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BAHAMAS JUDICIAL ENHANCEMENT PROJECT

COURT EFFICIENCY IN THE BAHAMAS
Analysis of Major Problems and Suggested Solutions

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National Center for State Courts
1110 North Glebe Road, Suite 1090
Arlington, Virginia 22201

FINAL REPORT

COURT EFFICIENCY IN THE BAHAMAS

Analysis of Major Problems and Suggested Solutions

by

James P. Rowles

with

Charles Mackey and James E. McMillan

National Center for State Courts
International Programs/Washington Office
1110 North Glebe Road, Suite 1090
Arlington, Virginia 22201
(703) 841-0205

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EXECUTIVE SUMMARY

1. Introduction

This report was prepared in response to a request from the United States Embassy in Nassau, in order to assist the latter in deciding what court modernization activities it might help fund. It attempts to analyze the problems currently encountered by Bahamian courts in the processing of drug-related and other criminal cases, a task which necessarily involves consideration of other questions related to the operation of the courts as a whole.

During April, 1993, a team consisting of James P. Rowles, Charles Mackey, and James E. McMillan conducted extensive interviews with Bahamian officials, judges, court personnel, and others as a part of its investigation. Those interviewed, who are deeply familiar with the problems faced by the courts, were extremely helpful to the study team. Their views are largely reflected herein.

2. Overview of the Court System and the Criminal Process

The report provides a detailed description of court organization and the procedure followed in criminal cases in trials before the Supreme Court and in summary trials before the Magistrates' Courts, which it is hoped will be particularly helpful to American readers.

The constitutional issues raised by the Skip Davis case, shortly to be decided by the Privy Council, are also examined. The Privy Council's decision may have very large repercussions throughout the criminal courts. For example, drug cases with sentences greater than two or five years might have to be tried before the Supreme Court. This would further

add to the backlog and delays which currently exist in the holding of Preliminary Inquiries, might require the addition of new judges and Justices, and underlines the urgency which exists with regard to introducing court reporting into the Magistrates' Courts.

Section II also examines what appear to be the most basic problems in the criminal justice process, including the backlog of cases. At the end of 1992, in the Magistrates Courts in Nassau alone, this backlog included some 419 drug cases, 4,455 other criminal cases, 451 Preliminary Inquiries, 658 juvenile matters, 3,035 civil cases, and 2,883 domestic matters. With the inclusion of traffic cases, the total backlog in the Magistrates' Courts in Nassau grew from 7,704 to 14,212 cases during 1992, with some 16,732 new cases being filed.

The matter of delays at every stage of the criminal process is also considered. While statistical data do not exist, the study team learned that as of April, 1993 Magistrates' Courts were adjourning cases into July, 1994 both in Nassau and in Freeport. The backlog and delays in the hearing of Preliminary Inquiries, and the long delays for subsequent trial in the Supreme Court are also described, together with the delays that occur in the hearing of summary trials and in the hearing of appeals of convictions and sentences by the Supreme Court.

The backlog and the fact that the courts are not gaining but rather losing ground each day has led to a crisis in which the ability of the judicial system to provide "a fair hearing within a reasonable time" may come increasingly into question.

Other matters considered are the inadequate physical facilities of the courts, which suggests the need for the initiation of long-term planning. The phenomenon of bail being granted to suspected drug dealers and other suspected criminals during the lengthy wait for

trial, and even after conviction in the Magistrates' Courts, is also considered. This is a matter which may seriously affect public perceptions of justice being done, and as a result the willingness of the public to participate in the judicial process (e.g., as complainants or witnesses). The lack of reliable judicial statistics is mentioned, while court statistics for 1992 are provided in Annex D to the Report. Other matters considered are the inadequacy of court personnel, the need for additional Magistrates and Supreme Court Justices, and the need for an adequate library with up-to-date holdings of the decisions of the highest courts in England and the Commonwealth.

The urgent question of the budget priority accorded to the courts is also considered, including figures for the budget of the Judicial Department for the last three years.

Finally, the relationship of drug cases to other criminal cases, the overall caseload, and the administration of the courts in general is briefly examined. This analysis suggests strongly that activities to increase efficiency in the processing of drug cases must address larger questions relating to the functioning of the courts as a whole.

3. Specific Problems in the Processing of Criminal Cases

Section III focuses in greater detail on certain key problems in the processing of criminal cases. These include the role of the police, particularly with respect to investigation following arraignment, the drawing up of the charges (where an official from the Attorney General's Office is needed), and the need for replacement of police prosecutors by legally-trained prosecutors from the Attorney General's Office, at least in the Preliminary Inquiry and drug Magistrates' Courts.

The whole question of adjournments is examined in considerable detail, as well as the problem of delay in the production of the record and the need for additional court reporters. Various suggestions are made regarding the need for streamlined procedures. Subjects covered include the Preliminary Inquiries (Special Procedure) Act, the advisability of considering the introduction of stipulations, the need for a functional equivalent to plea bargaining, and a potential need to increase the "costs" of appeals from Magistrates' Courts.

Finally, the advantages of office automation, as recommended in the following section, are briefly described in the text, and in greater detail in Annex E.

4. Recommendations

The text of the report contains a number of suggestions and recommendations as to how various problems might be alleviated or resolved. It is hoped that they will be given serious consideration by responsible Bahamian officials, and acted upon to the extent that the latter find them insightful and useful.

With respect to activities that it would make sense to include in a Bahamas Judicial Enhancement Project, the report recommends the introduction of a centralized data processing system to provide court automation, including computerized case management, word-processing, and other capabilities. The initial system recommended would have 25 terminals, including terminals in the Attorney General's Office and some exchange of data with the Police.

It is also recommended that additional court reporters be introduced into the Magistrates' Courts, and that a program be developed for training Bahamian court reporters.

Moreover, in addition to and as part of the foregoing, the establishment of new administrative and oversight capabilities is recommended, including the hiring of a computer manager to oversee the process of court automation.

I. INTRODUCTION

The United States Embassy in Nassau has arranged for the National Center for State Courts to provide an analysis of the current operation and problems of the judicial system, and to offer concrete suggestions regarding future project activities that might be undertaken to alleviate these problems. The principal goal of the present report is to assist the Embassy in determining what types of assistance it might be able to provide to the Government of the Commonwealth of The Bahamas in its efforts to improve the judicial system's ability to process cases more efficiently. A second goal is to provide the Bahamian Government with information and suggestions which it might find useful as it seeks to improve the efficiency of the courts.

A study team responsible for providing an overview of court efficiency and suggestions for elements to be included in a U.S.-assisted "Bahamas Judicial Enhancement Project" carried out on-site activities in Nassau in April, 1993, where it conducted interviews with judges, court personnel, and other officials and knowledgeable individuals, gathered pertinent information, and developed in basic outline the analysis and suggested elements of a project which are presented more fully below.

The study team was made up of Mr. James Rowles, an American expert in comparative judicial administration and comparative law, who served as Chief-of-Party; Mr. James McMillan, Director of the Court Technology Laboratory at the National Center for State Courts; and Mr. Charles Mackey, an English-trained Bahamian lawyer with extensive experience in the Bahamian judicial system including work both as a prosecutor in the Office of the Attorney General and as defense counsel.

A. SCOPE OF WORK

As noted in the "scope of work" or terms of reference of the study team, like its British counterpart, the justice system in The Bahamas derives from English common law. Both the Government and its citizens place a high value on the rule of law and the rights of the individual to a fair and public trial. Magistrates are deemed to be honest and their rulings fair. Nevertheless, due to an explosion in the number of drug-related and other court cases in the last decade, the entire judicial system has come under increasing stress, with serious delays occurring in the hearing and processing of criminal cases including drug-related cases.

The Scope of Work states the principal objectives of the study team and the present report as follows:

Activities to be Performed:

1. The team will provide the Embassy and the Government of the Commonwealth of The Bahamas (GCOB) with a study and analysis of the justice system, which should focus on causes of delay in processing drug cases. The study will also include examination of the present court reporting system and consider appropriate alternative reporting systems.

2. The team will assist the Embassy in preparing a preliminary draft of the main elements to be included in the project planning document for the Judicial Enhancement project. The Embassy is responsible for drafting the project planning document, but the team will contribute to it by identifying and prioritizing problem areas and recommending appropriate activities (including estimated levels of efforts and estimated costs) to address these areas. The main elements to be included in the preliminary draft of the planning document should represent a realistic and affordable set of activities with potential for real impact in the near and medium term. Project activities should also address the highest priority needs of the justice system as defined by its users and the GCOB. Emphasis should not be placed on new functions of the system, but rather on enhancing the system's effectiveness and efficiency in the performance of those functions for which it is already responsible, and enabling

the system to sustain a higher level of performance without dependence on foreign resources.

While the United States has a particular interest in the efficiency of the Bahamian judicial system in processing drug-related cases, it also has a broader interest in assisting the Bahamian government in improving the efficiency of the courts in processing criminal and other cases in general. In fact, these two objectives are closely related, for it is difficult to address the first without at the same time addressing the second. It quickly became apparent to the study team that while priority can be given to certain remedial measures targeted more narrowly toward the effective processing of drug-related cases, the efficient handling of such cases cannot be fully achieved without analyzing and addressing broader questions and issues that relate to the operation of the court system as a whole.

B. ACTIVITIES/METHODOLOGY OF THE STUDY TEAM

The study team's on-site evaluation of the operation of the court system and preliminary development of recommendations for program elements to be included in the Bahamas Judicial Improvement Project took place in Nassau from April 13-April 30, 1993. Mr. Rowles arrived in Nassau on April 13, and immediately began working with Mr. Mackey as a team, meeting with U.S. Embassy officials, Bahamian officials, judges, and administrative personnel of the courts. Mr. McMillan joined the team in Nassau from April 18-April 22, concentrating in particular on the needs for computerization and court reporting and the technical requirements of each. During May, Mr. Mackey also interviewed various court reporters and former participants in an earlier training program for court reporters in The Bahamas. Mr. Rowles is the principal author of this report. Mr. McMillan's separate report

on the needs and technical requirements for court automation and court reporting, whose findings are relied on in herein, is reproduced in Annex F.

During its work in The Bahamas, the study team received the full and active cooperation of a wide range of Bahamian officials, from Mr. Orville Turnquest, Attorney General, and Mr. Joaquim Gonsalves-Sabola, Chief Justice of the Supreme Court, to working level clerks in the courts. In addition, office space for the study team was provided at the courts, with the assistance of the Registrar, Mr. Nathaniel Dean, who together with his assistant, Mrs. Rebecca Grimes, also facilitated the work of the team in numerous other ways.

The study team set a high priority on meeting with a number of actors in the criminal justice process and the administration of the courts, proceeding on the assumption that these individuals, with years of experience in the court system, would have keen insights into its current problems and valuable suggestions regarding steps that might be taken for their resolution. This assumption was fully validated during the course of interviews with these individuals. The following report, therefore, to a very large degree reflects their collective insights into the operation of the courts and the ways in which its current problems might be overcome.

Interviews were conducted with both ranking and working-level officials. At the Ministry of Justice, these included Mr. Orville Turnquest, the Attorney General; Mr. Carlton Wright, the Permanent Secretary and Mrs. Leila Green, the Deputy Permanent Secretary; Mr. Ricardo Marques, Director of Legal Affairs; and Mrs. Cleopatra Christie, the Solicitor General. The team also had the opportunity to interview the former Attorney General, Mr. Sean McWeeney. In addition, the team met with Mr. Arlington Butler, Minister of Public

Security and Immigration; Mr. B.K. Bonamy, Commissioner of Police; Commodore Leon Smith, of the Royal Bahamas Defense Force; and Mr. Henry Bostwick, President of The Bahamas Bar Association.

At the courts, members of the team met on several occasions with Chief Justice Gonsalves-Sabola, whose insights were particularly valuable. The team also met on a continuing basis with Mr. Nathaniel Dean, Registrar of the Supreme Court and chief administrator of the courts. At the Magistrate's court level, the team met with the two magistrates handling drug cases exclusively, a third magistrate handling a few drug cases, the Chief Magistrate, and a magistrate handling preliminary inquiries in committal proceedings. At the suggestion of Minister Butler, the team had an extremely useful meeting with Mr. Telford Georges, former Chief Justice and currently both an adviser to the Ministry of Justice on law reform and a member of the Privy Council. It also had the opportunity to meet with Justices V.C. Melville (President), I.D. Rowe (formerly President of the Court of Appeal of Jamaica), and U.Y. Campbell, the three members of the Court of Appeal. Finally, the team met with a number of administrative personnel at the courts, and also at other government offices whose computer capabilities were of interest.

While the scope of work anticipated the possibility of the team producing two documents, one a court efficiency study and the other a project planning document, the study team determined that it would be best to combine the two into a single report. The following Sections II and III contain the heart of the analysis of the operation of the court system, including its problems and needs, while Section IV deals with potential solutions in the form of recommendations for elements or activities to be included in the Bahamas Judicial

Enhancement Project. Hence, both problems and their suggested solutions are encompassed within the present report.

II. OVERVIEW OF THE COURT SYSTEM AND THE CRIMINAL PROCESS

Before proceeding further, it will be useful to undertake a broad overview of the court system and the criminal justice process in The Bahamas. The structure and organization of the judicial system is briefly described in the Subsection (A), below, followed by a general description of the criminal process in Subsection (B). Basic problems both in the judicial system in general and in the processing of criminal cases in particular are identified in Subsection (C), while the relationships between the processing of drug-related cases, general criminal cases, juvenile matters, and the overall operation of the court system are discussed in Subsection (D). Against this background, a more detailed analysis of specific problems in the processing of criminal cases will then be presented in Section III.

A. COURT STRUCTURE AND ORGANIZATION

The center of the judicial system is in Nassau, the capital of The Bahamas. All major drug-trafficking cases and an estimated 75% of all drug-related cases are tried there, whereas only an estimated 25% of all drug cases are tried in the country's second city, Freeport, on Grand Bahama Island.

In Nassau there are at least eight (8) first-instance courts known as Magistrates' Courts.[1] With the exception of those handling drug cases, these courts are in general courts dealing with matters of lesser importance, e.g., civil cases where the amount in controversy does not exceed $3,000 or criminal cases for less serious offenses. Under the terms of legislation adopted in 1987, however, the Magistrates' Courts handling drug matters have jurisdiction to try all drug offenses, imposing sentences of up to five years in prison. Under

amendments to the 1987 Dangerous Drugs Act adopted in 1988, Magistrates Courts can try crimes with penalties of up to life imprisonment. In such cases, where a longer prison term is believed justified, the Magistrate's Court may refer the case of the defendant it has found guilty to one of the courts forming the Supreme Court, or what in England is known as the High Court, for the imposition of such greater sentence. However, the 1988 amendments have been held unconstitutional and are currently the subject of an appeal to the Privy Council, as discussed below.

In Nassau, at present, there are some eight (8) Magistrates' Courts dealing with criminal and civil matters, including juvenile and domestic matters. In addition there are two traffic courts and a coroner's court, which are also Magistrates' Courts in a technical sense. These courts may be grouped as follows:

Court	Magistrate	Type of Cases Handled
Drug Cases		
# 7	Sharon Wilson*	Drug cases
# 8	Carolita Bethell*	Drug cases
# 5	Gladys Manuel*	General criminal; some drug cases[2]
Preliminary Investigations (P.I.'s)		
# 6	Cheryl Albury*	Preliminary Investigations (P.I.'s) in "Serious" Criminal Cases (Indictable Offenses)
# 1	Ian Bethell	Preliminary Investigations

General Criminal Cases

# 3	Vera Watkins	General Criminal Matters
# 4	Hartman Longley* (Chief Magistrate)	General Criminal, Civil, and Domestic Matters

[See also Court # 5, above]

Juvenile Cases

# 2	Roger Gomez	Juvenile matters

Other

# 9		Traffic court
# 10		Traffic court
# 11	Winston Saunders	Coroner's court

*Interviewed by members of study team.

In addition to the foregoing, there are two (2) Magistrates' Courts in Freeport, Grand Bahamas. It should be noted that the Family Islands are served by courts which have a lesser jurisdiction than the Magistrates' courts. These are presided over by the Chief Administrator for the District, and thus are known as "Commissioners' Courts". They deal with minor summary offenses which do not fall under the administration of the judicial system. Aside from appeals to the Magistrates' Courts, they are independent of the Magistrates' Courts and will not be discussed further in this report.

Due to the shortage of adequate physical accommodations, the two traffic courts in Nassau presently sit in the evenings in the courtrooms of two of the eight magistrates referred

to above. The working hours of the courts are from 9:00 a.m.-5:30 p.m. Courtroom proceedings are held from 10:00 a.m.-4:30 p.m., and sometimes longer.

The first-instance courts which hear larger civil cases and try "serious" or "major" crimes (as these terms are understood in English law), are known as the Supreme Court.[3] These courts correspond to what is known in England as the High Court, and indeed are often referred to by that name by Bahamian lawyers. The Supreme Court also has appellate jurisdiction, hearing appeals from the Magistrates' Courts.

At present there are six justices of the Supreme Court, each sitting as the judge in his or her own court. The Justices do not sit en banc.

The highest court in The Bahamas itself is the Court of Appeal, which has appellate jurisdiction over cases decided by the Supreme Court and the Magistrates' Courts. It does not at present function on a permanent and continuing basis, instead meeting for four three-week sessions per year.

The highest court in the system, to which constitutional and other appeals may lie, is the Commonwealth's Privy Council, whose functions correspond roughly to those of the House of Lords in England. It has the authority to decide in the last instance questions of constitutional law, interpreting the provisions of the 1973 Constitution of the Commonwealth of The Bahamas. At present, two important cases from The Bahamas are on appeal or pending decision by the Privy Council. The first involves the constitutionality of the powers of the Magistrates' Courts under the Dangerous Drugs Act of 1987, as amended in 1988. The second involves the legality of the death penalty.[4]

The outcome of the first of these appeals, in the Skip Davis case, will have far-reaching consequences for the processing of drug cases. It is quite possible, for example, that the Privy Council may determine that all trials for offenses with penalties greater than five years--or even two years--must be tried as a trial for an indictable offense before a jury in the Supreme Court. Similarly, should the decision be retroactive in effect, it could require the dismissal or retrial of a great number of drug cases decided by the Magistrates' Courts in the past.

Supreme Court Justices serve with secure tenure until retirement at age 65, a period which may be extended to age 67 by mutual agreement.[5] Justices of the Court of Appeal likewise serve with secure tenure up to the age of 68, with the possibility of extension to age 70. Neither may be removed except for incapacity or misbehavior, in accordance with a decision by the Privy Council. Magistrates, on the other hand, do not enjoy such security of tenure, at least at the present.

Administratively, the courts are known as the Judicial Department, which is a department of the Ministry of Justice (Attorney General's Office). While the Attorney General is responsible for both criminal prosecutions and administration of the Judicial Department, the courts act independently in judicial matters.[6]

The Chief Justice of the Supreme Court is the head of the judiciary, and also has responsibilities for the administration of the courts. The Registrar of the Supreme Court is the Chief Justice's principal administrator, and exercises under his authority responsibility for the day-to-day administration of the courts, including the Magistrates' Courts. A Chief Magistrate also had administrative authority over the other Magistrates' Courts in the past, up

until 1987. Recently, a Chief Magistrate has been named, but his administrative and other responsibilities, which are in addition to those of running his own court, are still being worked out.

The Registrar of the Supreme Court is therefore the principal official with day-to-day responsibility for court administration. He is a member of the civil service, and also serves in a judicial capacity hearing cases (involving, e.g., the settling of costs), an activity which takes up to 75% of his time. He is responsible to the Chief Justice for judicial work, and works under the supervision of the Attorney General and with the Permanent Secretary of the Ministry of Justice on budget and other administrative matters, such as the extremely urgent need to find additional space and facilities.

These dual lines of authority appear in principle to create a situation in which the Registrar is responsible to two superiors whose interests and orders might collide. In practice, however, it appears that such conflicts do no occur or, if they do, at least they are not a matter of major concern.

Each judge in each court, both at the Supreme Court and at the Magistrates' Courts levels, has in principle a support staff consisting of one clerk and one secretary. In practice, several courts are currently without either a clerk or a secretary due to the unavailability of resources. This is a grave matter, indicative of the more pervasive problem of insufficient staffing in the courts.

B. PROCEDURE IN CRIMINAL CASES

Criminal cases may be tried in The Bahamas either before the Supreme Court or a Magistrate's Court, depending on the nature of the offense. As noted above, lesser

offenses are generally tried before the Magistrates' Courts in "summary trials" without a jury, whereas more serious offenses are generally tried, following a Preliminary Inquiry in a Magistrate's Court, before a jury in the Supreme Court, where a conviction requires an affirmative vote of two-thirds of the jurors (8 out of 12).

Certain offenses, including drug-related crimes, may be tried either before the Supreme Court or a Magistrate's Court, at the election of the Attorney General. In addition, a number of "indictable offenses" may be tried "summarily", i.e., in Magistrate's Court, provided the defendant agrees to be tried there without a jury.[7]

Following is a brief description of the procedure followed in the trial of (indictable) offenses "on information" in the Supreme Court, and of that followed in trials by summary procedure in the Magistrates' Courts. Because this report will be read by American officials unfamiliar with Bahamian legal terminology, full references which may seem repetitive to Bahamian readers are sometimes used. The indulgence of the latter in this regard is therefore requested.

1. SUPREME COURT: INDICTABLE OFFENSES

Following the arrest of a criminal suspect, the latter must be brought before a Magistrate's Court for "arraignment" within 48 hours. At the hearing, charges are read to the defendant before the Magistrate and the nature of the proceedings is explained to him. The date for the next hearing in the proceedings, the Preliminary Inquiry (described below), is also set at the time of this appearance or "arraignment". Moreover, the defendant may also obtain

bail at this time, and generally does so if he is Bahamian. Foreigners have a much more difficult time, due to the increased risk that they might leave the country.

The next stage is a "Preliminary Inquiry" which is held before a Magistrate's Court. At this proceeding, the charges are read and the nature of the proceedings is explained to the defendant, The prosecution, which is normally conducted by a police prosecutor (though the Attorney General's Office may send a legally-trained prosecutor if it wishes), must make out a prima facie case for committing the defendant to trial in the Supreme Court, which accounts for the fact that these proceedings are also known as "committal proceedings". The prosecution puts its witnesses on the stand and the Magistrate takes their depositions, which are transcribed, read back and signed by each respective witness. The witnesses may be cross-examined by the defense, which also has a right to put on its own witnesses. If the defendant has an alibi, he must present it at this stage of the proceedings, or shortly thereafter.[8] If the magistrate finds that the defendant should be committed for trial, he or she issues a committal order which is transmitted to the Registry of the Supreme Court.

After entering the matter in its books, the Registry of the Supreme Court forwards the file to the clerk of the Chief Justice, who enters the matter in his record books, after which he transmits the file to the Office of the Attorney General. If the latter decides to proceed with the case, as usually occurs, it issues an "information" officially submitting the case to the Supreme Court for trial, sending it and the file back to the Registry of the Supreme Court. Then the information sheet is sent back to the Attorney General's Chambers, where copies are made, after which it is sent with all the copies back to the Chief Justice's clerk. The latter,

after entering the case on the Cause List, sends one copy back to the Attorney General's Chambers, and files the others.

Once committal proceedings have been concluded and an "information" has been filed by the Office of the Attorney General, the accused is arraigned again, this time before the Supreme Court, where the charges in the indictment are read and the accused enters his plea. The date for this arraignment is set once the Attorney General's Chambers have submitted all the cases to be dealt with at the upcoming session of the Supreme Court, which must be done at least three days before the opening of the session.

When the matter is ready for trial, it is entered on the list of cases to be tried at the next session of the Supreme Court. The list must be closed three days before the opening of the respective session. In theory and in the past, the trial date might be at the upcoming session of the Supreme Court or, if the Court is already sitting, at the following session of the Court.

When the date set for trial arrives, the accused is brought before the Court and tried before a jury. A verdict requires the affirmative vote of two-thirds (or 8) of its members. Upon conviction, the defendant is normally remanded into custody to serve his sentence.

If convicted, the accused may appeal on points of either fact or law to the Court of Appeal. In practice, appeals are limited to points of law. The defendant is remanded into custody and remains in prison until his appeal is heard. It is unusual for bail to be granted at this stage. Once the matter is set for a hearing, and the date of the hearing arrives, each side in the case is provided adequate time to present its arguments.

In certain cases, particularly those involving questions of constitutional law, a further appeal to the Privy Council may be heard.

2. MAGISTRATE'S COURT: SUMMARY TRIALS

Summary trials are conducted in Magistrates' Courts for what are generally lesser offenses with penalties not exceeding six months' imprisonment. In the case of certain "hybrid" offenses (triable either as indictments or summarily), provided the defendant does not insist on a jury trial, the Magistrate's Court may impose a sentence of up to two years.[9] In addition, as explained above and in subsection (3) below, all drug cases may be tried before the Magistrates' Courts.

The procedure in summary trials is a simplified one, developed in England over the years to deal with offenses with a maximum sentence not exceeding six months imprisonment. The general idea is for the case to be disposed of "summarily", i.e., in a single, concentrated, oral proceeding or trial.

As in the case of those charged with indictable offenses to be tried "on information" before the Supreme Court, the suspect must be arraigned before a Magistrate's Court within 48 hours of his arrest. There the charges against him must be read, and he must enter a plea of guilty or not guilty. At the arraignment, the Court sets a date for the trial, usually before the same magistrate.

When the date set for trial arrives, the accused and witnesses for both the prosecution and the defense are called to appear before the Magistrate's Court. Due to the fact that attorneys (usually working in one-person firms) frequently are scheduled to appear in three or

four proceedings before different courts on the same morning, the absence of witnesses, and other factors discussed below, the summary trial is frequently postponed or "adjourned" to the next available date on the court's calendar. It is quite common for trials to be adjourned two or three times, or even more.

Once the accused, the witnesses, and the defense all show up and are in a position to proceed with the trial, the prosecution puts on its case. If it fails to prove all the elements of the crime, the case is dismissed. The prosecution is normally conducted by police prosecutors, who are active-duty police officials without formal legal training and who are rotated in and out of this position. In major drug cases, however, the Attorney General's Office will assign a prosecutor from its Chambers to conduct the prosecution.

In the great majority of drug cases, and perhaps most serious criminal cases not involving drugs, the defendant is represented by an attorney. Except in major drug cases, this results in a legal battle between highly-trained criminal defense counsel, on the one hand, and the legally untrained police prosecutor, on the other.

Upon conviction, the Magistrate normally proceeds to sentence the defendant. Generally, this sentencing power includes the imposition of sentences of up to six months or two years in general criminal matters, as explained above, and up to five years on a first conviction for a drug-related offense. However, if the drug-related offense is one for which a greater penalty may be imposed under the 1988 amendments to the Dangerous Drugs Act, the Magistrate then commits the defendant to the Supreme Court for sentencing at a later date, transmitting the file to the Court. Once such a case is set on its docket, and any appeal of the

conviction itself has been decided, the Supreme Court imposes the sentence on the defendant, which may be one of up to life imprisonment.

In the ordinary case not requiring transfer to the Supreme Court for sentencing, if the defendant is convicted, in the great majority of serious cases, and almost all drug cases, his attorney will appeal the conviction and very often also the length of the sentence imposed. The appeal lies to the Supreme Court which has appellate jurisdiction over matters tried in Magistrates' Courts.

In a drug case where the defendant is convicted on a count which involves a potential sentence that requires transfer to the Supreme Court for sentencing, the defendant will generally be convicted and sentenced on lesser counts as well. Once the appeal on the major count and on the lesser counts is filed, he will generally be granted bail, unless he is a foreigner.

The appeal can be heard before the Supreme Court only after the record for appeal has been prepared. This requires the transcription of the Magistrate's hand-written record of the case, and the Magistrate's certification that the transcription is a true and accurate copy of the same. The Supreme Court hears appeals on questions of both fact and law.

Once the record for appeal is ready, the appeal may be entered on the schedule of the Supreme Court for argument at the upcoming session of the Court. If the Supreme Court is currently in session, the case will be set down for the following session of the Court.

Appeals from the Supreme Court's decision on the appeal may be heard before the Court of Appeal, when the legal issue raised in one "of general public importance."[10] A

further appeal to the Privy Council is also possible, as illustrated by the Skip Davis case, discussed below.

3. DRUG CASES: PROCEDURE AND CONSTITUTIONAL ISSUES

As noted above, the Magistrates' Courts are, with the exception of those hearing drug cases, courts of lesser jurisdiction. On the civil side, they have jurisdiction to decide cases where the amount in controversy does not exceed $3,000. On the criminal side, they hear only lesser offenses, except for drug cases where they may decide all cases submitted to them by the prosecution (the Attorney General's Office has discretion as to whether to bring the case in Magistrate's Court or in the Supreme Court). In drug cases, the Magistrates' Courts may sentence the accused for up to five years in prison on a first conviction. If the sentence exceeds that period, the Magistrate may refer the case after conviction to the Supreme Court for sentencing.

The Constitutionality of the sentencing procedure and indeed the authority of the Magistrates' Courts to impose sentences of over one or two years in drug cases, and related issues, are currently the subject of an appeal to the Privy Council, in the Skip Davis case. The appeal was argued on May 17, 1993. The judgment of the Privy Council, which is likely to have far-reaching consequences for the processing of drug cases, is expected to be handed down shortly.

As the Skip Davis case brings home, 1987 Dangerous Drugs Act's grant of jurisdiction to the Magistrates' Courts to try all drug cases represents a significant change in the function and responsibilities of the Magistrates' Courts from those existing under English law. In

England, Magistrates' Courts have jurisdiction to try only minor criminal offenses involving sentences of up to six months' incarceration, or in the case of repeat offenders or multiple charges, up to 12 months in duration. Except for drug cases, the situation is similar in The Bahamas, where Magistrates' Courts generally may impose penalties of up to six months imprisonment and, in certain "hybrid" cases (triable by indictment or summarily) where the defendant does not insist on a jury trial, they may impose penalties of up to two years' imprisonment. At the same time, however, some other Commonwealth countries, including Jamaica, have given Magistrates' Courts the power in certain types of cases to try and impose sentences for longer periods of time without right to a jury trial.[11]

Before 1980, Magistrates' Courts in The Bahamas had jurisdiction to try lesser criminal offenses, including drug cases, where the sentence did not exceed two years. The effect of the 1980 amendments to the earlier Drug Act, reproduced in the 1987 Dangerous Drugs Act, was to confer on the Magistrates' Courts jurisdiction to try offenses which in England would be tried by the High Court as "serious" or "major" offenses and which in The Bahamas, prior to 1980, would have been tried by the Supreme Court. As explained below, this unusual feature of the Magistrates' Courts in The Bahamas has resulted in the trial of major drug-related cases in courts which were not originally designed for this purpose, a fact which may account for some of the chaos and delays now found in the processing of such cases.

Under the original 1987 Dangerous Drugs Act, Magistrates' Courts could try by summary procedure crimes with penalties for first offenders of a fine of up to $100,000 and imprisonment of up to five years.[12] In cases involving the supply of dangerous drugs to a

child or young person, the penalties could include a fine of up to $100,000 or imprisonment for a term of 3-7 years.[13]

In 1988 the Dangerous Drugs Act was amended to increase the maximum penalty for crimes under the main provisions of the act to life imprisonment, when the quantities involved exceeded 10 pounds of Indian hemp, two pounds of cocaine, or 20 grams of opium morphine and its salts.[14] The 1988 amendments also provided that in any case in which a Magistrate's Court had convicted an individual subject to imposition of a life sentence, the case would be transferred to the Supreme Court for sentencing as if on a plea of guilty.[15]

Except in drug cases (since 1980 under legislation in force before the 1987 Act) and as may be especially provided in specific legislation, the Magistrate's Courts generally have jurisdiction only to try cases with penalties of up to two years' imprisonment.[16] Under Article 20 (1) of the 1973 Constitution of the Commonwealth of The Bahamas, whenever a person is charged with a criminal offense, "the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law." Article 20 further provides that:

(2) Every person who is charged with a criminal offense

...

(g) shall, when charged on information in the Supreme Court, have the right to trial by jury.[17]

The provisions referred to above are directly involved in the appeal to the Privy Council in the Skip Davis case. In that case, a justice of the Supreme Court held that the 1988 amendments to the Dangerous Drugs Act were unconstitutional, and that five years' represented the outer limits of cases that might be heard by a Magistrate's Court without

violating the defendant's right to trial by a jury established by Article 20 of the Constitution. The case was then appealed to the Court of Appeal, which, holding that the 1988 amendments were unconstitutional, set aside the conviction and ordered a new trial. The Court's opinion, signed by two of the three judges, also set aside the lower court's finding that five years must be considered the outer limits at which the distinction between minor and major offenses is made.

Citing the 1977 Privy Council case of Hinds v. The Queen,[18] the Court found that the 1988 amendments had in effect deprived the defendant to the right to a jury trial which he had prior to 1988. While its reasoning suggested that even the 1980 amendments to the earlier drug act might be similarly flawed, the Court did not reach the issue of the maximum period for which the Magistrates' Courts might impose a sentence.[19]

In a separate concurring opinion, one of the three Justices described in detail provisions in other Commonwealth countries similar in many ways to the provisions in question, stating that he was "not persuaded that a term of imprisonment not exceeding five years can be said to be so severe as to categorize the offence a 'major' offence."[20]

In short, two of the three justices stated that they did not need to decide the maximum period for which a Magistrate's Court could impose a sentence, while the third strongly suggested that offenses with penalties exceeding five years gave the accused a right to trial by jury. All three concurred in holding the 1988 amendments unconstitutional, leaving the 1987 Act in force in its original terms.

The argument of the defendants (respondents) went further, maintaining that the appropriate dividing line might be drawn at the point where Magistrates' Courts had had the

power to sentence at the time of entry into effect of the Constitution. In drug cases, this period was 12 months prior to 1971, and two years thereafter up until 1980, when it was changed to five years.[21] The defendants argued that the maximum sentence that could be imposed was 12 months, due to the effect of the previous 1963 and 1969 Constitutions. Nonetheless, if only the 1973 Constitution is taken into account, the maximum sentence which the Magistrates' Courts might impose, under this rationale, would be two years.

In view of the foregoing, the Privy Council could find that (1) drug cases with sentences exceeding one or two years' imprisonment must be tried by jury in the Supreme Court; (2) drug cases with sentences exceeding five years' imprisonment must be tried in the Supreme Court, but that the Magistrates' Courts could lawfully impose sentences of up to five years without violating the accused's right to trial by jury; or (3) reverse the Supreme Court and Court of Appeal decisions, upholding the constitutionality of the 1988 amendments to the Dangerous Drugs Act.

The decision of the Privy Council in the Skip Davis case could have a great impact throughout the Commonwealth countries that follow English law, for it addresses the central question of what the maximum period is to which a defendant may be sentenced by a Magistrate's Court without benefit of the right to trial by jury. Given the complexity of the issues involved and the ramifications of the Privy Council's decision, it is difficult to predict how the case might be decided. Nonetheless, in view of the Hinds precedent and the opinions of the Supreme Court and the Court of Appeal, the possibility that the 1988 amendments will be upheld does not appear likely.

If the decision in the Skip Davis case is retroactive in effect, a distinct possibility in view of the language of Article 20 of the Constitution,[22] it could have the effect of setting aside the convictions of defendants in the Magistrates' Courts sentenced to periods greater than that which the Privy Council may determine is constitutionally permitted. In this event, such cases would have to be retried before a jury in the Supreme Court following a preliminary inquiry in a Magistrate's Court, or dismissed.

The Privy Council's decision in this case will obviously affect in a most serious way the ability of Bahamian courts to efficiently process drug cases and the types of measures which will need to be adopted to deal with the new and additional backlog of old cases which may be created by the decision. The need for and impact of such measures will also have to be taken into account in the design or subsequent modification of The Bahamas Judicial Improvement Project.

C. BASIC PROBLEMS IN THE CRIMINAL JUSTICE PROCESS

Based on extensive interviews with Bahamian participants in the judicial process, a number of basic problems that affect the processing of criminal cases including drug-related cases, and indeed the operation of the court system as a whole, can be clearly identified.

The Bahamian judicial system is a good one. The judges and staff of the courts impressed the study team on the whole as being well-qualified and dedicated to their work. Nonetheless, at least on the criminal side, it is not an exaggeration to say that the courts currently face very serious challenges which, taken together, amount to a crisis.

This crisis is the result of an explosion in the number of cases over the last decade and a failure, due to competing budget priorities within successive governments, to keep pace with the growing caseload by making the necessary increases in the resources allocated to the courts. In this connection it is important to bear in mind Article 20(1) of the 1973 Constitution, which establishes:

> If any person is charged with a criminal offense, then, unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent court established by law (emphasis added).

The ability of the courts to correctly determine the guilt or innocence of the accused "within a reasonable time" is in serious danger of being undermined as a result of the shortage of resources and attendant problems. These are described in broad fashion below.

1. Backlog

The first problem that stands out is the fact that there is a very large backlog of criminal cases waiting to be heard or whose appeals are waiting to be decided. The backlog is clearly related to and largely a by-product of the delays in processing cases (discussed in the following subsection). Yet it is important to identify it as a special problem because, even if the delays in processing new cases are resolved, extraordinary measures will still need to be taken to deal with the backlog.

Moreover, while the statistics which exist are not broken down by seriousness of offense, and as recently as two years ago were considered unreliable by the Chief Justice, those that do exist suggest that, with respect to criminal cases, the judicial system is not gaining but rather losing ground.

In a recent report by a special adviser to the Police Commissioner, the number of criminal cases pending trial as of January, 1987 was listed as 5,337, whereas the corresponding number in October, 1992 was stated to be 10,234.[23] The author of the November, 1992 report affirmed that the backlog "requires urgent attention and some extraordinary measures to deal with the problem."[24]

Statistics for 1992 prepared by the Registrar of the Supreme Court indicated that whereas there were 7,704 cases of all kinds pending before the Magistrates' Courts in Nassau as of January 1, 1992, the number had risen to 14,212 by December 31 of that year.[25]

With respect to drug-related cases in Nassau, where all major cases and perhaps 75% of the total are brought, the figures for 1992 show that while 552 drug cases were filed before the Magistrates' Courts, only 467 were completed during the year, with the result that the backlog grew from 334 on January 1, 1992 to 419 cases at the end of the year.

The backlog in general criminal cases (not involving drug-related offenses) also grew in 1992, with 3,931 cases filed in Nassau whereas 3,526 were completed during the year. As a result, the backlog grew from 4,050 on January 1 to 4,455 cases on December 31, 1992.

The situation with respect to the number of preliminary inquiries (committal proceedings) in cases involving indictable offenses achieved grave dimensions in 1992, with 419 cases filed and only 203 completed. As a result, the backlog grew from 235 at the beginning of the year to 451 at the end. This backlog was apparently related to some degree to an attempted outbreak at Fox Hill Prison in February, 1993, after which time the number of P.I. Magistrates' Courts was increased from one to two.

In juvenile matters, which may involve criminal and drug-related offenses,[26] according to statistics supplied by the Registrar of the Supreme Court, 911 cases were brought and 589 completed, with the backlog growing from 336 on January 1, 1992 to 658 at the end of the year. (Due to an apparent error in the totals for juvenile cases, the figure of 589 cases completed may be viewed with some doubt, and should be verified.)

In civil matters, the Magistrates' Courts in Nassau received 4,188 new cases, while completing only 1,683; the backlog grew from 530 to 3,035 pending cases during the course of the year.

With respect to domestic matters, some 3,008 cases were presented in Nassau, whereas only 1,070 were completed, with the backlog growing from 945 to 2,883 cases in 1992.

In Freeport, according to the statistics in Table 2 of Annex D, 4,353 criminal cases were filed in Magistrate's Court, 1091 were completed, and the backlog at the end of the year was 3,252.

The above figures suggest that the inefficiency in the processing of criminal cases, which in 1992 occupied a great proportion of the available judicial time[27] has led to an explosion in the backlog of civil and domestic cases. Currently, only Magistrate's Court No. 4 tries these matters, hearing civil cases on Monday and Wednesday morning, domestic cases on Wednesday afternoon and on Friday, and devoting Tuesday and Thursday to general criminal matters.

The backlog at the Supreme Court in criminal matters is also growing. While official statistics do not exist, the Solicitor General told the study team that there were 345 cases on

the list. Approximately 80 new cases come in during each of the four annual sessions of the Supreme Court, while only an average of 45 cases are completed each session. Thus, the Supreme Court is also losing ground against a growing backlog of cases.

On the civil side, the Clerk of the Lists for the Supreme Court for civil matters stated that some 300 cases were currently pending trial in the Supreme Court. The backlog is growing. In 1991, some 174 cases were set for trial, while only 56 were completed. In 1992, 241 cases were set for trial, but only 74 were completed.

At the Court of Appeal, statistics on the backlog of criminal and civil appeals apparently do not exist. The Justices of the Court themselves do not have this information, which they obviously need.

2. Delays

With the court system backed up with an increasing caseload greater than it can process efficiently, delays at every stage of the criminal process (as well as in other cases) have become an extremely serious and urgent matter. While the only reasonably detailed statistics available are for 1992, and data on criminal cases by type and seriousness of offense is not available (except for the general category of drug-cases), examples related to the study team make the point absolutely clear.

A striking example was cited by the three members of the Court of Appeal in a meeting with the study team on April 28, 1993. That morning, the Court had granted the appeal of a defendant who had been arrested on June 14, 1987, and who had been in custody for six years. Examples of cases involving criminals who have been free on bail for years,

pending trial and decision of their appeal, could also be cited to show that guilty criminals also benefit from the long delays. Justice, and public perceptions of justice, suffer as a result.

A Magistrate in Nassau hearing both criminal and drug-related cases told the study team that cases were now being "adjourned" or continued into September, 1994, the first available date on the court's calendar. Delays in some other Magistrates' Courts may be shorter, but are still long. In Freeport (Grand Bahama Island), the study team learned that as of April, 1993 Magistrates' Courts were adjourning cases into September, 1994.

The Solicitor General estimated that it would take two years to get a criminal case through the Magistrates' Courts. The Director of Legal Affairs at the Ministry of Justice estimated that it would take an average of a year for the record on an appeal from a conviction in Magistrate's Court to be ready to be presented to the Supreme Court. Other estimates ranged from 3-6 months (low) to an average of a year or more. The Chief Justice of the Supreme Court observed to the study team that the delay in the production of the record could take up to two years. The Minister of Public Security indicated to the study team that some cases may take considerably longer, citing a case from 1988 or 1989 in which the record was apparently still pending.

Because of the congested court calendar and the lack of case management expertise coupled with computer capabilities, in a system where each Magistrate's Court handles its own schedule independently of that of other courts, cases that do come to trial are very frequently "adjourned" in the middle of the trial. One drug court Magistrate estimated that 50% of all trials had to be interrupted and adjourned to the next available date on the calendar. Another drug court Magistrate related to the study team a current example of a

trial, then in its third week, that had to be interrupted and adjourned until October because there was no time left on the schedule of the court.

Once a defendant has been convicted in Magistrate's Court, a further delay of perhaps an average of a year takes place before the record of the case is ready for presentation to the Supreme Court. Due to the backlog of appeals there, further delays are frequent. The Chief Justice stated that the current backlog of appeals from the Magistrates' Courts was on the order of 40-50 cases. These he had fixed to be heard by himself by June, 1993.[28]

Delays in the trial of indictable offenses before the Supreme Court are also lengthy, due to the backlog in the granting of preliminary inquiries in Magistrate's Court, the time it takes to produce the written record to be transmitted to the Supreme Court and the Attorney General's Chambers, and the Supreme Court's own heavy caseload. The Solicitor General cited as one example a case involving a murder which occurred in April 1991, but which did not reach the Attorney General's Office until January, 1993. According to one estimate, it may take two years or more to get a trial in the Supreme Court, after the Preliminary Inquiry.

The introduction of a court reporter in one of the two P.I. Magistrates Courts has speeded the production of the record in that court. However, the second P.I. Magistrate's Court continues to take handwritten notes of the depositions and proceedings, with very considerable delays resulting in their transcription, proof-reading, and certification.

3. Physical Facilities

It quickly became apparent to the study team that the physical facilities of the courts in Nassau leave much to be desired. Given its terms of reference, the team did not

focus in detail on the courts' requirements for more space and new facilities, as it does not appear that this need can be addressed in the short to intermediate term.

Nonetheless, several observations are in order. The physical aspect of the courts is everywhere of great importance in impressing on all participants the seriousness of the proceedings underway and the respect which should be accorded the judicial process. The "majesty of the law", it is believed by experts in the field, should be reflected in its physical surroundings.

The study team observed that in one Magistrate's Court it was impossible for the audience to hear the proceedings due to the sound of the air conditioning units at the back of the courtroom. Various magistrates made comments regarding the inadequate physical security of their files. One expressed apprehension about personal security, after unexpectedly encountering an individual she had convicted in the hallway.

The clerk of the Chief Justice has inadequate space for maintaining case files, which are now stored in part in a hallway outside his office--a space which itself may soon be exhausted.

The Magistrates' Courts are located in several different buildings, and some are at a separate location several blocks away. The Registrar is doing his best to find the additional accommodations which are needed, but budget limitations impose strict constraints.

The physical separation of the Magistrates' Courts makes it difficult to share facilities such as a photocopying machine. For example, one of the Magistrate's reported that the Court's secretary spent at least a half a day a week going to another building to make photocopies. Moreover, it makes it difficult to even contemplate the possibility of the

different Magistrates' Courts sharing a caseload so that if a case does not come off in one, it might pick up an extra case from another.

Various individuals interviewed commented on the lack of adequate holding facilities for prisoners, who are brought down from Fox Hill Prison every morning and held at the Police Station.

In addition, there is a need for additional Magistrates' Courts and courtrooms in which to put them. There is a similar need for additional Supreme Court Justices. Currently, the three members of the Court of Appeal share the chambers of a displaced Justice of the Supreme Court during their quarterly three-week sessions. It would be desirable for each of them to have chambers. All of these needs will require additional courtrooms and chambers.

While addressing this problem may not be possible within the anticipated scope of the Bahamas Judicial Enhancement Project, long-term planning for the creation of a new judicial center would be well-advised, and should begin soon. In the meantime, every effort should be made to provide the courts with the additional space and facilities they require now and will require in the short to intermediate term.

4. Bail

Public perceptions that justice is being done are important to the successful functioning of any judicial system. Unfortunately, due in part to the long delays in bringing a defendant to trial and in deciding an appeal, an estimated 9 of 10 defendants are freed on bail following their arraignment. Moreover, they remain free on bail not only until convicted by a

jury in the Supreme Court, but also until the appeal of their conviction after a summary trial in Magistrate's Court is decided by the Supreme Court.

The result is particularly noticeable in drug-related cases, where suspected drug traffickers and dealers are able to remain free on bail for years following their initial arrest.

It is important to understand that both Magistrates and Supreme Court Justices view themselves, given the delays that are endemic in the processing of criminal cases, as under an obligation to grant bail except where the defendant is likely to flee the jurisdiction. Consequently, while foreigners are denied bail, Bahamians are granted it in the overwhelming majority of cases.

This is not necessarily the result of any lack of determination to fight crime on the part of the judges. Article 19(3) of the Constitution provides that if any person is detained on suspicion of having committed a crime and

> ...is not tried within a reasonable time, he shall (without prejudice to any further proceedings that might be brought against him) be released either unconditionally or upon reasonable conditions, including in particular such conditions as are reasonably necessary to ensure that he appears at a later date for trial or for proceedings preliminary to a trial.[29]

At the same time, in the case of appeals from convictions in Magistrate's Court, the Criminal Procedure Code establishes the following:

> Art. 234--(1) Where any person who has been convicted and sentenced to a term of imprisonment gives notice in accordance with the provisions of this Code of his intention to appeal against the conviction or sentence, the magistrate's court by which he was convicted or the court to which the appeal lies, shall, upon application being made by or on behalf of such person, order

> that he be released from custody until such time as the appeal is determined, abandoned or withdrawn, unless the court is satisfied that such person is likely to abscond or commit the same or a like offence if he is so released.[30]

Two observations are in order. First, the long delays in bringing a defendant to trial, and in completing a trial leading to a conviction, lead many judges to grant bail under the terms of Article 19(3) of the Constitution. If it were possible to try the defendant within a reasonable time, this constitutional injunction might not be deemed applicable and defendants on serious charges would stand a better chance of being held while awaiting trial.

The second observation is that the provision in Article 234(1) of the Criminal Procedure Code for granting bail to a defendant convicted in Magistrate's Court in a summary trial may make good sense when the offense is one with a maximum sentence of six months, but it may not make equal sense where the maximum penalty may be two years, or five years in drug cases, or up to life in prison in the major drug cases for which this penalty was established under the 1988 amendments to the Dangerous Drugs Act.

One solution to the first problem would be to try the defendant by jury in major cases "within a reasonable time." With respect to the second problem, speedier trials would obviously help. However, it may also be appropriate to consider the possibility of amending the Criminal Procedure Code to take into account the basic shift if the function of the Magistrate's Court and the seriousness of offenses which may be tried there under the Dangerous Drugs Act. Such an amendment would modify the current presumption in favor of release on bail <u>following conviction</u> in Magistrate's Court and pending the outcome of an appeal to the Supreme Court.[31]

An additional factor in granting or denying bail is the fact that Fox Hill Prison is an overcrowded facility occupied by a number of hardened criminals. Judges may be reluctant to send someone who is presumed innocent to be held there while awaiting trial, or even after conviction in a Magistrate's Court when an appeal from the conviction is pending.

In any event, dealing effectively with the backlog and shortening the long delays before trial should make it easier for a judge to deny bail when the circumstances so warrant.

5. Lack of Statistics

Until two years ago, when the present Registrar assumed his position, no statistics were prepared at the courts. Those for 1991 were deemed unreliable by the Chief Justice. Those for 1992 were produced manually by totaling up the weekly sheets that each Magistrate is required to submit to the Registrar of the Court. However, the Registrar has insufficient staff to devote to the time-consuming task of compiling such statistics, which in any event are prone to error due to their manual preparation.

As a result, the judicial system has been "flying blind". Without an accurate set of statistics, including a breakdown of cases by seriousness of offense, by average duration of the various stages in a trial and on appeal, and by the reversal rate of each judge, it is extremely difficult to analyze deficiencies in the operation of the courts and to introduce appropriate measures to overcome them.

The introduction of computerized case-tracking and case-management, as recommended in Section IV below, would solve this problem. Detailed statistics would be generated automatically as a result of the data entry at various stages of the proceedings.

Computerization should also solve the related problem of not being able to quickly access information on the status of a case. Such inquiries currently require a time-consuming manual search of the corresponding records.

6. Personnel

The courts are seriously understaffed. At least two of the Magistrates interviewed lacked a member of the normal support staff of a clerk and a secretary in each court. These positions should be filled at the earliest opportunity.

The registry functions of the courts are also understaffed. At present, there is no Deputy Registrar, and the position is being filled by the Assistant Registrar whose own position lies vacant in functional terms. At the same time, due to the Registrar's other responsibilities for hearing cases, which may occupy up to 75% of his time, there is not sufficient court management expertise available to the courts.

One solution would be to have the current Registrar, a capable administrator, devote a greater portion of his time to court administration. Yet there are limits to the degree to which this can be done, due to the career incentive structure which currently exists. In any event, there is a strong need to give priority attention to the question of how individuals with strong capabilities as court administrators can be introduced so as to work in the Office of the Registrar. A first step would be to fill the currently vacant position of Deputy Registrar with an individual who has strong administrative capabilities in addition to the other requirements for the post. Another step would be to provide Mr. Dean with a personal assistant who could

execute his instructions and enable him to concentrate more on the analytical and policy-making aspects of court administration.

The quality of Supreme Court Justices was reported to the study team as being quite high. Magistrates currently serving appear to be capable and hard-working, despite some public perceptions to the contrary. The latter may reflect frustration over the fact that cases are not being processed efficiently by the Magistrates' Courts, an assumption that when a Magistrate is not sitting in his or her court he or she is not working, and the fact that when a case does not go off a Magistrate may be left with little work to do. Improvements in scheduling and other case-management techniques made possible by computerization will help address this problem. There may also be a need to plan days off and vacations farther in advance.

Because of the salary levels, entering magistrates generally lack extensive experience at the bar, a fact which some observers believe is responsible for an overly lax policy of granting adjournments to experienced criminal defense attorneys. Given this relative lack of experience at the bar, it would be useful to introduce some form of in-service training for Magistrates. For example, periodic workshops might be held to address questions relating to when the granting of adjournments is appropriate, sentencing, the efficient scheduling of the judge's time, or staff management at the individual court level. Supreme Court Justices might participate in the training in some fashion, or at least be invited to attend.

Finally, given the backlog in criminal cases, there is a need for additional Magistrates and, particularly in view of the upcoming decision of the Privy Council in the Skip Davis case, additional Supreme Court Justices. Nonetheless, it would be a mistake to try to address

the current problems in processing cases by simply creating new courts, however natural such measures might appear to be. Rationalization of court administrative procedures and more effective management of the caseload assisted by computerization should precede or at least go hand-in-hand with the addition of new judges.

7. Books

The Courts in The Bahamas are called upon to apply a sophisticated body of law. Unfortunately, judges are severely handicapped in this task by the absence of a well-equipped library. For example, the All England Reports stop in 1987--five years ago!--despite the fact that appeals to lie to the Privy Council as the highest court of appeal and the fact that judges look to English case precedents, norms and principles for guidance, and indeed are required to apply English law where Bahamian law is silent on the point in question.

Members of the Court of Appeal, the Supreme Court, and even the Magistrates obviously need to have access to the latest court reports of the highest courts in England and the Commonwealth. They also need the latest editions of leading treatises in different fields. For example, the Court of Appeal has access to the one-volume 1979 edition of Archbold, Pleading, Evidence, and Practice in Criminal Cases, the authoritative work in the field. They, and the Supreme Court, obviously should have access to the three-volume 44th edition, published in 1992.

8. Budget

As noted above, the budget priority accorded the judicial system is a matter of the highest priority. While the budget of the police has been increased considerably in recent years, that of the courts remains at the level of approximately $3 million per year.

According to the Registrar there are 117 members of the staff of the courts, including judges. Salaries range from $8,900 for a filing assistant to $35,000 for a Magistrate and $60,000 for a Justice of the Supreme Court. Members of the Court of Appeal are paid considerably more.

According to figures supplied by the Registrar, the budget of the Judicial Department of the Ministry of Justice (i.e., the courts) from 1991 to 1993/94 (the latter date reflects a change in the fiscal year) was as follows:

BUDGET OF JUDICIAL DEPARTMENT
(in thousands of Bahamian dollars)

	1991	1992	1993	1993/94
Salaries	2,603.8	2,659.5	2,328.7	2,154.4
Operating Expenses	426.7	860.4	777.1	635.2
Capital Expenditure	Unavail.	Unavail.	Unavail.	487.5

Note: These figures may not include certain expenses related to the Court of Appeal.

It seems clear that very considerable additional resources need to be allocated to the courts, at the earliest possible date. With respect to the processing of criminal cases, the criminal justice process must be viewed as a whole. Increased arrests cannot address the

problem of crime unless the courts are enabled to efficiently process cases and put guilty criminals behind bars.

D. INTERRELATIONSHIP OF DRUG CASES WITH OTHER MATTERS

Given the fact that 6 or 6 1/2 of the 8 Magistrates hearing general civil and criminal matters are currently devoted to processing criminal cases, the fact that both Magistrates and court staff may be rotated from time to time and may be called to fill in for each other, and the relationship between juvenile, general criminal, and drug-related offenses, it is evident that any plan to introduce court automation (including computerized word-processing, case management, and the generation of statistics) should be introduced in all courts in Nassau at the same time, while including those in Freeport at a later date.

With respect to juvenile cases, it is important to understand how delays in processing cases may lead to the production of future criminals. The Registrar pointed out that there is a 10-month delay for trial of a juvenile. During that time, he is suspended from school, and with nothing to do is further tempted to resort to crime. Also, there is no detention facility for juveniles between the ages of 16 and 18. Consequently, a finding of guilty may lead to an overly lenient sentence on the one hand, or place the individual in prison with hardened criminals, on the other.

The relationship between general crime and drug-related offenses is widely understood. In recent years, drug traffickers have been paying off their Bahamian intermediaries in kind, i.e., in drugs. These find their way to the local market. The consequence is serious in social terms, and also may create a larger pool of willing

participants in drug-trafficking schemes in the future. While those interviewed all suggested that the major figures in the drug trade have had their activities greatly reduced in recent years, there is no guarantee that this situation will remain the same in the future.

In a word, general criminal cases, as well as juvenile cases, are related, and it makes good sense to seek to improve the processing of cases by the courts in all three areas.

At the same time, it is not practical to automate, for example, two-thirds of the court system but not all of it. The rotation of personnel, the interactions of various parts of the judicial system (e.g., in producing backlogs), the need for uniform procedures, and the need for detailed and reliable statistical information, all argue for a court automation project that unites and serves all of the courts. Given the relatively small size of the Bahamian judiciary, this is a realistic goal.

III. SPECIFIC PROBLEMS IN THE PROCESSING OF CRIMINAL CASES

The description of the criminal justice process in Section II, above, provides a broad overview of the most serious challenges facing the court system in The Bahamas. Here it will be useful to add to what is stated above and to provide further detail regarding certain more specific problems, such as that of the delays incurred in producing and transcribing a hand-written record of the proceedings.

A. THE ROLE OF THE POLICE

It is important to bear in mind that the criminal justice process begins with the police work resulting in an arrest and ends with the conviction or acquittal of the accused, the decision of all appeals, and the serving of prison sentences by convicted offenders. In this process, the police play an important role not only in apprehending criminals, but also in drawing up the charges against the defendant, in presenting evidence at summary trials in Magistrate's Court and, in the case of indictable offenses, at the Preliminary Inquiry in Magistrate's Court and the subsequent trial in the Supreme Court. They are also responsible for serving summons and warrants to ensure the presence of witnesses and the accused at the Preliminary Inquiry or trial. In addition, police prosecutors put on the case for the prosecution in all Preliminary Inquiries and in ordinary criminal and drug cases tried before the Magistrates' Courts.

Police time is a valuable and limited resource, and therefore it is important that the criminal process be organized in such a manner as to use this resource efficiently. While the study team did not focus specifically on police procedures and practices during its work, it

will still be useful to offer certain observations relevant to the role of the police in the processing of criminal cases.

1. Investigation

Some police officials hold the view that it would be useful to be able to interrogate defendants after arrest for a period greater than the 48 hours during which they may be held before being taken before a Magistrate, at which time they generally get bail. At the same time, the team heard from others that the police lab is under-utilized, and that the investigative capabilities and practices of the police might be strengthened.

At present, it would appear that investigation is limited in most cases to the initial 48-hour period. It appears that there is a strong need to further develop the post-arraignment investigative capabilities and practices of the police, so that in serious cases the investigation continues after the arraignment of the defendant and his release on bail. The police should consider developing practices and procedures for interrogating defendants after their arraignment and release on bail, e.g., by calling them in for questioning. More attention to the development of physical evidence and of corroborative testimony by other witnesses would also be useful.

Currently, there appears to be little coordination and cooperation between police investigators and the prosecutors in the Attorney General' Office. This is an area in which improvements should be sought and ought to be readily achieved. An enhanced criminal investigative capability coupled with closer cooperation with the Attorney General's office while building a case should improve the effectiveness with which cases are brought to trial and convictions are achieved.

2. The Drawing Up of Charges

In April. 1993, the police were still drawing up the charges to be brought against a defendant, without the benefit of legal advice. Plans are underway to assign at least one prosecutor from the Attorney General's Office to advise the police with respect to the drawing up of charges. This is an urgently-needed measure, which should help filter bad cases out from those that are sent forward to the courts, while avoiding legal errors in the drafting of charges to be presented against the defendant.

It would also be useful to have a second prosecutor with responsibility for assisting the police in their investigative work, particularly with respect to indictable offenses and serious drug cases.

3. Replacement of Police Prosecutors by Legally-Trained Prosecutors from the Attorney General's Office

At present, police prosecutors who are not legally-trained are responsible for putting on the case for the prosecution at the Preliminary Inquiry (for indictable offenses) in Magistrate's Court, and for conducting the prosecution of all but serious drug cases in summary trials before the Magistrates' Courts. As noted in Section II, above, this often leads to a gross mismatch in legal expertise between the prosecution and the defense. Consequently, it is recommended that the most serious consideration be given to replacing police prosecutors with legally-trained prosecutors from the Attorney General's Office in the two P.I. Magistrates' Courts, and in the two Magistrates' Courts exclusively hearing drug cases.

Should the Privy Council's decision in the Skip Davis case result in the more serious drug cases being tried in the Supreme Court, the additional prosecutors recommended for assignment to the drug Magistrates' Courts might be assigned instead to handle the increased number of Preliminary Inquiries that will be required.

In general, with the introduction of computerized scheduling and case management, and as delays are reduced, the Attorney General's Office should give serious consideration to developing a system whereby prosecutors in that office assume responsibility for a case from beginning to end, i.e., both at the Preliminary Investigation and at the trial in the Supreme Court. At present, the Attorney General's Office may not even learn of a case until the Preliminary Investigation has been concluded, and the case file is sent to its Chambers by the Registry of the Supreme Court.

B. ADJOURNMENTS

The problem of granting adjournments in the Magistrates' Courts is described in general terms in Section II(C), above. There are, of course, different types of adjournments, and it will be useful to distinguish between them.

First, there is the adjournment granted at the Preliminary Inquiry or at a trial by summary procedure which is due to the failure of witnesses to appear.

Second, there is the adjournment which is granted because of the conflicts that result from the fact that, under the present uncoordinated system of case scheduling, defense attorneys are frequently scheduled to appear in various matters in different courts at the same time.[32] Moreover, when a Supreme Court case is set for trial, usually with as little notice as

three or even fewer days, the defense attorney must give priority to his appearance in Supreme Court, obtaining an adjournment for the matter or matters for which he was scheduled to appear in Magistrate's Court.

Third, there is the adjournment which is granted during a trial, due to the fact that the court has not allocated sufficient time for conclusion of the trial in continuous fashion. It runs out of time, and must move on to the next matter entered on its schedule, with the result that the continuation of the trial may be put off for six months or more. This makes it more time-consuming and difficult to bring the matter to a successful conclusion, since it becomes harder to locate witnesses, participants lose interest, and memories fade. In a word, delay favors the defense.

There are thus several reasons why adjournments are granted on what appears to be an excessive basis. Witnesses do not appear at the Preliminary Investigation or the summary trial. Attorneys are scheduled to appear in more than one court, and must always get an adjournment in Magistrate's Court when one of their cases is set for trial in the Supreme Court. Cases are adjourned during the trial when insufficient time has been allocated on the calendar.

The introduction of a computerized case-management system should help considerably in reducing the need for adjournments through improvements in case scheduling, including the elimination of scheduling conflicts on the part of defense counsel.

Yet a further reason for what appears to be an excessive granting of adjournments must also be addressed. A number of individuals interviewed commented on the fact that defense counsel are frequently quite experienced and skillful, whereas Magistrates often come

to the bench with little trial experience. The result is that in a great number of cases Magistrates do not appear to impose strict conditions for the granting of adjournments.

This problem should be addressed through the development of reasonable and strict conditions for the granting of adjournments, both through meetings and consultations among the Magistrates and higher-level judges with a view toward developing common criteria, and through the holding of in-service training activities such as a workshop which focuses on the whole problem of adjournments. Such a workshop would be a natural adjunct of the broader range of activities to be introduced aimed at reexamining procedures and practices as computerized case management is implemented.

C. PRODUCTION OF THE RECORD: THE NEED FOR COURT REPORTERS

1. Production of the Record

One of the biggest causes of delay in the processing of criminal cases is the traditional method employed for producing the record of the proceedings. Under this approach, the judge writes down by hand as a complete version of the proceedings as is possible. The record must be sufficiently complete and accurate to withstand any attack on appeal. After making a hand-written record of the testimony presented in depositions in Preliminary Inquiries, and in summary trials before Magistrates' Courts, the handwritten record must be typed up before the case can go to trial in the case of an indictment, or before an appeal from a Magistrate's Court conviction can be heard by the Supreme Court in the case of a summary trial.

The traditional method of producing the record slows the proceedings down in several ways.

First, attorneys and judges become accustomed to the depositions being taken or the testimony being heard at a rate of speed which allows the judge to make a reasonably complete hand-written record of the proceedings. Defense attorneys also make extensive written notes of everything that is said. The net effect is to slow down the proceedings to a very significant degree compared to the rate of spontaneous exchange which might otherwise occur. Interestingly, members of the study team personally experienced this phenomenon while taking notes during interviews with attorneys and judges, who were then urged to continue speaking quickly without regard to the taking of notes.

Second, the Magistrate's ability to directly observe the demeanor of the witnesses, including that of the defendant if he takes the stand, is very significantly decreased.[33] This is particularly important in summary trials without a jury where the Magistrate is the trier of fact.

Third, a great deal of time is spent by both the secretary and the Magistrate is producing the typed and authenticated transcription of the judge's hand-written notes. Using simple electric typewriters, the omission of a sentence or paragraph may make it necessary to retype a page or even 30 or 40 pages of the record. Not only is the use of such typewriters slow and time-consuming for the secretary, but it also consumes valuable judicial time due to the fact that the Magistrate must review the typed transcription and certify that it is a true and correct transcript of the proceedings. In a word, the Magistrate and the secretary spend a considerable amount of time proof-reading together.

Fourth, the effect of the foregoing is to greatly increase the delays in the hearing of appeals from convictions in Magistrates' Courts. As noted above in Section II(C)(2), the average delay in the production of the record is perhaps one year and not infrequently it may run as long as two years or more.

The use of the traditional method of producing the record also delays the proceedings in Preliminary Investigations. In some cases, where the defense counsel cross-examines the witnesses, these proceedings may take two days using the hand-written method, whereas with Court Reporters it should be possible to complete the depositions in one day. Since the two days in question are not likely to be consecutive days due to the scheduling of the court calendar, and an adjournment may be for up to six months or more, it would obviously be more efficient to complete such inquiries in one day.

The introduction of Court Reporters in the PI Magistrates' Courts would assist greatly in reducing or eliminating the problems described above.

2. The Need for Court Reporters

Three years ago the Supreme Court introduced Court Reporters into its proceedings. At first, this change gave rise to considerable skepticism on the part of some Justices. Today, the Supreme Court Justices seem quite pleased with the use of court reporters and, according to the Chief Justice, it is hard to imagine how they got along without them before.

In April, six foreign court reporters were currently assigned to the Supreme Court, while one Bahamian was assigned to one of the two P.I. Magistrates' Courts. A second

Bahamian was also working in the Supreme Court in order to qualify at the requisite speed of 225 words per minute. In the Supreme Court, the six court reporters work as a team, with five usually assigned to courtrooms and the sixth rotated out to work on transcripts and fill in for absences due to vacations, etc. In the P.I. Magistrate's Court, where the one Bahamian court reporter is assigned, the use of court reporting enables the Magistrate to get the official record of the depositions off to the Registry of the Supreme Court quickly, the goal being to do so within a week.

The study team found that neither videotaping nor audio-taping represents a viable option for production of the record, due to the physical characteristics of the courtrooms in which Preliminary Inquiries and summary trials are conducted.

The technology employed by the court reporters is modern, consisting of computer-assisted transcription (CAT) steno-writing machines. The court reporters keep a dictionary of their shorthand keystrokes stored in portable computers. These keystrokes are individual and differ from reporter to reporter, a fact which makes it difficult to freely rotate reporters. Either at the time reporters are taking down the record or subsequently, the computer translates the court reporter's keystrokes into English, thereby creating a rough draft of the transcript. Moreover, real-time court reporting is available in two of the courtrooms of the Supreme Court (hearing criminal cases), with terminals provided for the prosecution and the defense so that they may view the transcript as it is being created.

Whether in regular court reporting or real-time reporting with terminals for counsel, the rough draft must be edited before the final transcript is produced. It takes approximately

one and a half to two hours of additional work per hour of court testimony to prepare a final transcript.

The technology used by the court reporters is up-to-date and on the whole appropriate for the needs of the Bahamian courts. However, the need in the Supreme Court for real-time reporting with terminals for opposing counsel is open to some question.

The immediate need is for additional reporters in the two P.I. Magistrates' Courts. There, depositions are taken and must be produced in final form so that they may be read back to the witnesses and signed by the latter and by the Magistrate as accurate.

At present, the one P.I. Magistrate's Court using court reporters has to take an extra hour off for lunch to enable the reporter to revise the transcript of the morning depositions. This reporter has to work extra hours before and after court to keep up with the workload. No person can work at this pace for long, and to avoid burn-out there is an immediate need to assign an additional reporter to this court to assist in the preparation of transcripts.

Both P.I. Magistrates' Courts need a full complement of court reporters. Ideally, two would be assigned to each of the two courts, with one transcribing the depositions and the second turning out the revised final transcripts. The introduction of additional court reporters in the two P.I. Magistrates' Courts should greatly increase the ability of the courts to process criminal cases. First, Preliminary Inquiries should take less time, helping to reduce both the backlog and the resultant delay. Second, quick production of the written record necessary for the case to proceed to trial should eliminate another major cause of delay.

The introduction of court reporters in the Magistrates' Courts hearing summary trials in cases likely to be appealed is also an urgent priority. When implemented, this step should

reduce the long delays currently experienced in the production of the record for appeal. The highest priority should be given to providing court reporters in the two Magistrates' Courts hearing drug cases, and perhaps an additional Magistrate's Court hearing criminal cases where the defendant is represented by counsel and there is a strong likelihood of an appeal from any conviction. Alternatively, in lieu of the latter, one or more court reporters might serve a number of Magistrates' Courts hearing non-drug criminal cases of the kind likely to be appealed. If this were done, problems associated with the moving of equipment would have to be addressed, and the reporters would also need to have a permanent office where transcripts could be revised.

The addition of more reporters to the P.I. Magistrates' Courts and their introduction in perhaps three of the Magistrates Courts hearing trials in criminal matters (including the two drug courts) should greatly improve the capacity of the courts to process cases efficiently and to reduce the backlog which currently exists.

Should the decision of the Privy Council in the Skip Davis case require the trial of serious drug cases as indictable offenses in the Supreme Court, the reporters recommended for the drug Magistrates' Courts may have to be assigned instead to the courts where additional Justices of the Supreme Court will be needed to hear these matters.

D. THE NEED FOR STREAMLINED PROCEDURES

In addition to better coordination between prosecutors and the police, computerized case-management to help with and stricter criteria for the granting of adjournments, and the introduction of additional court reporters, there are other steps that

should be seriously examined and which, if adopted, would help considerably to speed the processing of criminal cases.

1. Expedited Proceedings Under the Preliminary Inquiries (Special Procedure) Act

The 1983 Preliminary Inquiries (Special Procedure) Act provides for the use of written depositions submitted to the court with advance notice in the place of taking such depositions in person. Various Supreme Court decisions have questioned the constitutionality of the P.I. Special Procedure Act,[34] and there have been at least seven rulings on the procedure's legality.

As a result, the special procedure provided for in the Act is not currently being used.

Nonetheless, the Special Procedure Act would appear to be fair on its face, at least from a cursory review, and whatever constitutional infirmities it may have might well be addressed at an early date as a high priority matter. The government should give serious consideration to seeking legislation modifying the provisions in question to meet constitutional objections if this appears practicable, or should give serious consideration to appealing Supreme Court decisions to the Court of Appeal for clarification of the constitutional questions that have been raised.

The difficulty with the Preliminary Inquiry as it is now conducted is that it frequently amounts to a mini-trial of the case, particularly when defense counsel insist on their right to cross-examine witnesses and to put their own witnesses on the stand. The Solicitor General estimated that a Preliminary Inquiry would take an average of one day without cross-examination, and two with it.

The Preliminary Inquiry thus goes beyond the essential function of establishing whether or not the prosecution has a prima facie case, and in current practice seems to actually involve a weighing of the evidence that will be subsequently presented at the trial by the Magistrate conducting the inquiry. Since this evidence will be evaluated by a jury at the trial, evaluating its probative value at this stage represents a duplication of effort.

Unless and until the Preliminary Inquiry is abolished and replaced with a more agile mechanism for determining whether the government has a prima facie face sufficient to put the defendant on trial, it would seem to make good sense to get the Special Procedure provisions working effectively, which may require not only amendment or clarification of the law but also measures to discourage defense counsel from abusing certain of its provisions.

2. Stipulations

Under current practice, the prosecution in criminal cases is expected to prove every element of its case. There are no stipulations between the prosecution and the defense with respect to facts which are not in dispute. As a result, highly-trained defense lawyers sit and watch police prosecutors who are not legally trained put on their case at the Preliminary Inquiry or the summary trial in Magistrate's Court, waiting for the prosecution to make a mistake.

There is no practical reason why factual issues that are not in dispute should need to be proven in court, provided the defendant admits that they are true. Consequently, it is recommended that the government examine the question of whether it might be possible to introduce the use of stipulations as to undisputed facts into practice before the criminal courts.

3. Plea Bargaining

The use of guilty pleas is not permitted under Bahamian law and practice, which is consistent with traditional British practice on this point. Nonetheless, there is a need to develop a device which performs the function of disposing of cases without them all going to trial.

Moreover, at present there is little incentive for a defendant to plead guilty even if he is guilty. If he pleads innocent, he is likely to be released on bail, now, pending a trial that may be years away.

The challenge for the Bahamian criminal justice system is to devise incentives for guilty defendants to plead guilty. Whether it might be possible to introduce some kind of functional equivalent to plea bargaining is a question which merits continued and serious investigation.

4. Increasing the "Costs" of Appeals from Magistrate's Court Convictions

At present, defense attorneys are understood to appeal summary trial convictions in almost all important cases.[35] Under the bail provisions in Article 234(1) of the Criminal Procedure Code, the benefit to the client is usually immediate: free on bail, until the appeal is decided. Attorneys also routinely appeal the sentence imposed in the case of convictions in Magistrates Courts. In both cases, aside from attorneys' fees, the appeal seems to be largely "free", i.e., there are no risks of negative consequences.

In order to reduce the number of appeals, careful examination should be given to the current incentive structure and to changes that might be introduced to make appeals less automatic, and more limited to cases where genuine prospects for reversal exist.

One such change would be to modify the law so that defendants convicted in Magistrate's Court would be serving their sentences pending the outcome of their appeals. At the same time, to monitor and lower the reversal rate, Magistrates should be informed of the outcome of appeals in cases they have decided. This is currently not done. In addition, statistics should be generated on the reversal rates of different judges.[36]

5. Office Automation

The introduction of computers in the courts will make it possible to save considerable time in performing the wide variety of office tasks carried out every day. Office automation will provide computerized word-processing capabilities in most if not all courts, which will speed the preparation of opinions, notices, lists, letters, and the preparation and storage of the text of the record.

Second, office automation should make it possible to maintain a data base of Court of Appeal and selected Supreme Court opinions.

Finally, the introduction of electronic mail or messaging may help in the coordination of activities spread out among a number of different buildings and locations.

In addition, the introduction of office automation will present an opportunity for reexamining current administrative and office procedures with a view toward taking full advantage of the new capabilities computerization provides. For example, it may prove to be

no longer necessary to make six copies of every document in every file, since copies of many documents can be retrieved readily from the computer system.

Currently, the processing of papers related to a case is quite a complicated matter. See, for example, the document prepared by the study team on "Procedures for Filing Papers in Magistrate's Court," which is reproduced in Annex E, below. There appears to be much room for streamlining administrative procedures related to the paper flow in criminal and other cases.

IV. RECOMMENDATIONS

Throughout this report a number of suggestions and recommendations have been offered as to how various problems might be alleviated or resolved. These suggestions are offered to the Government and the Judiciary as the independent views of outside observers, and it is hoped that as such they will be considered by Bahamian decision-makers and acted upon to the extent the latter find them insightful and useful.

The study team was urged throughout its interviews with leading Bahamian officials and lawyers to write a strong and candid report. The report has drawn together disparate facts and the views of many who are experts on the operation of the judicial system. The facts that emerge are cogent, and argue strongly for urgent action to address what has become a crisis in the processing of cases. It is hoped that the suggestions and recommendations included above are helpful to Bahamian officials and lawyers in their ongoing efforts to improve the efficiency of the courts in general, and the processing of criminal cases in particular.

The following recommendations respond more directly to the specific task set out for the study team by the U.S. Embassy, i.e., to advise the Embassy on the kinds of activities that it would make sense to include in a Bahamas Judicial Improvement Project to be funded in part by the United States.

The activities proposed fall within three categories:

1) Computerization;

2) Court Reporting; and

3) Administrative Changes and Related Measures.

Details of most of the following recommendations are to be found in the text of the separate report of Mr. James McMillan, dealing with case management, court automation, and court reporting. The report is reproduced in Annex F, and should be considered incorporated herein by reference.

A. COMPUTERIZATION (COURT AUTOMATION)

Computerization or "Court Automation" represents a key element in any strategy to address the problems described in the preceding sections. The following recommendations are offered:

1. The Courts Should Hire a Computer Project Manager

The Courts need to hire a Computer Project Manager to oversee and coordinate the process of acquiring, installing and operating the centralized data processing system described in the following recommendation. This person should report to the Registrar of the Supreme Court, and be responsible for the tasks described in Annex F.

2. The Courts Should Implement a Centralized Data Processing System

The acquisition and implementation of a centralized data processing system to provide computerized case management and office automation is strongly recommended.

A system with the capabilities of the AS/400 minicomputer, with 25 dumb terminals, is recommended for the reasons set forth in Annex F. The 25 terminals should be located in the courts, except for two which should be located in the Office of the Attorney General. (With respect to additional options in the Office of the Attorney General, see Recommendation A(5), below.)

The physical location of the computer is a question which should be decided by Bahamian officials. The study team's computer expert suggests that it might be located either in the Ministry of Finance or at Police Headquarters. Similar computer systems are located at these locations. The study team's expert felt that the Police Headquarters might be somewhat better from a purely technical standpoint, but that the Finance Ministry would also be adequate. The Registrar of the Supreme Court expressed a preference for locating the computer at the courts, with the Finance Ministry being a second choice.

Given the importance of public perceptions that the courts are absolutely free of any influence from the police, and the views expressed by various court officials, the Chief of Party and principal author of this report believes that the minicomputer should not be located at Police Headquarters, but rather at the Ministry of Finance. Further consideration might be given to the possibility of locating the computer at the courts, although differences in costs and the trade-offs in terms of having back-up personnel and other computer specialists to work with would also have to be taken into account.

Regardless of the location of the minicomputer, arrangements for the sharing of selected data with the police should be made as suggested in Annex F.

The cost estimate for the system, including the software described in the following recommendation, is as follows:

Item	Quantity	Price
AS/400 Minicomputer	1	$ 50,000
AS/400 Systems Software	1	25,000
Case Management Software	1	50,000
Terminals	25	15,500
Printers	9	15,750
Cables	34	6,800
Communications	10	40,000
Total		$203,050

Depending on the physical location of each terminal, the possibility of acquiring additional printers might also be explored.

3. The Courts Should Purchase Court Automation Software from a Reputable Company and Modify It According to Their Needs

Appropriate software for Court Automation using an AS/400 minicomputer exists, and should be acquired. The PCSS system, described in Annex F, has been introduced in Trinidad and Tobago, and is currently being adapted to fit the needs of that country's Commonwealth legal system. Significant savings in software specialization costs might be realized by selecting this software. Other software packages that would provide workable alternatives are also available.

4. The Courts Should Establish a Process for Ongoing Evaluation and Planning for Their Automation System.

An on-going Computer Users Oversight Committee should be established to work with the Computer Manager to guide the automation of the judiciary.

One year after the installation of the computer hardware and software, the Court should evaluate the system and begin planning for the future. The Computer Manager and the courts should also look for outside evaluation and suggestions to improve the system during and after project implementation.

5. The Attorney General's Office Should Explore the Possibility of Office Automation.

The prosecutors in the Attorney General's Office represent a valuable and scarce resource in the criminal process, which must be used in the most efficient manner possible.

Consequently, in addition to the two terminals proposed under the second recommendation above, the Office of the Attorney General should explore available options for office automation, at least in the offices of prosecutors working on criminal cases.

One such possibility would be to expand the capacity of the minicomputer purchased by the courts so as to support additional terminals in the Office of the Attorney General. A very rough estimate made by the study team's technical expert is that each additional terminal beyond the initial 25 recommended above would cost approximately $2,500. This figure includes both the additional processing capacity of the minicomputer and the cost of the

terminal. Some additional expense may be entailed due to the distance between the Ministry of Justice and the courts.

If this option were followed, the Office of the Attorney General would "buy in" to the courts' data processing system, by paying the extra expenses necessary to include terminals and printers at the Ministry of Justice in the court automation system.

B. COURT REPORTERS

The need for additional court reporters is described in Section IV(C), above. Currently, the entering salary for a Bahamian court reporter is $17,900 dollars per year. The cost of contracting a foreign court reporter is some two to three times that amount. In the next two or three years, the courts will need to contract for the services of additional foreign court reporters to fill immediate needs. In the meantime, efforts should begin to develop a corps of Bahamian court reporters to work in the courts. In addition, there may be a need to introduce an audio-recording system to tape the proceedings before the Court of Appeal, to assist justices of that court to review oral arguments. The following recommendations are made:

1. The Courts Should Consider Contracting the Services of an Additional Six Court Reporters.

An additional 5-6 court reporters are urgently needed in the Magistrates' Courts to deal with the problems of backlog and delay described Section III, above. The courts should consider the possibility of contracting the services of two or three reporters to be assigned to the two Magistrates' Courts hearing Preliminary Inquiries. It should also

consider the possibility of assigning another three reporters to the two Magistrates' Courts hearing drug cases.

Should the decision of the Privy Council in the Skip Davis case require the trial of major drug cases before the Supreme Court, these three reporters might be reassigned to the P.I. Magistrates' Courts and to the Supreme Court Justice(s) conducting the Preliminary Inquiries and trials in these cases.

2. The Ministry of Justice and the Courts Should Consider Establishing a Program to Train Bahamian Court Reporters.

An earlier effort to train Bahamian court reporters in Nassau was unsuccessful. Former students in the course and others indicated that after an initial successful phase, with an instructor from New York, the program acquired an ad hoc and improvised nature. In this phase, which involved meeting at night with a series of instructors who were either too busy at other jobs or not well-qualified to teach, the course was not well thought out.

Three basic options exist for training Bahamian reporters. First, they might be offered complete or partial financial support to attend a training program in the United States. Second, a program to train court reporters might be established in Nassau, possibly at The College of The Bahamas. A third option, not explored by the study team, would be for aspiring court reporters to study in Jamaica, where a court reporting school has been established.

While the study team's technical expert reviewed a list of equipment proposed by a New York contractor for a training program at the College of The Bahamas and found the

equipment and cost estimates to be reasonable (see Annex F, below), it has not been possible to fully review other aspects of the proposed course.

However, based on the previous experience which did not produce satisfactory results, it can be said that any such course should include the following elements:

1) one or more qualified and experienced instructors;

2) an intensive program of instruction lasting two to two and a half years;

3) daytime classes; and

4) clearly defined objectives and activities, communicated to prospective students before the commencement of classes.

Whether the government should provide financial support to students is a question which needs to be carefully considered. Not everyone has the manual skill, drive, and ability to handle a high-stress job that are required of successful court reporters.

Also, whether court reporters should have a college education is an important question. In the United States, many court reporters do not necessarily have a college degree. On the other hand, a well-developed vocabulary is an important requisite for the job.

One possibility which deserves serious consideration is to provide financial support to students, once they have attained the minimal speed of 180 words per minute, to enable them to complete their studies or an internship in the U.S. in order to qualify fully at the rate of 225 words per minute.

3. The Courts Should Consider Providing Audio Equipment for Recording Arguments Before the Court of Appeal.

Members of the Court of Appeal suggested to the study team that it would be highly useful to have an audio recording system that would enable them to rehear portions of oral arguments. This possibility should be explored by the Court.

C. ADMINISTRATIVE CHANGES AND RELATED MEASURES

The introduction of court automation will require close cooperation between the Computer Project Manager, the Computer Users Oversight Committee recommended above, and the case management software company whose product is selected. It will be necessary, for example, to decide which variables and procedural steps are to be tracked, to make modifications in the paper flow, and to decide other specific issues. At the same time, computerization provides an opportunity for streamlining administrative procedures. The following recommendations are made:

1. The Courts Should Establish a Committee to Review Administrative Procedures as Part of the Court Automation Process.

Whether as a part of the Computer Users Oversight Committee or as a separate Committee, the courts should consider establishing a working group to review administrative procedures and the paper flow with a view toward streamlining such procedures and eliminating all steps that are not necessary.

2. The Court Should Consider Organizing and Supporting Workshops and Other In-Service Training Activities.

It would be desirable for the courts to initiate a program of in-service training, consisting of workshops, seminars, talks, and other activities. This program might be used to address some of the problems discussed above, such as the granting of adjournments. The study team met with the former Chief Justice, Mr. Telford Georges, who has experience in this area. Under the overall direction and oversight of the present Chief Justice and the Registrar, the courts should consider developing the administrative capability to provide support for such activities, drawing upon the talents of distinguished jurists such as Mr. Georges.

The in-service training program should be particularly useful in assisting Justices and Magistrates to make the necessary changes to work effectively under the new system of case management and office automation.

A number of similar activities are conducted on a regular basis in the Caribbean. The Court should consider the possibility of supporting the attendance of Justices, Magistrates, and key administrative personnel at such workshops and seminars.

NOTES

1. See Nathaniel Dean, "Interim Study of the Magistrates' Courts," June, 1992.

2. Between January 1 and April 15, 1993, Judge Manuel told the study team, she had processed seven (7) drug cases.

3. For American readers of this report, it is worth noting that this terminology corresponds roughly to that used in the State of New York, where the district court of first-instance in known as the Supreme Court, and the state's highest court is known as the Court of Appeals.

4. A third matter, involving the constitutionality of the 1986 Special Procedures Act, which provides for an expedited procedure during the preliminary investigation in committal proceedings for indictable offenses, has arisen due to various decisions by different justices of the Supreme Court. These decisions have resulted in the special procedure not being used at present. It appears that the Government intends to resolve the constitutional issue by way of amending the legislation, in which case more expedited preliminary inquiries might again be possible. See Section IV(D)(1), below.

5. Constitution, art. 96.

6. See Dean Report, above.

7. Criminal Procedure Code Act, Sec. 210.

8. See Criminal Procedure Code Act, Sec. 120(4).

9. See Criminal Procedure Code Act, Secs. 210, 214, and note 15 below and accompanying text.

10. Court of Appeal Act, Sec. 17(1).

11. See Commissioner of Police v. Skip Patrick Davis and Barry Franklin, Bahamas Court of Appeal, June 18, 1992, U.Y. Campbell, Judge (separate concurring opinion), at pp. 23-26.

12. Dangerous Drugs Act, Sec. 22(2). For repeat offenders, the corresponding penalties were a fine of up to $200,000 and 3-7 years' imprisonment. If tried by indictment in the Supreme Court, the latter could impose a fine of up to $200,000 and a sentence of 2-10 years imprisonment for the first offense; for repeat offenders, the penalties were $500,000 and 5-12 years imprisonment, respectively.

13. Id. (i.e., same source as in preceding note) Sec. 22(4). If tried by indictment in the Supreme Court, the latter could impose a fine of up to $200,000 and a sentence of 3-10 years' imprisonment.

14. Dangerous Drugs (Amendment) Act, 1988, Sec. 2 (adding Subsection (8)-(11) to (Sec. 22) of the 1987 Dangerous Drugs Act), published in the Official Gazette of March 25, 1988.

15. Id. Sec. 2 (adding new sections (9)-(11) to Section 22 of the 1987 Act). Compare Criminal Procedure Code Act, Secs. 210, 214. Sec. 210 provides that certain offenses (triable either by indictment or summarily) may be tried without a jury in Magistrate's Court provided the accused does not insist on a jury trial. Sec. 214 provides that in any such case resulting in a conviction when the Magistrate feels that "greater punishment should be inflicted than he has the right to impose," he may commit the convicted person to the Supreme Court for sentencing. Sec. 215 provides that the Supreme Court shall then sentence the convicted person as if on a plea of guilty or on a judgment of guilty by a jury before the Supreme Court.

16. Criminal Procedure Code Act, Sec. 7.

17. Constitution of the Commonwealth of the Bahamas (1973), Article 20.

18. (1977) A.C. 195.

19. Commissioner of Police v. Skip Patrick Davis and Barry Franklin, Bahamas Court of Appeal, June 18, 1992, Opinion by K.C. Henry, also signed by V.C. Melville, at pp.5-7.

20. Commissioner of Police v. Skip Patrick Davis and Barry Franklin, Bahamas Court of Appeal, June 18, 1992, U.Y. Campbell, Judge (separate concurring opinion), at p. 26.

21. See Separate Opinion of U.Y. Campbell, above note 20, at pp. 4-9.

22. See Constitution (1973), Art. 20(2)(g). Also worth noting is Article 20(4) of the Constitution, which provides as follows:

> No person shall be held to be guilty of a criminal offence on account of any act or omission that did not, at the time it took place, constitute such an offense, and no penalty shall be imposed for any criminal offense that is greater in degree or description than the maximum penalty that might have been imposed for that offence at the time when it was committed.

23. Michael S. Pike, "Review of the Criminal Justice System and the Prosecution of Offenders," paras. 5-6 (November, 1992). Mr. Pike is a special adviser to the Commissioner of Police. In his report or "discussion paper", he also states that the number of traffic cases pending trial for the two periods were 664 (1987) and 5,229 (1992), respectively.

24. Id. at para. 28.

25. Figures supplied by the Registrar of the Supreme Court. These figures are reproduced, in a slightly modified format, in Annex D, below.

26. See, e.g., Dangerous Drugs Act (1987), Sec. 22(5), which establishes that juvenile court shall, in the case of a juvenile found guilty of supplying drugs to another child or young person, order the juvenile to be committed to an industrial school or place of detention for a period of 1-5 years.

27. See Annex D, Tables 1 & 2, below.

28. During its conversations the study team heard from various sources that the Chief Justice is particularly skilled at sizing up an appeal and estimating the amount of time it will take to be heard.

29. Constitution, art. 19(3).

30. Criminal Procedure Code Act (1975), art. 234(1).

31. See Criminal Procedure Code Act, art. 234(1).

32. Because adjournments are granted readily and both Preliminary Inquiries and summary trials do not take place as scheduled due to the absence of witnesses, or even the absence of "sufficient instructions' (i.e., the lawyer has not been paid), this practice appears rational from the point of view of the defense lawyer.

33. While several magistrates did express a view that the taking of notes by hand did not affect their ability to judge the veracity of witnesses' testimony, it may be that with a greater opportunity to focus on the content of the proceedings and with an increase in the pace of questioning they might come to a different view.

34. See note 4, above.

35. Whether this is in fact the case will be revealed once reliable statistics are generated.

36. Wherever such a rate is unusually high, in-career training and advice might be made available on a voluntary basis to assist the corresponding Magistrate in the legal areas that are leading to a high rate of reversals.

Table of ANNEXES

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Annex D. Court Statistics

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Annex F. Report by James E. McMillan, "The Potential for Court Automation in the Bahamas." (The Appendices to the McMillan Report have been provided under separate cover)

ANNEX A

SCOPE OF WORK

(copy begins on following page)

ARTICLE I - TITLE

Bahamas Judicial Enhancement Project (598-0669)

ARTICLE II - BACKGROUND

Nassau, capital of the Bahamas, is the center for the judicial system. The courts of first instance for all but the most serious crimes are Magistrates' Courts, with eight in Nassau and two in the second principal city of Freeport. Three of the courts in Nassau are devoted to drug cases, while the two Freeport courts hear all types of charges. The Magistrates' Courts come under the authority of the Chief Justice of the Supreme Court of the Bahamas. The Supreme Court is the court of first instance for serious charges, the first appeals court from the Magistrates' Courts and the highest permanently sitting court in the Bahamas. The Court of Appeal is the highest tribunal in the Bahamas with further appeal possible to the Privy Council in Great Britain. The Supreme Court registrar is the Chief Justice's principal administrator and consequently the day-to-day administrator of the magistrates' court.

Like its British Counterpart, the justice system in the Bahamas derives from English common law. Both the Government and its citizens place a high value on the rule of law and the rights of the individual to a fair and public trial. Magistrates are deemed to be honest and their rulings fair.

Nevertheless, a deterioration in the efficiency of the court system has occurred because of the explosion of court cases involving drug charges, which began a decade ago. Some 1,200 to 1,500 persons are arrested each year on drug charges. While the government responded with an increase in the number of magistrates (three Magistrates' Courts now hear solely drug cases), the increase in volume continues to stress the entire system. Most cases continue up the appeals chain, and the administrative branch must address the drug cases as part of its overall function. The Supreme Court, which is the court of first instance for more serious cases, has a backlog of up to one year in hearing some cases.

Attorneys employed in the Office of the Attorney General prosecute cases on behalf of the Crown in the Supreme Court, whereas the prosecutions in the Magistrates' Courts are carried out by police prosecutors with assistance from the Attorney General's Office in serious cases.

The Judicial Enhancement Project is intended to address the highest priority issues of the Bahamas judicial system as it relates to drug cases by providing commodities, technical assistance, training and recommendations for change. The primary purpose of the project is to enhance the justice system to enable it to process cases in the most efficient way possible.

ARTICLE III - OBJECTIVE

To provide a three person team to assist in the preparation of a court efficiency study. This will be used to prepare a project planning document for the Bahamas Judicial Enhancement Project.

ARTICLE IV - STATEMENT OF WORK

The team will provide the U.S. Embassy and the Government of the Commonwealth of the Bahamas (GCOB) with a study and analysis of the justice system, which should focus on causes of delay in processing drug cases. The study will also include examination of the present court reporting system and consider appropriate alternative reporting systems.

The team will assist the Embassy in preparing a preliminary draft of the main elements to be included in the project planning document for the Judicial Enhancement Project. The Embassy is responsible for drafting the project planning document, but the team will contribute to it by identifying and prioritizing problem areas and recommending appropriate activities (including estimated levels of efforts and estimated costs) to address these areas. The main elements to be included in the preliminary draft of the planning document should represent a realistic and affordable set of activities with potential for real impact in the near and medium term. Project activities should also address the highest priority needs of the justice system as defined by its users and the GCOB. Emphasis should not be placed on new functions of the system, but rather on enhancing the system's effectiveness and efficiency in the performance of those functions for which it is already responsible, and enabling the system to sustain a higher level of performance without dependence on foreign resources.

The study shall include but not be limited to the following issues:

1. Determine the amount of time required for a drug case to be processed completely through the justice system from the point of arrest.

2. Assess the efficiency of the system as a drug case moves through it.

3. Identify the number of persons required to efficiently operate the courts and registry.

4. Determine possible correlation between educational level of staff employed and their service to the public and the bar.

5. Look at overall hours of work of the court system.

6. Determine the need for additional magistrates or other personnel.

7. Determine the need for a court reporting system and propose alternatives.

8. Determine the need for a computerized registry system for criminal cases and the effect that implementation of such a system would have.

9. Assess the adequacy of funding to the judicial system.

10. Determined causes of delay in processing cases which can be addressed by means other than hardware or additioanl personnel.

11 Examine any other causes that may result in the delay in processing cases.

12. Assess the effect that plea bargaining could have on the system and what would be required to implement plea bargaining.

The following skills are required: Sound working knowledge of the American and British judicial systems and administration of those systems; thorough understanding of the Bahamian legal environment; familiarity with court administration computer systems; highly developed analytical and writing skills; and a demonstrated ability to make relevant and practical recommendations to improve existing systems.

The team leader should preferably have a legal background, experience in the Caribbean, knowledge of A.I.D. requirements and good writing/editing skills. Although it is expected that each of the team members will contribute writing the study, the team leader will ultimately be responsible to the U.S. Embassy Nassau for the final product.

The team should have expertise in caseload management requirements, innovative and cost effective approaches to reducing case backlogs, and an understanding of computer applications and court recording methods. The local lawyer should be someone with a thorough understanding of the legal and judicial environment in the Bahamas and have knowledge of or access to those opinion leaders in the system whose views should be factored into the planning process. All team members should be adept in writing and interviewing.

ARTICLE V - REPORTS

1. The Contractor will deliver a preliminary draft of objectives, justification/rationalization, recommended activities, and level of effort required to address priority judicial enhancement areas (as defined in the court efficiency study) to be used by the Embassy in the preparation of a project planning document. The draft shall include:

a. A precise definition of objectives, including a rational and analytical justification for undertaking an assistance program and a definition of improvements and results expected from this assistance effort;

b. A determination of the means by which those objectives will be reached, such as the types of activities to be undertaken and their scope, the geographical location of such activities, the persons to be involved and their interrelationships;

c. Estimation of the resources needed to support the project activities; and

d. Development of methods to be used in implementing and managing the project.

2. The team will provide an oral debriefing and submit the first draft of the report to the U.S. Embassy Nassau and the GCOB before leaving the Bahamas.

3. The team leader will be responsible for submitting the final draft of the report no later than three weeks after leaving the Bahamas.

ARTICLE VI - TECHNICAL DIRECTION

Technical direction will be provided by the A.I.D. Project Officer in LAC/DI.

ARTICLE VII - PERIOD OF PERFORMANCE

A. The effective date of this Delivery Order is the date shown in Block 7 of the cover page and the estimated completion date is date shown in Block 8 of cover page.

B. Subject to the ceiling price established in this Delivery Order and with prior written approval of the A.I.D. Project Officer (see Block 5 of the Delivery Order), the contractor is authorized to extend the estimated completion date, provided that such extension does not cause the elapsed time for completion of the work; including the furnishing of all deliverables to extend beyond thirty (30) calendar days from the original estimated completion date. The contractor shall attach a copy of the A.I.D. Project Officer's approval for any extension of the term of this Delivery Order to the final voucher submitted for payment.

C. It is the contractor's responsibility to ensure that the A.I.D. project officer-approved adjustments to the original estimated completion date do not result in costs incurred which exceed the ceiling price of this Delivery Order. Under no circumstances shall such adjustments authorize the contractor to be paid any sum in excess of the Delivery Order.

ANNEX B

PERSONS INTERVIEWED

United States Embassy

Mr. Lino Gutierrez	Chargé d'Affaires
Mrs. Denise Malczewski	Attaché (Narcotics Affairs)
Mr. James McAnulty	Political Officer
Mr. John R. Pulley	Country Attaché (Narcotics)
Mr. Coleman Ramsey	Special Agent, DEA
Mr. Richard Miller	Special Agent, DEA

Ministry of Justice

Mr. Orville A. Turnquest	Attorney General
Mr. Carlton Wright	Permanent Secretary
Mrs. Leila Green	Deputy Permanent Secretary
Mr. Ricardo Marques	Director of Legal Affairs
Mrs. Cleopatra Christie	Solicitor General

Court of Appeal

Mr. V.C. Melville	President
Mr. U.Y. Campbell	Justice
Mr. I.D. Rowe	Justice (Former President, Court of Appeal of Jamaica)

Supreme Court

Mr. Joaquim Gonsalves-Sabola	Chief Justice
Mr. Nathaniel Dean	Registrar of the Supreme Court
Mrs. Rebecca Grimes	Administrative Assistant to the Registrar
Mr. Randy Forbes	Clerk to the Chief Justice
Mr. Cameron Ferguson	Clerk of the Lists, Supreme Court

Magistrates' Courts

Mrs. Carolita Bethell	Magistrate's Court No. 8

(Drug cases)

Mr. Hartman Longley	Chief Magistrate; Magistrate's Court No. 4 (Mixed jurisdiction, including general criminal matters)
Mrs. Gladys Manuel	Magistrate's Court No. 5 (Some Drug Cases)
Mrs. Sharon Williams	Magistrate's Court No. 7 (Drug Cases)
Mrs. Cheryl Albury	Magistrate's Court No. 6 (Preliminary Investigations)

Police

Commissioner B.K. Bonamy	Commissioner of Police
Mr. Keith Mason	Deputy Commissioner
Mr. Errold Farqueharson	Deputy Commissioner
Mr. Ellison Greenslade	Computer Development Center
Mr. Michael Pike	Adviser to the Commissioner of Police

Other Ministries

Mr. Arlington Butler	Minster of Public Security and Immigration
Commodore Leon Smith	Royal Bahamas Defence Force
Mr. Harcourt Turnquest	Permanent Secretary, Ministry of Foreign Affairs
Mrs. Kelphine Cunningham	Registrar General
Mrs. Olga Williams	Data Processing Department, Ministry of Finance

Court Reporters

Mrs. Barbara Wells	Chief Court Reporter
Ms. Kimberly Stanton	Court Reporter

The Bahamas Bar Association

Mr. Henry Bostwick	President

Other Officials

Mr. Telford Georges	Former Chief Justice; Currently Law Revision Adviser, and Member of the Privy Council
Mr. Sean McWeeney	Former Attorney General

ANNEX C

SOURCES CONSULTED

Laws

Constitution of the Commonwealth of The Bahamas, 1973.

Court of Appeal Act; The Statute Law of The Bahamas, rev. ed. 1987, Ch. 40.

Criminal Procedure Code Act, as amended; The Statute Law of The Bahamas, rev. ed. 1987, Ch. 84.

Dangerous Drugs Act, 1987; The Statute Law of The Bahamas, rev. ed. 1987, Ch. 213.

Dangerous Drugs (Amendment) Act, 1988

Magistrates Act, as amended. The Statute Law of The Bahamas, Ch. 42.

Preliminary Inquiries (Special Procedure) Act, 1983; The Statute Law of The Bahamas, rev. ed. 1987, Ch. 85.

Tracing and Forfeiture of Proceeds of Drug Trafficking Act, 1986; The Statute Law of The Bahamas, rev. ed. 1987, Ch. 86.

Legal Opinions

Commissioner of Police v. Skip Patrick Davis and Barry Franklin, Bahamas Court of Appeal, June 18, 1992, Opinion by K.C. Henry, also signed by V.C. Melville.

Commissioner of Police v. Skip Patrick Davis and Barry Franklin, Bahamas Court of Appeal, June 18, 1992, U.Y. Campbell, Judge (separate concurring opinion).

Reports, etc.

Nathaniel Dean, "Interim Study of the Magistrates' Courts," June, 1992.

Michael S. Pike, "Review of the Criminal Justice System and the Prosecution of Offenders," paras. 5-6 (November, 1992).

Sir John Spry, "Report to The Honorable Attorney-General of the Commonwealth of The Bahamas on the Practice and Procedure in and the Administration of the Supreme Court and the Magistrates' Courts of the Bahamas," 1975 (177 pp.).

Books and Articles

Archbold, Criminal Pleading, Evidence and Practice, 44th ed., 3 vols. London: Sweet and Maxwell, 1992.

Diamond, Shari "Revising Images of Public Punitiveness: Sentencing by Lay and Professional English Magistrates," Law and Social Inquiry, vol. 15, No. 2, pp. 191-221 (Spring, 1990)(on Magistrates' Courts).

Hampton, Celia, Criminal Procedure, 3d. ed. London: Sweet and Maxwell, 1982.

ANNEX D

COURT STATISTICS

Table 1

BACKLOG AND CASES PENDING IN MAGISTRATES' COURTS (January 1-December 31, 1992)

NEW PROVIDENCE (NASSAU)

Court	Cases Pending at 1/1/92	Cases Filed in 1992	Cases Completed in 1992	Cases Pending at 12/31/92
Criminal				
#1	966	1,010	739	1,237
#2	168	546	273	441
#3	1,136	1,118	1,164	1,090
#4	1,188	88	447	829
#5	592	1,169	903	858
Subtotal	4,050	3,931	3,526	4,455
Drug				
#5	164	13	36	141
#7	84	286	237	133
#8	86	253	194	145
Subtotal	334	552	467	419

Backlog and Cases Pending
in Magistrates' Courts
(January 1-December 31, 1992)

Court	Cases Pending at 1/1/92	Cases Filed in 1992	Cases Completed in 1992	Cases Pending at 12/31/92
Preliminary Inquiries				
#6*	235	419	203	451
*Includes cases transferred from other courts.				
Juvenile				
#2	336	911[1]	589	658
Civil				
#4	530	4,188	1,683	3,035
Domestic				
#4	945	3,008	1,070	2,883
Traffic				
#9	904	2,044	1,600	1,348
#10 & #6	370	1,679	1,086	963
TOTAL	7,704	16,732	10,224	14,212

Table 2

MAGISTRATE'S COURT
CASES PROCESSED AND BACKLOG
BY TYPE OF CASE AND LOCATION
(Jan. 1, 1992-Dec. 31, 1992)

NEW PROVIDENCE (NASSAU)

Type of Case	Cases Filed	Cases Completed	Cases Pending
Juvenile	911	589	658
Criminal	3,931	3,526	4,455
Drug	552	467	419
P.I.	419	203	451
Subtotal	5,813	4,785	5,983
Civil	4,188	1,683	3,035
Domestic	3,008	1,683	2,883
Traffic	3,723	3,526	2,311
TOTAL	16,732	10,224	14,212

GRAND BAHAMA (FREEPORT)

Type of Case	Cases Filed	Cases Completed	Cases Pending
Criminal	4,353	1,091(?)[2]	3,252 (3,262)[3]
Juvenile	518	138	380
Civil	1,424	1,091(?)[4]	333
Domestic	314	204	110

Traffic	3,687	1,781	1,906
TOTAL	10,296	4,305	5,171

Table 3

SUPREME COURT:
APPEALS FROM MAGISTRATES' COURTS
FILED AND PROCESSED
(Jan. 1, 1992-Dec. 31, 1992)

Type of Case	Appeals Filed	Completed	Pending
Criminal	57	86	241
Civil	11	1	45

Table 4

NUMBER OF CASES FILED
IN SUPREME COURT REGISTRY
(Jan. 1, 1992-Dec. 31, 1992)

Type of Case	Cases Filed
Divorce	479
Adoption	45
Quieting	26
Civil	1,545

85

NOTES ON STATISTICS

1. Corrected figure taken from following table. Number of "336" in figures supplied by court in error.

2. Figure is suspect due to fact same figure is given for civil cases completed.

3. Figure of 3,252 is apparent error due to incorrect sum. Correct figure of 3,262 is stated in parentheses.

4. Figure is suspect due to fact same figure is given for criminal cases completed.

ANNEX E

PROCEDURES FOR FILING DOCUMENTS IN MAGISTRATE'S COURT

Civil Matters

Magistrate's Court Number three (3) serves as the Registry for the filing of all matters pertaining to Civil, domestic, maintenance, and accounts matters and also serves as the Registry for the collection of all courts' fines, and payments in civil actions.

Procedure for Filing Documents in Civil Matters in Court Number 3

(A) All documents in civil matters at the Magistrate's Court level are filed in Court Number Three (3).

(B) Upon the filing of the documents, the Clerk in the Civil Court stamps the documents and charges a fee for the stamping. He then gives a date for the hearing of the matter, and the date is placed at the bottom of the receipt. Two copies of the written summons are then passed onto another clerk in the Registry. The clerk puts the date of hearing in the body of the Summons, stamps it, and places the seal of the Court on it. The clerk then affixes a date and number on the Summons, e.g., "1 of 1991", then folds the Summons and places a service stamp on the back of each copy of the Summons for the purpose of the Bailiff, so that the Bailiff can indicate the time and place of service of the document. The Summons are then placed in the Bailiff Book at least three (3) weeks before the date of hearing.

(C) The Bailiff then takes both copies and serves the original on the Defendant. After service, he brings back the copy with the service stamp indicating when and where the

Summons was served, and whether or not it was served on the Defendant personally. The returned copy of the Summons is then placed in a cabinet in the main Registry. A list is then typed up on the date of the hearing by a clerk of the Registry, and the said list is then sent to the Civil Court (Court No. 4) on the day of hearing.

Comment

One of the difficulties with the above-mentioned system of filing the service documents is that only two (2) copies of the Summons are left with the Registry, and when the Bailiff takes the two (2) Summons for service on the Plaintiff, the Registry is left without a copy. So if the Bailiff's copy or copies are mislaid, which sometimes happens, there is no record in the Registry of the action being filed. It is understood that it often happens that the Bailiff, even after serving the Summons, omits to return the copy to the Registry in time, so that the case is not placed on the Cause List for the day of trial; they find that the trial has not been set down; and consequently, the case must be adjourned to another date. This causes unnecessary delay in trial matters.

A possible solution to the problem might be to give the Bailiff only one copy of the Summons; other copies should remain at the Registry. The Bailiff should be given a service diary in which he would place the date and time of service on the Defendant, and upon service, he should return to the Registry and place the information on the copy left at the Registry. This would ensure that at all times a record of the action would be at the Registry.

Procedures in Matrimonial Matters

All maintenance payments are made at Court Number Three (3). The monies for maintenance are paid on a weekly basis. Upon payment of monies, the clerk in the Civil

Registry collects the money and writes it down in a receipt book, and gives the Payor a receipt for the amount paid. At the end of the workday, which is around 4:30 p.m., the clerk gives the receipt book to another clerk in the Registry, who places the amounts paid in another book called the "cash book". The cash is then passed on to the Supervisor of the Registry who deposits the cash in the Public Treasury. Another clerk would then take the cash book and enter the payments to the various accounts. Yet another clerk comes the following day and makes the pay-out. The recipients or payees are paid in alphabetical order. This creates a problem, in that although these payments are made to the payees' accounts every week, the payees cannot collect the monies on a timely basis, because if they attend the Registry to collect the monies, and their names do not fall in the alphabetical list for that day, they are unable to collect, and are forced to return on another day when their initials fall within the alphabetical list for that day. Furthermore, it is understood that the transfer of information from the cash book to the various accounts is not done on a daily basis, so that even though payments may have been made on the behalf of a recipient and recorded in the cash book, when a check is made of the recipient's account it is often discovered that the cash is not recorded therein. This creates confusion and arguments between the clerk of the Registry and the recipient. The clerk then has to go back to the cash book, backtrack (in some cases many days of previous recordings) only to confirm that the monies were paid on behalf of the recipient. This process only creates further delays in the system.

Criminal Documents

The "docket" pertaining to a Criminal Charge against a Defendant is made up by the Police Department. The docket is then brought to the Chief Prosecutor's Office, which

assigns the case to a particular Magistrate's Court. On the day of arraignment, the Court receives the original docket with a Police Number assigned to it. The docket is taken into Court when the case is called and the Magistrate records the information in the Court's Criminal minute book. The docket is then given to the Court's clerk who records the information in alphabetical order in the Cause List book. The case is given a Cause List number in the Cause List book. Whenever the case is called or dealt with, the clerk records the latest information in the Cause List book. The typical information recorded in the Cause List book is as follows:

a. Case Number (which number is also placed on top of the docket);

b. Accused's name;

c. Police number on docket and the charge;

d. Plea, e.g., "guilty" or "not guilty" and date of plea; and

e. Outcome of the case.

Note: Although all Magistrates' Courts have a criminal minute book into which the Magistrate records the procedures of the case, there is no central criminal registry for Magistrates' Courts.

Information on the Filing of Indictable Offenses

1. The record on preliminary inquiries goes from the Magistrate's Court to the Registry of the Supreme Court. It is stamped and then sent to the Supreme Court--with six (6) copies plus the original

2. The clerk to the Chief Justice records the information on the case in his incoming criminal case registry. Such information includes the nature of the case, the date when it is recorded and the district from which it came, e.g., Family Island district, or New Providence district, and the name of the Committal Magistrate.

3. The clerk then sends a copy (one copy) to the Attorney General's Chambers, and has the Chambers sign for it indicating that they have received it. The Attorney General's Office then draws up the information on a charge sheet and files the same at the Supreme Court Registry. It is then taken back to the Attorney General's Chambers where copies are made, after which the Attorney Generals's Chambers would send the Chief Justice's clerk all of the copies, to be filed by the clerk.

4. The clerk signs all copies and sends one copy back to the Attorney General's Chambers. The clerk keeps the original along with the extra copies, and places them in the file.

5. The information number of the case is then put on the file, and entered by the clerk into the Cause List. When the case is completed, the information or result should also be entered into the Cause List by the clerk of the presiding judge. However, I it is understood that this is not always done, and consequently, the Chief Justice's clerk himself would have to enter the result into the Cause List. The information in the Cause List is as follows:

a. Case number;
b. When indicted or filed;
c. Registration district and date of commencement;
d. Defendant's name;
e. Names of witnesses;

f. Nature of indictment;
g. Plea;
h. Date and result of trial; and
i Remarks.

N.B. All available information intended for the Cause List should be completed and recorded thereon before the opening of each session. However, because of the lateness of receiving information from the Attorney General's Office, this is not always done, and consequently, the Chief Justice's clerk (or the clerk responsible for the criminal registry) often finds himself lagging behind in recording his information.

Record of Appeals from Magistrate's Court to Supreme Court

In the case of Appeals from Magistrate's Court to the Supreme Court, the Appeal documents go straight from the court in question to the Court of Appeal Registry. The Court of Appeal Registry would then send the file, along with the Appeal calendar to the Chief Justice, and the Chief Justice himself or a designated Judge would hear the Appeal.

General Comments

One of the complaints voiced by judges in the Supreme Court is the difficulty of not being given sufficient time to study the record of the case that is scheduled to be heard before them. Some judges have expressed a desire to have the records of the case scheduled to be heard before them at least three (3) days and preferably seven (7) days in advance. However, due to the delay in receiving the information from the Attorney General's Chambers, the Judges often go into court without the benefit of a preview of the case they are about to hear.

Another note of concern is the lack of a bail cause list in the Supreme Court Registry. There are a large number of bail applications before the Supreme Court. In some cases, there

are four (4) to five (5) bail applications by the same Defendant on the same matter. In the absence of a bail cause list in which all matters pertaining to bail applications are recorded, the Supreme Court has no way of immediately ascertaining whether or not the Appellant has been granted bail previously, and if so granted, the terms and conditions of such bail; or whether or not the defendant has more than one applications pending on the same matter.

ANNEX F

The Potential for Court Automation in The Bahamas

by

James E. McMillan
Director
Court Technology Laboratory
National Center for State Courts

Our visit to The Bahamas was guided by finding answers to two basic questions. First, to determine if automation would help the judicial system? And second, to identify the Bahamian resources to help the court install and maintain the best system for it's needs.

The officials and staff of the Court, the Registry, the Police, the Prosecution, and the private bar in Nassau all recognized the potential benefits that automation could bring to the judicial system. This potential, however, cannot be realized over the long term without an implementation plan which puts both the control and the responsibility for the success of the system with the Chief Justice and the Registrar.

AUTOMATION NEEDS

Case Management

Coordination of schedules between the Supreme and Magistrates Courts and the police and prosecution was identified as a key problem in the current system. It was stated that with some frequency, Magistrate's actions are continued due to scheduling conflicts with the Supreme Court. Since Magistrate's Court is scheduled up to five months in advance, and the Supreme Court schedules three to four weeks in advance, automation which provides conflict checking between the courts would greatly assist in reducing continuances. Similarly, scheduling problems cause police officers to work extra time if cases are delayed or, if the case is continued, they may not be available due to other assignments.

Case assignment could also be assisted by automation. When sessions are scheduled the principles of case differentiation (i.e. determining the length of time a matter requires) could be used to more efficiently schedule both courts. Currently, the prosecutor's office schedules criminal matters in the Supreme Court and the individual magistrate's courts schedule their

matters. A system which would allow both courts schedules to be viewed would provide essential information to schedule all parties in the most efficient manner. Such a system would could also provide for automatic random judge assignment so that the automated system would be viewed by the public as inherently more fair than the manual system that it replaces.

Automated systems currently available provide significantly more information than what is possible in the physical Cause List books. The primary advantage of automated Cause Lists is that anyone with access to the computer system can view the Cause List without needing to visit the individual Magistrate's office, the Registry for civil matters, or the Clerk of the Chief Justice for Supreme Court criminal cases. If necessary, during absences anyone with security access can make entries on the system. Thus, staff can be cross trained to enter information for other departments for matters which need immediate attention.

All documents received by the courts should be recorded in the automated cause lists. Since all authorized personnel can enter this information, it will not matter whether the document is received at the Registry or at the court, the document can be recorded (even if the filing fee is paid at a later time). This provides the court with a list of all documents which have been submitted pertaining to the case. In the past there has been questions brought in court regarding documents submitted in individual cases, this official list would answer these questions. The automated system could also be used to print a list of documents which could accompany the case file to provide a checklist and information about the proper sorting of the contents of the file.

In addition, the automated Cause List could provide file tracking. It was stated that files are frequently misplaced or misfiled. If the automated system was used to track the location of a file, for example when it is moved from the Registry to the court, then most of this problem could be alleviated. The file tracking system should be controlled by the Registry since they are responsible for the security and maintenance of the files.

The automated Cause List can also be used to assist the Court and Registry implement a records management system. We viewed case files in the Registry from the 1960's. If these cases are not disposed of, the files should be moved to less expensive storage. The automated system can identify which case files can be moved and record in which box they were placed if they are needed in the future.

Finally, the whole automated court system should be used to provide reports not easily retrieved from manual systems. It is extremely time consuming to provide statistical information regarding the caseload in a court. Since staffing is minimized, there is often not time to collect and analyze information about the overall caseload, caseload trends, and identify problem cases or problem areas in the system. An automated court system can provide this information as a by-product of the day-to-day information recorded by the computer users. Some of the reports which are commonly available from automated court systems include:

- Case filing, pending, and termination statistics
- Average time to case termination
- Criminal case outcomes (percentage acquitted, dismissed, guilty)
- Case continuance reports

- Pending case reports by court, prosecutor, police officer, defense attorney
- Calendar reports
- Exception reports (for example cases in which no action has occurred for over one year)

Office Automation

All parts of the Bahamian judicial system could benefit from office automation. Most documents are hand written. This both takes considerable time, at times difficult to read, and difficult to correct one an error has been made. Therefore, automated word processing could assist the court in their production of documents. Word processing allows the computer user to type their documents on the computer screen which allows for easy editing and correction. This greatly speeds the persons ability to produce written work. In addition, commonly used forms and text can be stored in the automated system and immediately retrieved as needed. Word processing would particularly assist the Magistrate's Court in final preparation of Preliminary Inquiry reports, notice and letter preparation. It would also be used by the Supreme Court for their document preparation and by the Court of Appeals for opinion preparation.

A second aspect of office automation software is electronic mail. Electronic mail which would connect the courts, prosecution, and police would allow computer users to leave electronic notes which can be read by the recipient at their convenience. Electronic mail will be particularly helpful in Nassau due to the many separate buildings in which the court, prosecutor's office, and the police are located. Without this messaging, persons must be

interrupted either by telephone or in person to receive information. Electronic mail provides an alternative messaging system for information that is important, but which does not require immediate attention. Electronic mail has greatly facilitated the work in all organizations in which I have been involved.

The third aspect of office automation which will assist the courts is the ability to store Court of Appeals opinions and provide automatic searching and retrieval. This will provide the computer users with a valuable resource for the precedent driven system existing the Bahamas and, set the stage for future electronic publishing and distribution of case opinions to the private bar.

One caveat needs to be considered. Since the court primarily uses handwritten records and documents, it will be necessary to provide typing classes for users of the system. Computer software can be obtained to assist in the initial and ongoing training. It is important for the computer users to put their typing training immediately to use with the computer system. Therefore, training should not be done until immediately before the system is installed for the judicial system staff.

Support

The courts in the Bahamas have no computer professionals on their staffs. Therefore, it is vital for the success of the project that a person be hired by the court to manage and maintain the automation system. However, that person cannot work in a vacuum. They will need support from the computer hardware and software companies and, from other computer professionals. A major portion of my investigation was to identify expertise and support

within the Bahamian government for the court's automation efforts. This support is vital to keep the system operating once the initial installation and training is completed. It is also important to have experienced computer professionals to work with the court computer manager when problems occur.

Knowledge and support is available from both the Ministry of Finance Data Processing and the Royal Bahamas Police Force on the IBM AS/400 minicomputer system. Both departments have experienced personnel in managing and programming this system. Also, both departments have room in their computer centers for small AS/400 systems.

Support for personal computer systems is available in the Registrar General's office. They have been using personal computers for several years and, at the time of our visit, was expanding the system into a Novell local area network.

Procedural Changes

The introduction of an automation system into the legal process of The Bahamas will provide the opportunity to make changes to long established court procedures and rules. Communication will be significantly easier since the Supreme and Magistrate's Courts, the Registry, the Prosecution, and possibly the Police will be connected. Everyone with security access will be able to view the Cause Lists and court schedules. For example, this could allow schedules to be easily scanned and possibly events scheduled by multiple persons. It will also be able to send and share documents through the computer.

To most effectively use the proposed computer system, careful planning needs to be undertaken by representatives from the entire judicial system. Planning can be assisted by the

computer hardware and software companies. However, plans for changes in the way the system operates has to involve and receive approval from the parties that the change directly impacts. In addition, this planning cannot stop once the computer system is installed. An effective computer system is an evolutionary process. As the participants better understand the system, they can give better suggestions as to improvements to the programming and changes to the process. This planning process should be lead by the proposed computer manager, but it cannot be dictated. Therefore, an on-going computer users oversight committee should be appointed to work with the computer manager to guide the automation of the judiciary.

RECOMMENDATIONS

1. The Courts in the Bahamas need to hire a computer project manager. For the computer system to become a solution to the problems faced by the court, a computer project manager must be hired. The courts cannot rely upon either hardware or software companies, or computer managers in other departments to always represent their best interests. Other responsibilities and interests can cause delays and unsound advice from these parties. Therefore, a computer manager reporting to the Registrar is needed.

The computer manager will be responsible for:

- The operation of the system.
- Contracts for computer hardware maintenance.
- Contracts for purchases of computer equipment and supplies.
- Software support, either from the company, other government agencies

or from additional court computer personnel.

- System security.
- Connections to other if warranted.
- Monitoring system performance.
- Problem management.
- Staff training on computer operations.

Included with the report is a copy of the recent National Center for State Courts publication, Planning, Acquiring, and Implementing Court Automation. This publication goes into depth about the responsibilities of a court automation manager and explains the reasons that courts need their own staff to manage this valuable resource.

2. The court should implement a centralized data processing system. Due to the physical facilities in which the court operates, the need for security, and the need to share information. I recommend that the court install a centralized data processing system. A centralized minicomputer located in either the Ministry of Finance or Police Force computer rooms would provide the court with the necessary facilities to provide adequate air conditioning, humidity control, power protection, and physical security for this valuable resource.

Due to poor air conditioning and, questionable electrical power in many court offices, I recommend that terminals rather than personal computers be installed to access the minicomputer. These computer terminals should have key locks to help to physically secure the system. Terminal will also be less expensive for the court to maintain and replace. Since many of the current court facilities present a rather harsh environment for computer equipment, terminals can more reliably work in these situations than personal computers.

I further recommend that the court acquire and IBM AS/400 minicomputer system as this centralized system. I do not make this specific recommendation lightly since I work with many computer companies in the Court Technology Laboratory. I make this recommendation for the following reasons:

a. As mentioned above, both the Ministry of Finance and the Police Force have considerable experience with IBM AS/400 minicomputer systems.

b. IBM has an office in Nassau to provide direct support for this equipment.

c. I believe that it is in the court's best interest to explore the possibility of connecting the court's computer with the Police Force's computer to share required information and electronic mail. It is far easier to connect similar systems where data communications protocols and data file structures are the same. This connection could have the added advantage in the future of using the Police Force's data communication line to Freeport. Therefore, the second largest court location in the country could be automated and share information with the Nassau courts.

I spoke with Mr. Greenslade of the Police Force during my visit and I believe that he would be very helpful to the court in the acquisition and installation of such a system. In addition, he fully recognizes the advantages of connecting the Court to the Police Force system. However, both the Court's data processing manager and the Police Force will have to write a security plan so that only authorized information is shared between the systems. The IBM AS/400 has excellent system security which can provide both file restrictions and logs for data access and changes. Therefore, the Court's, and the public, should be assured that if the systems are connected, that their information will be safeguarded.

Advantages to connecting the Court's computer to the Police Force include system backup, electronic mail to police stations for sending subpoena's, and to allow the Police Force to easily view the Court's calendar to reduce continuances and extra police office work hours needed to attend court,

d. Last year, 1992, the country of Trinidad-Tobago purchased AS/400 based court management software from Professional Computer Software Services (PCSS) which is based in South Carolina in the United States. Since that time Trinidad and PCSS have worked together to make the necessary changes to the software to be efficient in Caribbean courts. Mr. Greenslade visited Trinidad earlier this year to consult with their Police Force on automation. He viewed the court system and reported that Trinidad was satisfied with their choice to date. Staff from the National Center for State Courts has also recently spoke with Trinidad and again they reported satisfaction with the product and progress in automating their courts.

e. The IBM AS/400 has good office automation software including word processing and electronic mail. As mentioned above, the court could benefit from these automation capabilities.

3. <u>The Courts should purchase court automation software from a reputable company and modify it to meet their needs</u>. Court case management software is complicated. It takes years to build computer software to handle the intricate relationships between court events, calendaring, and participants in the judicial system. As mentioned above, PCSS has already started the process of making modifications to U.S. court software to work in Trinidad. I believe that it would be in the Court's interest to view the PCSS system, and possibly other

IBM AS/400 court software to determine if it will meet their needs. The National Center for State Courts list six companies which provide case management software for the AS/400.

The basic operations of tracking case, person, financial, and calendar information does not vary greatly between courts. However, the procedures in each court vary greatly. Good court software, like PCSS, is flexible and easily adapted to different courts. If this recommendation is accepted, I believe that the Court's will be able to implement their automation system much more quickly than if they created the software.

I have attached a copy of standards developed by the courts in California. It lists requirements for court automation software. These standards can be used to either assist in the development of a request for proposal (RFP) or in evaluating potential software.

4. The Court could greatly benefit from ongoing evaluation and planning for their automation system. Court automation systems, like buildings, need constant maintenance. One year after the initial computer hardware and software is installed, the court should evaluate the system and begin planning for the future. Court personnel will learn to work with the computer and have suggestions how to make the system work together. Also, the AS/400 has many capabilities which will be learned over time. Therefore, the computer manager will be able to make additions to the system.

The computer manager and the court should also look for outside evaluation and suggestions to improve the system in the future. It will be difficult for court management to learn about advances in court technology and court procedures which take advantage of the computer systems.

Cost estimates

Court Reporting

Needs

Number of reporters needed

Cost of reporters

Hardware required

1. Corrected figure taken from following table. Number of 336 in figures supplied by court in error.

2. Figure is suspect due to fact same figure given for civil cases completed.

3. Figure of 3,252 is apparent error due to incorrect sum. Correct figure of 3,262 is stated in parentheses.

4. Figure is suspect due to fact same figure given for criminal cases completed.