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The Calendar Control Project

in Bronx Criminal Court

Final Report

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Introduction

The Calendar Control Project was conducted in Bronx Criminal Court from July 1, 1968 to April 15, 1969 by the Vera Institute of Justice under a grant from the Ford Foundation. The project was sponsored by the Court Delay and Sentencing Committee of the Mayor's Criminal Justice Coordinating Council and was conducted in cooperation with the Office of the District Attorney, Bronx County, and the New York City Criminal Court.

The immediate goal of the project was to test whether cases that would be adjourned on the court date could be identified in advance and adjourned by telephone on consent of both sides, thereby saving unnecessary court appearances on the original date.

In addition, the project experimented with other means by which treatment of cases could be expedited and the number of court appearances required of parties minimized. Where the need was demonstrated the project advanced cases to dates earlier than those originally scheduled for early disposition. At the request of defense counsel and with the consent of the District Attorney the project arranged plea negotiation sessions in advance of the court date. If agreement on a possible disposition was reached, the project advised other parties to the case of the possibility of disposition and that

they need not appear on the court date unless contacted by the project. And, on consent of the parties to the case, the project experimented with an alert system, advising certain parties that if their appearance were required they would be contacted on the court date; otherwise, they need not appear on that date.

The following is a report on the results of the Calendar Control experiment, with suggestions for change based on the project's experience.

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I. DESCRIPTION OF CALENDAR CONTROL PROJECT OPERATIONS

The Calendar Control Project (CCP) was conducted for nine and one-half months, from July 1, 1968 to April 15, 1969. During its first two months the project confined its operations to cases in Part 1A, Bronx Criminal Court. In September, 1968 the project's scope was broadened to include all parts in Bronx Criminal Court.

A. Composition of Project Staff

CCP operated with a staff of four full-time coordinators and a project director. The coordinators were selected with minimal regard to past experience and education, and were paid within the range of \$4,680 and \$5,200 annually. An attorney was the project's director. The project's office was a small room adjoining the District Attorney's office in Bronx Criminal Court.

B. Early Operations

During its first three months CCP's role in adjourning cases was essentially an active one. The project contacted parties to Bronx cases by mail and telephone, ascertained if they were ready to proceed on the court date and offered to request an adjournment if the response was negative. When a new adjourned date was agreed upon the

parties were advised they need not appear on the original date and on the original date a CCP representative made the adjournment application in court.

In early October, 1968 CCP changed its role to a passive one. It no longer contacted parties to ascertain if they needed adjournments and adjourned cases only when it received a request to do so.¹ To ensure that parties to Bronx cases were aware of the project's function it instituted the various notification methods described in the following section. Additionally, with consent of the Criminal Court, the project began adjourning most cases without making application in court.

C. Notification to Parties of Existence and Purpose of CCP

1. Police Officers: On June 28, 1968 and on August 16, 1968 T.O.P.s 296 and 296-1 were distributed to all police commands advising police officers who needed adjournments of Bronx cases to obtain them through CCP. Copies of the T.O.P.s are attached, Appendix A, pp. 1 and 2. T.O.P. 296-1 was read at 10 consecutive roll calls to ensure that each officer was given notice of the project's existence.

¹The assumption of a passive role was dictated by two considerations. CCP had expanded into all court parts and contacting parties to all cases became difficult. Secondly, it was felt that the best situation for testing the experiment's hypotheses was one in which the project did not take the initiative in arranging advanced adjournments.

2. Transit Police: While officers of the Transit Police had participated in the project informally since its early months they were not officially involved until early 1969. On February 6, 1969 the Transit Police issued circular #24 requiring all members of the Transit force who needed adjournments to seek them through CCP. In addition, the circular established a "Calendar Control Record Desk" within the Transit Police to ensure effective communication between the Transit Police and the court system. A copy of circular #24 is attached, Appendix A, p.3.

3. Civilian Complainants and Witnesses: After October 9, 1968 a wallet-sized card advising civilians to call CCP in advance if they could not appear on a court date was routinely issued in the 1A complaint room in the Bronx. After October 21, 1968 the card was routinely distributed in Part III complaint room as well. A copy of the card is attached, Appendix A, p.4.

4. Private Attorneys: On September 30, 1968 a memorandum from the Bronx District Attorney was mailed to attorneys regularly appearing in Bronx Criminal Court. The memo described CCP's procedures and sought the private attorney's cooperation with the project. A summary of the memo was published in the New York Law Journal.

In addition, from October 1, 1968 until the project's termination all copies of complaints drawn in the two Bronx

4.

complaint rooms bore a stamp advising the attorney to seek necessary adjournments through CCP rather than in court. A copy of the stamp is attached, Appendix A, p.5.

In summary, all parties to cases commencing in the Bronx after October 21, 1968 routinely had notice at an early stage of the way in which adjournments should be obtained.²

D. The Manner in Which Advanced Adjournments Were Effected

1. Non-Jail Cases: As indicated, in the early months CCP effected adjournments by making application in court. After October 9th the Calendar Control Project adjourned the majority of its non-jail cases without appearing in court and without the cases appearing on the calendar of the originally scheduled date. After October, in those cases in which CCP had sufficient advance notice to adjourn a non-jail case, the court papers were stamped "adjourned", processed and refiled as if the court had made the adjournment.³ Consequently, the case did not appear on the calendar of the original date. If the calendar of the original date had already been printed by the time the request was received by CCP, the master calendar was marked

² Arrangements to have the complainant cards distributed and copies of the complaint stamped in Bronx cases originating in Manhattan night and weekend court were not successful in the early months. With the establishment of a Pre-Arrestment Processing Facility in the Bronx in February 1969, this situation was rectified. Complaints were stamped and the cards distributed at the Pre-Arrestment Processing Facility.

³ A copy of the stamp is attached, Appendix B, p.1.

to show a CCP adjournment; the papers were stamped and filed as above, and while the case appeared on the original date's calendar there was no need to call it. In any event, the process of stamping the case adjourned and filing the papers was accomplished prior to the court date so that nothing remained to be done on the original court date.

In effecting adjournments, non-jail cases older than four months and bearing more than 3 previous adjournments were submitted to the judge-in-charge of the Bronx Criminal Court for his approval before the adjournment was arranged.⁴ This procedure afforded the judiciary a means of overseeing the project's operations.

Provision for prior approval by the judge-in-charge was beneficial to the development of the project in two respects. First, it provided CCP with a safety valve in honoring or rejecting adjournment requests. If a request involved a complex case or was accompanied by aggressiveness CCP referred that case to the judge-in-charge for his decision. Secondly, it centralized decision-making in one judicial person. Thus, differing judicial attitudes towards adjournments were not a problem.

⁴An analysis of cases submitted for prior judicial approval revealed the following. Of 647 adjournment requests received between January 1 and April 1, 1969, 221 were denied by CCP. Of the remaining 426, 67 or 16% were submitted for prior judicial approval.

On the other hand, the procedure for prior approval had one disadvantage. If the judge-in-charge denied an adjournment request there was no way of ensuring that the requesting party would not obtain the adjournment in court anyway. The majority of cases denied an advanced adjournment by the judge-in-charge were nevertheless adjourned in court.⁵

2. Jail Cases: From October 3, 1968 when separate records on adjournment of jail cases were kept, CCP adjourned 47 such cases. CCP was far more stringent in its adjournments of these cases than of non-jail cases. For even the best of reasons CCP did not adjourn a jail case for more than 5 court days, whether the defendant was in jail for the case sought to be adjourned or for an entirely different and unrelated matter. If the defendant had already been in jail too long⁶, CCP adjourned for only two court days. The fact that private counsel consented to or asked for the adjournment did not alter adherence to this policy. When Legal Aid represented the defendant a prior consent to the specific adjournment was obtained from the attorney-in-charge of Legal Aid in the Bronx Criminal Court.

⁵Of 23 cases denied an advanced adjournment by the judge-in-charge between January 1 and April 1, 1969, the following resulted on the original court dates: 15 (65%) were adjourned, 5 (21%) resulted in warrants issued, 1 pled guilty, 1 was dismissed and 1 was acquitted.

⁶As a rule of thumb, "too long" was considered more than 12 calendar days.

In addition, CCP did not adjourn a jail case unless the following qualitative criteria were met:

a. Requests from police officers - the reason had to be defined in the Department's Rules and Procedures as an "official reason";⁷

b. Requests from civilians - only excuses of incapacitating illness or of death in the immediate family that could be verified by CCP were accepted;

c. Requests from attorneys - only conflicting engagements in Supreme Court criminal cases marked for trial or in Criminal Court cases where the defendant there was also in jail; also incapacitating illness and death in the immediate family were accepted reasons.

CCP denied 62% of all adjournment requests it received on jail cases because they failed to meet the above criteria. It must be noted, however, that in jail cases where CCP denied a request for an adjournment the court often granted it on the original date, and often for periods longer than five court days. Thus, the defendant continued in jail to an adjourned date and all other parties made unnecessary appearances.⁸

⁷"Official reasons" are listed on page 10 , infra.

⁸A follow-up of jail cases denied by CCP in October, November and December revealed the following: Of 20 such cases, 4 either made bail or were transferred to the Supreme Court before the court date but after the CCP denial. Of the remaining 16 cases, 1 pled guilty, 1 was dismissed, and 14 were adjourned in court. Of the 14 adjournments, 3 made bail or pre-trial parole on the court date and the remaining 11 continued as jail cases and were adjourned for an average of 12 calendar days. These adjourned jail cases constitute 69% of the 16 cases remaining as jail cases on the original court date.

E. The Extent of CCP Advanced Adjournments

In its nine and one-half months of operation CCP adjourned 1,507 cases resulting in a total of 5,009 appearances saved.

1. Court Parts in Which Adjournments Effected:

Largely because CCP operated in Part 1A longer than in the other parts, almost half of CCP adjournments were of Part 1A cases. The project never received a request to adjourn a Part 6 case, and received only four requests for adjourning Part 7 cases, honoring one and referring the others to the Part 7 clerk.

Table 1 indicates the distribution among Parts of the 1,507 CCP adjournments:

Table 1 Distribution of CCP Adjournments by Parts

Part 1A	731
1B	377
2B	173
III	225
6	0
7	1
Total # of CCP Adjournments	<u>1,507</u>

2. Parties Requesting Adjournments: Private attorneys and police officers accounted for 80% of all requests that CCP honored, with private attorneys accounting for 36% and police officers accounting for 44%. Civilian complainants and witness requested 6% of CCP adjournments, and the Bronx Criminal Court Clerk's Office requested 10% of the adjournments performed by CCP.

Table 2 indicates the sources of the requests for the 1,507 CCP adjournments made:

Table 2 Distribution of Adjournments in Terms of Parties Requesting Them

CCP Adjournments Requested by:

Attorneys	546
Complainants	81
Witnesses	6
Police Officers	682
Clerk's Office	151
Other	41

a. Private Attorneys: The majority of requests from attorneys were based on their stated reason of being otherwise engaged on the court date. CCP required that attorneys supply the name, court, part and nature of their conflicting engagement. CCP conducted no independent verification of this information, but operated on the premise that if an attorney could supply these details his excuse was probably valid.

CCP did not discriminate between other court engagements in adjourning non-jail cases, and adjourned a non-jail Bronx case with few previous adjournments even though the other engagement was not in a higher court and not on for trial. CCP felt that since the Bronx was the only court supplying the advance-adjournment service it was better to adjourn a Bronx appearance in deference to a criminal court appearance in another county when conflict existed.

Occasionally an attorney stated as his reason for a request that he had just been retained, but rarely did an attorney make a request solely on the basis of his not being ready.

b. Police Officers: Almost half (46%) of the requests for adjournments by police officers that were honored by CCP were for reasons that are recognized as official excuses by the Police Department. These include adjournment requests because of: (1) sickness; (2) vacation; (3) appearance before a grand jury, in a higher court, or on a current arrest; and (4) authorized leave for a death in the family, extraordinary emergency or military duty. The remaining 54% of the Department's requests were based on "non-official" reasons--day off, conflicting tour of duty, special assignments, etc.--that would not withstand enforcement by subpoena.⁹

c. Civilian Complainants and Witnesses: The major reasons given in support of adjournment requests by civilians were two: (1) sickness; and (2) inability to leave work on a certain date.

⁹It should be recalled that CCP adjourned cases only with consent of both sides, and never adjourned jail cases for non-official reasons. In addition, all non-jail cases of specified vintage or older were submitted for prior judicial approval before adjourning, regardless of the reason given in support of the request.

d. Bronx Criminal Court Clerk's Office: CCP

worked closely with the Clerk's Office in Bronx Criminal Court. When cases had to be removed from dates on which they had been scheduled because of circumstances affecting the court's operation the Clerk's Office requested that CCP perform the necessary adjournments. Thus, CCP was requested to adjourn in advance non-jail cases originally scheduled for religious holidays when the court would be operating on light calendars. When the business of Part 2B3, the three-judge bench, was extended to a five-day week from its previous two days weekly, CCP was requested to balance that Part's caseload by adjourning non-jail cases previously scheduled for the two days each week to dates in the extended week. And, on certain days when the court's tickler indicated an excessive caseload the Clerk's Office requested that CCP adjourn in advance the more recent non-jail cases appearing on that date's calendar.

e. Other Requests: Adjournment requests in 41 cases were classified as "other". These included requests from such diverse sources as the United States Army Legal Officer at Fort Jackson, defendants themselves, caseworkers for defendants, the Bronx Sentencing Project, voluntary addiction service programs and the Narcotics Addiction Diagnostic Commission.

3. Appearances Saved by CCP Adjournments:

a. Police Officers: Approximately 1,500 police appearances were saved by CCP adjournments during the nine and one-half months of operation.¹⁰ This amounted to a net saving in manpower of 1,301 tours with a resultant cost saving of \$72,856.¹¹

The standard measure for computing police savings is \$56.00 per tour, with each appearance saved considered the saving of an entire tour. This measure balances a number of considerations that cannot independently be assigned a dollar value. The appearances saved by CCP adjournments break down as follows:

(1) The total number of police appearances saved is 1,499 appearances.

(2) Of these, 810 appearances were saved as a result of a request for adjournment by a party other than the police officer. In these cases the officer would presumably have appeared at court absent the CCP adjournment and would have made a wasted appearance. The resultant tour saving is 810 straight tours.

¹⁰ Within the total number of police appearances saved are included appearances by Transit and Housing Police as well as members of the New York City Police Department. All three departments are on parity in salary levels.

¹¹ For police manpower savings as a result of CCP placing officers on alert, see page 21, infra.

(3) The number saved as a result of a request by the officer for an official reason is 313 saved appearances. Inasmuch as the officer in these cases would normally not have been required to appear in any event, the CCP adjournment resulted in no tour saving in these cases. On the other hand, the Department's definition of an official excuse is not binding in the court, and CCP adjournment of these cases in advance ensured that the officer's non-appearance for official reasons did not prejudice the people's case on the court date or cause hardship to the other parties by requiring their appearance.

(4) The number saved as a result of a request by the officer because the court date fell on his day off is 230 appearances saved. Had the officer been required to appear in these cases he would have received time-and-one-half in equivalent time off.¹² The resultant tour saving is 345 tours.

(5) The number saved as a result of a request by the officer because the court date fell on a day on which he was doing a conflicting tour is 59 appearances saved. Almost without exception the tour that conflicted was the midnight to 8 a.m. tour for patrolmen or the night-duty tour.

¹² After July 1, 1969 police officers will have the option of taking their time-and-one-half overtime in pay or in time off. See Proposed Bargaining Agreement Between the Patrolmen's Benevolent Association and the City of New York (Latest Revision January 29, 1969).

for detectives. The resultant tour saving is 59 straight tours saved.

(6) The number saved as a result of a request by the officer because he was involved in a special assignment or other police business on the court date is 87 appearances saved. The majority of these special assignments involved detectives or plainclothes officers working on special cases who could not be easily replaced on their assignment had they been required to appear at court. The resultant manpower saving to the Department in these cases is 87 straight tours.

b. Other Parties: The impact of CCP adjournments on private attorneys, defendants and civilian complainants and witnesses is difficult to measure. Saving an attorney an unnecessary appearance may provide him with more time to devote to his other cases. Inasmuch as a number of private attorneys regularly practicing in Bronx Criminal Court maintain offices in lower Manhattan, the time saving resultant from a CCP adjournment could be considerable. Saving a complainant an unnecessary court appearance may mean saving him a day's pay and possibly his job. It may also preserve his case against dismissal when he cannot appear on a court date. Saving a defendant a needless appearance may also make the same salary and job saving, and may lessen the possibility of a bail-jumping or pre-trial parole violation and issuance of a warrant.

A total of 3,510 "real" appearances of parties other than police officers were saved by CCP adjournments.¹³ This figure includes the number (approximately 5 per week) of persons who failed to receive CCP's notification of adjournment in advance but who were advised by CCP of the adjournment and sent home by 10 a.m. of the court date. Parties appearing on the original date and not in contact with CCP by 10 a.m. (approximately 1 per week) were not considered saved appearances.¹⁴

The major reason for a party's failure to receive CCP's notification of adjournment in advance was the inaccuracy of the address listed on the court papers. CCP made special arrangements with the Security Department of the Telephone Company for obtaining unlisted telephone numbers in the metropolitan area; consequently, only when a party had no phone was the project forced to turn to other methods of communication. Reverse telephone directories were used to contact parties through neighbors and mail and telegrams

¹³ CCP computes its statistics on the basis of "real" cases and "real" appearances rather than on the basis of docket and calendar numbers. Consequently, while a given defendant may appear on the calendar with four docket numbers and four calendar numbers he is counted as one real case for CCP purposes. On the other hand, five co-defendants with one calendar number are computed as one real case but five real appearances.

¹⁴ While CCP adjournments were performed only on the consent of both sides to the case, the consent of each individual to the case was not sought. If the DA and counsel consented to the adjournment, all other parties were simply notified of the adjourned date. If, upon receiving such notification, other parties to the case had difficulty with the adjourned date they were advised to contact CCP.

were used to contact persons without phones. CCP personnel also routinely made calls at night to persons whose phones did not answer during business hours.

Surprisingly, inaccurate addresses on court papers were as frequent for complainants as they were for defendants. The major reasons for CCP's returned mail and telegrams were three: (1) party moved; forwarding address unknown; (2) party unknown at that address; and (3) the listed address does not exist.

In addition to civilians failing to receive notice of adjournment in advance, 51 police officers made wasted appearances because their commands did not notify them of the adjournment. Most difficulties were encountered with the Tactical Patrol Force, the Narcotics Bureau and the borough task forces, all of which have peculiar communication problems.

Table 3 indicates the breakdown of total appearances saved by CCP adjournments:

Table 3		Appearances Saved as a Result of CCP Adjournments	
Defendants		1,696	
Attorneys		1,039	
Complainants		652	
Witnesses		91	
Police Officers		1,499	
Other		32	
	Total		5,009

F. Adjournment Requests Denied by CCP

Many more requests for adjournments were made to CCP than were granted. Each week CCP denied a number of adjournment requests, either because the request was made too late or because of substantive or policy decisions. From September 26, 1968, when records on denials were routinely recorded, to April 15, 1969 CCP denied 1,111 requests.¹⁵

1. Requests Made Too Late: CCP denied 618 adjournment requests because the request was made too late for an advanced adjournment.¹⁶ In these cases the Assistant District Attorney and the bridgeman in the appropriate court part were advised of the request and the reason given in support of it, but action with regard to that information was left to the discretion of the court. The Police Department was responsible for two-thirds of these late requests, though in fairness, late requests from the Department were easier to record than those from other parties.

2. Requests Denied Because of Inadequate Information: CCP denied 83 adjournment requests because the information on the case supplied by the requesting party was found to be

¹⁵ See Note 16.

¹⁶ The recorded number of requests denied for lateness is small in comparison to the estimated actual number of such requests. Recording was difficult because these requests were received at the busiest time of day and had to be acted upon immediately.

inadequate for purposes of locating the court papers. A check of all clerical parts was made before a case was denied on this basis, and the requesting party was recalled for purposes of ascertaining additional information when time allowed.

3. Requests Denied for Substantive Reasons: CCP denied 410 adjournment requests because consent from both sides was not obtained or because the case fell short of CCP criteria for adjournment.¹⁷ The largest category (78 or 19% of these denied requests) concerned jail cases. Table 6 indicates the breakdown of denials:

¹⁷Adjournment requests denied by the judge-in-charge were not considered denials made by CCP, and are not included in this total. On a number of occasions the judge-in-charge approved a request submitted to him by CCP, but CCP subsequently denied the request because of inability to obtain consent of the parties.

Table 6 Denials by CCP of Adjournment Requests

<u>Reason for Denial</u>	<u>No. of Denials</u>
1. <u>No Reason for Adjournment</u>	
a. mistake as to original date;no conflict	25
b. police officer requesting adjournment excused	10
c. case scheduled for sentencing;party requesting adjournment not needed	5
d. defendant already convicted	4
e. case already dismissed	3
f. case already waived to grand jury	3
g. case already transferred to Supreme Court	18
2. <u>Denied for Insufficiency of Reason</u>	
a. police officer's reason found innaccurate	4
b. defendant's reason found false	1
c. attorney had no valid reason	10
d. police officer's reason insufficient	7
e. complainant's reason insufficient	2
f. police officer withdrew request when reason therefor inquired into	5
g. attorney withdrew request when reason therefor inquired into	7
3. <u>Inability to Arrive at Consent</u>	
a. no correspondence of available dates	2
b. unable to notify parties	22
c. attorney could not be contacted for consent	17
d. private attorney did not consent	33
e. Legal Aid did not consent	16
f. District Attorney did not consent	13
4. <u>Denied Because of Age of Case</u>	
a. case too old	57
b. case marked final v. both	8
c. people's request; final v. people	20
d. defense request; final v. defense	10
e. too many final markings in case	12
5. <u>Denial due to CCP Policy</u>	
a. requesting party previously requested two CCP adjournments	5
b. jail case not conforming to CCP criteria	78
c. bench warrant stayed to original date	10
d. Part 7 case referred to Part 7 clerk	3
Total	410

G. Other Forms of Calendar Management

1. Advances: CCP advanced a number of cases by scheduling them on a date earlier than the court date. No statistics were kept on this practice until the 13th week of operation. After that date CCP successfully advanced 59 cases, slightly less than one-third of the total number of advances requested. Most requests were denied either because an agreeable advanced date could not be arrived at or because one or more parties could not be contacted. CCP was not able to guarantee priority treatment of advanced cases on the advanced date, and close to 60% of cases advanced were adjourned in court on the advanced date, even though all parties were ready. At least 25 of the cases advanced were jail cases.

Advancing a case proved more complex than adjourning one. A court appearance by CCP was often required; the advance generally involved more substantive considerations; it was more susceptible to abuse (e.g., judge shopping) than adjournments; and it required squeezing onto a crowded calendar an added case rather than removing one.

2. Alert: CCP successfully placed 51 cases on alert, advising one or more civilians in 44 of these cases not to appear unless notified by CCP or the Assistant District Attorney in the court part. In only six cases were the civilians needed

on the court date and in five of the six they appeared after notification by CCP. Seven patrolmen were placed on alert; none of them was needed on the court date; and the resultant cost saving was 7 hours or \$392.00.

The project's design was not geared toward establishing a comprehensive alert system, so alerts were used sparingly. Inasmuch as the project's role in calendar management was essentially passive--i.e., awaiting requests for calendar action rather than initiating that action--it placed parties on alert only when the need was brought to the project's attention in specific cases.

3. Information Inquiries: CCP responded to a host of inquiries concerning cases and court dates. While not strictly an element of calendar management, information of the type provided to parties would seem to affect in-court adjournments to a degree. Records of the number and kind of these inquiries were kept after August 23rd: 661 inquiries were responded to, 360 of which required research into court records before they could be answered.

In terms of adjournments and appearances saved the most important inquiries addressed to CCP concerned: (1) the date of the next court appearance; (2) whether a police officer had been excused from a case; and (3) whether a complainant's testimony had been stipulated. 354 inquiries responded to by CCP concerned one of these items.

Presumably, when CCP informed a party of the date of his next appearance it helped prevent a possible adjournment of

that case. When CCP was able to inform a subpoenaed officer or civilian that he had been excused, it saved an appearance that would be otherwise wasted had the party appeared in compliance with the subpoena. No comprehensive follow-up was attempted to determine whether these presumptions were accurate because of the time necessary to do such a follow-up and because response to these inquiries was essentially a collateral service performed by CCP.

4. Advance Plea Negotiation: In cooperation with the District Attorney's Office, CCP advised defense attorneys that discussions concerning possible dispositions could be arranged in advance of the court date. The hypothesis underlying CCP's involvement in arranging plea bargaining in advance was that, if agreement were reached, other parties to the case could be advised not to appear on the court date. At the request of defense attorneys CCP arranged the time of the negotiating session and supplied the court papers for the session. At the end of the project CCP had arranged only 17 sessions (six at the request of Legal Aid, 11 at the request of private counsel) only eight of which resulted in advance agreement.¹⁸ In only three of these cases was CCP able to save other appearances: 2 complainants, 1 witness and 3 police officers.¹⁹

¹⁸In December, 1968 CCP, in conjunction with the Bronx Sentencing Project and with the cooperation of the District Attorney and Legal Aid, conducted a two-week pilot project in comprehensive advance plea negotiation. Results of that pilot are not included in the present text.

¹⁹The resultant cost saving to the Police Department was \$163.00.

The failure of advance negotiation rested in large measure on defense counsel's sense of tactic, the lack of a routine procedure for negotiation and the congestion in court calendars. The defense attorney feels that the Assistant District Attorney pressured by a heavy calendar on a court date is likely to be more generous in his reduction than he would be a few days in advance.

H. Legal Questions Involved in CCP Operations

1. Bondsman's consent to CCP Adjournments: For months there had been divided opinion among the judiciary as to whether CCP adjournments relieved the surety of his liability on his bond unless he consented in writing to the adjournment of each case. To avoid the problem and the controversy surrounding it, on October 4, 1968, on the advice of the bench, CCP secured a written blanket consent to all CCP adjournments from the three surety companies dealing in Bronx Criminal Court. The consent agreements were available to the court if the need arose.²⁰

2. Adjournment of Cases in which a Bench Warrant had been Stayed to the Original Court Date: In cases where a warrant had been issued and then stayed to the court date, the question early arose whether CCP's adjournment from that date at the request of the people interfered with the original staying of the warrant, abrogating its effect.²¹ In light of

²⁰ A copy of the consent agreement is attached, Appendix D.

²¹ Where the source of the adjournment request in such cases was the defense, the issue was more easy to resolve in favor of denying the request.

divided opinion on the subject, CCP decided that it would not adjourn such cases and denied requests where this situation existed.

3. CCP Notifications as a Substitute for Subpoenae: When CCP advised an already subpoenaed party not to appear, it had interfered with the mandate of the prior subpoena. When it notified the party of a new date: (1) it mailed or telephoned rather than personally served its notification; (2) its notification was not in the language of a command to appear; and (3) the notification did not include the warning, printed on all subpoenae, that failure to appear may result in a contempt citation and fine and imprisonment (CCP notifications to defendants did, however, include the warning that failure to appear may result in a warrant). No problem ever arose with regard to CCP notifications as substitutes for subpoenae and no party ever challenged the authority of a CCP notification; perhaps because the distinctions above are more academic than real and because CCP notifications bore the letterhead of the District Attorney's Office.²²

²² CCP written notifications were successfully used by police officers, Motor Vehicle License Examiners and N.A.D.C. doctors to obtain records for court appearances otherwise obtainable only by presentation of a subpoena ad testificatum and were used by school teachers for paid excusal from work to testify.

II. Conclusions

The Calendar Control Project terminated its operations in Bronx Criminal Court on April 15, 1969. The project was a limited success.

By January the project's weekly adjournment rate averaged 60 cases. Yet, in an average week close to 700 cases are adjourned in Parts 1A, 1B, 2B and III out of a total calendared caseload of little over 1,200 cases per week in these Parts.²³ Had CCP quadrupled its weekly adjournments, it would still have accounted for less than one-third of all adjournments made each week. The limitations on CCP's operational design and scope relegated the project to the status of a pain-reliever rather than cure of the court delay problem.

Still, the savings accomplished by CCP adjournments were real; they constituted an improvement over the system absent the advanced adjournment; very real human needs of parties--sickness, conflicting engagements of equal importance, inability to leave a home or business unattended on a certain day; entrance into hospitals and voluntary addiction services, the cost to the city of day-off police appearances--were accommodated by the CCP adjournment.

²³The week of October 7-11, 1968 is typical. Of 1,225 "real" cases on the calendars of Parts 1A, 1B, 2B and III, 699 were adjourned in court.

Additionally, CCP activities brought to the Bronx Criminal Court greater inter-agency communication in the adjournment area. As evidenced by the variety of forms in Appendix C, it developed new channels by which information concerning adjournments could be transmitted. It demonstrated that an umbrella unit adjourning cases could do so without hampering the operations of the various agencies.

CCP introduced into the Bronx adjournment practice routine use of police duty charts. It posted signs in the building reminding police officers of their responsibility for entering their chart number and vacation dates on affidavits. It supplied civilians with a card that not only apprised them of the project's existence but served as a convenient written record of their court appearances. The card also contained information enabling the Clerk's Office to respond to inquiries about the case.

CCP was useful to Probation by notifying that office of advanced adjournments in cases in which they were preparing a presentence report, thus giving them additional time--time they would not have had with in-court adjournments. When CCP advised Legal Aid in advance of an adjournment it saved the Society the time that would otherwise be spent preparing their case for the court date. CCP and the Bronx Pre-Arrestment Processing Facility worked

closely in supplying parties to cases information on court appearances and on how to seek needed adjournments. When Part 1C, the "blockbuster part", was installed in the Bronx, CCP assisted the District Attorney in notifying the People's witnesses that their cases were being advanced to earlier dates for treatment in that part. And the Bronx Criminal Court Clerk's Office referred to CCP cases the adjournment of which it felt was best arranged in advance.

During its operation the project's staff gained an appreciation of the complexities and difficulties confronting the Court in the area of calendar management. The staff had the opportunity to share the insights and suggestions of judges, court personnel, Assistant District Attorneys and a host of agencies and individuals involved in calendar management.

In conclusion, the project's staff realized that Calendar Control had not come close to controlling calendars. Experiments in sophisticated "alerts" of police officers and civilians; in lessening of the calendar part's daily business to determine whether a lighter load results in more dispositions than a heavy load; in staggering the times of day parties should appear; in identifying and feeding cases likely to proceed; have yet to be undertaken.

In developing the advanced adjournment, Calendar Control confronted the many complex problems involved in present calendar management. It is on those problems that coordinated efforts must now be trained.

III. Recommendations

Plans are presently being drawn by the Court for establishing a Master Calendar Office in Manhattan Criminal Court later this year. Many of the recommendations that follow could constitute features of a Master Calendar Office. They can also, however, be instituted in the absence of a Master Calendar Office.

The recommendations are grouped under eight headings:

- a. Institutionalization of the Advanced Consent Adjournment;
- b. Expansion of the Administrative Adjournment in Calendar Management;
- c. Establishment of a Court Alert System for Police Officers and Civilian Complainants and Witnesses;
- d. Structural and Operations Changes in Present Court Calendar Management;
- e. Improvement of Communication with Parties Concerning Court Appearances;
- f. Coordination of Procedures for Court Appearances Between Various Agencies and the Court;
- g. Coordination of Procedures for Court Appearances Among Different Courts and Counties;
- h. Improvement of Surveillance for Checking Abuse of Court Calendar Procedures.

While all of the recommendations are based on the project's experience with calendaring difficulties, the first three headings concern areas of improvement in calendaring in which CCP was most directly involved. Recommendations grouped under heading d embody suggested changes in internal court procedures for controlling case flow. The remaining headings consist of

recommendations for improvement of communication and coordination between the court and the host of individuals and agencies involved in calendar management.

A. Institutionalization of the Advanced Consent Adjournment

It is recommended that a procedure be devised to make the CCP adjournment a routine device in the court system. One possible means of accomplishing this would be to have the Police Department assist the Clerk's Office by receiving requests from and making notifications to the prosecution's witnesses concerning advanced adjournments. Police officers and complainants would call a police unit at court when they need an adjournment; the police unit would obtain necessary information and transmit the request to the "calendar control clerk" of the Clerk's Office. If the calendar control clerk, pursuant to the guidelines established by the judiciary, determines that the case is proper for advanced adjournment he would seek the consent of the attorney, notify the defendant where necessary, advise the police unit of the adjourned date and stamp the case adjourned. The police unit would then notify the people's witnesses of the adjourned date.²⁴

²⁴The Transit and Housing Police could participate by coordinating their appearances through this police unit as well and by assisting the unit's operations in boroughs where their arrest rate is high.

To insure effectiveness of this procedure, appropriate sanctions for non-compliance by parties are recommended. In CCP's experience, with the exception of New York City and Transit Police officers, who were required by Departmental orders to seek adjournments through CCP, parties to Bronx cases were free to seek adjournments either through the project or in court. There were no sanctions available against parties who sought in-court adjournments for reasons that could have been accommodated by an advanced adjournment, even though by seeking the adjournment in court they caused the needless appearance of other parties and took up precious court time. Attempts to have a sanction or reprimand administered from the bench to such parties were unsuccessful. The following are suggested means for ensuring cooperation with an advance adjournment procedure:

1. Police Officers: After September 4, 1968 CCP, in cooperation with the police sign-in-room at Bronx Criminal Court, followed up on every New York City police absence from a Bronx court appearance to determine whether it could have been accommodated by an advanced adjournment. When an advanced adjournment would have been possible, form CCP-1000 was sent to the officer's commanding officer advising him that a member of his command had failed to appear in court without notifying CCP in advance.²⁵ By April 15, 1969 274 such notices had been sent. CCP's records indicated only 21 "repeated offenders" and in only 5 cases did CCP have to mail a third notice.

²⁵A copy of form CCP-1000 is attached, Appendix C, page 1.

The form served two purposes. First, it apprised the officer with a casual approach to court appearances that his non-compliance with the relevant Departmental orders was being made known to his commanding officer.²⁶ Secondly, it supplemented the T.O.P.s in apprising police officers of the existence of the project, since the manner of posting T.O.P.s in most stationhouses does not insure effective notification.

CCP experienced few problems with abuse of its procedures by police officers.²⁷ When CCP denied a request based on an unofficial reason it advised the command that the officer had to appear. If CCP later discovered from the police sign-in room that the officer did not appear, his commanding officer was contacted.

It is recommended that the above procedure be continued in adoption of the advance-adjournment to ensure police compliance and cooperation with the court.

²⁶ Some commanding officers, upon receiving the CCP notification, in addition to a reprimand required their men to personally apologize or explain their absence to CCP.

²⁷ In only four cases had CCP learned that an officer's reason for an adjournment was inaccurate, and in all four cases the officer was advised, told to appear and did. Very few police requests escaped a check on the validity of the reason. Duty charts were consulted by CCP in each case so that requests based on day off or conflicting tour were easily verified. When CCP set a new date with an officer's command it routinely restated to his command his reason for the adjournment. If the command had no record of that reason a further inquiry was made.

2. Private Attorneys: Many private attorneys used CCP when it was to their advantage and ignored it when it was not. Additionally, certain attorneys were "CCP regulars" while others rarely employed the project's services.

The one attorney practice that most consistently defeated CCP's impact on adjournments was that of using court appearances as a method of collecting fees. A large number of defendants pay their attorneys in installments. This resulted in two problems for the project:

(1) attorneys would not proceed to disposition until fully paid, and would try to manipulate enough adjournments until fees had been collected; and

(2) attorneys would use court appearances as a method of seeing their clients for collection of fees. Rather than require the client to appear periodically at his office for paying installments, the attorney used the court appearance with its threat that failure to appear would result in a warrant. In-court adjournments for these attorneys were in large measure a collection device.

An even less desirable attorney practice is that of wearing out complainants by repeated in-court adjournments; if the complainant tires of appearances and subsequently fails to appear defense counsel moves to dismiss for want of prosecution. A variation of this involves the attorney who manages to adjourn a case in the police officer's absence to

a date probably inconvenient to the officer. 28

Attorneys presented CCP with two additional problems that interfered with CCP effectiveness. The first concerned the attorneys who scheduled too many cases on one day. Bronx "regulars" would appear in as many as 10 cases in various Bronx parts per day, causing many second calls and a large number of adjournments due to inability to proceed in all of them. The second problem involved a lack of preparation. Many attorneys wait until the afternoon before or the morning of the court date to review their cases and strategies.

Accordingly, it is recommended that in adoption of the advanced adjournment procedures be established to ensure that it will be employed by attorneys where appropriate. One means may be to have judges administer a reprimand in open court whenever an attorney seeks an in-court adjournment for a reason that could have been accommodated by an advance adjournment. Another may be to systematically record adjournment requests from attorneys and for the judge-in-charge to periodically review the records to identify abuse and determine appropriate sanctions. It is additionally recommended that representatives of the various bar associations--state, city and county--meet with representatives of the court to

28 Because of rotation of tours the odds are high that an adjourned date set in an officer's absence will fall on his day off or on a conflicting tour. Because of Departmental pressures on officers to avoid time-and-one-half for court appearances and of the paperwork required when such occurs, individual officers tend to lose interest in their cases.

determine better means for attorneys to collect their fees without contributing to court delay in doing so.

3. Civilian Complainants: After October when CCP complainant cards were routinely distributed, complainant requests resulting in advanced adjournments increased only 1% in relation to requests by other parties. The major difficulty with civilian requests was that they either were made too late to secure an adjournment or were based on reasons that CCP considered insufficient. CCP had no leverage in dealing with civilian complainants who failed to appear on a court date without notifying CCP in advance. There were no sanctions realistically available for such non-appearance other than dismissal of the case, and there is an understandable reluctance to employ the contempt powers of the court in such cases.

Accordingly, it is recommended that efforts be made to keep the number of appearances of complainants to a minimum either by putting them on alert or by not requiring their appearance until a case has been set for hearing or trial. Complainants would be advised that since they would only be required to appear once or twice for disposition of the case the contempt powers of the court would be employed if they failed to appear without justification and without seeking the advanced adjournment when necessary. In cases deemed appropriate by the judiciary, complainants failing to appear

would be ordered before the court to explain their absence and failure to comply with that order would result in a warrant for their arrest.

B. Expansion of the Administrative Adjournment in Calendar Management

CCP's experience was that consent adjournments in cases falling within the guidelines could usually be performed without the need for immediate judicial presence. Only 16% of adjournment requests eligible under the project's criteria required judicial approval prior to adjourning. Even when judicial approval was needed the adjourned date was arranged administratively by CCP. The judiciary established the project's guidelines, thereby assuring ultimate judicial control over cases adjourned. Since CCP adjourned only with the consent of both sides, a party wishing to go before a judge could still do so.

There is merit to expanding this delegation of judicial responsibility. Accordingly, it is recommended that the mechanics, as distinguished from the substance, of calendar management be made the routine responsibility of an administrative unit of the clerk's office. This might be accomplished by adoption of the following procedures:

1. Within guidelines set by the judiciary, the administrative unit would effect consent adjournments on the court date as well as in advance of it. Parties agreeing to

adjournment of a case falling within the guidelines could obtain the adjournment directly from this unit on the morning of the court date, without appearing in the calendar part and waiting for the call of their case.

2. In most other cases, after an adjournment request had been ruled on by the bench, the papers would be transmitted to the administrative unit for arranging and setting the adjourned date. In cases he considered appropriate the judge would set the adjourned date himself or indicate to the unit limits on the length of the adjournment.

By adoption of this recommendation the business of arranging an agreeable adjourned date would be removed from the pressures of the courtroom.

C. Establishment of a Court Alert System for Police Officers and Civilian Complainants and Witnesses

A comprehensive alert system for Criminal Court cases would require a degree of experimentation before it could be effectively employed. There are situations, however, in which an alert system could be of present value in the court system and could be introduced without the need for experimentation. Accordingly, it is recommended that civilians and police officers be placed on alert rather than required to appear in the following situations:

1. The first appearance after arraignment in non-jail cases:

Few non-jail cases are disposed of on their first adjourned date: the defendant has not yet retained an attorney or the attorney has not yet collected his fee and the case will probably not be reached because of its low position on the calendar. Rather than require the complainant's and officer's attendance, placing them on alert will save police and civilian appearances while protecting the defendant who desires and is able to proceed to disposition.

2. Cases in which the adjournment was made to permit the defendant to undergo long-range physical, psychiatric or narcotics addiction treatment:

When the court permits a defendant to undergo treatment during the pendency of his case, it often makes short intermittent adjournments of the case as a means of checking on the progress of the defendant rather than adjourning through the entire period of long-range treatment. The likelihood that the complainant's and officer's presence at these intermittent adjourned dates will be needed is low enough to justify an alert in these cases.

3. Cases in which the officer's testimony is merely supplementary to that of the complainant and the complainant has failed to appear on the last adjourned date:

There are many cases where the arresting officer's testimony alone would be insufficient for conviction absent the complainant's testimony. Where the complainant has failed to appear absent an explanation and the case is adjourned as a result, the considerations favor placing the officer on alert on the adjourned date, to be called only if the complainant appears.

D. Structural and Operational Changes in Present Court Calendar Management

1. Substitution of a centralized calendar office for present calendar parts:

The present calendar part is a source of many adjournments and delays. Calling the calendar is done in much the same way calendaring is done--with no distinction between "ready" and "not ready" cases. Cases are only infrequently called out of turn.

Back-up parts, because they cannot dispose of cases until they are fed from the calendar part, often sit idle for the first hour awaiting cases. When cases are finally fed to them they cannot all be handled; in fact, close to half are often adjourned.²⁹ Also, it is not uncommon that two calendar parts will feed cases to the same back-up part without knowing how many cases have already been fed by the other.

A person whose case is number 90 on the calendar must report at 9:30 a.m. even though his case will not receive its first call until noon. And the fact that there are presently four calendar parts (1A, 1B, 2B1; III) for at best four trial parts (2A, III-A-1, 2B3, and irregularly 2A1)

²⁹ During the first week of December, 1968 for example, Part 1A fed 48 of its 350 cases to back-up parts for hearing or trial. Of these, 22 or 46% were not reached in the back-up parts and were adjourned back to the calendar part. Of the first 30 cases on each day's 1A calendar during the same week an average of only 4 cases daily were fed to back-up parts, half of which were adjourned back from the back-up part.

in Bronx Criminal Court not only wastes judicial manpower but requires ubiquity on the part of police officers and attorneys in order to answer calls on their cases. The existence of these four calendar parts often causes additional court appearances. For instance, adjourning three of a police officer's cases to a single day could, if all were disposed of, result in two additional court days saved. But the fact that an officer may have to be in three different courtrooms at much the same time generally assures adjournment of two of his three cases. CCP consequently had to discourage adjournment requests when the reason was an attempt to consolidate appearances on a single day and to select its adjourned dates in a way that avoided such consolidation.

In addition, the present number of calendar parts creates problems for supportive operations. For each calendar part a separate clerical operation is required, resulting in overlap of clerical functions. Considerable space is taken by separate files, tables and cabinets for each clerical part. The police room must coordinate police appearances by communication with four separate parts; the warrant squad must deal with four separate clerical operations; bondsmen must swear to their bonds in four separate locations; and filing systems of supportive agencies must be separated to reflect the different parts.

Accordingly, it is recommended that calendaring operations be centralized in one or two offices³⁰ which would assign cases

³⁰ Because Bronx Criminal Court parts are housed in two buildings, it would probably be necessary in the Bronx to have a centralized calendar office for each building. In other counties the number of centralized calendar offices would be determined by space and caseload requirements.

to appropriate parts for trial or hearing on an "as available" basis. This would permit consolidation of clerical operations and would facilitate introduction of split scheduling and court alerts. It would also free a number of judges from calendaring duties.

2. Limiting Daily Calendar Loads:

Cases are presently placed on a calendar even though everyone is aware that they will never be reached. Present Bronx calendars average between 80 and 100 cases daily.³¹ Yet, it appears that at least 80% of the last 30 cases on so large a calendar will not be reached.³² Some of the present overload is due to increased numbers of cases entering the Criminal Court; but a good deal is also due to unnecessary overloading of calendars. Placing large numbers of cases on a day's calendar does not necessarily result in large numbers of dispositions; on the contrary, it most often results in large numbers of adjournments, which in turn results in overloaded calendars on the adjourned date resulting in further adjournments. Close to 70% of a

³¹During the last week of January, 1969, the average 1A calendar in Bronx Criminal Court had 82 real cases, excluding added-on cases and those on for sentencing, with three of the five days bearing more than 90 cases. Of these an average of 56 or 68% were adjourned in court daily.

³²During the first week of December, 1968 for example, with 1A calendars averaging 90 real cases daily, an average of 24 of the last 30 cases on each day's 1A calendar were adjourned.

Bronx daily calendar is adjourned in court; the outcome is not only futile appearances by many parties, the cases adjourned must be placed on another day's calendar, almost 70% of which is adjourned in turn.³³

It is recommended that daily calendar loads be reduced and that efforts be concentrated on the reduced number of cases to proceed to disposition on the court date. Reduction of calendar loads should cause no significant increase in a case's time span between arraignment and disposition; instead, it would at the least have little effect on the present time span but would eliminate a number of unnecessary appearances made during that time span. With less of a judge's day spent in adjourning cases that cannot be reached, more time can be devoted to disposing of cases daily. The result should be more dispositions in a shorter period of time than at present.

3. Setting alternate adjourned dates at arraignment:

When bail is set at arraignment the arraigning judge often does not know whether the defendant will make bail or not; consequently, he adjourns the case for a comparatively short period. If the defendant does make bail before the adjourned date, there is presently no means for changing the adjourned date to a later date more suitable for a non-jail case. The result most often is unnecessary appearances on

³³ See note 31, supra.

the original date. Accordingly, it is recommended that in all cases wherein bail is set;

a. the arraigning judge set two alternate adjourned dates agreeable to the parties, one to be effective if the defendant does not make bail, the other to take effect if he does; and

b. each day Corrections advise by telephone or messenger the clerk's office of those defendants who have made bail at the detention house; the clerk's office would then transfer the case to the alternate adjourned date and notify the parties.

4. Revision of the Tickler System and Early Identification of the Intended Purposes of Court Appearances:

The present tickler system is inadequate as a means of controlling calendar operations. If the tickler indicates a certain "maximum" number of cases adjourned to a certain date the court will accept no more adjournments to that date and will select another date. Following the tickler has two results:

(1) Little distinction in adjourning cases is made between those reasonably certain of disposition on a certain adjourned date and those simply put over because they cannot be dealt with at present;

(2) Adjourned dates must often be chosen, not on the basis of agreeability to parties or suitability for disposition, but because the tickler for a given date in-

icates a comparatively light load.

The outcome is further adjournment of cases--adjournments that would not have been necessary had the original selection of the adjourned date been based on other considerations.

The problem is compounded by the fact that Bronx cases are placed on calendars with no advance indication of what the parties wish to do on the court date. There is neither provision nor requirement for defense or prosecutor to indicate their intentions prior to the court date. Consequently, all parties must appear even though the appearance of some may not be necessary. Indicating intentions for each court appearance and recording such in advance would accomplish a number of things. First, it would aid calendar management by identifying not only the number of cases for a given adjourned date, but the nature of the proceeding contemplated on each of them, an improvement over the tickler system. Secondly, it would save appearances of parties when the action intended does not require their presence. Thirdly, by recording the stated intention on the court papers the judge before whom the case appears on the adjourned date would be better able to pressure the parties to proceed and to check judge-shopping and the wearing out of complainants.

Accordingly, it is recommended that the tickler system be revised at least to the point of indicating the type of action contemplated in each case on the adjourned date.

5. Staggering of appearances during the court day:

Instead of requiring all parties to appear at court at 9:30 a.m., it is recommended that the court adopt a procedure wherein parties would appear at different times during the court day. This would not only cut down on the number of hours spent in court but would also serve to more evenly spread out the court's daily business. It could be accomplished by one of two means:

a. if parties are required to state their intentions for an adjourned date, then the case can be scheduled in a time period on that adjourned date according to the intention stated, with cases slated for trial appearing at 9:30 a.m. and cases slated for hearing or motion scheduled for late morning or early afternoon; or

b. the tickler system can be revised to indicate at least two sessions, and cases would be adjourned not only to a date but to a session on that date as well.

Subpoenae and court notifications would be revised to reflect the different time scheduling.

6. Sign-in procedure and revised calendar calls:

As indicated on page 39, supra, back-up parts often sit idle in the first hour of the court day awaiting cases to be fed to them. The calendar is almost always called in turn so it often occurs that the first case ready to be fed to a trial part is not called until 10:00 or 10:30 a.m. even though all

parties to that case may have been ready at 9:30 a.m. The result is not merely wasted hours in court; it may result in further adjournments as well.³⁴

Accordingly, it is recommended that a sign-in procedure be adopted for each calendar part. As parties appear they would be signed-in. When court business begins cases fully signed-in would be called first, and cases would be called in the morning hours in the order in which they had signed in until they were all reached. In calling cases in the later morning and afternoon hours the judge would have the sign-in sheet before him indicating which parties to cases appeared at court at which time, thus providing an indication whether any individuals are abusing court procedures by consistent tardiness.

7. Prevention of multiple calendar calls:

To place a case on for a second calendar call initially consumes anywhere from one to four minutes per case. To prevent this time-consumption, it is recommended that the following "flag" system be adopted:

a. for each calendar number a slot in a tray clearly visible to the bridgeman would bear two cards: one red, one blue;

³⁴ See note 29, supra.

b. when the police officer arrives and ascertains that his civilian witnesses are present he would withdraw the red card from the slot for his case's calendar number;

c. private attorneys when appearing and ascertaining their client's presence would draw the blue card; Legal Aid, either by use of the sign-in procedure or by a separate sign-in for Legal Aid clients, would draw its appropriate blue cards when its clients appear;

d. parties would be instructed that if they must leave the courtroom for any reason they must surrender their card in the appropriate slot;

e. when calling cases in the morning hours the bridgeman would call only those in which the corresponding slot shows no cards or "flags". The tray could be placed in the courtroom in such a manner that insertion and withdrawal of cards would not interfere with the conduct of court business.

Thus, parties who must leave the courtroom temporarily would spare the court the time presently consumed in placing their case on for a second call.³⁵ When cases are called in the afternoon hours because their slot bore a defense or prosecution "flag" in the morning, the judge could then inquire as to the reason

³⁵ There are a number of reasons why a party might have to temporarily leave a courtroom. An attorney might have to confer with his client. A police officer might have to call a witness. Often persons who have brought small children with them must take them from the courtroom when they become unruly.

for the morning absence. If a case bearing no flags was called and a party was not present; the judge could reasonably assume that the party had not appeared at all that day and could base his decision accordingly.

E. Improvement of Communication with Parties Concerning Court Appearances

1. Adoption of the CCP complainant card:

As indicated on page 35, supra, the card distributed to complainants served more than merely notice of the CCP experiment. It also provided a record of court appearances and of basic information on the case. Not only did the card decrease the likelihood that a person would forget the date of his next appearance; it aided the clerk's office in assisting confused complainants by listing necessary information about the case. It is recommended that use of this form of record be continued for complainants and witnesses, and that defendants be issued a similar card which would additionally bear a warning regarding failure to appear in both English and Spanish.

2. Establishment of an information bureau within the court system:

As indicated by the volume of inquiries addressed to CCP on page 21, supra, there is a need for a formal information service within the court system. Under present conditions the clerk's office does not have the resources for detailed response--especially that requiring research into court papers--to every inquiry. Additionally, while interpreters are available for court

business there is no provision for a Spanish-speaking person to answer inquiries addressed to the court over the telephone.³⁶

Accordingly, it is recommended that the court system provide an information service capable of responding, in English and in Spanish, to inquiries made in person or over the telephone. This may be accomplished by establishing at one location with a designated telephone extension, a bilingual clerk equipped with both past and present calendars for all parts. An experienced clerk with available calendars should be able to answer most inquiries addressed to the court system. In addition, it is recommended that one clerk in each clerical part be designated an information clerk. When the bilingual clerk cannot answer an inquiry he would contact the information clerk in the appropriate part.

This service would not only prove valuable to persons having cases in Criminal Court; it would also relieve present pressure on clerical operations by centralizing the information function in one unit reserving to clerical parts only those inquiries requiring research into court papers.

³⁶After October, when CCP complainant cards were distributed, information inquiries concerning court appearances and court procedures addressed to CCP by complainants rose by over 1000%. One reason for the dramatic increase in information calls to CCP was the fact that a bilingual staff member was available to respond to questions from Spanish-speaking persons.

3. Use of bilingualism and further detail in all court notices:

CCP early discovered a number of instances wherein defendants unfamiliar with court designations spent hours in the wrong courtroom while their case was being called and a warrant issued in another courtroom. CCP revised its notifications to include the floor number as well as the court part, and it is recommended that this further detail--designating floor and location on floor as well as the court part--be included in all subpoenae and court notices. Because of the number of Spanish-speaking complainants and witnesses in Bronx cases, it is further recommended that all subpoenae be printed in both English and Spanish to ensure that effective notification is accomplished.

4. Adoption of the CCP-type notification to police commands concerning absent or late officers:

As indicated on page 31, supra, CCP's notifications to commanding officers concerning non-appearing officers were fruitful. One reason is that they served solely as an information device, leaving the individual commanding officer discretion in dealing with his men. The forms clearly indicate that no reply or additional paperwork is required, and, as a result, commanding officers were receptive to them and active in disciplining their men in response to them. (Past efforts by the Court and Police Department in this regard have had limited success largely because they required an investigation and report on each case and interfered with the commanding officer's discretion.)

Accordingly, it is recommended that the CCP-type notification be permanently adopted for police lateness and absence, as a responsibility of either the clerk's office, District Attorney's office or police room at court.

5. Location of Complainants and Witnesses:

CCP's experience with inaccurate addresses of parties on court papers has led to the conclusion that improvements in the initial recording of this information would aid calendar management. Accordingly, it is recommended that:

a. either the arresting officer or Assistant District Attorney or clerk in the complaint room complete an additional form that will list the following information on civilians:

- (1) the identity of all complainants and witnesses;
- (2) their home address, home telephone number and/or the name and number of someone who would be able to contact them at any time;
- (3) their business telephone number and the name of the business;
- (4) any dates in the subsequent months on which a court appearance would be unduly burdensome.

b. This form be attached to the court papers and remain a part of the permanent record of the case.

c. Appropriate captions on this form to be checked by the court clerk to indicate that a person has been excused or his testimony stipulated to prevent his being subpoenaed in error.

d. Civilians be advised at arraignment that they must notify the court of any change of address during the pendency of the case.

F. Coordination of Procedures for Court Appearances Between Various Agencies and the Court

Calendaring difficulties created by individuals-- private attorneys, complainants, defendants, witnesses--are hard to resolve mainly because the individuals do not conform their practices to a structure with which the court might be able to coordinate efforts. This is not the case with agencies operating before and within the court system with which coordination is more easily accomplished.

1. Appearance of N.A.D.C. Doctors:

The Narcotics Addiction Diagnostic Commission is responsible for the court appearances of doctors for N.A.C.C. hearings. Lack of inter-agency communication has resulted in needless adjournment of many such hearings. The Bronx District Attorney and Bronx Criminal Court had operated under the belief that N.A.D.C. doctors were required to appear for hearings in Bronx Criminal Court each Tuesday. Consequently, the court adjourned such hearings to Tuesday dates. On the other hand,

the N.A.D.C. had established a procedure whereby doctors responded to the first subpoena received for any date. Thus, if a subpoena for a Brooklyn court appearance was received first, a subsequent Bronx subpoena for the same date, even if a Tuesday, was not honored, and the Bronx case was either adjourned in court or the Assistant District Attorney conceded non-addiction and the defendant was sentenced absent the N.A.C.C. hearing. Since the overwhelming majority of these N.A.C.C. hearings concerned jail cases the results of adjournment were serious.

Beginning in early November CCP attempted to schedule short adjournments of N.A.C.C. hearings at the request of the N.A.D.C. when doctors could not appear. If an adjournment was secured the N.A.D.C. agreed to give the CCP adjourned date priority over any other county's Criminal Court dates for which the doctor may have been subpoenaed. CCP's intervention in these cases remained, however, a patchwork attempt at resolution of the problem. The N.A.D.C.'s response to subpoenas does little to help the court in scheduling these hearings and frustrates the court's attempts to have any security in its adjourned dates.³⁷ On the other hand, the N.A.D.C. is understaffed, with only five doctors available to perform all its examinations and attend all N.A.C.C. hearings in the five counties.

Accordingly, it is recommended that the Criminal Court, District Attorney and N.A.D.C. coordinate their efforts to improve

³⁷The security that the doctor would appear on a CCP adjourned date, while assisting Bronx Criminal Court, did not assist the courts of other counties in scheduling N.A.C.C. hearings.

scheduling of appearances of N.A.D.C. doctors. One suggestion would be to coordinate the appearances of N.A.D.C. doctors before setting dates for the hearings. One Correction officer assigned to the N.A.D.C. would be designated as coordinator of all N.A.D.C. appearances. Before a case in any borough's Criminal Court was adjourned for an N.A.C.C. hearing, the clerk would call the N.A.D.C. coordinator to ascertain available dates for the examining doctor. The N.A.D.C. coordinator would attempt to "group" appearances by each doctor for each borough. When the coordinator supplied a doctor's available date, these dates would be recommended to the judge as possible adjourned dates for the hearing. After the judge had selected one of the available dates, the N.A.D.C. coordinator would be notified by telephone and would schedule the doctor to appear on that date.

2. Use of New York City Police, Transit Police and Housing Police Duty Charts for scheduling adjourned dates:

When a police officer does not appear in court the odds are that the case will be adjourned to an inconvenient date for him. The police room generally apprises the Assistant District Attorney in the relevant part of available dates; frequently, however, these are not accepted by the bench because they are too early or conflict with the tickler system. Police duty charts--permitting computation of available dates of an officer for the remainder of the year for setting adjournment dates in an officer's

absence--were utilized only by CCP. The court did not have duty charts; the police room did not use them; and police officers often failed to indicate their chart numbers on their affidavits.

Additionally, while the court began adjourning certain cases into 1969 as early as October 1968, neither the court nor the officer could tell at the time whether the 1969 adjourned date was good for the officer, since the Police Department itself did not have 1969 duty charts until the last days of December. CCP personnel computed 1969 duty charts in early autumn (Appendix E) and distributed them to all Bronx commands, but attempts to have them used on an extensive basis by police commands and the court were unsuccessful.

It is recommended that:

a. A joint effort by the Police Department, Transit Police, Housing Police, District Attorney's Office and Clerk's Office be undertaken to ensure that police officers enter their chart numbers and vacation schedules on their affidavits, and that they advise the court of any subsequent change in that information. New York City police officers are already required by Departmental regulations to do the former. The District Attorney and Clerk could assist in this effort by refusing to accept affidavits not bearing this information.

b. Either:

(1) simplified duty charts for police, transit and housing officers be made available in every court part, and bridgemen be instructed in their use so that no adjourned date would be set absent prior reference to the appropriate chart; or

(2) simplified date lists for each chart squad and chart designation be prepared listing all available court dates for an officer assigned that chart squad or designation. An officer assigned to a given chart squad would cross out the days he would be on vacation and the remaining list would be attached to the court papers, indicating each available date for that officer for the year. Adjourned dates would not be set without reference to the date list.

c. All such duty charts for the following year be prepared and available at least four months prior to the beginning of that year to permit long adjournments.

3. Elimination of subpoenae for compelling police officers to appear:

Inasmuch as officers are rarely personally served with subpoenae it is questionable whether this form of notification offers any additional security for compelling officers to appear. Instead of the present time-consuming process of sending subpoenae to police officers, which requires subpoena clerks, messengers, and considerable additional clerical work for the Department, it is recommended that the police room at court

undertake a daily combined telephone and written communication procedure for all commands. Instead of notification only in cases where officers are not present, the police room at the end of each court day or on the morning thereafter would call each command, advising it of the adjourned dates for all officers in that command. The police room could also send through Departmental mail a list to each command confirming the next appearance for each member of that command.³⁸

4. Early excusal of police officers:

There are a number of situations where the arresting officer has no testimony to add to the prosecution of a case but where he is not excused from the case until the second or third appearance. Additionally, in a number of cases officers are excused but no record is made of the excusal on the court papers, a situation that sometimes results in the officer being subsequently subpoenaed in error. The result is wasted appearances by officers. Accordingly, it is recommended that in such cases the bench and prosecution make a renewed effort to excuse such officers at arraignment and to indicate such excusal on the court papers.

³⁸By continuation of the type of operation established by the Transit Police in setting up a Calendar Control Record Desk within its Department for all Transit appearances, Transit and Housing Police could take advantage of this procedure in lieu of subpoenas by receiving at such a desk notifications from the police room and channeling them to the appropriate Transit and Housing Police commands.

5. Coordination of Indictments and Criminal Court appearances on the same cases:

Present lack of coordination between the operations of the Indictment Bureau on the one hand and the Criminal Court on the other has led to a number of needless adjournments and wasted appearances.. Cases are indicted in one of three ways:

- a. the prosecution seeks the indictment prior to arrest; if an indictment is handed down the defendant is arrested and arraigned in Supreme Court;
- b. the case is originally arraigned in Criminal Court but is either waived to or held for the grand jury after a Criminal Court hearing; the case is marked "off-calendar" pending action by the grand jury and/or Supreme Court;
- c. the case is originally arraigned in Criminal Court and the prosecution absent a waiver or hearing, and with no indication to the Criminal Court, seeks an indictment; if an indictment is handed down the Criminal Court is notified and the case is transferred to the Supreme Court. It is in this third class of cases that lack of coordination results in needless adjournments.

Only two alternating panels are presently sitting as the Bronx grand jury, and the Indictment Bureau can rarely present a case to it sooner than three weeks after it receives the information, having a true bill handed down at the best four weeks after receipt.³⁹ If the case is one in the third class described above,

³⁹The earliest the Bronx Indictment Bureau could present a routine case for which it received the papers on March 28, 1969 was April 23, 1969, or almost one month later.

the result is that it may have two or three Criminal Court appearances in the interim where little happens. All the parties must appear and the defense can only surmise that a grand jury presentation is contemplated. The prosecution tends to stall during these Criminal Court appearances to avoid a preliminary hearing pending the presentation to the grand jury.

Accordingly, it is recommended that both an effort to minimize the delay between receipt of the papers and presentation to the grand jury and an effort to better coordinate Indictment Bureau operations with those of the Criminal Court be undertaken.

G. Coordination of Procedures for Court Appearances Among Different Courts and Counties

One of the difficulties confronting calendar management in the Criminal Court is that parties before it are often subject to conflicting commands of different courts of a higher or equal level. As a result procedures have developed that offer little security to a Criminal Court's adjourned dates and result in needless adjournments.

1. Conflicting dates in equal courts for police officers:

The Police Department's regulations provide that if an officer is subpoenaed by two different Criminal Courts for the same date he is to respond to the first subpoenae received. This provision is much like that used by the N.A.D.C. No distinction is made between jail and non-jail cases when responding to conflicting subpoenae, so a jail case may have to be adjourned

in deference to a non-jail case. Additionally, when an officer does not honor a Bronx subpoena because of a previously received conflicting subpoena, the Bronx case may well be adjourned in his absence to a date for which he has already received another county's subpoena, thus continuing the cycle. To date, the only means for resolving these conflicting demands had been the CCP advanced adjournment, which had rearranged the Bronx appearance so as not to conflict with that of the other county.

It is recommended that:

a. the Police Department revise its procedures for responding to conflicting subpoenae so as to attach priority up to 48 hours before the court date to the following types of cases irrespective of the order in which conflicting subpoenae are received:

(1) cases in which the defendant is in jail would take precedence over non-jail cases;

(2) older cases would take priority over more recent cases;

(3) cases bearing final markings would take priority over cases not marked final; and

(4) cases marked for trial would take precedence over cases marked for all-purpose parts.

b. The District Attorney of each county in its subpoenae or the police room in its notifications indicate on the face of the subpoena or notification, by code designation, which of the classes the case falls into.

2. Conflicting Commands of unequal courts on all parties:

When a Supreme Court appearance conflicts with that of the Criminal Court both the court and the various agencies operating within it defer in favor of the higher court appearance. This deference often overlooks the Criminal Court jail case. Accordingly, it is recommended that the Appellate Division consider whether it is advisable to adopt rules to provide that when a Criminal Court jail case and a Supreme Court pre-trial parole or bail case conflict because a necessary party for one case has been commanded to appear at the other, the interests of criminal justice will not be better served by giving the jail case priority regardless of what court that appearance is in.

H. Improvement of Surveillance for Checking Abuse of Court Calendar Procedures

1. Record on court papers of reasons for all adjournments:

Abuse of court procedures often escapes scrutiny because court papers infrequently indicate who has requested previous adjournments and rarely indicate the reasons given in support of those requests. Consequently, a judge before whom a case appears has little knowledge of whether one party is seeking unjustified adjournments. Accordingly, it is recommended that the reasons for adjournments be entered on the court papers, with an indication of the party making the request.

2. Absent and late police officers:

As recommended on page 51, supra, forwarding notifications to commanding officers for each unjustified police lateness or absence would do much to curtail police casualness concerning court appearances.

3. Excessive adjournment files on attorneys:

At present, the court can only check an attorney from abusing the adjournment process on a case-by-case basis. Yet a given attorney may persistently cause delay in a number of cases, a fact of which a judge ruling on an individual adjournment request would not be aware. Accordingly, it is recommended that:

a. in all cases adjourned more than six times the attorney's name and the number of those adjournments for which he was responsible be routinely recorded in an attorney file; and

b. the judge-in-charge periodically review with the clerk's office the attorney list and, where deemed necessary, call the attorney in for a conference concerning his court practices.

APPENDIX C: FORMS USED BY CCP

A number of the following forms are self-explanatory. Those that are not are explained below by the form number or form caption.

- C-1. CCP/1000: The purpose of this form is self-evident. The police room advised CCP each day of officers reporting absences for that day (see C-16). CCP checked to determine whether it had also received notification from the absent officer. If it had not but should have the form was sent, and a record on its mailing was kept.
- C-2. CCP/1100: Employed as project stationery.
- C-3. CCP/1200: The purpose of this form is self-evident. Each morning at 9:15 a.m. this form was transmitted to the police room. A carbon copy was retained by CCP. In the event CCP was adjourning a jail case, the name of the defendant was circled, and a handwritten message on the bottom of the form advised sign-in that the houseman had to pick up and deliver the prisoner, since the officer would not be available for that duty.
- C-4. CCP 1400 & 1500: These forms were "pre-adjournment" written notifications advising parties of an adjournment. CCP 1400 was specifically addressed to defendants; CCP 1500 was directed to all other parties. These forms were used as notification only prior to the original date, and only when CCP was adjourning a case sufficiently in advance of its scheduled date to permit the mails time to operate.

- C-5. CCP 1600 & 1700: These forms were the post-adjudgment equivalent of CCP 1400 and 1500. One or two days after the original date from which CCP adjourned a case these forms were mailed to all parties as confirmation of the adjourn date. CCP 1700 was directed specifically to defendants; all other parties to a case received CCP 1600.
- C-6. Notice to Surety: The purpose of this form is self-evident. It was delivered by hand in advance of the original date to the surety company.
- C-7. Case Sheet: The information on this sheet was extrapolated from the court papers. The sheet contained all information about a case necessary for CCP in order to adjourn. The caption "RFC" on the upper right side, when checked for a given calendar date, indicated that the case had been prepared for stamping or adjourning in court for that date.
- C-8. Telephone Call Record Sheet: This sheet served as a record of all calls received by CCP with the exception of anticipated return calls concerning a case. In the event a person requested an adjournment in person, "in person" was written across the top of the form. Likewise, in the event CCP received no request directly but learned of the need for an adjournment from sign-in (see C-16), "rec'd from sign-in" was written in.

In the event the call concerned an inquiry, the request for information was summarized, along with the action taken by CCP in response to it. When an inquiry

- had been responded to and no further action was required, noFAT (no further action taken) was entered on the sheet and it was filed for CCP records.
- C-9. Notification Sheet: This sheet functioned as a work-sheet on which adjournments were arranged. The caption "Pre-Adjournment Notification" referred to notification of the adjourn date made prior to the originally scheduled date. Post-adjournment notification was made subsequent to the original date, and was confirmation notification.
- C-10. Court Proceedings Sheet: This sheet supplied information on all in-court adjournments of cases with which CCP had at some time dealt.
- C-11. CCP/1800: The purpose of this form is self-evident. It was employed only in cases where CCP was adjourning by use of its stamp. A carbon copy was retained for CCP records.
- C-12. CCP-Plea Bargaining: This form has captions to include the maximum amount of information available on any plea negotiation session that Calendar Control arranged. CCP retained it for its records and analysis.
- C-13. CCP/1900: This form was employed when CCP had made an application for an adjournment in court at which time the bench granted the application but adjourned to a date other than that agreed to by all parties.
- C-14. CCP/2000: The purpose of this form is self-evident. It was prepared in duplicate and a carbon copy was retained for CCP records.