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Coordinating the Administration of Criminal Justice: The Interdependence Project in Avon and Somerset

Report to the Home Office

Walter P. Loughlin
Vera Institute of Justice

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Introduction

It has become commonplace for the relationship between and among the agencies which administer the criminal law to be described as an interdependent relationship. In 1984, for example, Leon Brittan, then Home Secretary, stated in an address to the Justices' Clerks' Society:

> The interdependence of the criminal justice system is not just a modish phrase. It is the key to the broad strategy I am trying to pursue -- to treat the system as a system. ... It is because the system's parts are interdependent that efficiency is so important.[1]

The following year, the Home Office published Managing Criminal Justice, a volume which collects numerous articles describing research projects conducted or supported by the Home Office Research and Planning Unit. The foreword to that volume states that, "An awareness of the interdependence of the agencies of the criminal justice system underlies much recent Home Office research and policy."[2] Several chapters explore the utility of interdependence as a concept to frame systemic thinking about the administration of criminal justice;[3] one of these chapters arose from an earlier phase of the Avon and Somerset project.[4]

The prevalence of the interdependence concept is not confined to discussions of criminal justice policy and research at the national level. County-wide criminal justice planning in Northampton, to cite but one example, is conducted by the Northamptonshire Interdependency Group;[5] inter-agency court user groups have been organized by justices' clerks in many of the larger petty sessional divisions;[6] it is acknowledged that an understanding of interdependence is an important part of the training of criminal justice professionals.[7]

Nor is interest in the concept of interdependence confined to British criminal justice planners and policy makers. The Council of Europe has devoted its Sixteenth Criminological Research Conference to an exploration of the interdependence concept, reflecting the broad interest in the issue among Western European governments and academic researchers.

While the concept of interdependence has clearly had an impact on the way the administration of criminal justice in England and elsewhere is perceived and discussed, less attention has been paid to the practical implications for criminal justice policy of the growing importance of the concept. This report, which is in three parts, seeks to devote more attention to those practical implications. First, the report describes the Avon and Somerset project from its inception in mid-1983 through its feasibility stage, which was completed at the end of 1984. Second, the report describes the demonstration phase of the project, which began in early 1985 and concluded in mid-1986. Finally, the report sets forth several conclusions concerning the

utility of interdependence as a strategy for criminal justice reform.

At its core, interdependence is a simple, and essentially indisputable, empirical statement: that the responsibility for processing criminal cases is divided among several agencies, none of which has independent or exclusive control over more than a small part of the entire process. But if the concept of interdependence is to be regarded as "the key to a broad [criminal justice] strategy,"[8] it must be an empirical statement which not only describes the way the world works, but also reveals how it can be improved by cooperation and coordination of planning. In other words, implicit in the concept is the belief that some of the problems of the criminal justice system arise from a lack of coordination among its component parts. The term "interdependence" is thus an abbreviated way of acknowledging that the fragmented and decentralized administrative structure of the criminal process creates the potential problem of lack of coordination while simultaneously suggesting cooperation as a solution to this problem. Co-operation to improve interdependent relationships is therefore an appealing, even seductive, strategy for criminal justice reform because it holds out the promise that improvements in the administrative structure of the criminal process will yield improvements in the overall processing of criminal cases. The Avon and Somerset project was designed to determine whether this promise could be realized.

I. The Avon and Somerset Interdependence Project: From Inception Through Feasibility Stage

The Avon and Somerset project, which was initiated at the suggestion of a Home Office Working Party, commenced in July 1983. The specific terms of reference of the project were as follows:

a. By reviewing in consultation with all concerned the working relationships in Avon and Somerset between the magistrates' courts, the police, prison service and probation services, to establish the principal points at which the operation of each of these elements of the criminal justice system affects the efficiency with which the others perform their tasks;

b. to initiate at these points of interaction experimental changes in the working methods of these services which appear likely to result in increased efficiency in the operation of one or more elements in the system;

c. to monitor and assess the effect of these changes, having regard to the manpower and expenditure implications.

The counties of Avon and Somerset were selected as the venue for the project in part because together they present, within a single police force area, a mixture of quite different pressures on the criminal process, as well as quite different institutional arrangements for coping with those pressures. The county of Avon, a relatively recent creation of local government re-organization, is dominated by Bristol, a large city with the full range of urban problems. Apart from Taunton, Somerset is a county of small towns, villages and rural areas.

At the outset of the project, the two counties contained 17 petty sessional divisions of the magistrates' courts, administered by nine different clerks to the justices, governed by two magistrates' courts committees. Two probation departments served the area, one in each county, and remand prisoners were held at one of four local prisons -- Bristol, Pucklechurch, Dorchester and Exeter. In 1982, over 20,000 persons were proceeded against for indictable and non-motoring summary matters in Avon and Somerset. Nearly one-half of these cases were heard in the Bristol Magistrates' Court. Six magistrates' courts in the force area handled fewer than 1,000 such matters, while five others handled fewer than 2,000.[9]

The initial phase of the project consisted of the formation of Steering Committees in the Home Office and in Avon and Somerset. The Home Office group, which was chaired by a senior civil servant in the Criminal Law Department, consisted of representatives from the subject matter divisions most interested in the project, the C-1 and C-2 Divisions, as well as representatives from the Research and Planning Unit. The Steering Committee in Avon and Somerset was comprised of two Justices' Clerks, two Chief Probation Officers, the Deputy Chief Constable and a Deputy Governor from HM Prison, Bristol.[10]

Throughout 1983 and 1984, interviews and meetings were held with the members of the Avon and Somerset Steering Committee, as well as other personnel in various criminal justice agencies, to discuss the ways in which the operations of each of their agencies were affected by the activities of other agencies. The purpose

of these discussions was to identify the points at which the operations of one or more of the agencies could be improved through enhanced cooperation or coordination with one or more other agencies.

The response was extraordinary; over 80 different major areas of interagency operation, all of which the responsible officials regarded as needing improvement, emerged from the initial interviews and meetings.[11] These suggestions were then grouped according to 24 larger themes, after which the Steering Committees in Avon and Somerset and at the Home Office agreed upon a ranking of the eight most important topics:

- Scheduling of Magistrates' Courts,
- Utilization of Police, Probation and Prison, Personnel at Magistrates' Court,
- Witness Issues,
- Bail Practices and Remands in Custody,
- Fine Enforcement,
- Summonses and Warrants,
- Sharing of Information,
- Consultation and Liaison.

The final stage of the feasibility project involved the identification of the most promising issues or topics within these eight areas for the development of specific demonstration projects. This involved principally further field investigation and close assessment of the areas which had previously been identified as needing improvement, with particular regard to determining the potential in each area for the development of

specific innovations. At the conclusion of this process, as with the ranking of the 24 themes, the Home Office and the Avon and Somerset Steering Committees considered the analysis which had been done, and agreed that the subject matters which should be given priority in the demonstration phase were (1) the scheduling of magistrates' courts and (2) bail practices and remands in custody.

Before proceeding to a description of the demonstration stage of the project, several concluding observations about the feasibility stage are in order.[12] First, the Interdependence Project did not introduce interagency co-operation and coordination to Avon and Somerset. Criminal justice professionals there were well aware, long before this project was launched, of the need for interagency solutions to various operational problems, and they frequently acted in response to this need. Even so, the feasibility study indicated that, prior to the demonstration project, communication between agencies was not as open, clear or easy as it later became;[13] interagency problem-solving was essentially ad hoc, short-term, and usually limited to bilateral negotiations between two agencies; and no institutional framework existed, except in the most limited forms, for longer-range planning or for the testing of new practices.[14] Thus, an important aspect of the demonstration phase of this project was to build on the consultative process which had been at the heart of the feasibility stage, and to observe and assess the process which the Steering Committee members and others were engaged in, as they developed new and different working relationships with each

other in the context of a project which challenged them to increase their level of cooperation and coordination.

Finally, a word should also be said about the scope of the subject matters involved in the demonstration project. The particular topics identified by the Steering Committee tended to involve operational matters which were essentially technical in nature, such as court listing, prison transportation, the service of summonses, and the like. This was due partly to the remit of the project, which was to explore the potential for achieving efficiencies by increasing cooperation and coordination across agency lines. It was also due in part to a belief, shared by the Steering Committee and the Vera observers alike, that it was prudent to concentrate on policy matters about which there was widespread consensus.

II. The Demonstration Phase: Tangible Improvements Through A Process of Co-operation and Co-ordination

The principal question posed by the Interdependence Project is whether tangible improvements in the administration of criminal justice can be obtained through increased cooperation and coordination across agency lines. The demonstration phase of the project indicates an affirmative answer. This section describes in detail the individual innovations which were undertaken. More important than any one of the individual innovations, however, is the overall process in Avon and Somerset that gave rise to them, shaped their implementation, and to some

degree determined their fate. This was a process in which several of the important criminal justice officials in the area met frequently over an extended period of time in an effort to identify practical ways to make the administration of justice in their area more efficient and effective. Because the Interdependence Project was designed to provoke a new process as well as to test the capacity of that process to produce specific operational innovations, a preliminary word about the project's methods is appropriate.

A. A Note on Methods

The nature of the Interdependence Project called for a style of work most closely associated with what the social psychologist Kurt Lewin described as the action research model. According to Lewin, action research is a method characterized by a process of planning. The process moves first from a general idea about some objective desired to a careful anaysis of the idea and means available; then as a plan for reaching the objective emerges from further fact-finding, a decision about the first "step of action" is made.[15] Lewin recognized that "usually this planning has also somewhat modified the original idea."[16] After the first step of the plan is executed, more fact-finding occurs.[17] According to Lewin, the action research model

> ...is composed of a circle of planning, executing, and reconnaisance or fact-finding for the purpose of evaluating the results of the second step, for preparing the rational basis for planning the third step, and for perhaps modifying again the over-all plan.

> Rational social management, therefore, proceeds in a spiral of steps each of which is composed of a circle of planning, action, and fact-finding about the result of the action.[18]

The process involved in the Interdependence Project was just such a spiral of analysis, fact-finding, conceptualization, planning, execution, assessment, and repetition of this circle. The image of the spiral reflects the evolutionary nature of the action research model, and the tentative and provisional nature of the reforms arrived at through this process. This model also suggests a description of what the project wanted criminal justice practitioners to learn how to do better, and to continue doing as one method of coordination and planning.

The action research model also seems an apt way to characterize the interdependence project because the concept of collaboration is central to the model. Lewin's organizational unit for action research is a team comprised of researchers and practitioners.

> This implies that practitioners and researchers must play on the same side of the ballgame, with shared goals and collaborative strategies. ...It entails research workers working <u>with</u> settings rather than <u>in</u> settings, to ask questions that are generalizable and practical, to translate reform into research and research into reform. It entails, as well, respect and hope in progress.[19]

Collaboration is the only word which accurately describes the relationship of the Vera staff, who were acting in some ways as researchers, to the members of the Avon and Somerset Steering Committee. Their questioning attitudes, wealth of knowledge and experience, willingness to devote precious time, energy and

resources, and dedication to improving criminal justice made the Interdependence Project possible.

B. The Individual Projects in Detail

The two priorities identified by the Home Office and Avon and Somerset Steering Committees as the general subject matter areas where innovations could be most useful were (1) the scheduling of magistrates' courts and (2) bail practices and remands in custody. In view of the consensus on these broad categories, attention was initially concentrated on designing projects within these general subject matter areas, and in particular, on the selection of projects which involved the operations of at least two of the agencies participating in the interdependence project. Furthermore, it quickly became apparent that a number of the specific innovations involved serveral of the topics previously identified by the Steering Committees. As the following descriptions reveal, many of the plans turned on enhanced consultation and liaison, and required improved information sharing; they simultaneously affected the utilization of police, probation and prison personnel, while also having implications for witness issues, bail practices and magistrate's courts scheduling.

1. Realizing the Potential of the Remand in Absence Procedure

One of the first innovations suggested by the Avon and Somerset Steering Committee had to do with the problem of the burden on the resources of the Prison Department and the Magistrates' Courts created by the requirement that remand prisoners be listed for court appearances at intervals of no more than eight days. This burden on court lists, and the demand on prison escort and transport resources, has been aggravated in recent years by the sharp and steady rise in the remand population -- up 62.9% between 1972 and 1983.[20]

It was recognized that at least one partial answer to this problem could be Section 59 of the Criminal Justice Act of 1982, which empowers magistrates to remand in custody a legally represented defendant, with his consent, at up to three consecutive remand hearings, without the need for the defendant to be brought to court. When enacted in 1983, the legislation promised to provide some relief from the pressure of transporting remand prisoners to court on a weekly basis. Furthermore, it was contemplated that the procedure would yield substantial savings in prison officer time, overtime, the cost of hired vehicles and police resources.[21] The Home Office estimated that use of Section 59 would result in a national annual savings for all remanding establishments in England and Wales of 67,000 hours of prison officer time, £98,000 in vehicle hire, and £19,000 in subsistence payments.[22]

However, research conducted in 1984 by J.P. Francis, Senior Psychologist at Bristol Prison, together with less systematic evidence, indicated that the promise of the remand in absence procedure was not being realized. This research indicated that many prisoners were either not aware of the remand in absence procedure or did not understand it. The studies further showed considerable variation in the use of the remand in absence procedure in different courts, a fact which suggests that some courts might be doing a less satisfactory job than others in advising defendants of the procedure.[23]

The foregoing facts led to an effort in which prison and court personnel developed practical steps to increase the quality and frequency of the advice being given to prisoners about the remand in absence procedure. The idea being tested was that if more prisoners had a clearer understanding of the procedure, more would consent to be remanded in absence. Only then could a greater measure of the anticipated savings result.

Before describing the efforts undertaken, two preliminary points deserve mention. First, this particular project labored under a handicap which is attitudinal in nature. In short, most people with relevant experience in these matters expressed the view that any activity to increase the level of remands in absence was likely to be futile. According to this view, prisoners uniformly desire to attend every remand appearance in order to seize the opportunity for a departure from the daily prison routine. Furthermore, court appearances provide opportunities for visits with family and friends, as well as

consultation with counsel, attractions which, it is argued, make remand appearances too desirable to forgo.

While there may be some plausibility to these beliefs, they are unduly broad. Clearly many factors, including some of those mentioned above, influence a prisoner's decision about whether to be remanded in absence. However, it is simply not the case that prisoners invariably prefer to be present at remand appearances. For instance, between June 1983 and January 1984, 1,613 remand appearances were made in various magistrates' courts by prisoners from Bristol Prison. Over the same period, 415 remand hearings in those courts were held in the absence of the prisoners. Hence, during the first 8 months following the effective date of Section 59, 20% of all possible remand hearings involving Bristol prisoners took place in the absence of the accused. This is an especially impressive figure when one bears in mind that the maximum possible proportion of remands in absence would be 75% since there must be one appearance for every three hearings in absentia.[24]

Secondly, one danger inherent in this effort at change was the risk of losing sight of the value underlying the requirement of weekly remands. At its core, the rule is admirable: it reflects a system's commitment to provide quite frequent review of cases involving presumptively innocent prisoners. It also has the functional advantage of providing frequent opportunities for prisoners to consult with counsel. If the unintended result of increasing remands in absence was a significant disruption in

communication between counsel and client, then the consequences of change might well be unacceptable.[25]

Although the specific practices introduced sought to increase use of the remand in absence procedure, the intervention strategy, described below, was formulated with sensitivity to these considerations. Indeed, one by-product of the effort may be an improvement in communication between prisoners and their counsel, at least with respect to remand hearings, by building on the existing role of the prison legal aid officer as an intermediary between defendants remanded in custody and their counsel.

The following steps were taken to implement this project. First, the Justices' Clerks in the area reminded their staffs of the importance of insuring that prisoners who are remanded in custody from their courts receive adequate advice about the Section 59 procedure. It appeared that some courts are better at this than others, at least that is one inference which could be drawn from the research conducted at Bristol Prison in 1984, which showed that in certain courts in Somerset not a single prisoner was remanded in absence between June 1983 and January 1984, while in other Avon and Somerset courts prisoners were frequently being remanded in their absence.[26]

Responsibility for providing this advice was firmly placed with the courts by the legislation itself, as well as by a Home Office circular which instructs Magistrates' Clerks to insure that the advice is given to prisoners who are remanded in custody from their courts.[27]

The intervention was based on the assumption that even a defendant who is thoroughly advised by a court clerk of the remand in absence procedure may not genuinely appreciate the advice received, owing to the stressful atmosphere at court. This may be particularly true when the advice comes on the heels of the announcement of the magistrates' decision to remand in custody. The limited efficacy of court-based advice is also reflected in the findings of the 1984 Bristol Prison research. One aspect of this research included interviews with prisoners which probed their understanding of the procedures. In substantial numbers, the prisoners claimed they had not received the advice at court, or that they had not understood the advice until a later time, following elaboration by counsel, other prisoners, or some other source. This research suggested that it would be useful for a prisoner remanded in custody to receive advice about the Section 59 procedure in addition to any advice provided in court.[28]

The staff at HM Prison, Bristol agreed to incorporate such advice into its existing reception procedures. Each newly remanded prisoner who arrives at the prison is interviewed by a member of staff who is the designated legal aid officer. These interviews are one-on-one and informal. The officer inquires of the prisoner whether he understands why he is at the prison, whether he has, or desires, legal representation, and whether the prisoner is aware of his next scheduled court appearance. The officer is responsible for assisting the prisoner in obtaining representation and in communicating with counsel and the court.

Beginning on July 15, 1985, when this project commenced, the prison legal aid officer carried out the additional responsibility of advising the prisoner about the remand in absence procedure during the initial reception interview, making sure that the prisoner understood the element of choice involved.[29]

There are several points which ought to be mentioned about the advice given to prisoners. First, an attempt was made to find a form of words easily understandable to a layman, but fully consistent with the statutory language.[30] Second, in order to avoid any posssible interference with the relationship between a defendant and his legal adviser, the advice about the remand in absence procedure encouraged each prisoner to discuss the matter with his solicitor if he was interested in exercising the option for an extended remand. Third, the advice was balanced. It encouraged any prisoner who chose to be remanded in absence to contact the legal aid officer if he changed his mind and wanted a hearing re-scheduled.

J.P. Francis, the prison psychologist who conducted the 1984 research, collected data for the time period during which this project was in operation, along with the figures for several months before July 15, 1985, in order to approximate a base rate of remands in absence, prior to any efforts aimed at increasing their frequency. The figures for the period March-June, before commencement of the experiment, suggests a base rate of remands in absence of roughly 26%.

While it is hazardous to draw firm conclusions from such limited data, the results are consistent with the expectation

that enhancing individual prisoners' understanding of the remand in absence procedure would increases their use of that option. In the first two full months of the intervention, August and September, this figure rose to 29.9% and 29.7%, respectively. It continued to rise in the following months. The October figure of 33.9% is the highest rate of remands in absence ever recorded at HM Prison, Bristol prison.[31]

The potential for savings derived from this practice, in terms of prison officer time, overtime, the cost of hired vehicles, and police resources are clear but their extent is difficult to estimate without fairly extensive research. A single prisoner's decision to be remanded in absence may result in substantial savings if his journey to court would have required transportation over a considerable distance by taxi and escort of two officers, as frequently occurs in Avon and Somerset. At the same time, a prisoner taking advantage of Section 59 who would have been transported by a coach that would make a regular trip to the courthouse, despite his absence, yields a minimal savings. Every prisoner remanded in absence, however, decreases prison reception costs since the considerable exit and entrance procedure at either end of a prisoner's journey to the court does not occur. In sum, because incorporating advice concerning Section 59 into the prison reception interview is an exceedingly inexpensive procedure, any increase in remands in absence it yields can only work to reduce the costs associated with the size of escorts, the journeys to and from court, and the hiring of vehicles and extra man-hours, as well as the costs associated

with the strain on judicial resources from burgeoning court lists.

a. Alternative Means Toward the Same End

Expansion of the remand in absence procedure is not the only possible strategy for reducing the resources devoted to prison transport and escort duty. Other initiatives directed toward this goal were also the subject of work during the course of the Avon and Somerset project.

The most promising of these initiatives involved an agreement reached by two members of the Steering Committee, the Deputy Chief Constable of Avon and Somerset and the Deputy Governor of HM Prison, Bristol. They agreed to devise and implement a procedure aimed at reducing needless requests for the production in court of sentenced prisoners. The argument is frequently heard that these requests are often made for prisoners serving substantial sentences for serious offenses, yet the pending offense for which production is sought, often in a court quite distant from the prison, is non-serious, if not trivial. An example of this would be a request that prison staff produce a prisoner, presently serving a lengthy sentence on a conviction of a violent offense, to answer charges alleging a traffic offense in a court hundreds of miles from the prison.

The new procedure agreed upon by the members of the Steering Committee was that the police requests for production would have to be reviewed and approved by a senior police officer of the rank of Chief Inspector or higher. It was believed that this

level of review would lead to a greater degree of discretionary judgment being applied to the police decision whether to request production.

This procedure was generally regarded as effective and successful by the members of the Steering Committee. Moreover, it led directly to more active and open consultation between the police and prison staff about an even wider range of police production requests.

In the main, this consultative process consisted of suggestions by prison staff to the police for re-consideration of requested productions. This could, in turn, lead to decisions by the police to postpone indefinitely the request for production, or to an agreement that the prisoner be produced at a more convenient time, date or location than originally requested, allowing prison staff to comply with the request in a manner less disruptive to previously organized transportation and staffing arrangements. The requirement of senior officer approval of production requests, as well as the more informal process of seeking police re-consideration, was also regarded favorably by the Magistrates' Court, which shared the view that in the absence of these efforts many inappropriate cases were needlessly burdening court lists.[32]

Finally, a third strategy was explored as another possible means of relieving the pressure on prison resources: greater use of Section 130 of the Magistrates' Courts Act 1980, which authorizes a court to transfer a case for further remand hearings to

"an alternate magistrates' court nearer to the prison where [the prisoner] is to be confined while on remand."

The advantage of such a procedure is that it would reduce the most costly type of prison escort expense -- the long trip for a single prisoner, or small number of prisoners, to a court which is remote from the prison. It was thought that such a procedure could be particularly useful in Avon and Somerset because the catchment area for HM Prison, Bristol, is extremely large. Prisoners held on custody at Bristol may have to be transported to Gloucestershire, Wiltshire, Wales, or to relatively remote courts in southern Somerset. If the cases of such prisoners could be transferred to Bristol Magistrates' Court for further remand hearings, considerable savings might be achieved. (The legislation provides that the prisoners must be returned to the original court for committal and trial.)

Having been advised that Section 130 was often used by magistrates' courts in Exeter, Cardiff and Swansea, members of the Steering Committee considered the possibility of encouraging greater use by courts in Avon and Somerset of their power to transfer remand cases. On balance, however, it was decided that greater use of Section 130 was impractical. The factors pointing toward this conclusion included the following: (1) most of the tranfers would be to Bristol, the court closest to the remand prison, a result which could dramatically increase the burdens on the busiest court in the area; (2) while a Section 130 transfer would reduce the travel for the prisoner, prosecuting and defense solicitors might be forced to travel considerable distances for

consultation and attendance at remand hearings, and (3) transfer of the case might hinder the ability of the defendant's family and friends to attend the remand proceedings.

In view of these considerations, no innovations with respect to the use of Section 130 were undertaken. While transfers under this section did occur, although infrequently, they were almost always under circumstances in which prison authorities were concerned with the heightened risk of escape involved in long distance travel between prison and court. Although the legislation does not require the consent of the court that receives the transferred case, the Justices' Clerk in Bristol took the position that this was preferable, and that he would expect any court considering a Section 130 transfer to contact him to seek prior approval.[33]

In discussing the possibility of remedial action through use of Section 130, the Steering Committee received suggestions that a more promising approach to the goal of reducing prison escort and transport costs would be a modification of court listing practices so as to take the demands on prison resources more fully into consideration. Acting on this suggestion, an effort by one court to give greater priority to cases involving prisoners remanded in custody was designed and implemented.

2. Giving Priority to Custody Cases in Bridgwater and Burnham Magistrates' Court

The Clerk to the Justices in the Sedgemoor Petty Sessional Division designed procedures aimed at dealing as quickly as

possible with all custody cases. The principal benefit of such an effort was thought to be that it would permit police resources to be released for more useful tasks, and would make greater use of the prison escorts who were already deployed for the function of transporting prisoners. Assured that remand cases would be given priority, prison escorts could wait at court until those cases were concluded and then return the prisoners to Bristol. Under a system which gives no priority to such cases, prison staff must return to prison after delivering the prisoners to court, leaving the police with the responsibility of escorting the prisoners back to Bristol.

In order for a priority system to work, the cooperation of police, prison, court staff and solicitors was necessary. Prison staff were asked to deliver prisoners to police custody at court by 10:00 a.m. Defense solicitors were requested to use the half hour between 10:00 a.m. and 10:30 a.m. to confer with their clients. The police were asked to organize the holding cells to facilitate solicitors' efforts to take last-minute instructions during this period. Once court opened at 10:30 a.m., court staff were required to organize the list to give priority to remand, committal and sentencing cases. Court staff were also required to prepare warrants as soon as each case was concluded so that the defendants who remained in custody could be returned to prison.

These procedures were initiated in December 1984 on a trial basis and were viewed by all as so successful that they were later incorporated into the regular court listing procedures at

both courts.[34] The Clerk to the Justices regularly sought the reactions of all concerned, and monitored the trial effort closely to assure its smooth functioning. While it is acknowledged that it may not be possible for the local remand prison to enter into an arrangement such as the Bridgwater-Burnham agreement with each petty sessional division it serves, clearly the benefits of such an arrangement as perceived by the participants argue in favor of efforts to determine whether and to what extent they can be replicated. When circumstances permit prison staff to remain at court for a short period of time, rather than returning to the prison immediately upon delivery of the prisoners to police custody, the availability of prison staff to return the prisoners is a significant improvement over the alternative of requiring police resources to be deployed for the return trip sometime later in the day.

3. Three-tiered Listing in Long Ashton and Weston-Super-Mare

A perennial complaint of both professional and lay consumers of a court system is that, even though a case may be listed for a particular time, undue waiting time may be required before the case is actually heard by the court. Delay of this sort, often described as waiting time on the day, is not only frustrating, it also can waste scarce police, probation and legal aid time.[35] Accordingly, the suggestion is often made that courts not list cases for times substantially in advance of the actual time the case is likely to be heard by the court.

One traditional response to this suggestion is for the court administrator to stress the impossibility of predicting with precision the amount of the court's time various matters will take, and to emphasize the need to avoid waiting time by the court. The best way to achieve the latter of course is for the court to have a number of fully ready cases available to be called at any time. Such a system necessarily entails considerable waiting time for the other parties.

This impasse seems to have been resolved by an innovation in Long Ashton and Weston-Super-Mare. In those courts, a listing officer now schedules cases for one of three times, 10:00 a.m., 11:30 a.m. and 2:00 p.m., rather than the former practice of scheduling all cases for a single time and taking them in turn. This procedure reduces waiting times for probation officers, solicitors, witnesses and defendants. And it seems to keep to a tolerable minimum the number of times when many of the listed cases collapse and the court temporarily has insufficient business -- the risk always invoked by those who oppose such a system.

Observing the implementation of this innovation, together with periodic discussions with the Clerk to the Justices who devised the new procedure, indicated that the following features are likely to be essential to success in this type of effort. First, it is necessary to have the cooperation of the bench. According to the Justices' Clerk in Long Ashton and Weston-Super-Mare, this cooperation hinged upon the willingness of the bench to acknowledge the value of reducing waiting times for those who

use the court, even at the risk of creating some waiting time for the bench. Second, listing of this sort can only be effective if the court staff, and in particular the listing officer, has sufficient information from the parties to make accurate assessments of the amount of court time likely to be required for the matters listed. When this effort was first launched, it was done so on a very limited basis; three-tiered listing applied exclusively to the scheduling of contested trials. By the close of the demonstration stage of the project, however, it was believed that the listing officer had developed sufficient experience with the procedure to make reasonably accurate predictions about the length of various matters, and three-tiered listing was being expanded to proceedings other than contested trials. Third, because this system inevitably results in some occasions in which the list generates less business in court than it can handle, there is a need for flexibility so that cases can be shifted from one bench to another. Finally, in the event that no case can be shifted, there is a need to have other judicial business available, such as the review and signing of summonses, which can occupy the bench until the next listed case is ready.[36]

4. Making Greater Use of Section 9 Statements

Emerging from the deliberations of the Steering Committee about the summons and warrant process in Avon and Somerset was the suggestion that a project be designed to explore the potential of Section 9 of the Criminal Justice Act of 1967, which permits the prosecution to prove its case in a summary trial

through the use of written statements, rather than the live testimony of witnesses. Since the use of such statements is preconditioned on their prior disclosure to the defendant, they are customarily sent to defendants by post. Prior to the design and implementation of the project to expand the use of Section 9, the use of such statements was important primarily in cases involving individuals who failed to appear in court at their first appearance. As a general rule, these persons were then served anew with Section 9 statements and adjournment notices. If the technical requirements of service were observed, the case could be proved in the defendant's absence.

The project which emerged from discussions with the Avon and Somerset Steering Group involved serving Section 9 statements prior to the first appearance for all defendants in minor process cases. The objectives of this procedure were (1) to increase the rate of guilty pleas from defendants who have been informed of the evidence against them, and (2) to enhance the ability of the court and prosecution to decide the case at the first appearance, in the event that the defendant did not appear, thereby eliminating the cost and delay involved in adjourned appearances and the second round of service.

This effort was centered on the police process office of "B" division in Bristol and commenced in July 1985. Prior to that time the police in Bristol served such statements by post only on a defendant who failed to respond to a summons for a court appearance in a minor process case. Under the new procedure, the police process office of "B" Division in Bristol served both

summonses and Section 9 statements by post to all defendants in minor process cases on the first occasion on which the cases were listed. The new procedure not only required the police to modify their practices in the process office, but also required the cooperation of the prosecuting solicitors, court clerks and benches. The principal change in court procedures, requiring adjustments by the prosecuting solicitors, court clerks and benches, involved the actual reading out of a summarized version of the Section 9 statement. Because this was a somewhat tiresome task, it met with some initial resistance. However, as the court clerks and prosecuting solicitors grew accustomed to the new procedure, the initial difficulties were overcome, and the last three months in which the scheme was fully operational proved to be a success.

Between 1st October, 1985 and the 31st March, 1986, the project monitored offenses to be heard before Bristol Magistrates' Court for informations laid by "B" Division Process Office beginning in July 1985. It produced a rate of 95% convictions at first appearance for all cases listed using the Section 9 procedure, a dramatic improvement over the near 50% adjournment rate of all cases listed in the minor traffic court at Bristol Magistrates' Court, the rate which prevailed prior to the expanded use of the Section 9 procedure. This exceptional return rate suggests that there were fewer adjournments simply because the defendant accepted the evidence which was served under Section 9 together with the initial summons.

The Section 9 procedure reduced postage costs associated with sending second summonses or adjournment notices (at a rate of 34p for each recorded delivery). More important to the Steering Group, it permitted re-deployment of manpower to tasks believed to be more productive. The value of this is obviously more difficult to estimate. In addition, the large percentage of cases decided at first appearance freed the list of the magistrates' court of a substantial number of adjourned cases and consequently saved court time and its associated costs.

There were, however, two offenses for which the Section 9 procedure was regarded by the police as inappropriate, therefore, cases involving these offenses were excluded from this effort. The first was in due care proceedings where it was thought the evidence might be subject to serious dispute. Section 9 evidence is normally served in such cases only under the advice of the prosecuting solicitor. Second, Section 9 statements were not used in cases of defendants charged with speeding offenses where the evidence consisted of a reading from a Truvelo speed-meter. The very high number of persons reported on any one day when the Truvelo speed-meter device is in use, the fact that sometimes as many as four police officers might be required to submit Section 9 statements for each such offense, and the high rate of guilty pleas entered by the defendants in these cases, in accordance with the Magistrates' Court Act procedure, were the factors which led to the exclusion of these offenses.

It had been feared, at the outset of the project, that greater use of Section 9 statements could lead to an increase in

the number of statutory declarations filed by defendants following a decision in court. The filing of such a declaration is the procedural device whereby a defendant may allege that he had not actually received service of the statements. This can result in the re-opening of the case. Obviously, if the project resulted in a substantial increase in these declarations, it would cast doubt on the effectiveness of using Section 9 statements. This fear, however, was unfounded. Even several months after the testing period, no corresponding increase in the filing of statutory declarations had occurred.

While the project was regarded by the police and prosecuting solicitors as a success,[37] the prospects for future use of Section 9 statements, along the same lines, were quite unclear at the conclusion of the project. It was anticipated that the broadened application of fixed penalty schemes to a much greater number of road traffic offenses would render resort to Section 9 unnecessary in many of the categories of cases involved in the project. Furthermore, with the advent of the Crown Prosecution Service, it was expected that the prosecution would be responsible for service of all written evidence pursuant to the Criminal Justice Act, and it was thought that the new service, for reasons unrelated to the project in Avon and Somerset, might decide to require use of the Magistrates' Court Act procedure as a way of achieving national uniformity in practice. As the Interdependence Project came to a close in mid-1986, a Working Party responsible for identifying the adjustments that would be required by the police and prosecuting solicitors upon the full

implementation of the Crown Prosecution Service had not reached any final decision about these issues.

5. Demonstrating the Effectiveness of Civilian Fine Enforcement

While considering the topic of the summons and warrant process, it was perhaps inevitable that the Steering Committee would turn its attention to the issue of the enforcement of fines. This particular topic is virtually a paradigmatic case of the interdependence of the criminal process, since enforcement of fines is customarily a shared responsibility of the court and the police.

The fine is a central part of the criminal process in the Magistrates' Court. These courts, which adjudicate over 90% of the criminal cases in England and Wales, impose fines in approximately one-half of their sentences for indictable offenses.[38] The centrality of the fine as a sanction is undermined, however, by the ineffective fine enforcement process. Recent studies indicate that approximately one quarter of the offenders fined for non-trivial offenses fail to pay the entire fine required.[39] It is essential to an efficient fining system that unpaid fines be subject to effective enforcement procedures.

At present, there is no uniform fine enforcement procedure to which all courts adhere. While some courts employ civilians as fine enforcement officers (FEOs) to serve warrants, other courts rely on the local police to perform enforcement duties. Despite the fact that the need for a prompt response to non-payment is acknowledged as the critical feature of successful

fine enforcement, it is also recognized that total reliance on the police to perform this function is inadequate. In Bristol alone, the total fines and fees imposed in 1985 increased over the prior year by £407,024 (20.3%) to a total of £2,407,294. However, the total amount of these fines collected decreased by £115,015 (7%) over the previous year's figure. One reason for the decrease is surely the fact that police manpower shortages in Bristol led to a decision in that year that police officers would be assigned to the duty of executing default warrants on only six days of each calendar month. At the end of 1985, the police in Bristol were holding no fewer than 10,605 unexecuted fines and warrants issued by the court.[40]

A substantial body of research into the fines enforcement process has been undertaken in the past several years. This research has tended to indicate that a system of court-employed civilian FEOs would be a more effective means of improving the fine enforcement process.[41] The Steering Committee was of the view that it would be useful to test the hypothesis that civilian enforcement was more effective than reliance on police enforcement. Somerset provided a good setting to explore this idea, since three of the courts in the county, Wells, Taunton and Yeovil relied upon the police to serve warrants on fine defaulters, while the Bridgwater court had an employee who was a civilian fine enforcement officer.

The project monitored the execution of warrants in all four courts from January through August 1985. The figures collected for this period focused in particular on the delays between

issuance and execution of fine default warrants at the four courts. This measure of performance was thought to be particularly important because research has indicated that the promptness of the response to non-payment is a key feature of successful fine enforcement procedures.

The data shows that the FEO at Bridgwater executed warrants much more promptly than the police in other towns. At Bridgwater, 81% of the warrants were executed within one month of being issued, and 47% were executed within the first ten days. While the FEO in Bridgwater executed the bulk of warrants within 15 days of their issuance, the police in Taunton, Wells and Yeovil allowed considerably longer than fifteen days to elapse before execution. Furthermore, the data showed that, on average, nearly twice as many days elapsed between the due date of a fine and the date on which payment was made in Taunton and Yeovil as in Bridgwater. The FEO was also able to execute more warrants than the police in the other courts. While the Bridgwater FEO executed 697 warrants over the data collection period, the police at Yeovil, Taunton and Wells executed 440, 562 and 445 respectively.[42]

The data for Somerset reinforce the findings of prior research, and provide further support for the view that use of civilian FEOs is a promising approach toward more effectiveness of the fine enforcement process.

6. Improving the Service of Breach of Probation Warrants

The Steering Committee's examination of the warrants and summons process also led to consideration of problems in the service of breach of probation warrants. The responsibility for responding to a probationer's failure to comply with the conditions of his probation order is shared by the probation service, the police and the court. A serious breach of a probation order will cause the probation service to initiate proceedings against the probationer by submitting an application to court for a breach of probation warrant. Once the warrant has been issued, execution of it is a police responsibility.

During the Avon and Somerset project, the probation service and police in Bristol entered into discussions about the problem of delay in the execution of these warrants. The probation service took the position that the warrants must be executed promptly; the police agreed, but asserted that they experienced difficulties in executing warrants because they frequently had insufficient information about the whereabouts and activites of the probationers named in the warrants.

In response to the police request for additional information, the probation service designed a one-page form which it proposed to attach to the papers submitted to the court in connection with any application for a breach warrant. This document would then be transmitted to the police if and when the warrant issued. The form, as proposed by the probation service, contained the following information: the probationer's name and last known address, the original offense and reasons for the

breach application, the name, address and telephone number of the probation officer applying for the warrant, and "other relevant information." It was contemplated that the probation officer would use the final section of the form to include in the papers information likely to assist the police in their effort to locate the probationer, such as a description of the probationer's daily routine, or suggestions of places where the probationer might be found, other than his place of residence.

The probation service proposal satisfied the police need for information beyond the name and address of the probationer. However, when the proposal was discussed at a meeting of the Bristol Magistrates' Court User Group, some doubts were expressed about the advisability of attaching this sort of form to the warrant. These doubts had to do partly with the administrative burden of completing the forms in all breach cases. Concern was also expressed about the possible negative reaction of a probationer who might discover, following service of the warrant, that the probation service had disclosed to the police information about him or his activities. This discussion led to the conclusion that a regularized procedure for exchanging information was needed, but that a somewhat less formal procedure involving a smaller amount of information was more appropriate to the task.

In view of these concerns, the probation service proposal was modified, based principally on a suggestion of the Clerk to the Bristol Justices. The modified proposal called first for the probation officer applying for the breach warrant to include his name and telephone number on all warrant applications. Second,

the police agreed that those responsible for service of such warrants would be notified that they should first contact the probation officer whose name appeared in the papers before beginning the process of locating the probationer. It was thought that this more informal approach to regularizing the exchange of information had several distinct advantages over the initial proposal. It avoided, or significantly reduced, the concerns described above, and also seemed more closely tailored to the perceived problem -- the need to provide the police, in a relatively quick and easy manner, with a small amount of additional information useful to the task of effective service of warrants.

The particular problem of arranging for an exchange of information between the police and the probation service about the execution of warrants is but one part of the larger issue of co-ordinating information sharing between interdependent agencies. This larger topic was also the subject of consideration by the Steering Committee.

7. Regularizing the Sharing of Information

The difficulties experienced by one criminal justice agency in obtaining information held by another agency is a recurrent theme of any discussion of interdependence. Although each agency involved in the Avon and Somerset project was formally committed to responding co-operatively to the requests for information received from sister agencies, it was recognized that difficulties in obtaining information frequently arose in the day-to-day

processing of criminal cases. Moreover, these difficulties sometimes developed into a pattern which called for an overall solution. Two of these particular problems were addressed in the course of the project.

a. Reducing the Burden of the Court in Responding to Police Requests for Case Information

Despite the commitment in principle to cooperation, one agency's request for information held by a sister agency can be a source of conflict. In Bristol, during the course of the project, the number of requests for information from the court was felt to exert such pressure on court staff that the spirit of cooperation was significantly strained. The minutes of the meeting of the Bristol Magistrates' Court User Group held on December 18, 1984, include the following statement, "[The Justices' Clerk] informed the Meeting that too many demands were being made of court staff for information which agencies already had in their possession. [The Justices' Clerk] stated that this information could not be given in future because of staff resources."

Upon closer examination, it was determined that much of the overburdening of the court with requests for information could be attributed to police inquiries seeking confirmation of the results of cases. Negotiations between the court and the police over this issue led to the following solution. A system of vetting was established whereby all requests for clarification of case results would be made initially to the Chief Inspector in

the police records office. Only if this inquiry failed to provide the information would the police contact the court. This seemed an acceptable compromise. The police were assured that they would be able to obtain the information they needed, and the court was satisfied that the procedure would reduce unnecessary demands on court staff.

There was a general belief held by most of the participants in the project that the difficulties experienced in the sharing of information across agency lines would evaporate once computerized information systems were fully introduced in all agencies. While it was not possible, during the project, to judge whether this expectation was realistic, one hopeful sign was the formation in Avon and Somerset of multi-agency consultative groups on computerization. Their formation was due in part to the concern that maximum compatibility of computer systems throughout the area be achieved.

b. Improving Prison Access to Previous Convictions Records

It is essential to the efficient and secure management of a prison system that prisoners be placed into appropriate security categories so that they can then be allocated to different types of prisons. Currently, there are four security categories -- A, B, C and D -- which correlate roughly with the different types of prisons in England and Wales. In local prisons the categorization is done by prison staff working in long term allocation units.

Discussions with the members of staff at HM Prison, Bristol revealed that the categorization process at the long term allocation unit there was often impaired or delayed by difficulties in obtaining the records of prisoners' previous convictions.[43] It is widely acknowledged that review of these records is essential to the proper categorization of prisoners.[44] Currently, the police are required to bring a copy of the record to the prison when they deliver a new prisoner. Too often, however, the prisoner arrives without the information, causing prison staff to then embark on what may develop into an arduous and frustrating task of obtaining the information. The unavailability of the previous convictions records can have serious effects. The Prison Inspectorate has determined that the pressure to reduce overcrowding at local prisons, combined with the delay resulting from the unavailability of previous convictions records, has led prison staff sometimes to allocate and transfer prisoners without waiting for this essential information.[45]

In discussing this matter with members of the Steering Committee and other police, court and prison personnel, one question recurred: if the previous convictions record is at court whenever a prisoner is sentenced, and the prisoner is then transferred from court to the prison, why does the record not travel with him? The observation implicit in this question formed the basis of the following agreement, which the Steering Committee arrived at as a possible solution to this problem. First, the police agreed to include in the case file at court, by the time of a defendant's sentencing, an extra copy of the

previous convictions record. The Justices' Clerk in Bristol agreed to instruct each of his court clerks to extract the extra copy from the file and attach the document to the court papers which must accompany the defendant to prison if a custodial sentence is imposed. While this creates a slight increase in the administrative duties of court personnel, who have no formal obligation to take steps to facilitate the prison's acquisition of information held by the police, the procedure outlined was suggested by the Justices' Clerk in Bristol, and was recognized by all concerned as an imaginative approach to a vexing problem.[46]

8. Adapting to Large-Scale Reform

Apart from the specific innovations described in the previous pages, the Steering Committee also considered the impact of large-scale criminal justice reforms on the operations of their agencies as an appropriate subject of the Interdependence Project. This view seems clearly correct, since the capacity of various agencies to co-ordinate their operations is frequently revealed and tested only when the agencies are required to adapt to new and changing procedures. During the course of the project, the most prominent of these adaptations involved the response to (1) the requirement of advance disclosure of prosecution witness statements, and (2) the field trials of time limits.

a. Advance Disclosure

In cases tried on indictment in the Crown Court the prosecution has long been required to disclose the evidence upon which it relies to the defense. Prior to 1967 this was done largely through the personal testimony of witnesses during committal proceedings. Since the enactment of the Criminal Justice Act 1967, disclosure has been made primarily by the service of written witness statements.

In 1975, the James Committee recommended a further extension of advance disclosure, particularly to either-way cases in the magistrates' courts.[47] Believing that some defendants elected trial by jury in order to learn the case against them, the Committee suggested that providing advance disclosure prior to the mode of trial decision would both improve fairness and reduce the number of elections for trial.

The response to this suggestion was passage by Parliament of Section 48 of the Criminal Law Act 1977, which permits the making of rules requiring the prosecutor to provide "advance information concerning all, or any prescribed class of, the facts and matters of which the prosecutor proposes to adduce evidence." Following pilot schemes aimed at testing the feasibility of implementing Section 48, the Home Office published in April 1985 the Magistrates' Courts Advance Information Rules 1985.[48] These rules were designed to "enable a person against whom proceedings for an offence triable either way are begun on or after 20 May 1985 to request advance information about the prosecution case, and oblige the prosecutor to whom such a request is made to furnish information on the basis prescribed."[49]

The advance disclosure rules had an immediate impact on the police, prosecuting solicitors and the court. Under the rules, the prosecution was required to furnish the defense, upon request, a copy or summary of "every written statement which contains(s) information as to the facts and matters which the prosecutor proposes to adduce evidence in the proceedings." This disclosure must be accomplished "as soon as practicable."[50]

Clearly, the initial need under the rules was for the police and prosecuting solicitors to agree on a procedure which would enable the prosecution to have witness statements in hand at the earliest stages of every criminal case, and if possible, before the first court appearance. Moreover, the possibility of delay in the prosecution's effort to obtain the necessary information, review it, and make disclosure threatened to cause adjournments in the processing of the cases in court.

Accordingly, it was recognized in Bristol that a multi-agency approach to the implementation of the disclosure rules was essential. A subcommittee of the Bristol Magistrates' Court User Group was therefore formed, the membership of which included representatives of the police, the prosecuting solicitor's office, the Law Society and the court. The first set of procedures for implementing the rules, announced shortly before their effective date, were as follows.[51]

First, the police agreed to deliver descriptions of witness statements to the prosecuting solicitor within four days of charge in any case. These statements formed what became known as the disclosure mini-file; the statements were expected to

constitute a _prima facie_ case of the charged offense. Since the prosecuting solicitors were to have the mini-file within four days of charge, there would be ample time to review the witness statements prior to the first appearance in court in most cases. The police bail period was fourteen days in Bristol, and cases commencing by summons were not scheduled for their initial court appearance until many weeks after issuance of the summons.

Second, it was expected that the mini-file would be served on the defense at the first appearance in court, and that this would be regarded as "informal" disclosure. However, because the mini-file would not necessarily include the complete information to which the defendant was entitled under the rules, the defense retained the option at the first appearance to request "full" or "formal" disclosure.

Third, the Justices' clerk and his staff hoped that the disclosure of the mini-file would encourage dispositions at the first appearance in court. Accordingly, they took the firm position that where the mini-file contained sufficient information to indicate the likelihood of a case resulting in a guilty plea, that the plea ought to be entered at first appearance, and that the defense ought not to invoke the right to more complete disclosure when it appeared to be unnecessary. Thus, the following memorandum was issued by the court on the eve of the effective date of the rules:

> The Court will expect as many cases as possible to be dealt with on the first appearance of the accused before the court. The Court will therefore expect

> defense solicitors to obtain Legal Aid before the first appearance. It should be noted that the informal disclosure statements will be sufficient for the defense to proceed on a guilty plea basis on the first appearance except in _exceptional_ circumstances.[52]

This memorandum acknowledged that service of the mini-file in court on the day of the first appearance might not provide the defense sufficient time to review the disclosed material and reach a decision concerning a plea, especially in those cases in which the defendant and his solicitor had not had an opportunity to confer about the case prior to the first appearance.[53] Nonetheless, the court was not willing to ease the pressure on the defense. The memorandum went on to state:

> In _exceptional_ cases the court will allow an adjournment for _7 days_ for the defense to take further instructions on a guilty plea, or to have further time to look at the statements which have already been served. Before adjourning a case the court should consider putting the case back in the list in order to allow time for the solicitor to prepare his case.[54]

The court's interest in obtaining the maximum number of guilty pleas at first appearance is understandable. First, the court was under pressure to achieve the prompt disposition of all cases, and in particular, to reduce delay in bringing contested cases to trial.[55] Second, the court was well aware of the delay which would result in cases that survived first appearnce, if the defense requested full advance disclosure. The subcommittee had taken the position that in all such cases a six-week adjournment would be required in order for the advance disclosure rules to be observed. The court's memorandum incorporated this understanding.

> At the first appearance or in exceptional cases 7 days later definite not guilty pleas will be listed for trial even though inconvenient dates may not be available. The prosecution state they will need a maximum of six weeks in order to comply with a request for full disclosure. This period is made up as follows:
>
> Four weeks for the police to prepare witness statements.
>
> One week for the prosecuting solicitor to examine and serve the statements on the defense and one week for the defense to peruse the papers. However, the prosecution have accepted that where the "informal disclosure" discloses the whole or the substantial part of the prosecution case they will not need that six week period.[56]

At the end of the six week period, the defendant would be called upon to plead. If the plea was "not guilty", a trial date would be set at the earliest time within the next six weeks.

During the first weeks and months of the operation of these procedures, a growing perception developed that defense solicitors were reacting negatively to the pressure exerted upon them at the first appearance. Indeed, it was thought that the pressure applied on the defense to enter a guilty plea or otherwise indicate firmly the likely disposition of the case, on the basis of disclosure of the mini-file, was causing defense solicitors instinctively to demand full disclosure, thus triggering automatic six-week adjournments.[57]

This phenomenon caused the court to reconsider the policy of exerting such pressure upon the defense at the first appearance. Instead, the Justices' Clerk and his staff came to the conclusion that in order for the informal disclosure process to be effective, i.e., in order for disclosure of the mini-file at the first

appearance to encourage earlier guilty pleas in genuinely uncontested cases, it was recognized that the defense required additional time to consider the disclosed materials. Therefore, it was decided that the original procedure required modification: the prosecutor would have to serve the mini-file prior to the first appearance, or the court would have to be willing to adjourn cases from first appearance, at least for a short period of time. One of these modifications was necessary if the defense was to have more of an opportunity to consider the mini-file before deciding whether to request full disclosure.

While acceleration of service of the mini-file so that this would occur prior to first appearance was the choice with obvious advantages, it was not thought that the police and prosecuting solicitors could accomplish this task on a regular basis for all cases, at least not without an expansion of the fourteen-day police bail period. Hence, the court modified its approach at first appearance, and let it be known that the defense would be entitled to a one-week adjournment, following first appearance, to consider the materials disclosed in the mini-file. In other words, the court abandoned its policy, expressed in its May 15th memorandum, that only in exceptional cases would such an adjournment be granted. After the one-week adjournment, the defense still retained the right to request full disclosure, but it was agreed by the subcommittee that any second adjournment for purposes of full disclosure should be for only one month.

Although the modified procedure had the advantage of providing the defense with more of an opportunity to review the

mini-file before the court began to look for a plea or mode of trial decision, it still carried with it the disadvantage of considerable delay. Moreover, as the police and prosecuting solicitor in Bristol gained more experience with the disclosure procedure, they became dissatisfied with it. Within a few months, the following proposal for yet another set of procedures was suggested by the police and prosecuting solicitor.

First, they proposed to do away with the distinction between formal and informal disclosure. The police and prosecuting solicitor had found that in the overwhelming majority of their cases, between 75-90%, the witness statements contained in the mini-file and disclosed at first appearance constituted full diclosure. There were simply not that many cases in which there was a need to have the police inquire further and prepare additional witness statements.

Second, the police and prosecuting solicitor proposed to eliminate the delay of four to six weeks which had been attributable to disclosure by serving witness statements on the defense prior to first appearance. This would give the accused and his solicitor an opportunity to review the disclosed materials prior to first appearance, and place the court in a much better position to obtain guilty pleas and mode of trial decisions from the defense at that point.[58]

At the time of this proposal, approximately 37% of all cases in Bristol resulted in guilty pleas at first appearance. The police believed that accelerated disclosure would increase this figure by revealing to the defendant, even before his first court

appearance, the strength of the prosecution's case.[59]

Even if a case survived first appearance, the police and prosecuting solicitor argued that their proposal would enhance the court's capacity to process the case promptly. They contended that under the new proposal there would be no need to adjourn the case for several weeks solely for purposes of the disclosure process. Moreover, the police committed themselves to taking the witness statements in a form suitable for commital proceedings, thereby eliminating another common cause for adjournments -- the need to give the police additional time to prepare commital papers. Finally, the police claimed that their proposal would enable them to have the information about the convenient and inconvenient dates for witnesses at the first appearance, thus enhancing the court's case scheduling ability.

In order to accomplish accelerated disclosure, however, the police and prosecuting solicitor required a one-week expansion of the police bail period -- from 14 days to 21 days. Specifically, the proposal was that the witness statements would be served on the defense by the 14th day after charge, leaving the defense to have one week to consider the material before first appearance.

The proposal was discussed both in subcommittee and then before the full Court User Group in Bristol Magistrates' Court. Despite the clear advantages of the proposal, it was not received with enthusiasm by the Clerk to the Justices or by the Law Society's representative on the Court User Group. The Justices' Clerk's attitude was based on his opposition to any increase in the police bail period, and his skepticism about the police

prediction that disclosure would be served on the defense within two weeks of the charging decision. The court had been committed for years to reducing the police bail period to an absolute minimum, and to exerting judicial control over criminal cases at the earliest possible point. In view of this long-standing policy, the new proposal seemed to be a regressive step.

While the opposition to the scheme from the defense solicitors was more muted, there was a belief among them that the scheme would revive the prior experience of placing the defense under pressure for pleas or mode of trial decisions at the first appearance. Since the procedure then in place had dealt successfully with this problem, from their point of view, the defense solicitors were reluctant to run the risk of re-introducing the previous problem by adopting the proposed scheme.

Confronted with this opposition, the proposal became just that -- a suggested policy in search of support. More importantly, the discussion in the Court User Group over the proposal strained relations between the Justices' Clerk who convened and chaired the meetings and the police and prosecuting solicitors. When there was an effort to place the proposal on the agenda for yet another meeting, in March 1986, the Clerk to the Justices unilaterally cancelled the Court User Group meeting and refused to schedule another date.[60] The cancellation notice did, however, invite members of the group who wished to discuss operational or policy issues with the court staff to contact the Justices' Clerk directly. Thus, as the formal Interdependence Project was coming to a close, an important forum for inter-

agency cooperation and criminal justice planning had broken down over the issues surrounding implementation of the advance disclosure rules. The Court User Group was instead replaced by the less satisfactory process of bilateral consultation and ad hoc problem-solving. Perhaps the most disappointing aspect of this episode was that the multi-agency cooperation in adapting to the requirement of advance disclosure had been so successful until the disagreement over the police-prosecuting solicitor proposal.

b. Field Trials of Time Limits

In November 1985, the Home Office launched field trials of time limits for the prosecution of criminal cases in four courts: Bristol, Birmingham, London (Southwark) and Maidstone. The trials represented the government's first step toward implementation of Section 22 of the Prosecution of Offenses Act 1985, which authorizes the Home Secretary to establish time limits for various intervals in the prosecution of criminal cases. Because Bristol was one of the sites of the field trials, their influence was felt on the courts and other agencies participating in the Interdependence Project. Even before the outset of the trials, the issue of delay was prominent among the subjects which concerned members of the Steering Committee. As the description of the various innovative projects undertaken indicates, reducing delay was an issue which played a major role in the Interdependence Project.

However, the field trials of time limits involved a view of the problem of delay, and method for addressing the problem, of a

quite different order from the other delay-reduction efforts. Delays in the service of probation breach or fine default warrants, for instance, or delays in obtaining previous convictions information, ordinarily involved only two agencies, one of which contends that the other is responsible for a delay which renders the complaining agency's operations less efficient. Any particular problem can therefore be addressed through consultation and negotiation over new or modified administrative procedures aimed at reducing the delay. Whether progress is achieved depends largely on the willingness of the agencies involved to be flexible and co-operative. Failure to achieve progress simply leaves matters in a status quo position.

With time limits, however, all this is quite different. First, the delay problem is not confined to two agencies, but touchs all agencies that use the court -- police, prosecuting solicitor, prison and probation service. The method of dealing with the problem is not consultation or negotiation, but enforcement by the court of deadlines on the operations of other agencies. Furthermore, the cost of failure to comply with the time limits is high -- dismissal of the prosecution.[61]

In other words, time limits touch the central nervous system of the criminal process. They require the court to adopt the role of disciplining the agencies which use the court, and they compel the court to impose deadlines which, if not met, result in dismissal of the prosecution. While it is important to note that the particular limits involved in the field trials were not exacting enough to have direct impact on many cases,[62] the

indirect effect of the time limits on the working relationships of various agencies and the magistrates' court was important to the Interdependence Project.

The indirect effect was two-fold. First, time limits tended to create an atmosphere in which reduction of delay in the processing of cases in court was regarded as the priority objective. Second, since this objective tended to predominate, at least in discussions about use of the court, it had a negative effect on the attitudes of flexibility and cooperation needed for effective relationships.

Prior to introduction of the time limits field trials, the Magistrates' Court in Bristol was already very concerned about delay in its processing of cases. In July 1985, figures were released from a Home Office pilot study on waiting times in Magistrates' Courts. The figures showed that while Bristol compared favorably with other courts in the time required to process guilty plea and serious crime cases, "the delay in all other types of cases [was] far worse when compared with the national figures."[63]

The reaction of the Justices' Clerk and his staff to the problem of court delay in Bristol was greater vigilance in the monitoring of cases, and parsimony in allowing users of the court time to perform their various functions. The various specific techniques utilized by the court staff were quite successful in reducing delay. Between the summer and fall of 1985, for instance, the amount of time required before the scheduling of a contested trial was reduced from 13 weeks to 8 weeks. The

Justices' Clerk in Bristol was also successful in encouraging lay magistrates to be more skeptical about requests for adjournments, and to entertain the possibility of dismissing proceedings in cases of exceptional, unjustified delay.[64]

Despite the impressive successes in delay reduction at the Bristol Magistrates' Court, the preoccupation with this objective was problematic, from the point of view of relationships with other agencies. For instance, the police-prosecuting solicitor advance disclosure proposal, discussed supra, was clearly a casualty of the Bristol Magistrates' Court's delay reduction campaign.[65] Probation officers in Bristol became concerned, during the Interdependence Project, that the pressure to conclude cases promptly might lead the court to reduce the amount of time allotted to them for the preparation of their reports on defendants.[66] The court took the position that defense solicitors who were thought to have caused unjustified delay would be reported to the Law Society.[67] One court administrator remarked, during the time limits field trials, that he felt he was being asked to respond to contradictory demands: "Interdependence means I should be flexible and co-operative with the users of the court, but if the measure of the court's performance is compliance with a time limit, I will have to require everyone to conform to my schedule."

The full effect of the phenomenon of time limits in Avon and Somerset could not be determined with precision by the conclusion of the project in mid-1986. However, it is possible to identify several points relevant to the relationship between long term

interdependence issues and a procedural reform such as time limits. First, a development such as time limits, which imposes new and potentially quite exacting demands on criminal justice agencies can have the positive effect of forcing agencies to reevaluate their priorities and to make necessary changes in operational procedures -- changes which could comfortably have been avoided in the absence of the pressure exerted by, in this case, time limits. Second, the process of reevaluation and adapting to new pressures can challenge an agency to achieve new levels of effectiveness. The reaction of the police and prosecuting solicitor in Bristol to the requirements of advance disclosure seems a notable example of this type of positive effect. Similarly, it is difficult to imagine any court responding more energetically to the problem of reducing delay than the Bristol Magistrates'Court.

The possible negative effect, however, cannot be ignored. The adaptation to new procedures may place such a high demand on an agency's resources and energy that the agency turns inward, away from co-operative action. More significant, if the large-scale adaptation is particularly difficult, and places significant operational strains on an agency, it can destroy the flexibility and experimental spirit needed to nurture innovation. In a 1983 study of innovation in criminal justice administration, the Rand Corporation concluded that this was an inevitable paradox of the effort to reform the criminal process. "In a resource-short world, fragmented interdependence is a two-edged sword."[68]

III. Conclusion: Some Lessons From the Avon and Somerset Interdependence Project

The preceding sections of this report have been devoted to a detailed description of the Interdependence Project in Avon and Somerset. This concluding section draws several evaluative points from the project, and suggests what might be the preconditions for replication of the positive aspects of the Avon and Somerset experience.

A Caveat About The Project in Avon and Somerset

The principal impetus of the Avon and Somerset project was a desire to know whether it is possible to stimulate cooperative action between and among local criminal justice agencies which more fully takes into account their interdependent relationships, and whether this cooperation could generate improvements in the operations of the agencies. The experience indicated that the interdependent condition of these agencies can be exploited by the agencies themselves to give sharper definition to their individual and common problems, and to develop and implement new policies or procedures likely to give some measure of relief from them. Building on existing working relationships between and among the criminal justice professionals in Avon and Somerset, it was possible to develop in that force area a more systematic process of planning, consultation and innovation. And that process led to observable improvements. The Interdependence Project increased the institutional self-knowledge of the participating agencies, strengthened their cooperative working

relationships, and led to the development, implementation and refinement of some useful operational innovations.

But it is fair to ask whether the patterns of cooperative action stimulated by the project are likely to endure in Avon and Somerset and can be started up elsewhere, without investment in a specific project agent such as the Vera staff assigned part-time to this function in Avon and Somerset. If the norm for local criminal justice managers is intermittent interdependent planning and action, and if the Interdependence Project simply stimulated an abnormally high level of such activity which will recede after withdrawal of the project agent, the utility of interdependence as a framework for stimulating sustained criminal justice reform is rather limited.

However, there are some reasons to expect that the process of cooperative planning and action will continue in Avon and Somerset, at least for so long as most or all of the individuals who participated in the Interdependence Project remain in post. Personal relationships which were established and developed or were strengthened during the project could be expected to endure and to support cooperation in the future, in the absence of an interdependence agent or formal project.[69] Moreover, as the key criminal justice managers in Avon and Somerset gained first-hand experience of benefits which can be obtained through collective efforts, it seems unlikely that they would move swiftly to abandon the process.

On the other hand, the cooperative action which survives will tend to change in character and form, in the absence of a

specific interdependence project; these changes would alter the pace and direction of interdependent action. For instance, the form of future cooperative action might gradually revert to a not unfamiliar pattern of consultation and liaison as needed, cooperative adaptation in the face of new legislation, and ad hoc bilateral bargaining between agencies. At risk are the more ambitious forms of interdependent planning and action, stimulated for and by the Project. These were the project features that built some collective capacity for local and regional planning and some capacity for designing and testing innovations.

It is difficult to be more sanguine about the durability of the more ambitious forms of coordinated planning and action in Avon and Somerset, because the instability of that process was apparent during the course of the project. The discontinuance of the Bristol Court User Group in March, 1986 is the clearest example of the fragile quality of multi-agency cooperation. The underlying instability stems largely from a lack of a firm institutional structure for interdependent planning or action (beyond the familiar bi-lateral bargaining); it means that interdependent strategies rely for their effectiveness on the good will and personal relations of the participants. Specific steps which might be taken to build a firmer foundation for useful interdependent efforts are discussed below.

The Prospects for Interdependence Elsewhere

All criminal justice professionals must solve problems, innovate and adapt to change. The project in Avon and Somerset

aimed to exploit interdependence to strengthen the collective capacity of criminal justice professionals in that area (1) to plan jointly for problem solving, (2) to experiment with new procedures that they believed might alleviate the problems they identified, and (3) to adapt to change initiated by central government. The Interdependence Project did strengthen the capacity of the criminal justice system to perform each of these functions. Whether the specific project achievements in Avon and Somerset are viewed as modest or substantial, the following features of the Interdependence Project conducted there appear to have been essential to the achievements, and may be preconditions for maintaining the process there and launching similar endeavors elsewhere.

Participation of Key Criminal Justice Leaders

The Avon and Somerset project enjoyed the support and active participation of the leadership of the criminal justice agencies in the area. This facilitated successful cooperative action for several reasons. First, it demonstrated that the commitment of each agency to cooperation was sincere, and was itself a manifestation of the interdependent condition from which planning and action was to proceed. Second, it meant that the selection of the specific issues or problems, and remedial actions to address them, corresponded to the real operational priorities of the participating agencies. Third, involvement of the leadership facilitated mobilization of the staff needed to implement the new policies or procedures that the interdependent leadership agreed to try out.

Multiple Benefits

While obtaining the support and participation of the leadership of local criminal justice agencies is essential, so too is maintaining this support and participation. As a practical matter, this requires selecting a mix of problems and remedial innovations which produce perceived benefits for each agency whose cooperation is sought. It is impossible to maintain commitment to the spirit of cooperation if the benefits and burdens of such endeavors are not distributed somewhat evenly. One possible weakness of the Avon and Somerset project was that the Steering Committee often identified remedial activities which would impose the chief burdens of innovation on the police, while the perceived benefits would flow to other agencies. This led the police representative on the Steering Committee to worry that the project cooperation would place new demands on his agency while returning few, if any, corresponding benefits. Selecting initiatives with multiple benefits was one way of reducing this fear and avoiding the possible alienation of an agency whose participation in the project was essential.

Retaining Independence

In order for cooperative action to be undertaken by interdependent agencies, it is essential that the agencies whose cooperation is necessary do not regard interdependent initiatives as a threat to their independence. As the Home Secretary, Douglas Hurd, reminded the Justices' Clerks' Society in 1986,

"The various agencies of the criminal justice system are independent, as well as interdependent."[70]

Each of the participants in the Avon and Somerset project regarded himself as fully independent, and none viewed participation in the project as requiring any diminution in his power to act independently. In other words, the members of the Steering Committee seemed to take the view that each would make an independent assessment of the value of collective planning and experimentation -- the value to his own as well as to the other agencies -- while always retaining the right to withdraw from any aspect of the project which he viewed, from that independent perspective, as valueless or harmful. Thus, the effort to stress interdependent action was rendered, as a practical matter, no threat to the independence of the participants in the project or the agencies they led.

During the project, the power to threaten withdrawal was not exercised, except to the extent that the suspension of the Bristol Magistrates' Court User Group in March 1986 was regarded as a reaction to a perceived threat to independent control. The fact that this sort of episode did not occur frequently was due no doubt to the pattern, developed early in the project, of decision-making by consensus in the deliberations of the Steering Committee. Although no meeting of the Steering Committee actually decided that unanimous agreement was necessary in order to go forward with a particular planning and implementation effort, that was the way the agenda for innovation was developed. Operating by consensus was a practical way of preserving, for

each of the participants, independent control over the course of the project.

If, as the Avon and Somerset project indicates, criminal justice agencies will plan and participate in interdependent action, but only to the extent that such efforts do not trench on their independence, does that cast doubt on the use of interdependence to shape a strategy for criminal justice reform? It should not. Despite the need for each criminal justice agency to retain independence, and the upper limit this necessarily places on each agency's participation in interdependent activity, the experience in Avon and Somerset was that ample room exists for useful co-operative work before this limit is even approached. There is considerable scope for useful interdependent planning and action, on a wide variety of operational problems, before unmanageable conflict between independence and interdependence arises.

Preserving Sensitivity to Fairness

The search for efficiency through cooperation in Avon and Somerset led to an exploration of summary procedures as a means of reducing delay and conserving scarce resources in a system of stress. There is some risk to fairness in pursuit of efficiency through these devices. For instance, expanding the use of Section 9 statements took new advantage of a procedure that permitted reduction of the resources committed to full application of the formal process in certain cases. Similarly, the effort to increase the use of remand in absence represents

something less than unquestioning acceptance of the value of frequent judicial review of cases in which defendants have been remanded in custody. Efforts at collaborative planning and action for more efficient criminal justice operations will not long survive if they endanger -- or are thought to endanger -- procedural safeguards on which we rely for the system's fairness. Successful efforts to launch cooperative efforts must incorporate sensitivity to the tension between efficiency and fairness.

To this observer, the Avon and Somerset Steering Committee seemed to incorporate the requisite sensitivity into its approach to interdependent planning and action. The following factors were important features of this approach. First, the Steering Committee members were individually quite sensitive to the possibility that unfairness -- or the appearance of unfairness -- could be a consequence of greater operational efficiency of their agencies or coordination among them. This sensitivity was pervasive in the Steering Committee's deliberations and influenced the planning and implementation of particular projects. For example, the advice given prisoners about remand in absence was carefully prepared so as not to interfere with the prisoner's assessment of self-interest or with any advice on the subject he might have received from his solicitor. Similarly, some of the opposition to expanded use of Section 130 transfers was the argument, made forcefully by a prison governor, that transfers make communication between a prisoner and his lawyer more difficult.

Second, virtually all of the specific projects selected by the Steering Committee were fully discussed in open meetings of

consultative bodies, such as court user groups, prior to their implementation. Since these groups included members of the bench, the legal profession and others who could question the advisability of any project, the process of planning interdependent action was open to challenge and criticism at every step of the way.

Third, several of the specific projects undertaken in Avon and Somerset promoted the interests of fairness and efficiency simultaneously. Advance disclosure is a procedural reform which was seen as likely to enhance the fairness of the process as well as its efficiency. And the reduction of delay, an aim of several of the specific projects undertaken in Avon and Somerset, serves both interests.

In sum, the Avon and Somerset project shows that some procedural innovations, arising from cooperative activity, can enhance the fairness of the system while promoting greater efficiency. Even though pressure for efficiency may theoretically lead to erosion of elements of the system which protect fairness, that possibility did not become a reality in the Avon and Somerset Interdependence Project. The individuals responsible for the pursuit of cooperation never lost their sensitivity to fairness, and the projects they selected as innovations reflected this. Finally, the openness of the process by which the Steering Committee implemented its work lessened the chances that the Interdependence Project would create risks to fairness.

Building a Firm Institutional Framework

In order for successful cooperative action between and among criminal justice agencies to survive in Avon and Somerset, beyond the commitment of the individuals who participated in the project, and in order for similar efforts to suceed elsewhere, there is a need for the creation of institutional frameworks that can stimulate and maintain interdependent planning and coordination. The experience in Avon and Somerset shows that it is not difficult to encourage useful improvements in interdependent relationships within existing behavior patterns and organizational structures. But it also shows that this can be a fragile and unstable process. Institutionalizing cooperative action would insulate the process of coordination and cooperation somewhat from the withdrawal or disenchantment of individual participants.

The development of an institutional structure for improving interdependent relationships could take many forms. The most promising approach might well be framed by the approach taken in Avon and Somerset -- building on existing networks of consultation and liaison. In many areas court user groups would be the most likely candidates for this function. In other areas, county-wide or force area groups comprised of the chief officers of the police, probation, prison and courts, as well as their counterparts in local government and social services, already meet regularly. These committees might profitably be transformed into interdependence working groups, along the lines of the Avon and Somerset Steering Committee.

While it is difficult to generalize about the desirability of different paths to effective interdependent action, the experience in Avon and Somerset showed both the strength and weakness of reliance on court user groups as a primary vehicle for improving interdependence. One shortcoming of court user groups is their size in relation to the other units in the process. Since the magistrates' courts are the smallest organizational unit in the criminal process, it is difficult to predict that the formation of interdependence groups along the lines of petty sessional dividsions will mesh well with the organizational needs of the police and probation service, or of the new crown prosecution service which is also generally organized along the lines of police force areas.

Apart from the issue of size, which is surely not an insurmountable problem, there is the fact that court user groups are designed principally as managment tools of the Justices' Clerk, which makes it at least difficult to transform them into enduring vehicles for multi-agency interdependent planning and action. In Bristol, the Justices' Clerk regarded the Court User Group as within his control, and rightly so, given the origin and function of such groups. On the other hand, one could view the group as belonging to the court users, which would argue for the Justices' Clerk relinquishing some degree of control. Should the chairmanship of such groups rotate among its members? Should each member of the group have the right to call a meeting? Should each member agency have control of the agenda during at least one meeting a year? Are such variations politically

feasible? The experience in Avon and Somerset does not yield answers to these questions. In any event, there is the danger that efforts to adapt court user groups to a function for which they were not designed might weaken their ability to perform the function they do so well, namely, stimulating interdependent action related to the activities of the court.

A final reservation about the appropriateness of court user groups as the primary vehicle for co-ordinating criminal justice has to do with the principle of judicial independence and the practical consequences which flow from that principle. As a general rule, many of the initiatives for coordination may come from those agencies which are constitutionally part of the executive, or from the policy initiatives of central government. In either case, such initiatives may be perceived, rightly or wrongly, as attempts by the executive to influence, control or co-ordinate the functioning of the independent judiciary. One example of this potential conflict arose during the Interdependence Project in Avon and Somerset, although it did not have any particular effect on the efforts underway there. In the Spring of 1986, industrial action among prison officers placed severe strain on a number of remand prisons. During the labor dispute, the Home Office issued a circular which, *inter alia*, called for "the understanding of the courts" and contained "...suggestions that may be useful in advising justices how they might best alleviate pressure on available secure accommodation."[71]

This circular met with sharp criticism from those who thought it inappropriate for the Home Office to suggest "that

courts should adjust their remand practices in response to industrial action...."[72] In short, this was regarded by some as an executive infringement upon judicial independence. This episode points toward a serious and principled limitation on the ability of court user groups to be the hub of the wheel of local interdependent planning and action, beyond planning and activity directly related to the operations of the court.

An alternative to reliance on court user groups would be the creation of interdependence committees along the lines of the Avon and Somerset Steering Committee or the Northamptonshire Interdependency Group. An entity of this sort could be of sufficient size and breadth to embrace the agencies whose cooperation would be necessary for effective regional criminal justice planning. Since the group would have as its only mission the development of interdependent action, it does not present the risk of dilution or detraction from other functions already performed by different institutions, which may be the case with court user groups. Furthermore, the very designation of an interdependence working group serves to increase the visibility of the concept, thereby raising the level of consciousness about the need for multi-agency cooperation, and placing productive interdependent activity within a firm institutional framework.

Where possible, both of these alternatives might profitably be pursued. An entity, organized along the lines of the Avon and Somerset Steering Committee, or the Northamptonshire Interdependency Group, including representatives from agencies organized along county-wide or force area lines plus perhaps the

Clerk to the Magistrates' Court Committee, might provide the best vehicle for regional criminal justice planning, consultation and innovation. (The success of the Northhampton group in designing and implementing a new multi-agency approach to the processing of juvenile cases suggests what interdependent action can achieve when attempted at that level.)[73] However, there will remain the narrower range of operational issues best addressed locally. It is at this level that the court user groups can be most effective, as the work of the groups in Bristol and Sedgmoor during the Independence Project demonstrated.

There remains the question of how, in a fragmented and decentralized criminal process, institutional vehicles for interdependent action might be created. While it would be impossible to chart this terrain fully in this document, which arises from a single, local Interdependence Project, the Avon and Somerset experience may provide some guidance. If the foregoing analysis of the experience in Avon and Somerset is generalizable, the key to stimulating effective and sustained interdependent work is to persuade each key criminal justice manager that his independent self-interest (or, more precisely, the interest of his independent agency) coincides with active participation in the process of interdependent planning and implementation. Criminal justice managers must become and remain satisfied that participation will enable them to manage their independent agencies more effectively.

One way to begin this process of persuasion is through the regular dissemination of information concerning practical

innovations, resulting from effective interdependent planning and action, which have relieved one or more local agencies of inefficient or inappropriate resource commitments. During the Interdependence Project in Avon and Somerset, there was no systematic way for criminal justice managers in other parts of the country to learn about such experiences in the Project. At its conclusion, mere publication of a project report is not likely to be enough to stimulate the formation of interdependence groups elsewhere. But more regular dissemination of information about local successes in interdependent planning and action would be likely both to find and to further stimulate the substantial, widespread appetite for information about how to improve the efficiency and effectiveness of local criminal justice operations.

The various criminal justice professional associations have a part to play in the exchange of useful information about effective interdependent efforts at problem-solving. So, too, does central government. The Home Office Adviser on Magistrates' Courts is already making important contributions along these lines, as he travels through the country sharing information about good practice with the Justices' Clerks and court administrators he meets. But the need is greater than the current response.

Similarly, consideration might be given to the development of training conferences and courses, aimed at encouraging criminal justice professionals -- at all levels of management -- to regard techniques of interdependent action as a normal part of

effective performance of their management tasks.[74] Such courses and conferences could also be an important forum for the exchange of practical information about successful interdependent action.

This cycle of activity -- the flow of information about successful cooperative innovation convincing others to try similar efforts, which in turn generates more information for the flow, and the sharing of these experiences at training conferences or other forums to stimulate new examples of interdependent action by other criminal justice professionals -- is the process which can and should be placed in motion if further work along the lines of the Avon and Somerset project is desired.

Manpower and Resource Implications

A last set of questions flowing from the Avon and Somerset experience concerns the economic implications of the innovations planned and implemented there. We saw that the local criminal justice managers were able to exploit the interdependent condition of their agencies to achieve ammendments to local procedure. Each of these innovations was pursued precisely because one or more participant perceived it as having positive implications for the allocation of resources. But, as each agency was in a stressed condition, perceived by its management to be without sufficient resources to carry out all existing functions as effectively as desired, an agency's resources freed up by a particular project (e.g., police man hours, court clerks' time, the time of prison escort and transport personnel) were re-deployed to other essential functions. From the perspective of

the participants, the particular reforms planned and implemented through the Interdependence Project in Avon and Somerset aimed at achieving a more efficient allocation of manpower or some other scarce resource, not at the avoidance of an expense.

Measuring the economic value of any of the particular innovations that emerged from the Interdependence Project is, therefore, elusive. The difficulties are twofold. First, it is hard and expensive to determine with any precision the amount of resources freed up by any one of the innovations developed in Avon and Somerset. For example, a close examination of the data collected in the effort at H.M. Prison, Bristol to expand use of the remand in absence procedure could yield data about the resource implications of that effort,[75] but determining the costs saved would be extremely difficult, as prior research has shown.[76] Second, the real question, in the context of interdependent activity of the kind generated in Avon and Somerset, would seem to be the difference between the economic value of the activity supported before the innovation by the resources redeployed as a result of it and the economic value of the activity to which those resources were redeployed. Addressing questions of this complexity was well beyond the scope of this project.

The purpose of the Avon and Somerset project was not so much to determine whether the interdependence of the criminal process could be exploited to reduce the operating expenses of criminal justice agencies as it was to determine whether the agencies themselves could work together to achieve re-deployment of

existing resources for improved operations. Efficiencies of this kind were pretty clearly achieved.

A Final Word

In the last few years, interdependence has become a central theme of discussions about criminal justice planning and policy in Britain. The concept has been described as "the key to [a] broad [criminal justice] strategy,"[77] and as an underlying basis of "much recent Home Office research and policy."[78] The Interdependence Project in Avon and Somerset sought to provide a detailed participant-observer account of interdependent planning and action in one force area. This report reflects what the participant-observer learned from that Project, about both the potential for, and limitations of, utilizing the interdpendent relationships of criminal justice agencies to frame part of a strategy for criminal justice reform. On balance, the experience of Avon and Somerset indicates that strategies grounded in interdependence are useful and usable in an overall criminal justice policy. Sensitively designed and sensibly applied, efforts to encourage cooperative attitudes and patterns of coordinated planning and action is a means toward the goal of improving the administration of criminal justice.

FOOTNOTES

[1]Address of the Home Secretary to the 1984 Annual General Meeting of the Justices' Clerks' Society, a copy of which is on file in the office of the Vera Institute of Justice. These remarks were echoed during the same month in the Home Office's publication of the Working Paper "Criminal Justice:"

> ...on taking office I decided that we needed a strategy which would enable us to establish and pursue our priorities and objectives in a deliberate and coherent way. Such a strategy is now in place. It covers all the main areas of the Department's work, both general policies and specific legislative or administrative objectives. We shall be reviewing it regularly. Our principal preoccupation is, and I believe it ought to be, the criminal justice system which, incidentally, I wish to see treated in all that we do as a system.

Criminal Justice: A Working Paper 4 (Home Office 1984).

[2]Managing Criminal Justice, David Moxon, ed., v (Home Office 1985). Similar sentiments were expressed in the Home Office Research and Planning Unit Programme for 1984-85, which stated that:

> In order to study the criminal justice system at any point it is necessary to be aware of the interdependence of its component parts. Changes at any point have repercussions elsewhere; it is impossible to affect output at any one point without considering inputs elsewhere.

[3]See, e.g., Pullinger, "The Criminal Justice System Viewed as a System," and Morgan, "Modelling the Criminal Justice System," Chapters 2 and 3 in Managing Criminal Justice, supra, n. 2.

[4]Feeney, "Interdependence as a Working Concept," Chapter 1 in Managing Criminal Justice, supra, n. 2.

Interdependence is by no means a new idea, although the prominent position of the concept in discussions concerning criminal justice policy is a relatively recent phenomenon. Both Feeney and Pullinger allude to the pedigree of the concept of interdependence in their contributions to Managing Criminal Justice, supra, n. 2. Students of social science will recognize the term as it relates to theories of social organization and modernization. See, e.g., Haskell, The Emergence of Professional

Social Science 28-29 (1977):

> For America and the advanced nations of Europe, the nineteenth centure was a period of growing interdependence among all the components of society, individual as well as institutional. By the term "growing interdependence" I mean to refer to something quite exact: that tendency of social integration and consolidation whereby action in one part of society is transmitted in the form of direct or indirect consequences to other parts of society with accelerating rapidity, widening scope and increasing intensity. A society is interdependent to the extent that its component members or parts influence and are influenced by each other. A society is interdependent to the extent that the activity of each of its members depends (consciously or not) upon the activity of its other members; conversely, it lacks the quality of interdependence to the extent that its members are able to act independently, without taking each other's acts into account. Interdependence is an objective condition of life which exists apart from anyone's perception of it. It can, however, be intensified by a growth of mutual awareness that prompts men to respond more deliberately and sensitively to their dependencies.
> (emphasis omitted).

[5]See Bowden and Stevens, "Justice for Juveniles -- A Corporate Strategy in Northampton," 150 Justice of the Peace 329 (1986), reporting on the results of a new policy with respect to the diversion of juvenile cases from the criminal process in Northamptonshire. The policy was formulated by the county's Interdependency Group, chaired by Julian Bowden, Chief Executive of the Magistrates' Courts Committee. Its members also include the Chief Constable, Director of Social Services, Chief Probation Officer, Chief Clerk of the Crown Court, Chief Executive of the County Council, Governor of the Remand Prison and Chief Crown Prosecutor.

[6]See, e.g., Feeney, supra, n. 4 at 13:

> Magistrates' court user groups include representatives of most agencies, and many agencies have specific individuals designated as liason officers to other agencies with whom they have important relationships.

See also the address of the Home Secretary, Douglas Hurd, to the 1986 Annual General Meeting of the Justices' Clerks' Society, where the establishment of court user groups was encouraged.

These remarks are reprinted in 150 Justice of the Peace 380 (June 14, 1986). The Report of the Home Office Working Group on Magistrates' Courts (1982) also recommended the establishment of such groups.

[7]See, e.g., "Probation Officers as Managers," 150 Justice of the Peace 185 (March 22, 1986), where a publication of the National Association of Senior Probation Officers entitled "The Training of Senior probation Officers" is criticized for not including "a module for considering interdependence" in the "induction training" of new Senior Probation Officers. The article also observes, perhaps with unintended irony, that "interdependence is a subject which is in fashion at the moment, but we can only see it as being of continuing importance." Id. at 186.

[8]Address of the Home Secretary to the 1984 Annual General Meeting of the Justices' Clerks' Society, supra, n. 1.

[9]These facts and figures did not change substantially during the life of the project. See, e.g., Annual Report for 1985 of Mr. T.G. Sullivan, Clerk to the Bristol Justices (1986) (reporting a 5.4% increase in the number of indictable cases heard in Bristol over the prior year.)

[10]The Steering Committee members, and their institutional affiliations, were as follows:

T.G. Sullivan, Clerk to the Justices, Bristol; B.A. Buckhurst, Clerk to the Justices, Sedgmoor, Frome, Shepton Mallet and Wells; J. Sharples, Deputy Chief Constable, Avon and Somerset Constabulary; J. Burbidge, Chief Probation Officer, Avon Probation Service; A. Croston, Chief Probation Officer, Somerset Probation Service; D. Vaughn, Deputy Governor, HM Prison, Bristol.

[11]See Appendix A to Feeney, Interdependence of the Criminal Justice System: A Report on Feasibility (1984).

[12]Several of these observations are alluded to in Floyd Feeney's report, Interdependence of the Criminal Justice System: A Report on Feasibility (1984), and his contribution to Managing Criminal Justice, supra, n. 2.

[13]Several members of the Steering Committee did not know one

another prior to commencement of the Interdependence Project and have conceded that, but for the project, might never have met.

[14]When this project began, a court user group was in existence in Bristol. During the life of the project, a similar group was established in Sedgmoor. Both of these groups confined themselves to issues of an immediate operational nature. Although magistrates serve on police and probation committees, no evidence emerged during the Interdependence Project to indicate that either of these committees could provide an effective forum for the working out of practical solutions to interagency problems.

[15]Lewin, Kurt, "Group Decision and Social Change," in Newcombe, T.M. and Hartley, E.L., _et al_., _Readings in Social Psychology_, New York: Henry Hold and Co., 1947 at 330-44.

[16]_Id_. at 333.

[17]The further fact-finding has four purposes:

> ...It should evaluate the action by showing whether what has been achieved is above or below expectation. It should serve as a basis for modifying the "overall plan." Finally, it gives the planners a chance to learn, that is, to gather new general insight, for instance, regarding the strength and weakness of...techniques of action.

_Id_. at 333-334.

[18]_Id_.

[19]Toch, H. "Training Researchers," _Society_ 15 (1978)

[20]Adapted from Table 1.4, _Prison Statistics, England and Wales_ (Cmnd. 9027).

[21]C. May and P.M. Morgan, _A Study of Prison Escorts_, (1982) (Home Office Research Working Paper No. 5).

[22]C. May, _Remands in the Absence of the Accused_, (1985) (Home Office Research and Planning Unit Paper No. 34).

[23]J.P. Francis, Remands in the Absence of the Accused : HM Prison Bristol, (1984).

[24]In Bristol Magistrates' Court, which accounted for over one-half of the hearings which took place during the relevant period, 22.7% of all possible hearings were held in the absence of the accused. In Long Ashton, for the same period, 37.1% of all remand hearings were held in the absence of the accused. J.P. Francis supra, n.23, at p. 23.

[25]While there is no doubt that weekly remand hearings provide an opportunity for client consultation, it is not altogether clear that counsel favor their clients' unnecessary appearance at remand hearings. At one Court User Group meeting in Somerset, an active defense solicitor complained that too many of his clients were needlessly appearing at weekly remands. He attributed this to their mistaken belief that a bail application could be made on their behalf. The solicitor asked that the magistrates give clearer advice to prisoners of the requirement of changed circumstances before an application for bail, having previously been denied, could be renewed. R. v. Nottingham Justices, ex parte Davies (1980) 144 J.P. 233.

[26] ALL REMANDS 1.6.83 - 31.1.84

(i.e., appearances plus remands in absence)

Court	Number of Appearances in Court	Number of Remands in Absence	Total	Remands in Absence as % of Total Remands
Bristol	806	237	1,043	22.7
Swindon	215	29	244	11.9
Bath	85	13	98	13.3
Weston-Super-Mare	82	28	110	25.5
Avon North	77	19	96	19.8
Trowbridge	61	21	82	25.6
Long Ashton	39	23	62	37.1
Sedgemoor	26	0	26	0
Devizes	25	1	26	3.8
Wells	25	0	25	0
Chippenham	25	12	37	32.4
Marlborough	18	4	22	18.2
Bridgwater	15	0	15	0
Frome	15	0	15	0
Warminster	13	14	27	51.9
Keynsham	12	2	14	14.3
Thornbury	11	4	15	26.7
Shepton Mallet	9	1	10	10.0

[27]HOC 49/1983.

[28]Chris May also suggests that one way of increasing remands in absence would be to improve the quality of information given to prisoners. C. May, Remands in the Absence of the Accused, (1985) (Home Office Research and Planning Unit Paper No. 34).

[29]The advice given to prisoners was based on the following form, copies of which were also offered to each prisoner:

> Our records show that your next court date is (date). When you go to court on that date, providing you are legally represented, you can choose not to go to court for the next one, two or three hearings - that is although the court sits and considers your case you don't need to be present. You must go to court on at least every fourth hearing, i.e., once a month.
>
> If you think you would prefer not to go to court every week, talk to your Solicitor about being remanded in your absence.
>
> If at any time, whatever decision you have made, you wish to change your mind, see me and this can be arranged. Also see me if for some reason you cease to be legally represented.
>
> Do you understand this?
>
> Do you want to ask me any questions about it?
>
> Would you like a copy of this information?

[30]The language of the advice given by the court clerks to prisoners remanded in custody from Bristol Magistrates' Court is as follows:

> If the chairman indicates that the defendant is to be remanded in custody.
>
> the clerk will say:
>
> Mr.   on future occasions the court may remand you in your absence if it is satisfied that you consent to this course, provided that it appears that

you are still represented by a solicitor and that you have not later withdrawn your consent.

If the court is not satisifed that these conditions still apply, you will be brought back before this court in the shortest possible time.

In any event, you will be brought to the court for every fourth remand.

Do you consent to future remands taking place in your absence?

If he consents the clerk will give you two dates and the chairman will say:

You are remanded in custody until (7 days)

But you will not appear again until .

Next state grounds and reasons for custody.

31

ALL REMANDS 15.3.86 - 15.10.86

	Number of Appearances	Number of Remands in Absence	Total	Remands in Absence as % of Total Remands
March	241	83	324	25.6%
April	243	90	333	27.0%
May	254	97	351	25.8%
June	207	72	279	25.8%
July	228	80	308	25.9%
August	206	88	294	29.9%
September	194	82	276	31.8%
October	191	98	289	33.9%

[32]The Justices' Clerk in Bristol simultaneously arrived at a policy which tended to encourage the exercise of police and prosecutorial discretion to withdraw minor charges against an offender already serving a custodial sentence or more serious charges. The minutes of the October 9, 1985 meeting of the Bristol Magistrates' Court Users Group reflect this policy:

> Where a defendant had been sentenced to a custodial sentence it was a considerable

waste of public funds for him then to be produced before the Court to be dealt with for outstanding minor offences. Arrangements should be made for such proceedings to be withdrawn to avoid this. To further avoid this situation arising in future, non-serious pure summary offences, which are at present adjourned to a fixed date upon committal of the more serious offence to the Crown Court, will now be adjourned sine die, the prosecution obviously having the option to re-instate these. Bail Act offences in particular created a problem as defendants were always anxious to avoid going back to the prison convicted and so losing their privileges. Although means to avoid this could be devised, the Court felt that no binding policy could be agreed upon this.

A further situation which was creating a lot of problems was where a defendant might be upon bail at a distant Court and then commits a further offence and ends up in custody. It was clearly not the duty of the Court to arrange for the production of the defendant, but endeavours should be made by both the prosecution and the defence to bring the proceedings before one Court by attempting to arrange for the earlier proceedings to be withdrawn in the first Court and being re-instated in the second Court.

[33] See the following excerpt from the minutes of the October 9, 1985 meeting of the Bristol Magistrates' Court User Group:

> The procedure of defendants on remand from distant Magistrates' Courts being produced before a local Magistrates' Court for interim hearings was discussed. The power under the Magistrates' Courts Act 1980 had not been widely utilised. It was agreed that in the case of Pucklechurch remand prisoners that the Avon North Court does not have the capacity to deal with such cases and that in those rare Category A cases from distant Courts the appropriate local Magistrates' Court was Bristol. Mr. Vaughn, however, pointed out that everyone was mindful of the difficulty this procedure created for communications be-

tween the defendant and his Legal Advisors. Mr. Sullivan reminded the meeting that there was no statutory requirement under the Act for the receiving Court to give consent, but that the Home Office had recommended that such consent be obtained.

[34]The procedure utilized in Bridgwater and Burnham is described in detail in the following memorandum by the Justices' Clerk:

All custody cases (whether on court remand or in police custody) will be dealt with first in the court list. At Bridgwater they will be dealt with in Court 1 (licensing applications in Court 2) and at Burnham in Court 2 (NB <u>licensing application in Court 1 henceforth</u>). In order to ensure that defendants and their solicitors are ready to appear promptly at 10.30 a.m. all court clerks in completing remand warrants should require custodial institutions to produce prisoners at 10.00 a.m on the adjourned date of hearing. The Police have agreed to allow defendants access to their clients between 10.00 a.m. and 10.30 a.m. to take last-minute instructions and I will be writing to all local solicitors to request their co-operation to ensure that they take advantage of this facility and do not cause unnecessary delay once the court session has commenced.

It will help all court users if a recognized "batting order" is adhered to in dealing with custody cases. Thus I wish the following categories to be dealt with in the follow order.

1) Remand cases
2) Committals for trial under Section 6(2) M.C.A. (i.e. those who have been remanded in custody pending the preparation of committal papers).
3) Sentencing cases (i.e. those who have been remanded in custody pending the preparation of reports).
4) Not guilty pleas (those will be dealt with according to the new procedure set out below).

On an experimental basis, the Deputy Governor at Horfield has agreed to my suggestion that the prison escorts should wait at court in anticipation that these remand cases will be dealt with quickly and will then return with their prisoners thereby saving the Police the task of returning them usually at the end of the day. Whether or not this experiment is a success, I

want all warrants to be available as soon as the case has been concluded in court. Accordingly I would like either the process department or the court clerks to ensure that these are prepared either beforehand or immediately after the decision has been reached. Ideally the police constable escorting the first prisoner out should be handed the appropriate warrant for him and asked to escort the second prisoner in. If the process department are to prepare these warrants, it makes it all the more important that frontsheets are fully completed by the court clerks, i.e. "remand in custody to (date)" is not sufficient; clerks must state the defendant's destination and the reason for the adjournment (e.g. is committal for trial expected next week?).

[35] See generally D.M. Hare and P.M. Winch, Cost Implications of Waiting Time in Magistrates' Courts. (1985).

[36] Of course a modified version of this procedure exists in many courts in Avon and Somerset and elsewhere, in which cases such as contested trials of an estimated length of one-half day are scheduled for the afternoon. One example of this procedure, as it exists in Bridgwater and Burnham, is set forth below.

JUSTICES' CLERKS MEMORANDUM

In order to reduce unnecessary waiting time and inconvenience to witnesses, solicitors and defendants, I have decided to adopt a special listing system for the hearing of Not Guilty pleas. When a not guilty plea is entered, it will be the court clerk's responsibility to ascertain whether or not the case can be disposed in 1/2 a day (i.e. up to 3 hours) or requires a full day to be allotted. If the case requires a half day, a court date can be selected by reference to the "closed list" but the parties should be told that the case will be set down for hearing at 2.15 p.m. and that they will therefore not be required to appear during the morning. Prosecution witnesses will be warned accordingly by the Police. If the case requires a full day to be allotted a special court will have to arranged, i.e. either a third court on a normal court day or an 'ad hoc' court arranged on any other weekday. In either case it will be up to the court clerk, before the case is formally adjourned, to check with the process department that the date proposed is convenient and thereafter he or she will be responsible for ensuring that all necessary arrangements are made, i.e. magistrates arranged, court usher warned, etc.

<u>NOTE</u>: The above arrangement does not apply to contested minor Road Traffic cases with one or two witnesses which can easily be absorbed as hitherto in Court 2's morning list. Cases of careless driving and excess alcohol will of course fall into the above-mentioned category.

[37]The final report of the project, prepared for the Chief Superintendent of the "B" Division, states, "[The] process clerks who prepare the evidence initially...were undoubtedly pessimistic when the scheme started. All are now very much in favour of using the Criminal Justice Act procedure... I regret that we are probably 19 years too late in using the Criminal Justice Act procedure initially for minor traffic offenses."

[38]<u>See</u> <u>Criminal Statistics in England and Wales</u> 1980 (London: H.M.S.O., 1981); S. Casale and S. Hillsman, <u>The Enforcement of Fines as Criminal Sanctions: The English Experience and the Relevance to American Practice</u> 29 (Vera Institute of Justice 1986).

[39]Softley, <u>Fines in Magistrates' Court: Home Office Research Study No. 46</u> (London: H.M.S.O., 1978).

[40]Annual Report of the Clerk to the Justices, Bristol Magistrates' Court (1985).

[41]<u>See generally</u>, "The Experimental Introduction of Fines Enforcement Officers into Two Sheriff Courts," a paper issued by the Central Research Unit, Scottish Office in December 1984.

[42]The data was collected by the court staff in the four courts, under the supervision of the Clerk to the Justices, with the assistance of the officers of the Personnel and Management Services Unit of Somerset County Council.

[43]This problem is not unique to Bristol. <u>See</u>, <u>e.g.</u>, <u>Categorisation Procedures: Summary of the Report of the Chief Inspector of Prisons, A Briefing Paper of the National Association for the Care and Resettlement of Offenders</u> (November 1985) ("Delays could be avoided by improving the availability of previous conviction lists...").

[44]<u>Id</u>. at 3 ("The main sources of information used in the categorisation process were criminal records, prison files and

social and medical reports, combined with interview and observation by staff. Staff often experienced delays in obtaining lists of previous convictions...").

[45]Id.

[46]Although agreement on this procedure was reached without difficulty, implementation of the procedure was postponed when the meetings of the Bristol Magistrates' Court Users Group were suspended, an episode which is discussed at p. 40-49, infra.

[47]See generally, The Distribution of Criminal Business between the Crown and Magistrates' Courts. London: HMSO (1975).

[48]The pilot schemes were conducted in Newcastle and London by the Vera Institute of Justice. See, Feeney,"Advance Disclosure of the Prosecution Case", in Managing Criminal Justice (D. Moxon ed).

[49]HOC 26/1985 (April 26, 1985).

[50]Id.

[51]Regrettably, one of the first effects of the implementation of the advance disclosure rules in Bristol was the elimination of pre-trial reviews. Pre-trial reviews, which were tried in Bristol Magistrates' Court for several months in 1984-85, involve sessions in court with prosecuting and defense solicitors, who meet with a court clerk in an effort to determine whether a case will definitely be contested. See generally J. Baldwin, Pre-Trial Justice (1985) for a favorable evaluation of the use of pre-trial reviews in several courts. As a practical matter, pre-trial review is designed to serve two purposes. First, it provides an opportunity for disclosure by the opposing lawyers of aspects of their case, which, in turn, is supposed to lead to better informed judgments concerning plea and mode of trial decisions. Second, improving the quality of these decisions is supposed to assist the court's scheduling process. Cases emerging from pre-trial reviews as contested cases are not supposed to result in last minute pleas of guilty, a phenomenon which is seriously disruptive of court scheduling.

In Bristol, the court staff believed that their experience with pre-trial reviews showed the process to be a poor predictor of firm contested cases. Too many cases would emerge from the pre-trial review with an assessment of the two solicitors that it

would have to be tried, only to result in last-minute pleas of guilty. Since the disclosure function of pre-trial review would be accomplished through the service of witness statements under the new advance disclosure rules, the Justices' Clerk in Bristol announced the abandonment of pre-trial reviews when the advance disclosure rules became effective.

[52]Bristol Magistrates' Court Memorandum 50/1985 (May 15, 1985) (emphasis in original).

[53]It was common in Bristol for defendants to postpone contacting a solicitor until the first appearance was looming, which frequently resulted in defendant and solicitor meeting for the first time in court at the first appearance.

[54]Bristol Magistrates' Court Memorandum 50/1985 (May 15, 1985) (emphasis in original).

[55]This subject is discussed at greater length <u>infra</u>, at subsection 7b.

[56]Bristol Magistrates' Court Memorandum 50/1985 (May 15, 1985).

[57]The minutes of the October 9, 1985 meeting of the Bristol Magistrates' Court Users Group contain the following statement from the police representative to the Users committee.

> Mr. Elliott mentioned that the hope that informal disclosure would result in more guilty pleas had not materialised - it appeared that more NOT guilty hearing dates were occurring, resulting in greater pressure upon his officers to prepare papers for full disclosure and trial. The enquiries which he had made disclosed that in a lot of cases pressure was being placed upon the defence to make an instant decision once informal disclosure papers had been handed over. This resulted in not guilty pleas being indicated immediately instead of a reasonable period being allowed for the defence to consider its position. Mr. Drew suggested that as the new system had been in operation for 6 months it would be appropriate to recommence the S48 Sub-Committee to consider the problem outlined above and the provisions generally. This suggestion was adopted by the meeting.

[58]It was believed that consultation between the defendant and his solicitor was more likely to occur prior to first appearance once the Police and Criminal Evident Act became effective in January 1986. One provision of the Act involved the requirement that procedures be put in place at police stations which would lead most defendants to have legal representation by the time they were charged. Such procedures would eliminate to a large extent the long-standing problem of defendants arriving at court at first appearance without legal representation.

[59]This expectation -- that disclosure would lead the defense to consider a more prompt entry of a guilty plea -- was part of the rationale of the advance disclosure rules. See Feeney, "Advance Disclosure of the Prosecution Case," Ch. 9 in Managing Criminal Justice (D. Moxon, ed. 1985). However, the initial experience of defense and prosecuting solicitors with the disclosure rules in Avon and Somerset indicated that this expectation might not be realized. The police claimed that one reason for their proposal to modify the disclosure procedure was their belief that the rate of early guilty pleas had not increased under the rules. Moreover, implementation of the advance disclosure rules was accompanied by a large increase, of 25%, in Crown Court trials in the force area. Although the reasons for this increase are not apparent, the very fact of the increase tended to undermine confidence in the efficacy of advance disclosure, since a principal objective of disclosure in either-way cases was a reduction in elections of Crown Court trials.

[60]The Clerk to the Justices was candid about his decision to postpone indefinitely further meetings of the Court User Group. In his view, the Group was at risk of being "hi-jacked" by the representatives of other agencies. He clearly regarded the group as a vehicle for enabling him to manage the Magistrates' Court more effectively; he would not participate in it if it could be used to pressure him into accepting procedural changes with which he disagreed.

[61]Section 22(4) of the Prosecution of Offenses Act 1985 states that

> Where, in relation to any proceedings for an offence, an overall time limit has expired before the completion of the stage of the procedings to which the limit applies, the accused shall be treated, for all purposes, as having been acquitted of that offence.

[62]During the first six month period of the field trials, the time limits that applied in Bristol, and in certain Somerset petty sessional divisions which were "feeder" courts for the Crown Court in Bristol were as follows: 56 days from first appearance to summary trial, and 70 days from first appearance to commital proceeding in custody cases. The overall limit from first appearance to commencement of trial or other disposition was 140 days. In Bristol Crown Court, the time limit in custody cases was 112 days from commital to arraignment. The overall limit from commital to arraignment was 182 days. The general reaction to these limits was that they did not cause difficult compliance problems.

[63]Bristol Magistrates' Court User Group Minutes of a Meeting Held on July 10, 1985.

[64]The following passage appears in the Minutes of the Meeting of the Bristol Magistrates' Court User Group of October 9, 1985.

> Mr. Sullivan dealt with the question of delay and once again urged that proceedings be promptly initiated and brought to trial as quickly as possible when witnesses' memories remained fresh. He cited a recent case at Bristol Magistrates' Court where the alleged offence was committed in January 1985 and by the 4th September the prosecution did not have committal papers available resulting in the Justices, of their own initiative, discharging the proceedings. The case illustrated the fact that Justices now are looking very critically at applications to adjourn and similarly bail conditions, notwithstanding lack of opposition by the other party to the proceedings.

[65]This is of course somewhat paradoxical, since the proposal from the police and prosecuting solicitor was actually a delay reduction strategy. Although it involved an expansion of the police bail period, it promised to eliminate the 4-6 week delay occasioned by a defense request at first appearance, or one week later, for full disclosure.

[66]There was a perception among probation officers in Avon and Somerset that reliance on the procedure known as a "stand-down" report was on the increase and that this was due to pressure to reduce the delay. This would occur when the bench wanted to sentence a defendant without waiting the customary period, up to one month, for the preparation of a formal report

by the probation service. In such cases, the defendant would be asked to "stand down" and consult with the probation officer, who would then deliver an oral report to the bench.

[67]Bristol Magistrates' Court Memorandum, dated May 15, 1985, states, in pertinent part:

> At the end of the period of time allowed for full disclosure a letter will be sent to both prosecution and defence asking if there has been any change in the case as listed. Both parties will be requested to complete a form indicating mode of trial, plea, length of case, etc. In cases where the defence fail to respond to this letter and the case subsequently collapses on the day of the hearing the court will require an explanation with a view to writing to the Area Secretary of the Law Society.

[68]P. Ellickson, J. Petersilia, M. Caggiano, S. Polin, Implementing New Ideas in Criminal Justice 69 (National Institute of Justice, 1983).

[69]The very good personal relationships of the Steering Committee members cannot be overemphasized as a contributing factor to successful interdependence in Avon and Somerset. Evidently this was not always the case. At a meeting of the Southwest Regional branch of the Institute for the Study and Treatment of Delinquency, at which the Steering committee provided a program on interdependence, a former governor of HM Prison, Bristol, was surprised to learn of the good relations and effective cooperative action among the leaders of the police, courts, prison and probation service. He remarked that if he had been asked to describe the relationships between and among those who held these positions when he was a prison governor in Bristol, he would have said the relationships were characterized by mutual hostility and distrust.

[70]Address of the Home Secretary, Douglas Hurd, to the Annual General Meeting of the Justices' Clerks' Society, May 23, 1986, Blackpool, England, reprinted in 150 Justice of the Peace 379, 380 (June 14, 1986).

[71]HOC 37/1986.

[72] 150 Justice of the Peace p. 337-38 (May 31, 1986).

[73] See Bowden and Stevens, "Justice for Juveniles - a Corporate Strategy in Northampton," 150 Justice of the Peace 326 (May 24, 1986).

[74] See, e.g., the suggestion that training in interdependence be incorporated into the management training of probation officers in "Probation Officers as Managers," 150 Justice of the the Peace 185 (March 22, 1986).

[75] Chris May has shown that if one has information on such factors as escort levels, journey distances, travel times, and vehicle costs and capacities, one can extrapolate an estimate of the costs of prison escort and transportation. The remand in absence experiment conducted at HM Prison, Bristol suggests that the innovation, tested there, of providing more frequent and clearer information to prisoners about the remand in absence procedure tends to increase the use of the procedure. Research aimed at ascertaining the cost of prison escort and transport for periods both before and after such an innovation could lead to an estimate of savings associated with this innovation, if it were possible to control for other variables. See C. May, Remands in the Absence of the Accused: Research and Planning Unit Paper 34 (Home Office 1985).

[76] See, e.g., C. May and P.M. Morgan, A Study of Prison Escorts: Research and Planning Unit Working Paper 5 (Home Office 1982) (reporting the difficulty of extrapolating reliable estimates of the savings which might result from different remand in absence rates).

[77] Criminal Justice: A Working Paper 4 (Home Office 1984).