Mercer Law Review

Volume 28
Number 1 *Annual Survey of Georgia Law*

Article 20

12-1976

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By Joel J. Fryer*

The inefficiency of the criminal justice system has come to be recognized by judicial reformers as a major problem that has been exacerbated by the expansion of the rights of defendants. During the past 15 years, largely in response to U.S. Supreme Court decisions attempting to insure due process and promote fairness, trial courts have had to accommodate not only the resultant changes in criminal practice and procedure but also the increased caseload caused by defendants' assertion of constitutional rights which have been recently articulated and guaranteed. The recognition that the burden placed on courts must not be so great as to render them incapable of implementing the substantive legal reforms has led to proposals for various procedural reforms, which attempt not only to cure due-process defects and promote fairness but also to aid trial courts in managing their increased workload.

One such proposal is the omnibus hearing, the merits of which were lauded at the 1976 Georgia Bench and Bar Conference by Judge Gerald Tjoflat of the U.S. Fifth Circuit Court of Appeals.[1] Characterizing the present system as "trial by ambush," Judge Tjoflat stressed the benefits of voluntary reciprocal discovery as the primary objective of omnibus hearings and urged that the procedure be adopted by state and federal courts because it "holds the key to the survival of the criminal justice system."[2]

While "trial by ambush" cannot be defended nor its spirit reconciled with the American ideal of fair and impartial criminal justice, the benefits of discovery alone may not be enough to recommend the omnibus procedure to state courts. Judge Tjoflat felt other benefits were realized in the Middle District of Florida, where he was a judge before his appointment to the court of appeals. After a description of the omnibus hearing and a brief overview of the major omnibus hearing projects about which reports are available, this article will focus on whether such a reform would be beneficial to state courts. Because of certain similarities with the experience of the Fulton County Superior Court, the experience of the San Diego division of the U.S. District Court for the central division of California will

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1. *"Trial by Ambush:" Is Omnibus Hearing the Answer?*, 3 GA. COURTS J. 17 (June, 1976).
2. *Id.* at 18.

be outlined in some detail.

First proposed by the American Bar Association in 1967, the omnibus hearing is part of a three-step judicial process in which the trial court shares with counsel the responsibility for raising issues and moving the case to final disposition.[3] The first step consists of discussions between counsel, without court supervision; the goals are full knowledge of the facts of the case by both the prosecution and the defense, consideration of a guilty plea, and identification of the issues that probably will arise. The second stage, the omnibus hearing itself, provides direct court supervision of those goals. In a formal hearing in open court, the court determines whether discovery has been accomplished and takes appropriate action if it has not, reviews the checklist-motions filed by the parties to ensure that all issues have been raised, immediately disposes of those motions that do not require hearings, and sets definite times for hearings on motions that do require hearings. The third stage, the pretrial conference to discuss specifics of the projected trial, is reached in only those few cases which actually go to trial.[4]

Those urging the adoption of the omnibus hearing argue that its benefits to the prosecution, the defense, and the court are numerous: "The reduction of issues in the field of discovery makes omnibus an invaluable tool for complete and informal discovery by the prosecution and defense, thus providing the latter with a more intelligent and enlightened plea. Other benefits . . . include a more logical and cogent case presentation, reduction of postconviction procedures, minimization of speedy trial deprivation, and increased numbers of guilty pleas . . . ."[5] These benefits logi-

3. ABA PROJECT ON MINIMUM STANDARDS FOR CRIMINAL JUSTICE, STANDARDS RELATING TO DISCOVERY AND PROCEDURE BEFORE TRIAL (Approved Draft 1970) [hereinafter cited as ABA STANDARDS].

4. R. NIMMER, THE OMNIBUS HEARING: AN EXPERIMENT IN RELIEVING INEFFICIENCY, UNFAIRNESS, AND JUDICIAL DELAY 22-24 (1971) [hereinafter cited as NIMMER, EXPERIMENT]. This is an American Bar Foundation study of the effects of omnibus hearings in the San Diego Division of the Southern District of California. A later report combines these findings with a study of the Western District of Texas. See R. NIMMER, THE OMNIBUS HEARING FINAL REPORT, AMERICAN BAR FOJNDATION REPORT (Tent. draft 1973).

5. Myers, *The Omnibus Proceeding: Clarification of Discovery in the Federal Courts and Other Benefits*, 6 ST. MARY'S L.J. 386, 387 (1971) (citations omitted) [hereinafter cited as Myers, *Benefits*]. The stated purposes of the omnibus project are to (1) eliminate the written motion practice, except where necessary; (2) secure discovery by the prosecutor and the defense within the constitutional limits permitted; (3) encourage voluntary disclosure by the prosecution of its basic case; (4) rule upon and supervise additional discovery requested by the parties; (5) expose and dispose of latent constitutional issues; (6) provide a period of time prior to the omnibus hearing for disclosure, exploration and plea discussion between counsel; (7) allow the defendant discovery so that he may make an informed decision; (8) use the procedure, as far as possible, for those cases where either sufficient information has not been secured for an informed plea, or the case probably will go to trial; (9) postpone for formal hearing those matters which will require, of necessity, preparation of written documents, affidavits, memoranda or the calling of witnesses; (10) provide a check list, suggesting to defense counsel the various procedures and tools available to them. *Id.* at 393, n. 60, *citing*

cally should flow from the concept of omnibus as a single hearing in which all pretrial issues are either raised or waived by the defendant and in which the possibility of a guilty plea is explored after the defendant is fully informed of the case against him through complete discovery. Some of these benefits have been realized in some of the jurisdictions in which omnibus has been tested.[6] However, not all of the expected benefits, particularly those related to efficiency, have been realized; in at least one experiment, the procedure decreased the efficiency of the system.[7] The effect of omnibus on a court's ability to expedite cases is an extremely important consideration in determining its applicability to busy state courts. If that effect is detrimental, the procedure may be doomed, for even the most enthusiastic proponents of omnibus agree that its success depends upon strong support from the bench and the bar.

> It is one thing to argue that the omnibus hearing is a valuable tool to enforce broadened discovery, which has the side effect of shortening time-lapse intervals and reducing judge-time per case; it is quite another to assert that this discovery enforcement value is beneficial despite the hearings being time-consuming and delay-creating. The detrimental impact of the omnibus hearing on judge time and time lapse might be regarded simply as costs of increased fairness or other benefits, but this is precisely the point: They are costs and, simply stated, the predictability that these costs will be incurred raises the issue of whether on balance the costs are justified by the benefits expected in other areas, such as increased fairness and decisional certainty.[8]

Federal jurisdictions that have implemented omnibus have reported varying results. These jurisdictions include the Western District of Texas, the Western District of Missouri, the District of Kansas and the Middle District of Florida.[9] There is evidence that the procedure has improved both fairness and efficiency in some of these courts.[10] However, the San Diego project of the U.S. District Court for the Southern District of California was instituted in 1967 to test the feasibility of the ABA proposal[11]

Proceedings at the 1969 Judicial Conference, Tenth Judicial Circuit of the United States, 49 F.R.D. 347, 463 (1969).

6. Myers, *Benefits, supra* note 5, at 397-99. See Clark, *The Omnibus Hearing in State and Federal Courts*, 59 CORNELL L. REV. 761, 766-68 (1974); Oliver, *Omnibus Pretrial Proceedings: A Review of the Experience of the United States District Court for the Western District of Missouri*, 58 F.R.D. 270 (1972).

7. NIMMER, EXPERIMENT 102. See also Nimmer, *A Slightly Movable Object: A Case Study in Judicial Reform in the Criminal Justice Process—The Omnibus Hearing*, 48 DENVER L.J. 179 (1971) [hereinafter cited as Nimmer, *Case Study*].

8. NIMMER, EXPERIMENT at 54.

9. Weninger, *Criminal Discovery and Omnibus Procedure in a Federal Court: A Defense View*, 49 S. CAL. L. REV. 514, 521-22 (1976).

10. *See* Myers, *Benefits* 402-05; *see also* R. NIMMER, THE OMNIBUS HEARING FINAL REPORT, AMERICAN BAR FOUNDATION REPORT (Tent. draft 1973) [hereinafter cited as NIMMER, FINAL REPORT].

11. NIMMER, EXPERIMENT 26.

and was deemed a failure by the American Bar Foundation reporter.[12]

The situation of the Southern District of California appears to be more similar to that of a state trial court than are the other federal jurisdictions about which reports are available. Of primary importance is the fact that the Southern District of California has the largest criminal caseload of all U.S. District Courts. In 1974, 2,470 criminal cases were filed in the district—an average of 502 cases per judge.[13] The national average was 99 criminal cases per district court judge in 1974,[14] and the average in the Northern District of Georgia was 121.[15] In the Superior Court of Fulton County, a sample state court, 5,115 criminal matters were filed in 1974, and each judge was assigned 494-497 cases;[16] in 1975, 4,871 cases were assigned to judges with each receiving from 442-444 cases.[17] Besides the Southern District of California, the only federal court with a caseload comparable to the Superior Court is the Western District of Texas, which in 1974 averaged 250 criminal filings per judgeship.[18]

Second, the Southern District of California had a high rate of guilty pleas before omnibus was instituted.[19] In contrast, in the Western District of Texas there had been minimal plea negotiation and only 5% of all guilty pleas were pleas to reduced charges;[20] in the Middle District of Florida prior to omnibus, approximately 45 percent of cases were disposed of by guilty pleas.[21] While the high rate of guilty pleas in the Southern District of California was unaffected by omnibus, both the Texas and Florida districts experienced a significant rise in the percentage of cases disposed of by guilty pleas.[22]

Thus, the Southern District of California is the only district which has implemented omnibus which combines two significant features of the Superior Court of Fulton County: a large criminal caseload per judge and a high percentage of disposal by guilty pleas. The second factor is significant

12. *Id.* at 102: "The San Diego procedure failed to achieve most of its objectives, and it was counterproductive."

13. Director of the Administrative Office of the U.S. Courts, Management Statistics for United States Courts 99 (1974).

14. *Id.* at 120.

15. *Id.* at 50.

16. 1974 Fulton County Superior Court Activity Summary 4 (copy on file with the Mercer Law Review). An additional judgeship was created during 1974, to which 160 cases were assigned.

17. 1975 Fulton County Superior Court Activity Summary 5 (copy on file with the Mercer Law Review).

18. Director of the Administrative Office of the U.S. Courts, Management Statistics for United States Courts 61 (1974).

19. NIMMER, EXPERIMENT 11; Nimmer, *Case Study* 193, 196-97.

20. Myers, *Benefits* 402; citing NIMMER, FINAL REPORT 64.

21. Clark, *supra* note 6, at 766.

22. Middle District of Florida: "eighty to eighty-five percent of the cases are disposed of through guilty pleas." *Id.* Western District of Texas: "a 30 percent increase in guilty plea rates." Myers, *Benefits* 404.

because, without regard to the desirability of such a system in philosophical or sociological terms, the plea-bargaining system improves efficiency in overburdened courts. Obviously, early and frequent guilty pleas require much less court time than do trials. Therefore, a court with a high percentage of disposals by plea is operating efficiently, as was the Southern District of California before omnibus was instituted.[23]

Largely because of its overwhelming caseload and the efficiency developed in response to it, the San Diego division of the Southern District was not streamlined by the omnibus procedure. Omnibus simply added an additional court appearance which required 10-25 minutes per case. For defendants who formerly would have pled guilty anyway, perhaps as early as arraignment, the additional time involved in the hearing was not counterbalanced by such benefits as fewer continuances or fewer other appearances, since no such appearances had been necessary before. In other cases as well, increases in the judges' time in court were not offset by an increase in guilty pleas or a decrease in continuances.[24]

In addition to increasing judges' time per case, omnibus also increased elapsed time to disposition. Not only was there no apparent reduction in time for cases that would have gone to trial anyway, but dispositions were more often delayed by defendants until after omnibus.[25] Consequently, the frequency of early pleas decreased and omnibus failed to induce firm scheduling and minimize wasted judge time.[26]

The hearing failed to identify, clarify and dispose of issues in the cases. This fundamental failure has been blamed on the court's inability to devote enough time to each hearing and on its holding the hearing before the lawyers were fully prepared to make binding commitments in negotiating dispositions.[27]

The enforcement of the rules leading to increased discovery, which had been a major objective of omnibus and which was the only area in which positive effects were produced, was accomplished at costs to the court that were far from commensurate with the results obtained:

> In many cases the hearing was not necessary for even this purpose [discovery], and the need for court orders to obtain disclosure did not arise. Also, even though discovery did increase, some items were not disclosed, and difficult disclosure issues . . . were postponed for a separate

23. "[I]n response to the chronic lack of resources under which the system functions, the present negotiated system strongly favors speedy and efficient disposition. Most cases are disposed of without trials or lengthy legal hearings and within small intervals from filing. Indictment, arraignment, disposition is the common progression. Any effort to attain greater efficiency or speed must, therefore, acknowledge that such dispositions are already often achieved." NIMMER, EXPERIMENT 8.

24. *Id.* at 11-12.

25. *Id.* at 12.

26. *Id.* at 13.

27. *Id.* at 14.

> hearing. Finally, the increased discovery did not substantially affect the patterns of disposition as had been expected . . . guilty pleas were no more frequent in the omnibus hearing year.[28]

By 1970, the omnibus hearing had been molded by the system into a procedure very different from that envisioned by the ABA Standards, and many of the original objectives had been tacitly abandoned.[29] Federal magistrates presided over hearings averaging less than five minutes long in which all issues were stipulated on checklist forms submitted beforehand and in which the magistrate's function was primarily the clerical one of inquiring about and scheduling whatever further appearances were necessary. The hearing did not advance significantly even its retained objectives. Neither scheduling nor the listing of issues were effective. Discovery had become so routine that omnibus was unnecessary to enforce it except in rare cases. Unusual problems were handled by the court outside the omnibus procedure.[30]

Rather than viewing the extensive modification of omnibus between 1967 and 1970 as a degeneration or a perversion of the original model, the American Bar Foundation report considered it "a rational modification of a time-consuming, generally ineffective addition to the work of an already overworked court."[31]

In his comprehensive study of the San Diego project for the American Bar Foundation, Raymond Nimmer found support for his thesis that, in the discretionary system that exists in all American criminal jurisdictions, procedural reforms like omnibus often fail to produce any real change in practice, because the reform is simply molded by the system until it fits within the comfortable pattern of the balancing of interests which has developed over a long period of accommodation of those various interests.[32] The manner in which the San Diego system absorbed and modified omnibus so that no real changes occurred exemplifies this theory.

Significant change in any system produces initial costs, as was illustrated in the Western District of Texas; after the introduction of omnibus, court time and delays increased at first and then decreased as participants became familiar with the program.[33] After placing the informal conference between indictment and arraignment—a major modification that eliminated the necessity for a formal omnibus hearing in most cases—there was a 30% increase in guilty plea rates and a decrease in written motions and briefs.[34] Thus the Texas experience indicated that after an initial adjust-

28. *Id.*
29. *Id.* at 73.
30. *Id.* at 75-86.
31. *Id.* at 74.
32. *Id.* at 5-9.
33. Myers, *Benefits* 403; NIMMER, FINAL REPORT 80, 83.
34. Myers, *Benefits* 404; NIMMER, FINAL REPORT 118, 124-25.

ment period, omnibus can promote efficiency in a system with low guilty-plea rates and extensive motion practice, but only if the process becomes "transformed . . . from one involving considerable in-court monitoring, to a system of cooperative informal conferences between counsel."[35]

When omnibus is applied to a system that already is operating efficiently, the costs persist after the introductory stage. In the San Diego experiment, increases in judges' time and time before disposition were extremely costly effects in a system which could not afford any additional burdens. Nimmer concluded that to introduce omnibus into such a system and expect greater efficiency to result was unrealistic. "Since the systems may have long adopted a technique of minimizing in-court time," he said, "it is entirely inconsistent to seek substantial reform by creating a time-consuming and generally mandatory in-court appearance."[36]

The problem of increased use of judges' time has been dealt with primarily by using federal magistrates to conduct the ommibus hearing. U.S. commissioners or magistrates commonly have conducted the hearings in the Western District of Missouri and in the Middle District of Florida.[37] The San Diego experiment in 1970 changed that court's procedure to a brief hearing before a magistrate.[38] The Western District of Texas does not use magistrates to conduct omnibus hearings, but its procedure is such that formal omnibus hearings almost never take place.[39] The use of magistrates and the smaller caseloads of the district courts have a great effect on the success of the procedure, as does a low guilty-plea rate, the rise of which under omnibus will greatly increase efficiency.[40]

The superior courts of Georgia have no magistrates to whom the omnibus hearing could be delegated. The 11 judges of the Superior Court of Fulton County have too many criminal cases to be able to try them all under any circumstances; if only one day were allotted to hear each case in its entirety, a judge could try criminal cases only all 365 days in the year and still not be able to clear his criminal calendar. In 1975, each judge of that court had from 442-444 criminal cases assigned to him. Of the non-capital matters, 75% were disposed of by guilty pleas and 12% were dead-docketed; there were trials in only 6% of the cases.[41] In capital cases, which represent approximately 8% of the total number terminated, 54% were terminated by guilty pleas, 13% were dead-docketed, and trials were held in 26% of the cases.[42] Statistics for both 1974 and 1975 indicate that the

35. Myers, *Benefits* 404.
36. Nimmer, *Case Study* 210.
37. *See* Clark, *supra* note 6, 766-68.
38. Nimmer, *Case Study* 203.
39. *Standards for Criminal Justice*, 57 F.R.D. 229, 324 (1972), remarks of Judge Adrian A. Spears.
40. Myers, *Benefits* 405; *see also* NIMMER, FINAL REPORT 99.
41. 1975 Fulton County Superior Court Activity Summary, *supra* note 17, at 6.
42. *Id.* at 5.

number of criminal cases terminated is approximately equal to the number filed; in 1975 a few more cases were terminated than were filed.[43] These figures indicate that, despite the heavy criminal caseload per judge, the overall caseload is being maintained at an input-output ratio of one case filed to one case terminated. That suggests that the current system is operating at optimal efficiency.

Promoters of omnibus generally stress the need for broadened discovery to increase fairness in criminal cases; however, the fact that a substantive reform is desirable does not mean that it should be implemented by a procedural reform that will increase court time in state courts, which are already overburdened. In at least one court of the Fulton County Superior Court, criminal matters account for well over half the court's time, even under an efficient system that has a high rate of early guilty pleas and that allows a defendant to go to trial well within a month of his arraignment if he desires.[44] To add an additional court appearance to this schedule might be so burdensome that any gains in fairness will be offset. If the hearing is offered to all defendants on a voluntary basis, experience has shown, most of them will request it even if they plan to plead guilty, since neither defendants nor their attorneys may be expected to pass up a chance to see the evidence against them.[45]

Even if omnibus did not cause delay and inefficiency, it is not at all clear that discovery could be broadened significantly by the omnibus procedure. Much criminal discovery takes place informally—as might be expected, since Georgia law clearly provides only a bare minimum of formal discovery to defendants as a matter of right.[46] The argument that informal discovery is granted to selected defense attorneys by prosecutors is less compelling now that indigent defendants are represented primarily by public defenders who are well known to the prosecutors. Furthermore, prosecutorial discretion is manifested at many steps in the process besides discovery and is a separate issue. Even where the primary benefit of omnibus has been said to be discovery, as in the Southern District of California, the defense bar has expressed dissatisfaction with the amount and type of information disclosed and with the arbitrariness that they perceived prosecutors to be exercising in deciding which attorneys would receive certain

43. *Id.* at 6; 1974 Fulton County Superior Court Activity Summary 4.

44. The Court Reporter's Quarterly Activity Report for the Months of April, May and June, 1976, compiled by D. Schulze, Official Court Reporter for Judge Fryer's court, Superior Court of Fulton County (copy on file with the Mercer Law Review), shows 22 days of criminal trials out of 50 days in court during the quarter. That figure does not include arraignments, which require at least an entire morning every week.

45. NIMMER, EXPERIMENT 11-12.

46. *See, e.g.*, Coachman v. State, 236 Ga. 473, 224 S.E.2d 36 (1976); Rini v. State, 235 Ga. 60, 218 S.E.2d 811 (1975); Nations v. State, 234 Ga. 709, 217 S.E.2d 287 (1975); Maddox v. State, 136 Ga. App. 370, 221 S.E.2d 231 (1975); Jones v. State, 135 Ga. App. 893, 219 S.E.2d 585 (1975). *See also* Daniel, *Criminal Discovery: A Matter of Fundamental Fairness*, 12 GA. ST. B. J. 134 (1976).

kinds of information.[47] Omnibus has not alleviated such arbitrariness; indeed, even proponents of broad discovery agree that some discretion must remain for prosecutors to be able to refuse discovery to defendants whom they feel might intimidate witnesses or suborn perjury.[48] A recent study of defense views about discovery and the omnibus proceeding in the Southern District of California found that, although they unanimously agreed that discovery is helpful in representing criminal defendants, "76 percent felt that the omnibus hearing was of little or no help in their cases."[49] The conclusions of that study are quite relevant to the application of omnibus to a state jurisdiction:

> The lack of success with this procedure in the Southern District of California, however, demonstrates that their objectives cannot be realized without the support of all those concerned with the administration of the criminal law—judge, defense attorneys, prosecutors, and even government investigators. This is especially true in a federal court, where wide disparity exists between the limited discovery available through the Federal Rules of Criminal Procedure and the broad discovery called for by the omnibus procedure. Therefore, to achieve the purposes of the omnibus procedure the parties must be willing to make disclosures not required by law; where necessary, courts, in the exercise of their discretionary powers, must compel such disclosures.[50]

The "wide disparity" between discovery required by law and that foreseen by omnibus is even wider in Georgia.[51]

Although the proponents of omnibus are most enthusiastic about the broadened discovery that they say it promotes,[52] it has been suggested that where such discovery exists, omnibus is superfluous.[53] Where discovery is not broad enough, the California study indicates that omnibus cannot be successful in compelling it unless there is a concerted effort by the entire system. Such a massive effort, which could not be accomplished without great costs to the court's efficiency, would require a commitment to the principle of broadened discovery that presently does not exist in Georgia.

There are several differences between state and federal criminal practice

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47. Weninger, *supra* note 9, at 532-35.

48. *See generally Discovery in Criminal Cases*, 44 F.R.D. 481 (1966); *see also* Brennan, *Remarks on Discovery*, 33 F.R.D. 56, 62 (1963).

49. Weninger, *supra* note 9, at 539.

50. *Id.* at 560-61.

51. See note 46, *supra*, and accompanying text.

52. Oliver, *supra* note 6, at 284; Comment, *The Omnibus Hearing: A Proposal for California Criminal Pretrial Motion Procedure*, 4 PAC. L. J. 861 (1973); Myers, *Benefits* 393.

53. Nimmer, *Case Study* 188-92. Discovery was voluntary in San Diego in most cases, so no court intervention was necessary; broadened disclosure left the dispositional pattern unchanged. *Id.* at 189, 191. See also *Standards for Criminal Justice*, *supra* note 39, at 324, in which Judge Spears remarks that discovery is a "free and open situation where very very seldom do we have . . . an omnibus hearing" and that he has not had an omnibus hearing in more than a year.

that are relevant to any discussion of procedural reform. The criminal caseload of a state trial court is likely to be larger than that of a federal district court in the same area; a comparison of the Fulton County Superior Court criminal statistics for 1974 with those of the U.S. District Court for the Northern District of Georgia shows that, although both serve the same urban area, the state court handled 7½ times the number of criminal cases as the federal district court.[54] The Southern District of California is the only federal court with a caseload equivalent to the Fulton County Superior Court, and many of those are immigration cases that are handled primarily as an administrative problem by the senior judge in his office.[55] Furthermore, the types of cases differ. The federal court tries a growing number of white-collar crime cases, such as mail fraud, embezzlement, income-tax fraud and securities fraud.[56] Such cases require a great deal of documentary and real evidence, and expert witnesses such as handwriting analysts are often called; discovery in such cases helps the prosecution, and that is one incentive for federal prosecutors to engage in voluntary reciprocal discovery.[57] These cases are similar to civil cases and can be handled more efficiently under an omnibus pretrial proceeding because of their complexity and the likelihood of debates over documents as evidence. These cases are not common in the state trial courts. Finally, criminal discovery under the federal rules is broader than under Georgia law.

Perhaps proponents of omnibus cite broadened discovery as its primary objective because the original expectation of efficiency has not materialized.[58] Much of the reportage on omnibus consists of anecdotal evidence from participants; the only comprehensive studies of whether omnibus has accomplished its objectives are less enthusiastic about the success of discovery.[59] Indications are that omnibus will not succeed in forcing disclosure broader than that required by law without vigilant court supervision; therefore, it is not surprising that defense attorneys in San Diego were dissatisfied with the discovery received pursuant to omnibus in 1974.[60]

Lacking magistrates but having a caseload comparable to the Southern District of California, the Fulton County Superior Court could not afford the additional court time that omnibus would require. Even if discovery could be broadened and fairness promoted, the resulting inefficiency would

54. In the Northern District of Georgia, 681 criminal cases were filed in 1974. Management Statistics for U.S. Courts, *supra* note 13, at 50. In the Fulton County Superior Court, 5,115 cases were filed in 1974. 1974 Fulton County Superior Court Activity Summary, *supra* note 16, at 4.

55. NIMMER, EXPERIMENT 25.

56. See 1974 Annual Report of the Director of the Administrative Office of the U.S. Courts (1975), Table D-3, for a list of all criminal cases filed in U.S. District Courts in 1974 by nature of offense and district.

57. *Standards for Criminal Justice, supra* note 39, at 325-26.

58. See authorities cited in note 52, *supra.*

59. Weninger, *supra* note 9, at 558; NIMMER, EXPERIMENT 66-71, 85-86.

60. Weninger, *supra* note 9, at 538-39.

hamstring the court, and eventually the system would have to react by accommodating the procedure in some fashion. It is quite possible that such an accommodation would lead to the accomplishment of none of the goals of omnibus, including discovery, as was the case in San Diego. As Judge Adrian Spear of the Western District of Texas, one of the most enthusiastic proponents of omnibus, has stated, "we should do everything we can do to see that justice is administered fairly, but expeditiously, and at the least expense to the taxpayers."[61] The available evidence indicates that the introduction of the omnibus hearing into state courts such as the Fulton County Superior Court would not accomplish the goal of fair and expeditious rendering of justice.

The goal of a procedure that will administer the law more fairly is always to be sought, and perhaps some forms of omnibus may have promoted this goal in other courts; yet neither defendants' interests nor those of society are served by reforms that cause counterproductive delay in the administration of justice. Before omnibus or any modification of it is seriously considered for the state courts of Georgia, the existing discretionary system should be carefully studied, as Nimmer advises, especially since there is such a dearth of information on the operation and efficiency of the Georgia courts. Finally, before the interests of expeditious justice are sacrificed to what may be an impracticable idealization of fairness, the following considerations should be carefully heeded:

> For when we aim at perfect procedure, we impair the capacity of the legal order to achieve the basic values for which it was created, that is, to settle disputes promptly and peaceably, to restrain the strong, to protect the weak, and to conform the conduct of all to settled rules of law. If criminal procedure is unable promptly to convict the guilty and promptly to acquit the innocent of the specific accusation against them, and to do it in a manner that retains public confidence in the accuracy of its results, the deterrent effect of swift and certain punishment is lost, the feeling of just retribution disappears, and belief in the efficacy of the system of justice declines.[62]

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61. *Standards for Criminal Justice, supra* note 39, at 333.

62. M. FLEMING, THE PRICE OF PERFECT JUSTICE: THE ADVERSE CONSEQUENCES OF CURRENT LEGAL DOCTRINE ON THE AMERICAN COURTROOM 6 (1974).