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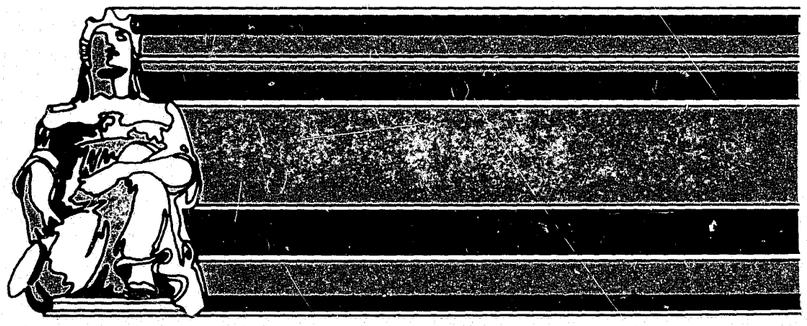
Managing the Pace of Justice

An Evaluation of LEAA's Court Delay-Reduction Programs



a publication of the **National Institute of Justice**

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Harry M. Bratt
Acting Director

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PREFACE

This is an evaluation of delay-reduction programs in four courts: Providence, Rhode Island; Dayton, Ohio; Las Vegas, Nevada; and Detroit, Michigan. These programs, targeted at criminal cases, were part of a larger LEAA program to reduce delay in civil and criminal courts. We do not evaluate the entire agency program and its efficacy, for that involves political and normative questions far beyond the legitimate mandate given to us by the National Institute of Law Enforcement and Criminal Justice. Rather, we provide an extensive research-based evaluation of four particular programs, utilizing time-series data and qualitative interviews and observations. In so doing, we hope to advance the methodological state of the art in court delay studies and the substantive boundaries of our knowledge about court management.

We are grateful to a large number of people for successful completion of this Report. In each of our sites, judges, administrators, and attorneys gave of their time and privacy. In particular, we wish to thank Judges Florence Murray, Anthony Giannini and Corrine Grande, and John Hogan and Frederick Cass in Providence; Judges Carl Kessler and George Gounaris, and Joe Greenwood and Judy Cramer in Dayton; Judges Charles Thompson and John Mendoza, and Donald Wadsworth, Morgan Harris, and Anna Peterson in Las Vegas; and Judge Samuel Gardner and Lester Blagg, Gina Gates, Michael Fried, and Terrance Boyle in Detroit. We are also grateful for the efforts of local data collectors who transformed court files into useable information in these sites, as well as coders in Chicago who prepared the data for computer analysis. Though too numerous to list, they too facilitated timely completion of the study. And we are most grateful for the efforts of Sharyn Eierman, Judy Byers, and April Winfield in typing the many drafts of the manuscript.

We are also grateful for a conscientious Advisory Committee that suggested and critiqued ably. Judges Benjamin Mackoff of Chicago and Paul Breckinridge of Los Angeles, Public Defender Benjamin Lerner of Philadelphia, State's Attorney Bernard Carey of Chicago, and Professors Kent Smith (Northwestern), Ilene Nagel (Indiana), and Jan Kmenta (Michigan), have our thanks for their efforts. We also thank our many AJS colleagues for their comments on several drafts of the Report.

PART I

THEORY AND METHODS OF ANALYSIS

Chapter 1

INTRODUCTION

Delay is one of the most frequently mentioned problems facing America's courts. Newspapers highlight cases that take years to reach disposition. Victims and witnesses complain that delay enacts an unfair penalty on their normal activities and discourages prosecution. Judges and lawyers decry delay because it undermines their professional responsibilities. Reformers cite its existence as justification for changing numerous aspects of the legal system. None are deterred by the fact that delay has a long history. Indeed, the demand to reduce delay in the courts has taken on renewed interest and importance in the last few years.

This study examines four courts that identified themselves as being delayed in their processing of criminal cases and that responded by implementing delay-reduction programs with federal funding. The delay problems facing these four courts — Providence, Dayton, Las Vegas, and Detroit — were varied in their origins, consequences, and sheer magnitude. Evaluating the impact of these programs is the specific focus of this study. Data on some 5,000 criminal cases across the sites were gathered and analyzed, and extensive interviews and observations were conducted in each site. The combination of quantitative and qualitative data provides a portrait of why the programs were adopted, how they were implemented, and what impact they had.

To be successful, of course, an evaluation must gather not only data but the right types of data. Despite all the discussions about delay, our knowledge of the causes, consequences and cures of delay is quite limited. Numerous and sometimes contradictory causes have been suggested for the delay problem, but no one has found an empirically sound explanation. The consequences of delay have been extensively discussed, but the evil effects remain largely undocumented. Similarly, there are varying proposals on how to expedite the court process. But there has been little systematic investigation of which programs actually reduce delay, and under what conditions they work.

The purpose of this chapter is to provide an overview of the topic of delay, of our mode of evaluation and working hypotheses, and of the four courts under study. Our main theme is that delay is not an isolated management concern but integrally related to the politics and norms of local trial courts. In other words, delay is a key element in the dynamics of courthouse justice.

WHY IS DELAY A PROBLEM?

Concern that "justice delayed is justice denied" is as old as the common law itself. The nobles forced King John to sign the Magna Carta and promise not to "deny or delay right or justice." Through the years, such literary figures as Shakespeare, Goethe and Dickens have condemned the tortuous pace of litigation in the courts. In this century, numerous leaders of the bar have singled out delay as a pressing problem. Likewise, many contemporary figures, most notably the last two Chief Justices of the U.S. Supreme Court, have called attention to the problem of delay.

Concern with court delay, then, is hardly new. What is new is the central importance attached to doing something about it. Beginning in the mid-1960s, systematic attention began to be directed toward court administration. This activity is reflected in the work of national commissions, speedy trial provisions, reform efforts, and expressions of public dissatisfaction.

Several prestigious national commissions have identified delay as a critical problem facing America's courts. The President's Commission on Law Enforcement and Administration of Justice argued:

> There are courts...in which persons charged with serious crimes normally await trial for over a year. Such courts make a mockery of bail decisions... Important cases are lost in such courts by attrition... Such delay undermines the law's deterrent effect by demonstrating that justice is not swift and certain but slow and faltering. (1967:375)

A year later, an American Bar Association Commission proposed standards for speedy trials (1968). Then, the National Advisory Commission on Criminal Justice Standards and Goals assigned first priority to ensuring "speed and efficiency in achieving final determination of guilt or innocence of a defendant" (1973:7).

Since 1967 these three commissions have proposed standards and goals for processing criminal cases. Their general recommendations are reflected in legislative and judicial efforts to impose speedy trial provisions. In 1974 the United States

Congress in the Speedy Trial Act mandated that federal defendants be tried within one-hundred days of arrest. Speedy trial provisions in some forty-four states likewise set time limits for some events in the criminal process (Fort, 1978), and most of these were enacted within the last ten years.

Pressing caseloads and excessive delay are used as direct or indirect rationales for proposals advocating reform of the judicial process. Some innovations are designed to divert cases to other forums. For example, no-fault insurance, changing the jurisdiction of the federal courts, neighborhood justice centers, and pretrial diversion programs have all been justified — at least in part — on their promise to reduce caseloads in trial courts. Even more numerous are proposals for structural, procedural and managerial innovations intended to reduce court delay — e.g., hire a court administrator, require omnibus hearings, write fewer opinions, unify state trial courts, adopt an individual (or master) calendar, and abolish the grand jury.

Complaints within the legal community about slow and inefficient courts are shared by the general public as well. Over half of those surveyed by the Yankelovich, Skelly and White polling organization (1978) rated the efficiency of courts as a "serious" or "very serious" social problem. Two specific findings from this poll press home the public's dissatisfaction. First, persons with direct court experience were more likely to rate the efficiency of courts as a problem than those with no experience. Second, the general public was more likely to perceive delay as a major problem than judges and lawyers.

Identifying the Costs of Delay

Concern with court delay flows from a set of common assertions about its costs. Cases that take too long to reach disposition are more than a minor inconvenience. In and of itself, the word "delay" is a rather benign term connoting postponement or late arrival. In most everyday circumstances, delay is merely an annoyance. But when delay occurs within an institutional setting, the import attached to it increases. Often, delay becomes equated with the failure to fulfill important institutional obligations. Viewed in this light, concern with delay in the courts is warranted, not because of slowness or inconvenience, but because the values and guarantees associated with the legal system may be jeopardized.

A number of different costs of delay are commonly cited. We can conveniently group these perceived costs under four headings: defendant, society, citizen, and system resources.

Defendant's rights. In the past, court delay was defined as a problem because it jeopardized the defendant's right to a speedy trial. The Sixth Amendment provides that "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial..." Defendants may languish in jail for a number of months before guilt or innocence is determined. Some suggest that lengthy pretrial incarceration pressures defendants into pleading guilty (Casper, 1972). A number of states have enacted speedy trial laws premised on the need to protect the defendant's rights. But because the right to a speedy trial rests with the defendant, the right may be waived as it nearly always is by defendants out on bond. Defendants may feel that their chances of acquittal increase over time. Also, workgroup norms foster waivers from defendants because their counsel often must accommodate prosecutors in order to obtain a better plea bargain.

Societal protection. More recently, delay has been viewed as hampering society's need for a speedy conviction. This view stresses harm done to the prosecution's case. As the case becomes older and memories of the witnesses diminish, the defendant's chance for an acquittal rises. Delay also strengthens a defendant's bargaining position. Prosecutors are quicker to accept a plea of guilty when dockets are crowded and cases are growing older. Also, when delay occurs among defendants out on bond, the potential for additional criminal activity weighs heavily in the public's mind. In short, the state is also viewed as possessing the right to a speedy trial (National Advisory Commission, 1973:68). The United States Speedy Trial Act reflects this more recent concern. It is premised on the notion that a speedy trial is needed for societal protection.

Citizen confidence and convenience. Despite costs or benefits to either the defense or prosecution, a third perspective emphasizes that delay erodes public confidence in the judicial process. Citizens lose confidence in the swiftness or certainty of punishment. Additionally, victims and witnesses make repeated and, for them, wasted trips to the courthouse. Appearances can cost citizens a day's pay and lost time, and ultimately discourage them from prosecution.

Strain on resources. Delay in disposing of cases strains criminal justice system resources. Pretrial detainees clog jail facilities. Police officers must appear in court on numerous occasions, at public expense. Attorneys are forced to expend unproductive time because of repeated court appearances on the same case, costs ultimately passed to defendants. Moreover, efforts to reduce delay on the criminal docket may exacerbate delay in disposing of civil cases.

Assessing the Costs of Delay

Assertions about the alleged costs of delay require careful scrutiny. While a general consensus has emerged that delay is a problem facing the courts, there is no agreement about the particulars. The four perspectives described above stress varying, and at times contradictory, reasons as to why delay is a problem. Some perceive that lengthy pretrial incarceration forces the defendant to enter into a less than advantageous plea bargain. Others, however, portray caseload pressures as forcing the prosecutor into offering unduly lenient negotiated bargains. The four perspectives, of course, are not necessarily mutually exclusive. Concerns about system resources as well as citizen confidence and convenience may be jointly held. The critical point is that assessment of the costs of delay are inherently subjective. It is this subjectivity that plagues research on the problem, a key point to be developed more fully in the next chapter.

Not only is there lack of agreement on the specific costs of delay, there is also lack of documentation of the evils that flow from it. In a recent review of the literature, the National Center for State Courts noted that "Few of the foregoing assertions (about the social costs of delay) have been subjected to empirical examination" (Church, 1978b:15). They find some evidence to indicate that jail overcrowding, failure to appear rates, and citizen respect for the judiciary are tied to case delay. But they find no support for the assertions that deterioration of cases, lack of deterrence, decreased possibilities of rehabilitation, or plea bargaining are the products of case delay. Indeed, a growing body of literature suggests that case backlogs have been falsely labeled the cause of plea bargaining (Feeley, 1975; Heumann, 1975; Nardulli, 1979; and Eisenstein and Jacob, 1977:238).

Another reason for urging a note of caution in assessing alleged costs of delay centers on the quality of justice. Within the legal community, there is a deep-seated

suspicion that undue emphasis on the speed of case dispositions may decrease the quality of justice. Faced with mounting backlogs, courts and judges may become more concerned with moving cases than dispensing justice. As Wheeler and Whitcomb remind us, judicial administration should not be equated solely with "efficiency." Rather, it seeks to contribute to "just and efficient case processing" (1977:8). The quality of justice produced by efficient courts must be kept in mind. Yet the charges that justice is eroded, where courts are expeditious, remain undocumented.

Finally, reduction of delay is no panacea for all the problems of courts. Environmental conditions promoting litigation will remain or even be exacerbated. Other questions of equity or justice will be left untouched. In the words of one critique of the National Advisory Commission:

> While the courts need to pay attention to the management of their dockets, we think the Commission over-stresses the improvements that are likely to result from speedier and more efficient procedures. Well-run courts staffed by capable persons using modern management techniques will face the same conditions — large volume of cases, sentencing disparities and overcrowded jails — as the courts do now (Neubauer and Cole, 1976:297).

EVALUATING DELAY REDUCTION PROGRAMS

Numerous reforms have been proposed to reduce delay in courts. Among the commonly-mentioned solutions are increasing resources such as additional judges, clerks, and prosecutors; eliminating procedural roadblocks like grand jury indictments; regularizing pretrial matters by adding an omnibus hearing; streamlining trials by imposing judicial control over voir dire; improving court administration by hiring a professional administrator and by computerizing records; and altering calendaring systems to schedule cases more effectively (Berkson, 1977:212 and Neubauer, 1979:458-65).

Though the list of possible remedies is long, our understanding of what works is limited. Much of the literature consists of descriptions of innovations introduced by courts to reduce backlog and delay. Some of these merely describe the methods without attempting to evaluate their impact on delay. Other reports are by practitioners who feel that they have been successful in reducing delay in their own courts. (See, e.g., Aldisert, 1968; Blake and Polansky, 1969; Leonard, 1973; and Thompson, 1974.) But the precise amount of reduction is not described nor is the reduction achieved clearly attributable to the changes introduced. (For a critical methodological review, see Luskin, 1978a).

Part of the difficulty is that all too often the problems of case backlogs and trial delays are discussed in legalistic and mechanistic terms. The impression conveyed is that caseflow management is removed from other issues and problems in the criminal court process. Such is not the reality. Case backlogs, trial delay, and case management are intimately intertwined with the dynamics of courthouse justice. The importance of the incentive structure of the court and the attitudes and motives of participants is demonstrated by Levin's (1975) study of the sources of delay in five criminal courts, by Eisenstein and Jacob (1977) in their study of the case disposition process in three felony courts, and by Church et al. (1978a) in their study of delay in twenty-one courts, both criminal and civil.

Our evaluation of delay-reduction programs in four courts takes place within this framework. That is, we are guided by much of the general literature on criminal courts in seeking to understand how delay is connected to the broader work and goals of criminal courts. In particular, we have been guided by the following four working hypotheses.

Delay May Occur in Any or All Stages of Case Processing

A criminal case proceeds through a number of defined stages: arrest, complaint, initial appearance, bail setting, preliminary hearing, arraignment in the trial court, pretrial, disposition and possibly sentence. Delay may occur between any and all of these stages. Unfortunately, most studies have focused on isolated stages of the process to the neglect of the entire process, relying on an incorrect assumption that eliminating a single bottleneck would solve the overall problem. The complex interrelationships of these stages require attention in an evaluation of delay-reduction programs.

The Design and Implementation of Delay-Reduction Programs Are Affected by Political Relationships within the Courthouse

In the public mind, delay is most frequently associated with judges and courts. Similarly, research on delay frequently concentrates on courts "solely as they exist on organization charts" (Church, 1978b:x). This association of delay with courts is misleading. The judicial process involves a diverse set of institutions that form a loosely coordinated confederacy. Processing and disposing of cases involving separate

and independent organizations: judges, prosecutors, public defenders, private defense attorneys, sheriffs, police officers, probation workers, clerks, court reporters, and even court administrators. Needless to say, each department, office or organization has responsibilities and goals other than disposing of cases, which may be viewed to be more important than a quick disposition.

This study examines various dimensions of relationships within the courthouse. We are interested in historical patterns of conflict or cooperation between the major groups or organizations (judges, prosecutors, public defender, local bar). We are interested in the reputations that these organizations have for being effective or weak managers. We will also examine the question of judicial independence. Finally, we are interested in looking at how forces external to the trial court (usually, the state supreme court) affected the delay-reduction programs. Researching these relationships allows us to determine who was consulted, who designed the program, who resisted, and who had sufficient power or authority to push through changes.

The Relationship Between Delay-Reduction Programs and Attitudes of Courtroom Actors is Complex and Interactive

A small but growing number of studies indicates that delay is largely the product of the voluntary actions of court officials (Oaks and Lehman, 1968; Banfield and Anderson, 1968; Levin, 1977; Nimmer, 1978).

> Delay did not seem to be an external phenomenon thrust upon unwilling participants. Rather, it was primarily associated with the voluntary behavior of the judges, defense attorneys, and prosecutors as they pursued their own interests. This differs from the conventional causal explanations which stress the delays caused by large caseloads thrust upon mismanaged, inefficient courts. Delay typically is described as an aberration in the court system that can be solved by better administration or more judges (Levin, 1977:3).

Nimmer extends this line of analysis by arguing that, in most courts, speed of disposition is of secondary importance. The abstract desire for speedy dispositions is subordinated to the dominant desire to maximize organization or agency goals (Nimmer, 1978:87; also, Ryan et al., 1980:219-20). Prosecutors will not seek speedy dispositions at the risk of losing convictions in serious cases or at the cost of additional trials. Defense attorneys will not seek speedy dispositions if they perceive them to be adverse to the interests of their clients. Similarly, judges permit the informal process to flow at its own pace. "This passive role avoids time-consuming, repetitive judicial intervention" (Nimmer, 1974:213). Thus, an evaluation of court

delay-reduction programs must assess existing attitudes toward case management and whether, and how, those attitudes may have changed.

The relationships, however, are complex and interactive. Any discussion of the relationship between judicial attitudes toward case management and delay reduction efforts confronts the cause and effect confusion. Are changes in judges' attitudes needed to bring about reductions in delay or are they one of the consequences? At one level, we know that commitment to change is a vital ingredient. As Flanders (1977) notes, what is often missing is the determination to reduce delay. Conversely, programs often proceed from the assumption that commitment to reduce delay is already present when it may not be. But stressing the need for judicial commitment can become a negative self-fulfilling philosophy. Within any court, judges' attitudes vary. Some wish to reduce delay; others are comfortable with the status quo; still others are simply indifferent. The attitudes of other participants, including especially the local bar, are also important. These attitudes, too, are likely to be related to delay-reduction programs interactively.

Local Socio-Legal Culture Influences Delay and Delay-Reduction Programs

America's trial courts are highly diverse in their structures and operations (Ryan et al., 1980). Those who staff the courts -- judges, prosecutors, and defense attorneys -- are usually recruited from the community they serve, and thus reflect the sentiments of that community. Together, these factors forge a system of justice with close ties to the local community. The enforcement of the criminal law by local officials operating in courts reflecting the local community results in disparities in bail release criteria, plea bargaining practices, and sentences imposed (Neubauer, 1979).

Likewise, the presence and extent of delay varies sharply from court to court. Church et al. (1978a) found that the median time for disposing criminal cases ranged from as little as 45 days in San Diego and Atlanta to 328 days in the Bronx, New York. Unable to find substantial relationships between elements of court structure and delay, they attributed these variations in case processing time to "local legal culture." By this term, they meant the "informal expectations, attitudes, and practices of attorneys and judges" (Church et al., 1978a:5).

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September 1981

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This project was supported by Grant Number 78-NI-AX-0076, awarded to the American Judicature Society by the National Institute of Justice, U.S. Department of Justice, under the Omnibus Crime Control and Safe Streets Act of 1968, as amended. Points of view or opinions stated in this document are those of the authors and do not necessarily represent the official position or policies of the U.S. Department of Justice.

In this study, we expand upon the concept of local legal culture to include the environment of the community external to the local court as well as formal laws, rules and procedures that impinge upon the local trial court (for further discussion, see Chapter 4). We further argue that not only is this local culture part of the problem but, somewhat paradoxically, it becomes part of the solution. Delay-reduction programs will strive to accommodate the local socio-legal culture wherever possible. By doing so, programs will have a higher likelihood of successful implementation and persistence.

THE FOUR COURTS: THEIR PROBLEMS AND DELAY-REDUCTION PROGRAMS

The four courts under study — in Providence, Rhode Island; Dayton, Ohio; Las Vegas, Nevada; and Detroit, Michigan — are located in communities of different size and geographic region (for further differentiation, see Chapter 4). The magnitude of the delay problem varied sharply across the sites. This is apparent from each court's own statistics on case processing time (see Table 1-1). The Providence court reported an average of more than eighteen months to dispose of its criminal cases. This compares with about one year reported by Las Vegas, seven months by Detroit, and less than three months by Dayton. The severity of the problem was also viewed differently by local court actors, as we shall describe in later chapters.

The goals that the courts established for improvement in case processing time were generally reasonable and potentially-attainable ones, in light of the magnitude of the problems at the outset. Note, for example, that the goals in Providence and Las Vegas were no better than the initial problem in Detroit, and considerably poorer than that in Dayton. Indeed, Dayton was already sufficiently speedy that the potential for improvement was quite modest.

The nature of the delay-reduction programs varied substantially across the sites, though there were some underlying similarities. The actual content of the program for each court is described in much detail in later chapters. Suffice it to say here that all were management reforms, whether increased formal coordination among courtroom actors (as in Las Vegas), initiation or modifications of assignment offices (as in Providence and Detroit), changes in method of case assignment (in Detroit), emergency programs to concentrate resources on getting rid of very old cases ("Push" in Providence, "Crash" in Detroit), or a coordinated package of management reforms

designed by a team from the Whittier College School of Law (as in Providence and Dayton). Table 1-1 lists the key elements of each court's delay-reduction program.

EVALUATION OBJECTIVES

Evaluations differ in their purpose, scope, and methods (Rossi, Freeman and Wright, 1979:30). This is an impact evaluation. After determining which programs were actually implemented, we seek to determine their effect on the practices and operations of each court — in particular, on their case processing time. Thus, our evaluation is not intended to provide information to program managers to directly assist them in decision-making. While information in this report will be useful to programs managers, such utility is only of secondary importance to the focus of this study.

Evaluations differ as to their intended level of explanation. Some are content to ask whether the program worked or not. We also seek to know why the program worked or didn't work. In this context our evaluation seeks to contribute to the discovery of knowledge. Rover-Pieczenik (1976:10-11) argues that the results of an evaluation are "more than a statement about what works/does not work or about what is effective/not effective...the more important task for evaluation research is to explain and specify the conditions under which success can be understood, so that programs can be refined and reshaped accordingly." This statement summarizes our view of the evaluation of court delay-reduction programs.

This evaluation has three concrete objectives: to describe the programs in action; to measure case processing time before and after the programs; and to assess the impact of the programs.

1. Describe the court delay-reduction programs. The initial task is to describe the court delay-reduction projects in each of the four courts. Many criminal justice evaluations have ignored simple description of the programs actually implemented. A recent review concluded that a majority of criminal justice evaluations did not even consider whether the program had been implemented as designed (Larson, 1979:36-37). This is a critical omission because studies have sometimes shown that no programs were implemented at all, or that a very different program was put into place. Similarly, a core concept (like that of the Whittier team) may be implemented quite

Table 1-1.

THE FOUR COURTS

City	Court	Court Jurisdiction	Average Case Processing Time*	Project Goal	Type of Delay-Reduction Programs
Providence, Rhode Island	Superior	Providence & Bristol Counties	580 days	180 days from charging to trial	Case Scheduling Office Push Program Whittier Team
Dayton, Ohio	Common Pleas	Montgomery County	83 days	75 days from arrest to disposition	Whittier Team
Las Vegas, Nevada	District	Clark County	360 days	225 days from arrest to disposition	Team & Tracking
Detroit, Michigan	Recorder's	City of Detroit	220 days	90 days from arraignment to disposition	Special Judicial Administrator Crash Program 90 Day Case Track Docket Control Center Individual Calendar

*These figures are for illustrative purposes only. They are drawn from the grant application, and we have no way of determining what methods were used in collecting the data.

differently in different courts. Our description of the programs will include attention to such questions as: How was the delay problem defined? How severe was it perceived to be? Who was involved in developing the delay-reduction programs? How were programs implemented? What support or resistance was offered by key actors? For how long did the programs stay in place?

2. Measure and analyze case processing time in each jurisdiction. Another primary task is to measure and analyze case processing time in each jurisdiction, across a time period spanning the introduction of delay-reduction programs. A recurrent theme in evaluation literature is the difficulty in measuring the goals that the criminal justice program seeks to accomplish. Evaluations of delay-reduction programs, though, do not suffer from this kind of measurement problem. The duration of a case, from arrest to disposition and including intermediate stages, is highly quantifiable. We utilize a number of different statistics and data display techniques to accomplish this task.

3. Measure the impact of the programs on case processing time. Finally, we seek to determine whether the programs were successful in reducing case processing time, and by how much. These assessments will be made for overall case processing time as well as for the time needed to process cases in the lower and upper courts respectively. Because programs may be implemented when other changes are also taking place, we seek to disentangle these effects through multivariate analysis over time. We consider, in particular, the potentially confounding role of changing case and defendant characteristics.

THE PLAN OF THIS REPORT

For the purpose of providing an overview of the area of delay, we have assumed a common understanding that probably does not exist. There is a great need for more explanation and precision in the use of the term "delay." We turn our attention to this task in the next chapter, where we establish the utility of the term "case processing time." We also review in Chapter 2 specific hypotheses about the relationships between case characteristics and case processing time, which serve as a guide for later statistical analysis.

The methodology of this study is described in Chapter 3. This includes discussion of site selection, sampling from case file data over time, and conducting interviews

and observations. Quantitative analysis strategies are set forth, with a description of the roles of bivariate and multivariate analysis, and a glimpse of statistical procedures to be utilized. A rigorous method of qualitative analysis is also described, which includes the use of concept and category development.

One of our primary arguments is that the local culture of a community not only influences the nature and extent of possible delay problems but also the shape of delay-reduction programs. If such programs sought to accommodate the local culture in each site, we need to describe those cultures and contrast them. Chapter 4 defines the environment in terms of "local socio-legal culture," a term more encompassing than Church et al.'s (1978a) "local legal culture." After defining the elements of the concept, we describe the culture for each of our four research sites.

The bulk of the study is devoted to an intensive analysis of each site. First, we present an analysis of the delay problems, the origins of the delay-reduction programs, and implementation of the programs, based upon qualitative data. Then, we provide an analysis of the impact of the programs upon case processing time, based upon quantitative data. For each site, we first present the qualitative view; then, the quantitative view follows immediately. Chapter 5 and 6 are given to Providence, 7 and 8 to Dayton, 9 and 10 to Las Vegas, and 11 and 12 to Detroit.

Finally, Chapter 13 provides a summary of the complex empirical findings of the study and considers implications of the findings. Both researchers and practitioners should find useful our discussion of the different delay-reduction strategies utilized and their analogous successes.

Chapter 2

CONCEPTUALIZING, MEASURING AND ANALYZING CASE PROCESSING TIME

Evaluating the impact of delay reduction programs requires that we begin with a useable understanding of "delay." But as we suggested in the last chapter, the term delay is inherently subjective. Because it merges many different subjective connotations, it has limited utility for research. Thus the purpose of this chapter is to discuss some important dimensions of the conceptualization, measurement, and analysis of case processing time, our objective term.

The first section of this chapter argues that there are a number of benefits for replacing the subjective term delay with a more objective concept — case processing time. Next we will discuss why it is important to subdivide total case processing time into individual phases of the judicial process. Further refining the concept of case processing time is the subject of the following section. In particular we look just at time under the control of the court. Having refined the concept of case processing time, we then turn our attention to some difficult measurement problems and show that a variety of statistical measures are needed to adequately portray the dispersion involved. In a similar vein, we will examine how to analyze changes over time in case processing time. Finally, the chapter sets forth hypotheses about the potential effects of case characteristics on case processing time.

THE CONCEPT OF CASE PROCESSING TIME

Delay is a much discussed but seldom defined term. Virtually everyone has a common sense notion of what court delay means — courts take too long to decide cases. In a general sense it stands for abnormal or unacceptable time lapses in the processing of cases. Its prime utility, though, lies in calling attention to a problem area. For delay is a nebulous term. Several major ambiguities make it inappropriate for research purposes.

The inherent subjectivity of this term becomes apparent when we try to define "unnecessary delay." The simple passage of time must be distinguished from "unnecessary delay" (Wheeler and Whitcomb, 1977:15). Some time is needed for case

preparation —preparation of police reports, interviewing witnesses and so on. Stated another way, the total time that a case is on the court's docket may consist of acceptable (normal) time plus unacceptable (abnormal) time (Nimmer, 1978:72). In turn many empirical measures of "delay" are measures of total time, that is normal and abnormal time mixed together. Given that the term delay is typically used pejoratively to suggest unnecessary time, we need to keep in mind that not all case processing time is unnecessary (Luskin, 1978:116).

Yet it is difficult to decide what should be "normal time" for a case disposition. The reform literature discusses normal time and delay in reference to an ideal time frame (Nimmer, 1978). A time interval cannot be considered normal or abnormal until such judgments are made. There is no consensus, though, about what this ideal time frame should be. The National Advisory Commission (1973) recommended sixty days from arrest to the start of trial. The earlier President's Commission (1967) specified a maximum of eighty-one days for the same events. The Federal Speedy Trial Act mandated one-hundred days. Other commissions, groups and state speedy trial laws have suggested time frames varying from six months to two years (Wheeler and Whitcomb, 1977). These varying and conflicting attempts to specify a maximally desirable time for disposing of a criminal case are largely abstract efforts. They are not grounded in a working knowledge of the dynamics of the court process. Moreover, they provide no linkages between the advantages to be derived from speeding up the dockets and the specific time frames. The President's Commission, for instance, acknowledged that its recommendations were the product of consecutive, arbitrary choices.

In attempting to define delay, one must be mindful of varied and subjective local definitions. What is considered an old case in one community may be viewed in another as merely ripe for disposition. Justice Delayed, authored by the National Center for State Courts, coined the phrase "local legal culture." A key dimension of local legal culture are the different local expectations about how long is too long for case dispositions (Church, 1978:54). Given these varying local expectations, use of the term "delay" for research purposes is likely to be ambiguous. A far better concept is case processing time. Case processing time involves an objective measure of reality — how long do cases take from start to finish. Viewed in this light, many studies have

actually investigated case processing time but have mislabeled it delay (Luskin, 1978:116).

It is important to note that an objective measure of reality like case processing time does not dispense with subjective assessments. Glancing ahead to Table 2-1, we find that in Las Vegas a criminal case typically takes 157 days (median) to proceed from arrest to sentencing. Some would label this time frame as delayed; others would not. Similarly, some court actors might find this situation very tolerable because of their own expectations, while others would not. The essential point is that utilizing the concept of case processing time provides a better foundation for thinking about differing and oftentimes conflicting assessments of delay.

CHOICE OF TIME FRAMES

Having introduced the concept of case processing time, we next need to consider which time frames should be measured and why. We could, of course, simply examine total case processing time, the time from the arrest of the defendant until sentence is imposed upon the guilty. The four sites vary considerably in overall case processing time (Table 2-1). In Detroit the typical case took about two months, in Dayton about three months, in Las Vegas over five months, and in Providence over half a year. The central benefit of investigating overall case processing time is that it views the court process through the eyes of the defendants, victims, witnesses, the police, and often the general public as well. These consumers assess the work of the court in terms of elapsed time from the original event until the case finally reaches disposition. For legal, policy, and evaluation reasons, however, it is necessary to subdivide overall case processing into its component parts.

Criminal cases proceed through several different stages before a final disposition is reached: arrest, arraignment, charging, screening, a trial date, sentencing and so on. Normal and/or abnormal case processing time can occur between any of these stages. The available data from case files in our four sites do not permit distinctions between each event. Nevertheless, we have been able to isolate three time frames: (1) lower court time, (2) trial court time, and (3) sentencing time.[1]

Analyzing separate time phases is a recognition that "the duration of a case is actually the summation of several phase-to-phase durations." (Petersen, 1977:191) Examining different time frames has a number of important advantages. First, it highlights where in the process the bulk of case processing time occurs. Different courts may exhibit similar overall case processing time, but have quite different patterns in the three major time frames. Second, the delay reduction programs being evaluated focused on different phases. Most did not attempt to control lower court time, but one did. Moreover, a program may impact one time period but not another. Finally and most importantly, the underlying judicial processes differ. A different set of actors are involved in the three phases.[2]

Lower Court Time

Lower court time refers to the period from arrest until the trial court gains control of the case. During this phase the preliminary stages of a case are handled: initial appearance, setting of bail, appointment of counsel, holding of a preliminary examination, and case screening. In three sites a different court than the trial court is involved. In Detroit there is a single court which hears criminal matters, but "lower court" matters are handled separately.

Furthermore, a quite different set of actors is involved in the lower courts. There, police, police laboratories, rookie prosecutors and public defenders, and justices of the peace are the most important actors. Typically better trained judges and more experienced attorneys dominate the upper (trial) courts, which are less affected by the vagaries of the local police department.

As Table 2-1 indicates, lower court time in Dayton and Detroit is minimal. By contrast, in Las Vegas and Providence it is quite substantial. We should also note that only in Las Vegas was lower court time a conscious target of the delay reduction program.

Trial Court Time

Trial court time refers to the period from when the trial court of general jurisdiction first gains control of a case until disposition on the merits. Typically, a trial court case begins with the filing of an information or an indictment. Until that

point literally no case exists there, although it may have consumed a considerable amount of time in the lower court. Upper court time ends in our study with a disposition on the merits — a plea of guilty, a trial or a dismissal.

Referring again to Table 2-1, note that there were differences in trial court time between the four sites. In particular, the Providence trial court was substantially slower than the other three courts. These differences are less dramatic than for overall case processing time, though, because of the variation introduced by lower court time. Trial court time is of major interest in this study because all four delay reduction projects sought to decrease this time.

Sentencing Time

The time from disposition to sentence is becoming an increasingly troublesome one for many courts across the nation. As prisons become more full, pressures increase to give defendants alternative sentences, especially probation. Concomitantly, the need for presentence investigations which determine the suitability of individual defendants for probation has greatly increased. With limited probation department resources, the time taken to prepare these reports has also increased, leading to delay in sentencing convicted defendants. Furthermore, some states mandate by statute a fixed time period (often, thirty days) between disposition and sentence. In one of our four sites (Las Vegas) the PSI is sometimes not ready by the initial sentencing date. Thus, this time frame is largely outside of the control of the trial court. Reforms and innovations directed at the court per se can little affect the length of this time frame. Accordingly, we present only limited descriptive data on this time period in each of our sites.

Table 2-1. Case Processing Time in the Four Sites

	Total Time Median	Lower Court Median	Trial Court Median	Sentencing Median
Providence	190 Days	89 Days	101 Days	0 Days
Dayton	97	12	57	28
Las Vegas	157	65	49	43
Detroit	55	7	34	14

Implications

Analyzing separate time frames provides a better understanding of case processing time than merely looking at total elapsed time. Note, for example, that Dayton and Las Vegas differ by two months in terms of total case processing times. But when we compare only trial court time, the differences are less than one week and, moreover, Las Vegas is faster than Dayton.

In addition, case processing time during the three different phases is not necessarily related. Providence, which consumes the most time in disposing of cases in both the lower court and the trial court, is the fastest in terms of sentencing the guilty. By local practice, those convicted are sentenced on the day a plea of guilty is entered. By contrast, sentencing the guilty takes the longest in Las Vegas (forty-three days) but this city ranks second in terms of trial court time. Thus, we get a very different view of case processing time when analyzing individual time phases rather than simply looking at overall time.

REFINING THE CASE PROCESSING TIME CONCEPT: WHAT IS UNDER THE COURT'S CONTROL?

To accurately assess the impact of delay reduction programs in any court, we need a measure of case processing time that reflects time "under the control of the

court." Across our sites, two types of events outside of the court's control consistently occur: sanity hearings and defendants who fail to appear.

In cases where a defendant's sanity is under question, the defendant is frequently institutionalized in a hospital for a period of observation. This period (often mandated by statute) may consume thirty, sixty, or even ninety days, resulting in long delays. Obviously, the court can do nothing in the meantime to process the case. Furthermore, no specific management innovations can directly influence this situation. Though the number of cases involving a psychiatric hearing is relatively small, these cases consume disproportionate amounts of case processing time. In the four courts, psychiatric cases take at least twice as long to reach disposition as other cases (Table 2-2). Clearly, they are handled very differently from "routine" cases. For these reasons, psychiatric cases were dropped from the analysis of trial court time because that is the phase when hospitalization and psychiatric exams occur.[3]

A defendant's failure to appear at a scheduled court appearance is far more frequent than commonly perceived. Looking at Table 2-3, we find that the proportion of cases involving at least one bench warrant ranges from 5 percent in Dayton to 21 percent in Providence.

Table 2-2. Trial Court Case Processing Time for Psychiatric Cases

	Providence	Dayton	Las Vegas	Detroit
Psychiatric Cases				
Mean	366 Days	275 Days	140 Days	153 Days
Median	257	234	107	143
N	(16)	(17)	(30)	(63)
Other Cases				
Mean	232 Days	75 Days	72 Days	66 Days
Median	101	57	49	34
N	(1131)	(520)	(772)	(1616)

Table 2-3. Bench Warrants in the Four Cities

	Number of Bench Warrants			Days Lost Due to Bench Warrants	
	n	%	N	Mean	Median
Providence	290	21%	(1381)	102 Days	28 Days
Dayton	37	5%	(700)	56	35
Las Vegas	143	17%	(844)	72	20
Detroit	213	10%	(2079)	78	27

The time during which a defendant is not available is outside of court control. The trial court is dependent upon the skill and perseverance of the local police or sheriff in tracking down defendants and returning them to court. It cannot be argued that the court is to blame for defendants skipping in the first place. Numerous studies have concluded that the type of pretrial release — e.g., OR versus bond, is unrelated to failure-to-appear rates (see, for example, Wice, 1974). Thus, it seems appropriate to adjust the case processing time variable to reflect the reality of time lost due to warrants.

In some cases, defendants are never apprehended. These cases, of course, have been excluded because they lack a final disposition date. In many other cases, defendants do reappear subsequent to the issuance of a bench warrant. The time lost due to a warrant can be quite substantial. In Providence, the median number of days lost due to warrants was 28 days; the mean, however, was 102, indicating a few defendants were missing for very long periods.[4] In the other cities, too, substantial time was lost due to defendants who failed to appear. If the defendant's absence occurred in the lower court, time lost was subtracted from lower court processing time; if in the upper court, from upper court processing time. The subtraction procedure is used rather than excluding these cases because the number of such cases is not trivial and because the time lost due to the failure to appear could accurately be determined. Subtracting out days lost due to warrants reduces our estimates of case processing time, but the effects vary by city. In Providence there is a substantial effect. Estimates decrease by one full month — the median of 133 days drops to 101 for total case processing time. In the other cities, however, estimates were reduced by seven days or less.[5]

Some other events, idiosyncratic to a particular site — such as the habeas petition to the Nevada state supreme court — were also deemed to be outside the court's control. For a discussion of these, refer to the individual chapters analyzing the results in each site.

Once corrective actions have been taken, we achieve a more accurate measure of case processing time attributable to the actions of the court, whether the lower or the upper court. Thus, the impact of the innovations on their intended target — the court — can better be assessed. Not to make these adjustments would lead to underestimating the effects of an innovation, for it can reasonably be predicted that

the court's handling of cases involving sanity hearings or defendants who fail to appear would not improve significantly over time.

Measuring Case Processing Time

What is most striking about case processing time is its variation: Some cases reach disposition soon after filing, others take several months, while still others languish for extended periods (over a year in some Providence cases). From both a policy and legal vantage point, such variation is of great importance. From a policy perspective we are particularly interested in how court procedures and case characteristics affect the timing of dispositions. From a legal perspective, we are interested in why some cases take a long time to reach disposition.

Past studies of court delay have used one or more measures of case processing time: mean, median and/or the toughest 10 percent (see, e.g., Church et al., 1978, Federal Judicial Center, 1976, National Center for State Courts, 1978). No single measure, however, captures the full range of variation. We will, therefore, examine case processing time in a variety of ways, utilizing currently popular analysis and display techniques from "exploratory data analysis" (EDA), developed by Tukey (1977).

> The underlying assumption of the exploratory approach is that the more one knows about the data, the more effectively data can be used to develop, test, and refine theory. Thus, the exploratory approach to data analysis seeks to maximize what is learned from the data, and this requires adherence to two principles: skepticism and openness. One should be skeptical of measures which summarize data since they can sometimes conceal or even misrepresent what may be the most informative aspects of the data, and one should be open to unanticipated patterns in the data since they can be the most revealing outcomes of the analysis. (Hartwig and Dearing, 1979:9)

We believe that a variety of statistical pictures can best project important variations in case processing time.

In statistics, the most commonly used summary measure is the mean (arithmetic average). While means are sometimes used to measure case processing time, they do not provide a good portrait of a "typical" case. Means are heavily influenced by a few extreme values at either end of the distribution. In the words of Hartwig and Dearing (1979:19), the mean is a "non-resistant summary of location and spread," one that is sensitive to a small number of values within a distribution, usually at either ends (tails) of the distribution. In court delay studies, in particular, where an upper tail of old cases is to be expected, alternative summary measures should also be utilized.

The median is a better summary measure of case processing time (see Wasby et al., 1979:25). The median is the 50th percentile. It indicates that half of the cases took longer, and half took less time. Because the median is much less influenced by a handful of extreme cases that take a long time to reach disposition, it typically provides a lower estimate of case processing time. Table 2-4 provides data for the four cities for trial court time in the pre-innovation period only. The table shows that the median is consistently lower than the mean. Importantly, note that for Providence the difference is substantial (almost 90 days) and in Detroit and Las Vegas the mean is nearly twice as long as the median trial court time. Only in Dayton is the difference between the mean and median relatively small (13 days). Thus, the view of case processing time differs considerably depending upon which statistical measure — the mean or the median — is employed.

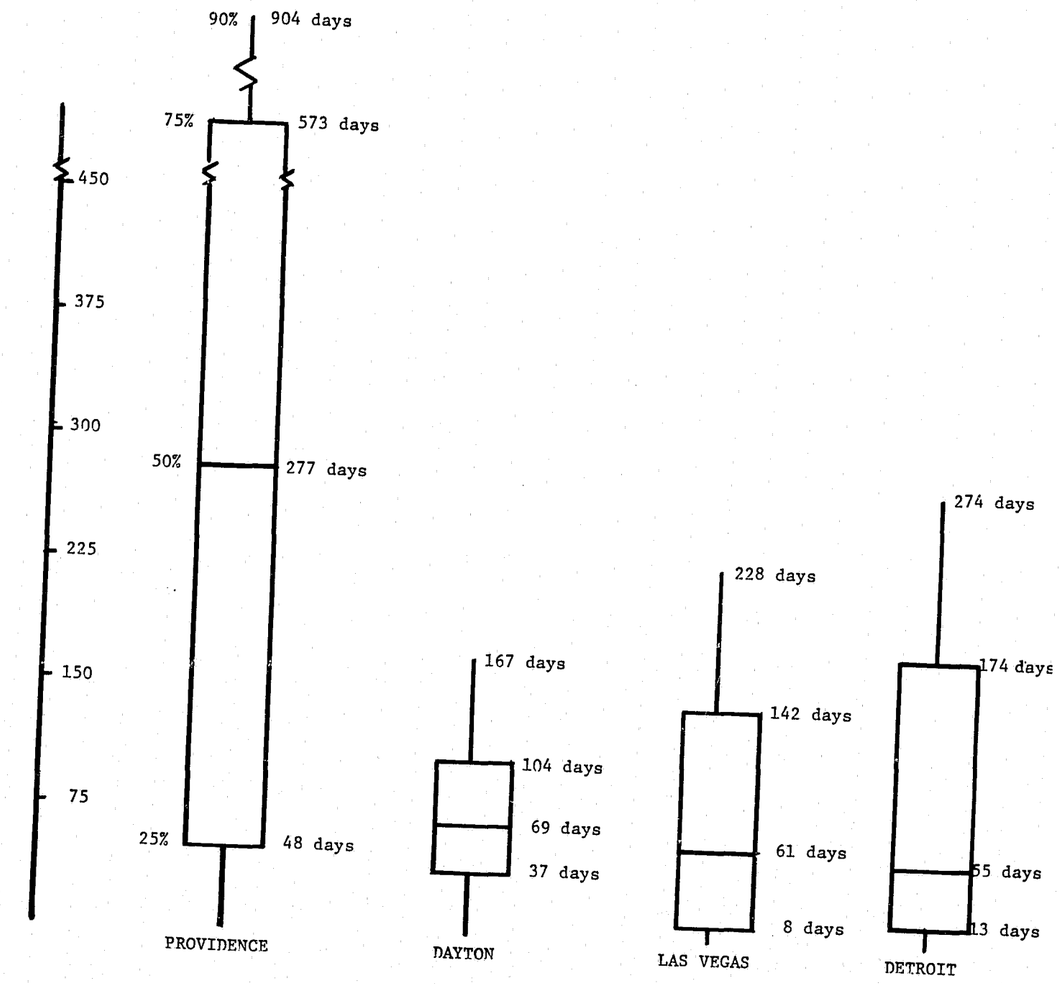
Table 2-4. Trial Court Case Processing Time Prior to Delay-Reduction Programs

	Baseline Period	Mean	Median	Standard Deviation	N
Providence	Jan.-Dec., 1976	365 Days	277 Days	345	362
Dayton	July-Oct., 1978	82	69	60	265
Las Vegas	Jan.-March, 1977	102	61	138	74
Detroit	April-Oct., 1976	105	55	111	440

Box-and-whisker plots. Box-and-whisker plots, developed by Tukey (1977), are an effective method of displaying information about the entire range of a variable. Whereas means and medians attempt to summarize the central tendency of a variable, a box-and-whisker plot provides information about cases surrounding the median and extreme cases. Figure 2-1 presents box-and-whisker plots for the pre-innovation period in our four sites.

FIGURE 2-1

Box-and-Whisker Plot of Trial Court Case Processing Time Prior to Delay-Reduction Programs in Four Courts



The "box" represents the range of the cases falling between the 25th percentile and the 75th percentile. The size (length) of the box is a visual summary of the range in values: the larger the box, the greater the range; the smaller the box, the more constricted the range. The horizontal line inside the box is the median value, the age of the case(s) at the 50th percentile.

The boxes highlight interesting differences in case processing time between the four sites. We immediately see that in Providence not only do cases on average take longer to reach disposition, but that the range is very great. This suggests that the process is less routinized than in the other three cities. Less drastic but nonetheless important differences between Las Vegas and Dayton also become apparent. Comparing the medians indicates that the cities are about the same (median of 69 for Dayton and 61 for Las Vegas). However, the range in Las Vegas is much greater. Fully 25 percent of the cases are disposed of quickly (eight days), but cases at the 75th percentile take longer than in Dayton. In short, the Las Vegas distribution is skewed at both ends.

Scrutiny of the bottom hinge (25th percentile) reveals another important dimension of case processing time. All four courts were able to dispose of a fair proportion of cases relatively quickly. Even in Providence one quarter were disposed of within one and one half months. Note that in Las Vegas and Detroit the court produced a fairly large proportion of very early guilty pleas.

Finally, the "whisker" represents the value of an outlier, an extreme case. Some distributions may have numerous outliers, at the upper end (above the box) or at the lower end (below the box). The whiskers are intended to name outlying values in order to facilitate substantive interpretation. In court delay studies, the name of a case is insignificant. Therefore, we have modified the upper whiskers such that there is only one whisker atop the line extending down to the box. This one whisker, in our analysis, represents the value of the case(s) lying at the 90th percentile. How courts handle their very "tough" cases is important. That is, how long do the court's long cases take to process?

The contrast between the four sites is again instructive. In Las Vegas the 90th percentile case filed at 228 days, which was less than the median case processing time in Providence. We also see that Dayton and Las Vegas differ more greatly than the

mean or median suggested. Cases at the 90th percentile are disposed two months more quickly in Dayton than in Las Vegas. Detroit was marked by a higher than expected proportion of long cases. While the median time in Detroit was the fastest, it had more long cases than either Dayton or Las Vegas.

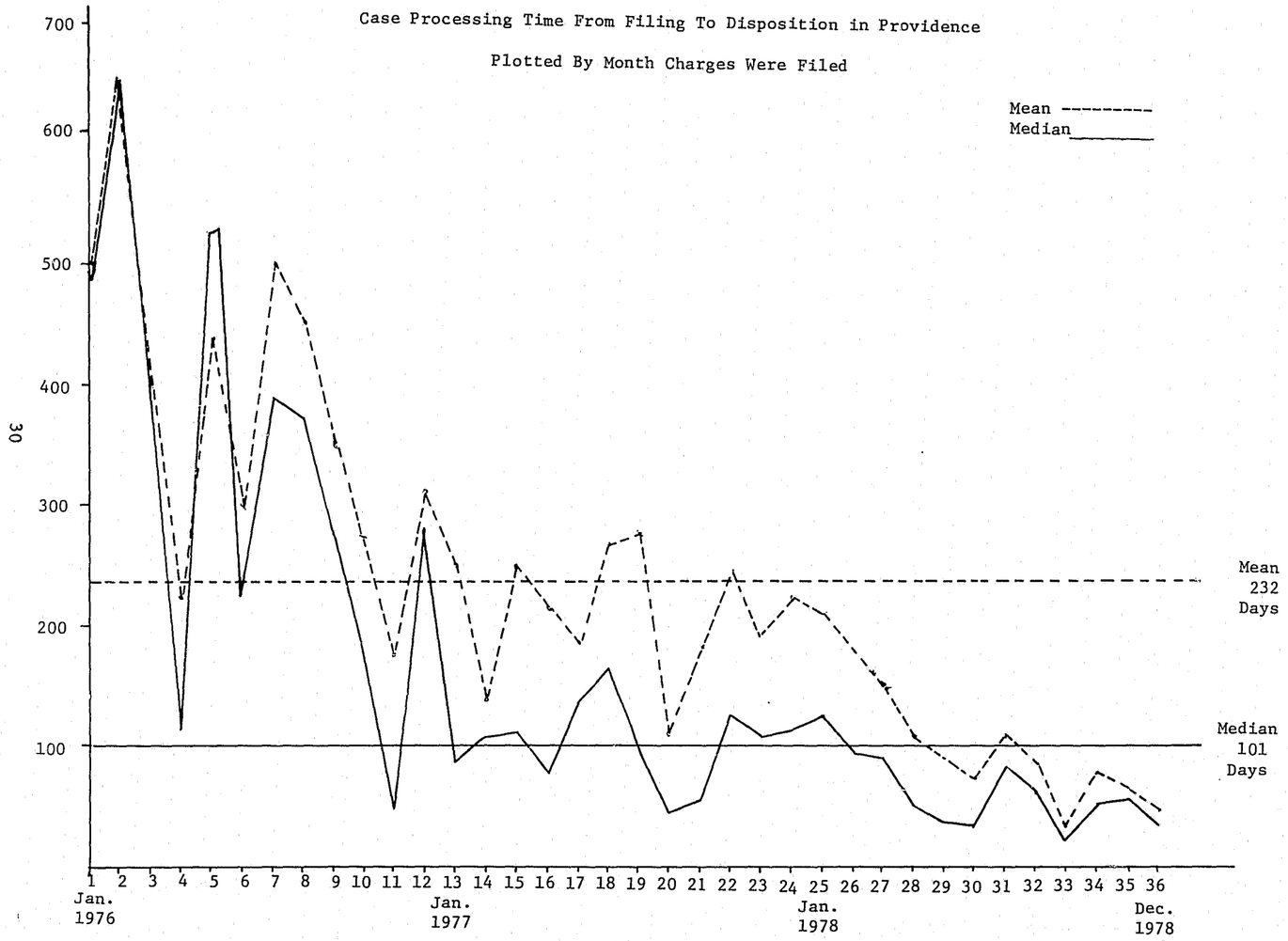
CHANGES OVER TIME

The most fundamental question in this evaluation is whether case processing time decreased after the delay reduction programs were introduced. A basic way of examining time-series data is through a time line, a graph indicating the value of the observed variable over several points in time. Figure 2-2 provides a time line for Providence, using both mean and median values.

FIGURE 2-2

Case Processing Time From Filing To Disposition in Providence

Plotted By Month Charges Were Filed

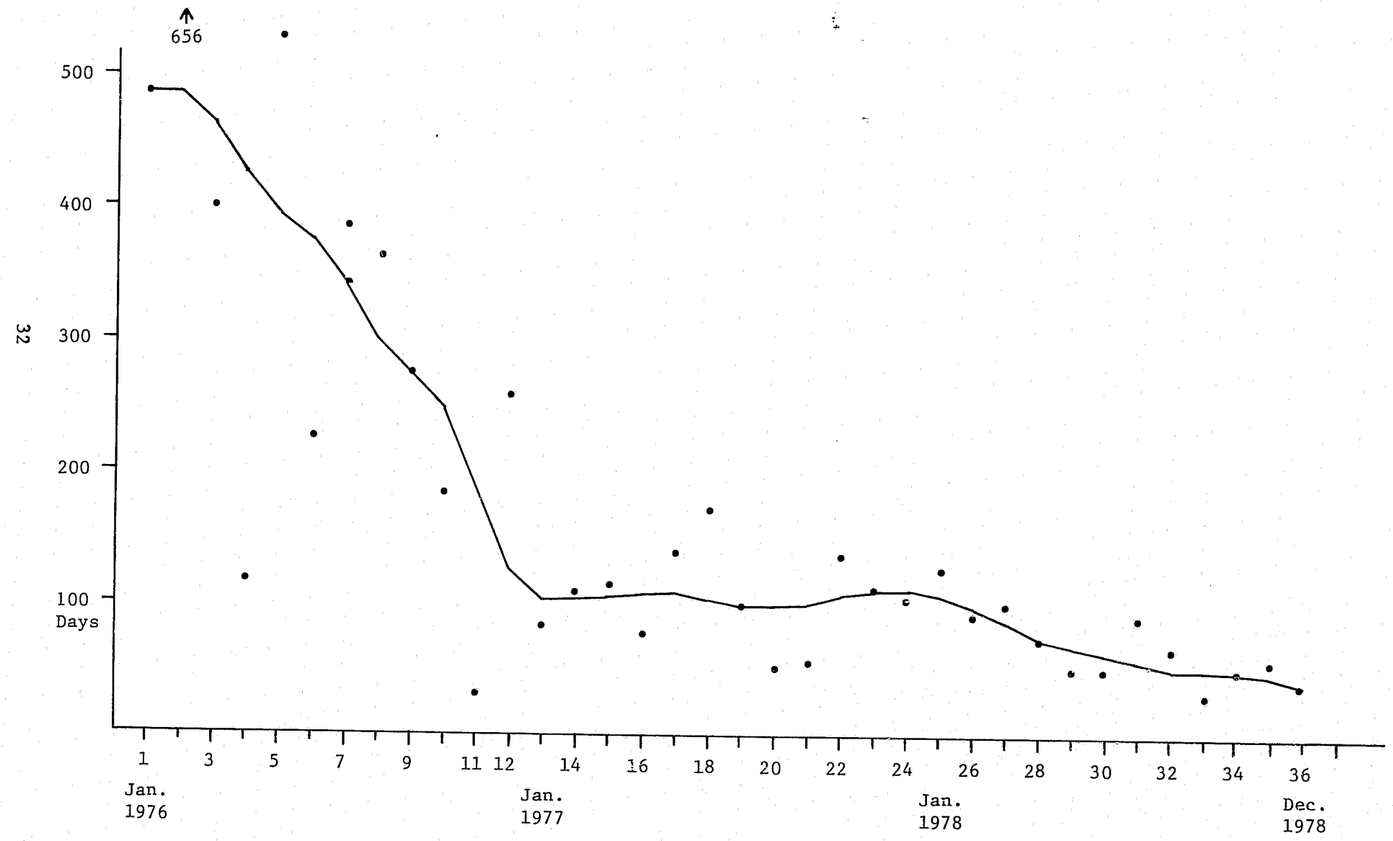


Median values are likely to fluctuate less than mean values. Still, there may be substantial fluctuation from month to month, because the sample size (and the actual number of court filings) is typically not very large.[6] Ascertaining a trend in such data may not be easy, at least not by mere visual inspection. Tukey pioneered a method of "smoothing" data, to provide a "clearer view of the general, once it is unencumbered by details" (1977:205). One way to smooth fluctuating values (over time) is through the use of "running medians," a technique which takes a median of surrounding medians, thereby casting to one side extreme median values when they occur in isolation or infrequency. Figure 2-3 illustrates a time line connecting running medians for the median values indicated in Figure 2-2. The result is a vastly clearer picture of the general — a significant downward sloping trend in case processing time. Through this method, one can still can get a picture of the "rough" or residuals, by examining the distance between the actual median (marked by an "x" in Figure 2-3) and the running median for any time point.

FIGURE 2-3

Case Processing Time From Filing To Disposition in Providence

Plotted by Month Charges Were Filed, Using Running Median



Contamination

The time lines displayed in Figures 2-2 and 2-3 differ in an important way from most time series data. Time series analysis is typically based on a quasi-experimental design. After a certain period, a new program is put into effect. The data points prior to the innovation serve as a baseline, while those after seek to measure the impact, if any, of the program. These data points would either follow a group through or would be based on non-reactive measures (numbers of highway accidents, for example). Our time series, however, does not display these independent measures, for the innovations also worked on cases filed (but not disposed) prior to the innovation. Thus, our base period is contaminated. As a result, the base periods often look better than they would have if the innovations had not been instituted. In addition, downturns in trend lines may start before the innovations are put in place. This may suggest anticipatory impact, but may also reflect a statistical artifact.

More on Box-and-Whisker Plots

The running median provides a useful overview. But we also need to also examine dispersion. A box-and-whisker plot for every month's sample of cases would be impractical, both logistically and visually. Twenty-four (or thirty-six) plots would be too much information to assimilate. Therefore, we have divided time spans into periods, either two or three periods, which roughly correspond to key transitions in our courts. Thus, the first time period is always the baseline period, whereas later time periods may be planning and impact periods (as in Providence) or innovation and post-innovation periods (as in Las Vegas). The utilization of a few time periods not only facilitates display of box-and-whisker plots but also the use of multivariate analysis techniques over time, to be described in Chapter 3.

By comparing the box-and-whisker plots in several different time periods for each court, we are able to identify a number of types of changes. We can see changes in a court's handling of tougher or extremely long cases by examining shifts in the top of the box (75th percentile) and the location of the whisker (90th percentile). Finally, we will be able to inspect changes in the size of the boxes across time periods. We would expect that in courts which improve their processing of cases, the size of the boxes would become smaller. Cases come to be processed more uniformly in time, expecially in middle 50 percent of a court's cases. The upper tails (whiskers) also

should drop sharply, as the amount of time needed to process the longest 10 percent of a court's cases improves.

In sum, by utilizing time lines, running medians, and box-and-whisker plots we look at the key variable — case processing time — in a number of different ways. Through these exploratory techniques, we come to a better understanding of the nature of its distribution. Once this is accomplished, analysis of the effects of case characteristics and of the innovations can proceed.

EFFECTS OF CASE CHARACTERISTICS ON CASE PROCESSING TIME

Cases proceed through the court at different speeds. As the descriptive data have already highlighted, some cases reach disposition relatively quickly while others take much longer to reach disposition. No analysis of the effects of delay reduction programs can take place without consideration of the profound way in which types of cases and defendants structure the screening, processing and disposition of a case. Moreover, delay reduction programs may alter these basic underlying relationships. This study, therefore, examines whether case processing time is systematically related to case characteristics and draws upon a wealth of relevant studies of the criminal courts. Nevertheless, these studies provide contradictory theories and findings. Therefore, we attempt some synthesis and sorting out of the contradictions. Based upon previous work, we would expect, for example, that cases involving jailed defendants, represented by a public defender, disposed by plea, and involving less serious charges would reach disposition more quickly. Correspondingly, cases involving defendants out on bail, represented by a private attorney, disposed by trial, and involving more serious charges should proceed more slowly. The specific hypotheses and their justification is the subject of this section.

Bail Status

We would expect to find a strong relationship between a defendant's release or detention status and the time it takes to bring a case to disposition. The National Bail Study found that cases involving defendants out on bail took considerably longer to reach disposition than cases involving jailed defendants (Thomas, 1976:253).

Defendants who have secured pretrial release either by posting a cash bond, usually through a bail bondsman, or who have been granted personal recognizance release (ROR) have more incentive to prolong the case (Wildhorn, Lavin, and Pascal, 1977:50). Because bailed defendants may wish to postpone the disposition of their case, their attorney can buy time by seeking delay for delay's sake. In addition, the attorney enjoys a freer hand in exploring legal matters that will in turn prolong the case.

By contrast, jailed defendants may want a quicker disposition. If the disposition is a dismissal or a finding of not guilty, the defendant will of course be released. If the sentence is likely to be prison, doing time in a state penitentiary is often viewed as easier or safer than in a county jail. For the incarcerated defendant, the defense attorney is less likely to try to buy time and may be more restricted in pursuing legal issues that might prolong the case.

Though the motivations of the defendant and his or her lawyer certainly play a role, institutional factors are also important. For more than a decade, there has been great concern about defendants held in jail awaiting trial. Not only has pretrial detention been condemned because a defendant is considered innocent until proven guilty, but some have also suggested that the incarcerated defendant faces disadvantages when the case is disposed and sentence imposed. Formally and informally then, court systems assign priority to cases involving jailed defendants. We see this influence in state speedy trial acts that mandate quicker processing time frames for those in jail. Informally, judges and other court actors typically place cases involving jailed defendants as first priority.

In general, we expect cases involving defendants out on bail to take longer to reach disposition. Bailed defendants and their attorneys have more incentive to try to stall their cases, whereas a variety of factors push jailed defendants toward a quicker disposition.

Type of Attorney

The literature strongly suggests that type of attorney is related to case processing time. Specifically, cases with privately retained counsel should take longer to reach disposition than those involving a public defender.

Levin's comparative study of Pittsburgh and Minneapolis suggests that private attorneys use delay as a tactic in pursuing strategies of economic maintenance, satisfying clients, and minimizing the time devoted to a case. Private attorneys, for example, may request a continuance because the client has not yet paid the full fee (Levin, 1977:78). Private attorneys also seek to project to the client that the lawyer is earning his fee. Case delay is one such ploy that can be utilized (Levin, 1977:78). Similarly, private attorneys seek continuances to mollify clients. "The simple passage of time is one of the most important, and sometimes one of the few, ways of minimizing a defendant's hostility and getting him to agree to his attorney's suggestions." (Levin, 1977:78) Finally, privately retained counsel use continuances to avoid full-length trials, thus minimizing time spent per case (Levin, 1977:78).

The literature suggests that a different set of tactical considerations affect the public defender. Rather than concerns about collecting fees, keeping clients happy so that they will recommend other clients, or simply wishing to avoid a trial that wastes time, public defenders have other concerns that stem from the institutionalized setting in which they work. Public defenders must worry about the level and demands of their caseload. And because individual public defenders typically practice before only one judge, they have less basis for seeking a continuance because of case scheduling conflicts than privately-retained counsel. Public defenders are also more directly tied to the ongoing court process and therefore wish to maintain good working relationships with their colleagues. They may be more sensitive, for example, to criticisms from judges about unnecessary motions, trials, and the like (Levin, 1977:79). Moreover, defense attorneys in general and public defenders especially have relatively few bargaining chips. Clients of the public defender are typically more likely to be charged with serious offenses, await a disposition in jail, and have a prior criminal record. Thus, public defenders are more susceptible to pressure, or in the words of one prosecutor: "With the public defenders, we control the docket in court, so you hassle them." (Heumann, 1978:62). Wice aptly summarizes the institutional nexus affecting the public defender, when he notes the thoughts of most private attorneys:

> The judges believed that they could best get through the mounting backlog of cases by having them placed within an institution more directly under their own control than among a loose assortment of individual private attorneys who might prove difficult to manage. (Wice, 1978:201).

Seriousness of the Charge

We would hypothesize that serious cases take longer to reach disposition than less serious cases. This was the conclusion of a study in the District of Columbia: "Serious cases stay in the system longer because the District Attorney is reluctant to accept a plea to a lesser charge, or the defendant is less anxious to plea." (Hausner and Seidel, 1980: IV-8). Plea bargaining studies similarly indicate that court actors devote more time and attention to serious cases. In our quantitative analysis, we operationalize seriousness of offense by the maximum number of months of imprisonment authorized by the legislature. This legalistic definition, however, may or may not be related to informal definitions of seriousness used by prosecutors, judges, and defense attorneys.

Nature of the Crime Charged

In conjunction with the seriousness of the crime, we would expect that different types of charges might proceed at different speeds through the courthouse. Thus, case processing time should be related not only to seriousness of the offense but also to the specific type of charge. Different charges present different problems for prosecutors and for court scheduling of police and civilian witnesses. The literature suggests differences across case types, but the differences are not consistent across jurisdictions. For example, in the District of Columbia robberies take longer than other types of cases (Hausner and Seidel, 1980: II-22), but in seven other cities robberies are processed more quickly (Brosi, 1979:55). Likewise, burglaries take longer to reach disposition than other types of cases in Portland, Oregon (Wildhorn, Lavin and Pascal, 1977:151), but less time in the Brosi study. Varying definitions of crime types account for some of these differences. Different jurisdictions may also have their own (different) reasons for deciding which cases should be given special attention. Nevertheless, the contradictory nature of the evidence to date suggests some fruitful lines of inquiry.

Case Complexity

We would hypothesize that complex cases take longer to reach disposition than simpler ones. This was the conclusion of the D.C. study which found that "more serious and complex cases remain unadjudicated for longer periods" (Hausner and

Seidel, 1980: IV-8). One indicator of "complex" cases in that study was the number of charges, which we also use in our quantitative analysis. Another indicator of complexity that we adopt is the number of defendants involved in the same case. Wice's study of private defense attorneys suggested that multiple defendant cases present unusual difficulties for the lawyer:

> "One of the most complex plea bargaining situations occurs in cases with multiple defendants...such cases often cause a race to the courthouse doors in order to achieve the maximum benefit from turning on co-conspirators. These cases, which offer great potential for immunized cooperation, present a real dilemma for the defense attorney who believes he may have a chance to win the case but realizes the practical necessity of protecting his client from being the fall guy. These situations occur most commonly in drug cases... (Wice, 1978:164).

We should note that most cases processed by state trial courts are typically not very complex. Most are "routine" street crimes — burglary, drugs, robbery, and theft. Rarely do state courts adjudicate multi-defendant drug conspiracy cases or major white collar crimes. It is these types of complex federal cases that have prompted the argument that the federal speedy trial act was intended for the typical federal criminal case, not the complex one.

We also need to note that case complexity and case seriousness, while often equated, are conceptually different. To be sure, some serious cases (like a sensational murder case) may indeed be quite complex because they involve numerous witnesses, extensive medical testimony, and perhaps a defense of insanity. But some less serious cases may also be complex. Drug cases, for instance, require an expert opinion that the substance seized from the defendant was an illegal drug. Thus, we would expect some less serious but still relatively complex cases like drug possession to take longer to reach disposition.

Mode of Disposition

Numerous studies discuss the relationship between delay and the dynamics of the disposition process. For example, Heumann reports that "as the trial approaches, the prosecutor's offer improves" (1978:73). The converse of this proposition, however, is not at all clear. Specifically, how the mode of case disposition affects case processing time suffers from much confusion.

One major area of difficulty is that plea bargaining practices typically have been explained on the basis of the court having too many cases and/or too few judges or other personnel to try those cases. Recent studies, however, have subjected this hypothesis to a rather devastating criticism (Neubauer, 1979:311-313). The literature now seeks to understand the plea bargaining process in terms of factors like the norms of courthouse actors rather than delay or backlog.

A second problem lies in the failure to recognize or highlight anticipatory behavior among courtroom actors. The expectation about whether a case will "surely plead" or "possibly go to trial" is important in structuring the actions of defense attorneys. Cases that are likely or possible to go to trial will generate more motions, for example. The preparation time during preliminary stages by attorneys — both prosecutors and defense attorneys — is likely to be much greater in cases that might go to trial.

Pleas of guilty. We expect cases disposed by the defendant's plea of guilty to ordinarily take less time than cases disposed by trial. One reason is that some defendants enter a plea of guilty relatively soon after charges are filed. Although it is generally assumed that delay works to the defendant's advantage, some studies suggest that defendants often benefit from quick dispositions (especially in non-serious cases). In his nationwide study of private defense attorneys, Wice likens the criminal justice system to a giant sieve in which the holes become smaller the longer a case remains in the system. Thus, the longer a defendant remains emmeshed in the process and the more time and energy devoted to him, the less amenable prosecutors are to negotiations (1978:164). Note that these assessments contradict an earlier-stated view that the prosecutor's offer improves as a case drags out.

Trials. Conversely, cases disposed by trial should take longer to reach disposition than pleas (see, for example, Nagel, 1975:63 and Brosi, 1979:46). Trials take longer than most pleas, even pleas on the day of trial which are not uncommon (Brosi, 1979:37 and Mather, 1979). The primary reason centers on the difficulty in scheduling trials. Trial dates are usually assigned well in advance of the actual date. But given the frequency of late pleas, court actors often do not know until the last minute which cases will go to trial. The result is unexpected postponements, as for example when attorneys have two trials set for the same date. Additionally, the lack of predictability in trial scheduling can cause difficulties in the availability of witnesses.

We should also note that the small percentage of cases that actually go to trial in any jurisdiction are a special, and unrepresentative, subsample of all cases. Property offenses like burglary and theft rarely proceed to trial, whereas more serious offenses carrying the likelihood of substantial prison sentences, like murder and armed robbery, are much more likely to go to trial (Neubauer, 1974; Mather, 1979). Similarly, some defendants, such as those with an extensive prior record, are more likely to take the "risk" of trial than others. Thus, in exploring the relationship between mode of disposition and case processing time, we need to examine other factors as well.

Dismissals. We expect that cases resulting in a dismissal will generally involve extensive time, longer than for cases disposed by plea. This hypothesis flows from studies of the federal courts, which have found that dismissals take longer than pleas or even trials.

The literature suggests two radically different explanations as to why a defendant's chance of dismissal may increase with the passage of time. Some suggest that delay causes cases to become weak, cases that otherwise would be prosecutable:

> As time passes, it becomes more difficult to make witnesses appear, and trials of state cases based on hazy memories are hazardous for prosecutors because they are less likely to end in conviction" (Rosett and Cressey, 1976:22).

Perceptions of defense attorneys that delay sometimes is their only defense highlights the widely-held belief that the prosecutorial merit of a case deteriorates over time. Note that this explanation examines the court process from the outside looking in.

An alternative explanation is that old cases are more likely to be dismissed because they were prosecutorially weak at the beginning. In this view, in other words, weakness causes delay. Prosecutors bury their "losers" by delaying them, either hoping that over time the case may somehow become stronger (through new evidence) or out of sheer reluctance to admit in open court that the case cannot be prosecuted (see Church, 1978a:59; also, Levin, 1977:196). Note that this explanation views the courthouse from the inside looking out.

These competing explanations have important policy implications. It is interesting to note that different studies have stressed one explanation or the other without placing them side by side. Our quantitative analysis cannot resolve these contradictory viewpoints, but our qualitative data based upon interviews and observations can be suggestive on this point.

Motions

Motions are requests for the court to make a legal determination. Some motions are simple and require little lawyer or judge time. Other motions, however, may require a fair amount of preparation time. We would hypothesize that cases involving motions would take longer to reach dispostion. As Katz noted,

> Motions...offer many opportunities for the use of delaying tactics by both sides...since few states require attorneys to submit at one time all the motions they intend to use, a lawyer bent on delay can introduce them singly over a period of months" (1972:6).

Read closely, though, this quotation implies that motions time is not necessarily additive. That is, merely filing a motion, even a "heavy" motion that will be contested and require a court determination, does not necessarily add to case processing time. To the extent that a court has regularized motions practices to require a filing of motions several weeks before the trial date, motions will not necessarily increase case processing time. Conversely, where motions may be filed up to the day of trial, motions can increase case processing time substantially.

Sentencing

The relationship between sentencing outcomes and case processing time needs exploration. Delay may be advantageous to the defendant's sentence, for example. Levin (1977) found that delay facilitates judge-shopping. Defense lawyers seek continuances either to avoid judges who have a reputation for being tough or to maneuver their case before a judge known to be lenient. Likewise, defense attorneys may seek delay to allow for pre-sentence rehabilitation — enrollment in a drug rehabilation program, for example. It is much easier for an attorney to argue that probation is an apporpriate sentence option because the defendant has been a good citizen for the last several months than a speculative argument that in the future s/he is likely to be a good citizen. None of these discussions, however, offers a firm basis for drawing specific hypotheses. In particular, imposition of sentence is the final step in the process (before appeal) and might therefore be affected by delay but not affect it. On the other hand, courthouse actors anticipate what the likely sentence will be for a defendant based on seriousness of the charge, prior criminal involvement and the like.

To the extent sentences are anticipated, the sentence can be viewed as an independent variable. The potential linkages between sentence and case processing time appear to be complex and interactive.

Defendant Characteristics

Numerous studies examine the relationship between characteristics of the defendant and criminal court processing. At a normative level, the concern has been that the poor and minorities are discriminated against. Empirical studies have examined the relationship between the defendant and type of crime charged, type of attorney, mode of case disposition, and the sentence imposed. Since these variables are an important part of our analysis of case processing time, we wish to analyze whether there are any direct links between the characteristics of the defendant and case processing time, once these factors are controlled. To the extent that data are available from the case files, we will look at the direct effects of age, race, sex, and prior criminal history of the defendant.

CONCLUSION

Delay in the courts is a commonly perceived problem. The term is so enmeshed in perceptions, however, that it is difficult to sort out the various dimensions. For research purposes, therefore, it is better to talk about case processing time, an objective measure of how long cases take to reach disposition. While this view hardly dispenses with important political and policy issues, it serves to focus the discussion more clearly.

Answering the question of how long cases take from start to finish is as elusive as it is important. How and what one chooses to count and measure has an important impact on the answers that are given. Total case processing time, we indicated, needs to be subdivided into separate phases: lower court time; trial court time, and sentencing time. Lengthy case processing time in one phase is not necessarily related to extensive case processing time in another. Our four courts differed as to where extensive case processing time occurred. To cite but one example, lower court time is extensive in Las Vegas and Providence but minimal in Detroit and Dayton. Moreover, not all case processing time is attributable to the court. Therefore, we have excluded cases involving a psychiatric exam because they are few in number and take

significantly longer than other cases. Similarly, we have subtracted days lost due to the defendant's failure to appear because that time is not directly under the control of the court. These refinements leave us with a set of more "typical" and "routine" cases. Given our rudimentary knowledge of the topic, it seems appropriate to focus analysis on the bulk of cases, leaving the clearly atypical and non-routine for later research.

Having identified the cases for analysis, we must next tackle a different set of measurement issues. Case processing time is very dispersed. No single summary statistic can adequately capture the range of variation. Thus, we not only use means, but also medians and box-and-whisker plots. These techniques highlight major variations between the cities that are obscured by single measures. Similarly, to measure changes over time we will employ time lines that illustrate means, medians, and "smoothed" (running) medians.

Once these measurement issues have been tackled, we can begin to investigate the relationships between case characteristics and case processing time. We have provided in this chapter a discussion of the theoretical underpinnings of these relationships. In the next chapter, we address strategies for analyzing multivariate relationships and for addressing the impact of innovations.

NOTES

[1]It is important to note that our analytic divisions of case processing time into individual phases are not always coterminous with legal definitions of the same events. Applicable state speedy trial laws are usually triggered by specific legal events (typically the filing of an information or an indictment) different from the one we have measured. More importantly, speedy trial laws typically focus on trial court time, thus excluding what we have labeled lower court time. In Dayton, Las Vegas and Detroit official time begins to toll when the case is officially filed in court. Similar problems occur in the choice of an ending date. For trial court time, we stop counting when the defendant either enters a plea of guilty, the case is dismissed and/or the trial begins. In most states, however, there is no formal disposition of a case until the defendant is sentenced and a judgment of conviction is entered.

For these reasons the figures to be presented throughout our report as to how long cases take will often differ from those reported by the courts. At times our figures will indicate more time because we start counting earlier. At other times our figures will indicate less time because we stop counting when guilt or innocence has, for all practical purposes, been determined.

[2]Analyzing separate phases of case processing time has the added advantage of highlighting case attrition. Cases drop from the court process during different phases, and this has measurement consequences.

[3]By contrast, psychiatric cases proceed as quickly as other cases in the lower courts. Thus, these cases are retained in the analysis of lower court time.

[4]Again we find that a simple summary measure can be misleading. In a significant proportion of warrant cases, defendants are missing for only brief periods. But some were missing for periods of two years or more.

[5]Excluding psychiatric cases from the analysis and subtracting days lost due to warrants from measures of case processing time are important for conceptual reasons. But these adjustments also have salutary benefits for later statistical analyses because they reduce (but do not eliminate) the small proportion of cases with very lengthy processing time. Often referred to as outliers, these extreme values introduce a high degree of bias into linear statistical analysis (see Blalock, 1972:381).

[6]Detroit is the exception; approximately eighty cases per month comprise the sample in this site.

Chapter 3

METHODS OF DATA COLLECTION AND ANALYSIS

In this chapter, we present a brief description of how we collected the quantitative and qualitative data that form the body of the text. Our evaluation of court delay-reduction programs is rooted in the experiences of some 5,000 defendants as well as the perceptions and attitudes of more than 100 court actors.

We played an active role in the selection of courts to be evaluated. From the some twenty-five projects funded by LEAA's Court Delay-Reduction Program, we chose four for analysis.[1] Two selection criteria were utilized. First, the projects to be evaluated had to focus on delay in criminal cases. Secondly, the projects to be evaluated must have begun their innovations no later than September 1978, in order to insure the adequacy of the post-intervention time period for quantitative analysis. The application of these two criteria resulted in the selection of courts located in Providence, Rhode Island; Dayton, Ohio; Las Vegas, Nevada; and Detroit, Michigan. The first three courts are general jurisdiction trial courts that hear a range of criminal and civil cases. In Detroit, a limited jurisdiction court (Recorder's Court) hears all, and only, criminal cases for the city of Detroit.

QUANTITATIVE DATA COLLECTION

Sampling From Case Files

Case processing information was gathered from official court records in each of the four sites. Key dates in the life-history of a case were collected, including the date of filing, arraignment, disposition, and sentence where applicable. Other dates were also collected, including those of motions, continuances, bench warrants, and other activities associated with the prolonging of a case. Additionally, we gathered information on a wide range of case and defendant characteristics, some of which were highlighted in Chapter 2.

In constructing the sampling design, we considered three issues. The most important was the definition of the population from which cases were to be sampled.

We chose to sample from the population of cases filed rather than from cases terminated. Other studies (e.g., Church et al., 1978) have used samples of cases terminated, but such samples are not well-suited for time-series analysis. For example, terminated cases sampled within a few months after the innovation would often be old cases filed, and processed in part, before the innovation. Thus, time lines based upon samples of terminated cases would be difficult to interpret, even quite a few months after the innovation date (in courts with a severe delay problem). Sampling from cases filed eliminates this problem, but one must be aware that some slow cases filed in the few months preceding the innovation date could be affected by the innovation. Neither sampling base is without some problems, then, but we believe that a sample based upon cases filed presents fewer problems of interpretation and analysis.

Secondly, we sampled across a substantial period of time: 36 months in Providence where the court received two grants at different points in time, and approximately 24 months in the other three sites.[2] This large number of months facilitated the collection of data before, during, and after the introduction of one or more innovations designed to reduce delay in each site. Furthermore, the collection of data over a significant time span facilitated an analysis of other potential changes in the courts, including the types of cases and defendants coming before them.

Thirdly, we chose the defendant as the unit for analysis. Therefore, in multiple-defendant cases — where several defendants were assigned the same case number — one defendant was randomly selected. This eliminated any potential biases from consistently selecting the first defendant listed in multiple-defendant cases.

Table 3-1 provides a summary of critical information about the sampling of cases in each site. In all four sites the case data are recent, typically spanning 1977 and 1978 as well as parts of 1976 or 1979. Likewise in all four sites, at least twenty-four months are represented in the samples. Because the Detroit court hears many more criminal complaints than the other sites, a much smaller sampling fraction was needed to achieve a substantial sample size. The resultant samples shown in the table range from 700 cases in Dayton to 2,079 cases in Detroit.

Table 3-1. Sampling Information for the Four Sites

Site	Sampling Period	Number of Months	Sampling Fraction	Projected Sample	Actual Sample
Providence	1/76-12/78	36	30%	1500	1381
Dayton	7/77—6/79	24	30%	760	700
Las Vegas	1/77—1/79	25	30%	850	844
Detroit	4/76—3/78	24	11%	2100	2079

Collecting and Coding Case File Data

Once we had drawn our sample of cases, we collected information about these cases from court files and other related sources. In each site, we hired undergraduate students from local colleges to collect this information. Data collection forms, designed specifically for each site, were used to maximize efficiency and minimize errors. For samples of these forms in each site, refer to the Appendix to this chapter. Data collectors were trained and actively supervised by a member of the professional staff of the project.

Once these data were recorded in the field, the data collection forms were returned to Chicago for coding, in preparation for computer analysis. Individual codebooks for each site were developed, and again undergraduate students were hired to perform the coding under the supervision of a graduate research assistant. Cases with missing information on critical variables were returned to the field for a second attempt at data collection.

QUANTITATIVE ANALYSIS STRATEGIES

Analysis Techniques: Assessing the Effects of Case Characteristics and Innovations in Providence, Dayton and Las Vegas

Just as the distribution of the key dependent variable — case processing time — needs to be explored (refer to Chapter 2), the nature of the relationships between various case characteristics and case processing time needs also to be explored. For innovations do not operate in a vacuum. They are introduced into courts having ongoing modes of operation and relatively fixed dockets. Thus, we first analyze bivariate relationships between selected case characteristics and case processing time in the upper and lower courts. Analysis of variance is utilized, so that the relationships are presented in intuitively-understandable units of analysis — days of case processing time.[3]

These relationships are presented both for the full sample period as well as for the two or three individual time periods within the sample. Changes in the strength, or even direction, of the bivariate relationships can be examined. Courts presumably should have as one goal the reduction in disparity of treatment across case and defendant characteristics. For example, in a court where defendants represented by a private attorney are processed much more slowly than defendants represented by the public defender, that court will ordinarily seek to reduce or eliminate entirely such a disparity. Therefore, changes in relationships and the time period of their occurrence are scrutinized closely, to determine indirect or unanticipated impacts of the innovations introduced in the courts.

Bivariate analysis, however, has its limitations, even in relatively large data bases where some controls can be imposed. Multivariate forms of analysis facilitate the disentanglement of joint effects, especially where there are a large number of independent variables. We have chosen stepwise multiple regression, the most commonly-employed form of regression in the social sciences today. Stepwise regression allows an interpretation of the relative influence of a number of different variables upon the dependent variable, case processing time. This relative influence is measured by the standardized coefficient ("beta"). The direct effect of these variables, in days of case processing time, is measured by the unstandardized coefficient ("b").

Regression analysis is performed for the full sample period and for the individual time periods. For the full sample period, the effect of the innovation is introduced, either in the form of a dummy variable representing the presence or absence of the innovation or in the form of an interval variable reflecting the date the case was filed. In either form, the result is an approximate measure of the impact of the innovation, controlling for case and defendant characteristics and their effects on case processing time. This impact is measured in both relative terms ("beta") and in days of case processing time ("b").

Notwithstanding these controls, further analysis is performed to identify any potentially confounding effects resulting from changes in case and defendant characteristics over time. Breakdowns of the frequency of case characteristics are presented for individual time periods. Thus, one can see whether, and how much, key case characteristics (i.e., those which explain case processing time) change over time. To the extent that the frequency of such characteristics does not change over time, still more confidence can be placed in the reductions that appear in case processing time over the periods. Correlatively, where case characteristics do change over time leaving a court with "easier" cases to dispose, small changes in case processing time cannot confidently be attributed to the innovation.

Analysis Techniques: Assessing the Effects of Case Characteristics and Innovations in Detroit

The analysis of the Detroit data differs from that of the other three sites. In Detroit, we delineate a model of case processing time consisting of a set of structural equations, each of which expresses the functional relationship between a dependent variable and its causes. (The details of the model are presented in Chapter 12.) After having specified the model, we estimate the coefficients of its equations by means of ordinary least squares regression (except for two equations which are estimated by generalized least squares). From the estimates we obtain, we calculate the direct and total effects of each of the independent and intervening variables on case processing time. Each effect is the change in days of case processing time that can be attributed to a change of one unit in the independent variable in question.

QUALITATIVE DATA COLLECTION AND ANALYSIS

The collection and analysis of qualitative data were integral parts of this project.[4] Qualitative data provided site descriptions of courts, the history of delay and delay-reduction programs in those sites, the various court participants' evaluations of the delay-reduction programs, and program implementation dates to facilitate the analysis of the quantitative data. The breadth and depth of the qualitative data also facilitated the quantitative analysis by providing explanations for unanticipated relationships between variables or dramatic changes in the quantitative data.[5]

Entree

We easily achieved entree in all sites. The project staff attended an LEAA Court Delay Program Cluster Conference at the beginning of the project. Court administrators, chief judges and other officials from each site receiving delay-reduction funds attended that meeting. This permitted an informal opportunity to meet representatives from each potential site, and those representatives were called as individual research sites were selected. The staff had the legitimation of working for the American Judicature Society and of being the national program evaluators.[6]

Members of the project staff made a brief two or three day visit to each site in advance of the first major data collection trip. (The first trip to Detroit coincided with the Cluster Conference because Recorder's Court hosted that conference). On the first trips, project staff met formally with the chief judge and court administrator. In many of the sites there were additional meetings with some of the judges, the prosecutor and public defender, and any other official that the court administrator or chief judge defined as important to the delay reduction project in each site. Those initial meetings facilitated ongoing entree because most court officials were familiar with the staff on return trips.

Field Work

Field work was designed to allow one staff member to spend a total of eight to ten weeks in a site in three major trips. In addition, one other staff member was to spend at least one week in each site to aid in interviewing. The trips were scheduled over the first eighteen months of the project. The first trip was designed to allow the

staff member to document the specifics of each delay reduction project, the history of delay in each site, and learn the stages in criminal case processing in each site. The second trip was a formal interview trip. And the third trip was a follow-up trip to complete interviews, if necessary, or any needed descriptions or participant evaluations.

The field work progressed differently in each site. Some sites demanded more than ten weeks and additional staff resources, and field work in one site was completed in six weeks. These differennces were a function of the number and complexity of the innovations, the number of respondents to be interviewed, and ease or difficulty of entree (Zelditch, 1971). One site required an increased number of trips because of problems with flights and hotel reservations, but the total time spent there was comparable to that spent in others.

On the first field trip, the project staff coordinated quantitative data collection and then spent two or three days observing each step in the criminal case process. This included, for example, warrant screening in Detroit, lower court preliminary exams in Dayton, arraignment calls in Providence, and trials in Las Vegas. Because each site processed its cases differently, the actual amount of time spent in each stage and the stages themselves varied. For example, the staff spent two days in the Providence criminal case scheduling office because case scheduling was a key to that delay reduction program. In Las Vegas, however, there was no scheduling office to observe.

The second major trip was an interview trip in which two staff members conducted interviews in each site. Those interview trips lasted from one to three weeks depending on the availability of and the number of respondents. Staff members conducted some joint interviews and did others separately. In Providence, the interview trip was scheduled during the ongoing implementation of the delay reduction program. Although all interviews were completed then, many were repeated several months later to gauge post-implementation evaluations.

The final trip to each jurisdiction varied the most. A block of time was actually spent in only one site. In the others, staff members made either a series of one week trips or completed data collection in one week. In one site, data collection progressed so quickly that remaining data were collected through a series of long distance phone conversations and interviews rather than by a trip to the site.

All information obtained during observation and conversations was recorded by the staff member in brief notes and then fully recorded each night in field notes. Staff members either typed out field notes, recorded field notes on a tape recorder for later transcription, or wrote field notes longhand. Each staff member experimented with a variety of techniques over the project period, but there was general agreement that the tape recorded field notes provided the most complete information.

Interviews

Formal interviews were conducted with a number of respondents in each site. Respondents were selected during the field work phase of the project as the staff identified those court actors who had been involved in some way in the delay reduction program (Spector, 1980). Thus, in each site we interviewed the chief judge, court administrator, prosecutor, public defender, judges hearing criminal cases presently or during the delay reduction program, and some assistant prosecutors and public defenders if possible. In some sites we also interviewed previous prosecutors, administrators in prosecutors' offices, public defenders, and others who were involved in the delay reduction project but were not currently in the court. We identified a number of private criminal defense specialists through our quantitative data and interviewed some of them in each site.

We designed separate, open-ended, structured interview guides for each site and each category of respondent in each site. The interview guides were tailored to the specific delay reduction innovation and its history. Each interview guide contained a common section on delay and the problems associated with delay. Interviews were arranged in advance when possible, either from the Chicago office or in person in each site. Sample interview schedules for each of the sites are included in the Appendix to this chapter.

Each interview lasted from thirty minutes to one hour, depending on the press of other business for the respondent or scheduling conflicts for the interviewer. Some of the early interviews were recorded by hand and later recorded more fully. We discovered, however, that virtually no one objected to tape recording the interviews and we recorded most later interviews. The taped transcriptions of those interviews provided richer data, and most of the quotations in later chapters come from those transcripts. All respondents were guaranteed anonymity and confidentiality, and quotations are used such that individual respondents cannot be identified.

Because we did not have time to pre-test the interview guides, early interviews in each site actually served as the site's interview guide pretest. No questions important to the analysis were excluded in later interviews, but some questions were originally too vague to elicit valid responses. More importantly, information received in early interviews was often verified in later interviews in response to direct interviewer probes. Thus, if early respondents consistently mentioned one problem or one unanticipated benefit from some aspect of the delay reduction plan, those problems or benefits were mentioned generally to later respondents for validation. This interview technique provided an internal validity check and indicated to respondents that the interviewers were somewhat knowledgeable about the specific innovation. As a result, many respondents were willing to give in-depth answers to questions and discuss openly certain issues. Most of the interviews were interactive in this manner and permitted insight into the actual operations of the innovations rather than simple programmatic descriptions (Vidich and Shapiro, 1969).

Use of McBee Cards

Field work and interviews resulted in fourteen volumes of field notes and interview transcripts. This sheer volume limited the utility of these raw data. Because particular pieces of information about any topic were scattered throughout the field notes from each site, we needed an analysis strategy that would facilitate retrieval of necessary information on any topic. The use of McBee cards, prepunched index cards that allow hand sorting, provided that retrieval ability.

The qualitative research assistant on the project was responsible for summarizing all information from the field notes onto the McBee cards. Each card contains summaries from approximately three pages of field notes and is prefaced by the name of the site, source of the information, corresponding page numbers in the field notes, and devised codes indicating the topics of information contained on the cards. Although the process of summarizing information was very time consuming, the resulting completed cards have allowed fast retrieval of very specific information both within and across sites.

Coding of McBee Cards

As field notes and interview transcripts were summarized on the McBee cards,

the research assistant developed a qualitative codebook from which all summaries were coded. The codebook was developed in an interactive process as the project staff became familiar with both the sites and their innovations. Some of the codes were specific to each project while others concerned general court issues. It was important to make the codes fit the data rather than attempt to squeeze the data into preconceived codes. The codebooks underwent eleven revisions and the completed version is a twenty page codebook with 113 codes in several substantive categories. Each code represents a separate variable related to the analysis.

The codebook variables are conceptually grouped. The first set of variables allows the identification of the site, the position of the respondent, the field worker who collected the data, and the location of the information on specific pages in the field notes. The second set of categories specify site-specific delay reduction programs and any descriptive or evaluative comments made about them. The third set refers to specific officials or offices within the court. The fourth set of codes refers to specific stages in the adjudication process for criminal cases and to variables related to case processing such as the use of the computer or specialized court calls. The final two groups of categories refer to delay and to general issues in courts — budget, politics, local legal culture.

To provide internal consistency, the qualitative research assistant coded all of the McBee cards. Once codes were noted on each card, the McBee card holes were punched through to correspond to the coding category. Most of the cards were coded with from five to ten codes, depending on the topics covered in the field notes or interview transcripts. With each card containing a summary and a series of codes, the cards can be manipulated by running a long needle through a coding category, and each card bearing that code punched out will fall out of the deck of McBee cards. This technique permits fast retrieval of very specific information. By manipulating the cards in this way, it is possible to find out, for example, what prosecutors in Providence thought about the criminal case scheduling offices or how attorneys in all sites devised new defense strategies in response to a court's innovation. Because the information on the cards is summarized, it is not necessary to return to the original field notes except to obtain direct quotations. The McBee cards and codebook are specific enough to permit secondary analysis of the data by those not familiar with the project, and to permit project staff members less familiar with certain sites to understand those sites or to look for specific information to explain unexpected quantitative findings.

SUMMARY

Each of the data bases — quantitative and qualitative — provides a store of information about the delay-reduction programs in the four sites. Yet it is the blending or synthesis of these data bases that yields the most reliable statements about impact. The following chapters that focus on each site attempt to provide the basis for a synthesis, by first presenting a qualitative-based view of the site and its program, and then a quantitative view. Before proceeding to those, however, we provide in Chapter 4 an overview of each site and its local socio-legal culture.

NOTES

[1]The restriction of the number of sites to four was based upon the Request for Proposal from the National Institute of Law Enforcement and Criminal Justice (LEAA). We persisted, against some opposition, in maintaining this limitation, because of the need for large samples of cases collected over many months and the need for extensive field research.

[2]The Detroit sample was drawn independently for each month's case filings. In the other three sites, the sample was drawn independently for each year.

[3]Ideally, we would also like to examine differences of medians, but this is impractical for large numbers of relationships.

[4]For a thorough discussion of the uses of qualitative methods in evaluation research, see Cook and Reichardt (1980).

[5]See, for example, Barton and Lazarsfeld (1969:163).

[6]This legitimation could actually have harmed entree if court actors had defined the project staff as threatening. However, the length of time spent in the field facilitated the development of some informal relationships and reduced the potential threat. See Dean et al. (1969).

APPENDIX

Case File Data Collection Forms:
- Providence/Bristol
- Dayton
- Las Vegas
- Detroit

Providence Private Attorney Interview Guide
Dayton Interview Guide
Las Vegas Public Defender Interview Guide
Detroit Interview Guide

PROBLEM_____

PROVIDENCE/BRISTOL: COURT FILE

TOP OF FACE SHEET

1. Def. #___of___ 2. Def._____ 3. Sup./Fam. Ct. #_____

4. Def. Atty._____ → 5. Atty. Type
0_Public Defender
1_Retained

6. Offense Date_____ 7. Arrest Date_____ 8. District Ct. #_____

9. D.O.B._____ → 10. B.C.I. #_____

ORIGINAL CHARGE (Face Sheet and Indictment or Information)

11. Count 1_____ Stat#_____
Count 2_____ Stat#_____
Count 3_____ Stat#_____

INDICTMENT/INFORMATION → 12. Which → 13. Date filed_____
0_Indictment
1_Information

ARRAIGNMENT → 14. Date_____ → 15. Judge_____

16. Bail Type → 17. Amount_____ → 18. Make Bail?
1_Surety
2_Surety/Cash
3_Own recognizance
4_No Bail Allowed
0_No
1_Yes → Stage?
1_District Court
2_Arraignment
3_Other → Date_____

MOTIONS/NOTICES

19. Date filed_____ 20. Judge_____ 21. Type_____

Date filed_____ Judge_____ Type_____

Date filed_____ Judge_____ Type_____

Date filed_____ Judge_____ Type_____

Date filed_____ Judge_____ Type_____

Date filed_____ Judge_____ Type_____

CONTINUANCES

22. Date granted_____ 23. Judge_____ 24. Ctd. to_____ 25. Reason_____

Date granted_____ Judge_____ Ctd. to_____ Reason_____

Date granted_____ Judge_____ Ctd. to_____ Reason_____

Date granted_____ Judge_____ Ctd. to_____ Reason_____

Date granted_____ Judge_____ Ctd. to_____ Reason_____

Date granted_____ Judge_____ Ctd. to_____ Reason_____

BAIL CHANGES

26. Bail changed?
0_No
1_Yes → 24. Date_____ → 25. New Bail → 26. Amount?_____
1_Surety
2_Surety/Cash
3_Own Recognizance
4_No Bail Allowed

27. Reason for change
0_Violation
1_Motion for reduction
_Other_____

TRIAL NOTICE

28. 21 Day Trial Notice → 29. 7 Day Trial Notice
0_Not Present
1_Present → Date_____
0_Not Present
1_Present → Date_____

DISPOSITION

30. Date_____

31. Judge_____ → 32. Defense Attorney_____

33. Verdict
1_Pled Guilty/Nolo Contendre
2_Bench Guilty
3_Jury Guilty
→ Count 1_____
Count 2_____
Count 3_____
4_Bench Not Guilty
5_Jury Not Guilty
6_Dismissed_____
7_No Disposition_____

SENTENCE → 34. Date _____

35. Judge_____ → 36. Def. Atty._____

37. Fine ? → 38. Costs?
0_No
1_Yes$_____
0_No
1_Yes $_____

39. Sentenced to_____

41. Date sent. . to be executed_____ → 41. Credit time served ?_____
0_No
1_Yes_____Days

42. Date sent. executed_____

PLEA CONSIDERATIONS (See Request to Enter Plea or "Affidavit and Atty Certification")

_____

CRIMINAL HISTORY RECORD

43. Present?
0_No
1_Yes → 44. FBI Rap Sheet? → 45. Total Additional Indict./Info_____
0_No
1_Yes
↓
46. Total Convictions_____

CONFESSION → 47. Present?
0_No
1_Yes

PROBLEM_____

DAYTON

PRINTOUT

Case #_____ Description_____

Judge (JD)_____ Bond_____

# of Def._____ P-Number_____

Def. #_____ Bind-Over Date_____

Section(s) 1._____ Arrest Date_____

2._____

3._____

COURT FILE COVER

Case #_____ Def. Name_____

Charges_____ Section_____

_____ _____

_____ _____

Date Commenced_____ Date Disposed_____

COURT FILE TEXT

Date Indictment Filed_____

Return of Warrant

1. Not Present
2. Arrest Date_____
3. Service Date_____

ARRAIGNMENT Date_____

Date Pretrial Set_____ Judge_____

BOND

Type
1. Own Recognizance
2. Cash
3. Cash/Surety
4. Surety
5. Remand (No Bail)
6. Other_____
9. N.A.

Amount_____ Make Bail?
0 No
1 Yes Date_____

BOND CHANGES

Bond Changed?
0 No
1 Yes Date_____ New Bail Amount_____ Make New Bail?
1. Own Recognizance
2. Cash
3. Cash/Surety
4. Surety
5. Remand (No Bail)
6. Other_____
9. N.A.

0 No
1 Yes Date_____

CAPIAS WARRANT

0 No
1 Yes Date_____ Date Cancelled_____

Date In Court_____

MOTIONS

Date Filed_____ Judge_____ Type_____ Granted?_____

Date Filed_____ Judge_____ Type_____ Granted?_____

Date Filed_____ Judge_____ Type_____ Granted?_____

Date Filed_____ Judge_____ Type_____ Granted?_____

CONTINUANCES/ADJOURNMENTS

Date Granted_____ Judge_____ Cont'd To _____ Reason _____

Date Granted_____ Judge_____ Cont'd To_____ Reason_____

Date Granted_____ Judge_____ Cont'd To_____ Reason_____

DISPOSITION Date_____ Judge_____ Defense Atty._____

Verdict

1. Plea
2. Bench/Guilty
3. Jury/Guilty
4. Bench/Not Guilty
5. Jury/Not Guilty
6. Dismissal_____
7. No Disposition_____

Count 1_____ Section_____

Count 2_____ Section_____

Count 3_____ Section_____

SENTENCE Date_____ Judge_____ Defense Atty._____

Fine
0 No
1 Yes $_____

Costs
0 No
1 Yes $_____

Sentenced To_____

_____

Change In Sentence
0 No
1 Yes Date Changed_____ Reason_____

Changed To_____ _____

Attorney Type
1. Appointed/Private
2. Defender
3. Retained
9. N.A.

PRIOR RECORD

Arrests_____

Convictions_____

FOUR MOST RECENT CONVICTIONS

Original Charge	Conviction Charge	Date of Conviction	Sentence
1._____	1._____	1._____	1._____
2._____	2._____	2._____	2._____
3._____	3._____	3._____	3._____
4._____	4._____	4._____	4._____

PROBLEM _____

DATA COLLECTOR _____

LAS VEGAS

NAME_____ AGE_____ SEX 1 Male 2 Female RACE 1 Black 2 White 3 Other

CASE #_____

DEFENDANT #_____of_____

COMPLAINT 1 Yes 2 No Date_____ Judge _____

Offense Date_____

Charge 1._____ Stat.#_____

2._____ Stat.#_____

3._____ Stat #_____

Total # of Counts_____

JUSTICE COURT

1st Appearance Date_____ City 1 Las Vegas 2 North Las Vegas 3 Other

Judge_____

Original Bond

1 Own Recognizance
2 Cash or Surety
3 Cash or Surety/Property
4 No Bail (Remanded)
6 Other_____
9 N.A.

Amount_____

Bail Bondsmen 1 Yes 2 No

Make Bail? 1 No 2 Yes-Date _____ 3 N.A

PRELIMINARY HEARING Date_____

Judge_____

Waived or Held? 1 Waived 2 Held 9 Can't tell

Defense Attorney_____

1 Court Appointed
2 Public Defender (DPD)
3 Retained
9 N.A.

Total # of Justice Court Judges_____

INFORMATION Date_____

INDICTMENT 1 No 2 Yes-Date filed_____ Bond Set When Indictment Filed_____

DISTRICT COURT-INITIAL ARRAIGNMENT

Date_____ Judge_____ Defense Atty._____

1 Court Appointed
2 Public Defender (DPD)
3 Retained
9 N.A.

Type Bond at District Court

1 Own Recognizance
2 Cash or Surety
3 Cash or Surety/Property
4 No Bail (Remanded)
5 Continued from Justice Court_____
6 Other_____
9 N.A.

Amount _____ Make Bail? 1 No 2 Yes-Date_____ 9 N.A

CHANGE IN DISTRICT COURT BOND AFTER INITIAL ARRAIGNMENT

1 No 2 Yes-Date_____ New Bond_____ Make Bail? 1 No 2 Yes-Date_____ 9 N.A.

Bench Warrant

1 No
2 Yes-Date Issued_____ Date Quashed_____

MOTIONS/HEARINGS/WRITS/NOTICES

Date filed_____Date heard_____Type_____Judge_____Grant _____

Date filed_____Date heard_____Type_____Judge_____Grant _____

Date filed_____Date heard_____Type_____Judge_____Grant _____

Date filed_____Date heard_____Type_____Judge_____Grant _____

Date filed_____Date heard_____Type_____Judge_____Grant _____

TOTAL # CALENDAR CALLS_____

HABEAS CORPUS APPEAL TO NEVADA SUPREME COURT

Date filed_____Date decided_____ 1 Yes 2 No

CONTINUANCES/ADJOURNMENTS

From_____To_____Req. By_____Reason _____

From_____To_____Req. By_____Reason _____

From_____To_____Req. By_____Reason _____

From_____To_____Req. By_____Reason _____

From_____To_____Req. By_____Reason _____

From_____To_____Req. By_____Reason _____

From_____To_____Req. By_____Reason _____

From_____To_____Req. By_____Reason _____

From_____To_____Req. By_____Reason _____

From_____To_____Req. By_____Reason _____

DISPOSITION

Date_____Judge_____Defense Atty_____

1 Court Appointed
2 Public Defended (DPD)
3 Retained
9 N A.

Verdict

1 Plea
2 Bench/Guilty
3 Jury/Guilty
4 Bench/Not Guilty
5 Jury/Not Guilty
6 Dismissal_____
7 No Dismissal_____

Count 1_____Stat# _____

2_____Stat# _____

3_____Stat#_____

SENTENCE

Date_____Judge_____Defense Atty._____

1 Court Appointed
2 Public Defender (DPD)
3 Retained
9 N.A.

Fine? 1 No 2 Yes $_____

Costs? 1 No 2 Yes $_____

Sentenced to_____

Credit Time Served_____Days

Change in sentence?

1 No
2 Yes-Date_____Changed to_____Reason_____

Probation Violations_____

PRIOR RECORD

Arrests_____ # Convictions_____

FOUR MOST RECENT CONVICTIONS

Original Charge	Conviction Charge	Date of Conviction	Sentence
1.	1.	1.	1.
2.	2.	2.	2.
3.	3.	3.	3.
4.	4.	4.	4

PROBLEM _____

COURT FILE: DETROIT

FRONT COVER ——→ 1. Holds or Pending Cases: # _____

2. Case # _____ 3. Def. _____ 5. DPD # _____
4. Def. 7 _____

COMPLAINT ——→ 6. Date _____

ARRAIGN ON WARRANT ——→ 7. Date _____ ——→ 8. Continuances?

0 No
1 Yes → How many? _____
Dates _____

9. Plea

0 Not guilty
1 Guilty
2 No contest

10. Bond Type ——→ 11. Amount _____ ——→ 12. Make Bond? (text)

1 Personal
2 Surety
3 Cash
8 Other _____
9 N.A.

0 No
1 Yes → Date _____
9 N.A.

13. Judge _____

EXAMINATION ——→ 14. Date _____ 15. Continuances?

0 No
1 Yes → How many? _____
Dates _____

16. Disposition

1 Waived
2 Held/Bound Over
3 Held/Bound Over on reduced charge → Charge _____ Stat # _____
Charge _____ Stat # _____

17. Bond

0 Continued
1 Change ——→ 18. Bond Type ——→ 19. Amount _____ ——→ 20. Make Bond?

1 Personal
2 Surety
3 Cash

0 No
1 Yes
9 N.A.

21. Judge _____ 22. Pros. _____ 23. Def. Atty _____

ARRAIGNMENT ON THE INFORMATION ——→ 24. Date _____ 25. Judge _____

TRIAL ——→ 26. Date _____ 27. Continuances?

0 No
1 Yes → How many? _____
Dates _____

28. Def. Atty _____ 29. Pros. _____ 30. Judge _____

31. Date of Verdict _____

32. Verdict

1 Plea
2 Bench/Guilty
3 Jury/Guilty
4 Bench/Not Guilty
5 Jury/Not Guilty
6 Dismissed _____
7 No Disposition _____

Count 1 _____ Stat # _____
Count 2 _____ Stat # _____
Count 3 _____ Stat # _____

SENTENCE ——→ 33. Date Set _____ 34. Date Sentenced _____

35. Def. Atty _____

36. Credit time Served? ——→ 37. Fine? ——→ 38. Costs?

0 No
1 Yes $ _____

0 No
1 Yes → Court $ _____
Atty $ _____

39. Sentenced to _____

PRETRIAL STATEMENT (text) 40. Date _____ ——→ 41. Continuances?

0 No
1 Yes → How many? _____
Dates _____

42. Prosecutor's Recommendation

1 No Reduced Plea _____
2 Dismiss _____
3 Adjourn _____
4 Reduced Plea _____

43. Prosecutor _____ 44. Comment _____

PLEA STATEMENT (text) 46. Attorney type

1 Appointed/Private
2 Defender
3 Retained
4 Change in type
9 N.A.

ORIGINAL CHARGE ON WARRANT (text)

47. Count 1 _____ Stat # _____
Count 2 _____ Stat # _____
Count 3 _____ Stat # _____

DEFENDANT (text) 48. Sex ——→ 50. Race ——→ 51. D.O.B _____

0 Male
1 Female

0 Black
1 White
2 Other

MISCELLANEOUS ENTRIES (back cover and text)

Date _____ Action _____ Judge _____
Date _____ Action _____ Judge _____

PROVIDENCE PRIVATE ATTORNEY
INTERVIEW GUIDE

I. There have been several new programs in the Superior Court in the past few years which have attempted to reduce delay. Generally, how have these programs affected your office? You? Your clients?

II. Were any members of the private bar involved in planning these programs?

III. What is your general impression of the Push Program conducted during November and December, 1977? Were case dispositions routine? Did the program create any hardships for you or your clients? Did you or your clients benefit from the program?

IV. What effect have changes in the scheduling office had on you? On case scheduling? Is case scheduling more predictable now? What problems had you had either with the office or with case scheduling in general?

V. What do you think of the Monday morning calendar call?

VI. The use of pretrial conferences new in the past 18 months? Are they useful?

VII. How have these general changes affected the type of case preparation and the timing of case preparation?

VIII. Have delay reduction programs in the court affected the type of dispositions you're getting?

IX. Have these programs affected the mood of the court generally? The bench? The relationships between the defense bar and the prosecution?

X. Will these programs have any lasting effect? What?

XI. Has your defense strategy changed as a result of these programs? Do you request fewer continuances? Use a different psychological timetable?

XII. Is it more difficult for you to get what use to be a routine continuance?

XIII. What do you think of the idea of a plea cut-off date?

XIV. How do you evaluate a case? Can you predict the outcome or timing after your first meeting with a client? Is this problematic now? Are any cases predictable?

XV. Everyone accuses defense attorneys of causing delay. Do they? Is delay a defense strategy?

XVI. General assessment of the court now. Strengths and remaining problems.

DAYTON INTERVIEW GUIDE

General Questions

I. How long have you been on the bench/in office?

II. How much do you know about the new court management plan? How and why was it introduced? Who was involved in decision-making and in implementation?

III. What was the management plan supposed to do for the court? Was it delay specific or more oriented to management issues?

IV. Is delay a problem here now? Was it when the plan was introduced? Has it historically been a problem in this county?

V. What do you consider an old case here?

VI. How would you generally evaluate the management plan?

VII. Why were centralized arraignments adopted? How are they working? What difference have they made to you?

VIII. Why were discovery procedures changed? How is the new procedure working? What difference does this change make to you or to attorneys? Could the concept withstand some legal challenge?

IX. Judges no longer participate in pretrial conferences. What difference does this make in terms of the actual negotiation process and in dispositions?

X. How are the scheduling conferences and plea cutoff date working? How did you expect them to work?

XI. Generally, what impact have these changes in the court had on case dispositions, time necessary per case, negotiations, and sentences? Are pleas coming earlier? Has there been an increase in the trial rate?

XII. Is there increased coordination with the lower courts? How is this working? Is it realistic to give a defendant a Common Pleas arraignment date there?

XIII. What were the problems encountered in the first few weeks of the new plan?

XIV. Has there been any change in communication within the criminal justice community? Does this have anything to do with some of the committees that have been created?

XV. What difference has the team concept among prosecutors made?

General Delay Questions:

XVI. How would you evaluate the Prosecutor's Office? The Public Defender? The local criminal bar?

XVII. What is an old case here?

XVIII. What are the major reasons a case is delayed?

XIX. Who is most responsible for delay? Who gains and who loses?

XX. Is there any pressure to speed up or slow down in your work?

XXI. The Ohio Supreme Court's Rules of Superintendence speak to the delay issue. Do they make any difference in the operations of the court?

Questions for Judges:

XXII. Many of the changes in the court management plan were intended to have an impact on judge time. Did they? Do you have more time for trials now? Is your docket call shorter or longer?

XXIII. What impact have changes on the criminal side had on your civil cases?

XXIV. Generally, what has the plan done to your workload? To justice? To dispositions?

Questions for Public Defenders:

XXV. Are your attorneys prepared for pretrials? Are prosecutors? Are pretrial negotiations different without a judge present? Do you like the plea cutoff date?

XXVI. Why doesn't the prosecutor make sentence recommendations?

XXVII. Has plea bargaining changed in terms of offers?

XXVIII. How do you feel about the changes in discovery procedures?

Questions for Prosecutors:

XXIX. How do you feel about the changes in discovery?

XXX. What do you think of the concept of the plea cutoff date? Have plea negotiations changed because of this? Because of the judge's absence?

XXXI. Why doesn't the prosecutor make sentence recommendations?

XXXII. How was the team concept begun? What was it supposed to do? Is it working?

LAS VEGAS - PUBLIC DEFENDER
INTERVIEW GUIDE

RESPONDENT_____

POSITION_____

DATE_____

LENGTH OF INTERVIEW_____

INTERVIEWER_____

We are in Las Vegas to do a study of team and tracking. We'd like to get your views on this program, as well as your thoughts about judicial administration.

I. How long have you been in the Public Defender's Office?

II. Las Vegas used a master calendar system until 1975. How did it operate (based on your experience or on general understanding)?

What problems did you experience under the master calendar?

What were the benefits of this calendaring system?

III. The court changed to an individual calendar in 1975. Why was this change made? Who decided to make the change?

Were you involved in the change?

How has this change affected your work? The work of others in the office?

IV. When was the general issue of delay defined as a problem in the Las Vegas courts? How? Why?

V. How did T&T originate? Were other programs considered?

Why did the court adopt T&T.

Who was involved in planning and implementation? How was it implemented?

VI. What impact did T&T have on your work? The work of the court generally?

VII. How did the concept of the overflow judge originate? Who thought it up?

Why did the court adopt it (what did the court hope to accomplish through the use of an overflow judge)?

Has the idea worked? What are the major problems it has created (uncertainty)?

VIII. Why did the court decide to alternate criminal and civil calendars?

How did the change affect you?

IX. A coordinating committee was created as part of the T&T concept. Who was on the committee? What was the committee supposed to do? Has it worked?

X. How would you evaluate T&T? Has it worked? What are the biggest successes and failures of the program?

PROBE ON IMPACT. Success and failure in the following areas:
- Continuances
- Timing of pleas
- Better case preparation
- Change in trial rates
- Change in number or type of motions
- Failed defendants

XI. According to the grant application, assistant district attorneys were suppose to rotate between justice court and district court. Has this occurred? Why not?

XII. A key element of the team and track concept was to promote better coordination and communication between assistant district attorneys and defense counsel. Has this occurred?

For members of a particular T&T

XIII. Which judges does your team regularly appear before?

XIV. How are cases assigned within your team?

XV. At what time, might you discuss a possible case disposition with the District Attorney's office?

XVI. What types of plea agreements are typical?

XVII. How do the District Attorneys bargain? Do they have any particular negotiating philosophy?

XVIII. Court intake officers were hired with T&T money. What were these officers originally supposed to do? Have they done this?

How have these people affected the flow of criminal cases?

XIX. Who is primarily responsible for scheduling cases here? Has this changed in the past few years.

How are motions scheduled?

How are trial dates determined? How often are they continued?

XX. Every court keeps some kind of court statistics. Who performs this function here? Are the statistics useful to you?

General Delay Issues

XXI. Is delay a problem here?

XXII. What do you consider an old case? What does the court consider an old case?

XXIII. Why are cases delayed here?

XXIV. Who benefits and who loses from delay?

XXV. Who is most responsible for delay here?

XXVI. Is there any pressure to speed up or slow down the processing of cases? From whom?

XXVII. What happens if you are too fast or too slow?

XXVIII. Has the court made any other major changes other than T&T and the new calendaring system in the past few years? Would you consider this court to be innovative? Who is most responsible for change here?

XXIX. What general problems remain in the court? What changes would you suggest if you had the authority to do so?

XXX. What are the traditional relationships here between the bench and the bar? The prosecution? Between the defense and the prosecution?

XXXI. What makes the Las Vegas courts distinctive?

XXXII. What else should I know about the courts in Las Vegas?

Need for Follow-up?_____

Areas for Follow-up?_____

_____

DETROIT INTERVIEW GUIDE

RESPONDENT_____

TITLE_____

DATE_____

LENGTH OF INTERVIEW_____

INTERVIEWER_____

GENERAL JUDGE INTERVIEW GUIDE

We are in Detroit to look at some programs that were introduced in Recorder's Court with the goal of reducing delay, and we are specifically interested in the Crash Program and the Delay Reduction Program. First, we would like some background information.

I. Why did Recorder's Court switch from an individual calendar to a central docket in 1975?

Do you have a preference for either assignment system? (Probe here for management philosophy -- some judges like to try cases no matter how they get them, and others have management concerns).

What effect did this change have on you in terms of workload, number of cases, or case management efficiency?

II. We understand that some time after this central docket was introduced, the Supreme Court mandated some changes in Recorder's Court. What caused the Supreme Court to become involved?

Were you involved in any of the planning? Who was?

How were specific program innovations communicated to you?

III. We would like your impressions about how these major programs affected those involved in the courts.

How were the judges affected?

How about the prosecution? (probe for structure of office and workload)

Assigned and retained counsel?

The Defender's Office

Did sentence or charge bargaining practices change during these programs?

Did dispositions change?

What impact did all of these programs have on the quality of justice in Recorder's Court?

IV. We understand that a number of specific programs were introduced during the Crash Program and the Delay Reduction Program. We are going to list each of them, and we would like to know what each was supposed to do, how each affected the court, and how each affected you and your docket.

Docket Control Center

90 Day Track/Case Tracking System

Floor Teams-- What is it like to be a member of a team? Are these teams operative in reality or only on paper? How were floor leaders selected and what are their responsibilities?

Fee Schedule for Assigned Counsel

Centralized Assignment of Assigned Counsel

Introduction of 10% Cash Bond

1 Day--1 Trial

Use of Visiting Judges

Meetings. Who met? Who attended general meetings? Were there judges meetings?

V. We understand that voluminous statistics were collected during this period. When did you first become aware that they were being collected?

Were they useful to you? To the Court?

How were they used by the judges?

By the Court?

By the Special Court Administrator?

How did their existence affect the mood of the bench?

VI. Generally, what was it like to be on the bench during such an active period?

Were the extraordinary measures used during these programs the best way to have solved Detroit's problems in 1977? What would you have done if you had been in charge?

What is distinctive about Detroit's courts?

VII. Questions to add selectively when time permits.

What is delay in Detroit?

Is or was delay a problem here? How was this defined?

Who gains and/or loses from delay?

Who is most responsible for delay here? Defense, prosecution, defendants, the court?

How long does a routine case take to be processed from arrest to sentencing?

How about a difficult case?

What happens to a judge who is either too fast or too slow?

Are there any elite attorneys in Recorder's Court? Why are they considered elite?

What are the most serious problems now facing Recorder's Court?

Chapter 4

THE ROLE OF LOCAL SOCIO-LEGAL CULTURE

Courts vary. Research has documented differences within and between courts in areas such as plea bargaining practices, sentencing patterns, and case processing. While some of these differences have been attributed to local variations in law, custom, and political environment, these cultural and legal differences have not been systematized until recently. Research has begun to ask how local and state variations are reflected in justice systems, why courts operate differently even though they are supposed to do similar things, and how court systems reflect their environments.

In this chapter we will deal with our research sites as court systems. We will discuss the history and utility of the concept of "local legal culture" as it has been applied to court systems. We propose refining the concept of local legal culture so that it includes many variables internal and external to courts, calling the redefined concept "local socio-legal culture." We will then describe the local socio-legal culture of our four research sites. The discussions in this chapter serve as a background to the later descriptive chapters.

LOCAL LEGAL CULTURE

In describing and explaining differences between court systems, researchers have discussed two themes: 1. local discretionary systems, and 2. contextual issues. The discretionary system theme involves variables internal to courts. Organizations and organizational employees or actors evolve some agreed upon way to operate that reflects shared attitudes and goals, and then settle into a state of equilibrium. If something disrupts that system, the informal organization either adjusts to, counterbalances, or ignores the disruption and eventually returns to some state of equilibrium. Contextual issues are external to courts and concern the local environment within which courts and other institutions operate. Courts are affected by local legal, structural, and cultural variables. These two themes are important to understanding the given boundaries within which all of the delay reduction programs operated. Innovations may disrupt the local discretionary system, and innovations operate within a local environment.

Local Discretionary Systems

Nimmer (1971) noted the importance of the "local discretionary system" in his study of the impact of the omnibus hearing in San Diego. In response to a new step in the criminal process, the court's discretionary adjustment process virtually counteracted any anticipated delay reduction from the innovation. Similarly, Levin (1975) noted the importance of "system-maintaining adaptations" as courts counteracted formal remedies to delay: informal agreements among court actors can undermine innovations. Eisenstein and Jacob (1977) called this group of courtroom personnel who make informal agreements concerning shared norms and values the "courtroom workgroup." Thus, judges, defense attorneys, prosecutors, and other support personnel who interact with one another regularly in the same courtroom devise shared goals and means to achieve those goals. This evolved court routine permits personnel to meet perhaps conflicting goals of their respective professional offices: convictions for the prosecution, fair deals for the defendants, and a reasonable clearance rate for the judge. The workgroup can facilitate or hinder innovations in the courtrooms through these shared understandings (Lipetz, 1980).

Decisions and operative norms used by court actors reflect attitudes toward the law and legal systems. Friedman (1977) has referred to these attitudes of legal professions as "internal legal culture." Church et al (1978a) posited a relationship between this internal legal culture, or "local legal culture" as they termed it, and delay in courts. Church et al found that conventional explanations for delay failed to explain much of the variation among the twenty-one criminal courts studied. The percentage of serious cases and the percentage of trials in each court were virtually unrelated to delay. The relationship between the type of calendaring system and delay was unclear. The size of the court and the strength of the case management system were only somewhat related to delay. Information systems were somewhat faster than systems which relied primarily on the Grand Jury. The only variable clearly related to delay in this study was the size of the backlog, but the authors suggested a tautological relationship in this case: delay creates a backlog which in turn causes further delay.

Lacking a strong explanation for delay in criminal courts, the authors stated that local variations in courts, as expressed in local legal culture, were primarily responsible for delay. They defined local legal culture as "...established expectations,

practices, and informal rules of behavior of judges and attorneys" (1978, p. 54). In sum, local court actors implicitly share a sense of timing and proper methods for the disposition of criminal cases. Potential solutions to delay must take into account this "local legal culture."[1] The concept of local legal culture as described in this study is basically a restatement of the political science concept of legal culture. Local legal culture does not take into account variables external to courts.

Contextual Issues

Courts and all social institutions operate within and are influenced by the local environment. Most discussions of this environment concern "lay legal culture" (Friedman, 1977), or how the general public feels about law, the uses of law, and when to use legal institutions as oppopsed to other social institutions. For example, Sarat (1977) has analyzed and summarized studies tapping public attitudes concerning such topics as the police, courts, and civil liberties.

Although discussions of attitudes do provide information on the climate of public opinion within which courts operate, they do not exhaust a description of other aspects of culture that influence courts and court operations. Levin (1972) attributed sentencing differences in Pittsburgh and Minneapolis to differences in their respective political traditions. McLaughlan (1977) has discussed the role of litigiousness and basic demographics in creating a local legal environment. And Nimmer (1978) has stated that statutes, case law, local agency policies, and workgroup norms influence local expectations of and interaction in the judicial process.

Although a clear list of external factors that can be expected to have some influence on courts and other legal institutions is relatively underdeveloped, the literature does suggest that there is such a relationship. The literature also begins to suggest the kind of variables that ought to be considered in examining that relationship. These two themes, local discretionary systems and contextual issues, both infer that what happens in courts can be affected by working relationships, attitudes, and legal, administrative, and demographic boundaries. No existing concept encompasses all of these variables. We feel that these two themes can be merged and expanded in our refined concept: local socio-legal culture.

LOCAL SOCIO-LEGAL CULTURE

We began this chapter with the statement "courts vary." Courts do not vary in a random fashion. They vary because they operate within distinct social, legal, and cultural contexts. Court processes take into account formal elements of law and criminal procedure. Courts operate within the context of local custom and informal arrangements, and court operations are related to internal and lay legal culture. Because most of the existing terms that attempt to describe this environment carry with them distinct connotations that do not reflect the variety of variables we feel influence court operations, we propose calling our refined concept "local socio-legal culture." We use "socio-legal" rather than simply "legal" culture to connote the role of demographics, local custom and history, and state and local law and rules. All of these variables provide a set of boundaries within which courts operate. All of the delay reduction programs introduced in our four research sites were designed with the boundaries in mind or were modified in order to be compatible with existing boundaries. Knowledge of the local socio-legal culture can thus influence program content.

Local socio-legal culture is a concept with three major components: 1) cultural characteristics of the jurisdiction, 2) law and legal structures and procedures, and 3) informal organization.

Cultural characteristics of the jurisdiction. This component includes such variables as demographics, type of industry, race and ethnic composition, and local history — in short, cultural characteristics which make one jurisdiction distinctive. This component delineates a cultural context within which institutions operate.

Law and legal structures and procedures. All jurisdictions have distinct statutes and ordinances, criminal procedure, and court rules which define legal operations. Other legal boundaries include state speedy trial regulations, the method of judicial selection, selection of the prosecutor, form of indigent defense, sentencing alternatives and guidelines, calendaring, case screening mechanisms, job descriptions, the division of labor and other variables that impose official limits or procedures on the court or court actors.

Informal organization. Informal organization refers to those implicit and explicit agreements made by co-workers about how to do work.[2] Variables that inform these agreements include the concept of the courtroom workgroup and the possibility of workgroup formation, personnel placement patterns, local discretionary systems, informal norms, values and attitudes, relationships between individuals and departments in the court, the distribution of political and personal power in the jurisdiction, risk-taking, gatekeeping, coordination and communication mechanisms, and the centralization of authority.

We define local socio-legal culture as local variations in courts as shaped by the cultural context of the jurisdiction, law and legal structures and procedures, and the informal organization of the court.

We agree with Church et al. that traditional explanations for delay are insufficient, and that some attempts to reduce delay may conflict with local system features. If we assume that delay is actually a symptom of broader problems in a particular court, describing the local socio-legal culture may allow us to understand differences in local definitions of delay, how programs were tailored to meet local needs, and what features of the court were not amenable to management changes.

LOCAL SOCIO-LEGAL CULTURE AND DELAY

Church et al. have hypothesized a relationship between local legal culture and delay. Experience in our four sites indicates that each had a somewhat different type of delay problem that was consistent with local definitions of delay, and each introduced a different intervention strategy in light of local problems and perspectives. Nimmer has described the relationship between some aspects of what we now call local socio-legal culture and the potential impact of any innovation, and his statement can be applied to the relationship between delay-reduction innovations and the local socio-legal culture:

> Changes inconsistent with the local discretionary system face difficult, if not impossible, obstacles before they become the rule of practice rather than the hypothetical model. Changes which are irrelevant to current practice may simply be ignored, while changes which are supportive of, or only slightly different from current procedures may have comparatively easy paths toward accomplishing their purpose (1971, p. 181).

Levin found a relationship between delay and background and contextual characteristics of the criminal court process in his study of delay in five courts:"...the

background and contextual characteristics of the criminal court process...contribute significantly to increased delay" (1972, p. 129).

The nature of the relationship between local socio-legal culture and delay is worthy of systematic research. The role of local socio-legal culture was not the primary goal of this research project. However, in the course of our evaluation of delay reduction programs, we became aware that our courts varied dramatically in terms of the local environment, law, and informal practices. We feel it is important to understand those differences. The remainder of this chapter is a description of the local socio-legal cultures of our four research sites. Those descriptions will serve as a background for later discussions of the innovations and should provide an understanding of the local context within which delay-reduction innovations had to operate.

LOCAL SOCIO-LEGAL CULTURE IN RHODE ISLAND

Cultural Characteristics

The population of the state of Rhode Island was 936,000 in 1976, making it the thirty-ninth in population. Sixty-six percent of that population is centered in Providence and Bristol counties, the location of the court which was the technical grant recipient. According to 1970 census data, 8.9% of the population was black. The dominant white ethnic groups are the Italian-Americans and Portuguese-Americans.

Rhode Island is primarily a manufacturing and commerical state that is strongly unionized. In addition, it is historically a resort state. The combination of union contracts and resort influence have had an impact on the court's schedule. Because of contractual agreements concerning summer vacation periods, witnesses and jury members are relatively unavailable during parts of the summer. For this reason, the court has traditionally operated only a small emergency and summer calendar during a nine week period in the summer. This has recently been modified and has met some resistance. Newport, an historical summer home area, is the major resort area. The resort and working class atmosphere spills over to the court. This is not a three-piece suit court: sport jackets, slacks, and two-piece suits are predominant for men.

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Politically, the state is primarily Democratic. The governor, both United States representatives, and one senator are Democrats. The other senator and the mayor of Providence are Republican. Both houses of the state legislature are overwhelmingly Democratic. Residents of the state have voted Democratic in every presidential election since 1940, with the exception of the 1972 election.

Rhode Island is a small state, both in area and population. It is a blue collar state and is predominantly Democratic politically. The size, class, and political orientation are all reflected in the Rhode Island courts.

Law and Legal Structures

Laws, criminal procedure, court rules, and terms of office for court officials set official guidelines within which courts operate. We have selected certain features of the Rhode Island courts which both describe key characteristics of the court and which have some bearing on delay within the courts.

Jurisdiction and judicial selection. All judges in Rhode Island are appointed for life either by the governor with the advice and consent of the Senate, or are elected by the legislature. Most of the judges have had some political experience and political ties. All attended out-of-state law schools since there is no law school in Rhode Island.

The State Supreme Court is the court of last resort and no intermediate court of appeals exists. The Chief Justice and four Associate Justices are elected by the legislature, have a life term, and have no mandatory retirement age.

The Superior Court, the grant recipient, is the court of general jurisdiction. It hears civil cases involving more than $5,000, equity cases, and all criminal matters after indictments or informations are filed. In addition, it hears de novo criminal misdemeanor appeals. There are seventeen justices, one of whom is the Presiding Justice. All are appointed by the governor, with the advice and consent of the Senate, for life, and have no mandatory retirement age. Judges have statewide jurisdiction and may be assigned by the Presiding Justice to any county court.[3]

The District Court is the court of limited jurisdiction. It handles criminal matters punishable by fines of less than $500 or jail sentences of less than one year, and civil matters concerning less than $5,000, and some preliminary matters for the Superior Court. There are thirteen district court judges, including one Chief Judge, all of whom are appointed for life terms by the governor with the advice and consent of the Senate.

In addition, Rhode Island has a Family Court which hears all matters pertaining to juveniles and divorces, a Probate Court, and several Municipal courts.

The bench and terms of the Superior Court. There are Superior Courts in four locations. Of the seventeen Superior Court Justices, thirteen sit in the court for Providence and Bristol Counties. Five of these have criminal assignments, seven have civil assignments, and the Presiding Justice handles a variety of matters. There are four three month court terms. Specific judicial assignments are made by the Presiding Justices, and assignments can vary each term. Both political parties are well repesented on the bench by custom and local agreement.

Prosecution. The office of the Attorney General in Rhode Island combines the duties of county prosecutor and state legal advisor. The Attorney General is elected for a term of two years. There are approximately ten assistant and special assistant attorney generals assigned to statewide criminal responsibilities at any one time. The current attorney general was elected to his first term in November, 1978.

Indigent defense. The Public Defender's office handles most indigent defendants in Rhode Island. The public defender is appointed by the governor for a term of three years. The current public defender has been in office for eight years. The office itself determines indigency. There are currently twenty-one attorneys in the office, twelve of whom have responsibilities in the Superior Court in Providence. Court appointed attorneys are only occasionally used by the court, typically when the Public Defender's office finds some conflict of interest.

Administration and calendaring. The court administrator is responsible for all administrative matters of the court and is responsible to the Presiding Justice. He handles personnel and fiscal matters, the physical plant, and manages the civil and criminal case scheduling offices. The criminal case scheduling office is staffed by five

full-time employees who are responsible for scheduling all phases of the criminal process from arraignment to trial. The court operates under a master calendar system. One judge handles all arraignments and pretrial matters, one assigns cases to particular judges for trials and conducts trials, and the others conduct trials. Because judicial assignments can change every three months, no one can predict with certainty which judge will hear any stage in a case.

Criminal procedure. Criminal Procedure is outlined in the General Laws of Rhode Island, adopted in 1956 and re-enacted in 1969. Unlike some of our other sites, the procedure prescribes very few time limits for various stages in the adjudication process. Police have two hours after an arrest in which to charge someone. Those arrested and charged must appear before a district court judge within twenty-four hours for a bail hearing, and a judge can order an additional hold of twenty-four hours. A district court judge who finds that an accused is "probably guilty" sets bail with the condition that the accused will appear before the first Grand Jury to meet seven days after the date bail is ordered. Those charged with a serious offense must either be indicted within six months or discharged, and those indicted for a serious offense must either be tried within six months or released on bail if none had previously been allowed. The criminal procedure places virtually no other time limits on the criminal process.

Until 1973, all cases proceeded by indictment. Currently, only those cases which could call for capital punishment or life imprisonment must go to the Grand Jury. Others can proceed on an information. Grand Juries in Rhode Island consist of from thirteen to twenty-three people. New Grand Juries can be convened every six weeks between the third Monday in September and the second Monday in July, unless requested at other times by the Presiding Justice or other justice of the Superior Court. The absence of a formally scheduled Grand Jury between July and September reflects the court's nine week summer vacation period. Grand Juries in the counties consider infractions within each jurisdiction, and statewide Grand Juries can also be convened to consider any crimes committed in the state. Again, the Presiding Justice or any justice can convene a Grand Jury at times other than these called for in the statutes.

Cases come to the prosecutor's office for routing to either the Grand Jury or to the screening prosecutor after the defendant has been found to be "probably guilty" in

a district court. There is no definition of what is considered "probably guilty," and there is no call for a mandatory preliminary hearing in the lower court.[4] Attorneys can request this hearing, but few do because any finding can be overruled in the Superior Court. The procedure seems to assume that the Grand Jury will make a finding of probable cause. The procedure, however, does provide for a sort of probable cause hearing after the issuing of an information. In serving an information upon a defendant, the prosecutor must attach to that information exhibits, sworn affidavits, documents, photos, and any other evidence that the prosecutor used to establish probable cause. Defendants have the right to file a motion to dismiss the information within ten days after service on the grounds of no probable cause. A hearing on the motion will be heard in the Superior Court within a "reasonable time." Evidence such as hearsay may be admissible at the probable cause hearing even if it is not admissible at trial. Informations which are dismissed at this hearing may be reinstated only on appeal or if new evidence is presented at a later time.

This screening procedure seems to be out of sequence when compared to our other jurisdictions. Rather than calling for a probable cause hearing in a lower court to screen out weak cases before sending them to the court of general jurisdiction, the Superior Court in Rhode Island assumes a screening function. The court may therefore spend time on some cases which, in other jurisdictions, would have been dismissed by a lower court. This feature may have a clear relationship to delay if court time is spent on issues that could be handled elsewhere.

Case disposition. According to court statistics, the trial rate in Rhode Island is about 7%. The vast majority of the remaining cases are settled through plea bargaining. Plea discussions take the form of sentence rather than charge bargaining. Because Rhode Island does not have indeterminate sentencing, prosecutors recommend a specific sentence to judges. Pre-sentence investigations may be ordered from the Probation Department.

Judges of necessity consider resource limitations when making sentencing decisions. There is only one prison in the state, the Adult Correctional Institution. The ACI houses both those awaiting trial and those convicted. There are separate sections for men and women, minimum and maximum security, and psychiatric care. The ACI capacity is 520. With between 1,400 and 1,500 new cases filed each year, incarceration is used relatively rarely. Many defendants receive a deferred sentence.

This sentence allows the court to defer sentencing a convicted felon for a period of five years. It may, however, impose a sentence any time within that five years if there is reason to do so.

The use of the deferred sentence may help control the population of the ACI, but it can add court time to cases. If a convicted felon has been originally given a deferred sentence and commits a second offense, that individual can be brought to court as a violator of the deferred sentence. If found to be a violator, s/he may be sentenced for the original charge. In addition, s/he may also be tried for the second offense. One infraction can therefore lead to two different kinds of hearings with two potentially different outcomes. Different kinds of evidence are permitted in violation hearings and trials, and the two are rarely combined. Those brought in for a violation of a deferred sentence are held without bond until they see a judge, and some judges will interrupt other court matters for a violator. Violation hearings are more common in Rhode Island than other jurisdictions because of the use of the deferred sentence, and they consume a large amount of judge time. Judges may therefore sentence one defendant several times for the same case, contributing to delay in the courts.

To summarize, the aspects of formal law and procedure that may have some bearing on delay are the absence of a firm time frame for processing cases, unclear screening mechanisms, the use of deferred sentences, and violation hearings.

Informal Organization

Rhode Island is a small state, and that size is reflected in the courts. Five judges, ten prosecutors, and twelve public defenders are concerned with criminal matters at any one time. Even with frequent personnel rotation, the universe of personnel is small, and hiring of new personnel is not frequent. The private criminal bar is perceived as small. The judges have identified about ten to fifteen attorneys who practice frequently in criminal matters, and our case data indicate that the busiest ten private attorneys handled fully 42% of the cases in our sample — a remarkably high level of case concentration. Indeed, the busiest four attorneys handled nearly one-third of the cases in our sample (almost 200 cases).

The support staff in each court is also minimal. Each judge is assigned two sheriff's deputies, one stenographer, and one clerk, and the assignments of the deputies last longer than those of either the clerks or the stenographers. Clerks and

stenographers do not have offices close to chambers, and typically leave the courtroom area when court is not in session. Judges have access to a typing pool, but do not have secretaries. Both prosecutors and public defenders were assigned to specific cases rather than to courtrooms until the spring of 1979. At that time, the Attorney General began placing two prosecutors in each criminal courtroom. This may open the door for more ongoing interaction in the court between judges and prosecutors and may create new kinds of relationships.

The relatively small number of personnel may have an additional impact on the court. Because attorneys and judges know that they must continue to deal with one another, that they cannot request different assignments to escape certain personnel too often, relationships have to be relatively smooth. All actors will meet again soon, simply by the luck of the draw. This may or may not facilitate more cooperation or the development of a system-wide, rather than a courtroom-specific, workgroup.

We have discovered some surprising aspects of the informal organization of the courts in Rhode Island. We might expect many relationships to be casual and informal due to the small size. The opposite is true. Relationships between departments are very formal, and are characterized by discussions between appropriate levels of personnel. A prosecutor or public defender or clerk with a complaint would not talk directly to the second party involved. Rather s/he would talk to his or her supervisor or division chief who would then talk to the parallel person in the second office, who would then relay the matter to the involved second party. We saw evidence of this time and again. A judge unhappy with a clerk talked to the senior judge who talked to the court administrator who talked to the clerk who then talked to the courtroom clerk involved. A prosecutor unhappy with a judge's time schedule talked to the chief of the criminal division who talked to the Presiding Justice who talked to the specific judge. Rather than informal two-party discussion, minor matters often involved personnel and time perhaps beyond the scope of the specific concern. In this state, size is not the equivalent of informality.

Seniority is important to the judges. Traditionally, the Presiding Justice has been the senior judge. The two most recent Presiding Justices have not been the most senior judges. The governor appoints a new Presiding Justice when that position is vacant, and then appoints a new judge to the bench. This is tradition, not law. When we arrived in Rhode Island, the court administrator arranged a series of meetings for

us with personnel in each department. In all cases, he was careful to call the senior judge or the senior person in each department, rather than to arrange a meeting with the person who may have been the most helpful in getting the information we needed. In some cases, the senior person arranged additional meetings with others for us.

Until recently, there have been few interdepartmental meetings to encourage informal discussions. While there were judges' meetings and meetings in each department, no mechanism existed which allowed representatives from various departments to meet regularly to discuss common concerns. One delay reduction innovation in the state created such a mechanism as a first step of project implementation. For the first time, and now on a continuing basis, representatives of the judges, prosecutor's office, clerk, police, probation, private bar, and other concerned agencies have a mechanism for meeting and talking. Everone interviewed stated that these meetings were proving to be very important in problem solving and in facilitating communication in areas other than delay reduction.

One important element in the formal organization of the Rhode Island courts is the issue of risk taking. Of the key personnel on the court, only the Attorney General faces the general public in elections, and those elections occur every two years. There are a series of accommodations in the courthouse to allow the Attorney General to appear in the best light. The current Attorney General has embarked on a number of campaigns that should be very popular. He is increasing investigations in welfare fraud and consumer issues, and is continuing the professionalization of the office begun by his predecessor. Most assistant attorney generals make relatively stiff sentence recommendations to judges for cases with knowledge that judges may reduce the actual imposed sentence. Because many of the judges have served in the office of the Attorney General, they know that judges and not the prosecutors will be blamed for an unpopular sentencing decision. And the judge has little to lose by taking the blame. This sort of arrangement allows those involved to minimize risks and meet mutual goals.

One final element of the local socio-legal culture in Rhode Island is worth some attention. Rhode Island has a reputation as a center for organized crime. There are a number of "experienced defendants," those big-time criminals who are very familiar with the court system in the state, both at the state and federal level. Most of these defendants hire an attorney from the two or three largest firms with full knowledge,

according to several judges, that these attorneys are aware of and use tactics which may delay the processing of cases. One judge even stated that these experienced defendants hired a particular attorney knowing that that attorney would insure a year or two delay in adjudicating the case. Because a significant number of defendants know the system as well as the legal participants do, these defendants may almost be a part of the ongoing informal organization of the court.

LOCAL SOCIO-LEGAL CULTURE OF DAYTON, OHIO

Cultural Characteristics

Montgomery County was described to us by one resident as "Main Street USA," and the description seems to fit the cultural and social atmosphere. Dayton, the major city in the county, was the model for the political science concept of good-government city goverment, the city manager structure. The area has faced no major political scandals recently although there have been a few political corruption cases in the courts. The area has remained budgetarily sound, and Dayton's city budget has actually declined recently because of savings in various agencies. Only good-government, moderate Dayton could produce such American folk heroes or celebrities such as the Wright brothers, Phil Donahue, and Erma Bombeck.

The 1975 population of Montgomery County was 586,507, with 205,986 of those living in Dayton. Both the county and the city are facing declining populations: the population of Montgomery County declined by 3.4% between 1970 and 1975, and Dayton's decline in the same time period was 15.8%. 13.8% of the county and 30.4% of the city were black in 1970. German-Americans comprise the major white ethnic group. The county spans 459 square miles, and 46% of the land area is occupied by farms. The farm population has been declining recently.

The county is predominantly a manufacturing center. Both Mead Paper Company and National Cash Register have their corporate headquarters in Dayton. Respondents in the site have indicated that changes in major industries are creating population changes. Several large companies have moved their manufacturing plants out of the area, but their business headquarters into the area. The population is expected to shift in the direction of white collar employees in the future. In addition to industry, there is a heavy Air Force influence, with Wright-Patterson Air Force Base located just outside the city limits.

Politically, Ohio historically is a Republican state that is shifting to a Democratic electoral pattern. Currently, the Governor is Republican and Republicans are the majority in the state's Congressional delegation. But both United States Senators and the majority in both state houses are Democratic. The United States Representative for the third district, the district comprising most of Montgomery County, is a Democrat. Montgomery County voted slightly for Nixon in 1972 and just as slightly for Carter in 1976. The current mayor of Dayton is a black Democrat.

Culturally, then, Montgomery County is main street USA. It is a mix of industry, farm, and Air Force. It has maintained its political and economic base in spite of a declining population. Although it has had its share of disruption, particularly a fireman's strike and a major teacher's strike in past few years, nothing seems to have had an ongoing disruptive influence on the area. In addition, unlike Rhode Island, there are no traditional sources of problems for the courts or legal process in the area.

Law and Legal Structures

Unlike some of our other sites, laws and legal structures in Montgomery County and in Ohio are very explicit. What is not covered by statute is typically dealt with in local court rules. Judges are bound by law and rules in administrative matters. The following is an outline of the legal boundaries operative in the area.

Jurisdiction and judicial selection. All judges in Ohio, except those on the Ohio Court of Claims, are elected for six year terms by voters in the appropriate jurisdiction. Interim appointments on any bench are made by the Governor with recommendations from the political parties in the appropriate jurisdiction. Elections in the county are nonpartisan. Those with interim appointments must run for a full term at the first election that occurs after 100 days after the appointment.

The Supreme Court is the court of last resort. It has appellate jurisdiction over cases involving constitutional issues, capital cases, and cases originating in the Court of Appeals. It also regulates matters pertaining to the bar. The Supreme Court is located in the state capitol, Columbus.

The Court of Claims is composed of active or retired judges from the Supreme Court, Court of Appeals, and Common Pleas Court appointed by the Chief Justice of

the Supreme Court. The Court of Claims has original jurisdiction over civil claims against the state.

The Court of Appeals is Ohio's intermediate appeals court. There are eleven Courts of Appeals, and each has jurisdiction over cases from counties assigned to each district. While each has a permanent court in one county seat in the district, each may sit in their respective county seats as needed.

The Court of Common Pleas is the court of general jurisdiction. These courts are located in each county seat and normally handle civil matters over $500. Each also has jurisdiction over all criminal matters other than minor offenses. Each Common Pleas Court has a Juvenile, Probate, and Domestic Relations division.

Ohio Municipal Courts have jurisdiction within city limits for misdemeanors carrying a sentence of less than one year imprisonment. In addition, these courts have concurrent jurisdiction with Common Pleas Courts in civil matters involving less than $10,000.

Ohio County Courts exist in some counties and have limited jurisdiction outside of municipal boundaries. They have original jurisdiction in civil matters involving less than $500 and in misdemeanors and traffic offenses.

The bench of Montgomery County Common Pleas Court. There are nine elected judges on the bench in the Montgomery County Common Pleas Court. In addition, the court has used visiting judges from smaller counties one week per month to handle politically sensitive cases or to serve as overflow judges. There are currently seven democrats and two republicans on the bench, but one of those republicans reputedly "thinks like a democrat." Each has an individual calendar of both civil and criminal cases assigned on a lottery system. The same judge serves as both Chief Judge and Administrative Judge and has been elected yearly by his colleagues for the past five years. Since January, 1978, his calendar is exclusively criminal to allow time for administrative matters.

Prosecution. The Montgomery County Prosecuting Attorney is elected for a term of four years. The current Prosecuting Attorney is serving his fifth term in office. There are currently twenty-three assistant prosecutors handling felony cases.

Eighteen of these work in three teams of six assistants, and each team is responsible for cases assigned to three judges. In addition, there is a screening prosecutor who works with the police department, a consumer fraud unit, and a unit which handles major cases. Although assistant prosecutors are paid a salary comparable to public defenders, the position of assistant prosecutor has traditionally been defined as a part-time job. Many assistants have private practices in addition to their prosecutorial responsibilities.

Indigent defense. Just over half of all felony defendants in Montgomery County are indigent, although this number may be increasing due to rising unemployment in the area. 60% of indigent defendants are handled by the Public Defender's Office, and the remaining 40% are assigned to private court appointed counsel.

The Public Defender is appointed for a two year term by the Montgomery County Public Defender Commission. The current Public Defender was appointed in 1979. There are seventeen attorneys handling felony matters. The office has a policy of vertical representation beginning at the preliminary hearing. The office also has a separate appellate division. The office handled over nine-hundred cases in 1979, many of which were concluded in the lower courts.

The appointment of private counsel is coordinated through the court administrator's office. The court administrator has a list of over two-hundred private attorneys, screened by the judges, who are willing to handle court appointed work. The average fee paid by the county to private counsel is $200 per case.

Administration and calendaring. All administrative matters are coordinated by the court administrator. In addition to the normal budget, personnel and space concerns, the court administrator has been responsible for the coordination of court appointed attorneys and monitoring functions associated with the court management plan, the specific delay-reduction program.

The Assignment Commission is one division of the administrator's office. It is composed of three people who handle the assignment of all civil and criminal cases to specific judges, monthly reports to the Supreme Court as required by the Rules of Superintendence, and all case tracking. Assignments are made to judges on an individual calendar system after indictment using a lottery system. Cases then remain

the responsibility of the assigned judge despite centralized arraignments and an informal policy used by several judges to help one another if one case or trial hinders hearing other scheduled cases. Those in the assignment commission assign all dates for case matters, confer with bailiffs to note any date changes, and mail notifications to attorneys. The clerks attend arraignments and the docket calls of each of the judges to assign dates for case activity or to record any requested changes. Motions, pleas, sentencing, and other brief matters are heard by each judge one morning or afternoon per week during these docket calls.

Criminal procedure. Criminal law and procedure in Ohio have undergone major changes in the past decade. Supreme Court Rules of Superintendence went into effect in 1971, a new criminal code became operational in 1974, a Speedy Trial Act took effect in 1975, and new criminal rules of procedure were promulgated in 1976. Provisions of each of these will be described as they relate to criminal procedure and time frames. Local court rules are included where applicable.

After an offense is committed or suspected, an individual can be arrested with or without a warrant, depending on the circumstances. Montgomery County's screening prosecutor reviews arrests daily with the police and assists in making charging decisions. Montgomery County operates under an informal twelve hour rule: defendants must be charged by the police or released within twelve hours after arrest. Those charged typically appear before a lower court judge the day of or after arrest and are informed of the charge and the defendant's rights. If the offense is a bailable offense, bail is set in the lower court.

Unless waived, defendants are entitled to a preliminary hearing within five days if in custody or fourteen days if on bond. Unlike in Providence, the preliminary hearing serves as a screening mechanism, and judges in courts of limited jurisdiction can either bind the defendant over to the grand jury, keep the case in the lower court, or discharge the defendant. All materials must be transmitted to the appropriate court within seven days after the preliminary hearing.

Grand Juries in Ohio consists of nine people serving a term of three months. All cases must proceed by indictment unless waived, but Grand Juries must hear all cases in which life imprisonment or capital punishment are possible. Seven grand jurors must vote to indict. In Montgomery County, most cases are transmitted to the Grand

Jury immediately after bind over. The prosecutor often walks witnesses from the preliminary hearing to the Grand Jury for immediate testimony. 95% of cases proceed by indictment in Montgomery County. About 80% of the Montgomery County Grand Jury cases are initiated by an arrest. The remainder of the cases result from direct Grand Jury investigation. This percentage of direct indictment cases has risen recently to as high as 40% due to a large investigation of welfare fraud cases in 1979. The only specific time limits on indictments or informations refer to cases in which the indictment has been waived. In these cases, the defendant must be formally charged within fourteen days after waiver or be discharged.

After an indictment or information is filed, the defendant appears in the Common Pleas Court for arraignment. Rights are given, a plea is entered, and the defendant is served with the indictment. A continuance may be granted in order to obtain counsel. After the arraignment, all pretrial motions must be filed. Motions must be filed within thirty-five days after arraignment or seven days before trial, whichever comes first. Motions for discovery must be filed within twenty-one days after the arraignment or seven days before trial, whichever is shorter. After motions and all pretrial issues and discussions are settled, the defendant may plea, have a trial before twelve jurors, or have a trial to the court. If convicted, sentencing must occur "without unnecessary delay," and this is considered two or four weeks in Montgomery County.

There is one additional time consideration in Ohio felony cases. According to the state's Speedy Trial Act, those accused must be brought to trial within ninety days if in custody or within 270 days if on bond. This time frame may be extended if the defendant is unavailable, is mentally incompetent to stand trial, if there are problems in obtaining counsel, and if the accused requests a continuance.

The Ohio Rules of Superintendence require some additional considerations for the processing of cases. They are specifically related to delay in courts and were introduced to provide remedies for delay problems. The rules provide for the election in each court of an administrative judge who is in charge of record keeping and the adherence to the rules. S/he may even reassign counsel if counsel is deemed to carry too many cases and therefore encourage delay in his or her cases. The rules mandate an individual calendar in Common Pleas Courts. They state that an accused person must be indicted or discharged within sixty days of bind over, and that all criminal

cases must be tried within six months of the upper court arraignment. Sentencing must occur within fifteen days of the receipt of a presentence investigation report. In addition, the rules impose stringent monthly reports to the Supreme Court which monitor both the size of individual dockets and the age of pending cases.

Although Ohio rules and criminal procedure clearly delineate time frames for various procedures, Montgomery County's court management plan, their delay-reduction innovation, introduced additional and more constraining time limitations to existing statutory ones. These will be fully discussed in Chapter 7. What is important about the state and local criminal rules and procedure is that they specify some clear guidelines for procedures and their timing. There is early and effective screening of cases, processing is not bogged down by police investigations or the Grand Jury, and all judicial activities fit along a timeline. With regard to delay, Ohio courts have time boundaries that demand speedy justice.

Case disposition. Over the past several years, Montgomery County Common Pleas Court has consistently had a 6-7% trial rate. Cases that are not dismissed or reduced to misdemeanors are plea bargained. Charge bargaining, never sentence bargaining, is used. Prosecutors typically offer to drop one charge in an indictment, and this is considered their best offer. Prosecutors virtually never make sentencing recommendations to judges.

Ohio uses indeterminate sentencing, and statutes provide a firm maximum sentence for each category of offenses. However, judges do have discretion within the guidelines of offense categories to set the minimum exposure. Ohio does permit capital punishment under limited circumstances.

Although presentence investigations are mandatory in Ohio only if probation is to be granted, Montgomery County uses them extensively in all sentencing decisions. Judges must consider the background of offenders in sentencing, and this is provided by sentencing reports compiled by the presentence investigation unit of the probation department in Montgomery County. This process takes two or four weeks, depending on the defendant's bail status.

Jail crowding is not a concern in Montgomery County. Defendants are held in a city or county facility until they are bound over to the Grand Jury. At that time,

everyone is transferred to the county jail. After sentencing, those convicted serve time either in the Dayton Human Rehabilitation Center, the Ohio State Reformatory for Women, the Ohio State Penintentiary system, or the Ohio State Reformatory system, depending on the gender, age and prior record of the offender. In addition, there is a diversion program and a community based corrections program, Project Monday, that provide sentencing alternatives to judges.

Judges do have one other sentencing option not seen in our other sites—that of shock probation. Under statutory provisions, judges may entertain a motion for shock probation after thirty days of incarceration and before sixty days. If granted, the offender is released and placed on probation. According to our case file data, shock probation is not uncommon.

Informal Organization

As we are finding in our other research sites, those who participate in the world of the court form a small microcosm. The population of the area is less important than the size of the bench, the size of the bar, local politics, and the kinds of working relationships and alliances that exist. Montgomery County has the smallest bench of our four sites, a relatively large private bar, and a political local environment.

The bench is interesting in terms of politics and seniority. Politically, there are seven democrats and two republicans, but divisions do not seem to occur along party lines. Each judge runs for election and therefore can claim his own constituency. However, one judge is viewed as very powerful politically, perhaps the biggest vote getter in the area, and few are willing to challenge him because of the potential political impact in the next election. However, no one has ever mentioned politics in the court itself and this seems to be unimportant in daily operations. Seniority is more of a concern in Montgomery County. Two of the judges are very senior and each has been on the bench for at least three terms. One of these senior judges cannot run for reelection when his term expires because of his age. After these two, the next most senior judge has only been on the bench six years, and the remainder have been in Common Pleas Court for less than three years. This issue has been mentioned as an indicator of lack of judicial maturity on the bench even though several had served as lower court judges before coming to Common Pleas Court. One of the senior judges serves as both Chief Judge and Administrative Judge.

Because of the individual calendar system, each judge has control over his own docket. Each conducts his own court according to local and state rules and his own personality. Rules are not used uniformly, and there has been substantial variation in the application of certain aspects of the new court management plan, the delay-reduction innovation. However, there is no widespread pressure to force all of the judges to abide by the rules to the letter. In addition to this respect for individual style and priorities, a number of the judges routinely help one another in hearing cases when time permits. Thus, if one member of the informal group has a lengthy trial another may hear motions on his cases to alleviate time burdens and facilitate the processing of cases that would otherwise have to wait. Several of the judges are not included in this informal arrangement.

Although the bench, local bar, and prosecution do seem to have good working relationships, most respondents point to the prosecutor's office as the weak link in the system. The County Prosecutor is very involved in national associations and relies on senior assistants and an administrator for the day to day operations of the office. There is a fair amount of turnover in the office, and there are reportedly a large number of very young and inexperienced prosecutors on staff. The job of assistant prosecutor has traditionally been defined as a part-time position, and assistants are permitted to handle a private practice in addition to official duties. One respondent described the prosecutor's office as the "largest private law firm in the city." In fact, assistant prosecutors do list their prosecutor's office address and phone numbers for their private practices. Most members of the defense bar interviewed stated that there were firm prosecutor's policies to guide plea bargaining, and that no one expects a good offer because of these policies. Members of the defense bar appeal to the judges and not to the prosecutors for a change in the offer or to get a "reasonable" idea about sentencing. Prosecutors do not make sentence recommendations.

Each judge in Montgomery County Common Pleas Court has two employees assigned to his court — a bailiff who handles most scheduling and arrangement issues, and a court reporter/stenographer. Each judge thus has a working team of personnel, unlike the minimal support staff seen in Rhode Island. We saw no deputies assigned to individual courts, although there were various law enforcement personnel in each court visited. In addition to these two, prosecutors work in teams, and the same group of prosecutors routinely appears before each judge. This personnel assignment pattern may facilitate work in the court. Everyone knows who to see about what issue as soon as a judge is assigned to a case before arraignment.

Relationships in the court seem to be rather informal. We often saw attorneys talking informally in chambers and bailiffs talking with one another. Offices are arranged so that two judges share a common reception area, but court reporters have private offices next to each courtroom. Most judges and bailiffs used the telephone to make arrangements, track down the next case, or solicit information. There was an atmosphere of professional informality in the court. We were surprised to see that the court was never very busy—it looked very different from Detroit's Recorder's Court. There were never many people waiting in the halls, and at times very few of the courtrooms were in use.

By contrast with our other sites, there is a strong working relationship between the local bar and the court. This may be due to tradition or to personal ties. The current president of the local bar association is the Chief Judge's former law partner. The court, the bar, and the local law school have instituted a training program in criminal practice that is now mandatory for new attorneys. The local bar is consulted on various matters, and was officially involved in the planning and implementation of the new court management plan. A bar subcommittee is making some recommendations for changes in the management plan. The court administrator has a list of over 200 attorneys who are willing to do work as court appointed attorneys, but we have no figures about the total number of private attorneys in the area. Many in the jurisdiction expect a growth in the profession because Dayton now has its own law school. Some attorneys fear this expected growth because an increased number of attorneys could have a negative impact on informal relationships among attorneys and the bench.

Although there are monthly judges meetings, there is only one existing committee that cuts across the criminal justice system — the Montgomery County Criminal Justice Information System. This committee has been mentioned as a meeting place for representatives of the various agencies involved in the system, but it was not involved formally in the development of the delay-reduction innovation. The primary concern of the committee seems to be computerization of various facilities and the standardization of record keeping.

Local socio-legal culture in Montgomery County is marked by good government, stringent rules and procedure, and informal relationships. The courts have been able to remain apolitical on a daily basis. The state has provided a clear set of legal

guidelines with regard to criminal process and the timing of various stages. Most participants in the system have good working relationships with one another and are very aware of the local culture, the impact of industry and rising unemployment, demographic shifts, and the good government image of Dayton.

LOCAL SOCIO-LEGAL CULTURE OF LAS VEGAS, NEVADA.

Gambling, entertainment, the strip, the Old West, the desert, and Howard Hughes are terms that come to mind when one mentions Las Vegas. The features most relevant for understanding the local socio-legal culture of Las Vegas, however, include an explosive population growth, unique legal provisions, marked and open political conflict, an historically weak and unstable District Attorney's office, and a pronounced emphasis on autonomy.

Cultural Characteristics

Created in 1905 as a whistle stop on the Union Pacific Railroad, Las Vegas and Clark County grew around an abandoned Mormon fort. The construction of Hoover dam and a World War II airfield (now called Nellis Air Force Base) contributed to early gradual population growth. The gaming industry began to influence population growth in the 1950's, and Las Vegas became one of the nation's fastest growing cities. Between 1960 and 1970, there was a 115% increase in population, and the 1975 population of Clark County was 330,714. The county is nine percent black. There are no large ethnic groups.

As is typical of this part of the West, the distances are vast, the terrain inhospitable, and the population is concentrated in a few areas. Las Vegas is the county seat of Clark County and is located in the southeastern tip of the state. The county spans 7,800 square miles.

Las Vegas is primarily a one industry town — gambling and entertainment, although the Air Force Base and mining do provide limited employment opportunities. Most of the jobs are in the service category — dealers, maids, cooks, and waitresses — and many rely on tips for income. The Culinary Union represents many workers and is a very powerful local political force. Several recent federal indictments and some convictions have confirmed a relationship between some casinos and organized crime.

In recent years, the gaming industry has taken on a corporate identity. Many of the giant strip hotels and casinos are owned by national corporations like MGM, Holiday Inn and Hilton Inns. Control over the gaming industry may explain why Las Vegas has the highest concentration of IRS agents in the nation.

The focus on the gaming industry, however, obscures an important consideration: Las Vegas is actually two separate communities. Field notes recorded this:

> It's important to realize that Las Vegas is really a small town,....there are two communities: one composed of workers and the small business community. This is small and inbred. The other community consists of the strip people, the gamblers. These two groups of people have little to do with each other.

The small, inbred nature of the town is reflected in a handful of local "political names." Some Las Vegas families are well represented in state and local elected positions.

Politically, legally, and socially, the state is very conservative. The governor and one United States Senator are Republicans, the mayor of Las Vegas, the other Senator, and Nevada's one United States Representative are Democrats. However, Nevada Democrats are conservative in their views. The Mormon church, traditionally a conservative church, is powerful in the area, and church members are active in all phases of local life.

Nevada has no law school, and it is difficult to gain a state license to practice law because the state imposes restrictive requirements. In order to take the July bar exam, a person must be a resident of the state by March 1. Students graduating from law school in the spring must therefore live in the state one year before taking the bar. One result is that the district attorney's office and the judges hire legal interns—recent law school graduates who wish to satisfy the residency requirement. One respondent noted that the net effect of these restrictions was a shortage of attorneys in the area.

Law and Legal Structures

As in Rhode Island, there are very few statutory limitations placed on the time involved in criminal case processing. However, Nevada does have three separate Speedy Trial laws. There are some additional legal features that are important as background to team and track, the specific delay-reduction innovation.

Jurisdiction and judicial selection. All judges in Nevada are currently elected for six year terms. However, until 1978, judges in the courts of general jurisdiction and in courts of limited jurisdiction served terms of four years. Vacancies on all benches are filled by gubernatorial appointment.

The Supreme Court is the court of last resort, and there is no intermediate court of appeals. The position of chief judge rotates among all the judges, but the most senior judge serves as chief for the last two years of his term. The Supreme Court is located in Carson City, the state capital.

The District Court is the court of general jurisdiction. There are nine District Courts in the state. The District Court has jurisdiction in civil cases involving more than $300, criminal jurisdiction except in cases covered by the lower courts, and exclusive juvenile jurisdiction. District Courts also have final appellate jurisdiction over appeals from the lower courts.

Justice Courts are the courts of limited jurisdiction. They have civil jurisdiction in cases involving less than $300, and criminal jurisdiction in matters punishable by less than six months imprisonment and/or a fine of $500. In addition, they hear preliminary matters for District Court cases.

There are several Municipal Courts in Nevada. These hear city ordinance violations and some minor misdemeanors. Some Municipal Court judges also serve as justices of the peace.

The bench and term of the Eighth Judicial District. There are twelve judges on the District Court for Las Vegas and the rest of Clark County. One is elected yearly by his colleagues as the designated chief judge and another as the designated juvenile court judge. The latter administers juvenile court matters. Neither of these two administrative judges has a regular court docket. The powers of the Chief Judge are limited, and no one may serve more than two consecutive terms. The remaining ten judges have both criminal and civil dockets and operate largely on an individual calendar system. However, these dockets have varied substantially since the court abandoned the master calendar in 1975. Only one of the judges currently on the bench has a political background, and all attended out-of-state law schools.

The courts of limited jurisdiction in Clark County are also involved in the delay reduction innovation. Las Vegas Township Justice Courts contributes the most cases to the District Court. There are five Justices of the Peace on the court. Several maintain private legal practices in addition to their judicial position, and are paid less than the full salary because of this. There are also three other justice courts in the county, but these contribute many fewer cases to the District Court.

Prosecution. The Clark County District Attorney is elected every four years. This office has a history of instability, and no incumbent District Attorney has been reelected since the 1930's. The office employs about sixty attorneys, forty of whom are assigned to criminal cases. Turnover in the office is fairly high and there are a large number of young and inexperienced attorneys.

Indigent defense. The Public Defender is appointed, and the office employs twenty-seven attorneys. Twenty handle adult criminal cases. Unlike the prosecutor's office, continuity is high and the assistants are on an average older and more experienced than their prosecutorial counterparts. The office represents between forty and fifty percent of defendants. Court appointed attorneys are used only occasionally.

Administration and calendaring. There has been a full time court administrator only since 1975, and this position has been marked by a high degree of instability. Three people have served in the position. The first quit after four months, and the second was fired. Judges have been reluctant to delegate much authority to the court administrator. Unlike our other sites, there is no case scheduling office, and judges assume control over scheduling their own cases.

The court employed a master calendar system until 1975. Since that time, the court has experimented with a number of individual calendar systems. Under the current team and track program, cases are assigned initially to a justice of the peace. They then automatically are assigned to one of two district court judges assigned to the JP's team.

Criminal procedure. Several features of Nevada Criminal Procedure provide an important backdrop for assessing Team and Tracking. These are three separate Speedy Trial rules which mandate a ninety day time frame but which are often waived. Both

the use of subpoena requirements and writs of habeas corpus add further steps in the process. During the period studied there were some important formal changes in these procedures. In addition the Las Vegas Courts, particularly the Justice Courts, experimented with new ways of implementing these formal procedures.

Most cases begin with an arrest by METRO (Metropolitan Police Department). Created in the early 70's, Metro merged the city police department and the County Sheriff's Department. It is headed by the County Sheriff, an elected official with considerable power. A defendant typically appears in court about eight days after arrest. Metro requires five days for preparing police reports and the DA's office needs three days for screening. In the past the DA's screening unit, the Police Liaison Unit, employed minimal screening standards. By late 1979, however, the screening unit was trying to impose stiffer screening standards and to file charges within forty-eight hours of arrest for those not in custody.

In Justice Court, a case is typically continued for one day for the appointment of counsel. The defendant is then arraigned, and a preliminary hearing date established. One of the state Speedy Trial laws mandates a preliminary hearing within fifteen days of arraignment. (Prosecutors contend that they need this full fifteen days because of the state's subpoena requirements.) Defendants in jail avail themselves of this right. Those out on bail, however, typically waive this right and a preliminary hearing date is set in "due course." By early 1980, this time span was about sixty days. Prior to team and track, the time prior to preliminary exam could take a year or more.

In Las Vegas preliminary examinations can be quite adversarial. District Court Rules of Evidence are employed, so hearsay evidence is not admissable. This necessitates that victims of crime testify twice—at the preliminary examination and during trial. Motions to suppress are also made and argued at the preliminary exam. The JP's decision to bind over a defendant can be appealed via a writ of habeas corpus. In the past some preliminary exams lasted several days in major cases.

Under Nevada law, subpoena requirements appear to be more strict than in our other sites. Until July 1, 1979 state law required that subpoenas be physically served. Moreover, if a witness fails to appear, the prosecuting attorney is required to state under oath that s/he had no knowledge that the person would not appear and that he had knowledge that a subpoena was served. Otherwise the case will be dismissed.

In any given year the prosecutor serves approximately 50,000 subpoenas. The large volume has obvious managerial relevance, particularly because many victims are not residents of the area. Out-of-state witnesses are flown in at state expense. Many out-of-state witnesses refuse to return to Las Vegas, and charges are thus dropped or cases dismissed. This is particularly true in prostitution-related cases.

Under state law an information must be filed within fifteen days of the holding of or waiver of the preliminary exam. Most cases proceed by information. State law grants discretion to the district attorney to proceed by grand jury indictment. During part of the team and track period, the district attorney used the grand jury more extensively than he had in the past to avoid lengthy delays before some JPs. Some have accused the district attorney of abusing this discretion by taking weak cases to the grand jury.

District Court arraignment is a routine legal event—defendants are advised of their rights and a trial date is set. Here the third Speedy Trial rules plays a major role. A defendant must be tried within sixty days of filing of the information. Bailed defendants invariably waive this right but jailed defendants rarely do. Thus the rule actually creates two separate trial tracks, jailed defendants have cases set quickly while bailed defendants have trial dates set for from two to six months later.

In most jurisdictions, the writ of habeas corpus has been used as a post-conviction remedy. In Nevada, however, the writ operates very differently, resembling an interlocutory appeal in civil cases and occurring prior to trial. A defense attorney may challenge the sufficiency of the evidence presented in the preliminary examination by filing a writ of habeas corpus in District Court. Once the judge rules, the losing party had the right to an immediate appeal to the state Supreme Court. To many, but not all, this right to a pre-trial appeal may result in unnecessary delay in bringing a case to trial.

In mid-1979 the Nevada legislature abolished the right to an intermediate appeal by the defense. While the motion is still filed in District Court, there is no right to appeal that ruling until after trial. If however the judge grants the motion, thus in essence dismissing the case, the state still has the right to an immediate appeal.

Every morning at nine each judge conducts a miscellaneous docket. Civil and criminal matters are heard on alternate days, but both are heard on Friday. The morning criminal calendar includes arraignments, motions, calendar calls, entry of pleas and sentencings. The nine o'clock call usually takes thirty to sixty minutes.

During the calendar portion of the nine o'clock call, all cases set for trial the following Monday are called. At this time defendants either plead guilty or announce ready for trial. However, negotiations are often incomplete, and a case may be continued for further negotiations. Cases not pled out are set for trial. Each judge sets his own trial priorities, and the remainder are sent to an overflow judge.

Case disposition. The trial rate in the District Court is eleven percent, higher than in Providence or Dayton. The remainder of the cases which are not dismissed are disposed through charge and count bargaining. There is no sentence bargaining. Plea agreements must be approved by the prosecutor's team leader, although in some major cases, the chief of the criminal division or the District Attorney himself must approve the offer.

After conviction, state law requires a presentence investigation conducted by the State Pardon and Parole Board. Nevada law provides for determinate sentencing, although a judge may impose an indeterminate period of probation. Most grants of probation carry a specific requirement that the defendant submit to being searched.

Prison population does present some problems to judges in sentencing those convicted. The county jail is currently under a court order, and the Nevada State Prison is full. In addition, judges have few alternative sentencing options. There is no restitution program, no alcohol program, and no drug program.

Defendants typically do not serve the full sentence imposed because of provisions for "good time" and the wide powers of the state pardon and parole board. The governor, the attorney general, and the members of the Supreme Court sit on this board. They can commute all sentences, even a sentence of life without the possibility of parole.

Informal Organization

Several aspects of the informal organization of the Las Vegas court process are

important in understanding 1) why team and tracking was adopted; 2) the nature of the changes that were implemented and 3) the types of underlying problems that were and were not addressed.

Among all judges in Las Vegas there is a pronounced sense of autonomy. Respondents talk freely about how individualistic the judges are. Moreover, the bench is internally divided, as evidenced by the 6-5 vote to fire the second court administrator. There is every indication that these divisions affect other issues as well, and this stress on judicial autonomy may explain the absence of a central authority figure in the court.

There are marked tension points between criminal justice agencies. Prior to the introduction of team and track, there was also no ongoing forum for the discussion of issues by personnel from the various agencies. Creation of the team and track advisory committee served to bring the varying organizations together, but this committee fell into disuse after the second court administrator was fired. It has recently been resurrected. In addition, we noted a marked lack of professional respect within the system, and some respondents claimed that some colleagues in other offices were not trustworthy or were incompetent.

There is also a long history of instability in the prosecutor's office. As previously mentioned, no incumbent district attorney has been reelected in modern times. The tradition of a one term district attorney partially accounts for the high turnover rate among personnel and the difficulty of filling vacant positions within that office. Moreover, the office is viewed as having a history of either mismanagement or no management.

Open political conflicts mark the area, and criminal justice issues have not escaped this pattern. The state legislature and the state supreme court have recently waged battle over the state court administrator's budget and funding for all courts. Building a new jail has engendered heated public comment. The clerk of the court and the district court judges disagree publicly over the clerk's services. The local newspapers have often been critical of the prosecutor's handling of some cases and of a proposed bail reform act.

However, there are some points of agreement within the criminal court process. This is a small town. Young attorneys who started in one office have through the years moved on to different positions and these past work experiences provide an informal network. Similarly several groups of people have worked together for a long time and provide an anchor of continuity. The public defender and the chief criminal district attorney have a long and good working relationship. The assistant court administrator has endured through three bosses. In addition, workgroup relationships have been positively affected by the introduction of team and track.

Finally, there is one surprising finding concerning the defendants in Las Vegas that contrasts directly with Providence. Cases involving persons allegedly associated with organized crime constitute a very visible part of the federal court docket. But these cases are largely (but not totally) absent from district court dockets.

LOCAL SOCIO-LEGAL CULTURE OF DETROIT

Cultural Characteristics

Detroit is the largest city of Michigan and the fifth largest in the nation. Detroit is located in Wayne County, which encompases Detroit, several cities that are surrounded by Detroit, and numerous suburban cities and towns. The population of Detroit in 1979 was forty-four percent black. The city depends heavily on the automobile industry; during times in which that industry has suffered, the city has also suffered. The United Auto Workers union is a major force. Politically, the city is Democratic, but there is no strong political machine tradition. The mayor is a black Democrat. There are two United States Representatives from the Detroit area and one is a Democrat and the other is a Republican. Both of these districts include some areas outside the Detroit city limits.

Law and Legal Structures

Jurisdiction and judicial selection. Michigan has two appellate courts—the Supreme Court and an intermediate Court of Appeals. The general trial courts of the state are the Circuit Courts. There is one circuit court in each county. The inferior courts are District Courts. Detroit's Recorder's Court is a municipal criminal court with exclusive jurisdiction over all criminal cases, both misdemeanor and felony, in the

city of Detroit. Recorder's Court also has a Traffic and Ordinance Division with separately elected judges and administration. For criminal cases arising in Wayne County, but outside Detroit, misdemeanors and preliminary felony matters are under the jurisdiction of District Courts, and high misdemeanors and felonies go to the Wayne County Circuit Court.

Recorder's Court is housed in the Frank Murphy Hall of Justice, a modern, twelve story building near downtown Detroit. The building also houses the Clerk of the Court, the Prosecutor's Office, the Probation Department, the Recorder's Court Psychiatric Clinic, a Release on Recognizance Division, and a Misdemeanor Defender's Office.

There were twenty judges on Recorder's Court at the time of this study. The judges are elected by the citizens of Detroit on a non-partisan ballot for terms of six years. Because vacancies on the bench are filled by gubernatorial appointment until the next election, however, many of the judges first reached the bench by appointment rather than election. In 1977, there were three women on the bench and half the judges were black—a proportion representative of the racial make-up of the city.

Since the court has both preliminary and trial jurisdiction, the judges normally rotate between misdemeanor and examining magistrate positions. In times of large pending caseloads, however, these functions have been performed by visiting judges rather than regular Recorder's Court judges.

Until 1977, the judges of Recorder's Court elected a presiding judge each year. The formal powers of this position were limited, but some presiding judges were able, through skill and personality, to wield more power in the position than others. According to court participants familiar with the court over a long period of time, there is a history of alternating between strong and weak presiding judges. When the workload grew heavy or the court was criticized, the judges chose and supported a strong presiding judge. When the crisis passed, they returned to a more laissez-faire administrative arrangement.

In late 1976, the Michigan Supreme Court promulgated a new court rule providing for the position of Chief Judge to replace the presiding judge. The position of Chief Judge has greatly expanded case assignment and management responsibilities

and powers. One chief judge was elected then, and there were no further elections through the research period.

Each judge has a clerk, a reporter, and two police officers assigned to provide security for his courtroom. All of these are selected by the judge (in some cases from an approved pool of people).

Administration and calendaring. Recorder's Court has used several calendar systems. Until 1968, the court used a master calendar. After that year experiments with various versions of individual calendars were used. An individual calendar system was used from 1972 through 1975. A master calendar (or central docket) with some elements of an individual docket were used between November, 1975 and November, 1976. From November, 1976, to the present, the court has operated under an individual calendar system.

Under the central docket, case scheduling was handled by the Case Scheduling Office. A veteran court employee directed the operations of this office. With the change to the individual docket, case scheduling through the preliminary exam stage remained in the Case Scheduling Office. Post-examination scheduling became the responsibility of individual judges. The delay-reduction program introduced a case track, based on the date of the arraignment on the warrant, to aid judges in scheduling cases. Delay-reduction project staff prepared tables which gave judges acceptable ranges of dates for scheduling cases.

There is a court administrator, but many of his responsibilities were assumed by an administrator appointed from outside the court for the duration of the delay reduction project. The court administrator retired in 1977 and a new administrator was hired in 1978.

Prosecution. The Wayne County Prosecutor is elected in partisan elections for a four year term. The current Prosecutor has held office since 1967. The Prosecutor's Office employs approximately 125 assistant prosecuting attorneys plus investigative and clerical staff. The office is organized into divisions, the largest of which are the Screening and Trial Preparation Division with its Warrant, Preliminary Examination, and Pretrial Division Program sections, and the Trial and Appellate Division. Each Division is headed by a Deputy Chief Prosecutor. (Annual Report, Wayne County

Prosecutor, 1977) There are, in addition, heads of each of the sections under the Deputy Chiefs. In structure and in operation, the Wayne County Prosecutor's Office is highly professionalized and bureaucratized (see Eisenstein and Jacob, 1977, pp. 151-154). Many Wayne County assistant prosecutors are career employees. While the Prosecutor's Office, like most prosecutor's offices, does recruit young attorneys just beginning practices, it is also able to recruit practicing attorneys who find the security, working conditions, and possibility for advancement in the Prosecutor's Office attractive. The result has been a strong, management-conscious prosecutor's office, which has often been in conflict with the Recorder's Court Bench.

Indigent defense. Over 80% of the defendants in Recorder's Court are indigent. Indigent defendants in Recorder's Court are represented by appointed counsel. Twenty-five percent of the appointments go to the Legal Aid and Defender's Society. Private attorneys who have indicated their willingness to accept appointments handle the remainder of cases. The responsibility for appointing counsel rotates among the Recorder's Court judges. Because of this method of appointment, close relationships have occasionally developed between judges and the attorneys they frequently appointed. These attorneys often contributed to the judge's reelection campaign and were usually cooperative in the courtroom. The judge, in turn, could be called upon for favors — continuances, or help in convincing the client the attorney was doing a good job. A few attorneys have specialized in representing indigent defendants. During the period under study, the assignment system was centralized to avoid such favoritism. When a judge gave an assignment to a particular attorney, s/he was required to indicate that on the attorney's assignment record. A limit was also placed on the number of open assigned cases that attorneys could have in Recorder's Court at any one time.

Criminal procedure. Under Michigan law, any person detained prior to trial can demand trial within six months of imprisonment or be released on his own recognizance (M.C.L.A. 767.38). There are also time standards regarding arraignments and preliminary examinations in felony cases.

Most cases in Recorder's Court begin with an arrest by the police. The police inform the Prosecutor of the arrest and the Prosecutor decides whether or not to request a warrant. This decision is made either on the day of or on the morning after the arrest. The arresting officer (or a representative from the appropriate precinct)

and the complainant appear at the Wayne County Prosecutor's Office. A senior prosecutor assigned to the Warrant Section reads the police write-up, talks to the officer and the complainant. He decides whether or not to issue a request for a warrant and what charge or charges to file. The Request for Warrant is taken to a judge who swears the complainant and issues a warrant. Michigan law requires that the accused person be arraigned on the warrant "without unnecessary delay" (M.C.L.A. 764.26). Most interpret this provision as requiring arraignment on the warrant within twenty-four hours of arrest. Defendants are arraigned on the warrant daily at two o'clock. Arraignments on the warrant are brief, hurried affairs usually lasting less than one minute. The defendant is informed of the charges against him, bail is set, and a plea of not guilty is entered. (The Release on Recognizance Program and, perhaps, a representative of the Police Department each make bail recommendation.) The defendant is asked whether s/he can afford to hire an attorney. If s/he says s/he cannot, s/he signs an affidavit of indigency and the case is put on the lists of those for whom attorneys are to be appointed. The magistrate sets a date for a preliminary examination which by law must be held within ten days. Most examinations are, in fact, set for one week after the arraignment.

Preliminary examinations in Recorder's Court are relatively adversarial proceedings in which witnesses are called and cross-examined. If the defendant waives his or her right to an examination or if the examination is held and the judge finds probable cause, the defendant is bound over for trial. All cases proceed by information unless a Wayne County Grand Jury issues an indictment in a Recorder's Court case. In virtually all cases, the defendant waives arraignment on the information.

Prior to the delay reduction project, the pretrial conference was the next event in a case. The pretrial conference was usually held in the Prosecutor's Office a week to ten days after the preliminary examination. The pretrial conference was a formally scheduled meeting between one of three senior assistant prosecutors assigned to the Pretrial Section. The defendant and his or her attorney then appeared before the judge to whom the case was assigned to plead guilty, to schedule motions, or to arrange for a trial date. Under the project, the pretrial conference became the calendar conference and a final conference date, which was also to be a plea cut-off date, was added. In December, 1978, pretrial conferences in the Prosecutor's Office were decentralized to Docket Prosecutors on each floor of courtrooms.

Case disposition. Recorder's Court has jurisdiction over cases from the time of arrest. For this reason, the court's statistics look a bit different from those of our other sites. About 10% of cases initially arraigned go to a full trial. Because 17% of cases arraigned are dismissed at the preliminary exam, the actual post-information trial rate is higher.

For most crimes, Michigan law provides maximum terms of imprisonment and/or fines. For a few crimes (e.g., armed robbery) there are also minimum terms prescribed. Judges impose minimum and maximum terms of imprisonment, but the minimum imposed cannot be more than two-thirds the maximum imposed. The Michigan Felony Firearms Statute, which went into effect in January, 1977, imposes a mandatory two year sentence on a defendant convicted of possessing a firearm while committing a felony. It is consecutive with the sentence served for the primary felony. (See Heumann and Loftin, 1979, on the impact of this statute.)

Informal Organization in Recorder's Court

Many of the elements described above contribute to the particular atmosphere in Recorder's Court. It is a large urban court with a criminal docket only. Because of its high volume of cases, it is a busy building with a lot of traffic. Elevators, hallways, and the cafeteria are usually crowded.

The court's specialization in criminal cases has created a similar sense of specialization among the judges: they feel that they are experts both in criminal law and in understanding what occurs "out on the streets." The judges have told us that they are neither deceived by defendants' stories nor shocked by details of defendants' violent or sordid lives.

Unlike some jurisdictions, the personnel of the court does reflect the racial composition of the city. Approximately half of the judges are black. The defense bar, probation officers, and clerical and administrative personnel are similarly representative. The Prosecutor's Office is less representative. Proportionate to the population, women are under-represented as judges and attorneys, and over-represented in clerical positions.

Because of the method of judicial selection and the attorney appointment system, judges and private attorneys are more mutually dependent than either are on the prosecutor. Unlike Rhode Island, there is a history of conflict between the bench and the prosecution over court policy. Although there are some close working relationships between some judges and their courtroom prosecutors, the bench and the prosecution typically have an adversary relationship.

The bench of Recorder's Court is not particularly a collegial one. This lack of cohesion has arisen from differences in philosophical and political outlook. The courthouse design does not facilitate close working relationships or informal interactions among the judges. There is no comfortable, convenient room for informal gathering. Unless judges seek one another out, they are unlikely to meet except in the elevator or hallway. There are some friendships among the judges. Two, for example, meet daily for a morning run around Belle Island in the Detroit River.

From an outsider's perspective, however, Recorder's Court is open and lively. Everyone in the court has an opinion on most issues and is willing to discuss those opinions freely. Most court employees have a sense that the court is special, and are willing to communicate with outsiders.

CONCLUSIONS

As the preceding descriptions indicate, our courts vary substantially but not randomly. No two courts are alike in every way, and no court is clearly deviant in every way. Variations in local cultural, legal, and procedural features are reflected in the courts. In addition, specific delay-reduction programs reflected cultural and legal boundaries. With these descriptions in mind, we turn to a description and analysis of the specific innovations in our four sites.

NOTES

[1]Two studies currently in progress are considering "local legal culture." In an LEAA grant to the American Judicature Society; 79-NI-AX-0064, Charles W. Grau, John Paul Ryan and Arlene Sheskin are anayzing the concept as a mediating variable between state supreme court rules of superintendence and local trial court practices (in Ohio). In another LEAA grant, James Eisenstein, Peter Nardulli, and Roy Fleming are examining local legal culture as one of several environmental factors that constrain courtroom actors.

[2]The existence and importance of informal organization was first discovered by Fritz Roethlisberger and William Dickson (1939) in their management studies of the Hawthorne Western Electric plant.

[3]Nine states (all the New England states, Delaware, North Carolina, and South Carolina) have statewide assignment systems. For information concerning Connecticut, see Feeley (1979). For a more general overview, see Ryan et al. (1980).

[4]Section 12-10-6 of the Rhode Island Criminal Procedure states: "Whenever any person shall be brought before a district court upon a complaint charging him with an offense which is not within the jurisdiction of the court to try and determine, and it shall appear to the court that the accused is probably guilty..." There is no further discussion of how this determination is made.

PART II

FOUR COURTS AND THEIR STRUGGLES TO REDUCE DELAY: DESCRIPTION AND ANALYSIS

Chapter 5

THE IMPLEMENTATION OF DELAY-REDUCTION PROGRAMS IN PROVIDENCE

Programmatic efforts to reduce case processing time in the Superior Court of Providence and Bristol Counties, Rhode Island, began in 1977. At that time the court used a master calendar system. It had not assumed complete control over criminal case scheduling from the Prosecutor's Office and used no predictable mechanism for case scheduling. The court collected no master criminal case statistics and was not concerned either with the size of the backlog or individual case processing time. Court actors did not routinely use pretrial negotiations. Through direct and indirect federal funding, the court has introduced sound management techniques, reduced the backlog of pending active criminal cases, and dramatically reduced criminal case processing time. Our quantitative analysis indicates that cases filed in 1976 had a mean case processing time of 365 days and a median of 277 days from filing to final disposition. Cases filed between April and December, 1978, however, were processed in a mean of 85.5 days from filing to disposition with a corresponding median of 61 days. Those quantitative findings are fully discussed in the next chapter.

This chapter is a description of the history of the delay problem in Rhode Island and the various delay-reduction programs instituted in the past three years. In addition, the chapter presents an evaluation of those programs based on the qualitative data.

THE PROBLEM: DEFINITION AND HISTORY

The state of Rhode Island has not historically defined delay as a major problem in the criminal justice system despite traditionally lengthy case processing times. This is not to say that delay was not a problem. Rather, until the mid 1970's the court paid little attention to criminal or civil case processing time and to the number of "old" cases still pending in the courts. The Attorney General claimed control over criminal case scheduling and routed cases under a master calendar to various judges. Case stage dates were not scheduled in advance, and the scheduling office was responsible for assigning only initial dates. Some respondents told us that because the prosecutor's office controlled scheduling, prosecutors could give priority scheduling to "good"

cases. "Bad" or weak cases could be lost in the shuffle, and many were neither scheduled nor tried. Prosecutors, however, often blamed judges and defense attorneys for delays. Whether judges or prosecutors were to blame for scheduling difficulties, the court generally had no routinized system for scheduling criminal cases. The court collected no master statistics from which either the age of cases or the size of the backlog of pending cases could be determined. On one occasion, the Attorney General simply dismissed all cases that were over six years old. In effect, the slate was occasionally and unsystematically wiped clean.

Beginning in 1972, several events and individuals called attention to the traditional way of scheduling cases and to delay as a problem. In 1972, the Supreme Court of Rhode Island issued a decision that connected case scheduling with delay. Although there was precedent for both the court and the prosecutor to control case scheduling, Mr. Justice Kelleher stated the following in his opinion:

> ...while we have recognized the Attorney General's power to conduct prosecutions on behalf of the state, once criminal process is issued either by way of complaint or indictment, his power is subject to both the judiciary's right and power to provide for an orderly administration of criminal justice within the judicial system and its obligation to protect an accused's right to due process and speedy trial. Tate v. Howard, RI 296 A. 2d 19 (1972).

The Supreme Court further held that the court's two month summer recess should not affect a defendant's right to be heard without unreasonable delay. This ruling led to a sharing of calendaring responsibilities between the court and the Attorney General. The court did not assume complete control in 1972 because of a lack of resources.

In 1974, the Democratic candidate for Attorney General used the criminal case backlog and delay problems as campaign issues and promised to focus attention on them. He was elected. In 1975, a new Chief Justice of the Supreme Court was appointed and expressed a need for improved judicial administration.

Despite the growing concern with delay, specific activities aimed at delay reduction did not begin until 1976 with a recommendation of the Judicial Planning Council. The Council is composed of the Chief Justice of the Supreme Court, the chief judges of all other courts, the Attorney General, the Public Defender, a representative of probation and parole, and the State Court Administrator. At the urging of the Chief Justice, the Planning Council adopted a 180 day case processing time goal for cases in all state courts. Plans were designed for the District Court,

Family Court, Probate Court, and the Superior Court. The Judicial Planning Unit of the Administrative Office of State Courts began a nationwide search for case processing models that might be relevant for Rhode Island.

We cannot over-state the magnitude of the problem faced by the Superior Court of Providence and Bristol Counties. Figures compiled by the Judicial Planning Unit for September, 1976, the first month systematically evaluated, indicated the following:

1. 3,176 felony cases with no outstanding warrants were pending.
2. Of these unwarranted felony pending cases, 2,474 cases were older than 180 days. This represented 78% of the pending unwarranted felony caseload.
3. In addition, 1,187 felony cases were pending with outstanding warrants.

According to the court's statistics, cases filed in 1976 took over 500 days to be processed. Our quantitative analysis indicates that cases filed in 1976 were processed from the filing of the information or indictment to disposition in a mean of 365 days with a median case processing time of 277 days. Although there are discrepancies between these two data sets, it is clear that the court was not particularly close to processing most cases within 180 days.

In order to deal with the newly defined problem of delay, the state planners and Superior Court officials conceived a series of grant applications, plans, and programs that would serve two purposes: 1) reduce the large backlog of pending cases, and 2) introduce some case processing mechanisms that would allow the court to reduce case processing time and remain current in its work. We will deal with these issues within two major time periods. First we will describe efforts which occurred primarly in 1977 and early 1978. During this period, the court attempted to deal with its backlog with a crash-type program and began planning management changes that were implemented in the following year. The second major time period began in April of 1978 as the actual programs were implemented. Our later statistical analysis will follow these time divisions. (See Table 5-1 for innovation dates.)

Table 5-1. Providence Time Line

Late 1976	Judicial Planning Council adopted 180 day goal.
Late 1976	Concept for grant conceived by Judicial Planning Unit and Approved by Presiding Justice.
January, 1977	Control over scheduling office transferred completely to Superior Court.
Spring, 1977	LEAA grant for $50,000 submitted.
August 29, 1977	Administrative Order appointing Assignment and Managing Justice.
September, 1977	Trip to Delaware.
November 8, to December 16, 1977	PUSH Program.
December, 1977	First site visit by Whittier College team.
January, 1978	Clerk appointed scheduling office manager.
January, 1978	Speedy Trial Conference.
February 28, 1978	Administrative Order establishing new scheduling procedure to be used for new cases.
March 1, 1978	New procedure begins.
March 3, 1978	First arraignment date for new procedure.
April, 1978	New Presiding Justice appointed.
May-June, 1978	Administrative authority over scheduling office transferred from Administrative Office of State Courts to Superior Court Administrator.
Summer, 1978	Evaluation of scheduling office by Arthur Young.
	Recommendation to use clerk's note.
September, 1978	Judges with lower court experience assigned to criminal responsibilities.

1977 AND EARLY 1978: BACKLOG REDUCTION AND PLANNING FOR MANAGEMENT INNOVATIONS

During 1977 and early 1978, the Superior Court of Providence and Bristol Counties went through a series of major changes designed to allow the court to meet the 180 day case processing time goal established by the Judicial Planning Council. Those changes included utilization of FY 1977 LEAA funds for planning, administrative changes in the operation of and control over the criminal case scheduling office, and the operation of a short term program to reduce the backlog of old pending cases.

As stated in the first quarterly report, the objectives of the approved $50,000 FY 1977 grant were:

1. To implement a predictable scheduling procedure.
2. To develop explicit performance standards and case processing time standards for criminal cases.
3. To review the unwarranted cases and pending cases over a year old to determine whether they are triable and to plan a means of disposing of them.

The funding period lasted from September 1, 1977 through February 28, 1979. The State Court Administrator, not the Superior Court Administrator, was the first project director. Because the State Court Administrator worked under the auspices of the Supreme Court, many in the Superior Court resented external control.

The court specifically used the grant funds during this planning period to finance a trip to Delaware for conversations concerning their scheduling office, recruit a manager for the scheduling office, plan a special court effort to dispose of old cases, and come up with a rational case tracking system.

Administrative Changes in the Scheduling Office

In January, 1977, the Superior Court assumed complete administrative control over the criminal case scheduling office. This administrative shift reflected Tate v. Howard and the court's displeasure with the case scheduling priorities of the Attorney General's office. The Attorney General was willing to relinquish control over scheduling. With the consent of the Presiding Justice of the Superior Court, the scheduling office was actually supervised by the Judicial Planning Unit of the Administrative Office of State Courts and not by the Superior Court itself.

The case scheduling procedure was reactive rather than active. The scheduling office set the first case appearance and then recorded later dates established by the various judges who heard later case stages. This general approach to case scheduling did not change initially with the administrative change. One of the planners described this administrative shift:

> ...they were just carrying on with what had been done by the Attorney General in the past. There were no grand schemes or plans... The Attorney General had placed one of his clerks from the Attorney General's scheduling office to assist and observe. That clerk and one of the Attorney General's employees came upstairs to take over scheduling services for us... It was almost like a move from the fourth floor to the sixth floor because really it was the same people.

During the summer of 1977, the Judicial Planning Unit began a nationwide search for ways to administer the case scheduling office and to place criminal cases on a predictable track. The state planners felt that a model used in Delaware[1] would be the most beneficial to the court. Based on a series of lengthy telephone conversations with personnel in Delaware, a new plan was devised. The Presiding Justice issued an Administrative Order on August 29, 1977 that provided for the appointment of an Assignment and Managing Justice who would be primarily responsible for the operations of the scheduling office. In addition, the Superior Court conducted a search for a scheduling office manager. By the end of 1977, a scheduling office clerk was promoted to this position because the search did not produce a satisfactory candidate.

Procedure Changes in the Scheduling Office

The Administrative Order implemented the following procedural changes in case scheduling:

1. The Assignment and Managing Justice was to call a daily calendar, assign cases for trial to other judges, and grant all pretrial continuances.
2. The Attorney General was to assign specific assistants to cases upon receipt of the new twenty-one day trial notice if assignments had not been previously made.
3. The prosecutor assigned to the case and the defense attorney of record were to discuss plea negotiations within fifteen days of receipt of the twenty-one day notice.

All of these points were new to the court. There had previously been no court representative in charge of scheduling, and although notices had been traditionally issued, they had no substantive meaning for trials. This Order mandated clear court control over case management.

After the implementation of the Administrative Order, the state planners and the newly appointed Assignment and Managing Justice went to Delaware to compare the operations of the various systems. During those discussions, the Rhode Island Court personnel realized that the new procedures would not help the court dispose of its large backlog of active old cases. The concept for a major backlog reduction program, the Push Program, was originated on that trip.

The Push Program

The Push Program was Rhode Island's first attempt to systematically reduce the backlog of pending cases. The actual program lasted from November 8 through December 16, 1977.

Push Program planning. Planning for the Push Program consumed most of the two months preceding the November start-up date. The Judicial Planning Unit of the Administrative Office of State Courts, with the advice and consent of the Presiding Justice and the newly appointed Assignment and Managing Justice of the Superior Court, did most of the planning.

The planners initially selected cases which fit four criteria: 1) single defendant cases, 2) private attorney cases, 3) cases filed in 1974, 1975, or 1976, and 4) non-capital offenses. Cases fitting these criteria as modified were called Calendar I of the Push.

Criteria for inclusion in the Push changed in two ways before the beginning of the program. First, public defender cases were included. Because that office did not assign specific attorneys to cases during early stages, these cases were selected by the Public Defender's office, not by the court, and were primarily cases fitting the other criteria and assigned to a limited number of attorneys. Second, at the insistence of the Presiding Justice, capital offenses were included and comprised Calendar II of the Push. Capital cases were selected to avoid attorney conflicts with Calendar I cases.

A total of 1,546 cases, 300 of which were public defender cases, were selected for inclusion in Calendar I of the Push. Three judges were assigned to these cases. 178 cases were scheduled for Calendar II, the violent crimes segment, and an additional twenty-one were eventually transferred from Calendar I. Five judges were assigned to Calendar II. This total of eight judges was double the number usually assigned to criminal matters. Some judges were borrowed from civil responsibilities.

The Operation of the Push. The Push Program was designed to dispose of a large number of cases within a short time period. Clerks were trained in the use of new case reporting forms that were fed into the computer daily. SJIS provided daily calendars and updated case information daily. Attorneys were notified regularly about the status of their cases and were sent notices for appearance.

Some new procedures were introduced. The first week of the program was devoted entirely to pretrial conferences. Pretrials had not previously been systematically used in Rhode Island and were institutionalized during the Push. Although the Assignment and Managing Justice tried to control the granting of all continuances and encouraged judges not to accept pleas in cases that had been set for trial, these practices met resistance and were discontinued.

The Assignment and Managing Justice and the state planners requested personnel assignments to facilitate case dispositions. Judges who were willing to negotiate were assigned to the Push. The Attorney General agreed to assign one prosecutor to each judge rather than to cases routed to various judges. Each judge was assigned a specific clerk. All cases handled by one attorney were assigned to the same judge. Because none of the private attorneys representing Push defendants were criminal defense specialists, judges encouraged attorneys to dispose of their cases and collect their fees. Because of these case and personnel assignments, courtroom personnel remained fairly stable during the Push. Only the defense attorney changed periodically.

Judges spent five weeks disposing of Push cases. During that time, 65% of Calendar 1 cases and 48% of Calendar II were disposed. Court statistics on Push dispositions are summarized in Table 5-2. According to the court's statistics, the program did contribute to backlog reduction. The backlog was reduced by 26.8% during the fall court term, and the planners attributed 73% of this reduction to the Push.

Table 5-2. PUSH Program Dispositions According to Court Statistics

	Calendar I (N = 1546)	Calendar II (N = 199)
Cases Disposed	65% (1008)	48% (95)
Cases Not Disposed	35% (538)	52% (104)
Mode of Disposition		
Trial	1.1% (11)	24% (23)
Plea	63% (639)	53% (50)
Dismissal	34% (338)	19% (18)
Miscellaneous (filed 1 year, diversion, deferred sentence, or death of defendant)	2% (20)	4% (4)

Evaluation of the Push Program. Respondents in Rhode Island shared a common evaluation of the Push Program: it did help reduce the backlog of pending criminal cases, but crash programs are not particularly desirable. Most also agreed that the court was able to dispose of "junk" case, cases that were either too old or too weak to prosecute effectively. One public defender stated..."(i)t disposed of cases but it stinks." Cases were run on an assembly line basis and attorneys felt they did not have enough time to deal with clients. In fact, that public defender described the office as an assembly line, with case files stacked up everywhere and clients running through every few minutes. And the judges also agreed that, while Push did accomplish its main goal, it was a public relations failure: "(p)ushes are always a PR failure." This particular judge stated that crash-type programs were fine as long as they were not advertised in the media. One defense attorney summed up the attitudes of judges, prosecutors, and the defense bar with the following statement:

> I didn't like the idea of mass justice... I don't think it was good for the public's view towards the judicial system... But as a practical measure of cleaning the dockets and doing some type of justice, I think it was fair, but I don't like — you know, if you've been down there at the time, you'll see every creep in the world standing in the hallways and getting thrown in and out. Some attorneys had like fifty clients down there, and didn't have time to properly advise them. They get a bad idea of what the justice system is. And I think the public was appalled there, too. But as a practical manner of getting rid of those cases, I thought it was very effective...

Some respondents mentioned that they felt that dispositions during the Push Program were much more lenient than they should have been. The local newspapers were very critical of the program for this reason, and at least one judge, several prosecutors, and several defense attorneys mentioned more lenient dispositions. One prosecutor expressed this sentiment:

> ...in my opinion, the dispositions were not fair...More probation really. Lots of cases thrown out. Pressure by the court and the prosecutor to reduce the charge, to do this, to do that... And with the kind of deals that were made, I found it (the Push) to be very distasteful.

However, several private attorneys felt that usually lenient sentences may have been warranted because of case characteristics:

> ...I got rid of about (x number) of cases that were complete dogs. And I got incredible deals. But they were also so old that I wasn't too sure exactly what the disposition would have been even without the Push. I think possibly I could have gotten the same dispositions without the Push as I did with it.
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> ****
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> ...I think the Push Program enabled them to get rid of a lot of cases. It was very beneficial to we defense counsel. I would have to say that.

> When I say beneficial, we were able to get rid of cases. Dispositions of the cases that were usually satisfactory to our clients. You'd get cases that were older in nature that would get dismissed, or you'd get cases that were....from a defense standpoint, were frivolous in nature and you'd get a disposition of them... I'm sure to the public it's going to look as though they're dumping cases...

In order to compare case dispositions during the Push Program with other dispositions, we compared our sample 1976 cases that were disposed of during the Push with other sample 1976 cases disposed of at other times.[2] According to our figures (see Table 5-3 for a more complete presentation of the findings), 1976 cases disposed during the Push were on the whole older at the time of disposition than other 1976 cases. Substantially more Push defendants were on bond at the time of disposition during the Push than at other times. Assault and theft cases were overrepresented during the Push, and robbery and burglary cases were underrepresented.

We did find a sentencing difference between Push and other 1976 cases that was significant at the .05 level. More Push defendants were in fact sentenced to probation and fewer to jail. We cannot, however, state that this difference supports the notion that the Push "gave away the courthouse" because of the nature of the offenses involved, the number of cases, and the age of cases. In addition, substantially more defendants were on bond during the Push.

The Push program did have one negative effect on the Superior Court. Because so much of the court's time and resources were devoted to the Push Program, the civil calendar suffered. Some judges normally assigned to civil duties attended to criminal matters for the duration of the program. Many attorneys with civil cases were unable to handle routine civil court dates. And the atmosphere of most court offices emphasized the extraordinary program, perhaps at the expense of routine court operations. We have no figures to indicate the depth of injury to the civil calendar, but all respondents were unanimous in this assessment.

Aside from reducing the size of the backlog of criminal cases, the program also had three other major positive effects on the court. First, it introduced the use of pretrial conferences in the state. Second, it showed the importance of collecting good statistical information for use in case management. And third, it put attorneys in the jurisdiction on notice that the court was committed to reducing delay in processing

Table 5-3. A Comparison of PUSH and Other 1976 Case Characteristics

Variable	76 Cases Disposed During Push (N=62) %	(N)	Other 76 Case Dispositions (N=316) %	(N)
Time From Filing to Disposition				
Under 240 Days	0	(0)	54.5	(164)
241 - 365 Days	9.8	(6)	11.3	(34)
366 - 547 Days	49.2	(30)	9.0	(27)
Over 548 Days	41.0	(25)	25.2	(76)
Offense Type				
Assault	29.0	(18)	14.2	(45)
Burglary	6.5	(4)	23.1	(73)
Drugs	8.1	(5)	9.2	(29)
Murder and Kidnapping	6.5	(4)	3.2	(10)
Miscellaneous	9.7	(6)	7.6	(24)
Theft	32.3	(20)	27.8	(88)
Weapons	6.5	(4)	4.7	(15)
Robbery	1.6	(1)	10.1	(32)
Bail Status				
Jail	4.8	(3)	30.2	(95)
Bail	95.2	(59)	69.8	(220)
Mode of Disposition				
Plea	71.0	(44)	78.8	(249)
Trial	8.1	(5)	5.7	(18)
Dismissal	21.0	(13)	15.5	(49)
Sentence Type				
Probation	88.9	(40)	62.5	(160)
Deferred	6.7	(3)	10.5	(27)
Jail	4.4	(2)	27.0	(69)

criminal cases. Although the Push was conceived and operated as a short term emergency measure, it was the programmatic start of delay reduction activities in Providence.

Speedy Trial Conference

Part of the LEAA grant money was used to sponsor a Speedy Trial Conference on January 4-5, 1978. The conference was part of the Judicial Planning Unit's effort to find a workable system to allow the court to reach its goal of processing felony cases in 180 days. Representatives from courts in Oregon, Delaware, New York, Pennsylvania, and Minnesota participated in addition to judges from the various levels of Rhode Island courts. Several of the participants were members of the Whittier College team who had already begun some activity in Rhode Island.

The planners structured the Speedy Trial Conference to allow the representatives from out-of-state courts to make presentations. These participants discussed their courts' experiences with delay and compliance with state speedy trial regulations. Based on these discussions, Rhode Island judges were encouraged to begin to plan administrative and structural changes in their courts.

The major impact of the Speedy Trial Conference was the development of an Administrative Order that implemented ideas coming out of the Conference. That Order was issued by the Presiding Justice on February 28, 1978 and outlined a new mechanism for scheduling and tracking criminal cases in the Superior Court.

The Administrative Order

If the Push program is seen as a backlog reduction measure, the Administrative Order must be seen as the first official attempt to introduce and routinize clear court control over criminal case scheduling and sound management procedures. The Administrative Order was designed to allow new criminal cases to be processed within the 180 day goal and to gradually feed cases over 180 days into the process. The following are the major points of the Order:

1. The previously appointed Assignment and Managing Justice was redesignated as Managing Justice for Criminal Case Scheduling. He was to oversee all operations of the scheduling office, modify procedures as required, and refer problems to a monitoring committee composed of three judges and representatives of the Attorney General and the Public Defender.
2. Both the Attorney General and the Public Defender were to assign specific attorneys to cases before arraignment.
3. At arraignment, each case was to be put on a court controlled ninety day track: the scheduling office was to assign a pretrial date approximately 60 days after the arraignment and a trial date 30 days after the pretrial. The scheduling office maintained its active posture.
4. Judges were to participate in pretrials and either dispose of the case at the pretrial or keep the case for disposition on its scheduled trial date rather than pass the case to another master calendar judge.
5. The Managing Justice was to review all cases one week before the scheduled trial date to anticipate trial problems.
6. Trials were to occur four days a week, with the other day being used for pleas, sentencing, and other matters. Arraignments were to be held one day a week.
7. Pretrial and trial notices issued at arraignment were to serve as trial notices, replacing the old seven day and twenty-one day notices.
8. Old cases were to be fed into the system once the procedure was operating.

The key points in this Order were continuing the use of pretrial conferences, getting early attorney assignments, and putting all cases on a specific track.

The time period between January 1977 and February 1978 was devoted to reduction of the backlog through the Push Program and planning for management changes in the scheduling and tracking of cases. The court did not act in isolation in these activities. The work of the Superior Court was greatly facilitated by the efforts of the Judicial Planning Unit of the Administrative Office of State Courts and contact with other jurisdictions. Major management innovations began in the Superior Court with the 1978 Administrative order.

MARCH 1978 THROUGH 1979: DELAY-REDUCTION THROUGH MANAGEMENT CHANGES IN THE SUPERIOR COURT

Although the Administrative Order was implemented immediately, its full effect was not felt in the court until case scheduling procedures underwent major modifications between March 1978 and September 1978. That seven month period was one of major administrative change in the Superior Court. During that period, the Presiding

Justice was elevated to the Supreme Court and the newly appointed Presiding Justice continued the court's commitment to delay-reduction and management changes.

The major administrative changes that occurred during this seven month period did not involve new personnel. Rather, the new Presiding Justice reassigned existing personnel and shifted personnel responsibilities. The Superior Court Administrator became responsible for the operations in the criminal case scheduling office and the Judicial Planning Unit's presence in the Superior Court was minimized. The conflict that had been generated by the Supreme Court/State Administrator's control over the Superior Court was thus resolved. The new Presiding Justice ended the position of Assignment and Managing Justice and divided those duties between two judges with responsibilities for administrative calendar calls. Because the Presiding Justice has the responsibility for assigning judges to either civil or criminal responsibilities in all of the Superior Court locations throughout the state, she specifically assigned four judges with lower court experience to the criminal calendar in Providence and Bristol Counties. Because of the large volume of cases in lower courts, she believed that judges with this experience could expedite case processing. She also made the daily calendar judge responsible for all pretrial conferences.

There were also major changes in the criminal case scheduling office during this period that were all oriented to introducing some rational and predictable case scheduling and monitoring mechanisms. Although the previous Presiding Justice had agreed to participate in the Whittier College delay-reduction project, the new Presiding Justice was in office before any firm project activities began. Major changes in the scheduling office were related to the Whittier model. We feel that we should describe the Whittier model as implemented in Rhode Island at this point.

The Whittier Model

The Whittier project[3] was initiated to introduce a system of effective management concepts into courts with delay problems. The system was based on the delay-reduction experience in Multnomah County, Oregon, but was modified in each site to meet local needs. Members of the Whittier team selected Rhode Island because of the magnitude of its delay problem and the willingness of the Rhode Island court officials to participate.

The Whittier team first visited Providence shortly after the conclusion of the Push program in 1977. Members of the team participated in the Speedy Trial Conference, and actual project work began in the spring of 1978. During the spring and summer of 1978, the Whittier team collected case file statistics to document both the size of the backlog and the average criminal case processing time. In order to reach a case processing time goal of 180 days from filing to disposition, the team asserted that the court had to dispose of 293 cases per month by plea or dismissal and in addition twelve to fifteen trials per month. If the court met this goal, the Whittier team believed that the court could dispose of the remaining backlog of cases and meet the 180 day goal within eighteen months. The 180 day time frame did not include lower court processing time, and the Whittier team was not involved in the lower courts. However, lower court time added approximately ninety days to total case processing time.

With the case file information collected and the Multnomah County model developed, the Whittier team began a lengthy series of meetings and seminars to tailor the plan to Rhode Island and to convince local court personnel that delay was a problem that could be solved through sound management practices. Subcommittees were formed to discuss problems in each stage of case processing and each subcommittee presented formal recommendations to the court for possible implementation. In addition, the team visited each office in the court to understand present operations and to suggest revisions in those procedures. The two team members assigned responsibility for Rhode Island visited the court monthly for the duration of the project.

The Whittier team also attempted to resocialize court support personnel through these meetings and seminars. There was an all day seminar specifically designed for clerks and other bureaucratic personnel that stressed the history of these functions in courts and the importance of those positions to the overall functioning of the court. These planning and resocialization sessions attempted to build an espirit de corps and a sense of common group mission.

The Rhode Island Plan. The following are the major points of the proposed Whittier plan for Rhode Island. It is important to note that elements of the plan were implemented gradually over a period of a year:

1. Temporary expansion of the role of Presiding Justice to include presiding over daily arraignments, motions, supervision of plea negotiations, and assignment of cases for trial. This temporary period was to be followed by the appointment of a chief criminal judge to handle these matters on an ongoing basis.
2. Appointment of a court advisory committee to meet regularly to discuss common problems in the criminal justice system's agencies.
3. Appointment of a criminal calendar clerk responsible to the court administrator. This person was to compile necessary court statistics.
4. Appointment of a bail and recognizance officer to monitor bail decisions.
5. Better case screening at the lower court level.
6. A daily list of cases scheduled for probable cause hearings.
7. Changes in arraignment to include early appointment of indigent counsel, prosecutorial discovery, scheduling of pretrial conferences within seven days of arraignment, and a trial date of fourteen days following the pretrial.
8. Written motions for continuance and the setting of a new date immediately upon granting the continuance.
9. Motions to suppress the information or indictment to be filed two days after the pretrial.
10. Implementation of a plea cut-off date two days after the negotiation session.
11. Monthly judges meetings with the distribution of monthly statistics and minutes of previous meetings.

Some of these ideas, particularly the concept of the plea cut-off date and control over continuances, were attempted with little success during the Push Program. Some of the concepts were therefore familiar to the court. This familiarity did not facilitate their implementation: the judges continued to resist the plea cut-off date and written motions for continuance.

Acceptance of the plan. The Whittier model was accepted at first with skepticism at best and some resentment at worst. When asked if s/he believed Ernie Friesen when he first began coming to Rhode Island, one judge said:

> I was inclined to believe him about fifty percent... I knew that (he) had been at this kind of thing for so long that about fifty percent of it might be optimism and encouragement...

Another judge expressed a different initial concern and said, "I don't need an outsider to tell me what to do."

Some specific Whittier proposals were adopted and implemented. A court advisory committee composed of representatives of all of the area's criminal justice agencies began meeting in January, 1979. All respondents agreed that this committee provided a forum for discussion previously lacking in the state. The chief clerk in the criminal case scheduling office has assumed the responsibilities of a calendar clerk and does compile monthly statistics used by the court administrator and judges for monitoring and decision-making. Monthly judge meetings do occur and monthly performance statistics are distributed at these meetings. Those judges with criminal responsibilities also meet periodically. These three changes facilitate the collection and dissemination of information within the Superior Court.

More of the Whittier proposals were implemented only after major modifications. The Presiding Justice did not expand the role of that office and believed that expansion was impossible because of the statutory responsibilities of the office. Both Presiding Justices in office during the delay-reduction program have conducted special calendars occasionally. The Presiding Justice did appoint one judge to be responsible for the daily and arraignment calls and another to call a weekly trial calendar. Both of these positions rotate quarterly and provide all judges with criminal responsibilities with some administrative responsibilities.

No bail and recognizance officer was appointed, but the Attorney General has received legislative authority to increase bond forfeiture and warrant service activities. The Attorney General has also restructured the Information Charging Unit, and that office is screening cases more effectively. This replaces the direct involvement of the lower courts.

The Superior Court did not accept the timing of events recommended by the Whittier team. Rather than mandating a pretrial conference within seven days after the arraignment, the court adopted a thirty day period. Similarly, trials are scheduled to occur thirty days, not fourteen, after the pretrials. The court rejected written requests for continuances, but has adopted a firm continuance policy. Those judges with administrative responsibilities must approve continuances before cases are routed to individual judges for trial. Continuances may not be granted by the scheduling office. Continuances are not formally monitored.

The court firmly rejected two key Whittier suggestions and there seem to be no plans to implement either a plea cutoff date or reciprocal discovery in the near future. Both of these suggestions were implemented in Dayton.

We have no information concerning suggestions to collect statistics from the lower court or on changes concerning the timing of motions to suppress the information. We assume that neither of these has been implemented.

The actual contributions of the Whittier team cannot be reduced to a list of specific innovations. Because of existing relationships between some team members and some court officials and because team members were in the court several days per month over a period of two years, the Presiding Justice and court administrator used the Whittier team as informal consultants on issues technically beyond the scope of the project. According to respondents in the site and on the Whittier team, such issues as budgetary and staffing concerns, personnel placement and assignments, changing the summer vacation policy, better use of the computer system, and changes in general management were discussed. We cannot assess the impact of those conversations on the court.

Evaluation of the Whittier Model in Rhode Island. We interviewed key respondents in the Superior Court in February, 1979 and again in November, 1979. The second set of interviews was necessary because of the lengthy implementation period for the Whittier plan. Respondents were generally aware in February that the Whitter team was in the court, but few could give a list of specifics to be attributed to the project. Others remembered serving on a committee or attending meetings but could remember little substance. Everyone, however, was aware of general delay reduction activities in the court. The awareness of the project had grown substantially by November, particularly among the judges. We attribute this change to the court's rotation of judges on the criminal call to the two administrative positions, the daily calendar call and the weekly trial calendar. Since the Whittier team specifically worked with judges in these gatekeeping positions, those with administrative functions learned the specifics of the plan much better than those only on the civil call or those with no administrative responsibilities.

Our quantitative analysis in the next chapter indicates that substantial reduction in criminal case processing time did occur in Providence during the Whittier project. However, many respondents felt that the presence of the Whittier team was as important to delay reduction as was any specific programmatic change. One respondent described the impact of the program this way:

> They didn't accomplish everything that they would have liked to accomplish. But then, whoever expects 100%?... I think, if I were to really try to capture in a word the contribution, it's really "catalyst." Really, that's how I feel. But it isn't fair to reduce it to a word because they did a lot of little extra things that took the extra time and the extra communication, and even at times helped with other little problems, but all in the spirit of gaining a confidence and communication and cooperation with the people here.

Describing the Whittier model and the team's presence as a catalyst for change, we feel, is very appropriate. Although the team did recommend and facilitate the implementation of specific changes, their mere presence may have created a new mood in the court and an orientation to change and modernization. Most respondents agreed that the court was changing when the team began its program, and that the team accelerated the change process and made it more directed.

The presence of the team and their programs have aided the resocialization of judges. Most judges in Rhode Island have been relatively isolated from one another and from judges in other jurisdictions. With the exception of the Presiding Justices, few have attended judicial conferences or courses. Few were familiar with systems in other jurisdictions. The Whittier team has provided them with a breadth of knowledge not otherwise available. It has also begun to provide management training and experience. If innovations on the criminal side are seen as having a positive impact, judges with the new program experience will be given civil responsibilities, and this could lead to a reduction in civil case processing time.

Many of our respondents mentioned the main contributions of the project as providing recognition of problems in the court and the motivation to solve those problems. One respondent specifically mentioned a change in motivation and morale:

> ...I think we did get people inspired and motivated to do a job. And I don't think that that was completely unplanned. I think the fact that they were given training, I think the fact that they were being monitored, and that each one felt that they were contributing was a good morale builder.

There was a general recognition that the court had identified problems and had begun to solve those problems. The Whittier team helped in the identification of those problems and provided the motivation for problem solving.

Several respondents pointed to three specific changes in the court directly attributable to the Whittier team: court control over the scheduling of cases, monitoring of case flow and activities, and increased communication among criminal justice system actors. One judge talked about monitoring and court control this way:

> ...I think the most significant thing we've done is established a pattern of monitoring what we're doing. In other words, stepping back all the time, seeing how things are going. I think if we continue to do that on a regular basis, we'll be able to catch the areas where bad things are going to start happening. That, I think, is probably the most significant thing we've done...

The same judge continued:

> ....I think the major force is changing our concept about the court's responsibility to keep things moving smoothly and doing something about it. In other words, doing something now that's different from what we used to do. Because it turns over all the rocks, makes people look at things again, and then into this system, whatever system we're putting into place, if you plug in all of these techniques —from monitoring to making lawyers accountable, requiring judges to evalute their own performance, in terms of the way we give continuances, and the way we deal with the calendar, all of that combined. But I think just the decision that there was a problem and then the decision to find ways to solve the problem, that kind of generates some force of its own.

Two judges specifically mentioned the improvement in communication in the court because of the formal meeting format:

> We can listen to each other's problems. The public defender or the Attorney General can point out the failings in the system we're using, that we might not be able to see because we're looking at it through one point of view.
>
> ****
>
> There was an involvement in the committee format of the chiefs of...for example, on the criminal calendar, of the chiefs of police, of the probation department. I had the fellow from the probation department tell me that it was delightful once a month to sit down every Tuesday afternoon with all the judges on the criminal calendar and the Attorney General, to be able, at least if you want to ask a question to have a context in which to ask it... I think that all those things that we did like setting up the committees for training, the involvement once a month of the people on the criminal calendar alone meeting was a very good thing.

Respondents in Providence saw the Push program, changes in the criminal scheduling office, and the Whittier project as a continuous court interest in delay reduction rather than as separate programs. Most could not attribute programmatic features to any individual project. However, the court administrator and the Presiding Justice were so pleased with the efforts of the Whittier team that they requested and received a small grant from the state legislature to hire the Whittier team to work on reducing delay in civil case processing.

This is not to suggest that the Whittier team was able to implement all of its recommended changes on the criminal side. The Whittier project's internal evaluation stated that early reciprocal discovery, structured plea negotiations, and a plea cutoff date were the most important parts of the program. None of these changes has been made in Providence to date. Respondents indicated that they would continue to resist changes in discovery or in the timing of pleas.

Rhode Island continues to have problems with pretrial negotiations as well. First implemented during the Push, the court has continued to experiment with both the timing and the placement of pretrials. The daily calendar judge first conducted all pretrials. When these resulted in relatively few pleas, cases were subjected to a second round of pretrials by other judges before trial. With some personnel changes because of judicial rotation, two pretrials are still being conducted for each case. However, the first pretrial conference has begun to result in more pleas earlier in the case and the second set of discussions serves to estimate the length of trials as well as resolve a few remaining cases. Most court participants feel that pretrial conferences are still not as effective as they might be. We can only wonder what the impact of reciprocal discovery, the plea cutoff date, and improved pretrials might be in Providence.

The Whittier team has pointed to the necessity of attitude change in delay-reduction efforts: judges and attorneys must believe that delay is dysfunctional to justice. Although we have clear evidence from our two sets of interviews that judges have changed their attitudes and that prosecutors are supportive of the court's efforts, we have not noted major attitude changes among members of the public or private defense bar. The Public Defender's office has been supportive of change, but several assistant public defenders and some members of the private bar have simply devised new defense strategies to circumvent court changes.

Many of the attorneys that we interviewed agreed that delay is a defense tool. They did not mention the fee collection problem as frequently as they discussed needing time to develop a case, to allow a case to "mature," and to weaken the prosecution's case. Many attorneys agreed that prosecution offers were unrealistic: better offers would end many cases earlier in the process. Several told us that the best way to ensure delay in a case was to simply call it ready for trial. Attorneys told us that the court consistently scheduled too many cases for trial and could never reach

all of the called cases in any given week. If attorneys called all of their cases ready for trial and began one trial, others could not proceed because of time conflicts. For many attorneys, then, delay reduction efforts simply necessitated new defense strategies.

Because the Whittier team emphasized the need for good communication and attitude change among all criminal justice system actors, we were surprised to learn from private defense attorneys that they knew little if anything about the Whitter program. They were aware of some of the new practices, but were not aware that they resuled from a concerted court program.

The Whittier team has facilitated delay reduction in the Superior Court of Providence and Bristol Counties. Many of the changes are likely to continue because they have been institutionalized. The team has contributed to a new mood and orientation to problem solving in the court.

THE CRIMINAL CASE SCHEDULING OFFICE

The criminal case scheduling office has been at the center of all of the various delay-reduction programs in the Superior Court. We have thus chosen to deal with it separately. The case scheduling office was involved when control over scheduling shifted from the Attorney General to the Superior Court via the Administrative Office of State Courts. Money from the LEAA FY1977 grant was used to hire an outside consultant to evaluate the workflow in the office, and the Whittier team spent considerable time in the office to help rationalize tracking of cases and record keeping.

As control over scheduling shifted from the Attorney General to the court, new scheduling procedures were introduced slowly. The first major change we discussed earlier in this chapter occurred in the summer of 1977 with the Administrative Order. There were a series of management changes between 1977 and late 1979 that have all attempted to introduce a predictable scheduling mechanism for all criminal cases and not simply those with prosecutorial merit.

From the summer of 1977 through early 1978, the office had to deal with less than wholehearted support for court control over scheduling and had to rely on the

personalities of the employees for cooperation. Employees could do favors for attorneys by giving them preferential scheduling and could then ask for favors in return. One judge described these 1977 problems to us:

> Well, we started trying to get the clerks to call and prepare calendars and to alert on a day to day basis the attorneys who were involved in trials before us... I think that initially the court had grown used to a system where they had accepted there had always been a criminal backlog, and there always would be a criminal backlog. I think there was a feeling on the court that the responsibility for prosecuting criminals is the responsibility of the Attorney General. And that the court had no direct responsibility. I think that the concept of the scheduling office taking over and running the calendar was not universally accepted... In the early days we functioned...with a lot of honey and a lot of cream, and we got a lot of things done...(one of the scheduling office employees) had many favors owed. Many favors were owed to her on the side of the prosecution and on the side of defense counsel... (Another employee) was a very charming girl and everybody liked her... (These two) called on every favor that anybody owed them to get things going. And that's the way the girls started it.

Once the Superior Court assumed control over the office, there was some misunderstanding in the court about what the office was supposed to do. Case files were sent to the office directly from each court, and the office had to deal with many individual files. This led to the following problems as described by one scheduling office employee:

> We have a problem with judges thinking that the scheduling office is a "running around and finding files" office. Each judge is assigned two sheriffs and a clerk, and for some reason every time they're looking for a file, they call the scheduling office and say, "Would you get me this file?" instead of the clerk's office. And so, we run around to find a file and you go down to the judge's chambers and there's two sheriffs and clerks sitting there and doing nothing... It's something that has got to stop. You wouldn't mind if everybody was busy occasionally, but you go down there and they're all sitting around.

This problem was solved by the introduction of a "clerk's note," a multi-copy document with all pertinent case information. The office received one copy of the form and no longer handled individual case files.

The scheduling office also had to devise a system for case tracking and record keeping. The computer was initially used for case tracking. However, because there were some problems with the system, the scheduling office went to a manual case tracking system. Using a series of master cards, the scheduling office employees record pertinent case information on the cards and place the cards in various files to reflect the appropriate case stage. Daily and weekly court calendars are compiled from information on these cards.

The scheduling process is triggered with the filing of the indictment or the information. The office schedules all new cases with an arraignment date ten days to two weeks from the filing date. It also schedules each case for a pretrial conference thirty days after arraignment and a trial date thirty days after the pretrial conference. The office notifies defendants and attorneys of the various dates and delivers a form with the dates to the defendant at arraignment. The court attempts to schedule hearings on motions and other pretrial matters before the original trial date. Any changes in scheduled dates are made by judges.

We noted two specific problems in the scheduling office in the middle of the research that had been solved by our last field visit. First, there was little interdependence of personnel and each employee had one job. Problems emerged during periods of illness or vacation. With the hiring of one extra person, increased training, and some personnel changes, that problem has been alleviated. Second, we noted that an inordinate number of phone calls came into the office. With better attorney notification procedures and judicial control over continuances, most phone calls have stopped.

The office has many strengths. All of the office employees have remarkable familiarity with every case in the system and each case's progress. Personnel share good rapport with the court administrator and with all of the judges. Each judge that has had some administrative responsibility in the court specifically complimented the office personnel for hard work and dedication. Statistics to provide management information are prepared monthly. By our last field visit, the court administrator commented that the office was virtually running itself. Routinized procedures have facilitated case scheduling mechanisms.

We have noted two remaining problems in the scheduling office: overscheduling of cases for trial and incomplete collection of pertinent statistics. The scheduling office has consistently scheduled more cases for trial each week than can possibly be reached. In the past, this practice was reasonable because of the large number of cases that entered a plea on the day of trial. However, because of some changes in the court, far more cases are pleading earlier in the process and those called ready for trial are more likely to actually go to trial. Attorneys know of this overscheduling problem and use it to their own advantage. Although the office does routinely feed the overflow cases back into the trial calendar, attorneys have no way of predicting

which of their cases in this category will actually go to trial first, making trial preparation difficult.

The second problem, that of incomplete statistics, is as much a problem of the court's priorities as it is of the scheduling office. Although the majority of the court's time is spent on felony cases, the court also hears numerous misdemeanor appeals de novo from the lower court and conducts bail and sentence violation hearings. Although these proceedings are scheduled and consume judicial time, nothing about them appears in the monthly statistics. The statistics therefore do not reflect the full workload of felony judges.

THE INFORMATION CHARGING UNIT OF THE ATTORNEY GENERAL'S OFFICE

The Information Charging Unit of the Attorney General's Office was not officially a part of any of the federally funded delay-reduction programs. However, members of the Whittier team did provide some assistance to personnel in the office. The office is very important to the court because it serves as the first real screening mechanism for felony cases. Lower court preliminary hearings are rarely used. Since the screening unit determines the Superior Court's workload by filing informations and indictments, we feel that its inclusion in our discussion is important.

The Information Charging Unit was created in 1975. Until that time, all cases in Rhode Island were sent to the Grand Jury. The unit currently routes cases either to the Grand Jury or does its own prosecutorial review. About 80% of the cases proceed by information.

The unit has used a variety of different personnel assignment systems since its inception. Prosecutors have been assigned on a weekly rotation system to screening, have heard cases only in the morning, and have screened cases throughout the day. At the time of our last field visit, one prosecutor was assigned to the unit on a relatively permanent basis and did screening three days a week. The prosecutor also had responsibility for the Grand Jury in one of the outlying counties on the other two days.

The police departments complete their arrest investigation and forward a packet of information to the prosecutor. That package contains arrest reports, defendant and

witness statements, police laboratory reports, and any other information that has been gathered. Upon receipt, the unit evaluates the information, interviews police officers and witnesses, and makes a charging decision.

The time between arrest and charging has been as long as three months in Rhode Island. This lengthy period has resulted from problems in preparing police reports, prosecutorial rotation and assignment patterns, and the hesitancy of some prosecutors to officially sign and file informations.

In the middle of our research, the time from arrest to charging dropped to a low of forty-four days. This time period has increased recently because of the large number of complicated cases being prosecuted by various special units in the prosecutor's office. As one prosecutor told us, the system is designed to handle routine cases, and more complicated cases simply take longer for decision-making. This increase in complicated cases may eventually result in a higher trial rate for the court.

Changes in Information Charging have had an impact on the court. The court is getting more recent cases and is receiving proportionately fewer cases. The new screening system has therefore reduced total case processing time and reduced the court's overall felony case load. Because of our sampling period, we may not have picked up all of these changes in our quantitative analysis. The prosecutors have told us that they are now filing about twenty-seven cases per week, a reduction from the previous figure of forty per week.

There are still some problems in the office. The clerks are required to complete an inordinate number of forms for each case. The office was still experimenting with attorney assignment systems. However, none of these remaining problems are as important as the fact that the unit has played a role in the delay reduction efforts of the court and that role has been noticed. The court administrator told us that the screening unit is doing a good job of screening cases better and faster. However, because of the formal lines of communication in the state, the prosecutor was not aware of the court administrator's praise.

OTHER CHANGES IN THE SUPERIOR COURT

Although our analysis has focused primarily on the specific delay reduction programs introduced in the Superior Court, there have been numerous other changes in the court over the past few years that may have had an impact on delay reduction. If anything, the court has become so oriented to change that the numerous programs may actually have interfered with one another because of conflicting demands on the personnel. However, these changes were indicative of the court's new spirit of innovation and modernization.

There have been several key management changes. We discussed the role of the newly appointed Presiding Justice in 1978 and her commitment to continue her predecessor's delay reduction efforts. In the fall of 1979, the Presiding Justice, like her predecessor, was elevated to the Supreme Court. The second new Presiding Justice was appointed and confirmed in the winter of 1980 and has committed himself to the continuation of the projects. In addition, a new Attorney General was elected in the fall of 1978 and continued his predecessor's interest in better management and increased professionalization of the office. Management changes in the Information Charging Unit of the prosecutor's office occurred under two Attorneys General.

With the power to make specific judicial assignments, the Presiding Justice assigned four judges with lower court experience to the criminal call in the fall of 1978. These assignments coincided with the introduction of the delay reduction programs. We have included these assignments in our analysis because of their importance. Aside from bringing experience with a high volume of cases to the bench, three of these four judges also initiated their own mini-crash calendars. Two of them worked with a few private criminal defense attorneys to try to settle many of their pending cases. These cases were fed into the docket for disposition when possible and appropriate. In addition, the third judge worked specifically on the large pending backlog of misdemeanor appeal cases and had a good deal of success in disposing of many of them. The court in 1979 had about 800 misdemeanor appeals pending that were older than 180 days. One judge was scheduling five of these per day in an attempt to further reduce this backlog.

The Attorney General committed himself to reducing the backlog of pending cases as well. In addition to providing the scheduling office with current cases to

schedule, the Attorney General was routing an additional twenty-five older cases a week for scheduling. In a sense, the Attorney General was attempting to routinize coping with old cases while the three judges were invoking quasi-emergency measures. Both programs were operating at the same time and both were demanding extra time from the court personnel. There seems to have been no communication with regard to the programs, and the overlap led to some frustration and duplication of efforts. It must also be remembered that the Attorney General reorganized the information charging unit at the same time and was reducing the number of new cases being sent to the court.

In the spring of 1979, the Attorney General changed the manner of case assignment of prosecutors. Prosecutors had been previously assigned to specific cases based on tenure and skills. In the spring, the Attorney General began assigning two prosecutors to each judge. This could have some impact on informal relationships in the court and routing of cases to judges. It did have an immediate impact on continuances at the request of the prosecutor. A court survey of causes for continuances in the fall of 1978 indicated that more continuances were requested by prosecutors than by defense attorneys. The prosecutor's staff was smaller than normal at that time because of the upcoming election, and this may have caused more continuances. However, with the new assignment system, the court administrator noticed a sharp decrease in the number of continuances requested by the prosecution. By the time the program was introduced, however, the prosecutor's office was back to full staffing.

One final major change was introduced in the summer of 1979. The court ended its policy of reducing its workload over the summer as described in Chapter 4. The court adopted a policy that allowed judges to take their vacations at any time during the year rather than only during the summer session. While this change was introduced to allow the court to operate at virtually full strength all year, all respondents told us that the change had caused some problems. First, since judges could take vacations throughout the year, the court never predictably operates at full strength. One judge is always on vacation. This has made scheduling and the distribution of work a problem. Second, because of vacation policies of labor unions and the local custom, the court experienced difficulties in getting juries, witnesses, and attorneys in court during the summer. One respondent said:

> The new year round scheduling, while it has great cosmetic value, it's injurious to productivity... In the summer we had July and August, because the bar and this jurisdiction are accustomed to summer vacation not only because we're a resort state, but because industry, business, and people in all the walks of life are geared towards a full scale vacation period in the summer. Many, many people here have two homes, winter and summer... We actually had more manpower than we could keep occupied during the summer period, and we now find ourselves at this point in time, where everybody is back in full swing, and with four judges assisting on the criminal calendar, two can be out on vacation. That cuts us down considerably. The trade off isn't worth it.

The court hopes to solve these problems through either the use of borrowed lower court judges or legislative approval of two additional Superior Court judges.

There have been other changes in the court in the past few years too numerous to list. CETA employess have been hired, offices have been redecorated, restructured, and moved, paper work has been reduced in some offices, computer terminals are available in some offices, and there have been some key personnel shifts. The important thing about all of these programs is that the court has undergone major changes in the past few years, and all of the changes may be reflected in delay-reduction even if that was not the primary goal. We cannot gauge these latent functions, but must point to their potential impact.

PROVIDENCE GENERAL ASSESSMENT

When we asked respondents to describe what had changed the most in the state as a result of the delay-reduction programs, most pointed to getting rid of the backlog of cases, setting goals and achieving them through hard work, and instituting a system for felony case processing. Some private attorneys maintainted that they weren't aware of any changes in the system and others noted that their cases were in fact getting to trial sooner. This speed required them to devise new defense strategies.

When asked about overall delay-reduction, one judge specified hard work as the key to the court's success:

> Well, a lot of hard work and getting all the cases. You know, we put everything on the computer and got all the cases that had been in limbo in the system for a good many years and brought them all together and put them on different calendars and got the lawyers in and just, you know, a real bonafide effort to get down and work on these things... A lot of cases were thrown out, and had been around so long...but it decreases the backlog. The cases will never be tried, witnesses unavailable, people have died, moved out of the state... Now when a case is on the calendar, I mean we don't just pass it off. We set it down to a day certain so it doesn't get lost somewhere. Keep track of it.

One public defender mentioned backlog reduction and the reduction in the size of the caseloads of the assistant public defenders:

> We're in the best shape we've ever been...the caseloads are reasonable now. We've disposed of so many cases through these pushes, you know,...these pretrial conferences and all of that stuff, and there were reasonable recommendations (from the prosecutors that judges were willing to accept).

A prosecutor mentioned a similar phenomenon in his office:

> I think probably the most significant thing right now is the court has reduced the backlog... I think the most significant aspect is that we are now trying cases that are pretty recent. I think that makes it a heck of a lot easier for us, because instead of trying cases five years old, the witnesses have moved, the witnesses have forgotten, the witnesses have lost interest. We're now trying cases, by and large, that have been in the court within the last year or so... When you try cases that are recent, people care about them... I think it's helping us try a better case.

Most respondents expressed a clear concern for improving the administration of justice through these programs. Courts, after all, dispense justice. One judge wondered if a concern with delay reduction could distract judges from justice concerns:

> We're dealing in this delay-reduction with the concept of time-reducing the amount of time. I hope we don't focus on that to the exclusion of all the other things that the criminal justice system has to be doing. And that is, I think, to make it the best, fairest system possible. So I think, every now and again, we have to step back and look at the content of what we're doing even while we're working with the delay-reduction program. I had the luxury this morning of setting down a sentencing hearing... While doing it, though, I'm haunted by the sense that I've had to delay a jury-waived trial I started yesterday. And when the defendant asked to waive his jury trial, while I did all the necessary things to make sure he knew what he was doing... I'm wondering whether I might not have been keen about letting him waive his jury trial because it fit in nicely with our plans — it meant the trial would go a little faster...

We found this open concern with the relationship between delay, delay-reduction and justice throughout the court. Being aware that new programs can hinder or facilitate justice is as important to the participants in Rhode Island as delay-reduction.

It is clear from both our quantitative and qualitative data that the Superior Court has changed dramatically in the past few years. That change has for the most part been in the direction of modernizing and further professionalizing the court. We have noted, however, that there are some remaining problems in the court that, if solved, could facilitate even further delay-reduction. These problems include how to deal with cases with outstanding warrants, overscheduling, violation hearings, routinizing misdemeanor appeal cases, delay on the civil side, and introducing elements of the Friesen model not in place to date. In addition to these procedural issues, the court may have some personnel needs that have not been recognized yet.

The court has a large number of cases still pending with outstanding warrants. Although the Attorney General and the Sheriff have had some success in finding defendants, the court generally has not been vigorous in serving warrants. This is complicated by the multi-state area and the number of out-of-state defendants and witnesses involved. Some cases may simply not be able to proceed, and the court administrator and the Attorney General have not found a procedure to solve this to date.

Violation hearings and misdemeanor appeals present a different problem. These issues are clearly part of the court's charge and they do consume personnel time. Misdemeanor appeal cases are now being fed into the docket routinely, and the docket is interrupted to hear both bail and sentence violation hearings. However, these activities are not recorded in terms of the amount of judicial time they demand. Simple statistics could indicate that the court in fact does a lot more work than it records.

We do not have good quantitative data on bail violations. However, our data do indicate that sentence violations are not uncommon. Because of jail resource limitations, a large number of defendants are sentenced to deferred or suspended sentences. Both are potentially subject to change. Of the 1,381 cases in our three year sample, 964, (69.8%) resulted in convictions. Of those convicted, 106 (10.8%) resulted in a post-conviction violation hearing. Of these, 71, (80.7%) resulted in a finding that a sentence violation occurred, and fifty-three (74.6%) of those considered violators resulted in a change in sentence. These figures indicate that post-conviction violation hearings do consume time and do have an impact on sentencing after the fact. Judges on the court are divided over the issue of violations. Some make them their first priority and others feel that they should be treated within the context of the new offense. One judge has prepared some guidelines for the timing of these hearings. What is clear is that the court's sentencing practices may actually create additional work, work that the court itself does not tally.

Overscheduling cases for trial in any week remains a problem that defense attorneys mentioned frequently. Because of the possibility of late pleas, overscheduling insures a full trial docket. However, some trials remained unreached virtually every week. Although those cases are fed back into the system for rescheduling, the practice creates problems for attorneys and case preparation. Some attorneys told us that unrealistic prosecutorial offers also created more trials than the court could reasonably handle. In addition, attorneys with large caseloads cannot try as many cases in a given week as are placed on the trial calendar. One attorney spoke to these problems:

> Basically, if you call every case ready for trial, you don't really need to do a hell of a lot more than that. Call them all ready for trial, then you start one and then automatically all the other ones get postponed forever... (I had) seven cases on the trial calendar last Monday. I mean, it's insane to expect me to be ready on seven cases. There's no way that I can go before the court and say, yeah, I know, I'm not only talking about trial preparation, but I'm talking about saying, yeah, my witnesses are available, I know I'm not going to have any problems... But to put that many cases on the calendar doesn't make sense. Because now, you don't get going on one of them. Well, assume you do get going on one — you never hear about the rest of the list, because by the time you finish that trial there are three more lists that came out. And I don't know what happens to them. They surface later on, in some kind of a different order.

Overscheduling, then, is a function of the number of cases the office places on the calendar, the number of cases per attorney scheduled per week, and the size of the local bar.

The civil calendar was not included in any of the delay-reduction programs to date but will be the next priority in the state. The civil backlog has not increased and in fact has been reduced a little. The court administrator hopes that the Whittier project may reduce this backlog of civil cases.

We have found one final major problem in Rhode Island that cannot be solved by court activity alone. The court seems to be understaffed. The court administrator and Presiding Justice have asked the state legislature to approve two additional judgeships for the Superior Court. However, we have heard no discussion about increases in personnel for the Attorney General, the Public Defender, clerks, bailiffs, or other support personnel. Judges now have access to a typing pool and have two sheriffs and a clerk. However, no judge has his or her own bailiff or secretary to facilitate work. Some of the problems could be alleviated with additional resources to hire additional trial and support personnel.

Despite these remaining problems in the state, Rhode Island has experienced major change in the past three years. Because the court does not have a history of dealing with delay as in Detroit, we have no reason to believe that these problems will recur. The court and all personnel seem determined to maintain the gains of all programs. The court has not simply coped with problems of delay; it has introduced a series of entirely new concepts that make the processing of cases sytematic. One prosecutor verbalized the major changes in Rhode Island far better than we could:

> The thing that's changed the most is that regardless of how people feel about it, they feel there's a sense of worth, that it's not pure chaos, and there are steps to be taken — they're in place, they're orderly steps. Even though these steps are automatic, people might try to manipulate them, at least they are manipulating those steps, and they're not just going in the back door and burying things. They're orderly because people have expectations of order now. That they didn't have before.

NOTES

[1]Delaware was selected as a good comparison site for a variety of reasons, none of which were related to delay. Delaware did not have a current history of delay problems. It was comparable in size to Rhode Island and handled about two-thirds the number of cases filed in Rhode Island. Like Rhode Island, Delaware had a state-wide court system rather than one of individual county jurisdictions. In addition, the planners felt that a state in the East would be more comparable for cultural and historical reasons than a western or southern site with experience in delay reduction.

The Delaware system included a Criminal Office judge who controlled case scheduling, conducted arraignments, granted continuances, heard pretrial motions, conducted a trial calendar and routed cases to specific judges for trial, and accepted early pleas. The system also required early assignment of prosecutors, overscheduling of cases for trial in anticipation of late pleas, and a firm time frame for case scheduling. Many of the elements of the Delaware system resemble the Whittier model. However, Delaware respondents told us that their system was designed in 1975 by one local judge. There may have been some later Whittier influence in Delaware because the scheduling office manager had been a student of Dean Ernest Friesen, the head of the Whittier team, at the Institute for Court Management.

[2]There may be some discrepancies between our figures and those collected by the court because cases filed in 1974 and 1975 were included in the Push but excluded from our sample. For example, the court indicated that the trial rate was actually lower during the Push than it was in other times. Our figures indicate, however, that more 1976 cases went to trial during the Push (8.1%) than during other times (5.7%).

[3]In 1977, the Whittier College School of Law received an LEAA grant to study the experience in Multnomah County, Oregon (Portland) with regard to delay reduction. Multnomah County claims a criminal case processing time of forty-five days from arrest to disposition. The Whittier College team is composed of Dean Ernest Friesen of the Whittier School of Law, Judge Alfred Sulmonetti of Portland, Joe Jordan, a computer consultant, and Murray Geiger, a management consultant. That project compared Multnomah County with four other court systems in an interactive fashion. Questions raised in the four comparison sites were answered with further study in Multnomah County. Upon completion of this initial grant, the same project team received a 1978 LEAA National Scope Project award to help the four comparison sites reduce delay in processing criminal cases by applying the model developed in the first project. Providence and Dayton were two of the four sites.

The Whittier College model is a complex one that stresses complete court and bureaucratic control over all stages of the criminal process, coordination with other justice agencies, communication within and across agencies, and the collection of statistics which are to be used as the basis for sound management decision-making. The initial project identified ninety-five critical factors in courts that fall into seven categories. The team hypothesized that the presence or absence of each of these critical factors bore some relationship to delay. Delay reduction in the four comparison sites was to be achieved by introducing into those systems critical factors discovered in Multnomah County that were absent in other court systems with appropriate modifications.

The team operationalized those critical factors into the following seven categories:

(a) Organization for decision-making. In order to accomplish the goals of any criminal justice system, agencies involved in the process must coordinate activities with one another, and each agency must also provide for ongoing internal communication and coordination. To accomplish this, the model proposed monthly coordinating committee meetings and monthly judge meetings to facilitate discussion, goal setting, and monitoring.

(b) Organization for control. The critical factors in this category stress the importance of strong court leadership through a criminal chief judge and some non-judicial officer to monitor and coordinate administrative tasks. In addition, a felony court committee should advise the chief judge. Other critical factors call for early appointment of indigent defense, sound bail policies, and centralized arraignments.

(c) Organization for case inventory control. The critical factors associated with this form of control stress coordination between the office responsible for formal charging and the office which schedules cases for trial. The coordinating office is to be kept informed of incoming cases and is to assign arraignment dates early in the process. This communication allows a court to estimate its potential workload.

(d) Arraignments with control. The court assumes full control over cases at arraignment. In order to maintain this control, courts must provide defendants with all necessary case information and schedule all future court dates and activities at the time of arraignment. Failure to abide by scheduling could result in other criminal charges against the defendant. Scheduling should permit the resolution of cases within twenty-one days after arraignment. One crucial critical factor in this category provides for full prosecutorial disclosure at arraignment.

(e) Operating standards to provide control. This category of critical factors assures continued court control over all pretrial motions and negotiations. Motions and requests for continuances must be in writing and all hearings and postponements should be immediately scheduled. These steps prevent cases from being administratively lost and insure their being processed on some known schedule.

(f) Statistical information for control. A key category in the Whittier model provides for the continuous collection and monitoring of case statistics at all stages of the adjudication process. A court can best maintain control over its workload only if it knows how many cases are at which stage in the process and how well the court and its participants are performing. The age of cases and the range of dispositions must also be monitored. The availability of these statistics allows rational decision-making in the court.

(g) Resources to support control. The final category of critical factors outlined in the Whittier model specifies the need for adequate resources. Courts must have adequate space and budgets, and court offices must be well staffed to accomplish its work. One factor calls for an adequate pool of qualified defense attorneys. Courts without adequate resources cannot hope to achieve delay reduction.

In their own evaluation of the model, members of the Whittier team modified their critical factors to include the need for understandable statistical information, meetings for criminal judges, coordination with lower courts, ongoing system monitoring, and effective personnel training.

Their evaluation stressed the importance of three aspects of the model: reciprocal discovery, structured pretrial negotiations, and a plea cutoff date. Although they admitted that not all of their demonstration sites implemented these aspects, programmatic success relied on these three.

The evaluation also stressed the need for communication and cooperation within each court system. Defensiveness within a system about the status quo may impede change. Relationships within and between courts may facilitate the implementation of a new program.

The Whittier evaluation also discussed at length the importance of social, legal, and political factors in each site. The model had to be tailored to each site to fit local expectations.

Chapter 6

THE RESULTS IN PROVIDENCE

Delay in processing criminal cases was more pervasive in Providence than in the other three courts. Historically, delay was not defined as a problem. The prosecutor's office, for example, only scheduled cases with prosecutorial merit and paid little attention to the rest. Beginning in the mid-1970's however, a number of changes were instituted. Control over case scheduling shifted from the prosecutor to the court. The Judicial Planning Council, a state level body, adopted a 180 goal for processing cases in all courts. The Superior Court responded by planning programs that would speak to the newly defined problem of delay. A Push Program was introduced, a speedy trial conference held, outside consultants hired. New scheduling procedures were established, and personnel were reassigned. These changes focused on professionalizing the management of the court. They proceeded slowly; more than two years were consumed in planning and implementation. This slow pace of change is a reflection of the local socio-legal culture of the jurisdiction.

The impact of these changes on case processing time is the central focus of this chapter. Toward this end we will consider the following topics: How long do cases take? Did the innovations reduce delay? Could other (confounding) factors account for the reduction in delay? Are case characteristics related to trial court case processing time? Are case characteristics related to lower court processing time?

HOW LONG DO CASES TAKE?

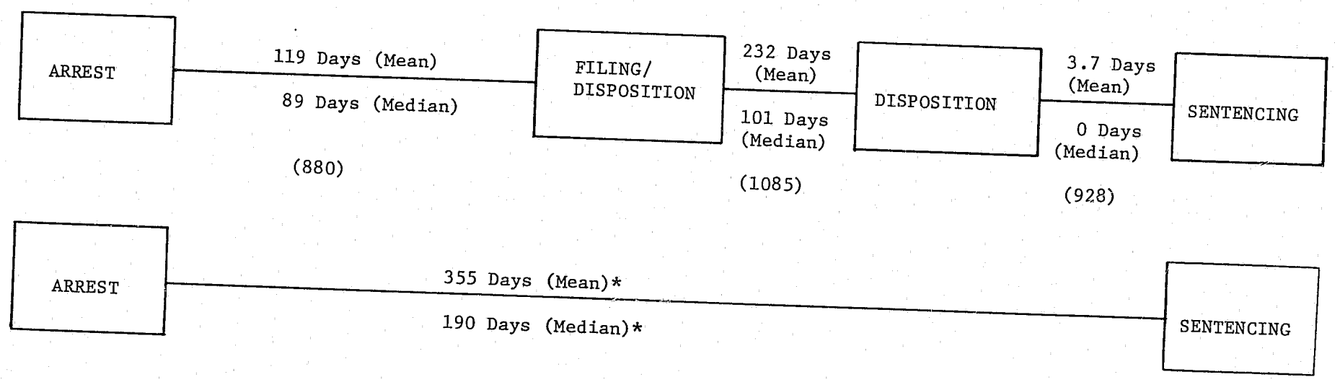
Figure 6-1 provides an overview of total case processing time in Providence. These estimates are based on a sample of cases filed in Superior Court during 1976, 1977, and 1978. During this three year period, cases took, on the average, 355 days to proceed from arrest to sentencing.[1] This estimate, however, reveals as much as it obscures. It reveals that on the average Providence processes its cases significantly slower than either Detroit, Las Vegas or Dayton. However, it obscures how long a "typical" case takes. As we indicated in Chapter 2, averages (means) are heavily influenced by extreme values — cases that take an unusually long amount of time to reach disposition. For this reason, we also need to examine the median (midpoint). In

Providence, the median case processing time is 190 days. The sharp divergence of more than five months between the mean and median highlights the high statistical variance in the sample.

FIGURE 6-1

Overview of Case Processing Time in Providence, Rhode Island

(1976-1978)



*These figures are a composite of the specific time frames.

While these figures provide an overall baseline for assessing Providence, of more analytical interest is where in the process elapsed time is occurring. Two time periods are analytically important: lower court time and trial court time.

Lower Court Time

Lower court time refers to the time from arrest until the trial court gains control of the case. In Providence lower court time involves three separate sets of activities: District Court handling of preliminary stages of a case, police preparation of the case package, and the Attorney General's decision to file charges. Lower court time was measured from the day of arrest until the day the defendant was arraigned in Superior Court. The median amount of lower court time is 89 days. As we shall discuss shortly, however, this figure varies at differing points in our three year sample. None of the Superior Court's delay-reduction activities involved the District Court, but the District Court did initiate some programs on its own.

Trial Court Time

Trial court time refers to the period from when Superior Court gains control of a case (the filing of either an information or an indictment) to disposition (plea, trial, or dismissal). Trial court time (median of 101 days) is lengthier than lower court time. But again this estimate is substantially higher before the innovations and lower afterwards.

As Chapter 2 indicated, not all the time that elapses during the life-history of a case is attributable to the court. In particular, time lost due to an outstanding warrant does not meet our conceptual definition of case processing time outlined in Chapter 2. Although some court systems exert control over time lost due to warrants by retrieving defendants who have skipped, the Rhode Island system traditionally has not done so. Indeed, the Superior Court keeps separate figures on warranted and unwarranted cases. Therefore, days lost due to warrants were subtracted from the overall case processing time of a case.

Defendants skipping scheduled court appearances are a regular occurrence in Providence. In our full sample of 1,381 cases, 453 involved one warrant, 68 cases a second warrant, and 9 cases a third warrant. Once a defendant fails to appear, the

court does not schedule a next court appearance date. That date is set only after apprehension. Time lost due to warrants is substantial as Table 6-1 shows. Subtracting days lost due to warrants produces a significant reduction in measures of case processing time. The average time from filing to disposition drops by one month (mean of 261 days to a mean of 232). The median likewise declines by a similar amount (133 days to 101).[2]

Table 6-1. Days Lost Due to Warrants

	Mean	Median	N
One Warrant	102 days	28 days	255
Two Warrants	100	32	31
Three Warrants	122	88	4

Sentencing Time

Sentencing time refers to the period between a finding of guilty and the imposition of sentence. In our other sites, this period consumes several weeks as a presentence investigation is conducted. In Providence, though, most defendants are sentenced on the day of disposition. The median case processing time is 0 (mean of 3.7).

DID CASE PROCESSING TIME DECREASE?

Having presented the basic case processing time measures, we can now turn to a fundamental evaluation question: were the innovations associated with a decrease in case processing time?

Figure 6-2 plots the means and medians of case processing time by the month cases were filed. Figure 6-3 smooths out the time line using a running median developed by Tukey (1977), as discussed in Chapter 2. It graphically highlights changes over time; case processing time decreased substantially, indeed dramatically. Note that during the initial months of 1976 the mean case processing time was 483, 696, and 402 days. For the last three months of 1978 the comparable figures were 39, 78, and 70. To be sure there are significant fluctuations from month to month, but such fluctuations are to be expected given the relatively small sample size per month.

FIGURE 6-2

Case Processing Time From Filing To Disposition in Providence

Plotted By Month Charges Were Filed

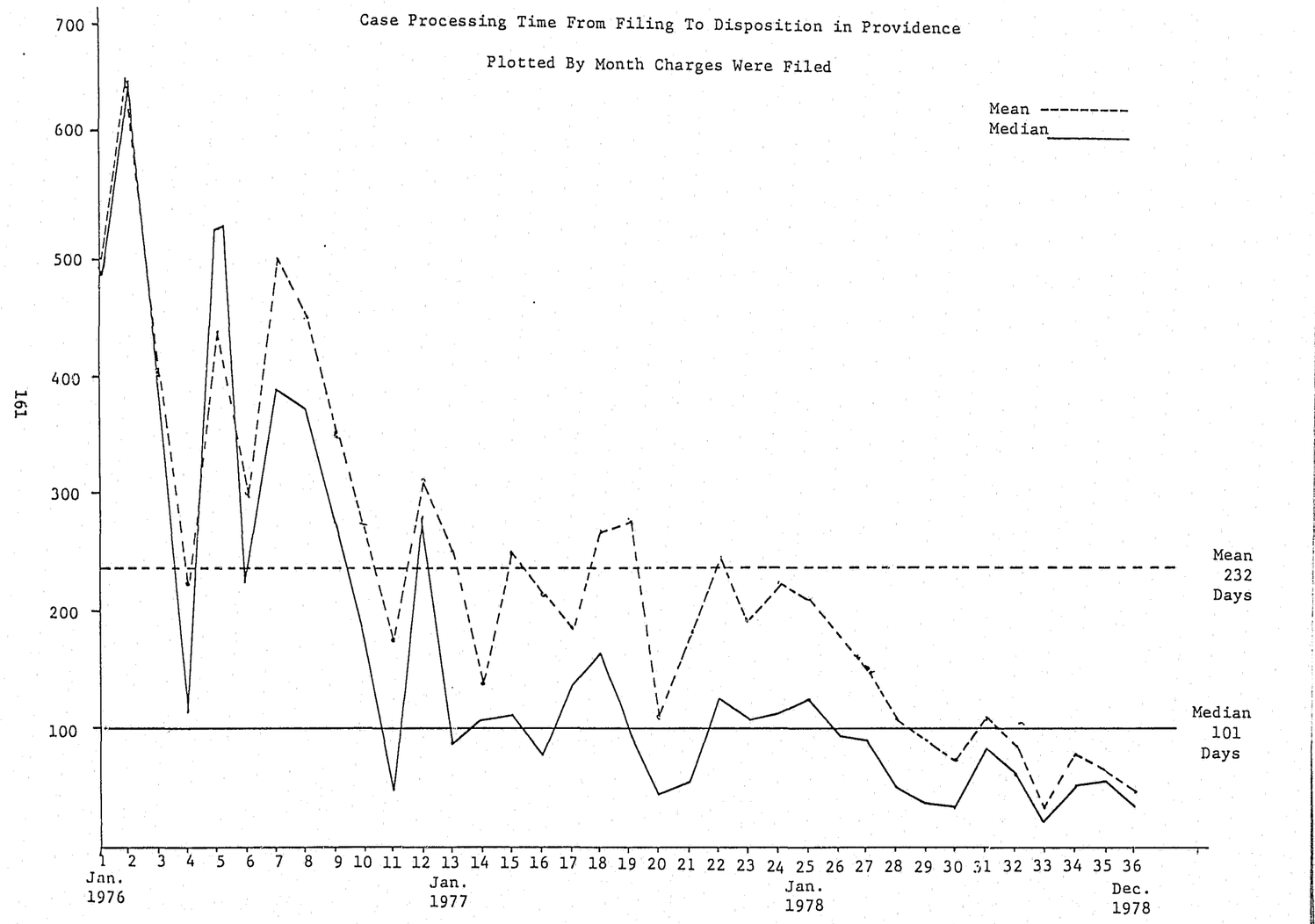
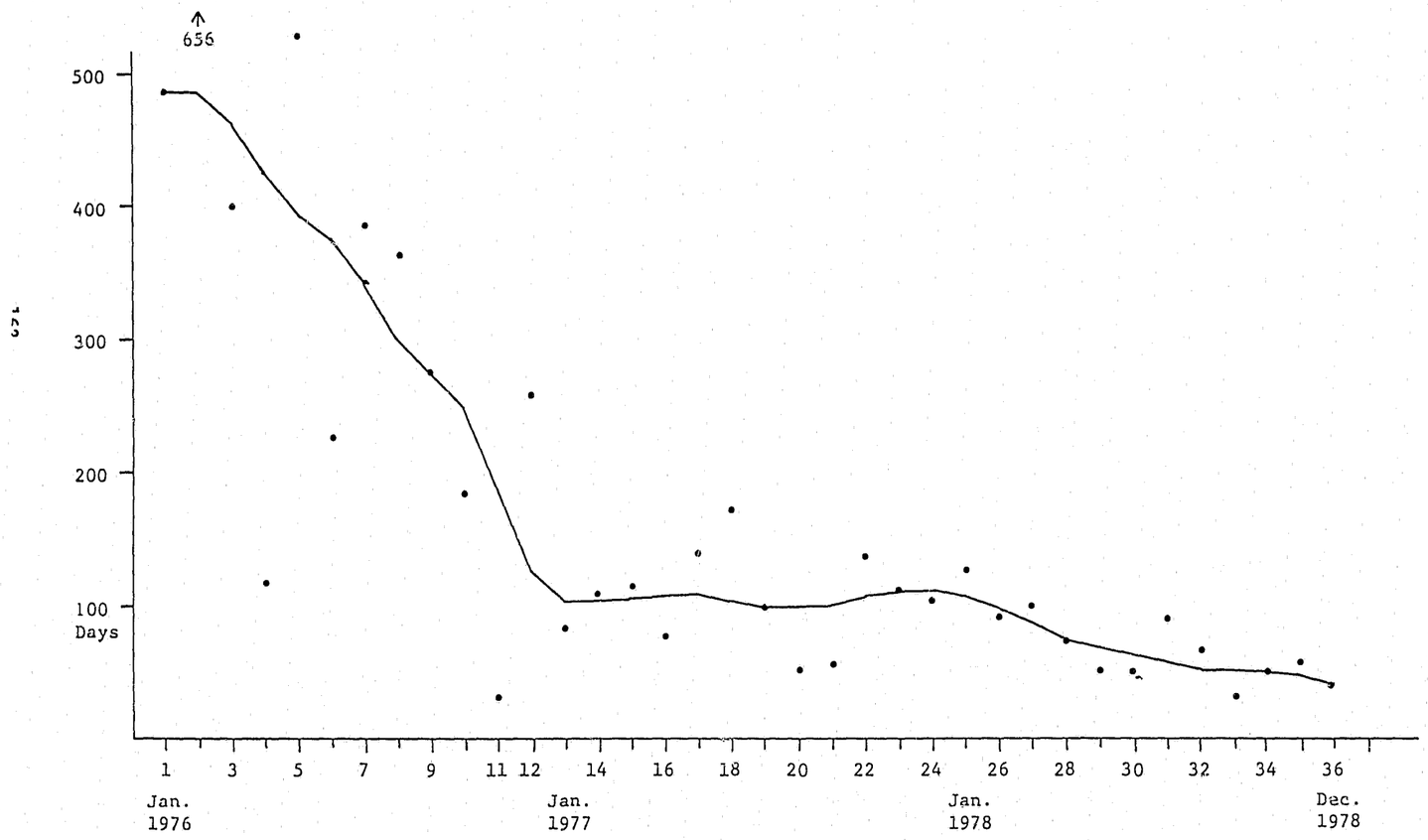


FIGURE 6-3

Case Processing Time From Filing To Disposition in Providence

Plotted by Month Charges Were Filed, Using Running Median



The time-line in combination with our extensive field research suggests that we can reasonably divide the data into three time periods: base, planning, and impact. 1976 stands as the base period prior to innovations in the court. It served as an approximate indicator of the magnitude of the delay problem in Providence. These figures, however, underestimate the extent of the problem because subsequent innovations affected cases filed in 1976 that were processed during later years. Thus, the base period appears better than it would have if no delay-reduction efforts had later been attempted.[3] Note that by the end of 1976 case processing time began to decrease, possibly influenced by actions of the Judicial Planning Council.

The second time period includes all of 1977 and the first three months of 1978. We have labeled this the planning period. During this period delay in the courts became a major issue of concern, and some changes were made including the Push Program and the drafting of the Administrative Order.

The impact period involves all cases filed after April 1, 1978.[5] Virtually all of the programs were in place by then, and the court acted in accordance with those programs. Referring back to the time-line, note that, a month after the new procedures were put into effect, case processing time dropped.

Box-and-Whisker Plots

While means and medians provide a useful overview of how long "typical" cases take, they also leave out much. When discussing delay in the courts, we are often most interested in cases that take abnormally long to process or are disposed of with great dispatch. Table 6-2 and Figure 6-4 provide this kind of information.

Table 6-2. Case Processing Time by Time Period

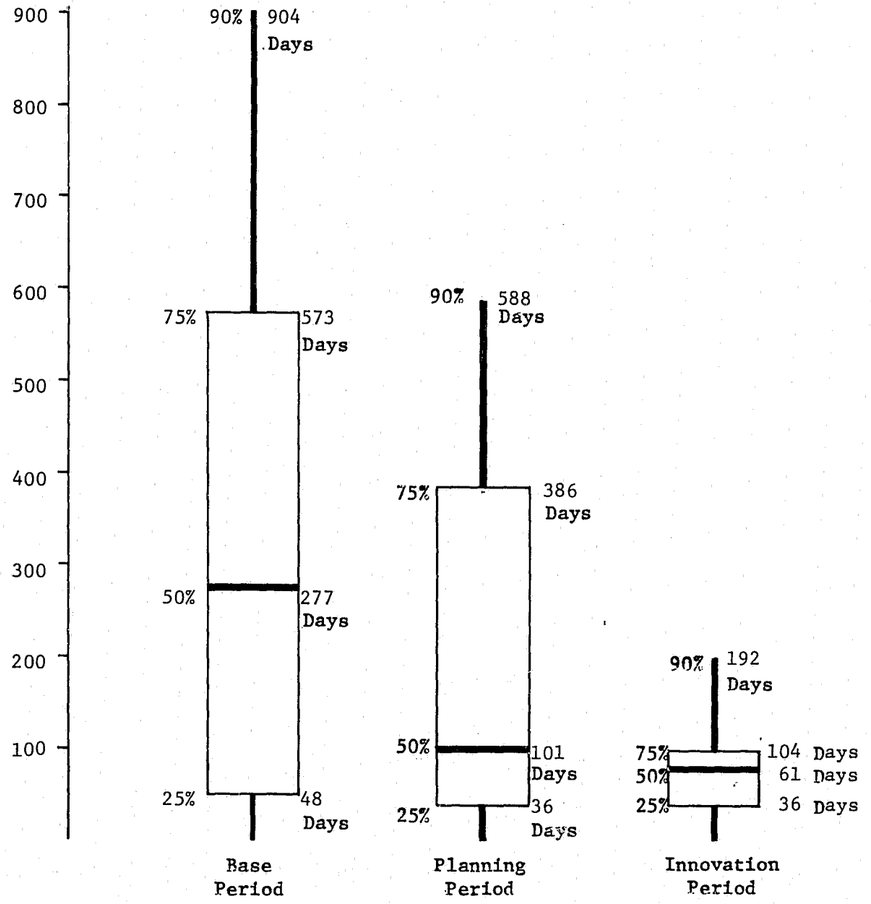
	Total Sample		Base Period (1/76-12/76)		Planning Period (1/77-4/78)		Impact Period (4/78-12/78)	
0 to 60 days	400	(38%)	96	(26%)	162	(38%)	142	(49%)
61 to 120	194	(18%)	35	(10%)	70	(16%)	89	(31%)
121 to 240	122	(11%)	33	(9%)	50	(11%)	39	(13%)
241 to 365	90	(8%)	40	(11%)	34	(8%)	16	(5%)
366 to 547	122	(11%)	57	(16%)	60	(14%)	5	(2%)
548 to 730	91	(8%)	50	(14%)	41	(10%)	0*	
Over 2 years	66	(6%)	51	(14%)	15	(3%)	0**	
N	1,085		362		432		291	

*Cases can fall into this cell only if filed before August, 1978.

**Because coding ended in December, 1979, no cases can fall in this cell.

FIGURE 6-4

Case Processing Time in Providence by Time Period



The box-and-whisker plots summarize the variation in elapsed time by the three time periods. Inside the box, the line represents the median. It shows that case processing time decreased significantly through time. During the base period the median time was 277 days. Actually these figures underrepresent case duration because of the backward impact of the programs. For the planning period case processing time dropped substantially to 101 days, perhaps highlighting the Hawthorne effect. Merely viewing delay as a problem, without implementing any changes, seems to have led to improvements. Finally, after the innovations were in effect, the median dropped again to 61 days. These drastic changes suggest that the earlier data presented in Figure 6-1 do not provide a good overview because they are largely dominated by the Planning Period and the Base Period.

The "box" consists of the second and third quartile of the data. Note that the lower quartile decreased only by a few days from 1976 to the impact period. What changed most dramatically was the third quartile. The proportion of cases taking a long time for disposition decreased significantly. The relative size of the three boxes indicates that the innovations served to greatly reduce variation in case processing time. Stated another way, the means and medians for the impact period are much more accurate summary measures than for the other periods.

"Whisker" refers to the statistical tail — cases that take an abnormally short or long time to reach disposition. Several studies recommend examining the 90th percentile — the time of the most lengthy ten percent of the cases (National Center for State Courts, 1978:38). For Providence, this statistic is quite revealing. During the base period, the minimum amount of time for the lengthiest 10% of cases was just short of three years (904 days); for the planning period about a year and a half (588 days) and for the impact period only half a year (192 days). Note in particular that by the end of 1978 the lengthiest 10% of cases were being disposed considerably faster than the median time for all 1976 cases.

In short, the innovations in Providence served to <u>increase</u> the percentage of cases disposed within 60 days, to <u>decrease</u> variance in case processing time (indicating a more systematic process) and finally to <u>greatly decrease</u> the percentage of cases that took an abnormally long time to be completed.

CONFOUNDING VARIABLES

Case processing time from filing to disposition in Providence decreased dramatically from 1976 to 1978. It seems highly likely that this decrease was due to the innovations put into place. But before drawing this conclusion, we need to consider whether other, confounding changes may have occurred, which would alter this interpretation. First, the mixture of types of cases confronting the court might have changed. If the proportion of cases that take less time to dispose increased, perhaps the decline of case processing time was not due to the innovations at all. Second, disposition practices may have changed. Skeptics might wonder if all the court did was increase plea bargaining or hand out lighter sentences.

The data necessary to probe these possibilities are presented in Table 6-3. They indicate a remarkable stability in plea bargaining and sentencing practices over the three periods.

Table 6-3. Case Characteristics by Time Period

	Total Sample		Base Period (1/76-12/76)		Planning Period (1/77-4/78)		Impact Period (4/78-12/78)	
Type of Offense								
Misdemeanor	6%	(66)	5%	(20)	8%	(33)	4%	(11)
Assault	14%	(156)	17%	(63)	12%	(51)	14%	(42)
Burglary	22%	(243)	20%	(77)	23%	(102)	21%	(64)
Drugs	16%	(176)	9%	(34)	22%	(95)	16%	(47)
Miscellaneous	8%	(91)	8%	(30)	11%	(48)	4%	(13)
Theft	26%	(291)	28%	(108)	21%	(94)	30%	(89)
Case Complexity								
Single Defendant	85%	(961)	85%	(318)	83%	(364)	87%	(263)
Single Charge	61%	(689)	64%	(240)	59%	(260)	59%	(179)
Indictment	17%	(186)	27%	(100)	12%	(54)	11%	(32)
Bail								
Made Bail	73%	(814)	68%	(258)	73%	(321)	78%	(235)
Bail not Allowed	6%	(60)	9%	(30)	4%	(16)	5%	(14)
OR Bond	70%	(738)	63%	(216)	72%	(306)	76%	(216)
Attorney Type								
Public Defender	48%	(541)	51%	(189)	46%	(201)	48%	(143)
Disposition Type								
Plea	81%	(924)	78%	(292)	82%	(363)	86%	(250)
Dismissed	14%	(158)	16%	(62)	14%	(60)	11%	(32)
Sentencing								
No Conviction	17%	(197)	19%	(72)	18%	(78)	14%	(42)
Prison	21%	(197)	24%	(71)	18%	(65)	22%	(58)
Prison Term - Months ($\bar{X}$)	31.6	(23)	33.4	(87)	26.4	(79)	34.4	(60)
Probation Term - Months ($\bar{X}$)	34.8	(727)	34.1	(227)	34.3	(292)	35.9	(197)
Defendant Characteristics								
Age - Years ($\bar{X}$)	28.3	(1109)	29.4	(374)	27.8	(427)	27.6	(293)
No Previous Conviction - %	51%	(464)	55%	(163)	47%	(167)	54%	(127)
No Previous Arrests	33%	(299)	38%	(113)	31%	(111)	30%	(71)
Processing Characteristics								
At Least One Warrant - %	23%	(255)	19%	(69)	28%	(121)	21%	(62)
Days Lost Due to Warrants	23.3	(1114)	23.2	(367)	25.9	(437)	19.3	(294)
Motions (None) - %	60%	(681)	63%	(238)	59%	(261)	59%	(179)

Criminal cases in Providence reflect a typical mixture of street crimes. The predominant charges are theft (26%), burglary (22%), drugs (16%), and assault (14%). Robberies account for only 6% of all cases. The distribution of these types of cases remained constant during the three periods, with the exception that during the planning period the proportion of drug cases was higher (21%) and of theft cases a little lower (21%).

Cases in Providence are not particularly complex. Most are single defendant (85%), single charge (61%), and felony cases (94%). These modal patterns did not vary significantly across the three time periods. The proportion of cases charged by indictment (rather than information) did decline, however, across the three time periods. This was due to changes in information charging in the Attorney General's office, which was placing more emphasis on case screening in an attempt to charge proportionately fewer cases.

About half of the defendants in Providence are represented by a Public Defender. Personal Recognizance (OR) bonds predominate. Three out of four make bail. Note that after the innovation, the rate of making bail increased slightly, largely due to the lower percent of cases where bail was not allowed. The OR rate increased.

In the three year sample, most cases (81%) are disposed by a plea of guilty. A handful are dismissed (14%). The trial rate is lower than most urban cities, only about 5%. Types of case dispositions remained largely stable during the three year period. Note, however, that from the base period onward the rate of pleas increases, with an offsetting decline in case dismissals.

Only a few of those found guilty (21%) went to prison. If sentenced to prison the average sentence was a little over two and a half years (31.6 months). The bulk of those not sentenced to prison were either placed on probation (69%) or given a form of deferred sentence (10%). Returning to Table 6-3, it shows that sentencing patterns did not vary materially during the three years, although during the planning period the percentage sent to prison and the average length of sentence declined slightly.

From our sample, the typical defendant in Providence was twenty-eight years old; two out of three had been arrested before; and one out of two defendants had a previous conviction (a comparatively high percentage). Moreover, defendants with a

prior conviction were much more likely to receive a prison sentence. Of the 21% that went to prison, an overwhelming percentage had a prior record. The characteristics of defendants varied only slightly during the three time periods.

EFFECTS OF CASE CHARACTERISTICS

Why do some cases take more or less time to reach disposition? The literature suggests that extended case processing time is the product of case characteristics like seriousness of the offense, representation by private attorneys and pretrial release. To test these and other hypotheses, Table 6-4 presents descriptive data using means. The differences clearly suggest that case characteristics are related to case processing time.

Table 6-4. Mean Upper Court Case Processing Time by Case Characteristics and Time Periods

	Total Sample	Base Period (1/76-12/76)	Planning Period (1/77-4/78)	Impact Period (4/78-12/78)
Filing to Disposition:				
Mean (sd)	232 Days (273)	365 Days (345)	219 Days (233)	87 Days (86)
Median	100	278	102	62
Type of Disposition				
Pleas	203	318	198	81
Trials	412	483	497	95
Dismissals	349	541	266	135
Bail				
Made Bail	254	413	243	93
Jail	156	224	140	62
Attorney				
Public Defender	200	213	179	83
Private	262	411	256	92
Sentence				
Deferred	165	235	164	104
Probation	230	372	222	78
Prison	148	228	121	79
Crime				
Assault	254	406	202	90
Burglary	190	293	188	71
Drugs	204	392	195	90
Miscellaneous	368	556	329	89
Theft	240	365	238	91
Robbery	220	243	288	88

CONTINUED

2 OF 6

To rigorously test these hypotheses, stepwise, multiple regression analysis was utilized. Table 6-5 presents these regression models.[5] They indicate which case characteristics are most important, controlling for the interrelationship of other case characteristics. The table first presents the regression model for the entire three year sample. Given the major administrative changes introduced by the court and the Attorney General's office that had a dramatic impact on overall case processing time, we might expect different patterns before the innovations and after. We therefore present separate regression models for the three time periods. These models allow us to test the adequacy of the overall model for different time periods. We can also test some subsidiary hypotheses about the relationship between case characteristics and case processing time, depending on the degree to which a court is managing its docket. Before discussing the differences between these time periods, however, let us first examine the effects of specific independent variables.

Table 6-5. Regression Models for Upper Court Processing Time by Time Periods

	Full Sample		Base Period (1/76-12/76)		Planning Period (1/77-4/78)		Impact Period (4/78-12/78)	
	Beta*	b	Beta	b	Beta	b	Beta	b
Number of Motions	.23	37.7	.21	39.4	.31	48.9	X	X
No Pretrial Release	-.18	-114.3	-.23	-190.5	-.13	-102.2	-.13	-24.8
Plea of Guilty	-.14	-97.6	-.24	-196.0	-.07**	-45.1**	X	X
Probation	.08	40.9	.13	85.8	X	X	-.17	-28.9
Miscellaneous (Charge)	.09	89.6	.10	130.2	.14	100.0	X	X
Burglary	X	X	X	X	X	X	-.12	-23.8
Age of Defendant	.06	1.9	.13	5.4	X	X	X	X
Number of Convictions	X	X	X	X	X	X	-.21	-11.2
Day Case Filed	-.41	-.4	Y	Y	Y	Y	Y	Y
R_2=	.56		.46		.42		.32	
R^2 =	31%		21%		18%		10%	

X = Not Significant.
Y = Not Entered.
*All Beta's are significant at .05.
**Significant at .126.

The Innovations

As expected, the most important factor affecting case processing time from 1976 through 1978 in Providence was the series of innovations introduced. The day the case was filed (see Figure 6-4) stands as a surrogate for the cumulative impact of these innovations.[6] Its effects are dominant (R=-.42). No other variable is as important in explaining case processing time as the innovations. Controlling for other case characteristics (Table 6-5) fails to reduce the strength of the relationship.

But as we have earlier noted, the programs were introduced piecemeal, over time. Therefore, cases filed in one period were possibly processed in a later period. This produces a backward impact on case processing time. Their cumulative impact is shown by that fact that during each of the three time periods there is still a negative relationship: cases filed late during the planning period were disposed of with greater dispatch than those filed earlier. Given that the effects of the innovations have already been amply demonstrated, the date of filing variable was not included in the regression models for each time period.

Type of Offense

More serious offenses, we hypothesized earlier, will take longer to reach disposition. This proves to be decidely not the case in Providence. By itself, the seriousness of the charge (measured by the maximum months of imprisonment called for by statute) exerts no influence on case disposition time. Nor do controls for other variables (Table 6-5) bring seriousness of the crime into the analysis. The type of crime charged, likewise, fails to be systematically related to case processing time.

Only two crime types enter the analysis — miscellaneous and burglary. For the full three years as well as the base and planning period, miscellaneous case charges — generally the least serious, such as destruction of property, obstruction of justice, consensual sexual misconduct, and extortion -- took longer. This seems to indicate that the least serious cases received low priority consideration and were allowed to progress at their own pace. Respondents mentioned the least serious cases as taking the longest, referring to them as "junk" cases. They often fell between the cracks. After the courts introduced the full range of administrative changes, however, this crime charge is of no significance. All cases were placed on a scheduling track. Its

place in the equation is taken by burglary. Only during the impact period is the variable systematically tied to delay — burglary suspects are processed faster. This is an indication that all cases were placed on a track; discretion in case scheduling was altered.

Our finding that the seriousness of the offense is not related to case processing time in Providence[7] differs significantly from studies in other jurisdictions. In Portland, Oregon robberies and burglary of dwelling took longer to reach disposition (Wildhorn, Lavin and Pascal, 1977:115). In Washington, D. C. robbery and sexual assault cases were the most likely to be delayed (Hausner and Seidel, 1980). But the pattern is not always consistent. Brosi reviewed data from seven cities and found that robberies and burglaries were processed faster and homicide and rape cases more slowly (1979:55). Clearly, more research is needed as to why crime type varies in both direction and significance between cities.

Case Complexity

The case complexity hypothesis can be quickly rejected. Contrary to expectations, case complexity is not related to how long a case takes to reach final disposition. The number of defendants, number of charges, the level of the offense (misdemeanor of felony), and the type of charging document are unrelated to how long a case takes. The small correlation is eliminated when other variables are controlled for (Table 6-5).

Type of Attorney

The literature strongly suggests that cases involving privately retained attorneys will take longer than those involving public defenders. At the descriptive level this is the case in Providence. For the entire sample, privately retained attorneys consume sixty-two more days than their court-appointed counterparts (Table 6-4).

This relationship, however, fails to withstand a multivariate test. In Providence, as in other communities (Skolnick, 1967; Neubauer, 1974) clients of the public defender are less likely to be granted probation, less likely to secure pretrial release, more likely to be charged with burglary and more likely to have a prior criminal record. Once the regression analysis controls for these other factors, the effect of type of attorney is eliminated.[8]

The lack of effect for type of attorney is surprising. It suggests that attorneys, whether privately retained or paid by the state, were equally as free to utilize tactics to delay cases. If delay was perceived in the best interests of the client, then both were free to maneuver toward that end. This is not to suggest that both types of attorneys pursued identical goals or adopted similar tactics. Rather it indicates that whatever the motivations, the end results were identical. The Public Defender's office, for example, automatically files motions to suppress whenever there is a statement by the defendants. Also, both private attorneys and public defenders have large caseloads. These factors may reduce the relationship between type of counsel and delay found in other studies.

Bail

Our hypothesis that jailed defendants are processed faster than those out on bail is confirmed. On the average, jailed cases took 156 days from filing to disposition as compared to 254 for those out on bail. Such differences hold true during all three time periods. The regression analysis indicates that bail status is the most consistent predictor of case processing time. It is the only variable to enter all four regression models. In Providence, those in jail must be processed in 180 days or be released on their own recognizance. This could account for the importance of bail status.

Defendant Characteristics

In Providence characteristics of the defendant are weakly and unsystematically related to case processing time. However, we have only two direct indicators of the defendant — age and prior criminal record. Information on race and sex was not readily available. Thus, as other studies have noted (Wildhorn, Lavin, Pascal, 1977:65) case files often contain incomplete information concerning the defendant's background.

The regression models show that the age of the defendant is only weakly tied to disposition time. Older defendants experience more delay in having their cases disposed in the overall sample and during 1976. After 1976, however, age fails to be associated. What is most striking is that during the impact period defendants with prior convictions had their cases processed much faster. We will discuss the significance of these findings when we compare the different time periods.

Motions

Motion practice is extensive in Providence. At least one motion was filed in 40% of the cases. Moreover, multiple motions are not atypical. In 11% of the cases, three or more were filed. When we compute all motions filed, we find that they average a little over one per case. The most common types include motions for dismissal, suppression, speedy trial, and pretrial discovery.

In both the bivariate and multivariate analyses, the number of motions is related to case processing time in the expected direction: more motions are associated with lengthier time from filing to disposition. The only period when motions are not statistically significant is during the impact period.[9] Interestingly, the proportion of motions does not vary during the three time periods although they were scheduled differently. In terms of consistency of inclusion in the regression models and strength of the relationships, number of motions ranks with bail status.

Since motions are related to case processing time in Providence, it is useful to ask: In what types of cases are motions most likely to be filed? We found that more motions are filed in serious cases. Also, cases that go to trial involve more motions, while cases that end in a plea of guilty have fewer. Private attorneys are slightly more likely to file motions. There is also a weak association between number of motions and a miscellaneous charge.[10] With the exception of seriousness of the charge, these are some of the same variables that are associated with case processing time.[11] Thus, the influence of seriousness of offense can be seen to affect case processing time indirectly through such variables as motions.

Type of Disposition

Cases that go to trial consume more time than those ending in a plea. For all time periods trials took longer, in the earlier periods significantly longer (Table 6-4). Differences are smaller during the impact period. Then, trials took only fourteen days longer on the average than cases disposed by plea. It is this narrow difference that explains why it is only during the impact period that method of case disposition fails to be included in the regression models. An interesting facet of the planning period is the large gap between pleas and trial. During this interim period, cases disposed by pleas were being processed much more quickly than during 1976. But for cases going to trial

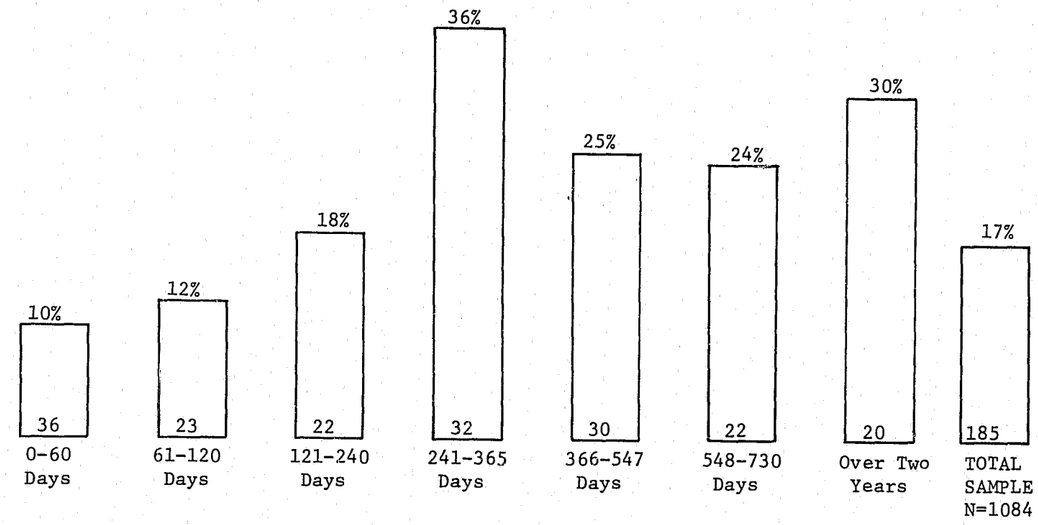
during the planning period, there was no change — it still took over 475 days for a case, on the average, to reach trial. The impact period, then, made its most dramatic impact by greatly shortening the time for all cases and especially reducing discrepancy in case processing time between trial and non-trial cases.

Cases disposed by a dismissal take longer than those ending in a plea of guilty in Providence. This holds true for all time periods. Figure 6-5 examines cases that end with no conviction (mostly dismissals, but a few not guilty verdicts) by the time of disposition. It shows that the longer the case remains in the system, the greater the likelihood the defendant's case will end without a conviction.

FIGURE 6-5

Proportion of Cases Resulting in No Conviction

By Time of Disposition



As we noted in Chapter 2, the literature suggests two radically different explanations as to why the longer a case remains in the system, the defendant's chances of receiving no conviction increase. Some suggest that this is because memories of the witnesses dim and victims lose interest in prosecution (Hausner and Seidel, 1980:IV-4; Cannavale and Falcon, 1976). An alternative explanation is that old cases result in no conviction because they were prosecutorially weak to begin with. An analysis such as ours, based on case disposition data, cannot resolve these contradictory viewpoints.

Sentencing

One hypothesizes that case processing time would increase as the severity of the potential sentence increases. This is not the case in Providence. Cases in which the defendant received the least restrictive sentence — probation — actually took more time to reach final disposition than defendants sentenced to prison. For the entire sample, the difference is eighty-two days.

The regression model, however, highlights an important change in these relationships. Note that during 1976, probation cases took longer (beta of .13). During the planning period there is no statistically significant relationship, but after April 1, 1978 probation cases moved faster (beta of -.17). It is clear that one major impact of the changes in court management in Providence was in the direction the hypothesis envisioned — cases with least restrictive sentences moved faster. One unanticipated finding emerges: during the impact period, the handful of cases receiving a suspended or deferred sentence took the longest to process. This may reflect a minimum time needed to process such cases that is greater than the quickly disposed probation and prison cases.

Continuances

The court management literature treats continuances as the flip side of delay. Reduce the number of continuances, we are told, and delay will be solved. We would, therefore, predict that as the Superior Court in Providence began to manage its docket and as cases moved more swiftly from filing to disposition, the frequency and number of days lost due to continuances would decrease. The data, however, show much the opposite occurring. In the base period, fully half of all cases were without continuances, a figure that drops sharply in later period (see Table 6-6).

Table 6-6. Continuances by Time Period

	Total Sample	Base Period (1/76-12/76)	Planning Period (1/77-4/78)	Impact Period (4/78-12/78)
Continuances Resulting in Days Lost	27% (289)	50% (184)	14% (61)	15% (44)
Mean Number of Days Lost	43	29	52	47
Standard Deviation	(71)	(82)	(70)	(38)
Median Number of Days Lost	27	50	36	43

The explanation for this lies in the context in which continuances operated. During (and before) 1976, the court faced an extensive backlog of cases and did not keep track of its cases. Indeed, a case with no scheduled next appearance date did not even get listed on the court's computer, much less listed as a case with a granted continuance. Therefore, if an attorney (or his/her client) wished to delay a case the tactics were simple: do nothing. For example, an interview with one private defense attorney revealed that s/he currently had three cases lost somewhere in the court scheduling procedures and didn't want attention drawn to those cases lest they be set down for trial. In short, the court did not begin to keep track of continuances until they began to track cases.

As the court began to perceive delay as a problem and instituted court control, fewer cases could get lost. Therefore, to delay a case required a request for a continuance. Until 1979 such continuances could be granted by the case scheduling office. Moreover, the nature of the programs contributed to the number of continaunces. Recall that pretrial conferences were instituted, so that a case required more court appearances. At times a case was "continued" from the pretrial conference to trial setting (Nimmer's study of omnibus hearings in San Diego revealed the same phenomenon). Moreover, defense attorneys with several cases set for trial in

a given week discovered that they could gain a continuance simply by announcing that all their cases were ready for trial. As we emphasized in the previous chapter, Superior Court was overscheduling trial cases.

Thus, the programs resulted in a change both in what was counted and how it was counted. Once delay was perceived as a problem, and the Whittier team began to stress the need to monitor and cut down on continuances, the court began to formally grant and, therefore, to count continuances. This explains why in the 1976 sample of cases half involved no continuances even though delay was extensive. Beginning in 1977, the number of cases without continuances drops to only 14% and levels off there in the impact period.[12]

Comparing the Three Time Periods

Our ability to explain case processing time from filing to disposition and the variables used in those explanations depends on which of the three time periods are examined: the base period (1977); the planning period (1977 and early 1978); and finally, the impact period (after April 1, 1978).

Returning to Table 6-5, note that as one moves from the base period to the impact period, the amount of explained variance decreases. The reason is straightforward: as the court imposed a management system, most of the time a case was before the court consisted of time related to court routines. Cases became more guided by these routines than by their characteristics. To choose one illustration, the gap between a plea and a trial was a modest fourteen days after March of 1978. By contrast, for 1976 the difference was substantial — 165 days (Table 6-4). In short, one is better able to explain case processing time in Providence on the basis of case characteristics before the court imposed case control routines.

What is equally important is that variables entering the regression analysis vary by time periods. The model based on all three years fits fairly well with those for the base period and the planning period, since most cases come from these two periods. But the overall model does not fit at all for the impact period. Only bail remains in the analysis in the same direction. That different variables are associated with case disposition time after the innovations contrasts sharply with our earlier discussion that case characteristics remained very stable. Thus, those who hope (while others fear)

that speeding up a court's docket will alter the dispositional process are proven incorrect, at least in Providence. What changes is not how many defendants plead guilty, escape with no conviction, are released on bail or sentenced to prison, but how (much) these variables affect disposition time.

In Providence the establishment of routines systematized the process. The type of disposition (plea or trial) no longer delayed or sped up a case, although this could have happened had a plea cut-off date been successfully implemented. The filing of motions no longer disrupted the processing the processing of a case. Recall also that during the three time periods the rate of guilty pleas increased while dismissals declined (Table 6-3). The new routines corralled the impact of these factors, but generally did not alter the frequency of their occurrence.

The greater systematization is also seen in the impact of other variables like age, previous convictions and probation. After April 1, 1978 the data reveal a more rational or legitimate set of priorities. Defendants receiving the least restrictive penalty are processed faster, as are those with prior felony convictions. Moreover, the age of the defendant is no longer associated with how long a case will take. The priorities given to cases become more geared to the goals of the trial court, where before, more extraneous factors affected case processing time.

The contrasting regression models likewise have some implications for court research. Most studies examine the court process at one point in time. If the underlying dynamics of the court process remain relatively stable over time, this causes no problem. Our study, however, examines courts that are in transition. If we had examined just one year, our description of what was happening to case processing time in Providence would be vastly different from our analysis of three time periods. In this regard it is important to ask what changed and what reamined constant in Providence. What remained the same were the underlying distributions on how cases were disposed. Proportions of plea, trials, prison sentences, pretrial custody and so on remained remarkably stable. What changed was how these variables interacted with case processing time. It is possible that in other courts, however, underlying case characteristics may change over time. In short, comparisons of the same court across differing time periods adds an important perspective to our understanding of the criminal court process.

LOWER COURT TIME

Although lower court time was not included in delay-reduction programs in Providence, it is instructive to examine this time period for two reasons. First, have the efforts in the trial court had any direct or indirect impacts? Second, do factors predictive of upper court time hold for other case processing times as well. Moreover, the District Court did respond to the 180 day goal of the Judicial Planning Committee.

Figure 6-6 provides a time-line of case processing time from arrest until the defendant is arraigned in Superior Court. Figure 6-7 plots the same data using a running median. These time-lines look strikingly different than for trial court time. Rather than showing a decrease (as in Figure 6-2), they indicate that lower court time increased, reaching a peak in the first few months of 1978. The only possible explanation is that the later months of 1977 (when the cases in the peak would have first appeared in the Attorney General's Office) were the period of the PUSH Program. One surmises that DA's time was devoted almost exclusively to case preparation of already-filed cases. Screening new cases, therefore, was assigned low priority.

FIGURE 6-6

Case Processing Time From Arrest To Arraignment in Providence

Plotted By Month Charges Were Filed

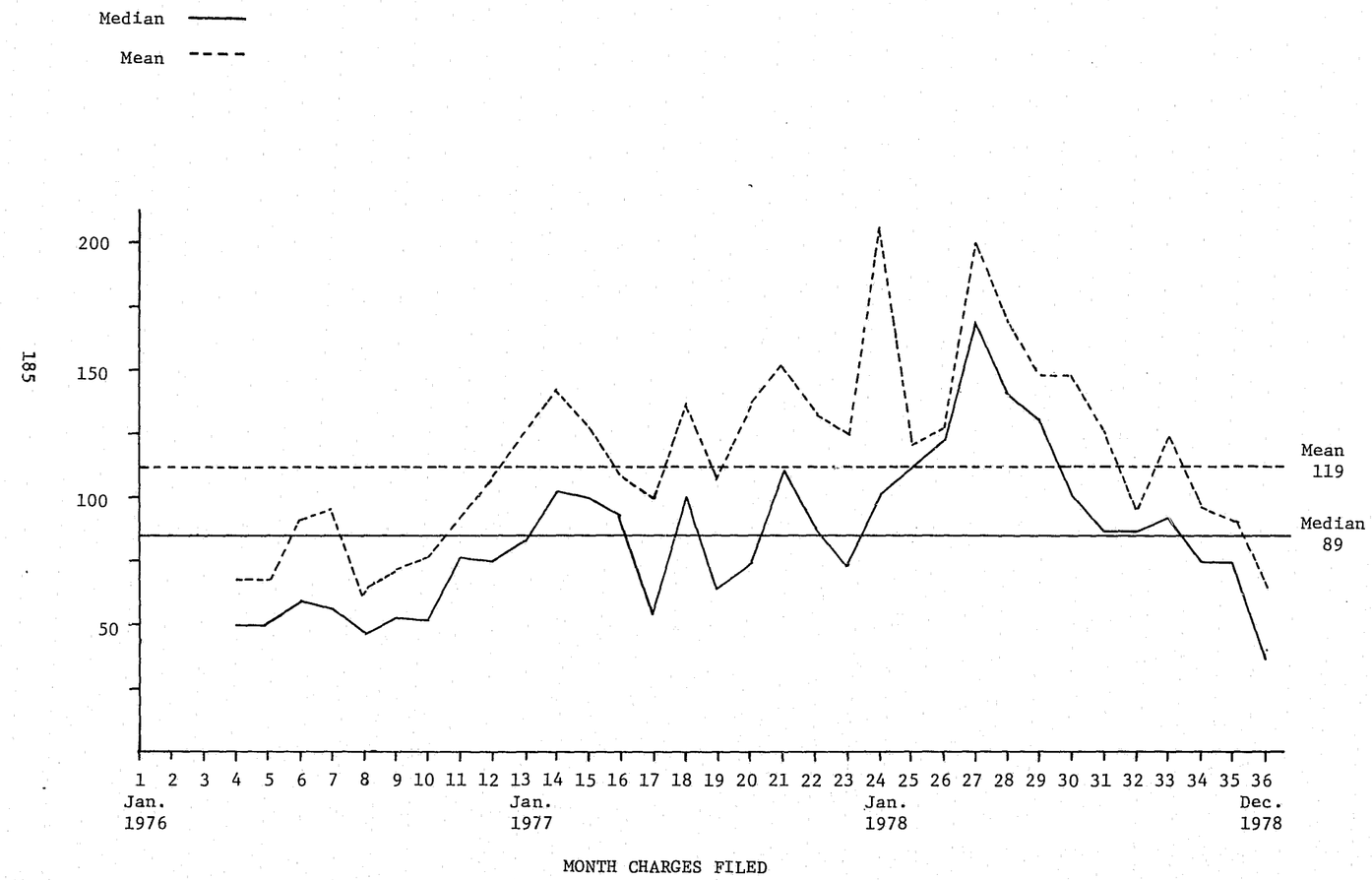
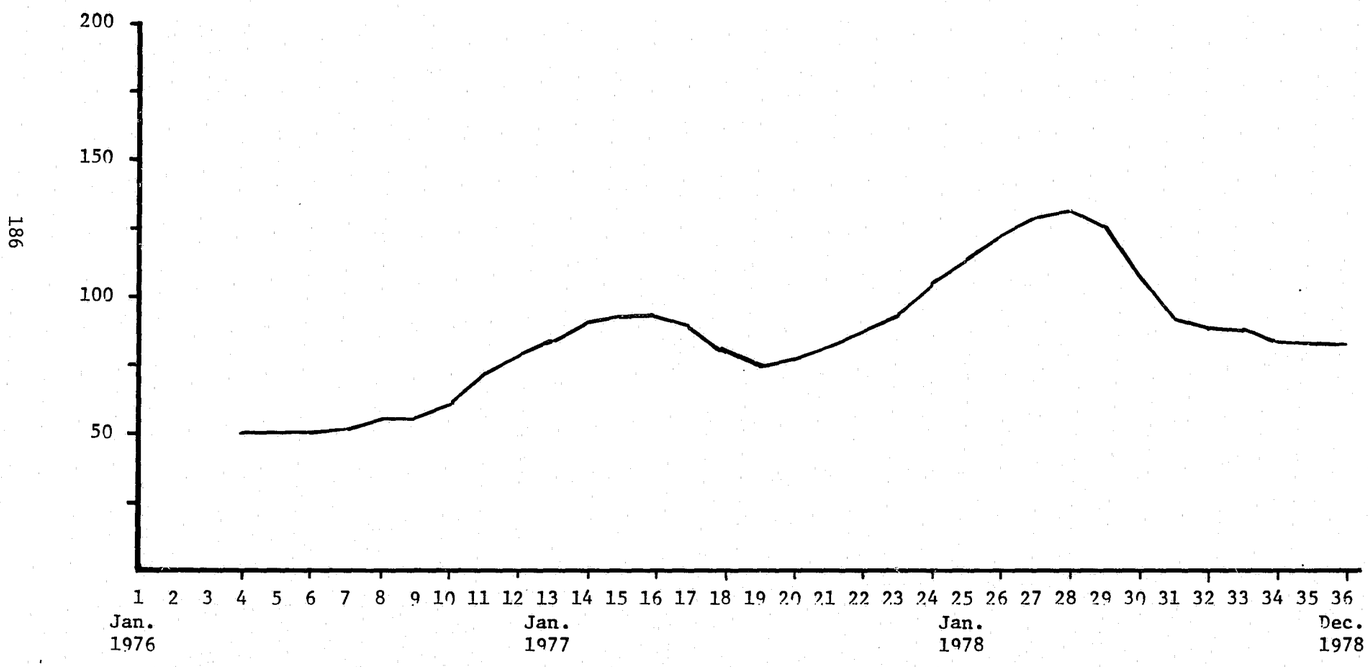


FIGURE 6-7

Case Processing Time From Arrest to Arraignment in Providence

Plotted by Month Charges Were Filed, Using Running Median



After March, 1978, the time from arrest to arraignment begins a steady drop. Two factors may account for this drop. First, DA's routine (interrupted during the PUSH) returned to normal. Second, the changes in the case screening unit began to have an impact. The time-line ends too soon (December, 1978) to draw any firm conclusions about which (or both) factors were involved. Discounting the temporary impact of the PUSH Program, lower court time was not affected by innovations in the Superior Court.

Factors Associated with Lower Court Time

As with trial court case processing time, we are interested in what types of cases were processed more quickly and more slowly. Table 6-7 reports the results from multiple regression. Though the overall levels of statistical association are low, a few variables suggest why some cases take longer than others.

Table 6-7. Regression Model for Lower Court Case Processing Time*

	Beta**	b
Maximum Penalty	-.16	-.03
Assault	-.07	-10.18
Drugs	.12	16.24
Multiple Charges	.13	7.06
Private Attorney	.09	8.78
	R_2 = .26	
	R^2 = 7%	

*Excludes outlier cases (i.e., longer than 240 days).

**All variables are significant at .05.

Type of offense. The most important factor affecting lower court time is the seriousness of the offense, measured by the maximum number of months the defendant might serve in prison. The more serious the charge, the shorter the time. This finding is directly opposite that of the Hausner and Seidel study of the D.C. courts. They found that serious cases took longer (from screening to indictment), positing that prosecutors were spending more time in an effort to build a stronger case. The negative relationship in Providence suggests that Rhode Island assigns a high priority to serious cases like murder or robbery, many of which must go to the grand jury. These evidently receive first priority while less serious charges (theft, miscellaneous and burglary, for instance) receive less immediate attention.

We should note that the seriousness of the offense is highly correlated with two other case features — indictment and a charge of robbery. Taking cases to the grand jury avoids the problem of assistant Attorney Generals who are hesitant to make charging decisions. Moreover, defendants accused of serious crimes are less likely to gain pretrial release. Indeed, for the most serious crimes no bail is allowed. That these defendants are in jail undoubtedly adds impetus to assigning priority handling.

Case complexity. One would posit that more complex cases should take longer in the lower courts. The D.C. study, for example, found that cases with multiple charges, two or more co-defendants and several witnesses took longer. We find support for this hypothesis. After controlling for case seriousness, the second most important variable associated with lower court time is the number of charges. However, other indicators of case complexity (number of defendants,[13] indictment versus information, and felony versus misdemeanor) are not systematically related.

Drug cases. Once seriousness of offense is controlled for, the only cases associated with lower court time are drug cases. This reflects an administrative problem, noted in Chapter 5: the police laboratory in Providence is backlogged. Additional time, therefore, is consumed awaiting these reports.

Type of attorney. In Providence cases involving a private attorney take longer to be processed from arrest to arraignment. This provides some support for the gamesmanship literature on court delay — i.e., private attorneys are more prone to employ stalling tactics, at least in the lower court. By contrast the D.C. study concluded that type of attorney was statistically unimportant. We can only note that in the two sites the results differ.[14]

Bail status. One would hypothesize that if the defendant is in jail the case would be processed more quickly. The results of the D.C. study support this hypothesis: cases with a cash or surety bail (they did not directly measure if the defendant made bond) moved more quickly. This proves to be the case for Providence at the descriptive level. However, when other factors are controlled for, bail status has no independent effect on lower court processing time.

Method of case dispostion. At first blush, how the case is disposed in the trial court would appear to bear no relationship to how much time elapsed in lower court. The D.C. study, however, found that cases that were dismissed took longer "indicating, perhaps, some inherent weakness in those cases requiring added effort to explore fully all avenues of prosecutorial merit" (Hausner and Seidell: 1980, II-16-17). No such factors are operating in Providence. Whether the case was ultimately dismissed, pled out or tried is not related to lower court processing time. As noted in Chapter 4, lower courts in Providence do not serve a significant screening function.

Characteristics of the defendant. Characteristics of the defendant are unrelated to the amount of elapsed time from arrest to arraignment in Superior Court. Neither the number of previous arrests, the number of previous convictions, nor the defendant's age have any impact. This pattern differs slightly from the D.C. study. Hausner and Seidel found that two or more previous arrests increased prosecutor's time. They interpreted previous arrests as an indicator that prosecutors devoted more time to those cases in the hope of building a stronger case. Whatever interpretation is offered, however, characteristics of the defendant have no statistical relationship with lower court time in Providence.

Summary

Case processing time in the lower courts of Providence takes longer than in two of our other sites (Detroit and Dayton) and longer than in another jurisdiction studied (Washington, D. C.). This lengthy amount of time is a reflection that the Providence Police Department takes from two to three months after arrest to complete the investigation and send the case to the Attorney General's office, as well as that prosecutorial screening has not been expeditious.

Our ability to explain lower court processing time is minimal. The multiple regression analysis explains only seven percent of the variance. This low level of explained variance reflects the overwhelming importance of routines — cases take time to progress through the district court, through police investigation and finally through the Attorney General's Screening Unit. The factors that do predict lower court time are a mixture of Attorney General's priorities (serious cases are handled more expeditiously) and administrative burdens (multiple count cases and drug cases take longer). The only variable that indicates significant discretionary activity is the type of attorney: private attorney cases take longer.

It is also interesting to note that the variables associated with lower court processing time differ from those associated with upper court time. Whereas the seriousness of the offense had no impact on trial court time, serious cases are processed faster in the lower court. Similarly, the complexity of the case does not impact upper court time but does influence case preparation time in the lower court: Complex cases take longer. In a similar vein, drug cases are neither processed faster nor slower than other types of cases once charges are filed, but they do take longer before they are filed. By contrast, some types of case characteristics affect upper court time but not lower court time. Both bail status and type of disposition are tied to differrential case processing time after charges are filed, but not before. Finally, characteristics of the defendant play no role in lower court time and have only a slight effect once the case reaches Superior Court. These differing patterns of the amount of explained variance and of the predictor variables lend credence to Petersen's argument (1977) for the need to disaggregate court time into its component parts. Merely looking at total disposition time or examining single time frames in isolation result in misleading portrayals of the underlying dynamics of court processing time.

CONCLUSION

Case processing time declined dramatically in Providence. This decline coincided with the introduction of a number of different changes in both the court and the Attorney General's Office. In 1976, before the court began to discuss ways to manage its docket, the typical (median) case consumed 271 days from filing to disposition. After the full set of changes went into effect, the corresponding figure was sixty-one days.

Total case processing time (arrest to disposition), however, remains fairly high. Lower court time was not directly included in the programs. In 1978, the Attorney General's office instituted changes in the Information Charging Unit. By the end of 1978, lower court time was decreasing but our sample ended too soon to draw any firm conclusions whether this is a long-term trend.

Delay-reduction efforts in Providence established case processing routines. These routines resulted in a more systematic process. As a result, our ability to predict case processing time decreases. Just as importantly, we find that in the impact period (after April 1, 1978) a different set of case characteristics enter the regression equations. No longer do motions or method of disposition serve to lengthen or shorten processing time. The greater systematization of case processing also produces a more rational set of priorities for handling cases.

NOTES

[1]Unless otherwise indicated, all data in this chapter are based on active cases under control of the court that were disposed by mid-December, 1976. The Methodological Appendix to this chapter details how the sub-sample was constructed.

[2]In terms of when the defendant skipped 198 (67% of total of 292) were absent between arrest and arraignment; 79 (27%) from arraignment to disposition; and 15 (5%) between disposition and sentencing. Time lost due to warrants is badly skewed. In terms of the 255 cases involving only one warrant, the mean days lost was 102 but the median was 28.

[3]For a fuller discussion, refer to Chapter 2.

[4]Although the Administrative Order took effect in March, 1978, the time-line suggests a one-month transition period before effects were felt.

[5]Entry of variables into stepwise regression was controlled by the researchers.

[6]An earlier analysis used dummy variables as measures of the differing time periods. These dummy variables were highly correlated with the day the case was filed. Therefore, we decided to use the continuous variable for further statistical analysis.

[7]A cautionary note is in order because several of the variables that do enter the regression models are clearly tied to case seriousness — type of sentence, nature of case disposition, number of motions filed and pretrial bail status. It may be that in Providence seriousness of the offense interacts with other variables to form a non-linear relationship.

[8]In the full sample and the base period, excluding outliers brings attorney type into the analysis in the expected direction (see Methodological Appendix).

[9]If we exclude the outliers for this period, however, motions do play a role.

[10]These five variables account for 19% of the variance (R = .44).

[11]To see if the motions were operating as a suppressor variable, the other variables were forced into stepwise regression. The results indicate that motions exert an independent influence.

[12]Including days lost due to continuances in the regression models for the planning period and the innovation period increases the multiple R. But given our discussion that days lost due to continuances is a measurement artifact with no theoretical payoff, it was not included.

[13]The tabular data, however, indicate that cases with three or more defendants take significantly longer. Perhaps the relationship is not linear.

[14]In D.C., the proportion of cases represented by private attorneys is very small —only 20%. Moreover, in D.C., the prosecutor controls the lower court time, and the routines employed in that office are probably not subject to manipulation by defense attorneys.

METHODOLOGICAL APPENDIX: PROVIDENCE

This appendix discusses some of the statistical and technical problems encountered in analyzing Providence and indicates the alternatives that were adopted.

Winnowing the Sample

Broken down by the year the charges were filed, the Providence sample looks as follows:

1976	446
1977	454
1978	457
1979	2
Missing	22
	1,381

1,381

Of the 1,381 cases in the sample, 243 cases were deleted from the analysis for one or more reasons. A key criterion for retention in the sample was that the case must have been an active one. Thus, fourteen cases in which charges were dismissed prior to arraignment were excluded. There were approximately 138 cases with an outstanding warrant that were also dropped, for no final disposition date was available. Finally, sixteen cases involving psychiatric examinations were excluded because these cases took much longer to process than those in which no such issue was raised.

Actually Disposed

A final criteria for inclusion was that the case must have been disposed of by early December, 1979 (the last day our data collectors worked in the field). One hundred and fifty-five cases were still pending on that date. (Note that here, as elsewhere, some of the exclusion criteria overlap, suggesting numbers should be considered rough estimates.) Some of these still pending cases involved outstanding warrants and others probably involved diversion cases. An analysis of fifty-three still

pending non-warrant cases indicated that they differed in important ways from other cases. They were, for example, much slower in being arraigned (a mean of 355 days as compared to a mean of 139 for the entire sample).

A major concern was that the still pending cases would disproportionately fall into the later months of our sample. This proved not to be the case as the accompanying graph shows (Figure 6-A-1). Cases filed in 1977 or 1978 were as likely to be still pending as those filed in 1979. An inspection of the data collection sheets indicated that miscellaneous factors were associated with still pending cases. In some, there had been extensive warrant activity. In others, there had been no activity for several years. This may be a reflection that if the case had no next court date, it was not listed on computer printouts. It had literally fallen into a crack in the court's record-keeping system. In some cases one suspected that the files did not fully reflect a case's history. Some cases involved idiosyncratic factors — e.g., the defendant had enrolled in basic training in the National Guard. Finally, some were still very active, with trial dates being set.

Subtracting Out Warrant Time

As mentioned in the text, the measures of case processing time are based on total elapsed time minus time lost due to outstanding warrants (refer also to Chapter 2). It was not always possible to determine when during the hiatus between filing and arraignment the defendant appeared on the warrant. To minimize missing data problems, two slightly overlapping time periods were chosen for subsequent analysis: arrest to arraignment, and filing to disposition. While this muddles the time from filing to arraignment, the vagaries of court data do not permit a purer refinement.

Subtracting out warrant time has the additional salutary impact of reducing (but hardly eliminating) the number of outliers, cases that take long periods of time for disposition. Outlier cases can unduly affect statistical analysis, particularly pearson correlation coefficients and regression coefficients that are based on interval level data.

Sampling Artifact

A caution is in order about interpreting the case disposition times for cases filed after the new programs went into effect during March, 1978. We closed case coding as

of December 19, 1979. Thus, cases filed during December, 1978 can take on a maximum disposition date of less than a year. All cases filed after March, 1978 could not logically be disposed in less than a year and a half. Thus, it is possible that of some of those still pending after our close-out date would fall into the tail of long case processing time.

Having noted this caution, however, we think that it is not an overriding concern. For one thing the number of cases still pending after March, 1978 does not differ significantly from the number pending during other periods of the sample. Moreover the cases for which there was a disposition date show that cases were being processed significantly faster. Thus, although a later close-out date would slightly increase our estimates of case processing time, they would not change the conclusions about program impact in any significant way.

Missing Data

For the vast majority of variables, the amount of missing data is negligible. However, for two variables — arrest date and defendant's prior criminal history —the amount of missing data is more extensive. For the arrest date variable, a small percentage of cases were deleted when the case was processed in reverse order (charges filed followed by an arrest). The difficulty with the missing data on defendant's prior record is that, when using stepwise multiple regression with a listwise procedure, the sample for the innovation period is reduced by about 20%. We did test the post-innovation regression model using the full data set for the period and found that the same variables entered the analysis.

Outliers

In analyzing interval data — such as case processing time, one is always concerned that a few extreme values (in this instance, cases that take a very long time to be disposed of) may unduly affect the statistical levels of association. These extreme values are often termed outliers. Alas, what to do with outliers is a thorny and difficult issue. Blalock suggests:

> If the researcher's interest is focused primarily on less extreme cases it may be more sensible to exclude the extreme cases from the analysis altogether... In some instances it would seem advisable to compute with and without the extreme cases." (Hubert Blalock, Social Statistics. New York, McGraw-Hill, 1972:381 and 382).

Following this suggestion, we ran the multiple regression models for the four periods with and without the outliers. The results without the outliers are shown in Table 6-A-1. Following the suggestion from several researchers to examine the 10% of the cases taking the longest (see, e.g., National Center for State Courts, 1978), we defined outliers as the longest 10%. For the full sample the cut-off time was 550 days, for the base period 904, for planning 588, and for impact 192 days.

The net effect of excluding the outliers is to reduce the amount of explained variance for the entire sample. For the three separate time periods, however, the percentage of explained variance remains essentially the same. Note, however, that for the later two time periods, excluding outliers has the effect of reducing the number of statistically significant variables to only two. Specifically, for the planning period plea of guilty and miscellaneous disappear. For the impact period, bail status and probation are no longer statistically significant.

Substantively, excluding outliers has its most important impact for the full sample and the base period because type of attorney enters the analysis. The beta is in the predicted direction — cases involving privately retained attorneys take longer to reach disposition. We have no explanation why excluding outliers affects this theoretically important variable.

Our overall judgment is that, in terms of upper court time, the longest 10% of cases appear to be the product of systemic influences. Since the outliers do not appear to reflect extreme variables on just a few cases, they were not excluded in the text. For lower court time, our judgment was that the few extreme cases were masking systemic influences and therefore were excluded. The result is a slightly higher percentage of explained variance.

Table 6-A-1. Regression Models for Upper Court Case Processing Time in Providence Excluding Outliers

	Full Sample (1/76-12/78)	Base Period (1/76-12/76)	Planning Period (1/77-3/78)	Impact Period (4/78-12/78)
	Beta	Beta	Beta	Beta
Number of Motions	.23	.16	.39	.27
No Pretrial Release	-.21	-.29	-.20	X
Probation	X	.14	X	X
Plea of Guilty	-.12	-.24	X	X
Private Attorney	.09	.18	X	X
Number of Prior Convictions	X	X	X	X
Day Case Filed	-.30	Y	Y	Y
R_2=	.47	.49	.43	.32
R^2=	22%	24%	19%	10%

X = Not Statistically Significant at .05

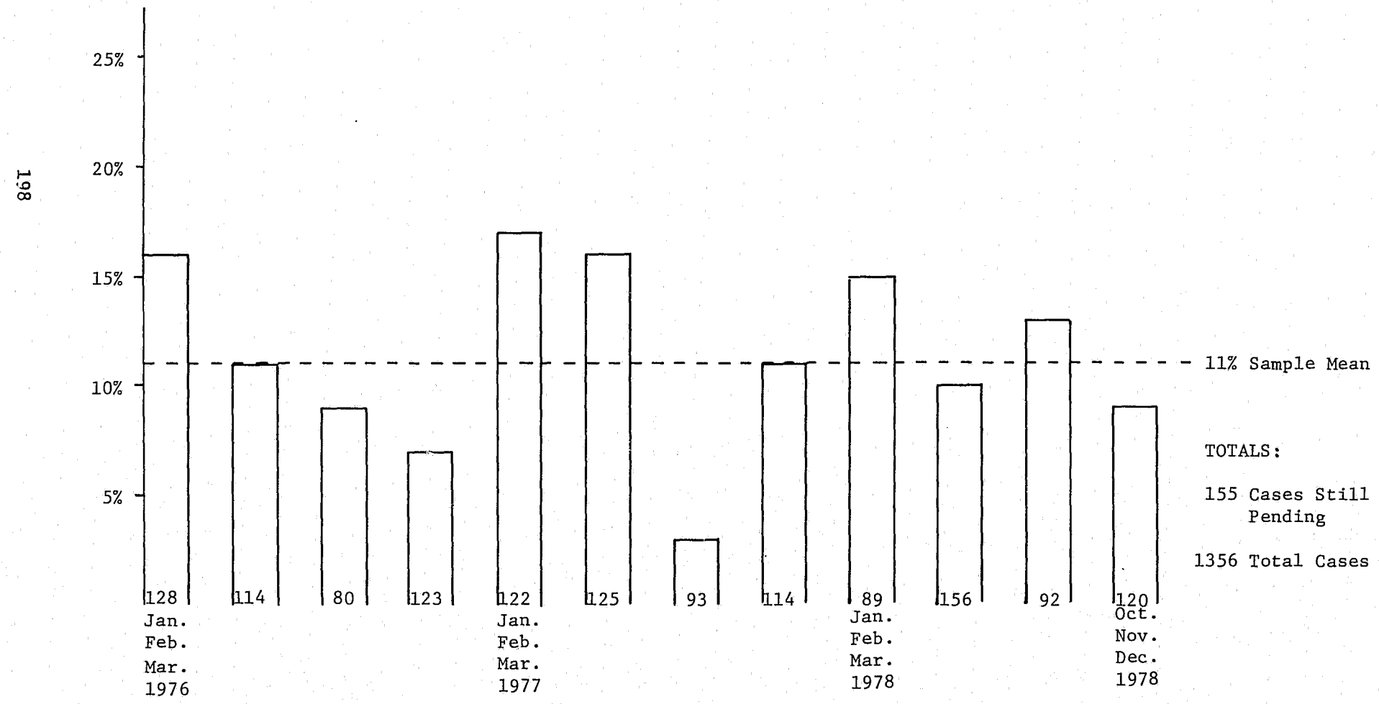
Y = Not Entered

FIGURE 6-A-1

Cases Still Pending as of December, 1979

Providence, Rhode Island

(Percentage by Quarter)



Chapter 7

THE IMPLEMENTATION OF DELAY-REDUCTION PROGRAMS IN DAYTON

By all conventional standards, Montgomery County, Ohio (Dayton area) did not have a serious problem of delay. Initial case processing time was shorter than the ultimate goal in some of our other sites. Our quantitative analysis indicates that case processing time from filing to disposition before the innovation took a median of 69 days with a mean of 82 days. After the innovation, case processing time declined to a median of 43 days with a mean of 67 days. Montgomery County had neither a large backlog of old cases, jail overcrowding problems, nor budgetary problems. However, Montgomery County is important in our analysis of various delay reduction problems because court participants were familiar with the specifics of the Whittier model. In Rhode Island, the Whittier model was one of many programs used over a three year period. While respondents in Rhode Island could talk about the plan as a whole, they could not discuss many of the specifics of the model; in Dayton, however, each court participant was aware of the details of the model. This chapter therefore will provide some background on the Common Pleas Court in Montgomery County and then deal at length with the implementation and analysis of the Whittier model in the court.

THE BACKGROUND

The boundaries within which the delay reduction program operated had all been in place well before the beginning of the project. As described in Chapter 4, the state of Ohio had adopted Rules of Superintendence specifically oriented to delay and a speedy trial regulation in the early 1970's. The court therefore had the necessary legal support for delay reduction. In addition, most of the involved personnel had been in place for some time before the project. The Chief Judge had been in office for four years, the prosecutor was serving his fourth term, and eight of the nine Common Pleas judges were already on the bench. A new court administrator was hired after implementation, one new judge came to the bench, and a new Public Defender was appointed. However, that Public Defender had been in the Public Defender's office for seven years as a trial attorney before his appointment, and the judge had been on the bench in a lower court. Montgomery County was thus clearly different from Rhode Island with regard to personnel stability and existing state legal boundaries.

The impetus for delay reduction activities began in the last few months of 1976. At that time, the Common Pleas Court received a $250,000 grant from LEAA to centralize and computerize court records. The court called in a series of representatives from computer companies to design a computer system. Realizing that each of these had a vested economic interest in computerizing the court, the court hired a private computer consultant who happened to be a member of the Whittier team. The court ultimately decided that it was not ready to use the LEAA money and returned it.

In addition to the computer consultant, the Chief Judge and the court administrator knew two other members of the Whittier team from attending the National Judicial College at Reno, Nevada. When the Whittier team received National Scope Project funding at the end of 1977 for Phase 1 of the project, they asked Dayton to serve as one of the four implementation sites.

PLANNING FOR DELAY REDUCTION: 1978

When first approached by the Whittier team, the Chief Judge was inclined to accept the offer because the court had a history of innovation and efficient management. The court had actually reduced its budget by 25% in the past few years through efficient management and natural personnel attrition. The Chief Judge had a firm belief that the way to deal with problems was to anticipate them and then prevent them from occurring. Seeing potential future economic problems in courts and in his county, he felt that increasing management efficiency through the use of the Whittier model could prevent these anticipated budgetary problems.

The only existing forum for criminal justice agency representatives was the computer committee: Montgomery County Justice Information System committee (MCJIS). This was not an appropriate committee to consider a new court management plan such as the Whittier model. The Chief Judge created a new committee — the Criminal Justice Coordinating Committee — made up of representatives of local criminal justice agencies and representatives of the local bar. This group considered and modified the Whittier model during several months in 1978.

The Whittier team had to convince court actors in Montgomery County that participation in the project would help the court. Although most in the court felt that delay was not a problem, the Whittier team defined delay as case processing time that

is beyond the tolerable limits of any system. Therefore, any court could in fact be a delayed court if case processing could proceed at a faster pace without harming justice.

The Whittier team also had to convince court participants that their case processing procedures could be refined and made more efficient. The court was already committed to good management. The court had gained control over scheduling in the early 1970's, and each judge scheduled his own cases under the individual calendar system. An assignment commission kept master statistics from each court and prepared monthly reports for the Supreme Court as mandated by the Rules of Superintendence. Court statistics indicate that the backlog of cases was very small.[1] Judges in Dayton were therefore used to individual accountability, unlike Detroit and Las Vegas, and had a rational case scheduling scheme, unlike Providence. The major battles being fought in other jurisdictions were in the past for Montgomery County.

Few in the court initially accepted the need for a program of this nature. Respondents in the site told us that they did not think that the court was a delayed court at the beginning of the project and do not think that the court is currently delayed. Most told us that the program was primarily introduced to make the court more efficient and thus a better court. Most also told us that the Chief Judge and the coordinating committee promised each criminal justice agency particular gains from the project in return for cooperation.

Those promised gains were interesting. The Chief Judge told the police department that the plan could reduce police overtime pay. If cases were tried sooner and continuances limited, then police would have to appear in court less often. This would result in a substantial savings because police had to be paid for three hours of overtime for each court appearance. In addition, the court helped the police department find new facilities for its laboratory. The prosecutors were told that the plan would reduce the amount of time each prosecutor would have to spend on a case because they would dispose of cases earlier in the process. The public and private defense would gain because of the proposed changes in discovery. Judges would gain more time for trials because of proposed case management responsibilities. And most important to a system of justice, everyone was assured that the defendants would ultimately benefit with a faster resolution of their cases. After all, they repeated, "justice delayed is justice denied."

Although no one involved in decision-making was entirely sure that all of these benefits would accrue, the Chief Judge was sold on the plan. With the consent of the coordinating committee, the plan was presented to and adopted by the judges on the Common Pleas Court. The Chief Judge experimented with the plan on his docket of criminal cases for a few months before the actual court-wide implementation date of November 1, 1978.

There were two major local legal barriers to implementing the original Multnomah County plan in Ohio. Some members of the Whittier team insisted that two features of the Ohio court system had to be modified for the plan to work: individual calendars and the Grand Jury. They argued that a master calendar provided stronger court (i.e., bureaucratic) control over case scheduling. Individual calendars demand more decentralized decision-making and record keeping. In addition, they argued that grand juries take longer to issue official charging documents than prosecutorial screening mechanisms. However, neither of these features could be changed by the local court and the court finally convinced the Whittier team that the innovation had to permit the use of the individual calendars and the Grand Jury as mandated by law.

THE WHITTIER PLAN

Specifics of the Plan

The court management plan went through several modifications before a final version was adopted and implemented. The points introduced in the court management plan that were departures from the previous Dayton system include giving defendants dates for all court appearances in advance, mandatory discovery at the preliminary hearing, centralized arraignments in Common Pleas Court, the removal of judges from pretrial negotiations, the implementation of a plea cutoff date at a scheduling conference, and shortening the time intervals between events in the process.

Lower court activities. As done previously, those arrested appear in a lower court for a preliminary arraignment within two days of the arrest. Bond is set in the lower court and cases are continued for a preliminary examination. The preliminary examination must occur within five days for those in custody or within fourteen days for those on bond.

According to the plan, the prosecutor is obligated to provide the defense at the preliminary exam with a discovery packet containing police reports, witness statements, defendant statements, and available laboratory reports, if any. In accepting the discovery packet, the defense agrees to provide reciprocal discovery. In addition, at the preliminary exam, the defendant receives a notice to appear in the Common Pleas Court for arraignment on a specific date scheduled within two weeks of the preliminary exam.

Formal charging. Unless specifically waived, all cases proceed by indictment. Those indicted appear for arraignment on the scheduled arraignment date. Those indicted by direct Grand Jury investigation are scheduled for arraignment within two weeks and are notified by service of the indictment. This does not represent a major change.

Arraignment on the indictment. Centralized arraignments replaced individual arraignments and are heard on Tuesday and Thursday mornings by the Chief Judge. Afterwards, cases are routed to judges assigned on the individual calendar system. At the arraignment, pleas of guilty are accepted by the arraignment judge, but cases are sent to the assigned judge for sentencing. For other cases, defendants enter a plea of not guilty. For defendants without an attorney, arrangements for representation are made. Defendants and attorneys are given specific dates for a pretrial conference and scheduling conference at arraignment.

Pretrial conference. Pretrials are scheduled within one week of the arraignment. Pretrials occur in the prosecutor's office without the presence of the assigned judge. Defendants may be present for pretrial negotiations. Both the timing of and the participation in pretrials represented change in the court.

Scheduling conference and plea cutoff date. A new stage, the scheduling conference, is set within two weeks of the pretrial conference. This gives defendants who do not choose to plead immediately time to consider the prosecution's offer, if any. Defendants may plead before the assigned judge at the scheduling conference. If no plea is entered by the scheduling conference date, the defendant may plead only to the original charge at a later time. Defendants are scheduled for trial within two weeks after the scheduling conference. Both the scheduling conference and the plea cutoff date were new to the court.

Implementation of the Plan

Most of the early activity on the plan was oriented to establishing the necessary critical factors of the Whittier model. Although the overall plan was devised by the coordinating committee, two subcommittees were formed to work on two specific aspects of the plan: coordination with the lower court and the development of the information packet. The first did not actually function as a subcommittee. Rather, one judge made a series of phone calls and was assured of cooperation in the lower courts in the jurisdiction. Two issues did have to be resolved. First, judges in the lower courts wondered if they had the jurisdiction to order a defendant to appear for arraignment in Common Pleas Court. This was solved by having the Chief Judge of the Common Pleas Court sign blank orders to appear in Common Pleas Court which were then distributed in the lower courts. Second, lower court judges agreed to continue to evaluate cases and keep true misdemeanor cases in misdemeanor courts.

The subcommittee dealing with the information package had a different set of problems. The concept of mandatory prosecutorial discovery, reciprocal discovery by the defense counsel, and the location of the exchange of discovery materials were issues that had to be resolved. The committee decided that the prosecution would provide a discovery packet at the preliminary exam for most cases, and at upper court arraignment for direct Grand Jury investigation cases. By signing a receipt for this packet, defense counsel would agree to provide discovery to the prosecution. The prosecutors simply duplicated statements and reports available at that time for inclusion in the packet. There was an implicit agreement that supplemental information would be exchanged as it became available.

To facilitate collection of the necessary statistics to monitor the plan, several new forms were devised by the Whittier team and the court administrator. These included the forms notifying defendants of all scheduled case dates and forms recording reasons for requests for continuances. In addition, new master case cards were devised to track each case in the assignment commission. The involved personnel had to be trained to use the new forms and to schedule the appropriate dates for cases. Before the implementation of the plan, each judge had scheduled his own case activities and bailiffs sent these assigned dates to the assignment commission. With the plan, control over case scheduling shifted to the court administrator's office and the assignment commission. That office scheduled arraignment, pretrial, and sched-

uling conference dates in advance; judges scheduled trials or rescheduled other events if necessary. Judicial control over scheduling was not new in Montgomery County, but centralized bureaucratic control over scheduling was new. All involved in these scheduling changes indicated to us that it took several months to get used to using the new forms and procedures. Those in the assignment commission still have some trouble getting date changes from some of the bailiffs in individual courtrooms.

There was one major difference between the implementation of the Whittier plan in Dayton and in Providence. In Providence, there were a series of seminars and meetings with court personnel to talk about the importance of the plan in delay reduction. There were no seminars or meetings of this type in Dayton. Although clerks and bailiffs knew that there were new forms to accompany a new management plan, the overall purpose of the management plan and their relation to it were never fully explained. Because of the mode of implementation of the plan and the absence of large meetings, court participants in Dayton never developed the sense of mission or zealous feel for the management plan. Most respondents in the site told us that they went along with the plan because they knew that the Chief Judge wanted it.

EVALUATION OF THE WHITTIER PLAN IN MONTGOMERY COUNTY

In order to evaluate the Whitter plan as implemented in Dayton, we interviewed judges, prosecutors, public defenders, private attorneys, and other key court participants. Our research indicates that few respondents felt that delay was a problem in Montgomery County. Everyone interviewed was aware of the court management plan and most knew which specific changes in the court were attributable to the court management plan. Virtually everyone agreed that the plan was beneficial to the court, but most were critical of at least one aspect of the plan. For this reason, we will present the respondents' evaluations of the specifics of the plan as well as their overall assessments.

Implementation of the Court Management Plan

Most of the early discussion and decision-making was confined to people in administrative positions. Lower level personnel and assistants in the various departments were not consulted. Some felt that the plan was ultimately presented even to the judges as a fait accompli rather than as a proposal to consider. This is not to

suggest that the coordinating committee members did not have input in the planning. All members of the coordinating committee told us about various disputes concerning the feasibility of the plan, and most were complaints that eventually had been satisfied. Most also felt that the promises to the various departments facilitated a positive decision, although many wondered if the court could actually deliver.

Most participants told us that they initially resisted change. Many of the judges felt that change was unnecessary because the system in place was operating effectively. However, the Whittier team convinced them of improvements that could accrue from the project. Most were willing to go along eventually, but no one seemed initially as committed to the plan as the Chief Judge.

The implementation stages and committee meetings did have one important side benefit according to several respondents: the coordinating committee provided a meeting place for criminal justice agency officials who had no other formal forum for discussion. Several told us that they wished these meetings had continued on a regular basis. As in Providence, most welcomed the opportunity to talk about common organizational or criminal justice problems.

The court belatedly realized that excluding clerks and bailiffs from input during the early stages of the plan was a mistake. In May, 1980, nineteen months after the implementation date, the court organized committees of the clerks and bailiffs to design new forms and to talk about the plan. The court administrator felt that this would bring an understanding of the plan to these employees and help them develop some commitment to it. Because these people do much of the paperwork and scheduling for the court, the court administrator felt their involvement and commitment was desirable. What Providence found important in the early stages, Dayton discovered to be equally important, even if it had to be done after implementation.

Coordination with the Lower Court

The Common Pleas Court included the lower courts in the court management plan for two reasons. First, some cases which were sent to Common Pleas Court actually involved misdemeanor, not felony, activities. Common Pleas Court judges wanted to encourage lower court judges to continue to identify these cases and keep them for processing in the lower courts. Most judges interviewed agreed that lower

court judges generally did a good job in identifying and keeping these cases. Second, Common Pleas Court relied on lower court judges to assign defendants an arraignment date and place in Common Pleas Court. Before the introduction of the management plan, those dates were given to defendants with service of the indictment. Common Pleas Court judges reasoned that if defendants knew where and when to appear well in advance, the number of defendants who failed to appear for the upper court arraignment would be reduced. The court intended to charge defendants who did not appear for upper court arraignment with the felony of failure to appear, but no such charges have been filed to date.

Most coordination activities before the introduction of the court management plan were via phone calls. The lower court judges agreed to cooperate with the Common Pleas Court's plan and most Common Pleas judges told us that there have been no problems. The court administrator estimated that 10% of defendants were not appearing for upper court arraignment; however, he attributed most of these to cases originating in the grand jury and not in the lower courts.

Centralized Arraignments

Everyone we interviewed agreed that centralized arraignments have alleviated scheduling problems. It is easier for lower court judges to tell all defendants to report to one courtroom at one time than it is to route defendants to nine judges at nine different times. Before the innovation, defendants were notified of their arraignment date with the service of the indictment and the lower court had no scheduling responsibilities of this type.

Many respondents felt that centralized arraignments created confusion in the courtroom and harmed the demeanor of the court. One respondent spoke about this mixed blessing of increased coordination and confusion:

> ...there's one place to go to at a specific time and you don't tie the rest of the judges up with arraignments. It's one place, one person does it, it doesn't take that long if you've got somebody that can really go through 'em...before, arraignments might, for some judges, take half a day. So I think in that sense it's good. The problem is that there are so many people in that one courtroom that it gets to be a little confusing and papers flying around everywhere. There's not a great deal of control. I would prefer to see everyday arraignments (instead of twice a week) and have less people. They could probably take twenty minutes a day in our court, but if you're dealing with fewer numbers, fewer attorneys, fewer defendants, you might have a better handle on making sure all the paper gets where it's supposed to be.

The Whittier team did originally propose daily centralized arraignments rather than the twice weekly arraignments implemented by the court.

Every attorney we interviewed echoed this complaint about noise and confusion. They were not concerned about paperwork problems as much as they were about the appearance of justice. They agreed that case management was easier, but referred to the centralized arraignments as a "zoo" and a "circus". Attorneys felt that it simply looked bad for the court to have an atmosphere of such noise and confusion and felt that the public needed a more serene picture of justice than the one presented in the arraignment call.

Judges had different complaints about centralized arraignments. Few missed actually doing their own arraignments, but some doubted that the change saved them much time. Many stated that by not doing arraignments on cases assigned to them, the number of times they saw any defendant was reduced. They therefore felt less familiar with their defendants at the time of a plea or a trial. When judges coupled this with their new absence from pretrial negotiation, they expressed some discomfort at seeing defendants only for final case resolution. One judge expressed his views of centralized arraignments this way:

> In one sense I could say I don't like it by the fact that it reduces the number of times I see the defendant. I'm not sure, with some reservations, I'm crazy about that in terms of the only time I see somebody is at the time they come in to plea. So with the number of cases involved and the way we divide them, it's questionable whether in terms of the amount of judicial savings is taking place. Now staff, I think it goes without saying that that's been significant in reducing their running around the court and doing a lot of duplicating things, but from the judges' point of view, I'm not sure that it's a plus.

Discovery Changes

Under the court management plan, the prosecutor is to supply the defense attorney with a packet of materials — witness lists and statements, defendant statements, police reports, and any additional materials available — at the preliminary hearing. By signing a receipt for this discovery packet, the defense attorney agrees to provide the prosecution with reciprocal discovery. This change was designed to provide both prosecutor and defense with more information sooner and to allow pretrial negotiations to proceed sooner.

The change in the discovery procedure created a potential redundancy in the court. In the eyes of one assistant prosecutor, the preliminary hearing may be simply a repetition of already available discovery material and may therefore waste time in the lower court. However, both prosecution and defense use the preliminary hearing as an opportunity to see their witnesses testify before they must appear before the grand jury or a judge or jury in trial. Further, one judge stated that the discovery procedure has actually reduced the number of preliminary hearings held as well as the number of motions for discovery filed in Common Pleas Court:

> ...quite frankly, a lot of preliminary hearings over there (lower court) were fishing expeditions to see what the prosecutor had, and when they found out what the prosecutor had they didn't need to go fishing so they waived the preliminary hearings to some extent. I mean, they all didn't go away, but a lot of them did fold...

This judge later stated that he had only seen one motion for discovery in his court over the past six months. Our quantitative analysis indicates that there has been a reduction in the number of discovery motions.

Most prosecutors do give available materials to the defense at the preliminary hearing. If defense attorneys have not been selected by the time of the preliminary hearing or if a case originates in a grand jury direct investigation, the materials are presented at the upper court arraignment. Because most prosecutors comply with the new discovery procedure does not mean that they are particularly pleased with it or that they didn't resist it at first. They were afraid that witnesses would be subject to harassment or intimidation before the trial. One assistant prosecutor said:

> ...we...were not totally happy with that idea. We thought it wasn't bad to discuss generally what your case was and tell them who the witnesses were, but we didn't think giving the entire file to the defense counsel was something we should do, that discovery didn't require it, defense counsels would use these hurry-up offense reports that are quite often done under pressure, and turn witnesses upside down, the police officers upside down, well, you didn't say this in your report...

This prosecutor continued by stating that this has in fact occasionally happened:

> And, you know, I think the chief complaint that we have had, that indeed what is occurring is when the case is not settled, we're facing these reports being opened up and witnesses being cross-examined extensively with these offense reports they would not have had prior to the court rule.

However, the prosecutor also said that he felt that many cases were being settled earlier in the adjudication process and much of that may be due to the discovery procedure. Prosecutors and defense attorneys can evaluate their cases better with more information available earlier in the process.

If the changes in discovery are accomplishing court goals — reducing the number of preliminary hearings and motions for discovery and providing attorneys with information earlier in the process — the changes are not operating adequately. Every attorney we talked with indicated the same set of problems: prosecutors are not providing the defense with supplemental reports and defense attorneys are not complying with reciprocal discovery.

We asked one public defender if the changes in the discovery procedure helped the office. The response was:

> Definitely. But then, you never know whether that prosecutor's holding anything back on them. Because all they give you is a police report. They don't give you the supplementals...They're supposed to give you everything that they have, but they don't...You know the supplementals are the things that really have all the meat in it. You don't get those.

Other attorneys mentioned the same problem, and one attorney stated that s/he did not receive most materials until the date of the pretrial. This attorney found it difficult to be prepared for pretrial negotiations because of incomplete materials. However, every attorney we interviewed also said that the defense attorneys were reluctant to provide reciprocal discovery even though that was required.

Prosecutors were critical of the public and private defense bars for their failure to provide reciprocal discovery. One prosecutor did admit that occasionally prosecutors were unable to provide the defense attorneys with materials on complicated cases:

> I think we're doing a pretty good job of getting the packet (to defense attorneys) on our everyday normal cases. We have a complicated case...you know the packet gets to people a little more haphazardly, but our everyday robbery, burglaries and things like that get to them right away in five days. ...we are not getting much discovery from the defense. It's kind of understood in our letter that we supply, we demand reciprocal discovery... So what they give us reciprocally is simply a list of their witnesses. They don't give us statements of anybody, although we ask for it... Then we come to the scheduling conference with our offer, but we have not really had any realistic assessment of why or how strong their case is in defense...so we are not making a realistic offer because we don't know what the defense's real strength is, so quite often we're simply taking a pretty hard stand.

Everyone that we interviewed understood the potential importance of reciprocal discovery, and everyone stated that the rest of the changes due to the court management plan relied on the success of changes in early case stages. Changes in the discovery procedure have been implemented and have solved some informational problems but are not completely working as designed to date.

Pretrial Negotiations

Changes in the pretrial negotiation procedure have been described by virtually all respondents as the weak link in the court management plan. The pretrials occur sooner in the adjudication process and proceed without the presence of a judge. Respondents complained that because of problems in the discovery procedure, neither defense nor prosecution is fully prepared for negotiations, that negotiations occur too soon, that some judges do become involved in negotiations, and that more trials may be resulting from ineffective pretrial negotiations. The Chief Judge has recognized the need to work on the problems presented in this area and presented a seminar on negotiations with a local law school to try to improve negotiation techniques for attorneys. However, the judge stated that attendance at the seminar was poor and that the court would have to design some other mechanisms to solve the problems of pretrial negotiation.

Most attorneys that we interviewed agreed that pretrial negotiation were not proceeding as planned and blamed much of this on problems in the discovery procedure. Both defense and prosecution stated that if they did not have all of the available materials, they could not adequately evaluate their cases and therefore could not engage in realistic negotiations. One attorney said, "Pretrials are really worthless for this reason; they're worthless unless it's a clearcut case." Attorneys did admit that negotiations were occurring sooner even if those negotiations remained unsatisfactory.

One prosecutor admitted that some attorneys failed to evaluate available materials before pretrials:

> I'm not sure that some of (the prosecutors) have been able to get themselves organized to really take full advantage of it. It's pretty meaningless if (the prosecutor) or the defense attorney hasn't really looked at the file pretty well before they sit down and have that discussion, but I like the idea and I'd like to see (prosecutors) be prepared well enough so they knew what they were doing at that conference.

Another prosecutor echoed this problem of preparation and realistic evaluation:

> I think we need to more realistically discuss with defense counsel the merits of the case, and they should (give us)...statements or something that would be helpful...I think the failure of defense counsel to present their case strongly enough, either through witnesses or bringing the people to our office or something prior to the scheduling conference, I don't think they can realistically expect us to do anything else (offer a more lenient resolution). You know, they get a good look at our case and they know

whether they should do something, but we don't know whether we should do something because they don't really know what their strong suit is.

One judge agreed that preparations did present some problems during case negotiations and talked about what attorneys do and do not prepare and discuss during negotiations:

> ...The question of negotiation cannot be used without first putting the word "meaningful" in front of it, and what we found out is that meaningful negotiation is not taking place...nothing is happening...it's my understanding that it's not the tools. It's theoretical using of the tools... It's the verification of information in it by one or both sides that is really not being done. The analysis of that, looking for the loopholes, the things that lawyers do finally when the trial is set... One change in the system we've initiated does not bring about, it's impossible to bring about these ultimate changes because you haven't changed the other parts of the system and that's the training, conditioning, and attitudes of the two key roles, the defense attorney and the prosecutor.

The problem of making pretrial negotiations meaningful without a judge's presence may rely not on the availability of materials but on the experience or abilities of the involved parties.

Several respondents spoke to this point of inexperience and inability to negotiate. One judge said that inexperienced prosecutors were unable to recognize important elements in a case that might warrant early or more lenient resolution. This judge felt that he may have been trying more cases because of this inexperience:

> ...I am removed from the case more because I don't take part in pretrials, and sometimes that's good. But at the same time, since we don't have any pretrials, when the matter comes to trial I'm not aware of the evidence, questions, there are some little things I suppose would be nice to know about... And I suppose I'm trying more cases because the prosecutors are green. During pretrials I would be able to say, my experience is such you know, that this is ridiculous, you better look at it another time if he's willing to plead to the lesser charge, take it. Now, I don't have that opportunity to evaluate the case at all.

Several judges have countered these problems of inexperience and meaningless negotiations by becoming involved in some negotiations despite the court management plan. They recognize that a judge can have influence in case discussions, and this participation can result in a loss of judge time but a savings in trial time. The court administrator was aware of this slippage:

> I have a feeling that it (judicial participation in negotiations) makes a difference in the processing of a case, because a lot of attorneys simply won't sit down with another attorney and talk. But the influence of the judge, whether it be good or bad, forces them to do something.

And one judge admitted that his participation was occasionally necessary:

> I'm finding frankly that I have to get involved in many cases to see that the job gets done and also to allow defense counsel to get some sense of how I'm leaning in the event his man pleads. I make myself available to lawyers to discuss these cases.

Defense attorneys particularly mentioned asking judges to intervene when they felt that prosecutors were being unrealistic in making plea bargain offers:

> I'd like to have judges back in pretrials. That's a mistake. You have lots of young prosecutors who take a hard line... Those with experience can't get away with that, and judges force them to deal... I've had some judges intervene, but only on request from me.

Another attorney said that he occasionally asked the judge to participate in negotiations and has received a more lenient offer because of the judge's input. However, this tactic also allowed the judge rather than a prosecutor to take the blame for a lenient offer:

> ...you can always backdoor a pretrial. Say, look, let's go take it...well, some judges, others, you can't. You know, you can still sort of get the judge involved in a pretrial which I've always liked, because if you can't pitch the prosecutor, maybe you can pitch the judge... The judge would say (to this attorney, would you plead to a lesser charge?) You say, well, yes. You say we'll proffer for the plea and I'll accept. It helps the prosecutor because the judge reduced it, he did it. If you have a bad judge, you don't get that break.

Despite all of the problems mentioned concerning pretrial negotiations, several judges felt that the change was operating fairly well and was in fact giving judges more time to try cases. One judge said that he was willing to get involved in pretrials occasionally, but did not particularly miss doing them because of the accrued benefits:

> I think when you get your unusual case, the one out of the ordinary, that the lawyers will come, both the prosecutor and defense attorney will both come together and tell me that they have a problem and they want to ask me some questions and I'm only too happy to do that. But overall, it saves my time...I do have more time. And more time to spend in court trying cases which I guess is what we're really here for.

Scheduling Conference

According to the court management plan, a scheduling conference is set two weeks after the time of pretrial negotiations. At the scheduling conference, the defendant either pleads as agreed in negotiations or demands trial. Judges set a firm date for trial at the conference if necessary. According to the court management plan, defendants can enter a plea only to the original charge at a later time. The scheduling conference thus serves as a negotiated plea cutoff date.

At the inception of the court management plan, the court administrator and chief judge were particularly concerned with the number of pleas that were being entered on the day of trial. Court statistics indicated that 55% of all pleas were coming on trial date. This created resource problems for the court. Juries were available and were then not needed. Judges could not schedule a firm trial calendar because of the possibility of late pleas. The introduction of the plea cutoff date was designed to firm the trial docket and reduce waste in resources.

If pretrial negotiations are the weak link in Montgomery County's court management plan, the scheduling conference is the least understood and the most subject to manipulation. Many respondents told us that anyone would be foolish to reject a plea at any time. These comments indicated some misunderstanding about the concept of the plea cut-off date. The court can accept a plea at any point in the adjudication process. However, according to the management plan, it cannot accept a plea to lesser charges after the scheduling conference.

The scheduling conference is subject to manipulation through continuances. Attorneys discovered that most judges were willing to continue the scheduling conference for a week or two to allow further negotiations. This in essence also extended the plea cutoff date and manipulated the overall time frame designed in the court management plan. The time between arraignment and scheduling conference was designed to take three weeks. Continuances can extend this time to four or five weeks.

All of the respondents knew that the plea cutoff date and the scheduling conference could be manipulated by continuances or special appeals to judges. Two judges told us that they would grant continuances of the scheduling conference to permit further plea negotiations or case development:

> ...if our object is to set the cases that have to be tried and to get rid of the cases without setting a trial date that don't have to be tried, then the place to continue or to extend is in the negotiation process, because until they announce that we want to go to trial or we'll plead to something, you haven't clogged up your trial docket...there are some situations where I've continued the scheduling conference and still ended up setting the case for trial...every rule's got an exception. And there are some cases, quite frankly just because the decision was made to go to trial you can't necessarily bind both sides to that.
>
> ****
>
> I take the initial attitude that if it (continuing the scheduling conference) is going to contribute to the case being resolved the following week finally,

> then I obviously, like most judges, would be willing to continue it for one week. If I see that that is not happening and I know that right then, and that's very difficult because you've eliminated the judge from the pretrial conference so he knows less and less about the case, which I'm finding to be a real handicap in terms of the ability of me to do the job I see myself to do, the role that I'm supposed to do. So, it's interesting. I find myself saying I might be getting back into pretrial conferences. I don't want to.

Attorneys know that most judges will respond to reasonable requests for continuances of the scheduling conference. Some have also discovered that some judges will allow a defendant to plea to reduced charges after the scheduling conference date. One attorney said, "(t)he system is subvertible and I've done it." Another described his tactics for gaining continuances and late pleas:

> We ask for continuances and they're granted. OK, but they're not supposed to be. The only way to slow it down is to ask for continuance, which isn't really supposed to be granted all that often, but none of the judges follow the management system to the letter. There has to be flexibility. Like you can change your plea on the day of trial. You can plead to a reduced charge. You're not supposed to, but you can do it. Because it's the better thing to do...There's no sense in forcing a guy to go to trial if he's willing to plead to something that the prosecutor agrees with, too. Now a lot of attorneys in town don't realize that.

One judge told us that he attempted to enforce the plea cutoff date until he realized that his colleagues were accepting late pleas:

> There isn't one judge around that's sticking to it well enough to make it really a hard and fast rule. I tried to stick to it very early and then found that nobody else was and they were getting rid of trials while I was sitting there trying cases. So that while we give it lip services, the very fact is that unless all the judges stick to it earnestly, no one wants to be the sucker trying the cases when the others are accepting the pleas to lesser charges (after the plea cutoff date).

Some of our respondents were critical of the timing of the scheduling conferences rather than the concept of the plea cutoff date. The local bar association has requested an extension of the time between pretrial negotiations and the scheduling conference to continue the case negotiations. One judge said that this concept might be beneficial because that's where most of his requests for continuances occur:

> If I were to extend the time within which something would have to be done...it would be that period between arraignment and scheduling conference...I do find that in terms of administering my docket, that's where I grant continuances.

Despite the manipulation and the number of continuances, the Chief Judge felt that the plea cutoff date was reducing the number of pleas on the day of trial and was creating a trim trial docket. The judge told us that the number of pleas coming on trial day has been reduced from 55% to 5% or lower, and is very pleased with those figures. If those figures are correct, the court may be making resource savings. However, the quantitative analysis in the next chapter will discuss whether this is a savings in actual case processing time or only in what the court calls the day a plea occurs.

MONTGOMERY COUNTY GENERAL ASSESSMENT

We have discussed our respondents' comments about the specifics of the plan in detail in the preceeding sections. Overall, respondents were critical of the absence of meaningful pretrial negotiations, problems in the exchange and content of discovery materials, the length of time between the arraignment or pretrials and the plea cutoff date of the scheduling conference, and variations in adherence to the plan by judge. None of these criticisms indicated that respondents favored doing away with the plan. Rather, respondents said that certain aspects of the plan needed improvement, and that court actors needed to be trained to use elements of the plan effectively.

The court administrator has begun to collect certain kinds of statistics to provide the necessary feedback for ongoing monitoring of the plan. Statistics are being compiled to indicate productivity by judge and by the total court. Judges can then compare their own docket to those of their peers as well as see the total court picture. In addition, the administrator will collect separate statistics for cases ending in a plea and those going to trial. These will provide necessary comparison statistics on case processing times. The court attempted to monitor continuances but has been unsuccessful in doing so. We do not know if continuances will be monitored in the future. The court administrator feels that improved statistics and programmatic efforts on the weak portions of the court management plan will provide the necessary modifications and increase the utility of the plan.

Respondents mentioned two aspects of the plan that cannot be solved by manipulation of specific features, training, or better statistics. One complaint calls for attitude changes in the bench and bar or some attempt at conflict resolution. The other complaint is aimed at the total time frame of the plan and its utility for difficult cases.

Judges cited two frustrations due to the plan. Some felt more removed from their criminal cases and less familiar with defendants. Even though judges do little during arraignments or pretrials, they felt that by simply seeing a defendant more often they know him or her better and are more aware of circumstances surrounding the offense and are better able to make decisions. Increased bureaucratic control over the docket of individual judges reduces judicial familiarity with cases. The second frustration came from losing management control over the docket. Some judges were glad not to have to worry about scheduling anything but trials. They were willing to turn over management responsibilities to the court administrator or the assignment commission. Several, however, did not like losing this management control. One said:

> I'm finding myself a little frustrated, and find it a little bit of a contradiction in terms of feeling...that the rule that is supposed to help me manage better is maybe interfering with my own abilities to manage the docket I have.

This judge is committed to court management techniques and believes that he is able to effectively manage his own docket. The court management plan excluded him from some of that docket management. Judges who were less concerned with personal management techniques did not express these concerns.

The most serious criticism of the court management plan concerns the overall time frame as applied to serious cases. All of the attorneys that we interviewed stated that the case processing time frame was adequate for the majority of their cases even though they would have liked more time for case processing. However, all also said that the time frame was much too fast for 25-30% of criminal cases that involve very serious charges, multiple witnesses or other complicating factors. They said that the plan was designed to facilitate the processing of simple cases but could not work for those that required time for development. The Public Defender's Office refers to the plan as "One, two, three, you're in jail". One public defender said:

> The concept is not bad...and we probably plead 70% of our cases if not more. It doesn't hurt us... You're in there, they've got everything, you don't have anything to go on, and all you're talking about is sentence bargaining. You know, it doesn't hurt these cases. But that 30%, where you have to work the case, you might eventually plead them, you might eventually take a deal, you might eventually go to trial, it's just too fast.

Further refinement of the existing plan or increased training cannot solve this problem. It must be remembered that the same criticism of the Whittier model surfaced in Rhode Island. Respondents there also complained that complicated cases could not fit the mandated time frame.

Despite these criticisms, most respondents agreed that the implementation of the court management plan had been generally beneficial for the court. The Common Pleas Court was getting cases sooner, prosecution and defense were being forced to deal with individual cases sooner and had relevant case materials sooner, the court was being managed more efficiently, judges had more time for their civil cases, and cases were being resolved sooner. Some judges have deviated somewhat from the plan by participating in pretrials or by accepting late pleas to reduced charges, but virtually all of them noted improvements in setting a real trial docket and in knowing more about the size and nature of their caseloads.

Judges mentioned some specific benefits of the court management plan:

> If it doesn't completely attain the goal, it's going to help a lot... I think it's beneficial and I don't find it hard to deal with... If you buy the old song that...justice delayed is justice denied, I think that you have more justice now than you did two years ago...
>
> ****
>
> I can say that the criminal docket is in much better shape, not that it wouldn't get there with the old system, but it's gotten there, and by there I mean where we are, faster with the new system because we're on top of it more. As a result of that, I've had the opportunity to plan ahead and I've set more civil cases...for the first nine months or eight months of this year... I think the court management plan has been very beneficial to my particular docket, and I understand it's been a benefit to the whole court.
>
> ****
>
> More benefits have come out of it even with the fact that we have not uniformly followed it. No one has uniformly followed that rule. I'd still vote for it.

Although we have spent more time discussing some specific criticisms of the court management plan in Montgomery Conty, both our quantitative analysis and our qualitative data indicate that the plan has accomplished much of what it was introduced to do. Because respondents were more conversant with the specifics, they were also more critical of the specifics. This is in marked contrast to Providence. Although the improvement in Montgomery County in terms of the number of days gained in case processing time is less than in our other sites, the magnitude of the problem was smaller at the inception of the plan. Respondents feel, and our analysis indicates, that the court management plan has increased efficiency in the delivery of justice in Montgomery County.

NOTES

[1]State statistics indicate that 437 criminal cases were pending in Montgomery County at the beginning of 1978 and 427 were pending at the end of 1978. Although the number of criminal case filings have increased in the past few years, so have the number of terminations.

Chapter 8

THE RESULTS IN DAYTON

The Court of Common Pleas of Montgomery County processed criminal cases with dispatch prior to the court management plan. Thus, the Whittier Project was an attempt to fine tune an already well managed courthouse. Some of the specific changes implemented included: notice to the defendant of all pre-trial appearance dates, centralized arraignments, withdrawal of judges from plea negotiations, establishment of a scheduling conference, imposition of a plea cut-off date and mandatory reciprocal discovery.

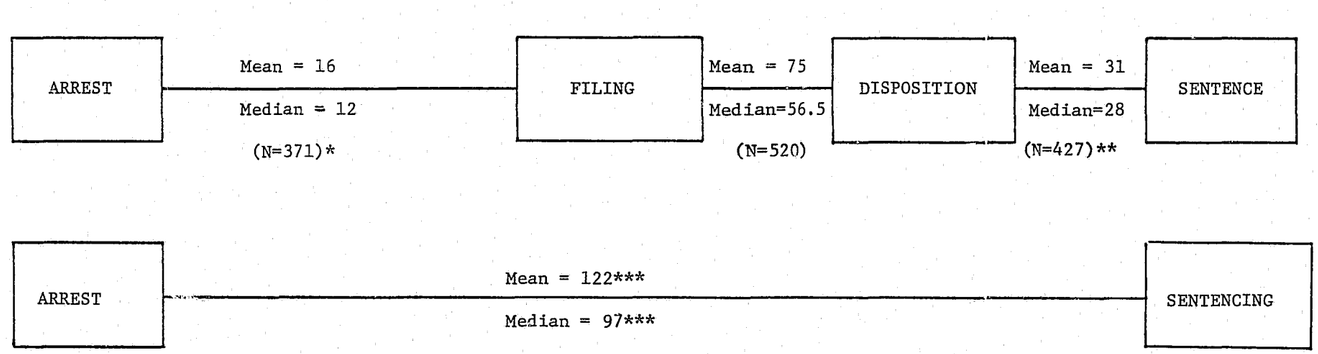
The impact of these changes on case processing time is the focus of this chapter. We will begin with a discussion of how long cases were taking prior to the innovation. Next we will examine briefly lower court time, and then concentrate on changes in trial court processing time.

HOW LONG DO CASES TAKE?

From the beginning of our research, we expected cases in Dayton to be processed more quickly than those in the other three sites. The results presented in Figure 8-1 bear out this supposition. From arrest to the imposition of sentence, the average case takes 122 days (median of 97). Lower court action proceeds with great dispatch --in half of the cases, charges are filed within 12 days of arrest. This is much faster than the median of 89 days in Providence. In Dayton, the bulk of case processing time occurs in the trial court between the filing of the indictment and a final disposition. But the median of 56.5 days certainly places Dayton among the speediest of the nation's big city courts. Finally, after the finding of guilt, sentence is imposed in 28 days (median). This is fairly typical for states that mandate a presentence investigation prior to sentencing.

FIGURE 8-1

Overview of Case Processing Time in Dayton, Ohio (July 1977-June 1979)



*Excludes Cases with Grand Jury Indictment in Lieu of Lower Court Processing

**Necessarily Excludes Cases Not Having a Finding of Guilt

***These Figures Are a Composite of the Individual Time Frames, and Therefore are Based Upon Slightly Different Samples

These estimates of case processing time are based on a two year sample of cases that began with cases filed in July, 1977. The total sample of 700 cases was winnowed to 520 to include only active, routine cases, and we subtracted days lost due to warrants.[1]

LOWER COURT TIME

Cases are handled quickly in the police department, lower courts, and prosecutorial screening. The average case takes 16 days from arrest to filing of charges in the Common Pleas Court (median of 12), and it is rare for a case to take more than 30 days. Of the 10% of the cases in our sample (n = 371 for the lower court) that take longer, idiosyncratic factors are probably involved as well as unmeasured days lost due to outstanding warrants.

The overall speed of case processing in the lower courts is particularly noteworthy, given that the Ohio Constitution mandates the use of a grand jury. While a number of studies suggest that the grand jury adds unnecessary delay to case processing, such is not the case in Dayton. This is because the prosecuting attorney schedules grand jury proceedings on the same day as preliminary hearings. This not only aids the witnesses (they must make only one, rather than two, trips to the courthouse before trial), but it also expedites case flow.

The speed of processing is an indication that in Montgomery County the police, prosecuting attorney, and county and municipal courts utilize well established routines. As a result, we would expect that few variables could be associated with differential speed of processing. This proves to be so. Variables like type of attorney, mode of upper court disposition, nature of the charge, and seriousness of the offense are all unrelated to lower court time.

Only two factors -- bail status and no indictment -- predict lower court processing time. As Table 8-1 shows, defendants in jail are processed six days more quickly than those out on bail. While this difference is statistically significant, the gap is not large. As discussed in Chapter 4, Ohio law mandates different time frames for jailed and bailed defendants in lower court. Cases eventually resulting in a "no true bill" are processed more slowly. Despite the small number of cases involved, the difference of eleven days is statistically significant. That cases resulting in no

charges being filed take longer in the lower court supports the hypothesis that, in weak cases, prosecutors delay the case hoping that additional evidence will be gathered or new witnesses will be forthcoming. When they are not, the case is dismissed by the Grand Jury.

Table 8-1. Lower Court Processing Time for Selected Case Characteristics in Dayton

	Mean	Median	N
BAIL STATUS			
Bail	18	13	215
Jail	12	11	98
CHARGING DOCUMENT			
No True Bill	27	15	22
Other	16	12	350

The innovations did not affect lower court case processing time. Given that cases were already being processed quickly, it is unlikely any innovations could have further reduced case processing time there. The Whittier project did not attempt to do this. Thus to evaluate the impact of the changes in Dayton, we need to concentrate on upper court case processing time.

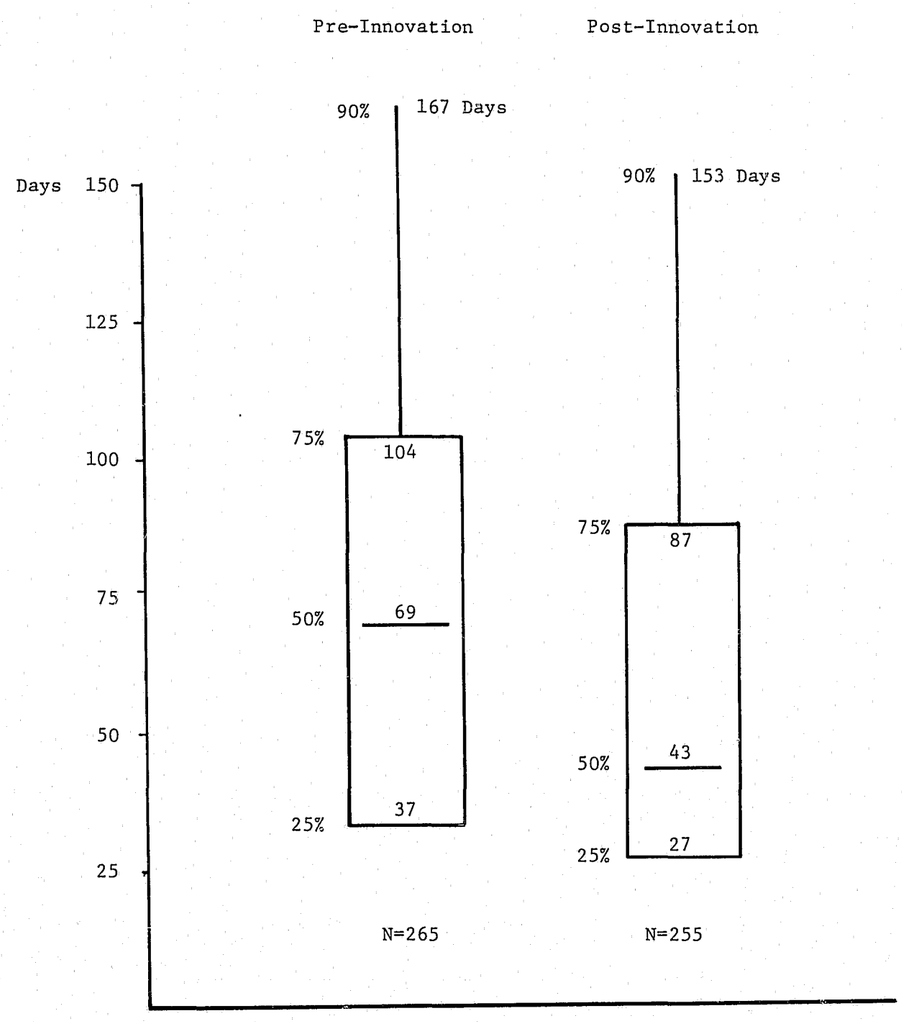
UPPER COURT CASE PROCESSING TIME: DID IT DECREASE?

Given the speedy processing of cases in the lower court, our evaluation of the impact of the Whittier project case management program must, by necessity, concentrate on the upper courts. Figure 8-2 utilizes a box and whisker plot to display case processing time from filing to disposition, before and after the November 1, 1978 innovations. It indicates that case processing time did decrease substantially. Prior to

the innovations, median time was 69 days compared to 43 days after the innovations. Median case processing time thus decreased by one-third. A comparison of the means shows a roughly similar decrease from 82 days to 67, which is statistically significant. But even before the innovations, the lengthiest 10% of the cases were taking only 5.4 months or longer. Clearly, the reductions in Dayton were not as dramatic in terms of the actual number of days as those in Providence, but the magnitude of the initial problem in Dayton was far smaller. Note in this regard that the box and whisker plot for the pre-innovation period in Dayton bears a remarkable similarity to the post-innovation period in Providence.

Figure 8-2

Box and Whisker Plot of Case Processing Time in Dayton by Innovation Period



Time Line

We get a somewhat different picture of the impact of the innovations when we look at Figures 8-3 and 8-4. These plots of case processing time by the month the indictment was filed in Common Pleas Court indicate that the delay reductions were not as consistent as in Providence. Whereas the time line for Providence showed a dramatic downward slope, the time line for Dayton projects a much more ambiguous pattern. This is particularly so in Figure 8-4 which uses a running median to highlight overall changes through time. This line looks like a sideways double "s." Note in particular that prior to the innovation, case processing time was decreasing. This may partially reflect plans that were underway during these months to institute the new procedures, and they may therefore have produced a Hawthorne effect. Also, the innovations did produce a backward effect on cases already in the system: some of the cases filed prior to November 1 were disposed when the innovations were in place. But, just as importantly, the time line also shows that toward the end of our sample, case disposition time was increasing approximately to the levels of late 1977.

Figure 8-3

Case Processing Time from Filing to Disposition in Dayton
Plotted by the Month Charges were Filed

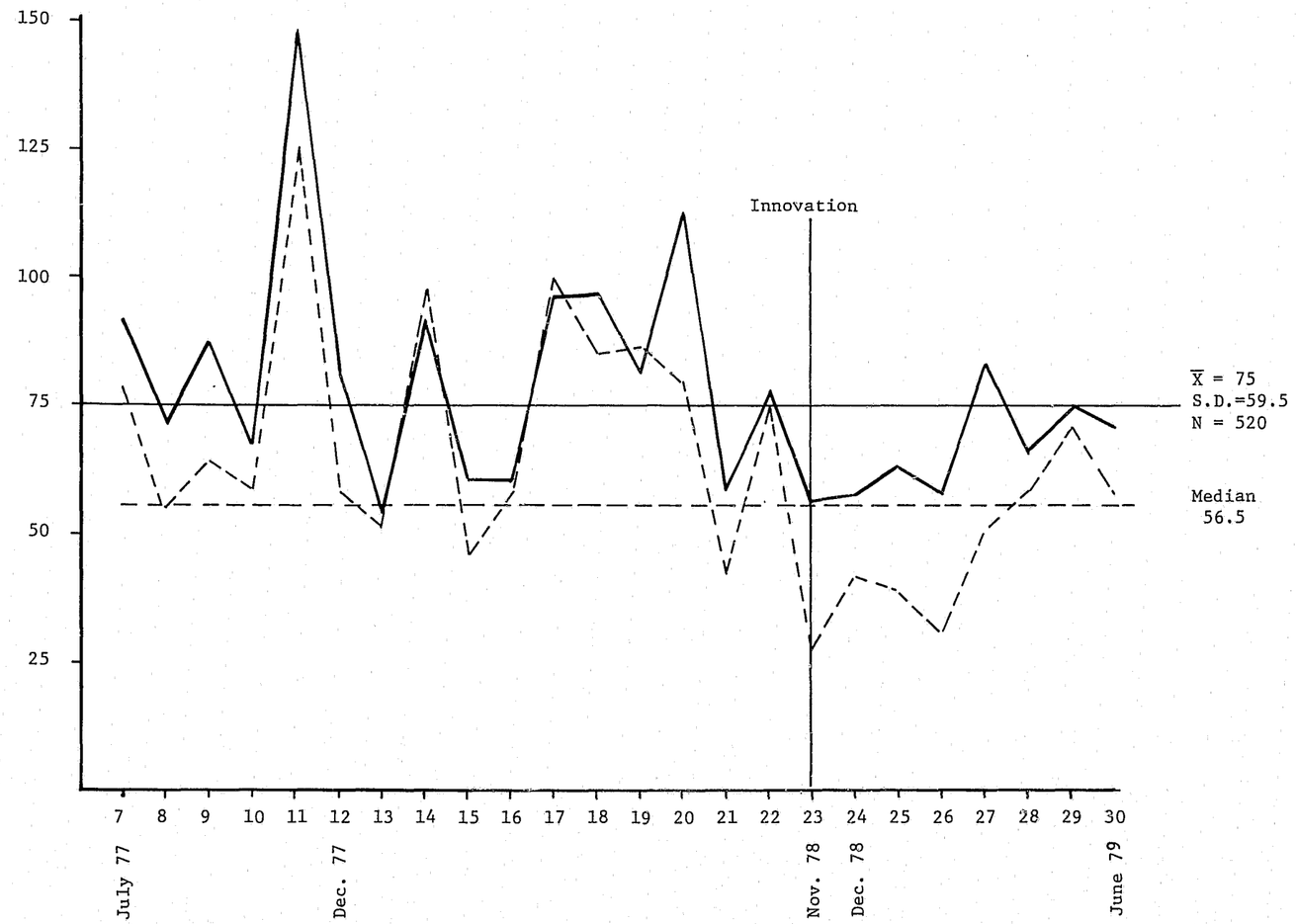


Figure 8-4

Case Processing Time from Filing to Disposition in Dayton
Plotted by the Month Charges were Filed, Using Running Median

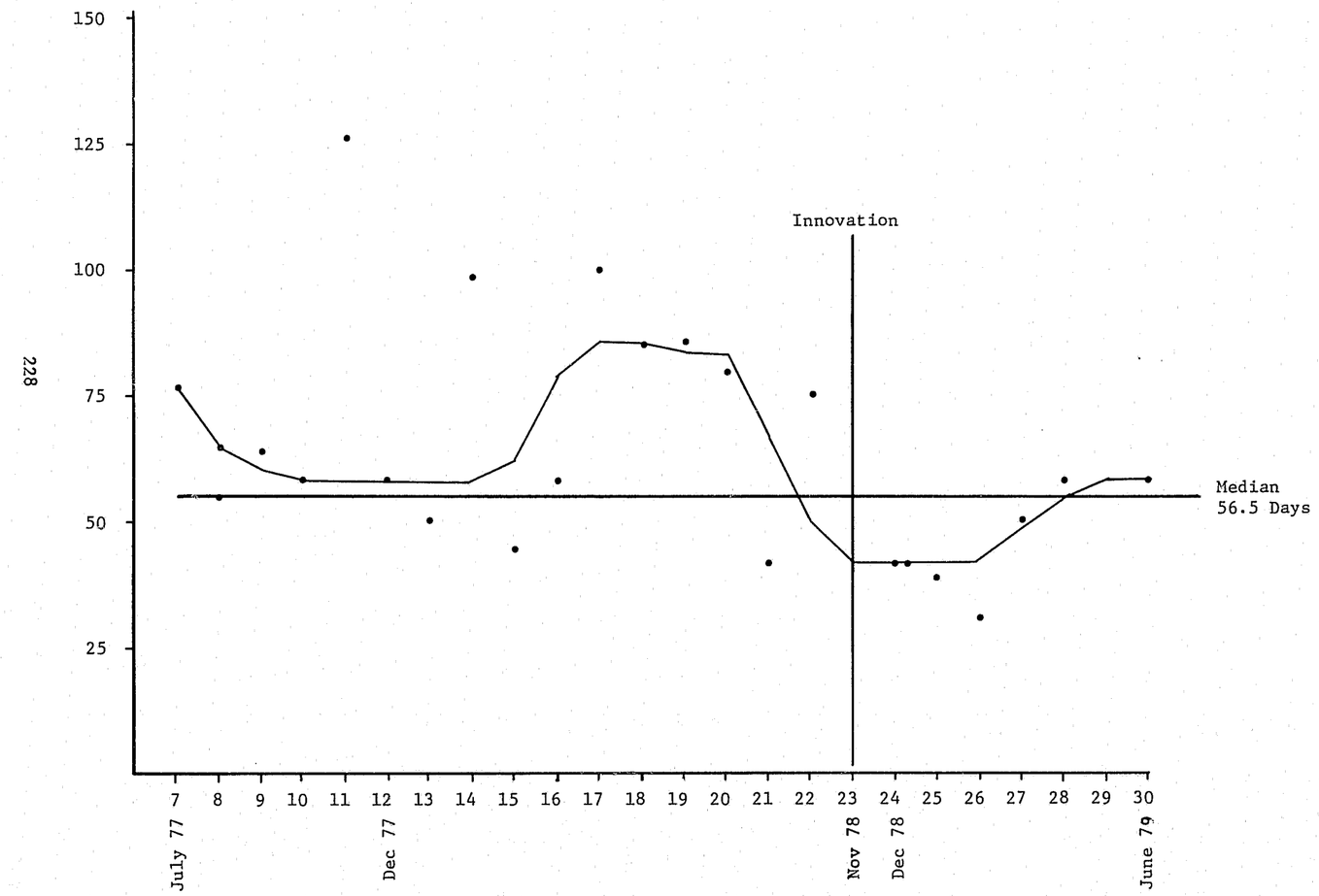


Table 8-2. Case Characteristics by Time Period in Dayton

	Full Sample (7/77-6/79)		Pre-Innovation (7/77-10/78)		Post-Innovation (11/78-6/79)	
	N	%	N	%	N	%
SERIOUSNESS						
Maximum Penalty in Months						
6 Months	29	6%	15	6%	14	6%
60	288	51%	137	53%	151	60%
120	43	8%	17	7%	26	10%
180	63	12%	32	12%	31	12%
300	76	15%	52	20%	24	10%
480	11	2%	5	2%	6	3%
MOST SERIOUS CRIME CHARGE						
Assault	47	9%	27	7%	20	7%
Burglary	47	9%	23	9%	24	9%
Drugs	70	13%	33	12%	37	15%
Theft	203	39%	91	34%	112	44%
Robbery	96	18%	56	21%	40	16%
Weapons	29	6%	17	6%	12	5%
Murder	12	2%	8	3%	4	2%
Miscellaneous	17	3%	11	4%	6	2%
CASE COMPLEXITY						
Multiple Defendants						
One Count	408	88%	195	87%	213	88%
Multiple Charges						
One Count	432	83%	211	79%	221	86%
BAIL STATUS						
Can't Tell	49	9%	24	9%	25	10%
Bail	339	65%	164	62%	175	68%
Jail	134	25%	78	29%	56	22%
TYPE OF ATTORNEY						
Court Appointed	162	31%	83	31%	79	31%
Public Defender	130	25%	66	25%	64	25%
Retained	228	44%	116	44%	112	44%
MODE OF DISPOSITION						
Plea	423	81%	214	81%	209	82%
Trial	29	6%	13	5%	16	6%
Dismissal	70	13%	39	15%	31	12%
SENTENCE						
No Conviction	89	17%	45	17%	44	17%
State Prison	84	16%	52	20%	32	13%
County Jail	76	15%	43	16%	33	13%
Suspended/Probation	251	48%	110	41%	141	55%
Rehabilitation	22	4%	16	6%	6	2%
DEFENDANT CHARACTERISTICS						
Age - Mean	491	28	251	27	240	29
Race - White	255	47%	111	44%	124	51%
Sex - Male	392	79%	213	85%	179	73%
PRIOR RECORD						
Conviction	142	30%	75	53%	67	30%
MOTIONS						
None	380	73%	18	71%	192	75%

About half of the criminal cases in Dayton involve some form of theft of personal property, whether burglary, larceny, forgery or embezzlement. Between the two time periods, there was some shift in the types of crimes processed by the courts. Theft cases increased by 10% while robbery cases declined by 5%. We find a similar pattern in terms of case seriousness — there was a slight decline in the proportion of serious cases (as measured by the maximum months of possible imprisonment). Compared to Providence, Dayton has fewer burglaries, about the same proportion of drug offenses, but a higher percentage of thefts.

As in Providence, cases are not particularly complex: single defendant (88%) and single count cases (83%) predominate. After the innovation there was a small increase in the proportion of multiple charge cases, but if this variable has any impact it would be to increase case processing time, not decrease it as occurred in Dayton.

Only about 25% of the Dayton defendants await disposition in jail.[2] After the innovations the percentage of jailed defendants declined by 7%, but this should (as with multiple counts) increase case processing time.

In terms of type of counsel, a slight majority (55%) of defendants are indigent and represented by either the public defender or a court appointed attorney. Note that unlike most communities, Dayton uses a mixture of a public defender office and court appointed attorneys to represent indigents. This may reflect the large number of defense attorneys in Dayton, where no single lawyer or law firm has a dominant share of the business. Indeed, the busiest five attorneys controlled only 23% of all privately-retained cases in our sample. The large number of attorneys also allows the court to make liberal use of court appointments: of the 172 cases with court-appointed attorneys in our sample, more than 100 different attorneys served as counsel.

Modes of case dispositions remain remarkably constant in Dayton. Pleas predominate (81%), trials are relatively rare but still involve a fair number of cases, and finally, dismissals are twice as common as trials.

Similarly, there were no changes in the proportion of cases involving motions. Only in one case out of four does the defense file legal motions related to the disposition of the case. There were changes between the time periods, however, in the types of motions filed. Motions for discovery declined from 12% of the cases to 5%, a

result attributable to a court management plan that mandated reciprocal discovery. On the other hand, motions to suppress evidence increased from 11% to 24% of the cases. One of two factors might explain this increase. Under the new discovery rules, defense attorneys could have known more about potentially illegal searches and seizures in cases. Alternatively, the increase in the number of welfare fraud cases might be the cause. For in welfare fraud cases, attorneys argued that use of social security information involved violations of fourth amendment protections.

One variable that does change after the innovations is the type of sentences. Note that in Dayton there are many more sentencing options than in our other sites. In most communities, the sentence comes down to a choice between prison or probation. In Dayton, intermediate categories of county jail (15%) and rehabilitation (4%) are used. The latter reflects the court's usage of special programs such as Project Monday, diversion, drug therapy, job counseling and the like. Overall though, only 19% of convicted defendants go to prison. This percentage decreased after the innovation, but this appears to be the result of fewer serious cases rather than changes in judicial sentencing philosophies due to the court innovations.

The typical Dayton defendant is 28 years old, black, male, and with no prior criminal conviction. This last characteristic contrasts markedly with Providence. Note, though, that the racial make-up is almost evenly split between white and minority. Note also that these characteristics change somewhat over time. After November 1978, there is an increase in the number of female defendants and an increase in the number of white defendants. In addition, the proportion of defendants with a prior felony conviction drops significantly.

Two overall patterns emerge in terms of changes in case characteristics in Dayton. First, as part of a nationwide crackdown, the court experienced an increase in welfare fraud cases. We find this pattern in the increase of theft cases (which includes welfare fraud), decline in seriousness of charges, an increase in female defendants, and the decline in the proportion of guilty sentenced to a state prison. Many of the welfare fraud cases have been continued for hearings on motions to suppress, thus increasing case processing time.

The second pattern is that most of the changes are in the direction of <u>increasing</u> case processing time, not decreasing it. Thus, coupled with the multivariate analysis

in the next section, our data strongly suggest that decreases in case processing time were not due to changes in the types of cases being handled or in the mode of disposition.

THE EFFECTS OF CASE CHARACTERISTICS ON UPPER COURT CASE PROCESSING TIME

How quickly or slowly a case is processed depends somewhat on the type of case involved. Table 8-3 presents average case processing time by case category for the full sample and the two different time periods. The results indicate that there are differences but, by and large, they are small. To determine which of these factors are the most important, controlling for other variables, Table 8-4 presents the results of stepwise multiple regression. Overall, five factors emerge as important predictors of case duration: jail status, mode of disposition, type of attorney, the number of motions, and the number of counts in the indictment.

Table 8-3. Mean Days of Upper Court Processing Time by Case Characteristics in Dayton

	Full Sample (7/77-6/79)	Pre-Innovation (7/77-10/78)	Post-Innovation (11/78-6/79)
SAMPLE MEAN	75 Days	82 Days	67 Days
SERIOUSNESS			
Maximum Penalty in Months			
6	73	70	77
60	72	75	69
120	82	96	74
180	64	77	49
300	82	94	57
480	110	128	94
MOST SERIOUS CRIME CHARGE			
Assault	81	94	63
Burglary	59	66	51
Drugs	83	100	68
Theft	72	71	72
Robbery	71	82	55
Weapons	87	84	92
Murder	113	131	77
Miscellaneous	69	81	47
CASE COMPLEXITY			
Multiple Defendants			
1	77	84	70
2	67	83	50
Multiple Charges			
1	73	81	65
2	80	81	78
3 or more	88	92	75
BAIL STATUS			
Can't Tell	63	72	54
Bail	81	87	75
Jail	64	76	47
TYPE OF ATTORNEY			
Court Appointed	68	79	57
Public Defender	65	70	60
Retained	85	91	78
MODE OF DISPOSITION			
Plea	69	77	62
Trial	115	130	102
Dismissal	89	93	84
SENTENCE			
No Conviction	92	95	89
State Prison	66	76	51
County Jail	76	91	56
Suspended/Probation	72	79	67
Rehabilitation	55	59	42
DEFENDANT CHARACTERISTICS			
Race			
Minority	77	86	67
White	71	68	74
Sex			
Male	74	81	65
Female	77	83	74
History			
No Prior Convictions	75	80	68
Prior Convictions	72	86	57
MOTIONS			
No Motions	66	74	58
One Motion	96	95	97
Two Motions	83	99	56
Three or More	117	120	108

Table 8-4. Results of Multiple Regression for Trial Court Time in Dayton

	Full Sample (7/77-6/79)		Pre-Innovation (7/77-10/78)		Post Innovation (11/78-6/79)	
	Beta	b	Beta	b	Beta	b
Motions	.23	17.8	.25	17.5	.21	18.8
Pre-Trial Detention	-.16	-21.1	-.15	-18.7	-.18	-24.4
Plea of Guilty	-.12	-18.4	ns	ns	ns	ns
Privately Retained Attorney	.12	14.7	.13	16.0	.13	15.6
Multiple Counts	.09	10.8	ns	ns	ns	ns
	R_2 = .34 R^2 = 12% N = 471		R_2 = .30 R^2 = 9% N = 241		R_2 = .33 R^2 = 11% N = 230	

All Beta's are statistically significant at .05.

Bail Status

Whether the defendant awaits disposition in jail or has made bail is a critical factor affecting case processing time (Table 8-4). In Dayton, cases involving defendants in jail reach disposition 17 days sooner than those out on bail. This finding is consistent with Ohio's Speedy Trial Rules which mandate faster case processing for pretrial detainees. What is unexpected, however, is that the innovations served to increase the bail/jail differential. Prior to the innovations, there was an 11 day difference between bail and jail, while afterwards, there was a 28 day difference (Table 8-3). Similarly, the discriminating power of beta and the net effect of the bail/jail variable both increase after the innovation. By contrast, innovations in Providence had the opposite effect, decreasing the gap in case processing time between bail and jail.

Mode of Disposition

A second factor affecting case processing time is the mode of case disposition. Cases disposed by a plea of guilty move with greater dispatch than those disposed by either a dismissal or a trial. From an average of 77 days before the innovations, pleas declined to 62 days afterwards, a reduction that is statistically significant. Table 8-5 highlights this reduction in tabular form. Note, for example, that after the innovations, one-third of all pleas of guilty occurred within 30 days of the indictment being filed, as compared to 19% prior to the innovation.

Table 8-5. Timing of Pleas of Guilty Before and After the Innovation in Dayton

	Full Sample (7/77-6/79)	Pre-Innovation (7/77-10/78)	Post-Innovation (11/78-6/79)
0 to 30 Days	26%	19%	33%
31 to 60 Days	32%	28%	35%
61 to 120 Days	26%	36%	18%
121 to 240 Days	14%	15%	13%
241 to 365 Days	2%	2%	1%
N	421	213	208

The innovation served to speed up the time when a plea of guilty was entered due to the introduction of scheduling conferences and imposition of a plea cutoff date. Reductions in case processing time, however, were not uniform across case types. Cases disposed of by trial or by dismissal did decrease slightly after the innovations, but these reductions are not statistically significant. Only cases disposed by a plea of guilty were significantly affected by the innovations. This should come as no surprise, given that the program in Dayton concentrated heavily on plea procedures. The court was concerned that 55% of guilty pleas were coming on the day of trial. This was a key motivation for imposing a plea cut-off date.

Type of Attorney

Another factor associated with differential case processing time is attorney type. Defendants represented by privately retained counsel experience lengthier processing time. Table 8-3 shows that privately retained counsel consume about 20 days more than those representing indigents. This difference does not change

appreciably according to the innovation period. What appears to be the most critical consideration is the indigency of the defendant (and probably the types of charges associated with indigency) rather than the type of attorney. As described in Chapter 4, Dayton uses both the public defender and court appointed counsel in indigent cases. Note that in this regard, court appointed counsel and public defender attorneys are very similar in terms of case processing time. Thus, the crucial distinction is not between an institutionalized defender versus office attorneys, but rather between indigency and non-indigency. Indigents represented by either public defender or court appointed counsel experience the same length of case processing time. The distinction between indigency and non-indigency suggests one of two possible explanations. One is that it is the type of defendant (poor and charged with different types of crimes) that is important. The other is that there are two types of legal service provided: one for the poor, another for the non-poor. Our data cannot disentangle this question.

Number of Counts

A factor that exerts a small influence on case processing time is the number of counts in the indictment. Multi-count cases take longer as Table 8-4 highlights. While this finding is in the hypothesized direction, some caution is in order. For one, the number of multi-count cases is quite small (only about 14%). Second, the relationship is actually small. Looking ahead to Table 8-6, note that once we enter the innovation variable into the equation, the number of counts is no longer statistically significant.

Motions

The best predictor of case processing time is the number of motions filed in a case: the more motions filed, the longer a case takes. In constructing this variable, we exclude the fairly large number of post disposition motions involving sentencing (typically modification of sentence). As Table 8-3 shows, the relationship between number of motions and case processing time is stepwise. Cases with no motions go fastest, those with one or two motions experience more time. Those cases with three or more motions take the longest.

Given the importance of number of motions to the speed of disposition, we ran a multiple regression to see what variables are related to motions. We found that trial, serious offense, a county jail sentence (but not prison), a charge of murder and pretrial

detention were all positively related. Taken together, these individual factors perhaps suggest a more refined measure of seriousness.

Stability of the Regression Model for Different Time Periods

As Table 8-4 reports, the regression models were calculated not only for the entire sample but also before and after the innovations. Examining the different time periods gives an indication not only of the stability of our predictors but also whether the innovations produced any major changes in the relationships of case characteritics to case processing time.

The results indicate a high level of stability. Number of motions, pretrial release and a privately retained attorney increase case processing time no matter which time segment is examined. This stability is to be expected given the overall continuity in the Dayton court. The innovations were in essence a fine tuning of an already smoothly-running court system. By contrast, in Providence the imposition of case flow routines resulted in major changes in the variables predicting case processing time.

Note also that for the individual time periods, the number of counts fails to be statistically significant. As we noted earlier, this variable had the weakest relationship in the total sample, and its disappearance comes as no surprise. But two results are unexpected. First, plea of guilty, an important predictor in the original equations, fails to withstand tests of statistical significance for either specific time period. This seems an indication that a plea of guilty, rather than the prime ingredient in court processing (as traditional studies have emphasized) is actually more of a secondary characteristic (as more recent studies suggest).

The second unexpected finding is that levels of predictability actually increase in the post-innovation period. We would have predicted the opposite, because as routines become more established, they should serve to lessen disparities. But note in particular, that in the post-innovation period, the beta for pretrial detention has increased (as suggested by the difference of means used earlier). The overall increase in predictability, however, is very slight.

Independent Effects of the Innovations

Having identified five variables that affect case processing time in Dayton, we can now test the null hypothesis that the innovation had no independent effect.[3] Table 8-6 indicates the null hypothesis is rejected. Once we control for motions, plea, type of counsel and bail status, the innovation remains associated with a decrease in case processing time — a net effect of thirteen days reduction.

Table 8-6. Results of Multiple Regression for Upper Court Time, Innovation Variable Included

	Beta	b
Motions	.22	17.1
Pre-Trial Detention	-.17	-22.0
Privately Retained Attorney	.12	14.8
Plea of Guilty	-.12	-18.3
Innovation	-.11	-12.9
Multiple Counts	.08*	9.5

R_2 = .36
R^2 = 13%
N = 471

All Beta's are statistically significant at .05, unless otherwise noted

*Statistically significant at .072.

It is clear, however, that even when we include a variable measuring the innovation, our ability to predict case processing time is limited. The amount of explained variance is only 13%. This low amount reflects the presence and importance

of case routines in Dayton, routines that were generally in place before the innovation (in contrast with Providence).

Factors Not Related to Case Processing Time

A number of factors often hypothesized to be related to case processing time turn out not to be important in Dayton. One such non-factor is the seriousness of the charge and the specific types of crimes charged. More serious cases move no faster nor slower than less serious ones. Likewise, the specific nature of the charges — robbery as opposed to theft, or burglary as against drugs — makes no systematic difference. This seems an indication that the routines employed by the court preclude the establishment of priorities based on either the seriousness of the offense or the specific nature of the crime.

Likewise, the eventual sentence the defendant receives makes no difference in terms of the speed with which a case moves through the Court of Common Pleas. Unlike Providence, where cases with a sentence of probation took longer before the innovation but shorter afterwards, whether a defendant is sentenced to prison, county jail, placed on probation, or given a rehabilitative sentence makes no difference in speed of disposition in Dayton.

Finally, the characteristics of the defendant do not make a difference. Our data include information on the age, race, sex and prior criminal history of the defendant. None of these are related to how fast or how slow a case is handled by the court.

CONCLUSION

To summarize briefly, case processing time in Dayton decreased after the innovations, on the average, about 15 days. An analysis of changes in case characteristics before and after the innovations indicates that these changes cannot account for the decline in case processing time. Similarly, we found that once we controlled for important factors affecting case processing time (motions, a plea of guilty, bail status and type of attorney), the innovations still exerted an independent effect. In short, the reduction in case processing time can be confidently attributed to the innovation.

Yet, though case processing time decreased for a few months after the innovation, it rose again to a level roughly equal to that of one year before the innovations. This is probably accounted for by behavioral changes of key actors noted in the last chapter. Some of the judges reverted to earlier patterns, such as involvement in plea negotiations. Moreover, attorneys learned that one way to manipulate the plea cut-off date was to continue the scheduling conference. Thus, our general conclusion is that, while case processing time decreased after the introduction of the Whittier plan, the reductions were short-lived. We cannot conclude that the innovations, as presently constructed in Anyton, will have a lasting impact on case processing time. Nevertheless, the work of judges, the scheduling of trials, and the occurrence of pleas have all been modestly rationalized as a result of the Whittier Team's intervention.

NOTES

[1]The appendix discusses which cases were exluded from our estimates of case processing time and why.

[2]See the appendix for a discussion of missing data on bail and other variables.

[3]The innovation was operationalized as a dummy variable, but when measured by the day the case was filed the statistical results are identical.

METHODOLOGICAL APPENDIX: DAYTON

This appendix discusses some of the technical issues involved in drawing the sample, winnowing the sample of cases, subtracting out warrant time, and in handling missing data.

WINNOWING THE SAMPLE

Not all 700 cases drawn in the sample could be utilized in the analysis. Table 8-A-1 lists the reasons for excluding 180 cases from the analysis. To be included, a case had to have been both an active and a routine case.

Active Cases

Some cases were deleted because they had either never been active or had not reached disposition. No true bills as well as some of the cases in the miscellaneous category were never active in the Court of Common Pleas and therefore were dropped. Likewise, cases involving an outstanding warrant were deleted. The examination of the no disposition cases provides strong indications that in these cases the defendant was never apprehended. For example, in 17 cases the files contain no information that the indictment had been served or that the defendant had ever been arraigned. In the remaining 9 cases, the defendant was arraigned but the absence of any further information indicates that these defendants probably had skipped bail.

Non-Routine Cases

Also excluded were cases that were judged to deviate substantially from routine processing norms. The most important category of non-routine cases that were excluded are those involving a psychiatric examination. As Table 8-A-2 shows, these 17 cases took considerably longer (average of 275 days) than other cases. Such extended case processing time reflects that most defendants are hospitalized from sixty to ninety days while undergoing a psychiatric examination.

Diversion cases and information cases were also dropped from the analysis because they are handled in quite distinctive ways. The vast majority of criminal

cases in Dayton proceed by indictment. A handful of cases, however, do not. In most instances when the defendant ultimately receives a "sentence" of diversion, the case is treated differently from the beginning. Typically, there is no indictment. Moreover, when the defendant is arraigned in the Court of Common Pleas, the diversion recommendation is immediately noted. Subsequently, cases take an average of 54 days until the formal decision is made to accept the defendant into a diversion program. Thus, diversion cases proceed much more speedily than cases that proceed by indictment. Diversion cases also involve the least serious penalties and the most minor charges (theft, forgery and small amounts of illegal drugs predominate).

Similarly, a handful of defendants waive Grand Jury presentment and proceed by information. These cases are heavily concentrated in burglary, theft and forgery charges. An analysis of these cases indicates that they are geared for an immediate plea of guilty, being disposed of within eight days on the average (median of one day).

The rationale for excluding diversion and information cases from the analysis is three-fold. First, the way they are handled indicates that they constitute a small proportion of deviant cases. Second, their short disposition times may potentially distort the time series analysis. Third, these cases contain a heavy concentration of missing data on key variables such as bail status and type of attorney.

Subtracting Warrant Time

Time lost due to warrants has also been subtracted from our estimates of upper court time. Unlike Providence, however, there were very few warrants. Only 10 cases involved a defendant who skipped between arraignment and disposition, and days lost due to warrants could be computed. (In several cases, days lost due to warrants could not be calculated, and so the entire case was excluded). Days lost due to warrants averaged 56 days (Table 8-A-2). Excluding days lost due to warrants decreased the estimate of case processing time by only two days.

MISSING DATA

In our other research sites, data collection from the court files proceeded with only the predictable, but manageable, problems. In Dayton, however, we experienced more than the expected problems, because court files were often incomplete. This is

surprising because the clerk's office seemed well-managed and was computerized. In any event, more than a desirable amount of missing data appeared on some key variables. For example, court files often contained information on the type of bond required by the court but did not in all cases record whether the defendant had made bond. For that reason, in 9% of the cases we were unable to determine bail status, even after employing a variety of surrogate measures.

For attorney type also, we experienced difficulty determining if the attorney was private, court appointed or a public defender. Information on court appointment was most easily obtained, because the clerk carefully recorded vouchers involving expenditures of county funds. For the public defender, the major indicator was the office address. In some cases, there was clear indication that the attorney was privately retained. We then compared missing cases to the name of the attorney to apportion the remaining cases into public defender and probably private. In the analysis, the probably private category was treated as retained both because the name list gave this indication and also because the empirical results paralleled those for attorneys whom we knew to be privately retained.

Finally, we experienced great difficulty recording information on the lower court handling of a case. There are a number of lower courts in Montgomery county. Only the Dayton Municipal Court forwards a complete set of records to the Court of Common Pleas. Thus, the estimates of lower court processing time probably reflect only the Dayton Municipal court.

Table 8-A-1. Cases Winnowed from the Dayton Sample

Warrant Outstanding	14
No Disposition	26
No True Bill	45
Diversion	42
Miscellaneous	11
Direct Information	17
Psychiatric Cases	18
No Disposition Date	7
	180

Table 8-A-2. Characteristics of Cases Involved in Winnowing the Dayton Sample

	Mean	Median	N
Psychiatric Examination	275	234	17
Days Lost Due to Warrants	56	35	10
Diversion	54	51	41
Indictment Waived	8	1	15
All Other	75	57	520

Chapter 9

THE IMPLEMENTATION OF DELAY-REDUCTION PROGRAMS IN LAS VEGAS

Delay in disposing of cases in Las Vegas was symptomatic of a number of deep seated problems. This chapter begins with an overview of the definition and history of the problem in the court. Next we will discuss the series of far reaching changes that began to occur as far back as 1975. Team and tracking, introduced in 1977, was one of those innovations. Finally, we will examine the impact of these changes on the trial courts, the lower courts, and the public defender's and prosecutor's offices.

To glance ahead to the next chapter, the analysis of cases filed in 1977 and 1978 indicates that lower court case processing time improved markedly. Upper court case processing time, on the other hand, showed little improvement. This chapter suggests that the reason that case processing time did not significantly decrease in the district court in this time period is that the changes relevant to delay occurred prior to 1977.

THE PROBLEM: DEFINITION AND HISTORY

In 1974 Las Vegas's court process was beset with numerous and far reaching problems. "Chaotic" was the adjective respondents most often used to describe the situation. Some of the specific problem areas included:

1) Justice Court was understaffed, procedures were archaic, and cases could languish for over a year.
2) District Court's master calendar system was working badly: work was inequitably distributed, trials were few, continuances the norm, and two to four year delays occurred.
3) The District Attorney's Office was non-managed, and continuity in case preparation was lacking.

Case flow management problems like these were the product of a series of underlying factors related to the local socio-legal culture:

1) Las Vegas had experienced explosive growth in population and crime.
2) The judges cherished autonomy and were internally divided.

3) Open political conflicts reflected underlying tensions among components of the criminal justice process.

These factors are the focus of this section, with the general ones proceeding first.

Explosive Growth

Since the mid-fifties, Las Vegas has experienced an explosive population growth. From 1960 to 1975, for example, the population tripled (see Table 9-1). Crime increased concomitantly. In one five year period (1970-1975), the number of reported index crimes doubled. Moreover, the overall crime rate ranks well above the national average for communities of its size (FBI, 1976: 34, 153, 63).

As one would expect, there has been a parallel expansion in legal/judicial personnel. One lawyer estimated there were about 250 lawyers in the county when he began practice in 1969. By 1979 there were over 750. One consequence is that the bar is relatively young. Similar increases have occurred in the legal bureaucracies. In 1965 there was only one Justice of the Peace; now there are five. District Court judgeships doubled in the same period. The number of public defenders increased from 8 to 25; the District Attorney's office grew to about 60 (the baseline is unknown). Typically, however, these expansions lagged behind increases in population, crime and caseload.

From 1971 to 1979 the number of cases submitted to the District Attorney's office increased 96% (3195 to 6264). Very unreliable court statistics illustrate a rise in caseload. From 1966 to 1975, criminal cases in District Court tripled from 1015 to 3140. In Justice Court, misdemeanor cases almost doubled during the same period.

Political Conflict

The recent, explosive growth of Las Vegas makes it a unique city. As one respondent phrased it: "This is still a frontier town, it's really only 20 years old; the city hasn't matured yet." The frontier town image is reflected in numerous open political conflicts involving the judiciary.

The pervasiveness of political conflicts and tension points surrounding the judiciary is best exemplified by the following AP wire story:

Table 9-1. Rapid Growth of Las Vegas (Clark County) Nevada

	1960	1970	(% Change 1960-70)	1975	(% Change 1970-75)
Nevada Population	285,000	488,738	(71%)	590,268	(21%)
Clark County Population	127,110	273,288	(115%)	330,714	(22%)
Index Crimes (Clark County)	—	15,916	(—)	32,696	(105%)

Sources: U.S. Bureau of the Census, County and City Data Book, 1977, U.S. Government Printing Office, 1978.

Southern Regional District Allocation Committee, 1977 Regional Comprehensive Criminal Justice Plan.

> The Nevada Supreme Court resumes oral arguments Monday after a two-month layoff, amid what Chief Justice John Mowbray calls a 'more serene' atmosphere compared to past bickering among the justices... There have been reports of in-fighting among the high court justices which led to a Judicial Discipline Commission probe at one point. But Mowbray said 'things are fairly quiet now.' 'It's much more serene and that's the way it's going to be,' he said. (Las Vegas Review-Journal, September 9, 1979).

The hoped-for serenity was short-lived. Less than three months later the court's former chief legal adviser attempted to file an affidavit in federal court concerning the state supreme court's handling of a disbarment proceeding. The two Supreme Court judges who were accused in the affidavit:

> "...angrily denied the charges, with Manoukian claiming that they were motivated by fellow Supreme Court Justice Al Gunderson.
>
> 'That's where the heat comes from — Gunderson's office' said Manoukian." (Las Vegas Review-Journal, December 15, 1979).

Open dissension among judges of the Supreme Court form a backdrop for assessing conflicts between this court and the legislature. Unauthorized pay increases in the Administrative Office of the Courts led to a major confrontation with the legislature and resulted in a major shake-up in that office, including widespread staff firings and resignations.

During this time the legislature proposed a constitutional amendment that would increase legislative powers over the judicial budget. Judges viewed the proposed amendment as a major threat to the independence of the judicial branch. If nothing else, the internal disarray on the state supreme court coupled with battles between the court system and the legislature meant that local courts could neither look to, nor expect, leadership from the state.

Similar political conflicts occurred in Clark County. Marked tension, perhaps even animosity and antipathy, between the District Court and the County Commission was mentioned by several respondents. In Nevada, judges' salaries are paid by the state, but the county funds all support staff — ranging from secretaries to district attorneys, public defenders and so on. The absence of good working relationships between the court and the county commission was mentioned by a high level official as one motivation for the team and track grant: prosecution and defense needed additional staff but the county commission would not spend the money. The county commission actively opposed the creation of new judgeships in Clark county. The

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cited reason — the budget for support staff would run $500,000 per judge — was viewed by at least one judge as an example of creative bookkeeping since those salaries would be carried in other budgets. In addition, the county commission, responding to the bail bond industry, terminated a pretrial release program.

There are also pronounced tensions between the District Court and the clerk (who also serves as county clerk). While the clerk contends that 80% of her budget is devoted to court tasks, the court claims it doesn't get 80% of the service. A legislative bill to sever the District Court Clerk from the County Clerk drew the political battle lines (the bill was later defeated). But the underlying problems would not be that easily put to rest. During our research, we discovered the clerk's figures on case filings were inaccurate. When discussing this point with a judge, he replied:

> But they're the best we have. Make sure you put in your report that the inadequate statistics are not our fault, but the clerk's office.

To cite another example, problems with the clerk's scheduling of civil cases prompted the judges to assume this responsibility.

To an inordinate degree, the local newspapers promote political conflict. For example, newspapers provide bad press to district attorneys in their last year in office. One public defender commented that the press did a real "hatchet job" on the former district attorney (who then chose not to run for re-election). Similarly, a study of misdemeanor courts in Las Vegas commented on the role of the press in killing the pretrial program:

> In addition to distorting the nature of the program and its FTA (failure to appear) rates, the press highlighted offenses committed by individuals on ROR and portrayed the program as part of the 'revolving doors of justice' phenomenon. (MITRE, 1978:35).

Nothing captures the flavor of the press better than the observation that one of the courthouse reporters moonlights as a stringer for the National Enquirer. During our interviews, several people described the negative role of the press in terms such as "vindictive."

Viewed in one light, the political conflicts just described are hardly noteworthy; similar issues surface in other communities. What is distinctive, however, is how intensely open and recurring these conflicts are in Las Vegas.[1] By contrast, controversy in Providence is much more muted and kept behind closed doors. The enduring nature of these conflicts (which extend to the bench as well) highlight the key role of personalities. Several respondents stressed that Nevada is really a very small

state and individual personalities therefore can have major impacts on governmental issues. Moreover, in the frontier town image, the personal animosities have wide ranging effects as the following news account indicates. The former district attorney was testifying in federal court about why he did not immediately report an apparent bribe attempt to either the FBI or the U.S. Attorney:

> Former Clark County District Attorney George Holt testified Thursday that...he didn't trust either Sheriff Ralph Lamb or U.S. Attorney Mahlon Brown enough to take the case to them. ...His distrust of Brown stemmed from experiences when Brown was Justice of the Peace. (Las Vegas Review-Journal, November 16, 1979).

Such statements in open court aptly reflect the politics of Las Vegas.

JUDICIAL AUTONOMY

The frontier town image, with open political conflicts, extends to the judges. Judges cherish their autonomy. Discussions with judges and others often touched on their strongly individualistic spirit. "All the judges are strongly individualistic; there are, in essence, 12 individual fiefdoms (in District Court)." Turf is a critical consideration.

Not only are the judges individualistic, it is known throughout the criminal court system that they do not get along with one another. Numerous respondents referred to the "little battles" between two judges who disagreed openly and often. Moreover, some judges never go to judges' meetings. Observations at one such meeting confirmed that the predicted absentees were indeed missing. But most importantly, the bench divided 6-5 on the firing of the court administrator. (This issue will be discussed later.) There were often references to the 6 to 5 split on this and other issues as well. Perhaps one judge summed it up best when he referred to "the adolescent and childish behavior of some of the judges." One should note, however, that by 1979 these internal divisions were less pronounced and less open, although the interviews confirmed that philosophical differences over the individualistic role of the judge persist.

This combination of individualism and divisiveness explains the weak powers of the chief judge. The chief judge is selected by the judges each year and no incumbent may serve more than two consecutive terms. The chief judge has virtually no authority over the activities of the other judges. Much like Detroit, there appears to be a pattern of alternating activist chief judges with acquiescent ones. For instance,

one respondent commented on the selection of a particular chief judge: "(h)e was a safe choice...he would not demand anything from the other judges." At the Justice Court level, there is no chief judge.

JUSTICE COURT

Justice Court dramatically highlights the explosive growth of population and crime in Las Vegas. In a few short years, the court had to evolve from a "ma and pa" operation, according to one Justice of the Peace. Originally there was a single Justice of the Peace and then a second. A third was not added until mid-1975. Now there are five. Prior to 1975, then, a critical problem was the lack of Justices of the Peace to handle the swelling volume of cases. This assessment by the Justices of the Peace was backed by others.

> When there used to be two or three (JPs)...one of them would probably be on vacation or whatever would be happening. And they just couldn't do it workload wise.

Delayed mass arraignments. The period from arrest to first court appearance was plagued with difficulties. After arrest, defendants did not appear in court for a minimum of 8 days. Although the Nevada Supreme Court had seemingly sanctioned a wait of up to 12 days before a defendant appeared before a judicial officer, some felt that this practice violated the U.S. Supreme Court decision in Gerstein v. Pugh.

Private bail bondsmen dominated the system. Delay in appearing before a Justice of the Peace was compounded by the absence of a bail program, meaning that many defendants spent over a week in jail before appearing before a judicial officer.

Arraignments were held only 3 times a week in a police auditorium. Handcuffed groups of up to 45 defendants were arraigned at one time. One JP painted a picture of chaos during these mass arraignments and suggested that there was little appearance that justice was being done. Another report put it this way:

> When someone was arrested for a felony or a gross misdemeanor, he was held in jail until the Justice Court held the next mass arraignment. This was usually done on Monday, Wednesday and Friday. The mass arraignment was held in the Police Auditorium. It met the needs of a first judicial appearance if only in a very mechanical way. Aside from the human problem related to the area type arraignments, this process also lacked the ability to tell the accused when they should appear for the next step. Furthermore, if a prisoner made bail before this mass arraignment (and many did) he had no 'first judicial appearance.' (Geiger, 1978:5-6).

Preliminary exam delays. After arraignment, a date for a preliminary exam was set. Justice court appears to have been able to hear jail cases in a fairly timely fashion. (Recall the state speedy trial law mandates 15 days from arraignment to preliminary exam, unless waived). Bailed defendants invariably waived this right, however, with the result that it could take over a year before there was a preliminary exam. To quote a veteran public defender:

> The JPs would have so much trouble dealing with the in-custody cases, to try and give them a prompt arraignment, preliminary hearing, or what have you, that if somebody was out of custody and charged with, say, a non-violent crime like embezzlement, grand larceny auto or possession of light narcotics, or something like that, nobody would really seem to care whether the case ever came up.

During this time, a preliminary exam setting could be continued 6 to 8 times. The lack of judgeships, however, is only a partial explanation for this delay. Lobbying for new judgeships also played a role. A veteran District Attorney argued "it was a political thing." The JPs were screaming for more help and the way they attempted to make their point was to establish a quota; they would handle only so many preliminary examinations each day. Because the JPs gave preference to custody cases, they often didn't dispose of all cases that day, so the rest were merely continued. This meant that some cases would take literally months before a preliminary examination was held. A district court judge agreed:

> The Justice of the Peace procedure, from the time of arrest to the time when they sent them over to us, was horrendous. They were playing some very funny games with caseflow.

Delays in hearing preliminary exams were also tied to varying work habits of the JPs. After the new judgeships were added, some set more cases per day than others. In this vein, several respondents noted some JPs were more hardworking than others. One suggested that "there were only two (out of four) hard workers on the bench..." Another suggested that the JPs who maintained a private legal practice were the ones with the most delayed dockets. Even after new JPs were added, defense requests for continuances were freely given by at least one JP.

Continuances/Forum Shopping. Delays in hearing preliminary examinations for bailed defendants were associated with numerous continuances. Six to eight continuances per case were not uncommon. These continuances were partially the product of the workload problem. But they also were tied to the master calendar system. The JPs would alternate weeks on the criminal arraignment calendar or the preliminary

examination calendar. With no one JP in charge of a case, a defense attorney could gain a continuance by saying that this is the other judge's case. At the next hearing the attorney, if desired, might repeat the argument with the same result.

Respondents noted, however, that requests for continuances were not just attempts at delay for delay's sake. Rather they were often part of forum shopping — the attempt of a lawyer to maneuver a case in front of, or away from, a specific judge. Independently, a public defender and a private defense attorney spoke of the flexibility in case scheduling that allowed lawyers to maneuver the case before the right type of judge. The JPs were well aware of forum shopping, and most condemned it. One, however, noted the difference in background among the JPs. Not only were some more knowledgeable in terms of criminal law, but some were more defense oriented than others.

A related difficulty with the operation of the master calendar in Justice Court was the handling of what two ex-JPs referred to as undesirable cases. Undesirable cases would be transferred from one JP to another, while each one sought ways to avoid hearing it.

Lack of a paper flow system. Justice Court also experienced great difficulty in coordinating the flow of paper and getting the right people to appear when needed. As one JP phrased it, "the whole operation was sloppy." There were a lot of forms, but they were often confusing and useless. The official records were bound together with staples so that if a document was needed it was simply torn off. After several months, the official court records were very "dog-eared" in appearance.

The lack of an adequate paper flow system had several specific consequences. First, forms would get lost. A defendant would receive a favorable disposition (dismissal, for example) but the paperwork would get lost. The quashing of a bench warrant would not be entered on the police computer, and several months later the defendant would be re-booked in county jail, even though the case had ended. Second, key witnesses would not always be present. An ex-public defender who worked in Justice Court stated that he would never plead a case prior to the preliminary hearing because there was a 20 to 30% possibility that the witnesses wouldn't show up. A JP made the same point, estimating that there was a higher probability witnesses would show on a Wednesday rather than on a Monday just because it took the bureaucracy that long to "gear up to get the right type of people there."

Finally, after a bindover, there was no regular system of channeling defendants to District Court. In the words of a district attorney:

> In the old days for example, if a case would be in preliminary examination in Justice Court and bound over, that would be it — the defendant would leave. There would be no indication of when he's due to appear, how he's to appear at the district court level. That hadn't been determined yet, because they didn't know where it was going to be. ...the (District) court, just through years of tradition I guess, or practice so to speak, would make our office responsible for notifying the defendant and his counsel when the arraignment is going to be. Which I didn't think was our job at all. That they would put that upon our shoulders, and then we would send out notices by mail to the then attorney of record, well this case is coming on calendar on such and such a day. Well that day would come, which might be another week or two after he was bound over and maybe the attorney would show up and maybe he wouldn't, but if he did show up, he'd say well, I didn't get a hold of my client, he's not here, I couldn't get a hold of him in time for his appearance because the client was never notified. Or he would say well, I didn't get the notice I just happened to be walking by and see it on calendar this morning, I didn't get any notice in the mail. And there's no way to verify it. So then you've got another delay. It might be ten days down the road where they continue the arraignments, this is before the defendant is even in court. So you may have three weeks built in just from the time the information is filed until the defendant appears.

DISTRICT COURT

After a case was bound over from Justice Court, the District Court also experienced great difficulty moving cases. Discussions of these problems focused on the operations of the master calendar system. According to several judges, this system had functioned adequately when the court was small — 4 or 5 judges — but by 1974 "(i)t wasn't really functioning very efficiently."

The master calendar operated roughly as follows. All cases set for trial for the week were called on Monday morning (later changed to Friday). The largest courtroom was used, and it was full. The main actors were the master calendar judge, the chief criminal district attorney and the chief assistant public defender. Cases would be assigned out for trial on a priority system determined by the judge. All cases not reached for trial would be reset. Respondents pointed to numerous problems with this system.

Delay and Backlog

We have no way to estimate the extent of delay and court backlog in Las Vegas

in 1975. The court kept no statistics. Assessments from numerous actors, however, clearly point to extensive delay and backlog. The following reactions are typical:

> Interviewer: How long were the delays in getting cases to trial at that time (1974-5)?
>
> Public Defender: Oh man, you're asking me... We got some up to two and three years. I mean it was no problem getting it delayed at least a year.
>
> ****
>
> Judge: It was not atypical at this time to find a criminal case that was four years old.

Varying Judicial Availability

The master calendar judge had the responsibility of assigning cases to the judges, but he had virtually no power over his colleagues. "The master calendar judge, in fairness to him, he really didn't have that much control because he was kind of at the mercy of what the other judges would tell him as far as their availability." The net result was that judges varied in their general availability to hear cases, as well as their willingness to accept certain types of cases. One public defender phrased it this way:

> One of the problems that would happen is that the master calendar judge might refer a case down there (to a department) but the judge sitting down there would say he was busy and he couldn't take a case. And, you really didn't know what he was doing, maybe he was legitimately busy, but...(voice trails off).

These sentiments were shared by a judge who said that some judges were not taking their fair share of cases. It was "...too easy for a judge to draw out..." One who served as a master calendar judge provided some specific examples. After having been assigned to a judge, a one day civil trial would settle out, but "you wouldn't hear from that judge or his staff in enough time to send a jury panel back." Or they would delay advising of their availability, thus one day was shot. He would send five Justice Court appeals, each involving a 15 to 20 minute trial, to one department. The judge would set one case for 10 a.m. and another at 1:30 p.m. and end up taking the entire day with them. Yet another judge suggested that when asked about availability, a judge might reply that he had a matter under submission and therefore was not available to try cases. The overall sentiment was that some, but not all, judges were unresponsive.

Beyond the issue of being generally available for assignments, judges preferred some cases over others. One judge indicated that if a judge didn't like the cases sent to him by the master calendar judge, then the judge would just ship them back and nobody knew what happened. Another judge elaborated:

> On Monday, the master calendar judge would assign cases out for trial. Several friends had already told him they wanted a murder case so the murder case was assigned to department x. Somebody else had said, "Well, I don't want this type of case, but send me that type of case."

This practice developed into an extreme situation when all judges opted out of divorce cases (a major source of cases in Las Vegas).

One court observer noted that the assignment process created friction within the court. Some judges were jealous because the master calendar judge was more likely to get his name in the paper. Moreover, some judges did not like being told what to do by another judge. The master calendar judge was "shoveling" cases to them and they did not like it. And some judges felt assignments were based on friendship.

Burdens on Master Calendar Judge

As it was structured in Las Vegas, the master calendar placed a major burden on the shoulders of the master calendar judge. In civil cases, motions were assigned to individual judges, with the master calendar judge responsible only for assigning cases out for trial. In criminal cases, however, all aspects of a case came to the master calendar judge: initial arraignments, motions, other preliminary matters, assigning trials, taking pleas, and sentencing upon plea. In short, all the routine work in all criminal cases went to the master calendar judge.

When probed, one ex-master calendar judge admitted the job was "burdensome," a sentiment expressed by some other judges and court actors as well. "The system put too great of a load on one judge to handle," said one prosecutor. A public defender told us "That one master calendar judge worked his fool head off."

Effects on Caseflow

As the master calendar operated in 1974, a significant backlog of cases had developed. The system was able to produce only limited numbers of guilty pleas. One specific problem was that no one knew from week to week how many judges would be

available to hear cases:

> You might have two or three (judges to hear trials) on one given week, you may have only one judge who said he's going to take a trial. And they would determine their availability and not the master calendar judge. So you never knew how many courts were going to be open for each given week. So with that in mind, that judge would set the priority. Of course, he'd take custody cases and set his own prioritizing according to whatever way he would want to do it... And he would say well, if there's only one judge open for trial, this is the case that's going to trial. He would continue all the rest of the trials and reset the things on the calendar, trial calendar. And so, that might be another six to eight months you know, on down the road.

Given that not all cases would be reached, defense attorneys would be reluctant to plea bargain. The same district attorney continued:

> Defense attorneys knew that only so many cases were going to go to trial, and if they weren't going to trial, then their case probably was going to be continued...they could get another delay so they would be more reluctant to plea bargain, because they would play a waiting game and determine well, my case probably won't be set for trial anyway so why should I plead to anything. That sort of thing. So that would create a situation where you got less dispositions than you would if ...trials were stacked up and they put their feet in the fire as far as going to trial. So that was another factor that just added to the problem.

Backlog begat backlog in yet another perverse way — cases that pled on the trial day created holes in the docket:

> Not all the time, but on occasions, one trial would be going Monday and all of a sudden, he would either plead out or you might have to move for a continuance or somebody was sick or who knows. And a lot of times, the cases that were set for that Friday, for the following week, wouldn't go for one reason or another. And the judges had no criminal trials to be tried. The case would just be getting backlogged again, and nothing was getting disposed of by trial. So it was a very unsatisfactory system. You could just see that the criminal trial calendar was just getting worse, worse and worse as far as I was concerned.

Forum Shopping

"The lack of uniformity in treatment" of cases is how one judge expressed his displeasure with another aspect of the master calendar. As a specific example he pointed to motions in civil cases where Judge A would make one ruling but at a later time Judge B would hear a very similar motion in the same case and rule the opposite way. This happened all the time, he explained. Similarly, there was a "duplication of effort" in criminal motions. The master calendar judge would initially rule on a motion, but then a second motion would be filed with the trial judge who would review

the same evidence, with again the potential for inconsistent decisions. A public defender mentioned that renewing a motion was a common practice.

The apparent centralization of pleas before one judge likewise led to forum shopping. If a defense attorney anticipated an unfavorable sentence from the master calendar judge, he could demand trial and then plead before the trial judge (if the odds were better for a favorable sentence). "If there happened to be a tough (sentencing) master calendar judge, the attorney would need only to say that his case was ready for trial. His case would be assigned elsewhere and then they would plead out."

The lack of established routines for case disposition meant that the master calendar system could be manipulated. According to a veteran public defender who practiced under the system:

> Looking at it from a really selfish, defense lawyer's point of view, the (master calendar) system was more manageable. And to the extent that lawyers could manipulate the system before team and tracking, that happened a lot more.

Two specific ways defense could manipulate the system have already been discussed: attorneys could argue the same motion twice, and they could determine which judge to plead before. Other ways included seeking delay for delay's sake. The same public defender observed:

> When I first came into the office...continuances in criminal cases were freely given, for almost no reason. One of the best defense tactics, especially in a very poor defense case, would be to delay. Even though an attorney should not ethically do that, just for the purpose of delay, in truth and fact that used to happen all the time. Judges would let it go on. And the cases would get older, older and older, and whatever happened, happened.

Opportunities for private attorneys to delay were equally present. Another public defender put it this way:

> ...we had a couple of attorneys in town who just about made their livelihood by being continuance attorneys. If someone wanted to buy a year or two years, they'd go to those attorneys and they'd be successful in buying time.

Buying time was also associated in some respondents' minds with a private attorney unduly boosting a fee.

Perhaps it is important to underscore that while private attorneys and public attorneys discussed the ability to manipulate the master calendar, they felt somewhat uncomfortable. That is, they saw some of these tactics as either improper, unethical

or unnecessary. Thus, the attorney who discussed getting continuances as the only defense couched the conversation in terms of ethical prohibitions and hastily added, "I'm not saying I asked for such continuances." Similarly, a private defense attorney felt that overall more was lost than gained by having a system very responsive to the defense. In short, these attorneys did not fondly recall the old days, but typically mentioned these examples as negative ones.

Attorney Scheduling Conflicts

In the practicing lawyers' minds, one of the major drawbacks of the master calendar was scheduling conflicts: attorneys had to be in several different courtrooms at the same time.

> The attorneys in the (public defenders) office...would have to scramble a lot to appear in different courts at the same time. As you know, most of the courts start off at nine o'clock in the morning, both the justice courts and the district courts. You might have a motion to suppress in District Court No. 2, a sentencing on in District Court No. 4 and a preliminary hearing in Justice Court No. 1. All at the same time and that made it very, very difficult.

Hypothetically, an attorney could have a case in each department. Clearly the same applied to prosecutors, who could have cases before many different judges (although the district attorneys staffing District Court did not appear in Justice Court).

Besides the general scramble to be in several courtrooms at the same time, some specific trial scheduling problems occurred. With pleas occurring on Friday or Monday morning, attorneys faced problems of knowing which cases might go to trial and in which order. As one district attorney noted, the office had no ability to assign specific deputies to either specific judges or specific cases. Similar problems were faced by the public defender, although the office maintained vertical representation (attorneys assigned to specific clients).

> Even after calendar call a lot of cases were bargained... That caused scheduling problems. Because you know, you have say, two or three of the lawyers, or four of the lawyers who are coming down the Friday of the week before, or possibly Monday morning when the trial is supposed to start. Those guys are scheduled in for trial and then the trial doesn't go. It's really hard to put them into preliminary hearings, because it has to be a certain amount of lead time for the attorney to work up the preliminary hearing and so forth. So that caused some inefficiencies in our office, which were really nobody's fault. But some of the guys, human beings being the way they are, some of the guys would sandbag, or we suspected that they sandbagged. But even the guys that weren't sandbagging ended up a lot of times with a very spotty scheduling type of thing.

Overall Assessment

The overwhelming assessment of the master calendar system, as it operated in late 1974, was that it was not effective. Only two people interviewed mentioned positive aspects of the master calendar system — one judge and one private attorney. Other than those two, however, all respondents' references to the master calendar were negative ones.

The one shared phrase that appeared over and over again duirng the interviews was "accountability." One respondent said, "Under the master calendar system you had no idea who was responsible for what." Respondents from all three major components of the court process referred to the lack of accountability under the master calendar. Coupled with this was a lack of judicial incentive. One public defender expressed these sentiments as follows:

> There was no incentive for one guy to work hard, because, it's just like the willing horse, you know — the harder he worked the more work he had to do, and so there was never a light at the end of the tunnel.

Another public defender noted that "cases were so backed up, each department had so many, that they were so far behind that they didn't care if they got any further behind." The net effect was that continuances were freely given. A judge "didn't mind continuing a trial date because, what's the difference whether you're 500 cases behind or 600 cases behind, it makes no difference. As you (interviewer) said, you're bailing the ocean."

This overall assessment, however, covers up an important difference. When discussing the problems of the master calendar, judges stressed that two of their brethren were not carrying a full load, that they had opted out. By contrast, the practicing lawyers stressed more systemic weaknesses. While they pointed at specific judges opting out of their fair share of cases, these respondents noted more deep-seated difficulties.

THE DISTRICT ATTORNEY'S OFFICE

In 1974, a number of problems beset the District Attorney's office. Some were the product of the status of that office.

Historically, Las Vegas had a strong sheriff and a weak prosecutor. Numerous law enforcement powers, particularly matters related to gambling, center in the sheriff's hands. Moreover, the sheriff was closely intertwined with the political structure. Until his unexpected defeat in 1978, the sheriff had held office for over 20 years and was a member of a well known Nevada political family. By contrast, the powers of the district attorney were weak. No incumbent had ever been re-elected. Thus, there has been no continuity in the top position.

Other problems in the office were typical of those found around the nation. A young, inexperienced staff with high turnover was a perennial problem in the office. Moreover, up until the early 1970's, assistants were allowed to maintain a private law practice on the side. One outside observer noted that it was not until then that efforts were made to professionalize the office.

Still other problems centered on the non-management of the office. According to one inside source, the professional staff was not properly deployed. In particular, there were two groups of attorneys — those who worked in the justice court and those who performed in the district court. There was no coordination or cooperation between the two groups, a factor that the team and track system sought to overcome.

Finally, there was the lack of adequate attention to the growing volume of paperwork. When the newly elected district attorney took over, his staff found real administrative difficulties: the civil division had only one typewriter; there were no forms for routine events; there was no dictating equipment. As a result, the office had great difficulties processing subpoenas.

The defeat of the incumbent in November 1974 represented a major shift in the office. The defeated incumbent was part of the "good old boy network" who was closely tied to the local political establishment. He had refused to seek federal funds for the office. By contrast, the newly elected district attorney had a reputation as a good administrator, and actively sought out federal grants. He also had a reputation for absolute honesty and had no ties, nor sought any, from the casino people. The shift in emphasis was aptly summarized by a top prosecutor who, when speaking of the non-management of the office, stated: "When we took over, we knew how far we had to go."

1975: THE BEGINNINGS OF CHANGE

Beginning in 1975, a series of significant changes began to be implemented in the Las Vegas courts (see Table 9-2). An individual calendar system was adopted. The position of overflow judge was created. The court applied for, and received, a grant for team and tracking. A new position of court administrator was created. New personnel were added at all levels. New procedures were implemented, particularly in justice court. And the legislature changed some court procedures. The district attorney's office also underwent significant upgrading.

No single factor or major event led to these changes. Rather, by 1975, a number of factors coalesced to make the court system ripe for change:

1) Two new judges took the bench, replacing incumbent judges with reputations for not moving cases. One successful candidate waged an aggressive campaign focusing on delay.
2) A new district attorney took office. He was much more management-oriented than his predecessor.
3) The bar association was pressuring the court that civil cases were receiving no priority.
4) Pressure from public opinion was mounting.
5) The population of the county jail was increasing.

In the words of one judge, a number of factors came together:

> All of these pressures and attitudes, I think, may have jelled about the same time, so that when the proposal was made that we expedite the criminal calendar and assist and alleviate the civil backlog, it just fit together with everything in the system: the clerk, the sheriff (and the frustrations of his jail exploding with population), the justice of the peace perception and then, our perception as well, that we weren't pushing that many cases through the system as rapidly as we should.

An ex-justice of the peace was asked: When was the general issue of delay defined as a problem? He replied, "just prior to the institution of the third judge." Let us then discuss these changes, beginning with the court's adoption of the individual calendar.

THE MOVE TO PERMANENT DIVISIONS

In 1975, the newly-elected chief judge, the public defender and the chief

Table 9-2. Key Events in Las Vegas Criminal Court Process

November, 1974	Two incumbent judges are defeated.
November, 1974	Incumbent D.A. defeated.
Early 1975	Chief Judge, Public Defender and First Assistant D.A. inspect Denver's Team and Track program.
July, 1975	District Court adopts permanent divisions with individual calendars.
July, 1975	Third judge added to Justice Court, eleventh judge added to District Court.
December, 1975	First Court Administrator resigns abruptly, after only four months.
July, 1976	New Court Administrator hired.
December, 1976	Team and Track Grant application submitted.
January, 1977	New Justice of the Peace position.
March, 1977	Overflow judge position begins.
April, 1977	Team and Track grant begins.
April, 1978	Court begins alternating three week civil/criminal dockets.
June, 1978	Court administrator fired.
June, 1978	Second grant begins.
November, 1978	Only one incumbent judge opposed during the election. New D.A. elected. Long-time sheriff defeated.
January, 1979	Twelfth judgeship in District Court. Fifth judgeship in Justice Court. New (3rd) Court Administrator hired.

assistant criminal district attorney journeyed to Denver to inspect that court's team and track system. Denver was chosen because two of the judges had attended law school in that city. The participation of the latter two indicates the good, top-level, working relationship between the two organizations. These three came back much impressed. The idea of instituting team and tracking was proposed but met with opposition from some of the judges. The judges turned "deaf ear" according to one respondent.

A new case assignment system, however, was instituted in July 1975. The plan called for permanent divisions — four judges permanently assigned to criminal and four permanently assigned to civil. (The 9th judge was assigned to juvenile and the 10th served as chief judge). Most importantly, cases were now handled on individual dockets.

The move to permanent divisions with individual calendars had a very salutary effect. According to one backer, the change produced almost "instantaneous results." Another judge recalled that they really moved the criminal cases the first six months. We "did anything to get rid of cases, including things that shouldn't have been done," stated another judge. Impartial observers also praised the system. Several thought this initial permanent division was the best division of labor the court ever had.

One reason for these results appears to be the energy level accompanying the change. One judge, for example, remembered receiving stacks of paper and working on cases trying to get the backlog down to a manageable level. There was also cooperation among judges. One judge referred to the judges with the same assignment as his as working very well together — they were very cooperative. Moreover, judges were able to choose their assignments; they volunteered for the types of cases they liked to best handle. Finally, once the backlog was reduced, the court was able to establish routines for the scheduling of cases. For defendants in jail, trials were set "in due course" within 60 days of arraignments on the information. For bailed defendants, the due course setting was 120 days.

One has no way of directly testing the impact of the initial permanent divisions. The court kept no accurate statistics (and still does not) on the number of cases filed, time to disposition or the like. Nor did our sample extend that far back. One indicator, however, is the number of presentence reports prepared by the state

department of probation and parole. Under state law, these reports must be prepared once a defendant is found guilty and prior to sentencing. According to those in Las Vegas, probation and parole keeps the most accurate statistics.

Table 9-3 presents data on presentence investigations by county. Prior to 1975-76, Clark County lagged behind the other urban county — Reno. Although Reno is smaller in population, it convicted many more defendants per capita than the larger Clark County. Also, the data indicate that beginning in 1975-76, Clark County experienced an increase in the number of defendants found guilty. While these figures do not indicate speed of disposition, they do show that, with the shift to the permanent divisions, the court began processing many more cases. Indeed, the rapid shift resulted in an overload on the probation department, which wasn't able to keep abreast of the increasing volume.

Table 9-3. Presentence Investigations in Nevada

	72-73	73-74	74-75	75-76	76-77	77-78
Clark (Las Vegas)						
1970 POP. 273,288 1975 POP. 330,714	480	549	631	936	1289	1630
Washoe (Reno)						
1970 POP. 121,068 1975 POP. 144,750	556	559	675	630	711	701
All Other Counties						
1970 POP. 94,382 1975 POP. 114,804	292	335	324	315	368	431
TOTAL	1328	1443	1630	1881	2368	2762

Source: State of Nevada, Department of Parole and Probation, Biennial Report July 1, 1976 -- June 30, 1978.

Change in assignments. From the beginning, the assumption was that judges would eventually change their permanent assignments. Thus, 16 to 18 months after the permanent divisions were created, the judges changed assignments. Those who had been hearing criminal cases now went to the civil docket and vice versa. Thus, for a period of about three years, the court operated on the permanent divisions system.

Flip/Flop. In April 1978, the court again changed calendaring systems, installing what was referred to as the flip/flop system. Each judge now heard both civil and criminal cases. He spent three weeks on one type of case and then three on the next. Under this arrangement, two district court judges are paired with a single justice of the peace court and a single district attorney/public defender team. The nine o'clock calendar call remained unchanged, however. That is, a judge on a three week criminal term still hears civil matters every other morning.

Why did the court change? Two very different interpretations were advanced. The overwhelming sentiment among the judges was that the three week flip/flop system produced a more desirable mix of cases to hear. In the words of one judge: "No one liked to have all of one type of case." He noted that, "in civil, one spends more time in chambers whereas in criminal, there is more bench work." Yet another judge stated that he simply got tired of doing nothing but criminal work; tired of sitting in the court and sentencing 10, 15, 20 defendants all in one day. He said, "It was a real ball breaker. I'd rather have the ability to switch back and forth." Thus, the feeling of most judges was that no one liked a steady diet of only civil or only criminal cases.

Added to this, however, was the perception of the judges that criminal cases were easier. "Criminal is so much easier...civil gets complicated." The judge continued that he is "not comfortable dealing with civil. I would prefer not to do them." Perhaps one reason that many Las Vegas judges seemed to prefer criminal is that many had previously served as justices of the peace and/or prosecutors and were more familiar with criminal law. At least one of the Las Vegas judges, though, clearly preferred civil and several drew no distinction. But to the majority of judges who liked hearing criminal cases, a clear disadvantage of the permanent divisions was that one ended up hearing cases that one preferred not to hear. The three week system evened out the inequities. Thus, as one backer of permanent divisions conceded, the flip/flop system "meets the needs of most judges."

Discussions of the desirable mix of cases aside, a couple of judges pointed to more fundamental problems in the permanent division. The accountability supposedly inherent in an individual docket system "lacked permanent continuity" because judges knew their assignments would change. According to one judge, when cases were transferred,

> "it became evident that some guys knew they could dump cases. Some calendars were in arrears. They realized that the individual system was good but it lacked permanent continuity. Some judges knew that soon they would be going to the other side and therefore they could drag their heels."

In the words of another judge, when cases were transferred, "Some judges found they'd gotten 'screwed' -stuck with a docket that was very large and they became bitter." According to this judge, the flip/flop eased out everything — now everyone received an equal allotment of cases.

The sentiment was that the original group of civil judges were the hardest workers and they inherited troubled criminal dockets. Conversely, after the switch, the judges who liked criminal were now handling the cases they found difficult — civil.

Other problems also arose under permanent divisions. In the views of one respondent, "Court reporters were starving to death in civil, while the court reporters in criminal had a lot of transcript business to do and were making good money."

Note that the above assessments come from the court. Non-judicial respondents had a decidedly different perspective. All pointed to the upcoming elections as being the key factor. One summed it up as follows:

> The feeling was that the (permanent division) system was working very well... However, the reason they went off that system...was purely a political issue. An election year came up and some of the judges felt like they were only hearing civil calendars, that the public would not like that or would respond better to judges on criminal issues. Naturally, a judge's criminal record generally is regarded as more important than his civil record in the taxpayers' eyes or the voters' eyes, so they split the calendars up..."

Identical thoughts were expressed by a defense attorney: "The primary motivating goal, the dominant goal, was publicity...they all wanted their names in the paper."

This argument was tested on several respondents. One private attorney discounted the upcoming election explanation, stating that the judges expect to run unopposed. A judge, whose opinions were viewed as not self-serving, acknowledged some credence to the political explanation, however. He thought that the possibility

of publicity made the proposition "more attractive" but felt the primary motivation was "we were tired of doing the same thing."

There is no need and indeed no way to resolve these conflicting interpretations. What is important, however, is the wide divergence between the judges and those who work with the judges. That others so firmly believed that the primary motivation for the change in calendar was a political one aptly summarizes some of the underlying dynamics of the Las Vegas court system.

THE TEAM AND TRACK GRANT APPLICATION

The general idea of team and track first circulated in 1975, but the concept was stillborn. In late 1976, however, the idea was resurrected. The newly hired court administrator drafted a grant application with some input from the prosecutor's office and submitted it by December.

Several factors seem to have contributed to greater judicial willingness to experiment with team and track. One was the presence of the new court administrator. A veteran district attorney told us that the court administrator broke the deadlock. Likewise, a judge close to the concept suggested that the judges were more receptive because the idea was coming from someone hired by all the judges, not just from a single judge. Another factor was the lack of any sustained opposition. While there were opponents, one judge noted:

> Had there been any real resistance from the bench, I don't think it would have sailed at all. Everybody kind of said, o.k., yes, let's look at it, let's try a system. In fact, I think the way we finally got it on was to say: look, let's try it. If it doesn't work, we can always go back to square one. It was thought out, but to those who were not really into whether we should or shouldn't go, the offensive, I think convinced that group.

And finally, a district attorney pointed out political incentives:

> The judges stand for election. There are good and bad points to that, but the judges in Las Vegas are now adjusted to handling a large caseload, to grind them out...therefore as the election was coming up, the judges were simply more inclined to go along. They thought it would give them good public relations.

The money for team and tracking was used primarily to add personnel in existing offices, not to create new offices or new types of tasks. The gut problem was simply that there wasn't enough money being made available by the county government, and

both the district attorney and the public defender needed more staff. Thus, the grant application requested funding for four additional Justice Court clerks, five additional district attorney personnel (two of whom would be attorneys), four additional staff in the public defender's office (one attorney) and three court intake officers.[2]

It is important to note what is <u>not</u> included under team and track. No new organization was put in place. In the other three cities we studied, a case scheduling office was either created or given added powers and responsibilities. There is no such entity in Las Vegas. The only new positions created were the team chiefs in the prosecutor's and defender's office. Each team had a team leader (middle management position) with higher status and salary. The team leaders bore primary responsibility for the new levels of coordination.

The grant application defined the delay problem in terms of court congestion. Relying on what they admitted were inadequate data, the application estimated that "45% of the active cases in District Court are over seven months since filing.... Justice Court cases set for preliminary hearing are being set eight months in advance." Probing deeper, the application estimated that "a case has a 50% chance of being continued at each hearing." The grant application identifies a lack of continuity on the part of the attorneys as a major problem. "The duplication of effort in the district attorney's office caused by the present necessity of having different attorneys working on one case is the basic reason for the development of the Team Tracking concept." This problem was amplified by a district attorney who said the only collaboration between the assistants who worked in Justice Court and those in District Court was to say hello in the halls.

The proposed vehicle for increasing continuity in case preparation was team and track. After a defendant is arrested, the case is randomly allotted to one of four justices of the peace. This JP is associated with a specific track that will follow the case through its entire history. The prosecutor's team consists of 5 or 6 attorneys. The public defender's team has 4 or 5. One of these attorneys appears in Justice Court both for the initial arraignment and later for the preliminary exam. Once the case is bound over, it goes to one of two district court judges. That is, two specific district court judges are matched on a permanent basis with one justice of the peace. The district court judges have alternating three week criminal calendars. Thus, when the defendant is arraigned in district court, an attorney from the same district attorney

and public defender teams will appear. These attorneys will make all subsequent appearances for motions (if any), calendar call, entry of plea (or trial) and sentencing. An important feature of team and track, not found in delay-reduction programs in the other three sites, is that the lower court is directly included.

TEAM AND TRACK ADVISORY COMMITTEE

Prior to team and track, communication between the major court actors was minimal. "Everyone of the criminal justice agencies had their own bailiwick...there was a total lack of cooperation in the criminal justice system," remarked one prosecutor. A requirement of the federal grant was that a Team and Track Advisory Committee be created. Numerous members of that committee stressed the positive role the committee served in creating a forum for dialogue. According to a public defender, the committee was "effective in that it gave us a chance to communicate and bring up some of the problems in our system. I think it is essential...because it gives us a forum to communicate with justice court, district court, the district attorney's office, courts services (in the police department), parole and probation, and the private bar." A number of those interviewed stressed that the cooperation resulting from the team and track advisory committee was essential for the overall operations of the program. One prosecutor thought that the advisory committee was "...the only way we could have implemented team and track, because it was a cooperative effort...here it was done by mutual effort and by agreement of all the different agencies in the criminal justice system."

The success of the advisory committee was a reflection not only that virtually all the major agencies were represented, but that the heads of the agencies took an active role. As one court administrator phrased it, the committee "got a group of people together that mattered...All the key agency people that mattered got together and they decided things that should have been decided before." Thus, those capable of making major decisions were actively involved. "The meetings were productive, not the political banterings that exist on the police commission (a local governing board)... we had good attendance, everyone was committed and excited," said one court official. An examination of the committee's minutes indicated that a number of important topics had been discussed, many of which resulted in implementation of change. Moreover, during our interviews, several respondents mentioned problems that they were about to take before the advisory committee or had already been discussed.

After its creation, the advisory committee met on a regular basis, every month or two. After the court administrator was fired, however, the committee fell into disuse. Meetings were rare. The agenda listed less important issues than before. In short, the court administrator was the "catalyst" for the committee, able to provide important follow-through. As one court administrator noted, "The team and track committee is good at setting goals, but not at continuing through." After the new court administrator was hired, the committee lay dormant and at one point seemed to have lapsed from non-use. But by late 1979, the committee was rejuvenated. It was recreated into a more expansive body and given permanent status. By the end of our interviews, the committee was again playing a prominent role in the court system, a conclusion far different from the one drawn during initial interviews and observations.

Clearly, the team and track advisory committee had very positive effects in Las Vegas. At least three people interviewed felt it was one of the most positive factors of team and tracking. The committee, however, was not without its problems or its critics. For one, the private defense bar believed they had little input. Team and track was geared to the public defender's office, and problems of the private practitioner were given little attention. Moreover, the committee contained no member from probation and parole, an agency greatly affected by the speed-up in the court. When the comittee was reconstituted, they were placed on the committee. Finally, the police at first felt reluctant to participate fully, probably out of traditional police reluctance to intrude into matters dominated by judges and lawyers. But the most critical on-going difficulty is the lack of involvement of, or knowledge by, the judiciary. The chief judge served on the committee. The other judges, however, know little about the committee. When one management-oriented judge was asked about the committee, he replied, "They are a group of guys that I have never heard from and they have never heard from me." When asked about the committee, the responses from two other judges indicated that they had little knowledge about the committee. Perhaps this is not all that surprising. One expects similar reactions among assistant public defenders and assistant district attorneys. The committee facilitated dialogue among top level administrators only.

OVERFLOW JUDGE

Although not formally a part of the team and track program, the position of overflow judge was established at about the same time. In the minds of some, but

certainly not all, overflow was a critical factor in improving the speed of case dispositions in Las Vegas.

Essentially, the overflow position represents a mini-master calendar (a phrase used often in Las Vegas). One judge has no regular criminal docket, but waits for overflow cases from other judges. When a judge is unable to reach all cases on a given week's docket, the excess cases are assigned to the overflow judge.

The purpose of overflow is to establish credibility of trial dates. Under the master calendar when the lead cases were set down for trial, attorneys in other cases would demand trials, knowing the court could not provide them. Moreover, as another judge commented, lawyers can jam up a single judge's docket. But with a judge in permanent back-up for the four track judges, this is much less likely. Reduced to its basics then, the overflow position, by insuring that cases can be tried when scheduled, forces attorneys to either plead out the case or go to trial. It is simply bluffing, as one judge phrased it. And during its early operations when the court had a backlog of cases, bluffing occurred. The same judge reported that on one morning, when he was an overflow judge, he had 26 cases set for trial. All were disposed of that day, without a single case going to trial. A key factor in the early operations of overflow was that the overflow judge had a reputation for being a tough sentencer. Thus, attorneys preferred to enter a plea before the team and track judge rather than risking going to overflow.

Overflow judges try a substantial number of criminal cases. During 1979, for example, one overflow judge (who also spends half his time on civil cases) conducted over thirty trials. Observations of trials before overflow indicate that many are the least serious felonies before the court. Typical trials involved burglary, theft and credit card fraud. In all likelihood, these minor cases would not have been expeditiously disposed under the old system. Rather, they would have been allowed to proceed at their own pace and probably would have resulted in an eventual dismissal.

There are some important informal aspects to overflow. For one, some of the judges, if their dockets have cleared for the week, readily contact overflow to take cases. The informal availability of at least two judges has greatly added to the credibility of trial dates. Moreover, during 1979, a judge became seriously ill with cancer. While he attempted to maintain a full docket, he simply lacked the stamina to

work an entire week. During that period, overflow appeared to be supporting and maintaining that judge's docket.

In operation, the position of overflow judge has fostered some minor case scheduling problems. For one, judges vary as to when they send cases to overflow. Some hold onto the case until the last minute, while others dispatch the case much earlier. These variations have provoked the ire of one overflow judge. An additional difficulty is that in some instances, a judge, presuming the lead case will go to trial, sends the rest of his cases to overflow. But when the lead case falls through, his docket is bare. This has resulted in some judges trying cases from other teams, rather than receiving back their own cases. Additionally, one or two judges have begun to perceive abuses by their fellow judges. One judge was perceived as having sent a difficult and time-consuming case to overflow because he simply didn't want to try it. Another judge was perceived as having left the courthouse for a week without having covered his own docket, leaving overflow as the sole back-up. Finally, toward the end of 1979, some long cases were tried in overflow. As a result, the permanent back-up had been destroyed. A management-oriented judge stressed that the position of overflow is a good one because once the defendant sees that the witnesses are present, he will plead. He mentioned two recent cases involving out of state witnesses from New York and Los Angeles. All the defendant needed to know was that the victim would be there and he pled guilty.

Viewed from the perspective of the judges, overflow has been a major success. While two judges voiced some criticisms about some specific practices, all uniformly praised the concept. One went so far as to term it "fantastic," because none of the cases he had sent to overflow had ever returned. (He was one of the least management-oriented judges.)

We got a decidedly different picture of the overflow position from attorneys. They noted that the operations of overflow conflict with the original goals of team and track. A key purpose of team and track was to cut down on conflicts in attorneys' case schedules by assigning cases to specific judges. But when cases are assigned to overflow, attorneys may have to appear before several judges.

The public defender's office has forcefully stated its objection that overflow has resulted in unnecessary conflicts in scheduled court dates. Given the stress in the

office on vertical representation, the office will not reassign a deputy for trial at the last minute, citing the attorney-client relationship. Because cases will not be reassigned, public defenders end up with an unpredictable trial schedule and the necessity of appearing before several different judges. One public defender referred to overflow as "a pain in the neck" and elaborated:

> The main problem is trailing cases. One of the attorneys is currently trailing three cases. He doesn't know when they are going to trial. He pointed to the problem of defendants in custody and there are no courtrooms available. The judges think that the public defender should be on 30 minute call to try a case.

District attorneys are more supportive of the overflow concept, but they have experienced analogous problems with its operation. Because the district attorney does not utilize vertical representation, cases can be reassigned for trial. As a district attorney noted: the court "will make a deputy pick up a file and try it on very short notice; and it puts us naturally at a disadvantage." The office prefers that the deputy who worked on the case from the beginning, try it. When we asked how the overflow was working, the District Attorney replied:

> Well, it's still working in the same way. In actuality, it's turned into a mini-master calendar. (Laughter) And there are some drawbacks to that, from our standpoint and from the public defender's standpoint. From the overall result's standpoint though, I think it's been very effective simply because they're still putting their feet to fire for trial. Unlike the old master calendar, the pressure is still there. We were supposed to have another meeting this week. (The public defender) again brought up the idea to go back to our original concept of the overflow calendar, which was that, only those cases that are not only ready for trial, but those cases where both counsel were ready for trial, would be sent to overflow. I mean you'd go in there for trial, period. The other cases that were assigned to the track judge, and both counsel were not ready to go to trial, those would still be trailed in his department for him to keep track of, as a trailing posture. (District attorney, January 24, 1980).

In short, from the attorney's perspective, overflow has resulted in uncertainty in trial scheduling. On the other hand, one judge noted, "The overflow judge accomplishes more than the conflicts it creates, and as you know, it accomplishes much."

COURT ADMINISTRATOR

The short but troubled history of the position of court administrator aptly highlights the autonomy of the judges as well as the underlying tensions on the court. Since 1975 the court has had 3 court administrators; the first quit abruptly; the second

was fired by a 6 to 5 vote of the judges, and the current incumbent is a local businessman/politician who came to the position with no previous background in either the law or the judiciary.

Prior to 1975, there was a part-time court administrator who doubled as probate commissioner. His court administration tasks were largely limited to a yearly compilation of individual department's budget requests. In 1975 the court created a full time position. In the judge's minds, the principal task of this new position was to handle the large volume of routine paper work. Each department was individually responsible for preparing pay vouchers (bailiff, secretary, law clerk) and preparing other payment forms (indigent defense, court appointed psychiatrists and juror fees).

When the judges "got the central office, and the administrative paper work was gone, the departments were very happy, very relieved; they delegated 'everything not adjudication' to the court administrator's office, all the routine paper work."[3] Beyond performing routine tasks, however, the court was unclear and, as later events showed, divided over what else this office should do.

The first court administrator abruptly quit after only four months. She found it difficult to work with 10 very individualistic judges and they with her. In the words of one respondent, she "tried to reach out and the judges rejected this. They wanted to protect their own individual bailiwicks. They thought they had simply gotten rid of the paperwork; they didn't like the idea of a female reaching out in their area." She left abruptly which, in the words of another respondent, "left a very bad taste in the mouths of people about what was going on."

After a national search and an eight month hiatus, a new court administrator was hired. He had attended the Institute for Court Management (ICM) and had worked in court administration in New Jersey and Georgia. According to one respondent, he had a "super" first year. Among other things, he put together the team and track grant and generally worked with the courts and other agencies. Almost universally, public defenders, prosecutors and others spoke highly of him. Likewise, some judges were supportive. By the second year, though, things began to unravel. His experience in a centralized system did not dovetail with the autonomy of judges in Las Vegas. Various respondents mentioned specific tensions. Secretaries were very protective of their judges and resented the court administrator's attempt at centralization: "they were

very punitive toward the court administrator, very hostile." The court administrator also worked with the JPs. Many JPs liked this but according to one, "some of the (district) judges didn't like it, and it was one of the reasons, among many, that (the court administrator) was terminated." To at least one prosecutor who was generally supportive, the court administrator got "too big for his britches" by asserting the supremacy of the judges. He mentioned that he tried to tamper with the district attorney's handling of the grand jury. The court administrator also was caught in the continual battle between the judges and the clerk's office.

But most of all, a majority of judges believed that the court administrator should confine his activities to servicing court personnel and facilities. Only five envisioned a larger role for the court administrator. They believed the court administrator should represent the court. The others, however, feared the potential power of the office. Against the backdrop of the split, the chief judge in particular grew to dislike the court administrator. These two did not talk for 6 months. The end result was that the court voted 6-5 to fire the court administrator. To the majority, the court administrator had acquired too much power and was not listening to the judges enough. The firing obviously left scars. The local press played up the incident. Numerous respondents referred to divisions on the court.

The court was again left without a court administrator, this time for six months. The court decided that, after two experiences with outsiders, they wanted a local person. They approached a local state representative who had applied before. He had worked for 25 years in business, knew the judges, had been active in state politics and was interested in this new challenge. He had only one drawback — he had no experience in the judiciary. Thus, his first year was largely one of on-the-job training and attendance at national seminars and workshops (ICM predominantly). Initially, he was viewed by the support staff as not being helpful or well-versed, but he has begun to develop programs in areas other than caseflow management. He had no responsibility over team and track.

Despite musical chairs in the court administrator's position, the office has exhibited stability. The assistant court administrator first worked for the court in 1974 and has endured through the turmoil. She is universally respected by judges and others. She is the hub of activity in the office, managing the routine paperwork as well as being involved in dealing with larger problems and serving as a representative

of the court, particularly on the team and track advisory committee. Her ability to get along with the judges and her wealth of knowledge about court matters have served her well.

The firing of the court administrator had important consequences for team and tracking. It meant that the court, and team and track in particular, now lacked the central leadership that had been so important. There was no one to pay attention to caseflow management. For example, after the firing, the team and track advisory committee fell into disuse and seldom met. In terms of managing the grant, the chief judge replaced the court administrator as project director (but with his other duties he had little time to work in this area). The preparation of required government reports was added to the duties of the senior court intake officer who had other day-to-day responsibilities.

ACTOR'S ASSESSMENTS

Judges, prosecutors, defense attorneys, and justice court judges were virtually unanimous in their praise of the changes that had been introduced in the Las Vegas court system, but there was no unanimity as to what these major changes were. Thus, as the field research progressed, the question — what was team and tracking all about — assumed growing importance.

The difficulty of evaluating team and track is that it is not an office or institution. As mentioned earlier, Las Vegas did not use the federal monies to create a new bureaucratic entity. Team and track functioned without a focal point. With the firing of the court administrator, there was no one person principally responsible for its operation. Finally, team and tracking seemingly operates without an engine. Reduced to its barest ingredients, team and tracking was merely a new organization chart. Personnel in the four major institutions were reshuffled into four mini-court processing units.

The difficulty in pinning down team and tracking is that it cut across all major institutions, except the clerk's office. We can best summarize the changes by returning to the three focal points discussed under history and definition of the problem — Justice Court, District Court and the prosecutor's office. We will, however, need to add the public defender's office to round out a discussion of actors' assessments.

Justice Court

The addition of new judges, the adoption of the individual calendar, and the implementation of team and track produced major changes in Justice Court. Mass arraignments have been replaced by individual arraignments that are handled with as much dignity and attention to legal details as lower courts are able to do. Case backlogs have been eliminated. The random allotment of cases has largely eliminated forum shopping. Cases are assigned a preliminary hearing date which occurs, by and large, on the date set. One indirect effect is that witnesses are more likely to appear on the scheduled date. Overall, cases were viewed as moving through the system faster. In the words of one district attorney, "...team and tracking has expedited caseflow, because in the old days it would take six to eight months to get a case to a preliminary hearing." Just as importantly, respondents believed that increased efficiency in Justice Court projects a better image of justice.

District Court

A firm majority of the judges praised the changes introduced in District Court. While some voiced specific complaints or highlighted areas that needed improvement, all the judges interviewed felt that the current system operates more smoothly than the past one.

One of the improvements cited by the judges was a reduction in attorney conflicts. "The whole beauty of track and team is the time element. It is theoretically impossible to have a conflict in court appearances. All my cases come from JP (x) and they go to either Judge (y) or myself," one judge told us. While some judges acknowledged that there were more scheduling conflicts than might be desirable, they clearly believed the situation had improved. Another improvement often mentioned by the judges was the ability to set trial dates with the reasonable expectation that the case would either plead out or go to trial on that date. While there is no monitoring of these dates, the judges spoke with some pride about the ability to assign due course trial dates.

Interviews with judges often highlighted a central theme — individual, judicial accountability. The judges liked the individual accountability of the individual docket, which conforms with the strong stress on judicial autonomy in Las Vegas. Similarly,

interviews with prosecutors and public defenders often stressed the same theme. They said that individual accountability was critically important. No longer could "dog cases" — the ones no one wanted to handle — be continued in hopes that they would become someone else's cases.

Some of the judges also mentioned a heightened commitment to moving cases through the system. Judges were portrayed as working harder. Here, too, the prosecutors and defense attorneys stressed the same point. "The judges have pride in their calendars, and move them a lot quicker," one prosecutor remarked. While some of the prosecutors made veiled references to a few judges who were not working as hard as they might, they agreed that overall the bench was willing to put in their time and try cases.

District Attorney's Office

Concomitant with innovations in Justice Court and District Court, there were major changes in the prosecutor's office. The District Attorney elected in 1975 set out to restructure the office and impose a management system. Recall from our earlier discussion that a key goal of the team and track grant application was to increase continuity in the prosecutor's office. The creation of the four teams clearly had this effect. As more than one defense attorney pointed out, it is now a lot easier to find out which district attorney is handling a case. Before, one had to make numerous phone calls to try to determine which district attorney was currently handling a case, with no assurances that this attorney would be present later on. Some of the prosecutorial problems with team and tracking will be discussed in the general assessment.

Public Defender's Office

The public defender's office has a history of strong management and close political ties to the county board. Thus, unlike the prosecutor's office, it has not experienced major difficulties either in securing an adequate budget or hiring attorneys. Members of the office voiced strong praise for the changes in the Las Vegas court system. An ex-public defender, for instance, argued that team and tracking "was great for the Public Defender's office," because it eliminated the administrative chaos caused by appearances in different courtrooms. Likewise, a

current team leader stressed his satisfaction with working with just four or five people. As a result:

> The team chief knows what's going on, the other members of the team know what's going on and you have a much better sense of...each sharing the load. (This allows the team chief) to schedule back further. Instead of three or four or five days lead time between assignment of a case for preliminary hearing and the preliminary hearing itself, we might get a week or eight or nine days lead time for preliminary hearing. ...As team chief, I monitor all of the cases that come up in our track after arraignment. So that if there is a case that looks like it requires special handling, for any one of the number of reasons, I can make sure that case gets assigned and gets handled very early. So, team and tracking is much, much better in terms of the defense side...

Somewhat surprisingly, team and tracking produced better coordination within the public defender's office than in the prosecutor's office.

Changes in Informal Working Relationships

Alterations in formal organizational structure produced some far reaching changes in informal working relationships within the courthouse. Under the old master calendar system, attorneys appeared before different judges on an ad hoc basis. Relationships between defense attorneys and the prosecutors were similarly structured on a case by case basis. The introduction of the individual calendar system changed this. Under team and tracking, a small number of prosecutors and public defenders appeared before only two district court judges.

During the interviews, numerous respondents discussed changes in working relationships. Typical are the comments of a judge recorded and summarized in field notes:

> Another thing that the judge particularly likes about the individual calendar is that he can talk to the district attorney and the public defender. He seems to take particular pride in having the ability to be able to talk to the attorneys in chambers. ...(He) continued talking about getting to know the attorneys. They know him and know what he wants them to do.

Other judges made somewhat similar assessments. Moreover, while in chambers, we observed interchanges between judge and prosecutor attorneys very similar to those described above.

Prosecutors also mentioned different working relationships with the judges under team and tracking. This is how an ex-team chief described the transition from master to individual calendar:

> Well, I enjoyed it better as a prosecutor simply because I had an opportunity to familiarize myself with one or two district court judges. I familiarized myself to the point where I could...see them in chambers, I could call them over the phone. ...You really were permitted to build a good rapport with the judge you dealt with and of course you made an effort to build that rapport. I mean any time there was a legal issue that cropped up, you made damn sure as a prosecutor, that you had the law and in the end, it really works to your benefit. You have the law at your finger tips, the defense attorney doesn't and pretty soon, for any legal issue, the judge starts looking to you as the prosecutor for the law. Now, you got to be right on it and the judge starts depending on you and the judge starts listening to you more. ...I don't think that you're building favoritism but he does start depending on that prosecutor and of course you as a prosecutor, depend on that judge for some rulings on a daily basis...

Other prosecutors echoed similar sentiments, although one felt that by practicing before just one or two judges you learned to predict what they will do and as a consequence became stale.

Similar factors apply to the public defenders. The following assistant viewed team and tracking in terms of working with the district attorney and we summarized his comments this way:

> As a public defender, X believes he has to maintain good working relationships with the district attorney, but not to the point of jeopardizing a client's rights, he stressed. He cited an example. Public defenders rarely request a continuance. Such requests are most likely to come from the district attorney. They will phone or contact the public defender in advance. If the public defender trusts the district attorney and thinks he isn't getting a snow job, he will agree. But you have to know and trust the district attorney. If the public defender agrees to a continuance, he tries to get something in return.

The pattern of informal working relationships we found in Las Vegas under team and tracking characterizes the courtroom workgroup. Courtroom workgroups can emerge when court personnel have ongoing relationships and must rely on one another to accomplish their goals. (Eisenstein and Jacob, 1977; Clynch and Neubauer, 1978; and Lipetz, 1980). What is unique in Las Vegas are the descriptions of the emergence of courtroom workgroups.

Courtroom workgroups, like those found in Las Vegas, have major implications for case processing time and delay reduction programs. The judge's concern with moving cases is transmitted to the lawyers. Those regularly appearing before the judge cannot seek delay for delay's sake. Moreover, the judge's knowledge about cases increased. To return to the prosecutor just quoted:

> ...the judge will regularly call up on say, Tuesday, our calendar call is Wednesday. ...And say hey X, why don't you come on down and let's see what we have going tomorrow for trial for next Monday. So I go down and during that period of time I am able to tell him what kind of case it is. He gets a feel for the case before he ever calls the calendar... It makes our negotiations easier if we have a case, let's say a robbery, and we're reducing it down to a trespass. If you'd never talked to the judge, he might say, wait a second, I'm not going to allow that kind of negotiation but you had that chance Tuesday night to talk to the judge; he knows what's coming up; he knows why we're negotiating it and he understands. Come Wednesday morning, everything runs smooth. That's fairly common around here where you can go and see the judges....

In Las Vegas, the courtroom workgroup clearly worked to speed up the court process.

GENERAL ASSESSMENT

Why did team and tracking work? Comparing the grant application to the realities of Las Vegas (unstable District Attorney's office, turmoil in the court administrator's office and a strong stress on judicial autonomy), we would probably have gauged the chances of implementation as being poor. Yet, changes were implemented and as the next chapter will demonstrate, case processing time in the lower courts clearly decreased.

The best assessment of why team and tracking worked came from an outside observer very knowledgeable in the internal dynamics of the justice process. "Team and tracking added organization to the court, but it didn't require the judges to give up any of their powers." Indeed, a key change, the shift to the individual calendar, increased judicial autonomy. In short, by not creating a new bureaucracy, the program did not directly challenge the prerogatives of office so dearly cherished by the judges. Looking beyond the court, major changes occurred in the prosecutor's office which was very receptive to change and in the Justice Court, where new personnel and a great dissatisfaction with existing conditions clearly made that court amenable to phased-in change that did not challenge their powers or prerogatives.

These internal political dynamics also explain what the court did not adopt. The court did not adopt and is not likely to adopt a caseflow management system of the type proposed by court reformers. There is no central office, for example, that keeps track of cases. Nor are there any statistics that monitor court performance. The figures compiled by the clerk's office are very deficient. But even these statistics are not collated into a useable form. The lack of statistics reflects the grave concern on

the part of a number of judges that statistics would undermine their judicial autonomy and could be used as political ammunition by a hostile local press and future judicial candidates. Indeed, the one time that case processing data were compiled by individual judges, a very influential judge stormed into the court administrator's office and demanded that no such reports ever be compiled again. The absence of a case flow management system utilizing monitoring statistics, means, in the words of one court bureaucrat, that "if problems developed, the court wouldn't know about them and wouldn't be able to identify them." This is not an abstract concern. Courtroom observations revealed one judge whose due course trial settings were much longer than the other judges. Yet, no one in the courthouse was aware (until probed by a researcher) that the docket of one judge was potentially in difficulty.

The same factors that result in the absence of a caseflow management system in Las Vegas likewise account for the continuing weak powers of the chief judge. The chief judge can lead only by persuasion; he has no legal powers to manage the court. To cite but one example, the transfer of a sensational murder case from the team and tracking judge to overflow served to jam up overflow. In other jurisdictions, the chief judge would have the power to intervene in such reassignments to ensure that the overall work of the court was not unduly affected. Such is not the case in Las Vegas. On small matters like this, as well as the more major ones, the norms of judicial independence do not allow for a chief judge with effective power.

Overall, the court is satisfied with the progress that has been made under team and tracking. Reducing the backlog and reducing case processing time is now assigned a low priority. They believe, in the words of a court bureaucrat, that they have accomplished their goals and perceive more pressing problems like jury management, personnel matters, additional judgeships and funding from the county commission.

Prosecutor's Office

While all agreed that the prosecutor's office was a much stronger office than in years past, a number of people outside but also inside the office pointed to some continuing problems areas. Public defenders argued, somewhat self-servingly, that they win cases at trial that they shouldn't win, because district attorneys are ill prepared.

One remaining problem area is recruitment and training of assistant district attorneys. Overall, we found more marginally qualified attorneys in Las Vegas than we did in the other cities. Given the difficulty of hiring a sufficient number of qualified attorneys, the office has not been able to institute vertical rotation of assistants between justice court and district court. (By contrast, the public defender experiences no difficulty in this regard.) The end result is that some assistants become permanent fixtures in Justice Court, because they are viewed as not possessing the skills necessary to try a felony case in district court. Likewise, justices of the peace complain about poorly trained deputies who practice in their court. These complaints are borne out by our observations. At times, we observed trials in Justice Court where assistants were largely unfamiliar with the rules of evidence. Staffing problems extend to the district court as well. On some teams the top trial assistant had only two years experience. Indeed, one team chief had only three years of criminal law experience.

A second problem area involves coordination between the four teams in the prosecutor's office. Each team chief in essence runs a mini-prosecutor's office. He must approve all plea bargaining agreements for his four or five assistants. The four teams operate somewhat differently. Plea bargaining philosophies of the team chiefs vary. Some prosecutorial teams are viewed by their defense counterparts as being difficult to work with and, at times, somewhat prone to play it too close to the vest. There is also competition and tensions between the four teams.

The office has made efforts to provide some coordination. There are now weekly meetings of the team chiefs. There is a written but unpublished plea bargaining policy (which one team chief admitted he violated daily). Pleas in major cases must be approved by the chief criminal deputy. Pleas in very serious cases must be personally approved by the District Attorney himself. But these efforts aside, the four teams still differ in important ways. When asked about the influence of four mini-prosecutor's offices, some responded quite realistically that they generally knew of the situation. They also responded that four different philosophies were better than each individual assistant pursuing a different policy. Thus to some extent, differences between the four teams are simply more noticeable (and therefore potentially more controllable) than in the typical courthouse.

Finally, there are problems related to the management the team chiefs provide. Team chiefs have not systematically been able to provide training for assistants. The office still functions largely on the basis of on-the-job training. Some team chiefs, their assistants complained, were not effectively involved in case preparation. For instance, cases assigned for trial were sometimes viewed as not being thoroughly prepared (which was one oversight function of the team chief). Moreover, one judge and several justice of the peace complained that the team chiefs were not in justice court enough. Finally, morale on some of the teams was low. Assistants felt they were receiving insufficient support from their team chiefs, and some went months without handling a trial. (By comparison, young public defenders expressed no such displeasure about their participation in a team.) In sum, these complaints (which do not necessarily apply to all teams) suggest that perhaps the position of team chief has become a new middle management position, not effectively integrated into the work of the office. Some of those interviewed certainly felt that way.

CONCLUSION

"I would recommend team and tracking to any court of similar size." This statement from a Las Vegas judge summarizes the overall sentiment of those involved in team and tracking. Uniformly, respondents praised the system and pointed to a number of very beneficial features.

As we have stressed, team and tracking served as a focal point for a number of changes in the court processes, not all of which are directly tied to the actual program of assigning all cases to one of four teams from the time of the filing of the complaint until sentencing. Certainly, the adoption of the individual calendar played a major role and some suggested that without the individual calendar, team and tracking would have been far less successful. Similarly, the creation of the team and tracking advisory committee had salutary effects well beyond the specific program. To the judges the overflow judge position helped ensure credibility in trial settings. But the prosecutors and public defenders believed that the system would have worked about as well without overflow, and highlighted the conflicts in attorneys' case schedules that resulted. Finally and most importantly, major changes in the prosecutor's office, while perhaps not an absolute necessity, were certainly very important in the overall success of the program.

In short, reduction of trial court delay was not a single program in Las Vegas. It involved a series of interrelated innovations. The process appears more important than the program. Much the same point was made by two persons involved in changing the appeals process in St. Louis:

> While the accelerated docket, settlement conference, screening procedures, and dismissal dockets have all contributed to the reduction of case time on appeal before the Eastern District in Missouri, no one procedure or technique is 'The Answer' to meeting the appellate crunch. The solution to the multitude of problems confronting appellate courts today really lies in the process or approach used by the court in handling its caseload. (St. Vrain and Hudson, 1979:19)

The process of change began in 1975. Thus, some important innovations were in place in the District Court prior to the actual start of team and tracking. By contrast, changes in the Justice Court began about 1977. As the next chapter will document, it is in the Justice Court that we see a major decrease in case processing time between 1977 and 1979 resulting from team and tracking, the individual calendar, additional personnel and general streamlining of procedures.

NOTES

[1]The divisiveness of the bench affected, to a certain degree, how research was conducted in Las Vegas. We knew of the firing of the court administrator prior to site selection. We therefore opted to proceed cautiously. As a result, research proceeded more slowly. One reason is that without a central figure like the court administrator, there was no one to provide guidance early on about how the whole system fit (or didn't fit) together. In other sites, we had such assistance from the onset.

Along the way, however, we did receive warnings from some to stay away from this issue, or more general caution to "lay low." We can report, though, that all the people were most helpful and courteous. Whatever the political conflicts and divisiveness, none spilled over onto us.

[2]The activities of the court intake officer are not discussed in this evaluation because the position is unique to Las Vegas and therefore has little applicability in other jurisdictions. The primary motivation for creating the court intake officer was to provide for a quasi-judicial officer to handle a case in the eight to twelve day hiatus between arrest and appearance in justice court. The court intake officer interviews the defendant in jail shortly after booking. He tells the person the reasons for the arrest, advises him of his rights, collects information relevant to pretrial release and finally will sometimes fill out indigency forms so that the public defender may be appointed. Local officials believe that the court intake officer has helped not only to cover the legal void between the Nevada Supreme Court decisions and the U.S. Supreme Court decisions as well as to speed up the appearance of the defendant in Justice Court.

[3]The Federal Judicial Center's report on the circuit executive discusses the implications of judges delegating all non-adjudicative tasks to a court administrator. It can mean that all the interesting and pressing problems are reserved to the judges. (McDermott and Flanders, 1979).

Chapter 10

THE RESULTS IN LAS VEGAS

A quantitative assessment of the impact of the innovations described in Chapter 9 is the focus of this chapter. Did a reduction in case processing time accompany the introduction of team and tracking and its associated programs? Can any reduction be attributed solely to the innovations or did other things change over time? Were the effects of team and tracking more pronounced in the trial court (District Court) or in the lower courts (Justice of the Peace Courts)? We address these questions in detail. In addition, we examine the characteristics of the courts, their cases, and defendants. These provide the context within which any delay-reduction programs must operate.

The analysis is based upon data collected over a twenty-five month span from January 1977 through January 1979. For analytic simplicity, we have divided the months into three periods. The first period is the baseline period prior to the introduction of team and tracking. The period runs from January 1977 through the end of March 1977, comprising three months.[1] The second period commences with the introduction of team and tracking, and runs from April 1977 through March 1978, a span of one year. The third is a post-innovation period, beginning at the point at which the last team and track-related innovation was introduced. (This last innovation was the alternation of three week periods -- "flip-flop" -- of criminal and civil case work for each judge, a plan which some court actors viewed as the key component of team and tracking). The third period runs from April 1978 through January 1979, a span of ten months. Because our sample of the number of cases filed in any one of these months is quite small in absolute numbers, statistical reliability is also enhanced by the grouping.

THE COURT AND ITS CASES

The most common types of cases before the District Court are crimes of property, either theft (27%) or burglary (18%). Drug cases comprise a significant share (21%), whereas robberies (12%) and assaults (6%) are less common. The remaining cases (16%) span a wide range of offenses. The mix of cases, then, is not

unlike in Providence and Dayton. Maximum penalties for these types of charges range from six months to twenty years, and include both life and death sentences.[2]

The overwhelming majority of cases are not "complex" from the court's point of view. That is, most cases are single defendant (87%) and single charge (92%). Nevertheless, there are a variety of procedural characteristics, or quirks, which help to make cases more "difficult." These include the use of a grand jury indictment (14%) rather than the usual prosecutorial information (86%), and the frequent use of motions and continuances. More than one-third (39%) of the cases had motions filed, not infrequently two or three different types of motions.[3] Continuances were even more common: 80% of the cases had at least one continuance, and 30% had four or more continuances. Finally, one quirk unique to Las Vegas (Nevada) is the habeas petition, which may be filed with the Nevada Supreme Court at any time during the progress of a case, thus suspending the trial court's work on the case. Ten percent of all cases had a habeas petition filed by the defense.

The modal disposition is a plea of guilty, accounting for 66% of the cases in our sample. Twenty-nine percent of the cases were dismissed, and a mere 5% were disposed by trial (usually, jury trial). Of those defendants convicted, the majority received probation. Most of the remainder were sentenced either to the Clark County Jail or, more likely, to the Nevada State Prison. There are few alternative types of sentences in Nevada, or alternative institutions to the state penitentiary. Convicted defendants in drug cases, in particular, find little or no treatment available to them in the Nevada correctional system.

Most defendants (69%) are out of custody at the time their case is disposed, paralleling quite closely the proportion (66%) out of custody at the time of their arraignment in District Court. The few changes in custody status are primarily instances where a defendant unable to make bond at arraignment does make bond sometime later. Unlike in Providence, relatively few defendants have their bail revoked as a result of additional charges for new offenses. One reason for the comparatively high rate of Las Vegas defendants not confined to custody is the substantial use of OR (release on own recognizance). Nearly one-third of all defendants were so released. Furthermore, the amount of bonds set was usually moderate; three-fourths were for $5,000 or less.

The personal characteristics of defendants in Las Vegas parallel what we already know from many other crime and criminal justice studies. Most defendants are young (median age, 25), male (84%), and disproportionately black (29%) vis-a-vis the community racial composition (9% black in Clark County). Finally, these defendants are somewhat more often represented by the public defender (57%) or other court-appointed attorney (6%) than by a privately-retained attorney (37%).

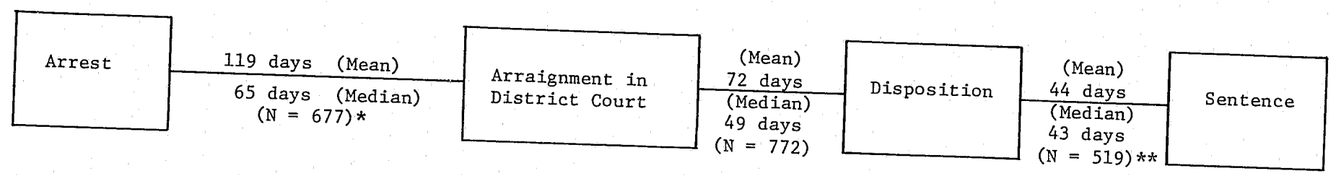
In sum, the Las Vegas court's criminal cases are much like those of other courts, including our other three sites. Still, there is a bit of a distinctive air from the gambling-resort atmosphere of the community that pervades criminal (and civil) cases here. As one of our many observations revealed, "theft" in Las Vegas is as likely to result from a slot-machine scam as it is from the community's other more conventional resources.

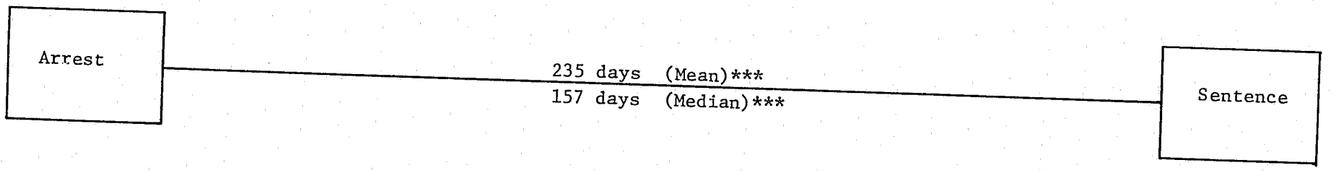
OVERVIEW OF CASE PROCESSING TIME

Figure 10-1 provides an overview of case processing time in the Justice of the Peace and District Courts in Las Vegas from January 1977 to January 1979. Many months elapse between arrest (actually, filing of the complaint)[4] and disposition or sentence. The mean time from initiation of a case to the sentence is approximately 235 days, or almost eight months. The median figure, though, is quite a bit lower — 157 days — indicating the presence of an upper tail of very long cases.

Figure 10-1

Overview of Case Processing Time in Las Vegas Justice of the Peace and District Courts (1977-1979)





*Excludes cases with Grand Jury indictment in lieu of lower court processing.

**Necessarily excludes cases not having a finding of guilt.

***These figures are a composite of the individual time frames, and therefore are based upon slightly different samples.

The figure also reveals where in the processing of a case time is consumed. Like Providence but unlike Dayton, the Las Vegas lower court takes substantial time to send cases foreward. This is true notwithstanding that nearly half (43%) of all defendants waive the preliminary hearing. Less time is taken by District Court from when it receives a case to a determination of guilt or innocence. The mean time is 72 days, with a median of only 49 days. However, a substantial amount of time often elapses from disposition to sentence in cases where the defendant has been found guilty. On average, this approaches six weeks. This reflects, in part, a statutorily-mandated thirty-day period to provide for the preparation of a presentence investigation.

CASE PROCESSING TIME IN THE TRIAL COURT

District Court was a key, though not exclusive, target of the team and tracking innovation introduced. By establishing teams of prosecutors and teams of public defenders, the court sought to eliminate inefficiencies caused by duplication and lack of communication among members of those offices. Equally, the court sought to routinize the flow of cases from the lower court upward by linking the cases handled by specific lower court judges with specific District Court judges (tracks). How effective were these measures? Before proceeding, we need to consider some refinements made in the measurement of the case processing time numbers which appear in Figure 10-1.

Case Processing Time: What Is under the Court's Control?

There are a number of factors which serve to lengthen case processing time over which the trial court has no control. (For a general discussion, refer to Chapter 2). This brief digression from our main focus will summarize these issues and their treatment in Las Vegas.

The time from disposition to sentence has not been included in the analysis to follow. The court is constrained by statute from shortening the period to less than thirty days. Thus, we consider only the time from arraignment in District Court to determination of guilt or innocence (disposition). For this time frame, we have further excluded thirty cases in which there was a hearing to determine the defendant's sanity. These few cases take almost twice as long, on average, to process ($\bar{x}$ = 140 days versus

76 for all other cases), primarily because mandated time periods once again constrain the court's freedom of action.[5]

Two other situations required transformation, or correction, of the case processing time variable. In cases where a habeas petition was filed with the Nevada Supreme Court (10%), the time required for the high court to decide the petition was subtracted from the case processing time variable. On average, this time was 30 days (median) or 45 days (mean). Likewise, in cases where the defendant skipped or was unavailable, resulting in a bench warrant being issued (17%), the time required to retrieve the defendant was subtracted from the case processing time variable. On average, this time was only 20 days (median), but 72 days (mean).

These transformations were required to measure accurately the time which could be deemed to be under "court control." Not to make these transformations would bias the evaluation in a conservative direction. For cases having such characteristics as habeas petitions, bench warrants, or sanity hearings did not materially improve their speed over the time period sampled. By eliminating these cases, or the time attributable to such events, we can more accurately gauge the impact of the innovation on its intended target — case processing time over which the trial court has control.

Did Case Processing Time Decrease?

Figure 10-2 displays the mean and median processing time for cases filed from January 1977 to January 1979, a period during which team and tracking was introduced. No dramatic changes occurred during this two year period. However, the baseline period from January 1977 through March 1977 does show slightly higher times, particularly means, for case processing. Once team and tracking is introduced (April 1977), case processing time appears to level off — with some fluctuation — at a slightly lower level. This pattern is more readily apparent from inspecting Figure 10-3, a display of "running medians" for the two year time period. Once the "rough" is eliminated, a virtually smooth line runs across the second and third time periods. But this is preceded by a slightly downward sloping line prior to, or almost simultaneous with, the introduction of team and tracking. There is, however, more to the story of reductions in case processing time in District Court.

Figure 10-2

Case Processing Time in Las Vegas District Court,
by Month of Filing

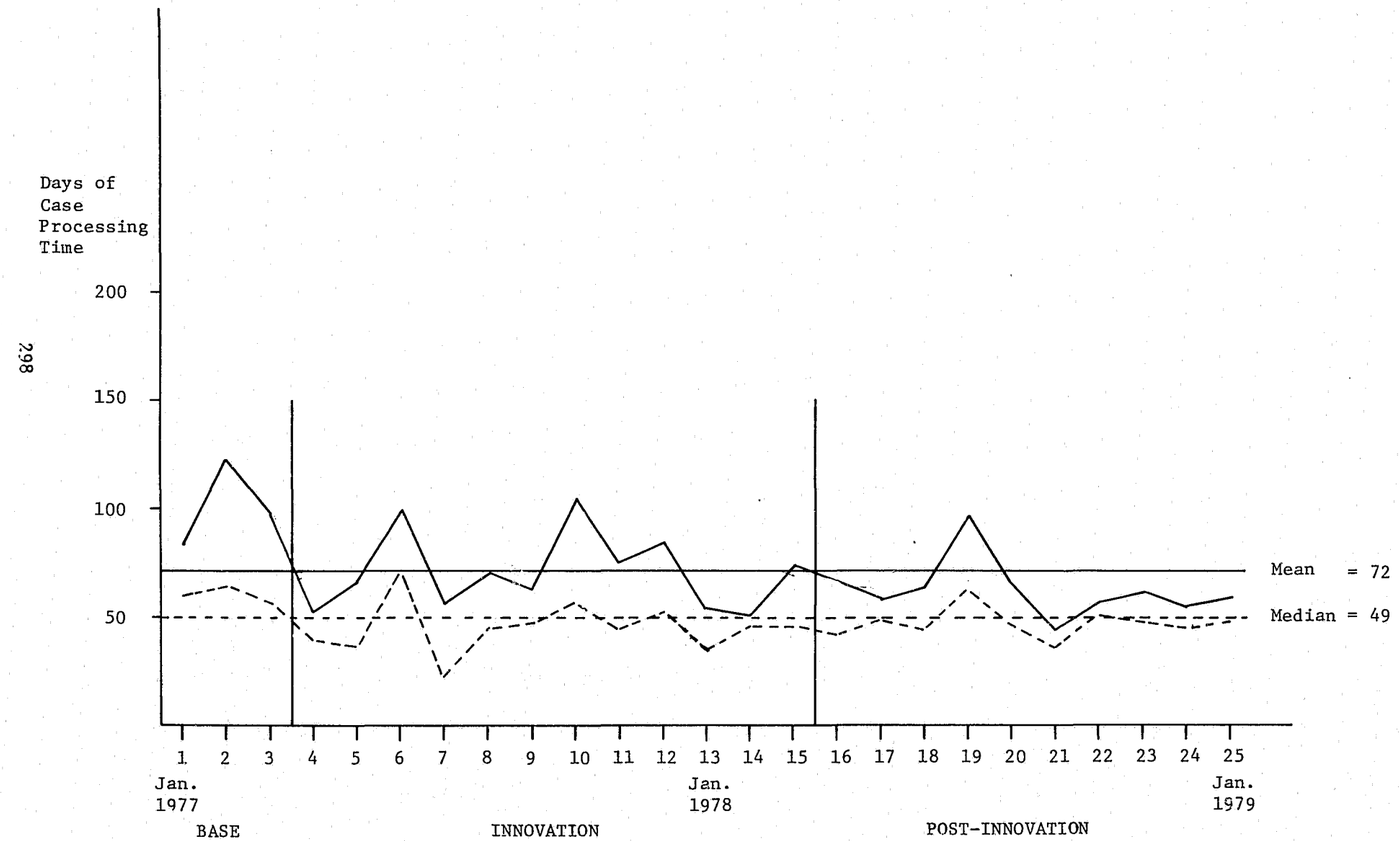


Figure 10-3

Redrawn Case Processing Time in Las Vegas District Court
by Month of Filing, Utilizing Running Medians

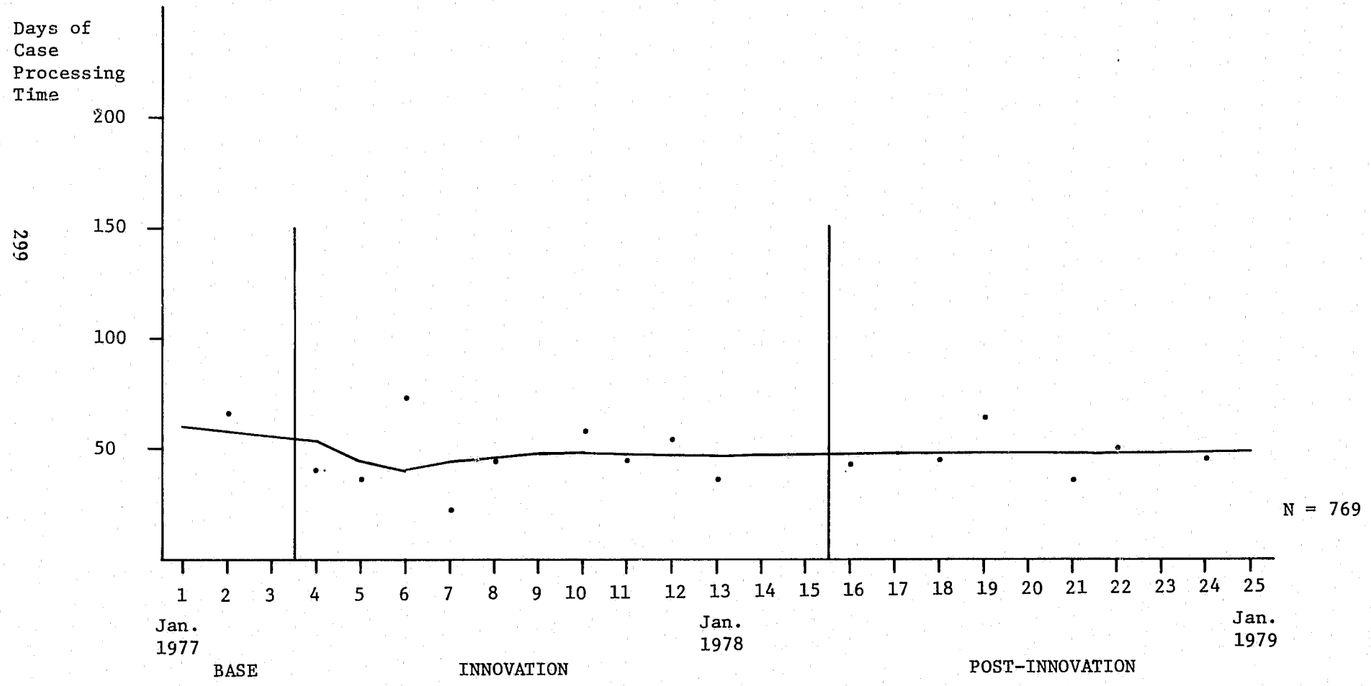
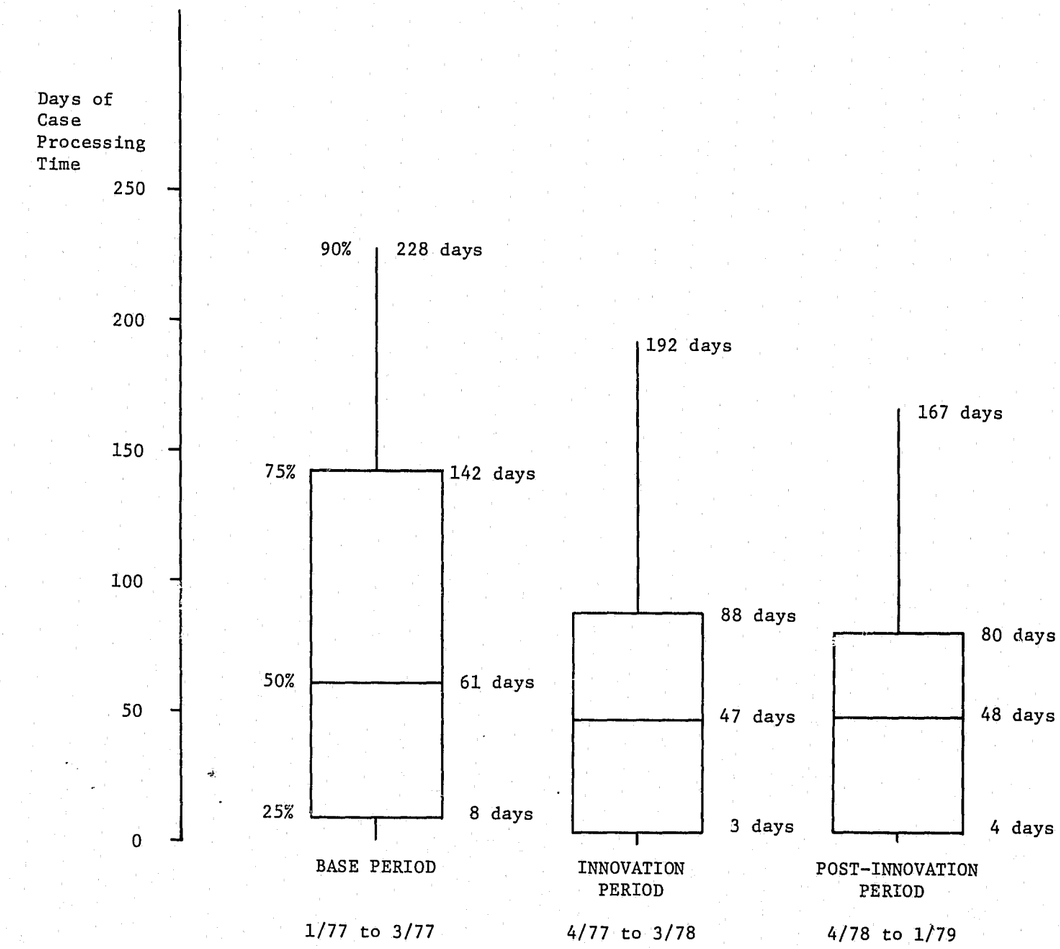


Figure 10-4, a box-and-whisker plot of case processing time during the three time periods, illustrates the court's considerable success in reducing the time required for "long" or "difficult" cases. Whereas the median drops only slightly from the baseline period to later periods (61 days to 47/48 days), the 75% and 90% points drop sharply. In the baseline period, the longest 25% of the cases consumed 142 days or longer in District Court. But this figure drops sharply — to 88 days or longer — in the innovation period, and to 80 days or longer in the post-innovation period. Thus, once the innovations were in place, three-fourths of the cases were being processed in 80 days or less. A roughly similar drop occurs with the longest 10% of the cases. These consumed 228 days or longer in the baseline period, 192 days or longer in the innovation period, and only 167 days or longer in the post-innovation period.

Figure 10-4

Box-and-Whisker Plot of Case Processing Time in Las Vegas District Court, by Time Period



The box-and-whisker plots highlight what the time lines in Figure 10-2 only suggest. The processing of routine cases improved only slightly with the introduction of team and tracking. On the other hand, the processing of difficult cases improved more substantially with the introduction of team and tracking and continued to improve well after its implementation. Because the time required to process routine cases was not all that great in early 1977 (median = 61 days), dramatic improvement analogous to Providence was not possible. In this light, the innovation appears to be all the more significant.

The Role of Case Characteristics

But what of the characteristics of the cases and defendants coming before the court? How (if at all) are these related to case processing time? By identifying the key variables which predict case processing time, we also isolate those variables for which fluctuations over time become important. In this section, we first examine the bivariate associations between case characteristics and case processing time, utilizing one-way analysis of variance. We then proceed to a multivariate analysis of case processing time, including the effects of case characteristics and the team and tracking innovation. Each of these analyses is conducted for the full sample period (1977-1979) and for each of the three time periods — baseline, innovation, and post-innovation.

Table 10-1 displays the mean case processing time by selected case and defendant characteristics. For the full sample period, a number of characteristics are sharply related to case processing time. The largest differences occur in court processing characteristics — motions practices and whether the case proceeds by prosecutorial information or grand jury indictment. Cases without motions proceed very quickly, only 46 days on average. But cases where one motion is filed take more than twice as long — 96 days, and cases with two motions take three times as long — 140 days. The effects of additional motions, beyond two, are minimal. Cases where the prosecutor, for whatever reasons, pursued a grand jury indictment consume much more time (134 days, on average) than the more usual information (62 days).

Table 10-1. Breakdown of Case Processing Time in Las Vegas District Court across Selected Case and Defendant Characteristics, by Time Period

		Full Sample 1/77-1/79 $\bar{X}$	Base Period 1/77-3/77 $\bar{X}$	Innovation Period 4/77-3/78 $\bar{X}$	Post-Innovation Period 4/78-1/79 $\bar{X}$
TYPE OF OFFENSE					
Assault		108 Days	136 Days	122 Days	75 Days
Burglary		53	63	48	60
Drugs		77	105	80	64
Theft		80	103	83	77
Robbery		75	121	55	53
Other		90	75	99	79
CASE COMPLEXITY					
Single Defendant		71	110	69	64
Multiple Defendants		75	58	83	67
Single Charge		89	100	69	63
Multiple Charges		98	121	102	78
PROCESSING CHARACTERISTICS					
Grand Jury Indictment		134	174	145	105
Information		62	91	60	59
No Motions		46	46	48	44
One Motion		96	151	91	85
Two Motions		140	165	157	115
Three or More Motions		146	255	158	105
DISPOSITION TYPE					
Plea		56	72	56	52
Trial		106	239	113	67
Dismissal		99	140	99	89
BAIL STATUS					
Out of Custody		79	100	78	74
In Custody		57	110	53	49
ATTORNEY TYPE					
Public Defender		64	99	64	55
Court Appointed		88	-	108	58
Private		77	108	70	79
DEFENDANT CHARACTERISTICS					
Age/	17-20	57	35	54	64
	21-25	56	80	50	59
	26-35	90	124	100	65
	36 or older	81	71	92	72
Race/	White	72	95	72	67
	Black	69	100	73	54
Gender/	Male	71	93	73	64
	Female	74	166	64	67
	N	~768	~74	~383	~311

The mode of disposition is substantially related to case processing time. Cases which actually go to trial, not surprisingly, take more time (106 days, on average). Cases which are dismissed take almost that long (99 days). By contrast, cases resulting in a plea of guilty typically go much more quickly — only 56 days, on average.

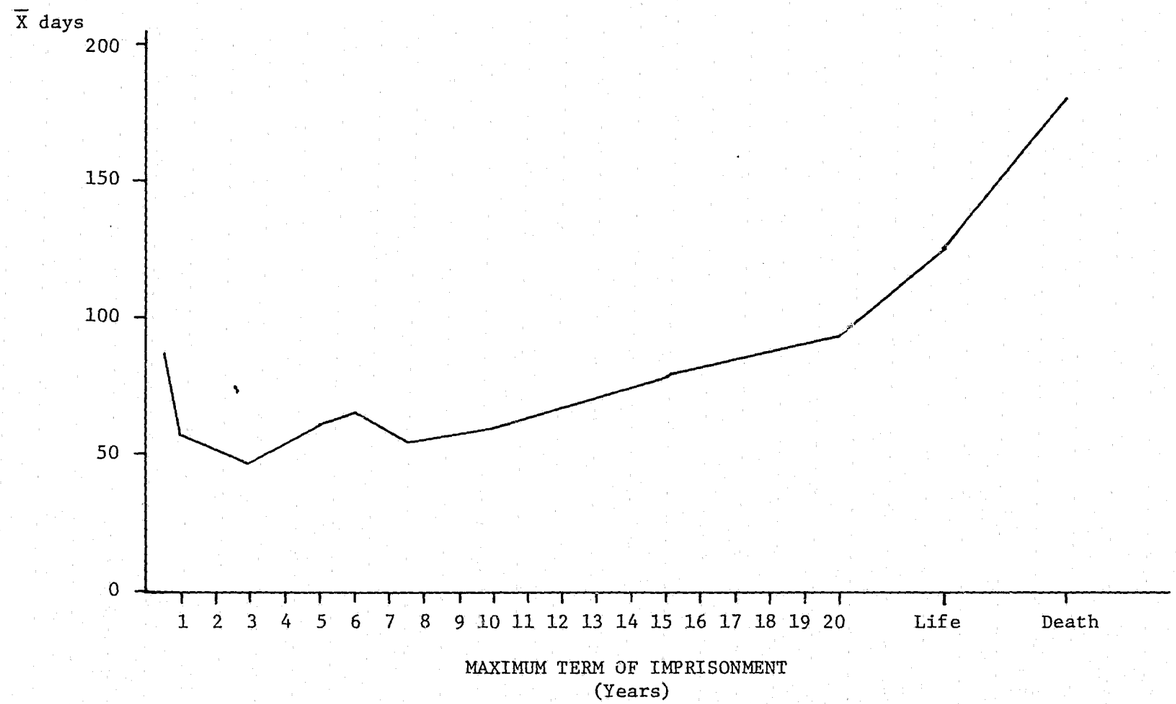
The bail status of the defendant and the type of representation are also related to case processing time. Defendants in custody are processed more quickly than those out of custody (who either made bail or were granted OR). This is to be expected in light of the Nevada Speedy Trial Act, which gives priority to cases involving jailed defendants. Still, the difference is only about twenty days. An even smaller difference of only thirteen days separates public defender cases from private attorney cases. The relatively few cases where a defendant is represented by a court-appointed (private) attorney take somewhat longer.

Measures of case complexity and defendant characteristics reveal only a few significant relationships. Multiple defendant cases take little longer than single defendant cases. Multiple charge cases, however, do take significantly longer (96 days, on average, versus 69 days). Among defendant characteristics, age makes a difference: Younger defendants are processed more quickly than older ones. Race and gender, however, show no relationship with case processing time.

Finally, the type and seriousness of offense are related to the time needed to process cases. Routine property crimes, like burglary and theft, proceed most quickly, 53 and 60 days respectively. Assault cases take the longest time, 108 days on average. Robbery and drug cases fall in-between. The seriousness of the offense, as measured by the maximum possible term of incarceration, is also related to case processing time, as Figure 10-5 illustrates. The relationship is distinctively non-linear. There is no relationship for 0-10 years, a general linear rise from 10-20 years, and a sharp increment for cases having a potential sentence of life imprisonment or death.

Figure 10-5

Breakdown of Case Processing Time in Las Vegas District Court
by Seriousness of Offense*



*Measured by the maximum term of imprisonment in years.

These relationships are generally consistent across the three time periods, though there are a few instances where the small numbers in the base period result in unstable means. Improvement in processing time typically occurs in most categories of case. Reductions are particularly marked in cases that go to trial and those that proceed by grand jury indictment. Whereas trial cases took far longer in the base period and in the innovation period than plea-disposed cases, by the post-innovation period the difference is rather small (only fifteen days). The difference between grand jury and information cases is still sizable in the post-innovation period (forty-six days), but it is substantially less than in the earlier time periods. Differences by type of offense also narrow considerably in the post-innovation period. In the base and innovation periods, assault cases consumed much more time, but by the post-innovation period this is no longer so.

Bivariate analysis provides a basic understanding of the character of relationships between case characteristics and processing time. For a more precise analysis which takes into account the relationships among case characteristics, we turn to a form of multivariate analysis -- stepwise regression. This is needed with the data from Las Vegas, which indicate some interrelationships among predictor variables. For example, cases in which motions are filed are also cases that are more serious and more likely to go to trial, characteristics themselves related to (longer) processing time. Cases which proceed by grand jury indictment are cases having older defendants charged with drug offenses and represented by private attorneys, characteristics that again are associated with longer processing time.[7] Thus, the actual effects attributable to motions, grand jury indictment, and other variables cannot accurately be gauged by bivariate analysis. Instead, a regression model is more suitable.

Table 10-2a presents the results of stepwise regression, including case and defendant characteristics and the implementation of team and tracking, for the full sample period and each of the three time periods. For the entire sample period, we find substantial corroboration of the bivariate analysis presented earlier. Statistically speaking, the number of motions is the most powerful predictor of case processing time, having a beta weight of .35. Of moderate importance are the mode of disposition (whether plea or not), the bail status of the defendant at disposition, and whether the case proceeded by grand jury indictment or prosecutor's information. Of statistically significant, but relatively slight, importance are the seriousness of the case and the presence of the team and tracking innovation.

Table 10-2a. A Multivariate Analysis of Case Processing Time in Las Vegas District Court, by Time Period: Standardized Coefficients

	Full Sample 1/77-1/79	Base Period 1/77-3/77	Innovation Period 4/77-3/78	Post-Innovation Period 4/78-1/79
	Beta[a]	Beta	Beta	Beta
Number of Motions[b]	.35	.44	.36	.33
Plea	-.16	-.20	-.15	-.15
Bail Status (In Custody)	-.15	ns	-.20	-.17
GJ Indictment	.14	ns	.21	(.09)[e]
Team & Tracking Innovation	-.09	—	—	—
Seriousness of Case[c]	.08	ns	ns	.12
Assault Case	(.06)[d]	ns	.12	ns
	R_2 = .52 R^2 = 27%	R_2 = .51 R^2 = 26%	R_2 = .55 R^2 = 30%	R_2 = .45 R^2 = 20%
	N = 716	N = 74	N = 362	N = 297

[a]All betas are statistically significant at .05, unless otherwise indicated.

[b]Coded as 0, 1, 2 or more motions, based upon bivariate relationship.

[c]Dichotomized: 15 years, 20 years, life, or death versus lesser maximum punishments, based upon bivariate relationship in Figure 10-5.

[d]Borderline statistical significance (p = .07).

[e]Borderline statistical significance (p = .08).

When the predictor variables are measured in unstandardized units such that their effects can be interpreted in days of case processing time, the results again strongly confirm previous bivariate analysis. Table 10-2b presents these results. An increase of one unit in the number of motions (up through two motions) results in an increase of forty-four days in case processing, once other variables are controlled. This is nearly identical to the data on motions in Table 10-1. The effects of a plea disposition (31 days) and grand jury indictment (40 days) are somewhat smaller than what the bivariate analysis suggested, indicating that the effects of these variables are partially diffused through other variables. Finally, the presence of the team and tracking innovation results in a reduction of twenty-eight days, controlling for other variables. This, too, is nearly identical to the difference in mean processing time before and after the implementation of team and tracking.

Table 10-2b. A Multivariate Analysis of Case Processing Time in Las Vegas District Court, by Time Period: Unstandardized Coefficients

	Full Sample 1/77-1/79	Base Period 1/77-3/77	Innovation Period 4/77-3/78	Post-Innovation Period 4/78-1/79
	b[a]	b	b	b
Number of Motions[b]	44 Days	82 Days	46 Days	34 Days
Plea	-31	-56	-31	-22
Bail Status (In Custody)	-30	ns	-44	-27
GJ Indictment	40	ns	57	(22)[e]
Team & Tracking Innovation	-28	—	—	—
Seriousness of Case[c]	19	ns	ns	28
Assault Case	(24)[d]	ns	53	ns

[a] All betas are statistically significant at .05, unless otherwise indicated.

[b] Coded as 0, 1, 2 or more motions, based upon bivariate relationship.

[c] Dichotomized: 15 years, 20 years, life or death versus lesser maximum punishments, based upon bivariate relationship in Figure 10-5.

[d] Borderline statistical significance (p = .07).

[e] Borderline statistical significance (p = .08).

The results of the regression model are remarkably stable across the three time periods. The number of motions consistently emerges as the most powerful predictor of case processing time. Likewise, the influence of disposition mode is significant in all three periods. However, the quickness of pleas contrasts more sharply with trials in the base period, then more sharply with dismissals by the post-innovation period (refer to Table 10-1). Bail status is significant in the innovation and post-innovation periods, though its effect in the base period is clouded by a few extreme values amidst small numbers. Finally, the particularly marked improvement in handling grand jury cases and assault cases, noted earlier, is evident in the multivariate analysis as well. Both types of cases are significant predictors of case processing time in the innovation period (and probably also in the base period, but for the small numbers). In the post-innovation period, however, the direct effect of assault cases is entirely washed out, and the effect of a grand jury indictment is, at best, very slight.

The effect of the team and tracking innovation, of course, cannot be measured within time periods because the construction of the time periods are based upon the date of its implementation. Nevertheless, a measure of time was introduced into the regression model for each period in the form of the date of the filing of the case (in District Court). This measure, however, proved not to be predictive of case processing time within the three periods, confirming the virtually flat line across the last eighteen months illustrated in Figure 10-3.

The overall combined effect of case and defendant characteristics and the team and tracking innovation is substantial. For the full sample, R = .52, indicating that 27% of the variation in case processing time is accounted for by the predictor variables. Across the three time periods, predictability (R^2) increases slightly from the base period to the innovation period (26% to 30%), but then drops significantly (to 20%) in the post-innovation period. This reflects the limited routinization of case handling which occurred sometime after the implementation of the team and tracking innovation. Routinization is notable in the more efficient handling of grand jury cases and assault cases, and, for that matter, across most categories of cases.

The Role of the Team and Tracking Innovation: A Discussion

From the data presented thus far, it would be tempting to conclude that the team and tracking innovation played a distinct role in reducing case processing time

during the 1977-79 period. That would be premature, however, because the innovation variable is really only a surrogate measure for the passage of time. In fact, the presence/absence of the innovation and the date of filing of the case in District Court are very highly correlated (r = .89). Thus, the innovation variable stands for any and all things which might have changed over time, within the 1977-79 period. It could stand for changes in unmeasured variables, factors which either have not been recorded in case files or perhaps which could not be recorded. In addition, it should not immediately be ruled out that the innovation variable stands for changes in case or defendant characteristics over time. Though such changes are controlled for, in a statistical sense, in the multivariate analyses, the observed effect of the innovation is sufficiently slight (beta = -.09) that further investigation seems warranted.

Did the frequency of particular case or defendant characteristics change during the 1977-79 period? Table 10-3 reveals that the types of cases coming before District Court and the way in which these cases were processed did change somewhat across the three time periods. Most importantly, the changes occurred such that the court had more "easy" and fewer "difficult" cases after the innovation was implemented. Specifically, the proportion of cases with one or more motions dropped after the base period (to an average of about 38%, compared with 46% before). The proportion of cases resolved by plea rose after the base period, as the proportion of dismissals dropped. The percentage of cases proceeding by grand jury indictment dropped slightly after the base period. And the frequency of assault cases and serious cases dropped after the base period. All of these changes, taken together, call into question the slight statistical effect attributed to the innovation from regression analysis.

Table 10-3. Changes in the Characteristics of Cases before the Las Vegas District Court

	Base Period 1/77-3/77	Innovation Period 4/77-3/78	Post-Innovation Period 4/78-1/79
Percentage of cases having...			
Motions (one or more)	46%	35%	42%
Pleas	60%	66%	66%
Defendants Out of Custody	64%	73%	64%
Grand Jury Indictments	15%	15%	11%
Serious Maximum	23%	20%	16%
Assault Charge	13%	5%	7%
N	74	383	311

It could be argued, however, that the team and tracking innovation itself altered the frequency of particular case characteristics, thereby effecting a reduction in case processing time indirectly. Is this plausible in Las Vegas, given what we know through our field observations and interviews? The answer is generally in the negative.

The innovation was not sufficiently far-reaching in scope to have affected the mix of cases coming before the court; thus, changes in the proportion of serious cases or assault cases seem not attributable to the presence or absence of an administrative innovation such as team and tracking. The changing proportion of defendants out of custody more likely reflects changes in the availability of a pretrial release program in Las Vegas. (The program was eliminated in early 1978 in response to pressures from bail bondsmen). The proportion of cases proceeding by grand jury indictment changed apparently in response to a prosecutorial change of attitude toward the use of the grand jury during 1978.[8] And it is possible, but not likely, that motions practice was

affected directly by the innovation. It is more likely that the decrease in cases with motions reflects changes in other case characteristics (e.g., proportion of serious cases). Only the rise in the proportion of pleas, and the corresponding drop in dismissals, seems potentially attributable to the innovation. This kind of change occurred in Providence after the introduction of management changes, and it is quite possible that in Las Vegas also the innovation led to a greater efficiency in keeping track of cases, resulting in less need to dismiss cases lost in the "cracks" of the system.

In sum, it is likely that the team and tracking innovation played little role in reducing case processing time in the District Court during the 1977-79 time period. In the regression equation, its effect is very small. Only an additional 1% of the variation in case processing time is explained by the presence of the innovation. Furthermore, other changes occurred in the court over time — most notably, the types of cases coming before the court (less serious) and the court's processing and disposition of cases (fewer motions and grand jury indictments, more pleas). These case-related changes, which account for much of the reduction in case processing time during the two year period, generally cannot be attributed to any direct or indirect effects of team and tracking. One important caveat though: If we been able to sample further back in time (say in 1976 or 1975), the picture might look different.[9] In light of what we learned from our field work, improvements in District Court were already under way by early 1977. The severe problem remaining lay in the Justice of the Peace courts. It is to an analysis of the lower courts, and the role of team and tracking there, that we now turn.

CASE PROCESSING TIME IN THE LOWER COURTS

The Justice of the Peace Courts, too, were a major target of the team and tracking innovation. Court actors perceived far-reaching problems in the operations of the lower courts. Additionally, however, other changes were instituted in early 1977 to combat these problems. These included the elimination of the master calendar in favor of the individual docket and the addition of a new lower court judge. Thus, because several innovations occurred nearly at the same time, we necessarily examine their combined impact.

In analyzing the data on lower court processing time, several cautions are needed. The most important one relates to the sampling design. Because we sampled

from cases filed in District Court (from 1977 to 1979), we do not have a random sample of lower court filings for any time period. In fact, we have data on cases which originated in the lower courts as far back as 1975 or 1974, cases which obviously languished before moving up to District Court (in 1977 or later). As a result, we have eliminated from the lower court analysis cases that were filed in the lower courts prior to January 1, 1977. This effectively eliminates any bias toward "old" cases.

Several other caveats are also in order. We have no data on lower court processing time for cases that proceeded by grand jury indictment, because the court files do not contain such information. From our interviews we have reason to believe that such cases were likely to be older ones. Indeed, these cases proceeded much more slowly in District Court, as our analysis there indicated. Finally, the court files contain only the date of filing of a complaint, not the actual arrest date (see note 4).

The cumulative effect of these missing data is to make the lower courts look faster than they really were. Furthermore, our elimination of cases filed in the lower courts prior to 1977 — though necessary for analytic purposes — has a similar effect insofar as any improvement taking place in processing cases prior to 1977.

Did Case Processing Time Decrease?

Figure 10-6 displays the mean and median processing time in the lower courts for cases filed in the lower courts from January 1977 to December 1978, a period during which team and tracking and other changes specifically directed to the lower courts were introduced. Unlike in the District Court analysis, the trend here is dramatic and unmistakable. The mean case processing time dropped from a high of 157 days just prior to team and tracking to 55 days at the end of the innovation period to a mere 37 days at the end of the post-innovation period. Median case processing time experienced a roughly parallel, if slightly less dramatic, decline. The median time was rising to 99 days before team and tracking, but dropped to 40 days at the end of the innovation period. The levelling of median case processing time during the post-innovation period is especially clear in Figure 10-7, which utilizes "running medians."

Figure 10-6

Case Processing Time in Las Vegas Lower Courts,
by Month Complaint was Filed in Lower Court

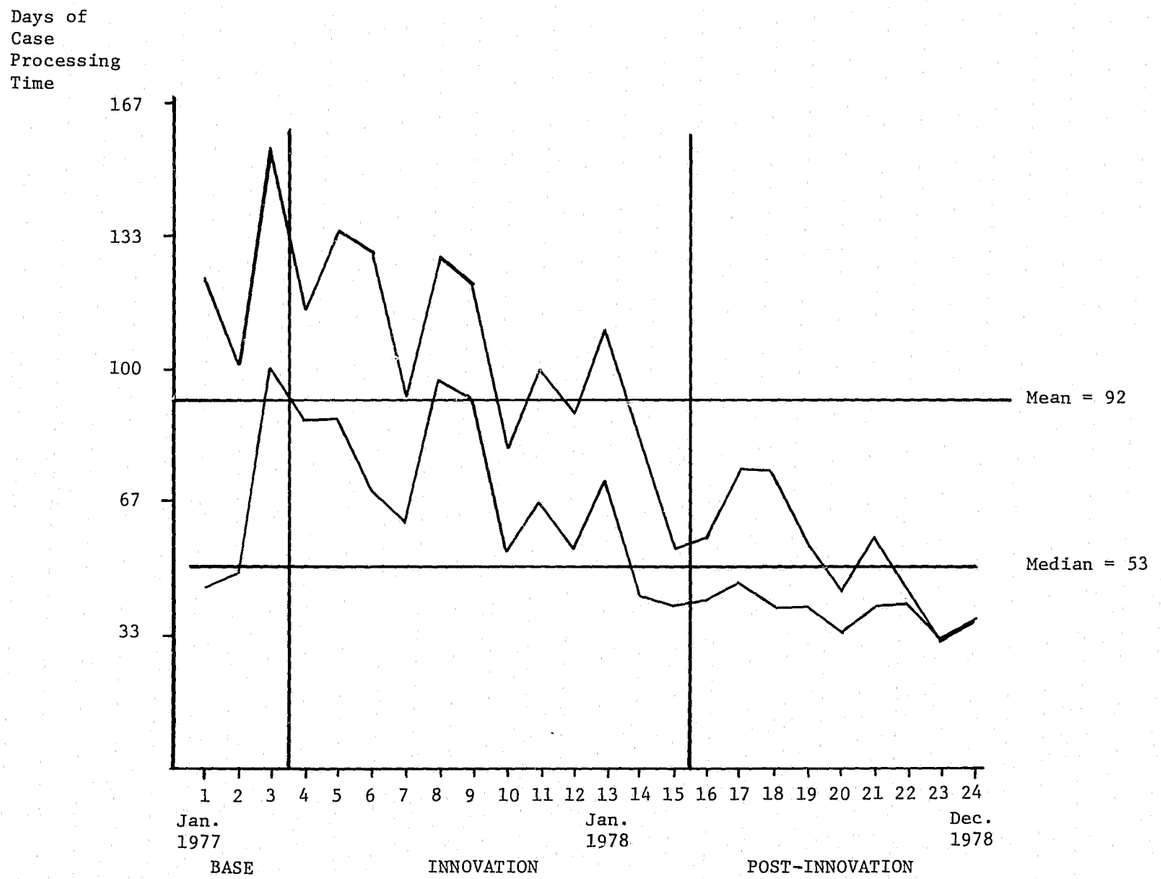


Figure 10-7

Case Processing Time in Las Vegas Lower Courts by Month Complaint was Filed in Lower Court, Utilizing Running Medians

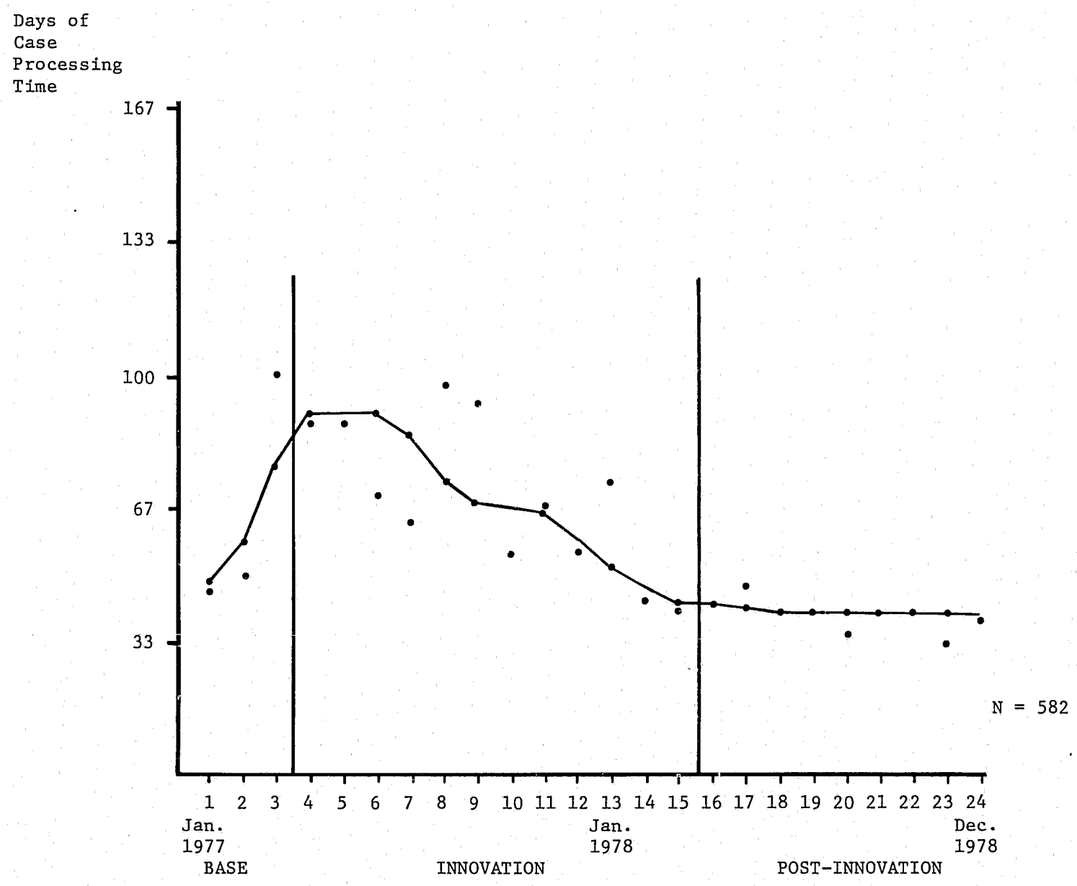
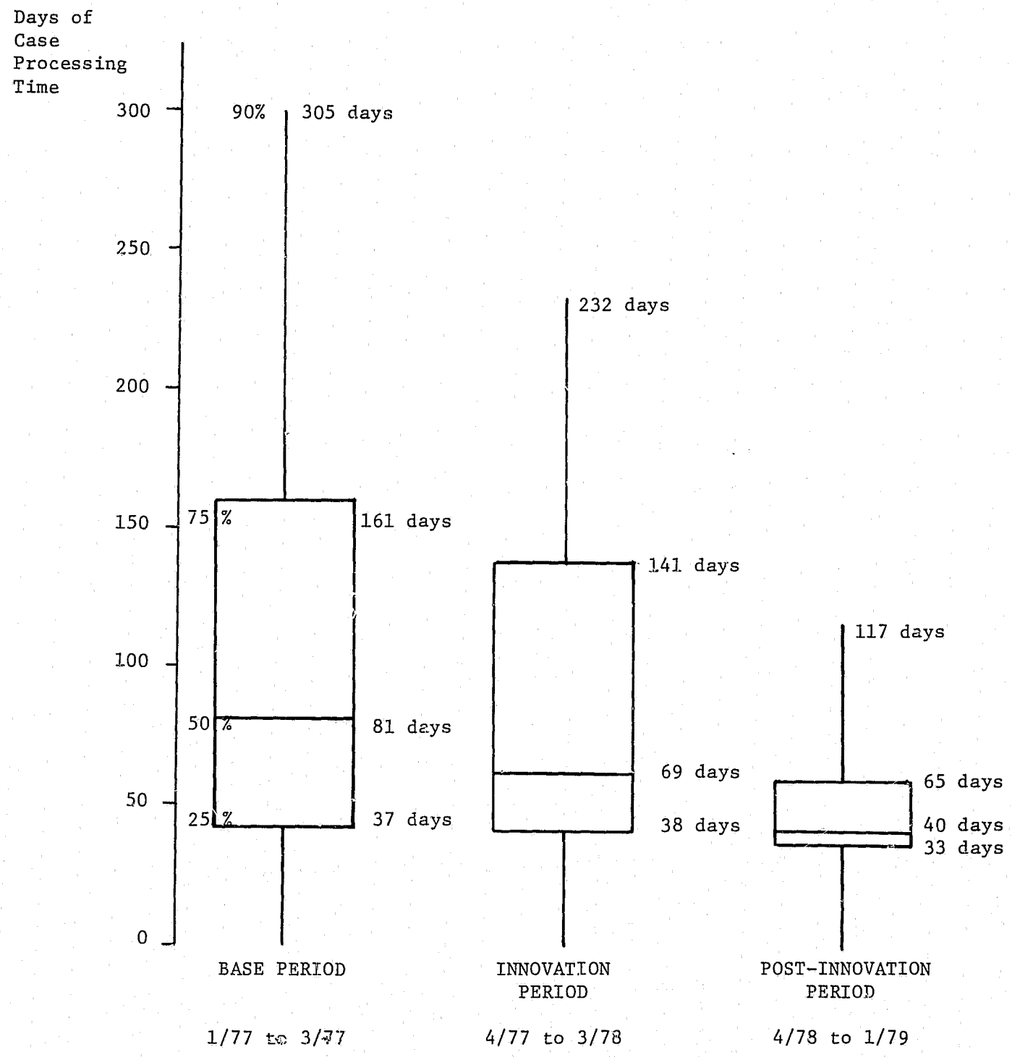


Figure 10-8, a box-and-whisker plot of case processing time during the three time periods, corroborates the dramatic decline illustrated by the previous time lines. The median drops sharply, from 81 days in the base period to 69 days in the innovation period to only 40 days in the post-innovation period. Equally important, the time needed to process more difficult cases dropped sharply. Three-fourths of the cases were processed in a mere 65 days in the post-innovation period, compared with 141 days in the innovation period and 161 days in the base period. The largest ten percent of the cases were also processed much more quickly, from a minimum of 305 days in the base period to a minimum of only 117 days by the post-innovation period. These reductions in variance are emphasized by the change in the shape of the boxes, from rather large in the base and innovation periods to quite small in the post-innovation period. Note also that the 25% point does not change significantly over time. A minimum amount of preparation time in the lower courts is required for most cases. Rather, what changes is the processing of the majority of cases that cannot immediately be disposed. For these cases, the lower courts seem to have successfully established routines, subsequent to the implementation of team and tracking and other changes.

Figure 10-8

Box-and-Whisker Plot of Case Processing Time in Las Vegas Lower Courts, by Time Period*



*Based on complaints filed during 1977 and 1978.

The Role of Case Characteristics

How are the characteristics of the cases and defendants coming before the lower courts related to lower court processing time? We approach this question much as we did for the District Court analysis, first by examining bivariate relationships, then proceeding to multivariate analysis. We again look at the relationships for the full time period as well as the three individual time periods.[10]

Table 10-4 displays the mean case processing time in the lower courts for selected case and defendant characteristics. Bail status and type of attorney are most strongly associated with case processing time. As in District Court, jailed defendants and defendants represented by the public defender have their cases processed more rapidly. But these relationships are much stronger in the lower court, where the average difference is more than fifty days between defendants out of custody and in custody and almost as large for public defender versus privately retained cases.

Table 10-4. Breakdown of Case Processing Time in Las Vegas Lower Courts across Selected Case and Defendant Characteristics, by Time Period

	Full Sample 1/77-1/79	Base Period 1/77-3/77	Innovation Period 4/77-3/78	Post-Innovation Period 4/78-1/79
TYPE OF OFFENSE				
Assault	92 Days	91 Days	142 Days	47 Days
Burglary	69	90	78	48
Drugs	124	184	122	87
Theft	102	127	127	59
Robbery	51	55	59	45
Other	105	152	114	59
CASE COMPLEXITY				
Single Defendant	91	123	105	58
Multiple Defendants	92	147	116	48
Single Charge	92	126	106	58
Multiple Charges	79	105	99	48
PRELIMINARY HEARING (in lower courts)				
Held	84	99	99	59
Waived	101	155	111	59
DISPOSITION TYPE (in District Court)				
Plea	92	131	103	56
Trial	79	138	88	59
Dismissal	92	109	115	51
BAIL STATUS (in the lower court)				
Out of Custody	114	162	117	76
In Custody	60	60	86	40
ATTORNEY TYPE (in the lower court)				
Public Defender	75	98	88	46
Court Appointed	75	44	127	35
Private	123	166	129	84
DEFENDANT CHARACTERISTICS				
Age/ 17-20	82	126	94	51
21-25	78	100	94	49
26-35	111	143	127	68
36 or older	95	130	108	64
Race/ White	95	144	106	59
Black	82	91	104	53
Gender/ Male	85	116	98	55
Female	130	196	146	71
N	~578	~112	~256	~214

Time in the lower courts also varies sharply with type of offense: Drug cases take the most time, robbery cases the least time. This contrasts with the District Court, where robbery and drug cases fell in-between the slow-to-dispose assault cases and the much quicker burglary and theft cases. Seriousness of the offense, as measured by the statutory maximum, is unrelated to time in the lower courts. This contrasts again with District Court, where the very serious cases took longer (refer to Figure 10-5).

One characteristic specific to lower courts — whether a preliminary hearing is held or waived — is modestly related to time consumed in the lower courts. The direction of effect, though, is unexpected: Cases in which a hearing is waived actually take somewhat longer than where a hearing is held (difference of 17 days), suggesting that the hearing itself is no stumbling block to speedy case processing.

Among defendant characteristics, both age and gender are significantly related to processing time in the lower courts. As in District Court, younger defendants are processed more quickly than older defendants. Unlike in District Court, male defendants are processed more quickly than female defendants. The gender relationship, however, need be cautioned by the quite small number of female defendants (only 16%).

Other case characteristics, important in District Court, are of only limited significance in explaining variations in the lower courts. These include the ultimate disposition in District Court and the number of motions in District Court.[11] In fact, cases that go more slowly in the District Court — trial dispositions and motions —are processed slightly more quickly in the lower courts, resulting in the seeming paradox of "hurry up, then wait." All this suggests that cases are processed rather independently in the lower courts, without much reference to the character which they might assume later in District Court.

These relationships for the full sample period generally remain stable across the three time periods, though again the number of cases is quite small in the base period (resulting in some instability of the mean values). Improvement in processing time occurs in most categories of case. For example, the time needed for both public defender and private attorney cases is approximately cut in half from the base period to the post-innovation period. Reductions also occur for most types of offense except

robbery, which remains low in all time periods. Improvement is, perhaps, more marked in out-of-custody cases, where consistent reductions occur (from 162 to 117 to 76 days), than in jail cases. However, out-of-custody cases proceeded so much more slowly in the base period that there was much more room for improvement. Only differences based upon gender and the holding of the preliminary hearing consistently narrow across time periods. By the post-innovation period, the difference is quite modest for gender (16 days); for the preliminary hearing, the difference is totally eliminated.

As we noted in the earlier analysis for the District Court, an examination of bivariate relationships has its limitations. This is particularly true when a number of key predictor variables (such as case and defendant characteristics) are interrelated. To disentangle these relationships, we move to a multivariate model based on stepwise regression analysis. Table 10-5 presents these results, for the full sample period and then for each of the three time periods. For the full sample period, we find that the presence of the team and tracking innovation is the single most important variable. (Actually, this variable measures the date of filing in the lower court, an interval variable which reflects the continuing and cumulative effects indicated in Figures 10-6 and 10-7). The next most important variable is the custody status of the defendant in the lower court. Other statistically significant, but small, influences include the type of attorney, the gender of the defendant, and whether the case is a burglary or robbery.

Table 10-5. A Multivariate Analysis of Case Processing Time in the Las Vegas Lower Courts, by Time Period: Standardized Coefficients

	Full Sample 1/77-1/79	Base Period 1/77-3/77	Innovation Period 4/77-3/78	Post-Innovation Period 4/78-1/79
	Beta[a]	Beta	Beta	Beta
Team & Tracking Innovation[b]	-.25	—	—	—
Bail Status (In Custody)	-.18	-.39	-.11	-.40
Type of Attorney (Public Defender)	-.13	ns	-.19	ns
Gender (Female)	.12	ns	.18	ns
Burglary Case	-.12	ns	ns	-.13
Robbery Case	-.11	ns	ns	ns
Theft Case	ns	ns	.12	ns
Drug Case	ns	ns	ns	.22
Dismissal	ns	ns	ns	-.13
	R_2 = .46 R^2 = 21%	R_2 = .38 R^2 = 15%	R_2 = .35 R^2 = 12%	R_2 = .50 R^2 = 25%
	N = 555	N = 96	N = 244	N = 189

[a]All betas are statistically significant at .05, unless otherwise indicated.

[b]Coded as date of filing in the lower court.

The size and direction of all of these variables in the multivariate analysis strikingly confirm the results from bivariate analysis. The graphs over time clearly indicated a sharp drop in case processing time soon after the introduction of team and tracking and other innovations in the lower court. Likewise, the breakdowns clearly indicated the importance of such case characteristics as bail status, type of attorney, and type of offense, and defendant characteristics such as gender.

The results of the regressions are not highly stable across the three time periods, however. In each period, bail status is a statistically significant predictor of case processing time in the expected direction: Defendants in jail are processed more quickly. But its relative strength varies. In the base period, it is the only predictor of processing time, and it is by far the strongest of several influences in the post-innovation period. In the innovation period, however, its effect is small, paralleling the narrowing of means indicated in Table 10-4. Of the remaining variables, some are statistically significant influences in the innovation period, others in the post-innovation period. But there is no overlap.

This instability is partially a reflection of the small sample size in the base period. A number of variables other than bail status (such as attorney type and gender) would be likely to discriminate, given a larger sample size. Still, instability from the innovation to post-innovation period remains, and it probably can be accounted for by the state of flux that characterized the lower courts in this period. In the District Court, the regression model proved more stable across time because change had already taken place, and case processing time had levelled off completely in the last year of our sample. By contrast, in the lower courts much change in case processing time was still taking place in the innovation and post-innovation periods.[12] This seems well reflected in the bewildering array of different influences on case processing time during these two periods. The lower courts were still (re)learning how to sort cases and how to give priority to particular cases en route to the District Court.

This conclusion seems further reinforced by the increase in the variance explained from the innovation period (12%) to the post-innovation period (25%). Unlike in District Court where the explained variance dropped in the post-innovation period, routines had yet to be fully established in the lower courts. In the absence of routines, priority based upon case characteristics remained strong. Disparities in the efficient processing of cases and defendants also remained strong.

The Role of the Innovations: A Discussion

The several innovations introduced in early 1977, including team and tracking as well as other changes geared specifically to the lower courts, had a substantial impact on subsequent case processing time. This is evident from the dramatic and continuous decline in case processing time illustrated in Figures 10-6 and 10-7. It is further evident from the multivariate analysis where, controlling for case and defendant characteristics, the presence of the innovations emerged as the most powerful predictor of case processing time in the lower courts over the two year period.

Most important, the kinds of cases and defendants coming before the lower courts did not change significantly along the key variables. In fact, the few changes that occurred led to a slightly higher proportion of "difficult" cases before the court: more out of custody defendants, more private attorney cases, more female defendants. Though these changes were small, they made it slightly more difficult for the justice of the peace courts to do their work expeditiously. Had the proportion of these types of cases remained exactly the same over time, the raw differences in case processing time from the base period to later periods would have been even larger yet.

Analytically, it would be desirable to separate the effects of team and tracking from changes in the type of calendaring system and from the addition of a new lower court judge. Unfortunately, this is not possible in any precise way, because the changes all happened within one or two months of each other. Nevertheless, it seems reasonable to attribute at least part of the success to more judicial resources. Furthermore, we can demonstrate that the change in calendaring had some salutary effects. During the days in which the lower courts operated under a master calendar, it was not uncommon for several judges to hear parts of any one case. In the base period, 60% of the cases were heard by at least two judges (often, three different judges). By the post-innovation period, only 31% of the cases were heard by more than one judge in the lower court (and rarely by more than two judges). Thus, the lower courts began moving toward a pure individual docket, with few transfers of judge except in emergencies. This change is indeed salutary, for "multiple-judge" cases proceeded much more slowly than cases heard by a single judge in the lower courts.[13]

SUMMARY

Case processing time declined slightly in the District court, but dramatically in the lower Justice of the Peace courts over the two year time period from 1977 to 1979. These declines coincided with the introduction of the team and tracking innovation and, in the lower courts, with other changes as well.

A variety of case, and some defendant, characteristics account for variations in case processing time. In the District Court, the number of motions is consistently the most impressive predictor variable. Motions serve to lengthen the time needed to process cases, roughly six weeks for each additional motion. In the lower courts, the custody status of the defendant is the most consistent predictor variable. Defendants in jail are processed more quickly, roughly one month faster than those out of custody. In general, the kinds of case characteristics that account for variations in processing time differ substantially between the lower and trial courts. The needs and priorities of a screening court are quite different from those of a trial (or plea) court.

Most important, the impact of the innovations can clearly be demonstrated for the lower courts, where change was dramatic and confounding influences of case characteristics were insignificant. Nevertheless, the mixture of a calendaring change (from master to individual), an additional lower court judgeship, and team and tracking within a short time span render a precise disentanglement of individual effects impossible. In the District Court, the little change in case processing time that occurred seems potentially attributable to small changes in the characteristics of the cases coming before it. Had we been able to sample further back into 1976 (or even 1975), however, we almost certainly would have found a more severe delay problem in District Court than in the first three months of 1977 prior to team and tracking. Thus, the anticipation of, or planning for, innovations may have had a beneficial effect independent of the changes themselves.

NOTES

[1]The baseline period is shorter than desired. We wished to have data for at least six months prior to the innovations, but the uncertainty among court actors as to when the introductions were first implemented caused difficulties in sampling.

[2]Both felony and gross misdemeanor cases were included in our sample. Ninety-four percent of the cases were felonies, the remainder were gross misdemeanors.

[3]The most common types of motions were for additional information or discovery, for changes in the type or amount of bail, and for changes of (defense) attorney.

[4]Las Vegas case files contain no information on date of arrest. Court actors estimated that 10 to 12 days typically elapse between arrest and filing of the complaint.

[5]The time actually lost due to the sanity hearing could not be determined accurately from court files. Thus, we excluded the cases rather than adopt the solution described below for habeas and bench warrant cases.

[6]Note here that the first quarter of cases were processed quickly in all time periods, ranging from a median of 8 days in the baseline to 4 days in the later period. This is so because a significant percentage of cases (23%) were disposed at arraignment in District Court. In these cases, a plea negotiated in the lower court was formally entered in District Court.

[7]For an analysis of the interrelationships among predictor variables, refer to the factor analysis presented in Table 10-A-1 in the Appendix to this chapter.

[8]During most of his tenure as District Attorney (1974-1978), the incumbent was reported to have used two grand juries simultaneously, a practice quite unlike predecessors. But 1978 was an election year (in which the incumbent did not seek re-election), and only one grand jury apparently was used during that year. This would account for the reduction in the proportion of cases proceeding by indictment in the post-innovation period.

[9]This is particularly important in the Las Vegas site because of the short baseline period (only three months). Many of the cases filed prior to the innovations were actually processed during the innovation period.

[10]Keep in mind that the sample of cases in the lower court analysis is smaller than, and therefore slightly different from, the samples used in the District Court analysis, for reasons explained earlier in the text. Also, the three time periods in the following analysis are based on the filing date in the lower court, not District Court.

[11]We cannot assess the effect of grand jury indictment on lower court processing time for lack of available data.

[12]This is especially true for mean (rather than median) case processing time, and regression is a mean-based statistical procedure.

CONTINUED

4 OF 6

[13] Across the full sample period, cases heard by only one lower court judge had a mean processing time in the lower court of 72 days, compared with 104 days for cases before two judges, 138 days for cases before three judges, and 189 days for cases before four or more different lower court judges.

Table 10-A-1. A Factor Analysis of Selected Case and Defendant Characteristics in Las Vegas

	Unrotated Factor Matrix	
	Factor 1	Factor 2
Assault	.08	.07
Burglary	-.29	-.28
Robbery	-.28	.31
Theft	-.09	-.36
Drugs	.49	.30
Seriousness	.28	.55
Number of Defendants	.15	.08
Number of Charges	-.20	.34
Grand Jury Indictment	.24	.38
Number of Motions	-.12	.47
Plea	-.07	-.40
Trial	-.02	.42
Private Attorney	.78	.08
Public Defender	-.77	-.13
Bail Status[a]	-.53	.19
Black	-.44	.49
White	.43	-.49
Gender[b]	.21	-.02
Age	.25	.14
Percent of Variance Explained	(14%)	(11%)

N=697

[a] Bail Status: out of custody (low), in custody (high)

[b] Gender: male (low), female (high)

Chapter 11

THE IMPLEMENTATION OF DELAY-REDUCTION PROGRAMS IN DETROIT

In this chapter we shall consider the delay reduction project in Detroit's Recorder's Court. We should like, first, to give a brief overview of the project — when it began and ended, its administration, and its major components. Second, we shall describe the nature and history of the problem in Recorder's Court. In doing so, we shall give special attention to the question of how case processing time came to be defined as a problem. Next, we shall describe the project in detail including its components, their operation, and their impact on the activities of court participants. And, finally, we shall examine court participants' evaluations of the project. Let us turn, first, to a brief overview of the project.

PROJECT OVERVIEW

Delay reduction efforts in Recorder's Court were supported by two grants, Courtflow Improvement I from January 12, 1977, through August 31, 1977, and Courtflow Improvement II from August 1, 1977, through July 31, 1978. Since Courtflow Improvement I was supported with 1976 funds, only Courtflow II was, technically, part of LEAA's Court Delay Reduction Program. As will be seen from the discussion that follows, however, the two projects were so intimately connected in theory and action that both should be considered part of LEAA's Delay Reduction Program.

Courtflow I was essentially a crash program to address the problems of an overcrowded jail and a rapid increase in numbers of cases pending. Its goals, according to the project's grant proposal, were (1) to reduce Recorder's Court's share of jailed inmates from just over 1,000 to 550 inmates within six months, (2) to achieve a normal case processing time from arraignment to trial of ninety days within two years (a goal which looked beyond the six month funding period of Courtflow I), and (3) to achieve a normal case processing time of ninety days for the jail population cases within six months (Michigan Supreme Court, State Court Administrative Office, 1977a).

To accomplish these goals, the court was placed under the direction of a Special Judicial Administrator. The project increased the court's resources by bringing in visiting judges and providing money for additional prosecutors, probation officers, and administrative, clerical, and security personnel. A case tracking system was developed and statistical information was used to monitor performance.

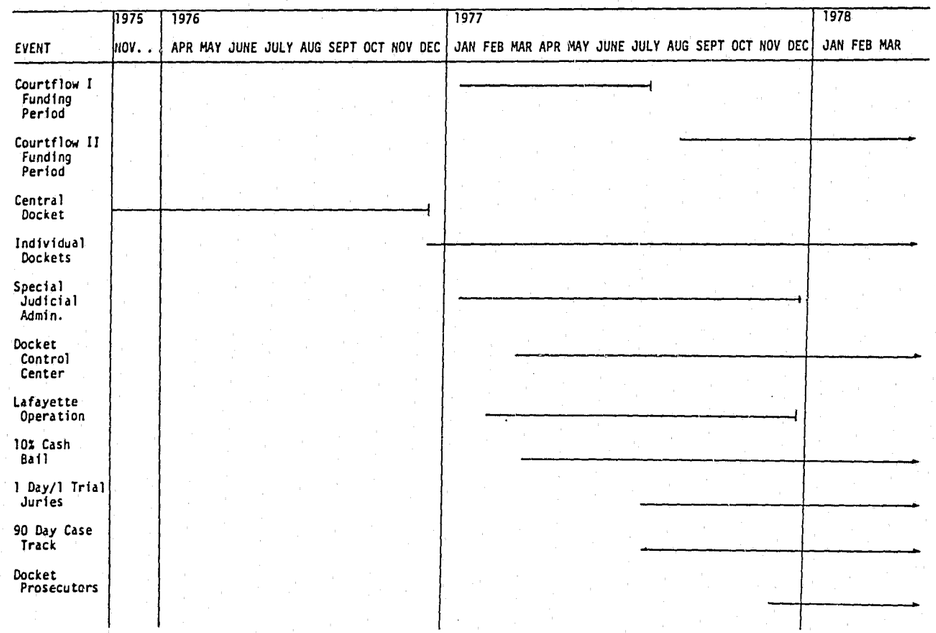
Courtflow II was a request to continue and systematize the delay reduction effort by constructing and staffing a Docket Control Center, which would serve as a center to schedule and manage the court's caseflow through an automated tracking system and visual displays. Both grants were to the Michigan Supreme Court, State Court Administrative Office with the Special Judicial Administrator as project director.

Table 11-1 shows the major innovations of the project and the dates of their implementation. These elements are described in detail below. Table 11-1 also includes two changes, one day/one trial juries and ten percent cash bail, that were not formally parts of the delay reduction project, but were changes that were implemented during the course of the project. Both were accomplished by administrative order from the Chief Judge of Recorder's Court. (The Recorder's Court, 1977a and 1977b).

TABLE 11-1

Time Line of Events in Recorder's

Court's Delay Reduction Project



The one day/one trial jury was copied from a jury management system at the Wayne County Circuit Court (Carlson, Halper, and Whitcomb, 1977). Under this system, the term of service for jurors was set at one day or the completion of one trial. We shall consider the impact of this change on dispositions in our statistical analysis.

The ten percent bail innovation allowed defendants for whom surety bail had been imposed to post ten percent of the bail amount with the court. Defendants were to be allowed this alternative unless the judge who imposed the bail explicitly required a surety bond only.

THE PROBLEM: DEFINITION AND HISTORY

The manner in which a problem is defined often structures the solutions considered. We believe, therefore, that knowledge of the recent history of case processing time in Recorder's Court will help us to understand why certain elements came to be included in the solution and to better ascertain which of those elements are essential to the project and which were dictated by local conditions.

Case Disposition Problems in Recorder's Court

Recorder's Court has a history of fluctuations in case dispositions and case processing times. It undertook two crash programs in the ten years preceding its 1977, LEAA-funded delay reduction effort. The more recent of the prior crash programs occurred in early 1972. In the Fall following that crash program, Eisenstein and Jacob (1977, p. 233) estimated that median case processing time from arraignment on the warrant to disposition for cases initiated in Recorder's Court was 71.2 days. At that time, the Presiding Judge boasted that Recorder's Court was "one of the fastest in the nation." Yet, less than five years later, the mean age of cases disposed in Recorder's Court was 220 days (The Recorder's Court, 1977c)[1]

Additional examples of fluctuations in case disposition statistics over recent years in Recorder's Court can be found in the Courtflow I grant application. The authors of the grant proposal present statistics on warrants issued, dispositions, pending cases, and jail inmates for the years 1970 through 1976. We reproduce those figures in Table 11-2 (Michigan Supreme Court, State Court Administrative Office, 1977a).

Table 11-2. Recorder's Court Judgeships, Caseload, Dispositions, and Jail Population 1970 - 1976

Year	Judgeships	Warrants Issued	Dispositions	Cases Pending (as of Dec. 31)	Jail Population
1970	13 Judges	10,988	11,098	3,418	1,007
1971	13 Judges	14,295	12,505	4,539	664
1972	13 Judges	12,213	13,224	2,059	389
1973	20 Judges	11,910	11,555	1,559	443
1974	20 Judges	12,296	10,977	1,805	622
1975	20 Judges	12,421	11,021	4,592	688
1976	20 Judges	13,005	10,959	6,331	1,073

As can be seen from Table 11-2, there was a rapid increase in both the number of jailed defendants and the number of cases pending in 1976. (The increase in number of cases pending was larger in 1975, but a footnote to the original table implies that this increase was to some extent an artifact of a new definition of active cases and a more accurate counting system instituted in that year.) One can also see from Table 11-2 that there is a decrease in total dispositions over the period, even though the size of the bench increased.

An administrator from the Wayne County Prosecutor's Office claimed, however, that until 1976, Recorder's Court as a whole had no docket problem. By the Prosecutor's more conservative measure of caseload, there were approximately 2,200 active cases in November, 1975.[2] Of this caseload, the administrator said:

> We did not believe that...was a backlog. And I don't believe it now... And, so, if you look at it, a systematic kind of analysis of the caseflow tells you that you have about sixty days work for the court as a whole, and that is not a backlog as far as I'm concerned. Now the problem was, of course, that talking of averages that way is like talking about the average salary between me and Henry Ford.

Although court actors disagreed about whether a courtwide case disposition problem existed before 1976, there was general agreement that the 1976 increase in number of cases pending did constitute a problem. The precipitating factors for the definition of these changes as a problem in 1976 were the rapidity of the rise in numbers of cases pending at the end of the period depicted in Table 11-2 and the concomitant rise in the size of the jail population. It seems likely that without this latter increase, in particular, the court would have been submitted to or would have undertaken on its own a much more limited project.

The Jail Problem

In 1971, a suit was brought against the Wayne County Board of Commissioners on behalf of the inmates of the Wayne County Jail. One result of this suit was that a ceiling was placed on the jail population. Recorder's Court's response to this limit in 1971 was to sharply increase the number of defendants released on personal recognizance bond so as to keep the number of pretrial detainees below the jail limit (Fleming, 1979). After 1972, however, the proportion of defendants released on personal bond and the proportion of defendants making surety bonds decreased (The Recorder's Court, 1976).[3] The resulting larger proportion of defendants in jail before

trial coupled with more defendants awaiting trial brought the jail population over the ceiling on numbers of inmates in 1976.

When the jail population exceeded the upper limit, Wayne County was forced to house the excess prisoners in other facilities. To meet the cost of doing so, the County placed mandatory, fifteen percent savings requirements on all its departments. It was this fiscal drain that precipitated a crisis. The jail problem, one project staff member said, "kept everyone's feet to the fire." Although the jail problem was the impetus to action, most court participants believe that the immediate cause of the jail problem was a switch to a central docket in November, 1975.

The 1975 Change to a Central Docket

General beliefs about central versus individual dockets. Recorder's Court has operated under versions of both master and individual calendars in the recent past. (See Chapter 4 above.) The arguments for and against each in Recorder's Court are similar to those for and against master and individual calendars in other jurisdictions. Supporters of the central docket argue that the caseload is the entire court's responsibility. They say that, in meeting this responsibility, the central docket, by assigning judges to tasks at which they are efficient, allows the court to effect a division of labor that maximizes its output. The result is also fairer. As one respondent put it:

> (The central docket) allows everybody to do (his) best effort. In this way the cases move much more evenly, uniformly, because no case will get stuck on a bad docket. No case will be expedited on a good docket. (Those arguments) still make sense.

The central docket was also supported by judges who believed that it protects them from what they perceived as unfair criticism. For example, in 1974, while the court was under an individual docket, a judge who had just been criticized in the press for having one of the longest dockets on the court complained that "you work hard to do a good job and you still get criticized." The remedy suggested by the assistant prosecutor assigned to this judge's courtroom was "vote to return to the central docket at the next judges' meeting."

Opponents of the central docket argued that individual assignment is superior because "it gives you more accountability." The central docket was seen as allowing

less efficient, lazier judges to hide from public scrutiny. One judge described his experience with a central docket on another court by saying that "...you'll find those judges who'll pick out the kind of case that may have minimal legal issues and it goes on and on, and they leave the more difficult cases."

The court operated under an individual docket system from 1972 through 1975. Judges who had difficulty managing their share of the workload on the individual docket system, however, were falling further and further behind. As pending cases accumulated on their dockets, some judges began to perceive a court-wide backlog developing. Interest in changing to a central docket, which was always present, increased. In response, the bench set up a committee to study the advisability of returning to a central docket. The chairman of that committee, a judge who had been presiding judge when the court last used a central docket in 1971, said:

> (The central docket) is an effective mechanism for moving cases and I have the suspicion that it is the normal method of moving the docket. There was no particular reason for going to the central docket in 1975, except that we thought it would be a good idea. It had worked in the past...I was a strong advocate of the central docket system because it had worked. It had worked for me in the 71-72 period, while I was the presiding judge.

Another judge, when asked why the court had switched said, "Because we thought we could dispose of more cases that way. We actually believed that." And, the prosecutor quoted above said:

> Well, giving the judges the benefit of the doubt, I think they were concerned that there was what they perceived to be a developing backlog and they...combined that with the feeling that the central docket would make use of the efficiencies of the most efficient judges and would not result, as the individual docket did, in a backlog for individual judges.

Other court participants, however, questioned the motives of those who supported the central docket.

> Some judges were really so naive or so foolish that they didn't realize what was going to happen. Other judges knew what was going to happen but didn't care. It was almost like, "Let's do it this way and I don't care how bad it is, at least the onus—the responsibility—will not be on me.
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> ****
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> ...the hidden agenda, I think, in the minds of at least 10 out of 14 for going for it was "I've really had it with this individual docket, the accountability and the pressure is getting to me and I don't want to work this hard. I would love to be back in the central docket days; I don't want to work anymore. Put it to me whether I'm going to or not, I shall not."

One observer from the prosecutor's office described the division of opinion on the court as:

> ...five or six judges strongly for an individual docket and five or six strongly for a central docket and the rest of them somewhere in between waltzing around. And, generally, the best producers were for the individual docket and the worst producers were for the central docket.

The bench took several votes on whether to return to a central docket. The supporters of the central docket eventually won, and in November, 1975, the Supreme Court agreed to allow the court to change to a central docket.

Opposition to the central docket. The final vote on a central docket left a minority of the judges in outspoken opposition. These judges predicted that the central docket would not succeed and would, in fact, result in a larger backlog. So sure were they that the central docket would fail that one proposed an amendment to the change that said that, if the court returned to an individual docket at some future date, each judge would be assigned the proportion of the cases he had when the court switched to the central docket. The amendment passed.

The Wayne County Prosecutor's Office under William Cahalan opposed the court's change to a central docket. The prosecutor's office's opposition was so deep-rooted that, when the central docket passed, there were those in the office who urged that the Prosecutor scuttle the central docket as quickly as possible by assigning assistant prosecuting attorneys to cases rather than to courtrooms. These sentiments did not prevail (the Prosecutor assigned one attorney to each courtroom and assigned a squad of attorneys to prosecute especially serious and complicated cases), but the Prosecutor's arguments to the Chief Judge of the Supreme Court against allowing Recorder's Court to return to a central docket had been so vehement that the Supreme Court sent an outside administrator to aid in the transfer to and operation of the central docket. This administrator became the Supreme Court's monitor of the operation of the central docket in Recorder's Court. In the words of one administrative level prosecutor:

> It's not that there was any distrust on the part of anybody, but I'm sure that there was a sense that the prosecutor's office might be obstructive in terms of the return to the central docket. I think that the Supreme Court wanted to satisfy itself that we would be blameless, if those things that we said would occur, actually did occur. So, the Supreme Court's monitor was here...all during the time of the central docket.

Operation of the Central Docket

Recorder's Court's central docket was a master calendar with some elements of an individual docket system. Under it, all defendants were arraigned on warrants before a single judge — usually the Presiding Judge, but sometimes a visiting judge. Preliminary examinations were held in two courtrooms staffed either by regular Recorder's Court judges on month long tours of duty as examining magistrates or by visiting judges. At the conclusion of the preliminary examination, there was a blind draw that assigned the case to a judge for pretrial matters. (Even under the central docket, then, there was a blind draw and assignment of a case to a specific judge's docket for part of its history.)

The pretrial judge had responsibility for hearing any motions in the case, overseeing plea negotiations, and generally preparing the case for trial. If the defendant decided to accept a plea offer, he was to plead before the pretrial judge. When all pretrial motions had been heard and the case was prepared for trial, the pretrial judge signed a "Ready for Trial Certificate" and sent the case to the central docket. Once the case was on the central docket, it went to the Case Assignment Officer who assigned a trial date. On trial day, the Presiding Judge (formally) and the Case Assignment Officer (actually) sent the case to a specific judge for trial.

Problems with the central docket. In actual operation, the central docket had a number of problems. First, the Presiding Judge's courtroom was chaotic. All attorneys, defendants, witnesses, and other interested parties for all cases scheduled that day assembled at nine o'clock in the Presiding Judge's courtroom to wait for their assignment to a judge for trial. A defense attorney described it by saying:

> You just couldn't believe it...They should have had movies of it. It would have been worth it...We'd have fifty or seventy-five cases scheduled for the day. At one time we had one of the judges presiding (who would) lock the door... The court would be open from eight-thirty to nine and then he'd lock the door. If you were out in the hallway, you couldn't get in. So he's screaming, "Where are you?" And you're in the hallway beatin' on the door and you can't get in. All these witnesses are out there. And, finally, it got to the point, where, if you didn't want to try your case that day, you would stay out in the hall. Pretty soon there were more people in the hallway than there were in the court... I hadn't been out of law school that long. You're filled with the idea of all this dignified practice and then you're out there beatin' on the door.

Besides confusion and lack of dignity, court participants generally believed that the central docket caused more defendants who intended to plead guilty to postpone their pleas until trial day. This practice not only increased case processing time in these cases, but made all trial dates less certain necessitating multiple appearances by defendants, witnesses, police officers and other interested parties. Defendants postponed their pleas because the central docket increased the opportunities for finding a judge before whom the defendant could get a favorable disposition. The Case Assignment Officer described defense attorneys' strategy by saying:

> It depended on who the judge was. If they got their plea judge (that is, a judge before whom they would like to plead), bang! It would go because they might not get him again. They had three shots under the central docket — the pretrial judge, on trial day before the Presiding Judge, and at the trial.

A defense attorney agreed.

> If the judge was willing to give a plea to a misdemeanor and probation, then you could plead right away — and, of course, if I'd determined that my defendant didn't have a good defense. But, for the defendant who couldn't do well now, it had to be more favorable down the line... Eventually, he can get a dismissal or a misdemeanor or a felony with a promise of probation.

Defense attorneys did more than simply trust to luck that the assignment to a trial judge would be a good one from their point of view. They used knowledge of judges' reputations, friendships, and past and future favors as resources to influence the assignment of the case to a specific trial judge. Judge shopping was endemic to the central docket. The Case Assignment Officer spoke only semi-tongue-in-cheek when he said:

> I drove the same old car the whole time. I could have made a fortune in this position... If an attorney came in and whispered in my ear that he had a jury trial with 15 witnesses, but said that he could plead, if he had Judge X or Judge Y, I'd get him X or Y. I got rid of a lot of cases that way. With that volume, the lawyer has you at his mercy.

Even if a defense attorney believed that postponing the plea offered no advantage to his client, the client may have been reluctant to plead early. A defense attorney with a large Recorder's Court practice told us that the court gained a reputation for slowness among the defendant population. Defendants knew that pleading guilty immediately wasn't their only alternative. A defendant might have to plea eventually, but he could postpone that day. Such knowledge may have made it more difficult for defense attorneys to persuade their clients to plead guilty before trial day.

A final reason for postponing guilty pleas was that, without the responsibility for trying those cases in which the defendant did not plead, judges may have offered fewer inducements to plead at pretrial. The Chief Judge made this point with respect to the central docket.

> Under a central docket a judge is not active (in plea bargaining) in that he's not going to be stuck with the case. There's no reason why he should be, you see. One of the most difficult things that a judge does is not in the trial stage, but in the pretrial of cases. The risk that a judge takes on his reputation —his political reputation — and everything else is in the pretrial stage. When I decide to take a reduced plea and give a sentence bargain, that is when I lay myself on the line for criticism. And, certainly, judges like to be without criticism as much as possible.

The problem of finding judges to try cases also hampered the operation of the central docket in Recorder's Court. Although a central docket should be able to make good use of the court's trial time by efficiently assigning cases to judges, the ability to do so depends on whether a judge can be found to try the case. For reasons discussed below, it was difficult to get some judges to accept cases. The Supreme Court's monitor of the central docket in Recorder's Court described the problems of the Case Assignment Officer in this regard.

> (He) went around the courthouse on his knees... Of course, there were some judges that tried very hard to move the cases as rapidly as possible and call down to G-2 (the Presiding Judge's courtroom) to get another one as quickly as they could. They soon gave that up upon seeing that judges were hiding behind their clerks... It was impossible for a senior-type clerk to get a straight answer from a courtroom clerk.
>
> "Is your court available?"
>
> "Well, I don't know."
>
> "What would it take to find out? If I give you fifteen minutes could you ascertain the status of your courtroom?"
>
> "I'll call you back."
>
> If the judge says he's got to write a couple of opinions, he's hiding out. Or, "We're not quite done, we've got a jury deliberating." Some judges would take another case with a jury deliberating, some not. "No, I'm not going to take another case, it's already two-thirty."

In its year of operation, then, the central docket was plagued by undignified and confusing proceedings, postponement of pleas until the date of trial, and reluctance of judges to try as many cases as they could. As a result of the second and third of these problems, the number of cases pending rose forty percent during the period of the

central docket. In the next section, we turn to what court participants believe to have been the underlying causes of these problems, that is, the absence of strong leadership and a willing bench.

Causes of central docket problems. When the court changed to the central docket in 1975, the bench was badly divided. This division was reflected in the election of the office of presiding judge a senior judge who was near retirement and in poor health.

> (The presiding judge) was selected because he was the judge least likely to exercise the powers of a presiding judge. If there had been someone less likely, he would have been elected.

Without strong leadership, the success of the central docket depended on willingness of the judges to make it work. The central docket, however, made it easier for every judge to "avoid making the hard decisions" required to dispose of an individual share of the docket of 500 or more felony cases. A judge illustrated what he meant by the hard decisions by saying:

> If you look at the totality of your docket and say, "These fifty cases are the most important and I'm not offering any plea or any sentence on these and they are going to trial and, consequently, on these others I will offer any inducement necessary in order to get a plea" — trying to keep in mind that there are certain limitations that you will feel with them, then you are acting responsibly. Except, again, you are risking some bad publicity.

The central docket removed the pressure to make these decisions. Instead, judges could say, as another of our respondents characterized them as saying, "Look, I am a judge. I have been elected to try cases. Send me a case. That is all I want. That is all I am going to do."

As we said above, judges who had supported the central docket were accused of voting for it so that they could avoid pressure to dispose of cases. Judges who had opposed the central docket, however, were accused by their colleagues and others of slacking off once the central docket was adopted. The motives of these latter judges were said to be variously a desire to destroy the central docket, frustration, and unwillingness to accept more than their fair share of the work and risk. The comments quoted below from the Supreme Court's monitor and from two judges, respectively, illustrate that perception.

> The judges that had the desire to work and had the capacity sat on their hands pretty much. They wanted the central docket to fail. They were unhappy about having less productive judges foist cases on them, encroaching on their leisure, trying to harness their productivity for the good of the order against their will, so they ensured there was no excess

> productivity on their part.
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> Some of the other, more ambitious judges finally adopted the attitude of "What's the use? It doesn't pay to carry more than your fair share of the load because the others just don't care."
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> ****
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> About five or six of the really heavy producers...had to put out. The average number of cases was somewhere around 550. We had to put out close to 900 as fast as we could. We were also the ones opposed to the switch. Sure, we started saying, "Well, wait a minute now. You want us to help you out and carry most of the load because we're fastest, then you have to go with our system."

Supporting evidence for the contention that the most productive judges slacked off under the central docket can be found in a comparison of their share of dispositions under the individual and central dockets. The share of dispositions of the five most productive judges shrank from thirty-five percent of all dispositions, approximately 3,860 dispositions, in 1975 to twenty-nine percent, approximately 3,180 dispositions, in 1976. (Michigan Supreme Court, State Court Administrative Office, 1977a.)

Responses to Problems in 1976

One of the earliest responses to the difficulties experienced under the central docket was a proposal by the Supreme Court's monitor through the Regional State Court Administrator's Office to create a special pretrial screening unit. This unit was to be composed of judges before whom defendants were most likely to plead guilty, that is, judges who were light sentencers or skilled negotiators. The Supreme Court's monitor hoped that the plan would save the central docket by taking advantage of the ability of this group of judges to dispose of cases. The judges selected for the pretrial unit were, however, unwilling to serve, and, as a result, the plan was dropped.

The response of the judges themselves to the problems of the central docket was mixed. By the summer of 1976, the judges, who had been divided from the beginning over the idea of a central docket, were "at each other's throats." While some judges were arguing to the Supreme Court that Recorder's Court and, therefore, criminal justice in Detroit was in crisis, others contended that the rise in numbers of cases pending was temporary and due to an increase in crime in the city rather than a failure of the court. The first group countered with the argument that crime had increased, at least partially, because the court was not performing its function. Likewise, while one group contended that the jail population problem was a result of the failure of the

court to dispose of cases, the other group contended that the jail problem was a result of deficiencies in the county jail and should be remedied by building a new jail. A judge commenting on the depth of the division of the bench said:

> We were at the point where we had something like 6,000 cases backlogged and the top was about to blow off the building. The chief judge at that time...was walking around telling everybody how wonderful everything was and how beautifully everything was working... And, in reality the situation was such that it was going to end up in a conflagration in this court if not in the city of Detroit.

Throughout the summer and early fall of 1976, representatives of the State Court Administrator's Office, the Criminal Justice Coordinating Council, and the Wayne County Prosecutor's Office met to discuss what needed to be done. A general agreement emerged from these meetings that the court should return to individual dockets and that there should be some administrative reform, although exactly what the administrative reform should include was not determined.

By Fall, 1976, it became apparent that some changes including, at the very least, a return to individual dockets would be made. In anticipation, judges began informally to remove themselves from the central docket by scheduling new pretrials for those cases for which they had been drawn as pretrial judge, under the (correct) assumption that, once the court reverted to individual dockets, central docket cases would be assigned to the trial docket of the judge who had been drawn as pretrial judge. The Supreme Court's monitor said:

> ...in October or November, there were judges (who) were literally going down to the file room and directing (clerks). "Do you know who I am? Do you know how to find my files? Get every file that belongs to me and send it to my courtroom." So the judges were walking out with two or three hundred file jackets, stacking them on the couch in their chambers, and telling their clerks, "Let's get these cases in for a re-pretrial, find out where they stand. Let's start moving the docket again."... And, of course, they were not about to touch anybody else's cases.

At this time, Recorder's Court judges made efforts to indicate their ability to extricate themselves from their problems. First, they voted to adopt individual dockets once again. (A number of judges and other court actors have pointed out that the size of the pending caseload began to shrink almost immediately). Second, two judges, Judges Gardner and Connor, also proposed a plan by which Recorder's Court itself could clear the docket, but because the Supreme Court had determined to intervene directly, their plan was rejected.

Problem Definition and the Nature of the Solution

The experiences of Recorder's Court under the central docket are reflected in the project's emphases on accountability, leadership, and long-term change in Recorder's Court. First, the State Court Administrator's Office (we mention the State Court Administrator's Office specifically because the grant proposal was written from there, but the belief we describe was held more generally) believed that, in considerable measure, the problem lay in the motivations of the judges. Hence, the project empahsizes increasing accountability. Individual dockets, of course, were seen as a means of increasing accountability, but also, in the operation of the project, attention was given to more direct and immediate rewards and sanctions to individual judges.

Second, there was belief in a need for strong leadership. This belief arose both from distrust of the judges on the Recorder's Court bench and from the experience under a weak presiding judge in the immediate past. To meet this need, the Supreme Court responded in two ways. For the long term, the Supreme Court promulgated a new court rule that created the position of Chief Judge and gave the occupant of that position broad caseflow management responsibilities and powers (Michigan, GCR 925 as amended Octoer 11, 1977). For the short term, the Supreme Court appointed a Special Judicial Administrator. The grant aplication says the Special Judicial Administrator would provide a role model for future chief judges. The informal language that court participants used in describing what the Special Administrator's job was to be, however, was much more descriptive. Said one prosecutor, "We had to have a czar, someone who could walk in and tame them with a cap gun and a chair."

Third, the grant proposal reflects the strong sentiment from the Wayne County Prosecutor's Office, in particular, that this project should not be "just another crash."

> A crash program comes in, you bring a bunch of visiting judges in...they get rid of cases. We know that most of the time they're cleaning off the easier cases anyway by handing out wholesale probation...there are no administrative reforms made, and, then — a couple of years later — you are right back in the same situation.

Although the project implemented in Recorder's Court was a crash program, certainly, with large numbers of visiting judges and intensive plea bargaining to dispose of old cases, planning was also explicitly included as were training sessions for judges and clerks, a case tracking system, and other elements intended to maintain the short term gains of the crash program.

DELAY REDUCTION IN RECORDER'S COURT: ELEMENTS OF THE INTERVENTION

The Special Judical Administrator

Changes in Recorder's Court intended to reduce numbers of cases pending and case processing time began in November, 1976, with a vote to return once again to an individual docket system. Psychologically, however, the crash program began on January 12, 1977, with the Michigan Supreme Court's appointment of T. John Lesinski, a former lieutenant governor and former chief judge of the Michigan Court of Appeals, as Special Judicial Administrator.

Judge Lesinski's qualifications for the position were his reputation as an administrator while Chief Judge of the Court of Appeals, the personal confidence justices of the Supreme Court had in him, and his proven ability to raise funds. An administrator in the Prosecutor's Office said of the choice,

> We needed a czar. Preferably, he should be a judge or have judicial experience so that the judges would not have the ordinary relationship they have with the administrator, and he must have the full confidence of the Supreme Court. And, once we said all of that, somebody said that sounds like T. John Lesinski, and that was who they finally appointed.

In addition to his formal qualifications and relationship with the Supreme Court, Judge Lesinski is a man of imposing appearance and personality. He has a forceful, irreverent style with a strong sense of drama.

These formal and informal qualifications were apparent in his marshalling of the support of the Wayne County Board of Commissioners. Judge Lesinski appeared before the Board of Commissioners the day after he was appointed to ask for sixty thousand dollars operating capital for his first two months as Special Judicial Administrator. He received it (along with an ovation) on the same day.

The Special Judicial Administrator became the project director of Courtflow I, an umbrella grant that included subgrants to the court, probation services, prosecutor, and sheriff. Not only were court resources increased, therefore, but those of other agencies as well. Although the idea of an umbrella grant may not have originated with Judge Lesinski, the occupant of his position was probably the only person who could have served as project director for a grant that spanned several criminal justice agencies. In addition, a single grant with subgrants increased the Special Judicial Administrator's power with respect to other criminal justice agencies. For the duration of the project, Judge Lesinski became a criminal justice manager.

Docket Control Center

A second major element of the project was the creation of the Docket Control Center. In the earliest days of the project, the staff of the Docket Control Center sorted pending cases to prepare special dockets for visiting judges and began to assemble those statistics of courtroom performance that would allow the Special Judicial Administrator, through the Docket Control Center, to monitor performance and progress. "Docket analysts" were hired and assigned to each floor of courtrooms to collect the necessary statistics. For the four or five judges on the floor, the docket analyst reported the hours the courtroom was in operation ("bed checks" were taken in the morning, after lunch, and at the end of the day), the disposition of all cases set for trial (i.e., trial, dismissal, continuance, or plea), and the numbers of active cases. As the project progressed, the docket analysts helped the judges and their clerks prepare dockets that conformed to the ninety day track developed in the Docket Control Center. In addition to providing information to the project staff, these statistics were used to motivate judges and to instruct judges and clerks. These uses are described below.

The Supreme Court's monitor of the central docket became Director of the Docket Control Center. The rest of the staff was hired with project money from people outside the court. Bringing in people from outside the court meant that, unlike other court or Clerk's Office employees (especially courtroom clerks), the Docket Control Center staff had no established loyalties to judges or other court actors. They were, therefore, willing to report on the performance of judges. (After some months assigned to a particular floor, however, one docket analyst reportedly began to protect "her judges.")

Docket Prosecutors

One of the last changes under the project was the creation of the position of docket prosecutor and consequent reorganization of plea bargaining by the Prosecutor's Office in December, 1977. Prior to that date, plea negotiations between the prosecutors and defense attorneys were centralized in the Prosecutor's Office. All negotiations were handled by three senior assistant prosecutors. (See Eisenstein and Jacob, 1977, pp. 131-132.) The new system decentralized plea bargaining to the courtroom floors. A docket prosecutor was named for each floor of courtrooms. The

Docket Prosecutor had responsibility for plea negotiations for all cases assigned to the four judges (on some floors five judges) on his floor. He also had some supervisory authority over the trial courtroom prosecutors on his floor.

Administrators in the Prosecutor's Office believed that this reorganization increased their ability to monitor the caseflow and to aid judges in the management of their dockets. In particular, they felt that the presence of a docket prosecutor on each floor helped them to influence judges to enforce plea cut-off dates, which they regarded as essential to docket management.

Visiting Judges

The fourth major element of the project was the massive use of visiting judges to supplement Recorder's Court's twenty judge bench.[4] Visiting judges were drawn from among judges currently sitting in other jurisdictions, retired judges, and former judges. At the beginning of the crash program, the Regional Court Administrator simply assigned judges from the Wayne County Circuit Court and from other jurisdictions to serve in Recorder's Court. In general, he tried to choose judges from urban areas. (No judges were assigned to Recorder's Court from neighboring Oakland County, however, because that jurisdiction was hard-pressed to maintain its own docket.) As the project progressed, however, the Regional Court Administrator ordered fewer judges to serve in Recorder's Court and relied more on volunteers. Estimates of exactly how many judges were hearing Recorder's Court cases varied, but at the peak of the crash program in the spring of 1977, there were as many as eighteen visiting judges handling Recorder's Court business at any one time.

Assignments. Most visiting judges handled misdemeanors and the preliminary stages of felony matters; they authorized warrants, arraigned defendants on warrants, and conducted preliminary examinations. Visiting judges sat in felony trial courtrooms for vacationing and ill Recorder's Court judges. They also heard cases from the dockets of Recorder's Court judges who were involved in long, complex trials. Seven visiting judges from the Wayne County Circuit Court, however, heard a special docket of old cases with bailed defendants. Regular Recorder's Court judges, for the most part, heard newly initiated cases and old cases with jailed defendants.

Strains caused by visitors' presence. The use of large numbers of visiting judges created problems in Recorder's Court. The number of judges made it difficult for the Prosecutor to adequately staff all of the courtrooms and prepare cases, despite the addition of new courtroom prosecutors under the grant. Staffing difficulties were due to lag time in hiring prosecutors and to the fact that new staff members required some period of training and acclimatization before they became as productive as the veteran staff. Administrators in the Prosecutor's Office also said that more visiting judges than were first planned for were assigned to Recorder's Court. In fact, the fear of being innundated with work had made the Prosecutor's Office initially hesitant about the advisability of using any visiting judges at all. The Chief of the Trial and Appellate Division of the Wayne County Prosecutor's Office said:

> I realistically knew, given the docket that we had, that we did need some additional support and finally I talked (the Prosecutor) into conceding — very grudgingly saying, "O.K. Five or six at the maximum." Well, the next thing we knew, we not only had a czar, we were operating routinely with thirty-four and there were as many as thirty-seven judges at one point. They'll deny it here. They'll say they never had that many, but they did... Instead of saying five or six, I should have held with none and then maybe we would have had thirty. Once they saw a breach, they just ran with it.

Notwithstanding the complaint that there were more visitors than they anticipated, the prosecutors contend that they were, by working long hours, able to carry out their function in the short run. Courtroom prosecutors tried cases all day and prepared the next day's cases in the evening. Those cases that the prosecutor's office regarded as most serious were prosecuted by the PROB Unit (the Wayne County Prosecutor's Career Criminal Program) or were assigned to individual prosecutors for preparation. The crisis atmosphere of the crash program made the administration of the prosecutor's office willing to ask for higher than normal levels of performance and the trial prosecutors willing to respond.

The use of visiting judges was also criticized on the grounds of competency and values. These criticisms were often intertwined, but the competency argument seemed to center around the visitors' lack of expertise in criminal law. Because their docket is purely criminal, Recorder's Court judges tend to believe that specialization gives them an expertise in criminal law and procedure that a judge with a purely civil or a mixed criminal and civil docket — especially if he is from a jurisdiction with relatively low levels of crime — cannot hope to achieve. The criticism of the values of visiting judges was sharper, but there was disagreement among those making the criticism about whether there was bias in their behavior and, if there was bias, on its direction.

The Recorder's Court bench, as we have noted, is elected by the people of the city of Detroit. The judges are residents of the city. Many court participants value the idea that Recorder's Court judges are and should be representative of the people who elected them. The use of visitors, who came mostly from outside the city and were not elected by the residents of Detroit, was therefore opposed on democratic grounds, regardless of the substance of their decisions.

In addition to not meeting a representative ideal, many critics claimed that because the visiting judges were from outside the city, the visitors had no stake in the welfare of the city. Consequently, they were willing to take orders. Since they saw themselves as having been brought to Recorder's Court to dispose of cases, they disposed of cases. They disposed of cases by giving out sentences that were, in the critics' eyes, unduly lenient. The comments of a judge and a prosecutor illustrate these sentiments.

> There was a visiting judge who had outstanding statistics for anyone who was crash program oriented. He might have disposed of more cases than anyone else. And the irony of it all is his real attitudes in terms of criminal defendants are incredibly harsh... But, when he came aboard during the crash program, he saw his mission to get rid of cases... So, you have right-wing Judge_____, hostile as hell to criminally accused people, coming over and literally giving the store away.
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> ****
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> Some were just bodies. I can't see how the statistics came out that there was more incarceration... Some atrocities were committed.

In contrast to the claim that the visitors were too lenient because they were following orders, some comments from court participants seemed to indicate that the speaker thought that the visitors were too harsh either because they were racially biased or because — coming from jurisdictions where every crime seems more serious because there is less crime — they applied a more severe set of sentencing standards than those normally in operation in Recorder's Court. The following comment from a defense attorney illustrates this position but also shows the way in which criticisms were only partially articulated and often intertwined.

> I don't think you should have old white men from the suburbs. They can't understand what's going on. It may be that under the crash program the amount of reversible error rose. They weren't familiar with criminal law. They just relied on the prosecutor.

If the visitors did not follow orders, that is, if they did not use dismissals and light sentences to dispose of cases, some claimed that visitors were sent back to their

home jurisdictions. Several people told the story of a judge from another city who refused to accept a sentence bargain negotiated by the Chief Judge and was quickly returned to his own court.

A project staff member contended that criticism of the visiting judges arose not from the substantive decisions of the visiting judges but from cultural differences in expectations about courtroom decorum.

> A factor that I feel strongly was involved with the judges and conflict with the bar (primarily the defense bar and to some extent with the prosecutor) was the level of decorum. Courtroom decorum in Recorder's Court is abysmal. It's worse than terrible. And, I think that a lot of attorneys were used to coming in their jeans, leaning up against the bench with one hand in their pockets, elbow propped up on the bench, and calling the judge by his first name. I think some of those people got jumped on by a judge who came down from Olympus to the bench for a very short period of time, then ascended. I think there was a cultural shock on both sides...
>
> A judge who was from Grand Rapids, and used to seeing three-piece suits, stuck up his nose in the air at someone who was flashily dressed — a black attorney in Detroit who has his elbow on the bench and wants to address the judge by his first name. (That attorney) may get an impression that this is a racist reaction (on the part of) this out-state judge.

In further defense of the use of visiting judges, this project staff member pointed out that the range of variation in the visitors' decisions (in the severity of their sentences and proportion of defendants bound over for trial) was within the range of variation of the decisions of the Recorder's Court bench itself. This project staff member also contended that most complaints about the quality of the visiting judges occurred in the second half of 1977 when the Regional Court Administrator began to rely on volunteer visiting judges instead of choosing those who would serve. But, he said, even then, the complaints were about individuals and not about the visitors in general.

In sum, the use of visiting judges almost doubled the size of the bench at times during the crash program. Their use meant that regular Recorder's Court judges could concentrate their efforts on new felony cases, while the visitors cleared old cases from the system and relieved them of the burden of misdemeanors and preliminary felony matters. Their use, however, put strains on the system because their presence meant an increased workload for prosecutors and because they may not have met local legal-cultural expectations. Court participants also charged that the decisions of the visitors reflected the requirements of the crash program rather than those of justice.

DELAY REDUCTION IN RECORDER'S COURT: OPERATION OF THE PROJECT

In this section we shall examine how the elements of the delay reduction program operated. Since project personnel engaged in a variety of activities and since non-personnel elements of the project (e.g., statistical reports) were used in a variety of ways, we shall organize this section by activities rather than by elements of the project. Even so, the categories of activities we use — coordinating meetings, re-pretrials of old cases, and attempts to change attitudes and behavior — overlap one another. These activities overlap not only because the categorization is one we have imposed on a complex set of interactions, but also because the project evolved over its history.

Coordinating Meetings

From the very earliest weeks of the project, representatives of criminal justice agencies with responsibilities in Recorder's Court met to coordinate their activities. The meetings, which were held daily in the first several months of the project and less frequently thereafter, addressed both the immediate problems of organizing the crash program and the issues of long-term change.

The project staff did not plan for coordinating meetings; they arose because the crash program created problems for other actors in the court. The genesis of the meetings seems to have been in the prosecutor's office. An administrator from that office recalled:

> ...they were moving cases all over the court and transferring them here and there, and we were really getting pissed because we couldn't keep track of cases... So, one day I went downstairs and talked with (the Regional Court Administrator) and (the Director of the Docket Control Center) and said, "Hey, this is ridiculous. If you want this thing to work you've got to get our co-operation. You can't get that by just running off and doing things by yourself. You've got to start meeting."

These actors agreed that meetings should be held. The three decided that representatives from the project, the prosecutor, the police, and the sheriff should attend. The administrator from the prosecutor's office went on to say:

> Well, there were two meetings, I remember. At the third meeting, T. John (the Special Judicial Administrator) showed up and sort of took over the meeting... So, all of a sudden, the meetings got moved out to T. John's office, and we started having daily meetings that would last from four o'clock to about seven o'clock.

As the meetings developed, they were chaired by the Special Judicial Administrator and were open to all interested in attending. The people who regularly attended were the administrator quoted above and the Chief of the Trial and Appellate Division of the prosecutor's office, the Chief Judge, representatives from the police and sheriff, the Regional Court Administrator, and the Docket Control Center Director. Other administrators from the prosecutor's office also frequently attended. After the crash program had been in operation for some time, the bar association of attorneys practicing in Recorder's Court sent representatives to present specific grievances, but no defense attorneys nor any judges aside from the Chief Judge were there regularly.

The meetings fell into two segments. In the first hour or so, those present tackled specific difficulties that had arisen during the day; the remaining time was devoted to a discussion of how to best organize and administer the caseload of Recorder's Court.

Problem solving. The meetings began with the Special Judicial Administrator polling those present for problems, the reasons for the problems, and suggestions for solutions to these problems. The Director of the Docket Control Center said, "the effectiveness came as an outgrowth of T. John's personal management style, which is *ad hoc* and right now." He went on to relate a typical exchange with the Special Judicial Administrator interrogating those present:

> "How about the courtrooms?"
> "Well, about nine o'clock we still had six courtrooms down."
> "What reason did you find?"
> "Four of the courtrooms were down because of prisoner delays — getting the prisoners over."
> "Lieutenant, why weren't the prisoners there?"
> "I don't know."
> "Well, you'll find out, won't you?"
> "Yes, I'll find out and report to tomorrow's meeting."
> That kind of...we're going to solve it right now, right there on the spot.

An administrator from the prosecutor's office described the first portion of the meetings by saying:

> The general format would be a polling of everybody. "Why didn't we get the jail prisoners over here?" "What about this courtroom?" "What about the police?" That would be first half hour with T. John barking orders; T. John playing to the crowd.

The meetings allowed the project staff to find out quickly about the problems that are certain to arise when the court resources (i.e., judges, courtrooms, police

assigned to the court and so forth) are increased to the extent that those of Recorder's Court were during the crash program and to find solutions to these problems. The format of the meetings also suited the Special Judicial Administrator's flamboyant style. It allowed him to instill and maintain a sense of urgency among the people represented and, through them, among the agencies represented. The probability of facing an interrogation by the Special Judicial Administrator also increased the motivation of these actors to acquire all the information they could and to straighten out those problems within their own control ahead of time.

Theory. The second segment of the meetings dealt with what kinds of long run changes needed to be made in Recorder's Court to prevent this crash program from becoming "just another crash." This portion of the meetings was devoted to theory and served the planning function described in the Courtflow I grant application. The chief theoreticians, according to a meeting participant, were the Special Judicial Administrator, the Director of the Docket Control Center, and the Chief of the Trial and Appellate Division of the prosecutor's office.

The prosecutor's theoretician at the meetings argued that a management system had to emphasize individual responsibility for the disposition of cases, which meant that judges should have individual dockets. Second, there had to be a reward for pleading (or, looked at another way, a cost for not pleading). And, third, the court needed to set specific time limits for events in the life of a case. All of these were central to the project as it developed. Prosecutors felt that it was at the meetings that their ideas about docket management were able to affect direction of the project.

The Director of the Docket Control Center believed that a central docket should work, other things being equal, but the disaster of the 1976 central docket convinced him that a central docket was not right for Recorder's Court now. Therefore, he supported the use of an individual docket. He also advocated modeling caseflow to develop individualized scheduling standards for different types of cases and increasing the use of statistical information for monitoring the court's performance.

The Special Judicial Administrator believed that a court's docket should be managed like a military campaign from a war room. In the early days of the project, the meetings themselves served the functions of a war room, but after the first month or so, the meetings decreased in frequency and length. The Docket Control Center

also performed some war room functions—for example, the creation of special dockets for visiting judges—but its work, too, evolved away from direct intervention into scheduling. The most fully articulated statement of the war room concept (including a magnetic board to display the activities of courtrooms) appears in the Courtflow II grant proposal, which was submitted in the summer of 1977 (Michigan Supreme Court, State Court Administrative Office, 1977b). The war room as envisioned in the Courtflow II grant application, however, was never implemented. Over the course of the meetings, the consensus of how to best manage the court's docket seem to have shifted away from the war room with its rapid transfer of cases toward the emphasis on individual accountability advocated by the prosecutor's office. In all likelihood, the prosecutor's opposition to these transfers of cases, because such transfers interfered with the prosecutor's ability to staff courtrooms rationally and to prepare cases, was influential in the shift.

Re-pretrials

The meetings served co-ordinating and planning functions, but they did not directly dispose of cases. Most cases that had been certified ready-for-trial under the central docket were disposed through re-pretrials. A re-pretrial was a conference attended by a judge, a prosecutor, and the defense attorney in the case to negotiate charge and sentence considerations for a plea of guilty, or, if no plea agreement could be reached, to prepare the case for trial.

Re-pretrialing was done for two sets of cases by two sets of actors. One of these, the "Lafayette Operation" (named for the downtown building in which the Wayne County Circuit Court is housed), re-pretrialed old cases with bailed defendants. Chief Judge Gardner and Special Judicial Administrator Lesinski conducted another set of re-pretrials in Recorder's Court itself for old cases with jailed defendants. These latter re-pretrials began several months after the Circuit Court program. Individual Recorder's Court judges also held re-pretrials for cases on their own dockets.

Circuit Court re-pretrials. The Lafayette Operation began in January, 1977, with a former Recorder's Court judge as director and six visiting Circuit Court judges as trial judges. The judge who directed this portion of the project was a Recorder's Court judge until 1976, when he was appointed to fill a Circuit Court vacancy. His

qualifications for the role of organizing the re-pretrialing of cases in Circuit Court were that he had consistently maintained a current docket in his years on the Recorder's Court bench and that he had disposed of a very high proportion of the cases assigned to him by guilty plea. In addition, he was, he said, "one of the judges most familiar with the computer and how to make it an effective tool of administration."

Because the project staff was eager to enlist this judge's aid despite his reluctance to participate ("I was never in favor of this program. I resented going back to clean up that court's problems...."), the judge was given autonomy in directing his portion of the crash program. He was also able to influence the prosecutor's office in the assignment of assistant prosecutors and the Regional Court Administrator in the assignment of visiting judges from Circuit Court and elsewhere to the Lafayette Operation.

The judge, a prosecutor assigned to assist him, and the head of the Case Assignment Office selected cases on which re-pretrials were to be held in Circuit Court from computer print-outs of regular Recorder's Court judges' dockets. The judge described the case selection process by saying:

> ...we identified what we considered problem cases. Those were cases that had been assigned to other judges, who, for one reason or another, were unable to make a disposition of them...we identified problem dockets (even problem judges) and we took cases...off their dockets that we didn't feel that they could make a disposition of, and, perhaps, we could.

Besides problem cases and dockets, the team of judge, prosecutor, and Case Assignment Officer used print-outs of cases by defense lawyer to find those lawyers with large numbers of open cases whom they suspected of using the excuse of scheduling conflicts to delay dispositons.

> (We) brought in three of them, (i.e., lawyers) who were real problem cases. Brought them in and announced that "you're going to trial." Then, they'd say, "We have all of these other trials." We cancelled all of their trial dates and gave them new ones and went through the pretrial of every case. And, then, we would assign them to a judge and back-to-back all of their trials right in a row.

Once appropriate cases were selected, the team transferred the files for these cases to the Lafayette Building and sent sternly worded notices to defendants and their attorneys directing them to appear for pretrial conferences on specific dates. They scheduled about twenty-five conferences for each day.

At the conference, the first question was whether a plea bargain could be reached; judge, prosecutor, and defense attorney negotiated both charge and sentence. If the defendant and his attorney decided to go to trial, the conference was used to prune witness lists, to complete discovery, to agree upon exhibits, and to dispose of any remaining motions, so that all that remained for the trial judge was to try the case.

The Lafayette Operation was originally scheduled to run from January through July, 1977. At the end of July, however, it was extended through December, 1977. The project staff believed that by extending the crash, including the use of Circuit Court judges as visitors, they could put the docket in excellent condition. The decision to extend the Lafayette Operation looked different from Circuit Court. The Circuit Court judges saw Recorder's Court's gain as their loss. The judge who head the Circuit Court program said:

> After July, I was dealing with brand new cases and I didn't think that given the condition of the Circuit Court's docket that Circuit Court owed any more obligation to Recorder's Court. And, I felt it should have been terminated then. It was extended for another six months because by that time everybody was basking in the spotlight of good public relations with the news media because the thing was working.

Outcomes of re-pretrials. Participants believe that most of the cases that were re-pretrialed in Recorder's Court and the Lafayette Building resulted in guilty pleas. A high proportion of guilty pleas from cases which had been set for trial on the central docket is not surprising, if, as the description of the operation of the central docket above would seem to indicate, asking for a trial date under the central docket did not really mean that the defense attorney intended to take the case to trial. Furthermore, most participants believe that the inducements offered for guilty pleas during the crash program were substantial. The judge who conducted the re-pretrials in the Lafayette Building said, "A lot of people received more lenient treatment than they were entitled to...." If the defendent chose not to accept the negotiated plea, his case was immediately set for trial. Except in unusual circumstances, these trial dates were real; defendants were not allowed to plead to lesser charges after the re-pretrial. As a result, most cases ended in guilty pleas. The judge said that some attorneys who usually avoided trials pled their entire caseloads and that "even with the others — with the trial attorneys — they would go (i.e., plead) about eighty percent."

Criticism. Massive re-pretrialing disposed of large numbers of cases for Recorder's Court rapidly, but the process was not without criticism. A general criticism of all re-pretrials, the two re-pretrialing projects and re-pretrials conducted by Recorder's Court judges on their own dockets, was that there was too much "wheeling and dealing." In a frenzy to clear the dockets, "the store was given away." Court participants who made this charge pointed to one or more egregious instances in which the critic felt that a judge imposed an unconscionably lenient sentence.[5]

Second, some attorneys felt that too much pressure was placed on defense attorneys to plead with repeated pretrials of cases. A Legal Aid and Defender's Society attorney said:

> When the crash program came in with Gardner and Lesinski re-pretrialing everything...you had to know whether it was really a trial. The defense counsel was forced to join a system of coercion when a case was re-pretrialed for the nineteenth time. Eventually Lesinski came to believe me that I knew when there would be a trial. Gardner didn't. He just kept pushing for pleas.

Another defense counsel (after being asked specifically whether there was pressure) said that "there were sporadic instances of clients subtly being coerced into pleading." These criticisms did not come from defense attorneys only. An administrator in the prosecutor's office said:

> ...tactics that were used created a pressure cooker to speed cases through. I'm talking about squeezing pleas — and that was particularly true in the Lafayette Building Operation (but) it was also true here. When you run people through a third and fourth pretrial conference, and you run it in front of T. John Lesinski and Sam Gardner, and you have attorneys lined up until six or seven o'clock at night in the hallway; that's too intense. But, then, there was a monumental job to be done.

Defense attorneys also said that re-pretrialing worked a hardship on them. They complained that re-pretrials were scheduled without regard to their schedules.

> There was not adequate notice of pretrial. Clerks called up without consulting your schedule. There was nothing to do but to be at Recorder's Court.

In addition, they said, that in most cases they did not receive adequate compensation for their time.

> It's a problem when you are assigned. At that time they were not paying for re-pretrialing.
>
> ****
>
> On retained cases, we were happy to re-pretrial, but on the other, we'd have to go down and weren't paid. You'd go down and there'd be ten attorneys waiting in line.

Some criticism was directed specifically at the re-pretrialing in Recorder's Court itself. The prosecutor's office opposed the involvement of the Special Judicial Administrator in the substantive decisions of the court. An administrator from the prosecutor's office said:

> (The Special Administrator) started getting very involved...rather than being a manager, (he) started taking pleas and all this other stuff and discussing things with the defendant and playing trial judge.

Finally, some judges complained that judges' sentencing discretion was threatened by sentencing agreements entered into by the Special Judicial Administrator and Chief Judge at the re-pretrials. For most cases, the negotiated plea consisted of a charge reduction and a judge before whom the defendant could plead. But, if the case was going to a judge before whom the attorney did not want his client to plead, a sentence was sometimes agreed upon and notification of this agreement was sent to the judge to whom the case was assigned. Judges protected their sentencing discretion in the face of commitments made by others by hearing the guilty plea but taking it under advisement until after having read the pre-sentence report. If the contents of the presentence report caused the judge to feel that he had to impose a more severe sentence than that agreed upon by the pretrial judge, he could allow the defendant to withdraw his plea of guilty. A visiting judge's outright refusal to agree to sentence commitments made by another judge, however, led to the visiting judge being sent back to his home jurisdiction within a week.

In sum, re-pretrialing was the major means by which Recorder's Court cleared its docket of pre-1977 cases. Re-negotiating cases before a few judges and pleading or trying them before visiting judges relieved the burden of cases from some Recorder's Court judges, enabling them to begin individual dockets on relatively equal footing with one another. Despite the criticism of the process, the overall belief seems to have been that some sort of crash program (like re-pretrials to clear old cases) was probably necessary.

Changing Attitudes and Behavior

Project personnel and other court actors participating in the project directed many of their activities toward changing the behavior of judges and, to a lesser extent,

clerks. Project staff and the Chief Judge tried to change behavior by rewarding and sanctioning performance directly. They also made the implicit assumption that changes in beliefs and attitudes about what should be done would result in changes in behavior. Accordingly, they tried indirectly to alter behavior by changing beliefs and attitudes. Some behavior (for example, the use of a plea cut-off date) was the target of both direct and indirect modification attempts.

Monitoring. If a change agent wants to increase the frequency of certain desired behaviors (or decrease the frequency of undesired ones), he needs to know the rate of performance of these behaviors. The staff of the Docket Control Center performed this monitoring function by checking whether or not courtrooms were in operation, compiling information on numbers of active defendants on each judge's docket, and constructing diagrams which showed the proportions of adjournments, dismissals, pleas, and trials for cases set for trial over two week periods. Another monitoring device was the requirement that the Chief Judge approve all continuances.

Collecting these measures of behavior not only provided information to the staff, but also influenced the behavior itself. Simple monitoring of the performance of a behavior can change its rate of performance. The monitoring done in Recorder's Court was conducted in a very public fashion so that the collection of the information in itself created the sanction; other court participants became aware of whether or not the judge was working. The collected statistics were available to anyone who wanted to see them. And, Docket Control Center staff prepared and posted graphs of each judge's caseload over the course of the project. Anyone who entered the office could trace the numbers of active defendants for an individual judge over time and could compare judges.

Rewards and sanctions. The Special Judicial Administrator used the information compiled by the Docket Control Center as the basis on which to distribute personal rewards and sanctions. He and other actors associated with the project directly rewarded and sanctioned judges to influence them to work more hours, to dispose of more cases, to grant fewer continunaces, and to schedule cases according to a case tracking system that included a plea cut-off date.

One means of sanctioning judges was to call the judge before the Special Judicial Administrator. Meetings with "problem" judges were arranged to discuss the reasons

for increasing numbers of pending cases or trial docket cases that weren't going to trial. The Director of the Docket Control Center said of judges who took trial day pleas,

> We would humiliate them for their pitiful docket. That was one of the things that we discussed with them when they were brought up on the carpet. "Look at your tree diagram. You take you pleas on trial day. You'll always have a bad docket when you take your pleas on trial day. You're a dummy. Go and sin no more."

It was also not uncommon for the Special Judicial Administrator to visit courtrooms on his way to his office. Court participants said that he was not only adept at verbal sanctions, but that he knew how to praise as well. That this personalized style of rewards and sanctions was used was no doubt a function of the personality and status of the Special Judicial Administrator.

In two or three cases, more severe sanctions were imposed or at least threatened. Several judges were threatened with transfer to other courts. One such threatened judge is reported to have replied, "Please, send me." No one was actually removed although the Supreme Court did order the transfer of one judge to another court. The affected judge, however, had a strong political base and was able to resist the attempt. The incident demonstrated some limits to the Special Judicial Administrator's power. The Special Judicial Administrator, however, has since contended that he would have succeeded, if he had waited until he had more fully documented the evidence of what he says was this judge's failure to work.

Attempting to change behavior by means of negative sanctions may result not in change toward the desired behavior, but rather in behavior designed simply to avoid the imposition of the sanction. There is evidence that the use of sanctions produced avoidance behavior. For example, judges resented "bed checks" on working hours. Some judges were on the bench by the prescribed time in the morning, but left shortly after the Docket Control Center's check of their presence. According to Docket Control Center staff members, one judge scheduled trial dates for cases that he knew would be guilty pleas so that his schedule would show that he would be in trial. On the trial day, the defendant plead guilty as expected, and the judge was free.

Besides generating avoidance behavior, direct negative sanctions may have only transient effects on behavior. Old behavior patterns may re-assert themselves once the sanction is removed. In the Detroit project, many of the sanctions depended on the personality and authority of the Special Judicial Administrator. A Docket Control

Center staff member, who was with the project from the beginning, believes that after the Special Judicial Administrator left the court the sanctions had less meaning. This staff member reported that, although the Docket Control Center staff still monitors the amount of time courtrooms are in operation, judges have become much more lax about arriving on time. When the Special Judicial Administrator was in the court, judges preferred to be in their courtrooms, if he should happen to drop by. Now, there is no such sanction. Although the role of sanctioner could devolve on the Chief Judge, court observers worried that a chief judge could not be as effective because he must, necessarily, remain a colleague. They believed, furthermore, that for anyone who cared whether or not he was liked, the role of sanctioner is debilitating.

Attempts to change attitudes and beliefs. If a change agent can alter an actor's beliefs about what should be done, the probability that the new behavior pattern will be maintained is increased because the individual is more likely to reward himself for doing what he believes he should do. In Recorder's Court, attempts were made to increase judges' "docket consciousness," that is, to convince them that they needed to be actively involved in plea negotiations and that a pure trial docket was essential to achieve a docket with a small number of cases pending.

The term "docket consciousness" is used frequently in the court, but there is a variation in how much the term is meant to encompass. At its narrowest, the term is used to mean that the judge is aware of the size of his own docket of pending cases and has some sense that it is important to manage the flow of these cases through his courtroom. One indicator of a judge's docket consciousness was his knowledge of and understanding of the existence of information about his docket, especially of the "CR 6," a printout of the status of all active cases assigned to him. An administrative level prosecutor said:

> It sounds remarkable today because judges are almost all docket conscious today. But at that time, (i.e., before the delay reduction project), even though they had the computer system here, there were probably half the judges on this court who didn't even know what a CR 6 was... In fact, fifteen of the twenty never looked at one single report produced by the computer. And, I know that we had three or four judges halfway through the crash that still never looked at one. So, the fact is that there were some judges who simply had no awareness whatsoever — of any kind — of an administrative system for handling the caseflow.

At other times, however, when this prosecutor and others spoke, they gave the term broader meaning. A judge who was docket conscious was one who looked at the

cases on his docket as a group and decided how the group of cases should be handled. The quotations below, one from a prosecutor and one from a judge express the sense of seeing the cases in relation to one another.

> You have to make decisions. You probably were not elected to engage in plea bargaining and sentence bargaining... But it is part of the whole need and necessity for judges to make decisions. You have to look at your cases and say, "I can't try this larceny in a building, if I'm going to try this murder one, this felony murder in the course of a robbery. So what do I do here? I'm going to have to get a plea in this larceny." Now, I always say "with certain limitations," because you have to also — there are going to be some larcenies you are going to have to try just so nobody ever gets the idea that there will never be a trial on those cases.
>
> ****
>
> If you're going to be realistic about an administrative system for disposing of cases, you have to understand that you're talking about whatever limited trial time you have. And, if you don't want a backlog, you ought to pick out the cases that you know you want to try, or that you have to try. And, then, find a way of disposing of all the rest. And it's as simple as that. Things don't work like magic. You get what you pay for... Those are very refined judgements, and, obviously, it doesn't add up to one plus one equals two. But, you hope that it works — roughly ten cases can be tried by this judge during the month and the other whatever have to be disposed of in another way.

Running through both these comments is the sense of limited resources and the necessity of judges having to conserve those resources for those cases that most require them. The need to do the best one can within constraints imposed by limited resources is also revealed in the Chief Judge's description of a counselling session with a new judge on the court.

> I had to talk to (a judge). (This judge) is a little conservative about some things here. But this is the track and you've got to work this track. "Fine, you can have some ideas that are just super, but I think you are going to have to go to the Upper Peninsula to do it."

He went on to say of another judge:

> That's (a judge's) problem. He is one of the hardest working judges here. He wants to try the perfect case, and the problem with trying the perfect case, (is that) if he does that, somebody else is going to have to move his docket.

A judge who was a strong critic of the entire program saw the same thing from the opposite point of view.

> There was a time when they kept statistics on number of days in trials. That's not kept any more. No judge has a higher number of days in trial. Now it's which judges have the highest disposition rate. There's nothing left to art or craft.

Besides increasing docket consciousness, the project staff tried to convince judges to adopt a "pure trial docket." The pure trial docket, that is, a plea cut-off

date and no pleas to reduced charges or sentences offered or accepted after the plea cut-off date, was not new to Recorder's Court. While the court was on the individual docket from 1972 through 1975, judges who were most successful at managing their dockets maintained more or less pure trial dockets. The prosecutor's office had long advocated their use. When the case track was set up in July, 1977, it included a calendar conference at which a plea offer would be made and a final conference. The defendant was given until the final conference to decide on whether or not to plead guilty to the negotiated plea.

To convince judges that they should adopt the pure trial docket and to make them more docket conscious, project personnel attempted to demonstrate that to behave in a specific way was instrumental to achieving desired goals. For example, with respect to the pure trial docket, project staff tried to illustrate that enforcing a plea cut-off date helped judges move up in the ranking of judges by pending caseloads. This ranking, called the "hit parade," was distributed to all judges and to administrators every two weeks. Each ranking shows the judge's current rank and his or her rank on the last hit parade.

The Director of the Docket Control Center took special pains to give individual feedback to judges. In his estimation, preparing and using visual aids was especially important.

> You cannot produce paper reports. You've got to give oral reports. If you want to sensitize them to the quantitative indicators of their performance, you've got to make the lines big and simple...largely (it) was a matter of answering their questions...by grabbing their elbows and taking (them) to a chart. "How is it going?" Show them a number. Don't say, "Fine;" show them a number.

Docket Control Center staff were not the only ones trying to change judges' beliefs and attitudes. The Chief Judge spent and continues to spend time talking with judges about their philosophies of plea bargaining and case management. With respect to pleas, he argues that judges should be active in the process. With respect to case management he argues that "the earlier you take the plea, the healthier your docket" and that "the system has to push the plea forward." The Docket Control Center Director and the Chief of the Trial and Appellate Division in the prosecutor's office also supported these positions. The Director of the Docket Control Center said of their efforts:

> ...he and I together were the joint proponents in the whole courthouse saying, "Hey, you've got to get certainty on trial date or you're going to have wasted time on trials; judges sitting idle. Judges that sit idle will over-schedule. Judges that over-schedule will lose credibility."

Skill development. Not only did these advocates of docket management exhort judges and their clerks to change their beliefs and, presumably, their behavior, they also tried to aid the judges in changing their behavior by preparing forms for them that showed scheduling dates that would meet a ninety-day track for trial cases. Training workshops were held for judges and their clerks on case scheduling and on the use of the newly developed forms. The Chief Judge attempted to increase the skills of interested judges in plea negotiation by having them sit with him as he pretrialed cases.

> (A judge) had problems about moving the docket until we had a long talk about sentence bargaining and the whole plea bargaining concept. (The judge) sat in and watched me do it several times and...caught the knack. And, when (the judge) got the knack, (he) started moving the docket.

Success in changing attitudes and behavior. How successful were the efforts to teach judges new behaviors, to change their beliefs about what their behavior should be, and, in general, to change their behavior? In some instances, as in the example of the judge who sat in on pretrials with the Chief Judge, court and project participants agreed that there had been changes in behavior. The Docket Control Center Director said of this judge that:

> (One judge) found out there were a lot of things he was doing wrong, that made (him) a low disposer. Now, whether (this judge) is a good or bad judge, I don't know about that, but give (this judge) cases and (he'll) shovel them out the door. (The judge) learned...what plea and sentence bargaining was all about.

A consensus exists, however, that not every judge changed. Many judges remain willing to take pleas on trial day. They feel that a plea cut-off date is an incursion into their discretion. One judge, in particular, is often pointed out as disagreeing philosophically with giving a reward for pleading or a punishment for not pleading. The reputation of this judge is that he will not sentence any differently for going to trial or for pleading. Since he is one of the lightest sentences on the bench, few defendants on his docket plead (although defendants from other dockets prefer, if they can manage it, to have their cases transferred to him for pleas). As a result, he has one of the highest total of dispositions on the court even though his own docket is slow. Although attempts to change this judge's beliefs and behavior were generally unsuccessful, he was said to have learned how to use administrative information, even if it wasn't to the ends the project staff desired. The Docket Control Center

Director said:

> (He) had a growth in understanding — very clear, unmistakable growth in understanding. (He) was obstructionist from day one; the more he understood, the more he obstructed. It became more knowledgeable obstruction. He would say "...Where's that damn chart?" You know, the one that makes my point. Where's that damned chart?"

Finally, there are one or two judges who did not change their behavior to conform to the ninety-day track, but who managed their dockets so well that no one bothered them. These were judges who had always had very small pending caseloads. They have been allowed more scheduling flexibility than other judges. The Chief Judge's comment about one of these judges was:

> He has his system, so I don't bother him. What can I tell him? Except that I want a final conference form. He wasn't even following that. I had to sit down with his clerk and say, "I know your judge's position, but I must have the final conference form in the file. We need that as a record."

An administrator in the prosecutor's office summed up adherence to the system from his perspective by saying:

> On four floors we've been very successful. One one floor we haven't been. And, there — there is not a real docket consciousness. There just simply isn't. And, the docket attorney down there is dealing with four prima donnas and they're not going to yield to the system. One of them in particular is not going to yield to any administrative principle. He's going to adjourn cases whenever the defense attorney asks for it. He'll take pleas. He'll probably cut deals that the prosecutor doesn't know anything about to take a plea on the day of trial, and his docket reflects it.

Over the history of the project, then, attempts were made to change the attitudes and behavior of judges. Some behaviors (hours worked, continuances granted, and scheduling, for example) were rewarded and sanctioned directly. Statistics on judges' performance were collected and used as the basis for the sanctioning of these behaviors. The project seems to have been fairly successful in altering these behaviors for the short run, but the heavy reliance on negative sanctions produced avoidance behavior. The emphasis on negative sanctions combined with the dependence of many of these sanctions on the personal authority of the Special Judicial Administrator made it less likely that the desired behaviors could be maintained at the levels achieved during the project over the long term.

The major targets of attempts to change judges' attitudes and beliefs were their "docket consciousness" and their beliefs about the pure trial docket. These attempts

relied on rational argument and the attempt to demonstrate that certain behaviors are instrumental to achieving such rewarded goals as a docket with a relatively small number of pending cases. Most court participants believed that the level of understanding of and sense of responsibility for the management of the court's docket was increased by the project, but change was not universal.

CONCLUSION

The delay reduction program in Detroit's Recorder's Court was begun when the court was in crisis. The extreme financial burden placed on Wayne County by the need to house excess jail prisoners brought pressure to act quickly. At the same time, the common belief of court observers that the blame for much of the problem could be laid on the doorstep of Recorder's Court judges undermined the moral authority of the court to act. The Michigan Supreme Court was willing, therefore, to exercise its supervisory power to the fullest by placing Recorder's Court under the direction of an outside administrator—in essence, by placing the court in receivership.

The project introduced a Special Judicial Administrator, large numbers of visiting judges, performance monitoring, re-pretrialing of cases, a new case tracking system and attempts to change judges' beliefs about what they should do and how they should do it over a relatively brief period of time. The number and rapidity of changes had the potential to affect not only the operation of the court, but also its mood. There was little respect for or deference to judges.

Was this lack of deference a healthy willingness to force judges to recognize and assume their administrative responsibilities, or was it a threat to the independence that has been judges' traditional bulwark against improper influence? This question is certainly one of definition, degree, and value that will receive different answers from different observers. We should like to conclude by considering some of the perceptions of those who participated in and were affected by the project.

An administrative level prosecutor discussed the issue of judicial independence in his general evaluation of the project.

> I think there was an insensitivity to the fullest political ramifications of an elected judiciary. That sounds high falootin, but I don't know how to make it more basic than that... I think that in Michigan we have an elective judiciary; I think in no place is it more important than it is in Recorder's Court. It's paramount to the health of the city that the citizens of Detroit

have a feeling that it is their judge that sits in Recorder's Court. I think that Mr. Lesinski, coming in from outside, at times gave the appearance of being high-handed... One of the costs of an elective judiciary is that you will always have four or five judges out of twenty in a court system that can't hack the load that's coming through. That is one of the costs... I think that there was an insensitivity on the part of T. John to the role of the elected judiciary and there was a subordination of that elected judiciary to the ends of administration of the criminal justice system.

A judge, however, seemed more sanguine on the same issue.

...(The Special Judicial Administrator) came into a situation where persons were accustomed not to be questioned about their decisions and brought with him what appeared to be the full authority of the Supreme Court to second guess us all on things that we had always taken for granted as our prerogatives. Even things as basic as when we were going to elect our new chief judge or things like hours coming in and out of the court were suddenly subjects for discussion. Whether he controlled them or not is not the important thing; the point is that there was someone who presumed to discuss them with us. And that didn't set well with most of the judges who were accustomed to the image of the judge as a king in his own courtroom that no one dared bother... So it was inevitable that Judge Lesinski, or any other person who came in from the outside was going to have some clashes of wills, and, because Judge Lesinski lacks sweetness, it was inevitable that he was going to have some more abrasive contacts...

In general, in talking with the judges, we found that, although most had complaints about one or more aspects of the project, there was little remaining resentment. This lack of resentment towards the project was surprising, given the vociferous opposition that sometimes existed during the project itself. The judges — like other court participants we talked with — were often ambivalent. They pointed to things they didn't like — for example, "we weren't consulted" — but most also pointed to the aspects of the case tracking system or other parts of the project that they approved.

When asked why there seemed to be so little opposition remaining, one judge said:

It doesn't surprise me that you would find a lack of negative comments about Judge Lesinski, not just on a let bygones be bygones basis, but because there is so much authority, so much of an opportunity that is left to a judge to have his ego intact, that the occasional challenge can almost be brushed aside as something that existed but it isn't real or wasn't so real, or wasn't so bad at times...

Beyond the fact that judges may have sufficient authority to make the intrusions of the project seem short-lived and relatively minor in retrospect, the project may have positively contributed to judges' sense of satisfaction with their jobs. Although

judges may not have like parts of the project or even parts of the current system, the period under the central docket, which had gone before the crash, was far from ideal.

NOTES

[1]These figures are not strictly comparable, since one is based on cases initiated and the other on cases disposed, but the size of the difference suggests that there was a real change between the two measurements.

[2]The court's tally of cases counts every defendant from the arraignment on the warrant to sentencing as an active case. The prosecutor's tally, on the other hand, does not count a case until it has passed the preliminary examination stage and is put on a pretrial docket. It also differs from the court's count in that cases with multiple defendants are counted as a single case because these probably will be tried or otherwise disposed together. Multiple cases against a single defendant are likewise counted as a single case. An exception to this last is that a large number (e.g., four or five) cases against a single defendant would be counted as two cases. The prosecutor's office argues that its method of counting cases is a more accurate reflection of the court's real workload.

[3]The more stringent bonds could be accounted for by a number of factors including changes in the standards judges applied and changes in the composition of the defendant population.

[4]To accommodate these judges, the project created temporary courtrooms in conference rooms and other little used space in the courthouse. The temporary courtrooms were Spartan but adequate and — with aid of portable judges' benches designed by the Special Judicial Administrator — relatively dignified.

[5]To test this contention, we regressed sentence length (minimum number of months of incarceration imposed with probation and other non-incarceration sentences scored 0) on a set of variables having to do with defendant and crime characteristics including the crime type (as defined in Chapter 12) and the seriousness of the crime as defined by the statutory maximum sentence that could be imposed for the original charge. The equation for sentence length was estimated for three groups of cases: cases disposed in 1976, cases disposed under the crash, and cases disposed in the post-crash period. We found that the effect of seriousness on sentence length was smaller during the crash period than it was either before or after. (The unstandardized b coefficients for seriousness were .098 for the pre-crash period; .070 for the crash; and .087 for the post-crash period). Each increase in the statutory maximum of the charge brought longer imprisonment in 1976 than it did under the crash and post-crash periods. In other words, for given levels of seriousness, sentences were more lenient. We also estimated the effect of the crash and post-crash periods on sentence length for cases initiated. We found no effect for either variable. Taken together, these findings lead to the conclusion that sentence severity was decreased to clear old cases from the docket rather than to speed up case processing time for newly filed cases.

Chapter 12

THE RESULTS IN DETROIT

To evaluate the innovations of a delay-reduction project, we need, first of all, to establish the magnitude of the effects that they have on case processing time: by how many days, on average, has each innovation reduced it? But to establish such effects, we have to know what other variables, besides the innovation, we should "control for" -- i.e., what other variables affect case processing time and in what ways. In other words we need to have at least a rudimentary theory — or, in its mathematical form, a model — of case processing time. The formulation of such a theory and the specification of a model expressing it is the task of this chapter.

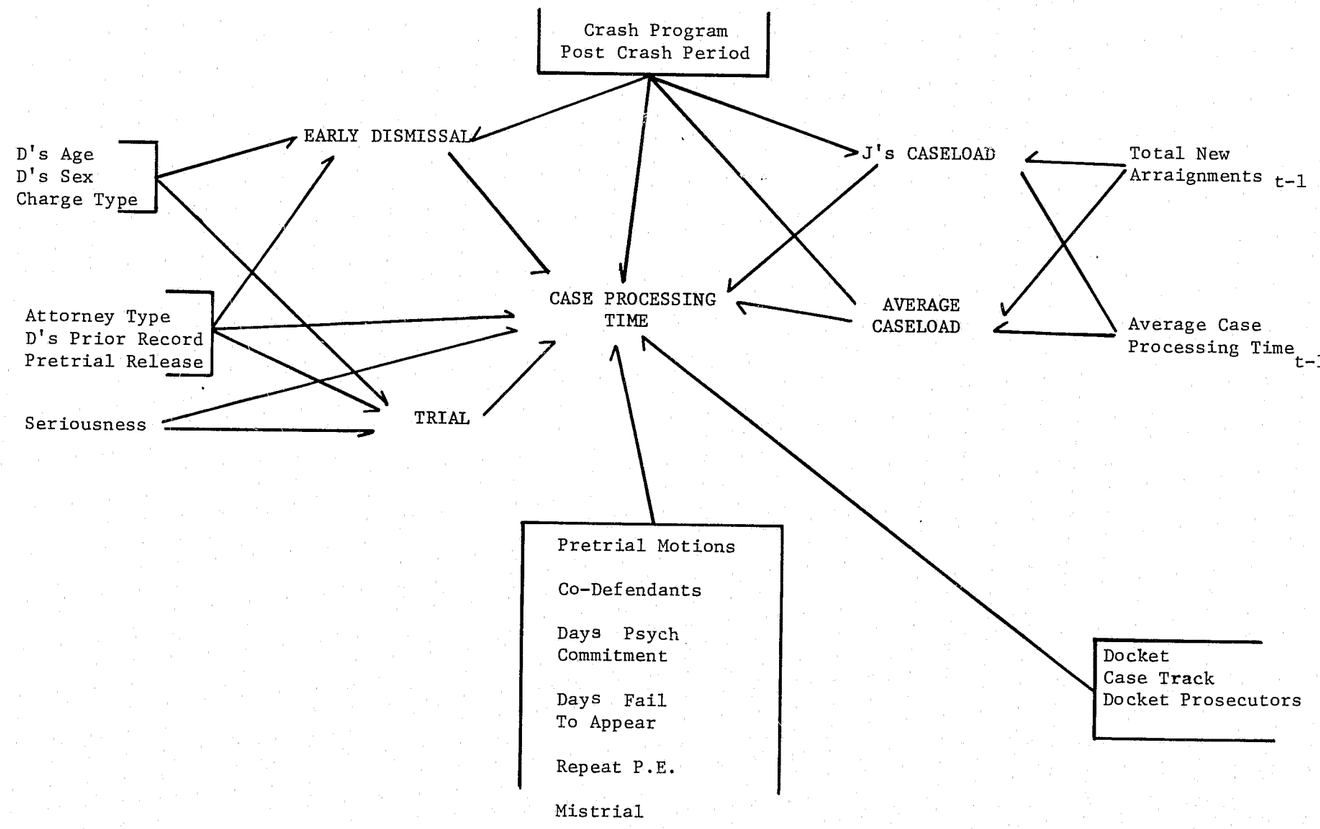
Although the presentation of the model in this chapter is in the context of the Detroit court and the delay-reduction project there, its applicability is not limited to that court alone. The model contains elements that can be expected to produce variation in case processing time in criminal courts generally. In addition, the Detroit delay-reduction innovation variables represent variation in the structure of the court. Although such inferences go beyond the data presented here, the effects that these variables have on case processing time may hint at similar effects of structural variations across courts.

A MODEL OF CASE PROCESSING TIME

The model of case processing time we propose consists of equations, each of which represents the immediate causes of one of the model's dependent — or endogenous — variables and the way in which these causes combine to affect it. The equations of the model represent, first of all, a set of causal hypotheses. These are summarized in the "arrow diagram" in Figure 12-1.

Figure 12-1

Arrow Diagram of Model of Case Processing Time



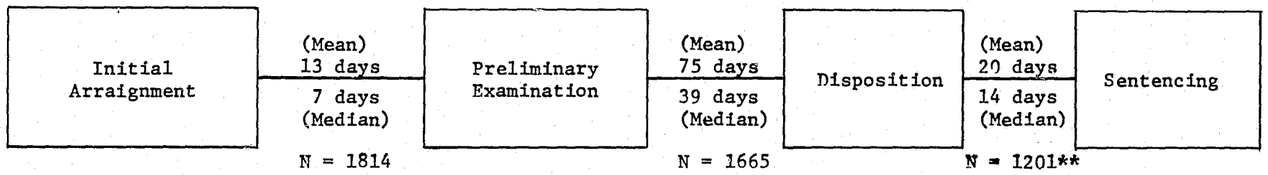
As a scanning of the diagram will reveal, the model we have in mind contains five endogenous or dependent variables — whether the case is dismissed at the preliminary examination, whether the case goes to trial, the judge's caseload, the average caseload for the court, and case processing time. (The endogenous variables in Figure 12-1 appear in bold type.)

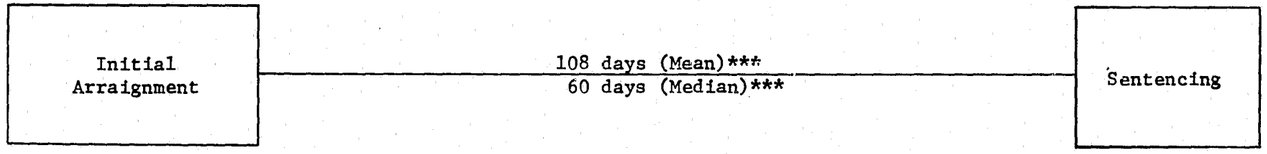
Of these variables, case processing time is, of course, endogenous because it is the variable we should most like to explain. We define case processing time as the number of days from the arraignment on the warrant to the date of any dismissal, finding of guilt or innocence, or plea.[1]

To give a sense of the levels of case processing times in Detroit in comparison with those of the other courts we studied, we have calculated the means and standard deviations of case processing time from arraignment on the warrant to binding over for trial, from binding over for trial to first final disposition, and from arraignment on the warrant to disposition for cases initiated in each month of the period under study. Figure 12-2 presents the mean and median case processing times for various stages of the process for the entire sample period. Figures 12-3, 12-4, 12-5 present plots of mean case processing time by month.

Figure 12-2

Overview of Case Processing Time in Detroit Recorder's Court (1976-1978)*





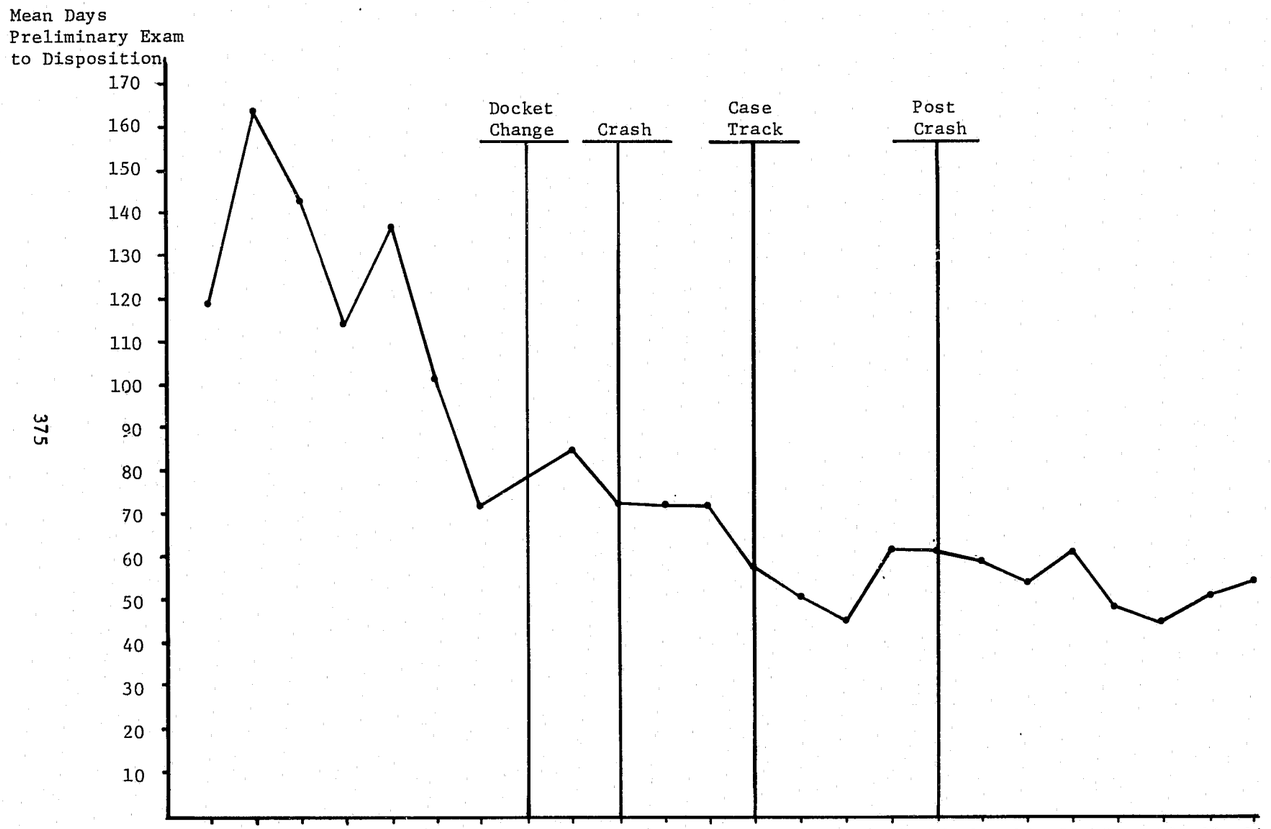
*Recorder's Court is a unified court that hears criminal cases from initial arraignment to disposition; there is no lower court in Detroit.

**Necessarily excludes cases not having a finding of guilt.

***These figures are a composite of the individual time frames, and therefore are based upon slightly different samples.

Figure 12-3

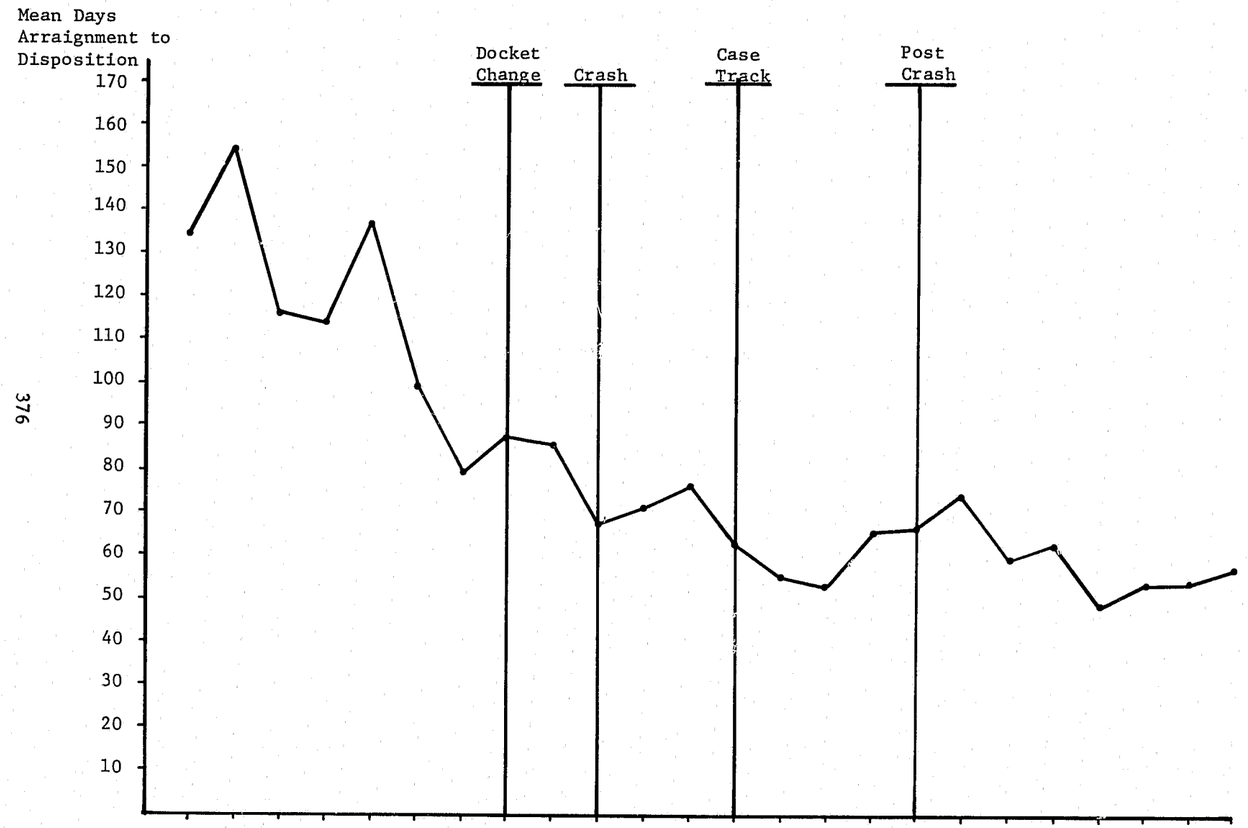
Mean Case Processing Time by Month: Preliminary Examination to Disposition



Month	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24
Mean	115	158	128	110	132	98	70	77	80	71	71	70	59	50	44	61	61	58	54	61	48	47	51	53
S.D.	158	142	127	118	105	100	61	75	80	70	98	78	74	48	44	77	73	68	58	88	53	53	66	67
N	69	59	65	65	70	65	67	66	62	71	52	73	67	74	68	61	69	89	76	78	69	59	68	66

Figure 12-4

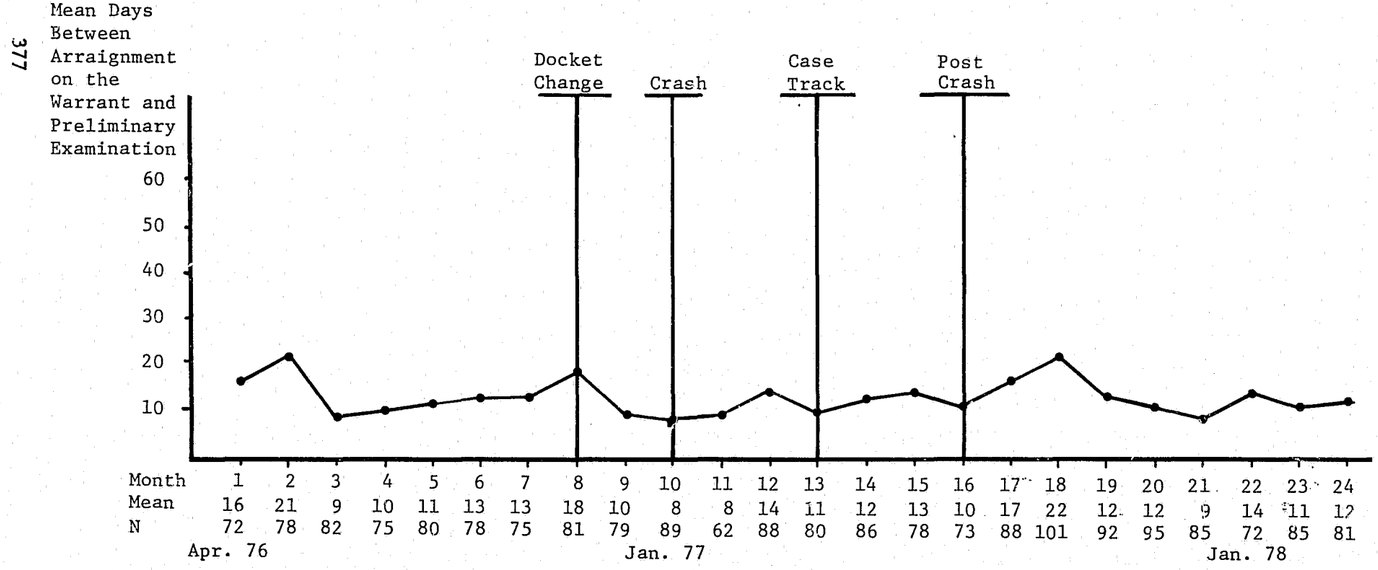
Mean Case Processing Time by Month: Arraignment to Disposition



Month	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24
Mean	130	147	110	109	131	96	77	83	74	66	69	73	61	56	52	63	66	75	59	62	49	53	53	55
S.D.	161	152	124	124	107	103	74	106	79	69	94	89	75	50	57	75	74	98	59	83	50	55	64	71
N	72	74	82	72	77	76	73	78	77	87	61	87	79	85	77	70	85	99	89	95	83	71	83	81

Figure 12-5

Mean Case Processing Time by Month:
Arraignment to Preliminary Examination



From these plots one can see that mean case processing time declined in the period under consideration. This is true both for case processing time from arraignment to disposition and for the period from bind over to disposition. Figure 12-3 shows that mean case processing times from arraignment to bind over for trial fluctuate randomly and do not decline across the period studied. The figure also shows that this period constitutes a small part of overall case processing time in Detroit.

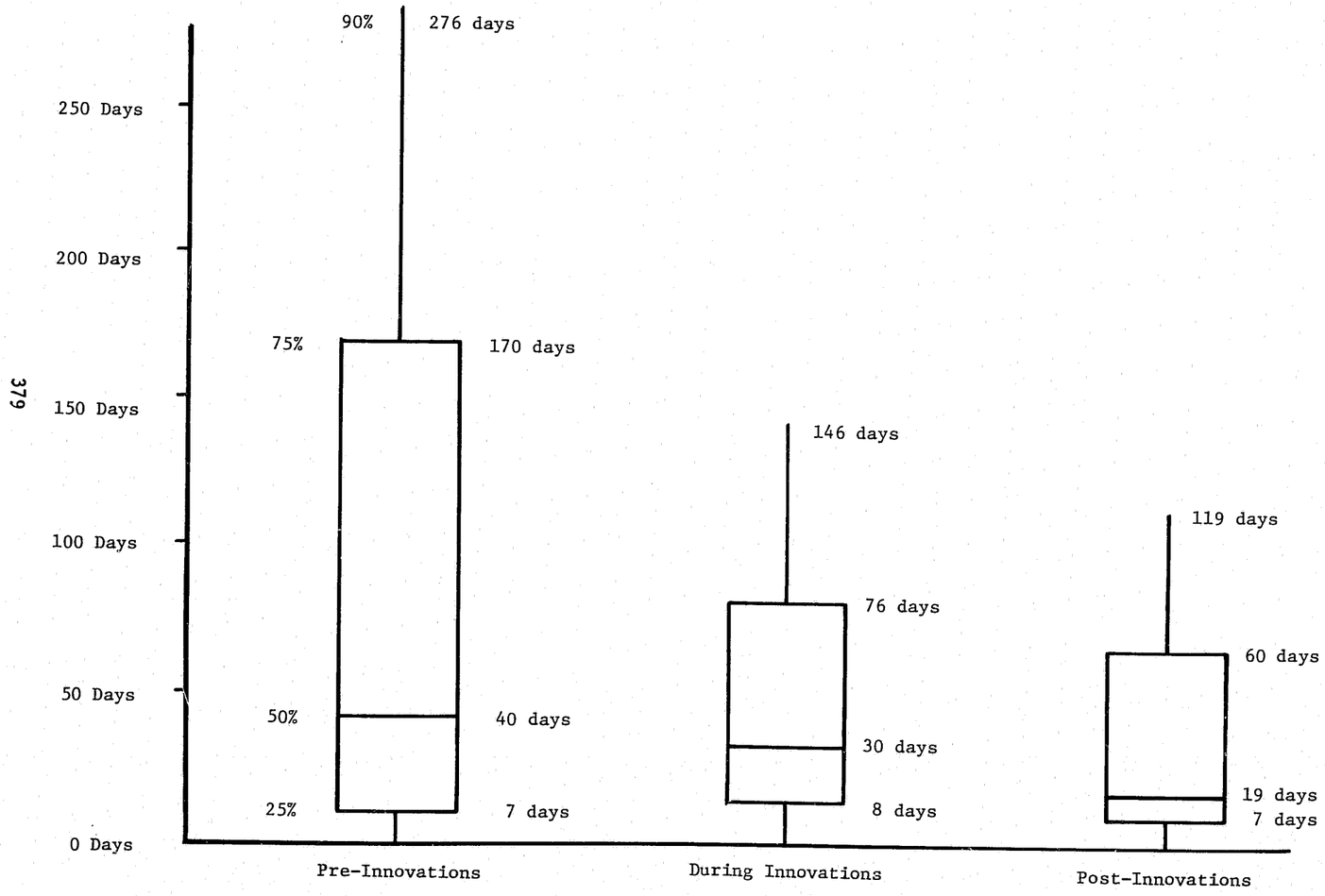
Cases arraigned in May 1976 have both the highest mean case processing time from arraignment to disposition and the highest mean from bind over to disposition (147.3 and 157.8 days, respectively). Those initiated in June, 1977, have the lowest mean case processing times for both measures (52.2 days and 43.8 days). The difference in means between months with the highest and lowest means — that is, May 1976, and June 1977 — is approximately 95 days. The standard deviations of both the means reported in Figure 12-4 and those reported in Figure 12-5 are large. Furthermore, the distributions are skewed to the right, that is, most of the cases are disposed in less than the mean case processing time while only a minority take longer than the mean for the month. (Figure 12-6 presents a further illustration of this fact.) That the plots of these two measures over time are so similar suggests that they are produced by the same underlying processes, which is confirmed by the results of our analysis.

We can also see from these graphs that mean case processing times are decreasing before any of the innovations are in place. The likely reason for this decrease is that the crash program, through its effort to clear the docket of old cases by re-opening plea negotiations in them, also affected cases initiated before the crash began. Without the crash program cases initiated in the summer and early fall of 1976 would have taken even longer to process.

Another way to describe case processing time is to look at median case processing time and the distribution of cases around the median for the pre-innovation period, the innovation period, and the post-innovation period. Figure 12-6 presents box-and-whisker plots of case processing times for each of these periods. As in the other cities, case processing times are more spread out above the median. And, as in other cities, variation in case processing time is much smaller after the innovations.

Figure 12-6

Box and Whisker Plots of Case Processing Time in Detroit



The other endogenous variables in Figure 12-1 are endogenous because they are hypothesized both to affect case processing time directly and to intervene between other explanatory variables and case processing time. In order to assess the indirect effects that variables exert on case processing time through these intervening variables, we treat these latter variables both as causes of case processing time and as dependent variables in their own right. A scanning of the arrow diagram will also reveal that the model contains a fairly large number of exogenous variables — that is, variables hypothesized to affect one or more of the endogenous variables, but whose own causation lies outside the model.

In presenting the model, we consider the direct causes of case processing time first — these include both exogenous variables and endogenous variables directly linked by arrows to case processing time in Figure 12-1. After having considered these variables, we shall work our way backward along the causal chain to consider the variables that are the causes of the other endogenous variables and, thus, the indirect causes of case processing time.

Direct Causes of Case Processing Time

Variables that can be hypothesized to directly — or for that matter indirectly — influence case processing time fall into two broad categories: some are characteristics of the court or system, delay-reduction innovations included, and others are characteristics of the case. Let us look first at the latter.

Characteristics of cases. Cases vary in the time that it takes to process them because they vary in the kinds of activities and the complexity of the activities that go into their disposition. First of all, there is the manner in which the case is disposed — by dismissal at or before the preliminary examination (in some courts, this is a dismissal in the lower court, but as we saw in Chapter 4, Recorder's Court itself has jurisdiction over preliminary activities in felony cases), by dismissal in the trial court, by plea of guilty, or by trial. It goes almost without saying that a dismissal at the preliminary examination — that is, before a case reaches the trial court —abbreviates case processing time.

The activities that constitute a trial, on the other hand, are more complicated and take longer than those that go into the acceptance of a guilty plea or the granting

of a dismissal. Trials also require greater and lengthier preparation on the part of the people involved (Nimmer, 1978, p. 88; Rhodes, 1978, p. 61; and Wice, 1978, pp. 143-168). Furthermore, since trials involve a larger number of people than do pleas or dismissals, the resulting problems of coordination — witnesses must be notified well in advance; and lawyer's, judge's, (and in some cases, witnesses') schedules must be accommodated — add to the duration of the case. Cases that go to trial, therefore, should take longer to complete than do those that end by a dismissal or guilty plea — which, in turn, to repeat, should take longer than those that are dismissed at the preliminary examination. Differences in the mode of disposition are represented in the model by two variables — dismissal at preliminary examination, which is scored 1 when the case is dismissed at or before the preliminary examination and 0 in all other cases, and trial disposition, which is scored 1 when the case goes to trial and 0 in all other cases.[3]

A second variable relating to activities in the processing of cases is whether pretrial motions were filed by the defense. The preparation for and consideration of motions — for example, motions for discovery, motions to suppress evidence, or motions for evidentiary hearings — takes time and should add to the processing time of cases in which they are filed. Third, a defendant may be removed from the court for a time in order to evaluate his competency to stand trial or to treat him if he is found to be incompetent (MCLA, 767.27a). The number of days consumed on this account is another source of variation in case processing time.

We usually think of court cases progressing through a series of stages in the court process (and, most diagrams of the stages of the criminal process show a unidirectional flow), but we know that cases can experience repetitions of various stages. Two sorts of events can be distinguished: (a) the belated holding of a preliminary examination that was initially waived or the re-holding of one that was in some respect insufficient and (b) the restarting of a trial that ended the first time in the declaration of a mistrial. A case that is sent back for a preliminary hearing or new trial will, of course, take longer than one that is not.

Finally, we include in this group of case characteristics, the number of co-defendants charged in the case. Although the number of defendants is not a processing activity that varies across cases, it is a variable that complicates the performance of such activities. At a minimum, additional defendants in a case increases coordination

and scheduling problems, but the presence of additional defendants may also complicate the strategic decisions of both the prosecution and defense. (See, for example, Wice, 1978, pp. 163-164). Thus, we should expect, other things being equal, that the more defendants there are in a case, the longer case processing time will be.

Cases also vary in the time it takes to process them because certain case characteristics affect the probability that participants will act so as to increase or decrease case processing time regardless of the specific activities that go into the processing of the case. These characteristics are associated with incentives (or rewards and punishments) that motivate participants.

A number of authors have commented on the importance of the motives of participants in the process (both at the macro-level and at the micro-level) in explaining variation in the processing of individual cases. The import of these studies is, as we noted in Chapter 2, that court participants have many pecuniary, social, and intellectual incentives to pursue goals that do not include and often conflict with rapid case processing times. (See, for example, Levin, 1977, pp. 226-245; Nimmer, 1978, pp. 87-93; Nardulli, 1978, pp. 67-71; Fleming, 1973; and Chapter 2 above). For this reason, we include in the model characteristics of cases that should affect case processing time because they are associated with different incentives to the participants to seek prompt disposition of cases or to slow down case processing.

The first of these is whether a defendant has retained his own attorney. There have been suggestions in the literature (Blumberg, 1965; Nimmer, 1978, pp. 91-92; and Nardulli, 1978, pp. 180-183, for example) that retained attorneys handle cases more slowly than do public defenders or court-appointed counsel. The reason is that, unlike the others, retained attorneys must collect their fees directly from their clients, who generally need time to scrape together the money. Since defendants become less inclined to pay after the case has been resolved, it is in the retained attorney's interest to see to it that the case is not resolved until he has received all or most of his fee.

A second variable that may influence how long a case takes is whether a defendant is in jail while his case progresses. A defendant who is in jail is apt to be in a greater hurry to get it over with and ignore any strategic advantages of prolonging his case than is one who is at liberty. (See Nimmer, 1978, p. 89; Nardulli, 1978, p. 192;

and Chapter 2 above, on the perceived advantages of postponing disposition and Bernstein, et al., 1977a, p. 370; Rhodes, 1976, p. 319; Rosett and Cressey, 1976; Casper, 1972, pp. 51-68; and Goldfarb, 1975, on the effects of pretrial incarceration). In addition, a court may give priority in scheduling to jailed defendants because the state imposes shorter time limits for the disposition of cases involving jailed defendants (Nardulli, 1978, pp. 158-160 and Thomas, 1976, pp. 110-118); because judges believe that presumptively innocent defendants should be detained as short a time as possible (Luskin, 1978); or because jail space is limited and can accommodate all the defendants that judges feel should be detained only by means of fast turnover (Fleming, 1979). A defendant who is free, moreover, can further increase the processing time for his case by failing to appear for scheduled hearings. Thus, an additional variable that should influence case processing time is whether and for how long a defendant manages to avoid appearing in court — the variable being the number of days that elapse between the defendant's scheduled appearance and his actual appearance.

Next, we come to the seriousness of the crime with which the defendant is charged. The more serious the crime of which the defendant stands accused, the greater is the penalty he risks if convicted, and the more desperate he should be, therefore, to obtain an acquittal or a favorable plea bargain. As a result, the defendant accused of a more serious crime should be especially eager to draw out the case against him in the hope that it will eventually weaken.

By the same token, the seriousness of the offense serves as a basis on which judges and prosecutors decide how much of the their time (and other resources) a case ought to be allotted (Mather, 1979; Heumann, 1978; Forst and Brosi, 1977, pp. 184-187). Judges tend to take more time with serious cases, to allow a fuller exercise of the adversary process — and, of course, this consumes more time. To measure seriousness, we use the maximum sentence that conviction on the original charge can bring.[2]

Another variable that, like the seriousness of the charge, ought to affect case processing time by increasing the defendant's risk, and thus his incentives to impede the progress of his case, is his prior record. The greater the number of crimes of which he has been previously convicted, the heavier his sentence for the offense with which he is currently charged is likely to be, and, again, the more interested he will

tend to be in delaying matters. We might expect, however, that the increased risk resulting from two as opposed to one prior conviction is greater than the increase in risk resulting from seven as opposed to six prior convictions, that is, that the value of each additional conviction in determining a defendant's risk and thus his motivation to slow the progress of the case decreases as the number of convictions increase. To accommodate this theoretical relationship in the model, we represent prior record by the logarithm of total prior convictions rather than the total number of prior convictions.

These, then, are the case characteristics that we expect to determine case processing time: the mode of disposition, the presence of pretrial motions, delay due to psychiatric evaluation or treatment, whether there is a mistrial or other "back-tracking" in the case, whether the attorney is retained, whether the defendant is free or in jail, delay due to the failure of the defendant to appear in court, the seriousness of the crime, and the defendant's prior record.

Characteristics of the court. Now let us turn to characteristics of the court that affect case processing time directly. These are characteristics that vary over time and that, in the model, whose units of analysis are individual cases, take the value that they have at the time a given case is filed.

The first is the court's caseload. For the Detroit project, which operated under two docket systems, there are two caseload variables: the average caseload for the court, that is, the number of active defendants divided by the number of judges assigned to trial courtrooms; and the individual judge's caseload, that is, the number of active defendants on the disposition judge's docket. The former should affect cases under the central docket and the latter should affect cases under the individual docket. Since these variables should not affect case processing time for cases dismissed at the preliminary examination, both variables are scored 0 for cases dismissed at the examination.

The conventional view is that the more cases there are for each judge to deal with the longer it should take for each case, other things being equal, to receive the attention it needs in order to be completed, but at the aggregate level, that view has not been well supported empirically (Church, et al., 1978; Nimmer, 1977; and Gillespie, 1976). Alternately, judges may monitor their caseloads and try not to let them get out of hand by processing cases more rapidly as the caseload grows.

The other court characteristics are the presence or absence of the innovations of the delay reduction project. For Detroit, the principal elements of the delay reduction project were four: the change to the individual docket, the crash program, the case track, and the docket prosecutors. Although it was not part of the delay reduction project, another innovation, the one day/one trial jury management system, is also included in the model. Its hypothesized effect is discussed below. (See Chapter 11 for a full discussion.) The innovations are represented in the model by dummy variables scored 1 for cases arising after a particular innovation was made and 0 for cases arising beforehand. For the crash program, we use two dummy variables — one for the crash period and one for the post-crash period, during which the program continued to operate at lesser and gradually decreasing levels.

In addition, we believe the effects of the innovation, in some instances, ought to have depended on the values of certain other variables that affect case processing time. For one thing, inasmuch as a judge has more control over the time that a trial and its preparation consume than he does over the time consumed by other dispositions, the introduction of the individual docket should have shortened trial cases more than others, thus diminishing the effect on case processing time of cases going to trial. Furthermore, since the case track introduced new deadlines for motions and trials, we should expect greater reductions in case processing time for cases with motions than for those without and for trials than for other dispositions. These interactions of the docket and case track innovations with the trial and motion variables are represented in the structural equations by the products of the variables involved. So much, then, for the immediate causes of case processing time; now let us discuss briefly the immediate causes of the other endogenous variables.

Indirect Causes of Case Processing Time

Dismissals at preliminary examination. Let us consider first, variables that affect case processing times through their effects on the probability that a case is dismissed at the preliminary examination. At the preliminary examination or probable cause hearing, the prosecution must show that there is probable cause to believe that a crime has been committed and that this defendant committed the crime (Fellman, 1958; Rosett and Cressey, 1976, p. 17). Jurisdictions vary in the proportion of cases dismissed at this stage. (See, for example, Eisenstein and Jacob, 1977; Neubauer, 1974; Mather, 1979, pp. 49-60; Nardulli, 1978, pp. 160-177; and Brosi, 1979). The

proportion of cases removed at this stage is a function of the degree of prosecutorial screening at an earlier stage (Eisenstein and Jacob, 1977; Nardulli, 1978; and Brosi, 1979); of prosecutorial screening at the preliminary examination stage (Brosi, 1979); of the frequency with which defendants elected to waive the preliminary examination, which is, in turn, a function of the uses to which examinations are put in various jurisdictions — e.g., discovery or creation of a record for a later abbreviated trial (Mather, 1979; Wice, 1978; Greenwood, et. al., 1976); and of judges' views of the role of the preliminary examination — for example, judges may dismiss cases in which they believe that there is probable cause to bind over the defendant for trial but in which they believe full criminal proceedings are too severe in the light of the charge and the nature of the defendant. Dismissals at the preliminary examination can also be used to help manage the size of the caseload of the trial court (Luskin, 1978).

We should expect, therefore, that dismissals at the preliminary examination should be affected by the type of crime with which the defendant is charged because differing crime types are associated with varying legal and evidentiary problems. We distinguish drug crimes, violent crimes, and weapons crimes from the remainder of crimes, which are, in the main, property crimes. We might also expect that, other things being equal, judges should be more willing to dismiss charges against defendants —who, from personal and legal characteristics, appear less threatening or, perhaps, more deserving — female defendants, defendants who are much younger or older than than most, defendants who have no or less serious prior criminal records, defendants who are free on bond, and defendants with retained attorneys (Nardulli, 1978; Bernstein, et al., 1977a; Eisenstein and Jacob, 1977; Luskin, 1978; and Neubauer, 1974). In addition, if defendants are to have the opportunity to have their cases dismissed at the preliminary examination, they must elect not to waive that examination.

Finally, our interviews in Detroit suggest that the dismissal of the case ought to have been affected by the "crash program" under which, as we saw in Chapter 11, many claimed that the visiting judges were encouraged to dismiss a larger proportion of the cases than was normal in Recorder's Court in order to reduce the caseload of the trial court. On the other hand, since previous research into the use of visiting judges in Detroit at preliminary examinations argues that these judges are unlikely to dismiss significant numbers of cases (Eisenstein and Jacob, 1977), any attempts to encourage dismissals under the crash program may have been washed out by the propensity of visiting judges to bind over high proportions of cases at examination.

Disposition by trial. Turning to the next endogenous variable, whether the case goes to trial, we hypothesize it to be a function, first, of the defendant's sex because women may be more likely to be offered attractive plea bargains, and are, perhaps, more easily persuaded to plead, although Bernstein et al. (1977a) found no difference in charge reductions. We also expect the probability that the case goes to trial is a function of the defendant's age — because attractive pleas are more likely to be offered to defendants who are very young or relatively old. The effect of these personal characteristics, however, should be small (Hagan, 1974; Mather, 1979, Bernstein, et al., 1977a).

The defendant's prior record should also affect the probability of going to trial. With respect to prior record, however, several contending hypotheses exist about the direction of the effect or effects. Mather (1979) argues that effects in both directions exist. Defendants with lengthier records should be offered fewer incentives to plead guilty (Mather, 1979), but this effect may be cancelled out by a lengthy record's carrying the risk of a stiffer penalty, if the defendant is convicted after trial on the original charge. Furthermore, one could hypothesize that defendants with prior records should be — because of their previous experience in court — better negotiators and, therefore, better able to recognize and obtain favorable bargains. (See, for example, Skolnick, 1966, pp. 174-181; and Bernstein, et al., 1977a). But, again, if Rhodes (1978) is correct in concluding that plea bargaining does not result in lighter sentences, defendants with prior court experience should be more likely to go to trial. Although our prediction of the direction of the effect of prior record on the probability of going to trial must be tentative, it is that lengthier prior records should lead to increased probability of going to trial.

The type of attorney representing the defendant may also affect the choice of trial or guilty plea. For the Detroit model we distinguish three attorney types — retained, private appointed, and Legal Aid and Defender's Society attorneys. Again, several conflicting hypotheses are possible. One argument is that private attorneys usually work on a fixed fee basis so that it is unprofitable for them to go to trial (see Greenwood, et al., 1976). Rhodes (1978), however, found no difference between attorney types in propensity to go to trial. Nimmer (1978) argues that retained attorneys need to show their clients that they are getting something for their money. (See also, Casper, 1972, pp. 100-124, on the client/attorney relationship from the defendant's perspective). In addition, retained attorneys and private appointed

attorneys are not two distinct groups. In Detroit, most criminal lawyers handle a mixture of retained and appointed cases. Our observations indicate that in allocating resources among these cases, they give particular attention to retained cases. (For an example, the reader may refer back to Chapter 11 to a defense attorney's willingness to attend extra plea bargaining sessions in retained as opposed to appointed cases). Thus, we expect that retained attorneys should be more likely to take cases to trial. Although public defenders may be burdened by heavy workloads, problems in convincing their clients to plead and freedom from economic pressures to plead clients should lead to a greater likelihood of trials for defendants with these attorneys also.

The type of charge and its seriousness should affect whether a case goes to trial. Mather (1979) argues that the seriousness of the case in terms of expected sentence is an important determinant of the decision to go to trial. In addition, court personnel are likely to be more willing to expend resources on the disposition of cases involving serious crimes. (Luskin, 1978; Heumann, 1978). The charge types of violent, drug, and weapons crimes, because they are associated with varying probabilities of acquittal and with the attractiveness of plea bargains offered, should make defendants more or less likely to seek a trial. Brosi (1979) found that violent crimes were most likely to go trial.

Some authors have argued that to escape intolerable jail conditions, jailed defendants are more likely to plead guilty than are free defendants. (See, for example, Casper, 1972, and Rosett and Cressey, 1976). Other research, however, has concluded that jailed defendants are more likely to seek trial dispositions (Greenwood et al., 1976). If, as has been argued, bail is an indicator of the court's rating of the moral worth or dangerousness of the defendant to the community (Bernstein et al., 1976, and Landes, 1971), then defendants who are in jail before disposition of their cases are ones who correctly expect a severe penalty if convicted and should be, therefore, more likely to feel they have nothing to lose if they go to trial.

The final case related variable that should affect the probability of going to trial is the relative sentencing severity of the judge to whom the case is assigned. Other things being equal, cases before more severe sentencers should be more likely to go to trial. We operationalize the disposition judge's sentencing severity by the average ratio of the length of incarceration actually imposed by the judge to the statutory maximum possible in the case. This average ratio is calculated for each Recorder's Court judge from all defendants in our sample sentenced by the judge.

Besides these characteristics of the case, we expect whether a case goes to trial to be a function of the introduction of the "one day/one trial" jury management system because — in the view of defense attorneys — it increased chances of acquittal.

Caseload. The last of the model's endogenous variables are the caseload variables, the average caseload for the court and the individual judge's caseload. We hypothesize both these variables to be functions of the crash and post-crash periods. The crash program greatly increased the number of judges thereby decreasing the number of cases per judge. In the post-crash period, the number of judges declined, but not to its original level. We also expect that caseload is a function of new arraignments in the month preceding the one in which a case is filed. Although the explanation of the number of new arraignments is outside the model, it might be well to mention that this variable is, in part, a function of variation in the amount of available criminal activity, of arrest policies of the police, and of charging decisions of the prosecutor's office. It is at this variable — along with dismissals at the preliminary examinations and whether a case goes to trial — that our model touches models of case processing from the prosecutor's perspective. (For examples of these, see Rhodes, 1976; Forst and Brosi, 1977; and Brosi, 1979).

Finally, we expect that current caseload is a function of average case processing time in the month preceding the one in which the case was filed. In this way, the court's current behavior affects its future workload directly and its future case processing time indirectly. The average case processing time in the preceding month is calculated from our sample and is the mean case processing time for the period from arraignment to verdict.

Table 12-1 presents the means and standard deviations of all of the variables in the model. In the case of dichotomous variables, the mean is the proportion of cases scored 1.

Table 12-1. Means and Standard Deviations of Variables in Case Processing Time Model*

VARIABLE	Mean	Standard Deviation
Case Processing Time (from Arraignment on Warrant to Verdict)	75.330	92.939
Dismissal in Preliminary Examination Courtroom	.187	
Trial	.107	
Average Caseload per Judge	75.796	140.777
Individual Judge's Caseload	62.398	91.872
Seriousness of Original Charge	150.369	151.971
Pretrial Release at Disposition	.654	
Defendant Make Arraignment Bail	.617	
Total Prior Convictions	2.017	3.868
Retained Attorney	.182	
Defender	.159	
Defendant's Age	27.795	9.471
Defendant's Sex (1 = Female)	.103	
Defendant's Race (1 = White)	.158	
Violent Crime Charge	.245	
Drug Crime Charge	.193	
Weapons Crime Charge	.163	
Days Psychiatric Commitment	.870	7.845
Days Defendant Fails to Appear	5.822	37.093
Pretrial Motions	.152	
Mistrial	.002	
Repetition of Preliminary Examination	.019	
Number of Defendants Charged in Case	1.210	.555
Total New Arraignments for Month	997.060	
Crash	.243	
Post-Crash	.373	
Individual Docket	.731	
Case Track	.408	
Docket Prosecutors	.233	
1Day/1 Trial Jury	.185	

*For dichotomous variables, the mean is the proportion scored 1, that is, the proportion possessing the characteristic.

Properties of the Model

Several characteristics of the model deserve comment. First, the model is recursive, that is, there are no reciprocal links between variables nor are there any contemporaneous feedback loops. Nonetheless, it should be noted that the average case processing time in the preceding month does affect case processing time in the individual case through its effects on the caseload at the time the current case is processed.

Second, it may be well to note the dynamic properties of the model. The data constitute a disaggregated time series. Each of the variables is implicitly subscripted not only for each case, but also for time. Some variables (the court-wide characteristics) in fact, vary only across time. If one were to aggregate the observations by unit of time (say, month) so that the case variables become not a particular case's score on the variable but rather the monthly average on the variable, the model would then be a time-series. But the effects on the endogenous variables would be exactly the same as for the disaggregated version and our estimates of them would be less precise, since by aggregating we lose information and hence statistical efficiency. Thus the disaggregated nature of the model is an advantage.

FUNCTIONAL FORM

Having specified a causal ordering of the variables, it still remains to decide what the functional forms of the equations that represent our hypotheses about the relationships among these variables should be. Ideally, the choice of functional form is based on theory. In practice (because theories are often not well enough developed to give much guidance on the question of functional form), the choice is often one of convenience — which usually means that a linear and additive form is chosen. The linear part of this statement means that no higher powers of any variable appear. The additive part means that no variable combines with any other variable except by addition.

Our hypotheses about how variables combine to affect case processing time — especially those regarding the impact of the innovations for cases with varying characteristics (for example, our hypothesis that the switch to an individual docket in Detroit should have a greater impact on case processing time for trial cases than for

other dispositons) — suggest some non-additivities. We have accommodated these in the equations for the model by including the products of the variables in question along with the variables themselves. Such product terms are included for the docket and case track variables and the trial and motions variables. Because we also expect that the effects of age are different for different segments of the range on this variable, we multiply the age variable times a set of dummy variables, which are scored 1 for different segments of the age range, so that we can obtain separate estimates of the effect of defendant's age within each portion of the range. The consequence of the construction of these product terms and the transformation of the prior record to accommodate the hypothesized non-linearity in its effects, is an "additive — non-additive" functional form that is linear and additive in the parameters, although not in the variables.

ESTIMATION

Since this model is recursive (i.e., without any contemporaneous feedback) and linear and additive in the parameters, granted a number of standard assumptions, among them, that the disturbances, or error terms, associated with different structural equations are mutually independent, the model is identified and — with some exceptions — optimally estimable by ordinary least squares (See Kmenta, 1971; Rao and Miller, 1971; or other econometrics text). The exceptions are the equations for early dismissal and for trial. Since both are dichotomies, their disturbances are heteroskedastic, as a result of which ordinary least squares is inefficient. For these equations we substitute generalized least squares, which regains efficiency, asymptotically, at least.

RESULTS FOR DETROIT

Goodness of Fit

The estimates of the coefficients of the model for Detroit and the estimated standard errors of these coefficients appear in Tables 12-2, 12-4, 12-5, and 12-6, below. Perhaps the first thing to notice about these estimates is that they have, in general, the signs one would predict on the basis of the arguments we have advanced. Moreoever, a majority of them, although not all, reach conventional levels of statistical significance. The R^2s, the "proportions of variance explained," are .45 for

the equation for case processing time, .41 for that of the judge's caseload, and .67 for the average caseload for the court. These are quite good R^2 for dependent variables -- especially the first two — that undoubtedly have a good deal of inherently random variation. The R^2s for the two remaining equations, however, are much smaller. The small size of these R^2s indicates that we do not explain why a case is dimissed at or before the preliminary examination or why it goes to trial nearly as well as we explain the caseload or case processing time variables.

Several possible reasons can be advanced for the relatively poor explanation of these two variables. First, with respect to the early dismissal variable in Detroit, it may be that the strength of evidence is important but is not well captured by the type of crime variables we include. As a result, the model does not explain the decisions well (See Bernstein, et al., 1977a.) Nevertheless, as we shall see below, despite the low R^2, most of the explanatory variables included have non-negligible effects in the expected directions. In addition, earlier research on this decision in Recorder's Court (Luskin, 1978) found that these same variables explained substantially more of the variation in the decision. The fact that regular Recorder's Court judges were conducting the preliminary examinations at the time of the earlier study but visiting judges conducted most of the examinations in the current study period may account for the difference in the relative power of the explanatory variables in the two periods. The decisions of the visiting judges may contain more inherently random variation and/or the visitors may be assigning weights to these factors idiosyncratically. With respect to trial, we suspect that differences in the strength of the evidence may account for much of the remaining unexplained variance, although, there too one suspects that there may be a fair amount of inherently random variation.

Direct Effects on Case Processing Time

Table 12-2 reports the estimates of the parameters of the equation for case processing time. To interpret these parameter estimates we need to keep in mind that what we are interested in knowing are the effects that the explanatory variables can be said to have on the dependent variable. Because the equation for case processing time contains multiplicative terms so that certain of its explanatory variables combine interactively (e.g., trial and docket), the effects of the variables involved are not equal simply to "their own" coefficients, that is, b's, reported in Table 12-2. Rather, in calculating the effects on case processing time, we must take into account the

coefficients associated with all of the expressions in which each explanatory variable appears, either singly or as an element of a product term. The results of these calculations for the direct effects on case processing time are reported in Table 12-3. Each of the estimates of effects that Table 12-3 records is the number of days that case processing time should be expected to change in direct response to change in one unit in the explanatory variable in question.

Table 12-2. Estimates of Structural Coefficients for Case Processing Time in Detroit's Recorder's Court

$R^2 = .449$

N = 1252

VARIABLE	B	S.E.
Case Characteristics:		
Seriousness of Charge	0.072	0.014
Number of Co-Defendants	5.287	3.343
Free on Bond	11.440	4.159
Log Defendant's Prior Record	4.555	2.158
Retained Attorney	6.277	4.969
Pretrial Motions	54.757	6.934
Repetition of Preliminary Examination	15.356	11.021
Mistrial	40.507	32.971
Days Psychiatric Commitment	1.582	0.238
Days Defendant Fails to Appear	0.995	0.048
Trial	101.391	14.360
Preliminary Examination Dismissal	-32.088	6.482
Court Characteristics (Including Innovations):		
Individual Docket	-5.938	13.140
Case Track	-39.033	11.583
Docket Prosecutors	-8.439	5.978
Crash Program	-27.338	7.384
Post-Crash Period	6.154	10.411
Docket X Trial	-65.000	17.427
Track X Trial	20.567	13.417
Track X Motions	-29.530	10.497
(Avg. Caseload for Court) X (1-Docket) X (1-Preliminary Exam Dismissal)	-0.010	0.038
(Judge's Caseload) X Docket X (1-Preliminary Exam Dismissal)	-0.063	0.027
Constant:	69.329	13.341

Table 12-3. Table of Direct Effects on Case Processing Time

VARIABLE	EFFECT IN DAYS CASE PROCESSING TIME
Seriousness of Charge	.072
Defendant Free on Bond	11.440
Defendant's Prior Record	4.555
Number of Co-Defendants	5.287
Retained Attorney	6.277
Pretrial Motions	
Before Case Track	54.757
After Case Track	25.227
Repetition of Preliminary Examination	15.356
Mistrial	40.507
Days of Psychiatric Commitment	1.582
Days Defendant Fails to Appear	.995
Trial	
Under Central Docket	101.391
Under Individual Docket	36.391
Under Individual Docket and Case Track	56.958
Dismissal at Preliminary Examination	
Under Central Docket	-32.088 -.010 X (Avg. Caseload for Court)
Under Individual Docket	-32.088 -.063 X (Judge's Caseload)
Individual Docket	
For Dismissal at Preliminary Examination	-5.938
For Pleas and Later Dismissals	-5.938 -.063 X (Judge's Caseload)
For Trials	-65.000-.063 X (Judge's Caseload)
Case Track	
For Pleas and Later Dismissals w/o Motions	39.003
For Pleas and Later Dismissals w/Motions	-68.563
For Trials w/o Motions	-18.466
For Trials w/Motions	-47.996
Docket Prosecutors	-8.439
Crash Program	-27.338
Post Crash Period	6.154
Average Caseload for Court (Under Central Docket)	-.010
Judge's Caseload (Under Individual Docket)	-.063

Thus, if we begin by looking at the effect of seriousness of the crime, we see that an increase of one month in the seriousness of the charge as measured by the maximum penalty that can be imposed produces an average increase of .07 days in case processing time so that, for example, the difference in case processing time between a charge of possessing cocaine, which, under Michigan law, carries a maximum sentence of twenty-four months and one of arson of a dwelling, which carries a maximum sentence of 240 months, is roughly fifteen days. The cases of defendants with longer rather than shorter prior records also take longer as expected. An increase of one unit in the log of the defendant's total number of prior convictions increases case processing time by about 4.5 days. The case of a defendant who is free on bond prior at disposition takes eleven days longer, on average, than does the case of a defendant who is in jail.

Repetitions of preliminary examinations in cases seems to add an average of about 15 days case processing time — though here the standard error is substantial, probably because this variable has little variance with few cases being sent back for preliminary examinations. Mistrials, although unusual occurrences, add forty days on average to processing time. For this variable too, however, the standard errors are large. The same is true for the direct effects of having a retained attorney and of having more than one defendant in a case. The estimates of both variables are positive as expected, but their standard errors are large.

The defendant's failure to appear for a given number of days cost the court the same number of days in the processing of his case, as the coefficient of almost exactly 1.0 for the "days fails to appear" variable reveals. In other words, the defendant's failure to appear neither entails the loss of any additional days beyond the time he is gone, nor brings about any compensatory efforts to speed his case along more quickly than it would have proceeded before. In contrast, each day the defendant is committed for psychiatric evaluation or treatment costs the court 1.6 days. This estimate suggests that cases in which the defendant requires extended psychiatric attention present particularly difficult problems for the court, which prolong case processing time beyond the mere time lost due to the psychiatric procedures themselves.

The filing and hearing of pretrial motions added, on average, 54 days to the processing time for a case before the case track was instituted; afterward, their effect declined to a still not inconsiderable 25 days.

The types of dispositions also had a major effect on case processing time. A case's being dismissed at preliminary examination decreases case processing time under the central docket by some 32 days minus a trivial quantity that varies with the average caseload for the court, and, under the individual docket, by 32 days minus a small, but not entirely trivial, quantity that varies with the judges' individual caseloads.

Turning to the second mode of disposition variable, a case's going to trial increases its case processing time by 101 days, before the docket and case track innovations — although this effect is, as we expected, whittled down — in fact, to half by the introduction of the individual docket. Contrary to expectation, the effect is somewhat larger again under the case track than it is under the individual docket, but this minor anomaly rests on an estimated coefficient that has a large standard error (see Table 12-2) and falls short of statistical significance.

Under the central docket, the average caseload for the court has no effect on case processing time, but under the individual docket, a judge's own caseload does have some effect. With an increase of, say, 50 cases in his own caseload, the judge compensates by speeding up his average case processing time by roughly 4 days. Thus with the changeover to the individual docket and the greater individual responsibility it brought, judges seem to have begun to monitor their dockets and attempt to keep them under control. Such "docket consciousness" was indeed one of the intents of the return to individual dockets in Recorder's Court.

Innovations. Having taken account of other variables which should have influenced case processing time directly, we can now turn to the effects of the innovations themselves. As for the effect of the docket change, the earliest of the innovations, it had essentially no effect for cases dismissed at preliminary examination. This lack of effect is not surprising since the change to individual dockets altered the calendaring of cases only after they passed the preliminary examination stage. For cases that pass the preliminary examination and end in ways other than trial, the effect of the change to the individual docket was essentially to reduce the case processing time by .063 days times the judge's caseload. Thus, judges with larger caseloads lowered their case procesing times by larger amounts than did those with smaller caseloads when the individual docket came in; the effect, in other words, was greatest for those judges who had previously been least concerned to keep their

caseloads down. But the biggest effect of the docket change was, as hypothesized, for cases that did go to trial. For these cases, the docket change decreased case processing time by 65 days — plus a further decrement that again varied with the judge's caseload.

The introduction of the case track also cut case processing times dramatically — by 39 to 69 days, depending on whether the case went to trial and whether motions were filed in it. As predicted, the effect is substantially greater for cases with motions than for those without. On the other hand, the effect is unexpectedly smaller for trial than for non-trial cases — but the estimated decrement for trial stems from a coefficient that does not approach statistical significance.

Finally, the intense monitoring, reopening of negotiations, decrease in sentence lengths, and hiring of judges that constituted the crash program decreased case processing time by about 27 days. In addition, as we saw above, the crash program also seems to have affected case processing times of cases initiated before the crash most likely through the renegotiation of pleas in these cases. There was no appreciable post-crash reduction in case processing time, however. (Although the estimated effect reported in Table 12-3 is a positive six days, it has a very large standard error and the most reasonable interpretation seems to be that there was no effect.) Case processing times were lower in the post-crash period, but the lower level was due to the docket and case track innovations rather than to the additional activities of the post-crash period. The estimate of minus eight days for the effect of the last of the innovations, the introduction of docket prosecutors, is also quite unstable.

These, then, are the estimated direct effects on case processing time. In the following sections, we consider the direct causes of the other endogenous variables and, then, the indirect and total effects on case processing time.

Direct Effects on Early Dismissal

Table 12-4 presents the parameter estimates for dismissal at or before preliminary examination.

Table 12-4. Estimates of Structural Coefficients for Dismissal at or Before Preliminary Examination

R^2 = .06
N = 1361

VARIABLE	B	S.E.
Case Characteristics:		
Weapon Crime	-0.059	0.020
Drug Crime	-0.050	0.019
Violent Crime	-0.083	0.018
Defendant Free on Bond	-0.001	0.007
Retained Attorney	0.002	0.019
Defender	0.054	0.024
Log Defendant's Prior Record	-0.039	0.008
Defendant is Female	0.082	0.036
Defendant's Age	0.001	0.002
Age X Defendant Under 21	-0.001	0.001
Age X Defendant Over 35	0.002	0.001
Defendant Waive Examination	-0.144	0.014
Court Level Characteristics:		
Crash Program	0.019	0.018
Post-Crash Period	0.024	0.015
Constant:	0.262	0.054

Each estimated coefficient can be interpreted as the change in the probability that the case will be dismissed that should result from a change in one unit on the explanatory variable in question. Thus, other things being equal, the probability that a female defendant will have her case dismissed is about .08 greater than that of a male defendant having his case dismissed. Or, put differently, women are about eight percent more likely to obtain early dismissals than are men.

The defendant's prior record also affects probability of examination dismissal in the expected direction. An increase of one unit in the log of the defendant's total prior convictions decreases his or her probability of obtaining an early dismissal by about four percent. Contrary to expections, we did not find that very young defendants were more likely to have their cases dismissed, nor is there any relationship between age and probability of dismissal for the 21 to 35 year range. For defendants over 35 years old, however, each additional year results in a .2 percent greater probability of dismissal. Thus, the difference in probability of dismissals for a 35 year old defendant as compared to a 45 year old defendant is two percent. A 65 year old is about six percent more likely to have his case dismissed at examination than a 35 year old.

With respect to type of attorney, we find that attorneys from the Legal Aid and Defender's Society are more successful in obtaining early dismissals for their clients than are retained or private appointed attorneys. Defendants represented by defenders are on average five percent more likely to have their cases dismissed. Defenders may do better for their clients because of better preparation at the early stages (e.g., more thorough interviews with the defendant prior to examination.) An alternative explanation is that the defendants whose defense judges assign to defenders have weaker cases against them. Defenders may get more routine cases, while cases that appear to have special problems may be more often assigned to attorneys who are thought to have special expertise.

Weapons, drug, and violent crimes are all less likely to be dismissed at examination than other crimes (six percent, five percent, and eight percent respectively). The finding that weapons and drug charges are less likely to be dismissed is unexpected and contrasts with earlier findings (Luskin, 1978). We might speculate, again, that it is the presence of visiting judges that accounts for the difference. If this explanation is correct, we should predict a change toward more frequent early dismissals of drug and weapons charges to accompany a return to the use of regular Recorder's Court judges rather than visitors at examinations. The finding that violent crimes were dismissed less frequently comports with our hypothesis for Recorder's Court although it may not generalize to other courts. In courts where the prosecutor does less thorough screening at the charging stage, these crimes might be dismissed more frequently. A defendant's freedom on bail does not affect his probability of getting a dismissal when other factors are taken into account.

From the point of view of assessing the impact of the innovations on the processing of cases in Recorder's Court, the effects of the two crash program variables are most interesting. Contrary to the beliefs of some of our respondents, the crash program did not increase the probability of early dismissals. In the post-crash period, however, we do find a small increase (two percent) in the likelihood of dismissal at the preliminary examination stage. The visiting judges who staffed the examination courtrooms in the post-crash period were more likely to dismiss at examinations than were those who staffed the courtrooms in the crash period. Since the visitors in the post-crash period were volunteers rather than draftees and thus presumably wanted to be assigned to Recorder's Court (see Chapter 11 above), they had more incentives to do what they perceived the project directors to want, that is, to dismiss cases. The difference, however, is small and cannot account for the reduction in case processing times in Recorder's Court.

Direct Effects on Trial Disposition

If we look next at Table 12-5, which presents the estimates of the direct effects on whether a case is disposed by trial, we find that the type of crime and the age variable for defendants over 35 years old have significant effects. As in the case of disposition by dismissal at or before preliminary examination, there is an effect for age only for defendants who are older than most of those who appear in Recorder's Court. A 45 year old defendant is about three percent more likely to go to trial than a 35 year old, and a 65 year old is about nine percent more likely to go to trial than a 35 year old. This result is in contrast to our hypothesis that older defendants, other things being equal, should receive more attractive plea bargains and, thus, be more willing to plea guilty. We might speculate that, because older defendants are likely to have more ties to the community and to be more economically stable, they perceive that they have more to lose by pleading. And, as Bernstein et al. (1977a) suggest, older defendants may have more power vis a vis the court. In any event, we find that with age defendants over 35 become increasingly more likely to have their cases dismissed at or before examination and increasingly likely to go to trial. As we shall see below, these effects have opposing influences on the time it takes to process cases.

Table 12-5. Estimates of Structural Coefficients for Trial Disposition

R^2 = .04
N =1045

VARIABLE	B	S.E.
Case Characteristics:		
Seriousness	0.000	0.000
Weapon Crime	-0.052	0.019
Drug Crime	-0.063	0.020
Violent Crime	0.065	0.039
Defendant Free on Bond	-0.001	0.016
Retained Attorney	0.001	0.020
Defender	-0.011	0.016
Log Defendant's Prior Record	0.005	0.009
Defendant is Female	-0.001	0.020
Defendant Age	-0.001	0.002
Defendant Age X Under 21	-0.001	0.001
Defendant Age X Over 35	0.003	0.001
Judge Severity	-0.059	0.125
Court Level Characteristics:		
One Day/One Trial Jury	0.010	0.026
Constant:	0.088	0.058

Not surprisingly, the type of crime has the largest effects on whether a case goes to trial. Weapons and drug crimes, which are more likely to involve legal rather than factual questions, are less likely (about five and six percent, respectively) to be disposed by trial. Violent crimes in which defendants are more likely to raise factual questions — e.g., self-defense or identification — are between six and seven percent more likely to go to trial. It is not the risk the defendant faces in terms of the maximum sentence possible, as shown by the zero coefficent for the seriousness variable, but the kind of crime and the varying possibilities for a defense associated with these crime types that is important.

None of the estimated coefficients for the other variables including the defendant's bond status, prior record, attorney type, the relative severity of the judge or the jury management system in operation were significantly different from zero.

Direct Effects on the Caseload Variables

Next, we turn to the caseload variables. Let us look first at the average caseload for the court, which is, for each month in the study, the total number of defendants on the court's docket who have passed the examination stage divided by the number of judges on the bench. Given the construction of the variable, the crash and post-crash variables both should and did have very large effects as can be seen in Table 12-6. It was of course, the crash and post-crash periods which saw the great expansion of the Recorder's Court bench through the use of visiting judges. Although the numbers of judges decreased in the post-crash period, the difference between the post-crash period and the period before the crash is even larger than the difference between the crash and the period before the crash program. The reason for this difference is that the judges of the crash period had to first clear the docket of an existing backlog of cases from the central docket period, but while there was a decline in judicial manpower in the post-crash period, the pending caseload had also dropped precipitously so that the average caseload per judge decreased.

Table 12-6. Estimates of Structural Coefficients for Caseload Variables

Dependent variable: Average Caseload for Court	R^2 = .67	N = 1947
VARIABLES:	B.	S.E.
Crash Program	-105.830	4.743
Post-Crash Period	-202.019	4.515
Total New Cases in Preceding Month	0.018	0.013
Avg. Case Processing Time in Preceding Month	0.243	0.075
Constant:	287.178	17.240
Dependent Variable: Judge's Caseload	R^2 = .41	N = 860
VARIABLES:		
Crash Program	-5.849	6.875
Post-Crash Period	-92.087	6.881
Total New Cases in Preceding Month	-0.027	0.018
Avg. Case Processing Time in Preceding Month	2.517	0.276
Constant:	59.010	26.546

The total number of new cases initiated in the preceding month has almost no effect on the average caseload in the current month. The reason for the lack of effect is doubtless that the range of variation in total new cases initiated over the period is small. (The prosecutor's office from this evidence and from our qualitative evidence appears not to have changed its charging standards so as to reduce the workload of the court to bring case processing time down.)

In contrast, the average case processing time of the preceding month does affect caseload, indicating that the reduction in Recorder's Court caseload was not brought about by simply clearing the docket of old cases, but rather by a decrease in case processing time.

With respect to the other caseload variable, the disposition judge's individual caseload, we find that the post-crash period had an effect. Again, we would argue, that it had an effect because there was a smaller overall caseload and a relatively large number of judges. (Since the regular Recorder's Court judges, for the most part,

started fresh at the crash, the crash variable had no effect on individual caseload). The effect of the total new arraignments in the preceding month on the individual judge's caseload is small. The average case processing time in the preceding month, however, has a significant direct effect on current caseload. An increase of one day in average case processing time in one month should produce an increase of 2.5 cases on average in a judge's caseload in the next month.

Total Effects on Case Processing Time

Because some of the explanatory variables that affect case processing time do so only indirectly through their effects on intervening variables and because other explanatory variables affect case processing time both directly and indirectly, if we are to assess the total effect of these explanatory variables, we must take account of all their effects — direct and indirect.[4] For the variables that affect case processing time directly only, the total effects are the same as the direct effects reported in Table 12-3. For the variables that affect case processing time indirectly we have calculated total effects. In this section, we report these total effects, where they differ substantially from zero — in the case of variables that influence case processing time indirectly only — and — in the case of variables having both indirect and direct effects — where they differ appreciably from the variables' direct effects.

Let us begin by looking at the total effects of defendants' personal characteristics. The predominant effect of the sex of the defendant is through early dismissal. The effect fluctuates very slightly over time depending on the presence or absence of the innovations, but, overall, case processing time is about 2.5 days shorter for female defendants than for male defendants. The defendant's age has an effect on case processing time only for defendants who are over thirty-five. With age, for these defendants, there is an increased likelihood of dismissal at preliminary examination resulting in shorter case processing times, but also an increased likelihood of going to trial resulting in longer case processing times. Case processing time was, on average, about 2.5 days longer for a 45 year old defendant than for a 35 year old defendant under the central docket. With the introduction of the individual docket and the rest of the innovations, the effect of a ten year age difference drops to roughly a one day difference in case processing time.

The total effect of a defendant's prior record is about six days case processing time for every increase of one unit in the log of the defendant's total prior

convictions. This effect is greater than the variable's direct effect because more prior convictions means that it is both more likely the defendant will not have his case dismissed at the preliminary examination and that he will go to trial, both of which increase case processing times.

The various attorney types have small effects on case processing time. The total effect of having a retained attorney is the same as the direct effect, about six days longer case processing time. This estimate is very unstable, however; the effect might well be much smaller. If the defendant has an attorney from the Legal Aid and Defender's Society, the model predicts between two and three days shorter case processing time on average, primarily because defenders are more successful at obtaining dismissals at the preliminary examination stage.

The various crime types we distinguished — weapons, drug, and violent crimes — affect case processing times indirectly. The effect of a weapons crime charge is to decrease expected case processing time by about 3.5 days under the central docket and about 0.5 days after the change to the individual docket and the various innovations. Case processing times were about 5 days shorter for drug crimes under the central docket but only about 1.5 days shorter after the docket change. Since the negative effect of both weapons and drug charges occurs mostly through a smaller probability of going to trial, the change to individual dockets, which cut the difference in case processing times between trial and other dispositions, decreased the size of the effects of these crime types relative to other crimes. The total effect for both these crime types is composed of a negative effect on case processing time resulting from these cases being less likely to be disposed by trial and a positive effect on case processing time resulting from their being less likely to result in dismissals at examination. If we are correct in our earlier speculation that with the replacement of visiting judges in the examination courtrooms by regular Recorder's Court judges dismissals for weapons and drug crimes will increase, there will also be an increase in the size of the total effect of these crimes on case processing times. The result will be even shorter case processing times for both drug and weapons crimes.

Violent crimes are less likely to be dismissed early and more likely to be disposed by trial; thus, they have longer case processing times. Under the central docket the total effect of a violent crime charge on case processing time was nine days. Although the effect of a violent crime charge was necessarily reduced by the

introduction of the individual docket (because defendants charged with violent crimes are more likely to go to trial, and the individual docket reduced the effect of going to trial), the effect of a violent crime charge, even after the docket and case track innovations were introduced, was still a five day increment to case processing time. The total effect of the seriousness of the crime is essentially its direct effect, that is, to increase case processing times by about .07 days for each one month increase in the statutory maximum penalty.

Turning next to the total effects of court-wide variables, we find that, of those that have only indirect effects, only average case processing time in the preceding month has an appreciable influence on case processing time in individual cases and, then, only under the individual docket, where the effect is about -.15. An effect of -.15 means that an increase of ten days in the average case processing time in one month produces a decrease of about 1.5 days in case processing time in individual cases initiated during the next month. Conversely, if average case processing time decreases in one month, the judge's caseload decreases and case processing time for cases initated in the next month goes up. Thus, under the individual docket (but not under the central docket) current case processing time affects the future behavior of the court.

Since most of the innovation variables influence case processing time directly only, their total effects are the same as their direct effects. The two variables representing the crash program (the crash and post-crash variables), however, not only operated directly but also operated indirectly through the two disposition variables and the caseload variables. The direct effect of the crash program was to decrease case processing time by just over 27 days. Taking account of all of its indirect effects as well, we find that its total effect is about minus 29 days with some very slight adjustments depending on the type of crime charged and various defendant characteristics. Most of its influence on cases initiated during this period was exercised directly rather than indirectly. For the post-crash period, we obtained an estimate for the direct effect of six days increase in case processing time. This estimate was not statistically significant, however, and we concluded that the post-crash period had no direct effect on case processing times. Since most of the estimated total effect depends on this direct effect, we conclude that, once other variables are taken into account, the post-crash period had little or no influence on case processing times.

CONCLUSIONS

In general, the innovations of Recorder's Court's Delay Reduction Project (the change to individual dockets, the case track, the docket prosecutors, and the crash program) brought about extremely large reductions in case processing time — although the magnitude of these reductions varied in some instances in response to the values of other variables.

The docket change in Recorder's Court had its largest effect on those cases that went to trial, where the effect was cut by more than half. One of the most interesting aspects of the docket change was that after the change to individual dockets, case processing times became directly responsive to the judges' caseloads and indirectly responsive to the average case processing time in the preceding month. Case processing times in one month affect caseload in the next and, as caseload goes up, current case processing times decrease. While it is no doubt true that adjustments in current case processing time to meet rising caseload could not accommodate all increases in caseload, it does appear that in a period in which there are no outside shocks which greatly increase the incoming caseload or cut the court's resources drastically, under the individual docket the court maintains a steady state with respect to small variations in caseload.

Our interviews suggest several ways in which this responsiveness to caseload was achieved. The first, of course, was that the change to individual dockets gave each judge an amount of work for which he was accountable. Second, it was clearly a goal of the project to make judges "docket conscious." Efforts were made both to instill a feeling of responsibility for the docket and to give judges the tools (e.g. teaching them how to read computer printouts and graphs) to enable them to do so. Third, the project staff and later the Chief Judge did not leave the monitoring of dockets entirely up to the judges themselves. They also monitored judges' dockets and made personal visits to those who were falling behind. Our results suggests, however, that the practice of "helping out" judges who are having trouble by removing cases from their dockets — although it may keep the court's docket under control — does not cause the judges so helped to speed up case processing times in the cases remaining on their dockets. That this was recognized by some in the court is apparent from the remarks of the case assignment officer who said that he had quit trying to transfer cases from the dockets of judges who were having trouble because, when he did so,

they stopped working. In any event, the point to be made here is that under the individual docket, judges became directly responsive to their caseloads and indirectly response to their performance at an earlier period.

The case track innovation also resulted in dramatic reductions in case processing time. For this innovation, the largest effects were for cases with motions and, through the plea cut-off date component of this innovation, for cases disposed by pleas and later dismissals.

The effect of the crash program on cases initiated under it was substantial. This effect was brought about through the components of the crash program — an increase in the size of the bench, intensive monitoring of performance, and renegotiation of pleas to clear the docket of old cases.

As for the post-crash period, we find essentially no effect on case processing times. Because of the large number of visiting judges, however, there is a very large effect on the average caseload. If one looks at the lack of effect of the post-crash period on case processing times and at its large effects on the caseload variables, it appears that Recorder's Court was over-staffed during the post-crash period. A considerable number of people were sharing a relatively small workload. We found no additional decrease in case processing time attributable to the introduction of docket prosecutors. Docket prosecutors may be important to the prosecutor's office in monitoring its own performance and the court's performance, but their presence did not further reduce case processing times.

In conclusion, it should also be added that the effects of variables besides the innovations should also be of interest to a court. These variables are more than merely necessary "controls" so that the effects of the innovations can be estimated, although they do serve this function. A number of the variables that this analysis show to have important effects on case processing time are potentially manipulable and the estimates we have presented reveal how large the payoffs in reductions of case processing times are likely to be. And, finally, the analysis suggests what effects changes in the composition of the court's caseload are likely to produce in case processing time.

NOTES

[1] We choose the arraignment on the warrant as the beginning of the case because it marks the point at which the court becomes cognizant of the case and the point at which the court's count of case age begins. The use of this date does exclude time that elapses between the incident and the complaint and the complaint and the arraignment on the warrant, but this time is outside the court's knowledge and control. The use of the arraignment on the warrant as a beginning date excludes those cases in which the defendant was never arraigned because he was never apprehended. The use of the date of verdict, dismissal or plea as an ending date excludes sentencing, appeals, new trials as a result of appeals, revocation of pretrial diversion, and probation violations, but it is most comparable across cases because all cases should have one of these actions, although not all will receive court action after that date.

Fifty-three defendants in our sample were never arraigned on the arrest warrant. These defendants were not in custody when the warrant was issued and had not been arrested and arraigned by the time we concluded our data collection in the spring of 1979. Because they were not arraigned, they are not counted by the court in its own measures of caseload. Furthermore, they are necessarily omitted from our calculations because they have no beginning date under our definition of case processing time. The defendants in these cases are slightly older, have more prior convictions, are more likely to be charged with drug crimes, and are less likely to be charged with weapons crimes than are those defendants in our sample who were arraigned, but the differences are not great.

Twenty-six defendants in our sample were arraigned, but their cases had not been disposed at the time we completed our data collection. These defendants also resembled those whose cases were disposed except that they had more prior convictions (5.4 on average as compared with 2.1 for the remainder of the sample). The most frequent reason for failure to dispose of the case was that the defendant had failed to appear and a bench warrant had been issued.

[2] Although one might view the statutory maximum penalty as a rather narrow operationalization of seriousness — one could, as some researchers have done, attempt to build a measure of seriousness based on the amount and kind of harm done and the relationship between the victim and the defendant (see Forst and Brosi, 1977; Berstein, 1977a); or on a combination of prior record and crime type (Mather, 1979) — the statutory maximum penalty has much to recommend it. First, it is the legal ordering of the seriousness of crimes by the punishments appropriate to them. Second, it represents a defendant's maximum risk. Although a defendant might receive a lighter sentence, there always remains the possibility, while his case is in progress, that he will receive the maximum sentence. Finally, it is a measure that is obtainable from the court files, whereas, a measure that incorporates specific aspects of the crime and characteristics of the victim is not. We choose the statutory maximum of the most serious count of original charge rather than the statutory maximum of the conviction charge because it is the former and not the latter that governs perceptions and treatment of the case in its progress through the court; only convicted defendants have conviction charges. For maximum penalties of life imprisonment we arbitrarily assigned the value of 480 months.

It has also been suggested that type of crime should be included in the definition of seriousness. It seems to us, however, that with respect to direct effects on case processing time, various crime times do not add to the risk the defendant faces in sentencing which is, of course, a central argument for including seriousness in the model. Rather, they are inferior measures of seriousness. This argument was supported in preliminary results in which type of crime was found to have no effect when seriousness was taken into account. This is not to say that crime type may not indirectly affect case processing time through its effects on other variables. Indeed, our model specifies such indirect effects.

[3]Dismissals, although they constitute a conceptually different outcome, are not distinguished from cases disposed by pleas in the model, because, as our arguments with respect to strategic reasons for delay imply, dismissals in the trial court are not causes of longer case processing times, but a consequence of them. They represent, from the defense's point of view, a successful use of strategic delay.

[4]To calculate the total effects on a dependent variable, we first express the dependent variable in terms of exogenous variables only. In our case, we obtain this "reduced form" equation for case processing time by substituting for each appearance of a prior endogenous variable (trial, dismissal at examination, average caseload or individual caseload) in the equation for case processing time, the equation for that variable. The total effect of any explanatory variable in the reduced form equation is, then, the partial derivative of that equation with respect to the explanatory variable.

PART III

CONCLUSIONS

CONTINUED

5 OF 6

Chapter 13

SUMMARY AND CONCLUSIONS

In the preceding chapters we have provided an extensive analysis of delay-reduction programs in four courts. We reiterate that these four courts cannot be viewed as representative of American or urban courts. These courts are distinctive, among other ways, in that they received federal money to combat their delay problems in criminal cases. Similarly, the four courts may not necessarily be fully representative of courts that receive federal money to attack delay. These courts were among the first to implement programs using funds from LEAA's Court Delay-Reduction Programs.

Nevertheless, the courts proved to be a useful laboratory for studying the implementation and efficacy of innovations. The courts differ in their environment — region of the country, community size, community racial and ethnic composition. The courts also differ in their legal structures — how judges are selected, whether the court is unified or not, whether there is an active grand jury or not. Furthermore, the courts differed greatly in the extent to which delay was a problem and in their views of appropriate remedies. These differences facilitated evaluating delay-reduction strategies under different conditions.

The number of sites (4) is too small and their selection was sufficiently non-random to permit scientifically-grounded generalizations. But we will make inferences about the significance of delay as a problem, the role of local socio-legal culture and political relationships within the courthouse in promoting or blocking delay-reduction efforts, and the characteristics or attributes of successful programs, based upon the rich quantitative and qualitative data collected. To policy-makers, such statements should be treated as suggestive rather than definitive, as one attempt to step back from the minutae of data. To researchers, such statements should be treated as mere hypotheses in search of confirmation.

In this chapter we first provide a summary of the major empirical findings of the study. Then we examine some implications of these data, which are intended to address concerns of both practitioners in and researchers of courts. In doing so, we

hark back to themes and discussions raised — but not fully developed — in our earlier chapters.

SUMMARY

By almost anyone's standards, Providence was a court with a severe delay problem prior to the introduction of innovations. Criminal cases took not merely months but often years to be processed and disposed. Ironically, though, local court actors were among the last to come to view this situation as a problem. State supreme court decisions, a new attorney general, and a new chief justice of the state high court proved to be the catalysts for the development of local concern over the slowness in processing cases. It was state-level figures, encouraged by a Judicial Planning Council, who initiated a series of grant applications, plans, and programs, in concert with the local court, designed to reduce a large backlog and to introduce case scheduling mechanisms and routines. The local court then assumed responsibility for ongoing implementation of these programs.

In actuality, a series of innovations — not merely one or two — were introduced in the Providence Superior Court between late 1976 and September of 1978. Probably the most important of these were (1) the "Push" program, a one-time crash program designed to remove the old backlog; (2) an Administrative Order, issued by the Presiding Judge and designed to place all cases on a ninety-day track from arraignment to the trial date; and (3) the involvement of the Whittier team to resocialize judges and court personnel with respect to management prerogatives and controls. In no instance did all the attempted innovations actually become implemented. Local resistance to such alien concepts as plea cut-off dates or reciprocal discovery prevented their implementation. But a number of innovations were successfully introduced, particularly changes in the court's scheduling process.

The results were dramatic. In the baseline period, median case processing time from arraignment to disposition was 277 days. This dropped sharply to 101 days for the period of planning and implementation of innovations. For the impact period — when innovations were firmly in place —the median dropped further, to 61 days. Equally important, the time needed to process relatively slow cases improved materially. The "75% point" — the point at which three fourths of the cases were processed —dropped from 573 days in the baseline period to 386 days in the planning

period to a mere 104 days in the impact period. And the time needed for the slowest 10% of the cases also dropped sharply, from a minimum time of 904 days in the baseline period to 192 days in the impact period. These reductions in case processing time could clearly be attributed to the innovations introduced rather than to any changes in the characteristics of the cases or defendants coming before the court.

Unlike Providence, Detroit's court actors were attentive to the potential problems of delay. Detroit's Recorder's Court (which hears only criminal cases) had a stormy history in the 1970s, including prior experience with delay-reduction programs. Though such programs were once successful, case processing time again deteriorated due to weak leadership by several chief judges and vacillation over which type of case assignment system —master or individual — was preferable. The resultant backlogs and case processing times never approached those of Providence, but the situation was acute because of a shortage of local resources. The county jail was bursting with inmates, and delays of any magnitude in processing jailed defendants threatened both the fiscal resources of the community and the safety and well-being of defendants. Furthermore, judges themselves were badly divided as to how to improve the situation.

Against this backdrop, the Michigan Supreme Court intervened directly by appointing a Special Judicial Administrator to oversee the delay reduction program. The Administrator was a former state court of appeals judge known locally for his managerial skills and ability to raise money. Innovations introduced included a return to the individual calendar; a "docket control center" which monitored the progress of cases and the work habits of judges; decentralization of plea bargaining in the prosecutor's office to facilitate the concept of floor teams; and extensive use of visiting judges. Again, not all attempted innovations came to be implemented (e.g., a "war room" which was to serve as the base for the docket control center). Most were successfully put in place, though, reflecting the higher level of coercion involved.

The results indicated substantial improvement, most notably in the court's handling of the tougher cases. Though median case processing time dropped only from an initially modest 40 days from bindover to disposition in the baseline period to 19 days in the post-innovation period, the 75% and 90% points improved considerably. Where the toughest 25% of the cases consumed 170 days or longer in the baseline period, this dropped to 76 days in the innovation period and to 60 days in the post-innovation period. Likewise, the longest 10% of cases improved from a minimum of

276 days in the baseline period to 146 days in the innovation period to 119 days in the post-innovation period. Thus, Detroit's problem prior to the innovations was not in handling routine cases but in disposing of tough or unusual cases. These dragged on for many months and contributed to a substantial backlog, until the innovations corralled them. As in Providence, statistical controls indicated that the innovations — particularly those related to the operations of the docket control center -- accounted for the reductions in case processing time.

Las Vegas, too, was a troubled court in the 1970s, beset with problems of understaffing, ineffective management and predictably large backlogs and slow processing of cases. These problems extended down to the justice of the peace courts, which serve as the filter to the trial court in Las Vegas. Unlike Providence, problems developed and escalated rapidly in the early 1970s as the Las Vegas area experienced a rapid population growth and concomitant crime explosion. Increases in judgeships seemingly did not keep pace with this expansion. Furthermore, judges' work was not coordinated by the court's master calendar nor was cooperation well-served by intense feelings of judicial autonomy.

Into this environment a series of changes were introduced, gradually over a period of time. In contrast to Providence and particularly Detroit, these attempted solutions to delay were initiated locally without significant pressure from state-level figures. Like Detroit, the Las Vegas court reverted to an individual calendar. A new, professionally-trained court administrator was hired, and shortly thereater an application for a "team and tracking" grant was submitted and accepted. The key focus of the team and track innovation was improved coordination between the justice of the peace and trial courts, to be achieved by the creation of teams of prosecutors and public defenders who would appear before designated justice of the peace and trial court judges. Most of the envisioned changes were successfully implemented.

The results were dramatic in the justice of the peace courts, but modest at best in the trial court. In the trial court, the innovations associated with team and tracking had only a small effect on case processing time. The median time dropped from 61 days from arraignment to disposition in the baseline period to 47 days in the innovation period, and rose slightly (to 48 days) in the post-innovation period. Much like Detroit, however, problems were reflected in the tough or relatively long cases. The toughest 25% of cases improved from a minimum of 142 days in the baseline period to 88 days

in the innovation period to 80 days in the post-innovation period. A parallel improvement occurred in the toughest 10% of cases, dropping from 228 days in the baseline period to 167 days by the post-innovation period. Not all of this improvement, however, could be attributed to the innovations, for the kinds of cases coming before the court changed slightly — toward the easier end of the continuum.

In the operations of the justice of the peace courts, the results were unmistakably dramatic. Unlike the other sites, the lower courts were a specific target of innovations in Las Vegas. Our findings indicate that median case processing time improved from 81 days in the baseline period to only 40 days by the post-innovation period. Even more impressive, long, drawn-out lower court proceedings were virtually eliminated. The slowest or toughest 10% of cases dropped from a lengthy minimum of 305 days in the baseline period to only 117 days by the post-innovation period.

Dayton was a court that, on the surface, was strikingly different from the other three courts. There was no atmosphere of crisis or serious problems about delay. There were no controversies over, or vacillation as to, which case assignment system should be used. And there was no absence of strong leadership. The chief judge was a well-entrenched, aggressive leader of the court.

Impetus for delay-reduction activities came by happenstance. When the court received a federal grant to centralize and computerize court records, it hired a consultant who was a member of the Whittier team. When the Whittier team itself subsequently received LEAA funding to implement and test its delay-reduction program, Dayton was asked, and agreed, to serve as one site. The innovations introduced in Dayton consisted mostly of "management tinkering" — e.g., centralized arraignments, mandatory discovery at the preliminary hearing, establishment of a plea cut-off date — rather than the dramatic changes and additions in the other sites. Even so, a number of court actors initially resisted, and ultimately some of the changes (such as the removal of judges from pretrial negotiations) were never fully implemented.

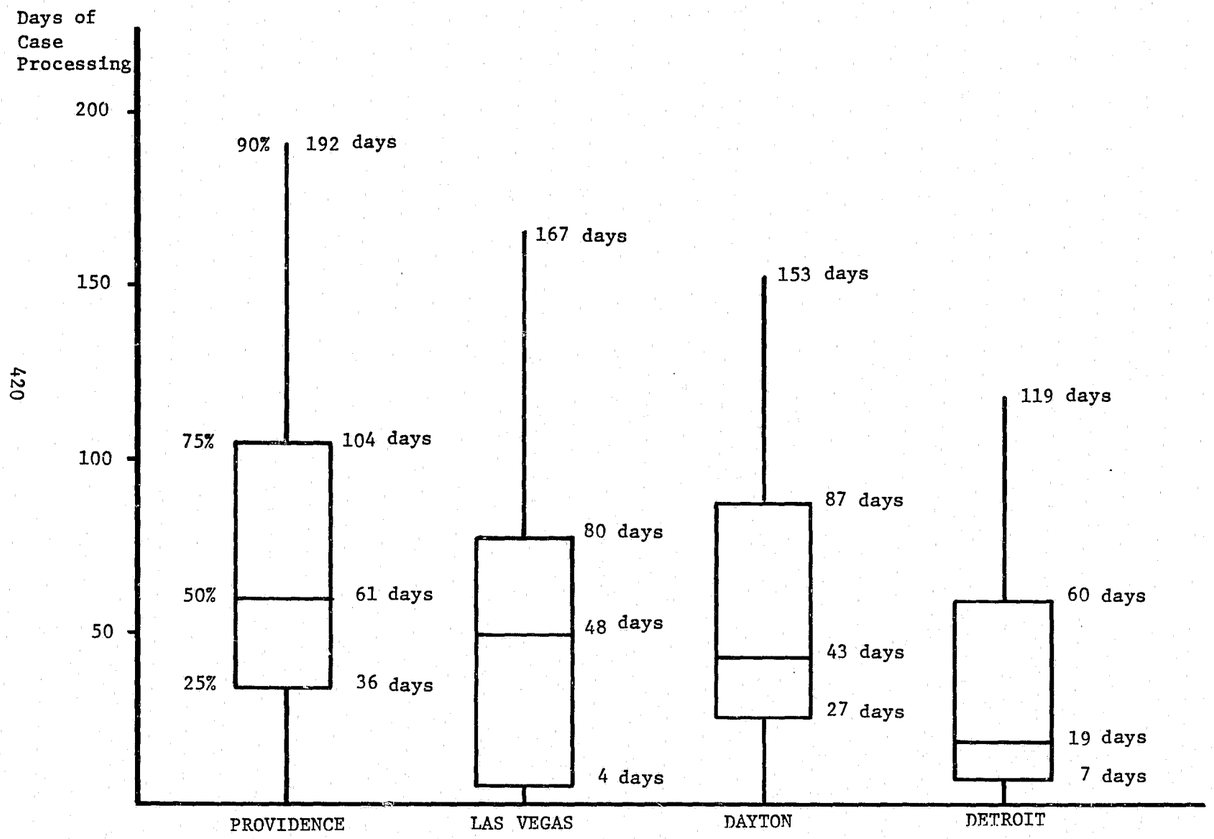
The results indicated improvement, notably in the processing of routine cases. Median time dropped from 69 days from arraignment to disposition in the baseline period to only 43 days in the post-innovation period. Nevertheless, monthly-based time lines suggested lack of consistency and instability in the improvement, calling

into question long-term effects. The 75% and 90% points in Dayton were not particularly slow at the outset. Thus, modest improvements were perhaps all that could be expected. The toughest 25% of the cases consumed a minimum of 104 days in the baseline period, 87 days after the innovations. Improvement in the slowest 10% of cases was even smaller —from 167 days in the baseline period to 153 days in the post-innovations period.

Viewing the four sites together, the most significant finding from our quantitative data is the homogenization of the case treatment that occurred subsequent to delay-reduction innovations. This increased similarity in the pace at which cases are handled is evident both across the four courts as well as within the courts. Figure 13-1 illustrates this phenomenon across courts through box-and-whisker plots of case processing time in each of the courts after the innovations. Note that, compared with Figure 2-1 illustrating box-and-whisker plots before the innovations, the four courts become much more comparable in the pace of their dispositions. Providence remains the slowest of the four courts, but not by much. Las Vegas and Dayton are a bit faster and quite similar to one another, while Detroit is the speediest of the courts. The gap between the slowest and speediest courts is not great (median of 61 days versus median of 19 days). Larger differences still remain among the lower courts in these sites where, except for Las Vegas, delay reduction programs were not introduced. Overall, though, the trial courts in these four sites have become more routinized in their handling of criminal cases, and thus they have come to look more alike.

FIGURE 13-1

Comparative Box-and-Whisker Plots for Case Processing Time
in Four Courts after the Innovations*



*Includes only upper (trial) court time; in Detroit, time from preliminary exam to disposition.

Within courts, too, case treatment became increasingly homogenized as a result of the innovations. This is reflected in the decline of the discriminating power of case and defendant characteristics. Before the innovations, there was often a wide disparity in the processing times of cases with and without motions, of cases going to trial and cases which plead, of cases with jailed defendants and those with bailed defendants, etc. After innovations were introduced, these disparities were typically reduced and sometimes eliminated entirely. This can be seen in the raw mean figures and in unstandardized regression coefficients, both of which are measured in days of case processing time. For example, in Providence prior to the innovations cases going to trial consumed almost twice as long as those pleading, but after the innovations the difference was a mere 14 days (95 days for trial cases, 81 for plea cases). A similar reduction in disparity of treatment occurred in Las Vegas. Cases going to trial consumed three times as long as cases pleading before the innovations, but only fifteen days longer (67 versus 52) after the innovations. In both courts, the unstandardized coefficients — denoting a variable's net effect — showed similar declines for the mode of disposition variables.

The reductions of disparities in case treatment are also reflected in the decreases in the proportion of variance explained (R^2) across time periods. For example, in Las Vegas 26% of the variation in case processing time is explained by case and defendant characteristics in the baseline period, but that figure drops to 20% in the post-innovation period. In Providence, too, a decline can be noted from 21% in the baseline period to only 10% in the impact period. Thus, innovations helped these courts — notably Providence and Las Vegas — to rationalize and routinize their treatment of cases. No longer were some classes of cases taking a much longer time to be disposed than others.

IMPLICATIONS

Case Processing Time Can Be Reduced through Different Delay-Reduction Strategies

The four sites introduced a rather different mix of delay reduction programs. Detroit and Providence relied, in part, upon the psychology of "crash programs" to rid their courts of the backlog of very old cases. Providence introduced case monitoring and tracking mechanisms; Detroit and Dayton refined theirs, and Las Vegas generally

remained without such mechanisms. Detroit and Las Vegas abandoned master calendars, whereas Providence retained the master calendar (Dayton had an individual case assignment system for years). Even elements of the Whittier model operated differently in Providence and Dayton, a theme to be elaborated upon later. Yet each site subsequently experienced some, often marked, reduction in case processing time, either in the trial court and/or the lower courts. Thus, no one program, no one set of attributes are required for a court to improve its case processing time. Instead, programs likely to succeed are those that come to grips with the local socio-legal culture (see also, Nimmer 1971). Successful courts will be those that consider the cultural environment of the jurisdiction, the legal structures and procedures of the jurisdiction, and the court's informal organization. Since informal organization and local norms may be causes of delay (Church et al., 1978a), delay reduction programs must not only accommodate the local socio-legal culture but challenge it where necessary. The relationships and tensions between local socio-legal culture and delay-reduction programs are the subject of the next section.

Local Socio-Legal Culture and Delay-Reduction Programs

Some aspects of local socio-legal culture may contribute to delay while others facilitate efficiency. Some aspects of the local culture are amenable to change by courts while others remain outside a court's control. Each of our research sites designed delay-reduction programs compatible with existing political and economic parameters. No statutory or state constitutional changes were required, although two sites did request increased budgets to maintain or expand the programs once federal funding came to an end. Only Las Vegas required additional personnel to implement the program. The other three sites either utilized existing personnel in new ways or borrowed personnel from other courts on a short term basis. In the following sections, we examine how the delay-reduction innovations coped with each major component of local socio-legal culture.

Cultural characteristics of the jurisdiction. Whereas most of the cultural characteristics of the jurisdictions had only a general influence on the operations of the courts, several were influential in the shape of the delay-reduction innovations. For example, both Detroit and Dayton were faced with sharply rising unemployment as a result of national and local economic factors. Consequently, both courts expected some rise in crime, and therefore devised programs that would allow for an increased

workload. Providence had a large number of cases involving outstanding warrants, due at least in part to the ease of leaving the jurisdiction of a very small state. Consequently, the Providence delay-reduction program virtually excluded cases involving outstanding warrants because of the difficulty in retrieving defendants across state lines. And in Las Vegas, the program had to take into account the explosive growth of the community between 1960 and 1980. Consequently, the innovation was the vehicle for adding new personnel — trial and lower court judges, prosecutors, and public defenders.

Law and legal structures and procedures. In contrast to the cultural environment, which placed only modest boundaries upon delay-reduction innovations, the legal structures of the state and locale were more formidable. Speedy trial laws, methods of formal charging, and the formal and informal role of the lower courts all were relatively immovable objects that required compatible innovations. By contrast, case assignment systems — often part of the problem — proved amenable to change and thereby became part of the delay-reduction solution.

All four states in which our sites were located had speedy trial laws or rules that placed time limits on some phase of case processing. Rhode Island had the least restrictive timetable (established as a goal), whereas the other states had some strict time standards (fixed by statute) between certain stages, especially for defendants in custody. Of necessity, the delay-reduction innovations worked within the standards prescribed. Conversely, no new standards were formally introduced as a result of the innovations. Providence may be viewed as an exception in this respect. There, the establishment of a 180 day limit by the Judicial Planning Council was the first step toward a series of delay-reduction innovations.

There was some variation in formal charging mechanism across the four sites. Dayton used almost exclusively indictment by a grand jury, whereas prosecutorial informations heavily predominated in Providence, Las Vegas, and Detroit. Abolition of the grand jury has long been a "bugaboo" of reformers, including the Whittier team that assisted in the development of delay-reduction programs in Dayton where the grand jury prevailed. Nevertheless, the program in Dayton had to accommodate use of the grand jury, for attempted legislative change was not realistic. Interestingly though, use of the grand jury did not contribute to lengthy case processing time in Dayton.

The role and activities of the lower courts varied sharply by site. In Detroit, there is no lower criminal court; there is but one, unified criminal court. The Dayton and Las Vegas lower courts set bail and determine probability of guilt through a preliminary hearing. The Providence lower court does little more than set initial bail. Its relative lack of screening would limit severely the potential effectiveness or relevance of innovations directed there; thus, the concentration of delay-reduction programs in the Providence trial court. By contrast, Las Vegas and Dayton were free to attempt improvements in both levels of court. Las Vegas did so, given the deep-rooted problems in its lower courts; Dayton did not, absent such problems.

Unlike the previous areas, case assignment systems were not immovable objects that innovations were required to accommodate. Indeed, in two sites — Detroit and Las Vegas — the assignment system changed from master to individual in anticipation of, or as part of, the delay-reduction innovations. And in Dayton, an element of the master calendar principle — centralized arraignments — was instituted at the recommendation of the Whittier team. Only in Providence did the innovations work within the general framework of the existing (master) case assignment system. Thus, the mechanisms of case assignment and scheduling often proved to be critical ingredients in the recipes for change recommended by outsiders and concurred in, if sometimes grudgingly, by local court actors themselves.

Informal organization. The informal organization of the courthouse is perhaps the most critical aspect of local socio-legal culture, as well as the centerpiece around which recent studies of criminal courts have been built (see e.g., Eisenstein and Jacob, 1977; Heumann, 1977). Delay-reduction innovations rarely, if ever, uprooted these relationships within the courthouse. Rather, the programs were designed to be compatible with ongoing divisions of labor, power relationships, and shared understandings of work.

In all sites there was some reorganization or reassignment of personnel. Providence and Detroit "borrowed" judges and auxiliary personnel for short periods to staff emergency programs for backlog reduction. Dayton trained clerical personnel to handle new case scheduling responsibilities. All sites drew upon the "team" concept to better coordinate the processing and disposition of cases. But none of these programs seriously disrupted permanent divisions of labor. Some were only temporary measures, and considerable slippage occurred in the workings of "teams."

In all sites there was substantial development of, or expansion of existing, communications mechanisms. In Las Vegas, a team and track advisory committee was created to combat the individual bailiwicks that flourished prior to the innovations. In Detroit, a coordinating committee of criminal justice agency representatives met frequently, sometimes daily, in the early stages of the innovations. In Providence, a series of committees was formed to discuss problems at each stage of case processing and to make recommendations for change to the court. And in Dayton, a criminal justice coordinating committee was created by the chief judge to be a vehicle for planning the implementation of specific delay-reduction techniques. Though most of these committees periodically fell into disuse, they provided an important — often the only — forum for inter-office communication during critical periods of planned change. These new communications mechanisms did not, however, disrupt or materially alter relationships within the court. Rather, they were more typically instruments of rationality by improving the sharing of information, and perhaps instruments of cooptation by incorporating the input of key local actors. More fundamental relationships, such as courtroom workgroup patterns or organizational socialization of new workers, were well beyond the reach of new or improved communications mechanisms that operated primarily at the level of elites.

The role of the local bar was one aspect of the informal organization that delay-reduction programs generally sidestepped. Although all of our research sites introduced mechanisms that demanded the cooperation of the local bar, none actively sought to change attitudes within the bar. Local bar associations remained relatively uninvolved in delay-reduction planning. Some attorneys were put on notice; some sites directly informed local attorneys about delay-reduction programs. But the programs typically focused on stable members of the courtroom workgroup — judges, prosecutors, and public defenders. The local bar received the message informally rather than through a major effort at resocialization.

Finally, the role of the judge was an aspect of informal organization that innovations necessarily confronted. In all of the sites, the delay-reduction programs required that individual judges become more "docket-conscious" — more aware of management principles and their application in their own courtrooms. This was perhaps most visible in Detroit, where statistics assessing the comparative performance of judges in achieving dispositions and low backlog were distributed widely within the courthouse. In Dayton and particularly Providence, the Whittier team worked hard

to socialize judges to the need for sensitivity to courtwide caseflow even if, as in Providence, no judge had his or her own individual docket. In Las Vegas, too, a newly-hired court administrator tried to heighten judicial sensitivity to management.

The success of these delay-reduction innovations in making judges more docket-conscious largely depended upon whether judicial autonomy was perceived to be seriously threatened. Despite the crudeness of case monitoring mechanisms in Detroit, most judges seemed to have taken these measures in stride. Few became convinced that their autonomy was threatened. In Las Vegas by contrast, judges revolted and ousted the court administrator, as many judges became convinced that the availability of comparative statistics on judicial productivity would threaten their autonomy, indeed perhaps even their job security. In Providence, the unusual lifetime tenure of judges provided no incentives to be receptive to new management principles but also no reason not to be. Job security was assured. In Dayton, judges perceived that certain aspects of the Whittier model — notably, removal of judges from pretrial negotiations — intruded on their autonomy, on their definition of the role of a judge. As a result, this part of the new management procedures was implemented with resistance and subsequently disintegrated. The lesson from all four sites, then, is much the same. To the extent that delay-reduction programs accommodated judicial perceptions of their autonomy — however narcissistic those perceptions — the programs succeeded in sensitizing judges to case management principles.

The Whittier Model in Action: An Illustration of the Role of Local Socio-Legal Culture

The Whittier model was designed as a unified program with distinct elements. In all, 95 "critical factors" were identified as necessary to achieve optimum case processing time. Implementation sites were analyzed for the presence or absence of these factors, and plans were made to introduce missing ones into a given site. In theory, the unified program should have looked much the same in every site, even though some courts would need modifications, perhaps as a result of state law or local procedure, to fit the model. Actually, the implementation of the model in Dayton and Providence resulted in quite different programs with distinctive emphases. The Whittier team realized the import of local socio-legal culture. Although the initial recommendations in the two sites were very similar, the plan and method of implementation in each site were very different.

Participants in both sites had prior contact with the Whittier team through judicial conferences and classes. In Providence, planning was lengthy and included introductory seminars, meetings with state officials and criminal justice personnel, and the development of a sense of mission, an esprit de corps. The plan was introduced slowly, in steps, over a period of one year or more, at a time when other management changes were also occurring. In Dayton, by contrast, the political lobbying or "resocialization" of actors did not occur on a broad scale. Planning was comparatively brief, and the program was implemented all at once. In fact, many of the court participants wondered why a delay-reduction program was being introduced into a court not experiencing lengthy case processing time. The goal in Providence was clear: to reduce overall case processing time. The most widely discussed goal in Dayton, however, was to reduce the number of pleas coming on the day scheduled for trial.

On the first series of visits to the two sites, the Whittier team searched for the presence or absence of each of the critical factors. In conjunction with local court officials, the team designed a plan to reduce local case processing time. These plans reflected less concern with the critical factors than with outlining a list of specific procedural changes and case processing time goals.

The specific plans in both Dayton and Providence included recommendations to increase coordination with the lower courts, introduce reciprocal discovery at an early stage, initiate centralized arraignments in the upper court, mandate a plea-cutoff date before the scheduled trial date, require written requests for continuances and judicial control over granting those requests, and collect statistics concerning case processing time. And the plans called for specific time frames between stages of case processing by establishing a scheduling track.

Not all of these recommendations were successfully implemented in either site, especially in Providence where several recommendations were rejected out-of-hand and others modified (see Table 13-1). The different responses of the two sites reflected local differences in judicial autonomy, specific court problems, law and local procedure, tolerance of change, and acceptance by the local legal community.

Table 13-1. Local Response to Key Whittier Proposals

Elements	Providence	Dayton
Master calendar	already in place	No
Coordination with lower court	No	Yes
Reciprocal discovery	No*	Yes
Centralized arraignments	already in place	Yes
7 days from arraignment to pretrial	modified to 30 days	Yes
14 days from pretrial to trial or plea cut-off date	modified to 30 days	Yes
Concept of plea cut-off date	No	Yes
Written requests for continuance	Yes	Yes
Collection of statistics to monitor caseflow	Yes	Yes

*Prosecutor's office provides some discovery; no reciprocal rules.

Dayton officials implemented virtually every Whittier recommendation once the plan was modified to permit the individual calendar mandated by state supreme court rule. Providence, on the other hand, modified many recommendations, rejected some, and implemented others. The modifications of the time frames were viewed to be necessary in light of local judgments about the limits of tolerable change in the pace of litigation. Although the Whittier team has identified reciprocal discovery, structured pretrial negotiations, and a plea cutoff date as the three key aspects of their plan, Providence achieved a significant reduction in case processing time without placing much emphasis on any of these. Dayton accepted all three aspects but continued to experience difficulties with pretrials.

Although the local socio-legal cultures in Providence and Dayton varied substantially, as did the actual content of change, the courts resembled one another after implementation in one important way. Case scheduling was centrally controlled in both courts, and judges gained control over their cases at about the same stage despite formal differences of procedure and calendaring. Judges in Dayton were assigned cases before arraignment, but they typically did not become involved until after pretrials because of centralized arraignments and the removal of judges from pretrials. Judges in Providence were assigned cases for pretrial, rather than for trial as previously. In sum, judges in both courts were to be involved in cases only when a judge was needed. Attorneys in both sites were expected to resolve much without judicial participation, and judges were to conduct trials or resolve pretrial disputes. The Whittier team encouraged each site to determine when judges were needed and which functions could be handled by nonjudicial personnel. Court control over cases is not synonymous with judicial control.

The evolution of the Whittier team's view of implementing change reflects graphically the coming to grips with the role of local socio-legal culture. Rather than trying to superimpose a unified program consisting of many "critical factors" onto each site, the Whittier team broadened their own perspective. They did this by adapting to immutable characteristics of a court (like calendar system in Dayton) or to deep-rooted local predilections (such as opposition to a plea-cutoff date in Providence). By emphasizing a court's self-evaluation, expansion of communication networks, self-monitoring, and new divisions of labor, the Whittier team's thinking came to resemble the nature — if not the details — of delay-reduction programs initiated in our other sites.

Delay as a Symptom

Discussions of delay in courts typically treat delay as the problem. Two years of research has convinced us that simply viewing delay as one problem is not very helpful in explaining its causes, assessing its consequences, or in suggesting remedies. We prefer to view delay as a symptom of other problems that exist within a particular court system. Much as a physician might view a patient's chronic indigestion as a symptom of a variety of possible diseases, so should a court pay attention to lengthy case processing time as a symptom of a range of possible system problems.

Carry the medical analogy one step further. Upon seeing a patient complaining of indigestion, a physician begins probing for other symptoms that can lead to a diagnosis. S/he probes the patient's medical history, runs diagnostic tests, and asks for information that a patient may not think to volunteer. Correctly diagnosing the source of a court's symptom of delay requires a similar approach. Some courts may never experience delay or may feel that delay is unavoidably the result of structural features in the criminal justice system. Others may either conduct an internal search for problems and derive internal solutions, or look to outsiders for help. All of our research sites relied somewhat on external help for coping with their symptom of delay. All used some kind of external funding. Some used management consultants or computer experts to facilitate a correct diagnosis. Some generated internal solutions.

Upon recognizing delay as a symptom, each of our research sites first measured (however crudely) the magnitude of the problem. This varied substantially. Some sites had initial case processing times that were shorter than the ultimate goal in others. Each system was able to tolerate very different case processing times and each defined its own system's limitations and goals. Upon further diagnosis, each site found other problems associated with delay and each designed different programs to address them. Some found management and case tracking to be a problem. Others focused on budgetary concerns, lower court problems, late pleas, or jail overcrowding. The diagnostic process looked beyond the court itself to measure social and institutional costs of delay. As each site generated its list of problems, it developed programs that varied in length and scope to solve the problems. Some programs were implemented over a period of several years, and others were introduced on one day. No one program or timetable for implementation was better than any other. Rather, court actors in each site planned and implemented solutions that each system could tolerate.

Just as a medical problem can respond to alternative modes of treatment, so can problems in courts respond to very different solutions.

Because delay is often, and understandably, viewed as an undesirable evil in courts, much investigation concerning the sources of and solutions to delay adopts a negative tone. We can suggest that delay in courts may actually be <u>functional</u> to courts if, upon noting that delay is a "problem," courts begin to search for its causes and introduce appropriate remedies. Although undesirable in terms of economic and social costs, delay can compel courts to look for problems and find possible solutions.

Defense attorneys and judges are most frequently blamed for causing delay. Our research indicates that <u>all</u> actors in the criminal justice system may be responsible for unnecessary case processing time. Police departments may contribute to delay if inadequate resources are devoted to case preparation. Lower courts can contribute to delay if there is no coordination in the bindover of defendants and the transmitting of papers with the upper trial court. Prosecutorial screening may contribute to delay if weak or inappropriate cases are not dismissed early. Judges may contribute to delay by too easily granting continuances. Prosecution and defense attorneys can contribute to delay by requesting continuances to strengthen or weaken cases. No one stage in the criminal process is solely responsible for delay, and no one set of actors is solely responsible for delay. Our research indicates a myriad of sources of delay, whose individual components may vary from one court to another.

A relationship between managerial efficiency and respectable case processing times is suggested in the literature on court delay, and our research, too, indicates such a relationship. All of our sites introduced changes in the management either of courts or cases, and all of our sites experienced some reduction in case processing time. Some of our sites virtually revamped court and case management. Others changed only parts of an existing management scheme. Three of our four sites found statistical information on the age of cases at various stages of the process invaluable in their efforts. These courts not only collected such information but also provided it to court actors to allow self-monitoring. Changes in management including the development of feedback were defined as important to delay reduction in the majority of our sites.

Delay, then, can be a symptom of some severe maladies afflicting courts, ranging from the lack of effective management controls to the lack of desire for such controls. Like some patients in our medical analogy, some courts may fear that the proposed cures will be worse than the known problems. The interests of court participants in using case processing time to their own ends brings us back to the larger purpose for which courts exist — to do justice. By doing justice, or perhaps invoking its name, court actors make more difficult the work of reformers who would streamline and purify the processing of cases. Doing justice and resolving disputes between the state and individual defendants are somehow related, but we do not yet know exactly how. That is the task of future research, using as its groundwork the kinds of empirical analyses of delay, delay-reduction, and case processing time that we have provided here.

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