FINAL REPORT

EXPLAINING AND ASSESSING CRIMINAL CASE DISPOSITION:

A COMPARATIVE STUDY OF NINE COUNTIES

EXECUTIVE SUMMARY

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Introduction

This summary describes the initial results of an ambitious empirical study of the operation of three middle-sized criminal courts in each of three states. Using a variety of research techniques, we amassed a formidable body of data on each system's operation.

The research had its origin in the coincidence of two developments: (1) the principal investigators' assessments of the current state of knowledge about state criminal courts and the directions new research ought to take, and (2) the National Institute of Justice's desire for research analyzing practices and behaviors that affect the criminal process with an eye to improving the efficiency, fairness, and consistency of the courts.

NIJ's objectives appeared compatible with our research goals. We believed that sensible proposals to alter the operations of criminal courts required a better understanding of how these courts worked in order to avoid the failures that had plagued previous change efforts. The emergence over the past decade of three partially developed but unintegrated approaches to understanding courts provided an opportunity to elaborate and integrate in a way that would produce major advances. Finally, it was clear to us that such advances would require a major research undertaking. Narrowly focused research projects confined to a few aspects of a few jurisdictions' operations and completed in a year or two were unlikely to do more than replicate existing research. The research question proposed by NIJ offered us the opportunity to conduct a study broad enough to go beyond replication.

Readers of the final report and this executive summary must clearly understand that the project is not complete. In one respect, this is an interim report, laying out necessary but not sufficient foundations for the final products. NIJ has awarded the project a second grant to refine the data analysis and integrate theoretical approaches, an endeavor in progress as this summary is being written. But we have learned much already, and though we have not completely refined and developed our findings, we are in a position to introduce them preliminarily.

The final report which this document summarizes is approximately 1,300 pages. Much of it provides essential descriptions of our research methodology, instruments, and sites, the basic features of the criminal process in each county, and the major features of case disposition patterns. We will not provide a synopsis of this material here, but rather describe briefly what was done and indicate where fuller descriptions can be found. Readers of this executive summary will be introduced to our theoretical approach, the research design and methodology, the outlines of our statistical description of key decisionmakers, defendants, court structures, and case outcomes, and the nature of the questions addressed in the twelve chapters describing the states and counties studied. However, we will describe in more detail the "emerging themes" in our approach to understanding courts that our work to date has produced.

The Conceptual Framework

Chapter 1 describes the study's approach to criminal courts. At its heart is the recognition that courts perform both mundane and

important political tasks and are an integral part of the political process. As such, they embody a variety of sometimes conflicting values. We do not see courts primarily as either "crime deterrers" or "guardians of due process," though we recognize that efforts to define their functions in either way reflect their political nature. Rather, we view courts as institutions that process defendants. When they make decisions about defendants, courts produce politically significant consequences for "who gets what," not just for defendants, but for the community at large and for the individuals who work in them. Finally, in making these decisions, elements that shape outcomes in politics generally (interest groups, pressures from constituencies, interpersonal interactions, decision makers' personal values and political beliefs, etc.) also determine what happens in courts along with more traditional "legal" concepts.

Chapter 1 also identifies and describes three distinct approaches scholars have used in studying courts: (1) "individual level" approaches, which examine attitudes and role perceptions of critical decision makers; (2) "contextual level" approaches, which look at the organizational setting (sponsoring organizations, work groups, etc.) in which individuals make decisions; and (3) "environmental level" approaches, which look to community characteristics like local political culture, legal culture, the sociopolitical makeup of the community, the structure of its institutions, statutes, and the like. In the past, these approaches had been only incompletely operationalized and applied; more significantly, though they are not inherently incompatible, virtually no efforts to integrate them had been undertaken. And with few

exceptions, all three approaches had been used to study the operation of large metropolitan courts only.

Chapter 2 presents our conceptual framework which weaves elements from all three approaches into a single approach. The framework depicted schematically in Figure 2-1 is described in the pages that follow it in Chapter 2. It guided our decisions concerning what concepts to measure, what data to collect and from whom, and what techniques to use in obtaining them.

The Research Design Methodology and Resulting Data Base

Chapter 2 and the appendices detail the types of data gathered and the methods used to obtain them. We studied nine criminal courts in three Northeastern states--(1) Illinois (DuPage, Peoria, and St. Clair counties), (2) Michigan (Oakland, Kalamazoo, and Saginaw counties), and (3) Pennsylvania (Montgomery, Dauphin, and Erie counties). All were "middle sized," serving populations between 200,000 and 1,000,000 and utilizing the services of at least four trial court judges. We sought to vary the social, political, and geographical characteristics of the research sites, choosing a wealthy, Republican suburban "ring" county, an "autonomous" conservative county, and a "declining," more industrial, Democratic, poorer county in each state. This design sought to produce substantial intrastate variation in the social, economic, and political environment in which the courts operate while allowing interstate comparisons of court operations in similar counties.

We undertook a massive data collection effort including over 300 open-ended interviews of approximately one hour in length with judges, prosecutors, and defense attorneys in the nine counties. Taped and

transcribed, these interviews yielded over 10,000 pages of transcript containing insights and information on the operating and structural characteristics of the court system and the personal styles and attitudes of the respondents. Most of the 300 participants also completed an attitudinal and background survey, a personality (Machiavellianism) scale, a questionnaire designed to tap local legal culture, and an evaluation of the operating traits of the occupants of other positions. We subscribed to local newspapers and clipped all articles dealing with the courts and crime during our active field research. Finally, we gathered extensive case-level data on almost 7,500 felony defendants. For the most part, we succeeded in obtaining for each of the nine counties the wealth of data contemplated in our initial research proposal. These data represent a rich lode of information that will permit the simultaneous examination of the impact of a variety of factors on the disposition of cases. For example, in our report for the second grant, we will associate information on the background, attitudes, personality, and operating style of the judge, prosecutor, and defense attorney who constituted the work group that disposed of the case.

Initial Data Analysis: A Statistical Portrait of Participants, Defendants, Court Structure, and Case Outcomes

Our initial "pass" through the data provided a portrait of the principal characteristics of case dispositions in the nine county court systems. In some important respects, substantial similarities emerged. Despite differences in the nature of crime in the counties and the composition of defendants and charges that came to court (described in Chapter 3), variation was small on several critical measures of case outcome. For example, pretrial release rates ranged from 64 percent to

84 percent and conviction rates varied within a narrow range (from 79 percent to 95 percent). But on other measures, we encountered more substantial differences, greater than we anticipated. For example, the dollar amount of bail for the same crime, the percent of defendants who were white, the proportion of defendants given prison terms holding crime constant, and the length of those sentences varied substantially as did the total lapsed time between arrest and final disposition. Thus, in terms of across-county variation in case outcomes, our data will allow subsequent analysis to explore the correlates of differences between jurisdictions.

The analysis of the attitudes of judges, prosecutors, and defense attorneys also revealed significant variation. For one thing, consistent differences emerged in the expected direction between judges, prosecutors, and defense attorneys on belief in punishment and regard for due process. On both scales, judges fell between the attorneys, with prosecutors displaying a higher belief in punishment and a lower regard for due process than defense attorneys (see Table 18-5). Furthermore, the relative mean scores on these scales for the three positions varied. For example, prosecutors and defense attorneys in Dauphin showed much greater divergence than in Peoria. But as we note below, configurations of attitudes on these measures within individual groups of prosecutor, judge, and defense attorney showed substantial and significant variation.

Finally, the descriptions of the policies and mechanics of case disposition derived from the interviews summarized in Chapter 4 revealed an astonishing array of techniques for organizing court calendars, assigning cases, and deriving and enforcing policies. The data led us

to devise a scheme for classifying ways of organizing judicial manpower to dispose of cases (Diagram 4-1 and Table 4-4), to summarize the principal dimensions of trial court systems' structural characteristics (Table 4-2 and 4-3), and to identify critical dimensions and differences in the operating styles of the counties' judges, prosecutors, and defense attorneys (Tables 4-5 through 4-15). These tables demonstrate forcefully the tremendous differences in the structure of middle-sized courts and their arrangements for disposing of cases.

Basic Operating Characteristics of the Nine Courts and the Three State Judicial Systems

Chapter 4 summarizes the principal characteristics of the nine counties and provides a useful introduction to the lengthy substantive descriptions of each county found in Part II. A general description of the structure of each state's judicial system preceeds the chapters describing its three counties. These introductory chapters examine state-mandated provisions governing the authority of the state supreme court and court administrator over trial courts, the recruitment procedures for and governance of the trial bench, the structure of lower courts and their relationship to the trial court, and procedures for financing the courts. They then examine state-mandated rules and procedures for processing cases (including provisions relating to plea bargaining) and the structure of the state criminal code (with special attention to provisions affecting sentencing).

Obviously, the content of the nine chapters describing the jurisdictions, which constitute two-thirds of the final report, cannot be summarized here. However, a common set of questions guides the nine

descriptions. We briefly explore their geography, social composition, and voting tendencies. We describe recruitment, case assignment, organizational structure and policies, leadership styles and degree of centralization, relations with other organizations, and members' attitudes in the prosecutor's office, the public defender's office (or alternative mechanism for indigent defense), the private bar, and the bench. We present the major characteristics of the case-processing system and the outlines of plea bargaining practices. Finally, we explore the nature of relations among judges, defense attorneys, and prosecutors.

These chapters delve deeply into the structure and dynamics of each county's criminal court processes, examining a broad range of questions rarely if ever looked at systematically across a number of jurisdictions--recruitment, calendaring, sponsoring organization policies, and relations with political executives. These chapters not only provide a necessary preliminary to more detailed quantitative analysis of case disposition but also establish a data base for exploring the relationship between environmental characteristics and case outcomes.

Emerging Themes in Developing a Theory of Criminal Court Operation

As suggested above, the following discussion departs from the final report's content and findings to present a more speculative and suggestive summary of the major elements of an emerging comprehensive theory of criminal courts. Readers should remember that subsequent analysis and pondering of our data may significantly modify the tentative and speculative ideas that follow. The presentation of these emerging themes

will follow our classification of existing research into "individual level," "contextual level" and "environmental level" approaches.

The Nature and Role of Individual Level Attributes

Our research drew heavily on previous work in devising measures of the characteristics of prosecutors, judges, and defense attorneys. Consequently, we have not made any breakthroughs in identifying the kinds of variables that shape behavior. But because we operationalized measures of attitudes, personality, and style of social interaction, we are in a position to study their simultaneous impact. Our on-going research on sentencing has already produced significant findings. First, a number of attributes appear to be related significantly to case outcomes. Specifically, participants' belief in punishment, responsiveness (as measured by the Q-sort), and personality (as measured on the Machiavellianism scale) all contribute to understanding sentencing. Second, these attributes interact both with each other and with characteristics of the decision making context. For example, the content of beliefs concerning punishment interacts with Machiavellianism to affect whose views are apt to prevail in determining sentences. Contextual features such as the degree of discretion given by the prosecutor's office to assistants, the extent to which attorneys can steer cases to or from judges, and the discretion local plea bargaining practices and traditions leave to judges in determining sentences all help shape the way in which personal attributes combine.

Third, important characteristics of the decision-making context are themselves defined by the mix of individual characteristics. For example, examination of the belief in punishment scores of judges,

prosecutors, and defense attorneys responsible for case dispositions reveals a number of distinctive "punishment structures." Diagram 1 displays these structures and illustrates more generally the way in which the judge-prosecutor-defense attorney "triads" can be classified. The structure of these triads shapes the dynamics of workgroup decision making and mediates the effect of individual attitudes on outcomes. Fourth, our initial hypothesis that personal characteristics interact with the context in which decisions are made has been supported. Outcomes depend not only on the structure of attitudes on such things as punishment and the interaction of personality, operating style, and the like. They also depend on how attitudes of key decision makers interact with the severity of the offenses. And they reflect the constraints and guidelines found in the state criminal code.

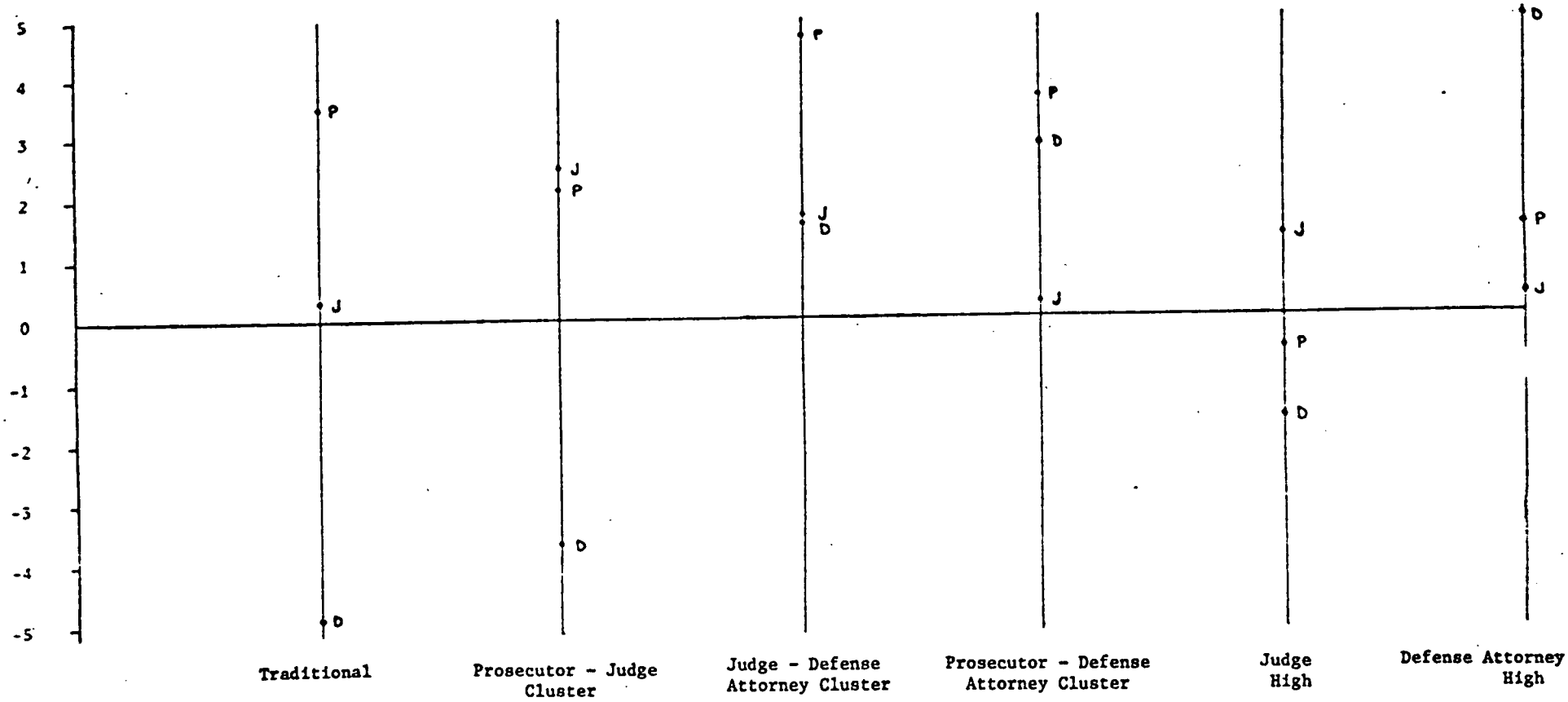
Our research also confirms suggestions in the literature that judges, prosecutors, and defense attorneys exhibit different "styles" in performing their tasks.[1] But we will be able to develop and enrich existing typologies by mobilizing our multiple sources of data about 300 judges, prosecutors, and defense attorneys. In addition to identifying and describing these "styles," we will examine what differences, if any, style makes in case outcomes.

The Relation Between Jurisdiction Size and Trial Courts' Conceptual Focus

One strand of research in the 1970s relied heavily on concepts derived from organization theory to help understand the workings of criminal courts. The notion of "courtroom workgroups" played an especially important role in research conducted on three major metropolitan

Diagram 1

Average Punishment Scores By Role and Triad Type



courts and participated in by all three principal investigators on this project. But nearly all research on criminal courts, regardless of approach, focused on big city courts.

This study expands considerably the range of courts which have been studied by providing an indepth look at nine middle-sized courts. Unfortunately, equally extensive studies of rural courts do not exist. However, scattered published material on rural courts (much of it unsystematic and anecdotal) provides at least some preliminary notions about the nature of their operation.[2]

We have now reached a point where we can begin to sort out both similarities and differences in the characteristics of criminal courts associated with jurisdiction size. This constitutes one of three emerging themes dealing with "contextual level" variables. At this point, our clearest conclusions relate to the significance of individual courtroom workgroups as autonomous and significant entities that shape case outcomes. The existing literature suggested that the independent effect of distinctive patterns of interaction found in workgroups varied with the composition (especially the familiarity and stability) of these workgroups. In jurisdictions where a handful of prosecutors and defense attorneys interacted over a protracted period with a single judge, the resulting workgroups developed distinctive modes of interaction and disposition patterns that could vary from one courtroom to another. Communication among courtrooms was limited and any centralizing tendencies emanating from the prosecutor's office encountered countervailing pressures generated by the workgroup.

On the basis of previous research, we anticipated workgroups would play an important role in understanding the operation of our nine

criminal courts. But nowhere did we uncover descriptions of the development of distinctive workgroups (with the partial exception of the largest jurisdiction studied, Oakland County). This does not mean that the characteristics of the "triad" of judge, prosecutor, and defense attorney that dispose of a defendant's case do not interact to affect outcomes. As already mentioned, a major line of inquiry in our on-going research on sentencing involves exploring the combined effects on outcomes mix of attitudes, style of interaction, and personality among triad members. But it does mean that these effects are transitory, arising from the chemistry of an everchanging combination of individuals rather than the expression of a continuing pattern of interaction among a distinct and distinctive workgroup that lives and works in a single courtroom.

The absence of such distinctive workgroups was accompanied by more widespread and intensive patterns of interaction than previous research had uncovered. This finding prompted the development of the notion of "courthouse community" and suggested its relationship to jurisdiction size.

Though evidence is scarce, it appears reasonable to hypothesize that the notion of "courthouse community" makes little sense in rural or less populous jurisdictions served by one or two judges. They are so small and the community elites (legal, medical, social, financial, business, agricultural) so few in number that the notion of "community" unadorned by the restrictive "courthouse" adjective may best describe the relevant group to examine in seeking to understand the operation of their criminal courts. Counts' decisions in small communities are normally visible to individuals occupying a wide variety of roles in their

elite structure. Hence, they are susceptible to influence from a broad range of individuals familiar with both the decision makers and the defendants and the criminal incidents with which they are charged.

The emerging picture of the impact of size suggests that the autonomy of the triad of effective decision makers in criminal cases is likely to increase as jurisdiction size increases. In the largest courts, workgroups may (depending on a variety of factors, including procedures for assigning cases which shape familiarity and stability) develop distinctive and autonomous styles. In medium-sized jurisdictions, however, the courthouse community, composed primarily of court-related personnel but including other political decision makers housed in the county courthouse, acts as an overgrown workgroup. The number of individuals is small enough to permit thorough familiarity with one another. Community pressures and long-term interaction and communication are sufficiently strong to support development of widely-shared beliefs about the disposal of cases and decision makers' behavior in their disposal. Such autonomy is less likely in small jurisdictions where decision makers find themselves constrained by a "community workgroup" whose traditions and values are shaped by elites holding positions outside law and politics. Though we do not believe that small communities necessarily enjoy widespread consensus on such matters, in all likelihood the dominant elites in such communities often do.

The emerging view of the relationship between jurisdiction size and the scope of relevant decision makers represents a major addition to our understanding of criminal courts. It flows not so much from our analysis and comparison of the nine courts we studied per se as from placing

our findings in the broader context of existing knowledge about criminal courts.

Along with these differences associated with jurisdiction size, there appear to be some striking similarities in criminal courts' case disposition patterns. In particular, the proportion of defendants convicted in our counties and the manner of conviction (guilty plea rather than trial) does not produce surprises to those familiar with the operation of major urban courts. The absence of militant pro-defendant attitudes and no-holds barred representation by the defense bar found in most urban jurisdictions also characterized our middle-sized courts.

Finally, the wide differences in the institutional arrangements large courts use to organize the calendar, assign cases to judges, prosecutors, and publicly-paid defense counsel, and operate plea bargaining and sentencing systems also arise in middle-sized (and for that matter, rural) courts. Nothing inherent in the size of these courts or the communities they serve appears to produce convergence in the mechanisms used to perform the task of disposing of defendants charged with crimes.

The Concept of "Courthouse Community"

As the foregoing discussion suggests, the concept of the "courthouse community" constitutes a second significant "contextual level" theme that has emerged from the research. Here we (1) describe the variety of mechanisms that link key decision makers to each other and to other important political officials in the courthouse to form the courthouse community and (2) explore the utility of the concept for understanding how our courts work.

Previous research on courts says little about courts as communities, and our thoughts on the nature of court communities and the utility of the concept are still tentative. The discussion below draws heavily from Chapter 18 and presents some additional thoughts on the subject.

The role of the courthouse community and its grapevine took on significance during the course of this research. Stable work groups, while existing in some courtrooms, were relatively infrequent phenomena because various calendaring, scheduling, and assignment practices combined to undermine their chances for formation. Yet our respondents described many of the same patterns of interaction one would expect in courts with stable workgroups. In particular, we found a high degree of familiarity among the principal decision makers interviewed. In part, this familiarity reflected the small number of judges and attorneys active in the criminal process in most of our counties. In the larger suburban counties some defendants had their cases handled by people who were strangers. Even in these counties, however, most defendants entered courtrooms in which judge, prosecutor, and defense attorney already knew each other.

Their knowledge of one another went beyond recollection of previous courtroom encounters. Participants had often met one another in a variety of social settings (grade school, law school, church) over a number of years. Divisions created by membership in distinct organizations were breached by long-standing informal relationships. In some counties, such as St. Clair, the strands for these webs were spun while growing up in the same neighborhoods or through political activities. In other counties attorneys knew each other from law school; clerked for

judges who appointed them to felony cases when they started their private practice or gave them a boost when they decided to run for the bench; lived near judges or went to the same church or belonged to the same social club as they did; bowled with prosecutors or played baseball with them or golfed with judges; and so on and so forth. The point here is not that every attorney or all judges and prosecutors were part of these informal relationships. Nonetheless it was striking how often the interviews serendipitously uncovered these varied and informal links among participants in the courthouse.

Familiarity also increased through the operation of another mechanism often associated with the notion of community--the "grapevine." In part, the grapevines we encountered in every county were nourished by curiosity and the pleasures of gossiping. But their primary stimulant to vigorous growth and operation rested in their usefulness in providing information that all participants in the criminal process felt they needed. Attorneys could expect to be in the same courtroom with a number of the judges and opposing attorneys and sought information on their personal styles, capabilities, and quirks. How does a particular judge get along with a particular prosecutor? Can the judge be approached in chambers about possible sentences without the attorney's being severely rebuked? Can a given prosecutor be trusted? Is he any good at cross examination? These questions and hundreds of others like them were partially answered by the traffic that travelled the grapevine every day. The answers provided knowledge valuable to and sought by nearly all regular participants in the criminal process.

The structure of the grapevines varied from one county to another, though we have no clear ideas about how they might be classified. The

physical distribution of offices and courtrooms shaped these structures as did the interaction of calendaring systems with the location of individuals who made case assignments. Transmission of information was easier and quicker in prosecutors' offices and in centralized public defenders' offices because attorneys could return to their desks or a coffee pot to share the latest news about a judge, police officer, or attorney. For others the coffee lounge, nearby restaurants, or clubs were regular stops during the day to swap news and update the "book" on an important member of the community. The extent to which individuals plugged into and benefitted from information on the grapevine also varied. Hence grapevines did not completely homogenize and equalize the amount and quality of information available to members of the court community.

The size of our counties produced another significant characteristic of grapevines. All courts, even the largest metropolitan ones, produce their own grapevine. But in urban courts their branches only connect various components and participants in the criminal process. The courts in our counties shared the county courthouse with other major county officials, and a single grapevine existed carrying a variety of messages. Consequently, political officials' knowledge of the courts' activities and court personnel's knowledge of political officials' behavior was widespread. A basic requirement for integrating the criminal court community into the larger political environment--information about its daily activities--was, thanks to the grapevine, present in all of our counties.

Finally, communities often exhibit important generational differences. We found variation in the nature of interaction among people who

were familiar with one another depending on their relative age and experience. Older contemporaries with many years of shared experience (especially older defense attorneys and judges) often displayed considerable informality in their interactions, many of which took place in chambers or other informal settings. We also noted the impact of convergence or divergence in the sequence of generations occupying critical positions. In Erie, for example, all but one of the judges was over 60, the public defenders very inexperienced and young, and the prosecutors a mixture of young and middle-aged attorneys. The judges were tired and not inclined to innovate. This mix shaped the nature of interaction among the three organizations. Again, the implications of the particular patterns and rhythms of age coherence are not entirely clear. But our research suggests that the age structure of the court community, a factor little discussed in the literature, shapes the nature of interactions leading to the disposition of cases.

The implications of other characteristics of the court community are just emerging and our conclusions are tentative and speculative for the most part. Much of our understanding of the significance of courthouse communities can be summarized by analyzing their effects on participants' perceptions of the consequences of their actions. The existence of a community significantly reduces the anonymity and scope for nonconforming behavior enjoyed by attorneys who practice in large metropolitan courts. Actions on specific cases become known to everyone, particularly if noteworthy in any way. Thus, participants develop a reputation that follows them throughout their career. Furthermore, mechanisms exist to reward or punish attorneys who violate established norms. Younger attorneys especially open and close future career

options depending on the content of their reputation. A variety of favors that facilitate earning a living can be granted or denied. For example, in one county, young attorneys customarily passed out cigars to judges upon the birth of a child. In turn, the judges would appoint them to a receivership, generating a fee of up to $1,000. The withholding of such favors from an attorney who strayed from established norms constituted part of the effective mechanisms operating in the community to deter deviant behavior.

We encountered intriguing suggestions (but no systematic proof) that the mechanisms operating in court communities have other significant effects on how the court operates. For one thing, decisions on specific cases are more likely to be seen as determining the quality of life in the community as it affects the individuals deciding the fate of the defendant. This most clearly surfaced in the comments of a number of defense attorneys who observed that dangerous defendants who escaped conviction or incarceration posed a direct threat to themselves, their families, and their acquaintances. Another obvious effect is to reduce uncertainty by passing on information about court rulings and sentences, communicating and defining expectations about appropriate role behavior, and smoothing over or at least tempering conflict. In turn, this may help reduce disparities in dispositions and sentences because participants can easily compare decisions across courtrooms. Accordingly the dynamics of strong courthouse communities may produce a certain degree of consistency within the courthouse as a whole even though courtroom workgroups are fleeting and transient. In perhaps an unsystematic and haphazard way, the courthouse community thus acts to define what "doing

justice" entails, a definition that does not depend on consensus in attitudes regarding due process or punishment.

In the nine courts we studied, the courthouse community became a relevant consideration in examining the disposal of cases. As suggested earlier this does not mean that varying and particular combinations of attitudes, personality, and operating style of judge, prosecutor, and defense attorney do not shape outcomes. It does suggest that these characteristics are themselves influenced by the courthouse community at large as well as the policies of the sponsoring organizations that affect their formation and configuration.

The Consequences of the Mechanics and Structure of Case Processing

The case studies paid considerable attention to a third component of "contextual level" attributes that superficially may appear to deal with insignificant details of the mechanics of case disposition, in particular scheduling, docketing, and assignment practices. In fact, however, these procedures lie very nearly at the center of courthouse operations, for at issue is how major participants in the disposition process are selected to work on cases and how they are brought together to do their work. Despite the significance and complexity of the "nuts and bolts" making up these procedures, only recently has the study of courts and the felony disposition process recognized this fact and begun to explore it.

Scheduling, for example, demands that various individuals converge at the same time and place throughout the life of a case to perform their respective roles. These participants often have legitimate conflicting demands on their time which must be accommodated. This

accommodation occurs within a context where no single authority or organization can consistently or unilaterally impose solutions on others when individual schedules begin to diverge. This continuing problem has no easy or common answer, as amply evidenced by the diverse practices employed by the nine courts. The problem is further complicated by state laws mandating when certain steps in the process must be taken and when the process as a whole must be completed. Even the best laid schedules go awry because of unavoidable last minute changes that set off ripple effects altering or disrupting the schedules of other cases. A final set of complications arises because participants often have reasons for postponing the proceedings. Private attorneys need to collect their fees before concluding a case; prosecutors may be insufficiently prepared or missing a key witness; both may find postponement can take them away from a dreaded judge; defendants on bail want to avoid the day of reckoning. These are just a handful of the many complications entangling the scheduling problem. In each of the jurisdictions the court's "solution" emerged through compromise and reactions to events and each, in this sense, was unique. The nine criminal courts, then, utilized a bewildering array of procedures and policies to cope with the challenge of scheduling. Our efforts to impose order on the welter of interrelated factors are at this point tentative.

Perhaps the most fundamental scheduling decision rests in how courts make judges available to hear criminal cases. Judicial assignment policies are quite varied, as Chapter 4 suggests. Some courts assign a few of their judges to hear criminal cases continuously for extended periods of time; others assign a few for more limited periods and then reassign them to other tasks; still others require all judges

to handle criminal cases for designated periods during the year. In all, five major assignment patterns were identified for the courts. As depicted in Figure 4-1, they varied according to whether docket assignments were mixed or specialized for the judges, whether the trial terms were continuous or periodic, and within periodic terms whether a rotational scheme existed by which judges alternately heard criminal and civil cases. The choice of one of these five patterns provides the basic skeleton which determines the general shape of the mechanisms used to schedule cases.

Judges, prosecutors, and organizations providing counsel to the indigent can pick from a variety of options to assign personnel to cases once the basic skeleton has been formed. Regardless of which option is chosen, each organization must decide:

--When in the history of a case key personnel will be assigned to it and when major decisions affecting its disposition will be made.

--Who will make these assignment decisions, and

--How they will make them (i.e., according to what criteria).

The variety of solutions to the scheduling problem in the nine counties was stunning. Cases were assigned to judges as soon as they came to court, producing "individual calendars." These assignments could be random in one court and personalized in another, which in turn had the effect of making it almost impossible to move cases to different judges in the former and increasing the chances considerably in the latter. As an alternative to individual dockets, cases were assigned in other courts as they were ready for disposition through a "master calendaring" system. As for who made the scheduling decisions, court

administrators or case coordinators performed this task for judges in some counties, while prosecutors did it in others. The type of calendar, however, made little difference in who set the dockets--prosecutors were found to schedule cases in both individual and master calendar courts. Moreover, under the master calendar system, the decision to send cases to the "next available courtroom" was rigidly adhered to in some jurisdictions and more liberally applied in others (where it was shaped by intense negotiations and maneuvering by the participants).

Although we cannot yet reach definitive conclusions about the range and significance of the implications of scheduling arrangements, we present in Chapter 18 some of the most noteworthy that have emerged from our analysis so far. Chapter 18's discussion shows no clear, direct relationship between speed of disposition and the nature of the calendar, the degree of early screening by the prosecutor, the extent to which lower courts were controlled by the trial court, or the degree of specialization in the defense bar. Only specialized dockets, in which judges heard nothing but criminal cases for a sustained period of time, appeared to speed the disposition of cases, but even here the relationship was not without an important counter-trend.

Chapter 18 also points to a relationship between prosecutorial policies and the pace of court dispositions. In both DuPage and Kalamazoo, the manner in which the prosecutor's office sought to govern the guilty plea process affected the pace of litigation. The DuPage County Prosecutor's office reviewed all guilty pleas and set a bottom line for each. These decisions were made, however, before defendants were arraigned in circuit court and this could be the reason why such a prolonged hiatus existed between the time of lower court disposition and

trial court arraignment in DuPage. If it had not been for this delay, the county's disposition time would have been comparable to other counties. Kalamazoo surprisingly posted a fairly short median disposition time despite troubles on the circuit bench and the absence of consistent judicial policies on the length of trial terms. The compensating factor appears to have been the prosecutor's policy of setting the conditions for guilty pleas prior to preliminary hearings in district court. As a result most preliminary hearings were waived by defense attorneys and a sizable proportion of the defendants pled guilty as soon as they were arraigned in circuit court.

To summarize, it seems that the timing of the decisions from the prosecutor's offices greatly affects disposition tempo. But this may only be true where an office decides to centralize or to control in some way how its assistants negotiate guilty pleas. It is instructive to note that in St. Clair, for example, where the disposition time was the second quickest of the nine counties, the assistant prosecutors had a free rein in the guilty plea process. In contrast, in counties where there are vague or flexible restrictions on assistants such half-hearted policies may impede the quick disposition of cases. This might well have been the case in Saginaw.

Aside from whatever impact the nuts and bolts of courts ultimately are found to have on case disposition times and how their arrangements mesh with those of other sponsoring organizations, the ways in which calendars are set up and scheduling is performed have other important implications for the work of our criminal courts. For example, they affect the nature of the plea bargaining system by facilitating or inhibiting the ability of attorneys to steer cases to and away from

particular judges. In courts with master calendars (St. Clair and the three Pennsylvania counties) the ability to route cases as part of a plea bargain made the question of who would hear the plea an integral part of attorney negotiations. The ability of Dauphin and Peoria prosecutors to control which judge heard a case provided them with a significant bargaining chip. In two of the Michigan counties (Oakland and Saginaw) even though prosecutors were unable to channel cases to particular judges, they nonetheless were deeply involved in selecting which cases would be tried and when during trial terms. While prosecutors in all of these counties lacked unbridled liberty in assigning or scheduling cases, such arrangements were viewed skeptically by many defense attorneys and public defenders who felt they gave prosecutors an undeserved edge in what one lawyer called a "game of inches." Other aspects of plea bargaining, such as the time in the life of a case when negotiations took place and the identity of the major participants, also reflect the influence of scheduling procedures.

Prosecutors and public defenders feel their impact as well. When all judges hear criminal cases simultaneously as in Dauphin, it placed a tremendous strain on the prosecutor's office because five courtrooms had to be supplied with one of seven available assistants as the court worked its way through the master calendar's docket. Peoria, with approximately the same number of judges and assistant prosecutors, operated only two courtrooms simultaneously, providing its assistants with more preparation time. Chapter 17 reported a similar relationship between dispositions and scheduling in Erie. Each trial term assumed a different rhythm that shaped the tactical decisions of prosecutors charting their trial decisions in the office's "war room" and of the

more sophisticated defense attorneys. Thus, the nuances of the disposition process as understood and acted upon by key participants very much depended on the calendaring and scheduling system.

To summarize, the policies of sponsoring organizations, and the joint effects of these policies create varied tactical and strategic contexts within which their members make decisions and perform their roles. It is critical to keep in mind that each of the contextual settings in the nine counties was a composite product of such policies and their interrelationships. The rules on plea bargaining of prosecutors' offices and the timing of pleas cannot be separated from the scheduling and assignment procedures of the courts in understanding why some disposition processes move more quickly than others. Thus, it is the interactions of these policies that establish the dynamics of local systems.

Environmental Influences on Courts

This study's sampling design sought to maximize differences among the three middle-size courts studied in each state while providing similarities interstate in order to enhance our ability to detect "environmental level" effects. Anyone who has conducted field research will appreciate the dilemmas faced in choosing research sites. Studying nine counties taxed our resources and energy to the limit. At the same time, looking at just three counties in each state provides a slim basis for making generalizations. Furthermore, the reality imposed by the characteristics of each state's counties served by middle-size courts refused to conform to the requirements of a "clean" sample. The three types of counties sampled in each state did not always differ from one another as

cleanly as one would have liked. This is particularly true of the "autonomous" and "declining" counties. Likewise, counties in the three states falling into the same classification did not always closely resemble one another on key characteristics (for example, the percentage of minority population). Finally, the presence of important differences associated with each state's judicial system complicated the task of separating the impact of state effects from the effects of the county "type."

A full analysis of the impact of state judicial system characteristics and of county characteristics requires examination of the nature of case dispositions. Since we are still engaged in the quantitative analysis of dispositions, we are not yet in a position to draw firm conclusions about the relation between criminal courts' operations and their local and state environments. We can, however, offer some tentative but intriguing conclusions.

Chapter 18 summarizes the relationship between county type and several measures of outcome. In Illinois and Pennsylvania, a consistent pattern emerged. The counties termed "declining" showed the shortest disposition time at the trial court stage, the "ring" counties the longest. Further, the median disposition time for the three pairs of counties in these two states was very close (see Table 18-1). But our initial hypothesis that the suburban ring counties would be most efficient was clearly contrary to the actual pattern. All three Michigan counties took considerably longer than any of the other counties, suggesting that the lack of effective sanctions for violation of its speedy trial law produced slower disposition.

Our initial hypothesis that the suburban ring counties would sentence more severely than the other counties also received no confirmation (see Table 18-2). Again, it appears that something about Michigan's judicial environment affected disposition in its three counties, for its sentences generally were more severe. With several exceptions, Pennsylvania's counties meted out the least severe sentences. The stringency of bail decisions also appeared related more to the identity of the state than the classification of the county. Again, Pennsylvania was most lenient; but Michigan and Illinois reversed positions compared to sentence severity, with Illinois generally harsher than Michigan. However, we did find a relationship between county type and features of the prosecutor's office. The ring counties' prosecutors' offices exhibited more bureaucratization and established more formal and clear-cut policies regarding plea bargaining than did the other counties.

These murky and tentative results suggest the utility of examining between-state differences more closely. They also demonstrate that the classification of counties into "ring," "autonomous," and "declining" failed to capture environmental characteristics that had a clear and consistent impact on outcomes. This is an important finding in itself, for it suggests that links between environmental characteristics and criminal court operations, if they do exist, are complicated. Our research also suggests, however, that the classification is not useless, though the differences in the counties may not be reflected in quantitative measures of case dispositions. For example, respondents in each of the ring counties repeatedly measured their performance against that of the courts in the adjoining inner city. This produced the impression that their systems dealt with defendants severely since defendants

charged with crimes like burglary that received little punishment in the city often went to prison following conviction in their court. But this perception of greater stringency, at least when outcomes were compared to other nonmetropolitan courts, was erroneous.

We found too much evidence of links between the larger community's social, economic, and political structure to discard the notion that environment affects how criminal courts perform their tasks. But we still need to clarify the characteristics that most often produce measureable effects. Clearly, some of these characteristics (the strength of the dominant local political party, the content of citizens' political attitudes, the nature of news media coverage of the courts) are not necessarily associated with our three-fold classification of counties. Sorting out the most significant features of the local environment that shape criminal courts and separating their impact from the effects of factors produced by the state political systems constitutes a major challenge to be confronted during the next stages of our analysis.

Footnotes to the Executive Summary

[1]See, for example, Albert Alschuler, "The Defense Attorney's Role in Plea Bargaining," Yale Law Journal 84 (1975): 1206-1255; and "The Prosecutor's Role in Plea Bargaining," University of Chicago Law Review 36 (1968):50-112.

[2]For a review of research on rural criminal courts, see James Eisenstein, "Research on Rural Criminal Justice: A Summary," in Shanler Cronk, ed., Criminal Justice in Rural America (National Institute of Justice, 1982).