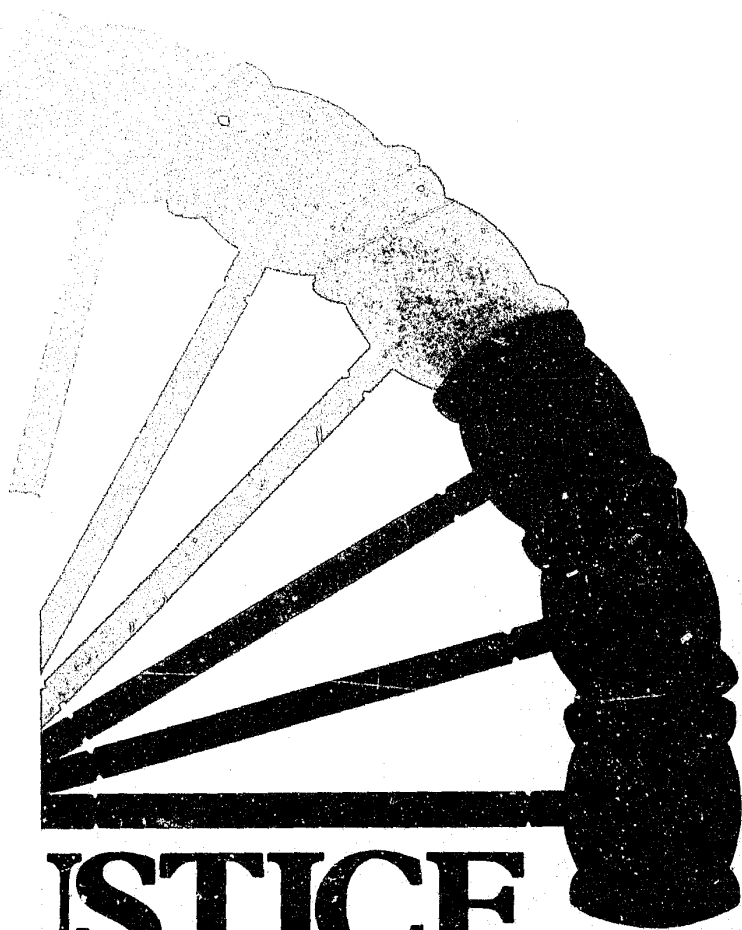


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PACE OF LITIGATION IN URBAN TRIAL COURTS

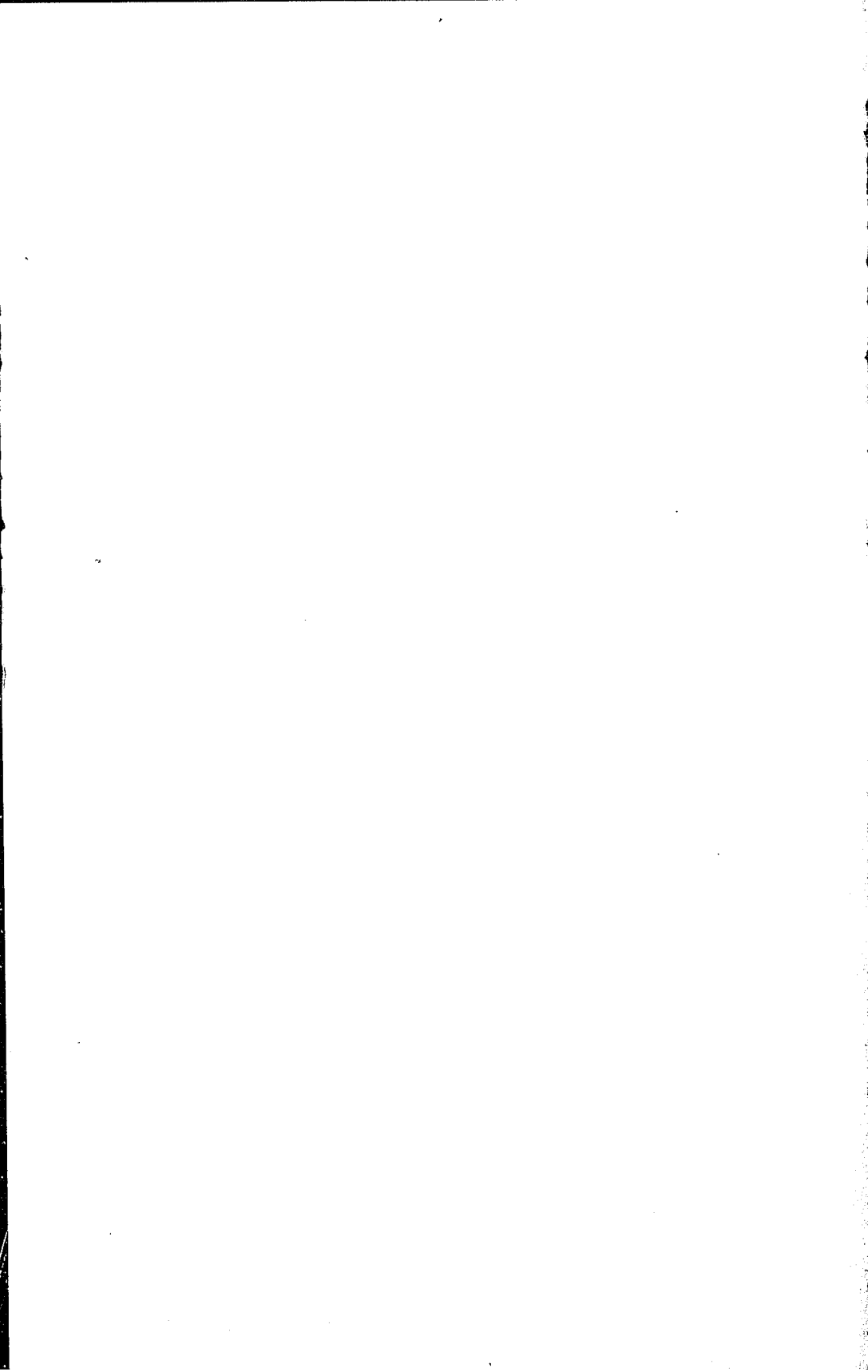


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THE PACE OF LITIGATION IN URBAN TRIAL COURTS

by

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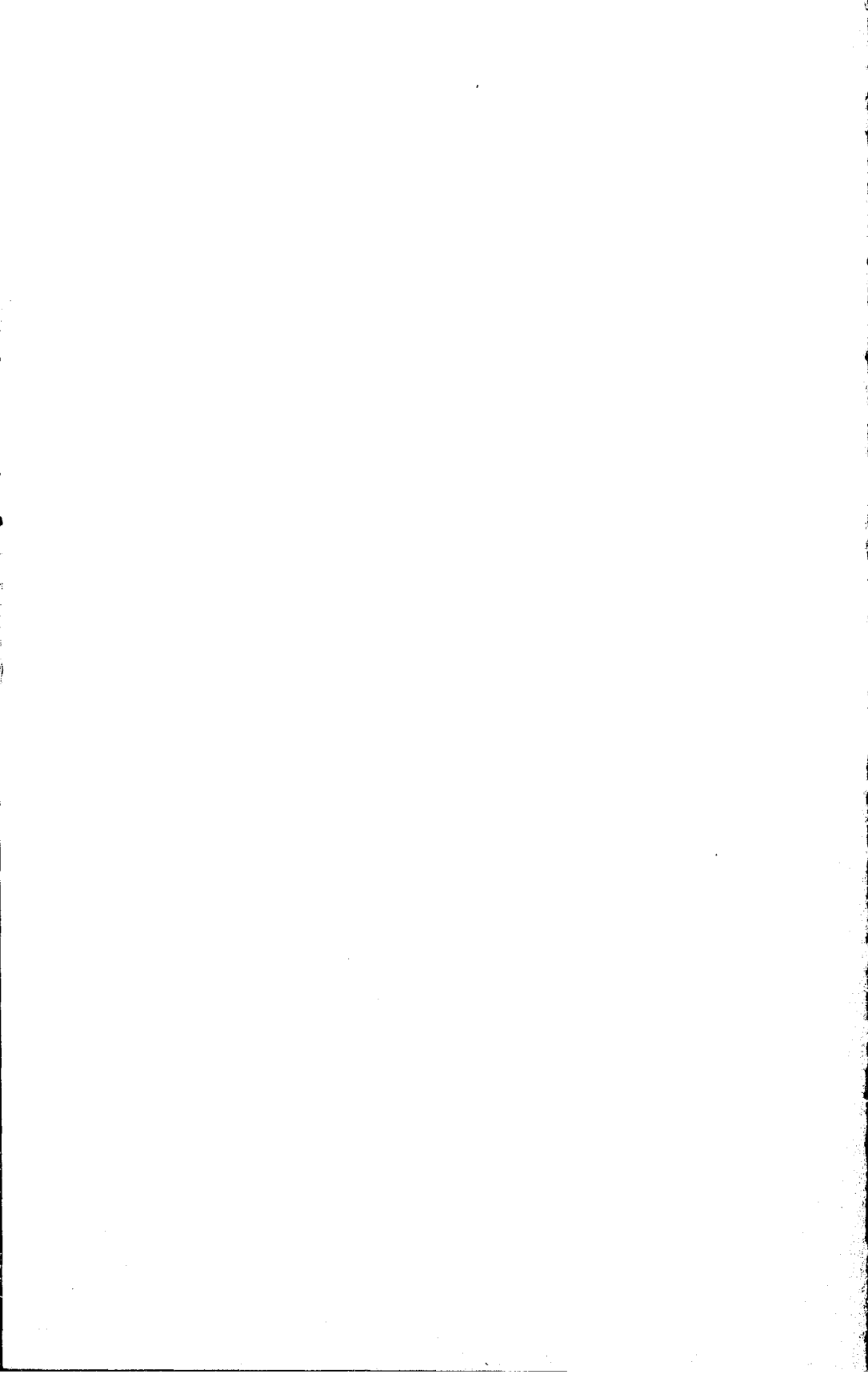
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Designed by Elizabeth Church

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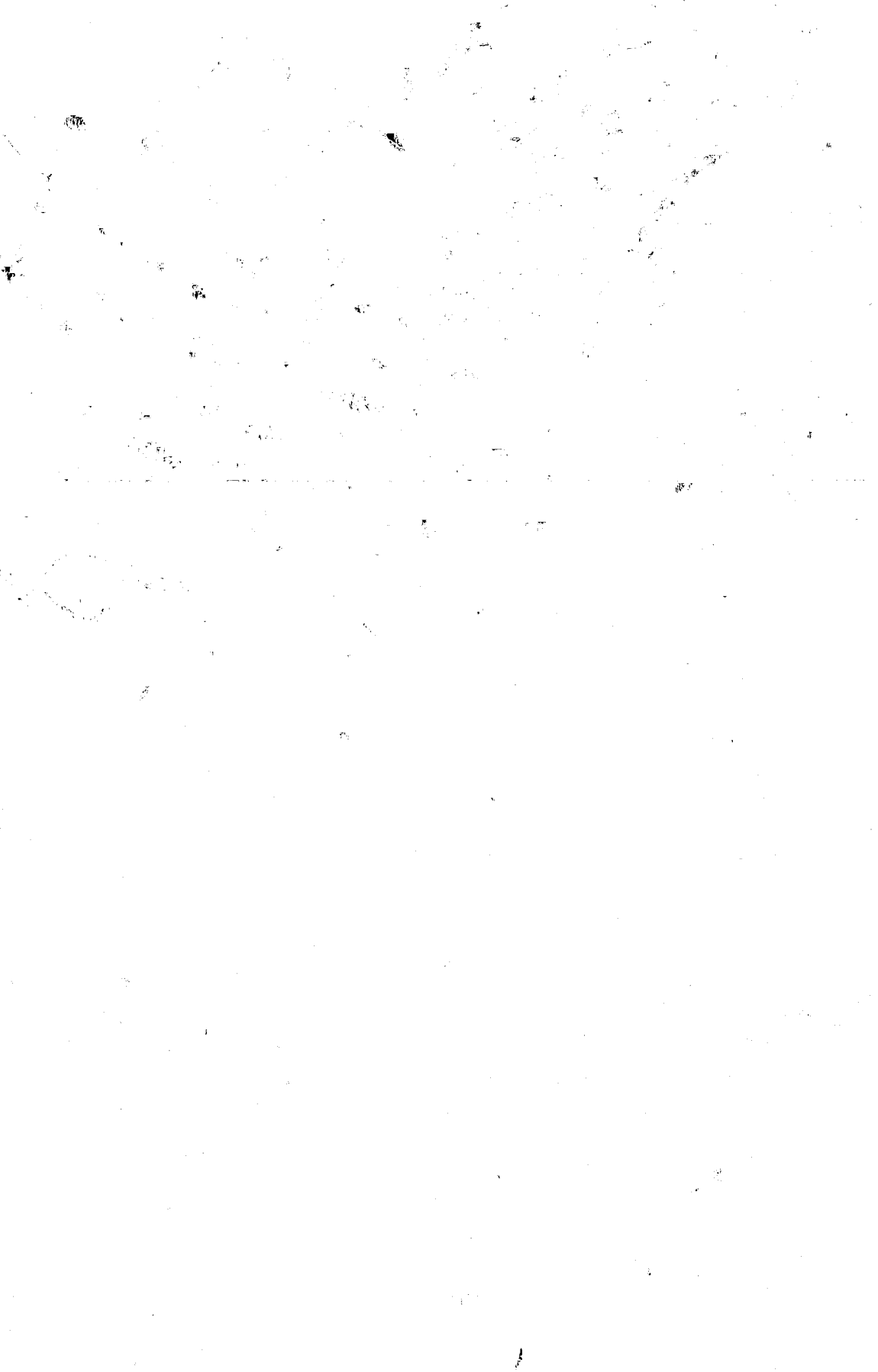
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1. INTRODUCTION



A recent national survey of public attitudes revealed a remarkable lack of confidence in state and local courts: only 23 percent of those polled indicated a high degree of confidence in these institutions, and well over one-third expressed little or no confidence. State and local courts ranked eleventh of the 15 institutions included in the poll, below the medical profession, American business, public schools, even the battered federal executive branch and Congress.¹ The reasons for this unfavorable image of state and local courts are suggested by other data gleaned from this survey. Of those polled, 57 percent believed "efficiency in the courts" to be a serious national problem, an expression of greater public concern than for pollution, education, racial problems, even the threat of war.² Almost half the respondents believed the courts to be in either "great" or "moderate" need of reform.³ Not surprisingly, pretrial delay was a major problem in court operation cited by those members of the general public most knowledgeable about the judicial system.⁴ This book describes the findings of a major national research project aimed at investigating the extent, causes, and most promising remedies for this important problem.

This research is grounded in the assumption that speedy resolution of civil and criminal cases is an important social goal. We do not agree that it may be "undesirable for courts to operate with speed."⁵ We have not undertaken a comprehensive analysis of the costs and benefits of trial court delay to individual litigants or to society as a whole, an investigation which would undoubtedly reveal that some litigants benefit from slow resolution of cases.⁶ But when two-thirds of the respondents in a national sample assert "strong" support for spending tax dollars on an effort to "[t]ry to make courts handle their cases

¹Yankelovich, Skelly and White, Inc., *The Public Image of Courts: Highlights of a National Survey of the General Public, Judges, Lawyers and Community Leaders* (Williamsburg, Va.: National Center for State Courts, 1978), Table III.6, p. 25.

²*Ibid.*, Table IV.1, p. 29.

³*Ibid.*, Table III.1, p. 22.

⁴*Ibid.*, Table IV.20, p. 42. See also Table II.5, p. 19.

⁵A. Sarat, "Understanding Trial Courts: A Critique of Social Science Approaches," *Judicature* 61 (1978): 324.

⁶An attempt to consolidate what little research has been done on this question is presented in T. Church, Jr. et al, *Pretrial Delay: A Review and Bibliography* (Williamsburg, Va.: National Center for State Courts, 1978), ch. 2.

faster,"⁷ it is at least clear that prospective *consumers* of court services value speed in the disposition of civil and criminal cases. This consumer-oriented perspective underlies the study.

Expeditious disposition of trial court cases is not impossible. We examined several trial courts in which civil and criminal cases are not delayed by any reasonable standard. Although an objective assessment of the "justness" of dispositions in these courts is beyond the scope of this research, extensive interviews and observation revealed no evidence of systematic unfairness arising from the speedy resolution of cases in these courts. Even in the courts where litigation moves the fastest, few complaints were voiced by attorneys or court system observers that time pressures produce injustice. This evidence is obviously subjective. We can only stress that this study of a number of both speedy and slow courts uncovered little support for the contention that "Slow justice may be more certain justice."⁸ That several metropolitan courts examined in this study are able to dispose of criminal and civil cases rapidly without an apparent sacrifice of substantive or procedural justice should also put to rest assertions that tardy justice is unavoidable and that "There will always be court delay."⁹

Delay in the disposition of trial court cases is a phenomenon with a long and notorious history. Civil case delay was one of the first problem areas of the legal system to be examined through use of empirical research techniques.¹⁰ Most analysis of criminal court delay is more recent.¹¹ Previous studies usually focused on delay within individual courts, attempting to identify causes for excessive disposition times and prescribe appropriate remedies. Their usefulness is obviously restricted by problems of generalizing from one court to all courts.

⁷Yankelovich, Skelly and White, *Public Image of Courts*, Table VI.1, p.52.

⁸Sarat, "Understanding Trial Courts," p.324.

⁹*Ibid.*

¹⁰See H. Zeisel, H. Kalven, Jr., and B. Buchholz, *Delay in the Court* (Boston: Little, Brown and Co., 1959); A. Levin and E. W. Woolley, *Dispatch and Delay: A Field Study of Judicial Administration in Pennsylvania* (Philadelphia: Institute of Legal Research, University of Pennsylvania Law School, 1961).

¹¹For a general summary of this literature, see T. Church, Jr. et al., *Pretrial Delay*. Studies that discuss criminal court delay in a limited comparative context include J. Eisenstein and H. Jacob, *Felony Justice: An Organizational Analysis of Criminal Courts* (Boston: Little, Brown and Co., 1977); M. A. Levin, "Delay in Five Criminal Courts," *Journal of Legal Studies* 4 (1975):83-131; Notre Dame University, "Systems Study in Court Delay—LEADICS—Law Engineering Analysis of Delay in Court Systems," mimeographed, 4 volumes (Springfield, Va.: National Technical Information Service, 1972); S. Wildhorn, et al., *Indicators of Justice: Measuring the Performance of Prosecution, Defense and Court Agencies Involved in Felony Proceedings* (Santa Monica: Rand Corp., 1976).

The comparative measures generated in the present study permit us to examine—almost for the first time—civil and criminal case delay across a number of state trial courts. The questions to be addressed are divided into two categories. The first category consists of two related research questions: a) Why are cases disposed of at a faster rate in some courts than in others? and b) What factors account for the pace of litigation in a court? Because of the exploratory nature of this study, the approach to these questions is inductive. We examine “faster” and “slower” courts in order to determine what elements in the structure, procedures, and environment of the courts seem to distinguish them. The goal is formulation of a general theory of the determinants of the pretrial pace of civil and of criminal litigation.

The second set of issues has an explicit policy focus: What are the most promising approaches for expediting litigation within a given court? Our conclusions are deduced primarily from the theories developed, supported by other relevant data collected in the course of the project. Although much of this evidence is indirect, we believe that it provides reliable support for the analysis of the various delay reduction techniques.

The breadth of these questions required some limitation on the focus of this research. We examine only general jurisdiction courts in major metropolitan areas. The analysis is also restricted to court processing of felony and civil cases exclusive of domestic relations, probate, and juvenile matters. And primary concern is with the pretrial period. These restrictions leave a number of problem areas outside the focus of this research. We do not discuss the conduct of trials. There is little analysis of that part of felony case processing which occurs in the court of limited jurisdiction. We do not explore no-fault, decriminalization, and other alternatives to adjudication.

The broad questions addressed in this study required an eclectic methodology. Empirical data were obtained on 21 general jurisdiction courts in major cities across the United States.¹² In each court we sampled approximately 500 civil and 500 criminal cases disposed of in 1976.¹³ From these samples the various

¹²Courts were not chosen randomly. Choice was restricted to general jurisdiction state courts with at least ten judges. Within this set of courts, selection was made of courts with significant differences in judicial productivity (case output per judge), backlog (pending cases as a percentage of total yearly terminations) and geographical region. The research methodology is discussed in more detail in Appendix A.

¹³In each court we sampled approximately 500 general civil (*i.e.*, civil cases exclusive of domestic relations or probate) cases disposed of by any final means in 1976. The criminal sample included approximately 500 cases filed in general jurisdiction court, in which the most serious charge could result in a year or more in jail. We usually also sampled approximately 50 civil and 50 criminal jury verdicts in order to obtain a sufficient number of trial cases for construction of reliable indices of jury trial activity and time to trial measures.

time measures utilized throughout the analysis were constructed. These samples also serve as the basis for other indices of court operations such as utilization of jury trial. Aggregate caseload data were obtained from published and unpublished court reports. Information on the number of civil and criminal cases filed, terminated, and left pending in various categories was subjected to close scrutiny to insure comparability. In a number of instances, information on individual courts is incomplete because of a lack of reliable data. There are comparable data on a sufficient number of courts to examine most relevant hypotheses, however.

Interviews and observation were utilized to verify and supplement the quantitative information. Five courts were selected to serve as sites for an intensive evaluation of the civil case process,¹⁴ five for criminal case processing.¹⁵ Sites were selected to produce the greatest range among the courts in processing time and case output per judge. Each of the site visits was of two weeks duration, during which most of the relevant judges were interviewed, along with the court administrator and staff.¹⁶ In the examination of civil case processing, from 10 to 20 attorneys with substantial civil litigation experience in that court were interviewed.¹⁷ Site visits on the criminal side included a similar number of interviews with the staff attorneys of the prosecuting attorney and the public defender, and at least five private defense counsel.¹⁸ These interviews were informal in nature to allow participants maximum opportunity to describe court operation in their own terms.

The next chapter will describe the indices developed to measure the pace of civil and criminal litigation in the various courts. Subsequent chapters will summarize project findings on the relationship of these indices to court structure, procedures, and resources, and will synthesize these data with more informal

¹⁴The courts chosen for extensive analysis were Bronx County Supreme Court (Bronx County, New York), Dade County Circuit Court (Miami, Florida), Hennepin County District Court (Minneapolis, Minnesota), Maricopa County Superior Court (Phoenix, Arizona), and Wayne County Circuit Court (Detroit, Michigan).

¹⁵The sites chosen for criminal case processing were Bronx County Supreme Court (Bronx County, N. Y.), Dade County Circuit Court (Miami, Florida), Allegheny County Court of Common Pleas (Pittsburgh, Pennsylvania), Essex County Superior Court (Newark, New Jersey), and Orleans Parish Criminal District Court (New Orleans, Louisiana).

¹⁶See Appendix A for civil and criminal interview schedules.

¹⁷Attorneys were selected on an *ad hoc* basis from contacts in the court, the clerk's office, and local bar associations. An attempt was made to include all segments of the litigating bar, particularly representatives from large and small firms, attorneys specializing in defense and plaintiff personal injury work and commercial litigation. The sample was by no means random but considerable effort was expended to make it at least roughly representative.

¹⁸As on the civil side, criminal attorneys were chosen in an *ad hoc* manner from contacts in the

aspects of the court systems obtained from the intensive site visits. Finally, the major delay-reduction strategies and techniques proposed in the literature of judicial administration will be examined in light of these findings.

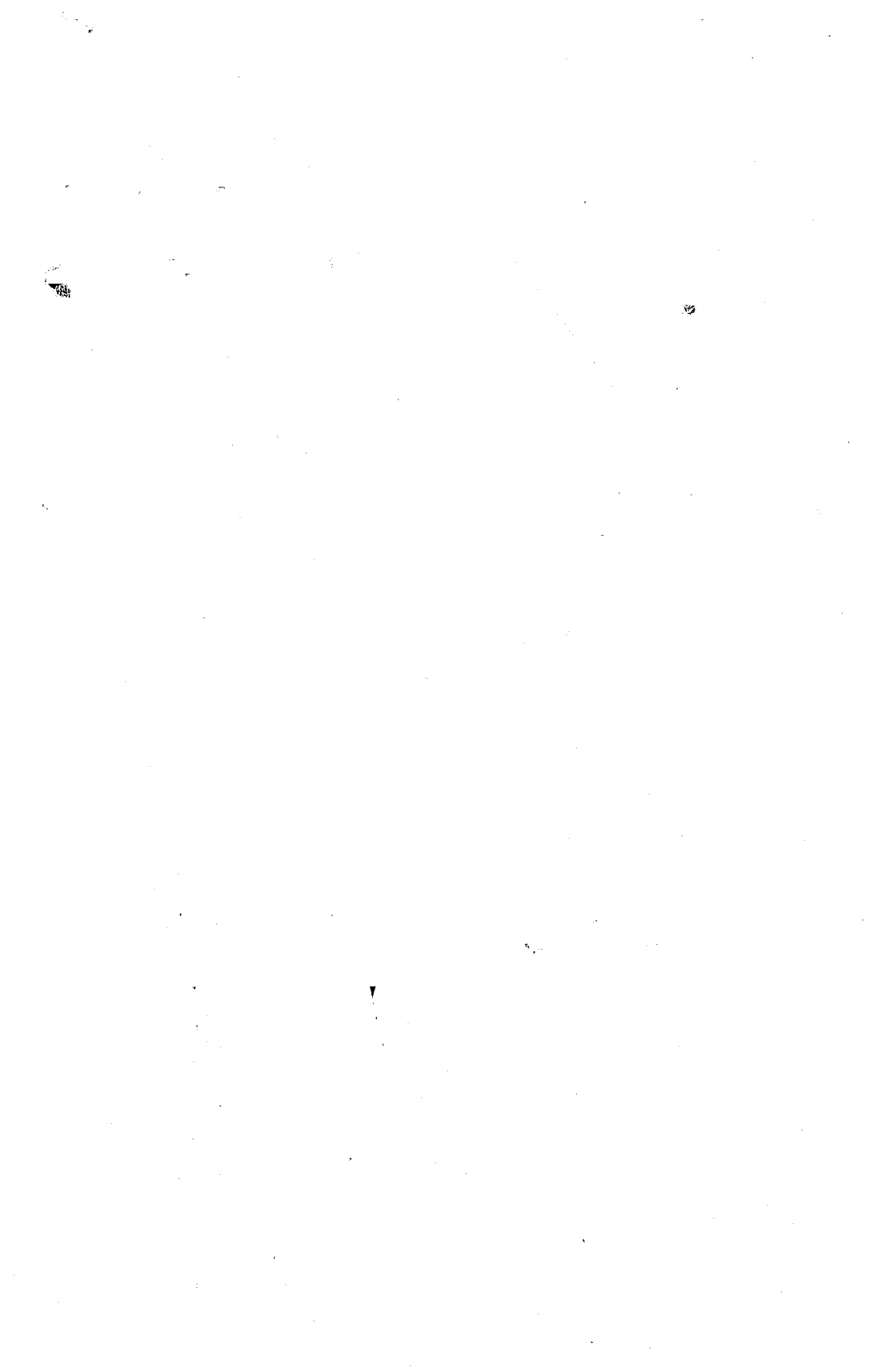
A major project finding is reflected in this organization. Although there are obvious differences, the problems of civil and criminal court delay emerge as remarkably similar. Many of the same court system attributes are believed to cause civil and criminal court delay. More importantly, project data concerning the relationship of these attributes to the pace of litigation are generally consistent in both the criminal and civil area. Most aspects of civil and criminal case processing will therefore be discussed together in the following chapters.

We are persuaded that few of the traditional explanations of trial court delay differentiate faster from slower courts. Delay—or comparatively tardy disposition of civil and criminal cases¹⁹—does not emerge as a function of court size, judicial caseload, “seriousness” of cases in the caseload, or the jury trial rate. The calendaring system of civil cases and the charging process used in criminal cases do bear some relationship to a court’s pace of cases. The amount of management or control exercised by the court over the pretrial stages of litigation also appears important, especially for criminal cases.

Our general conclusion is that informal expectations, attitudes, and practices of attorneys and judges have a great deal more to do with trial court delay than the aspects of a court system that can be gleaned from an annual report, organization chart, or compilation of local rules. These subjective elements of the local legal community affect the level of a court system’s *concern* with the existing pace of civil and criminal litigation. If any one element is essential to the effort to reduce pretrial delay, it is concern by the court with delay as an institutional and social problem.

court, with other attorneys, and in the local bar association. An effort was made to seek out as broad a cross-section of the criminal bar as possible.

¹⁹The term “delay” in this book is used in its vague but commonly understood usage to connote excessive case processing time. Disposition time, or case processing time—and not delay—will be used to describe the amount of time a case requires from its inception to disposition.





2. MEASURING THE PACE OF LITIGATION

A major goal of this research is generation of a set of case processing time measures by which courts can be reliably compared. The substantial differences among state trial courts in procedures, jurisdiction, and local practice make this effort especially difficult. The following sections summarize the measures developed for civil and criminal cases respectively.

Civil Cases

Construction of cross-comparable case processing time measures for civil cases is made complex by two factors, one methodological, the other conceptual. The methodological problem is caused by the wide diversity among court systems in both local practice and the composition of civil caseloads. Major events in the life of a civil suit—service, filing, request for trial, final order—mean different things in different jurisdictions. Local practice differs among courts as to when a case is filed or a complaint served. The “certificate of readiness,” “notice of issue,” even “final disposition” have different formal connotations and even more diverse meanings in operation. A major obstacle to comparative quantitative research in civil courts is thus the proverbial problem of comparing apples with oranges. We endeavored to measure comparable time periods in similar types of cases. This effort required the imposition of somewhat arbitrary definitions on widely disparate court information systems. It also necessitated using processing times of a limited set of cases to serve as stand-ins for the general class of contested civil lawsuit that is the central concern of the civil aspect of this study.

The conceptual problems in constructing civil case duration measures are caused by a notable lack of agreement among both practitioners and observers as to the function of trial courts in the civil process. This dispute centers on whether courts have a responsibility to expedite the disposition of every case filed, or whether their real responsibility is simply to provide a timely trial upon attorneys’ request. The former model of civil court function implies a broad measure of processing time: from initiation to final disposition for all cases, regardless of the manner in which the case was terminated. If courts have responsibility only for providing trials when requested to do so, however, the

appropriate measure is much narrower: from filing (or trial request) to commencement of trial for only those cases that go to trial.

The general orientation of this project is closer to the former than the latter theory of court role in civil cases. While the primary emphasis will be on the more inclusive measure of disposition time for all cases regardless of how terminated, the time-to-trial measure is also included in several of the tables. This measure is strongly correlated to the broader measures of overall civil processing time, and thus adds little to the analysis.¹

In order to compare processing time of civil cases among courts, some attempt must be made to compare the disposition time of a similar set of cases with the use of beginning and ending points that are also analogous. Because of the considerable diversity in the mix of civil cases processed in state trial courts, the overall measures are based upon a roughly comparable subset of the courts' total caseload. Two measures were formulated to reflect overall civil processing time and one for time-to-trial.

First, the overall civil measures:

1. *Tort disposition time*: Median days from filing² to disposition³ for torts. This measure assesses processing time for all torts, regardless of the mode of disposition and regardless of the point in case progress when the case was

¹The primary statistic used here for relating two variables is the correlation coefficient, or Pearson's *r*. See H. Blalock, Jr., *Social Statistics*, 2nd ed. (New York: McGraw-Hill Book Company, Inc., 1972) pp. 408-413. Correlation analysis measures the strength of relationship between two variables, or the extent to which they "track." The correlation coefficient always varies from 1.0 (indicating a perfect "fit" between the two variables) through 0 (indicating no relationship) to -1.0 (indicating a perfect inverse relationship).

Table 2.1, for example, depicts three indices of processing time for civil cases that are strongly and positively correlated. The correlation coefficient between tort disposition time and trial-list disposition time is .97; between trial-list disposition time and time to jury is .95; and between tort time and time to trial is .89. These are relatively high correlations since in most social research a correlation coefficient above .6 (or below -.6) indicates a fairly strong relationship. These particular high correlations indicate that if a court is fast by one measure, it will tend to be fast by the others, thus suggesting that there may be just one dimension of dispositional speed for court systems. Because there is not any one measure available for all 21 courts, however, both the tort and trial-read measures will generally be indicated in the tables that follow. The time to trial measure will be utilized only in dealing with issues directly relevant to trial cases.

One additional statistic is useful in evaluating the relationship described by the correlation coefficient. This is the significance level, or *p*. The significance level indicates the probability that the relationship described by the correlation coefficient could have occurred randomly or by chance. A significance level of *p* = .01 indicates only 1 chance in 100 that the variables examined are unrelated and the correlation observed occurred by chance.

²The filing date used in this measure is the date on which the first pleading—usually the complaint—was filed in the court.

³The disposition date used in this and the following measure is the date the final paper that officially closed the case was filed with the court. While attorney procrastination may delay the filing of this document and thus overstate disposition time, no alternative date is uniformly available.

closed. The focus on torts reflects an effort to restrict analysis to a similar group of cases across the courts. A rough similarity exists among torts as a group across jurisdictions. Tort cases as a class are not only similar from court to court, but they also make up a major share of the jury trial work of all the courts examined.⁴ We thus have a measure of the processing time of a similar set of cases that constitutes an important segment of the caseload in every court we examined. The same cannot be said for property or contract and commercial cases. Cases classified by courts as contract actions, for example, often include widely varying numbers of quasi-administrative commercial defaults. These cases are typically processed in a most accelerated fashion and are seldom contested; processing time measures based in part on such cases would be distorted if used for comparative purposes.

Unfortunately, a comparable measure of tort disposition time could not be constructed in those courts where it was not possible to sample from cases disposed of between initiation of legal action and an assertion of trial readiness. Thus an additional measure of overall civil processing time was formulated:

2. *Trial list disposition time*: Median days from initiation of the lawsuit⁵ to disposition for all civil cases placed in line for trial. This index of processing time includes all those cases (whether tort, contract/commercial, real property, or equity) in which counsel has indicated at least the possibility of trial by filing a certificate of readiness, note of issue, or analogous document to place the case in the pool awaiting trial. Like the tort measure, this index excludes those actions that are seldom contested and even less likely to be tried. But it allows a comparable measure to be computed in those jurisdictions where extensive formal case activity can occur prior to filing (as in New York and Minnesota) or where those cases disposed of prior to being placed on the trial list could not be sampled. Those courts in which cases are automatically placed at issue after a set period of time or upon filing an answer will not have a measure on this index.

The final measure of civil case processing time relates only to those cases that result in jury trial:

3. *Time to jury trial*: Median days from initiation of legal action to commencement of jury trial. This measure is relatively unambiguous. It is based

⁴Among the courts examined, torts made up an average of 81 percent of the civil jury verdicts. See text accompanying note 11, chapter 3, below.

⁵The beginning date for this and the following measure is either the filing of the lawsuit or service of the complaint, whichever is earlier. The courts of Minnesota and New York permit a lawsuit to progress to trial readiness without filing in the court. In those courts, the date of service was used as the beginning date.

TABLE 2.1
Civil Disposition Time Measures

	Median Tort Disposition Time ^b (in days)	Median Trial List Disposition Time ^c (in days)	Median Time to Jury Trial ^d (in days)
New Orleans, La. (Orleans Parish Civil District Court)	288	357	*
Ft. Lauderdale, Fl. (17th Judicial Circuit Court)	298	368	458
Phoenix, Az. (Maricopa County Superior Court)	308	416	607
Portland, Or. (Multnomah County Circuit Court)	310	*	464
Dallas, Tx. (Dallas County District Courts)	322	*	*
Miami, Fl. (11th Judicial Circuit Court)	331	408	412
Cleveland, Oh. (Cuyahoga County Court of Common Pleas)	384 ^h	*	660 ^e
Seattle, Wa. (King County Superior Court)	385	412	476
St. Paul, Mn. (2nd Judicial District Court)	*	440 ^f	437 ^f
Atlanta, Ga. (Fulton County Superior Court)	402	*	628 ^e
Oakland, Ca. (Alameda County Superior Court)	421	569	*

Note: On all tables in this book, medians are based on at least 20 cases unless indicated to the contrary.

*Data unavailable or not applicable.

^aUnless indicated to the contrary, on this and the civil tables that follow, courts are listed in order of tort disposition time. Where that measure is unavailable, the court is placed in order where it seems most appropriate according to the other two measures. Official court names will be omitted from the remaining tables, as will the footnotes below explaining exceptions in the data for individual courts.

^bMedian days from court filing to filing of the document which officially closed the case at the trial court level for all tort cases (including workmen's compensation cases). Those cases dismissed for lack of prosecution by the court are not included.

TABLE 2.1 (continued)
Civil Disposition Time Measures

	Median Tort Disposition Time ^b (in days)	Median Trial List Disposition Time ^c (in days)	Median Time to Jury Trial ^d (in days)
Minneapolis, Mn. (4th Judicial District Court)	*	710 ^f	734 ^f
Philadelphia, Pa. (Philadelphia County Court of Common Pleas)	*	713 ^g	716 ^g
Pontiac, Mi. (6th Judicial Circuit Court)	555	*	804
San Diego, Ca. (San Diego County Superior Court)	574	608	846
Pittsburgh, Pa. (Allegheny County Court of Common Pleas)	583 ^g	727 ^g	906 ^{e, g}
Houston, Tx. (Harris County District Courts)	594	*	840
Newark, N.J. (Essex County Superior Court)	654	*	680 ^e
Detroit, Mi. (3rd Judicial Circuit Court)	788	904	1231
Bronx County, N.Y. (Bronx County Supreme Court)	*	980 ^f	1332 ^f
Boston, Ma. (Suffolk County Superior Court)	811	*	*

^cMedian days from court filing to filing the document which officially closed the case at the trial court level for all cases placed in the pool of cases awaiting trial.

^dMedian days from filing to commencement of trial for cases ending in a jury verdict.

^eMeasure is to the judgment, rather than commencement of jury trial.

^fMeasure is from service of the complaint, not filing with the court. Court allows cases to progress to trial readiness prior to filing.

^gIncludes only "major" cases that did not pass through the court's mandatory arbitration program for lawsuits involving less than \$10,000.

^hIncludes cases resolved by arbitration.

upon only those cases that resulted in a jury *verdict* in order to avoid definitional differences among jurisdictions as to whether a trial had in fact begun. Nonjury trials were not included because jurisdictions have widely different definitions of what constitutes such a trial. This measure was computed for all courts in which at least 20 civil jury verdicts were present in the data base.

Table 2.1 shows the three civil processing time measures for each court examined in this study. The measures are strongly related:⁶ although there are differences, courts tend to rank at approximately the same position on each of the three indices of processing time. Because the tort disposition time measure is present for most courts, it is the primary measure used in the analysis to follow. The range in each of the measures is striking. On every measure the slowest court takes roughly three times as long to dispose of cases as does the speediest court.

Tables 2.2 and 2.3 set out two subsidiary indices of the distribution of tort and trial list processing times in each court. The first measure is the *third quartile*. It represents the disposition time for the case that took more time than three-fourths of the cases in the sample, less time than one-fourth. This measure indicates how long the slower cases in a court take to be disposed of. The second measure is the percent of cases in the sample exceeding an arbitrary, and comparatively lengthy, processing time of two years. A perusal of Tables 2.2 and 2.3 indicates how concentration on the median may obscure important differences among courts, even though the additional measures are strongly correlated to the median.⁷ The median tort case in New Orleans, for example, is disposed of in 288 days—faster than any other court examined in this study. Yet the third quartile case requires nearly twice that long (508 days) and 15 percent of the cases exceed two years disposition time. These latter figures indicate that a significant number of tort cases in New Orleans require more time to disposition than in several of the courts with slower median disposition times. They also indicate that court delay may be defined not simply in terms of the pace at which the majority of cases move through a court, but also by observing the time required by those cases with unusually long disposition times.

Criminal Cases

Formulating cross-comparable measures of criminal case processing time

⁶See footnote 1, above.

⁷For tort disposition time, the correlation between median and third quartile is .91; between median and the percent of cases over two years is .95. For trial list disposition time, the correlation between median and third quartile is .93; between median and the percent of cases over two years is .98

TABLE 2.2
Tort Disposition Time

	Median (in days)	Third Quartile (in days)	Percent Cases Over 2 years
New Orleans, La.	288	508	15%
Ft. Lauderdale, Fl.	298	455	7%
Phoenix, Az.	308	471	7%
Portland, Or.	310	429	2%
Dallas, Tx.	322	498	5%
Miami, Fl.	331	466	9%
Cleveland, Oh.	384	587	17%
Seattle, Wa.	385	595	15%
Atlanta, Ga.	402	659	22%
Oakland, Ca.	421	700	22%
Pontiac, Mi.	555	864	33%
San Diego, Ca.	574	778	29%
Pittsburgh, Pa.	583	855	33%
Houston, Tx.	594	1155	44%
Newark, N.J.	654	749	34%
Detroit, Mi.	788	1171	57%
Boston, Ma.	811	1624	55%

Note: Tort disposition time measures the time from filing to entry of final order for tort cases.

TABLE 2.3
Trial List Disposition Time

	Median (in days)	Third Quartile (in days)	Percent Cases Over 2 years
New Orleans, La.	357	587	19%
Ft. Lauderdale, Fl.	368	535	8%
Miami, Fl.	408	581	15%
Seattle, Wa.	412	623	16%
Phoenix, Az.	416	612	17%
St. Paul, Mn.	440	597	10%
Oakland, Ca.	569	808	31%
San Diego, Ca.	608	866	34%
Minneapolis, Mn.	710	932	46%
Philadelphia, Pa.	713	1390	49%
Pittsburgh, Pa.	727	1048	49%
Detroit, Mi.	904	1188	66%
Bronx County, N.Y.	980	1404	68%

Note: Trial list disposition time measures the time from either service of the complaint or filing (whichever is earlier) to entry of final order for those cases placed in the pool of cases awaiting trial.

TABLE 2.4
Criminal Disposition Time Measures

	Median Upper Court Disposition Time ^b (in days)	Median Time to Jury Trial ^c (in days)	Median Total Court Disposition Time ^d (in days)
Wayne County, Mi. ^{a, e} (3rd Judicial Circuit Court)	33	81	64
San Diego, Ca. (San Diego County Superior Court)	45	67	71
Atlanta, Ga. (Fulton County Superior Court)	45	73 ^f	77
New Orleans, La. (Orleans Parish Criminal District Court)	50	*	67
Portland, Or. (Multnomah County Circuit Court)	51 ^g	56 ^{f, g}	67 ^h
Seattle, Wa. (King County Superior Court)	56 ^g	84 ^g	82
Pittsburgh, Pa. (Allegheny County Court of Common Pleas)	58	92	103
Oakland, Ca. (Alameda County Superior Court)	58	89	116
Minneapolis, Mn. (4th Judicial District Court)	60	76	*
St. Paul, Mn. (2nd Judicial District Court)	69	69	74
Cleveland, Oh. (Cuyahoga County Court of Common Pleas)	71	89	103

*Data unavailable or not applicable.

^aUnless indicated to the contrary, on this and the criminal tables that follow, courts are listed in order of upper court disposition time. Most explanatory footnotes below are excluded on remaining criminal tables.

^bMedian days from date of filing of formal charges in general jurisdiction court to date of either guilty plea, trial verdict, dismissal, or formal determination of entry into diversion program.

^cMedian days from date of filing of formal charges in general jurisdiction court to date trial commenced for cases where disposition was reached by jury verdict.

^dMedian days from date of arrest to date of either guilty plea, trial verdict, dismissal, or formal determination of entry into diversion program.

TABLE 2.4 (continued)
Criminal Disposition Time Measures

	Median Upper Court Disposition Time ^b (in days)	Median Time to Jury Trial ^c (in days)	Median Total Court Disposition Time ^d (in days)
Pontiac, Mi. (6th Judicial Circuit Court)	78	168	122
Miami, Fl. (11th Judicial Circuit Court)	81	84	106
Phoenix, Az. (Maricopa County Superior Court)	98	129 ^f	114
Ft. Lauderdale, Fl. (7th Judicial Circuit Court)	99	147 ^f	105
Houston, Tx. (Harris County District Courts)	99	160	181 ⁱ
Newark, N.J. (Essex County Superior Court)	99	140	209
Dallas, Tx. (Dallas County District Courts)	102	*	115
Philadelphia, Pa. (Philadelphia County Court of Common Pleas)	119 ^{g, j}	121 ^{f, g, j}	168 ^j
Boston, Ma. (Suffolk County Superior Court)	281 ^k	278 ^f	*
Bronx County, N. Y. (Bronx County Supreme Court)	328	405	343

^eThe criminal jurisdiction of the Third Judicial Circuit Court includes all of Wayne County *except* the city of Detroit. Because of this fact, the jurisdiction will be referred to as Wayne County in the criminal tables that follow.

^fVerdict date used as substitute for date trial commenced.

^gDate of arraignment on formal charges used as substitute for date of filing of charges in the court of general jurisdiction.

^hArrest date unavailable; date case opened in circuit court used. This date is within two days of the arrest date.

ⁱArrest dates were unavailable for a large number of cases in this sample. There is a danger, therefore, that this figure may not be representative.

^jThe sample of felony dispositions provided by the court computer system includes a considerably greater proportion of homicide, robbery, and rape offenses than aggregate data supplied by the court would suggest.

^kFigures do not include cases categorized as "dead docket."

presents fewer conceptual and methodological problems than those encountered on the civil side. While the criminal jurisdiction of the courts examined varies somewhat, data were collected only on those cases in which the charge could result in incarceration of a year or more—felony in most courts. The time measures are based on a sample of these felony dispositions for each court.⁸ The bifurcated nature of the criminal process in most court systems suggests the need for at least three separate measures of felony processing time:

1. *Total court disposition time*: Median days from arrest to disposition;⁹
2. *Upper court disposition time*: Median days from filing of the indictment or information in the general jurisdiction court to disposition; and
3. *Time to jury trial*: Median days from filing of the indictment or information in the general jurisdiction court to commencement of jury trial.

Table 2.4 sets out medians of the two disposition-time measures of criminal case duration for each of the 21 courts, together with median days from indictment or information to commencement of jury trial.

As on the civil side, the measures are strongly related: courts tend to rank in approximately the same position on all three indices.¹⁰ Because the major focus of this research is the general jurisdiction court, the measure of the time consumed in that court is the most logically relevant index of criminal case-processing speed. Since it also tracks so closely with total court time, the upper court disposition-time measure will be the primary index of criminal court speed utilized throughout this analysis.¹¹ Total court disposition time and time to jury trial will be utilized where relevant.

The data in Table 2.4 for the 19 fastest criminal courts show a pattern similar to the analogous measures of civil-case duration described in the previous

⁸There was no need to isolate a specific type of case for construction of the criminal measures because of the absence of cases analogous to the quasi-administrative confession of judgment or commercial default case that confounded the civil measures. The courts differed in the proportion of violent crimes against persons in their caseload, due undoubtedly both to the nature of crime in the jurisdictions examined and screening practices. But differences in the overall disposition times were not a result of concentrations of these typically slow cases. See Table 3.5, below, and accompanying text.

⁹Since this project is focused primarily on pretrial delay, the disposition date is defined as the date of either verdict, guilty plea, dismissal or *nolle prosequi*, or formal determination of entry into a diversion program.

¹⁰The correlation coefficient between median upper court disposition time and median total disposition time is .92; between median upper court disposition time and median time to jury trial is .92; between median total disposition time and median time to jury trial is .91.

¹¹The strong relationship between upper court disposition time and total disposition time is due in large part to remarkable uniformity among the courts in the amount of time consumed between

TABLE 2.5
Upper Court Disposition Time

	Median (in days)	Third Quartile (in days)	Percent Cases Over 150 days
Wayne County, Mi.	33	70	7%
San Diego, Ca.	45	64	4%
Atlanta, Ga.	45	84	14%
New Orleans, La.	50	115	16%
Portland, Or.	51	81	4%
Seattle, Wa.	56	90	7%
Pittsburgh, Pa.	58	91	9%
Oakland, Ca.	58	116	19%
Minneapolis, Mn.	60	139	24%
St. Paul, Mn.	69	89	5%
Cleveland, Oh.	71	150	25%
Pontiac, Mi.	78	155	27%
Miami, Fl.	81	148	24%
Phoenix, Az.	98	134	18%
Ft. Lauderdale, Fl.	99	150	25%
Houston, Tx.	99	167	29%
Newark, N.J.	99	179	34%
Dallas, Tx.	102	200	34%
Philadelphia, Pa.	119	164	29%
Boston, Ma.	281	487	75%
Bronx County, N.Y.	328	499	79%

Note: Upper court disposition time measures the time from filing of either indictment or information in the court of general jurisdiction until either verdict, dismissal, guilty plea, or formal determination of entry into diversion or other special program.

section. The measures for 19 courts exhibit the same rough three-to-one relationship between fastest and slowest court on upper court disposition time, total court disposition time, and time to jury trial.

Two courts fall outside this general pattern: Bronx County Supreme Court and Boston's Suffolk County Superior Court. In the Bronx and Boston, criminal cases move to disposition at a significantly slower pace than the other courts surveyed. Upper court time in the Bronx is almost a year; in Boston, it is ten months. In the next slowest city, Philadelphia, the analogous figure is four months. On total disposition time, the Bronx was four and one-half months slower than the next slowest jurisdiction. These same patterns hold true for the

arrest and upper court filing. With the exception of Newark, which has an extraordinarily slow grand jury process, median time from arrest to upper court filing for all the courts examined fell in the 33-day range; from 12 to 45 days. See Appendix B.

TABLE 2.6
Total Court Disposition Time

	Median (in days)	Third Quartile (in days)	Percent Cases Over 180 days
Wayne County, Mi.	64	109	10%
Portland, Or.	67	106	3%
New Orleans, La.	67	131	16%
San Diego, Ca.	71	96	6%
St. Paul, Mn.	74	95	5%
Atlanta, Ga.	77	126	15%
Seattle, Wa.	82	124	12%
Pittsburgh, Pa.	103	137	9%
Cleveland, Oh.	103	175	24%
Ft. Lauderdale, Fl.	105	148	16%
Miami, Fl.	106	169	22%
Phoenix, Az.	114	152	14%
Dallas, Tx.	115	189	28%
Oakland, Ca.	116	210	29%
Pontiac, Mi.	122	205	32%
Philadelphia, Pa.	168	216	38%
Houston, Tx.	181	935	52%
Newark, N.J.	209	354	57%
Bronx County, N.Y.	343	504	75%

Note: Total court disposition time measures the time from arrest to either verdict, dismissal, guilty plea, or formal determination of entry into diversion or other special program.

time-to-jury trial measures as well. For want of a better term, we will refer to these two courts as "pathologically delayed," a reference to their exceptional slowness when compared both to other courts and to virtually every criminal disposition time standard we have encountered.

Tables 2.5 and 2.6 set down additional descriptive information on upper court disposition time and total disposition time respectively. As in the preceding section, these tables indicate two additional indices of case processing speed: a measure of how long the oldest cases took to be disposed of, and a measure of the percentage of cases that exceeded a generous but somewhat arbitrary processing time limit. The former measure, as in Tables 2.2 and 2.3, is the number of days consumed by the lengthiest case in the third quartile. The latter is the percentage of cases in which total disposition time exceeded six months or where upper court disposition time exceeded five months. These

five- and six-month periods represent an outside figure for the time limits specified in many speedy-trial standards.¹²

These two additional statistics describe more fully than the median how cases on the long end of the processing time scale are disposed of. As would be expected, these subsidiary measures are strongly correlated with the median for both total and upper court disposition time.¹³ But the additional measures indicate that courts with similar median processing times may dispose of very different proportions of older cases: while Pittsburgh and Cleveland have identical median total court time figures, for example, Cleveland has more than twice the proportion of cases disposed of in more than 180 days.

Whether these data taken together reveal excessive delay in the disposition of felony cases in state trial courts depends on the perspective of the observer. If the basis of comparison is the speedy trial standard proposed by the National Advisory Commission on Criminal Justice Standards and Goals, an average or normal processing time of sixty days from arrest to disposition,¹⁴ then every court examined in the study was "delayed." All the courts but three, however, dispose of at least half their criminal cases within six months from arrest, a speedy-trial standard utilized in several states. Only two courts exceeded a four-month median for upper court time. There is little question that pathological delay, at least in a comparative sense, exists in the Bronx and Boston. Because upper court disposition time in the Bronx and Boston is so much greater than in the other courts examined, much of the following analysis will discuss these two anomalous jurisdictions separately.

¹²See B. Fort et al., *Speedy Trial: A Selected Bibliography and Comparative Analysis of State Speedy Trial Provisions* (Kansas City: Midwest Research Institute, 1978), Figure 3, p. 150.

¹³For upper court disposition time, the correlation between median and third quartile times is .98; between median and percent of cases over 150 days is .94. For total disposition time, the correlation between median and third quartile times is .66; between median and percent of cases over 180 days is .94.

¹⁴National Advisory Commission on Criminal Justice Standards and Goals, *Courts* (Washington: Government Printing Office, 1973), Standard 4.1, p. 68.





3. COURT STRUCTURE AND CASE DELAY

This chapter deals with the following formal aspects of court operation to determine if they are linked to disposition time: a) court size, b) judicial caseload, c) settlement and trial activity, d) calendaring system, and e) case management practices. In addition, two elements unique to criminal case processing are examined: the process used to initiate formal charges—the grand jury indictment or an information-based charging system—and the presence of speedy-trial rules.

These court characteristics comprise what could be termed the traditional model of court delay. The model presumes that delay in litigation is caused by problems of the court itself, such as burdensome caseloads, excessive trials, or inefficient court structure and case-handling procedures. In the following sections we report our findings concerning the usefulness of this model in explaining differences among courts in the pace of civil and criminal litigation.¹ Our attempt to synthesize these findings and relate them to a coherent theory of trial court delay is presented in the next chapter.

Size of Court

We encountered a strong impression among practitioners that delayed disposition of both civil and criminal cases is predominantly a problem of large urban courts. Alternatively, these practitioners believe that expeditious disposition of cases is possible only in smaller courts that presumably handle a smaller volume of less serious or complex litigation. It should be noted that the courts chosen for analysis in this study are already “metropolitan” and “large,” at least by national standards. The size of these courts varies considerably, however: from 11 to 54 judges, for example, and from 1,700 to 25,000 annual civil filings.

¹The various factors are discussed individually, thereby making it difficult to determine the independent effect of each on the pace of litigation in the courts examined. The appropriate statistical tool for determining the specific impact of each independent factor is multiple regression analysis. This technique could not be utilized because reliably comparable data on one or more of the variables were missing for most of the courts examined.

TABLE 3.1
Court Size — Civil

	Tort Disposition Time	Trial List Disposition Time	Total Judges ^a	Civil Judges ^b	1976 Civil Filings ^c	1976 Tort Filings	1975 Population (in thousands)
New Orleans, La.	288	357	6	6	*	2,349	564
Ft. Lauderdale, Fl.	298	368	27	17 ^e	14,537	4,072 ^e	863
Phoenix, Az.	308	416	31	17	18,776	4,320	1,218
Portland, Or.	310	*	17	*	6,609	*	536
Dallas, Tx.	322	*	25	12	13,297	4,366 ^e	1,399
Miami, Fl.	331	408	43	24	25,743	12,456 ^e	1,439
Cleveland, Oh.	384	*	26	*	14,397	8,158	1,603
Seattle, Wa.	385	412	24	*	16,455 ^f	2,791	1,149
St. Paul, Mn.	*	440 ^d	12	*	1,741 ^f	*	476
Atlanta, Ga.	402	*	11	*	4,068	*	584
Oakland, Ca.	421	569 ^d	24	13	10,747 ^f	3,825	1,088
Minneapolis, Mn.	*	710 ^d	17	11 ^e	4,413 ^f	1,328 ^{e, f}	926
Philadelphia, Pa.	*	713	60	17	3,620 ^f	1,454 ^f	1,825
Pontiac, Mi.	555	*	11	*	8,375	1,715 ^e	968
San Diego, Ca.	574	608	28	17	22,302	3,050	1,588
Pittsburgh, Pa.	583	727	31	16	4,444 ^f	2,481 ^f	1,517
Houston, Tx.	594	*	38	18	21,191	9,770	1,964
Newark, N.J.	654	*	26	8	6,284 ^B	3,323 ^e	885
Detroit, Mi.	788	904	33	25	23,583 ^f	7,389 ^e	2,537
Bronx County, N.Y.	*	980 ^d	39	10	3,105 ^f	2,434 ^f	1,377
Boston, Ma.	811	*	19	6 ^e	7,902	*	723

*Data unavailable or not applicable.

^aTotal number of judges authorized to general jurisdiction court for civil and criminal divisions.

^bTotal number of judges assigned to general civil cases, exclusive of probate and domestic relations.

^cExclusive of probate and domestic relations to the extent possible.

^dTime from service, not case filing.

^eEstimate.

^fIncludes only at-issue or trial-ready cases.

^BCases counted only if at least one answer to the complaint is filed.

TABLE 3.2
Court Size — Criminal

	Median Upper Court Disposition Time (in days)	Total Judges ^a	Criminal Judges ^b	1976 Criminal Filings ^c	1976 Felony Filings ^d	1975 Population (thousands)
Wayne County, Mi.	33	33	7	4,244	4,028	2,537
San Diego, Ca.	45	28	9	4,254	4,254	1,588
Atlanta, Ga.	45	11	*	5,296	5,296	584
New Orleans, La.	50	10	10	7,525	2,746	564
Portland, Or.	51	17	*	3,627	3,213	536
Seattle, Wa.	56	24	*	4,567	2,625	1,149
Pittsburgh, Pa.	58	31	14	7,949	6,587 ^e	1,517
Oakland, Ca.	58	24	10	2,711	2,648	1,088
Minneapolis, Mn.	60	17	6	2,369	2,305	926
St. Paul, Mn.	69	12	*	1,051	1,011	476
Cleveland, Oh.	71	26	*	6,632	6,632	1,063
Pontiac, Mi.	78	11	*	4,921	*	968
Miami, Fl.	81	43	12	11,741	*	1,439
Phoenix, Az.	98	31	10	7,294	5,218	1,218
Ft. Lauderdale, Fl.	99	27	7	4,081	4,081	863
Houston, Tx.	99	38	15	15,086	*	1,964
Newark, N.J.	99	26	16	7,083 ^e	7,083	885
Dallas, Tx.	102	25	9	10,457	*	1,399
Philadelphia, Pa.	119	60	43	9,122	*	1,825
Boston, Ma.	281	19	9	3,989	1,965	723
Bronx County, N. Y.	328	39	29	3,518	3,518	1,377

*Data unavailable or not applicable.

^aTotal number of judges authorized to general jurisdiction court in civil and criminal divisions.

^bJudges assigned to criminal matters.

^cTotal criminal matters filed in 1976. Because of significant differences in statistical procedures across courts these figures are not strictly comparable.

^dFelony defendant-incidents.

^eEstimate from data supplied by courts.

Table 3.1 sets out the relationship between civil disposition time and five indices of civil court size: total judges, judges assigned to civil matters, total 1976 civil filings, 1976 tort filings, and jurisdictional population. By whatever index chosen, it is apparent that size of court bears little relationship to civil processing time. If anything, as the number of judges and tort filings increase, there is a tendency for disposition time to decrease.

Criminal court practitioners, in common with their civil brethren, also assert that large courts with numerous cases and comparatively "heavy" crime cannot be expected to dispose of cases as expeditiously as smaller courts. Table 3.2 relates upper court processing time to five indices of criminal court size: total authorized judges, judges assigned to criminal cases, total 1976 criminal filings, 1976 felony filings, and 1975 population.

It is at first apparent that pathological delay is unrelated to any index of size. Neither number of criminal filings, nor number of judges, nor population distinguishes the courts of Boston or the Bronx as particularly large. Larger courts on every dimension of size are able to process cases at a considerably more rapid pace.

Among the remaining 19 courts a somewhat different pattern emerges; the slower courts tend to be somewhat larger on all five dimensions, the faster courts somewhat smaller. The data suggest that it may be difficult for very large courts such as the Court of Common Pleas in Philadelphia to process criminal cases at the same pace as the courts in New Orleans or Portland. There are, however, notable exceptions. The Pontiac and Newark courts are substantially slower than would be suggested by their size. In contrast, the Court of Common Pleas in Pittsburgh is an example of a large court that processes criminal cases at a much faster pace than other courts of comparable size.

Court Caseload and Backlog

Perhaps the most commonly asserted cause of delayed case disposition is an imbalance of court resources to caseload. The literature of civil² and criminal³ court delay is replete with references to overworked judges and understaffed courts. Similarly, judges and lawyers in most courts visited in this study asserted that the local caseload warranted an immediate infusion of new judges.

Research on both federal⁴ and state⁵ courts has failed to uncover a link

²See e.g., Zeisel, Kalven, and Buchholz, *Delay in the Court* (Boston: Little, Brown and Co. 1959), p. 3; M. Rosenberg, "Court Congestion: Status, Causes, and Proposed Remedies," in *The Courts, the Public and the Law Explosion*, ed. H. Jones (Englewood Cliffs: Prentice-Hall, 1965), pp. 38-46; R.S. Miller, "A Program for the Elimination of the Hardships of Litigation Delay," *Ohio State Law Journal* 27 (1966): 406; J.P. Frank, *American Law: The Case for Radical Reform* (New York: Macmillan Co., 1969), pp. 3-4.

³The National Manpower Survey of Courts indicates that 40 percent of responding officials believe inadequate resources to be the primary cause of delay. "Background Paper on Issues and Data Relating to Sources of Case Backlog and Delay in the State Courts," mimeographed (Washington, D.C.: Courts Technical Assistance Project, American University, 1970), p. 15. See also National Advisory Commission on Criminal Justice Standards and Goals, *Courts* (Washington, D.C.: Government Printing Office, 1973), p. 1; L.R. Katz, L.P. Litwin, and R.H. Bamberger, *Justice is the Crime: Pretrial Delay in Felony Cases* (Cleveland: Case Western Reserve University Press, 1972), p. 75; L. Banfield and C.D. Anderson, "Continuances in Cook County Criminal Courts," *University of Chicago Law Review* 35 (1968): 266.

⁴See W.M. Rhodes, "The Economics of Criminal Courts: A Theoretical and Empirical Investigation," *Journal of Legal Studies* 5 (1976): 319-20, fn. 9. See also W. J. Campbell, "Delays in Criminal Cases: Before the Conference of Metropolitan Chief Judges of the Federal Judicial Center," *Federal Rules Decisions* 55 (1973): 230; R. W. Gillespie, *Judicial Productivity and Court Delay: An Exploratory Analysis of the Federal District Courts* (Washington, D.C.: Government Printing Office, 1977).

⁵See J.O. Williams and R.J. Richardson, *Delay in Superior Courts of North Carolina and an Assessment of its Causes* (Raleigh: Administrative Office of the Courts, 1973), pp. 38-39.

between the criminal caseloads of judges and the pace of litigation. Historical studies documenting the results of both a significant infusion of judicial resources in one court⁶ and a substantial decrease in criminal court filings in another⁷ reached analogous conclusions: criminal caseload helps very little to explain differences in processing time either between courts, or in the same court over time. Little analogous work has been done on the civil side.

Two measures—cases filed per judge and cases pending per judge—will be utilized to give a picture of the amount of civil and criminal work facing judges on different courts. Because of significant differences in the case output of courts, however, these measures may be somewhat misleading. A high number of pending cases per judge has very different implications in a court with high judicial productivity (defined in the pages that follow as yearly case dispositions per judge) than in a court that disposes of comparatively few cases per judge. Highly productive courts may dispose of high pending caseloads expeditiously while less productive courts cannot. We thus propose a final measure of caseload, a *backlog index*: the number of cases pending in a court at the beginning of the year divided by that year's dispositions. This measure is sometimes termed "statistical delay"⁸ or the "inventory control index."⁹ It relates the number of pending cases to yearly terminations; the higher the backlog index, the more pending cases a court has relative to expected yearly productivity.

Application of these aggregate measures to the courts examined in this study is difficult. Unlike federal courts, state court systems have no uniform caseload

⁶The addition of 51 new judges to the criminal courts of New York between 1972 and 1974, with accompanying increases in prosecutorial and public defender staffs, failed to reduce criminal case processing time. The Commissioner of Criminal Justice Services for New York, after a survey of the impact of the new judges, concluded that "The data indicate clearly that the expenditure of substantial sums for additional trial parts has not solved the problem of delay and backlog." Quotation from a memorandum by Archibald Murray, Commissioner of the New York State Division of Criminal Justice Services, December 16, 1974. Cited in M. Feeley, "The Effect of Heavy Caseloads," paper presented at 1975 Annual Meeting of the American Political Science Association, p. 27.

⁷Data gathered by the President's Commission on Crime in the District of Columbia indicate that from 1950 to 1966 the median time from indictment to termination in Washington's U.S. District Court quadrupled from 1.2 months to 4.8 months. During the same period the number of judges stayed constant and the number of criminal case filings fell by 30 percent. President's Commission on Crime in the District of Columbia, *Report* (Washington, D.C.: Government Printing Office, 1966), Tables 8 and 9, pp. 247-49.

⁸See, e.g., National Planning Association, "Statistics on Criminal Caseloads and Estimated Processing Time in General Trial Courts, Fiscal Year 1975," Mimeographed Final Report to Law Enforcement Assistance Administration, United States Department of Justice (Washington, D.C.: 1977).

⁹See S. Flanders, *Case Management and Court Management in United States District Courts* (Washington, D.C.: Federal Judicial Center, 1977), pp. 74-75.

counting or reporting system. They have no common system for weighting different case types to measure the amount of court work typically required to dispose of particular types of cases.¹⁰ Some civil courts process large numbers of uncontested commercial defaults or "confessions of judgment" in which the court performs the purely administrative function of entering a legal judgment against a defaulting debtor. These cases are sometimes processed in such volume that they overshadow in number the contested civil cases that consume the bulk of judge time. At least one court examined considers each admission to the bar as a disposed civil case. Similar problems exist with aggregate criminal caseload statistics. They sometimes contain large numbers of uncontested traffic cases, minor misdemeanors, writs of habeas corpus, and the like. These actions typically consume little judge time of a general jurisdiction court yet may distort the caseload statistics for comparative purposes. Because of these divergent practices, no comparable index of caseload can be obtained from total civil or criminal case statistics reported by courts. For reasons analogous to our choice of disposition-time measures based on tort cases, we have concluded that aggregate tort statistics, when available, again provide a rough but meaningful substitute in each of the civil caseload measures proposed above. Aggregate data on tort cases filed, pending, and terminated will therefore be used in the analysis of caseload that follows.¹¹

Despite the fact that several of the general jurisdiction courts examined in this study handle varying numbers of nonfelony cases, criminal caseload analysis will be confined to felony¹² filings per judge, total pending felony cases per judge, and a criminal backlog index, analogous to the civil measure, relating pending felony cases to yearly terminations. These civil and criminal

¹⁰See D.S. Clarke and J.H. Merryman, "Measuring the Duration of Judicial and Administrative Proceedings," *Michigan Law Review* 75 (1976): 100-105; J. Doyle, "Comparing Court Productivity," *Judicature* 61 (1978): 416-421.

¹¹Of the 21 courts, the proportion of torts in the civil jury verdicts sampled ranged from 65 to 100 percent. The average was 81 percent. This reliance on tort statistics is further strengthened by the fact that the tort cases tend to be similar in both a definitional and a substantive sense from court to court. Tort filing statistics, for example, mean generally the same thing from court to court, while the kinds of actions counted as contracts or equity or general civil varied enormously.

This choice has eliminated several courts from our analysis because they do not report tort statistics separately from other civil cases. Other courts are not included in the judicial workload analyses because it was not possible to identify the number of judges who work on general civil cases, thereby making "per judge" calculations impossible.

¹²Felony cases on the tables are defined in terms of "defendant-incidents" or "defendant-episodes." An indictment or information charging three defendants with a number of counts arising out of the same criminal act would constitute three cases, one per defendant.

When courts did not report their statistics in this form, it was sometimes possible to utilize our own case data on the average number of defendants or counts associated with a case to adjust court figures. See Appendix C.

caseload measures are constructed for the purpose of comparing courts. It should be emphasized that these data do not purport to provide an absolute measure of *total* work in any individual trial court.

TABLE 3.3
Civil Caseload Data

	Median Tort Disposition Time (in days)	Tort Filings per Judge ^a	Tort Cases Pending per Judge ^b	Backlog Index ^c
New Orleans, La.	288	392	*	*
Ft. Lauderdale, Fl.	298	240	*	*
Phoenix, Az.	308	254	*	*
Dallas, Tx.	322	364	339	1.0
Miami, Fl.	331	519	*	*
Cleveland, Oh.	384	*	*	1.2
Oakland, Ca.	421	294	*	*
Pontiac, Mi.	555	*	*	1.4
San Diego, Ca.	574	179	*	*
Houston, Tx.	594	543	821	2.0
Newark, N.J.	654	415	506	1.5
Detroit, Mi.	788	296	800	2.3

*Data unavailable or not applicable.

^aTort filings per civil judge — 1976.

^bTort cases pending as of 1/1/76 (or beginning of 1976 fiscal year) per civil judge.

^cTort cases pending as of 1/1/76 divided by 1976 tort dispositions.

The data in Table 3.3 suggest that civil judge caseload has little relation to civil case disposition time. Courts with heavy filings per judge can be either relatively fast or relatively slow.¹³ Data are available on too few courts to make reliable inferences concerning the relationship of pending cases per judge to disposition time. The courts slower in processing civil cases do tend to have a higher total pending caseload per judge than the faster courts, but the number of courts in the sample with these data is very small. A clear pattern does emerge when disposition time is related to the backlog index. The higher a court's backlog index, the slower civil cases move to disposition.¹⁴ Slower courts, in other words, seem to be backlogged courts.

¹³The correlation between tort filings per judge and median tort disposition time ($n = 10$) is .03. See footnote 1, Chapter 2.

¹⁴ $r = .88$, $p = .02$. It might be hypothesized that this relationship is due to a link between productivity and disposition time. This link does not emerge from our data, however. The correlation coefficient between median tort disposition time and tort dispositions per judge ($n = 15$ courts) was .02, indicating virtually no relationship. The great differences in judicial productivity among the 21 courts suggest that judges work at very different paces in different courts, a fact observed in on-site visits, as well. In any event, highly productive courts can be either fast or slow.

TABLE 3.4
Criminal Caseload Data

	Median Upper Court Disposition Time (in days)	Felony Filings per Judge ^a	Pending Felonies per Judge ^b	Backlog Index ^c
Wayne County, Mi.	33	575	*	*
San Diego, Ca.	45	473	435	*
Atlanta, Ga.	45	*	*	.08
New Orleans, La.	50	275	*	*
Pittsburgh, Pa.	58	471 ^d	*	.29
Oakland, Ca.	58	265	48	.20
Minneapolis, Mn.	60	384	53	.14
St. Paul, Mn.	69	*	*	.17
Cleveland, Oh.	71	*	*	.22
Pontiac, Mi.	78	*	*	.35
Phoenix, Az.	98	522	*	*
Ft. Lauderdale, Fl.	99	583	177	.33
Houston, Tx.	99	*	*	*
Newark, N.J.	99	443 ^d	267 ^d	.67
Dallas, Tx.	102	*	*	*
Philadelphia, Pa.	119	233	88	.37
Boston, Ma.	281	218	515	1.54
Bronx County, N.Y.	328	121	102	.78

*Data unavailable or not applicable.

^aFelony cases (defendant-incidents) filed per judge assigned to criminal matters — 1976.

^bPending felony cases as of 1/1/76 (or beginning of 1976 fiscal year) per judge assigned to criminal matters.

^cPending felony cases as of 1/1/76 divided by 1976 felony dispositions.

^dEstimate.

Table 3.4 presents criminal caseload measures for those courts in which the necessary data are available. In common with both the civil findings of this research and those of previous studies, very little relationship is present between processing time and either the number of felony filings per judge or the number of pending felonies per judge.¹⁵ Indeed, the two courts with the most severe delay problem have the lowest number of felony filings per judge of any of the courts for which data are available. The Boston court has a relatively high number of pending felonies per judge, but so does the San Diego court, the second fastest court of the 21 surveyed. These data reveal significant differences in the criminal caseload of state trial courts. But the courts with the highest

¹⁵The correlation between median upper court disposition time and filings per judge for all courts is $-.65$; excluding Bronx County and Boston, $r = -.10$. The correlation between median upper court disposition time and pending felonies per judge for all courts is $.21$; excluding Bronx County and Boston, $r = -.24$.

TABLE 3.5
Seriousness of Criminal Cases

	Median Upper Court Disp'n Time All Cases (in days)	Median Upper Court Disp'n Time Serious Cases ^a (in days)	Median Upper Court Disp'n Time Less Serious Cases ^b (days)	Percent Serious Cases ^a
Wayne County, Mi.	33	60	31	14%
San Diego, Ca.	45	62	43	18%
Atlanta, Ga.	45	47	45	16%
New Orleans, La.	50	57	49	19%
Seattle, Wa.	56	74	53	16%
Pittsburgh, Pa.	58	65	57	12%
Oakland, Ca.	58	56	58	23%
Minneapolis, Mn.	60	52	61	16%
St. Paul, Mn.	69	67	70	22%
Cleveland, Oh.	71	76	70	23%
Pontiac, Mi.	78	98	74	12%
Miami, Fl.	81	96	76	11%
Phoenix, Az.	98	112	98	10%
Ft. Lauderdale, Fl.	99	93	100	10%
Houston, Tx.	99	106	93	16%
Newark, N.J.	99	90	97	23%
Dallas, Tx.	102	114	95	13%
Boston, Ma.	281	253	283	17%
Bronx County, N.Y.	328	322	315	51%

^aHomicide, rape, robbery.

^bFelony cases exclusive of homicide, rape, robbery, and cases categorized as "other".

caseloads are not the courts with slowest disposition times, nor are the comparatively underworked courts speedier.

The criminal case backlog index is strongly related to disposition time.¹⁶ The higher the index, indicating a large number of pending cases relative to yearly dispositions, the lengthier the processing time. As on the civil side, backlogged criminal courts tend to be slow criminal courts. It should be kept in mind, however, that the backlog index measures the relationship of pending caseload to the court's output of criminal dispositions; unlike the two previous measures, it does not relate caseload to court resources.

The amount of work facing a trial court is a function not simply of the number of cases it must process but also of the type of cases in the caseload. While there is little literature on the subject, we interviewed a number of practitioners who

¹⁶Without including the Bronx and Boston in the calculation, $r = .83$; including the Bronx and Boston, $r = .72$.

asserted that a high proportion of serious or "heavy" crime in a court would necessarily slow it down.¹⁷ The presumption was usually that serious cases are likely to consume considerable judge time in hearings and trial and will also require more attorney preparation time. On the contrary, the data suggest that differences among courts in the pace of criminal litigation are remarkably independent of the proportion of more serious crime in the caseload. Table 3.5 sets out for each court the median upper court disposition time for all cases in the felony sample, upper court time for a class of cases unambiguously serious in all courts—homicides, rapes, and robberies, disposition time for the remaining less-serious offenses, and the percent of serious cases among the court's total dispositions.

It is at first apparent that although the percentage of serious cases ranges from a low of 11 percent to a high of 51 percent, this figure is virtually unrelated to the overall upper court disposition time. Of the most seriously delayed jurisdictions, the Bronx does have an exceptionally high proportion of serious crime—more than twice that of any other court. But the proportion of serious cases disposed in Boston is not especially high in comparative terms. Virtually no pattern linking disposition time and percent of serious cases exists for the remaining courts.

A possible exception for this lack of relationship between percent of serious cases and disposition time is suggested by an analysis of the central two columns of the table. They reveal that differences in disposition time for serious and less serious offenses are strongly related: although serious cases usually move slower than less serious cases, courts that are comparatively slow in disposing of serious cases are similarly slow with less serious cases. The converse is also generally true. The clear implication is that differences in the overall pace of criminal litigation among trial courts cannot be ascribed to heavy concentrations of serious criminal cases.¹⁸

Data on the relative pace of complex civil cases are unavailable because court records do not contain reliable indications of case complexity. A study of civil case processing in federal courts concluded that "differences in disposition

¹⁷Fragmentary data on the relationship of case type to disposition time may be found in J.A. Navarro and J.G. Taylor, "Data Analysis and Simulation of Court System in the District of Columbia for the Processing of Felony Defendants" in *The President's Commission on Law Enforcement and the Administration of Justice Task Force Report: Science and Technology* (Washington, D.C.: Government Printing Office, 1967), p. 205. See, generally, Banfield and Anderson, "Continuances in Cook County Criminal Courts."

¹⁸In the 10 courts for which data are available on the number of defendants associated with a criminal case, an analogous conclusion emerges; there is little correlation ($r = .16$) between a court's proportion of cases with two or more defendants and median disposition time.

TABLE 3.6
Judicial Productivity and Trial Utilization — Civil

	Jury Trial Utilization Index ^a	Judicial Productivity ^b	Median Tort Disposition Time (in days)
Cleveland, Oh.	1%	*	384
New Orleans, La.	2%	*	288
Detroit, Mi.	3%	354	788
Dallas, Tx.	4%	338 ^c	322
Oakland, Ca.	4%	201	421
Pontiac, Mi.	4%	*	555
Houston, Tx.	5%	429	594
Newark, N.J.	5%	339	654
Ft. Lauderdale, Fl.	6%	275 ^c	298
Pittsburgh, Pa.	6%	162	581
San Diego, Ca.	6%	147	574
Phoenix, Az.	7%	248	308
Portland, Or.	8%	*	310
Miami, Fl.	10%	477 ^c	331
Seattle, Wa.	12%	*	385
Atlanta, Ga.	14%	*	402

*Data unavailable or not applicable.

^aPercent of 1976 tort dispositions (excluding court dismissals for lack of prosecution) reached by jury verdict.

^b1976 tort cases disposed per civil judge.

^cEstimate.

time among the courts studied are not caused by concentrations of cases that characteristically are fast or slow."¹⁹ Whether this conclusion is warranted for state courts must await further research.

Trial and Settlement Activity

Trials, especially jury trials, consume a considerable amount of the judge time spent in most state trial courts. The extensive resources in time and money consumed by the typical jury trial provide considerable impetus for programs to encourage pretrial settlement of civil cases and negotiated pleas in criminal cases. Techniques to decrease the proportion of civil cases requiring jury trial include mandatory settlement conferences, "crash" settlement programs of limited duration, and use of pretrial orders in all civil cases. All are based on the assumption that a court can dispose of more cases by lowering the proportion of cases that require jury trial. If this assumption is correct, those courts with fewer civil jury trials should be more productive than "trial-intensive" courts.

¹⁹Flanders, *Case Management*, p. 18.

Table 3.6 presents data on the proportion of tort dispositions that come about through jury verdict. The table indicates a considerable range in the proportion of jury trials across the 21 courts — from one percent to 14 percent. This variation is virtually unrelated to either individual judge productivity²⁰ or to disposition time.²¹ Courts that dispose of a relatively high proportion of their civil cases by jury trial are neither less productive nor slower than courts with lower trial utilization.

The five courts in which civil case processing was examined in detail also vary considerably in the amount of judicial effort expended in securing settlements. In Miami and Phoenix, judges typically take very little part in settlement negotiations. Most judges ask on the day of trial if counsel have “talked settlement.” The pretrial orders used in both courts require a statement confirming that settlement discussions have been conducted. But most judges of these courts hold strong attitudes against judicial coercion of settlements. The judges interviewed indicated that they seldom talk about specific dollar figures and that any discussions are always held with both counsel present. Minneapolis judges typically take a more active role in settlement discussions, although the level of this activity reportedly fluctuates. The court holds regular settlement programs in December and during the summer months, and has recently set its most effective “settlers” to work on the oldest cases on the calendar. As in Miami and Phoenix, however, most judges expressed concern over exerting excessive influence on the decisions of the parties and do not engage in *ex parte* contacts.

The Detroit and Bronx County courts expend considerably more effort on settlement-related activities. Settlement conferences are routinely held in every case. In the Bronx, a case generally requires a dozen or more appearances for the primary purpose of settlement before a trial is commenced. The Detroit court’s settlement activity depends to some extent on whether it is currently conducting a “crash program” to reduce the number of pending cases, but judges and attorneys alike indicated that the court always makes considerable effort to settle. In both the Bronx and Detroit the court role in settlement is aggressive, and judges are not reticent to suggest specific dollar amounts, comment on the merits of the case, and indicate the likely result of a trial. In the Bronx, settlement judges routinely speak to counsel *ex parte* as a means of facilitating settlements. Some attorneys complained in both courts that court pressure to settle is at times inappropriately intense.

²⁰ $r = .18.$

²¹ $r = -.28.$

TABLE 3.7
Court Settlement Activity

Court Settlement Involvement	Median Disposition Time Trial List Cases (rank)	Judicial Productivity ^a (rank)	Trial Utilization Index ^b (rank)
(most)			
Bronx County, N. Y.	980 (5)	303 ^c (3)	4% ^d (2)
Detroit, Mi.	904 (4)	354 (2)	3% (1)
Minneapolis, Mn.	710 (3)	117 ^c (5)	11% ^d (5)
Phoenix, Az.	416 (2)	248 (4)	7% (3)
Miami, Fl.	408 (1)	477 (1)	10% (4)
(least)			

^a1976 tort dispositions per judge.

^bPercent of total tort dispositions reached by jury verdict.

^cThe base of these statistics reflects only dispositions of torts filed with the court. Because both the Bronx and Minneapolis civil cases can progress to trial readiness prior to filing, these numbers are not strictly comparable.

^dThis figure based only on the trial-ready cases since cases are not filed with the court prior to trial readiness.

Table 3.7 lists the five courts in order of our subjective determination of the amount and intensity of judicial involvement in civil case settlement activities. It also indicates judicial productivity, median disposition time for trial-list cases,²² and the index of jury trial utilization. The two settlement-intensive courts make less use of jury trials than those with less court settlement activity, but there is no clear linkage to judicial productivity. Those courts that exert the most effort in settling cases do not necessarily dispose of more cases per judge than those courts where less judicial settlement effort is expended. The only obvious relationship in the table is the perfect inverse relationship between amount of court settlement activity and median disposition time. The most settlement-intensive courts are the slowest courts. We are not in a position to assert causality here. It seems clear, however, that fast courts on civil case processing need not be "settling" courts.²³

Much of the literature on plea bargaining in criminal cases assumes a linkage between judicial productivity and the proportion of those cases requiring jury trial. A representative example:

Only the guilty plea system has enabled the courts to process their caseloads with seriously inadequate resources. The invisible hand of Adam Smith is at work.

²²The trial list disposition time figure was used because it is present for each of the five courts, whereas the tort measure time is missing in two.

²³An analogous conclusion was reached by the Federal Judicial Center's study of federal trial courts. See Flanders, *Case Management*, pp. 37-39.

TABLE 3.8
Judicial Productivity and Trial Utilization — Criminal

	Jury Trial Utilization Index ^a	Judicial Productivity ^b	Median Upper Court Disposition Time (in days)
Dallas, Tx.	1%	*	102
Houston, Tx.	4%	*	99
Minneapolis, Mn.	5%	248	60
Pittsburgh, Pa.	5%	354	58
Philadelphia, Pa.	6% ^c	249	119
Miami, Fl.	6%	751	81
Wayne County, Mi.	7%	*	33
Ft. Lauderdale, Fl.	7%	389	99
New Orleans, La.	7%	*	50
Oakland, Ca.	7%	198	58
Pontiac, Mi.	7%	*	78
San Diego, Ca.	7%	396	45
St. Paul, Mn.	8%	*	69
Phoenix, Az.	9%	378	98
Atlanta, Ga.	9%	*	45
Cleveland, Oh.	9%	*	71
Seattle, Wa.	10%	*	56
Portland, Or.	11%	*	51
Boston, Ma.	14%	*	281
Bronx County, N.Y.	18%	111	328
Newark, N.J.	19%	280	99

*Data unavailable or not applicable.

^aPercent of felony adjudications (guilty pleas, court and jury verdicts, post-indictment diversions) reached by jury verdict. From delay project case samples.

^bFelony adjudications per criminal court judge. From court-supplied aggregate statistics.

^cThis figure obtained from court-supplied statistics, not delay project case sample.

Growing concessions to guilty plea defendants have almost matched the growing need to avoid the burdensome business of trying cases.²⁴

While recent studies have cast some doubt on the accepted linkage of case pressure to the avoidance of trial through plea bargaining, many of the practitioners interviewed shared a belief that jury trials must be avoided if a court is to increase both criminal case output and processing speed.²⁵

²⁴Alschuler, "The Prosecutor's Role in Plea Bargaining," *University of Chicago Law Review* 36 (1968): 51. See also citations in M. Heumann, "A Note on Plea Bargaining and Case Pressure," *Law and Society Review* 9 (1975): 516-17.

²⁵See Heumann, "A Note on Plea Bargaining and Case Pressure;" Feeley, "The Effects of Heavy Caseloads."

Table 3.8 indicates criminal case jury trial utilization, judicial productivity, and median upper court disposition time of all of the courts for which these data are available. Judicial productivity refers to the number of felony *adjudications* (trial convictions and acquittals, and guilty pleas) per criminal court judge;²⁶ the trial utilization index is the percentage of those adjudications reached by jury verdict.²⁷ The first point to be made concerning this table is the substantial range among the courts in jury trial usage.²⁸ The highest trial utilization—19 percent of felony adjudications in Newark—is almost five times that of the smallest. A clear relationship of trial utilization to productivity and processing time does not emerge from these data. The three courts with the highest trial utilization include the Bronx and Boston—courts characterized by exceedingly long upper court disposition times and comparatively low judicial productivity. The Newark court has the highest trial utilization of all 21. Yet it disposes of two-and-one-half times as many cases per judge as in the Bronx, 20 percent more than in Boston, and does so in one-third the time.

Outside those three courts there is little relationship between trial utilization and either productivity or processing time. These data suggest that exceptionally high jury trial rates are related both to lower productivity and to lengthier processing time, but that the incremental differences in trial rates that characterize the majority of courts have little effect on either aspect of criminal court performance. It should be noted, for example, that the courts in Seattle and Portland, two of the faster courts examined, obtain more than 10 percent of their adjudications by jury trial. This figure may not seem large in an absolute sense, but does indicate high trial utilization in comparative terms.

²⁶Several jurisdictions make extensive use of postindictment (but pretrial) diversion of youthful and first offenders. These dispositions were included in the adjudication figure on the theory that such cases would in all probability have resulted in reduced-charge guilty pleas in other courts.

Nolle prosequis, dismissals, remands and the like were not counted in the productivity measure because they tend to reflect differences in prosecutorial and lower court screening practices rather than general jurisdiction court productivity. Furthermore, a guilty plea or trial verdict tends to have a fairly uniform meaning from court to court (not the case with dismissals and *nolle prosses*) and usually requires substantially more court resources than cases that exit the system without a formal adjudication of guilt or innocence.

²⁷This figure was based on case samples in all jurisdictions but one. Jury verdicts were utilized as the primary measure of jury trial utilization because of the difficulty in applying a uniform definition to all courts as to whether a jury trial commenced in a case.

²⁸As might be expected, a court's trial utilization and the proportion of serious cases are related. This relationship is not especially strong, however, and by no means explains all the variance among the courts on jury trial utilization. Not counting Bronx and Boston, the correlation between percent of serious crime and trial utilization is .44. When these two courts are included in the analysis, $r = .64$, a jump attributable in part to the unusually high percentage of serious crimes in the Bronx (twice the proportion of any other city) with an accompanying high trial utilization index.

We could not rank the five courts in terms of judicial participation in plea bargaining, an endeavor that is analogous to the civil rankings indicated on Table 3.7. The practices of individual judges on the same court differ so extensively that any such ranking would be arbitrary.

Calendaring System

A perennial dispute in judicial administration concerns the relative merits of two different approaches to the organization of case processing within a court.²⁹ On one side stand adherents to the individual calendar system. In "pure" individual calendar courts, cases are randomly assigned to judges at filing and, absent reassignment, remain with the judge until terminated in trial or settlement. Each judge has responsibility for his own caseload and functions almost as an autonomous court. This system is said to encourage judicial familiarity with the cases and a sense of responsibility for "moving the calendar." The alternative system, the master calendar, exists in a number of variants; they have in common an allocation of judges to different functions, such as motions, conferences, and trials, rather than to cases. As cases require judicial action they are assigned to an available judge. The system is said to increase efficiency, promote expertise by division of labor on the bench, and allow flexibility in the allocation of judicial resources.

Table 3.9 divides the 21 courts according to whether they utilize an individual calendar system or some variant of the master calendar system for allocation of their civil cases. The differences in civil case disposition times between the two systems is striking: the mean tort disposition time of individual calendar courts is over 200 days faster than the mean of the master calendar courts. When all the courts are ranked according to the civil time measures, the fastest third of the courts consists of six individual calendar courts and one master calendar court, the slowest third consists of seven master calendar courts and no individual calendar courts. An indication of higher productivity on individual calendar courts is also suggested by Table 3.9, although the data are less conclusive because civil case productivity measures cannot be computed in four of the eight individual calendar courts.

The data relating civil case processing to calendaring system are relatively unambiguous: individual calendar courts tend to be both speedier and more

²⁹For a discussion of the various arguments for and against the two calendaring systems, see M. Solomon, *Caseflow Management in the Trial Court* (Chicago: American Bar Association, Commission on Standards of Judicial Administration, 1973); California Judicial Council, *Master-Individual-Calendar Study*, prepared by John Fall and Associates (San Francisco: California Judicial Council, 1974).

TABLE 3.9
Court Calendaring Systems — Civil

	MASTER CALENDAR COURTS ^a			INDIVIDUAL CALENDAR COURTS			
	Tort Disposition Time	Trial List Disposition Time	Judicial Productivity ^b	Tort Disposition Time	Trial List Disposition Time	Judicial Productivity ^b	
Portland, Or.	310	*	*	New Orleans, La.	288	357	*
Seattle, Wa.	385	412	*	Ft. Lauderdale, Fl.	298	368	275
St. Paul, Mn.	*	440	*	Phoenix, Az.	308	416	248
Oakland, Ca.	421	569	201	Dallas, Tx.	322	*	338
Minneapolis, Mn.	*	710	*	Miami, Fl.	331	408	477
Philadelphia, Pa.	*	713	*	Cleveland, Oh.	384	*	*
San Diego, Ca.	574	608	147	Atlanta, Ga.	402	*	*
Pittsburgh, Pa.	581	727	162	Pentiac, Mi.	555	*	*
Houston, Tx.	594	*	420				
Newark, N.J.	654	*	339				
Detroit, Mi.	788	904	354				
Bronx County, N.Y.	*	980	*				
Boston, Ma.	811	*	*				
Mean	569	674	271	Mean	361	387	335
No. of Courts	9	9	6	No. of Courts	8	4	4

*Data unavailable or not applicable.

^aCourts were included in this category if they used the master calendar or any of its variants. The distinguishing characteristic for our purposes was whether or not cases were permanently assigned to the same judge from filing to disposition. If not, the court was considered to be a master calendar court.

^bTort cases disposed per civil judge in 1976.

productive than master calendar courts. Analogous data on criminal case processing are less clear. Table 3.10 indicates upper court disposition time and criminal case productivity measures for the master and individual courts examined. Eight of the ten fastest courts utilize the master calendar; so do the two pathologically delayed courts. The individual calendar courts in Atlanta and New Orleans are very speedy; the two Texas individual calendar courts are relatively slow.

TABLE 3.10
Court Calendaring Systems — Criminal

	MASTER CALENDAR COURTS ^a		INDIVIDUAL CALENDAR COURTS		
	Upper Court Disposition Time	Judicial Productivity ^b	Upper Court Disposition Time	Judicial Productivity ^b	
Wayne County, Mi.	33	*	Atlanta, Ga.	45	*
San Diego, Ca.	45	396	New Orleans, La.	50	*
Portland, Or.	51	*	Cleveland, Oh.	71	*
Seattle, Wa.	56	*	Pontiac, Mi.	78	*
Pittsburgh, Pa.	58	354	Miami, Fl.	81	751
Oakland, Ca.	58	198	Phoenix, Az.	98	378
Minneapolis, Mn.	60	248	Ft. Lauderdale, Fl.	99	389
St. Paul, Mn.	69	*	Houston, Tx.	99	*
Philadelphia, Pa.	119	249	Dallax, Tx.	102	*
Boston, Ma.	281	*			
Bronx County, N. Y.	328	111			
Mean—all courts	105	259	80	506	
No. of Courts	11	6	9	3	
Mean—without the Bronx, Boston	61	289			
No. of Courts	9	5			

*Data unavailable or not applicable.

^aIncludes all courts on master or hybrid system where a single judge is not responsible for cases from filing to disposition.

^bFelony adjudications per criminal judge in 1976.

Average upper court disposition times are indicated on the table for the two calendaring systems. The substantial effect of Bronx County and Boston figures on the mean of the master calendar courts is apparent: when the two courts are included in the analysis, master calendar courts as a class are somewhat slower than individual calendar courts; when the courts are excluded, master calendar courts are marginally faster. The criminal case productivity measures are not present for a substantial number of individual

calendar courts, but do suggest—as on the civil side—that individual calendar courts make more productive use of judgepower than do master calendar courts.³⁰

These data are inconclusive. At most they indicate that for criminal case processing neither master nor individual courts have a monopoly on speed, delay, or productivity.

Case Management

Probably the greatest observable difference between civil and criminal case processing in the courts examined is found in the area of case management. In the courts where the civil process was observed most closely, management of civil case progress is seldom exercised; attorneys control the pretrial pace of civil litigation. Nearly every court visited, however, controls the pace of criminal litigation to a considerable degree. The prosecuting attorney may have formal responsibility for bringing criminal cases to trial. This responsibility often translates into a substantial prosecutorial role in case scheduling. We observed no court, however, that gives the parties to a criminal action the same control over case progress that civil litigants enjoy.

Civil Case Management. The philosophy of court control of the pretrial pace of civil litigation is relatively new. Only in the past decade have a number of judges, court administrators, and professional observers begun to urge active court management of pending civil litigation rather than the pure umpire's position implied by a strict concept of the adversary system.³¹ The philosophy of case management encourages the judge to "intervene in civil litigation and take an appropriately active part in its management from the beginning."³² The procedural devices utilized to achieve these ends vary, ranging from the use of pretrial orders to status conferences, pretrial conferences, and a "tight" continuance policy. The overall objective is the same: the assumption of court responsibility for both the pace and the substantive progress of the pretrial stage of civil litigation.³³

³⁰Productivity measures are not included for the two Texas courts because their aggregate statistics are based on single count indictments and thus tend to distort the productivity measures for comparative purposes. Even allowing for this distortion, however, their data (and our subjective observations) suggest that these two courts dispose of a very large volume of cases with a comparatively small number of judges. Were comparable productivity data available for the Texas courts, it would in all probability augment the productivity mean of individual calendar courts.

³¹See, e.g., M. Frankel, "The Adversary Judge," *Texas Law Review* 54 (1976): 465-468.

³²W. Schwarzer, "Managing Civil Litigation: The Trial Judge's Role," *Judicature* 61 (1978): 402.

³³For a review of various case management techniques, see Solomon, *Caseflow Management in the Trial Court*; Flanders, *Case Management*; Schwarzer, "Managing Civil Litigation."

Civil case management is most in evidence in the federal courts and its effect there on the pace of litigation is pronounced.³⁴ There is no easy litmus test for the presence of an operating case management system because its existence depends upon actual practice rather than formal policies or procedures. Discussion is therefore confined to those five courts examined intensively. Of these five, only the Miami court maintains substantial judicial controls on the pretrial period. Elsewhere the pace of litigation is left almost entirely in the hands of the attorneys. In the Bronx and Minneapolis a case is not even filed with the court until it is certified by counsel to be trial ready. In the other courts, including Miami, the period from filing to attorney stipulation of readiness is seldom subject to any court control.³⁵

When cases approach the trial date, several of the courts are more active. Pretrial orders specifying witness lists, issues to be raised at trial, and a deadline for any uncompleted discovery are required by most judges in both the Miami and Phoenix courts, although the degree of enforcement of these orders varies from judge to judge. The firmness by which judges hold counsel to scheduled trial and other appearance dates also varies considerably among the five courts. Only in Miami does it appear that attorneys expect a trial actually to begin on the first scheduled trial date. By contrast, the artful use of stipulated continuances, allegations of scheduling conflicts, and refusal to file (or readiness to withdraw) a trial readiness document allow a skilled attorney in the Bronx, Minneapolis, Phoenix, or Detroit to control the speed at which his cases come to trial—at least in the negative sense of insuring that the start of trial is not compelled before it is convenient to try the case.

One indication of court control of this final period of case progress is the relationship between scheduled and actual trial dates. Table 3.11 illustrates the loose manner in which many state trial courts control the trial date. The table indicates the median time from first scheduled trial date to actual commencement of jury trials. It also shows the percent of jury trials commencing on the date scheduled, and the percent beginning within one and two weeks of the date scheduled.

Few of the state courts examined in this study seem able to forge a tight relationship between scheduled and actual trial dates. An instructive comparison can be made with six federal district courts studied in a recent

³⁴See Flanders, *Case Management*, pp. 17-41.

³⁵There are limited exceptions. The Phoenix court, for example, dismisses all cases on file for one year without a certificate of readiness. Some judges in Miami set a case for trial on their own motion if they feel it has grown inappropriately old.

TABLE 3.11
Trial Scheduling — Civil

	Median Days	Median Days	Median Days	Percent Trials Begun		
	Filing to Trial Commenced	Filing to First Scheduled Trial Date	First Scheduled Trial Date to Trial Begun	On Day Scheduled	In 7 Days	In 14 Days
Miami, Fl.	412	301	36	6%	31%	42%
St. Paul, Mn.	437 ^a	387 ^a	28	20%	35%	35%
Ft. Lauderdale, Fl.	458	403	2	24%	55%	59%
Phoenix, Az.	607	330	202	3%	8%	8%
Minneapolis, Mn.	734 ^a	542 ^a	15	34%	39%	44%
Houston, Tx.	840	388	294	1%	6%	6%
San Diego, Ca.	846	721	30	4%	22%	32%

Note: Cases included in the figures on this table are those in which jury verdicts were rendered.

^aTime periods are from service, not filing.

TABLE 3.12
Federal Court Trial Scheduling

Federal District Court	Median Days Filing to Trial Commenced	Median Days First Scheduled Trial Date to Trial Begun	Percent Trials Begun on Day Scheduled
Florida — Southern	254	17	21%
California — Central	476	1	50%
Maryland	557	80	19%
Louisiana — Eastern	444	0	51%
Pennsylvania — Eastern	870	6 (n=17)	35%
Massachusetts	997	0	61%

Source: S. Flanders, *Case Management and Court Management in the United States District Courts* (Washington, D.C.: Federal Judicial Center, 1978) Table 20, p. 34.

Note: Cases described in this table are those in which a civil jury or nonjury trial commenced.

report by the Federal Judicial Center. Data on these courts are set out in Table 3.12. Both the median time from scheduled to actual trial dates and the proportion of cases commencing trial as scheduled differ considerably between these federal courts and the state courts in Table 3.11. Even in those federal courts that have relatively long times to commencement of trial, the first scheduled trial date is more firm than in the state courts. Broad generalizations are not possible concerning the overall continuance practices of federal as

opposed to state courts. But in those state courts for which there are data, it is clear that control seldom is exercised over the date upon which trials commence.

These data on continuance practices, together with the previous discussion of case management, should make clear that differences in civil case processing speed cannot be explained by differences in judicial control of case progress. The point is not that such controls are necessarily unrelated to the pace of civil litigation but rather that most state trial courts exercise so little control that the cause of the significant differences in processing speed must lie elsewhere.

Criminal Case Management. Criminal cases typically are managed to a much greater degree than civil cases. Of the five courts examined in detail, the fastest median upper court disposition time (50 days) is obtained in New Orleans. The Orleans Parish Criminal District Court is an individual calendar court with 10 judges. The prosecuting attorney for Orleans Parish stresses case management and delay reduction to a considerable degree and employs an extensive data-processing system to further these efforts. Office policy advocates moving cases from arraignment to trial in 60 days, a standard that the data indicate is met in 55 percent of the cases. While it is clear that a majority of the individual judges share the prosecutor's concern for expeditious disposition of criminal cases, most of the attorneys and other court observers interviewed credited the prosecutor's case management policies and practices with the particularly rapid pace of the criminal litigation in New Orleans. The prosecutor has legal control of the criminal calendar in Louisiana; in a majority of courtrooms in New Orleans that control is exercised to a considerable degree. Those judges who exhibit extensive independent control of their calendar tend to be particularly interested in case management and thus their efforts complement those of the prosecuting attorney. In most of the courtrooms a relatively firm trial date is set at arraignment, with cases commencing trial on or very near that date unless disposed of earlier by guilty plea or dismissal.

The Court of Common Pleas in Pittsburgh, Pennsylvania, disposes of the median felony in 58 days from filing—about a week longer than in New Orleans. Only eight percent of the cases exceed 150 days upper court time, however, a little more than half New Orleans' proportion. The Pittsburgh court is comparatively large, with more than twice the number of felony filings. In order to meet the 180-day limit from arrest to trial mandated by the state supreme court, the Court of Common Pleas institutes strong controls from the beginning: as in New Orleans, a case is set for trial at first appearance in the general jurisdiction court. While postponements occur with some frequency, they usually are of limited duration, and only in exceptional circumstances is a

case allowed to exceed the 180-day limit.³⁶ All cases are tracked on a computer system that clearly indicates the relevant 180-day limit. Attorneys and judges reported that uncertainty regarding appellate court rulings causes the court to attempt to process all felony cases within 180 days, even if a waiver is obtained from the defendant. In Pittsburgh, the case controls are maintained primarily by the court rather than the prosecutor. The prosecuting attorney, however, is obviously not interested in losing cases because of a speedy-trial dismissal and much of the effort to speed disposition is cooperative.

Median upper court disposition time in Miami places it in about the middle of the 21 courts examined. The court operates on an individual calendar system with considerable uniformity apparent among the judges. This similarity in procedure may be due in part to the extensive court use of a central computer for scheduling and monitoring criminal cases. Again, trial dates are set at the arraignment in the general jurisdiction court. Interview reports indicate that these dates usually can be continued once each by defense and prosecution. The judges appear to be very much in control of their calendars, however, and most of the attorneys interviewed indicated that it is difficult for either defense or prosecution to obtain more than one continuance.

Florida courts operate under a 180-day rule similar to that in Pennsylvania. Median time from arrest to disposition in Miami was 106 days in 1976, considerably less than the 180-day standard and virtually the same as in Pittsburgh. The proportion of cases exceeding the 180-day limit, however, is two-and-one-half times higher: 22 percent in Miami as opposed to 9 percent in Pittsburgh.³⁷ This difference may reflect in part the somewhat looser controls exercised in Miami: several judges in the court indicated in interviews that they are more concerned about the size of their pending caseload than its age,³⁸ and the impact of exceeding the 180-day limit is generally believed to be inconsequential so long as the defense requests a continuance.³⁹

The Superior Court in Newark, New Jersey, is one of the slower courts examined in this study, with a median total court disposition time of 209 days—a figure exceeded only in Boston and the Bronx—and median upper court

³⁶Our data indicate that eight percent of the 1976 dispositions exceeded 180 days from arrest to disposition. See Table 3.2.

³⁷See Table 2.6.

³⁸These judges feel it is the state's attorney's responsibility to meet the 180-day limit and not the court's.

³⁹There is considerable diversity of opinion among the judges as to the legal implications of a defense-requested continuance. Several judges believe such a postponement permanently waives any speedy trial deadline in the case. Others asserted that after a defense continuance, the only requirement was to get a case to trial within "a reasonable time."

disposition time of 99 days. Analysis of felony processing in Newark is complicated by the presence of a special program for dealing with "high impact" crime. Roughly half the judges on the court are assigned to this program, which operates on a master calendar. The remaining judges utilize the individual calendar system.

While generalization is difficult, interviews with Newark judges and attorneys indicate that judicial control of case movement is significantly more lax in Newark than in the three courts described above. The master calendar division is presided over by a judge who is particularly concerned with case management and case movement, but as a whole the court appears to leave calendar movement primarily to the prosecuting attorney's office. And unlike the situation in New Orleans, delay reduction and case management do not appear to be elements of concern in that office. Neither the court nor the prosecuting attorney appears to have any specific definition of proper felony processing time, a distinct difference from the three courts discussed above. Trial-setting practices differ among the judges, but a common element perceived by almost all those interviewed is a rather relaxed court attitude toward postponements, particularly among judges on the individual calendar system.⁴⁰ Control of criminal case progress is exercised to some degree by selected individual calendar judges and by the presiding judge of the master calendar division. In general, however, the Newark court manages criminal cases less than the courts discussed previously.

The median felony case in the Bronx requires almost a year from filing in the general jurisdiction court to disposition. Felony case processing in Bronx County is characterized by an almost complete absence of judicial controls for at least the first 8 to 12 months. The court forces a case to trial only when a defendant has been incarcerated for a year or when a case involving a defendant on pretrial release is pending more than 18 months. Cases that have not exceeded these limits are scheduled for court appearances on a regular basis, but these appearances simply provide judge and counsel an opportunity to discuss whether a plea bargain might be worked out in the case. Little judicial pressure to commence a trial occurs until a case exceeds the previously discussed time limits of 12 to 18 months. At this point the case is transferred to a special courtroom and a trial is begun in fairly rapid order unless a plea bargain is concluded in the interim.

⁴⁰When asked about continuance practices, a common response of judges in Newark was that they had "plenty of cases awaiting trial" and thus felt little need to push a case to trial if counsel wanted a postponement.

TABLE 3.13
Trial Scheduling — Criminal

	Median Days Filing to Jury Trial Commenced	Median Days Filing to First Scheduled Trial Date	Median Days First Scheduled Trial Date to Trial Begun	Percent On Day Scheduled	Trials Begun In 7 Days	Trials Begun In 14 Days
St. Paul, Mn.	69	61	7	9%	56%	65%
San Diego, Ca.	67	63	2	26%	68%	74%
Minneapolis, Mn.	76	59	8	12%	47%	53%
Seattle, Wa.	84	70	7	16%	54%	63%
Miami, Fl.	84	49	16	5%	27%	41%
Oakland, Ca.	89	49	36	10%	24%	38%
Houston, Tx.	160	100	2	42%	53%	53%

Note: Cases described in this table are those in which a trial began that ended in a jury verdict. All medians based on at least 20 cases.

Each of these five courts institutes judicial controls at some point in case progress. In the fastest courts, this control is established at filing with a routine process for setting an early, and relatively firm, trial date. The slower courts exercise relatively little early control and do not push cases to disposition until much later.

As implied in the preceding discussion, the scheduling of trial is a major judicial control of criminal case movement in the five courts examined in depth. Although upwards of 90 percent of criminal cases are disposed by nontrial means, most practitioners interviewed asserted that the imminence of trial produces many of those dispositions. Table 3.13 shows trial setting and continuance practices for criminal cases in those courts for which there are relevant data. A cursory comparison of these data with the figures on Table 3.11 provides a graphic illustration of the previous assertion that state trial courts control the trial dates in criminal cases to a much greater degree than in their civil cases. Both the median days from first scheduled trial date to commencement of trial and the percent of cases in which trial commences on or near the date scheduled contrast sharply with analogous civil data. For example, an average of 55 percent of the criminal cases in all courts commence trial within two weeks of the first scheduled date. The analogous figure for civil cases is 32 percent.

As with civil trial scheduling, there is no obvious relationship between the firmness of trial date, as indicated by the percent of cases in which trial

commences within a week of the first scheduled date, and overall time to jury trial. When the length of time from filing to first scheduled trial date is taken into consideration, however, a relationship emerges: the shortest time to jury trial is found in those courts with a comparatively brief period from filing to first scheduled trial and a high proportion of cases commencing trial on or near that date. The converse is true for those courts with lengthy times to jury trial.⁴¹

Our analysis of criminal case management in five courts, together with the preceding analysis of trial-setting practices, suggests that there is a rough correspondence between the strength of control over criminal case movement, how early it exercised, and upper court disposition time. This control can be exercised either by the court or the prosecuting attorney. In the courts examined, the efforts generally involved considerable cooperation between court and prosecutor. Criminal cases in the faster courts follow a fairly standardized track with an expectation of early disposition by all concerned; defense attorneys and prosecutors who cannot work out a negotiated settlement fully expect to proceed to trial in short order. Alternatively, in the slower courts there is no real threat of an early trial in most cases. No routine pattern exists to carry a case either to trial or nontrial disposition in a timely fashion. Dispositions in these courts simply do not occur until considerably more time has passed.

Charging Process

The process by which defendants are charged with felonies is a commonly alleged cause of delay in the criminal justice system. Project data support the assertion that the grand jury system consumes more time than a charging process based upon prosecutorial filing of an information. Table 3.14 indicates lower court time (median days from arrest to filing charges in the general jurisdiction court) and total court disposition time for courts operating with information- and indictment-based charging processes. These data confirm findings of previous research: information-based systems are faster, measured both in terms of total court time and amount of time consumed from arrest to filing in the general jurisdiction court.⁴²

⁴¹The coefficient of determination is .98. This measure is analogous to r when more than one variable (in this case median time to first scheduled trial date and percent of cases commencing trial within one week of first scheduled trial) are being used to predict a third variable (here, median time to commencement of jury trial).

A similar relationship exists for civil cases between median time to first scheduled trial date, percent of cases commencing trial within two weeks of that date, and median time to jury trial; $r = .89$. See Table 3.11.

⁴²For relevant literature on the issue, see Navarro and Taylor, "Data Analysis and Simulation," p. 206; Notre Dame University, *Systems Study in Court Delay*, Mimeographed, 4 vols. (Spring-

TABLE 3.14
Charging Process

	INFORMATION-BASED SYSTEMS		INDICTMENT-BASED SYSTEMS	
	Lower Court Disposition Time ^a	Total Court Disposition Time ^b	Lower Court Disposition Time ^a	Total Court Disposition Time ^b
Wayne County, Mi.	21	64	Atlanta, Ga.	23
New Orleans, La.	12	67	Cleveland, Oh.	28
San Diego, Ca.	22	71	Dallas, Tx.	37
Seattle, Wa.	13 ^c	82	Houston, Tx.	*
Ft. Lauderdale, Fl.	15	105	Newark, N.J.	79
Miami, Fl.	25	106	Bronx County, N.Y.	24
Phoenix, Az.	14	114		
Oakland, Ca.	36	116		
St. Paul, Mn.	3	74		
Pontiac, Mi.	34	122		
Philadelphia, Pa.	39 ^c	168		
Mean	21	99	38	171
No. of courts	11	11	5	6

*Data unavailable or not applicable.

^aMedian days from arrest to filing of formal charges in general jurisdiction court.

^bMedian days from arrest to disposition in general jurisdiction court.

^cDate of arraignment in general jurisdiction court used instead of date of filing of formal charges.

Speedy Trial Standards

Probably the most common solution invoked by appellate courts and legislatures to the problem of delay in criminal cases is imposition of speedy-trial standards.⁴³ Every court examined is at least nominally governed by specific speedy-trial provisions except the courts in Newark⁴⁴ and Portland.⁴⁵ Although the speedy-trial provisions of the remaining 19 courts are phrased in different ways, the provisions governing 10 of the courts place a limit in days on the amount of time that can be consumed in a felony case from arrest to commencement of trial. Although there are some differences among these provisions in

field, Va.: National Technical Information Service, 1972), Vol. 1, p. 13. Compare National Advisory Commission, *Courts*, p. 75.

⁴³For a review of state speedy trial statutes and a limited bibliography on the subject, see Fort et al., *Speedy Trial: A Selected Bibliography and Comparative Analysis of State Speedy Trial Provisions* (Kansas City: Midwest Research Institute, 1978).

⁴⁴New Jersey has no speedy trial provision. *Ibid.*, Figure 3, p. 150.

⁴⁵Oregon statutes only require trial to commence within a "reasonable period of time." *Ibid.*, note 32, p. 163.

TABLE 3.15
Speedy Trial Standards

	Median Time Arrest to Disposition All Cases (in days)	Median Time Arrest to Trial Jury Trials (in days)	Arrest to Trial Time Limit ^a (in days)	Percent of Cases Exceeding Speedy Trial Time Limit ^b
New Orleans, La.	67	91	730 ^c	1%
Pittsburgh, Pa.	103	134	180	9%
Cleveland, Oh.	103	113	270	14%
Ft. Lauderdale, Fl.	105	166 ^d	180	16%
Miami, Fl.	106	*	180	22%
Phoenix, Az.	114	*	150	28%
Dallas, Tx.	115	*	120	46%
Philadelphia, Pa.	168	171 ^d	180	38%
Houston, Tx.	181	*	120	63%
Bronx County, N. Y.	343	476	180	75%

Note: Only those courts with overall arrest to trial limits for felonies, phrased in a specific number of days, are included.

^aData on these limits were obtained from B. Fort et al., *Speedy Trial* (Kansas City: Midwest Research Institute, 1978).

^bPercent of cases in which disposition date (date of plea, dismissal, verdict) exceeded speedy trial standard. This figure is somewhat higher than the actual figure since the date of verdict, rather than the commencement of trial was used in the trial cases.

^cFor noncapital cases. Limit for capital cases is 1095 days (3 years).

^dTime calculated to verdict, not start of trial.

the treatment of defense requests for continuances and other matters relating to "excludable time," most are modeled after the speedy-trial standards of the American Bar Association.⁴⁶ The provisions thus differ primarily on number of days they specify from arrest to trial for felony cases.

Table 3.15 provides a rough test of the relationship of these time limits to total court disposition time and to time from arrest to jury trial. In addition, the last column on the table indicates the percent of cases in the sample that exceeded the jurisdiction's speedy-trial standard, independent of any considerations of excludable time and defendant waivers. At the very least, the table indicates that the pace of criminal litigation is not linked in any direct way to the duration of a court's speedy-trial standard. The percent of cases that are disposed after the speedy-trial limit further suggests the flexibility and lack of operational effect of many such rules. Given the number of cases that are

⁴⁶*Ibid.*, Figure 2-6, pp. 148-166.

apparently excluded from the speedy-trial requirements for one reason or another in many courts, it is not surprising that the times specified in these standards show so little relationship to actual disposition times.

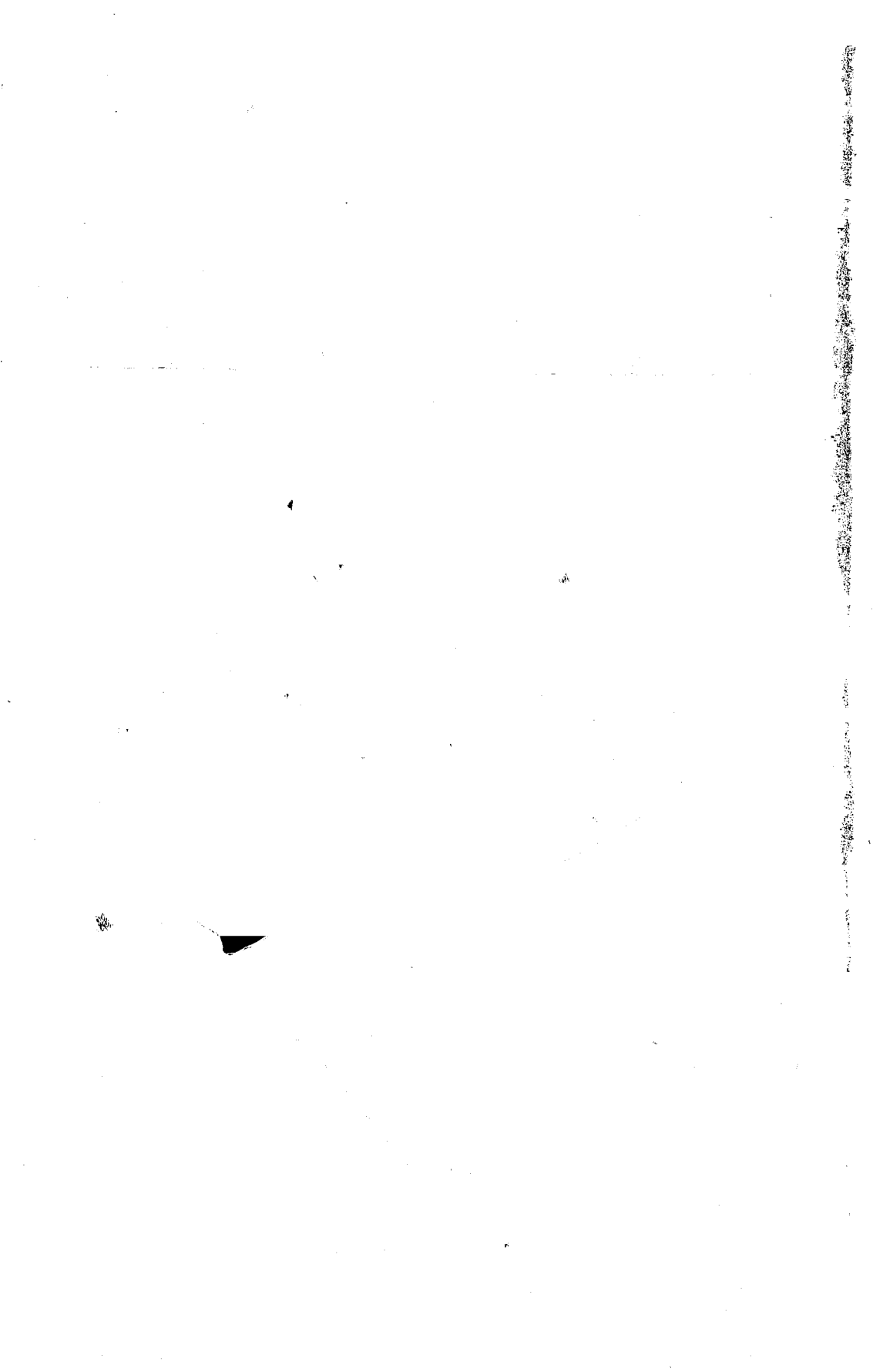
It is important not to misconstrue the preceding discussion. That there is little relationship between the number of days in a court's speedy-trial provision and its felony processing time does not necessarily mean that speedy-trial provisions are without effect. Intensive examination of criminal case processing in five courts revealed at least one court—the Court of Common Pleas in Pittsburgh—in which a court-mandated speedy-trial provision was asserted by all those interviewed to have a significant impact on criminal case processing time. The major reason for this impact appears to be fear or a strict interpretation of the rule by the state supreme court. In particular, defendant waivers of the speedy-trial limit are carefully evaluated and sometimes overturned. The Florida speedy-trial provision is also prominent among the concerns of Miami judges and attorneys, although the data indicate that its time limit is exceeded in a substantial number of cases. While Louisiana's speedy-trial limit is uniquely generous, the local prosecutor imposed a time limit of his own that is considerably more restrictive. In contrast, the two slowest cities either lack a legal limit for criminal case processing time (Newark) or have a state provision with little operational effect (the Bronx).

It appears that a speedy-trial rule—regardless of the time limits specified—need not affect criminal case disposition time at all. But a rule or standard with “teeth,” one that carries operational consequences if violated and that cannot be easily waived by the defense, may indeed affect the disposition of criminal cases.

Summary

This chapter has addressed one broad question: “What formal aspects of court structure, caseload, and procedures characterize faster, as opposed to slower, trial courts?” Our assessment of the major arguments advanced by scholars and practitioners suggests that much of the conventional wisdom concerning trial court delay is in need of revision. In particular, caseload per judge and the proportion of cases requiring jury trial, two key elements of the traditional model of court delay, have no relationship to the pace of either civil or criminal cases in the 21 courts we examined. Since delay-reduction efforts in many courts involve attempts to alter judicial caseload (by adding judges or diverting cases out of the court) or to change the trial rate (through settlement programs), these findings are significant.

The one characteristic clearly related to a slow pace of disposition is backlog, defined as the ratio of pending cases to annual terminations. The calendaring system is strongly related to disposition time on the civil side, but not the criminal. Strong case management practices characterize the courts with faster criminal processes, but not necessarily those with faster movement of civil cases. Also related to a speedy criminal process is avoidance of the grand jury indictment in routine criminal cases and presence of a speedy-trial rule with stringent waiver requirements. The following chapter integrates these findings with additional interview and observational data in order to suggest a general theory of the determinants of the pace of civil and criminal court litigation.



4. A THEORY OF COURT DELAY

Many commonly believed causes of court delay, for the reasons set forth in the preceding chapter, explain little of the considerable variation among state trial courts in case processing times. The positive relationship observed between the backlog index and processing time, however, does support one theory central to much of the conventional wisdom of both civil and criminal court delay. According to this theory, court system delay is caused by, if not defined in terms of, an inherited backlog of pending cases. The dispositional process is conceptualized as a line of cases awaiting trial; the longer the line, the greater the resulting delay.¹ The problem with this backlog-causes-delay model is that it is largely tautological: a court in which the median civil case is disposed of in three years, for example, will necessarily have approximately three years of filed cases pending at any one time if filings and terminations stay fairly constant.

The process by which civil and criminal cases are disposed bears little resemblance to a line of inert cases awaiting court processing. Most cases are disposed of primarily by lawyers, not judges and juries. Furthermore, case activity by attorneys—discovery, motions, and trial preparation—takes place throughout the period from filing to disposition. Both civil and criminal attorneys suggested that this activity continues up to the moment of trial.

A more instructive analogy is to compare the operation of two hypothetical automobile factories. In one factory, a car moves from barren frame to finished automobile in one day. A second factory has a longer, perhaps less efficient, production process and requires two days to produce a car. If both factories complete an equivalent number of cars daily, the second will necessarily have twice the number of uncompleted autos in its inventory. Yet it obviously makes little sense to term this inventory the cause of the longer production process. The appropriate concern is the question, "What is it about production in the second factory that requires twice as much time as the first?"

¹The most prominent spokesman for this position is Hans Zeisel. See his "Court Delay Caused by the Bar?" *American Bar Association Journal* 54 (1968): 886; see also Zeisel, Kalven and Bucholz, *Delay in the Court* (Boston: Little, Brown and Co., 1959), chs. 3, 4.

The relevance of this analogy to the current study can be seen by comparing civil case processing in two state trial courts: Dallas County District Courts (Dallas, Texas) and Wayne County Circuit Court (Detroit, Michigan). The Dallas court disposes of the median tort cases in 322 days; the median tort case in Detroit requires 788 days from filing to disposition. Both courts have similar judicial productivity (338 tort cases per judge per year in Dallas; 354 tort cases per judge per year in Detroit). Both courts have traditionally disposed of roughly the same number of cases as are filed in each year. But the Detroit court's backlog index of 2.3 indicates that pending cases number more than twice yearly terminations, while in Dallas the pending case inventory is equal to yearly terminations (a backlog index of 1.0). The conventional wisdom would attribute the different disposition times to this difference in backlog. But while courts are not automobile factories, our previous analogy suggests that the causality may be reversed in this formulation. The process by which attorneys, litigants, and judges interact to resolve civil disputes may simply consume twice as much time in Detroit as it does in Dallas. A relatively large backlog of civil or criminal cases may be a *result* of a lengthy dispositional process, rather than its cause.

It is our conclusion that the speed of disposition of civil and criminal litigation in a court cannot be ascribed in any simple sense to the length of its backlog, any more than it can be explained by court size, caseload, or trial rate. Rather, both quantitative and qualitative data generated in this research strongly suggest that both speed *and* backlog are determined in large part by established expectations, practices, and informal rules of behavior of judges and attorneys. For want of a better term, we have called this cluster of related factors the "local legal culture." Court systems become adapted to a given pace of civil and criminal litigation. That pace has a court backlog of pending cases associated with it. It also has an accompanying backlog of open files in attorneys' offices. These expectations and practices, together with court and attorney backlog, must be overcome in any successful attempt to increase the pace of litigation. Thus most structural and caseload variables fail to explain interjurisdictional differences in the pace of litigation. In addition, we can begin to understand the extraordinary resistance of court delay to remedies based on court resources or procedures.²

²See M. Fleming, "The Laws' Delay: The Dragon Slain Friday Breathes Fire Again Monday," *Public Interest* 32 (1973): 13-33.

Delay in Civil Cases

Although the relationship of legal culture to civil case processing time cannot be tested as directly as the impact of more formal aspects of court structure and process, there is support for this informal model of court delay in both quantitative and qualitative data. Perhaps the most persuasive evidence for the importance of local legal culture to the pace of civil litigation comes from comparing disposition times of state and federal trial courts in the same cities. If legal culture strongly influences the overall speed of civil disputes in a state trial court, there should be considerable spillover to other courts in the same geographical location. In particular, we would expect slower federal courts to be in cities where the state courts are slow, faster federal courts in cities where state courts are relatively fast.

Table 4.11 depicts median disposition time for tort cases in state courts and the median time to disposition for all civil cases in the federal court in the same locale. It also sets out federal and state court time-to-trial measures. There is a striking relationship between the scales: the correlation³ between median disposition time for all civil cases in federal court and median tort time in state court is .60. Time-to-jury trial in the two courts also tracks, although the relationship is less strong: the correlation coefficient is .49. Given the considerable difference between state and federal courts in nearly all aspects of caseload, structure, and procedures, this relationship in processing times provides strong support for the existence of a local legal culture that affects the pace of civil litigation in both the state and federal courts of a community.

This theory of the pace of civil litigation is reinforced by interview data. The most instructive comparison in this context is between the state trial court in Miami, one of the fastest of the 21 courts, and the analogous court in Detroit, one of the slowest.⁴ Attorneys in Miami repeatedly described their system as geared to speedy disposition of cases. In the words of one attorney:

We're accustomed to speed. A culture has developed here as to how cases should move We're all just tuned in to moving cases along.

Another:

We have a rather fast track down here in terms of the trial bar in general. For the most part, lawyers who try cases for a living want to, and know how to, move cases.

³For an explanation of the meaning of the correlation coefficient, see footnote 1, Chapter 2.

⁴The median tort disposition time in Detroit is 788 days; in Miami, 331 days. Detroit median time to jury trial is 1231 days; in Miami the figure is 412 days. See Table 2.1.

TABLE 4.1
State and Federal Court Disposition Times

City	CIVIL DISPOSITION TIME (in days)		TIME TO TRIAL (in days)	
	State Court ^a	Federal Court ^b	State Court ^c	Federal Court ^d
New Orleans, La.	288	305	*	549
Ft. Lauderdale, Fl.	298	122	458	305
Phoenix, Az.	308	244	607	702
Portland, Or.	310	274	464	518
Dallas, Tx.	322	305	*	488
Miami, Fl.	331	122	412	305
Cleveland, Oh.	384	214	660	365
Seattle, Wa.	385	305	476	671
St. Paul, Mn.	*	336	437	732
Atlanta, Ga.	402	274	628	488
Oakland, Ca.	421	274	*	549
Minneapolis, Mn.	*	336	734	732
Philadelphia, Pa.	*	305	716	488
Pontiac, Mi.	555	274	804	671
San Diego, Ca.	574	274	846	671
Pittsburgh, Pa.	583	214	906	427
Houston, Tx.	594	336	840	793
Newark, N.J.	654	365	680	793
Detroit, Mi.	788	274	1,231	671
Bronx County, N.Y.	*	336	1,332	915
Boston, Ma.	811	702	*	732
		$r = .60^e$ $p = .01^e$		$r = .49$ $p = .04$

*Data unavailable or not applicable.

^aMedian days filing to disposition — tort cases.

^bMedian days filing to disposition — civil cases. Source: *Annual Report of the Director of the Administrative Office of the United States Courts—1976* (Washington, D.C.: Government Printing Office, 1976), Table C-5, pp. 318-321.

^cMedian days from filing to commencement of trial for cases ending in a civil jury verdict.

^dMedian days from filing to jury or nonjury verdict. From *Annual Report of the Director*, Table C-5, pp. 318-321.

^eSee Chapter 2, footnote 1, for an explanation of r and p .

As indicated in a previous section, the Miami court is characterized by a case-management philosophy in which judges take an active role in monitoring and managing individual case progress. These activities were described by both judges and attorneys as contributing to the speedy pace of litigation in Miami.

But case management by the court reportedly was overlaid on a system already operating expeditiously. In the words of one judge:

We've always moved fast around here. No one has ever had any problem getting their cases heard. There is no reason why you *can't* have a case ready in a year.

The difference is that in the old days there was little pressure from the court.

Interviews and observation in Miami depict a court system in which speedy disposition is considered the norm, where concern with "moving" or "getting rid of" cases appears to motivate both bench and bar.

The legal community in Detroit, on the other hand, has very different perceptions about the proper pace of civil litigation and the court's role in expediting that litigation. As in Miami, attorneys and judges in Detroit see considerable continuity in the operation of their system. A sole practitioner in general practice asserted:

I haven't seen real difference in the operation of the court in the last 20 years.

We've always had a three to four year backlog.

Another in a larger plaintiff firm:

We've always had about three to four years to get to trial here. I'm not sure that's such a problem. If they cut the docket down I'd be in trouble. My cases aren't ripe.

The latter quotation typifies the level of satisfaction with the general pace of litigation expressed by most Detroit attorneys. When asked whether he felt delay to be a problem in the court, one attorney replied: "What do you mean by delay?" Another said he felt the problem was only "relative." A third, a partner in a large defense firm, summed up the general attitude of the attorneys interviewed:

The problem of delay in Wayne County Circuit Court is not profound. Delay is always a question of degree It takes a couple of years to get a case trial ready.

Despite the fact that the median case tried to a jury required three and one-half years from filing to commencement of trial in Detroit in 1976, the attorneys interviewed simply do not regard court delay as a real problem. Indeed, no less than three separate attorneys indicated that, in the words of one, "If the court started getting to cases much earlier, we'd have to change when we file our cases." During the interview visit to Detroit, the court was in the throes of a crash program to reduce the backlog. Reports from both judges and attorneys, however, suggest that the court's concern with delay is traditionally sporadic in nature, often in response to outside pressure. As one attorney put it, "Crash programs seem to come and go every seven or eight years—like the locusts."

While the attorneys interviewed had numerous complaints concerning the operation of the circuit court, most of these grievances were directed not at the pace of civil cases but at the uncertainty in the court's trial scheduling procedures and the inconvenience and lost time incurred when cases are not reached on scheduled trial dates.

Detroit attorneys also differ from their Miami counterparts in their assessment of the proper role of the court in expediting civil litigation. We found little support in the bar for case management by the court. A previous chief judge who instituted a strict continuance policy was criticized by several lawyers who made it clear that attorneys, not judges, know best when a case should be pushed and when it should be left alone to "ripen."

Criminal Court Delay

The criminal justice system has been the subject of a large body of recent behavioral research. In addition to a growing number of general analyses of existing criminal court systems,⁵ studies have focused on sentencing,⁶ plea bargaining,⁷ bail,⁸ and the consequences of various reform efforts.⁹ Most of this research has emphasized the central importance of a "local discretionary system" of norms, relationships, and incentives of criminal court participants.¹⁰ Often it was found that these informal elements of the criminal justice system had more to do with the actual disposition of cases than did formal statutes, rules, and policies.

Few behavioral studies have specifically addressed the problem of criminal court delay.¹¹ In the preceding chapter few formal elements of court structure or procedure were found to be linked to disposition time. These findings, together with the established importance of an informal system of relationships among

⁵See, e.g., J. Eisenstein and H. Jacob, *Felony Justice: An Organizational Analysis of Criminal Courts* (Boston: Little, Brown and Co., 1977).

⁶See, e.g., M.A. Levin, *Urban Politics and the Criminal Courts* (Chicago: University of Chicago Press, 1977).

⁷See, e.g., M. Heumann, *Plea Bargaining* (Chicago: University of Chicago Press, 1978).

⁸See, e.g., W. Thomas, *Bail Reform in America* (Berkeley: University of California Press, 1976).

⁹Representative examples are R.T. Nimmer, "A Slightly Moveable Object: A Case Study in Judicial Reform in the Criminal Justice Process: The Omnibus Hearing," *Denver Law Journal* 48 (1976): 206-30; T. Church, Jr., "Plea Bargains, Concessions and the Courts: Analysis of a Quasi-Experiment," *Law and Society Review* 10 (1975): 377-401.

¹⁰The term is Raymond Nimmer's. See Nimmer, "A Slightly Moveable Object."

¹¹The major exception is M.A. Levin, "Delay in Five Criminal Courts," *Journal of Legal Studies* 4 (1975): 83-131. See, generally, T. Church, Jr., et al., *Pretrial Delay: A Review and Bibliography* (Williamsburg, Va.: National Center for State Courts, 1978).

judges, defense attorneys, and prosecutors suggest that local legal culture may be as important in criminal as in civil case delay. Indeed, the incentives for delay operating on individual criminal court participants may be even stronger than on the civil side.

Unless a defendant is incarcerated prior to trial, he typically has little to gain from a speedy trial that may deprive him of his liberty.¹² The defense attorney has an additional reason to resist an early disposition: concern over obtaining his fee.¹³ A prosecuting attorney is seldom interested in pushing a case to disposition if it is weak (a "dog"),¹⁴ or if the victim refuses to cooperate in the prosecution of a defendant friend or lover.¹⁵ Private defense attorney, assistant public defender or prosecutor, and trial court judge share with their civil practice brethren a common incentive to resist any quickening in the pace of litigation that might result in an increased caseload. The limited number of attorneys engaged in criminal practice, and the resulting close and continuing personal contact among those engaged in prosecution and defense work, further allows "professional courtesy" in criminal courts to decrease objections to postponement requests and the like.

Despite these clear analogies to the problem of civil delay, it is important to emphasize the significant differences between the criminal and the civil justice systems. These differences may operate to lessen the impact of incentives to delay operating at the individual case level. Probably the most crucial difference between civil and criminal case processing is the opportunity for supervisory control of the individuals handling criminal cases.

Almost every metropolitan jurisdiction elects a professional prosecuting attorney to represent "the people" in criminal actions. Many criminal courts also utilize a public defender to represent the sizeable proportion of indigent defendants. Unlike the civil justice system where attorneys handling cases are either self-employed or work for one of many private law firms, the prosecution and often the defense in criminal cases is handled by lawyers employed by a large public agency. These agencies are headed by a public official who has considerable concern at the least that his subordinates avoid activities that may

¹²See M. Fleming, "The Law's Delay," pp. 13-33.

¹³L. Banfield and C.D. Anderson, "Continuances in Cook County Criminal Courts," *University of Chicago Law Review* 35 (1968): 282-85; Levin, *Urban Politics and the Criminal Courts*, pp. 239-40; Eisenstein and Jacobs, *Felony Justice*, pp. 50-51.

¹⁴See, generally, L. Carter, *The Limits of Order* (Lexington, Mass.: Lexington Books, 1974).

¹⁵For the importance of prior relationships between defendant and victim, see Vera Institute of Justice, *Felony Arrests: Their Prosecution and Disposition in New York City's Courts* (New York: Vera Institute of Justice, 1977).

embarrass him. Hence the participants in the actual disposition of criminal cases—the “courtroom workgroups”¹⁶—are in all likelihood subject to management controls not present in the more fragmented civil justice system.

Trial court judges also have the potential for a much greater management role in the processing of most criminal cases than on the civil side. While a majority of civil cases may be terminated by attorney negotiations alone, with little or no judicial involvement, almost every criminal case requires some judicial time. Judges typically arraign all criminal defendants and either set or review the amount of their bond. Recent Supreme Court decisions have mandated that guilty pleas be preceded by extensive colloquy in which questions of both culpability and voluntariness are raised. Dismissals and even *nolle prosequis* in many courts must involve judicial ratification. With such participation comes both judicial influence and judicial oversight, elements largely missing in the disposition of most civil cases.

These opportunities to exercise control over the activities of criminal trial attorneys would be less significant without the public policy significance of the crime problem and the resulting public and media interest in the operation of all criminal justice agencies. Unlike civil litigation, a subject on which most citizens have little knowledge or interest, crime and criminal cases frequently capture the media spotlight. Public officials such as trial court judges and prosecuting attorneys adopt a *laissez-faire* attitude toward criminal case processing at their peril.

The nature of the controls placed on criminal case duration, however, varies considerably from court to court. Indeed, the major procedural factor that distinguishes the faster courts from the slower courts we examined is the strength of case-management controls applied and the point in case progress at which they are imposed: of the five courts investigated intensively, those with the speedier disposition times are those with strong controls of case progress applied from filing. Slower courts impose such controls much later. Interviews with judges and attorneys indicate both the significance of court system expectations and attitudes concerning the pace of criminal litigation and their relationship to the case-management procedures applied. Not surprisingly, the courts with the most stringent controls on criminal litigation are the courts in which the expectations and norms of the legal community support an accelerated pace. Alternatively, in court systems with the fewest controls, participants evince the least general concern with delay as a problem and similarly have

¹⁶The term is from Eisenstein and Jacob, *Felony Justice*.

norms and expectations that are consistent with the existing leisurely pace of criminal cases.

In the Bronx, for example, the slowest of the 21 criminal jurisdictions examined in this study, it is evident from interviews that the existing pace of criminal litigation is simply not regarded to be a problem by many of the judges, prosecutors, or defense attorneys. After pressure from state judicial officials, the court responded to a growing number of "long-term detainees:" defendants who have remained more than 12 months in jail before trial. Beyond this set of cases (and another limited group of highly serious crimes assigned to the district attorney's Major Offense Bureau), the overall duration of criminal litigation is not generally perceived to be a problem. In the words of a visiting judge assigned to the Bronx County court, "There is a pervasive feeling in this court that moving cases along is not all that important. At the least, there is no shared feeling of responsibility for expediting cases." Several attorneys interviewed indicated real disbelief that criminal cases could or should move to disposition in less than a year. In one attorney's words, "Cases simply can't move any faster than they are at present." We heard similar sentiments from many of those interviewed in Newark, another especially slow jurisdiction.

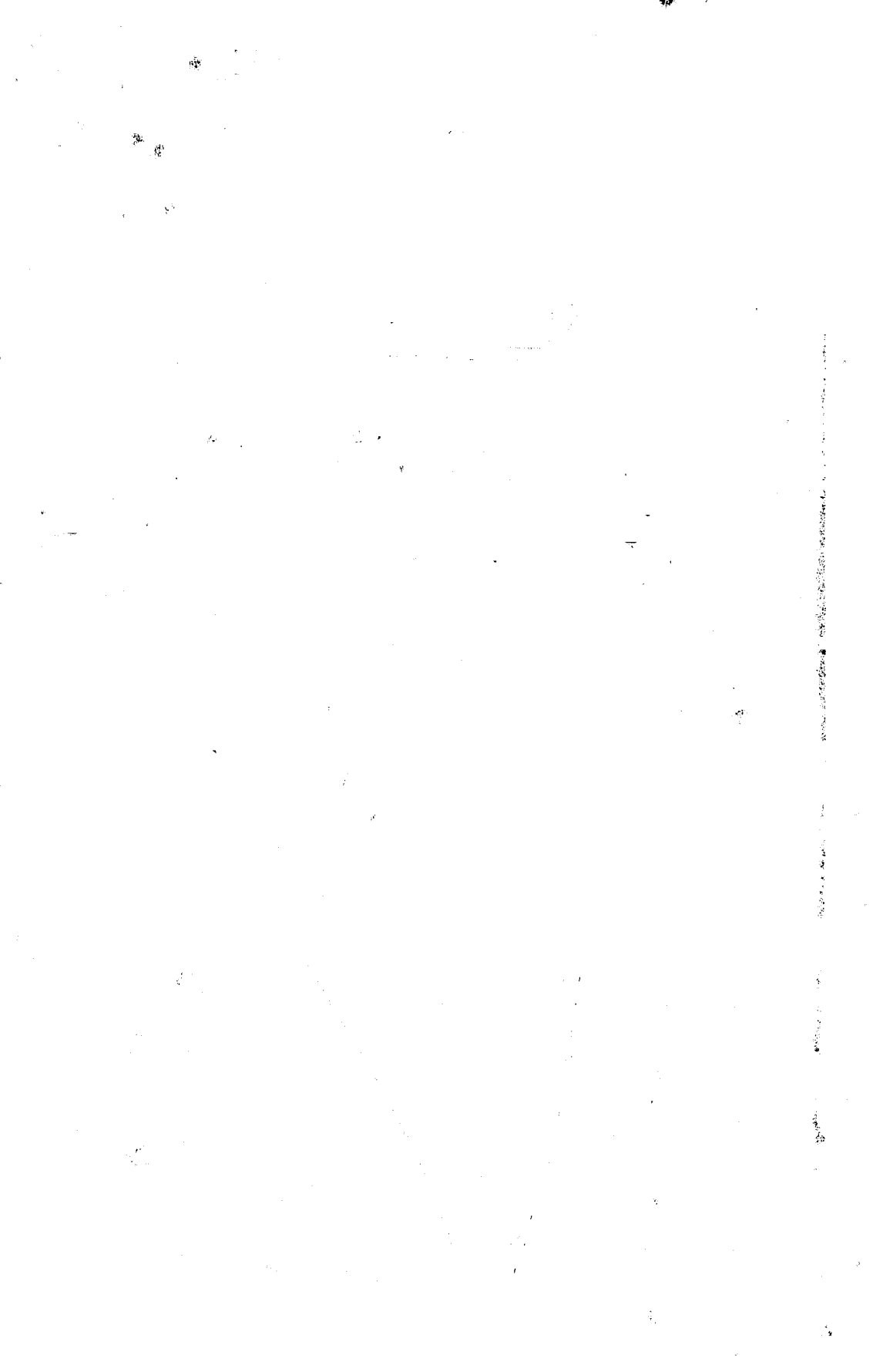
The perceptions of judges and attorneys in Pittsburgh and New Orleans regarding the proper and possible pace of criminal cases are markedly different. Unlike the Bronx, concern over processing time of individual cases was expressed in nearly every interview we conducted. In Pittsburgh, for example, the 180-day rule appears to have a substantial impact on those working in the criminal courts. In calendar calls and requests for continuances the primary issue is the proximity of the final trial date. Although the criminal justice system in New Orleans operates under a rather generous speedy-trial standard (two years from arrest for noncapital cases, three years for capital cases), a general concern expressed by judges and prosecutors alike is "moving the docket," and "disposing of cases." This attitude is particularly evident in the district attorney's office, where policy strongly encourages disposition within 60 days of filing. Several of the judges echoed a similar concern for speedy disposition of criminal cases; and the *sub rosa* competition among the individual calendar judges reportedly causes them all to be sensitized to problems of backlog and delay.


These observations suggest that the pace of criminal litigation, like the speed of processing civil cases, is strongly dependent on the attitudes and expectations of court system participants — the local legal culture. Unlike civil litigation, criminal cases are disposed of in a context of public visibility and concern, and

administrative accountability. When an individual case becomes old by local standards, most court systems have administrative machinery in place to press the attorneys involved for a disposition. As indicated in the previous chapter, the faster courts are differentiated from slower courts not so much by whether case-management controls are utilized in criminal case processing but rather by when those controls are applied. Courts in which a one-year processing time is considered both normal and acceptable will be less concerned about pushing a six-month-old case than a court where 180 days to trial is the outside limit.

The data presented in the preceding chapter indicate that the pace of criminal cases is influenced far less by caseload, resources, and structure than is commonly alleged. Rather, intensive study of five criminal courts strongly suggests that it is set in large part by the expectations and attitudes about disposition time held by court system officials—particularly judges and prosecutors—and the controls on the progress of individual criminal cases those attitudes produce. This theory of criminal court delay thus differs from the analysis of delay in civil cases only in its emphasis on court control of criminal cases. Since the pace of civil litigation is left almost entirely to attorneys, the chief determinant is local legal culture—the established norms, expectations, and informal practices of those attorneys. Because criminal courts seldom allow attorneys the complete control over case progress common to the civil side, informal attitudes and practices of individual lawyers cannot determine the pace of criminal litigation. The control or management techniques applied by the court to individual case movement must also be considered a crucial determinant of disposition speed.

This discussion should not be construed as fault-finding or criticism of either the attorneys or judges in any particular jurisdiction. We found lawyers and judges to be both hard working and dedicated in each of the courts examined in depth. The lesson from this discussion is the extent to which the expectations and norms of civil and criminal justice engendered by the legal culture of a community can differ from city to city. Enforced by the institution of professional courtesy and the constant interaction of the participants throughout their professional careers, these informal influences have great impact on the conduct and pace of litigation.





5. STRATEGIES FOR DELAY REDUCTION

The impact of local legal culture on the pace of litigation presents a serious challenge to those who would attempt to accelerate that pace. This should not be read as requiring acceptance of the status quo: the point is not that the attempt to reduce court delay is necessarily doomed to failure. Rather, it is that any such effort will face considerable resistance that must be taken into account if reform is to be at all successful. This chapter will assess a number of the broad strategies commonly suggested for accelerating the pace of civil and criminal case disposition. The analysis is based on the theory of court delay developed in the previous chapter, with support from additional qualitative or quantitative data where possible. The reader should bear in mind that while the discussion is consistent with what we know of court delay, it is not definitive. A number of controlled experiments would be necessary to test conclusively the performance of different delay-reduction strategies.¹

One more point should be emphasized here: this research is focused on the speed at which cases move through state trial courts. We have not undertaken the difficult task of assessing whether the dispositions reached are appropriate or fair. A sacrifice of justice to obtain speedy dispositions could hardly be termed a reform. It is our strong belief, however, that the faster courts examined in this study have made no such sacrifice. To repeat an observation made previously, neither the attorneys and judges working in the faster courts, nor the outside observers interviewed, asserted that the speedy pace caused injustice. On the contrary, the usual response to a query on this issue was disbelief that justice could be served in a significantly slower court. We do not suggest that speed or efficiency should be the ultimate measure of a trial court. The discussion that follows, however, assumes that neither speed nor efficiency is necessarily in conflict with the more fundamental goals of a court system.

¹It should also be noted that the various reforms or suggested alterations in the court system are evaluated solely in terms of their expected impact on case processing time. This is obviously a limited perspective since several of the proposals also address problems other than delay and hence may be desirable even if the pace of litigation is unaffected.

Case Management and Continuance Practices

Civil Case Management. The basic tenet of the case management philosophy is that the court, not the attorneys, should control the progress of cases in the pretrial period. Progress of individual cases is monitored to insure that civil litigation moves through pleadings, discovery, and motions without unnecessary delay.² There is persuasive evidence that case management expedites the disposition of civil cases in federal courts.³ In part because of the limited utilization of case management in state courts, no comparable study has been conducted at the state level. This research uncovered at least one jurisdiction—Phoenix—that maintains a speedy pace of civil litigation without extensive case management by the court.⁴ While strong case management may be less essential to a jurisdiction accustomed to a speedy civil process, we conclude that such a system *is* necessary to accelerate civil litigation in a court that has traditionally been slow.

Court management of civil cases assumes that litigants' interest in speedy dispute resolution may not be well served by total attorney control over the pretrial period. The impact of local legal culture on civil case delay suggests that so long as pretrial proceedings are left entirely in the hands of attorneys case processing time will not be significantly reduced. It is true that the control attorneys hold over the pace of civil litigation in most courts is primarily the power to delay or to postpone. With such negative control of case movement, however, an attorney can put unprepared, nonlucrative, or otherwise undesirable cases on the "back burner" indefinitely; he can adjust case preparation to fit his own priorities of case importance. Perhaps most importantly, he can adjust to changes in court procedures and increases in his own practice without a necessary change in work habits or office staffing levels.

Three events segment the pretrial life of a civil case in most courts: filing, formal assertion that a case is either at issue or trial ready, and commencement of trial.⁵ The time when a suit is filed is largely beyond control of the court since filing marks the court's first knowledge of the case. If the major concern in delay reduction is decreasing litigant wait for dispute resolution, however, the

²See M. Solomon, *Caseflow Management in the Trial Court* (Chicago: American Bar Association Commission on Standards of Judicial Administration, 1973); Flanders, *Case Management*; W. Schwarzer, "Managing Civil Litigation: The Trial Judge's Role," *Judicature* 61 (1978): 400-408.

³See S. Flanders, *Case Management and Court Management in United States District Courts* (Washington, D.C.: Federal Judicial Center, 1977).

⁴Time to jury trial, however, is considerably slower than courts with comparable median tort disposition times. See Table 2.1.

⁵The formal meaning of the at issue document is simply that the two sides have been joined (usually indicated by filing the answer), while a trial readiness document involves an assertion that

filing date takes on considerable importance. As the Detroit lawyer quoted in the preceding chapter indicated, an accelerated pace from filing to trial may simply result in a longer delay in filing the case, leaving the litigant wait virtually unchanged. While the prefiling period may absorb some of the time saved by speedier court processing, this period is bounded both by the statute of limitations and by litigant impatience with attorney failure to initiate legal proceedings. Although courts cannot control this period, other factors may serve to constrain its overall duration.⁶

After initiation of legal action, a case proceeds through responsive pleadings, discovery, and pretrial motions until it is at least theoretically trial ready. At some point in this process, most courts require the filing of a document which officially places the case in the line of cases awaiting trial. This document may be filed when all the answers to the complaint have been received and the case is at issue; it may be filed at the point counsel asserts trial readiness. Few courts pay any attention whatever to a case prior to the filing of such a document. At most, inactive cases are monitored by some courts through a sporadic attempt to dismiss for lack of prosecution those cases in which no activity has been recorded for a defined period of time, usually one to two years. A case can thus remain in this limbo status indefinitely, so long as a party occasionally files a *pro forma* pleading, motion, or discovery request.

Court failure to place any controls on this stage of civil litigation virtually guarantees that most cases will progress at a speed compatible with the practices of the attorneys in the suit. Furthermore, this uncontrolled segment of case progress—like the prefiling period—may simply absorb any time saved in other parts of the process, leaving no net gain for the litigant. Some court interest in the control of this period would thus seem essential to any effort aimed at lowering overall disposition time. Possibilities include the following:

1. *Court monitoring receipt of the answer.* If a responsive pleading is not filed within the legal time limit, the court sends a notice to the plaintiff requiring him either to file a motion for default judgment or to show cause why the suit should not be dismissed for lack of prosecution.

the case is prepared and ready for trial. The functional effect of both assertions is to put the case in the pool of cases awaiting trial. The formal meanings of such documents in many courts is secondary to the administrative needs of attorneys; such documents are often filed so as to bring the case to trial at a time most convenient for the attorneys.

⁶The courts of New York and Minnesota, unlike those of every other state investigated, allow formal pleadings, discovery, and even motions to proceed before a case is formally filed in court. Cases are seldom filed before they are alleged by counsel to be trial ready. This practice puts the major part of the pretrial period outside any possible control by the court and makes comprehensive case management virtually impossible.

2. *Court setting a deadline for filing the certificate of trial readiness or note of issue.* If this document is not filed within that time period, the court sends a notice to counsel that the case is about to be dismissed.
3. *Elimination of the entire certificate of readiness/note of issue procedure.* With this policy the court assumes the case should be trial ready within a given period of time and sets it for conference or trial on its own motion. While this presumption of trial readiness should be rebuttable in special cases, this management strategy can be combined with holding a status conference fairly soon after filing so judge and counsel can work out appropriate deadlines for completion of discovery and other aspects of trial preparation.

None of the many devices that have been proposed for limiting the amount of time consumed in the pretrial stages of the civil process could be evaluated comprehensively in this study.⁷ Although we have seen variants of such devices in operation in one or more courts, these observations were not extensive enough to permit us to speak with authority on their success. We merely repeat that some form of court-imposed control of the period from filing to placement in the trial pool is crucial if an expedited pace in the latter part of the civil process is not to be offset by an increase of time consumed in this earlier period.

The period immediately preceding trial constitutes the last and in many ways the most important phase of the pretrial period. Case management at this stage relates primarily to court practices in setting—and permitting postponements of—the trial date. If attorneys are able to postpone commencement of trial indefinitely, they control the pace of litigation.

The relationship of continuance practices to court delay has been debated among judges and scholars. Perhaps the most noted academic expert on civil delay, Professor Hans Zeisel, asserts that continuances should be freely given by the court so long as they do not cause calendar “breakdowns” or empty courtrooms. His primary argument is that average time to trial is unaffected if the cases waiting in line simply change places.⁸ If the court is concerned with speedy disposition of all civil cases, whether by trial or settlement, this argument is less persuasive. Virtually every attorney and judge interviewed during this project described a class of cases that would predictably settle, but not until litigants and counsel were faced with an imminent and unavoidable

⁷See citations in footnote 2, above, for a discussion of various case management devices applicable during this period.

⁸H. Zeisel, “Court Delay Caused by the Bar?” *American Bar Association Journal* 54 (1968): 886-887.

trial. Whether this situation is caused by litigant intransigence (particularly some insurance carriers) or attorney disinterest, such cases would almost certainly reach a negotiated settlement faster if trial dates were relatively firm.

It might be correct in a statistical sense to assert that a policy of free continuances will not affect average time to trial, but this position also ignores the subjective effects of multiple postponements in virtually every case. We observed in courts with high continuance rates what might be termed a "psychology of delay": lack of judge or attorney interest in expediting the disposition of individual cases, reflected in multiple postponements, seemed to affect the overall atmosphere of the court. "No hurry" was the unspoken byword in such courts. This relationship between continuance practices and overall system concern with delay is more hypothesis than proven fact. It is put forward here only to suggest that continuance practices may have an overall subjective effect on the attitudes, work habits, and productivity of judges and lawyers.

We join the many others who have concluded that continuance practices are an exceedingly important element of case management.⁹ We do not propose an excessively rigid continuance policy or mindless enforcement of arbitrary rules. Rather, a court should create the *expectation* that a case will be tried on the first scheduled trial date unless there are compelling reasons for a postponement. If a court is to foster this expectation, it obviously must be able to provide a trial as scheduled or shortly thereafter. A court that must postpone a large number of cases because it has no available courtroom can no more succeed in creating the expectation of trial on the scheduled date than a court that grants all requests for continuances. Indeed, the two situations are related, since judges are obviously reluctant to refuse a continuance request from counsel when no courtroom is available for trial. Continuance practices and trial expectations are thus dependent on trial-setting and scheduling practices.¹⁰

⁹The Federal Judicial Center's study of case management in federal district courts concluded that continuance practices were not crucial to expedient disposition of civil cases in federal district courts. It should be noted, however, that of the six courts they examined, three had median elapsed time from first scheduled trial date to actual commencement of trial of one day or less. Only one of the six had a median elapsed time greater than 17 days. By comparison, of the nine state courts for which we have civil trial setting data, none had a median elapsed time from first scheduled date to trial commencement of one day or less; all but two were greater than 17 days. See Tables 3, 11 and 3. 12. State courts, in other words, have trial postponement practices that are considerably more lax than federal courts. Thus, conclusions based on the limited range of federal court data are not necessarily applicable at the state level.

¹⁰The major work in this area is Institute for Law and Social Research, *Guide to Court Scheduling* (Washington, D.C.: Institute for Law and Social Research, 1976). See also Flanders, *Case Management*, pp. 52-55.

A perfect court scheduling system would provide a trial on the day scheduled for every case set. At the same time, however, it would insure that no judge suffer a calendar breakdown in which all his scheduled cases either settled or were continued, thereby leaving him without a trial to conduct. Perfection is obviously difficult to achieve given the uncertainty involved in predicting the number of cases that will settle, the length of trials in cases that do not, and unforeseen but justifiable reasons for postponements. Hence, courts must balance the desire to keep judges in trial with an effort to provide sure trials in all those undisposed cases scheduled. In our observation, most courts strike this balance by placing almost all emphasis on the side of preventing any loss of trial judge time, a resolution of the scheduling dilemma that may slow dispositions and lessen court productivity.

A court that sets enough cases to virtually guarantee that no judge is idle also insures that it will seldom be able to try all those cases that have not settled before their scheduled trial date. The court will therefore have to grant requests for continuances and postpone any remaining cases on its own motion. Continuance practices will then fluctuate with the state of the calendar on any particular day, serving to lessen the expectation of trial in the minds of attorneys and litigants, postpone settlements, and confuse attorneys' schedules. We suggest that courts balance the desire to avoid unnecessary lapses in the trial schedules of judges with a concern for promoting an expectation that trial dates will remain firm. A trial-setting policy that emphasizes this latter goal will encourage early settlements, alleviate attorney grievances over the uncertainty and inconvenience associated with vacillating trial dates, while at the same time leaving the court—not the attorneys—in control of this important element in the overall conduct of civil litigation.

This section has not spelled out the specific details of a model civil case-load management system. Such a discussion would be considerably beyond the scope of this research and the confines of the data. The basic point is that any delay-reduction effort—whether it be a crash program with a temporary infusion of judges, a long-term effort to conduct more trials with existing resources, or a program to control the time spent in discovery or pleadings—should be accompanied by controls at *all* stages of the civil process. If not, the built-in inertia of attorney backlog, together with settled local practices and expectations, may produce a shift in delay from one part of the process to another. The result may be improved court statistics (such as a decrease in the average time from certificate of readiness until trial) but no real change in the length of time litigants must await resolution of their disputes.

Institution of court control over the movement of cases is not likely to be an easy affair in many courts. In particular, considerable attorney resistance to a change in scheduling prerogatives is virtually assured in those courts where lawyers have traditionally controlled the pace of civil litigation. What is needed in order to resist this pressure is genuine court concern with delay as a social and institutional problem and a firm long-term commitment on the part of judges to insure that gains achieved at one point in the civil process are not lost in another.

Criminal Case Management. Court management and control of criminal cases is much less foreign to most state courts than the application of similar controls to civil litigation. Although some state statutes place the responsibility for docket control in criminal cases upon the prosecuting attorney, no court studied adopts the *laissez-faire* attitude toward criminal cases that is commonly in evidence on the civil side. Many courts, often in cooperation with the prosecuting attorney, utilize sophisticated data-processing systems to monitor criminal cases, schedule appearances, and insure that processing time does not exceed relevant speedy-trial limits. The fastest courts make the dispositional process routine to a considerable extent: some cases may deviate from the general pattern but most move at a fairly standard pace from arrest to disposition.

Most of the preliminary activities in a criminal case have been concluded when it is filed in the general jurisdiction court. Bail has been set, probable cause found, and formal charges made. With the possible exception of a pretrial hearing on evidentiary motions (held in many courts immediately preceding trial), the next formal event in the case is commencement of trial. Hence, the major control exercised by most of the general jurisdiction courts examined focuses on the trial date. The courts with strongest controls set a relatively firm trial date soon after filing; those courts with few controls do not push cases to trial, have lax continuance practices, and maintain no standard track for the majority of criminal cases to follow from filing to disposition.

Our major recommendation for accelerating the pace of criminal litigation is directly analogous to that made for civil cases: courts should monitor and control the pretrial movement of criminal cases. Much of the discussion of this issue in the previous section is relevant here. Continuance practices should create an expectation that trials will commence on the date scheduled except for good cause. Trial-setting procedures should be designed to nurture this expectation, even at the cost of some unoccupied judge time due to unexpected pretrial disposition of all scheduled cases.

In urging court control of the pace of criminal litigation, we recognize that many jurisdictions place considerable responsibility in this area in the hands of the prosecuting attorney. Where the prosecutor is particularly concerned with speedy disposition of criminal cases, as in New Orleans, such a system can work well. Even in New Orleans, however, the fastest individual calendar judges exercise considerable independent control over movement of cases on their calendars. One effect of a prosecutor-controlled system may be an increase in the proportion of older cases left pending in the court, despite a speedy median disposition time. In most of the courts examined, prosecutor control of the calendar was equated with his ability to "bury" evidentially weak cases in order to proceed with stronger ones. The weaker cases thus become older (and often weaker) until finally disposed of by a generous plea bargain or dismissal. Court control of a calendar often forces the prosecutor to make the same hard decisions concerning trial as defendants face. The response of most jurisdictions is to balance court and prosecution authority by providing for shared responsibility over scheduling of criminal cases. Perhaps this is a necessary acknowledgment of the special prosecutorial role in the criminal justice system.

Because criminal litigation is already subject to more court control than civil litigation, efforts at tightening those controls in most courts are unlikely to meet the resistance predictable on the civil side. The presence of a district attorney (and often a public defender), however, may necessitate coordination in the design and implementation of controls in many jurisdictions. As with civil cases, the essential ingredient is genuine court concern with the problem of trial court delay and a commitment to do something about it.

Calendaring Systems, Judicial Accountability, and Judicial Productivity

The mean tort disposition time among individual calendar courts is more than 200 days faster than among master calendar courts. No analogous relationship between speed and calendaring system exists for criminal cases. Individual calendar courts do tend to have higher individual judge productivity than master calendar courts for both civil and criminal cases. The individual calendar system does not emerge from this analysis as a panacea, but it is our strong impression that it provides an accountability for individual judges not possible in the master calendar. Stated baldly, individual calendar systems create incentives for judges to work harder, and to expend that effort on activities that increase productivity and decrease individual case delay.

Because master calendar courts assign judges to very different kinds of tasks, the formulation of judicial performance measures suitable for all judges on a

court is difficult. It makes little sense to count case terminations, for example, because judges handling settlement conferences will almost surely be credited with considerably more dispositions than those conducting jury trials or hearing pretrial motions. Counting the number of trials concluded may provide a limited measure of the work of judges sitting on trial duty, but these measures are not available for nontrial judges and can be misleading over short time periods because of the effects of very long trials.

Some master calendar courts have been mandated by higher state authority to measure the amount of time individual judges spend on the bench. These bench-time measures at least provide a uniform dimension by which to compare judicial effort. The courts studied that hold judges accountable for bench time, however, are not characterized by either high individual judge productivity or a speedy pace of litigation. Encouraging judges to stay on the bench does not guarantee that the bench time will be spent productively. Indeed, there is no reason to conclude that a judge who feels pressured to spend a predefined number of hours a day on the bench will have any particular motivation to expedite the conduct of trials, to settle cases short of trial, or to act in any other way likely to increase court productivity or processing speed. Because of these difficulties in fashioning meaningful measures of judicial performance on master calendar courts, most such courts use no measures at all. Instead, courthouse gossip types judges as "producers," "lazy," "settlers," "legal experts," and the like.

Because individual calendar courts make each judge responsible for moving a set of cases from filing to disposition, they are uniquely able to measure judicial performance on a dimension that relates directly to court productivity and case processing time. The two summary statistics commonly used to assess individual judge performance in the individual calendar courts are the number of terminations in a given period attributable to a judge, and the number of pending cases in the judge's inventory. Both measures are meaningful so long as cases are assigned to judges in a random fashion and all judges receive the same number of cases.¹¹

We observed competition among the judges in virtually every individual calendar court visited. This competition is seldom formal and its existence was often denied. But when pressed, most judges admitted that the comparative statistics are closely watched. In the one individual calendar court that does not compile periodic reports on individual judge terminations and pending

¹¹The usefulness of the pending case statistics depends additionally on stability in the assignment of judges to particular dockets.

caseloads, concern over relative rankings appears as intense as in courts with formal reporting systems. The difference is that the competition is based on courtroom "scuttlebutt" among judges' staffs and is apparently based on unreliable information (three separate judges on this court informed us that they had the lowest number of pending cases).

Our theory of the determinants of the pace of litigation suggests that attorneys will generally resist court efforts to increase the overall pace of case dispositions, at least if those efforts involve court pressure for speedier case preparation. Given this attorney resistance to court efforts to control case progress, those courts that provide some countervailing incentives for judicial resistance to this pressure should be more successful in efforts to increase productivity and decrease delay. The informal competition among individual calendar judges on productivity and pending case measures provides just such an incentive. Using the terms of the preceding analysis, it elevates the level of judicial concern. This fact of individual judge accountability for case-processing performance, together with the immediate feedback the conscientious judge receives on the administrative impact of varying case-management practices, may well account for productivity and civil case speed differences between individual and master calendar courts.

The difference in performance between individual and master calendar courts is not so pronounced in criminal as in civil case processing. Master calendar courts are well represented among both the slowest and the fastest courts; their performance as a group is considerably more varied than the individual calendar courts, which tend to cluster toward the middle of the distribution of median processing times. As with civil judges, productivity of judges on individual calendar criminal courts is considerably higher than that of judges on the master calendar, although the small number of courts for which there are comparable data makes any conclusion tentative.

One possible explanation for these findings emphasizes the observed difference in the amount of controls present in the criminal as opposed to the civil dispositional process. Most court systems have instituted some form of administrative monitoring of the status of pending criminal cases independent of the activities of individual judges. The presence of a prosecuting attorney with at least a formal interest in speedy disposition of criminal cases adds a further cohesive element to criminal case processing that is not present on the civil side. Hence, unlike civil cases, criminal cases are subject to a variety of institutional monitoring and controls beyond the actions of the judges themselves. The civil system, on the other hand, leaves the judge as the sole source of

uniform pressure for speedy disposition. A system that makes an individual judge accountable for moving a specified set of cases may thus have more impact on civil than on criminal case-processing time.

The preceding discussion is premised on our belief that appropriate assessment of individual judicial performance is both proper and desirable. Judges have traditionally been insulated from most attempts to evaluate them. Concern for maintaining judicial independence has produced long terms of office and indirect selection methods in most states. But judges should not be sheltered from all efforts to assess the level and efficiency of their court-related activities. It is obviously not desirable to make high productivity the all-encompassing definition of a good judge. But we did not observe this pathology in even the most productivity- or speed-conscious courts. Far more common is a lack of any real interest or concern by judges and attorneys in the problem of delay. Ironically, those courts with the longest disposition times often evinced the least concern. The attempt to provide meaningful measures of both individual judge and aggregate court performance is an initial step in elevating that level of concern.

Pretrial Conferences and Court Settlement Activity

One of the most frequently applied delay-reduction strategies involves judges in the attempt to increase the proportion of cases that are settled without trial. Mandatory pretrial settlement conferences and crash settlement programs are common court responses to perceived problems of civil backlog and delay. Calls for various types of pretrial conferences among the defense attorney, prosecutor, and judge have similarly been advanced for criminal cases. These proposals are all premised on the theory that since a settlement conference requires less judge time than a trial, a successful conferencing system will increase court productivity without additional judicial resources.¹²

Evaluation of the success of civil case settlement programs is difficult. Judges see a high proportion of the cases settle in conference and the program thus seems to be achieving positive results. But it is difficult to determine whether the settlement conferences actually lower the *proportion* of cases that

¹²Major empirical studies that discuss the relationship of court settlement programs, the trial rate, and judicial productivity are M. Rosenberg, *The Pretrial Conference and Effective Justice* (New York: Columbia University Press, 1964); R. W. Gillespie, *Judicial Productivity and Court Delay: An Exploratory Analysis of the Federal District Courts* (Washington, D.C.: Government Printing Office, 1977); Flanders, *Case Management*, pp. 33-40. For an evaluation of a settlement conference program in criminal cases, see W. Kerstetter and A. Heinz, "Pretrial Settlement Conference: An Evaluation," *Law and Society Review* 13 (forthcoming).

require trial. And even if conferences do settle cases that would otherwise have resulted in trial, it is not clear that a change in trial utilization will necessarily increase total court output. In the courts for which there are relevant data, no significant relationship was found between trial utilization and individual judge productivity in civil cases: those courts that dispose of a high proportion of cases by jury trial do not necessarily dispose of fewer cases per judge.¹³ These findings parallel those of a recent study of federal courts indicating that courts that dispose of proportionately more civil cases by trial tend to be the courts that dispose of a *larger* number of civil cases per judge.¹⁴

Court readiness to try civil cases may well be the most effective settlement-inducing device. The assertion that only the reality of imminent trial produces fast and sure settlements was made by judges and attorneys in every court visited. Furthermore, of the courts in which we examined civil case processing in depth, those with the fastest pace of litigation have the least settlement activity by civil judges and tend to dispose of a higher proportion of cases by jury trial.¹⁵ This finding directly parallels that of a recently completed project of the Federal Judicial Center evaluating case management in federal district courts.¹⁶

The data gathered in this study, together with a growing number of previous research efforts, suggest that extensive court involvement in civil case settlement activity is nonproductive. A judge may produce the final "nudge" needed to crystallize a settlement in selected cases, but dedicating substantial judicial resources to settlement discussions in every case may neither increase judicial productivity nor speed dispositions.¹⁷

¹³See Table 3.6.

¹⁴R. W. Gillespie, "The Production of Court Services: An Analysis of Scale Effects and Other Factors," *Journal of Legal Studies* 5 (1976): 254. The author of this study offers an explanation that is similar to our thinking on the question:

When the judges in a court use trials as a matter of course rather than the exception, this imposes a pressure on attorneys to settle quickly if they feel their case is weak. If the pressure of a trial were not there, attorneys might be inclined to stretch out negotiations. A court with lengthy procrastination of most cases, but few ultimately going to trial, could absorb more total judge time than a court having more cases going to trial but with the pretrial settlements being achieved quickly and with little expenditure of judge time.

¹⁵See Table 3.7.

¹⁶"Judicial participation in settlement produces mixed results. A limited role may be valuable, but data suggest that a large expenditure of judicial time is fruitless." Flanders, *Case Management*, p. 37. See generally, Rosenberg, *The Pretrial Conference and Effective Justice*.

¹⁷It should be added that we have observed pathologies in the operation of mandatory settlement programs that should also be considered by a court contemplating adoption of such a technique. Settlement activity by trial court judges is at least susceptible to judicial abuse. Overzealous judges may exercise undue influence on a final settlement, often without adequate knowledge or under-

Calls for various types of pretrial conferences in criminal cases among the defense attorney, prosecutor, and judge have been made by the American Bar Association,¹⁸ the President's Commission on Law Enforcement and Administration of Justice,¹⁹ and the National Advisory Commission on Criminal Justice Standards and Goals.²⁰ Such conferences are alleged to further a number of goals: improving trial preparation of counsel, saving judicial time in hearing numerous separate pretrial motions, improving discovery. Proponents of such proposals generally assert that some form of pretrial conference will also decrease disposition time by "speeding up the process" and "increasing the number of guilty pleas."²¹

Although none of the courts examined in detail utilize pretrial conferences of the type proposed to any great extent, an empirical study conducted by the American Bar Foundation evaluating the impact of the omnibus hearing device concluded that the scheme neither increased speed nor decreased trials.²² Our data on the relationship of trial rates to processing time suggest that the marginal decrease in the proportion of cases requiring jury trial that could be expected to flow from even a successful conference program would be unlikely to alter appreciably the overall pace of criminal cases.²³ It may be that goals other than speedy disposition will be furthered by such programs, however.

Abolition of the Grand Jury

Among the courts examined in this study, the information-based charging system operates more expeditiously than the grand jury system. Average lower court time for grand jury systems is approximately two weeks longer than in

standing of the facts of the case. Settlement judges often become familiar with the practices of individual attorneys, their reluctance to take a case to trial, the degree of their over-commitment and resulting need for postponements. Such judges have tools to influence, even coerce, a settlement agreement that may violate both procedural and substantive standards of fairness.

¹⁸American Bar Association, Advisory Committee on Pretrial Proceedings, *Standards Relating to Discovery and Procedures Before Trial* (Chicago: American Bar Association, 1969) pp. 9-10.

¹⁹President's Commission on Law Enforcement and Administration of Justice, *Task Force Report: The Courts* (Washington, D.C.: Government Printing Office, 1967) pp. 41-42.

²⁰National Advisory Commission on Criminal Justice Standards and Goals, *Courts* (Washington, D.C.: Government Printing Office, 1973) p. 90.

²¹American Bar Association, *Standards Relating to Discovery*, pp. 9-10.

²²R. T. Nimmer, *Prosecutor Disclosure and Judicial Reform: The Omnibus Hearing in Two Courts* (Chicago: American Bar Foundation, 1975). See also Nimmer, "A Slightly Moveable Object;" L. R. Katz, *Reduction of Pretrial Delay—Demonstration Project—Final Report* (Washington, D.C.: Government Printing Office, 1975). Compare G. B. Tjoflat, "The Omnibus Hearing: The Jacksonville Experience," *American Criminal Law Review* 12 (1974): 357-261.

²³See Table 3.8. See also T. Church, Jr. et al., *Pretrial Delay: A Review and Bibliography* (Williamsburg, Va.: National Center for State Courts, 1978) pp. 40-42.

systems without a grand jury. The difference in total court time between the two systems is even greater.²⁴ These data suggest that replacing the grand jury for the charging of routine felony cases might very well cut days from the overall arrest to disposition period. It should be mentioned, however, that some courts are able to move cases through the grand jury relatively quickly. In the Bronx, for example, cases move through the lower court and grand jury in 24 days, the majority of the extensive processing time being consumed in the general jurisdiction court. The grand jury adds considerably to processing time in some courts, the most extreme example being Newark, where the grand jury adds approximately seven weeks to disposition time. Abolition would be unlikely to reduce processing time in all jurisdictions.

Speedy-Trial Standards

Of the 21 courts examined in this study, 19 have criminal case speedy-trial standards. Yet the time limits specified in the standards bear little relationship to actual processing times, with the limit being exceeded by over half the cases in several courts.²⁵ Clearly, the presence of a speedy-trial standard alone does not guarantee either observance of that standard or speedy dispositions. Nor does absence of a speedy-trial rule necessarily result in a slow pace of criminal litigation. Of the three fastest jurisdictions in total court disposition time, one is required only to bring a case to trial within a "reasonable" period of time (Portland), and one operates under a speedy-trial limit of two years (New Orleans).

It is our strong impression that speedy-trial standards can affect disposition time only when they cannot be easily waived by defendants. Of all the parties to a criminal case, the defendant is typically *least* interested in a speedy trial, particularly if he is free on pretrial release. Rules that allow defendants to waive the speedy-trial requirement, or exclude the time consumed by defense-requested continuances, are likely to be honored in the breach. The Pennsylvania speedy-trial rule is effective in maintaining a rapid pace of dispositions in Pittsburgh, in large part because the court and the prosecution are concerned that their supreme court will overturn defendant waivers of speedy-trial requirements. Defense attorneys indicated in interviews that the court attempts to dispose of criminal cases within 180 days regardless of whether the requirement has been waived by the defendant. The effect of defendant waivers is of less

²⁴See Table 3.14.

²⁵See Table 3.15.

less concern in Miami, a fact that probably accounts for the large proportion of cases exceeding their 180-day limit.

A relatively tight speedy-trial standard, one that is not materially affected by defense continuance requests and which cannot be waived easily, can have a substantial effect on the pace of criminal litigation. It should affect both the median disposition time and the measures of older cases indicated in Tables 2.5 and 2.6. The primary mechanism for this effect may be simply an elevation in the level of concern evidenced by the court system with the problem of delay in criminal cases. With increased concern comes the institution of systems to monitor case progress and insure disposition within the specified time limit. Speedy-trial standards, however, are unlikely to have an appreciable effect on either the level of concern or the overall disposition time if they depend for their enforcement on the parties who typically have the least interest in speed, the defendant and his attorney.

The Resource-Workload Nexus: Adding Judges or Decreasing Filings

Serious empirical research on trial court delay began in 1959 with *Delay in the Court*, a study that was grounded on the proposition that, "while study is indispensable for disclosing the exact additional judge power needed to cure delay, it needs no ghost come from the grave to tell us that delay can be cured by adding more judges."²⁶ This assumption was accepted in most of the courts we visited in 1977; the one constant theme was an alleged need for more judges, a reduction in caseload through various diversion programs, or both.

This research provides no basis by which to assess the objective need for additional judges in any court. It is probable that real differences in jurisdiction, organization, and procedures across courts would make the attempt at such an analysis unfruitful. The preceding analysis, however, sheds some light on the likely success of adding judges or reducing filings as a cure for civil or criminal court delay.

The data indicate enormous variation from court to court in productivity or case output per judge. Even allowing for intercourt differences in recordkeeping, case complexity, and the like, this wide variation strongly suggests a) considerable differences in the amount of effort judges expend in these courts, or b) variation in the efficiency or productivity of that effort, or c) both. No matter which conclusion is reached, it would appear that the case output per

²⁶H. Zeisel, H. Kalven and B. Buchholz, *Delay in the Court* (Boston: Little, Brown and Co., 1959), p. 8.

judge of at least the low productivity courts could be improved. This conclusion is supported in an empirical study of case productivity of federal district courts. This study found, after analysis of aggregate data on all federal district courts over a five-year period, "that courts produce more output with *no additional resources* when the demand for court services increases [thereby implying] the existence of underutilized judicial resources in the district courts."²⁷

It should be noted that these conclusions are based on comparisons across a number of courts. They do not imply that judicial resources are always adequate or that the addition of judges cannot improve performance in an understaffed court. But additional judges will have no independent effect on the underlying legal culture that colors expectations and practices of the trial bar. The same backlog of cases will exist in attorneys' offices, as well as the same expectations of professional courtesy to achieve postponements at the convenience of either party to the suit, and the same set of disincentives for judges to interfere with accepted attorney prerogatives in case movement. Additional judges or decreased filings need not have any effect on existing court case management practices.

Altering the relationship of judges to caseload in a court with weak or non-existent controls on the pace of litigation is thus unlikely to affect appreciably the overall pace. Rather, such an alteration is likely to be accompanied by a fall in the average productivity of judges on the court; trials may be slower or there may be more nontrial time in the schedules of judges. It may be that such efforts will accomplish other goals. Criminal case screening and diversion, for example, or civil arbitration, may provide more appropriate disposition for a number of less serious cases.²⁸ And it may well be that a lower caseload per judge will allow more consideration to be given to individual cases. Such efforts will probably not affect processing time materially, at least in the absence of changes in case management practices.²⁹ This is merely a prediction based on our understanding of the dynamics of civil and criminal court delay, but it is supported by the reportedly transitory effect of most crash programs. These programs typically involve a one-time infusion of temporary judicial resources in order to reduce backlog and delay. Several of the courts where civil

²⁷Gillespie, "The Production of Court Services," p. 258 (emphasis in original).

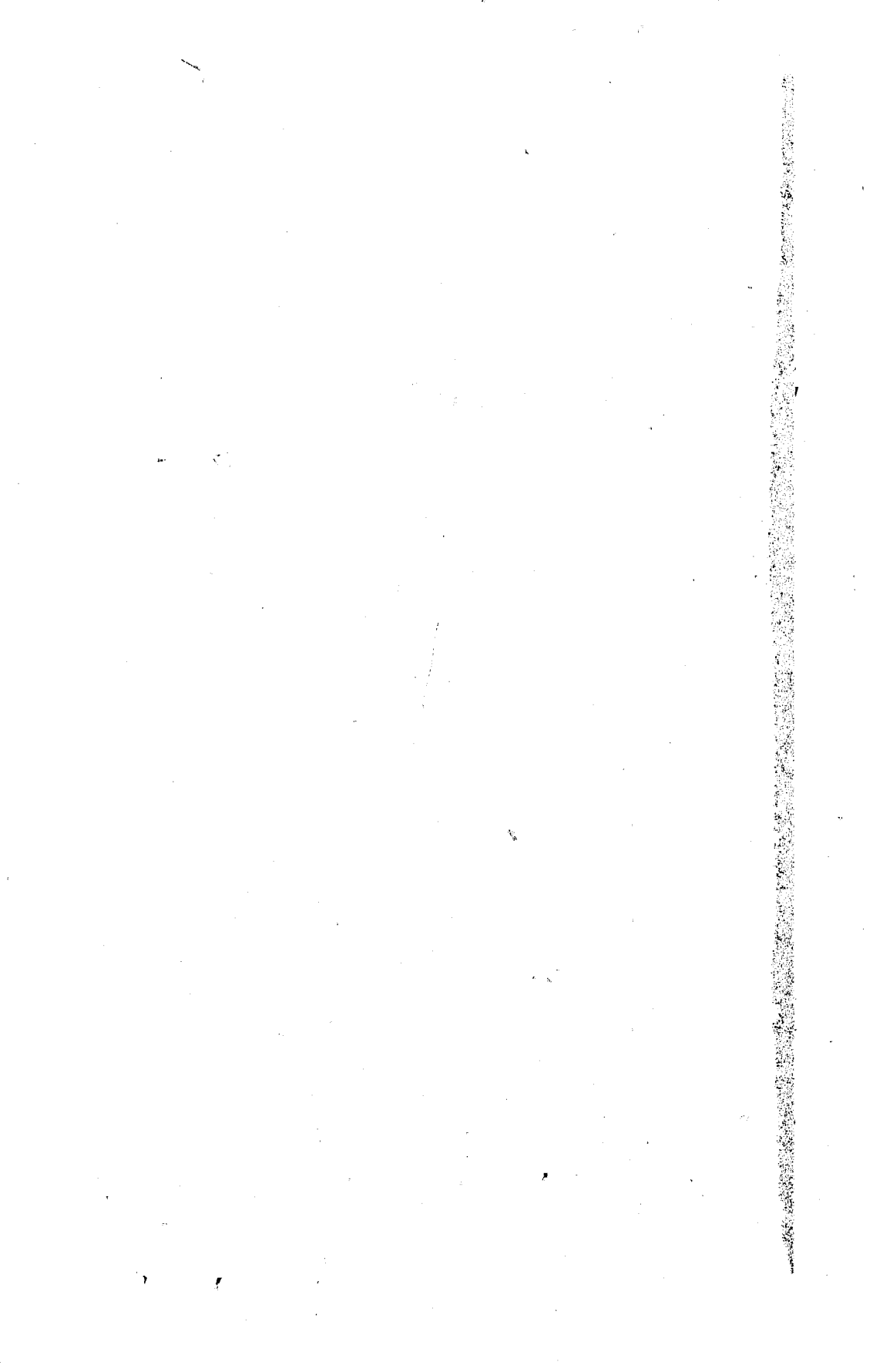
²⁸This screening out of the less serious cases should result in an increase in seriousness among the cases remaining. Our data suggest, however, that the proportion of serious crime in a court's caseload does not materially affect overall disposition time. See Table 3.5.

²⁹This hypothesis is supported by the experience of several courts in which substantial increases in judges (and prosecutors and public defenders) produced no appreciable increase in dispositional speed. See footnote 6, chapter 3.

case processing was examined in depth had utilized such programs in the recent past. Although there is no empirical evidence on this point, without exception the attorneys interviewed indicated that the effect of these programs was transitory at best. In the cogent words of one Detroit attorney:

The mentality of the trial bar here is that crash programs are something to be tolerated until they are over. I'd analogize the court's use of crash programs to crash diets. They have temporary results but so long as you have the same philosophy of eating, you'll get fat again.

It may be that this analogy sums up much of the present discussion. If the overall pace of litigation is to be accelerated, the most important and the most difficult change to be made is in the long-term expectations and practices of the individual judges and attorneys practicing in the court. No infusion of judicial resources or decrease in caseload will change those expectations and practices without court concern with delay, a long-term commitment by the court to expedite case disposition, and a readiness on its part to take an active management role in the disposition of civil and criminal cases.



6. EPILOGUE

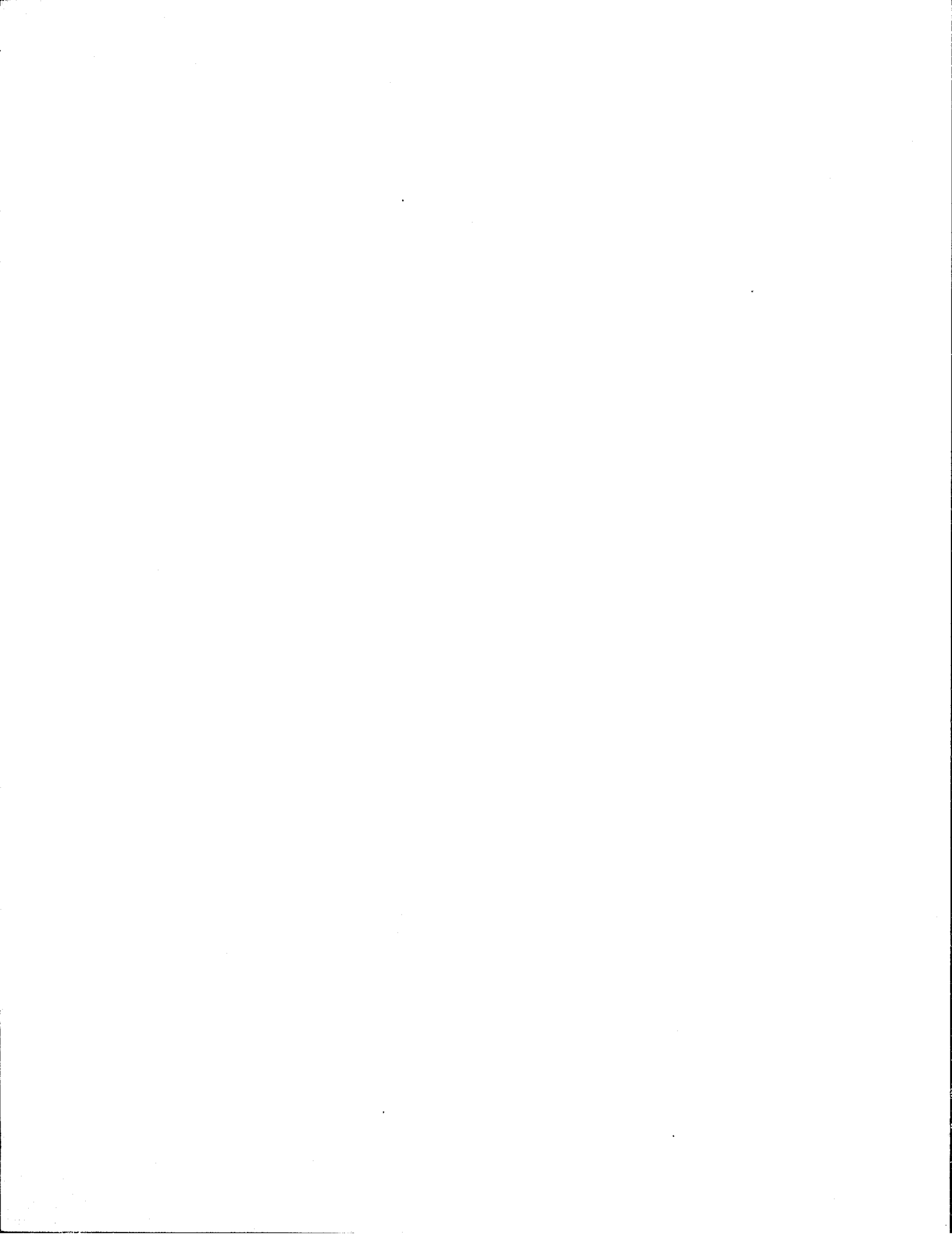


Trial court delay has emerged in this study to be a remarkably similar problem in both civil and criminal litigation. Few of the traditionally posed explanations for court delay are substantiated by the data for either criminal or civil cases. Neither court size, nor trial rate, nor judicial caseload, nor use of settlement conferences differentiates faster from slower courts. Use of case-management techniques is clearly associated with a speedy pace of criminal cases, a relationship which is less true on the civil side.

Probably the major finding of this research is the centrality of informal court system attitudes, concerns, and practices—what we term local legal culture—to the pace of both civil and criminal litigation. Major elements of legal culture are the attitudes and practices of judges and attorneys regarding the problem of court delay. As a general rule, the fastest courts tend to be the courts in which the attitudes and concerns of the legal community support a speedy pace of litigation. This support may be generated by external forces: a state speedy-trial rule, an aroused public, a watchful media, a strong state judicial hierarchy. It may simply be based on long-standing attitudes of individual judges and other court system participants concerning proper and expected case disposition time. Many of the slower courts visited in this project simply do not regard the existing pace of litigation to be a significant problem; if they address it at all, the response is typically a short-term burst of energy followed by a return to business as usual.

We observed three major and unambiguous differences in the conduct of criminal and civil litigation in the trial courts examined in this study. The first is the aforementioned prevalence of court management and control of criminal case progress, along with the absence of such control in civil cases. The second difference is in the general level of court concern over delay in criminal as opposed to civil litigation. Whether because of speedy-trial requirements, public and media concern, or individual judge attitudes, the trial courts almost universally exhibited more concern about criminal than civil case delay. The third difference between civil and criminal case processing is the substantial difference in pace: the median criminal case is disposed of much more expeditiously than the median civil case in every court examined in this study.

The theory of trial court delay developed in this research suggests that these three facts are related. It further suggests that the most commonly alleged



CONTINUED

1 OF 2

reason for the comparative speed of criminal litigation—the shift of judges from civil to criminal courtrooms—is at best a partial explanation. It is at least as likely that the comparative speediness of criminal cases is a result of judicial concern over the problem of criminal court delay, court system attitudes and practices supportive of a faster pace, together with stronger controls over criminal case progress. It is important not to conclude from this analysis that legal culture is somehow immutable or unchangeable. A basic conclusion of this research is that neither civil nor criminal case delay is inevitable, even in those urban trial courts with large caseloads and a limited number of judges. The solution to the problem of court delay does not necessarily lie in a massive infusion of new judges, or in the latest proposals for a new pretrial conferencing program. Rather, differences among faster and slower courts, and between criminal and civil litigation, strongly suggest that court delay can be reduced only by judges who are willing to insist that attorneys meet reasonable deadlines for the conclusion of pretrial activities and by trial-setting and continuance practices that create an expectation of an early and relatively firm commencement of trial for those cases not settled.

This effort will require concern and commitment on the part of judges. Judges will very probably receive considerable “heat” from attorneys understandably upset by changes in their scheduling prerogatives. In simplest terms, delay cannot be eliminated unless cases move at a faster pace. Cases cannot move more rapidly without a change in the existing practices—and ultimately the attitudes—of both judges and attorneys.

APPENDICES

APPENDIX A – Methodological Summary

The research was divided into two main phases. In phase one, descriptive data were gathered on case processing in 21 general jurisdiction courts across the country. Brief visits to each of the courts were conducted to determine the broad outlines of court organization, procedures, and workload. The mechanics of data collection for development of the processing time measures were also designed at this time. Phase two involved two-week site visits to study civil and criminal case processing in five jurisdictions each.

Phase One

Selection of the initial 21 sites was based on data from published annual reports, supplemented by unpublished data provided by state and local court administrators. Only state general jurisdiction courts with a minimum of 10 judges were considered. Within this constraint, courts were selected to insure considerable diversity among the final 21 on the following dimensions: a) case output per judge, b) backlog (pending cases as a proportion of annual terminations), and c) geographical area. Where possible, consideration was also given to court size and organization, particular delay-reduction efforts instituted, and other such factors.

Each of the 21 courts selected was visited by two project staff members for a period of two to five days. A major purpose of the visits was to develop a broad picture of both civil and criminal case processing in the court. Court administrators, judges, and other court officials were interviewed and aggregate court statistics were obtained.

The other task on each visit was to design and organize the data collection needed to generate the cross-comparable processing time measures. In each jurisdiction we took a systematic sample of approximately 500 felony cases terminated in 1976 in the court of general jurisdiction. The criminal sample was restricted to cases in which the most serious charge in the accusatory instrument could result in a year's imprisonment or more, and in which a guilty plea, verdict, or dismissal occurred in 1976. Felony cases disposed prior to filing in the general jurisdiction court were not sampled. Wherever possible we took an additional sample of approximately 50 criminal jury trials conducted in 1976.

Information on all major events between arrest and sentencing were recorded on each criminal case sampled. Differences in the availability of data produced differences in the data elements obtained in the various courts. At a minimum, we obtained the date of arrest, the date of filing the indictment or information in the general jurisdiction court, the date of disposition, the mode of disposition, and the highest original charge in the indictment or information. Data on trial scheduling, sentencing, plea bargaining, bail and attorney status, and other relevant events were obtained if reliable data were readily available.

On the civil side the sample consisted of general civil cases disposed of in 1976 in the court of general jurisdiction. The general civil category was defined as all civil actions heard in the court exclusive of domestic relations, probate, juvenile, and miscellaneous uncontested matters such as adoptions, changes of name, and the like. The disposition date was defined as the date a final order or judgment was entered in the court record as to all parties to the action. Systematic samples were taken of approximately 500 civil dispositions and, if possible, approximately 50 jury trials. Data on major events in the entire period from the commencement of the action to the entry of the final order were obtained on each civil case sampled. The samples in every jurisdiction included the date of filing, date of disposition, case type, the mode of disposition. Wherever possible additional information was gathered on trial setting and continuances, motions, date of service, and date of the incident giving rise to the suit.

The data were coded by undergraduate and graduate students, supervised by on-site personnel. After checking a sample of the forms against court records for accuracy, they were subjected to extensive computer analysis to uncover any logical inconsistencies. The samples were also compared to court-supplied aggregate statistics to determine if they were representative. In many instances missing information was supplied or inconsistent dates corrected by court personnel, data collection supervisors or return visits by project staff. In the jurisdictions visited in phase two, the information from a random subsample was verified by comparing the information to the original records themselves.

The figures given in this report on case processing and inter-event times are based on the analysis of these samples. The samples were also used to generate information on such things as trial utilization, trial scheduling, settlement characteristics, and seriousness of criminal caseload.

Phase Two

In the second phase of the project, five of the 21 jurisdictions were selected

for intensive examination of civil case processing, five for criminal case processing. The processing time and productivity data generated in the first phase identified faster and slower courts. Since the purpose of the phase two visits was to determine subjective differences in procedures applied to cases, an effort was made to maximize the processing time and productivity variation in order to increase the likelihood of observable differences. Of the five civil jurisdictions two courts maintain a relatively speedy pace of litigation, two are quite slow, and one falls about in the middle of the 21 courts. One each of the fast and slow courts has comparatively high judicial productivity, one comparatively low. An analogous site selection strategy was followed on the criminal side. We examined two courts which process cases from filing to disposition rapidly, two courts which are slow, one court in the midrange. A variation in productivity within the fast and slow categories was also sought, although later analysis of the aggregate data in at least one court revealed it to be inaccurate.

The same two members of the project staff visited each of the five courts chosen for extensive analysis of civil case processing; two different members visited each of the five criminal court sites. The principal author spent at least a week in each court examined intensively. From two to three weeks was spent by staff in each court. Local judges, attorneys, court personnel, and newspaper reporters were interviewed. Courtroom proceedings, particularly those dealing with trial scheduling and settlements, were observed. On each site visit project staff were accompanied for two days by one to three judges from other courts provided by the National Conference of Metropolitan Courts. One visiting judge and one staff member conducted each of the interviews with the local judges. Interviews with attorneys and other court officials were usually conducted by the project staff alone.

The schedule of questions used during the interviews with judges follows this methodological summary. Attorney interviews covered the same topics with minor revisions in the wording of the questions. The interview schedule served only as a guideline, however, and an effort was made to encourage an informal, conversational approach to the interviews. Since we were interested in obtaining the opinions and perspectives of local participants, they were permitted to explore in depth their own particular concerns and were encouraged to bring up topics of special concern to them.

Each team attempted to interview every judge handling the type of cases in which we were interested. We were usually successful in meeting with a large majority of the relevant judges in each court. In addition, we interviewed the court administrator and other clerical personnel, particularly those involved in

case scheduling and recordkeeping. The names of the attorneys interviewed were obtained in an *ad hoc* manner from suggestions of judges, court officials, local bar associations and other attorneys. We made a concerted effort to interview attorneys from large firms, small firms, and the public sector. On the civil side we interviewed plaintiff and defense attorneys. On the criminal side we interviewed private defense as well as trial assistants in prosecutors and public defenders' offices. In each jurisdiction we interviewed between 10 to 20 attorneys.

Civil Interview Schedule

1. What, in your view, are the most serious problems facing this court?
 - are cases delayed?
2. What pressures are placed on your performance as a judge?
 - work hours?
 - number of courtroom activities or concern for "dark" courtrooms?
 - case dispositions or "output"?
3. Is there emphasis in this court on moving older cases?
 - who really determines when cases will be heard?
4. What is an "old" case?
5. What factors impede the movement of cases in this court?
6. Are there any specific points in the civil process that become bottlenecks?
7. What improvements could be made to address these problems?
8. Has the court made any significant changes in handling criminal cases in the last several years?
9. Would you predict any problems developing if the court began to move civil cases significantly faster than at present?
10. Is there a regularized process for monitoring the progress of civil cases?
 - if answer or default not filed?
 - discovery proceedings?
 - dismissals for lack of progress?
 - use of "trial readiness" form?
11. What is your policy when both attorneys want to move a case slowly?
12. Does court try to insure that cases filed are within the jurisdictional limits of the court?
13. Are there screening procedures that allow different types of cases to be treated differently?
 - complex litigation?
 - short or routine matters?

- equity?
14. How do you handle pretrial motions in this court?
 - oral or written?
 - hearing required?
 15. How are trial dates and other court appearances scheduled?
 16. Under what circumstances are continuances or postponements granted?
 - if uncontested?
 - if considerable notice?
 17. Do challenges to pleadings or discovery-related motions consume much judicial time?
 - used to harass or delay?
 18. What role does the court play in encouraging settlement?
 19. How are important policies made in the court?
 - role of presiding judge?
 - role of committees?
 - role of court administrator, clerk of court?
 20. What role does the bar have in initiating or modifying court policies?
 21. How would you describe bar practice in this court?
 - defaults?
 - motions to compel?
 - stipulations on continuance requests?
 22. What happens if an individual judge deviates from court rules and policies?
 23. What role does the bar, and local or state political leaders play in the selection of judges on this bench?

Criminal Interview Schedule

1. What, in your view, are the most serious problems facing this court?
 - are cases delayed?
2. What pressures are placed on your performance as a judge?
 - work hours?
 - number of courtroom activities or concern for "dark" courtrooms?
 - case dispositions or "output"?
3. Is there emphasis in this court on moving older cases?
 - who really determines when cases will be heard?
4. What is an "old" case?
5. What factors impede the movement of cases in this court?
6. Are there any specific points in the criminal process that become bottlenecks?

7. What improvements could be made to address these problems?
8. Has the court made any significant changes in handling criminal cases in the last several years?
9. Would you predict any problems developing if the court began to move criminal cases significantly faster than at present?
10. Do the district attorney and lower courts do an effective job of screening cases prior to filing in this court?
 - is the grand jury effective?
11. Is there a regularized process for monitoring the progress of cases?
 - procedures for identifying and handling old cases?
12. Are there constraints placed on the amount of time spent by attorneys in pretrial activities?
 - effect of speedy trial rule?
 - differences between appointed and retained counsel?
13. What is your policy when both defense and prosecution want to move a case slowly?
14. How do you handle pretrial motions in this court?
 - differences between handling of dispositive, and other types of pretrial motions?
 - oral or written?
 - hearing required?
 - used to harass or delay?
15. How are trials and other court appearances scheduled?
 - role of the district attorney?
16. Under what circumstances are continuances or postponements granted?
 - effect on speedy trial rule?
 - concern of reversal on appeal?
 - what if uncontested?
17. How are plea negotiations conducted?
 - amount of judicial involvement?
18. Do court relations with the prosecutor or other criminal justice agencies cause problems?
19. How are important policies made in the court?
 - role of presiding judge?
 - role of committees?
 - role of court administrator, clerk of court?
 - role of district attorney?

20. What role does the bar have in initiating or modifying court policies?
21. What happens if an individual judge deviates from court rules and policies?
22. What role does the bar, the local or state political leaders, play in the selection of judges on this bench?

APPENDIX B

CIVIL CASES

Jurisdiction	Filing to Disposition All Civil Cases (in days)	Filing to Disposition Torts (in days)	Filing to Disposition "Trial List" Cases (in days)	Filing to Start of Trial—Jury Verdicts (in days)	Percent of Jury Trials— Tort Cases
Atlanta, Ga. (Fulton County Superior Court)	317	402	*	628 ^a	14%
Boston, Ma. (Suffolk County Superior Court)	394	811	*	*	*
Bronx County, N.Y. (Bronx County Supreme Court)	*	*	980 ^d	1332 ^d	*
Cleveland, Oh. (Cuyahoga County Court of Common Pleas)	378 ^c	384 ^c	*	660 ^a	1%
Dallas, Tx. (Dallas County District Courts)	210	322	*	*	4%
Detroit, Mi. (3rd Judicial Circuit Court)	735	788	904	1231	3%
Ft. Lauderdale, Fl. (17th Judicial Circuit Court)	189	298	368	458	6%
Houston, Tx. (Harris County District Courts)	490	594	*	840	5%
Miami, Fl. (11th Judicial Circuit Court)	236	331	408	412	10%
Minneapolis, Mn. (4th Judicial District Court)	*	*	710 ^d	734 ^d	*
New Orleans, La. (Orleans Parish Criminal and Civil District Courts)	259	288	357	*	2%
Newark, N.J. (Essex County Superior Court)	608	654	*	680 ^a	5%

*Indicates data unavailable or inapplicable.

^aMeasure is to judgment, rather than commencement of jury trial.

^bVerdict date used as a substitute for date trial commenced.

^cFigures do not include cases categorized as "dead docket."

^dMeasure is from service of the complaint, not filing with the court. Court allows cases to progress to "trial readiness" prior to filing.

DISPOSITION TIME MEASURES

CRIMINAL CASES

Arrest to Upper Court Filing (in days)	Arrest to Disposition (in days)	Upper Court Filing to Disposition (in days)	Arrest to Jury Trial (in days)	Upper Court Filing to Jury Trial (in days)	Jury Trials as Percent of Adjudications
23	77	45	98 ^b	73 ^b	9%
*	*	281 ^c	*	278	14%
24	343	328	476	405	18%
28	103	71	113	89	9%
37	115	102	*	*	1%
21	64	33	118	81	7%
15	105	99	166 ^b	147 ^b	7%
*	181 ^f	99	*	160	4%
25	106	81	*	84	6%
*	*	60	*	76	5%
12	67	50	91	56	7%
79	209	99	236	140	19%

^cIncludes cases resolved by arbitration.

^fArrest dates were unavailable for a large number of cases in this sample. There is a danger, therefore, that this figure may not be representative.

Jurisdiction	Filing to Disposition All Civil Cases (in days)	Filing to Disposition Torts (in days)	Filing to Disposition "Trial List" Cases (in days)	Filing to Start of Trial—Jury Verdicts (in days)	Percent of Jury Trials— Tort Cases
Oakland, Ca. (Alameda County Superior Court)	295	421	569	*	4%
Philadelphia, Pa. (Philadelphia County Court of Common Pleas)	*	*	713 ^g	716 ^g	*
Phoenix, Az. (Maricopa County Superior Court)	196	308	416	607	7%
Pittsburgh, Pa. (Allegheny County Court of Common Pleas)	*	583 ^g	727 ^g	906 ^{a, g}	6%
Pontiac, Mi. (6th Judicial Circuit Court)	364	555	*	304	4%
Portland, Or. (Multnomah County Circuit Court)	275	310	*	464	8%
St. Paul, Mn. (2nd Judicial District Court)	*	*	440 ^d	437 ^d	*
San Diego, Ca. (San Diego County Superior Court)	362	574	608	846	6%
Seattle, Wa. (King County Superior Court)	217	385	412	476	12%

^gIncludes only "major" cases which did not pass through the court's mandatory arbitration program for those lawsuits involving less than \$10,000.

^hThe sample of felony disposition provided by the court computer system includes a considerably greater proportion of homicides, robbery, and rape offenses than the aggregate data supplied by the court would suggest.

Arrest to Upper Court Filing (in days)	Arrest to Disposition (in days)	Upper Court Filing to Disposition (in days)	Arrest to Jury Trial (in days)	Upper Court Filing to Jury Trial (in days)	Jury Trials as Percent of Adjudications
36	116	58	128	89	7%
39 ^{h, i}	168 ^{f, h}	119 ^{h, i}	171 ^{b, f, h}	121 ^{b, h, i}	5%
14	114	98	*	129 ^b	*
*	103	58	134	92	6%
34	122	78	203	168 ⁱ	7%
*	67 ^j	51 ⁱ	*	56 ^{b, i}	11%
3	74	69	*	69	8%
22	71	45	88	67	7%
13 ⁱ	82	56 ⁱ	102	84 ⁱ	10%

ⁱDate of arraignment on indictment or information used as substitute for date of filing of charges in the court of general jurisdiction.

^jArrest date unavailable; date case opened in Circuit Court used. This date is within two days of the arrest date.

APPENDIX C

Jurisdiction	1975 Estimated Population	Total Judges	General Civil Judges	1976 General Civil Filings	1976 Tort Filings
Atlanta, Ga. ¹ (Fulton County Superior Court)	584,200	11	*	4,068	*
Boston, Ma. ² (Suffolk County Superior Court)	722,800	19	6 ^a	7,902	*
Bronx County, N. Y. ³ (Bronx County Supreme Court)	1,377,000	39	10	3,105 ^a	2,434 ^a
Cleveland, Oh. ⁴ (Cuyahoga County Court of Common Pleas)	1,603,900	26	*	14,397	8,158
Dallas, Tx. ⁵ (Dallas County District Courts)	1,399,400	25	12	13,297	4,366 ^a
Detroit, Mi. ⁶ (3rd Judicial Circuit Court)	2,536,700	33	25	23,583	7,389 ^a
Ft. Lauderdale, Fl. ⁷ (17th Judicial Circuit Court)	862,500	27	17 ^a	14,537 ^b	4,072 ^b
Houston, Tx. ⁸ (Harris County District Courts)	1,963,600	38	18	21,191	9,770
Miami, Fl. ⁹ (11th Judicial Circuit Court)	1,438,600	43	24 ^a	25,743	12,456 ^b
Minneapolis, Mn. ¹⁰ (4th Judicial District Court)	925,800	17	12 ^a	4,143 ^b	1,328 ^{b, c}
New Orleans, La. ¹¹ (Orleans Parish Criminal and Civil District Courts)	564,300	16	6	*	*

*Data unavailable or not applicable.

¹Source: Supplied by Fulton County Court Administrator's Office. ³Figures provided were indictments, we multiplied by an average of 1.2 defendants per indictment to get defendant-indictments.

²Source: Provided by the Office of the Executive Secretary, Supreme Judicial Court for the Commonwealth. ^aEstimate. ^bTotal criminal filings included appeals from District Court. All figures are for the period July, 1976 through June, 1977.

³Source: *22nd Annual Report of the Administration Board of the Judicial Conference for Calendar 1976*.

^aFigures include only those cases in which a note of issue was filed.

⁴Source: *1976 Ohio Courts*.

⁵Source: *1976 Texas Annual Report*. ^aTort statistics not reported separately by court. This figure is estimate based on motor vehicle tort statistics reported by the court, adjusted by the proportion of motor vehicle to all torts in our sample of 1976 tort dispositions. ^bJurisdiction uses single count indictment.

AGGREGATE COURT DATA

1976 Tort Dispositions	Torts Pending 1/1/76	Criminal Judges	1976 Criminal Filings	1976 Felony Filings	1976 Felony Dispositions	1976 Felony Adjudications	Felonies Pending 1/1/76
*	*	*	5,296 ^a	5,296 ^a	5,289 ^a	4,585 ^a	398 ^a
*	*	9	3,989 ^b	1,965	3,011	1,974	4,635
3,031 ^a	2,490 ^a	29	3,518	3,518	3,819	3,209	2,966
7,791	9,403	*	6,632	6,632	6,527	*	1,459
4,059 ^a	4,073 ^a	9	10,457 ^b	10,126	12,083	*	*
8,850 ^a	19,993 ^a	7	4,244	4,028 ^b	3,803 ^b	*	1,473 ^c
4,670 ^b	*	7	4,081	4,081	3,799	2,726	1,241
7,562	14,777	15	15,086 ^a	*	*	*	*
11,450 ^b	*	12	11,741	*	*	9,017	*
1,328 ^{b, c}	1,647 ^{b, c}	6	2,369 ^d	2,305 ^e	2,226 ^e	1,490	316
*	*	10	7,525	2,746	*	*	*

⁶Source: Supplied by the 3rd Judicial Circuit Court Administrator's Office. ^aSee footnote ^a for Dallas, Texas. ^bIncludes only cases awaiting trial. ^cExcludes appeals.

⁷Source: Supplied by the 17th Judicial Circuit Court Administrator's Office. ^aEstimate. ^bSee footnote ^a for Dallas, Texas.

⁸Source: 1976 Texas Annual Report. ^aJurisdiction uses single count indictments.

⁹Source: Supplied by Dade County Clerk's Office. ^aEstimate. ^bSee footnote ^a under Dallas, Texas.

¹⁰Source: Supplied by Hennepin County Court Administrator's Office. ^aEstimate. ^bFigures include only those cases for which a trial request was filed. ^cSee footnote ^a for Dallas, Texas. ^dFigures may include habeas corpus petitions, extradition matters, and lower court appeals. ^eExcludes appeals.

¹¹Source: Annual Report with 1976 Statistics and Related Data of the Judicial Council of the Supreme Court of Louisiana.

Jurisdiction	1975 Estimated Population	Total Judges	General Civil Judges	1976 General Civil Filings	1976 Tort Filings
Newark, N.J. ¹² (Essex County Superior Court)	885,300	26	8	6,284 ^a	3,323 ^{a, b}
Oakland, Ca. ¹³ (Alameda County Superior Court)	1,088,700	24	13	10,747	3,825
Philadelphia, Pa. ¹⁴ (Philadelphia County Court of Common Pleas)	1,824,900	60	17	3,620 ^a	1,454 ^a
Phoenix, Az. ¹⁵ (Maricopa County Superior Court)	1,217,500	31	17	18,776	4,230
Pittsburgh, Pa. ¹⁶ (Allegheny County Court of Common Pleas)	1,517,300	31	16	4,444 ^a	2,481 ^a
Pontiac, Mi. ¹⁷ (6th Judicial Circuit Court)	967,500	11	*	8,375	1,715 ^a
Portland, Or. ¹⁸ (Multnomah County Circuit Court)	535,700	17	9 ^a	6,609	*
St. Paul, Mn. ¹⁹ (2nd Judicial District Court)	457,500	12	*	1,741 ^a	*
San Diego, Ca. ²⁰ (San Diego County Superior Court)	1,587,500	28	17	22,302	3,050
Seattle, Wa. ²¹ (King County Superior Court)	1,149,200	24	*	16,455	2,791

¹²Source: *New Jersey Annual Report for Fiscal 1976*. ^aCourt counts only those cases in which at least one answer has been filed. ^bSee footnote ^a for Dallas, Texas. ^cFigures provided by court are indictments and were multiplied by factor of 1.6 defendants per indictment to get number of defendant-indictments.

¹³Source: Derived from monthly reports for calendar 1976 supplied by the Alameda County Court Administrator's Office.

¹⁴Source: *1976 Annual Report of the Philadelphia Common Pleas and Municipal Courts*. ^aFigures include only general civil cases which are at-issue. No arbitration cases.

¹⁵Source: Supplied by the Maricopa County Court Administrator's Office.

1976 Tort Dispositions	Torts Pending 1/1/76	Criminal Judges	1976 Criminal Filings	1976 Felony Filings	1976 Felony Dispositions	1976 Felony Adjudications	Felonies Pending 1/1/76
2,713 ^{a, b}	4,051 ^{a, b}	16	7,083 ^c	7,083 ^c	6,378	4,483	4,272
2,607	*	10	2,711	2,648	2,373	1,977	481
1,289 ^a	3,776 ^a	43	9,122	*	*	*	3,793
4,209	*	10	7,294	5,218	5,533	3,775	*
2,586 ^a	2,939 ^a	14	8,163 ^b	6,781 ^c	6,228 ^d	4,950 ^d	*
1,678 ^a	2,363 ^a	*	4,921	4,822 ^b	5,182	*	1,854
*	*	*	3,627	3,213 ^b	3,675 ^c	*	*
*	*	*	1,051	1,011	978	*	169
2,499	*	9	4,254	4,254	3,913	3,562	*
*	*	*	4,567 ^a	2,625 ^a	*	*	*

¹⁶Source: 1976 Annual Report of the Allegheny County Court of Common Pleas, July 1977. ^aFigures include only general civil cases which are at-issue. No arbitration cases. ^bTotal criminal filings include informations filed, grand jury actions approved, and grand jury actions waived. ^cFelony filings are general criminal filings less non-support, DWI vehicle, and disorderly conduct offenses. ^dFelony terminations include post-indictment diversion, dispositions in lieu of trial, indictment quashed, dismissed, and all trial dispositions less categories of crimes in footnote ^c.

¹⁷Source: Supplied by the 6th Judicial Circuit Court Administrator's Office. ^aSee footnote ^a for Dallas, Texas.

¹⁸Source: Supplied by the Multnomah County Court Administrator's Office. ^aEstimate.

¹⁹Source: 1976 Annual Report, State of Minnesota. Figures supplied by the Ramsey County Court Administrator's Office. ^aIncludes only cases in which a trial request was made. ^bExcludes appeals. ^cAdjusted.

²⁰Source: 1978 Annual Report to the Judicial Council, Fiscal 1975-1976 figures used.

²¹Source: Supplied by King County Court Administrator's Office. ^aFigures are indictments which may involve more than one defendant. Appeals are excluded.

APPENDIX D – Sponsoring Organizations

National Center for State Courts

The National Center for State Courts is a nonprofit organization dedicated to the improvement of justice at the state and local level and the modernization of court operations. It functions as an extension of the state court systems, working at their direction to provide an effective voice in matters of national importance to them.

The National Center thus acts as a focal point for judicial reform—serving as a catalyst for setting and implementing standards of fair and expeditious judicial administration, helping determine and disseminate solutions to the problems of state judicial systems. In sum, the National Center for State Courts provides the means for reinvesting in all states the profits gained from judicial advance in any state.

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National Conference of Metropolitan Courts

The National Conference of Metropolitan Courts was founded in 1963 through the efforts of Mr. Justice Tom C. Clark, who remained its Honorary Chairman until his death.

The National Conference is a nonprofit organization composed of presiding judges or chief judges of the 60 largest metropolitan courts in the United States. Its purpose is to find among the good practices of these courts the best programs for the administration of courts and to gain the commitment of these programs by the judges who can effect their adoption.

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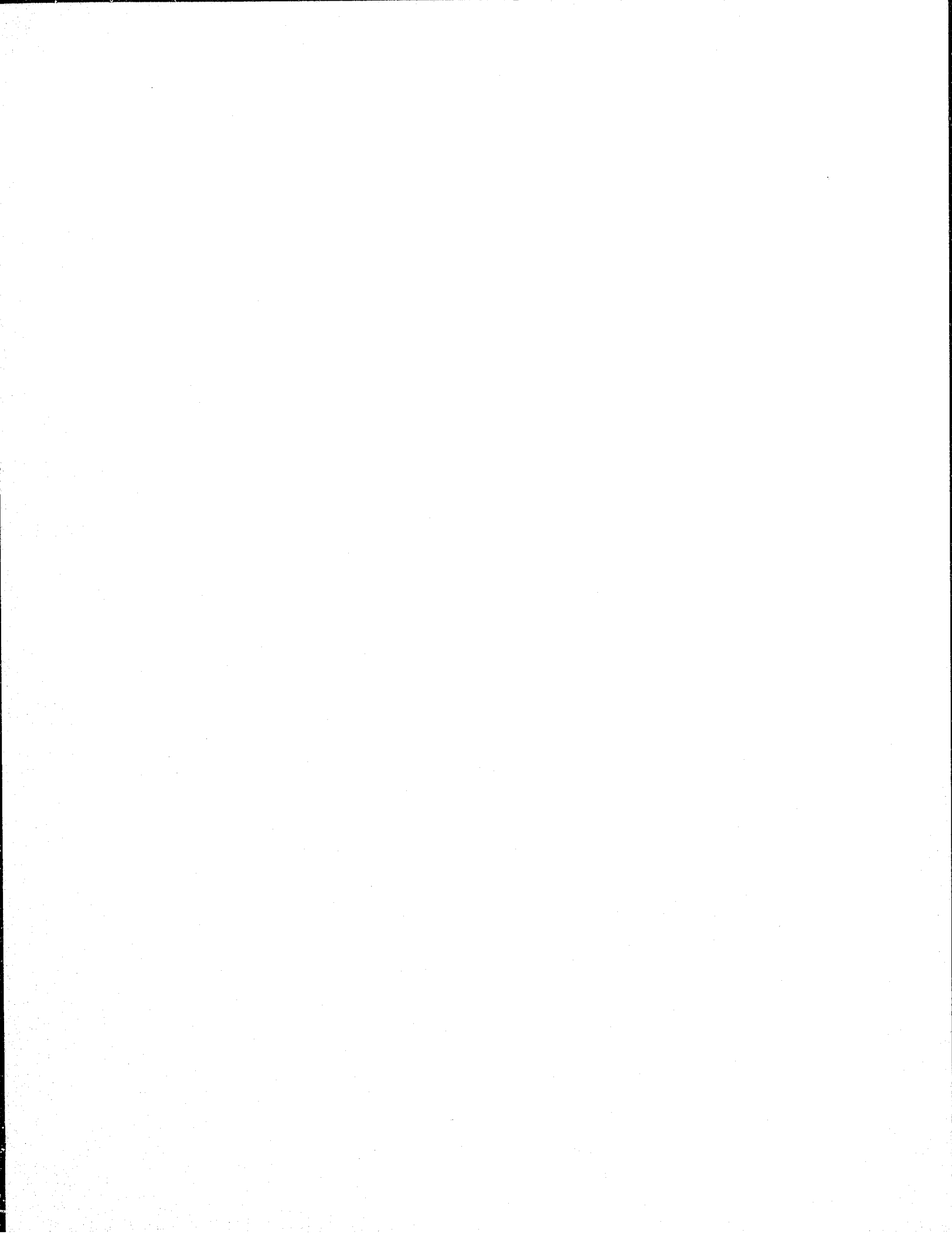
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