

✎ Using Work Orientations to Assess Case Processing Quality

A good starting point for developing a measure of effective advocacy is to assess the central differences in work orientation among faster and slower courts. Work orientations describe how people go about doing their jobs. They have been a central subject in previous research and reflection in criminal trial court systems. Nardulli, Eisenstein, and Flemming (1988) in their comprehensive and careful analyses of nine systems in Illinois, Michigan, and Pennsylvania develop a three-fold typology of work orientations to describe the operations of the different court systems. According to these scholars, each of the nine courts falls into one of three categories of work orientation: (1) formal, (2) efficient, or (3) pragmatic.

Each of these three different orientations is a set of principles that the judges, prosecutors, criminal defense attorneys, and court staff adhere to in justifying the way they go about doing their work. How do they organize themselves to get their work done? What alternative procedures do they follow in handling cases? To what extent is work monitored and evaluated?

The formal work orientation stresses the importance of professional development of judges and attorneys. Nardulli, Eisenstein, and Flemming (1988) contend that commitment to professional development fosters the values of limited discretion and the importance of appearing even-handed. For example, the formal work orientation commitment to long-term employment among prosecutors and defense attorneys is maintained, even though most cases are routine in nature and may not require the expertise of highly experienced and highly paid attorneys to resolve. In contrast, the efficient work orientation values professional development and discretion, but only if they facilitate the flow of cases, which is the primary value. There is limited tolerance for time- and resource-consuming procedures, which are otherwise justified because of tradition or some transcendent value. Finally, the pragmatic orientation is a commitment to resolving cases in an informal manner as the result of negotiations and bargaining. Case resolution depends on the bargaining skills of good lawyers, not particular procedures, technological support, or court staff.

Nardulli, Eisenstein, and Flemming (1988) posit that the type of work orientation present in each court system shapes the court system's entire infrastructure: "the structural arrangements of the court system's basic subcomponents, the bench, the prosecutor's office and the defense bar" (p. 163). They hypothesize that the resulting infrastructure, in turn, affects what they call the tenor of justice or the basic choices that judges and attorneys make. Hence, what they argue is

that court system performance reflects a chain of attitudes and actions beginning with work orientations. Variations in work orientations shape court system infrastructures, which, in turn, affect variations in fundamental decisions and strategies used by prosecutors, criminal defense counsel, and judges.

We agree with the emphasis that Nardulli, Eisenstein, and Flemming (1988) place on work orientations in the development of court practitioner attitudes, but offer a somewhat different conceptualization. As we discussed previously, we have developed the concept of the productivity frontier as a means to assess and compare efficiency across courts. Efficiency is the best allocation of resources needed to get the most of what courts value, and we argue that two fundamental values are timeliness and quality case processing. Furthermore, we believe that the multidimensional area of case processing quality can be assessed with reference to Nardulli, Eisenstein, and Flemming's concept of work orientation.

We interpret Nardulli, Eisenstein, and Flemming's (1988) classification of work orientations as highlighting many of the basic elements that comprise and define the court work environment and, by extension, should offer considerable insight into the quality of case processing. A court's ability to provide quality case processing will be influenced by attributes of what Nardulli, Eisenstein, and Flemming call the pragmatic (e.g., nature of prosecutor and defender plea bargaining practices), formal (e.g., skill, experience, and preparation of the prosecuting and defense attorneys), and efficient (e.g., extent to which court policies and practices reduce delay) work orientations. Therefore, because work orientations describe the court system environment in which prosecutors, defense counsel, and judges interact, systematic knowledge of them also provides the foundation for understanding important dimensions of the quality of case processing.

¶ The Importance of Attorney Attitudes in Determining Work Orientations

The subjects of our inquiry are the prosecutors and criminal defense attorneys who practice in each of the nine court systems under study. Because of the seemingly insurmountable difficulties of achieving consensus on how to measure case processing quality directly, we use an indirect method that highlights essential aspects and ingredients of quality.

Our indirect test involves clarifying key elements of court work orientations in court systems with different speeds. To guide this process, we draw on literature related to local legal culture and court management and the Trial Court Per-

formance Standards. The focus is on identifying attorney attitudes toward workload challenges, the extent to which attorneys believe those challenges can be met, and the ways that they see opposing counsel and the court helping or hindering the criminal court system's achievement of expedition and timeliness. These attitudes, which can be measured, are hypothesized to vary with case processing time, which also can be measured. The test hypothesis is that attorneys in the more expeditious court systems have distinctively different views toward possible determinants of timeliness, such as resources, management, attorney competency and preparation, and court and attorney practices, than the attorneys in the less expeditious court systems.

Local Legal Culture

One interest in the relationship between attorneys' views and timeliness is related to a well-established proposition that in almost all court systems there is a sharing of particular "expectations, practices, and informal rules" among the attorneys and judges. Church, Carlson, et al. (1978) conceive of the constellation of attitudes in a given court system as its "local legal culture." How long the judges and attorneys expect cases to take to be resolved has profound consequences for how long cases actually take to resolve. If the common expectation is that most cases should take two years to be resolved, it will take close to two years in reality. On the other hand, if the shared expectation is one year, the reality will be close to one year. In other words, prosecutors and criminal defense attorneys live up to their expectations.

Church (1986) has conducted research that demonstrates that there is a consensus on appropriate disposition time among judges, prosecutors, and criminal defense attorneys in each of several different court systems. He selectively chose four court systems (Bronx, Detroit, Miami, and Pittsburgh) and asked practitioners to estimate the appropriate disposition time in each of several hypothetical case scenarios. He found that there was an attitudinal consensus in each court system. Moreover, the agreement among the practitioners in each system on how long cases should take to resolve corresponded to the system's actual processing time. The shorter the appropriate time according to the practitioners, the shorter the system's actual processing time. The finding confirmed the idea that attorneys' attitudes vary across courts and that this variation is related to the actual pace of litigation in those courts.

The importance of attorneys' views also is emphasized in the work of Eisenstein, Flemming, and Nardulli (1988). They use the term county legal cul-

ture instead of the concept of local legal culture because they want to make it clear that the courts they are examining have countywide jurisdiction. However, they agree with Church and his colleagues that the attitudes that make up culture are of substantial importance. Eisenstein, Flemming, and Nardulli contend that attitudes shape both the nature of the court community on a macrolevel and the decision-making behavior of individual judges and attorneys on a microlevel. Eisenstein, Flemming, and Nardulli do not explicitly test any hypothesis about the linkage between county legal culture and observable activities such as plea bargaining, sentencing, and timeliness, but they offer a reasoned account of the relationship between attorneys' views and what goes on in a court system.

Court Management

Efforts to apply the insights and evidence gained from the scholarly literature are seen in applied court management studies. Judges are seen as having primary responsibility for determining how long cases take to be resolved, but attorneys are seen as important collaborators. A leading management expert, along with several colleagues, has identified ten common elements of successful delay reduction programs including leadership, goals, and communication. Mahoney et al. (1988) write:

Delay reduction and delay prevention programs are not undertaken in a vacuum. If there is any one lesson from the research and experimentation of the past decade, it is that good communications and broad consultations—within the court (including both judges and staff), between the trial court and state level leaders, and with the private bar and key institutional actors such as the prosecutor and public defender—are essential if a program is to succeed. . . . Our emphasis on communications is hardly surprising, given the centrality of the local culture to the pace of trial court litigation. If delay reduction programs are to succeed, practitioner attitudes, practices, norms, incentives, and expectations must be understood and taken into account in designing the program and in making adjustments once the program is underway.⁹²

In their work, Mahoney et al. (1988) acknowledge that they “did not systematically assess the linkage between practitioner attitudes and case processing times.”⁹³ However, they do report the results of a survey that they sent to court

⁹² Mahoney et al. (1988), p. 200.

⁹³ *Ibid.*, p. 87.

managers for their views on the factors contributing to delay in civil cases. They perform a limited analysis and interpretation of the survey responses, but the researchers say the results affirm the importance of local legal culture:

The responses to this question [what factors contribute most to court delay?] reinforce the notion that there are significant differences across the courts—particularly between relatively fast and relatively slow courts—with respect to the attitudes, expectations, and behavior patterns of those involved in the trial court litigation process.⁹⁴

Again, work orientation is believed to vary between courts of different speed.

Trial Court Performance Standards

In 1987, the court community took a major stride toward expanding its ability to measure and assess its performance through the initiation of the Trial Court Performance Standards (TCPS). “The program’s objective was to increase the capacity of the nation’s trial courts to provide fair and efficient adjudication and disposition of cases . . . [based on] the theme of the court as an organization accountable for its performance.”⁹⁵ The TCPS provide a framework to assess court performance in five general areas:

1. Access to Justice
2. Expedition and Timeliness
3. Equality, Fairness, and Integrity
4. Independence and Accountability
5. Public Trust and Confidence

These groupings represent ways of viewing the fundamental responsibilities and purposes of trial courts, such as complying with recognized guidelines for timely case processing; giving individual attention to cases; using their public resources responsibly; and working independently of, but in cooperation with, other justice system agencies.⁹⁶

⁹⁴ *Ibid.*, p. 89.

⁹⁵ Trial Court Performance Standards and Measurement System, BJA, Program Brief, July 1997, p. 1.

⁹⁶ Courts have historically had more experience with assessing performance in the area of expedition and timeliness. Courts know how to measure timeliness. On the other hand, the measures related to the remaining four performance areas have received only limited testing in the field. Assessing these “nontraditional” areas of court performance often requires courts to collect and analyze data that are not readily accessible (e.g., survey and interview data). The reality that timeliness is firmly enshrined into court consciousness underlies our choice of model. We establish the timeliness dimension and then compare other attributes of quality against this yardstick.

The TCPS underscore the point that court performance and work orientation require attention to be directed at a set of diverse, yet closely linked processes and tasks. However, the TCPS measurement system does not build on this idea by suggesting that the multiple areas of performance be gauged simultaneously. Each of the five performance areas—including expedition and timeliness—has its own differentiated and discrete set of performance measures. Courts assess performance in each of the five areas separately so that, say, timeliness is assessed without reference to, say, public trust and confidence. The TCPS measurement system fails to weave a web that links expedition and timeliness to the other four standard areas. The current research takes a first step toward developing a means to measure court performance along multiple dimensions simultaneously.

Hence, our reading of the literature indicates that there is considerable interest among scholars and applied researchers on the interrelationships among key concepts such as work orientations, legal culture, and court system performance. Nardulli, Eisenstein, and Flemming (1988) have established the importance of work orientations in explaining court operations. Their organizing ideas have yet to be tested with systematic data, however. In addition, Church and others have measured the extent to which judges' and attorneys' attitudes on appropriate disposition time are associated with differences in actual case processing times. Yet, the single measure of the expected disposition time or "local legal culture" lacks the richer idea of work orientations. Finally, over the last ten years there have been numerous efforts to conceptualize and define the elements of successful court management as well as overall trial court performance through the TCPS. These efforts provide a useful framework or "blueprint" for assessing successful trial court administration, but they have yet to be applied extensively. As a result, the extent to which practitioners' views on appropriate disposition time are related to other potentially relevant views remains largely unknown.

¶ Conceptualization and Measurement of Attorneys' Views

The role of alternative work orientations in providing effective advocacy is extremely difficult to measure. Ultimately, differences in court performance derive from the hundreds of activities required to move cases from filing to disposition. Assembling information on all of the activities that make up a court system's work orientation would require such close observation that it is beyond the time and resources available to comparative field research. For that reason, even the extensive effort conducted by Nardulli, Eisenstein, and Flemming (1988) offers

more in the way of insights and acute observations than systematic data on the connection between work orientations and court operations. Our hunch that the overall efficiency of court systems can be gauged according to timeliness and quality is beset by the same challenges confronting others. To overcome these obstacles, we assemble a body of data on attorney attitudes or work orientation and, by extension, case processing quality in courts with varying degrees of timeliness.

The four dimensions of work orientation discussed below are designed to gather information relevant to (1) the internal operations of each of the institutional participants in the legal process (i.e., the court, the prosecutor's office, and the system of indigent criminal defense) and (2) the strategic interaction *between* the court, prosecutor, and defense. The timely and effective processing of criminal cases requires *each* organization—the court, the prosecutor's office, and the criminal defense office—to be well run. But achieving efficiency throughout a court system also requires success in managing *interagency* relations.

This dual need is acknowledged in the court administration and management literature. That body of knowledge suggests that timeliness should be associated with work orientations that (1) ensure that resources are efficiently used and effectively managed; (2) develop fluid interagency management, communication, and leadership; (3) gain and exercise control over the flow of cases through the system; and (4) value practitioner preparation and skill levels.⁹⁷

Views Toward Resources

Resources in a criminal court system are usually considered to consist of the number of key personnel such as judges, prosecutors, and defense counsel. Adequate resources means an adequate number of judges, prosecutors, and defense counsel. Despite the seemingly straightforward nature of this concept, the complex nature of resources is evident by the difficulties in answering basic questions. When are resources adequate? What resources are needed to reduce court delay? Finally, how can resources be used to achieve productivity and quality simultaneously?

Contemporary studies of court timeliness generally conclude that variation in resources, as measured by the number of cases filed or disposed per judge, does not explain variation in the extent to which courts are expeditious,⁹⁸ though most of these studies found that the larger the backlog of cases, the longer the

⁹⁷ Solomon (1973); Flanders (1977); Friesen (1984); Solomon and Somerlot (1987); Mahoney et al. (1988); Hewitt et al. (1990).

⁹⁸ Flanders (1977); Church, Carlson, et al. (1978); Mahoney et al. (1988); Goerdts et al. (1991).

case processing times.⁹⁹ But even if there is not a consistent relationship between the level of resources and the pace of litigation in comparative court research, attorneys and judges in almost all court systems are likely to believe they could use additional resources.¹⁰⁰ Even in courts that are close to meeting the ABA standards, attorneys might be working vigorously and conscientiously to maintain their level of performance. They might reasonably perceive the need for additional resources to relieve the pressure they feel or to ensure the system's performance during a time of rising workloads. In jurisdictions that are slow in disposing most cases, attorneys and judges are likely to attribute their problems primarily to a lack of resources rather than their own managerial limitations. Thus, the expectation is that attorneys in every court system want additional resources, though attorneys in jurisdictions with expeditious case processing times will see the lack of resources as a less serious problem than attorneys in slow jurisdictions.

Views Toward Performance

A long-standing belief among criminal justice scholars and practitioners is that the prosecutors and defense attorneys will have distinctive views toward each other because of their different positions in the adversarial legal system. However, we believe that the effects of different positions in the adversarial system do not necessarily extend to views on the competency of opposing counsel. When opposing counsel see each other as well prepared and able to present arguments effectively and respond clearly and accurately to judicial questioning, they are more likely to put forth their own arguments coherently. Reciprocal perceptions of competency permit attorneys to engage the court. It is truly frustrating when issues cannot be joined because opposing counsel is confused on account of inexperience, haste, or extravagant insouciance. Confusion by an opponent requires counsel first to spend time eliminating the confusion in the mind of the judge, jury, or witness and then to focus on what they consider to be the real

⁹⁹ Church, Carlson, et al. (1978); Mahoney et al. (1988); Goerd et al. (1991). These studies used the backlog index (the number of pending cases at the start of the year divided by the number of cases disposed during the year) as a measure of relative backlog. Each study found a moderately strong to strong bivariate correlation between the backlog index and median case processing times. However, the backlog index is based on the number of cases disposed in a year, so the index is inherently a measure of case processing time (e.g., a backlog index of .50 means the court disposed of the pending caseload in six months; an index of 1.0 means the court disposed of the pending caseload in one year).

¹⁰⁰ Church, Carlson, et al. (1978) note that attorneys and judges interviewed in almost every court in their study (21 jurisdictions) claimed they needed more resources, a reduction in caseload through increased diversion efforts, or both (p. 79).

issues, with perhaps less than the desired amount of time for articulating their own view of the issues. For this reason, we hypothesize that prosecutors and defense counsel in expeditious court systems will be more likely than their counterparts in less expeditious courts to consider their respective opponents to be well prepared and competent trial attorneys.

Eisenstein, Flemming, and Nardulli (1988) suggest that attorneys in every court system achieve a consensus on acceptable ways of resolving cases. Conformity is encouraged, and attorneys who violate norms are penalized in some way. As a result, their conception of legal practice would suggest that there is no connection between attorneys' views on the competence and performance of opposing counsel and court system timeliness. Attorneys in fast courts may be just as likely as attorneys in slow courts to view the trial skills of their opponents positively. We think that there will be a different pattern. Attorneys in expeditious courts will be more likely than their counterparts in less expeditious courts to have positive and reciprocal views of their opponents' performance and competence.

Views Toward Management

The field of court management has developed the ingredients for success in reducing court delay. The prescribed way to achieve timeliness consists of a series of specific actions that the court needs to take the lead in implementing. They include establishing time goals, promoting formal and informal communications among judges and attorneys, and creating the opportunity for attorneys to provide input and advice on procedural changes. National and regional workshops, seminars, and conferences have been conducted over the past several years to educate judicial and bar leaders on the utility of these sorts of activities.

Our proposition is that attorneys who value timeliness and case processing quality will seek to conduct their business efficiently by being more cognizant of and receptive to case management principles. For example, more attorneys in expeditious courts can be expected to agree that there is the opportunity for dialogue with judges and that judges take responsibility for managing the court caseload rather than allowing attorneys to control the pace of litigation. In less expeditious courts, there will be less agreement among attorneys that the elements of case management are present.

The relationship between attorneys' views toward management and court system timeliness is not necessarily obvious. Attorneys are primarily interested in their own individual caseloads. They seek to resolve their cases in a manner that they deem necessary and appropriate. Taking care of their individual cases

comes before pondering how best to resolve cases on an office- or systemwide level. However, we believe that in court systems in which the individuals work relatively efficiently, they are more likely to have their antenna up and to be receptive to court-led efforts to introduce case management. They will be more likely to see a connection between system goals and their personal work (e.g., the firmer the trial date, the easier it is for attorneys to communicate confidently with their clients).

Views Toward Practices and Procedures

Even if attorneys share a work orientation that fosters the efficient use of resources, this agreement does not lead to positive views about one another's practices. Attorneys in expeditious courts might view the other side as competent, but not necessarily approve of the other side's tactics. Prosecutors' and defense attorneys' views on the practices of their adversaries are deeply rooted in their conflicting missions. Hence, prosecutors and defense counsel in expeditious courts are just as likely to be critical of their opponents' practices as their counterparts are in less expeditious courts. For example, prosecutors will see criminal defense attorneys' practices as contributing to delay, but see their own practices as not inhibiting expedition and timeliness. The converse is also expected. Defense counsel in fast courts are just as likely as defense attorneys in slow courts to believe that prosecutorial practices inhibit timeliness.

In sum, we draw on the attitudes of prosecutors and criminal defense attorneys toward multiple factors of court performance (our interpretation of what Nardulli, Eisenstein, and Flemming [1988] call work orientation) to delineate and assess fundamental aspects of quality case processing. We believe that there will be distinct patterns of attitudes and that the attitudinal patterns will be related to variation in court system timeliness. There is no reason, however, to expect disagreement between prosecutors (or criminal defense attorneys) in the most expeditious court systems versus the least expeditious court systems on every attitude. Because prosecutors and criminal defense attorneys hold particular positions in the American adversarial criminal justice system, their views are likely contingent on the specific issue being investigated. On the one hand, prosecutors and defense attorneys may be sharply critical of how, for example, plea bargaining practices and procedures are conducted by their counterparts in all court systems—regardless of their particular system's overall degree of timeliness. Different attorney responsibilities and obligations (e.g., protection of society versus protection of constitutional rights)—the adversary system—will shape attorney

interactions in courts of all speeds. On the other hand, prosecutors and criminal defense attorneys working in a more timely court will believe, for example, that a given level of resources is adequate even though prosecutors and criminal defense attorneys in a less timely court may see the same level of resources as inadequate. Such findings will provide a greater understanding of how it is possible to have an adversarial environment, yet a systemwide commitment to efficient case processing.

🦋 Hypotheses and Methodology

Based on this review of the literature, there are three basic propositions that we want to test against systematic survey data on attorneys' views and case processing times in the nine court systems. In testing these propositions, we classify the systems into three categories according to the timeliness of case resolution: (1) faster (Cincinnati, Grand Rapids, Portland), (2) moderate (Oakland, Sacramento, Albuquerque), and (3) slower (Austin, Hackensack, Birmingham) processing times. The propositions are as follows:

1. There will be substantial differences between the views of prosecutors and defense attorneys towards resources, management, and performance in the fastest court systems and the views of their counterparts in the slowest court systems. Moreover, the differences in attorneys' views will be greater when comparing faster court systems and slower court systems than when comparing faster and moderate-paced court systems or moderate-paced and slower court systems.
2. Consensus on resources, management, and performance is more likely among prosecutors and defense counsel in the fastest courts than among their counterparts in less expeditious court systems.
3. Attorneys in expeditious courts will be more likely than their counterparts in less expeditious courts to have positive and reciprocal views of their opponents' performance and competence.

The questionnaires used a Likert scale, named for its creator, to obtain the respondents' degree of agreement or disagreement with some issue about their criminal court system. The actual items are not questions, but observations that reflect a point of view. Respondents indicate their agreement or disagreement with the validity of the point of view by registering their views on a 5 (strongly agree) to 1 (strongly disagree) scale. An advantage of this scale is the ability to sum the responses to several observations (e.g., obser-

vations related to different aspects of management). Besides getting the results of each individual item, one can obtain a total score for a set of items. A total score, then, becomes an index of attitudes toward a major issue (e.g., management) as a whole.

Thirty-three items of considerable relevance to defining differences in work orientation between courts have been culled from the original questionnaire for analysis. Table 4.1 provides a description of the 33 questions, the number of response categories, and an interpretation of the “5” response.¹⁰¹

From our previous discussion, we believe it is possible to create a profile of work orientation by focusing on four basic components: resources, management, jurisdictional practice, and performance. To test this proposition, we must develop operational definitions for each of these four components.

Resources

Two sets of statements relate to the sufficiency of resources. First, there are four items that ask the extent to which attorneys agree with the basic proposition that there are enough judges and enough attorneys to get the work done: “There are enough judges to dispose of 100% of felony cases within 1 year of arrest” (R1); “There are enough prosecutors to dispose of 100% of all felony cases within 1 year of arrest” (R2); “There are enough defense attorneys to dispose of 100% of all felony cases in 1 year” (R3); and “The system should be able to dispose of 100% of all felony cases in 1 year” (R4). To develop a robust measure (or index) of “personnel sufficiency,” we constructed a single scale that combines the four factors.¹⁰² The higher the value on the Personnel Sufficiency Index, the greater the attorney’s satisfaction with the level of available resources.

Second, three items asked the attorneys to rate the extent to which they agree with the idea that compensation is fair (B1), that their office budget has kept pace with increases in caseload over the past five years (B2), and that existing facilities are adequate (B3). The scores on these two items were added together to

¹⁰¹ The entire questionnaire, including items not used in the analysis, is found in Appendix 3. This appendix also contains a table showing the questionnaire response rate.

¹⁰² The reliability of the scale can be assessed using Cronbach’s Alpha. This statistic can be interpreted as a correlation coefficient that varies between 0 and 1. Because the items in a scale are assumed to be measuring different aspects of the same phenomenon, the items should be positively correlated. Larger values of alpha indicate a higher degree of correlation between the scale items. Cronbach’s Alpha is reported at the bottom of the page displaying each scale.

Table 4.1
Prosecutor and Defense Attorney
Survey Questions

| | 5 | 1 |
|---|--|----------------|
| Description | Best Response | Worst Response |
| Response of "5" indicates | | |
| Index of Jurisdictional Practice | | |
| CP1 | Delay in felony case adjudication is not a problem in this jurisdiction | strongly agree |
| CP2 | Trial date continuances are not easy to obtain from judges in felony cases | strongly agree |
| CP3 | Court policies and practices do not cause delay | not a cause |
| DP1 | Defender plea bargaining practices do not contribute to unnecessary delay | strongly agree |
| DP2 | Defender policies and practices do not cause delay | not a cause |
| PP1 | Prosecutor screening practices are effective in minimizing dismissals | strongly agree |
| PP2 | Prosecutor plea bargaining practices do not contribute to unnecessary delay | strongly agree |
| PP3 | Prosecutor policies and practices do not cause delay | not a cause |
| Index of Management | | |
| C1 | Adequate opportunities for judges and attorneys to discuss management issues | strongly agree |
| C2 | There are clear goals for the time it should take to dispose of felony cases | strongly agree |
| C3 | There is very good communication among judges and attorneys regarding case management | strongly agree |
| L1 | Effective judicial leadership is a strength of this criminal justice system | strongly agree |
| L2 | Effective leadership by the prosecutors is a strength of this criminal justice system | strongly agree |
| L3 | Effective leadership by the defenders is a strength of this criminal justice system | strongly agree |
| Index of Resources | | |
| R1 | Enough judges to dispose of 100% of felony cases within 1 year after arrest | strongly agree |
| R2 | Enough prosecutors to dispose of 100% of felony cases within 1 year after arrest | strongly agree |
| R3 | Enough defenders to dispose of 100% of felony cases within 1 year after arrest | strongly agree |
| R4 | System should be able to dispose of 100% of felony cases within 1 year of arrest | strongly agree |
| B1 | Compensation for my services is fair | strongly agree |
| B2 | The prosecutor/defender budget has kept pace with caseload growth over past five years | strongly agree |
| B3 | Office has adequate facilities to handle felony caseload | strongly agree |
| Index of Performance | | |
| E1 | Experience with felony cases: full-time defenders | excellent |
| E2 | Experience with felony cases: part-time assigned attorneys | excellent |
| E3 | Experience with felony cases: private retained attorneys | excellent |
| E4 | Experience with felony cases: prosecutors | excellent |
| P1 | Preparation for felony hearings/trials: full-time defenders | excellent |
| P2 | Preparation for felony hearings/trials: part-time assigned attorneys | excellent |
| P3 | Preparation for felony hearings/trials: private retained attorneys | excellent |
| P4 | Preparation for felony hearings/trials: prosecutors | excellent |
| T1 | Felony trial skills: full-time defenders | excellent |
| T2 | Felony trial skills: part-time assigned attorneys | excellent |
| T3 | Felony trial skills: private retained attorneys | excellent |
| T4 | Felony trial skills: prosecutors | excellent |

provide an Index of Budget Sufficiency. Table 4.2 provides an overview of the two resource scales along with their corresponding individual items. It shows the overall average (arithmetic mean) score for each item and for each scale. In addition, it provides the results from two statistical tests. The first test examines whether there are significant differences between the views of prosecutors and defenders in each group, and the second test examines whether there are significant differences between the views of attorneys across the three groups of courts.

Management

There are two sets of management-related factors that we refer to as Communication and Leadership. First, the level of communication between judges, prosecutors, and defense attorneys can be gleaned from responses to the following statements: “There are adequate opportunities for the judges and attorneys to discuss management issues” (C1); “Clear goals exist for the time it should take to dispose of felony cases” (C2); and “There is very good communication among judges and attorneys regarding case management” (C3). An Index of Communication was developed using an additive scale that combines these three factors. The higher the values, the stronger the agreement that communication flows positively and clearly.

Second, the extent of interagency leadership can be determined from responses to the following statements: “Effective judicial leadership is a strength of this criminal justice system” (L1); “Effective leadership by the prosecutor is a strength of this criminal justice system” (L2); and “Effective leadership by the criminal defense bar is a strength of this jurisdiction” (L3). Responses to these three statements were combined to form an Index of Leadership. The higher the values, the higher the levels of agreement that leadership is exerted.

Table 4.3 provides an overview of the two management scales along with their constituent items. The average value for each item and index is displayed. The table also shows the result of a statistical difference of means tests for assessing differences between the prosecutor and defense attorney responses as well as the results for assessing differences between the three categories of court systems (faster, moderate, and slower).

Jurisdictional Practice

There are three sets of factors that play a significant role in assessing how judge, prosecutor, and defense counsel practices affect the flow of cases through the court system: Court Practice, Prosecution Practice, and Defense Counsel Practice.

Table 4.2
Index of Resources

Higher scores indicate stronger agreement with questions posed.

| Questions and Respondent Group | Comparing Courts of Different Timeliness | | | Significant Differences (.05 level or greater) Between Courts | |
|---|--|---------------|-----------------|---|---------------|
| | All Courts Combined | Faster Courts | Moderate Courts | | Slower Courts |
| Index of Personnel Sufficiency | | | | | |
| Defender | 12.8 * | 14.8 | 11.5 * | 12.0 * | a,b |
| Prosecutor | 11.9 | 13.9 | 10.6 | 10.9 | a,b |
| Enough judges to dispose felonies within 1 year from arrest | | | | | |
| Defender | 2.7 * | 3.4 | 2.8 * | 2.1 * | a,b,c |
| Prosecutor | 2.3 | 3.2 | 2.2 | 1.6 | a,b,c |
| Enough prosecutors to dispose felonies within 1 year from arrest | | | | | |
| Defender | 3.5 * | 3.8 * | 3.4 * | 3.2 * | a,b |
| Prosecutor | 2.3 | 2.7 | 2.0 | 2.3 | a |
| Enough defenders to dispose felonies within 1 year from arrest | | | | | |
| Defender | 2.7 * | 3.4 | 2.0 * | 2.8 * | a,b,c |
| Prosecutor | 3.2 | 3.5 | 2.7 | 3.3 | a,c |
| System should be able to dispose all felonies within 1 year of arrest | | | | | |
| Defender | 3.8 | 4.0 | 3.4 * | 3.8 | a |
| Prosecutor | 4.0 | 4.2 | 3.9 | 3.7 | b |
| Index of Budget Sufficiency | | | | | |
| Defender | 5.9 * | 5.3 | 7.0 | 5.6 * | a,c |
| Prosecutor | 6.2 | 6.0 | 6.5 | 6.1 | a |
| Compensation is fair | | | | | |
| Defender | 2.0 * | 1.6 | 3.0 | 1.5 * | a,c |
| Prosecutor | 2.4 | 2.0 | 3.0 | 2.4 | a,b,c |
| Budget has kept pace with increase in caseload over past 5 years | | | | | |
| Defender | 1.7 | 1.7 | 1.7 | 1.7 | |
| Prosecutor | 1.6 | 1.7 | 1.5 | 1.8 | |
| Adequate facilities | | | | | |
| Defender | 2.3 | 2.1 | 2.4 | 2.5 * | b |
| Prosecutor | 2.2 | 2.4 | 2.1 | 2.1 | |

* Statistically significant difference (.05 level or greater) between prosecutors' and defenders' mean scores.

KEY: a Significant difference between faster courts and moderate courts.

b Significant difference between faster courts and slower courts.

c Significant difference between moderate courts and slower courts.

Index Reliability: Personnel Sufficiency (Cronbach's $\alpha = .65$); Budget Sufficiency (Cronbach's $\alpha = .34$)

Table 4.3
Index of Management

Higher scores indicate stronger agreement with questions posed.

| Questions and Respondent Group | Comparing Courts of Different Timeliness | | | | Significant Differences (.05 level or greater) Between Courts |
|--|--|---------------|-----------------|---------------|---|
| | All Courts Combined | Faster Courts | Moderate Courts | Slower Courts | |
| Index of Communication | | | | | |
| Defender | 7.9 | 8.4 | 7.8 | 7.3 | b |
| Prosecutor | 8.3 | 9.0 | 8.6 | 7.2 | b,c |
| Adequate opportunities for court, prosecutors, and defenders to discuss problems | | | | | |
| Defender | 2.6 * | 2.6 | 2.6 * | 2.6 | |
| Prosecutor | 2.9 | 2.9 | 3.2 | 2.6 | c |
| Clear goals for time to disposition | | | | | |
| Defender | 2.8 | 3.3 | 2.7 | 2.4 | a,b,c |
| Prosecutor | 2.8 | 3.4 | 2.8 | 2.2 | a,b,c |
| Good communication among court, prosecutors, and defenders on case management | | | | | |
| Defender | 2.5 | 2.6 | 2.5 | 2.4 | |
| Prosecutor | 2.7 | 2.9 | 2.7 | 2.4 | b |
| Index of Leadership | | | | | |
| Defender | 7.6 * | 7.4 * | 7.3 * | 8.1 | |
| Prosecutor | 8.7 | 9.2 | 8.9 | 8.1 | b,c |
| Effective judicial leadership | | | | | |
| Defender | 2.5 | 2.5 | 2.2 | 2.8 * | c |
| Prosecutor | 2.3 | 2.6 | 2.4 | 2.0 | b,c |
| Effective prosecutorial leadership | | | | | |
| Defender | 2.1 * | 2.0 * | 2.1 * | 2.0 * | |
| Prosecutor | 3.8 | 3.9 | 3.8 | 3.6 | |
| Effective defense bar leadership | | | | | |
| Defender | 3.0 * | 2.9 | 3.0 | 3.2 * | |
| Prosecutor | 2.6 | 2.7 | 2.7 | 2.4 | |

* Statistically significant difference (.05 level or greater) between prosecutors' and defenders' mean scores.

KEY: a Significant difference between faster courts and moderate courts.

b Significant difference between faster courts and slower courts.

c Significant difference between moderate courts and slower courts.

Index Reliability: Communication (Cronbach's $\alpha = .68$); Leadership (Cronbach's $\alpha = .45$)

Table 4.4
Index of Jurisdictional Practice

Higher scores indicate stronger agreement with questions posed.

| Questions and Respondent Group | Comparing Courts of Different Timeliness | | | | Significant Differences (.05 level or greater) Between Courts |
|---|--|---------------|-----------------|---------------|---|
| | All Courts Combined | Faster Courts | Moderate Courts | Slower Courts | |
| Index of Court Practice | | | | | |
| Defender | 9.2 * | 9.2 | 9.8 * | 8.8 * | c |
| Prosecutor | 7.7 | 8.8 | 7.5 | 6.8 | a,b,c |
| Delay is <i>not</i> a problem | | | | | |
| Defender | 2.8 * | 2.8 | 3.1 * | 2.5 * | c |
| Prosecutor | 2.2 | 2.8 | 1.9 | 2.0 | a,b |
| Continuances are <i>not</i> easy to obtain | | | | | |
| Defender | 2.9 * | 2.9 | 2.9 * | 3.0 * | |
| Prosecutor | 2.3 | 2.6 | 2.2 | 1.9 | a,b,c |
| Court practices do <i>not</i> cause delay | | | | | |
| Defender | 3.5 * | 3.4 | 3.8 * | 3.2 | a,c |
| Prosecutor | 3.2 | 3.3 | 3.4 | 3.0 | b,c |
| Index of Prosecution Practice | | | | | |
| Defender | 8.3 * | 8.2 * | 8.8 * | 7.8 * | c |
| Prosecutor | 12.8 | 12.7 | 13.1 | 12.7 | |
| Prosecutorial screening is effective | | | | | |
| Defender | 3.0 * | 2.9 * | 3.1 * | 2.9 * | |
| Prosecutor | 4.5 | 4.4 | 4.7 | 4.4 | |
| Prosecution plea bargaining practices do <i>not</i> cause delay | | | | | |
| Defender | 2.2 * | 2.3 * | 2.4 * | 2.0 * | |
| Prosecutor | 4.1 | 4.0 | 4.2 | 4.0 | |
| Prosecution practices do <i>not</i> cause delay | | | | | |
| Defender | 3.1 * | 3.0 * | 3.3 * | 2.9 * | c |
| Prosecutor | 4.2 | 4.3 | 4.2 | 4.3 | |
| Index of Defender Practice | | | | | |
| Defender | 7.7 * | 8.0 * | 7.8 * | 7.4 * | b |
| Prosecutor | 6.5 | 6.8 | 6.3 | 6.2 | a,b |
| Defender plea bargaining practices do <i>not</i> cause delay | | | | | |
| Defender | 3.6 * | 3.8 * | 3.7 * | 3.4 * | b |
| Prosecutor | 3.1 | 3.2 | 3.0 | 2.9 | |
| Defender practices do <i>not</i> cause delay | | | | | |
| Defender | 4.1 * | 4.2 * | 4.1 * | 4.0 | |
| Prosecutor | 3.4 | 3.6 | 3.3 | 3.3 | |

* Statistically significant difference (.05 level or greater) between prosecutors' and defenders' mean scores.

KEY: a Significant difference between faster courts and moderate courts.
b Significant difference between faster courts and slower courts.
c Significant difference between moderate courts and slower courts.

Index Reliability: Court Practice (Cronbach's $\alpha = .51$); Prosecutor Practice (Cronbach's $\alpha = .34$); Defender Practice (Cronbach's $\alpha = .55$)

Attitudes about the impact of court practices on case processing are compiled from responses to the following statements:¹⁰³ “Delay in felony adjudication is *not* a problem in this jurisdiction” (CP1); “Trial date continuances are *not* easy to obtain from judges in felony cases” (CP2); and “Court policies and practices do *not* cause delay” (CP3). An Index of Court Practice was developed using an additive scale that combines the responses to the three items.

The impact of prosecution practices on the effectiveness of case processing can be gleaned from the following statements: “Prosecutor screening practices are effective” (PP1); “Prosecutor plea bargaining practices do *not* contribute to unnecessary delay” (PP2); and “Prosecutor policies and practices do *not* cause delay” (PP3). An Index of Prosecutor Practices was developed using an additive scale based on responses to the aforementioned items.

The effect of defense attorney practices on case processing can be captured by responses to the following statements: “Defender plea bargaining practices do *not* contribute to unnecessary delay” (DP1) and “Defender policies and practices do *not* cause delay” (DP2). An Index of Defender Practices was created using attorney responses to these two statements.

Table 4.4 displays the three jurisdictional practice scales along with the individual items that compose each scale. The overall average score for each scale, as well as the average score of each item, is shown. Higher values of each index indicate more positive views. In addition, the table provides information on the differences of means tests between prosecutor and defense attorney responses and between the three categories of court systems.

Performance

Attorney responses to three sets of factors are examined to assess the quality of performance by prosecutors and defense attorneys:

1. Experience with felony cases (E1-E4)
2. Preparation for felony hearings and trials (P1-P4)
3. Felony trial skills (T1-T4)

For each of these three aspects of performance, attitudes were compiled and compared to examine differences between full-time public defenders (E1, P1, T1),

¹⁰³ The statements used to develop this index were originally worded in the negative (e.g., delay in felony adjudication is a problem in this jurisdiction). To allow comparison across indices, we reversed the original responses (e.g., a “1” became a “5”) and reworded the questions to reflect this change.

Table 4.5

Index of Performance

Higher scores indicate stronger agreement with questions posed.

| Questions and Respondent Group | Comparing Courts of Different Timeliness | | | | Significant Differences (.05 level or greater) Between Courts |
|--|--|---------------|-----------------|---------------|---|
| | All Courts Combined | Faster Courts | Moderate Courts | Slower Courts | |
| Index of Experience | | | | | |
| Defender | 13.6 | 14.2 | 12.9 * | 13.7 * | a |
| Prosecutor | 14.0 | 14.3 | 14.0 | 12.4 | b,c |
| Felony experience: full-time defender | | | | | |
| Defender | 4.0 * | 3.9 | 4.0 | 4.1 | |
| Prosecutor | 3.6 | 3.6 | 3.8 | 3.0 | b,c |
| Felony experience: assigned defender | | | | | |
| Defender | 3.0 | 3.2 | 2.7 | 3.0 | a |
| Prosecutor | 2.8 | 3.0 | 2.8 | 2.8 | |
| Felony experience: private defender | | | | | |
| Defender | 3.5 | 3.6 | 3.0 * | 3.7 | a,c |
| Prosecutor | 3.5 | 3.6 | 3.4 | 3.6 | |
| Felony experience: prosecutor | | | | | |
| Defender | 3.2 * | 3.5 * | 3.1 * | 3.1 * | a,b |
| Prosecutor | 4.1 | 4.3 | 4.1 | 4.0 | b |
| Index of Preparation | | | | | |
| Defender | 12.8 * | 12.9 | 12.5 * | 13.3 * | |
| Prosecutor | 13.4 | 13.7 | 13.3 | 12.2 | b |
| Felony preparation: full-time defender | | | | | |
| Defender | 3.7 * | 3.6 | 3.7 * | 4.0 * | |
| Prosecutor | 3.3 | 3.3 | 3.4 | 2.6 | b,c |
| Felony preparation: assigned defender | | | | | |
| Defender | 2.9 | 3.2 | 2.7 | 2.8 | a |
| Prosecutor | 2.8 | 3.0 | 2.7 | 2.5 | a,b |
| Felony preparation: private defender | | | | | |
| Defender | 3.5 | 3.7 | 3.2 | 3.6 * | a,c |
| Prosecutor | 3.5 | 3.8 | 3.5 | 3.3 | a,b |
| Felony preparation: prosecutor | | | | | |
| Defender | 2.8 * | 2.6 * | 2.9 * | 2.9 * | |
| Prosecutor | 3.7 | 3.7 | 3.8 | 3.6 | c |

Index of Performance, *continued*

| Questions and Respondent Group | Comparing Courts of Different Timeliness | | | | Significant Differences (.05 level or greater) Between Courts |
|---------------------------------|--|---------------|-----------------|---------------|---|
| | All Courts Combined | Faster Courts | Moderate Courts | Slower Courts | |
| Index of Trial Skills | | | | | |
| Defender | 13.1 | 13.4 | 12.9 | 13.2 | |
| Prosecutor | 13.6 | 14.0 | 13.4 | 12.1 | b,c |
| Felony trial skills: | | | | | |
| full-time defender | | | | | |
| Defender | 3.8 * | 3.8 * | 3.9 * | 3.9 * | |
| Prosecutor | 3.4 | 3.4 | 3.5 | 2.8 | b,c |
| Felony trial skills: | | | | | |
| assigned defender | | | | | |
| Defender | 2.8 | 3.0 | 2.6 | 2.8 | a |
| Prosecutor | 2.7 | 2.9 | 2.6 | 2.7 | |
| Felony trial skills: | | | | | |
| private defender | | | | | |
| Defender | 3.5 | 3.6 | 3.2 | 3.6 * | a,c |
| Prosecutor | 3.5 | 3.6 | 3.4 | 3.4 | b |
| Felony trial skills: prosecutor | | | | | |
| Defender | 3.1 * | 3.1 * | 3.1 * | 3.1 * | |
| Prosecutor | 4.0 | 4.1 | 4.0 | 3.9 | b |

* Statistically significant difference (.05 level or greater) between prosecutors' and defenders' mean scores.

KEY: a Significant difference between faster courts and moderate courts.

b Significant difference between faster courts and slower courts.

c Significant difference between moderate courts and slower courts.

Index Reliability: Experience (Cronbach's $\alpha = .60$); Preparation (Cronbach's $\alpha = .54$); Trial Skills (Cronbach's $\alpha = .62$)

part-time assigned counsel (E2, P2, T2), privately retained counsel (E3, P3, T3), and prosecutors (E4, P4, T4).

To develop robust measures of experience, preparation, and trial skills, we produced three separate indices: Index of Experience, Index of Preparation, and Index of Trial Skills. Higher values of Experience, Preparation, and Trial Skill reflect more positive views toward these measures of attorney performance. Table 4.5 provides an overview of the three performance scales along with their constituent items. Mean values for each scale as well as each individual item are displayed. Also, the table shows the results from a difference of means test between prosecuting and defense attorneys for each item and scale as well as across the three categories of court systems.

Results

We expect that practitioners' attitudes in faster courts will be different from practitioners' attitudes in slower courts. But on what dimensions of the work environment do attitudes differ? Under what circumstances and on what issues do the attitudes of prosecutors and defense counsel appear adversarial? cooperative?

Resources

The survey results distinguish between two fundamental, yet distinct components of resource sufficiency: (1) Are there enough judges, prosecutors, and defense counsel to dispose of felony cases within one year of arrest? and (2) Is the overall budget adequate and the level of compensation fair? The Personnel Sufficiency index assesses whether there is general consensus among members of the court work *group* that they can stay current with workload, while the Budget Sufficiency index taps into more *individual* concerns about salary and budget.

The most prominent finding to emerge from the items making up the Personnel Sufficiency index is the large and significant differences between the views of prosecutors and defenders in the faster courts and the views of their counterparts in the moderate and slower courts, as shown in Table 4.2. Both sets of attorneys in the faster courts are less anxious about current staffing levels across the board than are the attorneys in the other two groups. For example, prosecutors in the faster courts have a greater tendency to see their resources as adequate (index value of 13.9) than their counterparts in the moderate-paced courts (index value of 10.6) and slower courts (index value of 10.9). In a parallel manner, criminal defense attorneys in the faster courts are more likely to see their resources as

adequate (index value of 14.8) than their counterparts in the moderate-paced courts (index value of 11.5) and slower courts (index value of 12). Simply stated, in the fastest courts, there are the strongest levels of agreement that there are enough judges, enough prosecutors, and enough defense counsel to resolve the felony caseload within one year from the time of arrest. This result emerges even though there are no obvious differences in the actual workload as measured by weighted filings per judge or prosecutor across the three groups.

Moreover, there is evidence that both prosecutors and defense counsel in the faster courts share a higher degree of satisfaction with current personnel levels. The four items that make up the index show that prosecutors and defense counsel in the faster courts are in basic *agreement* about the sufficiency of the number of judges and defense counsel. They also agree that the system should be able to resolve all of their felony caseload within one year of arrest. The only point over which prosecutors and defense counsel in the faster courts disagree is the number of prosecutors. However, there is almost complete (and significant) *disagreement* between prosecutors and defense attorneys across the four scale items in the moderate and slower courts. Both types of attorneys in these two court categories believe they are “under-judged,” but prosecutors in moderate and slower courts have significantly more negative views than defense attorneys about the adequacy of judicial resources. Also, prosecutors believe there are too few prosecutors (but defense attorneys disagree), and defense attorneys believe there are not enough defense attorneys (but prosecutors disagree). These results suggest that attorneys in the slower courts are more willing than attorneys in the faster courts to attribute their court’s lack of timeliness to an insufficient number of judges, prosecutors, and defense attorneys. Furthermore, prosecutors and defense attorneys in slower courts are less likely than their counterparts in faster courts to agree on what resources are needed.

A different picture emerges when the Budget Sufficiency Index is examined. There is general consensus that attorneys in courts of all speeds would like more compensation, are concerned about the budget keeping pace with expanding workload, and would like improved facilities. There is considerable agreement among prosecutors and defenders on all items. However, we interpret the desire for more compensation to be consistent with our experience that virtually all individuals, including those individuals working in the most efficient organizations, want higher personal salaries. This desire for remuneration does not contradict their belief that personnel levels are tolerably adequate. Thus, the work environment in the fastest courts appears to foster a “can-do” attitude among

attorneys and the expectation that they can accomplish more with a given level of personnel resources, although attorneys in all courts would like to be paid more and to see an increase in office budgets.

Performance

The survey results allow us to build three indices related to the performance of prosecutors and defense attorneys in terms of experience, preparation, and trial skills. Prosecutors and defense attorneys were asked to distinguish and compare the performance of full-time public defenders, assigned attorneys, privately retained attorneys, and prosecutors. By examining the items that comprise the Experience Index, for example, one can see how prosecutors view the experience of the three types of defense attorneys as well as other prosecutors.

A primary finding emerging from these three indices is that prosecutors in the faster courts gauge the *experience*, *preparation*, and *trial skills* of both prosecutors and defense attorneys in a significantly more positive light than prosecutors in the slower courts. For example, prosecutors in faster courts rate the trial skills of prosecutors and the three types of defense attorneys at 14 (the Trial Skills Index value); the comparable score is 12.1 in the slower courts. Similar significant differences exist when looking at Experience (14.3 in faster courts vs. 12.1 in slower courts) and Preparation (13.4 in faster courts vs. 12.2 in slower courts).¹⁰⁴

Moreover, the positive views of prosecutors in the faster courts toward the experience, performance, and trial skills of both prosecutors and defense attorneys are reciprocated by defense attorneys in the faster courts. There is no statistically significant difference between prosecutors' views and defense attorneys' views on these three indices, as shown in Table 4.5. In moderate and slower courts, there is a statistically significant difference between the views of prosecutors and the views of defense attorneys on the Experience and Performance Indices.¹⁰⁵ While the scores on the three performance indices can be interpreted as a sign of mutual respect between the prosecuting and defense attorneys in faster courts, there is still strong evidence of an adversarial relationship. Examining the individual scale items on *prosecutor* experience, preparation, and trial skills shows consistent and significant differences between the attitudes of prosecutors and

¹⁰⁴ In the cases of experience and trial skills, prosecutors in moderate courts also have significantly more positive views than the prosecutors in slower courts.

¹⁰⁵ However, there are essentially no statistically significant differences between defense attorneys across the three groups on all three indices.

the attitudes of defense attorneys in all three groups. Hence, positive, shared agreement among attorneys about system performance does not mean there is a loss of an adversarial relationship between prosecutors and defense counsel.

Management

The management indices are designed to assess the impact of key aspects of Communication and Leadership on the processing of felony caseloads. Prosecutors' and defense attorneys' views on the adequacy of opportunities for judges and attorneys to discuss systemwide management issues, the extent to which clear case processing time goals exist, and the strength of communication among judges and attorneys on case management issues provide a basic measure of communication. Our measure of leadership is based on prosecutors' and defense attorneys' straightforward assessment of the effectiveness of judicial, prosecutorial, and criminal defense bar leadership.

Prosecutors in the faster courts (index value of 9) are clearly and significantly more satisfied with the level of communication than prosecutors in the slower courts (index value of 7.2), as shown in Table 4.3. Likewise, there exists a positive and significant difference between the attitudes of defense attorneys in faster courts (index value of 8.4) and the attitudes of defense attorneys in slower courts (index value of 7.3) over the quality of communication.

Given our focus on timeliness, a particularly relevant result is the differences in views about the clarity of case processing time goals. There is more crystallized agreement among prosecutors and defense attorneys about clarity of time goals in the faster courts than in moderate and slower courts. It is perhaps of little surprise that an important first step toward improved timeliness is the receptivity of attorneys to time-to-disposition goals. This view is underscored by the comments from a prosecutor in one of the slower courts who claimed that the state's disposition time goals were "pie in the sky." He claimed that "no one pays any attention to them." Conversely, a public defender in Portland asserted: "Everyone knows about the court's disposition time goals. They've really changed the legal culture." The degree of commitment to case processing time goals shapes the impact that these goals have on the behavior of attorneys and judges and ultimately on the pace of felony adjudication.

Concerning the Leadership Index, prosecutors in the faster courts have a significantly more positive view about the combined effectiveness of judicial, prosecutorial, and defense bar leadership than prosecutors in the slower courts (index value of 9.2 vs. index value of 8.1). However, the consensus between

prosecutors and defense attorneys in each group about leadership is not as strong as their consensus about the quality of communication. The results show a significant difference between prosecutor views and defense bar views on leadership in the faster and moderate courts. The source of this difference is readily apparent—and understandable given the nature of the American adversary system—from a perusal of the items composing the Leadership Index. Prosecutors and defense counsel have strongly divergent views over the quality of prosecutorial leadership (e.g., 3.9 vs. 2.0 in faster courts). On the other hand, the prosecutors and defense counsel in faster and moderate courts, unlike their counterparts in slower courts, have similar and generally positive views about judicial and defense bar leadership. In sum, the heightened attention to communication and leadership in the faster court systems appears to produce an ethos of greater cooperation between prosecutors and defense counsel and, by extension, an environment conducive to improved timeliness.

Jurisdictional Practice

The first of the three indices related to jurisdictional practice shows prosecutors' and defense attorneys' attitudes about whether court and judicial practices help or hinder delay. The other two indices provide prosecutor and defense attorney views of their own and each other's practices. In all instances, higher scores on each item and the index indicate agreement with the idea that given practices do *not* encourage delay.

Examining the items that comprise the Court Practices Index shows that attorneys in all three court categories believe delay is a problem (i.e., all individual item scores are 3.8 or lower), as shown in Table 4.4. Yet, there are important differences in the relative magnitude with which attorneys—particularly prosecutors—view court practices as a source of delay. This perception is reinforced when views on the individual item “Delay is *not* a problem” is examined. Prosecutors in the faster courts see room for improvement (item value of 2.8), but there is no doubt about the depth of concern over delay among their counterparts in the moderate and slower courts (item values of 2.0 or less). Prosecutors in the slower courts are also significantly more concerned about the ease of continuances than prosecutors in the faster courts. Combining the three items shows that prosecutors in the faster courts have significantly more positive views about court practices (index value of 8.8) than prosecutors in the slower courts (index value of 6.8).

Doubts about the health of the adversary system are eased when one examines the Indices of Prosecutor and Defender Practices. There are uniformly large

and significant splits between the views of prosecutors and the views of defenders—across courts of all speeds—on each index as well as each separate item in the two indices. Take, for example, the item from the Prosecution Practices Index that states “Prosecutor plea bargaining practices do *not* cause delay.” The results are clear: defense attorneys, on average, think prosecutor plea bargaining practices *do* cause delay (overall mean of 2.2), while prosecutors believe their practices do *not* generally cause delay (overall mean of 4.1). The magnitude of this difference in views about prosecutor plea bargaining practices is almost identical across the three groupings of courts (e.g., 2.3 vs. 4.0 in faster courts and 2.0 vs. 4.0 in slower courts).

Next examine the mirror image of this item in the Defender Practices Index: “Defender plea bargaining practices do *not* cause delay.” Once again, there is virtually no reciprocity between the views of prosecutors and the views of defenders in all three groups of courts. In fact, prosecutors view the plea bargaining practices of defense attorneys as more of a source of delay than do defense attorneys (overall mean of 3.1 for prosecutors vs. overall mean of 3.6 for defenders).

The key difference between the Prosecutor and Defender Practices Indices lies in the cross-group comparisons. With respect to the Prosecutor Practices Index, there is essentially no difference (in a statistical sense) between the views of prosecutors and the views of defense attorneys across the three groups. The overall average score for defense attorneys (8.3) and for prosecutors (12.8) indicates the substantial difference between defense attorney views and prosecutor views on prosecutor practices in faster, moderate, and slower courts. On the other hand, while the Defender Practices Index shows a smaller overall difference between the views of defenders and the views of prosecutors on defender practices (overall mean of 7.7 for defenders vs. overall mean of 6.5 for prosecutors), there is evidence of significant differences in views across the three groups of courts. Defenders in faster courts view their practices not only as less conducive to delay than do the prosecutors in faster courts (index value of 8.0 for defenders vs. index value of 6.8 for prosecutors), but also as less of a source of delay than do the defense attorneys in slower courts (index value of 8.0 for defenders in faster courts vs. index value of 7.4 for defenders in slower courts). These same general findings also apply to the views of prosecutors with respect to defense attorney practices. Prosecutors in the faster courts have significantly more positive views of defense attorney practices than do prosecutors in the slower courts (index value of 4.8 for prosecutors in faster courts vs. index value of 4.2 for prosecutors in slower courts).

Thus, prosecutors and defense attorneys in faster courts are as adversarial in their views toward each other's practices as are their counterparts in slower courts. This adversarial outlook is maintained in the faster courts because they see themselves as confronting competent adversaries. Finally, their joint belief that they are not acutely underfunded also suggests that they can be adversarial and efficient at the same time.

Discussion

The idea of local legal culture has been appealing both in the literature and in conversations among court researchers and practitioners. There must be something besides case characteristics that influences the degree of court timeliness. The unique contribution of this chapter is to describe a broader conception and more detailed analysis of how attorney expectations help create a local legal culture with shared norms of timeliness.

Based on the fundamental assumption that efficiency underlies both timeliness and quality, we developed four sets of attitudinal measures among prosecutors and criminal defense attorneys. Our contention is that attorneys' views towards resources, performance, practice, and management capture aspects of quality. That is:

$$\text{Quality} = f(\text{Resources, Management, Jurisdictional Practice, Performance}).$$

From this assumption, we hypothesize particular relationships between case processing times in the nine courts and the views of the attorneys who practice in them.

We now offer an explicit comparison of efficiency across the faster, moderate, and slower courts. Each of the three groups of courts is arrayed on a modified productivity frontier (Figure 4.2). The two axes are case processing quality and

Figure 4.2: Assessing Efficiency in the Three Groups of Courts

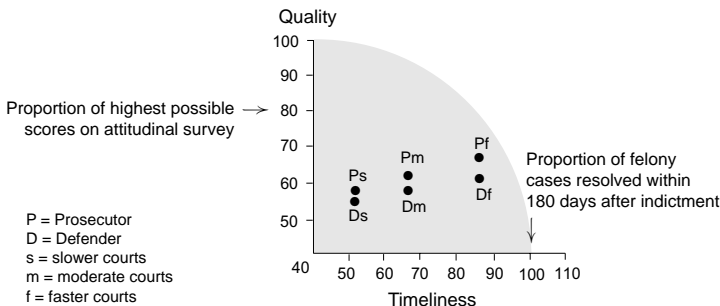


Table 4.6

Overall Quality Index

Higher scores indicate stronger agreement with questions posed.

| Questions and Respondent Group | Comparing Courts of Different Timeliness | | | | Significant Differences (.05 level or greater) Between Courts |
|---|--|---------------|-----------------|---------------|---|
| | All Courts Combined | Faster Courts | Moderate Courts | Slower Courts | |
| Overall Quality Index | | | | | |
| Defender | 98.3 * | 101.4 * | 98.0 | 93.8 | b |
| Prosecutor | 104.0 | 107.8 | 102.0 | 97.7 | a,b |
| Index of Jurisdictional Practice | | | | | |
| Defender | 25.2 * | 25.4 * | 26.4 | 24.0 * | b,c |
| Prosecutor | 27.0 | 28.3 | 26.9 | 25.7 | b,c |
| Index of Management | | | | | |
| Defender | 15.5 * | 15.8 * | 15.2 * | 15.3 | |
| Prosecutor | 16.9 | 18.1 | 17.5 | 15.1 | b,c |
| Index of Resources | | | | | |
| Defender | 18.5 | 20.0 | 18.4 | 17.4 | a,b |
| Prosecutor | 18.0 | 19.8 | 17.0 | 16.9 | a,b |
| Index of Performance | | | | | |
| Defender | 39.5 | 40.5 | 38.3 * | 40.2 * | |
| Prosecutor | 40.9 | 42.1 | 40.8 | 36.7 | b,c |

* Statistically significant difference (.05 level or greater) between prosecutors' and defenders' mean scores.

- KEY:
- a Significant difference between faster courts and moderate courts.
 - b Significant difference between faster courts and slower courts.
 - c Significant difference between moderate courts and slower courts.

timeliness. Quality is measured by reference to attorney attitudes in the three groups of courts and distinguishes between the views of prosecutors and the views of criminal defense attorneys. Higher levels of perceived quality are reflected by higher points on the vertical axis. Timeliness is measured by the average number of days that felony cases take to move from indictment to final resolution for each of the three groups of courts. The smaller the average number of days from indictment to disposition, the more timely the group of courts is and the further out the horizontal axis the courts lie.

Rather than assuming a particular shape and location of the “true” productivity frontier, we compare the three groups of courts against two somewhat arbitrary, but measurable standards. First, an overall measure of case processing quality is formed by summing the four sets of attitudinal measures (Table 4.6):

Overall Quality = Resources + Management + Jurisdictional Practice + Performance.

Because there are 33 separate measures, each with a maximum response of “5,” the highest overall quality score possible is 165. A score of 100 means that a court (or group of courts) scored about 60 percent on the overall quality index (measured on the vertical axis of Figure 4.2). Second, a court (or group of courts) is assumed to be operating in a timely fashion if it is disposing of 98 percent of its felony cases within 180 days after indictment.

As can be seen in Figure 4.2, all three groups of courts lie within the interior of the frontier. However, there are noticeable and important differences. *The three fastest courts also have the highest measures of overall case processing quality as rated by both prosecutors and criminal defense attorneys. The courts of intermediate speed are also intermediate in terms of quality, and the slower courts have the lowest measures of overall quality, according to the views of both prosecutors and criminal defense attorneys.* These results lend support to the nonobvious idea that quality and timeliness can coexist rather than threaten each other.

¶ Summary

The results have three implications for understanding the timeliness of American state criminal trial court systems. First, the findings suggest that there is a more complex relationship between resources and local legal culture in explaining timeliness than previously stated in the literature. When viewed from the perspective

of prosecutors and criminal defense attorneys, resources, especially attorney compensation, are important in all the systems examined regardless of their degree of timeliness. Every attorney wants a higher salary, but the common statement of self-interest does not translate into a corresponding wish for more court *system* resources. Attorneys in more expeditious court systems do not feel that larger budgets are needed as much as their counterparts do in less expeditious courts, where more resources are desperately needed, according to both prosecutors and defense attorneys.

However, prosecutors and defense attorneys in slow courts do not necessarily agree on what resources are needed. Variation in the relative importance of resources is consistent with the local legal culture notion that attorney attitudes vary from court to court and that resource availability does not account for timeliness. The current research demonstrates that the relative importance of resources varies inversely with timeliness. The faster the system, the less the perceived relative importance of resources. Moreover, the more timely courts do not necessarily have more resources than the slower courts, in accordance with the legal culture notion. Resources are important from the attorneys' perspective, but they are not that important in expeditious courts. We believe this relationship exists because in the expeditious courts, the attorneys have learned how to be more efficient. Hence, we believe that the concept of efficiency not only provides a theoretical understanding of timeliness, but also is consistent with what can be observed.

Second, leadership and communication matter. Variation in attorney attitudes support the importance of felony case management techniques developed over the past 30 years by experienced researchers and practitioners. Results from this study indicate that well-performing courts employ a set of essential policies and practices, including the following:

- Judges must be committed to early and continuous judicial control over case scheduling,¹⁰⁶ including firm trial and hearing dates;¹⁰⁷
- The court must adopt and take seriously case processing time standards or goals;¹⁰⁸
- There must be a regular process through which the court, prosecutors, and

¹⁰⁶ See, e.g., Solomon (1973); Friesen (1984); Mahoney et al. (1988).

¹⁰⁷ See Solomon (1973), p. 33; Mahoney et al. (1988), p. 201.

¹⁰⁸ Ibid. See also Friesen et al. (1979).

defense attorneys communicate and coordinate their activities to address case management issues and problems.¹⁰⁹

The evidence suggests that these management strategies are general elements of success.

Third, the results highlight the importance of attorney competence, another agreed-upon aspect of quality.¹¹⁰ Competent attorneys represent their clients vigorously to the full extent of the law, but this need not delay case disposition because the other attorneys know what to expect of opposing counsel. The views of attorneys in the faster and slower courts are illuminating on this point. Attorneys in faster courts are more likely than their counterparts in slower systems to see their opponents as prepared, trained, and skilled. In our judgment, an underlying basis for this situation is efficiency. Efficient attorneys are more likely both to be viewed as competent and, in fact, to be more timely.

The evidence also suggests that efficient attorneys can be adversarial attorneys. Prosecutors and defense attorneys in all courts question the practices of opposing counsel. In expeditious courts, prosecutors are just as likely as their counterparts in slower courts to see the tactics and procedures of criminal defense attorneys in a critical light. And the parallel relationship holds true for criminal defense attorneys. We take this relationship to be an indication that the attorneys in all of the courts maintain an adversarial outlook. Consequently, attorneys who operate efficiently and who are part of a timely system do not abandon their adversarial position.

The concept of efficiency provides a solid reason for why courts can achieve both expedition and quality. Timeliness should not be viewed as an automatic threat to individual justice and effective advocacy. Most importantly, in the real world, courts can seize this theoretical proposition and use it to search for ways to achieve more of both timeliness and quality without compromising either one.

¹⁰⁹ See Solomon (1973), p. 31; Mahoney et al. (1988), p. 200.

¹¹⁰ Rovner-Piecznik, Rapoport, and Lane (1977), especially pp. 38-43 concerning measures of "attorney competence"; American Bar Association Project on Standards for Criminal Justice (1971), especially pp. 225-28 concerning the "duty to investigate"; Genego (1984); National Legal Aid and Defender Association, National Study Commission on Defense Services (1976), especially pp. 428-47 on "ensuring effectiveness."

Chapter 5



WHAT IMPORTANT CONCLUSIONS CAN BE DRAWN?

Timeliness is seminal to American jurisprudence. The United States Constitution contains the explicit individual right to a speedy trial. The extent to which this provision of the Sixth Amendment is meaningful in practice is found in the capacity of courts to resolve cases expeditiously. If they cannot, then the right is hortatory.

To understand whether, and the extent to which, courts have the ability to handle cases in a timely manner, one needs information about why some cases are resolved more quickly than others and why some courts are more expeditious than others. Without that knowledge, efforts to improve court timeliness are left to intuition, opinion, and a search for the magic bullet. Moreover, concerns about whether expedition and timeliness come at the expense of critical dimensions of due process, such as the amount of individual attention given to cases or effective legal advocacy, must be addressed.

The current study of nine state criminal trial court systems has tried to contribute to knowledge concerning these global questions. The data, the statistical results, and their interpretation fill in parts of the missing blanks and shade in the gray areas in what we know. Basically, the findings provide three unique contributions to the literature and a targeted plan of action for the criminal justice community.

First, the data demonstrate that these nine courts have much in common in the work that they have to do, despite all of the talk about the differences among state trial courts because of federalism and localism. A comparative examination of caseload composition reveals more similarities than differences. Moreover,

many of the courts' organizational features and contextual characteristics are noteworthy for their commonalities. These observations are grounded in the evidence presented in Chapter 2.

The similarity among the courts' caseload composition extends to a fundamental principle of how they handle cases. Individual attention to cases through proportionality is found to be a processing norm. The more serious, the more complicated, and the more difficult cases take the longest time to resolve in almost all courts. There is a systematic pattern of proportionality across the courts even though the overall time is different. Faster courts operate within a tighter time schedule than slower courts, but timeliness is not achieved by a disregard for the severity of the offense or the method of resolution. That observation, which has not been demonstrated in previous research, is a central conclusion of Chapter 3.

The underlying basis for the tighter time frames in faster courts is the more efficient work orientations of their prosecutors and criminal defense attorneys. A close look at the views of attorneys shows that faster courts are associated with work environments that support effective advocacy. In expeditious courts, prosecutors and defense attorneys share views toward resources, management, and the competency of their opponents that are unlike those of their counterparts in less expeditious courts. In faster courts, prosecutors and defense attorneys are more likely to see the other side as sufficiently skilled, experienced, and well prepared. Additionally, they are less likely to see resource shortages, even though their workloads are no less burdensome than those of their counterparts in slower courts. These interpretations, which are different from the traditional idea that timeliness and quality are in inherent conflict, flow from the data presented in Chapter 4.

The fundamental lessons to be learned from these findings are threefold. First, there are comprehensible reasons for why some cases are resolved faster than others and why some courts are more expeditious than others. Contrary to discouraging conclusions in much of the previous research, there is a discernable basis for variation in case and court processing time. Moreover, the sources of the variation are understandable especially when interpreted in terms of the basic principle of proportionality.

Second, the reasons behind expeditiousness and timeliness are not because faster courts operate with an assembly line justice mentality. Attorneys in these courts are adversaries to the same extent as their counterparts in slower

courts. Third, efficiency is the foundation of a well-performing court. Higher levels of both timeliness and quality are possible by adopting a more efficient work orientation.

🦋 Policy Implications

Courts concerned with improving their degree of timeliness and case processing quality need to begin by assembling the information needed for a thorough appraisal of current practices that will serve to establish an ongoing dialogue between bench and bar. The recommendation that court systems make better use of information is hardly new, but the current research offers direction in identifying specific information needs, a framework for how the information can be used and analyzed, and results from a set of representative courts against which other courts can be compared. The court administration community should adopt a three-step process involving (1) self-diagnosis, (2) communication, and (3) education.

Self-Diagnosis

The first step is for the court to conduct a self-examination of current case processing practices and for the participants to reach a working consensus on its goals. At a minimum, a court should be expected to replicate the information on case processing time frames (e.g., arrest to disposition and indictment to disposition) and the nature of its caseload (e.g., caseload composition, manner of resolution, basic case-level attributes) displayed in the tables in Chapter 2. This set of information can be augmented with other data on continuance rates and motion filing practices. Grounded in the knowledge of current court processing practice (and how it compares to the courts in this study), judges and court managers can begin to discuss and establish their goals. Has the court established meaningful time standards with a set of management reports that allow the ongoing monitoring of disposition time frames and the size of pending caseloads? Does the judiciary see the need to take firmer control over scheduling, including firm trial and hearing dates? What is the court doing to meet these goals?

Another, somewhat more complex question for discussion by the bench and bar is: Can and should the norm of proportionality be a recognized element of successful case processing? We have argued that proportionality is one of the fundamental precepts underlying notions of justice in criminal courts. Both due process and the need for efficiency require proportionality in the amount of time spent by attorneys and judges in the preparation and resolution of

criminal cases.¹¹¹ Of course, examining the existence and extent of proportionality likely will require a special case-level data collection effort to conduct the type of analysis discussed in Chapter 3. However, there are several benefits of this exercise. The analysis will sharpen a court's knowledge of current practice by untangling the simultaneous effects of different case- and defendant-related characteristics on case processing times. In addition, it will show which factors are significant in case processing, including offense severity and manner of resolution, and whether factors such as race and gender are influential. Finally, a statistical analysis provides the opportunity to construct a range of defendant profiles.

Communication

As the court completes its own efforts of self-diagnosis and goal setting, the court must turn to determining the extent to which other key members of the criminal court system understand and accept the results. Are the goals of the court being clearly communicated to prosecutors, criminal defense attorneys, and other interested parties?

It is almost cliché to suggest that local criminal justice systems operate more efficiently when the various agencies work together to address systemwide problems and to monitor ongoing efforts to manage caseloads in an effective and timely manner. But regular communication and coordination of activities are not standard operating procedures. Courts often proceed as if their goals have been fully and clearly articulated to prosecutors and criminal defense counsel and seem surprised when the anticipated improvements in court performance do not emerge. The results from this study suggest that an important aspect of effective inter-agency cooperation is a shared understanding of the system's goals. The survey of prosecutors and defense attorneys in this study revealed a significant difference between faster courts and slower courts in the clarity of goals regarding case

¹¹¹ A reasonable effort by a criminal defense attorney is required in the handling of a criminal case, or the judgment may be overturned because of the ineffective assistance of counsel, a violation of the Seventh Amendment. What constitutes a "reasonable" effort by a defense attorney is inevitably determined by consideration of the seriousness and complexity of the case. In addition, from a management perspective, the desire for proportionality is driven by a concern for efficiency and quality case processing. A district attorney and chief public defender typically have limited staff resources. They want their staff to make the most of their resources by devoting an *appropriate* amount of time to each case: less time to simple and less serious cases; more time to serious and complex cases.

processing times. Attorneys in faster courts reported significantly stronger agreement with the statement that there were “clear goals regarding case processing times for felony cases in this jurisdiction.” Attorney “buy-in” to court improvement strategies is achieved through diligent and consistent communication and follow-through by the court, thereby creating the expectation that the stated goals will be enforced.

Conducting a survey similar to the one used in this study is an effective method for determining the clarity of the court’s message among judges, prosecutors, and criminal defense counsel. The precise issues covered in a survey will reflect the goals established by the court and can be drawn from sources such as the Trial Court Performance Standards. Do attorneys believe the court’s goals are clear? What do the attorneys believe to be the greatest challenges to meeting established goals? Do views vary between prosecutors and criminal defense attorneys? Without this type of attitudinal information, problems in court performance cannot be diagnosed. For example, do slow case processing times reflect a lack of resources, or do attorneys believe that meeting time standards is not really important to the judiciary? The more the court understands the attitudes and beliefs of attorneys working in the court, the better the court can tailor management strategies to improve performance.

Finally, courts can gain by looking beyond their jurisdictional boundaries. Because their intrastate and interstate colleagues are confronted with similar caseload challenges, courts interested in improving their performance should seek information about policies, procedures, and practices elsewhere. Each of the nine state criminal court systems examined in this study has its own tale to tell, but the experiences are not so different as to be of no relevance to the other courts. The claim that each court is unique in all respects and, therefore, can learn almost nothing from other courts is contradicted by the facts.

Education

National and state judicial, prosecutor, defender, and court management organizations and external funding sources should encourage an expanded dialogue among courts on the issue of case processing efficiency. The dialogue should occur among judges, prosecutors, criminal defense attorneys, and court managers. Judges should view the attorneys as willing participants and potential allies. These suggestions are not mere echoes of long-standing calls for team-based solutions to the twin problems of backlog and delay. Dialogue and interagency cooperation have a different edge to them in light of the results of this study.

The analytical framework presented in Chapter 4 demonstrates that quality and timeliness are not mutually exclusive, where a gain in one direction is a direct and corresponding loss in another. Judges, court managers, prosecutors, and defense attorneys need to explore, discuss, and design ways to achieve both values simultaneously. The opportunity for achieving greater quality and timeliness exists for all courts because no court, of which we are aware, is at maximum efficiency. Workshops, training programs, and conferences should not focus simply on delay reduction, because this focus encourages continued belief in the idea that enhanced timeliness inexorably displaces quality. Rather, the focus of educational efforts should be on efficiency and strategies for increasing it to achieve gains in timeliness and quality, whether quality is defined as affordability, accessibility, or fairness. One reason why courts today continue to be plagued by delay, despite the development of delay reduction techniques, is that successful delay reduction is viewed as a threat to quality. Promoting delay reduction, along with quality, as a natural and logical consequence of efficiency will help courts overcome their resistance to change.

Future Research

Basically, there are three avenues to explore to refine the results of the current research. First, future attitudinal research on prosecutors and defense attorneys needs to confirm (or disconfirm) the scales relating to the culture of legal culture developed in the current effort. To what extent do the results concerning the views of attorneys toward their work environment hold up when similar questions are asked in other court systems? How can the local culture be measured better? What do different measures reveal when they are applied?

Second, more comparative research on timeliness is needed. To what degree is the current explanation of individual case processing time supported when tested against data from other courts? Is there consistency in the results? Or do new and different factors account for variation in processing time? Does the study of caseload composition and timeliness in other courts confirm the current results that caseload composition is strikingly similar and the proportionality exists in the handling of cases but within different time frames? The value of this line of inquiry is to bring greater unity to an important issue on which past results have been fragmented and court-specific in nature.

Third, what is the parallel research agenda for the study of timeliness in civil litigation? The current research focuses exclusively on criminal courts where institutional offices (e.g., prosecutor, public defender) battle it out.

What are the comparable measures of individual attention, proportionality, and effective advocacy in litigation in which the attorneys are generally privately retained, many cases involve *pro se* litigants, and there is alternative dispute resolution? A lot of research has been done in the areas of procedural fairness and quality dispute resolution. We believe that it is important to see how those two areas can be linked to timeliness in civil litigation. We offer the analytical framework of efficiency, timeliness, and quality as a starting point. Surely timeliness and quality justice are just as important in civil court systems. The unanswered question is, how can and do some civil court systems manage to achieve both goals?

APPENDICES



Appendix 1



RESEARCH METHODOLOGY

📍 Site Selection

The National Center for State Courts (NCSC), in cooperation with the American Prosecutors Research Institute (APRI), conducted this study of the felony adjudication process in nine state general jurisdiction courts in urban areas. We selected the sites based on four primary criteria. First, sites were selected to represent counties with a large population (from about 400,000 to about 1.3 million). A sample of just nine courts is relatively small and simply cannot be representative of all jurisdictions of all sizes. By excluding very large and small counties, the study increases the likelihood that the counties in the study sites are representative of those in the given population range.

Second, we sought geographic diversity among the jurisdictions because the legal and socioeconomic context of a court can have a significant influence on the nature of the caseload and the way cases are adjudicated. We selected nine jurisdictions from eight states, representing five of the major geographic regions of the U.S.: the West Coast, Southwest, South, Midwest, and Northeast.¹¹²

Third, we sought diversity in the way courts manage their cases. Two of these jurisdictions (Multnomah County Circuit Court and the Sacramento County

¹¹² Three from the West Coast (Sacramento Co., California; Alameda Co., California; and Multnomah Co., Oregon); one from the Southwest (Bernallilo Co., New Mexico); two from the South (Travis Co., Texas, and Jefferson Co., Alabama); two from the Midwest (Kent Co., Michigan, and Hamilton Co., Ohio); and one from the Northeast (Bergen Co., New Jersey).

Superior Court) have unified trial courts, while the others have two-tiered systems (with separate limited jurisdiction and general jurisdiction courts). In addition, five of the courts use an individual calendar system, and four use a master calendar.

Fourth, courts differ in the way they organize the provision of indigent defense criminal services. Because of the continuing interest in the different types of indigent defense programs, this study includes four counties that have a full-time defender program as the primary source of indigent defense services; two counties that have a mixed system (half provided by a full-time indigent defender program and half by contract attorneys); and three counties that provide indigent defense solely through an assigned counsel program.¹¹³

¶ Case Sampling, Coding, and Analysis

In each of the nine counties, project staff worked with court and/or district attorney staff to select a sample of approximately 400 felony cases that had reached a disposition (sentenced, dismissed, acquitted, or *nolle prosequi*) during 1994.¹¹⁴ A sample of about 400 cases from each court in this study provide statistics (means, percentages) that have a reliability of +/- 5 percent and a confidence interval of 95 percent.¹¹⁵ Project staff hired and trained court clerks or law students to complete a one-page coding form for each case in the sample.¹¹⁶ Coders used automated or manual case file data, whichever were necessary to obtain complete and accurate data in a cost-effective manner. Coding forms were sent to the NCSC, where data entry and analysis were conducted by project staff.

¹¹³ By "assigned counsel program" we mean one in which privately retained attorneys accept assignments of indigent defense cases on a per-hour or per-case basis. These attorneys also might handle civil or domestic cases, or criminal cases on private retainer, in addition to criminal cases with indigent defendants.

¹¹⁴ In Albuquerque, New Mexico, we obtained data on cases disposed during the 1994 calendar year. In the other jurisdictions, however, 1994 means the fiscal year from July 1, 1994, to June 30, 1995.

¹¹⁵ See, e.g., Arkin and Colton (1963).

¹¹⁶ Each coder was given a detailed coding manual that he or she was required to read prior to starting the coding process. The coding form and instructions were reviewed with coders by telephone or in person at the court during the site visit to the court. Coders then coded several cases and faxed copies to project staff for review. One or more of the coders were then contacted by project staff to discuss any other questions that might have arisen during the coding of the initial cases. Thereafter, coders were given an 800 telephone number to call project staff to discuss any questions that arose at any time during the ongoing coding process.

🦋 Site Visits and Interviews

Two senior research staff, one from the NCSC and one from the APRI, visited each of the nine courts in this study. Project staff arranged each visit with the assistance of the court administrator's office, which set up the interview schedule. Research staff spent three days conducting courtroom observations and interviews with at least the following: three judges; three prosecutors; three public defenders and a private attorney who handles criminal cases only for private clients; the court administrator and chief deputy administrator in charge of the felony division (calendar, records management, etc.); two courtroom clerks; two probation officers; and two police officers.¹¹⁷ All interviews took 60 to 90 minutes. They involved primarily open-ended questions that focused on (1) assessment of the size of the caseload and adequacy of staff resources for judges, prosecutors, and indigent criminal defense attorneys; (2) the nature of the felony case management system, including assessments of the strengths and weaknesses of the system; (3) assessment of the seriousness of delay in felony adjudication, if any, and the causes of (and cures for) the problem; (4) the nature and effectiveness of informal and formal methods for interagency communication and coordination regarding felony case management issues; and (5) an assessment of the nature and effectiveness of court, prosecutor, and criminal defense leadership in addressing problems in the adjudication process. Research staff took moderately detailed notes during the interviews and used these notes to produce a site visit report for each jurisdiction.¹¹⁸ Each site visit report was circulated among NCSC and APRI project staff to provide the qualitative background data necessary for understanding each jurisdiction.

🦋 Questionnaires Distributed to Judges, Prosecutors, and Defenders

In addition to obtaining quantitative data from a sample of felony cases and qualitative data from interviews, project staff distributed a three-page questionnaire to each judge, prosecutor, and full-time public defender (in the six jurisdictions that had full-time public defenders) who handled felony cases in 1994. Response rates varied, of course, but at least 15 prosecutors and 15 defenders completed ques-

¹¹⁷ If time allowed, researchers interviewed additional judges and attorneys.

¹¹⁸ See Appendix 2 for summaries of the individual site visits.

tionnaires in each of the jurisdictions. Because the questionnaires were anonymous, project staff could not determine who completed and returned them, so whether there are substantial differences between respondents and non-respondents could not be determined (though this is a problem in almost all research conducted by mailed questionnaires). Because of the lack of assurance that there is no significant difference between respondents and non-respondents, data from the questionnaires must be interpreted with appropriate caution. Nevertheless, the questionnaires provide a broader base of opinions from key people in the felony adjudication process than could be obtained through personal interviews alone. The data from these questionnaires, therefore, can point to *potential* differences of opinion among key respondent types.¹¹⁹

¹¹⁹ Some jurisdictions had only four to seven felony judges. We are not reporting the findings from questionnaires distributed to judges because of the small number of respondents from some courts. Given completed questionnaires from just a few judges in these counties, most judges and attorneys in the jurisdiction will be able to discern which judges completed the questionnaires, thus destroying their anonymity.

Appendix 2



SITE OVERVIEWS

Albuquerque, New Mexico District Court Overview

📍 Environment

With a population of less than 500,000 and only 428 people per square mile, Bernalillo County (Albuquerque) has the smallest population and is the least densely populated among the nine counties in this study. The district court had the lowest percentage of cases disposed by jury trial (1.3 percent) and second-highest average prison sentence (74 months). In addition, the site had the smallest percentage of drug cases in the court's felony caseload (18 percent). In addition, Albuquerque had the second-lowest clearance rate (dispositions/filings = .85), and the court disposed of only 65 percent of its felony cases within 180 days after arrest.

📍 Organization and Staffing

Court

Six full-time equivalent (FTE) judges handle felony cases in the Albuquerque Circuit Court. A presiding judge also handles felony cases, but splits time between the metro court (lower court) and the district court. The six FTE judges are organized into two teams (A and B) of three judges. Team A does arraignments on Mondays (each judge every third Monday), and team B does arraignments on Friday (each judge every third Friday). The judges operate on an indi-

vidual calendar system. The clerks assign cases using a random draw system after arraignment in the district court. Murder cases are given special treatment, such that equal distribution among the judges is more of a priority. All judges rely on their secretaries to schedule trials, and the judges vary in their scheduling practices. The secretaries send out a notice of trial date about two months after arraignment. About 15 cases are scheduled during a typical one- to two-week trial calendar. If a case is not reached in the two-week period, it is rescheduled about a month later.

Most respondents agree that Albuquerque has enough judges and that they are working at full capacity. Judges generally believe they have too many cases and not enough time to devote to each case. While the legislature has approved additional judgeships, it is not clear whether the civil or criminal division will receive the new judges. In addition, the judges do not have law clerks to further ease the caseload. The clerk's office maintains an automated case tracking system that appears to capture most of the key court events. Judges' secretaries track cases for their respective judges. The court is pleased with this facet of the system.

Prosecutors

The district attorneys in Albuquerque are organized into units based on the types of cases assigned, such as property crimes, narcotics, or violent crimes. Within these units, cases are assigned to attorneys based on which judge and team (A or B) receive the case. Approximately 42 district attorneys are assigned to felony cases in Albuquerque. Judges and public defenders (PDs) generally feel that there are enough district attorneys (DAs) for felony cases, though more might be needed for the metro court. The DAs feel that they are working at maximum capacity, such that they indict about 3,000 cases per year. In terms of experience, the general impression is that the DAs and PDs are close to being equal, but the top 15 percent of prosecutors are more experienced than the top 15 percent of defenders.

In plea negotiations, the DAs use a "plea cutoff date" policy as more of a bargaining strategy than a firm policy. They give a 14-day deadline for defendants to accept the offer, or they will proceed with the charges of the indictment. The DA's office recently obtained a personal computer for each attorney, which has reduced the need for secretarial staff. A full-time MIS director manages the DA case database. The DAs agreed that the use of e-mail was the most important and useful tool in communicating with each other and the PDs.

Indigent Defenders

Similar to the DA's office, the public defenders are organized into A and B teams, based on which judge is assigned to a case. The PDs do not specialize in one type of case, though it would be preferable to some. Of the 3,500 felony cases, 600 are assigned to 15 contract attorneys. These cases are considered to be the "worst cases." Respondents agree that contract attorneys "do a good job," although they get paid only \$500 per case. The PD office has had more turnover than the DA's office in the last five years, but this has changed in the last two years. The PD office received computers last year, but the current management program is primitive and a new one is needed. The PD office relies on manual calendars to track their cases and e-mail to communicate.

Almost all interviewees thought the number of PDs, who handle felony cases, needs to be increased. Respondents felt that from twice to four times as many PDs are needed. Most interviewees agreed that the PDs have greater workloads and caseloads than the DAs, and more overall tasks, including establishing relationships with their clients, visiting defendants in jail, and performing quasi-social work functions. The shortage of PDs is apparent in the small number of motions filed by the office, which is due to the lack of time each PD has per case.

🔍 Felony Adjudication Process

One of three things occurs after a defendant is arrested. First, the police releases the defendant on recognizance, and the defendant does not appear in the metro, or lower, court. Second, the defendant is released on bond after review by the pretrial screening staff, but the defendant must appear in the metro court the next day. Third, the defendant is held in custody until the next day at the first appearance. The police arrest and charge many more felony cases than are brought to indictment by prosecutors. Given the caseloads of the DAs, PDs, and judges, only about 3,000 indictments can be brought to court each year.

At the first appearance, a day after the arrest, a PD and a PD paralegal attempt to get the names, addressees, and other information of all of the arrestees, but the public defender is not appointed at this time. If the DA assigned has an in-custody case, the case must be brought to grand jury within ten days or nolle prosequi the case. Most cases are nolle, but the DA has nine months to obtain a grand jury. If the DA is assigned an out-of-custody case, the case must be brought to grand jury within nine months. Most violent offenders' and habitual offenders' cases are taken to grand jury within ten days if the DA receives completed reports

from the police. The DA's office has made a concerted effort to make pre-indictment plea offers very generous to first-time defenders or fourth-degree felons. Almost all of the defendants offered these "sweet deals," which sometimes reduce a charge to a misdemeanor, accept the offer.

Felonies are processed almost exclusively by grand jury in Bernalillo County. There are two sitting grand juries, one on Monday and Wednesday and the other on Tuesday and Thursday. After the indictment is filed, a notice of arraignment is mailed by the clerk's office, and bench warrants are issued for the defendant's arrest. At this point the judges are randomly assigned, and the DA and PD are assigned based on the judge's assignments.

Arraignment in the district court occurs within 14 (usually 7) days of the indictment. The arraignment consists of a short hearing, including a formal reading of the charges, and a review of the conditions of release. One or two DAs and PDs are present, but not necessarily the ones assigned. New Mexico law requires exchange of discovery within 20 days after arraignment and is followed in most cases, but not all. The DA provides a discovery packet, including the police report, witness statements, and a list of possible witnesses.

Within 30 days of the arraignment, the DA usually makes another plea offer. A deadline is also given, but the PD seldom accepts the offer, because of lack of time. If the plea offer is not accepted, the DA usually extends the deadline, sometimes up to the trial date. The PD files motions at this time, even if they will not be effective, to acquire more time and sometimes to enhance the trust of the defendant.

New Mexico law requires all trials to commence within six months after the arraignment. One four-month extension can be granted by the presiding judge of the criminal division, and the New Mexico Supreme Court can grant an additional six-month extension. Most cases are scheduled for trial about four months after arraignment, and among the cases that go to trial, all of them have at least one continuance granted. Respondents agree that continuances are granted primarily because of the volume of cases given to the judges, DAs, and PDs. These continuances are not perceived as problems, but rather as part of the process. However, respondents see delay as a problem between the metro court arraignment and indictment, because the delay greatly benefits the PDs.

The Albuquerque District Court has several mandatory sentence laws. A firearm yields a minimum sentence of one year, a crime on an elderly yields one

year, and a crime of first-degree murder yields 30 years (no good time). Habitual offender enhancements include one additional year for one prior felony, four additional years for two prior felonies, and eight additional years for three prior felonies. There is significant flexibility in the use of mandatory sentence enhancements, but they provide a powerful negotiating tool for the DA. If the case goes to trial, the judge cannot drop one of the prior convictions. Overall, DAs and PDs believe the habitual enhancements produce more guilty pleas.

Austin, Texas

District Court Overview

📍 Environment

With a population of 623,159 and only 620 people per square mile, Austin, Texas, is one of the smallest sites visited. Of the nine sites visited, Austin has the highest percentage of people in poverty (16 percent), but one of the lowest numbers of reported violent crimes per 100,000 people (543). Austin has a low percentage of cases disposed by jury trial (1.4 percent).

📍 Organization and Staffing

Court

The district court in Travis County consists of four full-time equivalent judges and one magistrate. The judges are elected to four-year terms. Each judge has a court coordinator to set and keep docket and handle other administrative duties, a bailiff, and a court reporter. In addition, the criminal division has a newly created trial court administrator position. The judges in the criminal division use an individual calendar and are randomly assigned cases by the district court clerk. The magistrate has no assigned courtroom, but rather must look for one if needed. Judges use the magistrates to handle sentencing, pleas, and some pretrial hearings, but all magistrate decisions must be reviewed and accepted by a judge. An impact court is run by a visiting judge and hears nothing but child abuse and victim cases. Typically about 20 to 30 cases are set for jury trial per judge each week. The number of jury trials reflects charges, not defendants, so the number is not as high as it appears. Judges can hear about one to two trials per week and will dispose of multiple charges, which disposes of five to six “jury trials.”

The judges in Austin are working at maximum capacity, and most respondents feel that at least two more judges are needed. One judge has 81 jury trials pending, five since 1994, and he can hear only about 30 trials per year. Many respondents feel that additional judges will make a trial date more meaningful. Other respondents feel that a full-time magistrate for each judge would eliminate the need for additional judges. However, the state pays the judges and the county pays the magistrate, and it is hard to get additional funding through the county commissioner.

Prosecutors

The prosecutors who handle felony cases in the Travis County District Court are located in different units. First, four district attorneys are a part of each of the four trial teams in the trial division. In addition, there is one major crimes attorney, who handles death penalty cases, and the director, who devotes 60 percent of his time to trial work. In effect, there are 17.6 district attorneys handling felony cases in the trial division. In the family justice unit, four additional trial DAs are assigned to each court. In total, the Travis County District Court has 21.6 DAs handling felony cases.

Overall, the quality of the DAs in Austin has improved over the last five years, and the DAs are better and more experienced than the assigned counsel, on average. There is no problem filling vacant positions in the office because of the University of Texas graduates who want to stay in Austin. The DA's office is becoming a "career prosecution office." Pay is very competitive in Austin, where assistant district attorneys (ADAs) get a 5 percent raise after two, four, and six years and an occasional cost-of-living adjustment thereafter. There is no automated system in the office, but the office is looking to move to a direct file system.

A defining characteristic of the DA's office is its strong ties to the victim, through the Victim Rights Act (VRA). All victims get (1) a victim impact statement, (2) a letter/notice that their case is at the DA and going to the grand jury, and (3) notification of all court settings and bond status. The VRA applies to all violent crime and juvenile crime and should extend to property crime. The DA consults with the victim before any plea is offered, and the victim is allowed to speak in open court before a sentence is imposed.

Indigent Defenders

The type of defense system used in the Travis County District Court is assigned counsel (AC). Currently, there are 120 to 130 attorneys on the AC list, and many respondents would like to see this number decreased to 80. Attorneys are categorized into four levels: (1) A+, a dozen ACs available to handle death penalty cases, (2) A, ACs who are judged capable of handling anything, (3) B, ACs who can handle all cases, but mostly serious felonies and misdemeanors, (4) C, ACs who handle only probation violations. If out on bond, the defendant is presumed to be able to afford an attorney and can be assigned only by making an argument to the judge. If the defendant is still in custody after 72 hours, an affidavit of indigency is signed and the case is appointed to AC. The AC budget is about \$1.5 million, and the average payment per case is \$365. If the list is de-

creased, average pay per case should increase. One respondent feels the AC system works well because it gets the serious cases to the best ACs, evaluates AC performance, and provides effective representation in a county where indigent defense is not a priority.

🦋 Felony Adjudication Process

Following arrest, the defendants are taken to central booking for charging by the police. The case is classified as a felony or misdemeanor and is entered into the police computer. The defendant's initial appearance occurs within 24 hours before a magistrate in city court. The magistrate determines whether the defendant is eligible for bond. Of the defendants eligible for bond, 70 percent are released on personal bond, 10 percent are released on cash or surety, and 20 percent stay in jail. If the defendant does not qualify for bond, he or she is transferred to the city jail.

In addition to determining eligibility for bond, the pretrial release staff helps determine indigency. If the defendant claims indigence and is not bonded out within 72 hours, pretrial staff will assign counsel and the defendant will sign an affidavit of indigency. If the defendant is out of jail, the court assumes that the defendant will hire an attorney.

If the case is classified as a misdemeanor, a county attorney handles the case, and if it is classified as a felony, a district attorney is assigned. The case information is sent to the DA's office, where it takes about two weeks to assemble. Next, the case goes to the victim witness division, which notifies the victim under the Victim Rights Act. Finally, the case goes to "intake" for screening, where the decision is made to move the case through APT (Appropriate Punishment Team) or to indictment by grand jury. APT is used for nonviolent felony offenders who seem likely candidates. APT is composed of one ADA, one pretrial release officer, one adult probation officer, one counselor from the county jail, and one victim counselor. APT fashions sentencing packages for nonviolent offenders in consultation with the victim, the defender, and the court. The goal of the APT is to get an early guilty plea before indictment.

If not sent through APT, the case is sent to grand jury, where one of four judges is randomly assigned. A three-tiered system is used for sending cases to grand jury. If the defendant is in jail, a case should move from arrest to indictment in one to two months. If the defendant is not in jail ("out-of-jail") and is accused of a violent crime, the case should move from arrest to indictment in

three to six months. If the defendant is “out-of-jail” and the crime was nonviolent, the case should move from arrest to indictment in 6 to 18 months.

Within a week of assignment to the district court judge, the case is set for “designation hearing.” This hearing is used to determine indigency and to assign an attorney. Most judges will reset designation several times to allow the out-of-custody defendant time to find an attorney. Designation is often the point at which counsel and the defendant first meet. AC is supposed to visit the defendant in the county jail, but the first meeting is usually at designation. Discovery also first begins at designation, but since 50 percent of the cases are new for the AC at this time, defense typically will ask for reset of three weeks “to get up to speed on the case.” Since Texas does not have reciprocal discovery, the AC can look at the DA’s report and take notes, but cannot copy it.

Most “out-of-jail” cases are set for pretrial hearing about three to four weeks after designation. Cases in which the defendant is in custody usually will get set in about one week. The goal of the pretrial hearing is to handle the motions for discovery and suppression of evidence. Witnesses may or may not be present at the pretrial hearing, and pleas can be taken at this time, but it is uncommon.

If the defendant wants to plea, a hearing is set about two weeks after pretrial. The prosecution does not offer the best deals up front, and there is little incentive to plead early. Pretrial hearings are usually rescheduled two to three times, and the best deal usually is offered on the day of the jury trial. If not plead, the case may proceed to a real bench trial, such that evidence is discussed and witness testimony is given before the judge. These cases are typically real factual disputes in which the judge makes an informed determination of guilt.

If the case is not plead or disposed of through a bench trial, a jury trial is set within one month of the final pretrial hearing. Continuances are easy to get for the jury trials, and the judges give little pressure to plea. Prosecutors and defenders agree that careful review of the cases occurs only after the cases are set for jury trial. Once cases are fully examined, about 50 percent are set for jury trial, but the best offers are still not made until the day of the trial. Once established that the case will go to trial, the case is reset for jury trial in two weeks if the defendant is in jail and four weeks if out of jail. Child abuse cases account for about one-third of all jury trial cases. Jury selection takes place on Monday, and the trial begins Tuesday morning. Texas allows jury sentencing, such that the jury determines sentencing immediately after the conviction. In bench trials, the judge will set sentencing for about three weeks later.

Most respondents agree that delay is a serious problem in Travis County. Some interviewees state that while the VRA has good intentions, the DAs spend too much time with the victims. The VRA has increased the number of trials because the victim will not settle for reasonable plea offers. Other interviewees believe that charging practices need to be improved and more of the “bad cases” should be disposed of earlier. Some respondents describe the charging practice as “nonexistent.”

Birmingham, Alabama Circuit Court Overview

🦋 Environment

The site of Birmingham, Alabama, in Jefferson County has a population of 872,026. Of the nine sites visited, Birmingham has the lowest income per capita (\$13,277) and the highest percentage of people in poverty (16 percent). In 1991, Birmingham had the highest number of reported violent crimes per 100,000 people (1,467) and the highest average prison sentence length (81 months). The site has high percentages of defendants held in custody and defendants with privately retained attorneys and has the highest percentage of cases disposed by a jury trial (5.4 percent). Naturally, Birmingham has the lowest percentage of cases disposed within 180 days (55 percent).

🦋 Organization and Staffing

Court

Five full-time equivalent judges handle felony cases in Birmingham and operate on individual dockets. A computer in the clerk's office randomly assigns cases to judges. The circuit court receives about 350 indictments per month from the grand jury, or about 4,200 per year. In effect, each judge receives about 840 cases per year. The manual trial calendars kept by the judges, or their secretaries, are seriously backlogged. Twenty-five to 50 cases are set for trial on a given Monday, and a judge can try only about two cases per week, especially with the large number of capital cases pending. The clerk's office has an automated case management system that contains a great deal of information on criminal cases. They produce reports for each judge, listing the pending cases each month, the number of cases filed, and the number of cases disposed.

Prosecutors

Birmingham has 21 district attorneys handling felony cases, 15 of whom are strictly in the circuit court. Five experienced DAs handle the screening process, such that one supervises the other four. One DA conducts grand jury hearings. Five DAs are assigned to each of the five judges' courtrooms. Two DAs serve as backup to the five assigned to the judges' courtrooms. One of the two also handles

misdeemeanor appeals from the district and municipal courts, so he is not on felony cases full-time. One DA supervises the seven who try general felony cases, and the remaining seven are assigned to murder, rape, and child sexual abuse cases. These seven attorneys handle their cases vertically from the district court through the sentencing in the circuit court. With about 15 DAs handling felony cases in the circuit court, each DA receives about 280 cases per year. The DAs do not have personal computers in their offices, and they rely on the clerk's office for caseload reports.

Indigent Defenders

The jurisdiction in Birmingham uses an assigned counsel system. Approximately 150 local attorneys are on the list. Of the 150 attorneys on the assigned list, about 20 are assigned to capital cases. Each of the judges in the district court assigns an indigent defender at the first call in the district court. Judges try to match the most experienced attorneys with the most serious cases and the least experienced attorneys with the less serious cases. Sometimes an attorney will withdraw from the case when it gets to the circuit court, so the circuit judge will assign a new counsel. Most interviewees think the assignment system works well.

Assigned counsel receives \$20 per hour for out-of-court time and \$40 per hour for in-court time. There is a \$1,000 cap on hourly expenses for noncapital cases and a \$1,000 cap on out-of-court time for capital cases. Most respondents feel the assigned system works well and the public defenders are comparable to the DAs in experience and quality of work. However, there is more variation in the quality of assigned counsel than in the quality of DAs.

🦋 Felony Adjudication Process

There are four experienced DAs and one DA who supervises the screening process. These positions are rotated every 12 to 18 months. The first appearance occurs in the jail, where the district court judge handles the 48-hour hearing. The case is set for "first call" about a week to ten days later. The first call, or second appearance, occurs in the district court and is solely intended to determine if the defendant has an attorney and, if not, to determine indigency. Defendants who are out on bail and do not have an attorney are rescheduled for another first call about two weeks later to give them another chance to hire an attorney. Once the defendant is assigned an attorney, the attorney is informed of the assignment by phone that day or the next day, and the case is set for pretrial conference about three to five weeks later.

Most respondents agreed that 30 to 50 percent of all felony cases plead guilty at or before the preliminary hearing. Guilty pleas in the district court are most likely to involve less serious cases, though defendants in more serious cases sometimes plead guilty here also. The defense counsel waives most preliminary hearings. Most defense attorneys meet with the assistant DA on the preliminary hearing date and speak informally about the case before the scheduled preliminary hearing. After the preliminary hearing, or its waiver, the case is sent to grand jury, which will consider the case about three months later. It could take up to four months or more from the original arrest before the case gets to grand jury, which meets the first week of each month. At this time, indictments are delivered to the presiding judge of the criminal division once each month.

Discovery is often exchanged at the preliminary hearing. If the DA thinks it is necessary to play “hardball,” he or she will postpone providing discovery until after the indictment is filed. Alabama law requires open and reciprocal discovery, and none of the interviewees thought discovery was a problem area. DAs agree that the best plea offers are given at the preliminary hearing. Thereafter, there is a good chance that the offer will include a longer sentence. On the contrary, defenders agree that the better deal is often made in the circuit court. First, district court judges sometimes apply harsher sentences. Second, the backlog of cases in the circuit court provides the defendant with little incentive to settle, because of the small probability of the case going to trial. The first opportunity to discuss the plea offers in the circuit court is at the pretrial hearing, which is the first appearance after the indictment is filed.

After the indictments are delivered, it takes a week or more to get all of the paperwork on each case into a circuit court file. Cases are assigned to one of five judges at this time, and the judges set their own pretrial hearings. The pretrial hearing, or arraignment in the circuit court, occurs about three to four weeks after the court receives the indictments from the grand jury. Most judges conduct a pretrial settlement conference in the judge’s chambers. Most judges provide his or her opinion on what the sentence will be in order to facilitate a settlement. If the case is not settled, which is usually the case, the judge schedules the trial for three to six months later. With large trial calendars, cases rarely go to trial on the first trial date and are reset for trial about three more months later.

Pretrial motions are nonexistent in Birmingham and are considered by some as “a joke.” The lack of motion practice is attributed to the DA’s lack of time and insufficient clerical staff. Besides the pretrial hearing, no other pretrial conferences are scheduled. Settlement conferences are conducted between attorneys,

and a judge will meet in chambers only if it is necessary to help finalize a settlement.

Most interviewees consider delay and continuance policies a problem. The time from arrest to indictment is four to six months, and the time from indictment to trial is four to eight months, depending on the judge's docket. Most cases have multiple trial dates, so it is common for one year or more to elapse between the indictment and the actual trial. Everyone acknowledges that delay benefits the defendant's case because witnesses are more likely to leave town or die as time passes. Continuances are common and are driven primarily by the backlogged trial dockets. The most current judge has 15 trials scheduled per week, and the most backlogged has 60 cases scheduled. Even the most current judge cannot try half of the cases, thus trial continuances are common.

New minimum, mandatory sentence laws have had quite an impact on the felony adjudication process in Birmingham. First, a murder committed by shooting into or out of a car is a capital offense and results in life without parole. If one is charged with selling drugs within three miles of a school or public housing project, a mandatory five years is added, in each case, to the sentence. Ironically, there is no place in the county that falls outside three miles of a school or housing project. Thus, selling drugs carries a minimum, mandatory ten-year sentence, and judges cannot substitute the sentence with probation. With this policy, cases that could have been resolved with a guilty plea early in the process are now much more difficult to resolve. In addition, with the backlogged trial calendar, defendants in these cases are likely to postpone their final decision on a plea, until the trial date is imminent. Thus, the new sentencing laws undoubtedly complicate the felony adjudication process in Birmingham.

Cincinnati, Ohio

Common Pleas Court Overview

📍 Environment

In 1992 the population of Hamilton County was 511,997, with only 598 people per square mile. Cincinnati has the greatest percentage of cases disposed after 90 and 180 days (70 and 91 percent, respectively). The site has the lowest percentage of violent crime cases (17 percent), tied only with Portland. In addition, Cincinnati sentences the greatest percentage of convicted defendants (98 percent). Of the nine sites visited, Cincinnati is the only court with judicial assignments including both felony and civil cases.

📍 Organization and Staffing

Court

Fourteen judges handle felony and civil cases on individual trial calendars. One full-time equivalent visiting judge serves as a backup to the 14 judges and tries cases that the other judges cannot take because of overscheduling or vacations. In effect, about 7.5 judges handle the felony cases in Cincinnati. An assignment commissioner randomly assigns cases to one of the judges and sets a date for the “Disposition Scheduling Conference” (DSC). The court uses the DSC and the plea and trial setting (PTS) conferences to facilitate plea negotiation. Judges become most active in plea negotiations at the PTS conferences. Judges schedule their own cases, but differ in the way they manage their calendars. Attorneys in most courts conduct voir dire, but in some courts, the judges do. About 60 percent of all felony trials are bench trials; the remaining are jury trials.

Most interviewees believe that judges are working at close to maximum capacity. Judges generally feel that additional visiting judges are needed. The judges have been trained to use a new Windows-based case management system to help them manage their dockets. According to one judge, the system is quite adequate and effective. The judges hope to have a general data system containing complete information of offenders in one system.

At the time of the study in 1995, Hamilton County established a drug court to process the growing number of drug-related offenses. The court handles drug cases involving first offenders, primarily possession cases. The court was formed

in response to the dramatic increase in drug cases in the past five years, which has increased felony backlog and jail crowding. One prosecutor estimated that drug cases were about 20 percent of all felony cases about five years ago, and now they are 45 to 50 percent. Some observers also noted that because of jail and prison crowding, the penalty for selling small amounts of cocaine, for example, is dramatically less now than ten years ago.

Prosecutors

Twenty prosecutors handle felony cases in the common pleas court (CPC). After arraignment in the CPC, a chief assistant district attorney (DA) assigns cases to one of four teams. To coordinate assignments, the DA groups judges into four teams: two teams of three judges and two teams of four judges. Naturally, there is a team of prosecutors for each of the teams of judges: one DA in each courtroom (14 total); one chief assistant DA assigned to each team to help coordinate the work (four total); and two additional prosecutors who serve as backup to the teams. DA teams are rotated every three months. Complicated and serious cases are assigned to specific, experienced prosecutors who handle these cases regardless of which judge is assigned to it. Prosecutors receive their cases for the first time at the DSC.

Before handling felony cases, DAs work on misdemeanors and maybe juvenile cases for two years. This gives the DAs more experience than many defenders who take cases soon after they are out of law school. Prosecutors generally have more support staff than the public defender's office. Some respondents feel the court currently has an adequate number of DAs, and others feel that more are needed to handle the increase in drug cases. The DAs started developing their own information system two years ago, and they also have access to the court's case management system. Efforts continue to combine the systems and make both of them more accessible.

Indigent Defenders

One hundred fifty attorneys are on the assigned counsel list to handle felony cases in the county. Forty-five full-time public defenders handle misdemeanors, juvenile cases, special team cases, and program administration. Indigent defenders believe the fees for their services are much too low and cover only overhead costs. In addition, the public defenders believe they have far less resources than the prosecutors, who have the police department and two to three full-time investigators. The public defender's office just recently obtained one full-time investigator.

Most respondents believe that in the less serious cases, prosecutors have more experience, but in the most serious cases, there is little difference, and some defenders may be more experienced than the DAs. Overall, the indigent defenders are as competent as the DAs. With the assigned counsel system, moreover, defenders do not have the systematic supervision and training that prosecutors receive. Until recently, the PD office used index cards to keep track of offender information. They recently purchased ten computers to process cases more efficiently. The PD office is significantly behind the prosecutor's office in terms of data management.

🦋 **Felony Adjudication Process**

Rapid Indictment Program

In August 1994, the Hamilton County prosecutor and police department developed and initiated the “rapid indictment” program. The program's intent is to have the cases charged as felonies in the municipal court and go directly to the grand jury, bypassing the preliminary hearing process in the municipal court. Three police officers are full-time “presenters” before the grand jury. These police presenters provide hearsay testimony based on the police report and discussions with the arresting officer. In some cases, prosecutors still want the actual witnesses to take the stand. The indictment must occur within 10 days after first appearance if the defendant is in custody and 15 days if not in custody. This program puts considerable pressure on investigators, the police, and crime labs to provide information in an expeditious manner. It has significantly reduced the amount of time from arrest to indictment. Elimination of the preliminary hearing has saved much money on police overtime.

At the first appearance in the municipal court, the defendant is initially charged with the offense stated in the police reports. A chief assistant DA screens cases before grand jury, and many charges are reduced from felonies to misdemeanors, especially in the area of theft. According to defenders and judges, prosecutors routinely overcharge as a strategy to help get a plea on at least the most serious charge. Police promptly bring the cases through the rapid indictment program. At the first appearance, five attorneys from the assigned counsel list are scheduled to be in court each morning for first arraignments. The group of five gets one morning each month and consists of experienced and less experienced attorneys. The defenders receive the cases at this point, such that the serious cases go to the

more experienced attorneys. Prosecutors do not make plea offers before the case goes to grand jury.

Preliminary hearings have been nearly eliminated with the implementation of the rapid indictment program. Felony cases used to get bogged down in the municipal court, where they were handled through a preliminary hearing. Today, the municipal court is bypassed and felony cases go to a grand jury within 10 to 15 days. Hearsay testimony is common during this step.

Arraignment in the court of common pleas occurs in one courtroom every Friday. About half of the defendants (mostly those in custody) waive arraignment and enter a not guilty plea via a written statement. A judge is randomly assigned and the date for the DSC is set for two weeks. Defenders typically file motions for discovery soon after the indictment, so discovery should be exchanged before the DSC, but this is not always the case. Defenders have complained about the lack or lateness of discovery since the rapid indictment program was initiated. Discovery used to occur at the preliminary hearings, and since this stage was eliminated, discovery is sometimes overlooked.

The DSC is very informal and involves only the attorneys and may transpire without the presence of the judge. It might even occur in the hallway if the judge is in trial. Pleas are discussed, and discovery is supposed to be exchanged. Few pleas are actually settled here, and a plea or trial setting conference date is set. The first PTS conference occurs two to four weeks after the DSC or six to eight weeks after the arrest. The defendants appear at this stage and there are often three or four PTS conferences before a guilty plea is entered. If one is not agreed upon, the case goes to trial. Pleas are usually entered at the second or third DSC.

The rapid indictment program has also significantly affected pretrial motions. Because of the lack of information and discovery, defenders often file all categories of motions, whether needed or not. According to some interviewees, continuances have become a problem. Continuances have occurred because of money owed to the defense attorney, missing witnesses, and lack of enough judges. However, no cases have been dismissed for failure to meet the speedy trial deadlines. The speedy trial law in Hamilton County states that the trial must occur 90 days after the CPC indictment if the defendant is in custody and 270 days if the defendant is not in custody.

In addition, Hamilton County has mandatory sentences and habitual offender enhancements. Ohio statutes include a three-year enhancement for firearm use or possession during the commission of a crime. Use of a firearm makes robbery a

first offense and adds a mandatory three-year term (13 years total, minimum). The defendant must serve the full three years on the firearm charge, and the other ten years can be reduced by one-third for “good time.” There are also mandatory minimums for hard drug sale cases, depending on the type and amount of the drug or if it occurs near a school. Mandatory sentences have increased the caseloads and number of trials, but also serve as “one more tool to force a guilty plea.”

Grand Rapids, Michigan Circuit Court Overview

🦋 Environment

Grand Rapids is one of the smallest and least densely populated sites involved in the study. The population of 511,997 ranks second in the study, and the population density of 598 per square mile ranks third. The city has the highest percentage of Caucasians (86.7 percent). The percentage of the population in poverty, as well as the violent crimes reported, ranks low. Approximately 4,000 felonies were filed last year in the Grand Rapids Circuit Court. The circuit court handles about 100 trials each year. The caseload is divided fairly evenly—criminal, civil, and domestic cases each comprise one-third.

🦋 Organization and Staffing

Court

The Grand Rapids Circuit Court currently has seven judges in the top tier of a two-tiered system. The judges have specialized caseloads, such that four judges handle criminal cases and three judges handle civil cases. Judges and administrators feel that anywhere from one to three more judges are needed to deal primarily with the abundance of felony cases. However, if the number of judges is increased, then the problem of courtroom space arises. The judges use a master calendar system, but revert to it only when it is convenient. The clerk assigns a judge to a case at the circuit court arraignment through a random draw. The judge assigned to the case remains with it; however, there is a policy that allows another judge to handle the trial or the plea if the original judge has a conflict. Judges and prosecutors view the current calendar system as inefficient.

Many prosecutors and defenders feel that the availability of judges might increase with the reestablishment of the drug court. This system was in place for three years, with each judge moving through a six-month rotation. The system was effective in moving cases and freeing up time in other courts, but was abandoned because of the burnout of judges.

Prosecutors

The prosecutor is responsible for prosecuting all criminal offenses under state statutes. With 30 full-time assistants, the elected prosecutor tries to employ a

system of vertical prosecution. However, a respondent commented that this usually occurs only in drug and sex offender cases. Prior to the second appearance or preliminary exam, the cases are assigned to two district attorneys (DAs) the evening before. Typically more inexperienced attorneys are assigned to cases in the preliminary stages of a case, saving the more experienced DAs for the trials. Turnover is very low among DAs, which yields higher experience levels. Conversely, “career prosecutors” exist, who develop false expectations of winning every case. Staff resources, workload, and staff support are sufficient. Overall, the environment of the prosecution in Grand Rapids is fairly healthy.

Indigent Defenders

A private, nonprofit public defender (PD) handles 60 percent of the felony caseload, and the remaining cases are assigned to independent contract defenders. The PD office employs 13 attorneys, including the director, and each PD averages 175 felony cases per year. A vertical system is employed. Average tenure is three and a half to five years, with a core group of three experienced attorneys, who have been in the office since 1983. The remaining felony cases are assigned to independent contract defenders. Because bidding groups are evaluated each year by the judges, the quality of contract defense work is usually high. Counsel is appointed at the first appearance or assigned within 24 hours after the first appearance. Little effort is expended to determine indigency.

¶ Felony Adjudication Process

To improve felony case processing, the Grand Rapids Circuit Court has made improvements in the system before the screening process. In the past, warrants were difficult to obtain, because the DA was reluctant to sign a warrant before he or she knew the future of the case. As a result, a “warrant corner” was established, staffed by two DAs, including one with sufficient experience. The “warrant corner” aims to speed up and improve the warrant process. Accessibility and consistency have been improved, and a third attorney might be added to warrant writing in the future.

In the screening process, prosecutor charging practices are of great concern to the PDs and the court. An abundance of “minor,” small-stakes crimes are charged as felonies rather than misdemeanors. Respondents spoke of countless “borderline cases,” which are tried as felonies because of current statutes. Many PDs and judges feel that the DAs should informally raise this “line” and charge more

cases as misdemeanors. Case evaluation must be improved so that meaningful negotiations can get the “junk” out early.

Within 24 hours of the arrest, the first appearance, or arraignment on the warrant, occurs in the district court. No pleas are taken, there are no attorneys present, and the indigent defender is assigned. At this stage, pretrial release of the defendant is heavily influenced by jail overcrowding, with each judge allotted 17 beds in the jail. Within 12 days of the lower-court arraignment, Michigan law requires the preliminary exam to be held in the district court. Two prosecutors are assigned at this point, and they are usually briefed the evening before. Defendants can enter a felony plea to the district judge. About 30 to 35 percent of the cases settle here. Respondents feel that 35 to 50 percent of the cases should be settled at this point. Prosecutors have limited discretion on bargaining when pleas are entered. The “no bargain” list includes armed robbery, B&E occupied, and aggravated stalking. In effect, these cases are never plead until the day of the trial. The remaining cases are rarely reduced to misdemeanors and are set for arraignment in the circuit court in two weeks.

Exchange of discovery occurs at the preliminary exam. Many respondents question its effectiveness. Full discovery is usually not available until the day of the preliminary exam, and some PDs believe it should occur earlier. Prosecutors feel that discovery could occur earlier, but police cooperation and expedition are imperative. If discovery could occur a week earlier, PDs would have an idea of where the case was moving and the cost of bringing in witnesses might be saved. In addition, PDs might be able to respond more appropriately to plea offers at this time, which could achieve the mutual goal of settling more cases at the preliminary exam.

Approximately one month after the arrest, the circuit court arraignment is scheduled, but it is waived in 95 percent of the cases. New procedures allow in-custody defendants to enter a plea within one week of bindover. The case then goes to the county clerk’s office, where the clerk assigns a trial date for a judge. A trial date is set within 90 days for defendants in custody and within 120 days for defendants out on bond. If the trial date conflicts with the assigned judge’s schedule, a policy allows another judge to be assigned. This process takes approximately one to two weeks.

The first trial date is set approximately four to five months after the arrest but is rarely met. Respondents consider continuances to be a problem in Grand Rapids, with too many cases delayed. Several interview respondents feel that judges do not control their dockets and are too flexible on continuances. Fifteen cases

are assigned to each judge every morning, of which ten are jail cases and must be moved quickly. As a result, out-of-custody felons linger, because the court is processing the in-custody felons, and defendants waive the right to a speedy trial.

Pretrial motions are difficult to schedule because judges are busy and their calendars are tight. In effect, most motions are handled on the day of the trial. Pretrial conferences are also rare, on account of the volume of cases. Seventy-eight percent of the felony cases are decided within six months of the arrest. Continuances and other motions delay the remaining cases.

🔍 Issues and Observations

Many of the problems of the Grand Rapids Circuit Court relate to the overabundance of cases that circulate through the court and the problems of delay. The causes of these problems range from the prosecution's inability and lack of experience to charge lesser felonies as misdemeanors to the overscheduling of the trial docket. Others believe that more judges are needed or that judicial management should be improved. These problems result in the high volume of cases, a large backlog of cases, and jail overcrowding.

One respondent feels that the biggest difference in the justice systems is not between prosecutors and defenders, but between the state and federal court systems. The former is loose, informal, and subject to negotiation, despite rules. The latter is structured and well staffed, and lawyers are held accountable to standards. Although the Grand Rapids Circuit Court appears to be relatively efficient, several areas could be refined and many respondents are eager to improve the system.

Hackensack, New Jersey Superior Court Overview

🦋 Environment

The suburban area of Hackensack, New Jersey, is, ironically, the most densely populated site, with 3,565 people per square mile. Hackensack's per-capita income is highest (\$24,080), and the percentage of people in poverty is lowest at (3.9 percent). In terms of efficiency, the superior court had the second-highest clearance ratio, the number of felony cases disposed per cases filed (1.03 in 1994-95). The site has the lowest percentage of defendants held in custody (19 percent) and the highest percentage of defendants with privately retained attorneys (47 percent). Hackensack has the highest percentage of cases disposed by a jury trial (5.4 percent) and the lowest percentage of cases disposed in six months (12 percent).

🦋 Organization and Staffing

Court

Seven full-time equivalent judges currently handle felony cases in the Hackensack Superior Court. Four of the judges use an individual trial calendar, and the remaining three use a master calendar. Respondents throughout the court agree that judges have a very small role in plea negotiations. Experiments to expand the participation of judges may occur in the future. Currently, the judge's only role is approving or rejecting the plea offer. Respondents generally agree that judges need more support staff and law clerks. However, internal space is tight, and problems would arise in determining where to place the additional staff. The court is undergoing a transition from the old automated system to a PROMIS/GAVEL system. A copy of the complaint is sent through the system, and notices and the arraignment calendar are sent out of the system. The prosecutor's office is linked to the system.

Prosecutors

The prosecutor's office in Hackensack employs 11 felony prosecutors, 51 assistant prosecutors, and 150 investigators. All indictable matters come to one of two prosecutors who serve as case screeners. These experienced prosecutors

assess proofs, study the nature of the charges, and look at the defendant's prior record. The DAs then determine if the case is worthy of superior court prosecution. The prosecutor's office has, historically, been known to set forth a fairly conservative approach to plea negotiations. Two senior assistant prosecutors are responsible for overseeing and approving all pleas offers, rather than the two assistant prosecutors handling the case. A plea cutoff date policy is followed most of the time and typically occurs prior to the hearing of any motions. Prosecutors contend that their policy varies depending on how individual judges handle it. Because of special crime problems, the prosecutor's office has devoted more resources to domestic violence. Additional attorneys and support staff might be needed to deal with these problems.

Indigent Defenders

The public defender's (PD's) office employs 15 attorneys and 80 investigators. PDs handle criminal cases exclusively and use a vertical assignment system. An attorney and an investigator are assigned to cases on a rotating basis the day after the arrest. After the arrestee is interviewed, the individual is informed that the public defender services are not free. A \$50 fee is paid by the defendant if he or she can afford it. Computer checks are made to determine if the PD is working on any other cases involving the defendant. The PD is then officially assigned to the case.

🦋 Felony Adjudication Process

A team of three prosecutors, one with extensive experience, oversees the charging and screening process. The team meets with the arresting authority and promptly decides on the charges. At the first appearance in the municipal court, bail is set and counsel is either assigned or retained because of indigency. After the first appearance, the PD must meet with the arrestee within 48 hours. A pre-arraignment conference is held shortly thereafter.

About four months after the arrest, indictment occurs. Felonies must be charged by grand jury in New Jersey. The DAs present the case to the grand jury, and the decision is made to bill or not to bill. After indictment, discovery occurs, at which point police reports, statements, and any laboratory reports are exchanged. Exchange of discovery is supposed to be available at the pre-arraignment interview. In some cases, discovery is not complete because of the complexity of the cases.

Arraignment in the superior court occurs soon after the indictment. A date for the “status conference” is set at arraignment for about three weeks later. At the pretrial status conference, motions and the first pleas are made. At times, the motions are delayed in locating and bringing the witnesses into court. Once all of the motions have been heard, the judge schedules a trial date.

Respondents generally agree that continuances cause significant delays in Bergen County. The average continuance was said to last about four weeks. Almost all cases that go to trial have at least one continuance, and about two-thirds have two or more. Some respondents believe that continuances result from the overscheduling of judges. Others believe they are due to the younger, less experienced, and unprepared DAs. Once at trial, “drug zone” cases have minimum mandatory sentences, and crimes committed with a firearm have mandatory jail time.

Oakland, California Superior Court Overview

📍 Environment

The largest site visited, Alameda County has a population of 1,307,572. The site is the most ethnically diverse, with Caucasians comprising 58.2 percent of the population, African Americans comprising 17.5 percent, and Hispanics comprising 14.2 percent. The Alameda County Superior Court hears large percentages of violent and drug cases (31 and 45 percent, respectively). In addition, the Oakland court retains the greatest number of defendants in custody (66 percent).

📍 Organization and Staffing

Court

The Oakland Superior Court consists of two teams of seven judges. Each team has one executive judge (EJ), four docket judges, and two non-docket judges. The EJ handles all the pretrial matters, including arraignments and disposition and settlement (D&S) conferences. Docket judges are assigned their own trial cases to manage, and they tend to be involved in the most serious cases. The non-docket judges act as “back-up” to the docket judges, but they also conduct trials. After the D&S conference, the executive judge assigns the case to a docket judge. Docket judges generally handle 20 to 30 active cases at a time.

There have been no new judges in Oakland since 1986, and only the trial court judges believe that additional judges are not needed at this time. The trial court judges contend that because all cases have complied with the 60-day limit, a problem does not exist. On the other side, prosecutors, defenders, and EJs generally feel that the court needs additional judges. These respondents feel that the lack of judges causes difficulties in getting cases to trial, results in added pressure to meet the 60-day limit, and causes a larger backlog of cases.

A drug court was initiated in Oakland in January 1995. The judge who sits on the court was selected because of his interpersonal skills and his commitment to the program. All first-offense, felony drug possession cases go to this court. Oakland’s drug court is modeled after the Dade County program. While it is too early to determine the court’s effectiveness, the drug court has taken a large proportion of the less serious cases out of the dockets of other judges.

The superior court uses a newer version of a master calendar system to interact with the team concept. Some respondents feel the calendar system produced more courtroom “down time” than the former, master calendar system. Support staff is sufficient, but vacations and sick leaves create shortages. The court uses the CORPUS system, an automated case management system. The judges use the system to report their calendar for the coming weeks.

Prosecutors

The Alameda County Court uses horizontal assignment systems for both prosecutors and public defenders. Thirty-five prosecutors handle felony cases in the municipal courts. Eleven of the prosecutors handle charging duties. Six of the prosecutors, one in each of the municipal courts, handle all first appearances and subsequent settlement conferences. The remaining 18 prosecutors handle the preliminary hearings in the municipal courts.

Cases that reach the superior court are handled by one of two teams of ten prosecutors. A team leader handles arraignments in the superior court before an executive judge, and then assigns the case to one of nine trial attorneys. The assigned trial attorney handles the pretrial settlement conferences and the trial. Under this system, at least four prosecutors handle each case that goes to trial, excluding the prosecutor who screens and charges the case. The prosecution has special units for gang cases (two prosecutors), narcotics trafficking (four), career criminals (three), death penalty cases, and welfare fraud cases. Each of these units has its own investigators, and the cases are handled *vertically*. These special units allow the nine trial attorneys to carry smaller caseloads than prosecutors who handle general felonies. In addition, six district attorneys strictly specialize in law and motions.

Respondents agree that more attorneys, as well as more judges and public defenders, are needed. The shortage of DAs causes delay in getting cases moved, pressure to meet the 60-day limit, and the inability to handle the potential caseload. DAs maintain their own automated case management system, the DALITE. The prosecutor’s technology is basic, and the DAs would like the ability to access the central DALITE or court’s CORPUS from outside locations. Prosecutors are generally satisfied with their support staff.

Indigent Defenders

Public defenders (PDs) primarily use a horizontal assignment system, such that 33 public defenders handle felony cases. Six of the PDs handle municipal

court arraignments, six handle municipal court settlement conferences and preliminary hearings, fifteen handle felony trials, five handle murder cases, and two deal with law and motions. The five PDs who handle murder cases are assigned vertically and handle 60 percent of these cases. The remaining murder cases are assigned to regular, trial public defenders. In a non-murder case that goes to trial, typically three to four PDs will handle different phases of the case. A sabbatical program exists in Oakland, where most of the time, three PDs are away. In effect, 30 PDs handle the felony caseload.

Respondents believe the quality of the DAs and the quality of the PDs are comparable. The caseloads and workloads are difficult to compare between the two groups. However, in the areas in which special units exist on the prosecution's side, the PDs are overmatched. Attorneys on a local bar-appointed list of PDs handle the most serious felony cases. General opinion is that the quality of the local bar list is below average. Complaints of ineffective assistance of counsel usually involve the local bar program. Prosecutors and defenders attributed these problems to the low pay given to attorneys on the bar list.

The indigent defender program uses its own automated management system, the GIDEON. The GIDEON can communicate with the court's system, the CORPUS, and receive most of the information the program needs.

🦋 Felony Adjudication Process

The screening and charging process is handled by experienced prosecutors, usually only DAs with trial experience. It is widely acknowledged that substantial discretion is used by the prosecutors in applying the three-strikes law. This application has alleviated some of the potential impact of this law on the courts and the trial calendar. The first appearance occurs in Oakland and the five other cities in the county. A second appearance follows shortly thereafter and is routine. The prosecutor usually makes his first and most "friendly" plea offer at this time, and a concerted effort is made to settle the lesser cases in the municipal court. The exchange of discovery usually occurs at the second appearance as well, and no problems have been reported. Third and fourth appearances are also the norm in the municipal courts. Multiple appearances are necessary to allow defenders time to establish a relationship with their client and to allow both attorneys to get up to speed on a case. Sentencing on guilty pleas in municipal court is handled by one executive judge in the superior court.

A respondent estimated that 99 percent of defendants charged with a felony go to a preliminary hearing. Very few guilty pleas occur on felony charges in the municipal court. In contrast to Sacramento, where there is widespread use of hearsay preliminary exams, Oakland prefers to put witnesses on the stand early. The purpose of this procedure is to judge the credibility of the witness and to get a better feel for the case. Prosecutors also like to get the witness's testimony on the record so that it can be used at the trial in the event the witness decides not to testify. Hearsay preliminary exams are still most common, however.

The best offers in plea negotiations are made in the municipal courts at the beginning stages of the process. If the defendant goes beyond the preliminary hearing, the sanctions are sometimes increased. In the superior court, the executive judge is very active in assisting the plea negotiation process. If the case goes to trial, judges generally do not accept a guilty plea to anything less than what's charged in the information, unless the EJ approves the plea. Once a case goes to trial, the sanction will reflect all prior convictions and, therefore, is likely to be much more serious than the plea offer in either the lower or superior court before the trial.

Arraignment on the information occurs in the court of the executive judge and must occur ten days after the preliminary exam. Any pretrial motions are handled by six specialists in the area. Motions do not appear to be overly burdensome in the Oakland court. Trial scheduling is handled by the docket judges who have about 20 to 30 active cases at a time. Their main focus is to get non-time-waiver cases to trial within 60 days after arraignment in the superior court (the 60-day rule). The time-waiver cases, where defendants waive their right to a speedy trial, are juggled and pushed back or continued for another conference.

Leading up to trial, the executive judges conduct the disposition and settlement (D&S) conferences, and the trial judges conduct primarily trial setting and management conferences. Executive judges are very active in attaining guilty pleas, and multiple D&S conferences are usually necessary. The trial setting conferences are usually short, but are necessary to determine the probable length of the trial and the number of witnesses. Some judges allow attorneys to ask questions themselves, but they limit the attorneys' time.

The three-strikes policy is a major issue in Oakland, though its impact has been reduced by the DA's policy of using three strikes only in truly serious cases. Both judges and PDs applaud the prosecutor's application of this policy. Two-strikes cases are also mandatory in that the underlying sentence is doubled on the second offense. The legislature also has prohibited the use of probation in less serious cases, and mandatory prison sentences are involved.

Continuances are relatively common, but are granted primarily to accommodate attorneys' schedules and case preparation. None of the interviewees thought continuances were a problem. The felony backlog is significantly lower now (about 730 pending cases in the superior court) than it was about seven years ago (over 1,000), but it is slowly creeping up again. Most interviewees believe delay is a serious problem. Although most cases comply with the 60-day rule, many non-time-waiver cases can drag on for some time. To the extent that there is delay, the primary cause is the lack of judges, prosecutors, and public defenders.

Portland, Oregon Circuit Court Overview

🦋 Environment

Multnomah County (Portland) has a population of 600,811 and 1,380 people per square mile. Of the sites visited, Portland was second highest in terms of reported violent crimes per 100,000 (1,464). Portland stands out from the other sites in several felony caseload characteristics. Portland has the lowest percentage of violent cases (17 percent) and the greatest percentage of drug cases (53 percent). Portland has the lowest percentage of defendants with privately retained attorneys (9 percent), and the site has the lowest average prison sentence (five months). Behind only Cincinnati in the study, Portland is second in the percentage of felonies disposed in 180 days (90 percent).

🦋 Organization and Staffing

Court

The unified court in Multnomah County has a total of 36 district and circuit court judges and seven referees. It is estimated that about 50 percent of the judicial resources are used to process criminal cases. In effect, about 18 judges handle felony cases in Portland, using a master calendar system. The PJ uses almost all of the judges to handle criminal trials. If any judges are not used, these judges must be available to hear drug cases. Given that more than half of the felony cases in Portland are drug cases, the drug court receives a great deal of attention.

The drug court in Portland consists of one administrative judge and three other judges to handle pleas and trials. The drug court rotates each judge every two months. The drug court is a high-volume, “wheelin’ and dealin’” court, such that the objective is to get the cases plead and disposed. Judges take a very active role in the plea negotiation process. The judges stand by the policy of ensuring that the best offer is the pretrial offer and the sentence at the trial is always harsher. If the plea is not accepted and the defendant wants a trial, then a trial is scheduled for the next day. A sizeable portion of jury trials will finish the same day, and the rest usually finish the next day. Bench trials are also available and comprise about 40 percent of all trials.

Prosecutors

Thirty-nine prosecutors handle felony cases in the Portland Circuit Court.

Indigent Defenders

One-third of all indigent defender cases in Oregon occur in Multnomah County. Eighty-six percent of the defense services in Oregon are provided by contract. The evolution of the contract system reflects the goal of getting defense services at a low cost. Twenty public defenders handle felony cases in Portland. A contract system, the Metropolitan Defender, handles about 50 percent of the felony caseload. The rest of the criminal caseload is distributed to approximately ten other contracting groups.

🔗 Felony Adjudication Process

Arrested individuals are taken to the Multnomah jail for booking. The day of the arrest (day 1), the information gathered at booking goes to the appropriate unit within the police department for entry into the police automated system and assignment for any following work. There is concern within the Portland Circuit Court that the newly added police officers will focus too greatly on minor drug arrests, because of community and business pressures. The initial police report and case information are recorded on the Portland Police automated system and are sent to the district attorney (DA) and the court by the next morning. At 5:00 a.m. of day 2, the court calendar unit has staff that checks the police booking register from the day before. This staff determines the type of booking and schedules the arraignment on the arrest (AOA) for 2:00 p.m. In the DA's office, the new cases are initially handled by legal assistants, who enter the relevant information into the DA automated system and distribute the cases to the appropriate DA unit. A DA then screens the cases that morning, and a determination of charging will be made by noon. The DA paperwork is processed by a legal assistant, such that a file is prepared, a case number assigned (given by court calendar unit), and then sent to the Justice Center for AOA at 2:00 p.m.

The first appearance, or AOA, takes place in the circuit court because of the unified court system. Bail is set, charges and constitutional rights are read, and the defendant meets with a representative of the Indigent Defense Services Division. There is some use of video arraignment, depending on which jail the defendant is in. If the DA is not ready to charge at this time, the case is dismissed, although the DA can charge at a later time. The charged cases then go to the grand

jury within four judicial working days. There is no preliminary hearing in Portland. The possibility of drug diversion (STOP program) is assessed at this time.

The second appearance, or grand jury reporting date, takes place in the circuit court around day 5. All cases are read off and noted whether a true bill has been issued or not. If not, the case “cannot proceed” and it is dismissed (it is possible to indict later if, for example, all lab work has not been completed). Out-of-custody defendants and attorneys must appear at the first appearance.

The third appearance, or arraignment on the indictment (AOI), takes place the next day (day 6) for in-custody defendants. The AOI for out-of-custody defendants is scheduled for a few days later to give defendants time to turn themselves in. At this time, the defendant is given dates for certification, call, and trial at AOI. The Court Calendar Unit handles the case scheduling.

Certification is held before a court clerk about 35 to 45 days after AOI. Mandatory appearances by out-of-custody defendants must occur, while the attorney’s appearance on behalf of in-custody defendants is sufficient. The purposes of certification include determining if the defendant has been in contact with an attorney, determining if the defendant is present so the DA can subpoena witnesses, and setting the case on the plea docket, if the defendant wants to plea. The defense views this step as meaningless, but certification serves as a clearinghouse for the DAs. In drug and Unit A cases, judicial pretrial conferences are common at this time. These conferences occur about two weeks before call, with the objective to obtain more guilty pleas.

Call is set for about two weeks after certification or 49 to 56 days after arrest for in-custody defendants. Call is held before the presiding judge starting at 9:30 a.m. every day. This event distinguishes between drug and property crimes and person crimes. Person crimes are the focus of call, while the drug and property crimes are set for “drug call” in the afternoon. All defendants, both in custody and out of custody, must be present for call. The PJ reads through the docket, and the DA and the PD must respond if ready to go to trial. Each side is granted one set-over (continuance) of about two to five judicial working days. If the defendant wants to plea, the case is set for the plea docket the next morning. Otherwise, the case is set for trial the next day.

The drug call is set for 1:00 p.m., when the judges look to get the cases plead and disposed. If the defendant is ready to plea, the case is set immediately on the plea docket. Pleas are scheduled every 15 minutes on the docket of the judge taking the pleas that day. Defendants and attorneys go immediately to that judge’s courtroom and the case is disposed. The “drug judge” holds pretrial conferences

each afternoon with all of the public defenders (PDs) who think their clients might plead, but hope for a better offer, with the drug call DAs. The drug court judge plays a central role in negotiations and is very up-front about the need to get pleas. Successful drug courts often require judges who are effective administrators and managers.

The trials in Portland are about 60 percent jury trials and about 40 percent bench trials. The PJ works hard to ensure that a courtroom is staffed and available for trial the morning after call, if needed. Motions are handled the day of the trial, around 9:30 a.m. and usually take about one hour. Jury selection begins at 10:30 a.m., and is usually completed by noon, and no individual voir dire occurs in Portland. Trials begin at 1:30 p.m. and go to 5:00 p.m., and almost all trials finish that day or the next day. Drug court trials proceed in the same expeditious manner.

Oregon law requires reciprocal discovery, and all respondents believed discovery is equitable and seldom a source of problems. Following the AOI, the DA case file goes to the discovery unit within the DA office. The discovery unit prepares discovery and makes it available to all defense counsel. Discovery is mailed directly to the office of all PDs and other contract attorneys. Retained counsel must contact the unit and pay for a copy. Upon leaving the discovery unit, the file goes to the criminal history unit in the DA office. The goal is that within 21 days of AOI, a complete criminal history, summarized in a one-page report, will be prepared on each defendant. The criminal history is gathered from the defendant interview, the DA information system (DACTS), the Portland police, and the national criminal history tracking system. Upon receipt of the criminal history packet, the DA assigned to the case opens the case file, completes the “pretrial offer sheet,” and sends it over to the PD. The goal is for the PD to receive the offer sheet two weeks before call to be assigned appropriately.

Sacramento, California Superior Court—Overview

📌 Environment

Sacramento is the second-largest site visited in terms of population. The site's population of 1,307,572 is second only to Oakland, while its population density of 1,132 people per square mile is close to the study's average. Sacramento's percentage of people in poverty (12.5 percent) is also close to the study's average. The percentage of violent cases in the felony caseload is the highest of the sites visited (38 percent). Sacramento's efficiency is highest in terms of its clearance ratio, the number of cases disposed per cases filed (1.15 in 1994-95).

📌 Organization and Staffing

Court

The court has 20 FTE judges assigned to felony cases. On the assigned trial date, the master calendar judge assigns the case to an available judge. Seven of the judges try only felony cases. The remaining 18 have general trial calendars, which include felony, civil, and misdemeanor cases. Nine of those 18 judges strictly handle felony cases. Most interviewees agreed that judges were working at full capacity. It is evident that more judges are needed because of the problems with the master calendar system. According to the most recent state effort to determine judgeship needs, the state formula suggests that Sacramento needs eight more judges. The court uses an automated system, the Jail Inmate Management System (JIMS), to improve calendar management. Other agencies have access to this information.

Home court. Home court is one of the most interesting aspects of the Sacramento court's felony adjudication system. Sacramento unified the municipal and superior courts a few years ago, both administratively (one presiding judge and court executive) and judicially (municipal and superior court judges back up each other). The purpose of the home court is to provide continuity in the handling of felony cases and to encourage and facilitate early guilty pleas. Every felony case is assigned to one of five home courts, where all events, except the preliminary hearing and trial, are held before the same judge, prosecutor, and defender. Home

court judges take pleas and sentence defendants in all felony cases, except those that go to trial. If a defendant goes to the preliminary hearing and is “held to answer,” or if a guilty plea is entered before the trial, the defendant returns to the home court for the sentence. The process avoids “judge shopping” for the better sentence.

Prosecutors

Approximately 100 prosecutors handle felony cases in Sacramento. Forty of the prosecutors handle general, non-special unit felony cases, and they use a horizontal assignment system. An eight-person team is assigned to each home court. Each home court consists of two early resolution deputies, two preliminary hearing deputies, two trial prosecutors, one lead prosecutor, and one supervisor. Each supervisor splits his or her time equally between courts. The superior court consists of about 17.5 prosecutors on the horizontal system. The remaining 62 prosecutors have specialized units, and they employ a vertical assignment system. These prosecutors devote half of their time to each level, resulting in 31 prosecutors in the superior court. In total, the superior court consists of 48.5 prosecutors who handle felony cases.

The felony unit using the horizontal assignment system is working at maximum capacity. On the other side, the well-staffed specialized units are underutilized and have considerably smaller caseloads. Thus, the caseload/resources picture is uneven in the prosecutor’s office. Although the prosecutors have access to the court’s JIMS, they maintain their own system. Their system is in FoxPro format and is useful for managing cases, but not for producing statistical reports.

Indigent Defenders

The primary type of indigent defense system in the Sacramento Superior Court is the public defender. The PDs use a vertical assignment system. Thirty-eight PDs handle general felony cases, eight PDs handle homicides, two PDs handle criminal cases, and five PDs are supervisors (one in each home court). In total, the superior court consists of 26.5 PDs who handle felony cases. The court appoints PDs at the first appearance, and there is little effort to determine indigency. The PD program assigns about 230 new felony cases to each attorney per year. The caseload has become increasingly complex because of the increase in the number of murder cases and the advent of three-strikes cases. The additional time needed per case, the additional investigation, and the lack of adequate resources have pushed the working capacity of the PDs beyond the limit. If the number of cases goes beyond 230 per attorney per year, overflow cases are sent

to the Indigent Criminal Defense Program (ICDP). This system pays attorneys on an assigned counsel list to handle cases. Most respondents noted that the skill, quality, and dedication of the PDs far exceed that of the ICDP attorneys.

🔗 **Felony Adjudication Process**

Approximately 15 to 20 percent of felony arrests are screened out by prosecutors. Some respondents believe the DAs overcharge, but there is discretion in the three-strikes area. The first appearance occurs in one of the five home courts. At this time, the court appoints or assigns a defense counsel. The second appearance occurs in the same home court about two weeks after the first appearance. The DAs provide discovery and usually make a plea offer. If a guilty plea is not entered, a third appearance, or settlement conference, is scheduled for two weeks later. The pleas are again discussed, and many are accepted at this point. Most pretrial motions, excluding evidentiary and venue motions, and further settlement conferences occur in the home court as well. Sixty to 62 percent of all felony cases are disposed in the home court before a preliminary hearing is set.

Sacramento's superior court places great emphasis on obtaining early guilty pleas in the home court. DAs try to give their best offer up front and stick with it. Home court judges actively assist in encouraging and facilitating early pleas. In recent years, "strike" cases have complicated this process. A third felony now leads to a mandatory minimum sentence of 25 years, and a second felony will now double the sentence for a given offense. By law, the prosecutor must charge the prior qualifying felonies, but "in the interest of justice," the DA may subsequently drop one of the prior felonies. The law also states that the DA may not threaten a defendant with the use of the third strike to obtain a guilty plea on lesser charges that do not include all qualifying prior felonies. Prosecutors and defenders agree that the three-strikes law is poorly written and open to a range of interpretations.

Six to eight weeks after the arrest, the preliminary hearing is scheduled in the superior court. Sacramento uses a "hearsay" preliminary hearing in which DAs primarily call police officers to testify regarding their reports and the accounts of witnesses. This type of hearing expedites the process, but provides minimal discovery for defense attorneys. The DAs must now expend more time and resources to check and interview witnesses. At this point, felony cases are set for trial. Sacramento eliminated the arraignment in the superior court. Unless the defen-

dant waives his or her right to a speedy trial, the trial commences within 60 days of the preliminary hearing.

The trial is scheduled about 90 to 110 days after the arrest. Three-strikes cases take an average of ten days in trial (including jury selection), and other felonies (excluding murder cases) average about six days. With the number of murder and three-strikes cases increasing on the trial calendar, continuances are more common on the trial calendar. The court has not dismissed any cases for failing to comply with the 60-day limit. However, the court appears to be bumping cases on the trial calendar at a rate never experienced before in the court. Sacramento disposed of 87 percent of their felony cases before six months, the second-highest percentage in the study.

Trials are held Monday through Thursday. Judges use Fridays to hear miscellaneous motions, preliminary hearings, and other matters. The “Flexible Friday” policy has increased the number of trial hours per week. Trials are no longer interrupted so that attorneys can make appearances on miscellaneous matters concerning other cases. “Flexible Friday” improves the management of trials, allowing for continuous trials during the four days.

Appendix 3



QUESTIONNAIRES AND RESPONSES

*The Influence of Court, Prosecutor and Defender Resources and Interagency
Coordination on Felony Case Processing Project*

**Funded by the National Institute of Justice (U.S. Dept. of Justice)
and the State Justice Institute**

📄 Questionnaire for Prosecutors

We are conducting a study of the impact of resources, case management procedures, and interagency coordination on *felony* case processing in several urban jurisdictions. We need your assistance to learn more about your jurisdiction. We are asking judges, prosecutors and defenders in each jurisdiction to complete this questionnaire, which should take only about **15 minutes of your time**. When you are done, please tape or staple the form to keep it closed during mailing.

NOTE: All questions refer to the *felony* trial court case processing system in the state court in this jurisdiction. We *guarantee* that your responses will be confidential.

Rate how strongly you agree or disagree with the following statements.

1 = strongly disagree

2 = disagree

3 = neither agree nor disagree

4 = agree

5 = strongly agree

8 = not applicable here

9 = don't know

- ___ 1. Our court has enough judges to fairly adjudicate all felony cases.
- ___ 2. Our court has enough judges to dispose (sentence, acquit, dismiss) 98% of felony cases within 8 months after 1st arrest.
- ___ 3. Our court has enough judges to dispose of 100% of felony cases within 1 year after first arrest.
- ___ 4. The prosecutor's office has enough attorneys to fairly adjudicate all felony cases.
- ___ 5. The prosecutor's office has enough attorneys to dispose of 98% of all felony cases within 8 months after first arrest.
- ___ 6. The prosecutor's office has enough attorneys to dispose of 100% of felony cases within 1 year after first arrest.
- ___ 7. The indigent defense program has enough attorneys to fairly adjudicate all felony cases.
- ___ 8. The indigent defense program has enough attorneys to dispose of 98% of felony cases within 8 months after 1st arrest.
- ___ 9. The indigent defense program has enough attorneys to dispose 100% of felony cases within 1 year after 1st arrest.
- ___ 10. The court has adequate facilities to effectively handle the felony caseload.
- ___ 11. Our office's case information management system allows me to effectively manage my felony cases.
- ___ 12. Our office staff produce reports that are useful to me in managing my felony cases.
- ___ 13. Delay in felony case adjudication is a problem in this jurisdiction.
- ___ 14. Our system should be able to dispose 98% of all felony cases within 8 months after first arrest.

- ___ 15. Our system should be able to dispose 100% of all felony cases within 1 year after first arrest.
- ___ 16. I receive fair compensation for the services I perform as a prosecuting attorney.
- ___ 17. The prosecutors' screening procedures are effective in minimizing the number of felony cases that are eventually dismissed.
- ___ 18. Prosecutors' charging decisions are not influenced by the race or ethnicity of defendants.
- ___ 19. The quality of defense services is not influenced by the race or ethnicity of defendants.
- ___ 20. The prosecutor's plea bargaining policies are generally fair to defendants.
- ___ 21. The prosecutor's plea bargaining policies contribute to unnecessary delay in felony cases.
- ___ 22. Indigent defenders' plea bargaining policies contribute to unnecessary delay in felony cases.
- ___ 23. Jail crowding has an impact on bail/bond decisions in this jurisdiction.
- ___ 24. Mandatory minimum sentences result in more requests for jury trials in this jurisdiction.
- ___ 25. Sentencing laws in this state often produce sentences that are too harsh on defendants.
- ___ 26. Sentencing laws in this state often produce sentences that are too lenient on defendants.
- ___ 27. The sentences sought by prosecutors are not influenced by the race or ethnicity of the defendant.

- ___ 28. Sentences imposed by judges are not influenced by the race or ethnicity of the defendant.
- ___ 29. Defendants in this jurisdiction receive basically the same sentence regardless of which judge imposes the sentence.
- ___ 30. Juries in this jurisdiction are not influenced by the race or ethnicity of the defendant.
- ___ 31. There are adequate opportunities for the court, prosecutor, and indigent defense program to discuss issues or problems that arise in the management of felony cases in this jurisdiction.
- ___ 32. There are clear goals in this jurisdiction for how long it should take to dispose of felony cases.
- ___ 33. In the past five years, the prosecutor's budget has kept pace with the increase in our caseload.
- ___ 34. Effective judicial leadership is one of the strengths of the criminal justice system in this jurisdiction.
- ___ 35. Effective leadership by the prosecutor is one of the strengths of the criminal justice system in this jurisdiction.
- ___ 36. Effective leadership among criminal defenders is a strength of the criminal justice system in this jurisdiction.
- ___ 37. The "local legal culture" in this jurisdiction is a barrier to reducing delay in felony case processing.
- ___ 38. Trial date continuances are easy to obtain from judges in felony cases.
- ___ 39. In recent years an increase in felony drug cases has caused greater delay on the felony dockets.
- ___ 40. There are sufficient alternative sanctions (besides prison or probation) available in this jurisdiction.
- ___ 41. There is very good communication among the court, prosecutor, and indigent defense program regarding case management problems.

Rate each one: 0 = poor; 1 = fair; 2 = good; 3 = very good; 4 = excellent

How would you rate most prosecutors and the three types of defenders on each of these factors:

| | Full-time defender prog. attorneys | Part-time assigned attorneys* | Private retained | Prosecutors |
|---|--|-------------------------------------|---------------------|-------------|
| 42. Experience with felony cases | _____ | _____ | _____ | _____ |
| 43. Preparation for felony hearings and trials | _____ | _____ | _____ | _____ |
| 44. Felony trial skills | _____ | _____ | _____ | _____ |

*Part-time means they are not employed full-time as indigent defenders; they handle things other than criminal litigation.

Compare full-time defender program attorneys and prosecutors.

Check the one who has:

| | Full-time defender prog. attorneys | Prosecutors | About equal |
|--|--|-------------|----------------|
| 45. A larger felony caseload (open/active) per attorney. | _____ | _____ | _____ |
| 46. More support staff resources (e.g., for investigators). | _____ | _____ | _____ |

47. Rate the causes of delay in felony adjudication in this jurisdiction:

0 = not a cause; 1 = minor cause; 2 = significant cause; 3 = very significant cause

- ___ a. Prosecutor policies and practices
- ___ b. Defender policies and practices
- ___ c. Court policies and practices
- ___ d. Lack of prosecutor resources/attorneys
- ___ e. Lack of indigent defender resources/attorneys
- ___ f. Lack of court resources/judicial staff
- ___ g. Other (describe)

48. **HYPOTHETICAL CASE:** Assume there is a case in your jurisdiction with the same facts as the O.J. Simpson case in Los Angeles, except the defendant is not a famous person and the case is handled by assigned counsel. Assume that judicial, prosecutor, and defender resources are adequate to achieve a speedy but fair trial. The prosecutor did not seek the death penalty.
- a. How long should the case take to go from arrest to the start of trial (i.e., opening statements) to assure a fair and speedy trial?
_____ months
- b. How long do you think it would actually take in your jurisdiction?
_____ months
49. Please describe in a few sentences one or two of the greatest STRENGTHS or most INNOVATIVE policies or procedures in the felony adjudication system in your jurisdiction.
50. In a few sentences, describe one or two of the most SERIOUS PROBLEMS of the felony adjudication system in your jurisdiction.
51. What steps would you recommend to effectively address the problems you identified in the previous question?

52. Background information:

- a. Year first admitted to a state or federal bar to practice law: _____
- b. Number of years in legal practice before becoming prosecuting attorney: _____
- c. Number of years as a prosecuting attorney: _____
- d. Number of years handling felony cases: _____
- e. In the past year my average number of active/open cases (count defendants) has been: _____
- f. In the past year, the percentage of my open/active cases that have been felony trial court cases is: _____ %

ADDITIONAL COMMENTS:**THANK YOU FOR YOUR TIME AND COOPERATION!**

Please fold this questionnaire along the dotted lines so the stamp and return address are on the outside and all other pages with your responses are on the inside. Then staple or tape the questionnaire so it remains closed during mailing.

*The Influence of Court, Prosecutor and Defender Resources and Interagency
Coordination on Felony Case Processing Project*

**Funded by the National Institute of Justice (U.S. Dept. of Justice)
and the State Justice Institute**

📄 Questionnaire for Defense Attorneys

We are conducting a study of the impact of resources, case management procedures, and interagency coordination on *felony* case processing in several urban jurisdictions. We need your assistance to learn more about your jurisdiction. We are asking judges, prosecutors and defenders in each jurisdiction to complete this questionnaire, which should take only about **15 minutes of your time**. When you are done, please tape or staple the form to keep it closed during mailing.

NOTE: All questions refer to the *felony* trial court case processing system in the state court in *this jurisdiction*. We *guarantee* that your responses will be *confidential*.

Rate how strongly you agree or disagree with the following statements.

1 = strongly disagree

8 = not applicable here

2 = disagree

9 = don't know

3 = neither agree nor disagree

4 = agree

5 = strongly agree

- _____ 1. Our court has enough judges to fairly adjudicate all felony cases.
- _____ 2. Our court has enough judges to dispose (sentence, acquit, dismiss) 98% of felony cases within 8 months after 1st arrest.
- _____ 3. Our court has enough judges to dispose of 100% of felony cases within 1 year after first arrest.
- _____ 4. The prosecutor's office has enough attorneys to fairly adjudicate all felony cases.

- ___ 5. The prosecutor's office has enough attorneys to dispose of 98% of all felony cases within 8 months after first arrest.
- ___ 6. The prosecutor's office has enough attorneys to dispose of 100% of felony cases within 1 year after first arrest.
- ___ 7. The indigent defense program has enough attorneys to fairly adjudicate all felony cases.
- ___ 8. The indigent defense program has enough attorneys to dispose of 98% of felony cases within 8 months after 1st arrest.
- ___ 9. The indigent defense program has enough attorneys to dispose 100% of felony cases within 1 year after 1st arrest.
- ___ 10. The court has adequate facilities to effectively handle the felony caseload.
- ___ 11. Our office's case information management system allows me to effectively manage my felony cases.
- ___ 12. Our office staff produce reports that are useful to me in managing my felony cases.
- ___ 13. Delay in felony case adjudication is a problem in this jurisdiction.
- ___ 14. Our system should be able to dispose 98% of all felony cases within 8 months after first arrest.
- ___ 15. Our system should be able to dispose 100% of all felony cases within 1 year after first arrest.
- ___ 16. I receive fair compensation for the services I perform for indigent defendants.
- ___ 17. The prosecutors' screening procedures are effective in minimizing the number of felony cases that are eventually dismissed.
- ___ 18. Prosecutors' charging decisions are not influenced by the race or ethnicity of defendants.

- ___ 19. The quality of defense services is not influenced by the race or ethnicity of defendants.
- ___ 20. The prosecutor's plea bargaining policies are generally fair to defendants.
- ___ 21. The prosecutor's plea bargaining policies contribute to unnecessary delay in felony cases.
- ___ 22. Indigent defenders' plea bargaining policies contribute to unnecessary delay in felony cases.
- ___ 23. Jail crowding has an impact on bail/bond decisions in this jurisdiction.
- ___ 24. Mandatory minimum sentences result in more requests for jury trials in this jurisdiction.
- ___ 25. Sentencing laws in this state often produce sentences that are too harsh on defendants.
- ___ 26. Sentencing laws in this state often produce sentences that are too lenient on defendants.
- ___ 27. The sentences sought by prosecutors are not influenced by the race or ethnicity of the defendant.
- ___ 28. Sentences imposed by judges are not influenced by the race or ethnicity of the defendant.
- ___ 29. Defendants in this jurisdiction receive basically the same sentence regardless of which judge imposes the sentence.
- ___ 30. Juries in this jurisdiction are not influenced by the race or ethnicity of the defendant.
- ___ 31. There are adequate opportunities for the court, prosecutor, and indigent defense program to discuss issues or problems that arise in the management of felony cases in this jurisdiction.

- ___ 32. There are clear goals in this jurisdiction for how long it should take to dispose of felony cases.
- ___ 33. In the past five years, the budget for indigent defense services has kept pace with the increase in our caseload.
- ___ 34. Effective judicial leadership is one of the strengths of the criminal justice system in this jurisdiction.
- ___ 35. Effective leadership by the prosecutor is one of the strengths of the criminal justice system in this jurisdiction.
- ___ 36. Effective leadership among criminal defenders is a strength of the criminal justice system in this jurisdiction.
- ___ 37. The “local legal culture” in this jurisdiction is a barrier to reducing delay in felony case processing.
- ___ 38. Trial date continuances are easy to obtain from judges in felony cases.
- ___ 39. In recent years an increase in felony drug cases has caused greater delay on the felony dockets.
- ___ 40. There are sufficient alternative sanctions (besides prison or probation) available in this jurisdiction.
- ___ 41. There is very good communication among the court, prosecutor, and indigent defense program regarding case management problems.

Rate each one: 0 = poor; 1 = fair; 2 = good; 3 = very good; 4 = excellent

How would you rate most prosecutors and the three types of defenders on each of these factors:

| | Full-time defender prog. attorneys | Part-time assigned attorneys* | Private retained | Prosecutors |
|---|--|-------------------------------------|---------------------|-------------|
| 42. Experience with felony cases | _____ | _____ | _____ | _____ |
| 43. Preparation for felony hearings and trials | _____ | _____ | _____ | _____ |
| 44. Felony trial skills | _____ | _____ | _____ | _____ |

*Part-time means they are not employed full-time as indigent defenders; they handle things other than criminal litigation.

Compare full-time defender program attorneys and prosecutors.

Check the one who has:

| | Full-time defender prog. attorneys | Prosecutors | About equal |
|--|--|-------------|----------------|
| 45. A larger felony caseload (open/active) per attorney. | _____ | _____ | _____ |
| 46. More support staff resources (e.g., for investigators). | _____ | _____ | _____ |

47. Rate the causes of delay in felony adjudication in this jurisdiction:

0 = not a cause; 1 = minor cause; 2 = significant cause; 3 = very significant cause

- _____ a. Prosecutor policies and practices
- _____ b. Defender policies and practices
- _____ c. Court policies and practices
- _____ d. Lack of prosecutor resources/attorneys
- _____ e. Lack of indigent defender resources/attorneys
- _____ f. Lack of court resources/judicial staff
- _____ g. Other (describe)

48. **HYPOTHETICAL CASE:** Assume there is a case in your jurisdiction with the same facts as the O.J. Simpson case in Los Angeles, except the defendant is not a famous person and he is defended by assigned counsel. Assume that judicial, prosecutor, and defender resources are adequate to achieve a speedy but fair trial. The prosecutor did not seek the death penalty.
- a. How long should the case take to go from arrest to the start of trial (i.e., opening statements) to assure a fair and speedy trial?
_____ months
- b. How long do you think it would actually take in your jurisdiction?
_____ months
49. Please describe in a few sentences one or two of the greatest **STRENGTHS** or most **INNOVATIVE** policies or procedures in the felony adjudication system in your jurisdiction.
50. In a few sentences, describe one or two of the most **SERIOUS PROBLEMS** of the felony adjudication system in your jurisdiction.
51. What steps would you recommend to effectively address the problems you identified in the previous question?

52. Background information:

- a. Year first admitted to a state or federal bar to practice law: _____
- b. Number of years in legal practice before becoming defense attorney: _____
- c. Number of years as a defense attorney: _____
- d. Number of years handling felony cases: _____
- e. In the past year my average number of active/open cases (count defendants) has been: _____
- f. In the past year, the percentage of my open/active cases that have been felony trial court cases is: _____ %
- g. My practice is: _____ (1) full-time indigent defense
_____ (2) part-time indigent defense, part-time on other types of cases
_____ (3) primarily criminal defense for non-indigent defendants
_____ (4) other (explain): _____

- h. My employer is: _____ (1) full-time indigent defender program
_____ (3) law firm with 5 or fewer attorneys
_____ (2) I'm a solo practitioner
_____ (4) law firm with 6 - 10 attorneys
_____ (5) law firm with more than 10 attorneys

ADDITIONAL COMMENTS:

THANK YOU FOR YOUR TIME AND COOPERATION!

Please fold this questionnaire along the dotted lines so the stamp and return address are on the outside and all other pages with your responses are on the inside. Then staple or tape the questionnaire so it remains closed during mailing.

Number of Completed Questionnaires Used to Construct Scales of Defender and Prosecutor Views

| | Faster Courts | Moderate Courts | Slower Courts |
|--------------------------------|---------------|-----------------|---------------|
| • Jurisdiction Practice | | | |
| Court Practice | | | |
| Defender | 49 | 52 | 57 |
| Prosecutor | 64 | 62 | 60 |
| Prosecutor Practice | | | |
| Defender | 49 | 52 | 56 |
| Prosecutor | 67 | 61 | 60 |
| Defender Practice | | | |
| Defender | 45 | 51 | 54 |
| Prosecutor | 63 | 59 | 53 |
| • Resources | | | |
| Personnel | | | |
| Defender | 50 | 44 | 63 |
| Prosecutor | 54 | 50 | 45 |
| Finances | | | |
| Defender | 45 | 56 | 58 |
| Prosecutor | 63 | 59 | 53 |
| • Performance | | | |
| Experience | | | |
| Defender | 43 | 51 | 56 |
| Prosecutor | 62 | 61 | 54 |
| Preparation for hearing/trial | | | |
| Defender | 43 | 51 | 56 |
| Prosecutor | 61 | 61 | 54 |
| Felony trial skills | | | |
| Defender | 43 | 51 | 56 |
| Prosecutor | 61 | 61 | 54 |
| • Management | | | |
| Communication | | | |
| Defender | 51 | 45 | 61 |
| Prosecutor | 58 | 52 | 54 |
| Leadership | | | |
| Defender | 55 | 53 | 63 |
| Prosecutor | 65 | 59 | 57 |

REFERENCES



- American Bar Association. 1986. *Defeating Delay: Developing and Implementing a Court Delay Reduction Program*. Chicago: American Bar Association.
- American Bar Association. 1987. *Standards Relating to Trial Courts, As Amended*. Chicago: American Bar Association.
- American Bar Association Project on Standards for Criminal Justice. 1971. *Standards Relating to the Prosecution Function and the Defense Function*. Chicago: American Bar Association.
- Arkin, Herbert, and Raymond Colton. 1963. *Tables for Statisticians*. New York: Barnes and Noble.
- Banfield, Laura, and C. D. Anderson. 1968. "Continuances in Cook County Criminal Courts," 35 *University of Chicago Law Review* 282.
- Bazon, David. 1971. "New Goods for Old: Efficient Courts in a Democratic Society," 46 *New York University Law Review* 653.
- Blumberg, Abraham. 1967. "The Practice of Law is a Confidence Game: Organizational Cooperation of a Profession," 1 *Law and Society Review* 15.
- Bureau of Justice Assistance. 1997. "Trial Court Performance Standards and Measurement System." Program Brief, July.
- Casper, Jonathan D. 1972. *American Criminal Justice: The Defendant's Perspective*. Englewood Cliffs, N.J.: Prentice-Hall, Inc.
- Chapper, Joy A., and Roger A. Hanson. 1983. "The Attorney Time Savings/Litigant Cost Savings Hypothesis: Does Time Equal Money?" 8 *Justice System Journal* 258.

- Chapper, Joy A., and Roger A. Hanson. 1990. *Intermediate Appellate Courts: Improving Case Processing*. Williamsburg, Va.: National Center for State Courts.
- Chapper, Joy A., Kathy L. Shuart, Lynae K. E. Olson, Michael D. Planet, Paul R. J. Connolly, and Saundra L. S. Smith. 1984. *Attacking Litigation Costs and Delay*. Chicago: American Bar Association.
- Church, Thomas W., Jr. 1982. "The 'Old' and the 'New' Conventional Wisdom," 712 *Justice System Journal*.
- Church, Thomas W., Jr. 1986. "Examining Local Legal Culture," 1985 (3) *The American Bar Association Research Journal* 449.
- Church, Thomas W., Jr., Alan Carlson, Jo-Lynne Q. Lee, and Teresa Tan. 1978. *Justice Delayed: The Pace of Litigation in Urban Trial Courts..* Williamsburg, Va.: National Center for State Courts.
- Church, Thomas W., Jr., Jo-Lynne Q. Lee, Teresa Tan, Alan Carlson, and Virginia McConnell. 1978. *Pretrial Delay: A Review and Bibliography*. Williamsburg, Va.: National Center for State Courts.
- Commission on Trial Court Performance Standards. 1990. *Trial Court Performance Standards, With Commentary*. Williamsburg, Va.: National Center for State Courts.
- Eisenstein, James, Roy Flemming, and Peter Nardulli. 1988. *The Contours of Justice: Communities and Their Courts*. Boston: Little and Brown.
- Eisenstein, James, and Herbert Jacob. 1977. *Felony Justice: An Organizational Analysis of Criminal Courts*. Boston: Little Brown.
- Fernette, Janice. 1994. "Bibliography: Caseflow Management and Delay Reduction." Unpublished paper, Williamsburg, Va., National Center for State Courts.
- Flanders, Steven. 1977. *Case Management and Court Management in U.S. District Courts*. Washington: Federal Judicial Center.
- Flango, Victor, and Brian Ostrom. 1996. *Assessing the Need for Judges and Court Support Staff*. Williamsburg, Va.: National Center for State Courts.

- Flemming, Roy, Peter Nardulli, and James Eisenstein. 1987. "The Timing of Justice in Felony Trial Courts," 9 *Law and Policy* 179.
- Flemming, Roy, Peter Nardulli, and James Eisenstein. 1992. *The Craft of Justice*. Philadelphia: University of Pennsylvania Press.
- Friesen, Ernest C., Jr. 1984. "Cures for Court Congestion," 23 *Judges' Journal* 4.
- Friesen, Ernest C., Jr., Joseph Jordan, and Alfred Sulmonetti. 1978. *Arrest to Trial in Forty-Five Days*. Los Angeles: Whittier College School of Law.
- Genego. 1984. "Future of Effective Assistance of Counsel: Performance Standards and Complete Representation," 22 *American Criminal Law Review* 181.
- Goerd, John, Christopher Lomvardias, Geoff Gallas and Barry Mahoney. 1989. *Examining Court Delay: The Pace of Litigation in 26 Urban Trial Courts*. Williamsburg, Va.: National Center for State Courts.
- Goerd, John, Christopher Lomvardias with Geoff Gallas and Barry Mahoney. 1991. *Reexamining the Pace of Litigation in 39 Large Urban Courts*. Williamsburg, Va.: National Center for State Courts.
- Goerd, John, and John Martin. 1989. "The Impact of Drug Cases on Case Processing Times in Urban Courts," 13 *State Court Journal* 4.
- Hanson, Roger, Brian Ostrom, William Hewitt, and Christopher Lomvardias. 1992. *Indigent Defenders: Get the Job Done and Done Well*. Williamsburg, Va.: National Center for State Courts.
- Hanson, Roger, Brian Ostrom, and Ann Jones. 1998. "Comparing Publicly Appointed and Privately Retained Criminal Defense Attorneys." Paper presented at the SATO Conference, Berkley, Calif., April 25-27, 1998.
- Hausner, Jack, and Michael Seidel. 1979. *An Analysis of Case Processing Time in the District of Columbia Superior Court*. Washington: Institute for Law and Social Research.
- Hewitt, William, Barry Mahoney, Maureen Solomon, Marlene Thornton, and Linda Ridge. 1990. *Courts That Succeed*. Williamsburg, Va.: National Center for State Courts.

- Jacoby, Joan E. 1976. *Pre-Trial Screening in Perspective*. Washington: U.S. Department of Justice.
- Levin, Martin. 1977. *Urban Politics and the Criminal Courts*. Chicago: University of Chicago Press.
- Luskin, Mary Lee, and Robert C. Luskin. 1986. "Why So Fast, Why So Slow: Explaining Case Processing Time," 72 *The Journal of Criminal Law and Criminology* 190.
- Luskin, Mary Lee, and Robert C. Luskin. 1987. "Case Processing Time in Three Courts," 9 *Law and Policy* 207.
- Mahoney, Barry, Alexander Aikman, Pamela Casey, Victor Flango, Geoff Gallas, Thomas Henderson, Jeanne Ito, David Steelman, and Steven Weller. 1988. *Changing Times in Urban Trial Courts*. Williamsburg, Va.: National Center for State Courts.
- Mahoney, Barry, and Dale Anne Sipes. 1988. "Toward Better Management of Criminal Litigation," 72 *Judicature* 29.
- Mahoney, Barry, and Larry Sipes. 1985. "Zeroing in on Court Delay: The Powerful Tools of Time Standards and Managed Information," *Court Management Journal* 8.
- Mahoney, Barry, Larry L. Sipes, and Jeanne A. Ito. 1985. *Implementing Delay Reduction and Delay Prevention Programs in Urban Trial Courts: Preliminary Findings from Current Research*. Williamsburg, Va.: National Center for State Courts.
- Melcher, Frederick. 1984. "Setting Time Standards: How Much Delay is Too Much?" 23 (1) *The Judges' Journal* 48.
- Myers, M., and S. Talarico. 1987. *The Social Contexts of Criminal Sentencing*. New York: Springer-Verlag.
- Nardulli, Peter F., James Eisenstein, and Roy B. Flemming. 1988. *The Tenor of Justice: Criminal Courts and the Guilty Plea Process*. Urbana: University of Illinois Press.

- National Legal Aid and Defender Association, National Study Commission on Defense Services. 1976. *Guidelines for Legal Defense System in the United States*.
- Neubauer, David, Marcia Lipetz, Mary Lee Luskin, and John P. Ryan. 1981. *Managing the Pace of Justice: An Evaluation of LEAA's Court Delay Reduction Programs*. Washington: Government Printing Office.
- Neubauer, David W., and John Paul Ryan. 1982. "Criminal Courts and the Delivery of Speedy Justice: The Influence of Cases and Defendant Characteristics," 7 *Justice System Journal* 213.
- Nimmer, Raymond. 1976. "A Slightly Moveable Object: A Case Study in Judicial Reform in the Criminal Justice Process: The Omnibus Hearing," 48 *Denver Law Journal* 206.
- Nimmer, Raymond. 1978. *The Network System Change: Reform Impact in Criminal Courts*. Chicago: American Bar Foundation.
- Ostrom, Brian, and Neal Kauder. 1997. *Examining the Work of State Courts, 1996: A National Perspective from the Court Statistics Project*. Williamsburg, Va.: National Center for State Courts.
- Otto, Steve. 1985a. "Court Delay: A Bibliography," 1985 *Court Management Journal* 20.
- Otto, Steve. 1985b. "National Time Standards for Case Processing," 1985 *Court Management Journal* 32.
- Posner, Richard. 1979. "Utilitarianism, Economics, and Legal Theory," 8 *Journal of Legal Studies* 125.
- Pound, Roscoe. 1906. "The Cause of Popular Dissatisfaction with the Administration of Justice." Lecture. In *The Pound Conference: Perspectives on Justice in the Future*, edited by A. Leo Levin and Russel R. Wheeler. St. Paul, Minn.: West Publishing, 1979.
- Priest, George L. 1989. "Private Litigants and the Court Congestion Problem," 69 *Boston University Law Review* 527.

- Rovner-Pieczenik, R., A. Rapoport, and M. Lane. 1977. *How Does Your Defender Office Rate? Self Evaluation Manual for Public Defender Offices*.
- Sipes, Dale Anne, Mary Elsner Oram, Marlene A. Thornton, Daniel J. Valluzzi, and Richard Van Duizend. 1988. *On Trial: The Length of Civil and Criminal Trials*. Williamsburg, Va.: National Center for State Courts.
- Solomon, Maureen. 1973. *Caseflow Management in the Trial Court*. Chicago: American Bar Association.
- Solomon, Maureen, and Douglas Somerlot. 1987. *Caseflow Management in the Trial Court: Now and For the Future*. Chicago: American Bar Association.
- Stipak, B., and C. Hensler. 1982. "Statistical Inference in Contextual Analysis," *26 American Journal of Political Science* 151.
- Sudnow, David. 1965. "Normal Crimes: A Sociological Feature of the Penal Code in a Public Defender's Office," *12 Social Problems* 253.
- Trial Court Performance Standards Commission. 1990. *Trial Court Performance Standards, With Commentary*. Williamsburg, Va.: National Center for State Courts, Standard 2.1.
- Wice, Paul. 1978. *Criminal Lawyers: An Endangered Species*. Beverly Hills and London: Sage Publications.
- Woolf, The Right Honourable The Lord. 1996. "Access to Justice." Report to the Lord Chancellor's Office, London, HMSO.
- Zeisel, Hans, Harry Kalven, and Bernard Buchholtz. 1959. *Delay in the Court*. Boston: Little, Brown.