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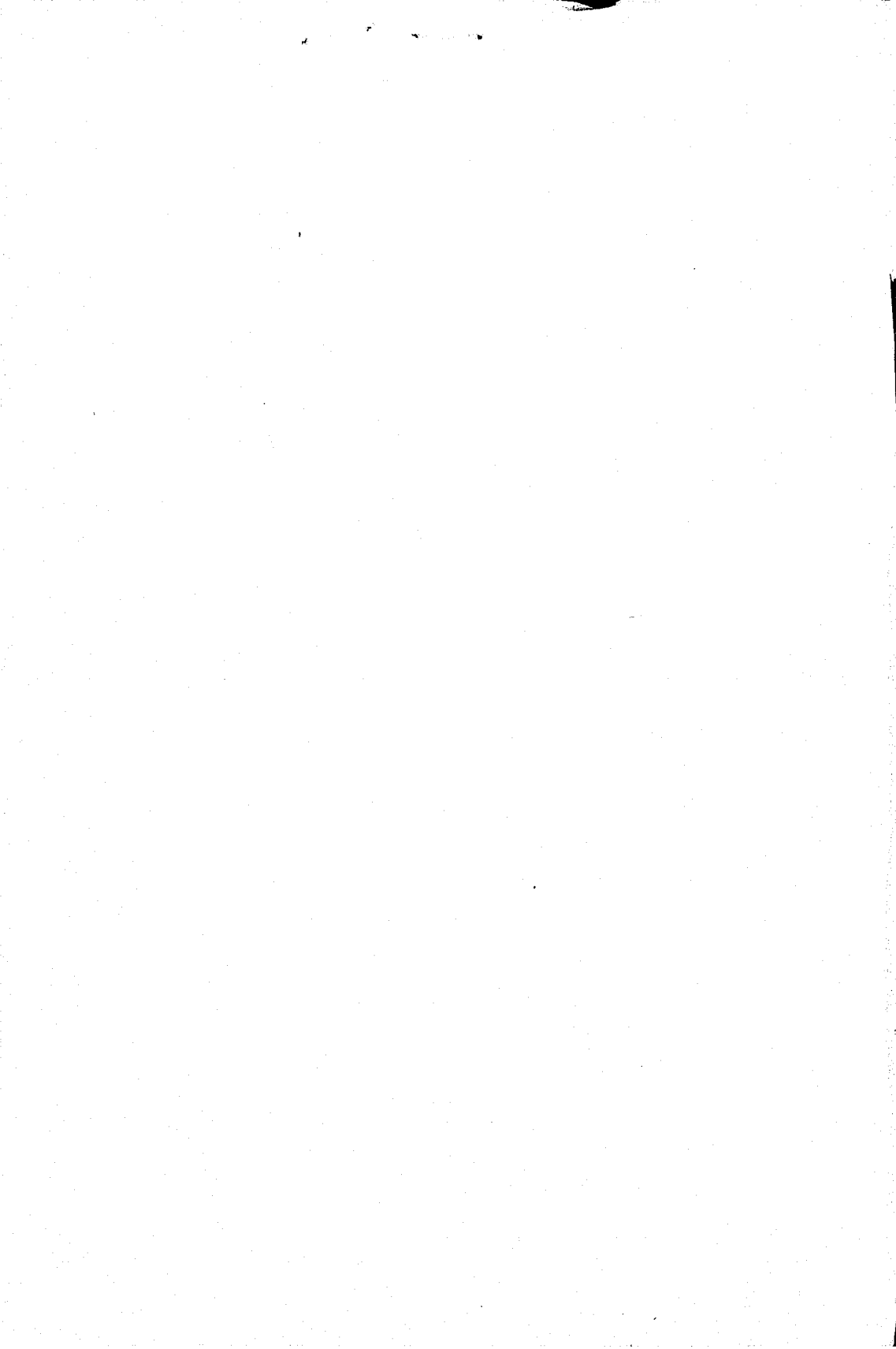
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# JUSTICE DELAYED

OF LITIGATION IN URBAN TRIAL COURTS

*Executive Summary*



# JUSTICE DELAYED

THE PACE OF LITIGATION IN URBAN TRIAL COURTS

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ACQUISITIONS

by

Thomas Church, Jr.

Alan Carlson

Jo-Lynne Lee

Teresa Tan

Honorable Kenneth Chantry, Project Director

Larry Sipes, Project Co-Director

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# PRÉCIS



- *Trial court delay is not inevitable.*
- *State trial courts process cases at widely varying speeds with widely varying numbers of dispositions per judge.*
- *The time from commencement to disposition is three times longer in some courts than in others; in some courts the number of dispositions per judge is three times greater than in others.*
- *Criminal cases are consistently processed faster than civil cases.*
- *Civil cases move significantly faster in courts with individual calendars.*
- *The pace of criminal and civil litigation is not significantly affected by court size, individual judge caseloads, or the percentage of cases which go to trial.*
- *Neither processing time nor judicial productivity is improved by extensive settlement programs.*
- *The pace of criminal and civil litigation is more the result of the "local legal culture" than court structure, procedures, caseload, or backlog.*
- *The most promising technique for reducing delay is management of case processing by the court from commencement to disposition.*



# EXECUTIVE SUMMARY



**T**his is a summary of findings on trial court delay based upon eighteen months of research by the National Center for State Courts and the National Conference of Metropolitan Courts.\* The methodology, findings and recommendations are set forth in greater detail in the full project report, *Justice Delayed: The Pace of Litigation in Urban Trial Courts*.\*\*

The project was ambitious. Civil and criminal case processing was examined in 21 metropolitan courts across the United States using comparable time and workload measures. In addition, scores of judges, attorneys, and court employees were interviewed and hours of court proceedings were observed. This provided unique information for examination of much of the conventional wisdom concerning trial court delay.

The comparative measures generated in this project permit an examination of delay from the broadest perspective to date. For the first time an important set of questions concerning case delay in state trial courts can be addressed with reliable and current knowledge of multiple courts. These questions are divided into two categories, distinguishable by both the nature of the queries and the methods used to answer them.

Basic research questions are first: Why are cases disposed of at a faster rate in some courts than in others? What factors account for the pace of litigation in a given court? The approach was inductive with the ultimate goal of formulating a general theory of what determines the pace of civil and criminal litigation in state trial courts. "Faster" and "slower" courts were examined to determine whether structure, operations, or environment distinguish them.

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\* Funds for the project were furnished by the Law Enforcement Assistance Administration with matching funds from the National Center and National Conference.

\*\* Available from the National Center for State Courts, Publications Department, 300 Newport Avenue, Williamsburg, Virginia, 23185.

The second set of issues has a policy focus: What are the most promising approaches for expediting litigation in a particular court system?

The fundamental causes of trial court delay are not to be found in the factors most often suggested by scholars and practitioners. As explained below, delay is not restricted to overworked courts, those with high trial rates, or those with a large proportion of serious or complex cases. There is, in fact, very little relationship between these aspects of trial courts and the pace of litigation. Case processing time is most strongly related to the informal attitudes, expectations, and practices of the legal community which includes judges, attorneys, and court personnel. This "local legal culture" in some jurisdictions fosters a leisurely pace of litigation. It colors the attitude of judges and lawyers toward how long cases should take to disposition and affects the amount of control or management courts exercise over pending cases. The major project policy conclusion is directed to this latter element—court control of the pretrial life of litigation: courts concerned with delay reduction will achieve the most results by control of case progress from filing to disposition.

### **Court Structure and Court Delay**

Structural aspects of court systems that assertedly affect court performance were examined: a) court size, b) judicial caseload, c) settlement and trial activity, d) calendaring system, and e) case management practices. Taken together, these aspects of court structure could be said to make up the "traditional model of court delay."\* The central feature of this model is the assumption that delay in litigation is a product of burdensome caseloads or inefficient court structure and case handling procedures.

The primary measure of civil case processing was median time from filing to disposition for tort cases. Two other civil dimensions were measured: a) the median days from initiation of the lawsuit to disposition for all civil cases placed in line for trial and b) the median days from initiation of legal action to commencement of jury trial. (See Table I.)

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\*References to related materials are not included in this summary but set forth at length in the full report and T. Church et al., *Pretrial Delay: A Review and Bibliography* (Williamsburg, Va.: National Center for State Courts, 1978).



The major criminal measure was median time from filing in the general jurisdiction court to a formal determination of guilt, innocence, or dismissal. Two other measures were the median days from arrest to disposition and the median days from indictment or information to commencement of jury trial. Table 2 sets forth the 21 courts, from fastest to slowest.

### **Size of Court**

Many practitioners assert that long case duration is predominantly a problem of large urban courts. Alternatively, they believe that expeditious case disposition is probably possible only in smaller courts with few serious or complex cases. Civil processing time was compared with five indices of court size: total judges, judges assigned to civil matters, total 1976 civil filings, 1976 tort filings, and jurisdictional population. By each index, size of court bears little relation to civil processing time. If anything, as court size increases, disposition time decreases. (See Table 3).

Criminal court practitioners also assert that large courts with numerous cases and comparatively "heavy" crime cannot dispose of cases as expeditiously as smaller courts. Table 4 relates general court processing time to analogous indices of size: total authorized judges, judges assigned to criminal cases, total 1976 criminal filings, 1976 felony filings, and 1975 population.

The pattern on the criminal side is not as clear, but the courts with the longest criminal disposition times are not large by any of the measures.

### **Court Workload and "Backlog"**

Imbalance of court resources to caseload is perhaps the most commonly asserted cause of court delay. The literature on court delay is replete with references to overworked judges and understaffed courts. Most of the court officials interviewed also believe inadequate resources—particularly an insufficient number of judges—to be a problem and a cause of delay.

Data of a cross-comparable nature were developed on civil and criminal filings per judge and the number of civil and criminal cases pending per judge. When either of these two measures of individual judge caseload is compared to disposition time, no pattern emerges. The courts with the highest caseloads are

**TABLE 1**  
**Civil Disposition Time Measures**

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

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

\*Data unavailable or not applicable.

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

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

TABLE 1 (continued)  
Civil Disposition Time Measures

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

<sup>c</sup>Median days from court filing to filing the document which officially closed the case at the trial court level for all cases placed in the pool of cases awaiting trial.

<sup>d</sup>Median days from filing to commencement of trial for cases ending in a jury verdict.

<sup>e</sup>Measure is to the judgment, rather than commencement of jury trial.

<sup>f</sup>Measure is from service of the complaint, not filing with the court. Court allows cases to progress to trial readiness prior to filing.

<sup>g</sup>Includes only "major" cases that did not pass through the court's mandatory arbitration program for lawsuits involving less than \$10,000.

<sup>b</sup>Includes cases resolved by arbitration.

**TABLE 2**  
**Criminal Disposition Time Measures**

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

\*Data unavailable or not applicable.

<sup>a</sup>Unless indicated to the contrary, on this and the criminal tables that follow, courts are listed in order of upper court disposition time. Most explanatory footnotes below are excluded on remaining criminal tables.

<sup>b</sup>Median days from date of filing of formal charges in general jurisdiction court to date of either guilty plea, trial verdict, dismissal, or formal determination of entry into diversion program.

<sup>c</sup>Median days from date of filing of formal charges in general jurisdiction court to date trial commenced for cases where disposition was reached by jury verdict.

<sup>d</sup>Median days from date of arrest to date of either guilty plea, trial verdict, dismissal, or formal determination of entry into diversion program.

TABLE 2 (continued)  
Criminal Disposition Time Measures

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

<sup>e</sup>The criminal jurisdiction of the Third Judicial Circuit Court includes all of Wayne County *except* the city of Detroit. Because of this fact, the jurisdiction will be referred to as Wayne County in the criminal tables that follow.

<sup>f</sup>Verdict date used as substitute for date trial commenced.

<sup>g</sup>Date of arraignment on formal charges used as substitute for date of filing of charges in the court of general jurisdiction.

<sup>h</sup>Arrest date unavailable; date case opened in circuit court used. This date is within two days of the arrest date.

<sup>i</sup>Arrest dates were unavailable for a large number of cases in this sample. There is a danger, therefore, that this figure may not be representative.

<sup>j</sup>The sample of felony dispositions provided by the court computer system includes a considerably greater proportion of homicide, robbery, and rape offenses than aggregate data supplied by the court would suggest.

<sup>k</sup>Figures do not include cases categorized as "dead docket."

TABLE 3  
Court Size — Civil

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

\*Data unavailable or not applicable.

<sup>a</sup>Total number of judges authorized to general jurisdiction court for civil and criminal divisions.

<sup>b</sup>Total number of judges assigned to general civil cases, exclusive of probate and domestic relations.

<sup>c</sup>Exclusive of probate and domestic relations to the extent possible.

<sup>d</sup>Time from service, not case filing.

<sup>e</sup>Estimate.

<sup>f</sup>Includes only at-issue or trial-ready cases.

<sup>g</sup>Cases counted only if at least one answer to the complaint is filed.

TABLE 4  
Court Size—Criminal

	Median Upper Court Disposition Time (in days)	Total Judges <sup>a</sup>	Criminal Judges <sup>b</sup>	1976 Criminal Filings <sup>c</sup>	1976 Felony Filings <sup>d</sup>	1976 Population (thousands)
	Wayne County, Mi.	33	33	7	4,244	4,028
San Diego, Ca.	45	28	9	4,254	4,254	1,588
Atlanta, Ga.	45	11	*	5,296	5,296	584
New Orleans, La.	50	10	10	7,525	2,746	564
Portland, Or.	51	17	*	3,627	3,213	536
Seattle, Wa.	56	24	*	4,567	2,625	1,149
Pittsburgh, Pa.	58	31	14	7,949	6,587 <sup>e</sup>	1,517
Oakland, Ca.	58	24	10	2,711	2,648	1,088
Minneapolis, Mn.	60	17	6	2,369	2,305	926
St. Paul, Mn.	69	12	*	1,051	1,011	476
Cleveland, Oh.	71	26	*	6,632	6,632	1,603
Pontiac, Mi.	78	11	*	4,921	*	968
Miami, Fl.	81	43	12	11,741	*	1,439
Phoenix, Az.	98	31	10	7,294	5,218	1,218
Ft. Lauderdale, Fl.	99	27	7	4,081	4,081	863
Houston, Tx.	99	38	15	15,086 <sup>e</sup>	*	1,964
Newark, N. J.	99	26	16	7,083 <sup>e</sup>	7,083	885
Dallas, Tx.	102	25	9	10,457	*	1,399
Philadelphia, Pa.	119	60	43	9,122	*	1,825
Boston, Ma.	281	19	9	3,989	1,965	723
Bronx County, N. Y.	328	39	29	3,518	3,518	1,377

\*Data unavailable or not applicable.

<sup>a</sup>Total number of judges authorized to general jurisdiction court in civil and criminal divisions.

<sup>b</sup>Judges assigned to criminal matters.

<sup>c</sup>Total criminal matters filed in 1976. Because of significant differences in statistical procedures across courts these figures are not strictly comparable.

<sup>d</sup>Felony defendant-incidents.

<sup>e</sup>Estimate from data supplied by court.

not the courts with slowest disposition times, nor are the comparatively under-worked courts speedier.

To investigate the relationship between processing time and backlog, a *backlog index* was constructed for each court. The measure consisted of the number of civil and criminal cases pending at the beginning of 1976 divided by the number of 1976 dispositions, thereby relating the number of pending cases to yearly terminations. (See Tables 5 and 6). The higher the backlog index, the more pending cases a court has relative to its yearly productivity. When disposition time is related to this backlog index, a clear pattern emerges for both civil and criminal cases. The higher a court's backlog, the slower cases move to

TABLE 5  
Civil Caseload Data

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

\*Data unavailable or not applicable.

<sup>a</sup>Tort filings per civil judge — 1976.

<sup>b</sup>Tort cases pending as of 1/1/76 (or beginning of 1976 fiscal year) per civil judge.

<sup>c</sup>Tort cases pending as of 1/1/76 divided by 1976 tort dispositions.

disposition. Slower courts, in other words, are "backlogged" courts. Notwithstanding this pattern relating speed of disposition to backlog, it is not this study's conclusion that backlog is the cause of delay. Rather, a court's backlog as well as its speed are symptoms of delay caused by other factors discussed below.

The number of cases a court must process is only one element of caseload; the type of cases is another. It was not possible to determine the quantity of complex civil litigation in a court or to determine its effect on processing time. On the criminal side, differences in the pace of criminal litigation apparently are independent of the quantity of serious crime in the caseload. Although serious cases usually move slower, courts that are comparatively slow in disposing of serious cases are similarly slow with less serious cases. The reverse is also generally true. The clear inference is that differences in the pace



TABLE 6  
Criminal Caseload Data

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

\*Data unavailable or not applicable.

<sup>a</sup>Felony cases (defendant-incidents) filed per judge assigned to criminal matters — 1976.

<sup>b</sup>Pending felony cases as of 1/1/76 (or beginning of 1976 fiscal year) per judge assigned to criminal matters.

<sup>c</sup>Pending felony cases as of 1/1/76 divided by 1976 felony dispositions.

<sup>d</sup>Estimate.

of criminal litigation, and perhaps civil litigation, among trial courts cannot be adequately explained by concentrations of complex cases.

### Trial and Settlement Activity

Trials, especially jury trials, consume most judge time in most state trial courts. The extensive resources consumed by jury trials encourage pretrial settlement programs: mandatory settlement conferences, plea bargaining conferences, and a host of other techniques to encourage nontrial dispositions. All of these strategies *assume* a court can dispose of more cases by lowering the

**TABLE 7**  
**Court Settlement Activity**

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

<sup>a</sup>1976 tort dispositions per civil judge.

<sup>b</sup>Percent of total tort dispositions reached by jury verdict.

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

<sup>d</sup>This figure based only on the trial-ready cases since cases are not filed with the court prior to trial readiness.

proportion of cases requiring jury trial. If this assumption is correct, courts with a relatively low proportion of jury trials should be more productive than trial-intensive courts. Despite considerable differences in the proportion of civil and criminal cases proceeding to trial, however, the trial rate has little to do with either case output per judge or disposition time. Courts with a relatively high proportion of jury trials are neither less productive nor slower than courts with fewer jury trials. Furthermore, as Table 7 indicates, the courts with the most intensive civil settlement efforts tend to be the courts with the slowest disposition times.

### Calendaring System

One of the great disputes in judicial administration is how best to calendar cases. On one side adherents support the individual calendar where each judge has responsibility for his own caseload and functions almost as an autonomous court. The master calendar alternative exists in a number of variants that have in common assignment of judges to different functions (motions, conferences, or trials) rather than to cases. As cases require some judicial action they are assigned to a judge for that specific action.

The differences in civil disposition times between the two systems are striking: the mean of the tort disposition times among individual calendar courts is more than 200 days faster than among master calendar courts. When the courts are ranked according to the civil time measures, the fastest third of the courts consists of six individual calendar courts and one master calendar court, the slowest third consists of seven master calendar courts and *no* individual calendar courts. An indication of higher productivity on individual calendar courts is also suggested, although the data are less conclusive.

Data on criminal case processing are less clear. Seven of the nine fastest courts utilize the master calendar, as do the courts with the most criminal case delay. Several individual calendar courts are quite speedy; several are relatively slow. As on the civil side, data on case output per judge suggest that individual calendar courts make more productive use of judgepower than do master calendar courts.

### Case Management Systems

Probably the greatest observable difference between civil and criminal case processing in the courts examined is in case management. While court monitoring and control of civil case progress is seldom exercised, nearly every court controls the pace of criminal litigation to a considerable degree. No court observed gives counsel in a criminal action the same control over case progress that civil lawyers enjoy.

In only one of the courts examined do judges exercise any substantial control over civil case progress. And even there counsel controls the duration of the period from initiation to attorney stipulation of readiness for trial. The firmness by which judges hold counsel to schedule trial and other appearance dates also varies considerably. But again, in only one court does it appear that attorneys expect a trial might actually begin on the first scheduled trial date. Through artful use of stipulated continuances, allegations of scheduling conflicts, and refusal to file (or readiness to withdraw) a trial readiness document, skilled attorneys in the other courts control the speed at which cases come to trial. In effect, counsel are never compelled to begin trial if it is inconvenient to them.

The criminal process is markedly different. Five courts were examined in depth and each institutes judicial controls at some pretrial point in criminal cases. In the fastest courts this control is established at filing, with a routine process for setting an early and relatively firm trial date. The slower courts exercise relatively little early control and do not push cases to disposition until much later.

Trial-setting and continuance practices for criminal cases also differ markedly from those for civil cases. The median time from first scheduled trial date to commencement of trial is shorter in criminal cases. The percent of cases in which trial commences on, or shortly after, the date scheduled is higher. For example, an average of 55 percent of the criminal cases commence trial within two weeks of the first scheduled date; for civil cases it is 32 percent. A tight continuance policy alone does not guarantee speedy disposition; but the data indicate that the ability to set firm and relatively early trial dates is characteristic of faster courts on both the civil and criminal sides.

### **A Theory of Court Delay**

The considerable variation in case processing times is not well explained by the traditional model of court delay for the reasons set forth above. The positive relationship between the backlog index and processing time, however, does relate to one popular theory of delay in civil and criminal cases: delay is caused by the cases awaiting trial; the longer the line, the greater the resulting delay. The problem with this backlog-causes-delay theory is that it is largely tautological: a court in which the median case is disposed of in three years will necessarily have approximately three years of filed cases pending at any one time if filings and terminations stay fairly constant.

An alternative conclusion is that the speed of disposition cannot be ascribed in any simple sense to the length of a court's backlog, any more than it can be explained by court workload or procedures. Rather, both speed and backlog are the result of a stable set of expectations, practices, and informal rules of behavior which is termed "local legal culture." Court systems become adapted to a given pace of civil and criminal litigation. That pace has a court backlog of pending cases associated with it; it also has an accompanying backlog of open

files in attorneys' offices. Established expectations and practices, together with court and attorney backlog, produce considerable resistance to attempts to alter the pace of litigation. This explains the failure of structural and caseload variables to account for interjurisdictional differences in the pace of litigation. It also explains the extraordinary resistance of court delay to solutions based on court structure, resources or procedures.

Although the relation of legal culture to processing time cannot be tested as directly as court structure and procedures, there is support for this informal model of court delay in both the quantitative and qualitative data. Perhaps the most persuasive evidence of the impact of local legal culture upon the pace of civil litigation comes from comparing disposition times in state and federal trial courts. If legal culture strongly influences the speed of resolution of civil disputes in a state trial court, then considerable spillover to other courts in the same geographical location could be expected. In particular, it could be expected that slower federal courts will be in cities where the state courts are slow, faster federal courts will be in cities where state courts are relatively fast. Project data indicate that this is indeed the case.

The relationship between disposition time for civil cases in federal court and state court is fairly strong. Time to jury trial in the two court systems also compare although the relationship is less strong. Given the considerable differences between state and federal courts in nearly all aspects of workload, structure, and procedures, this relationship in processing times provides strong support for the existence of a local legal culture that cuts across both state and federal courts in a community. One aspect of that culture is a set of operative expectations and accompanying practices that influence the overall pace of litigation in both courts.

This model of the pace of civil litigation is reinforced by extensive interview and observation. In the faster courts, attorneys and judges uniformly reported that they were "accustomed to speed," "tuned-in to moving cases along," on "a rather fast track." Speedy disposition was considered the norm, and concern for "getting rid of" or moving cases appeared to be the animating philosophy of both bench and bar.

Lawyers and judges in slower courts often appeared to be as satisfied with

their pace. Those interviewed often suggested that several years were required for cases to "ripen" or for "injuries to mature." The leisurely pace of civil litigation was simply not perceived to be a problem.

Previous research on the criminal justice system has emphasized the central importance of a local discretionary system of norms, relationships, and incentives of participants. Often these informal elements of the criminal justice system were found to have more to do with actual court operation than formal statutes, rules, and policies.

Few behavioral studies have specifically addressed the problem of criminal court *delay*. The established importance of an informal system of relationships among judges, defense attorneys, and prosecutors suggests, however, that local legal culture may be as important in criminal cases as in civil cases. If anything, the incentives for criminal delay may be even stronger. Unless incarcerated prior to trial, a defendant typically has little to gain from a speedy trial that may deprive him of his liberty. Defense attorneys often have an additional reason to resist early disposition: securing legal fees prior to trial or other disposition. A prosecuting attorney is seldom interested in pushing a case to disposition if it is evidentially weak. Private defense attorney, public defender, prosecutor, and judge share with their civil practice brethren a common incentive to resist any quickening in the pace of litigation that would result in an increased workload. The limited number of attorneys engaged in criminal practice—and the resulting close and continuing personal contact among those engaged in prosecution and defense work—further allows professional courtesy in postponement requests and other tactics which cause delays.

Despite these clear analogies to civil cases, it is important to emphasize the significant differences in criminal case processing. Probably the most crucial difference is the opportunity for supervisory control of the individuals handling criminal cases. Unlike the civil justice system, where attorneys handling cases are either self-employed or work for one of the many private law firms, in criminal cases the prosecution and often the defense is handled by lawyers employed by public agencies. These agencies are headed by public officials concerned that, at the least, subordinates avoid activities which may cause embarrassment. Hence participants in the actual disposition of criminal cases

are subject to management controls not present in the more fragmented civil justice system.

The role of trial judges in processing most criminal cases is greater than in civil cases. Judges typically arraign all criminal defendants and set the amount of the bond. Dismissals and even *nolle prosequi* in many courts may involve judicial ratification. Criminal cases settled without trial therefore involve considerably more judicial participation than most civil settlements. With participation comes both judicial influence and judicial oversight, elements largely missing in the pretrial disposition of most civil cases.

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

The nature of the controls placed on criminal case duration, however, varies considerably from court to court. Indeed, the factor that most distinguishes faster from slower courts is the strength of case management controls applied and the point in case progress at which they are imposed. Of the courts investigated intensively, those with the speedier disposition times are those with strong controls of case progress applied from filing. Slower courts impose such controls much later, if at all. Not surprisingly, the courts with the most stringent controls on criminal litigation are the courts in which the expectations and norms of the legal community support an accelerated pace. Alternatively, in court systems with the fewest controls there is less participant concern with delay, and norms and expectations are consistent with the existent relaxed pace of criminal cases. Courts in which a one-year processing time is considered both normal and acceptable will be less concerned about pushing a six-month-old case than a court where 180 days to trial is the outside limit.

In summary, courts that dispose of criminal cases expeditiously will be those in which there is a system-wide expectation and concern for speedy disposition. This exists most commonly in courts where the persons handling criminal cases

are subject to constraint or control from an aroused public, a management-conscious district attorney, an active state judicial hierarchy, or a speedy-trial standard with meaningful sanctions and few loopholes. These factors are obviously related. Constraints such as speedy-trial rules or an aroused public, for example, may serve to generate court system concern for expediting criminal case disposition, which in turn might result in tighter court or prosecution controls on processing of individual cases. The two crucial variables are system-wide concern over the speedy disposition of criminal cases and system-wide controls on the progress of individual cases. Without such concern and control criminal litigation will proceed at the most convenient pace for the individual attorneys, litigants, and judges.

### **Strategies for Delay Reduction**

In the following discussion the more commonly proposed remedies for court delay are examined.

*The Resource-Workload Nexus: Adding Judges or Decreasing Filings.* The assertion that court delay is a result of too few judges facing too many cases is accepted by both commentators and many practitioners as an article of faith. This research provides no conclusive technique to determine whether judges in any particular court are overworked. But the data on both civil and criminal case processing suggest that courts that handle relatively high caseloads per judge are no more likely to be slow than courts with comparatively light caseloads per judge. As noted above, case processing time is strongly affected by the expectations and practices of the attorneys and judges working in a court system and the extent of court control over case progress. Neither of these elements is necessarily affected by changes in the workload of judges, which probably explains the lack of relationship between workload and processing time.

This analysis suggests that efforts to reduce court filings through diversion and screening programs, and by adding new judgeships, will not necessarily result in a speedier pace of litigation. While these changes may accomplish other goals, it is not expected that they will alter processing times in the absence of other fundamental changes in court attitudes and practices.



*Court Settlement Activity.* One of the most frequently applied strategies involves judges attempting to settle cases through negotiation prior to trial. Mandatory pretrial settlement or plea bargaining conferences and crash settlement programs are common court responses to problems of backlog and delay. The premise is that negotiated dispositions require less judge time than trials, so that a successful conferencing system will increase court productivity without additional judicial resources.

Evaluation of the success of settlement programs is difficult. Judges see a high proportion of cases disposed of in conference and thus conclude that the program is achieving positive results. But it is difficult to determine whether such conferences actually change the trial rate. Even if conferences do dispose of cases that would otherwise have resulted in trial, it is not clear that this change in trial utilization will necessarily increase total court output. In the courts for which there are relevant data, no significant relationship between trial utilization and individual judge productivity was found. Those courts which disposed of proportionately more cases by jury trial do not necessarily dispose of fewer cases per judge. Furthermore, the fastest pace of civil litigation in the intensively examined courts was in courts with the *least* settlement activity. They also tended to dispose of a higher proportion of cases by jury trial.

The data therefore suggest that extensive court involvement in attorney negotiations is nonproductive. While a judge may crystallize a settlement in certain cases, there are strong indications that dedicating substantial judicial resources to settlement discussions neither increases judicial productivity nor speeds dispositions.

*Calendaring Systems.* The considerable difference in the pace of civil litigation in master as opposed to individual calendar courts has already been described: the mean tort disposition time among individual calendar courts is more than 200 days faster than among master calendar courts. The difference in processing time between individual and master calendar courts is not as pronounced in criminal as in civil case processing. For both criminal and civil courts, however, productivity for judges on individual calendars appears to be considerably higher than on master calendars.

Although there is no conclusive proof, the major distinguishing factor in performance under these calendaring systems appears to be the degree of judge accountability in individual calendar courts. Stated baldly, individual calendar systems seem to create incentives for judges to work harder, or to expend their efforts on activities that increase productivity or decrease individual case delay, or both.

One possible explanation for the lack of an analogous finding for criminal cases lies in the amount of controls already present in the criminal process. Most court systems have instituted some form of administrative monitoring of the status of criminal cases independent of the activities of individual judges. The presence of a prosecuting attorney with at least a formal interest in speedy disposition of criminal cases adds a further cohesive element to criminal case processing that is not present on the civil side. The civil system, on the other hand, leaves the judge as the sole source of pressure for speedy disposition. A system that makes an individual judge accountable for moving a specified set of cases may thus have more impact on civil than on criminal case processing time.

These data do not support an unqualified recommendation of the individual calendar system for either civil or criminal cases. They do suggest, however, that the presence of relatively unambiguous measures of individual judicial performance increase productivity and, at least for civil cases, may be responsible for more judicial attention to the problems of delay.

*Case Management.* The basic tenet of the case management philosophy is that the court, not the attorneys, should control the progress of cases in the pretrial period. Individual case progress is monitored to ensure that litigation moves through the various stages prior to trial without unnecessary delay.

Differences in criminal case processing make the concept of court control much less foreign to state courts than the application of similar controls to civil litigation. Although some state statutes place responsibility for criminal docket control upon the prosecuting attorney, no court adopted the *laissez-faire* attitude toward criminal cases that was common on the civil side. Many courts, often in cooperation with the prosecuting attorney, utilize sophisticated data processing systems to monitor and schedule criminal cases, and thereby ensure

that processing time does not exceed relevant speedy-trial limits. The fastest courts have the tightest controls and routinize the process to a considerable extent; cases may deviate from the general pattern but most cases move at a fairly standard pace from arrest to disposition. Standard management controls are an important element in the comparatively speedy pace of criminal litigation.

The major project recommendation is institution of systems for both criminal and civil cases by which the court can monitor and ultimately guide the progress of individual cases from filing to disposition. These systems should create an *expectation* that trial will commence on the date scheduled in the absence of exceptional circumstances. If a court is to foster an expectation that trial will begin on the first trial date scheduled, it obviously must be able to provide a trial on that date or shortly thereafter in those cases that have not settled prior to trial. A court that must postpone a sizable number of trial dates can no more succeed in creating the expectation of trial as scheduled than can a court which grants all requests for continuances. Continuance practices, and trial expectations, are thus dependent on trial setting and scheduling practices.

A "perfect" court scheduling system would provide that every case set for trial could be tried on the date scheduled. At the same time, however, it would ensure that no judge suffered a calendar breakdown in which all his scheduled cases were either disposed of prior to trial or were continued. Perfection is obviously difficult to achieve given the uncertainty involved. Hence, courts must balance the desire to keep judges busy in trial with an effort to provide sure trials in all those undisposed cases scheduled. Most courts have struck this balance by striving to prevent loss of judge time.

This practice of setting enough cases to virtually *guarantee* that no judge is idle also insures that a court will seldom be able to try all those cases requiring trial on time. The court will therefore have to grant continuance requests and postpone the remaining cases on its own motion. Continuance practices will then fluctuate with the state of the calendar on any particular day, serving to lessen the expectation of trial in the minds of attorneys and litigants, postpone settlements, and confuse attorneys' schedules. Courts should balance the desire to avoid unnecessary lapses in the trial schedules of judges with a concern for

promoting an expectation that trial dates will remain firm. A trial-setting policy that emphasizes this latter goal will encourage early dispositions, alleviate attorney grievances over the uncertainty and inconvenience associated with vacillating trial dates, while at the same time leaving the court — not the attorneys — in control of this important element in the overall pace of civil litigation.

This study does not purport to spell out the details of a model case management system. The basic point is that any delay reduction effort should be accompanied by controls at all stages of the civil process. If not, the built-in inertia of attorney backlog, together with settled local practices and expectations, may simply produce a shift in the time saved in one part of the process to some other period.

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





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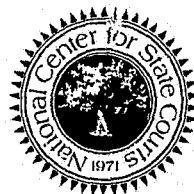
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