U.S. Department of Justice
Law Enforcement Assistance Administration
National Institute of Law Enforcement and Criminal Justice

Pretrial Settlement Conference: An Evaluation

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by
Wayne A. Kerstetter
Project Director
and
Anne M. Heinz
Senior Methodologist

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Henry S. Dogin, Administrator
Homer F. Broome, Jr., Deputy Administrator for Administration

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Harry M. Bratt, Acting Director

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FOREWORD

This document reports an effort to dignify and rationalize pre-trial negotiation practices in three urban courtrooms. In an era of self-serving "demonstration projects," this study attempted instead, to rigorously test the impact of an innovation through the use of random assignment of criminal cases in a field setting.

Field research inevitably falls short of the precision obtainable in laboratory experimentation. The reform examined was a modest improvement rather than a great leap foreward in the settlement of criminal cases. Yet it is precisely this form of incremental change and careful evaluation that holds long range promise in an area that has been dominated by quick cure programs and slipshod evaluation. In my judgment, this report is a significant addition to the research record of the Center for Studies in Criminal Justice and a valuable example of meticulous planning and research.

Franklin E. Zimring
Professor of Law and
Director, Center for
Studies in Criminal
Justice, University
of Chicago.

PREFACE

This study reports on the implementation in Dade County, Florida of a proposal to involve, on a voluntary basis, victims, defendants, and police in a judicial plea negotiation conference. The study, supported by a grant from the National Institute of Law Enforcement and Criminal Justice of the Law Enforcement Assistance Administration, U.S. Department of Justice, had several objectives:

-- To determine whether the proposed pretrial settlement conference was a feasible case disposition procedure in a major urban area felony court.

-- To make a preliminary determination of the impact of the use of the conference on case processing and disposition.

-- To assess the impact of the conference procedure on the judges, attorneys, victims, defendants, and police involved.

This report includes a brief background discussion and literature review; a description of the pretrial settlement conference proposal and the rationale behind it; a discussion of the issues addressed in implementing the proposal and of the implementation site--Dade County, Florida; a discussion of the research methodology; a presentation of the data collected and the research findings; and a discussion of the general findings and implications of the study.

The report is directed at both the criminal justice research community and criminal justice practitioners. It is a preliminary assessment of an idea which when the project was undertaken in mid-1976 was perceived by many criminal justice practitioners as a quite radical departure from current practice. In that context the evaluation focused on issues of feasibility and basic impact on the case disposition process. We believe that it will provide the foundation for further testing and evaluation of the involvement of judicial officers, victims, defendants, and police.

The study was conducted by the Center for Studies in Criminal Justice of the University of Chicago Law School. Wayne A. Kerstetter was Associate Director of the Center and Project Director for this study. Anne M. Heinz was a Research Associate at the Center and Senior Methodologist on the project.

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We are indebted to a large number of people for their thoughtful help and assistance during this project.

This research effort would have impossible without the active support and cooperation of the judges in the 11th Judicial Circuit, including particularly the judges who undertook to test the conference proposal. The Dade County judges included:

The Honorable Edward D. Cowart
The Honorable Ira L. Dubitsky
The Honorable N. Joseph Durant, Jr.
The Honorable Wilkie D. Ferguson, Jr.
The Honorable Richards Fuller
The Honorable Ellen J. Morphonios
The Honorable Leonore C. Nesbitt
The Honorable Leonard T. Rivkind
The Honorable Gerald T. Wetherington
The Honorable Gene Williams.

Two individuals in the Dade County criminal justice system provided invaluable day-to-day support and assistance. We salute the dedication and professionalism of Thomas K. Petersen, Executive Assistant State Attorney, and C. David Weed, Assistant Public Defender. They exemplify their respective offices' commitment to a humane and fair criminal justice system.

Our gratitude extends to the many officials of the Dade County criminal justice system who facilitated our work: Richard E. Gerstein, then State Attorney; Edward Carhart, First Assistant State Attorney, and the attorneys and staff of the State Attorney's Office; Bennett H. Brummel, Public Defender, Phillip A. Hubbart, former Public Defender, and the attorneys and staff of the Public Defender's Office; Richard P. Brinker, Clerk of the Circuit Court and Montague Eadie of the Clerk's Office; Jack Sandstrom, Director of the Dade County Department of Corrections and Rehabilitation; the Dade County Department of Public Safety, the Miami and Miami Beach Police Departments, and the many other police officers and agencies of Dade County; Phillip Ware of the Dade County Probation Department; Ms. Terry Sullivan, Ms. Bobbi Rosen, and Ms. Mary Wells who greatly helped with the day-to-day problems of keeping the implementation effort on track.

Louie L. Wainwright, Secretary, Florida Department of Offender Rehabilitation, and his fine staff were immensely helpful to our efforts to interview incarcerated defendants.

We were fortunate indeed to have benefitted from the leadership, dedication, and competence of our Site Director, Charlotte Boc Weatherholt. Her capacity to elicit cooperation from others was such that it evoked the label of the "C.B. effect". She was ably assisted by Elaine Russell and Raul Sarraff. As a result of the efforts of Professor Bruce Hamersley we received substantial assistance with interviewing from the Intern program at Florida International University, and from Dade County Junior College.

Professor Fred Dubow and Sandra Shane Dubow helped with the development

of our research instruments and research strategy.

Our Advisory Board lent their vast experience in state and federal criminal courts in greatly assisting us in translating the pretrial conference proposal from written word to living reality and in our search for implementation sites. The Advisory Board members were: The Honorable William J. Bauer, Judge of the 7th Circuit Court of Appeals, George Cotsirilos, Esquire, and Professor James S. Haddad of Northwestern University Law School.

Scott Marden and Robert Enright performed the computer programming for the analysis of data sets. Judith Inman assisted in that effort, in the preparation of tables, and in a number of other tasks essential to the research effort.

As always, Mrs. Helen Flint of the Center for Studies in Criminal Justice, provided the administrative cohesion to the project, performing the multitude of important tasks without which the work could not have gone forward. Mrs. Gladys Fuller played a similar role at the Law School.

Barrik Van Winkle shouldered the burden of preparing the final manuscript, including important editing and table preparation tasks. Ellen Fredel and James Zuehl assisted with the preparation of footnotes.

Secretarial support during the course of the project's two and one half years was provided by Frieda Lancaster, Eleanor De Paoli, and Sharon Varga.

Professor Franklin E. Zimring played a major role in the development of the research methodology and provided support and advice throughout the project.

Our close collaboration with Ben S. Meeker, Senior Research Consultant, afforded us the benefit of his extensive experience in the courts and corrections as well as support and assistance in many research and administrative tasks.

Our thanks are also extended to the many other persons, too numerous to mention by name, who have helped in various ways over the last two and one half years.

EXECUTIVE SUMMARY

Introduction

Plea bargaining as a significant mode of criminal charge disposition is, and has been for some time, under sustained attack. These attacks culminated ina recommendation by the National Advisory Commission on Criminal Justice Standards and Goals that such negotiations be abolished. But despite criticisms leveled from many quarters, there is little indication that the practice is about to succumb.

In 1974, Norval Morris proposed that judges should play a more active role in plea negotiations and that victims and defendants should be invited to participate in these discussions. This report documents a year-long implementation of that proposal carried out in Dade County, Florida felony courts.

It was thought that the pretrial settlement conference proposal would meet many of the legitimate criticisms currently leveled at plea bargaining and would also serve a number of other values. Participation by the judge and lay parties would make the practice more open and less unseemly. Increased citizen participation was expected to increase respect for the workings of thelaw by those directly affected by the crime and its prosecution. Judicial involvement would help insure that the interests of the public were considered in all settlements. It was hoped that the presence of the victim would focus more attention on the victim's legitimate claims for consideration and possible compensation. The defendant's presence was expected to add emphasis to his individual situation and needs. The open discussion at the conference of the appropriate settlement would lead to the articulation of principles which would develop a precedential value for future settlements. Finally, by means of structure and timing within the pretrial process, it was hoped that prompt consideration of the possibilities of pretrial settlement would occur and thus lessen last-minute disruptions to court scheduling currently caused by plea bargaining.

The evaluation used a field experiment design. 1074 cases were randomly selected, of which 378 were assigned to use a pretrial settlement procedure which had participation in plea discussions by judge, victim, and defendant as its key element. The remainder were assigned to control groups, some assigned concurrently with the test group and others selected from cases closing prior to the procedure's implementation. The data base consists of information from court records on each of the 1074 cases in the study sample and observations of each of the 287 conference sessions. Interviews with the lay parties were conducted with 30 percent of the defendants, 33 percent of the police, and 42 percent of the victims listed in the court records. After removing from the total those for whom we had insufficient information to make the contact, the response rate was 53 percent for defendants, 64 percent for police, and 78 percent for victims. Fewer than 5 percent of the defendants, 3 percent of the victims, and 1 percent of the police refused to be interviewed. Finally, 53 interviews with the judges and attorneys (including four waves with the three judges who used the pretrial settlement conference) were completed.

The evaluation used these data sources to focus on the nature and extent

of lay participation in the plea discussions, on the impact of the conference procedure on the felony case disposition process, and on the attitude of the participants in that process. The focus on these aspects reflects the substantial doubts expressed by many judges and lawyers about the feasibility of lay involvement in plea discussions and concern about the impact of such involvement on the functioning of the case disposition process.

Use of the Conference

The conference, of course, was the heart of the matter. Conferences were held for 287 of the 378 cases in the test group. In almost 22 percent of the test cases, where no conference was held, a settlement had been reached before the scheduled conference data. More than half of these involved a referral of the defendant to a pretrial diversion program run by the prosecutor's office. The absence of a critical party led to cancellation of the conference in 27 percent of the cases. The defense attorney was the party most frequently absent. A related reason was the judgment (17 percent of cancelled conferences) by one of the attorneys that the case was not ready for settlement discussion because some preparatory tasks needed completion.

For one judge the type of offense was significantly related to the likelihood of a conference being held. In more serious cases the conferences were less likely to be held. Interviews with professional participants generally supported this finding. In cases involving very serious crimes or defendants with extensive records charged with serious offenses, the judges and attorneys generally felt that it was preferable to try the case.

Cases which are in some sense marginal--either because the statute was not aimed at the particular type of situation or because of the presence of psychiatric or other extenuating factors--were seen as particularly appropriate for the conference process.

In cases where the conference was held, 26 percent ended in settlement; 46 percent reached a tentative settlement; 15 percent were set for trial at the conclusion of the conference. The more violent offenses were less likely to reach a settlement.

In 83 percent of the conferences, one or more lay participants attended. Defendants attended 66 percent; victims 32 percent; and police 29 percent. In 21 percent of those cases which had a victim, both the defendant and victim attended the conference. For none of the lay groups was attendance significantly related to the type of offense. The professional interviews disclosed only a minimal number (2) of conferences in which there was serious tension between the victim and the defendant.

The conferences usually took place in the judge's chambers and were informal, compared to courtroom proceedings. The judge sat behind his desk wearing a suit instead of judicial robes. The other participants were seated around the room or, in some cases, around a conference table. The protocol and atmosphere was that of a business conference, rather than a court proceeding.

The conferences averaged ten minutes in length although there was sub-

stantial variation. The shortest lasted less than one minute; the longest twenty-five minutes. The average length of the conference differed significantly for the three judges (the average length ranged from 9 to 12 minutes). The discussion in the conferences clustered around three topics: facts of the case, prior record of the defendant, personal background facts about the defendant or victim, and recommendations.

While all the judges were the most active party in their respective conferences, they differed markedly in the extent to which they directed the discussion in the conference as well as in the formation of a disposition. The lay participation was limited both in the extent of the contribution and in the extent to which they directed the flow of the discussion. The lay presence did not appear to significantly affect either the likelihood of settlement or sentence severity.

These findings are not surprising, since the main decision-making tasks of the conference lay with the professionals. The lay parties were limited participants, not key actors.

The judges' attitudes toward lay participation were mixed. One judge felt the lay presence had been very helpful. The other two were ambivalent. Lay presence had not been a problem, but on the other hand there did not appear to be major benefits, at least from the perspective of the judge. This view may result from the fact that substantial information was already available in the case file, and that the additional information needs were low. Thus, the lay parties' main contribution would be their attitude toward a possible settlement. However, the judges all felt that the lay attitudes toward a settlement could properly be given only limited weight.

The lawyers also held mixed views about the usefulness of lay participation. During the implementation period, before evaluation data were available, those who thought it useful tended to believe that it humanized and personalized the case disposition process. Those who saw little value in it tended to argue that it did nothing to speed or facilitate the disposition of cases.

Effect on Case Processing

The pretrial settlement procedure presents a mixed pattern of impacts on the allocation of processing costs in the courts. The procedure did not substantially change the method of disposing of cases: it did not affect the proportion of trials or settlements. As a result, there is nothing to show that the procedure altered substantially those time or information costs involved in the court system's use of trials, pleas, or dismissals.

The conference procedure clearly produced a savings in the length of time that cases were in the system. The cases assigned a conference date closed significantly more quickly than those not assigned a date. This savings occurred both with judges who had histories of comparatively slow and fast calendars. For two of the courtrooms in which the test cases that went to conference were more likely to settle than those that did not, the time savings occurred whether the conference session was actually held or not. For the third courtroom, where the likelihood of settlement was not associated with whether the case went to conference, the time savings occurred only for cases where the session was actually convened. Since the system

already had in place proceedings that reviewed the timing or scheduling of cases for trial, the conference's contribution may be associated with the negotiation process itself, or at least the anticipation of that negotiation, in front of the judge.

The time costs of involving lay participants included the cost of informing the appropriate parties of the scheduled conference. The findings indicate that benefits of those contacts were reaped only by those lay parties who actually attend the session.

The conference procedure, with its restructured plea negotiation process, appears to have facilitated the expeditious review of cases. Further, to the extent that lay parties attend, they have increased the information available to the professionals. These changes did not, however, significantly change the system's use of trials or settlements.

Effect on Case Disposition and Sentencing

The test of the pretrial settlement conference in Dade County did not result in significant changes either in the pattern of adjudication or in the sentences imposed. For one of the judges there is an indication of less severe sentences and less frequent use of incarceration, but the evidence is too fragmentary to be conclusive.

One of the three judges experienced a statistically significant increase in the use of restitution in both test and control cases when compared to his use of restitution prior to the introduction of the conference process. This finding may reflect a generalized increase in sensitivity to the appropriateness of restitution. There was no corresponding significant increase in the use of restitution for the other two judges.

Based on these findings, the most appropriate concusion is probably that the conference process, whether as a screening mechanism or in the dynamics of the session itself, did not result in any major changes in the kinds of decisions that were reached. The changes in the decision-making structure and the expansion in the variety of interests represented does not appear to have altered significantly the ways in which the criminal sanctions were utilized.

Effect on Attitudes of Victims, Defendants, and Police

The pretrial settlement conference procedure, with its provisions of judicial presence at all negotiations and invitations to attend extended to defendants, victims, and police, was expected to change lay perceptions of the courts. Four indices were used to measure the effects (knowledge of the disposition, satisfaction with the disposition, satisfaction with the process, and satisfaction with the criminal justice system). A majority of the defendants, victims, and police interviewed expressed satisfaction on these indices. Virtually all defendants, half the police, and one-third of the victims reported knowing the disposition of their case.

When considering treatment effects measured by differences among test and control cases, the lay parties whose cases were assigned to the test condition were generally similar to those in the controls in their attitudes and perceptions. Of the ten sets of tests among treatment conditions, only

two showed treatment effects. First, test victims were more satisfied with the way their cases were processed than their control counterparts. It is possible that the consultative process itself produced the more positive attitudes among the victims. The second significant finding was that the police in one of the test judges' courtrooms were more satisfied with the disposition of their cases than were the controls. Both of the significant findings were in the expected direction of more positive attitudes attributable to the conference process. However, the failure to find consistent results across the groups makes it unlikely that the implementation of conference procedure, based on the level of lay attendance achieved at this site, made substantial changes in public perceptions about the courts.

There was somewhat more evidence of differences for vctims and police who attended the conference. Of the seven sets of tests among the victims and police on the four indices, four showed that attenders were more positive than non-attenders; victims who attended were more likely to report knowing the disposition of their case than non-attenders. Police who attended the conference were more likely to know the disposition and to be more satisfied with the disposition and processing of their case. * For the defendants, attendance did not affect their atttitudes.

An inquiry into the possible coercive effects of judicial presence on defendant's right to trial disclosed no evidence that the conference procedure affected the defendant's perception of the pressure to plead guilty.

In general, at a systemic level the conference did not appear to affect attitudes and perceptions of the lay parties. At the individual level, based on personal experience of attending the conference, there is some evidence that the conference procedure produced more information and more positive attitudes toward the way cases were handled among victims and police.

Evaluation of Professional Participants

When interviewed during the implementation, before the evaluation results were available, the lawyers and judges displayed a wide range of attitudes toward the desirability of the use of the conference and lay participation in it. Some perceived it only as another time-consuming step in an already cumbersome process. Others perceived substantial benefits in an enhanced credibility for the system and in the creation of a more personalized and humanized process.

Two of the three test judges decided that they would not continue to use the conference procedure. One felt that it was too elaborate. A phone call to the victims advising them of the outcome of the case would suffice. The other concluded that while there were some benefits, because it gave the victim and police officer a sense of participation, the conference took more judicial time than could be justified by these benefits.

The third judge took a markedly different view. He agreed that the conference process took substantially more time, but he concluded that it was well worth the effort because it led to more just decisions. The opportunity to meet with the defendant and victim, he believed, gave him much

*It is possible that these differences reflect systematic differences among officers who attended the conferences compared to those who did not attend.

better insight into the case and not only led to better decisions, but also was more satisfying for him personally.

This variety of reactions undoubtedly reflects a number of factors. To some extent the difficulties in implementing any new procedure in a complex system result in imperfect execution of the original proposal. The task of contacting the victims proved, for example, to be more challenging than expected. This raises questions about the proper interpretation to be placed on the attendance rates at the conference and the effect of the conference opportunity on their attitudes. It also makes an interpretation of the professional attitudes problematic to the extent that these attitudes reflect disappointment with victim non-attendance.

Further, some of the professional reactions are either clearly idiosyncratic or reflect a narrowly function related view. For example, one defense attorney could clearly articulate that he did not like the procedure in his role as a defense attorney, but if he stepped outside of that role he thought it had merit.

The overall pattern of empirical results is that none of the major problems materialized; and there is one substantial benefit--the reduction of time to disposition. While there is some evidence of other benefits, it is too early to make definitive judgments. Additional analysis of our data and experience in other jurisdictions are necessary.

Plea negotiation is, and is likely to remain, an area of ambivalence and concern for thoughtful observers of the criminal justice system. Even though there is growing support of the view that settlement without trial serves other legitimate purposes, most proponents rest their argument ultimately on the necessity of disposing of overcrowded court calendars. It is in this context that we must attempt to form judgments about the value of the pretrial settlement conference procedure.

Given the inconclusive results of our empricial evaluation, the question of basic values in the criminal process comes to the fore. Since settlement without trial is the predominant means of criminal case disposition, should not the defendant have a right to attend the crucial proceeding of the process? Addressing this issue from a slightly different point of view, one prosecutor, when asked whether the defendant's presence inhibited discussion of settlement, dismissed the issue by saying, "It affects him; he should be there."

The victim has not proved to be the obstreperous party that some feared. Further, many victims who did not attend claimed that they were not notified of the conference, thus confounding interpretation of their absence. Certainly, the victim has a right to be informed of the disposition of the case.

On balance, the promise of the pretrial settlement conference does not seem as bright as when we started. It will not solve as many problems as originally hoped. But the promise, if dulled, is also less fragile. The procedure has withstood the test of the felony disposition process. Its precise potential for contributing to the just and humane disposition of criminal cases is still undetermined, but it is clearly worth additional testing and evaluation.

ABSTRACT

A field experiment in Dade County, Florida, was used to evaluate the use of a pretrial settlement conference as a means of restructuring plea negotiations. The procedure proposed that all negotiations take place in front of a judge and that victim, defendant, and police officer be invited to attend. The conferences were brief but generally reached at least an outline of a settlement. They usually included at least one lay party although the attendance rates for victim and police officer were quite low. The change in the structure reduced the time involved in processing cases by lowering the information and decision-making costs to the judges and attorneys. No significant changes in the settlement rate or in the imposition of criminal sanctions were observed. There was some evidence that police and, to some extent, victims who attended the sessions obtained more information and had more positive attitudes about the way their cases were handled.

CHAPTER I

PLEA NEGOTIATIONS: REFORM PROPOSALS

A. Introduction

Plea bargaining as a significant mode of criminal charge disposition is, and has been for some time, under sustained attack. These attacks culminated in a recommendation by the National Advisory Commission on Criminal Justice Standards and Goals that such negotiations be abolished. 1/ But despite criticisms leveled from many quarters, there is little indication that the practice is about to succumb.

In 1974, Norval Morris proposed that judges should play a more active role in plea negotiations and that victims and defendants should be invited to participate in these discussions. 2/ This report documents a year-long implementation of that proposal carried out in Dade County, Florida felony courts. The evaluation used a field experiment design. 1074 cases were randomly selected, of which 378 were assigned to use a pretrial settlement procedure which had participation in plea discussions by judge, victim and defendant as its key element. The remainder were assigned to control groups.

It was thought that the pretrial settlement conference procedure would meet many of the legitimate criticisms currently leveled at plea bargaining and would also reflect a number of other values. Participation by the judge and lay parties would make the practice more open and less unseemly. Increased citizen participation was expected to increase respect for the workings of the law from those directly affected by the crime and its prosecution. Judicial involvement would help insure that the interests of the public were considered in all settlements. It was hoped that the presence of the victim would focus more attention on the victim's legitimate claims for consideration and possible compensation. The defendant's presence was expected to add emphasis to his individual situation and needs. The open discussion at the conference of the appropriate settlement would lead to the articulation of principles which would develop a precedential value for future settlements. Finally, by means of structure and timing within the pretrial process, it was hoped that prompt consideration of the possibilities of pretrial settlement would occur and thus lessen last-minute disruptions to court scheduling caused by plea bargaining.

While this report focuses on a description of the implementation of the pretrial settlement conference procedure and a presentation of data regarding its effects, it is appropriate to begin with a brief introduction to the practice of plea bargaining in the United States and the major criticisms directed at the practice

In a recent survey conducted in 30 jurisdictions throughout the United States, the Georgetown University Institute of Criminal Law and Procedure examined current plea bargaining practices. 3/ This survey was based on site visit interviews and observations. The survey report uses "plea bargaining" and "plea negotiations" as synonymous terms and defines them to mean "the defendant's agreement to plead guilty to a criminal charge with the reasonable expectation of receiving some consideration from the state." 4/

We have modified that definition in several ways. We have expanded it to include discussions exploring the possibility of and leading to such an agreement. We believe that this is an important modification for the purposes of our study. We focus a good deal of our attention on the process as well as the end result. Our definition pays more attention to the underlying dynamics and less to the legal forms.

We have adopted the term "pretrial settlement" drawn from the discussion by Norval Morris of the innovations he was proposing. 5/ Thus, we define pretrial settlement discussions to include the discussion of and/or agreement to the consensual settlement of a pending criminal case. At issue is the waiving of some of the defendant's statutory or constitutional rights with or without the expectation of receiving some consideration from either the court, the prosecutor, or both. This definition includes the process by which the defendant may waive, for example, his right to a jury trial with the understanding that, if convicted after a less time-consuming bench trial, he will receive a less severe sentence. *

This definition is also useful in that it focuses attention on what we perceive to be the essential element in the process of settling criminal cases without trial: the balancing of power between the citizen and the state. The prosecutor and the court are allocated, by constitution and statute, authority to charge a person with a crime, to bring the person to trial, and if convicted, to punish the person up to a statutory maximum. The citizen charged with a crime is also given certain constitutional and statutory authority. Included in this authority is the right to trial and, specifically, the right to demand a trial before a jury of his peers. These rights can be seen as power to impose certain costs and inconveniences upon the state.

Pretrial settlement refers to the process and result of the manipulation of these powers in attempting to dispose of criminal cases. This perspective, while foreign to the formal language of the law, is faithful to the thinking and speaking of many participants in the criminal charge disposition process and captures the dynamics of the process. We believe it provides a useful analytical framework for thinking about the settlement without trial of criminal cases.

B. Variety and Extent of Plea Negotiations

The Georgetown study developed a typology for plea negotiations based on the degree to which the agreement was explicitely articulated by the participants, the types of concessions negotiated, and the persons involved in the discussions. 6/ While the survey discovered a wide variety of bargaining practices, it also disclosed some predominant patterns. The study reports that in 27 of the 30 jurisdictions surveyed, bargaining in which the agreement was made explicit appeared to be the prevalent method of disposing of felony cases by guilty plea. 7/ The predominant pattern

*The choice of the term "pretrial settlement" has substantive implications. Morris suggested that the conference he proposed is consistent with, and amenable to, settlements that do not involve charge or sentencing concessions. The conference, as we implemented it, was silent on that issue, allowing the individual prosecutors and judges to form their own policies.

of explicit bargaining involved a variety of considerations (usually charge or sentence concessions) offered either by the prosecution or the judge. 8/

The Georgetown study found a considerable range in the proportion of cases disposed of by guilty plea. The mean guilty plea rates by population of jurisdiction range from 55 percent (Wyoming--jurisdictions with a population under 100,000) to 100 percent (Vermont--jurisdictions with population between 250,000 and 500,000). However, the mode for the 20 states studied for this purpose, combining all jurisdictions regardless of population, falls between 85 and 90 percent. Seven of 11 jurisdictions with a population over 500,000 had a mean guilty rate of over 85 percent. This finding is consistent with other studies. 9/

C. Rationale for Plea Negotiations

The most frequently advanced rationale in support of plea negotiations is that the case load in our criminal courts makes it imperative. It is common to hear the statement, "I personally do not approve of plea negotiations, but we have no choice because, without it, the system would break down." The literature on plea bargaining generally reflects this view.

Milton Heumann, writing in 1975 10/ and again in 1978, 11/ casts doubt upon any simple explanation of the relationship between case pressure and non-trial case disposition. Using data from Connecticut trial courts, Heumann suggests that criminal trials have represented only a small minority of the cases disposed during the 75 year period between 1880 and 1954. 12/ Further, a comparison of the trial rates of low and high volume courts during this period does not disclose a substantial difference in the percentage of cases tried. 13/ Finally, an early 1970's change in jurisdiction drastically cut (some in the range of 50 percent) the case load in a number of Connecticut Superior Courts. Although personnel levels remained constant, the changes in trial rates were insignificant. Hartford, for example, with a 50 percent reduction in case load went from a trial rate of 3 percent to 3.2 percent of total case dispositions. 14/ From these findings Heumann concludes that plea bargaining is not a direct function of case pressure. He suggests that, "(t)he decision to plea bargain is not fundamentally a function of case pressure, other factors and incentives account for the decision to go to trial or to plea bargain." 15/

D. Major Concerns or Criticisms of Plea Bargaining

Perhaps the major criticism of plea bargaining is that it imposes a penalty on the defendant who wishes to assert his constitutional right to trial. 16/ A corollary of this criticism is the concern that innocent persons will be induced to plead guilty to avoid the possibly severe consequences of being convicted after trial. Thus, some observers perceive the repugnant situation in which a guilty person receives a reduced sentence by pleading while an innocent person is severely punished for unsuccessfully asserting his innocence at trial. A number of proposals have been made to limit the likelihood of such results, but they have not totally stifled the critical voices.

As part of this larger controversy about the appropriateness and desirability of plea bargaining, the issue of judicial participation has received considerable attention. The most common view is that it is appropriate

for the judge to be apprised of the tentative settlement once the attorneys have reached an agreement, but that judges should not be directly involved in the negotiations prior to agreement. This view argues that the judge should review the tentative settlement and indicate whether it is acceptable. The American Bar Association Standards. 17/ Federal Rule 11, 18/ and the National Advisory Commission on Criminal Justice Standards and Goals, 19/ all take this position. Underlying this position is the view that the power of the judge is so inherently coercive that it undermines the voluntariness of the defendant's acceptance of a plea agreement. The pretrial settlement conference proposal avoids this criticism by suggesting that the case be transferred to another judge for trial if a settlement is not reached. The proposal's prescription for judicial presence at the conference points to the benefits to be obtained by greater judicial knowledge of the facts and considerations behind a proposed plea. It does not require that the judge take an active role in the actual negotiations, but it does not prohibit such a role either. And, if the judge is so inclined, it facilitates direct judicial participation in plea negotiations.

As discussed above, there is considerable opposition to judicial involvement in plea negotiations. However, the case in support of judicial involvement is not without its proponents. Perhaps the most definitive survey of arguments for and against judicial involvement in its many possible variations is Alschuler's 1976 article entitled "The Trial Judges' Role in Plea Bargaining, Part I." Alschuler concludes that:

> "Judicial control of the plea bargaining process would offer defendants a clear and tangible basis for reliance in entering their guilty pleas; it would, at least on occasion, permit effective regulation of the extent of the penalty that our criminal justice system imposes for the exercise of the right to trial; it would facilitate the introduction of new procedural safeguards; it would be likely to affect the tone and substance of the bargaining process in a variety of useful ways; and, most importantly, it would restore judicial power to the judges." 20/

Alschuler proposes a pretrial conference very similar to that suggested by Morris in The Future of Imprisonment. 21/

Participation by the victim and defendant in plea discussions has not received a great deal of attention. A 1972 Yale Law Journal article 22/ suggested including the defendant in a pretrial conference presided over by a judge. It was proposed that the defendant be allowed to participate fully in the discussions at the conference.

Fredric L. DuBow and Theodore M. Becker 23/ conclude in a recent article that the victim's capacity to influence the outcome of the criminal case had declined over time, and that traditional plea bargaining has largely excluded victims. Both the sentence imposed and the absence of an opportunity to participate meaningfully frustrates victims. Discussing plea bargaining, DuBow and Becker point out that:

> "If the victim is interested in retribution, he may be frustrated by the imposition of a low sentence without explanation of the reasons for leniency or the opportunity to participate meaningfully in the process of reaching a disposition. If the victim is not

interested in retribution, there is little other satisfaction to be gained. Victims seldom get an apology, seldom are reconciled with the offender, and seldom receive restitution." 24/

Of course, The Future of Imprisonment, from which this study's proposal was developed, posited for both the victim and defendant a central role in the pretrial settlement conference. The defendant's presence is linked to constitutional values:

"The constitutional right to presence at trial can only be given reality if the accused is allowed to attend those aspects of the pretrial processes that are of significance to him. Now (under traditional plea bargaining practices) he is present only for the formalities, the signing of the treaty, not its negotiation." 25/

In proposing the presence of the victim at the pretrial settlement conference, Morris points to the need to redress the "extraordinarily shabby" treatment of victims; "the right to be informed of, and where appropriate involved in, the processes that have led to whatever is the state settlement of the harm that has been done to him (as) a matter of courtesy and respect to the dignity of the individual victim;" 26/ and finally the possibility of psychological benefits for the victim and defendant in the humanizing of the experience.

There have been other efforts at structuring plea negotiations in criminal courts. Both Detroit and Denver have utilized non-judicial conferences to explore the possibility of a negotiated settlement. The felony courts in Kings County (Brooklyn), New York, use a judicial hearing to consider disposition of felony cases by negotiated plea. The Omnibus Hearing procedure proposed by the American Bar Association attempts to structure extensive discovery early in the pretrial process and to utilize judicial involvement to facilitate plea negotiations. 27/

Substantial differences exist between these models and the pretrial settlement conference. The most striking is the explicit inclusion of both the victim and the defendant as regular participants in the negotiation process.

E. Description of Main Elements of Pretrial Settlement Conference Proposal

Plea bargaining has traditionally been bilateral with the prosecutor and defense counsel playing the main roles. Judicial involvement has usually been limited, taking the form of an after-the-fact ratification of an agreement reached by the two attorneys. The pretrial settlement conference proposal was conceived of as involving the judge and the victim, defendant, and police. The presence of the defendant, victim, and police was voluntary. The defendant was not required to be present even through counsel, except that it was proposed that there would be no plea negotiations except in the conference setting. If the defendant did attend, there was no requirement that he participate in the discussion. If the defendant chose to participate, nothing that was said could be used later against the defendant.

The conference proposal called for the judge to state explicitly this prohibition against later use of conference discussion. The proposal also

envisioned that the judge would indicate that, for purposes of the conference only, the participants would assume the defendant was guilty. The explicit statement of this assumption was necessary in order to make it clear that the defendant was not in fact making an admission of guilt by his participation in the discussion. This assumption is crucial, both as a matter of logic and a matter of defense tactics.

The victim was to participate fully in the discussion of the appropriate disposition of the case, but all parties were to be informed that the victim's comments would be given the most weight as they related to issues of compensation and restitution. The victim's voice was to be heard, but not carry special weight in the judge's consideration of the larger social ends to be served in the disposition decision. That is to say, to the extent the judge decided that a certain disposition was necessary in order to set an example, or simply to punish, the intensity of the victim's feelings, or lack thereof, was to play only a limited role.

The judge was expected to exercise some control over the discussion to ensure that the conference was not abused for inappropriate discovery purposes. Once the attorneys reached a tentative agreement, the judge would decide, based on the information presented during the conference, whether the settlement fell within the bounds of appropriateness given the circumstances of the case; that is to say, did the punishment fall between the minimum and the maximum appropriate punishment in the particular situation.

If an agreement was reached the plea would be entered in open court in accordance with the established procedure of the jurisdiction. If agreement was not possible, Morris proposed that the case be transferred to another judge for trial. Chapter III will discuss the modifications necessary in order to implement this proposal in Dade County.

F. Summary

In order to set the stage for the subsequent discussion, this chapter has presented a brief sketch of the current controversy regarding plea bargaining which mentioned in summary form recent findings on the extent and variety of plea bargaining, the effect of case pressure on plea bargaining, and the major critiques of plea bargaining. Finally, this discussion includes a statement of some of the antecedents and analogies to the pretrial settlement conference, as well as the rationale behind the proposal and a description of its main aspects.

CHAPTER II

PROJECT NARRATIVE

A. Introduction

We now focus on the efforts to locate a site in which to implement the proposed pretrial settlement conference and on the issues addressed in transforming the conference from a blueprint into an operating reality. This chapter also describes briefly Dade County (the study site) and the Criminal Court system as it operates there.

B. Site Selection

We considered over twenty jurisdictions as possible study sites. Preliminary considerations, such as the logistics of running a research project with sites on opposite coasts of the country (after Dade County was selected), led us to eliminate some of the west coast sites. Of the twenty, we made official contact with fourteen jurisdictions.

Final agreement to implement the pretrial settlement project was reached with Dade County, Florida. That story is told below. An interesting prologue is the variety of obstacles which we encountered in seeking jurisdictions to participate in the project.

The reasons given by various jurisdictions for declining to participate can be organized into five cateories:

1. A role in plea discussions is inappropriate for a judge.

2. Case overload.

3. Prosecutor did not want judicial participation because it was seen as an invasion of an executive function.

4. The jurisdiction was already involved in too many research studies.

5. Concern that lay participants would make it difficult to reach settlements.

The most theoretically troublesome was the notion that participation in plea discussions is an inappropriate role for a judge. This argument comes in two different forms. One points to the possibly coercive effect of the judge's participation (either indirectly on the defense counsel, or directly on the defendant); the other perceives a loss of judicial dignity.

The "coercive effect" argument was most succinctly stated by the Wisconsin Supreme Court in a 1969 case which said: "The vice of judicial participation in the plea bargaining is that it destroys the voluntariness of the plea." 1/

The "loss of judicial dignity" argument was less pervasive but was encountered on two occasions. This argument is best captured by the following quote:

> "The judge is a symbol of impartial justice; the prosecutor can more appropriately assume the role of bargaining agent whereas, to maintain the dignity of the judicial office and respect for the legal process, the judge cannot." 2/

The current crush of pending cases was an objection raised in three jurisdictions. The judges in these jurisdictions did not believe that the proposal would result in time savings for the judiciary. To the contrary, they felt strongly that their participation would increase their burden because of the difficulties in getting all the parties to the conference on time, as well as the time consumed by the conference itself.

A related time allocation objection was directed at the study itself. Two jurisdictions expressed the view that they had been "studied to death" lately and, while they were sympathetic to research concerns, they felt that it was necessary to begin limiting their involvement in research efforts.

Finally, both judges and attorneys in two large jurisdictions expressed the view that the victim, if present, would be so intransigent that a reasonable settlement would be foreclosed. Some were also concerned that the lay parties--both victims and defendants--were likely to misunderstand the discussion between the attorneys and judge and feel that an improper or unsavory action had been taken. This could lead to adverse publicity, particularly for the judge.

C. Implementation in Dade County, Florida

In 1972, the Dade County State Attorney's Office established a Pretrial Intervention Program. The purpose of this program was "to provide, for a three to six-month period immediately following arrest, intensive counseling and manpower services, as well as referrals to community agencies where warranted." 3/

We learned of this program during our early efforts to seek out jurisdictions with experience relevant to our proposal. Our attention was drawn to the fact that both the victim and police are consulted before the defendant is admitted to the program. Neither has a veto over the decision to admit, but their opinions are taken into account. Program officials report that they have encountered only minimal opposition to the program from either victims or police officers. Often they are quite supportive of the proposed referral.

Our discussion of the Pretrial Intervention Program with the State Attorney's Office led to an exploration of the possibility of implementing the pretrial settlement conference process in Dade County. Initial contacts with several judges yielded mixed results. One judge opposed, as a matter of principle, direct judicial participation in plea discussions. But another judge and the Administrative Judge were quite interested and supportive.

Similarly, the Public Defender's Office was very receptive. The Public Defender at that time, Phillip A. Hubbart, had within the previous year supported a proposed rule of criminal procedure which would have required that all plea discussions take place in a judicial conference. 4/ The defendant, his counsel, the prosecuting attorney, and the trial judge were to attend these conferences. The proposal further provided that "All other interested persons may be present at the conference," thus opening the possibility of victim participation. His successor, Bennet H. Brummer, was also supportive.

In addition to Hubbart's proposal and the Pretrial Intervention Program, prior experience in Dade County with elements of the pretrial settlement conference facilitated implementation discussions. Three specific aspects of the Dade County procedures were relevant to our program. These were: a) sounding conferences; b) the State Attorney's policy of notifying victims prior to accepting a negotiated plea; and c) the occasional use of conferences, sometimes with either victim or defendant, or both, to discuss a possible settlement.

The sounding conference is widely used by judges in the Criminal Division of the Circuit Court, although its purpose and nature vary substantially from judge to judge. The common element is its timing shortly before trial. It is generally set, at the time of arraignment, for one week prior to the scheduled trial date. The date usually falls within 30 to 60 days after arraignment. At the sounding conference, all cases scheduled for trial the next week are reviewed by the judge and the attorneys for defense and prosecution. The primary purpose of this review is to determine whether the parties are prepared for trial.

With some judges, an equally important function is to discuss the possibility of a settlement and to encourage a settlement when that appears to be appropriate. Other judges will not discuss the possibilities of settlement of all, either at the conference or in other settings.

The practices in the six courtrooms involved in the study varied. Four of the six held regular sounding conferences at which they discussed possible settlements. One of these four refused to accept a plea during trial week, in effect placing greater pressure on the attorneys to use the sounding conference to settle the case. One of the two judges who did not schedule sounding conferences made a practice of having general discussions with all attorneys scheduled to go to trial on the Monday of trial week. The last judge did not use sounding conferences at all and limited his involvement in plea discussions to approving or disapproving tentative settlements reached by the attorneys. Two of the six judges indicated that on occasion lay parties were present at discussions of possible settlements.

This prior experience, while helpful in gaining acceptance of the proposal, of course, causes problems for evaluation. First, it reduces the differences in treatment between test and control cases. This may make the results less noticeable than they would be in a jurisdiction which did not utilize these techniques. Also, in terms of an assessment of the process by the professional participants, it may lead to a greater acceptance than could ordinarily be expected.

Once preliminary agreement was reached, a plan was developed for the

implementation of the pretrial settlement conference procedure which would be feasible in Dade County.

D. Description of Dade County

Dade County is the tenth largest population center in the country and is the largest in the Southeast. Miami itself accounts for only one-quarter of the county's 1,500,000 population. 5/ Compared to its northern, if not western, counterparts, it is a relatively new center, having established itself as a major area only in the 1920's. Miami's economic activities have been primarily light industry, commerce, tourism, and transportation, rather than heavy industry or agriculture. Ethnically, 15 percent of its population is Black; 53 percent white; and 32 percent Spanish-surnamed. By far, the largest group of the latter are Cuban, Miami having been the chief port of entry after the Castro revolution. About 80 percent of Dade County's growth during the 15 years 1960-1975 was of Latin origin. That ethnic group grew from 60,000 to 467,000 during that period. The population is comparatively mobile, both as a result of population growth and seasonal visitors. The Dade area clearly, then, is a complex urban setting, facing many of the economic, political and social problems of similar large cities.

Dade County operates under a "Metro" reform system, adopted in 1957, which is almost an anomaly in this country, since it is much stronger than is the case in most jurisdictions. As a result, much of the political action is at the county, rather than the city, level. While the process is still incomplete, the county has moved to provide many traditionally city-run services.*

The preceding provides a very brief description of the county in which the implementation occurred. It shows that the conference was tested in a large urban jurisdiction, where the social and economic problems of growth and social and cultural interactions are important. The political setting of a strong county government and a strain of good-government concerns perhaps sets a tone of receptivity to criminal court experimentations.

E. Description of Dade County Criminal Court System

1. Court Organization. In 1972 a new judicial article was approved for the Florida State Constitution which streamlined the state court system. At the trial level, it established a two-tier system consisting of Circuit Courts and County Courts. In criminal matters, the Circuit Court has jurisdiction in all felony cases (those punishable by death or imprisonment in the State Prison) and of all misdemeanors arising out of the same circumstances as a felony which is also charged. The Circuit Court in the Eleventh Judicial Circuit (Dade County) has a specifically-designed Criminal Division with twelve Circuit Court judges assigned. Each of the twelve courtrooms disposes of approximately 1000 cases per year. Circuit Court judges are elected for six-year terms in non-partisan elections.

The County Court has jurisdiction in all misdemeanor cases which the

*Metro Dade county is governed by a county manager. This government has the power to perform most functions formerly exercised by some 27 separate municipalities.

Circuit Court does not have the jurisdiction to try, all violations of municipal or county ordinances, traffic infractions and offenses, bail bond hearings, preliminary hearings in felony cases, and a number of other matters.

2. Offense Structure. The Florida Criminal Code classifies offenses into five felony and two misdemeanor categories. Persons convicted of offenses are sentenced to determinate terms under this scheme. Persons with prior felony or misdemeanor first degree convictions are subject to extended term penalties which have the effect of moving the offense classification up one level, with the exception of the least serious felony category which receives an extended term maximum of ten years. 6/

3. State Attorney's Office. The State Attorney is the prosecuting officer in all trial courts in the circuit, with the exception that prosecutors may be appointed by municipalities to prosecute local ordinances. The State Attorney is elected for a four-year term.

In Dade County at the time of this study, the State Attorney's Office employed 99 Assistant State Attorneys. 7/ The assistants are usually, although not exclusively, hired upon graduation from law school. (There is an active intern program in which third year law students work for both the State Attorney and the Public Defender.) These young lawyers generally stay with the office from 3 to 4 years before leaving, usually to enter the private practice of criminal law. Attorneys seldom remain with the office more than 5 years. Only rarely does an attorney remain for 10 years. New assistants in the State Attorney's Office are assigned to the County Court, first to Traffic Court and later to Misdemeanor Court. On occasion a new attorney will be assigned to Juvenile Court. Wherever assigned during this initial period of their experience in the State Attorney's Office they receive training from a special training officer who is assigned to the County Division. During their first month, they serve under the direct supervision of a senior trial attorney. 8/

After approximately six months, the new attorney is transferred to the Circuit Court and assigned to a courtroom with three other prosecutors. During this transition, additional training is provided by the State Attorney's Criminal Division training officer. The four attorneys assigned to each courtroom are divided into teams of two: the Major Crimes attorney and one junior attorney; the Career Criminal Attorney and one junior attorney.

As the names suggest, the Major Crimes attorney handles all the very serious crimes assigned to that courtroom; the Career Criminal attorney handles those cases involving individuals with a substantial criminal history. The two junior attorneys are responsible for all cases that are not classified as either major crimes or as involving career criminals. These encompass the great majority of felony cases.

The State Attorney's Office has 16 investigators and 175 secretarial, clerical, and administrative personnel. The office has its own small law library and a large well-furnished branch of the County Law Library is located in the same building.

The supervisory structure is horizontal. In the 12 felony courtrooms,

each of the senior assistants supervises a junior attorney. The 24 teams are supervised by the First Assistant State Attorney and an assistant. This supervision is primarily by way of advice as requested and an after-the-fact review of dispositions.

Since 1974 the State Attorney's Office has utilized an alternate week system. Each of the two attorney teams assigned to a particular courtroom alternates between one week in the felony courtroom and the next in County Court handling the preliminary hearings in cases, which if they survive preliminary screening, will be assigned to their courtroom. The usual practice is for the attorney who presents the case at the preliminary hearing to handle the case in the Circuit Court as well. This procedure may encourage the attorneys to review the cases carefully and screen out those that are inappropriate for felony prosecution.

4. Public Defender's Office. A Public Defender is elected for a 4-year term in each judicial circuit. The Public Defender is responsible for representing indigent persons accused of having committed either misdemeanors or felonies. Legal assistance in cases with more than one defendant, in which the defendants' interest might be in conflict, is provided by the appointment of special counsel by the trial court.

The Dade County Public Defender's Office had a staff of 57 attorneys at the time of this study. They were assigned to five divisions: Circuit Court, Criminal County Court (misdemeanors), Traffic, Appellate and Juvenile. Each of the five divisions had a senior trial assistant in charge. In the Circuit Court, where the study was located, two Assistant Public Defenders were generally assigned to each courtroom.

As with the State Attorney's Office most of the attorneys in the Public Defender's Office are hired directly upon graduation from law school. The legal intern program, mentioned above, provides a considerable number of new assistants. Training of new attorneys is provided by assignment to teams with some of the more experienced assistants, supplemented by a lecture series in which both staff members and outside lecturers participate. New attorneys are asked for a commitment to stay two years. The office is pleased if they stay three or four years. The attorneys in the Public Defender's Office are assisted by a staff of 13 investigators.

5. Description of Case Processing. The Dade County Circuit Court (11th Judicial Circuit) has adopted a modified random assignment procedure, known as a "Blind Filing System," to assign felony cases to particular trial judges. This procedure is designed to reduce judge shopping and other attempts to undermine the integrity of the judicial process. The procedure begins with the preparation of a Magistrate's hearing log by the Dade County Correction and Rehabilitation Department twice daily (during regular court days) based on the order in which the defendants are booked upon arrival at the Dade County Jail. (See Appendix A for detailed description of this system.)

The assignment of a case to a particular Section (courtroom) of the Circuit Court Criminal Division has the effect of assigning the case to a track that will deliver it first to a bail hearing, then to a preliminary hearing, and finally, if probable cause is found, to the assigned courtroom for arraignment and trial.

Dade County has an established bail schedule which enables the defendant, after a check for pending cases and outstanding arrest warrants, to make bond before the scheduled hearing in a County Division Court. Court-established standards for release on recognizance also allow some defendants to be released prior to the bail hearing.

At the bail hearing the County Court judge reviews the probable cause for the arrest on the basis of the police affidavit (the police officer is not present unless a specific need for his testimony arises) and sets bail for the case.

Approximately 15 days after arrest a preliminary hearing is held in County Court. This hearing is non-adversarial. 9/ The prosecutor presents the State's case and if the judge finds probable cause, the case is bound over for trial. If the defendant indicates a desire to plead guilty to the charge, a public defender is appointed to represent him.

As discussed earlier, the alternate week system of the State Attorney's Office allows the attorney who will eventually be responsible for the case in the Circuit Court to handle the preliminary hearing as well. This gives that attorney an opportunity to review the case and screen out those which are inappropriate for felony prosecution. This is the major review and screening of felony cases.

After the preliminary hearing, the State Attorney's Office has another opportunity to screen the case in the form of its decision to file a felony information which is the basic charging document in the Criminal Division of the Circuit Court. The State Attorney can file an information even if a County Court judge has found no probable cause in the preliminary hearing. The State Attorney can also proceed by means of a grand jury indictment, although this procedure is used infrequently.

Discussions with the attorneys and judges suggest that about 25 percent of felony cases are settled prior to arraignment.

The defendants are normally arraigned on the felony information 7 to 14 days after the preliminary hearing, depending on whether the defendant is in custody or not. If a public defender is necessary, the appointment is made no later than the time of arraignment. A local discovery rule, which is normally invoked by oral motion at arraignment, provides for a broad-scoped discovery.

At arraignment the case is usually set for trial from 30 to 60 days later. Many of the judges also set the case for a sounding conference one week before the scheduled trial. (See this chapter, Section C, for further discussion of the sounding conference.)

If a settlement is not reached, the case proceeds to trial. A Rand Corporation study published in 1976 used Dade County to demonstrate the applicability of certain performance measures to adult felony cours. This study indicated that in 1974 there were an equal number of jury and non-jury trials--each accounted for 6 percent of the case closings. During the period of January to July, 1975, 9 percent of the case closings were non-jury trials, 4 percent were jury trials. 10/

Figures obtained from the Clerk of the Court for the period of our active intervention are comparable. Those figures indicate that jury and non-jury trials each accounted for 8 percent of disposed cases. This pattern thus conforms to the Georgetown University nationwide finding regarding the extensiveness of plea negotiations. 11/

The Eleventh Judicial Circuit is served by a computer-based data processing system which provides, among other services, a daily calendar print-out for each judge.

The Dade County court system impressed an observer as progressive, professional in its aspirations and practices, and on balance dedicated to providing a fair and effective criminal case disposition. It is within these fortunate circumstances that we undertook to implement the pretrial settlement conference process.

F. Issues in Implementation

1. Implementation Agreement. As part of the negotiations leading to an agreement to implement the pretrial settlement conference in Dade County, a step-by-step description of the process was developed in collaboration with the judges, the State Attorney's Office, and the Public Defender's Office. (See Appendix C for a complete statement of the implementation agreement reached with the criminal justice officials of Dade County.) Reaching this agreement required resolution of several important issues, including how much of the criminal court process we were going to include in the initial test of the pretrial settlement conference.

2. Selection of study universe. The decision to implement the pretrial settlement conference procedure after the non-adversary preliminary hearing reflected our perception that most felony plea discussions took place subsequent to that time. Initial discussions with management personnel in both the State Attorney's Office and the Public Defender's Office supported this perception. In addition, personnel in both these offices believed that it would be administratively difficult to begin the process in the Criminal Division of the County Court and then transfer it to the Criminal Division of the Circuit Court.

We concluded that for the initial evalution of the proposal, this decision involved no significant loss, since we were focusing on the threshold questions of whether the proposal would in fact work and its impact on the case disposition process. The question of whether it is applicable to plea negotiations at all stages in the process could be left to another study. Further, the benefits from simplifying the implementation seemed to outweigh the loss entailed in limiting our evaluative scope to post-probable cause proceedings.

3. Exclusion of certain offenses. At the suggestion of the Public Defender's Office, and with agreement by both the judges and the State Attorney's Office, capital cases were excluded from the study. The reasoning behind this decision was that since this procedure was an untested innovation, it was desirable not to use it in matters literally involving life or death. Further, the emotionally charged atmosphere of these cases made it appear wise not to risk additional trauma, at least until we had benefited by substantial experience with the conferences.

Early on in the study, the Public Defender's Office and one test judge suggested that possession of narcotics cases be excluded. At our request both parties agreed to withdraw the suggestion in order that we might acquire experience with handling these cases.

Cases involving individuals without prior felony records charged with writing a worthless check were also considered by one judge as inappropriate for inclusion in our test cohort. Although we considered excluding those cases, the problem of identifying them from court calendars, which was the sampling source, as well as the effect on the sampling led us to reject the idea. These cases then were eligible for the sample.

4. Transfer of case. The most significant accomodation to local practice in Dade County was the decision not to transfer the case to another judge for trial if settlement efforts failed. We were informed by the judges in Dade County that they had substantial experience with this issue and had given it careful consideration. They had reached a policy decision prior to any discussion about our project not to allow transfers based solely on knowledge of or participation in settlement discussions by the trial judge. Their experience had led them to believe that this policy was necessary to prevent forum shopping and manipulation of judicial participation by the defense bar.

We were impressed by the fact that the Public Defender's Office agreed with this policy and we concluded that it was not our role to attempt to reverse a carefully considered judicial policy based on local experience. *

5. Subsequent negotiation. Another accomodation was necessary to allow plea discussions on the day of trial. The original proposal foresaw a ban on such negotiations in order to force all parties to treat the settlement conferences seriously and reduce disruption to judicial calendars by last-minute pleas. While the judges would have liked to implement a policy prohibiting such discussion, both the Public Defender's Office and the State Attorney's Office argued that last-minute negotiations are necessary and desirable because circumstances, such as witness availability, can change immediately before trial. These last-minute changes can render a trial unnecessary. Of course, elements of both gamesmanship and human nature also enter into the situation.

Nevertheless, our judgment was that this issue was not so central to our proposal that we should insist on it, particularly in the light of the substantial modifications in other Dade County procedures which we were requesting. We did reach an agreement that, if negotiations occurred on the day of trial, the conference would be reconvened with all the original parties again invited.

6. Media attention to experiment. The project received substantial and unanticipated media coverage. One of the local papers ran a feature story on the project stressing the victim involvement. This was picked up by the wire services and was printed in papers all over the country.

*We perceived the Public Defender's Office to be vigorous, dedicated, and competent in its representation of its clients.

The other local paper ran a brief article describing the project and an editorial opposing the notion on the grounds that it would provide the victim too much influence over the outcome of the case. The editorial concluded with an attack on the State Attorney's Office.

The editorial caused some assistant public defenders to focus on the undue influence issue. As a result they indicated that they did not want to participate in the project. Management in the Public Defender's Office was able, after some discussion, to obtain agreement to a "try-it-and-see" policy. Subsequent interviews with participating assistants, after they had acquired some experience with the conference, indicated that this fear was unfounded.

In order to set the proposed innovation in what we felt to be its proper perspective, a letter was sent to the Miami Herald in response to the editorial which was subsequently printed in the Letters-to-the-Editor page.

The electronic media, particularly television, also expressed interest, although in a much more favorable, but no less troublesome, vein. They wanted to televise the actual settlement conferences. We resisted this, and after consultation with the Administrative Judge, adopted a policy of not disclosing either the time of the conference nor the names of the victims involved.

Our policy was based on the need to protect the privacy of the victim and defendant and to minimize publicity about the project so as not to unduly confound the evaluation effort. Fortunately, after an initial flurry of interest, the media did not pursue the matter.

However, our role in responding to the editorial points out nicely the complexities of our function both as prime mover in the implementation and as evaluators. 12/

CHAPTER III

METHODOLOGY

A. Scope of the Evaluation

The rationale and structure of the pretrial settlement conference procedure as a reform of plea negotiations in criminal cases suggested several loci of possible impact appropriate for evaluation. This chapter will present the basic conceptualization of the areas of impact, then discuss the research design by which the evaluation was made, and, finally, describe the sources of data.

The evalution was designed to provide the information necesary to understand: 1)how the conference procedure operated in the court structure; 2) how the conference procedure modified the ways the court worked; and 3) how the procedure modified participants' perceptions of the ways courts worked.

1. How the conference operated in the court structure. The conference procedure was envisioned as expanding the number of participants and formalizing the existing negotiation practices. One of the basic needs of the evaluation, then, was some detailed information about how the conference sessions were conducted: who attended, the subject matter of the sessions, the styles of participation, who appeared to control the session, and what decisions were reached. Thus, a description of how the changes in the negotiation rules were put into effect in different courtrooms was the first descriptive task.

2. How the conference procedure modified the way the courts worked. The conference procedure involved changes in the manner decisions were reached. There were many ways in which those changes in the structure of the decision-making might affect the functioning of the courts. One of the problems involved in designing the evaluation was that, while the location of the possible effect could be predicted, the direction of the effect was more problematic since plausible rival hypothesis could be offered. For example, since the number of participants was increased, the number of trials could be affected. One might hypothesize that the greater formality of the conference might make settlements more difficult, hence, make trials more frequent. On the other hand, bringing all the parties together might make settlements easier since the issues could be resolved through direct conversation, thereby reducing the number of trials.

Two general areas of impact on the ways courts worked were identified. First, the procedure could be expected to affect the ways courts processed cases: the method of disposition and the length of time the case is in the system. Second, the procedure might be expected to affect the dispositions themselves: the determination of guilt and, with a conviction, the appropriate sentence. The conference procedure did not incorporate a particular sentencing philosophy, so that no direct impact was expected. On the other hand, by changing the procedures by which the decisions are reached, the decisions themselves might be affected. For example, if the victim asked for stiffer sentences, one result might be an overall increase in the

severity of sentence. Therefore, the effect on the outputs of the courts needed to be checked. This general area is designed to determine some of the likely costs and benefits of implementation of the conference procedure.

3. How the conference procedure affected perceptions of how the courts worked. The proposed change in the way courts process case was intended partly to aid some of the basic values served by the courts. It was intended as a means of making the decision process more fair and just. These legal and moral dimensions are, to some extent, operationalized in the conference procedure. The last area of the evaluation was to see how the procedural implementation of these values was perceived by the participants. The task was to find out if the procedure was perceived as fairer, whether there was greater support for the court's dispositions, and whether there was greater access to information. The "participants" referred to the professionals, or "regulars", on the one hand, and the outsiders, or lay participants, on the other. The judges, attorneys, defendants, victims, and police are all participants whose views are important to assess.

We have labelled the judge, prosecutor, and defense counsel as the professional participants. They are distinguished from the lay participants (defendant, victim, and police officer) by their regular attendance at case dispositions and their formal training in the law. We speak of defense lawyers as regular participants, even though private defense attorneys may appear only rarely. However, the bulk of the defense work is conducted by regulars--that is, public defenders.

We place the police in the lay category, not because of their lack of professional expertise, but because, like victim and defendant, they are outsiders to the traditional plea negotiating process. Like the victims and defendants, an individual officer is an infrequent consumer of the court procedure, rather than a deliverer of the service. The professional paricipants, because of their role in case dispositions and frequency of use, would be the implementers of the procedure. Their actions defined in large measure the procedural content of the experiment. The lay participants would be implementers only in the aggregate, since they would not individually be in a position to shape the structure and procedures of the conference.

Because of their crucial role, the judges and attorneys would be an essential source of data regarding the implementation process. They were participants in the project and, as such, we interviewed them as respondents who could describe their own perceptions about their experiences. At the same time, the judges and lawyers were observers of the change process so that they became informants, providing descriptions of the history of the implementation and attributions of motivations.

The defendants, victims, and police occupy two roles in the study. First, they are "consumers of services", since they have each had cases in the courts. Second, they form what might be termed "the affected public" in the sense that they are members of the larger society in which the courts operate. The study has considered their perceptions as outcomes of the court system, since they can be conceptualized as responses to the court system. 1/

B. Description of the Design

Three judges used the conference procedure on a portion of their calendars over a thirteen-month period. * These judges will be referred to as test judges, since they agreed to use the experimental procedure. Three other judges, referred to as comparison judges, agreed to allow statistical analysis of their calendars but did not use the conference procedures.

The evaluation of the pretrial settlement conference procedure used a field experiment design. To meet the requirements of a true experiment, one must assign cases randomly to test and control conditions. 2/ Further, if all cases in the pool are not to be analyzed, one should use random selection of cases. The study met both of these criteria in the following ways. First, defendants' cases were assigned to judges in a random fashion by the courts. (See Appendix A for discussion of blind file system of assigning cases to judges.) Second, from the calendars of six judges in the criminal division, cases were randomly assigned to test and control groups. (See Appendix A for discussion of the assignment procedures.) A test case is defined as one which was scheduled for a pretrial settlement conference. The test group for each test judge includes all cases assigned to it, regardless of whether a conference session was actually held. The test group thus includes cases with varying degrees of "treatment" (i.e., use of the conference). A test case in which a conference session was held is referred to as a conference case. A test case in which a conference session was not held is referred to as a non-conference case. The decision to convene the conference was not randomly assigned. Comparing conference and non-conference cases is useful, therefore, in showing the criteria the participants used to make that decision.

A control case is defined as one which was selected into the study sample, but not scheduled for such a conference. It was processed according to the existing practices in the division. # Two types of control cases were selected: a) pretreatment cases, which closed prior to the implementation of the conference procedure, and b) concurrent controls, which were selected during the implementation period. For each test judge, three groups of cases were selected: pretreatment, test, and concurrent control cases. For each comparison judge, two groups of cases were selected: pretreatment and concurrent control. (See Appendix A for description of case assignment procedures.) The evaluation design, using the two groups of judges (test and comparison) and three types of treatment conditions (pretreatment, test, and control) is diagrammed in Figure 1, page 20.

Each of the judges volunteered to participate in the project. As a result, they in no way can be considered randomly selected and, as such, representative of some larger universe of judges. The sample of cases, as distinguished from the judges is representative of the population of cases that survived arraignment in Dade County. (See Chapter IV for discussion

*Cases were assigned for seven months; it took approximately two more months to complete the conference schedule and another four months for most of the cases to close. All told, from the time the first case was assigned to the completion of the data collection, thirteen months elapsed.

#A non-conference case, unlike a control case, had a conference available.

FIGURE I

EVALUATION DESIGN

Judge	Prior to Intervention	Period of Intervention
	T $_{-n}$ . . . . . T $_{-2}$ T $_{-1}$	T $_{+1}$ T $_{+2}$ T . . . . T $_{n}$
A (Test)	R O	R X O
		R O
B (Test)	R O	R X O
		R O
C (Test)	R O	R X O
		R O
D (Comparison)	R O	R O
E (Comparison)	R O	R O
F (Comparison)	R O	R O

O = Observation (Data Collection)

X = Treatment (Pretrial Settlement Conference)

T = Period of Intervention

R = Random Assignment

of sample characteristics and comparisons of the study sample with the arrest population in Dade County and the United States.) The evaluation tests the effects of the conference in three courtrooms within the one jurisdiction. In that sense, the design evaluates the experiment three times.

The total study sample consists of 1,074 cases. The cases were assigned to the treatment condition over a period of time. 3/ The test and control groups accumulated cases as they were selected by the research staff from the judges' arraignment calendars. Each case was tracked until it closed. * In this regard, the test and control samples are prospective samples. The pretreatment groups, by comparison, are retrospective samples. Those cases also trickled into the group, or cohort, over a period of time, but backwards. The pretreatment cases were selected on the basis of the proximity of their closing date to the start of the implementation of the experiment (January 17, 1977) and then tracked back in time, however long that might have been. To be comparable with the test and control cases, the only eligible cases were those that closed after arraignment. #

C. Summary of Design: Inferential Base

The field experiment with its random selection and assignment of cases and replication in three courtrooms makes it possible to make inferences about the impact of the conference procedure. Because the cases were randomly assigned to the treatment conditions for each of the six judges, the comparisons between the test and control groups can be used to determine changes due to the conference. (See Appendix A for further discussion on this point.)

Since each group has comparable distributions of cases, we can attribute differences in the groups to the effects of the treatment, since that is the basic element that distinguishes the test group from the controls. (See Appendix A for discussion of staff role in directing research.)

The basic evaluation, then, is based on comparisons between groups of cases for which the conference procedure was applied and similar groups for which the procedure was not available.

D. Analytical Procedure

In order to make the inference about the impact of the conference, a series of comparisons were made to determine the direction of effect when differences among the groups of cases appeared. First, comparisons among the judges were made to find out whether each courtroom behaved the same way, independent of any treatment effect. Second, tests for differences between

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*Eight percent of the sample had not closed at the end of the data collection period. Those cases have been included in the analysis where the data under consideration was not missing (e.g., when disposition was not an issue).

#The different sampling procedures were necessary because no time was available to accumulate a prospective sample prior to intervention. Comparisons of the cases using the different procedures, reported in Chapter IV, suggest that the two procedures produced comparable samples.

the pretreatment and control groups for the comparison judges are made to see whether changes were occurring in the court system itself that might explain patterns in the test judges' courtrooms. Third, comparisons among the treatment conditions were made. Differences in this test would point to (but not be definitive of or about) treatment effects. The fourth step involved looking at comparisons among the treatment conditions for each test courtroom. This step shows whether the conference procedure might have changed the practices in some courtrooms, but not in all. The final step was to make comparisons between the pairs of treatment conditions (pretreatment and test; test and control; pretreatment and control). These paired comparisons isolate the location of the differences to see whether the conference procedure, changes in the courtroom over time, or some spillover effect from the test to control cases accounted for differences. *

E. Data Sources

1. Introduction. The evaluation design planned systematic comparisons among randomly selected groups of cases on a wide variety of measures. Several data sources were needed to obtain the necessary information. Each data source presented its own problems of substance, cost, and reliability. The combined package provides a multi-faceted view of how the conference procedure was implemented and how it fit into the environment of the criminal justice environment. 4/ In this section, each of the four data sources will be discussed in terms of the data collection methods. (For more detailed coverage of the particular measures used, see the appropriate chapters describing the findings: Chapters IV - IX.)

2. Court records. Information about the official actions in each case in the sample was collected from records in the Clerk of the Court's Office. The information was generally straight-forward (statutory offense charged, date of closing, sentence) but sometimes required interpretation if different reports in the file conflicted. Discrepancies could usually be resolved by consultation with Clerk's Office staff.

Some of the information, such as the number of charges or type of defense counsel, was in a form that could be analyzed with relatively little difficulty. Other information, such as the severity of the offense, required a detailed coding procedure in order to provide the same depth of information for each case. (See Appendix B for coding decisions.)

3. Conference observation. We developed an observation procedure for the conference sessions which combined elements of a field work approach and small group dynamics research. 5/

a. Descriptive data. A research staff observer was present at each scheduled conference. For each session, the observer recorded three

*For example, if the pretreatment-test pair differed, but pretreatment-control did not, the pattern of pairs would suggest that the conference procedure would account for the difference. If the test-control pair were similar, but both differed from the pretreatment group, the inference could be made that changes had occurred in the courtroom over time (before and after the introduction of the conference procedure) unrelated to the use of the conference, or due to spillover process.

types of information. First, descriptive data (who was present, the length of the session, and the decisions reached at the conclusion of the session) was used to make basic categorizations about attendance rates and conference dispositions. In terms of the quality of data, much of this was not problematic, since the observer could generally recognize the regular courtroom participants and could usually determine from the conversation who any unnamed participants might be. * Categorizing information like the conference output was somewhat more difficult, since the degree of specification of the decisions varied across conferences. (See Appendix B for coding discussion.)

b. Interaction data. A second type of descriptive information might be termed interaction data. In order to analyze the participation patterns in the conference, the staff observer recorded each speaker and the substance of each comment, in sequence. Based upon these records, the substance of the session and the verbal interaction behavior among the participants could be determined. (See Appendix B for the indices developed.)

The observer used these codable comments to examine several areas. The extent of participation included three summary measures that established different levels of activity. First, the proportion of total comments made by police, defendants, and victims was recorded. Since this measure included any verbal behavior, it does not account for the importance of the comment.

The second measure of participation focused on relatively more active behavior. Only the person who asks a question, elaborates in any detail on an answer, or raises a new issue for consideration is recorded as initiating a comment. Comments that were the immediate answer to a direct question (e.g., "yes" or "no") were excluded. These data made up a matrix of topics and speakers.

The third participation measure was designed to establish who directed the flow of the conference--who established the order of issues to be discussed. The measure consisted of the proportion of all topic changes each participant made. A topic change was defined as any shift from one topic code to another. A speaker who addressed three different topics in a single speech would be given a score of three. If three different speakers sequentially addressed the same topic, only the first would be given a score.

Having looked generally at participation in the conference, we narrowed our focus to look closely at the negotiation process itself. Three indicators were used to measure participation in the actual negotiations. First, the observers made a tally for each participant of his or her proposal of, agreement with, or rejection of a disposition.

The second indicator measured the total number of different recommendations for the disposition of the case. One problem with this measure is the difficulty in establishing what are "different" recommendations. This judgment required familiarity with the sequence of comments, the context of the whole proceeding, and an understanding of the meaning and significance of various dispositions.

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*When necessary, staff would ask who someone was after the session.

The third measure of participation in the disposition consisted of the observer's rating of whose recommendation formed the basis for settlement of the conference. The rating was intended to be a measure of who used their power or influence in the conference to make or break a settlement. When a settlement was not reached, the observer indicated whose recommendation for discontinuing the discussion was crucial.

c. Subjective judgments. The third type of data was based upon subjective judgments. After each conference, the observer rated, on a series of structured scales, the extent to which various kinds of relationships had occurred (e.g., the judge had structured the conference; involved the lay participants; attempted to develop a consensus). These ratings required interpretations by the observer.

Given the data collection requirements for useful observations of the conference, the observer role was important. Various training and supervision efforts were made to maintain high data quality standards. To ensure that any observer bias would be minimal, the observers rotated among the three courtrooms. (See Appendix B for description of staff training and data reliability.)

In summary, the observations of the conference contained three types of information gathering: descriptive, interactive, and subjective. Some of the techniques provided overlapping information in order to enrich the checks on what was a difficult task from many perspectives: trying to describe and analyze the interaction process.

4. Lay interviews. Project research staff conducted structured 20-minute interviews with those most directly involved in the case--282 victims, 297 defendants, and 383 police--after the case was closed. Unless the persons were incarcerated, the interviews were conducted by telephone. (See Appendix B for description of interview procedures.) Because telephone contact could not be arranged in correctional facilities, the staff conducted in-person interviews using the same instrument for those who were incarcerated. We completed interviews with 33 percent of the defendants, 51 percent of the victims, and 53 percent of the police in the test and control groups whose names were available in the court records. (See Appendix B.)

Excluding those who did not have telephones (or, in the case of the police, those where no telephone message could be left), those who refused (5 percent of the listed defendants, 7 percent of the victims, and 2 percent of the police), had moved or were otherwise unavailable for contact, the response rate was 56 percent for defendants, 79 percent for victims, and 63 percent for police officers.

The interview instruments were designed to collect data on four major issues. (See Appendix B for discussion of scale construction and issues.) First, we wanted to know the extent to which respondents reported participation in the processing of their case. Second, we asked about knowledge of the way their case was processed. As indicator of knowledge, we used recollections of the case disposition. * A third general area was respon-

*We concluded that this question was probably as close as we could come to testing for the extent of understanding court processing, short of giving an examination.

dent's attitudes toward the disposition of their case, the way their case was processed, and toward the criminal justice system. We limited the investigation of attitudes to: a) satisfaction (expressed approval) with the outcome of their case, the way their case was reviewed by judges and attorneys, and the way police and courts carried out their functions and b) the extent to which judges and attorneys listened to their version of the facts and recommendations for outcome.

5. Interviews with professionals. The final source of data for the evaluation included inquiry into the perspectives of the regular participants in the procedure.

a. Procedure. We planned interviews at regular intervals during the project with test and comparison judges and attorneys. We talked with two of the three comparison judges at the beginning and end of the project, and with the prosecutors and defense counsel in their courts during the project. These interviews served primarily as baseline data regarding general practices in the jurisdiction. We interviewed the test judges four times and their prosecutors and defense counsel once or twice, timing the interviews to maximize information about the development of the conference procedure. * Over 50 professional interviews were conducted, including six with private defense counsel who had conference cases. With the permission of the interviewee, most interviews were tape recorded. #

The selection of the interviewer was important for the quality of data To maximize the richness of the technical detail about conference procedures, we needed an attorney familiar with criminal procedure. In addition, we needed someone knowledgeable about the history of the implementation in order to probe adequately for the essential details. Our decision was to use the project director who is an attorney and, obviously, familiar with the details of the project. One trade-off in this decision was the project director's known identification with the project. Our concern was with the interviewees' willingness to be critical if they wished. While potentially a problem, we concluded that carefully-designed questions and the readiness of professionals to recite their woes to a fellow professional would limit the problem of not using an independent interviewer.

b. Format. The first wave of interviews, designed to establish base line evaluations and experiences, used general questions about practices in the courts, attitudes towards the functions of plea negotiations, lay participation, and sentencing. Subsequent interviews focused on problems arising in the development of the conference process, emerging attitudes towards its beneficial or detrimental aspects, and the procedure's adaptation to specific practices and needs in Dade County. The last wave of interviews stressed comparisons between the experimental procedures and the traditional plea negotiations, and an assessment of the value of the process to criminal case dispositions. The interview format was primarily open-ended with the interviewer working from a semi-structured schedule.

*We interviewed the test judges when they began to use the conferences. We conducted additional waves of judicial interviews approximately every four months. The attorney interviews were conducted at the same time but did not include all attorneys each time.

#One refused to be taped, and three could only be interviewed over the phone.

CHAPTER IV

CHARACTERISTICS OF THE SAMPLE

A. Introduction

The main focus of this chapter is to give a descriptive overview of the study sample. One purpose is to show the range of cases that are represented. A second purpose is to compare the sample with distributions of other known populations, so that the sample can be placed in context. The evaluation has been conducted in only one jurisdiction, and there is no intention to argue that the findings from Dade County can be used to generalize to all criminal justice systems. However, by comparing distributions of the evaluation sample on several variables describing the criminal offense and defendant with those of the county as a whole and FBI Unfirom Crime Report figures, some estimates of the applicability of the evaluation findings can be made.

B. Sample Characteristics: The Offense

1. Types of offenses. The conference procedure was available to randomly selected felony cases surviving arraignment. (See Chapter II, Section E.2. for discussion of issues of placement of the conference in the criminal court procedure.) Two points are relevant to the issue of the distribution of criminal offenses. First, since only felonies were eligible, the samples were not drawn from all offenses committed nor even from all arrests. The pool consists of only the most serious criminal situations. Second, sampling at post-arraignment means that the relatively more minor and the presumably weaker cases have probably been dropped or disposed before sampling occurred. The effect is to underrepresent the less serious in the full range of criminal offenses.

Categorizing criminal offenses for data collection is a risky business, since any particular method has its drawbacks. 1/ This evaluation used two methods to meet different analytical needs. First, each case was categorized using the FBI Uniform Crime Report's categories. Basically, each offense is assigned a single score which represents the most serious charge. (See Appendix B for further information about scale construction.)

One of the chief drawbacks of the UCR scale, as it is called, is that it does not measure the seriousness of the criminal event (as distinguished from the statutory definitions of seriousness). For example, a case involving three murders and $100,000 in stolen checks would be scored the same as a single murder. To provide a more refined scale of offense severity, cases were also scored according to the Sellin-Wolfgang offense severity scale. (See Appendix B for discussion of scale construction.) The offense severity scale gives weight to all of the elements of the criminal event. As a result of the finer gradation and because the scaling is based on social definitions of seriousness, rather than relying totally on the legislative representation of social norms about offenses, the Sellin-Wolfgang scale has additional analytical potential. One of its chief drawbacks is it exclusion, currently, of victimless crimes. For this evaluation, drug, weapons, and gambling offenses were included in the sample but had to be

excluded from scoring on this variable. The limitations of each of the two scales can be minimized by the use of both.

The evaluation sample covered a wide variety of felony behavior, ranging from the death of two victims to forging vehicle inspection certificates. Table 4-1, page 28, reports the UCR offense codes and gives distributions for the evaluation sample of 1074 post-arraignment felony cases; total arrests in Dade County, as reported by the Public Safety Department for 1976; and national arrest figures for 1976.

Roughly, 30 percent of the sample cases involved violent crimes; 44 percent, property crimes; and 20 percent, drugs. Comparing the sample with the county and U.S. arrest figures, the results are quite similar. The differences are most likely due to the differences between a population of arrests compared to post-arraignments. The sampling procedure ensured that the conference procedure was applied to a wide variety of offenses. *

The offense severity in the sample, as distinguished from the type of offense, showed considerable range, from 0 to 92. The mean was 4.5. To place the score in context, burglary and stealing goods worth $25 would receive a score of 3; burglary and stealing $2,500, would be scored 4; injuring someone to the extent that the person needs hospitalization (but is then released), scored 4; killing a person, 26 points. While there is no comparable severity score for Dade County, the broad range in the score is appropriate, given the distribution of types of offenses just reported. #

Three-quarters of the cases with victims have a score of less than 6 on the offense severity scale; the median is 3.2. The distributions on the offense scale indicate that the bulk of the cases were at the low, or less serious, end of the scale. The discussion of the types of offenses demonstrated the wide variety of legal offenses involved, but the distribution of offense severity scores show that in an ordering of severity, relatively few cases involved the most heinous, violent behavior. While those at the most serious end may command the most public attention, in terms of the volume of cases, the relatively less serious were the most frequent. The point that comparatively few cases in the sample involved the most serious offenses does not indicate a failure to capture a representative sample of felony offenses. Instead, the issue is a descriptive

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*Random selection procedures were used to fill each of the treatment conditions (pretreatment, test, and control) for each of the test and comparison judges' cases. Based on probabilities, some statistical tests of differences among the judges and treatment conditions may be statistically significant although not substantively important. The statistical significance would occur because of chance factors in the distribution rather than some underlying social process. Nevertheless, the tests for comparability among the different conditions showed that the distribution of cases was similar across judges: $\chi^2 = 22.61$, sig. = .54.

#The tests for differences showed no statistically significant differences among the judges or treatment conditions. F-ratio for main effects of treatment conditions = 1.78, sig. = .17; main effects for courtrooms = 2.11, sig. = .12; interaction between courtroom and treatment condition = .76, sig. = .55.

TABLE 4-1

OFFENSE DISTRIBUTION BY UNIFORM CRIME REPORT CATEGORY FOR SAMPLE, DADE COUNTY, U.S. - OFFENDERS 18 YEARS AND OVER

Uniform Crime Report Categories	Project Sample a/	Dade Co. b/	National c/
1. Murder & other Homicide	2.3	.8	1.0
2. Rape	1.4	.4	1.0
3. Robbery	9.4	2 0	3.0
4. Agg. Assault or Battery	15.1	16.0	7.0
5. Burglary	18.5	10.0	9.0
6. Larceny	14.2	19.0	23.0
7. Larceny of Motor Vehicle	.0	1.0	2.0
8. Other Assault	3.9	.0	13.0
9. Arson	.5	.1	.3
10. Forgery & Counterfeiting	2.9	1.0	2.0
11. Fraud	3 .5	3.0	7.0
12. Embezzlement*	---	.2	.3
13. Stolen Property	2.4	4.0	3.0
14. Vandalism**	----	----	---
15. Weapon	4.4	7.0	5.0
16. Prostitution*	---	.0	3.0
17. Sex Offense*	---	5.0	2.0
18. Narcotics	20.6	22.0	17.0
19. Gambling	.9	4.0	3.0
TOTAL FOR 19 CATEGORIES	99.5	100.5	101.6

*No cases fell into the project sample. **We omitted vandalism for Dade Co. and U.S. figures because it is not a felony. a. N = 1009. Removed for the purposes of this comparison were cases that did not fit into the first 19 UCR categoreis (i.e., 6 percent of the total sample). b. N = 10,329. Public Safety Department, Felony arrests, 1976. c. N= 2,256,911. U.S. Government FBI Uniform Crime Report, 1976.

point--that the majority of cases in a felony court do not involve front-page, million-dollar heists or mass murders, or even serious personal injuries to victims. Such cases are, in fact, included in the sample, but only in a proportion similar to that in the population of felony cases-comparatively few cases.

Since drug cases have not been included in the offense severity scale, it is appropriate to describe separately the variation in drug cases, as they made up approximately 20 percent of the sample. Marijuana was involved in more than half of the drug cases (55 percent); heroin and cocaine were each charged in about a quarter of the drug cases. Amphetamines or barbiturates were involved in 18 percent. (Since more than one type of drug was involved in some cases, the percentages added up to more than 100.) The most frequent combination of multiple drugs was heroin and marijuana. On the basis of type of charges, nearly all cases (95 percent) involved possession. Almost one-quarter (23 percent) were charged with sale as well. Eleven percent involved charges of possession with intent to sell or conspiracy to sell. Finally, slightly more than half of the drug cases involved relatively large quantities of one or more of the drugs. (See Appendix B for index construction.) One characteristic of the catalogue of drug cases is that the sample involves a sizable number of fairly serious drug cases. Indeed, the sample included a handful of marijuana cases involving more than 100 pounds, according to police arrest reports. However, the major arrests, while significant for many purposes, do not constitute the greatest volume of cases. As with the earlier discussion of offense severity, the bulk of the cases are grouped at the less serious end of the scale.

2. Characteristics of the offense: type of counsel. Defense counsel in criminal cases involve two segments of the legal profession: defense counsel provided by the state (public defenders) and private counsel (paid by the defendant). Two-thirds of the study sample cases were represented by public defenders; one-third by private counsel. * These figures are similar to those reported by the Public Defender's Office, who estimated that their attorneys represented 60 to 70 percent of all defendants. The sample closely approximates the overall distribution of attorneys in the county. Further, the proportions of cases handled by the two types of defense counsel give sufficient opportunity for the experimental procedure to be tested by sufficient numbers of each group so that their patterns of practice are well represented.

C. Defendant Characteristics

The background of the defendants in the sample approximates that of the criminal case load in the county.

1. Sex. The study sample was 88 percent male and 12 percent female. # Dade County court records for the entire felony arrest population indicate

*No statistically significant differences exist among the courtrooms (χ^2 = 4.27, sig. = .51) or among treatment conditions (χ^2 = 5.28, sig. = .26).

#There were no statistically significant differences among courtrooms (χ^2 = 1.98, sig. = .85) or among treatment conditions (χ^2 = 2.71, sig. = .61).

that 80 percent of the arrestees were male and 20 percent female. The somewhat higher proportion of males in the study sample, as compared with the court as a whole, is most likely due to the fact that the study sample is drawn from post-arraignment felonies only, while the court figures are drawn from all arrests. It is likely that males are over-represented in the more serious (felony) offenses. 2/ As a result of differences in populations, the slightly higher proportion of males could be expected.

A further confirmation of the similarity between the study sample and other known defendant populations is the national distribution of sex differences among arrested defendants, as reported to the FBI. In 1976, 86 percent of those arrested were male and 14 percent were female. 3/

2. Race. The study population contained 53 percent black and 47 percent white defendants, based on categories used by the clerk's office.* Since the clerk's office did not separate out Spanish-surnamed groups, it is not possible to determine the extent to which they were included in the white group of the sample. For purposes of comparison, however, 50 percent of those arrested in Dade County, according to Dade County crime reports. were black and 50 percent were white in 1976. The figures are close enough to suggest that the study sample approximates the arrested population in Dade County. The proportions reported by the FBI nationally show 26 percent black and 74 percent white.

3. Age. The average age of defendants was 27.6 years at the time of arrest. For purposes of comparison, the distributions are presented in Table 4-2, below.

TABLE 4-2

DISTRIBUTION OF AGES FOR STUDY SAMPLE

Age	Number	%	Dade County a/		National b/	
17-Under	20	1.9	----	----	--------	----
18-20	224	23.3	2619	24.6	598,871	26.3
21-24	277	26.0	2782	26.1	571,074	25.0
25-29	185	17.3	2028	19.0	431,345	18.9
30-34	125	11.7	1105	10.4	229.069	10 0
35-Over	211	19.8	2117	19.9	450,172	19.7
TOTALS	1067 c/	100.0	10651	100.0	2,280,531	99.9

a/ and b/ are based on felony arrests for categories of offenses similar to those in study sample. c/ In 7 cases the age was not given in the records.

*There were no significant differences among courtrooms ($\chi^2 = 4.08$, sig. = .54) or among treatment conditions ($\chi^2 = 2.79$, sig. = .59).

Slightly more than two-thirds of the defendants were under 30 years of age, indicating that the defendant status was occupied primarily by young adults. There were very similar distributions for Dade County and U.S. arrests.

D. Summary

The study sample, which was randomly selected, closely approximated the known characteristics of the Dade County arrests and the FBI national summaries. The only deviation was that the study sample had somewhat more men in it than did the Dade County arrest population. The difference was quite small and is most likely due to sampling only after arraignment, as compared with the total arrest population. In terms of external validity, the study is comparable to the county arrest population and to the national figures. The comparability has been established on the basis of characteristics of cases that are generally unaffected by anything the courts might do, and are thus the input with which the courts work. *

*The similarity among treatment conditions for the input measures is reassuring, since the pretreatment cases had been randomly selected retrospectively (that is, the cases were drawn from closing dates after arraignment and then tracked back in time, however long that might be), while the test and control samples were drawn prospectively (that is, drawn from arraignment calendars and then tracked until they closed, whenever that might be). This difference in procedure did not affect the types of cases selected, since no differences among treatment conditions appeared on any of the input measures.

CHAPTER V

SPECIFICATION OF TREATMENT: CONVENING THE CONFERENCE

A. Introduction

The conference, of course, was the heart of the matter. This chapter introduces our discussion of the conference as it was implemented in Dade County, Florida. It focuses on some preliminary issues concerning the use of the conference. Thus, the first section discusses some of the criteria used in the decision to convene the conference. The chapter goes on to discuss who attended, the relationship between type of offense and cancellation of the conference, and the results of the conference. The next chapter explores the dynamics of participation in the conference.

Both chapters integrate data from staff observations with attitudes and opinions expressed by participants in our professional interviews. Together, these two chapters address the concerns expressed by various persons about the feasibility of the conference process.

B. Use of the Conference

1. Decision to convene the conference. The pretrial settlement conference was proposed as a voluntary proceeding. The procedure worked out with each test judge at the beginning of the project envisioned setting a conference date in each case although the conference would take place only if the defense attorney confirmed it. The judges modified the procedure to make the conference mandatory, unless cancelled by one of the attorneys. The result of the change was to put the burden on the attorneys to appear. The scheduled conference thus became at least a status conference, even if one of the attorneys indicated at the time of the conference an unwillingness to proceed with negotiations.

Conferences were actually held * for 67 percent of the defendants in Judge A's cohort, 62 percent in Judge B's cohort, and 81 percent in Judge C's cohort. # Conferences were not held for 144 defendants of the 470 in in the test group of 378 cases. ** Of those defendants' conferences, 74 percent were cancelled at the appointed day and time. Another 10 percent were cancelled prior to the scheduled meeting time, and 16 percent were not scheduled. This last category consists in large part of co-defendants to defendants selected for the test cohort, who were arraigned on different dates The co-defendants should have been assigned to a conference but were not. The following table shows the reasons that the conferences were not held.

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*A conference meant that, at minimum, the judge and attorneys were present.

#Three test judges will be identified throughout the report by these alphabetical labels. The three comparison judges are identified as Judge D, E, and F.

**For the discussion of the decision to convene the conference we have used all defendants in the same sample in order to show the maximum range of issues raised. For subsequent analysis the case rather than the defendant is used as the unit (See Appendix A for further discussion of this issue)

TABLE 5-1

REASONS THAT CONFERENCES WERE NOT HELD

	Number	Percentage
Case Closed	3	2
Pretrial Intervention Program	17	12
Prior Agreement	14	10
Timing Problem	24	17
Administrative Problems	18	13
Absence of Critical Parties	27	19
Attorney's Discretion, Including decision to try the case	19	13
No Information	22	15
TOTALS	144	100

The scoring of the reasons why the conferences were cancelled was based or statements made by those parties who were present. Of course, these statements may reflect tactical or other considerations, rather than the actual reason.

The absence of a critical party was the most frequent reason that a conference was not held. A "critical person" refers to someone without whom the session cannot take place or continue. Attorneys were more frequently the ones whose absence caused cancellations. Nineteen of these 27 cancellations were attributed to an attorney. While lay participants were often absent, the session generally proceeded without them.

In 17 percent of the cases in which a conference was not held, the timing of the scheduled conference was such that one or the other attorneys felt the case was not ready for settlement discussions. Tasks needing completion included interviews with witnesses or with victims, or various pretrial motions.

Another 13 percent of the defendants' conferences were cancelled because one of the parties felt a conference was not appropriate. Our professional interviews disclosed that these cases tended to fall into two categories. In some, the defendant was adamant about his innocence. Thus, the defense attorney would cancel the conference and proceed to trial. In others, the seriousness of the offense or the extensiveness of the defendant's prior criminal arrest record was such that, if convicted, the defendant was certain to receive a severe sentence. In these cases, the judges seemed inclined to try the case, rather than discuss a possible plea. In 13 percent of the

cases, various administrative problems, such as scheduling conflicts, caused a cancellation.

In almost 22 percent of the "non-conference" cases, a settlement had been reached before the scheduled date of the conference. * More than half of these prior settlements involved a referral to the Pretrial Intervention (PTI) Program administered by the State Attorney's Office. The prior negotiations reflected by these settlements were contrary to the treatment plan being tested. From the professional interviews, we learned that in some cases the appropriate settlement appeared so clearly from the bare facts that any extended discussion was superfluous, and the parties agreed to settle.

2. Relation of offense to cancellation of conference. One element in the decision to hold the conference is the type of offense involved. As discussed earlier, some participants felt that certain categories of offenses were inappropriate for the conference procedure. (See Chapter II for discussion of implementation negotiations.) Table 5-2, below, shows the proportion of cases by offense category for which conferences were held.

TABLE 5-2

PROPORTION OF DEFENDANTS WHOSE CONFERENCES WERE HELD a/ BY OFFENSE CATEGORY

	Judge A		Judge B		Judge C	
Offense Category	%	N	%	N	%	N
Violent Crime b/	67	36	57	14	33	6
Assault c/	56	18	84	19	88	24
Burglary	65	34	61	28	79	34
Larceny	55	22	53	19	73	15
Other Property d/	36	14	78	9	75	12
Drugs	85	52	53	34	85	34
Other (Weapons, Gambling, Inspection Cert.)	73	15	63	16	93	15
TOTALS		191		139		140
tau_c	-.12(sig.-.05)		.11(sig.=.12)		-.10(sig=.09)	

a/ Held = 1, Not Held = 2. b/ Homicide, Rape, Robbery. c/ Any Assault and/or Battery. d/ Fraud, Forgery, Stolen Property.

For Judge A, who had conferences for 67 percent of the defendants' cases, the likelihood of a conference being held was significantly related to the type of offense. Generally, the conference was less likely in more serious

*Settlement includes adjudications and dismissals.

offenses.

The relationship between offense severity and likelihood of holding a conference is not statistically significant at the .05 level for either Judge B or C. It appears that the two types of offenses that were thought to be inappropriate (worthless checks and drugs) were not substantially more likely to be excluded from conferences than any other types. However, two points deserve comment. First, the number of cases falling in some of the crime categories is so low as to make statistical comparisons of limited reliability. Second, the agreement of the test judges to use the conference for all cases assigned to the test cohort confounds any interpretation of the relationship between type of offense and cancelled conferences.

3. Professional's views of when conferences were appropriate. There was no clear consensus among the judges and attorneys regarding the appropriateness of particular types of cases for the conference processs. There are some loose patterns that can be discerned, but to each of these there are important exceptions.

Cases involving very serious crimes or defendants with extensive records were seen by some judges, prosecutors, and defense counsel as being inappropriate for the conference because the defendant, if convicted--whether by plea or by trial--is going to receive a very severe sentence. This had general, but not unanimous support. At least one defense attorney argued that in domestic cases the principle does not apply. Minor cases, in which there is a well-established appropriate sentence were perceived not to require a conference. Bad check cases involving first-time offenders were one example of this type of case. Minor drug possession cases by first-time offenders were another example. The latter cases are usually referred to the Pretrial Intervention Program.

Cases which were in some sense marginal were seen as particularly appropriate for the conference process. The case may be marginal in that, while the conduct is covered by the letter of the law, it is clear that the statute was not aimed at this type of behavior. A number of cases like this arose in the mandatory minimum gun felonies. Cases may also be marginal in that some psychiatric or other extenuating factors may be present. Of all the patterns, this is the clearest. A number of examples were cited involving this type of case, and the professionals' expressed sense of satisfaction with the procedure was the strongest in these instances.

A number of both prosecutors and defense attorneys felt that the conference should be used only in crimes in which there were victims. One prosecutor suggested that a conference be held only when the victim is interested in attending.

A good number of other attorneys, on both sides, would not agree with the exclusion of cases involving victimless crimes. The defense attorneys often saw advantages for their client in both discovery and influence on the judge in the conference, regardless of whether there was a victim. Similarly, some prosecutors saw both discovery advantages and increased possibility of settlement of cases, regardless of the existence of a victim.

4. Conferences held but not settled. Two hundred eighty-seven conferences were held. Table 5-3, page 36, shows the immediate results of these conferences.

TABLE 5-3

CASE STATUS AT CONCLUSION OF THE CONFERENCE

	Number	Percent
Settlement Agreed upon at Conference	75	26.0
Tentative Settlement Agreed Upon at Conference (Subject to Review)	131	46.0
Case Continued to a Later Date at Conclusion of Conference	37	13.0
Case Set for Trial at Conclusion of Conference	43	15.0
Don't Know	1	.3
TOTAL	287	100.0

Thus, in 72 percent of the conferences, either a settlement or a tentative agreement subject to review, usually by the defendant, was reached. From another point of view, 74 percent of the conferences did not end in a final agreement. Table 5-4 displays the reasons for these failures to reach a settlement. These reasons were categorized by our observers based on information given in the conference. One half of the cases (57 percent) did not settle although the outlines of the disposition had been reached.

In designing the implementation, considerable thought was given to when in the case disposition process the conference should be scheduled in order to allow adequate time for the pretrial motions and discovery. The findings are relevant to that early concern. Table 5-4, page 37, discloses that, in a quarter of the conferences that failed to reach a settlement, either the discovery process was incomplete, or one of the attorneys indicated an intention to file an additional motion which precluded a settlement agreement. Note also that in 17 percent of the conferences not held, similar problems of timing were listed as the cause. (See Table 5-1, page 33).

The general trend of professional interviews, with one exception, reported that the conference was not interfering with pretrial preparations. To the extent that the professionals' were advising us of the working expectations of system actors, their judgment suggests that these scheduling problems fall within the normal bounds of court experience.

As discussed above, the absence of a critical party was responsible for the conference not being held in 19 percent of the cases. In conferences that were held, absence of a critical person was responsible for failure to reach a settlement in 7 percent of the cases. A "critical person" was defined as that person or persons whose absence prevented further action on the case. Where an absence halted the discussion the lay parties were involved more than half of the time.

TABLE 5-4

REASONS CONFERENCES DID NOT SETTLE

	Number	Percent*
Lack of Time	4	2
Discovery Process Incomplete	30	14
Additional Motions to be Filed by Attorneys	22	11
Review of Tentative Settlement	118	57
Evaluate Special Treatment Programs	8	4
Absence of Critical Person	15	7
Other Charges Pending Against Defendant	17	8
Parties Couldn't Agree	46	22
Other Reasons	24	12

*On a number of occasions there was more than one reason why the conference did not reach a settlement.

5. Conference settlements analyzed by offense category. As might be expected, the settlement rate varied for each judge, depending on the nature of the offense. Table 5-5, page 38, shows the number of cases and the percentage of those cases by offense category which reached either a tentative or final settlement at the conclusion of the conference. Again, this data is based on what the participants said at the end of the conference. The type of offense was statistically related to the likelihood of settlement. The more serious, violent offenses were less likely to settle (tau = -.09, sig. = .02). Within that general relationship, some interesting patterns emerge.

These results are generally consistent with the patterns disclosed in Table 5-2 on the decision to hold the conference. Judge A indicated in one interview that cases which normally end in probation are particularly appropriate for conference discussion. (An example might be the "Other Property" cases.) In fact, as Table 5-2 shows, conferences were held in only 36 percent of such cases. However, all the conferences that were held ended in at least a tentative settlement. These findings are consistent in light of the explanation that in some cases the proper disposition seems clear from the bare facts. This situation would facilitate both settlements prior to the conference and settlement at the conference, if held.

TABLE 5-5

PROPORTION OF CONFERENCES REACHING A SETTLEMENT BY OFFENSE CATEGORY

Offense Category	Judge A		Judge B		Judge C	
	%	N	%	N	%	N
Violent Crimes a/	47	17	75	8	0	2
Assault b/	80	10	73	15	62	21
Burglary	78	18	88	16	58	24
Larceny	82	11	100	9	80	10
Other Property c/	100	4	86	7	89	9
Drugs	59	27	88	16	72	25
Other d/	91	11	70	10	64	14
% OF TOTAL REACHING SETTLEMENT OR TENTATIVE SETTLEMENT	70	98	83	81	67	105

a/ Homicide, Rape, Robbery. b/ Any Assault and/or Battery. c/ Fraud, Forgery, Stolent Property. d/ Weapons, Gambling, Inspection Certificate.

On the other hand, while Judge A held conferences for 85 percent of the defendants charged with drug offenses, only 59 percent of conferences reached at least a tentative settlement. In the violent crimes category--homicide, rape and robbery--only 47 percent of the conferences reached a settlement, the lowest settlement rate of any category. All other categories had 78 percent or better settlement rates.

Judge B was the only judge to settle more than 50 percent of his violent crimes cases, settling 75 percent. He held conferences for only 53 percent of defendants charged with larceny, but all of these conferences ended with a settlement or tentative settlement. In drug cases, where again he held conferences for only 53 percent of the defendants, 88 percent settled.

Judge C's conference outcomes for violent crimes are consistent with both his conference convening pattern and the views expressed in our interviews. Judge C expressed the view that, in particularly serious cases, he was inclined not to negotiate, but to try the cases; and if the defendant

was found guilty, to impose the appropriate penalty based on the facts disclosed at the trial. A similar philosophy is probably reflected in the fact that only 58 percent of his burglary conferences reached a settlement. *

C. Attendance When Conference Held

One purpose of the conference was to provide victims, defendants, and police officers an opportunity to attend and participate in discussions about a possible settlement of the case. In 83 percent of the conferences one or more lay participants attended. Defendants were present at two-thirds of the conferences. Victims were present at one-third of the conferences (32 percent); police at 29 percent of the conferences. In 21 percent of those cases which had a victim (N=42), both the defendant and victim attended.

Our professional interviews disclose only a minimal number of conferences in which there was serious tension between the victim and the defendant. Only two conferences involved a verbal confrontation between victim and defendant. One case arose out of a dispute between two businessman. The defendant was particularly irate, because he felt the criminal process had been inappropriately invoked by the "victim".

For the lay participants, attendance at the conference was voluntary. At one level of explanation the decision to attend may have been based on the type of offense involved. However, the findings indicate that for none of the groups did that variable explain attendance. # Even if the type of the offense did not help, the presence or absence of a victim might enter the decision for the defendant and police. On that measure also, higher attendance was not related to whether a victim was involved. ** From these measures it seems clear that the type of offense per se was not the criterion used by the lay participants to decide whether to attend.

During interviews conducted after their cases closed, the lay respondents were asked if they had attended a conference and, if not, why not. By far the most frequently cited reason was that they had not been notified or knew nothing about a conference. Forty-seven percent of the defendants, 63 percent of the victims, and 57 percent of the police fell into that category. One must grant immediately that the interview question is not likely to elicit very many responses saying "I didn't attend because I didn't want to go--it was a stupid idea." On the other hand, respondents

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*Conferences were held for only 33 percent of the defendants charged with violent crimes. Neither of the conferences that were held resulted in a settlement. However the number involved is so small as to make interpretation tentative at best.

#For defendants, the tau_c = .07, sig. = .13; for victims, tau_c = -.07, sig. = -.18; for police, tau_c = .08, sig. = .09.

**Defendants attended 66 percent of the conferences where a victim was involved; 67 percent where it was a victimless offense. The police attended 24 percent of the time in victim cases, but 38 percent of the time in victimless cases. The explanation for the difference in police rates might be that in victimless cases, the police would be equivalent to the complaining witness.

could easily have cited personal schedule conflicts (work, exams, baby-sitting, etc.). Instead, only 10 percent of the defendants, 16 percent of the victims and 28 percent of the police cited any sort of schedule conflict. It seems reasonable to assume, then, that some sizeable portion of those saying they had not been told of the conference were giving accurate answers. * The high proportion of non-attenders who cited a failure to be notified is a finding supported by those responsible for making the contact. The explanation for the failure of notificatoin is multi-faceted. The problems of communication were enormous. Incorrect addresses, non-functioning phones, or wrong phone numbers and changes of address all affected the contact procedure. Working with the same information as the court personnel who were trying to inform people of the conferences, the research staff found almost 30 percent of the victims and nearly 40 percent of the defendants listed in the court records could not be reached because of insufficient information in the records. #

The failure to be contacted, is, to some extent, due to the nature of the parties being contacted and their roles in the proceedings. Besides the problems of addresses, names, and phone numbers, others were reluctant to become involved for a variety of reasons--many quite legitimate.

Some felt that they had already cooperated by giving testimony and saw additional participation as an undue imposition. Further, the victims, when invited to the conference, were told that their participation was voluntary. All these factors undoubtedly account, to some extent, for the relative rate of victim attendance.

The professional interviews disclosed a rare unanimity regarding the difficulties in obtaining victim participation in court proceedings. There was also substantial sympathy with the victim's plight. The multiple appearances required of victims was seen as adding insult to injury. The additional imposition on the victim was often cited as a disadvantage of the conference process, despite the fact that victim attendance was voluntary.

Some prosecutors expressed a mix of disappointment and cynicism regarding the victims' lack of interest, generally, in the prosecution of the defendant. Some expressed the view that victims were interested only when there was a chance of recouping some of their losses by restitution.

The provisions for police participation varied from department to department. The Dade County Public Safety Department allowed officers to

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*On the other hand, some may have been informed but had forgotten about the contact. Often the interview was conducted a month or more after the conference had taken place. Since attendance was not required, the lay participants may have had less difficulty making decisions about it and hence, more difficulty recalling the contact than for other proceedings.

#Some portion of the missing or inaccurate information can be explained by the respondent's desire not to be reached. Particularly with those involved in the criminal justice system there may be reasons why they would seek to hide their identity or involvement.

attend conferences which fell within a scheduled tour of duty. Officers were allowed to attend conferences on off-duty time but were not paid for their attendance. Other departments allowed their officers to participate and paid for their time if the conference was scheduled during the officer's time off.

In addition to problems relating to payment for time spent at the conference, communications obstacles further complicated efforts to involve the police in the conference. Despite assistance from the court liaison personnel from various departments, project staff often found it difficult to contact individual officers, largely because of their rotating shifts and out-of-office assignments.

Attendance was generally unaffected by the age, sex, race, or occupation of the respondent or language spoken by the respondent. While it is beyond the scope of this project to explore this information fully, it seems clear that attendance was not a function of one's social or economic position. What can explain attendance is less clear at this point.

The notification rate was also a function of the effort put in by those assigned the task. One policy issue faced early in the project was the extent to which our staff would assume burdens of implementation of the conference process. We decided to limit staff intervention to evaluation tasks whenever possible. Two reasons--one practical and one theoretical--motivated our decision. From a theoretical viewpoint, it seemed desirable to carry out the implementation without unrealistically reducing the burden of the process by, in effect, providing additional staff to the criminal justice system. Further, our own staff limitations prevented us from doing any more than attending to our data collection tasks.

This decision was not without its costs, particularly in the matter of contacting vicims regarding their attendance at the conferences. Even though we had the encouragement and active support of the management of the State Attorney's Office, the contact procedures, as implemented by the secretaries to the various prosecutors, were unevenly carried out. Personnel turnover further added to the difficulties, requiring retraining and remotivation of new secretaries.

Six months into the implementation, our Site Director developed a procedure which improved the situation, as of course, did the simple acclimatization and accomodation to a new procedure over time. However, the new procedure did not produce any sigificant increase in lay attendance at the conference. When we compared attendance before and after the change, there were no statistically significant differences. *

D. Professional Attitudes Toward Lay Presence

The attorneys and judges varied in their attitudes towards the presence of the defendant. One judge felt that the presence of all the lay parties was extremely helpful in determining a just sentence. The opportunity to observe the defendant, his demeanor, and interactions within the confines

*For defendants, $\chi^2 = 1.49$, sig. = .22; for victims, $\chi^2 = .01$, sig. = .92; for police, $\chi^2 = .08$, sig. = .77.

of chambers was seen as giving the judge important information that he did not normally have in negotiated settlements.

The other judges were more restrained in their assessment. They pointed to cases in which the defendant had provided information about the motivating factors behind the offense, which had been helpful in the sentencing decision, but generally believed that the information obtained had been of only marginal value.

The attorneys also varied in their views about the presence of the defendant. There was little outright opposition from either defense attorneys or prosecutors. Some attorneys said that lay presence inhibited a frank discussion between the attorneys and the judge, because such discussion might be misunderstood by the lay parties. Other attorneys, when asked about a possible inhibiting effect, felt that the discussion could be undertaken in a way to convey fully the necessary facts and opinions without offending the lay parties. One prosecutor felt that the lay presence had the salutory effect of reducing irrelevant and inappropriate discussion between professional parties.

A consensus emerged that if the defendant was articulate and presented an appropriate demeanor, he could help himself substantially. One prosecutor said when the defendants cared about their lives, or are apologetic, or have a complaint or something that they want to let the judge know about, it is good for them to be at the conference. There was also a general view that it was seldom that these positive effects occurred.

To those professionals who were concerned about humanizing and personalizing the criminal justice process, the presence of the defendant and the victim was seen as having that effect. One prosecutor felt that the humanizing effect of the defendants' presence was too great in that it unduly reduced sentence severity. Another prosecutor dismissed the question with the statement, "It affects the defendant; he should be there."

E. Summary: Specification of Treatment

The pretrial settlement conference was originally proposed as a voluntary proceeding which the judge would tentatively schedule at arraignment; but which would take place only if the defense attorney confirmed it. The judges, in implementing the procedure, scheduled the conferences to be held unless cancelled by one of the attorneys.

Conferences were held for 326 of the 470 defendants in the test group. In almost 22 percent of the "non-conference" cases, a settlement had been reached before the scheduled conference date. More than half of those involved a referral of the defendant to a pretrial diversion program run by the prosecutor's office. The absence of a critical party led to cancellation of the conference in 27 percent of the cases. The defense attorney was the party most frequently absent. A related reason was the judgment (17 percent of cancelled conferences) by one of the attorneys that the case was not ready for settlement discussion because some preparatory tasks needed completion.

For one judge the type of offense was significantly related to the likelihood of a conference being held. In more serious cases the conferences

were less likely to be held. Interviews with professional participants generally supported this finding. In cases involving very serious crimes or defendants with extensive records, the judges and attorneys generally felt that it was preferable to try the case.

Cases which were in some sense marginal--either because the statute was not aimed at the particular type of situation or because of the presence of a psychiatric or other extenuating factor--were seen as particularly appropriate for the conference process.

In cases where the conference was held, 26 percent ended in settlement; 46 percent reached a tentative settlement; 15 percent were set for trial at the conclusion of the conference. The more violent offenses were less likely to reach a settlement.

In 83 percent of the conferences, one or more lay participants attended. Defendants attended 66 percent; victims, 32 percent; and police, 29 percent. In 21 percent of those cases which had a victim, both the defendant and and victim attended the conference. For none of the lay groups was attendance significantly related to the type of offense.

The professional interviews disclosed only a minimal number of conferences in which there was serious tension between the victim and the defendant. The professional attitudes towards lay presence was mixed, but a consensus emerged that if a defendant was articulate and presented an appropriate demeanor, he could aid his cause. Some of the professionals saw the presence of the defendants and victims as humanizing and personalizing the case disposition process.

CHAPTER VI

SPECIFICATION OF TREATMENT: PARTICIPATION IN THE CONFERENCE

This chapter focuses on roles played by the various participants in the conference. It presents an analysis of the dynamics of conference participation by looking at the length and subject matter of the conferences and the patterns of judicial and lay participation.

The conferences usually took place in the judge's chambers and were informal, compared to courtroom proceedings. The judge sat behind his desk wearing a suit instead of judicial robes. The other participants were seated around the room or, in some cases, around a conference table. The protocol and atmosphere was that of a business conference, rather than a court proceeding.

A. Length of Conferences

The conferences averaged 10 minutes in length although there was substantial variation. The shortest lasted less than one minute; the longest, 25 minutes. The average length of the conference differed significantly for the three judges. Judge A had the shortest (9 minutes on the average), while Judge C had the longest (12 minutes). * Of course, some additional time was consumed with people entering the room and getting settled and then leaving at the end of the conference.

In the early stages of the project, some judges and attorneys, when discussing the proposed conference, had predicted that the conference would turn into long, rambling discussions which would be wasteful of everyone's time. This prediction simply was not borne out. In part, the brevity reflects the nature of the judicial participation in the conference. The judges tended to structure the conferences, rather than allow the attorneys and the lay parties simply to argue the case out to a conclusion. (See Section C.4, infra.) This more directive role resulted in more efficient, less time-consuming conferences.

We have no direct way to compare the conference proceedings and traditional plea discussions. 1/ Two of the three judges came to the conclusion that the conferences were more time consuming. Our informal staff observations suggest that in some cases this is probably so. Interestingly, the two judges who concluded that the conferences were more time consuming reached different conclusions about the significance of that factor. For one, it played a role in his decision that the conferences should not be used on a regular basis. The other judge felt that the benefits derived from the conference outweighed the time costs involved.

The third judge expressed the view that, initially, the conferences were substantially more time consuming, but that when he scheduled all the conferences at the same time and held them as people arrived, the conferences

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*Comparison between the three judges shows statistically significant differences: F-ratio = 6.93, sig. = .000.

were only slightly more time consuming. He pointed out that the traditional plea negotiation practices had the advantage of utilizing the inevitable waiting periods in a judge's schedule.

In summary, while contrary to early predictions the conferences were short and to the point, the participating judges adopted a range of attitudes toward the significance to be attached to the perceived time costs of the process. For at least one judge, the time involved played an important role in his ultimate evaluation of the pretrial settlement conference process.

B. Variety of Topics Discussed

Within the context of a rather brief meeting, the discussions in the conferences covered a number of issues. * Table 6-1, page 46, presents data on the proportion of conferences where each of eight substantive topics were discussed by any participant. (See Appendix B for discussion of categories.) It also shows the average number of discussants per conference for each topic. Three topics--facts of case, recommendations, and prior record--are closely grouped at the top of the scale, ranging from 90 percent to 96 percent. A fourth topic--personal background facts of defendant or victim--is closer to these than to the other topics. It was discussed frequently enough to be considered a regular topic of the conference.

The facts of the case were discussed in 96 percent of the conferences and by a number of parties (on the average, by 3 individuals per conference). Further, the professional interviews disclosed a general consensus that the conferences allowed adequate opportunity for disclosure of the pertinent facts of the offense. The disclosure was seen to be superior to traditional plea negotiations, but there were mixed views when compared to disclosure at trial. One view saw a trial as the only way to get a complete picture of the incident. The other view pointed to the wider scope of the conferences which allowed information to be considered that would have been excluded under the rules of evidence. Of course, much of this latter information would theoretically be available in the presentence investigation after conviction, although these are generally not used in Dade County. #

The conference process, as it was implemented, utilized presentence reports infrequently. Because information regarding the background of the defendant was often directly available from the defendant at the conference, the conference appears to have served as a short-cut presentence investigation. To the extent that this type of information was available, all saw it as a benefit, but a limited one, because the information could have been

*Each comment made at the conference was subsequently coded by the research staff according to a scheme developed from analysis of the first 15 to 20 conferences. Most of the categories were designed to capture general substantive issues (e.g., facts of the case or recommendations for disposition), although some were included to identify central, but perhaps rarely occurring, issues for the research (citing prior conferences as precedent, or the predicted consequences of going to trial). Each conference was coded twice and discrepancies resolved by consultation with senior staff.

#Based on conversations with probation officials in Dade County.

TABLE 6-1

AVERAGE NUMBER OF PARTICPANTS AND PERCENTAGE OF CONFERENCES IN WHICH TOPICS WERE DISCUSSED

	Mean Number of persons adding to these topics	Percentage of Conferences a/ in Which Topic Discussed
1. Facts of case	2.7	95.6
2. Prior Record	1.7	89.8
3. Law and Practice	.5	37.5
4. Maximum sentence	.2	14.2
5. Outcome of trial		
a. More severe if new evidence comes out	*	1.5
b. More severe as a penalty	*	1.5
c. Could get maximum sentence	*	1.1
d. Will make no difference in sentence	*	2.4
6. Previous conference dispositions	*	1.1
7. Facts of the person	1.2	65.5
8. Recommendations for disposition	4.2	93.5

a/ N = 287 conferences. * = less than .05.

obtained through a presentence investigation. A disadvantage of the conference as a short-cut presentence investigation is that the information was often unverified. An advantage is that the information was unfiltered. Further, the sources were available for direct inquiry from the judge to follow up issues of interest.

Almost all of the conferences included discussion of recommendations for disposition. Given the stated purpose of the conferences, this is not surprising. However, since a quarter of the sessions ended with an indication that the case preparation was incomplete (additional motions to be filed) it is interesting to note that recommendations were discussed even when full information was not yet available.

Prior criminal arrest and conviction records were the third most frequently mentioned topic. A surprising element was the varying degrees of

specificity with which prior history information was presented. * In some conferences, the information was limited to the statement, "The defendant has three priors." No indication was made of charge or whether it was a prior arrest or a prior conviction. In other conferences, the information was given with substantial detail or, if not, was subject to challenge by the defense counsel. The professional interviews did not develop a clear explanation for the variation in treatment of this important information. To the extent that any insight was offered, it was limited to the notion that the defense counsel makes a judgment, when the data is presented in an incomplete form, whether it is in his client's interest to pursue the matter. In some cases, it might appear best to let the matter pass with as little attention as possible to the specifics.

Personal background and situation was a topic of discussion in 65 percent of the conferences. All three judges saw an advantage in the conferences to the extent that it provided some insight into the character and motivation of the defendant. This information is not necessarily limited to verbal behavior. The attitude and demeanor of the defendant was seen to be an important part of the defendant's presence at the conference.

Surprisingly, the possibility of a maximum sentence was mentioned only infrequently (14 percent). This raises some question about the notion that a reason for and function of plea bargaining is to escape severe statutory sentences. 2/ This finding is interesting in relation to the relatively high level of defendant satisfaction, across both test and control cohorts, with the disposition. This evidence is, of course, only suggestive of possibilities of further inquiry. (See Chapter IX, Section C.)

Another surprising finding, which is contrary to our early hypothesis, was the infrequent references to previous conference dispositions in the conference discussions. We began the project with the hypothesis that the use of the conference would lead to the use of prior dispositions as precedents for subsequent decisions, creating in effect a common law of sentencing. Table 6-1 shows that this did not happen at the level of verbal explanation. Prior conference dispositions were mentioned in only 1 percent of the conferences.

The observation that prior dispositions did not develop an independent precedential value was supported by the professional interviews which indicated that each judge had a working standard of sentences which he applied. But this standard, or "price list", predated the conferences. While its content may or may not have been affected, its existence and function were not.

The general pattern of the conference session, then, was to discuss the factual situation of the case, prior record, and recommendations for disposition, and somewhat less frequently, personal background information, all in the span, on the average, of 10 minutes. The coverage of any of the issues

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*In 60 percent of the conferences the prior record, including dispositions, was given in detail. The prior records were mentioned but no detail was given in 32 percent. In 8 percent, no information about prior record could be determined, either by explicit reference or inference from the discussion of the defendant's background.

was sufficient to identify and categorize an issue although not to provide much detail.

C. Conference Participation by Various Parties

The next issue to consider is which parties typically were active in addressing these topics. Table 6-2, page 49, indicates the number and percentage of conferences in which each party made at least one comment that either addressed a new area, or provided some new information within one of the same categories contained in Table 6-2, page 49. *

1. Subjects discussed by judges, attorneys, and police. For the judges, attorneys, and police, the frequencies of the topics (excluding discussion of recommendations) are ordered in a similar pattern, even though the proportions themselves differ. In descending order of frequency, they discuss the facts of the case, the prior criminal record of the defendant, the personal facts about the defendant, and their views of matters which fall into the law and practice category. Although this table does not disclose the extensiveness of the comments by various parties, the judge emerges as the most frequent contributor to each topic, which is consistent with the view of his role as the decision-maker.

The prosecutors and defendase attorneys contributed substantially less frequently than did the judges. One would have expected that the prosecutors would discuss some aspect of the offense more often than was the case. In almost 40 percent of the conferences, the prosecutor neither asked about nor added new information on the facts of the case. In more than half the conferences, the prosecutor did not address the prior record. As the party with authorized access to the official criminal history for the defendant, one might expect the prosecutor to discuss it more frequently.

The defense attorneys' discussion of prior record (37 percent of the conferences) probably reflects the widely acknowledged inadequacy of the criminal history, particularly with regard to missing information on case dispositions. The defense attorney would often be in a position to challenge misleading impressions caused by incomplete records. The defense attorneys discussed personal background of the defendant in 31 percent of the conferences, compared to 46 percent for the judges and 13 percent for the prosecutors. It is interesting to note that the judges raised this issue more frequently than did defense attorneys. Typically the judge would ask the defendant if he or she had a job or was married. The difference may be explained by the generally more active role of the judges.

The police role is clearly focused, as is to be expected, on the facts of the current case. In the conferences they attended, police discussed the facts more frequently than did the prosecutors (70 percent compared to

*Excluded are remarks that were repetitious or did not expand the scope of information available. For example, in this part of the analysis, we are not including every codable comment, such as a "yes" or "no" answer to a question, since these responses did not add to the subject matter coverage of the conference. The person asking the question would be included. The respondent would be included if the response provides an elaboration of the shortest answer.

TABLE 6-2

FREQUENCY OF SUBJECT MATTER

		Judge (N=287)	Prose-cutor (N=286)	Defense Counsel (N=282)	Police (N=83)	Defen-dant (N=189)	Victim (N=63)	Other (N=37)
1. Facts of the Case	N	237	171	193	58	59	33	7
	%	83.7	60.9	69.4	69.9	31.2	52.4	18.9
2. Prior Record	N	196	132	104	20	33	4	2
	%	69.3	47.0	37.4	24.1	17.5	6.3	5.4
3. Law and Practice	N	81	29	33	4	1	-	-
	%	28.6	10.3	11.9	4.8	0.5	*	*
4. Maximum Sentence	N	34	8	6	-	-	1	-
	%	12.0	2.8	2.2	*	*	*	*
5a. Trial More Severe	N	3	-	1	-	-	-	-
	%	1.1	*	*	*	*	*	*
5b. New Evidence Make More Severe	N	3	-	1	-	-	-	-
	%	1.1	*	*	*	*	*	*
5c. Possibility Maximum Sentence	N	3	1	-	-	-	-	-
	%	1.1	0.4	*	*	*	*	*
5d. Trial Same as Conference	N	9	1	3	-	-	-	-
	%	3.2	*	1.1	*	*	*	*
6. Conference Precedent	N	2	2	1	-	-	-	-
	%	*	*	*	*	*	*	*
7. Personal Facts	N	129	35	87	17	49	12	5
	%	45.6	12.5	31.3	20.5	25.9	19.0	13.5
8. Recommen-dation	N	244	158	175	50	51	38	4
	%	85.6	55.8	62.9	60.0	27.0	60.0	10.8

* Equals less than 0.5 percent. - Equals zero.

61 percent). The same pattern occurred in the discussion of personal background: proportionately, the police were more apt to provide information than the prosecutor. The direct experience the police have with the reality of the event and the people involved probably accounts for this difference.

2. Subjects discussed by victims and defendants. As with the judges, attorneys, and police, the victims and defendants discussed the facts of the case more frequently than any other topic except recommendations. For defendants, however, the difference in frequency between comments on the facts of the case and comments about their personal history is much less--31 percent compared to 26 percent--than for victims--52 percent compared to 19 percent. The only other topic which either victim (6 percent) or defendant (18 percent) discussed was prior criminal record.

Thus, as Table 6-2 illustrates, the range, as well as the proportionate use of topics for the victim and defendant was more limited than for the judges or attorneys. The defendants discussed possible dispositions far less frequently than the other parties. This pattern is consistent with the purpose of the conference: to listen to recommendations for disposition. Police officers and victims commented on recommendations more frequently than the prosecutors, but less than the defense attorney and judge.

While the victims often gave their opinion about appropriate dispositions, it should be noted that only one victim even raised the issue of the maximum statutory sentence. Generally the victims would indicate approval of a recommendation made by others, say they had no preference, or raise the possibility of restitution. The expectation that victims would come looking for the maximum simply was not borne out by events.

Police officers would, typically, indicate no specific recommendation unless the disposition might affect other investigations (e.g., sentencing informants or co-defendants) or the arrest situation had been troublesome.

The professional interviews suggest that the defendant's relative silence on the facts, even though no statement made in the conference could be used against him, probably reflects, in large part, instructions by the defense counsel to limit comments. This instruction reflects concern about the implicit discovery potential of the conference. It should be pointed out that often no one asked the defendant what he or she thought should be the outcome in the case, as was done with the victim.

3. Use of information from lay parties by judges and lawyers. The judges involved in the project had somewhat different opinions regarding weight to be given lay recommendations, but the range of differences was narrow. None of them believed that lay opinions should be more than one of a number of factors to be considered. All felt that the ultimate decision was the responsibility of the judge. All the judges also believed that it was important that, in making a sentencing decision, the judge receive the input of any party who felt he had something to say. However, the views of the various parties must be placed in the larger context of all the facts and opinions in the case and considered in the light of the judge's experience and insights in sentencing. Within this framework, the judges vary; one took the recommendation seriously, but within the bounds of the judge's sense of what was appropriate. Another stressed the procedural importance of the victim's right to be heard but suggested that the victim's views should have

only modest substantive weight. The third stressed the centrality of the judicial responsibility and minimized other influences.

The attorneys' views on the issue varied by individual, by function (prosecutor or defense), and by courtroom assignment. This substantial variety can be organized to some extent into patterns, but each pattern can account for only a relatively limited part of the diversity in views.

As discussed earlier, a number of attorneys perceived that a defendant's demeanor, appearance, and capacity to articulate his situation can have a significant impact--either beneficial or detrimental. Notwithstanding the differences between judges, most attorneys felt that the influence of lay opinions and presence made, with rare exceptions, only marginal impact on sentence.

Of course, there were function-specific differences in the attorneys' perceptions of the relative weight given to the respective opinions of victims and defendants. Some prosecutors saw the defendants' presence as having greater effect than the victims'. Some defense attorneys felt that the victims' presence and opinions were more influential than the defendants'. These function-specific differences appeared to be stronger with two of the three judges than with the third.

Implicit, and sometimes explicit, in the views discussed above, is a perception on the part of the professional participants that lay expertise is quite limited. Lay opinions are to be heard, but only rarely do, or should, they carry great weight. Their non-verbal contributions--demeanor and attitude--may even be more important than their opinions. Occasionally a lay party may have factual information about the offense, the background of one of the parties, or the nature and extent of damage and injury which is significant. But, as mentioned earlier, the intial expectation of the professionals regarding this contribution seems not to have been realized. (for further discussion, see this Chapter, Section C.5.e.)

4. Judicial participation. a. Indices. In order to examine the role played by the judge in the pretrial settlement conference, we developed four indices of judicial style. The measures are not intended to be mutually exclusive, but rather, to approach the subject from a variety of perspectives. The first index is a summary measure, giving the total number of different participation tasks in which the judge engaged during the conference session. The index is labelled scope of participation. The second index, looking at the control of information, is the proportion of topic changes in the session made by the judge. The third index, labelled judicial control, is created by combining qualitative judgments made by the observer and a quantitative score to measure the extent to which the judge controlled the direction and outcome of the conference. The fourth index, labelled judicial negotiation behavior, is based on qualitative judgments made by the observer regarding the extent to which the judge sought to involve others in the discussion, particularly in the development of the disposition.

b. Scope of participation. The scope of participation index is a summary of the variety of verbal behavior. The index assigns a point if the judge changes the subject of the conference (shifts the conversation from one coding category to another) or if the judge makes a recommendation. The ndex has a possible range of 0 to 4. The mean score across judges was 3.35. Table 6-3, page 52, compares the courtrooms on the measures of judicial

TABLE 6-3

COMPARISONS AMONG COURTROOMS ON JUDICIAL STYLE - MEAN SCORES

Judge	Index Range	Summary Participation 0-4	Initiations 0-1.0	Control 0-4	Negotiations 0-4
A		3.30	.57	2.86	2.25
B		3.27	.42	2.09	2.94
C		3.40	.60	2.59	2.58
Mean across judges		3.35	.54	2.54	2.57
	Test for Differences				
F-ratio			21.10*	24.38*	8.26

N = 287. * = Significance at .000 level.

participation. Among the three judges using the conference, there were no significant differences in the variety of behaviors in which they engaged. The mean score indicates that in most conferences the judges were quite active, since most engaged in all the activities measured.

c. Proportion of topic changes. A subset of this total participation index is the proportion of the total initiations of subject changes in the conference that were made by the judge. The purpose of the ratio is to provide an indicator of the extent to which the judge directed the discussion at the conference, not to evaluate the quality or consequence of that direction. This measure of control of the conference is based on the assumption that the person who defines the range of subjects discussed (and, perhaps, the amount of information available) greatly influences the direction of the conference. In order to test the notion, we need measures of control of the subject matter; hence the proportion of topic changes. On the average judges accounted for 54 percent of the total topic changes. * On this measure, the judges were significantly different. Judge B averaged about 16 percent lower than Judges A and C. Differences between the judges

*For purposes of comparison, the prosecutors' average proportion of subject changes was 14 percent; the defense counsels', 25 percent; police, 9 percent; defendants', 4 percent; and victims', 5 percent.

explained 13 percent of the variation in the proportion of subject changes. Judge B, then, although engaging in the same variety of activities as Judges A and C (as seen from the similarity in scope of participation scores), did not engage in this particular behavior to the extent that the other two judges did.

d. Judicial control. The judicial control index of participation that we created attempted to measure the extent to which the judge could be said to have controlled the structure and direction of the conference discussion. The index combines the scores on three ratings made by research staff observers about the quality of judicial control, as well as one measure of the quantity of control behavior. The three qualitative ratings were 1) the extent to which the judge structured the development of the conference, 2) the extent to which the judge imposed a unilateral decision, and 3) whether the judge was rated as making the recommendation which formed the basis for the settlement of the case (or conference, if the case did not reach a settlement). The fourth measure was the proportion of subject changes made by the judge, as outlined above. The index had a range of 0 to 4. The mean was 2.54 (shown in Table 6-3). Since a score of 4 would indicate a total domination by the judge, the mean suggests substantial, but by no means complete, control by the judge. We expected that the degree of judicial control would vary by courtroom, since the behaviors that were being rated would depend on personality, view of the judicial role, and judicial philosophy about the appropriate type of judicial involvement in plea negotiations.

The three judges were significantly different in the degree to which our observers felt the judge controlled various aspects of the conference. The judge differences accounted for 16 percent of the variance in the control index. Judge B, whose subject change rate was significantly lower than the other two, exercised much less control on the summary control index which relied on observer ratings of control as well. Judges A and C, who were comparatively high on subject changes, were different from each other in the degree of control exercised.

e. Judicial involvement in negotiation. The final aspect of judicial participation that we wished to measure was the extent to which the judge actively encouraged participation in the negotiation process. We summed the scores on six indicators to produce a negotiation index: 1) whether the judge involved the lay people present (victim, defendant, and, or police officer) in the disposition process, 2) whether someone other than the judge made the recommendation which formed the basis of the settlement, 3) the extent to which the observer felt that the judge tried to develop a consensus, and 4-6) the extent to which the observer felt the judge tried to involve the defendant, victim, and police in the conference. The mean negotiation score was 2.57 (shown in Table 6-3). As with subject changes and control, the negotiation index differentiates the judges. Judge B, who exhibited the lowest control and subject change scores, had the highest negotiation score. Judge A, who had the highest control score, had the lowest negotiation score.

To some extent, our conceptualization of negotiating behavior is defined as the absence of, or opposite of, judicial control. The index of control may be seen as reflecting one style of directing the conference while the negotiation index reflects another. The Pearson's r between the two is -.50, indicating that the presence of one is associated with the absence of the other.

The measures differentiate among the three judges in their conference behavior, thereby providing some description of differences in judicial style. One judge had a high proportion of subject changes, the highest control score, and the lowest negotiation score. Another judge had the lowest proportion of subject changes, the lowest control score, and the highest negotiation score. The third judge appears to fall in the middle. Because of the differences in judicial style of conference behavior, we can conclude that we have observed the conference procedure under three different types of judicial involvement. We can say that the judges differed markedly in the extent to which they directed the conduct of the conference, as well as in the formation of a disposition. One judge was extensively involved in both, one shared those functions with the other participants, and the third appears to have provided a mix of control and negotiation behavior. However, all the judges took an active role in the conference.

5. Lay participation. a. Indices of participation. We developed three indices of participation for the defendant, victim and police. Lay participation was measured along lines similar to the indices of judicial participation but with somewhat greater emphasis on the role of information provider rather than on control of the process. The summary scope of participation index looks at different types of participation behavior, from making no comments at all to making recommendations for disposition. The other two indices look at the contribution of the lay members relative to the total discussion. The second index, proportion of total comments, measures the participation in the conference is shown in Table 6-4, page 55. On each type of particidex, proportion of total subject changes measures participation as a ratio of all subject changes.

b. Scope of participation. The scope of participation is an additive index of five types of activities a person might engage in. The five are: 1) if the person said anything at all; 2) if the person added substantial information to the conference; 3) if the person initiated a subject change; 4) if the person made a recommendation for disposition, and 5) if the person made more than five comments. This last item is included to distinguish between minimal and relatively greater verbal participation. It is not meant to be mutually exclusive of the other indicators, instead it provides an additional perspective.

The extent to which the defendants, victims and police participated in the conference is shown in Table 6-5, page 55. On each type of participation the three groups are ordered in the same way: the defendants were least likely and the police most likely to engage in each activity. Most lay participants said something: 78 percent of the defendants, 87 percent of the victims, and 88 percent of the police made some comment during the conference. *

*What is perhaps surprising is the converse of these figures--that some lay participants who came to the conference said nothing at all. Since gathering information from these parties was one of the purposes of the conference procedure, it is worthy of note that, at least at the level of verbal behavior, some provided no information. Attorney instructions or prior consultation with the attorney who would himself or herself give the pertinent information most likely accounts for the silent participants.

TABLE 6-4

PARTICIPATION BY LAY PARTIES - PERCENTAGES

	Defendant (N=287)	Victim (N=63)	Police (N=82)
	%	%	%
Said Anything	78.3	87.3	87.8
Add Anything	48.1	58.7	78.3
Make Recommendation	28.9	60.4	64.0
Initiate Subject Change	36.2	47.7	63.4
More than 5 Comments	19.0	25.4	87.8
Mean summary participation score (range = 0-5)	2.12	2.39	3.78

It is clear from this measure that the lay participants generally were involved in the conference. They were not silent observers of the process. Beyond this most inclusive measure, the other types of participation were expected to require somewhat more "effort"--that is, in order to engage in them one would need more initiative, and the task would, therefore, be more difficult to accomplish. For the defendants and victims, the hypothesis was generally supported since proportionately far fewer engaged in any of the other activities. For the police, however, the difference was not as great. The wider scope of police participation is shown by the comparatively larger percentage of officers who took part in each activity.

For the defendant and victim, the most difficult activity of the five measured was to talk with any frequency. Only 25 percent of the victims and 19 percent of the defendants made more than five comments. For both, a brief answer in response to a request for information or an opinion was the most characteristic participation pattern. For example, the extent of a defendant's participation might be to give his or her age, marital status, and employment status in response to direct questions by the judge.

The findings on the patterns of behavior for the defendants, victims, and police point to the different perspectives each has in attending the conference. The police, who bring professional experiences and expertise, participate most widely. The defendant, who may have been instructed to say as little as possible, was the least active. Finally, the victims, who could provide for the court some degree of personal knowledge of the offense occupied a middle ground.

c. Role of lay parties in the conference. In order to put the roles of the lay parties in the conference into perspective, their participation has been examined in terms of the total conference discussion. The proportion of the total number of comments in the conference and the proportion of all subject changes made by each lay participant have been calculated. Table 6-5, page 56, presents these findings. The figures show that the lay

TABLE 6-5

LAY PARTICIPATION IN CONFERENCE

	Proportion of Total Comments	Proportion of Total Subject Changes	Number
Defendant	9.8%	4.4%	187
Victim	13.1%	5.5%	63
Police	15.0%	9.2%	82

participants made a relatively small contribution to the total discussion.

When a lay party attended, the person contributed, on the average, 10 to 15 percent of the total number of comments. This proportion holds for defendants, victims, and police. When we look at the subject changes--those who directed the flow of the discussion--the lay role diminished even further. On this measure, lay participants, when present, contributed, on the average, between 4 percent and 9 percent of the total.

These findings are not surprising, since the main decision-making tasks of the conference lay with the professionals. The lay participants had been invited to attend but were not expected to be the key actors. As support for the notion that the lay persons participated but did not lead the conference, our observers felt the lay participant's recommendation for disposition was definitive in less than 8 percent of the conference.

d. Lay participation related to judicial style. Another way of putting the lay participation into context is to look at the relationship between the extent of lay activity and variations in judicial style. Table 6-6, page 57, presents these findings. The extent to which the judge acted as a negotiator in the conference was positively correlated with greater defendant participation.

Such a relationship is consistent with our measurement of negotiation, which gave weight to the sharing of control in the conference. To be rated high on negotiation, a conference needed to have others involved in the direction of the conference and the development of the disposition. The positive relationship is not totally a function of the measures involved, however, since the sharing of control in the conference could have been done only with the professional parties.

There was no significant relationship between the degree of control exercised by the judge and the extent of lay participation. One might have expected that the firmer grip the judge had on the proceeding, the less involved the lay parties would be. Instead, the degree of control did not seem to relate to the way the lay parties behaved. We saw many high-control conferences, where the judge asked someone for his or her recommendation for a disposition; and we saw low-control conferences, where the discussion excluded lay participation almost entirely. While "negotiation style"

TABLE 6-6

RELATIONSHIP BETWEEN JUDICIAL STYLE AND LAY PARTICIPATION a/

	Scope of Lay Participation b/		
Judicial Style	Defendant	Victim	Police
Control of Conference c/	-.08	.10	-.15
Degree of Negotiation Role d/	.26*	.11	.12
Proportion of Topic Changes e/	-.11	.16	-.11
Scope of Participation f/	.21*	.34*	.29*
	N-189	N=63	N=82

a/ Pearson r, *=.01 significance. b/ 5-point scale: number of activities engaged in. c/ 0-1.00 scale: high value = high control behavior. d/ 0-1.00 scale: high value = high negotiation behavior. e/ 0-1.00 proportion of subject changes made by judge. f/ 4-point scale: number of activities engaged in.

includes, by definition, greater non-judicial participation, "control style" is not incompatible with non-judicial participation.

The positive correlation between the extent of judicial and lay participation indicates that increases in the variety of lay participation occurred in connection with greater activity, if not greater control, by the judge. The findings suggest that the extent of lay participation was cued by the behavior of the judge. Judges who were more active in the conference would, perhaps, set an example for other participants.

e. Lay participation related to judge differences. We have already indicated that our measures of judicial style appeared to differentiate the three judges using the conference. We now examine the differences among the judges in the extent of lay participation. The test for differences, presented in Table 6-7, page 58, shows that the judges did have different degrees of lay involvement. Victim involvement did not vary significantly among the judges, although the numbers present are so small that the test for significance is difficult at best.

For defendants and police, even with small numbers, there were statistically significant differences among judges. Judge A, who was characterized by the highest degree of control or direction of the conference, had the least defendant and police participation. Judge C, who scored relatively high on control and in the middle of the three judges on negotiation role, had the highest participation. We have here some evidence that the differences in judicial style, which differentiated the judges, was associated with different degrees of lay participation. By indicating some of the ways in which the judges differ, we can now specify more precisely the nature of treatment conditions (i.e., variance in the use of the conference) and

the consequences for lay participation. We have found that the differences among the judges in their use of lay participation can be explained in part by differences in judicial style. Conferences where the judge exercised a negotiator role, using extensive input from others, included as a component more extensive lay participation.

When discussing the extensiveness of participation, we must consider the length of time of the conference and the total amount of discussion that took place. As indicated in Table 6-7, below, greater participation is positively correlated with greater lay participation. Further, the length of the conferences differed significantly. Judge A had the shortest conferences (9 minutes) on the average, while Judges B and C had longer ones (12 minutes). * As shown in the table, Judge A had the least lay participation; Judge C, the most. The relationship among these findings suggests that one of the costs of involving defendant, victim, and police is to use somewhat more time in the conferences. # Nevertheless, as evidence that the longer conferences were not associated with less organization or direction, Judge C, with the longest conferences, was rated by our observers as providing, on

TABLE 6-7

DIFFERENCES AMONG THREE TEST JUDGES IN EXTENT OF LAY PARTICIPATION - MEAN SCOPE OF PARTICIPATION SCORES a/

Judge	Defendant	Victim	Police
A	1.37(N=59)	3.13(N=22)	2.96(N=23)
B	2.34(N=56)	2.46(N=28)	3.96(N=26)
C	2.58(N=67)	2.92(N=13)	4.27(N=30)

Analysis of Variance

Judge differences in participation by:	F-ratio	sig.
Defendant	11.80	.000
Victim	1.27	.290
Police	5.97	.003

a/ 5-point scale with high score indicating greater participation

*Comparison among the three judges shows statistically significiant differences: F-ratio = 6.93, sig. = .000.

#Conferences where lay parties were present tended to last longer than those where they were absent (defendant present, r = .26; victim present, r = .29; police present, r = .25).

the average, the most structure to the conferences. * On the summary indices of style, Judge C was in an intermediate position on each index. However, Judge C was the most active in directing the discussion. As a result, the greater lay participation and length of the session in that courtroom appears to be associated with the position taken by the judge.

In summary, the variety of lay participation was closely associated with the extensiveness of the judge's participation and the extent to which the judge involved others in the conference process. It was not associated with the degree of control the judge exercised. The direction of the conference (its length, subjects covered, and degree of lay involvement) appeared to be a function of judicial style.

It is suggestive that, while the professional participants were perhaps less than enthusiastic about the quality of information that the lay parties provided, it was to some extent within the judge's control how much information was brought forth. Since the judge asked most of the questions and provided the greatest direction to the conferences, they pursued, with varying degrees of vigor, the information the lay parties might have. Judges structured the lay participation by the type and timing of the questions they asked. Typically, the judge spent relatively little time and effort gathering information about the criminal event and generally sought ratification of a recommendation from the lay participants after one had already been discussed with the attorneys.

The judicial control over the extent of lay participation becomes significant in understanding the importance that the professional paricipants attached to what information the defendant, victim or police might provide. As reported earlier, judges felt the information given in the conference sufficient to reach a disposition decision, but found the information given by the lay participants in particular somewhat disappointing. (See Chapter V.)

The disappointment may result from the circumstances of the situation and from the fact that substantial information was already available in the court file. In many cases the factual situation may not be in dispute, or the victim may have little personal knowledge about the offense (e.g., breaking and entering cases) so that one should not have expected much new information. Second, since the assumption of guilt was made for the purposes of the conference, the conference was structured to minimize those areas where the lay parties might have the most to say. Finally, the sentencing process seemed to require relatively little information. In many conferences the discussion appeared to be directed at determining into which informal sentencing category this case would fit. For example, some of the shorter conferences went like this:

> Judge: What is the charge?
> Prosecutor: This is a B & E.
> Judge: Any priors?
> Prosecutor: Yes, there are some.
> Judge: I'll give 2 and 2. #

*Judge C's score on that item was 3.19 out of 4; Judge A's, 3.04; and Judge B's, 3.01. The differences were not statistically significant.

#Two years incarceration and 2 years probation.

Unless there were extenuating and mitigating issues, which are those that the lay participants could most effectively address, the lay participation would be minimal. In the routine, uncontested case, then, the information needs are probably relatively low.

In summary, the evaluation of the value of lay participation must be considered in light of what are realistic expectations of its role. Further, the amount of information received is a function of the amount of information sought so that the low value placed on the information given by most defendants, victims, or police may reflect low information needs.

Providing determinative and new information is not the only use for lay presence. An alterntive view is that the lack of important information is itself comforting. The procedure gave the opportunity for crucial information that might affect sentencing to be introduced. The fact that it rarely came out is not as significant as the fact that it could have been brought up. Thus, the quality of the information is a different issue than the reality of the opportunity. Under other methods of plea negotiations the direct consultation is rarely available so the decision-maker is perhaps unaware of the missing information. The conference may, therefore, reassure the decision-maker that an important potential source of information has been consulted.

g. Lay participation and conference output. The preceding discussion has considered lay participation in the context of the conference process. We now turn to the relationship between lay participation and the two basic decisions for the conference: a) whether the case can be settled and, if so, b) what the sentence will be if there is to be an adjudication. In this discussion we are considering the agreement reached at the conference itself. We are not looking at whether the case finally settled or went to trial or the official disposition when the case closed. We are looking at the status of the case as it stood at the conclusion of the conference.

At the conclusion of each conference, the observer would indicate whether the conference concluded with a settlement (or a future date when the plea would be taken), a tentative settlement, plans for a trial, or no conclusion (continued). In addition, the observer recorded the agreed-upon sentence, if one could be determined. We scored the severity of the sentence proposed at the conference using the Diamond-Zeisel scale. (See Appendix B for discussion of scoring.) Excluded from the scoring were cases where the amount of time for probation or incarceration was not specified.

A preliminary question is whether attendance itself made a settlement more likely or affected the proposed sentence. The answer appears to be "no", as shown by the findings that attendance was unrelated to either the likelihood of settlement or the proposed sentence. Thus, the early concern that lay presence would be so disruptive as to make settlement discussions difficult or impossible was not a problem in these tests of the procedure.

A second question deals with the effects of lay participation within the conference (as distinguished from prsence) on the ability to dispose of cases.

One possible consequence of increased lay participation would be a greater ability to dispose of cases. For example, the opportunity to ques-

tion defendant, victim, or police might provide otherwise missing information, so that further delays might be reduced. Table 6-8, below, shows the relationship between the number of activities each lay group engaged in and the likelihood of a case failing to settle.

TABLE 6-8

RELATIONSHIP a/ BETWEEN LAY PARTICIPATION AND LIKELIHOOD OF TRIAL AND SENTENCE SEVERITY

Degree Participation b/	Likelihood of Trial c/	N	Sentence Severity d/	N
Defendant	-.20*	182	.00	114
Victim	-.08	63	-.03	41
Police	-.13	79	-.10	50

a/ tau_c, * = sig. at .01. b/ higher score = greater number of activities. c/ 4-point measure: 1 = settled, 2 = tentative, 3 = continued, 4 = trial. d/ higher score = more severe sentence, based on Diamond-Zeisel scale.

Increases in the extent of defendant participation was associated with a reduction in the likelihood of going to trial; i.e., the more active the defendant, the more likely the case was to settle. While the direction was the same, the relationship was not statistically significant for the police or victims. Although the correlation is in the expected direction, it should not be used to infer anything about the defendant's ability to produce the settlement, nor is it a prescription for bringing one about. It merely indicates that greater defendant participation is associated with a higher probability of settlement.

While the availability of information is one reason, the nature of the offense and the instructions to the defendant by the defense attorney are likely to play additional roles. We have already noted that some attorneys instructed their clients to be absent or to remain silent if the attorney feared the defendant might make a bad impression. The more active defendants may, then, be the most impressive or articulate and most able to help their case. The less active may have the least to say because their cases are more difficult to resolve and, hence, more likely to go to trial.

The degree of lay participation did not appear to affect the severity of the sentence discussed at the conference. Given the variety of factors involved in sentencing and the relatively low priority given to lay recommendations by the professional participants, it is not surprising that the two indices are unrelated. (See this chapter, Section C.3. for discussion of professionals' reactions to lay recommendations.) Nevertheless, it is an important test since some concern had been expressed initially that victims, for example, might try to gain some sort of revenge in arguing for a harsh sentence. Hence, it appears that the vigor with which the lay participants pursued their views had no effect on the sentence that was discussed.

D. Summary

While the conference for the test cohort averaged only ten minutes in length, there was statistically significant variations between the judges. The discussion in the conference clustered around four topics--facts of the case, prior record of the defendant, personal background facts about the defendant or victim, and recommendations. While all the judges were the most active party in their respective conferences, they differed markedly in the extent to which they directed the discussion in the conferences as well as in the formation of a disposition. Lay participation was limited, both in the extent of their contribution and in the extent to which they directed the flow of the discussion.

The lay presence did not appear to significantly affect either the likelihood of settlement or sentence severity. These findings are not surprising, since the main decision-making tasks of the conference lay with the professionals. The lay parties were limited participants, not key actors.

CHAPTER VII

IMPACT OF THE CONFERENCE: EFFECTS ON CASE PROCESSING

A. Introduction

The preceding chapters have discussed how the pretrial settlement conference functioned. At this point the task is to find what effects the procedure had on the way the courts process cases. In this chapter the assessment focuses on the allocation of certain costs and vlaues in the system--specifically, the use of time. The issue is whether the implementation of the conference procedure reallocated or changed the costs.

Three measures of processing costs are used. First, the method of disposition--whether one settles or tries a case--includes some time calculations since the methods vary in the amount of time required. Other values involved in the decision to go to trial involve somewhat more intangible issues like the right to be heard and information costs (to prepare for trial; to find out the information necessary for a decision).

The proportion of tried and settled cases will measure the impact of the conference procedure on the allocation of these costs. The second measure of processing costs involves, literally, time. The issue is whether the conference procedure affects the length of time a case is in the court system. The third measure looks at the extent of contact between the professionals--judges and attorneys--and lay parties. This area is included here as a processing cost because contacting people takes time.

For each processing cost, a brief description is presented of the measures used, followed by the findings. The findings include descriptive information about the sample as a whole and inferences about practices in the jurisdiction and then presents comparisons between the test groups (all cases assigned a conference date) and the pretreatment and control groups (where no conference was possible). The final step is to compare test cases based on whether or not the conference was actually held to determine some of the criteria used to convene the conference session.

B. Method of Disposition: Measures

The pretrial settlement conference might be expected to affect the equilibrium of the criminal justice system by changing the proportion of tried cases. A substantial increase or decrease in the number of trials would produce significant dislocations in the use of court resources. While there is no inherent reason why the settlement conference should affect the proportion of cases going to trial, it is possible that the systematic review of cases that the conferences provide would make some trials unnecessary. The hypothesis would be that the test group would have a lower proportion of trials than would the control groups. A counter hypothesis would be that the test group would have proportionately more trials due to the presence of the lay parties who might accentuate differences on contested issues. By making the divisions more pronounced, settlements without a

trial might become more difficult. The null hypothesis is that the conference procedure would not significantly affect the trial rate, perhaps because the conference does not significantly change the negotiation process or because the decision to go to trial is based on other considerations, such as available evidence, severity of the possible sentence, or workload.

The method of disposition is organized for analysis into three categories: tried, settled, and dropped. The variable incorporates all closed cases whether or not there is an adjudication of guilt. Cases are counted as dropped when all the charges are dropped or nolle prosequi. Settled cases includes all cases whethere is a plea of guilty to some or all charges. *

C. Methods of Disposition: Findings

1. Description of the jurisdiction. a. Trial rates among all cases. Circuit Court reports for 1977 indicate that approximately 11 percent of cases in the Criminal Division were disposed of by trial. 1/ The figure would be somewhat lower if all disposed cases were used as the base, as is done in some other studies. The overall trial rate for all adjudicated cases in the total sample of cases in our study was 12 percent. Table 7-1, page 65, shows the distributions for each courtroom and treatment condition. The trial rate for all closed cases was 9 percent. # Prior to our intervention, the trial rate was 15 percent of all adjudicated cases and 12 percent of all closed cases. Aside from providing further evidence of the comparability between the study sample and the total jurisdiction, the findings show that Dade County is similar to many other jurisdictions in which the proportion of cases going to trial is roughly 10 percent. (See Chapter I for discussion.) Trials are certainly not the modal method of dispcsing of criminal cases.

b. Plea negotiations, settled cases, guilty pleas. Plea negotiations are used in the majority of all criminal cases in jurisdictions across the country, whether in addition to or instead of a trial. ** In the study

*The settled category is the best available indicator of cases disposed of by plea negotiations. There are two countervailing problems with this category as an indicator of plea negotiations. First, some guilty pleas may be entered without any negotiations. The category to that extent overestimates the prevalence of plea negotiating. The second problem results in an underestimation of negotiations. We have put all dismissed and nolle pros cases into a single category which is mutually exclusive of settled cases. Many such dropped cases will be due to the action of the prosecutor independent of the other parties. However, some portion will be the result of the plea negotiation process. The lack of precision in the measure is unavoidable since data on whether a case was negotiated was not routinely collected by the court. At best, then, the measure of method of disposition is an approximation of the frequency of plea negotiations.

#Note that no estimates for the cases inthe test and control groups remaining open at the end of data collection are included in this analysis.

**As indicated in the preceding discussion of the measures, the data can only approximate the extent of discussions since no records are kept routinely on such activity.

TABLE 7-1

METHOD OF DISPOSITION - DISTRIBUTIONS ACROSS TREATMENT CONDITIONS

		Pretreatment		Test		Control	
		%		%		%	
Test Judges							
	Tried	24.3		8.3		9.2	
A	Settled	56.8		61.2		52.3	
	Dropped	18.9	N=37	30.6	N=121	38.5	N=65
	Tried	15.8		6.5		8.3	
B	Settled	68.4		74.1		69.4	
	Dropped	15.8	N=38	19.4	N=108	22.2	N=72
	Tried	12.5		7.7		6.8	
C	Settled	72.5		68.4		56.2	
	Dropped	15.0	N=40	23.9	N=117	37.0	N=73
Comparison Judges							
	Tried	2.6				11.4	
D	Settled	76.9				71.4	
	Dropped	20.5	N=39			17.1	N=70
	Tried	2.6				9.1	
E	Settled	76.9				71.2	
	Dropped	20.5	N=39			19.7	N=66
	Tried	15.4				12.5	
F	Settled	71.8				62.5	
	Dropped	12.8	N=39			25.0	N=72

sample the mean settlement rate (i.e., plea bargain) was 91 percent of all closed cases (including dropped cases as settled) or 87 percent of all adjudicated cases The figures are comparable to the 90 percent figure cited elsewhere in the literature. 2/

c. Dropped cases. Twenty-two percent of all cases in the study sample were dropped. The figures were from post-arraignment cases so that some screening would already have taken place. (See Chapter II for discussion of screening procedures in the jurisdiction.) However, the extent to which the drop rate is a function of prosecutorial screening or plea negotiations cannot be determined from these data. A comparison of the expected method of settlement at the conclusion of the conference and the actual method of settlement shows that the decision to drop was rarely made or contemplated at the conference. At the conference observers rated 3 percent of the cases as dropped. When the cases actually closed, 20 percent were dropped. The extent to which this discrepancy indicates subsequent negotiations or reviews internal to the prosecutor's office is unclear.

d. Differences among judges' courtrooms. Before looking for treatment effects, two possibly confounding explanations of the findings need to be explored: a) differences among courtrooms in the use of various methods of disposition and b) changes in the jurisdictions during the life of the evaluation occurring independently of the conference procedure. Table 7-2, page 66, presents the tests for differences among the groups of cases and courtrooms. Part A tests for differences among test and comparison judges for each treatment condition (pretreatment, test, control) looking for differences in practice among courtrooms.

The differences about whether to try, plead, or drop a case may be made individually by one party or collectively by more than one. The findings compare courtrooms since clearly other parties in the courtroom have as much as or more part to play in the decision as does the judge. We are not in a position to explain the process of the interactions involved in the decision and have used the judge as the focus because the judge was the common element in all the cases. 3/

Table 7.2, page 67, shows that the different judges' courtrooms did not differ significantly in the proportion of tried, settled, and dropped cases. None of the statistical tests reached the .05 level of significance, suggesting that differences among courtrooms did little to explain the decision in any of the treatment conditions.

e. Changes in the jurisdiction. The comparisons between cases processed before and during the period of implementation for each of the comparison judges are also reported in Table 7-2. The findings show no statistically significant changes in the method of disposition for any of the comparison judges. The similarity between the pretreatment and control groups indicates that no historical process had intervened in the criminal justice system--such as a State Attorney policy to prohibit plea negotiations--which affected everyone's method of disposition.

2. Treatment effects. a. Differences among treatment conditions. The preceding analysis has established that across courtrooms and across time there was little variation in the proportions of tried, settled, and dropped cases. We now turn to the question of whether the conference procedure

TABLE 7-2

TEST FOR DIFFERENCES: DISPOSITION STATUS

A. Differences Among Judges

	χ^2	sig.
1. Among three test judges in:		
a. pretreatment cases	2.59	.63
b. test cases	4.58	.33
c. control cases	5.66	.23
2. Among three comparison judges in:		
a. pretreatment cases	7.20	.13
b. control cases	2.02	.73

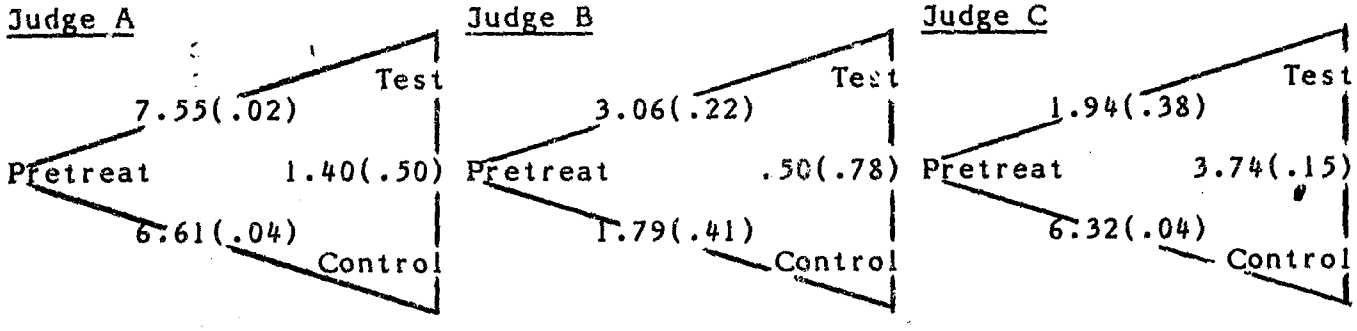
B. Changes in Jurisdiction over time: Differences

	χ^2	sig.
Among two treatment conditions for comparison judges:		
a. Judge D	2.64	.27
b. Judge E	1.68	.43
c. Judge F	2.30	.32

C. Treatment Effects: Differences

	χ^2	sig.
Among three treatment conditions for test judges:		
a. Judge A	10.39	.04
b. Judge B	3.54	.47
c. Judge C	7.83	.47

D. Location of Differences Among Treatment Conditions for Test Judges



affected those decisions. The tests for differences among the treatment conditions are presented in Table 7-2.C and 7-2.D, above. Each test is done for each judge since, even if no overall courtroom differences appear, the courtrooms may adapt to the procedure differently.

Differences appeared among the three treatment conditions only in Judge A's courtroom. Referring back to Table 7-1, page 65, Judge A's pretreatment cases had a substantially higher trial rate and lower drop rate than did the test or control groups. The paired comparisons in 7-2.D show the statistical tests for that observation. The pretreatment cases differed significantly from both the test or control conditions but the test and controls were themselves very similar. In terms of the research design, since the latter two groups were similar to each other, there were no overall treatment effects. The difference between the pretreatment cases on the one hand, and the test and control on the other, lies in the historical period during which the groups of cases were in the system. Therefore, one likely explanation of the findings lies in the changes over time. Judge A's courtroom appears to have changed over time: more cases were dropped and fewer cases went to trial in the later period. As noted earlier, there is no evidence of a general shift in the system in that direction, so the change for Judge A is more likely to explained by practices in that courtroom, such as an overloaded trial docket. *

Judge C's courtroom had differences between the pretreatment and control groups, shown in the paired comparisons in Table 7.2. The shift was in the same direction as Judge A's; the more recent group had fewer trials and more dropped cases. Since the test group for Judge C's courtroom was not significantly different from either of the other two groups, there is little support for attributing changes to the effects of the conference. Differences between groups were sufficiently small that they did not register in the overall test of differences among the three treatment conditions. This suggests that the one statistically-significant paired comparison may be only a statistical artifact which has occurred by chance. If one were to given an explanation based on the experimental design, one could conclude that for this judge's courtroom there was a significant change in practice over time, but that the test procedure tended to limit or hold back this historical movement toward fewer trials and more drops.

From these findings, there is minimal evidence of changes in the method of disposition that can be attributed primarily to the conference procedure.

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*Judge A had the highest trial rate of any of the six participating judges in the pretreatment period. In interviews with the judge, he indicated his awareness that he tried an unusually larger number of cases. One explanation of the findings is that either the judge or prosecutors or both reached some self-defined limit and modified their behavior to deal with what might have become an unmanageably large trial docket. A second explanation might lie in that judge's move to the civil division just prior to the conclusion of the data collection phase. After all the conferences were held, but prior to the closing of some cases, another judge took over the calendar. It is possible that the new judge, with different practices, held fewer trials. However, comparisons of the method of disposition between the two judges shows no statistically significant differences, thereby negating that explanation.

While variations occurred, it appears to be explicable by individual courtrooms' responses to environmental issues, such as workload or the pretrial screening process.

b. Method of disposition in conference and non-conference cases. Comparisons between conference, non-conference and control cases can shed some additional light on the way in which the conference procedure affected the decision about whether to drop, try, or settle cases. The comparisons of methods of disposition between cases where conferences were and were not held are presented in Table 7-3, page 70. The decision to hold the conference was not experimentally manipulated so that the distribution may well reflect some conscious decision about its anticipated utility. Confounding the interpretation is the willingness of the parties to participate in the experiment.

For each judge, the control cases (pretreatment and control) generally lie between the conference and non-conference groups. Splitting the test groups for each judge into conference and non-conference cases produces the two extremes. Such a pattern suggests that the decision to hold the conference was most likely based on estimations of whether the case would eventually be tried or would be dropped. Note that for each judge the conference cases were more likely to be disposed with a guilty plea and less likely to be dropped than non-conference cases. The rarity of trials makes those figures quite unstable. For Judges B and C, conference cases were less likely to be dropped than non-conference or control cases; for Judge A, trials were more likely in conference cases. The distribution among the judges' courtrooms in the use of the conference suggests that the cases that went to conference may have been generally the more clear cases of guilt. Where issues arose of guilt or, perhaps, the severity of the possible sentence, the cases were somewhat less likely to use the conference.

Table 7-4, page 71, shows the statistical tests for differences among these groups. The first series of tests, looking for differences among judges in their use of the conference, show that the method of disposition did not differ significantly either when conferences were held or in control cases. There were differences among the test judges in the method of disposition within the non-conference group. Thus, where a case was assigned a conference date but the conference never took place, the three courtrooms showed quite different patterns. * Judge C had proportionately more trials and fewer settlements in the non-conference cases than did either of the other judges. Judge B had a lower drop rate than the other two. The interjudge or courtroom differences in this one group of non-conference cases is only suggestive, at this point, of differential uses of the conference, since none of the other interjudge tests on this variable were significant.

Table 7-4.B and C shows the comparisons, first among the three conference conditions and then between the three pairs of conditions. Judge C's courtroom had significantly different proportions of trials, settlements, and drops among the three conference conditions. Judge A's courtroom had differences between conference and non-conference cases although it showed no overall differences. Judge B's courtroom did not differ in any of the conditions.

*Since the number of non-conference cases is relatively small (see Table 7-3, page 70), any explanation of differences must remain quite tentative.

TABLE 7-3

METHOD OF DISPOSITION: DISTRIBUTION ACROSS CONFERENCE CONDITIONS

		Conference %	Non-Conference %	All Controls %
Test Judges				
	Tried	10.8	2.7	14.6
A	Settled	65.1	51.4	54.4
	Dropped	24.1	45.9	31.1
		N=83	N=37	N=103
	Tried	4.1	11.8	10.9
B	Settled	79.7	61.8	69.1
	Dropped	16.2	40.9	29.2
		N=74	N=34	N=110
	Tried	3.3	27.3	8.8
C	Settled	78.3	31.8	61.9
	Dropped	18.5	40.9	29.2
		N=92	N=22	N=113
Comparison Judges				
	Tried			8.3
D	Settled			73.4
	Dropped			18.3
				N=109
	Tried			6.6
E	Settled			73.6
	Dropped			19.8
				N=106
	Tried			13.5
F	Settled			65.8
	Dropped			20.7
				N=111

TABLE 7-4

TEST FOR DIFFERENCES: DISPOSITION STATUS AMONG CONFERENCE CONDITIONS

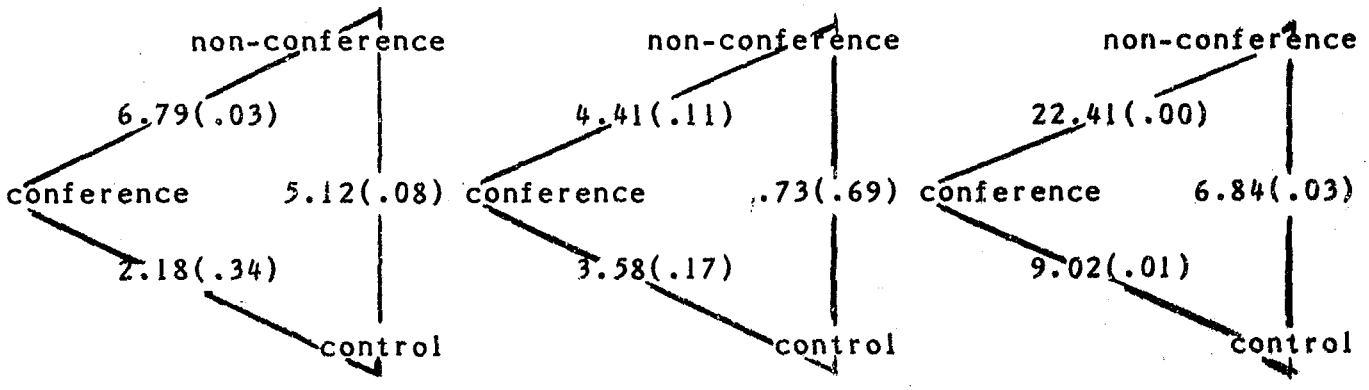
A. Differences Among Judges

Among three test judges in:	χ^2	sig.
a. conference cases	7.63	.11
b. non-conference cases	11.29	.02
c. control cases: test and comparison judges	16.24	.09

B. Differences Among Conference Conditions

Among three conference conditions for test judges:	χ^2	sig.
a. Judge A	8.61	.07
b. Judge B	5.31	.26
c. Judge C	22.93	.00

C. Location of Differences Among Conference Conditions for Test Judges



We have already noted the possibility that the decision to hold the conference probably was based to some extent on predictions about the appropriateness of a guilty plea. That interpretation was based on the location of the control cases between the conference and non-conference cases. Since the patterns differ among the judges, we will discuss them separately.

Judge A's courtroom was more likely to dismiss cases where no conference had been held than where there was a conference. However, such a difference does not allow the causal interpretation that holding the conference prevented dismissals, or more generally, that the treatment affected the proportions of trials, settlements, or dismissals. Since the decision to convene the conference was not experimentally manipulated, the different rate of dismissal may be the result of differences between the two groups of cases. (See Chapter III, Section B.1.d. for discussion of the function of this analysis in the interpretation of the findings.)

The discussion of the uses of the conference reported that the type of offense appeared to play some role in the decision. For example, the more serious offenses were less likely to have a conference.

Judge A's courtroom settled more and dropped fewer conference than non-conference cases. Such a pattern would suggest that the decision to hold the conference was based on whether the case looked like a clear guilty case. If the evidence in the case was weak, then the conference would not be convened. The difficulty with such an interpretation is that one would expect that cases likely to go to trial ought also to have proportionately more cancelled conferences, but such is not the case. Eleven percent of the conference cases went to trial, but only three percent of the non-conference cases had trials. Since a trial would seem to remove a case from the "easy to dispose" category, some other factor must play a part. One possibility would that a policy in Judge A's courtroom of imposing the same sentence, regardless of whether a trial were held, might have encouraged some attorneys to go to trial because there was nothing to lose. The judge reported in interviews that he did have such a policy.

The possibility that the judge's courtroom changed its practice over time by reducing trials and dismissing more cases was raised in the preceding discussion of treatment effects. The conference was likely to be cancelled when dismissal was a probable option. Almost half (47 percent) of the non-conference cases were finally dismissed. Since neither the test group as a whole nor the conference/non-conference dichotomy differed significantly from the controls, the conference procedure was not associated with an overall increase in dropped cases. The conference procedure may have facilitated the tighter review of cases for this judge, but it, at maximum, only reinforced a change in screening cases after arraignment. The discussion of possible treatment effects has also raised the possibility that the conference procedure might be counterbalancing a general shift in practice for this courtroom, thereby producing an independent effect. However, the comparison among conference conditions does not support such an explanation, since neither the conference nor the non-conference cases differ significantly from the controls. In summary, Judge A's courtroom appears to have reviewed cases in order to estimate the appropriateness of the conference. A similar review, or its functional equivalent, was probably being applied to control cases with the result that overall more cases were being screened

out without an adjudication and fewer trials were being held. There is a suggestion that this judge's explicit policy that he would not give a more severe sentence if a trial were invoked may have encouraged the use of trials after a conference was held, although the number of trials is so small in all cells that any substantive interpretation is at best tentative on this point.

Judge C's use of the conference shows a somewhat different pattern with respect to the method of disposition. There is a striking difference between the conference and non-conference cases, with the non-conference cases being much more likely to go to trial or be dropped and much less likely to settle. In this courtroom, there appears to have been a strong tendency to cancel conferences where a trial or dismissal was likely. The decision to hold the conference was an important point at which the strength of the case was reviewed. Where settlement was unlikely and/or inappropriate, the settlement conference was not attempted. The use of the conference did not change the proportion of trials or dismissals for this judge. Rather, the early review was being employed for all cases in this courtroom.

c. Summary. In the context of basic similarities among judges and stability across time in the proportions of trials, settlements and dismissals, the conference procedure appears to have had minimal impact on the way cases are disposed. There is fairly strong evidence that two of the three judges employed a screening process, reviewing the possibility of settlement, prior to convening the conference. However, the increases in dismissals and decreases in trials appear to be due primarily to a shift in these courtrooms' practices across the board and not to the treatment itself. The apparent changes over time are not due to changes in the entire court system. At most, two of the three test judges may have adopted some new practices which were consistent with the conference procedure of determining ahead of time the utility of settlement discussion.

D. Timing Issues: Measures

Another area where the conference procedure might be expected to affect the processing of cases is in the timing of the disposition. The conference reform does not contain anything inherent that would speed up or slow down the processing of cases. The null hypothesis of no effect may be the most persuasive. However, it is plausible that the meeting of all parties at an assigned time for the purpose of discussing possible dispositions may reduce the number of discussions and the length of time intervening. Therefore, joint consideration rather than the sequential bilateral discussions may speed up the process. Alternatively, the conference's joint discussions may constitute an additional meeting, resulting in further delay.

The timing issues were approached in two ways. First, the number of days from arraignment to closing was calculated. This measure called Time to closing, is an indicator of the time the case was in the criminal division and, therefore, the time the participating judges had jurisdiction over the case. A second measure looks at the issue of speed-up or delay in terms of when the case closed in relation to the original trial date which was set at arraignment. This variable, called timing status, has three categories of cases: those closing before, on, or after the original trial date.

E. Time from Arraignment to Disposition: Findings

1. Description of jurisdiction. a. Timing for all closed cases. Among all the cases in the sample that closed, the average length of time from arrest to closing was 138 days. * The focus of the study was on the period from arraignment to closing for which the average time was 84 days. 4/ Table 7-5, page 75, shows the average number of days for each of the test and comparison judges under each of the treatment conditions. The average score has the disadvantage of becoming skewed in the presence of extremely long or short cases. That characteristic is substantively interesting, because extremely long cases can be expected to impose additional processing costs and, hence, should be given more weight than short, "easy" cases in a study of court costs. The figures point to the fact that the implementation of the pretrial settlement conference took place in a system that processed its cases relatively swiftly. #

b. Differences among judges' courtrooms. The decisions about the timing of cases are made by various parties individually and jointly. Personal schedules, availability of witnesses, completion of motions, and strategic considerations all play a part in determining the rate at which a case moves through the court system. An additional issue is the practices of each courtroom. These practices would extend beyond issues involved in an individual case and include the ways in which each courtroom worked out such questions as the appropriateness of trials, judicial involvement in pretrial proceedings, and the discipline imposed by the judge on the attorneys. Table 7-6, page 76, presents the tests for differences among judges and treatment conditions. Part A shows the results of a two-way analysis of variance test for differences among test judges and between treatment conditions. **

The significant differences among courtrooms reflect differences in courtroom practices regarding the speed with which cases were disposed. Further, the statistically significant interaction score shows that each courtroom behaved differently in the alternative treatment conditions. The significant interaction effect confirms the view that the three test judges, who were not randomly selected, indeed represent different judging and courtroom practices. As a result, their use of the conference and its effects on timing choices must be treated seperately.

*This is not a measure of speedy trial rules, since it does not exclude periods when a case was off the calendar for any period of time for any of various reasons.

#To the extent that treatment affected the time variable, this summary mean score incorporates the treatment effects. The pretreatment mean for all judges was 111 days, which is still relatively fast.

**The time variable, calculated in days, is an interval scale. Hence, analysis of variance is appropriate. Analysis of variance in this instance has the advantage of parsimony over the chi square tests used with the method of disposition, which was a categorical variable. Here we can report with three scores the relative independent and interactive effects of courtroom and treatment condition differences, because the procedure can simultaneously look at effects of both variables rather than physically controlling for each possibility. This one test is not sufficient to pinpoint precisely the location of or direction of any differences; that problem requires additional tests presented in Parts C and D.

TABLE 7-5

DISTRIBUTION OF MEAN TIME TO DISPOSITION

	Pretreatment	Test	Control
Test Judges			
A	$\bar{X}$= 208.2 s= 238.0 N=37	$\bar{X}$= 82.7 s= 61.2 N=120	$\bar{X}$= 116.4 s= 77.9 N=66
B	$\bar{X}$= 86.2 s= 52.4 N=38	$\bar{X}$= 64.4 s= 45.5 N=108	$\bar{X}$= 80.9 s= 65.2 N=71
C	$\bar{X}$= 132.8 s= 123.0 N=40	$\bar{X}$= 60.8 s= 44.3 N=117	$\bar{X}$= 81.8 s= 63.1 N=73
Comparison Judges			
D	$\bar{X}$= 72.9 s= 81.2 N=39		$\bar{X}$= 70.3 s= 68.3 N=70
E	$\bar{X}$= 75.0 s= 47.0 N=39		$\bar{X}$= 60.7 s= 49.4 N=66
F	$\bar{X}$= 89.5 s= 70.7 N=39		$\bar{X}$= 74.3 s= 52.3 N=72

$\bar{X}$ = mean score. s = standard deviation.

The finding that Judges A, B, and C processed their cases at different rates is evidenced by the disparity in the length of time for each treatment condition. The difference between the fastest and slowest of the three judges is 122 days for pretreatment, 22 for test, and 30 for control cases. In each group, Judge A was the slowest. Since Judge A also had a substantially higher trial rate in the pretreatment cases and since trials are more time consuming, the much larger disparity in that group is probably understandable.

c. Changes in the jurisdiction. The time elapsed between arrest and disposition occurs in the context of formal rules regarding right to a

TABLE 7-6

TEST FOR DIFFERENCES: [a/] ARRAIGNMENT TO CLOSING IN DAYS

A. Interactions Between Treatment Conditions and Judges

Test judges, three treatment conditions

1. Main Effects	F-ratio
a. treatment effect	34.03***
b. judge effect	14.63***
2. Interactions	5.71***

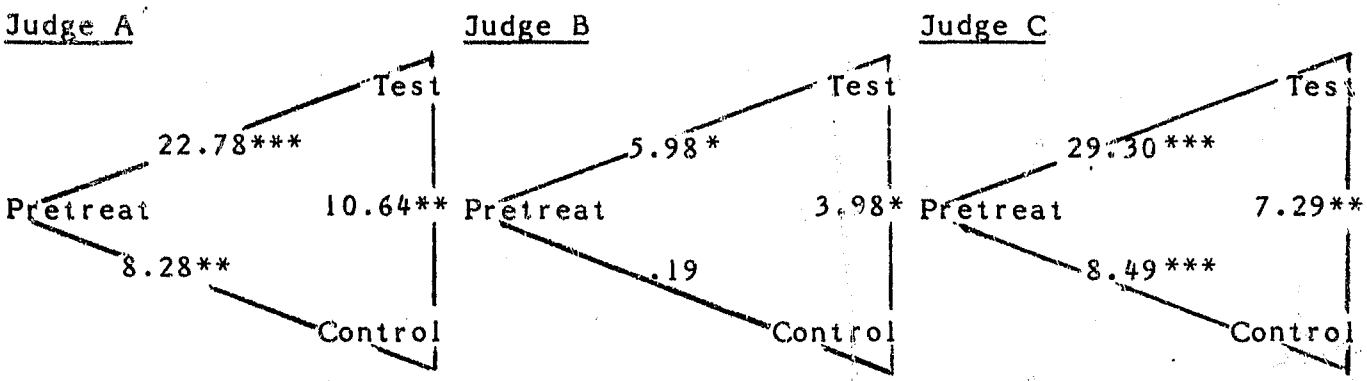
B. Changes in Jurisdiction over Time: Differences

Among two treatment conditions for comparison judges:	F-ratio
a. Judge D	.03
b. Judge E	2.13
c. Judge F	1.67

C. Treatment Effects: Differences

Among three treatment conditions for test judges:	F-ratio
a. Judge A	17.04***
b. Judge B	3.28*
c. Judge C	15.92***

D. Location of Differences Among Treatment Conditions for Test Judges



a/ Analysis of variance: * = sig. at .05; ** = sig. at .01; *** = sig. at .001.

CONTINUED

1 OF 3

to a speedy trial. Any changes in those rules or in their implementation might well confound possible treatment effects. Table 7-6.B, page 76, shows the tests for that type of explanation by comparing each comparison judge's cases closed prior to and during the implementation of the conference procedure. To the extent that the comparison judges did not participate in nor adopt any of the conference procedures, they can serve as some indication of what was happening in the system as a whole. The tests indicate that the slight speed-up in processing between pretreatment and control cases is not statistically significant for any of the comparison judges. There is no support, therefore, for an interpretation of historical shifts in the court environment as an explanation of changes in the test judges' practices.

2. Treatment effects: Time to disposition. a. Differences among treatment conditions. The differences among the treatment conditions, which are described by the variation in mean scores in Table 7-6, above, are documented in several tests. The significant main effect for treatment effect in Table 7-6.A is evidence that the groups differ. When the comparisons are made for each judge, the finding is the same (See Table 7-6.C). Finally, the location of the differences, demonstrated in Table 7-6.D, show that the test group for each judge was different from either the pretreatment or control groups, as would be expected if the conference had made a difference. The mean scores in Table 7-5 tell us what the direction of effect was. For all three judges, the test group closed faster than the respective pretreatment or control groups. The findings, which show up consistently, of a significant speed-up in the test group indicate that the conference procedure was responsible for shortening the period of time to disposition. The shortening occurred in the slow and fast courtrooms, indicating that the change in processing was not related exclusively to one style or another of processing cases.

One possible limitation on the argument that credits the conference procedure with speeding up the process is the significant difference between the two untreated groups (pretreatment and control) for Judges A and C. For both judges, the control cases were disposed faster than the pretreatment cases. This shift suggests that something was occurring over time that was changing the practices in these courtrooms for all cases, not just the test group. Given the fact that the test cases proceeded even faster than the control cases, it is most likely that the conference procedure by itself was the cause of the shift in the test cases. The findings suggest some application of the conference procedure to the control cases of Judges A and C as well.

b. Differences among conference conditions. As indicated in the introduction to this chapter, there is nothing inherent in the conference procedure that can explain the speed-up it produced. The comparison between the conference and non-conference cases gives some suggestion about how the process affected the timing.

The differences in the average time from arraignment to closing for conference and non-conference cases are quite small. Conference cases took an average of 69 days, while non-conference cases took 70 days. Table 7-7, page 78, shows these distributions.

Unlike the pattern for method of disposition, where the control cases

TABLE 7-7

TIME TO CLOSING IN DAYS: DISTRIBUTIONS FOR CONFERENCE STATUS

Test Judges	Conference	Non-Conference	Control
A	$\bar{X}$= 85.9 s= 62.2 N=83	$\bar{X}$= 75.5 s= 58.9 N=37	$\bar{X}$= 149.4 s= 160.7 N=103
B	$\bar{X}$= 63.6 s= 43.1 N=74	$\bar{X}$= 66.0 s= 50.9 N=34	$\bar{X}$= 82.8 s= 60.9 N=109
C	$\bar{X}$= 56.7 s= 41.4 N=92	$\bar{X}$= 69.7 s= 51.0 N=22	$\bar{X}$= 99.9 s= 91.8 N=113

$\bar{X}$ = mean score. s = standard deviation.

fell between the two other groups for the timing variable, here the control cases took longer than either group, with a mean across the three judges of 111 days.

Table 7-8, page 79, presents the findings on the tests for differences in timing among the three test judges in the use of the conference. The two-way analysis of variance tests in Part A show differences among the judges and among the conference conditions. These findings are elaborated in Part B, where the tests show differences among the conference conditions for all three test judges. The location of the differences, plotted in Table 7-8, shows that for none of the judges were there significant differences between the conference and non-conference cases. The differences, were instead, between the conference and control cases.

The similarity between the conference and non-conference groups suggests that a case did not need to go to the conference to reap its benefits. One explanation for change would seem to lie, then, with the setting of the conference itself. However, the prior practice in Dade County of more or less routinely holding sounding conferences prior to trial to assess the likelihood of settlement should have negated the conference effect if the conference was merely serving a scheduling function of getting people together at an appointed time. On the contrary, even with the sounding conference (which was part of the courtroom procedures for all cases), the settlement conference procedure shortened the time.

We have indicated in the discussion of the method of disposition the apparent introduction of a more careful screening process. The findings here on the timing suggest that while cases where settlement was unlikely

TABLE 7-8

TIME TO DISPOSITION: TESTS FOR DIFFERENCES AMONG CONFERENCE STATUS

A. Interactions Between Conference Conditions and Judges

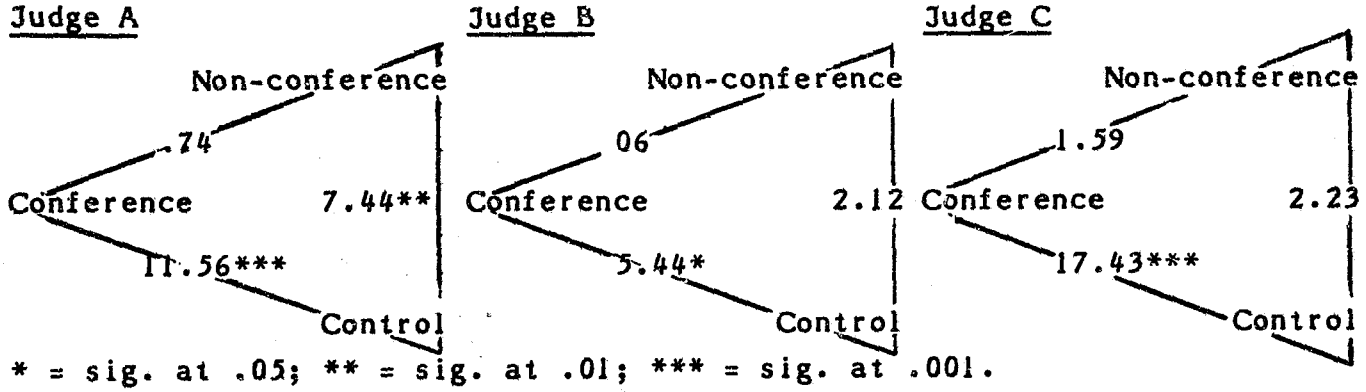
Test judges, three conference conditions:	F-ratio
1. Main Effects	
a. conference effect	19.97***
b. judge effect	15.15***
2. Interactions	2.38*

N=667

B. Differences Among Conference Conditions

Among three conference conditions for test judges:	F-ratio
a. Judge A	8.92***
b. Judge B	3.17*
c. Judge C	9.37***

C. Location of Differences Among Treatment Conditions for Test Judges



* = sig. at .05; ** = sig. at .01; *** = sig. at .001.

were screened out of the conference, at the same time the review to reach that decision forced a discipline on the disposition decision. The most likely explanation is that not just scheduling the parties to meet together, but scheduling the meeting with the stated purpose of discussing settlement alternatives, encouraged a speedier disposition process, whether the solution was trial, settlement, or dismissal. The discussion itself, or the scheduling of that discussion, appears to have forced an earlier preparation by the parties, reducing delay.

To the extent that attorneys are faced every day with a variety of deadlines, and that they respond by routinizing their behavior to respond

to these scheduling demands, the anticipated or actual meeting with the judge to discuss the settlement may encourage dispositions because that is the task at hand. Unlike the sounding conference, the settlement conference has the expressed intent of discussing alternative settlements.

One attorney suggested that the procedure encouraged the parties to study the file in order to be prepared for negotiation discussions. In discussions with court observers the point about preparation was amplified. They felt that the prior preparation facilitated communications among the parties at the conference. The conference, to the extent that more parties who must be consulted are present, made ratification of a possible settlement a likely result. It reduced the need for subsequent negotiations because all were prepared to reach a disposition.

3. Early closings: Findings. a. Description of the jurisdiction. The preceding section analyzed the amount of time elapsed between arraignment and closing. In this section the issue is the timing of the disposition relative to the court's prediction, determined by the trial date assigned at arraignment. The distributions across treatment conditions are presented in Table 7-9, page 81.

Prior to the introduction of the treatment procedure, the test judges averaged 5 percent of their cases closing before the original trial date (the one assigned at arraignment) and 80 percent closing after that date. The comparison judges also closed 5 percent of their cases early; while 62 percent closed late. In all of the groups, more than half of the cases closed late. The most likely time at which a case might close early would be at a sounding conference, a proceeding most of the judges regularly scheduled shortly before the trial date in order to assess readiness for trial or disposition. Across the pretreatment and control groups for all judges, only 6 percent closed early. This low figure indicates that the procedure used prior to the settlement conference implementation did not produce a great volume of early closings.

b. Courtroom differences in the timing of the closing. As with the other aspects of the processing of cases, the timing of the closing relative to the original trial date is likely to be affected by differing courtroom practices. Part A of Table 7-10, page 82, presents the various tests for courtroom differences. Among the test judges, courtrooms varied significantly in the use of the early, on time, and late, closings under all three treatment conditions. The comparison judges' courtrooms differed within the control group, although not in the pretreatment group. The significant differences indicate that the courtrooms did have their own practices. In general, the test judges tended to experience late closings somewhat more than the comparison judges.

c. Changes in the jurisdiction over time. The timing of the closing relative to the trial date assigned at arraignment is a function, to some extent, of the rules and procedures used in the jurisdiction. A policy change such as stricter enforcement of the speedy trial rule could well affect the implementation and/or the evaluation of the pretrial settlement conference procedure. Table 7-10, page 82, tests for changes over time in the jurisdiction by comparing pretreatment and control groups for each comparison judge's courtroom. The findings, which show no statistical difference between the two groups for any of the judges, indicate that no

TABLE 7-9

TIMING STATUS:[a/] DISTRIBUTIONS AMONG TREATMENT CONDITIONS

		Pretreatment		Test		Control	
		%		%		%	
Test Judges							
	Before	10.8		33.6		12.3	
A	On	10.8		8.8		11.0	
	After	78.4		57.7		76.7	
		100.0	N=37	100.0	N=137	100.0	N=73
	Before	2.8		17.9		4.9	
B	On	27.8		24.1		25.9	
	After	69.4		58.0		69.1	
			N=36		N=112		N=81
	Before	0.0		18.3		2.6	
C	On	7.5		19.8		19.2	
	After	92.5		61.9		78.2	
			N=40		N=126		N=78
Comparison Judges							
	Before	10.5				14.1	
D	On	31.6				31.0	
	After	57.9				54.9	
			N=38				N=71
	Before	0.0				14.1	
E	On	38.5				41.1	
	After	61.5				57.5	
			N=39				N=73
	Before	5.1				11.7	
F	On	28.2				22.1	
	After	66.7				66.2	
			N=39				N=77

a/ % of cases closing before, on, or after original trial date.

TABLE 7-10

TIMING STATUS: DIFFERENCES AMONG TREATMENT CONDITIONS a/

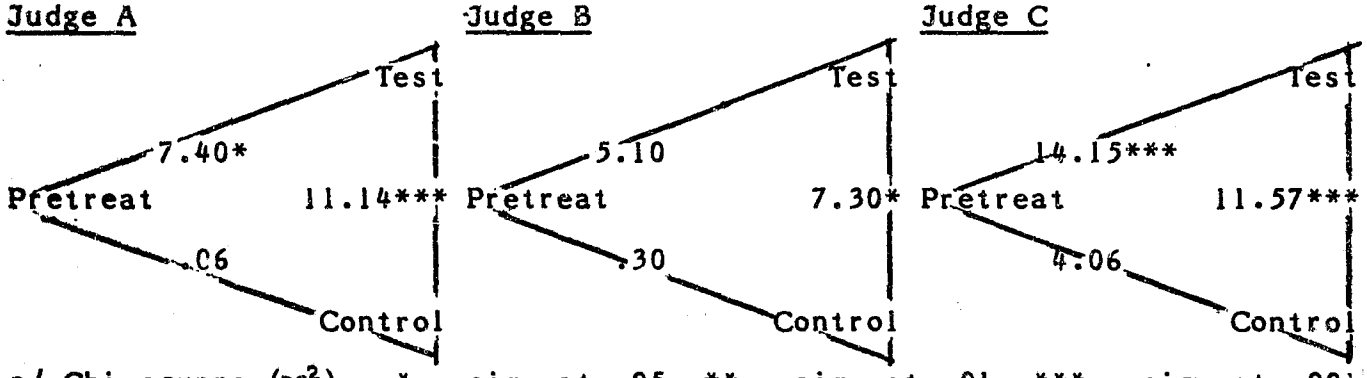
A. Differences Among Judges

	χ^2
1. Among three test judges in:	
a. pretreatment cases	12.52***
b. test cases	18.41***
c. control cases	11.05*
2. Among three comparison judges in:	
a. pretreatment cases	5.01
b. control cases	12.56**

B. Differences Among Treatment Conditions

	χ^2
1. Among two treatment conditions for comparison judges:	
a. Judge D	.29
b. Judge E	.65
c. Judge F	1.58
2. Among three treatment conditions for test judges:	
a. Judge A	15.95***
b. Judge B	11.07*
c. Judge C	23.80***

C. Location of Differences Among Treatment Conditions for Test Judges



a/ Chi square (χ^2). * = sig. at .05; ** = sig. at .01; *** = sig. at .001.

system-wide change occurred during the period of the evaluation that might explain the findings. The inspection of means shows the stability with approximately 40 percent closing on or before and 60 percent closing after the original trial date in both groups.

d. Differences among treatment conditions. The tests for differences among the treatment conditions, presented in Table 7-10.B, show statistically significant differences for all three test judges. In each test courtroom, the pretreatment and control groups were similar; but the test and control groups were very different. For Judges A and C, the pretreatment and test were also different. * The proportion of early closings increased substantially in the test group, while the proportion of late closings went down. It is interesting to note that the proportion of cases closing on the original trial date was quite similar across each judge's treatment conditions. In the three courtrooms, the two types of control groups were similar to each other, but differed from the test group. Further, the direction of effect was the same for all three courtrooms. The differences, then, tested on this variable approach the ideal pattern of measured treatment effects.

e. Comparison of conference and non-conference cases: Description of conference conditions. The way in which the conference procedure functioned to produce the changes in the timing of the disposition can be suggested from comparisons between conference and non-conference cases. The analytical problem is the same as that involving the length of time to disposition. Is the treatment effect due to the scheduling function of the conference or due to some process in the conference itself? Table 7-11, page 84, shows the comparisons between conference conditions. The most significant point of comparison is the early closing category where the 24 percent of the conference and 21 percent of the non-conference test cases closed early. These figures are quite different from the control groups, in which only 6 percent of the cases closed early. From another perspective, 43 percent of the conference cases, 33 percent of the non-conference cases, and only 23 percent of the control cases closed on or before the original trial date.

f. Tests for differences among conference conditions. i. Differences among judges' courtrooms. The tests for differences among the courtrooms in their timing of the disposition are shown in Table 7-12, page 85. The conference procedure functioned differently for the three courtrooms, as is shown by the significant courtroom differences in Table 7-12.A, page 85. It is particularly interesting to note that, among the non-conference test cases, Judge A closed 49 percent on time; Judge B, 29 percent; and Judge C, 23 percent. The difference between the judges is significant among the conference group, ranging from 39 percent closing by the original trial date for Judge A to 48 percent for Judge B, although the difference is not as great as among the non-conference cases.

ii. Tests for differences among conference conditions. Each courtroom differed significantly in the timing of the disposition among the conference, non-conference, and control groups. The findings are presented in

*The differences in Judge B's courtroom were not statistically significant, but the pattern was the same as for the other two judges.

TABLE 7-11

CONFERENCE STATUS: DISTRIBUTIONS ON TIMING STATUS a/

Test Judges		Held %		Not Held %		Control %	
A	Before	29.7		42.2		11.7	
	On	8.8		6.7		10.8	
	After	61.5	N=91	51.1	N=45	77.5	N=111
B	Before	24.7		2.9		4.3	
	On	23.4		25.7		26.5	
	After	51.9	N=77	71.4	N=35	69.2	N=117
C	Before	18.8		18.2		1.7	
	On	23.8		4.5		15.3	
	After	57.4	N=101	77.3	N=22	83.1	N=118

a/ % of cases which closed before, on, or after the original trial date.

Table 7-12.B and 7-12.C, page 85. For Judges A and C, the conference and non-conference groups were similar, although each was different from the control groups.

For these two courtrooms, the salient aspect of the conference procedure was apparently the setting of the date and purpose of the conference. As was suggested in the discussion of the length of time to disposition, the jurisdiction already used a sounding conference with the judge and two attorneys attending to assess readiness for disposition. What would distinguish the pretrial settlement conference from the sounding conference in terms of scheduling would be the expressed purpose: to discuss disposition alternatives. The pressure of the conference's purpose, in which discussions were to take place in front of the judge, may well serve to encourage the parties to conclude the disposition in its final form. Thus the review for the conference may facilitate speedy disposition of cases. The presence of the other parties may encourage a timely decision and discourage postponments.

Another aspect of the scheduling process for Judges A and C was the apparent tightening up of the screening process. As was noted in the discussion of the method of disposition, there was some evidence that those

TABLE 7-12

CONFERENCE STATUS: TESTS FOR DIFFERENCES [a/] ON TIMING ISSUES

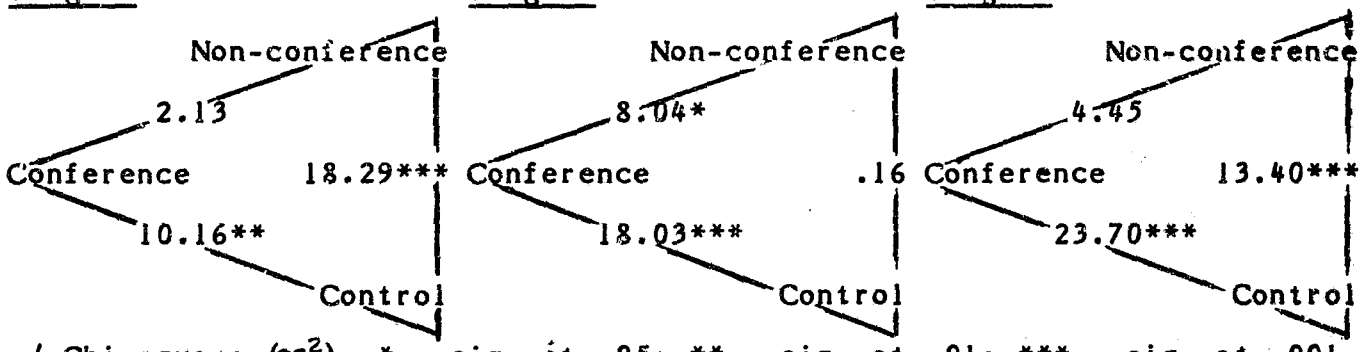
A. Differences Among Judges

Among three test judges in:	χ^2
a. conference cases	10.1*
b. non-conference cases	22.5***

B. Differences Among Conference Conditions

Among conference conditions for test judges	χ^2
a. Judge A	19.1***
b. Judge B	22.9***
c. Judge C	26.5***

C. Location of Differences Among Treatment Conditions for Test Judges



a/ Chi square (χ^2); * = sig. at .05; ** = sig. at .01; *** = sig. at .001.

courtrooms were dropping more cases, which points to a more careful scrutiny. Drops due to unavailability of witnesses would be associated with a lengthened, rather than shortened time to disposition, since witness problems tend to increase the longer a case takes. * Therefore, the increased drops are probably associated with changes in the courtroom's view of the case, rather than witness problems or other case-based reasons for dismissals.

Judge B's increase in the proportion of closings prior to and on the original trial date occurred only in the conference group. The non-confer-

*The court records did not routinely indicate the reason for dismissals, so we can only infer such an interpretation from the finding that somewhat more drops were occurring at the same time as a speed-up in closing.

ence group looks very similar to the control groups. Since this courtroom did less screening for the conference regarding the likelihood of cases settling, it is not surprising that the effects on timing occur only when the conference is actually convened. While we observed some instances of explicit screening of cases on basis of likely disposition, court file data did not suggest screening on these criteria.

Since the power of a potential settlement review was not the critical factor in this courtroom, the explanation of the treatment effects appears to lie in the interactive process of the conference. In the comparison of judicial style, Judge B was described as consulting with others, both lay and attorneys, more extensively than the other judges. Involved in the consultation process was the relatively intensive effort by all parties to obtain a mutually satisfactory disposition of cases. (See Chapter VI, section C.4 for fuller discussion of judicial style.) The use of the conference procedure in this courtroom, with the strong emphasis on reaching consensus, suggests that the negotiation efforts themselves aided the timely disposition of cases.

F. Lay Contacts with Court Personnel: Measures

A different perspective on the effects of the conference procedure is the amount of communication it generated between defendant, victim, and police officer, on the one hand; and attorneys and judges, on the other. The hypothesis was that the conference process would increase the amount of contact between the parties over and above what would normally take place, resulting in more personalized attention to the needs of the lay parties. Such an increase would have potential effects on the allocation of court resources: the time and personnel involved in any increase in the amount of contact with lay parties would need to be considered.

Two sources of information are available to analyze this topic. First, from our discussion with court personnel, we learned that the task of informing police and victim was handled almost exclusively by the secretarial staff of the assistant state attorneys. Defendants were informed when they appeared at arraignment of the conference date. Subsequent discussions would be between attorney and client, or, again, secretarial staff and client. Since the conference represented an additional procedure in the court system, time costs are associated with it. To the extent that the number of subsequent proceedings is reduced by more expeditious disposition procedures, the added time costs of organizing the conference may be offset.

The second source of information regarding communication between court and lay parties is responses from interviews with defendants, victims, and police after the case closed. (See Chapter III for discussion of interview procedures. Interviews were conducted among all test and control groups.) The items of concern here are the number of court personnel the respondents talked with and the number of issues the respondents raised with each of them. *

*Court personnel included: judge, assistant state attorney, defense counsel, police, and any member of a social service agency (e.g., Probation officer, or bailiff).

1. Analytical plan for interview data. The analysis consists of, first, aggregate comparisons of defendants', victims', and police officers' reports of these contacts. Second, tests are made between three treatment conditions (test and control group for the test judges, and controls for the comparison judges). The tests allow estimates of the impact of the procedure on the court's processing. The third set of tests compares three groups: those in the test group who reported that a) they did and, b) did not attend a conference, and c) all control defendants, victims, and police (for both test and comparison judges). As with the comparisons between conference and non-conference cases, this set of tests cannot indicate the extent of change due to the conference since attendance was a matter of choice, not experimental manipulation. It does inform those comparisons, however, by indicating differences associated with attendance at the conference. We cannot make any causal statements since attenders may differ systematically from non-attenders. Confounding any comparison between attenders and non-attenders is the fact that some conferences were cancelled and/or some respondents said they were not notified, an issue discussed in Chapter VI. Therefore, some non-attenders might have attended had they had the opportunity. (See Chapter IXfor discussion of related issues, distinguishing between systemic and individual-level effects.)

G. Lay Contacts Wi*h Court Personnel: Findings

1. Differences among lay parties in number of people contacted. The average number of people in the court system with whom any member of those groups talked was 1.3 people. Table 7-13.I.A, page 88, shows the mean scores for each group. The score is the same for defendants, victims, and police. One might have expected somewhat greater contact with members of the court system, at least for the defendant. However, the procedures for communication by a defendant are usually fairly carefully delimited; so perhaps there is a relatively low ceiling, with only a few parties likely to be contacted.

2. Differences among treatment conditions. The comparisons among the three treatment conditions, presented in Table 7-13.I.B, above, show substantial similarity between the treatment groups for defendants, victims, and police. For each respondent group (i.e., defendant, victim, and police). the test group reported somewhat more people contacted although the pattern is not statistically significant. The overall similarity among the treatment conditions indicates that the conference procedure did not result in any significant greater number of parties in the court system getting involved in talking with the respondent groups.

3. Differences among the attendance conditions. The comparisons between attenders and non-attenders, in Table 7-13.II, show significant differences among the attendance conditions for all three respondent groups. The mean scores, shown for each attendance condition, are significantly higher for the attenders than for either group of non-attenders. This pattern indicates, as would be expected, that by going to the pretrial settlement conference, one meets additional parties to the proceeding. Members of the test group who did not attend a conference were substantially similar on this measure to the control groups. Because the exposure to members of additional offices of the court appears to occur primarily at the meeting itself rather than through phone calls or other meetings, the staffing costs

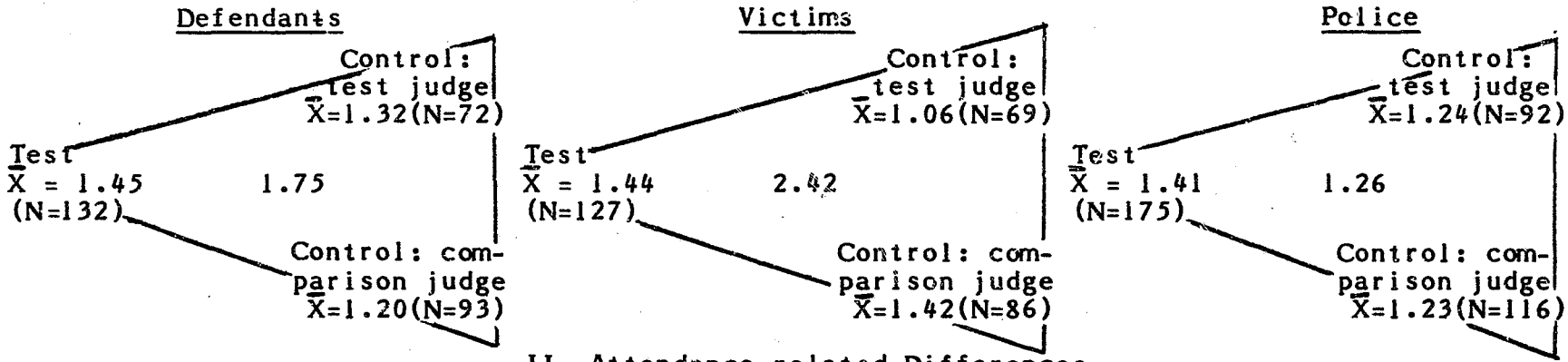
TABLE 7-13

LOCATION OF DIFFERENCES: [a] NUMBER OF PEOPLE CONTACTED [b]

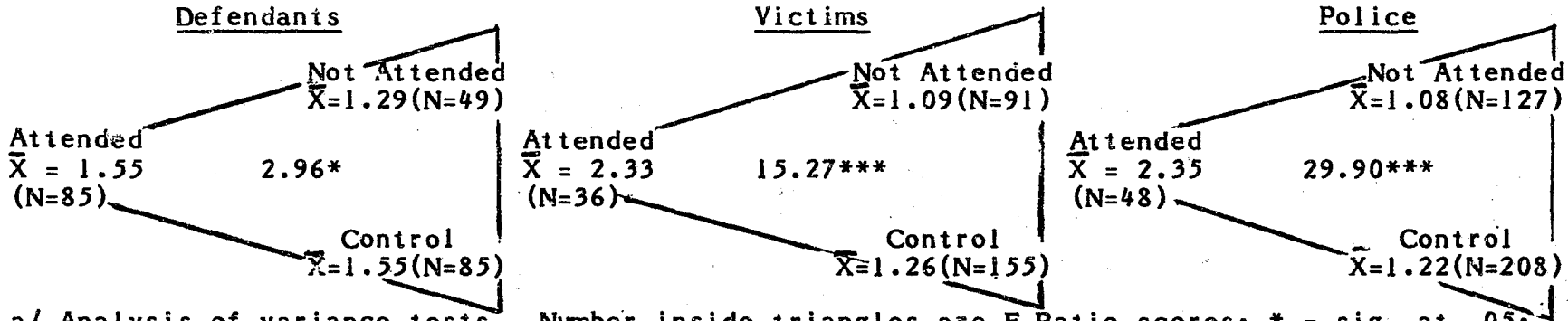
I.A. Average Number of People Contacted

Defendants	Victims	Police
$\bar{X}$ = 1.3	$\bar{X}$ = 1.3	$\bar{X}$ = 1.3

I.B. Differences Among Treatment Conditions



II. Attendance-related Differences



a/ Analysis of variance tests. Number inside triangles are F-Ratio scores: * = sig. at .05; *** = sig. at .001. b/ Range = 0 to 5.

of the conference could be considered minimal, if the judge and attorneys would be present in any event.

The failure to find significant difference among treatment conditions in regard to the attendance-related differences may be due to several things. First, the number of attenders in any of the groups is relatively small. Sixty-four percent of the defendants in the test group said they attended conferences, 28 percent of the victims and 27 percent of the police said they attended. To have the conference make a significant difference, if attendance is the thresholdfor effect, would require an extremely large impact to counteract the effects of large proportions of non-attenders. A second point to note in the interpretation of attendance-related differences is the possible self-selected nature of the attender group. If one disregards the stated reasons for not attending the conference and concludes that attenders tend generallly to be more socially conscious, responsible citizens who go because of some sense of civic duty, then the findings suggest a quite different interpretation. Attenders, being more active generally, would be the individuals who would seek out more contacts with court personnel regarding the progress of their case. According to this interpretation, the greater number of people contacted by attenders would only be a function of this greater activism or attendance syndrome.

One problem with an attendance syndrome interpretation for this particular finding is that the number of people one could be expected to contact in most criminal cases is finite. Of the court officials who were included (judge, assistant state attorney, defense counsel, police, and social agency), one would be most likely to talk with the appropriate counsel or or police. Rarely would one be likely to initiate a call to a judge about a pending case. A defendant or victim would also probably not initiate contact with the opposing counsel. Police might see both counsel but, again, not the judge. Most questions that would arise would be handled by the appropriate counsel. Therefore, even the most civic-minded participant is generally limited in the number of different offices which can be consulted because of the constraints on the socially and legally appropriate officials who can be contacted, the increase in the number of contacts is most likely due to face-to-face meetings at the conference, rather than by lay-initiated efforts to keep informed of the progress of the case.

4. Number of issues discussed. a. Differences among respondent groups. Unlike the number of contacts, the number of issues discussed is not as circumscribed by court procedure and personal preference. Potentially, one could discuss almost any number of topics with one or more people. The respondents were asked about eight likely subjects, ranging from scheduling and transportation problems to issues of court procedure and the facts of the case. These findings are presented in Table 7-14, page 91. The defendants discussed, on the average, 2.2 subjects; victims, 1.6; and police, 1.4 subjects. The comparatively large number of issues for the defendants is not surprising, given that the defendant's presence and, perhaps, informed

*Respondents were not asked to indicate whether they talked with these people at a conference or outside, but the difference between attenders and non-attenders on its face suggests that the additional contacts were made at the conference itself.

participation in the preparation of the case is important at more points in the case processing than is the participation of victim and police. The police's greater familiarity with court procedures, on the other hand, probably reduces the necessity of talking about some issues.

b. Differences among treatment conditions. The test and two control groups did not report significantly different numbers of issues discussed. While the victim and police test groups had, as expected, a slightly higher number of issues, the defendants in the test group were slightly lower than the control groups. The findings show that the consultation process of the conference procedure did not produce any overall changes in the variety of information that defendants, victims, or police received from or gave to the court system.

c. Differences among attendance conditions. Even though the conference procedure did not produce an increase in the number of issues discussed in the entire test group, comparison between attenders and non-attenders may be instructive. The findings are shown in Table 7-14.II, page 9½, Defendants who attended were not significantly different from their non-attender counterparts. Two possible explanations can be offered. First, it is possible that no attendance syndrome accounts for defendants' presence; and, hence, the more and less inquisitive are distributed proportionately in both groups. Second, the topics that were asked about may be more or less required information in the prosecution of a criminal case, so that the issues were raised in one forum or another.

The victims and police who attended the conference reported more than twice as many issues as the non-attender group. Since the conference often covered many of the issues mentioned, it is not surprising that attenders would mention discussing them if they had not been covered before. Further, the victims and police occupy different positions in the prosecution procedure from the defendants. Whereas the defendant's view may, of necessity, be consult d at various points in the process, the victim and police more often play a peripheral role, requiring little exchange of information. At the conference, or in prepartion for attending, the victim and police may discuss issues that otherwise are not considered unless part of a police arrest or investigation report. While certainly there was room for respondents to forget having discussed some issues, the forgetting function is probably evenly distributed among the treatment groups. * In any event, the victim and police attenders, as would be expected, reported discussing more topics with court personnel than did non-attenders.

d. Summary of findings on lay contacts. The patterns on the number of people and the number of issues the defendants, victims, and police discussed were similar. There were no measurable increases on either parameter sufficient to suggest that the court system was investing substantially more resources in communications with lay parties, beyond what was occurring in carrying out the professionals' other functions. The lay participants who attended the conference meeting reported more contact and more issues

*It is possible that the conference discussion reinforced topics in earlier conversations that would otherwise be forgotten. If this process indeed ocurred, the reinforcement process is perhaps still important; because it produced what might be considered the desired effect: perceptions of having talked with court personnel about the pending case.

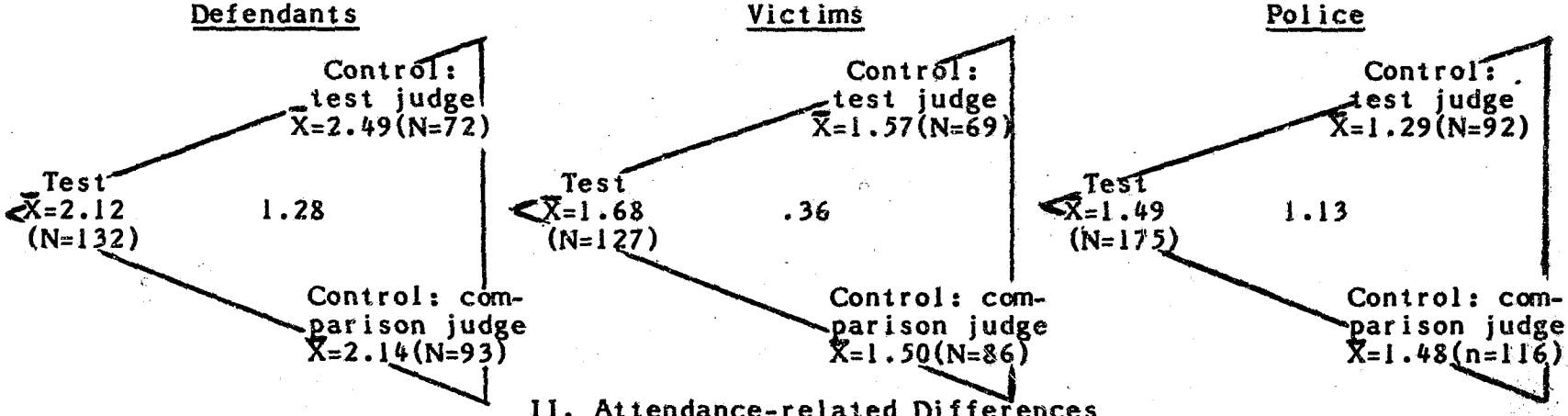
TABLE 7-14

LOCATION OF DIFFERENCES:[a/] NUMBER OF ISSUES[b/]

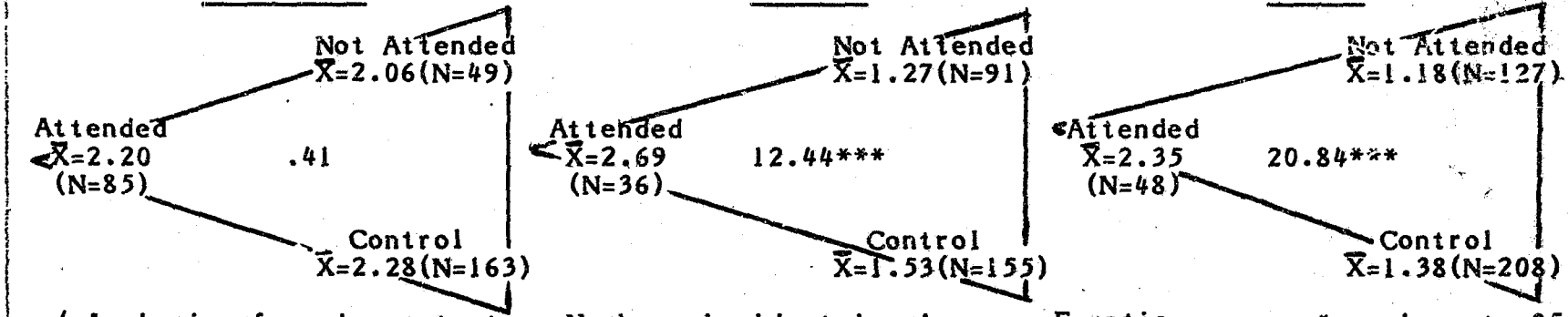
I.A. Average Number of Issues

Defendants	Victims	Police
$\bar{X}$ = 2.22	$\bar{X}$ = 1.60	$\bar{X}$ = 1.44

I.B. Differences Among Treatment Conditions



II. Attendance-related Differences



a/ Analysis of variance tests. Numbers inside triangles are F-ratio scores: * = sig. at .05; *** = sig. at .001. b/ Range equals 0 to 8 for defendants and victims; 0 to 4 for police.

discussed. The system costs of producing those increases were relatively low, to the extent that the conference meeting did not depend on the lay attendance. (See Chapter X for further discussion of costs and benefits of the conference process.)

H. Summary

The pretrial settlement procedure presents a mixed pattern of impacts on the allocation of processing costs in the courts. The procedure did not substantially change the method of disposing of cases: it did not produce significantly more trials or settlements. As a result, there is nothing to show that the procedure substantially altered the time or information costs involved in the court system's use of trials, pleas, or dismissals.

On the issue of the time that cases were in the system, the conference procedure clearly produced a savings in that the cases assigned a conference date were closed significantly more quickly than those not assigned a date. This savings occured both with judges who had histories of slow and those with fast calendars. The shortened time in the system occurred in conjunction with an apparent review of the likely method of settlement. For two of the courtrooms (which appeared most likely to convene conferences when a settlement was likely) the time savings occurred whether the conference session was actually held or not. For the third courtroom, where the review did not occur prior to the session, the time savings occurred only for cases where the session was actually convened. Since the system already included proceedings that reviewed the timing or scheduling of cases for trial. the conference contribution may be associated with the negotiations process itself, or at least the anticipation of that negotiation, in front of the judge.

The time costs of involving lay participants included the cost of informing the appropriate parties of the scheduled conference; the findings indicated that benefits of those contacts were reaped only by those lay parties who actually attended the session. There may be a ceiling on the number of court officials whom the lay parties contact voluntarily. Increased information dissemination may thus occur only if the lay parties share the burden of contact costs by attending the conference rather than by relying on what the court system provides through written or telephone contact.

CHAPTER VIII

IMPACT OF THE CONFERENCE: EFFECTS ON CASE DISPOSITION

A. Introduction

This chapter focuses on changes in the disposition of criminal cases that can be attributed to the pretrial settlement conference procedure. It will examine the questions of determination of guilt and sentencing. The pretrial settlement conference process as an arena for reaching a disposition does not contain any inherent notions about what are appropriate or desirable dispositions. The process does not have any built-in methods of implementing a particular sentencing philosophy. While the procedure by which the disposition is reached is different due to the presence of the judge and the invitation to the defendant, victim, and police to attend, the result of the deliberation at the pretrial settlement conference has not been specified. The same range of disposition alternatives is still available. Further, the professionals who are making or contributing to the decisions remain the same, even though the decision-making process is restructured. To the extent that the role occupants are the same, the same mix of sentencing philosophies, views of the criminal justice system, legal values, and personal backgrounds are likely to be involved. To the extent that sentencing predispositions are involved, no changes due to the conference would be expected.

Changes in the decision-making structure may have some effect on the decisions made. 1/ For example, the victims may come in seeking (or be thought by the judge and/or the prosecutor to want) vengeance. The victim's recommendation constitutes an additional viewpoint that must be taken into account in the disposition decision. By the victim's inclusion the decision-making process has been altered. The problem here is to determine whether the inclusion modifies the output itself. The defendant's presence hypothetically may reduce the sentence severity or, perhaps, put into question a seemingly open-and-shut guilty verdict by the injection of the defendant's perspective. Finally, the judge's presence may strengthen his own position in reaching an independent decision since he or she would have more control over the available information. * These examples indicate ways in which a procedural change potentially may affect the types of decisions made.

B. Measures

The two decisions that have been evaluated are the adjudication and sentencing decisions. The adjudication status includes three categories: not guilty, dropped, and guilty. This measure includes all closed cases, whether or not there is an adjudication. By incorporating dismissals the measure accounts for all cases in the sample, excluding only the 8 percent which had not closed at the conclusion of the data collection period. The inclusion of dismissals in the method of disposition variable has been discussed in the preceeding chapters (See Chapter VII especially.)

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*However, the judicial presence per se may not be expected to affect the kinds of sentences given in the aggregate, since no direction of affect is implied by the variance in the amount of information available.

The study looks at sentencing in terms of the type and severity of sentence. Two types of sentences were of particular interest. One hypothesis was that the victim might be particularly concerned with receiving restitution for losses suffered as a result of the offense. Alternatively, one might expect less use of restitution at the conference if the inability of the defendant to provide it became obvious through information brought out at the conference that would not generally be available in a traditionally negotiated case. To look at the consequences of the conference procedure on the imposition of restitution, a dichotomous variable was created, measuring whether or not restitution was part of the criminal sanction imposed. Comparisons are reported on the use of restitution among the treatment conditions (pretreatment, test, and control) and the conference conditions (conference and non-conference test cases and control cases). It should be noted that this measure looks only at whether restitution was imposed as part of the sentence, not whether restitution was finally paid.

The second type of sentence that will be reported is the imposition of incarceration. The variable is dichotomous, measuring whether or not the convicted defendant was sentenced to jail or prison. The variable is of interest because the loss of freedom is the strongest negative sanction that is widely imposed in American criminal law and, as such, represents one criterion of community norms of deviant behavior. From such a perspective, one hypothesis about the conference procedure is that the greater involvement of victim and judge, who in different ways represent community values, may result in the more frequent use of incarceration. On the other hand, the presence of the defendant may serve to individualize the case for the decision-makers, resulting in less use of incarceration.

As indicated earlier, the procedure does not contain a sentencing philosophy, so that the null hypothesis (of no change in sentencing practice) would not indicate that the conference was ineffective. The finding of no difference in these measures would suggest that the procedural change (the use of the conference) did not produce a change in the decisional output.

The final measure to be reported is the severity of the sentence, or criminal sanction. A modification of the Diamond-Zeisel sentence severity score is reported. 2/ (See Appendix B for discussion of scale construction.)

C. Adjudication Status

1. Description of jurisdiction. The acquittal rate, prior to the implementation of the conference procedure, averaged 6 percent of all disposed cases. The conviction rate was 76 percent. On the average, 17 percent of the pretreatment cases were dropped. The distributions are presented in Table 8-1, page 95. As noted above, the proportion of cases that were closed without an adjudication showed some variability. The chances of being convicted, if one's case survived arraignment, were approximately three out of four. These figures are roughly comparable with those reported by Eisenstein and Jacob for Chicago, Detroit, and Baltimore. 3/ Dade County figures for 1977 show an acquittal rate of 4 percent. The sample of cases selected for study, therefore, conformed in broad outlines with those in the jurisdiction as a whole and with those reported for other large urban court systems.

2. Differences among courtrooms. The determination of guilt is in large measure a function of circumstances of a particular offense situation

TABLE 8-1

ADJUDICATION STATUS: DISTRIBUTIONS WITHIN TREATMENT CONDITIONS

		Pretreatment %		Test %		Control %	
Test Judges							
	Not Guilty	8.1		5.0		4.6	
A	Drop	18.9		30.6		38.5	
	Guilty	73.0	N=37	64.5	N=121	56.9	N=65
	Not Guilty	13.2		6.5		2.8	
B	Drop	15.8		19.4		22.2	
	Guilty	71.1	N=38	74.1	N=108	75.0	N=72
	Not Guilty	5.0		3.4		5.5	
C	Drop	15.0		23.9		37.0	
	Guilty	80.0	N=40	72.6	N=117	57.5	N=73
Comparison Judges							
	Not Guilty	0.0				4.3	
D	Drop	20.5				17.1	
	Guilty	79.5	N=39			78.6	N=70
	Not Guilty	2.6				6.1	
E	Drop	20.5				19.7	
	Guilty	76.9	N=39			74.2	N=66
	Not Guilty	5.1				5.6	
F	Drop	12.8				25.0	
	Guilty	82.1	N=39			69.4	N=72

and the strength of the case built by the prosecution and defense. To that extent, the differences among courtrooms should be minimal when considering randomly selected cases for each. However, if judicial practice or the interactions of particular groups of attorneys and judges can affect the adjudication decision, then one would expect differences among courtrooms. Table 8-2.A., page 97, presents the tests for differences among the judges' courtrooms. The findings indicate that variation among courtrooms under each treatment condition and among all sampled cases were insignificant. It appears, then, that the pattern of adjudication decisions did not depend on the courtroom to which one's case was assigned.

3. Changes in the jurisdiction. The comparison judges acquitted and found guilty approximately the same proportion of defendants as did the test judges. Since the comparison judges were not involved in the implementation of the conference proceure, a comparison of their guilty and acquittal rates between pretreatment and control groups serves as an indicator of changes in the practices in the criminal justice system. The tests for differences for each judge are presented in Table 8-2.B. They indicate that no significant differences occurred during the course of the study to suggest that system-wide changes could account for any changes in the test judges' courtrooms.

4. Treatment effects. The conference procedure as a forum for discussions of possible settlements was not intended as a substitute for a trial with a formal review of the evidence and testimony from witnesses, leading to an adjudication. The defendant's guilt was explicitly assumed. The assumption was necessary for the conduct of the conference in order to encourage a full discussion of the issues surrounding the possible sentence. The conference was not intended to provide a review of the question of guilt. The tests for whether the conference altered the proportions of acquittals are presented in Table 8-2.B. The findings show no differences for any of the test judges among the pretreatment, test, and control groups (the three treatment conditions). The review of cases that used the conference procedure does not indicate any substantial change in the proportions of acquittals or findings of guilt.

The presumption of guilt for the purposes of the conference made it unlikely that more than a quick indication of the nature of the offense and, perhaps, a summary of quality of the evidence, would be attempted. The brevity of the conference, averaging ten minutes, indicates that the conference did not, in fact, involve a detailed discussion of the evidence. Further, if, as we suspect, the decision to hold the conference became a screening device (See Chapter VII's discussion of fluctuations in the drop and trial rates among conference and non-conference cases), it probably precluded a subsequent serious review of guilt at the conference itself.

It is interesting to note that the opportunity to review the cases jointly by all parties in a more systematic fashion did not produce more acquittals. The presence of the lay parties might possibly have introduced information, whether sought or not, that would put into question the adjudi-

*The findings should not be considered an indication that the courtrooms, faced with the same case would reach the same decision. Instead, the findings show similar proportions for groups of cases across the courtrooms.

TABLE 8-2

TEST FOR DIFFERENCES:[a/] ADJUDICATION STATUS[b/]

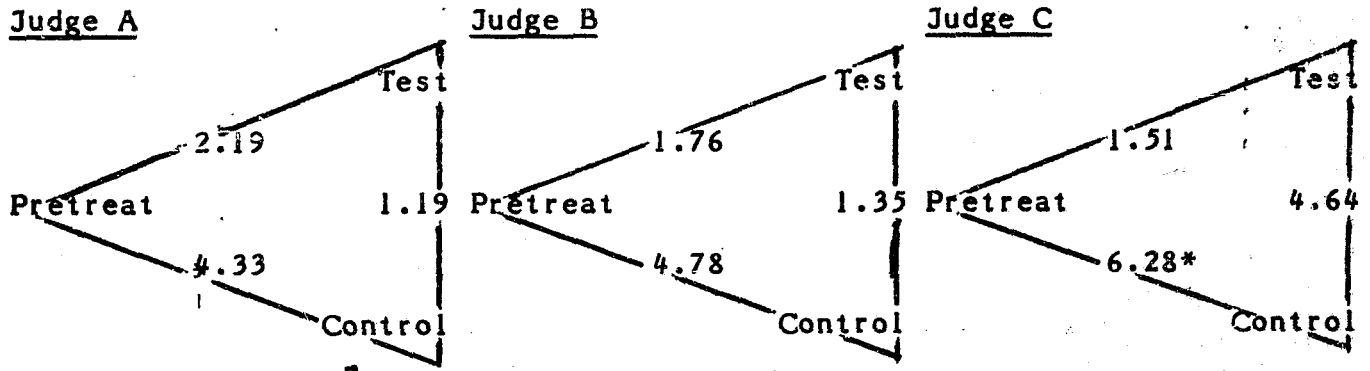
A. Differences Among Judges

	χ^2
Among three test judges in:	
a. pretreatment cases	1.94
b. test cases	4.88
c. control cases	6.51
Among three comparison judges in:	
a. pretreatment cases	2.92
b. control cases	1.72
Overall test for judge differences	15.13

B. Differences Among Treatment Conditions

	χ^2
Among two treatment conditions for comparison judges:	
a. Judge D	1.83
b. Judge E	.66
c. Judge F	2.36
Among three treatment conditions for test judges:	
a. Judge A	4.52
b. Judge B	4.76
c. Judge C	8.11

C. Location of Differences Among Treatment Conditions for Test Judges



a/ Chi square = (χ^2); * = sig. at .05. b/ Not guilty = 1; drop = 2; guilty = 3.

cation decision. The domination of the conference proceeding by the judge, as described in Chapter VI, perhaps makes the interjection of those issues more difficult. The format of the conference, with the judge asking the questions and lay participants answering primarily rather narrowly drawn questions, was not a time when a defendant or victim could be expected to volunteer information. No dramatic confessions or challenges occurred to question the presumption of guilt made at the outset.

The tests for differences among the paired comparisons between the three treatment conditions for each test judge, shown in Table 8-2.C., show that the test group did not have a significantly different pattern of adjudication than the pretreatment or control groups. The only pair that was significantly different was the pretreatment and control for Judge C's courtroom. In that comparison, the acquittal rate was unchanged, but the control group had a higher drop rate and lower guilty rate. The pattern does not point to any major change brought about by the conference procedure.

5. Conference status. The change in the decision process did not significantly alter the decision output as measured by the adjudication status, as discussed above. At issue now is the question of whether the likelihood of an acquittal played any part in the decision to go to a pretrial settlement conference. Table 8-3, page 99, presents the distributions among conference and non-conference test cases and control cases. The figures show patterns similar to those suggested in the discussion of the method of disposition in the preceding chapter. The proportion of cases that were dropped shows considerable variation across the conference, non-conference, and control groups. For each of the categories the controls lay between the conference and non-conference groups. The tests for these differences, presented in Table 8-4, page 100, show no evidence of courtroom differences on this measure. However, there were some significant differences among the conference conditions suggesting that the decision to convene the conference may have been affected by the likely adjudication. For Judges A and C the cases that did not go to conference were much more likely to be dropped and less likely to be found guilty. Further, for Judge C, the probabilities of being acquitted were much better if no conference were held. The prediction of guilt, as with the method of disposition, appears to serve as a criterion for determining if a conference should be held. Such a screening decision, whether formal or not, can occur as the parties are reviewing the files in preparation for the conference date. The review suggests a procedural question about whether to use the conference, rather than a calculation about the effect of the conference on the final adjudication.

The preceding analysis indicates that the conference procedure did not affect the determination of guilt itself. The change in the decision process did not, as might have been expected, affect the decision output as measured by the adjudication status. The assumptions of the conference, the preliminary review incorporated in the decision to convene the conference, and the professional domination of the conference appear to have counter-balanced any possible effects of the structural change.

D. Sentencing Practices

Various hypotheses have been raised about the possible effects of the pretrial settlement conference on sentencing decisions. The judicial control in the conferences was most obvious in the determination of the sentence.

TABLE 8-3

CONFERENCE STATUS: DIFFERENCES IN ADJUDICATION STATUS

		Conference %		Non-Conference %		Control %	
Test Judges							
	Not Guilty	6.0		2.7		5.8	
A	Drop	24.1		45.9		31.1	
	Guilty	69.9	N=83	51.4	N=37	63.1	N=103
	Not Guilty	4.1		11.8		6.4	
B	Drop	16.2		26.5		20.0	
	Guilty	79.7	N=74	61.8	N=34	73.6	N=110
	Not Guilty	1.1		13.6		5.3	
C	Drop	18.5		40.9		29.2	
	Guilty	80.4	N=92	45.5	N=22	65.5	N=113
Comparison Judges							
	Not Guilty					2.8	
D	Drop					18.3	
	Guilty					78.9	N=109
	Not Guilty					4.7	
E	Drop					19.8	
	Guilty					75.5	N=106
	Not Guilty					5.4	
F	Drop					20.7	
	Guilty					73.9	N=111

TABLE 8-4

TEST FOR DIFFERENCES:[a/] HELD STATUS - ADJUDICATION STATUS[b/]

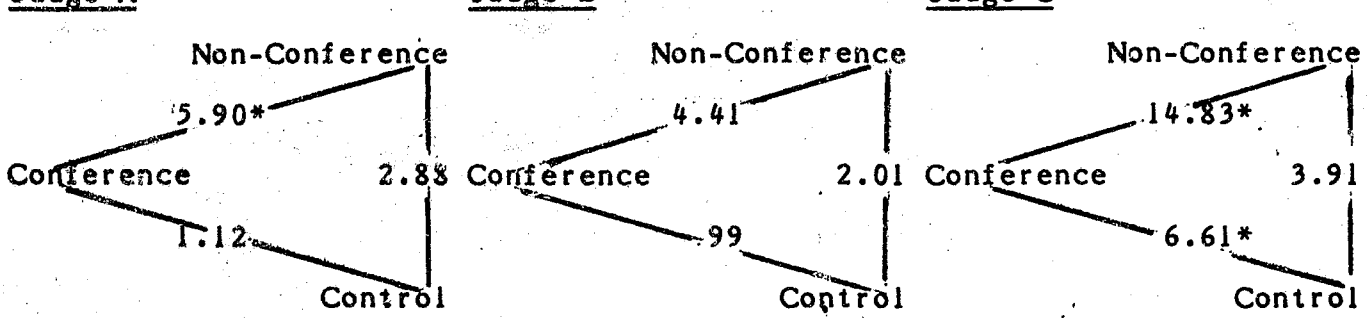
A. Differences Among Judges

Among three test judges in:	χ^2
a. held conferences	5.10
b. not held conferences	5.14
c. control cases test and comparison	11.42

B. Differences Among Conference Status

Among three conference conditions for test judges:	χ^2
a. Judge A	5.93
b. Judge B	4.28
c. Judge C	14.76

C. Location of Differences Among Conference Conditions for Test Judges



a/ Tests = chi square; * = sig. at .05. b/ not guilty = 1; drop = 2; guilty = 3.

(See Chapter VI, section C, for a description of judicial participation in the conference.) While the differences existed in the extent to which other's recommendations were sought and/or incorporated into the final recommendation, in most cases it was the judge who structured the sentencing discussion and the sentence output. Given the strong judicial role in the sentencing decisions at the conference, one would probably expect no changes in sentencing since that is the judge's responsibility in any case.

1. Description of the jurisdiction. a. Differences among judges. The average length of sentence for all defendants adjudicated guilty was equivalent to approximately two years in prison. * Forty-six percent of the guilty defendants were sentenced with some jail time; 34 percent of those sentenced were given more than one year of incarceration. The proportions of defendants sentenced to incarceration and the mean Diamond-Zeisel score representing

*The mean score on the Diamond-Zeisel scale was 6.7.

TABLE 8-5

SENTENCE SEVERITY[a/]

		Pretreatment	Test	Control
Test Judges				
	% Incarcerated	44.4	55.8	47.4
A	Sev. Score	$\bar{X}$=6.94 N=27	$\bar{X}$=6.23 N=77	$\bar{X}$=5.84 N=38
	% Incarcerated	22.2	28.8	31.5
B	Sev. Score	$\bar{X}$=2.24 N=27	$\bar{X}$=3.14 N=80	$\bar{X}$=3.66 N=54
	% Incarcerated	65.6	38.8	51.2
C	Sev. Score	$\bar{X}$=15.20 N=32	$\bar{X}$=7.00 N=84	$\bar{X}$=6.52 N=42
Comparison Judges				
	% Incarcerated	51.6		47.3
D	Sev. Score	$\bar{X}$=10.66 N=31		$\bar{X}$=7.17 N=55
	% Incarcerated	58.1		65.3
E	Sev. Score	$\bar{X}$=5.08 N=30		$\bar{X}$=6.87 N=49
	% Incarcerated	46.9		57.1
F	Sev. Score	$\bar{X}$=12.05 N=32		$\bar{X}$=8.04 N=50

a/ Based on Diamond-Zeisel scale; higher score = more severe sentence.

the sentence severity for each judge and treatment condition are presented in Table 8-5, above.

In order to put the sentencing output in a context, the findings for the sample may be compared with Florida incarceration rates. In 1976, 32 percent of those convicted of a felony were incarcerated. 4/ A recent study in New York City reported that in 1977, "52 percent of all felony convictions in the city resulted in a sentence to a state prison . . . In the suburban counties of Nassau, Suffolk, Westchester and Rockland, 29 percent of felony convictions resulted in state prison terms." 5/ The figures for New York City are

somewhat higher than the ones in the Dade County Sample (34 percent) showing that proportionately fewer defendants in Dade County were sent to prison than in New York City. The Dade County sample is drawn from a county including city and suburbs, while New York City and its suburbs are separated in their calculations. Based on Eisenstein and Jacob's work, the Dade sample rate of incarceration (jail and state prison) of 46 percent lies between Baltimore and Chicago, with 63 percent and 60 percent respectively, on the one hand; and Detroit, with 35 percent, on the other. 6/ The practices in Dade County, as represented by the cases in the sample, lie within the range of practices in similar large metropolitan areas.

Although the sentencing practices may be comparable with other jurisdictions, an inspection of the figures for each participating judge shows considerable variation. During the pretreatment period, the percentage of defendants given incarceration ranged from 22 percent to 66 percent, depending on the judge, although the relatively small numbers of cases in each cell make inferences tentative. The sentence severity scores show similar variation. Table 8-6, page 102, provides the statistical tests for differences for the sentences severity scores.

The analysis of variance tests for differences among the test judges (see Table 8-6.A.) show that the sentencing practices in the three courtrooms varied significantly. Clearly, the sentence given was affected by the courtroom to which one was assigned. Differences among courtrooms do not necessarily indicate that random or arbitrary factors are the primary basis for determining sentences. The differences in sentence severity may be explained by varying degrees of importance being placed on the same types of information (e.g., characteristics of the offense, existence of a prior record, method of disposition, etc.). 7/

The mean sentence severity scores for the pretreatment condition in particular, show that the test judges' courtrooms differed in their sentencing practices. * Based on sentence severity and incarceration rate, in one courtroom the chance of being incarcerated was almost two in three, while in another they were roughly only one in five. These differences indicate that the pretrial settlement conference was implemented under three quite different conditions. Comparatively, the conference procedure was used by relatively lenient, as well as relatively "tough," sentencing courtrooms.

The significant interaction effect between courtrooms and treatment conditions (see Table 8-6.A) indicates that the courtrooms differed under some, but not all, treatment conditions. Subsequent sections will discuss the impact of conference procedure on courtroom sentencing practices. However, it is appropriate to point out here that the courtroom differences were most pronounced prior to the introduction of the conference procedure into the court system.

b. Changes in the court system in sentencing. The analysis of the comparison judges' courtrooms provides a test of the hypothesis that changes in sentencing patterns can be explained by some shift in the court system itself. A media campaign or judicial training sessions, for example, might

*Among the comparison judges' courtrooms, the differences were insignificant (see Table 8-6.C) in explaining the sentencing decision.

TABLE 8-6

TEST FOR DIFFERENCES: SENTENCE SEVERITY

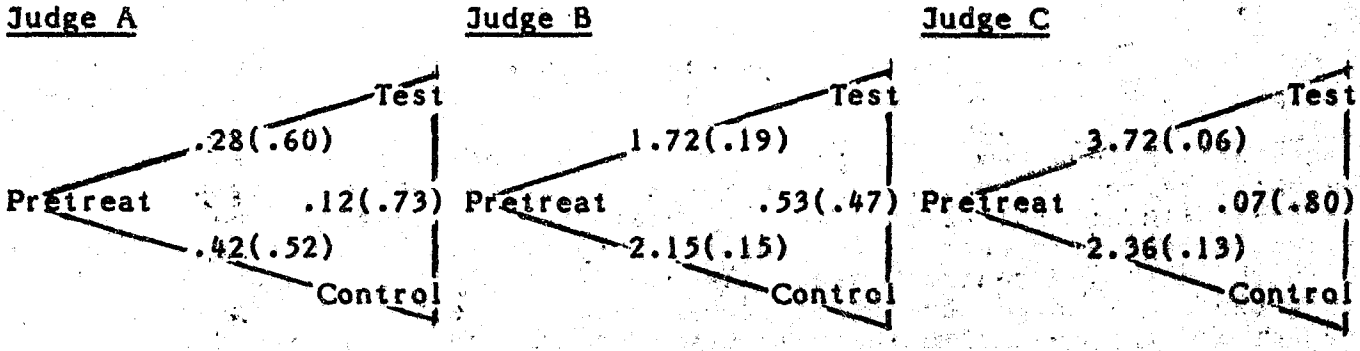
A. Interactions Between Treatment Conditions and Judges

Test judges, three treatment conditions	F-ratio	sig.
a. Judge effect	8.62	.00
b. treatment effect	2.39	.09
c. Interactions	2.39	.05
Comparison judges, two treatment conditions:		
a. treatment effect	.84	.36

B. Differences Among Treatment Conditions

Among two treatment conditions for comparison judges:	F-ratio	sig.
a. Judge D	.96	.33
b. Judge E	1.53	.22
c. Judge F	2.70	.07
Among three treatment conditions for test judges:		
a. Judge A	.27	.77
b. Judge B	1.29	.28
c. Judge C	2.74	.07

C. Location of Differences Among Treatment Conditions for Test Judges



result in a system-wide or across-the-board change in the incarceration rate or sentencing severity. The test for whether the sentencing practices showed the effects of such a policy are presented in Table 8-6.A and .B, above. No statistically significant differences existed between the pretreatment and control groups for the comparison judges. The similarity across time suggests that no system-wide change in sentencing practices needs to be taken into account in an interpretation of the findings. 8/

2. Treatment effects. The pattern of findings indicates that the conference procedure had little measurable effect on sentencing. The conclusion is based on the similarities among treatment conditions, whether one uses a two-way analysis of variance with courtroom and treatment conditions as independent variables (Table 8-6.A) or the comparisons among treatment conditions for each courtroom separately (Table 8-6.B and C). The conference procedure does not appear to have affected sentence severity in either the more or less severe courtrooms. *

The discussions in the settlement conference of sentencing alternatives provide some insight into the basis for these findings. The general impression wasthat the outlines of what a case was worth in any particular courtroom were already known to the participants. The range of sentencing alternatives discussed for any particular case was relatively narrow. Further, conferences took, on the average, ten minutes. The lay participants' recommendations did not fall far outside the range discussed by the judge and attorneys. The lay parties were not, as some had expected, adding a qualitatively, or even quantitatively, different dimension to the sentencing decision. None made such strong demands of revenge, for example, that the prior calculus of what an appropriate sentence would be was upset.

The sentencing discussions at the conferences were, therefore, usually quickly concluded, and almost always dominated by the professionals. The introduction of new roles into the decision structure appears to have had relatively little impact on the sentence output. The routine presence of the judge in an active, if not dominant, position in the decision-making process was one of the new elements of the conference procedure. However, legally, it is the judge's responsibility to determine the sentence. Without going into an extended discussion of the dynamics of the sentencing process, it is reasonably clear that expanding the number in the group discussing the sentencing alternatives didnot significantly modify the decision itself. Without the conference, the regulars (judge and attorneys) would be involved in a more or less active way in sentencing discussions, although most frequently the conversations were dyadic--i.e., between the two attorneys or between an attorney and the judge. The conference made the discussions triadic.

Based on the observations of the conference, it is clear that the lay participants were not decision-makers in the same ways that the professionals

*It should be noted, however, that in two of the three courtrooms differences among the treatment conditions suggest that treatment effects may be an alternative, although not definitive, explanation. For Judge A, the use of restitution increased from 15 percent in the pretreatment cases to 35 percent in the test and control cases. The shift may indicate a change in the Judge's behavior independent of the conference procedure. Or, the shift may point to treatment effects that were then applied to all the Judge's cases. When asked about the findings the Judge said that the conferences had heightened his interest in the availability of restitution. He perceived that he had increased his use of restitution in all cases, supporting a spillover explanation.

Although the pattern does not quite reach statistical significance, Judge C's sentence severity score was 15.2 in the pretreatment group but 7.0 in the test and 6.5 in the control group. Like Judge A's use of restitution, the findings could suggest either a general change over time or a spillover effect. When asked to comment on possible changes in sentencing practices, Judge C was unable to provide any explanation.

were. The victim and/or the police would be asked what he or she thought should be done by way of a disposition but were rarely in a position to direct the discussion. Because the lay participants were included in order to provide their perspective to the judge and attorneys, the conference modified the structure of the representation of lay interests to the extent that the preferences of the police, victim, and defendant could be heard directly, rather than be represented or interpreted through counsel.

To some extent, overlaps exist in these "interests". For example, the police, victim, and state may share similar goals of incapacitating the defendant, or the defense counsel speaks for the absent defendant. However, in a drug case, the police may ask for leniency in order to encourage a defendant to cooperate with subsequent investigations, while the prosecutor wants a stiff sentence to carry out office policies of punishing drug offenders severely; or a victim may seek only restitution, while the police want incarceration to serve as a deterrent. To the extent that prior consultation had not occurred or the parties took different positions, the conference provided an arena for the presentation of these views. The result was an expansion of the information available and of the number of parties present to make their own positions known. Both changes were in the direction of greater complexity. One might expect that the greater complexity would require more compromises and make the decisions harder to reach. The findings on the sentence output indicate that any balancing of interests that may have taken place did not change the allocation of penalties significantly (as measured by a change in incarceration rates or sentence severity).

TABLE 8-7

STATED SEVERITY: DISTRIBUTIONS AMONG CONFERENCE CONDITIONS

Test Judges	Conference		Non-Conference		Control	
A	% Incarcerated	58.6	47.4		46.4	
	Severity Score	$\bar{X}$=5.55	$\bar{X}$=8.29		$\bar{X}$=6.30	
		N=58		N=19		N=65
B	% Incarcerated	20.3	52.4		28.4	
	Severity Score	$\bar{X}$=2.92	$\bar{X}$=3.76		$\bar{X}$=3.19	
		N=59		N=21		N=81
C	% Incarcerated	36.5	60.0		57.5	
	Severity Score	$\bar{X}$=7.21	$\bar{X}$=5.95		$\bar{X}$=10.28	
		N=74		N=10		N=74

3. Conference status and sentencing. The analysis of the adjudication and disposition status showed that cases where guilty pleas were likely--for example, no questions about guilt or strength of the case--were most often

given pretrial settlement conferences. A conference was less likely where a dismissal was contemplated. The analytical problem in this section is the relationship between the decision to hold the conference and the sentence output.

The distributions of the sentence severity scores for each test judge and the conference condition are presented in Table 8-7, page 105. In general, the conference groups had less severe sentences (i.e., lower severity scores) than did the non-conference cases. 9/

The conference sentences appear to correspond with those given in the control groups. The statistical tests for differences among conference conditions in the sentence severity scores are presented in Table 8-8. The findings show differences among the test judges in the sentencing decisions which are independent of the use of the conference (see Table 8-8.A). Differences among the courtrooms' sentencing practices have already been noted in the preceding section so that the courtroom differences in conference conditions are probably a function of general sentencing practices. The tests for differences in Table 8-8.B and .C, indicate that, generally, the sentencing was not related to the use of the conference. The trend for conference groups to be given less severe sentences was not statistically significant, so the reduction is more likely to be due to chance. For Judge A, the less severe average sentence in the conference group did reach statistical significance when compared with the non-conference group. It should be recalled that Judge A's courtroom did not appear to screen out potential trial cases and, therefore, perhaps those likely to receive more severe sentences. As a result, the comparatively low sentence severity for the conference group cannot be explained by differences in the method of disposition. One explanation lies in the availability of the defendant's perspective, which might produce some pressure for leniency. The absence of statistical significance in all other tests, however, requires caution in the substantive interpretation of this finding; since by chance some small proportion of findings will be significant.

4. Effect of conferences on incarceration rate. Defendants in conference cases were incarcerated less frequently than those in non-conference or control cases in two of three test courtrooms. The trend of less severe sanctions among conference cases suggested in the sentence severity score also exist in the incarceration rates. While the pattern is not sufficiently strong to put a great deal of weight on it, the direction of differences is consistent: in courtrooms B and C (but not in A), the incarceration rate at the conference was comparatively low. However, in courtroom B, the likelihood of being sentenced to incarceration was significantly less in the conference than non-conference cases. (See Table 8-9, page 108.) Based on the findings reported in previous sections, courtroom B did not appear to screen out cases based on likelihood of settlement or adjudication status, so that the sentencing differential would seem to be due to some aspect of the conference session itself. Another explanation of this finding is that some form of screening did occur in courtroom B with the incarceration decision being the criteria. Cases where incarceration was the likely disposition were perhaps excluded from the conference. On the other hand, if conference cases only had what were expected to be relatively low sentences, then they as a group should differ from the control group which would contain the entire range of expected sentences. The similarity between conference and control groups, however, puts into question the interpretation of a sentencing screening process. (See Table 8-7, page 105.) To summarize, while courtroom

TABLE 8-8

TEST FOR DIFFERENCES AMONG CONFERENCE CONDITIONS: STATED SEVERITY

A. Differences Between Conference Conditions and Judges

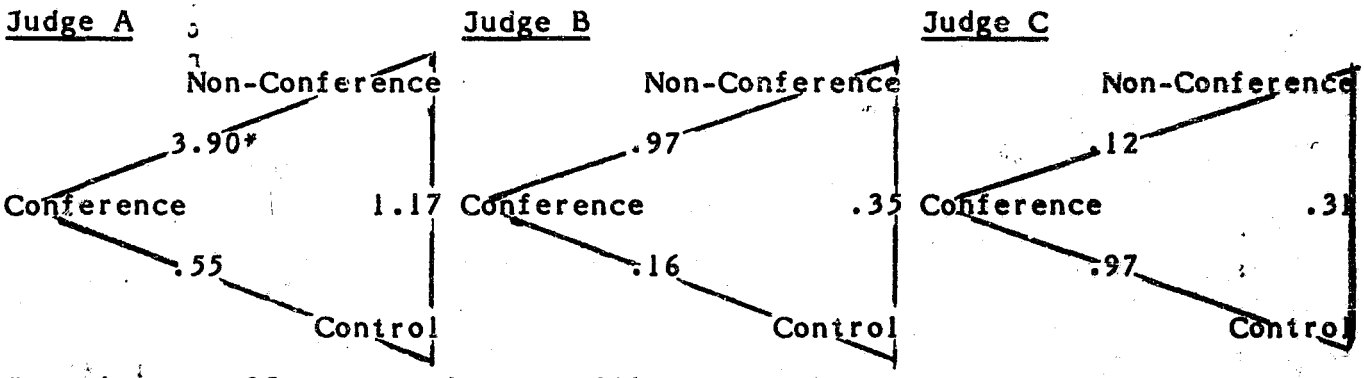
Test judges, three conference conditions:	F-ratio
1. Main Effects	
conference effect	.83
judge effect	9.24***
2. Interactions	.61

N=461

B. Differences in Conference Status

Among three conference conditions for test judges:	F-ratio
a. Judge A	1.50
b. Judge B	.39
c. Judge C	.62

C. Location of Differences Among Conference Conditions for Test Judges



* = sig. at .05; *** = sig. at .001.

B had a pattern suggesting that the expected sentence might affect the decision to hold the conference, the interpretation is tentative at best and is perhaps as likely to be an artifact of chance distribution.

In courtroom C, the conference group had less likelihood of incarceration than the control group, although the conference and non-conference test groups were similar. (See Table 8-7, page 105.) The direction of effect, as noted above, is similar to courtroom B, but is in a different location. Although one might suggest that the conference resulted in more attention to the position of the defendant, the failure to find differences between conference and non-conference groups makes such an interpretation tenuous at best. At most, the findings are suggestive and indicate the need for further testing in other settings.

TABLE 8-9

TEST FOR DIFFERENCES: a/ CONFERENCE STATUS - INCARCERATION

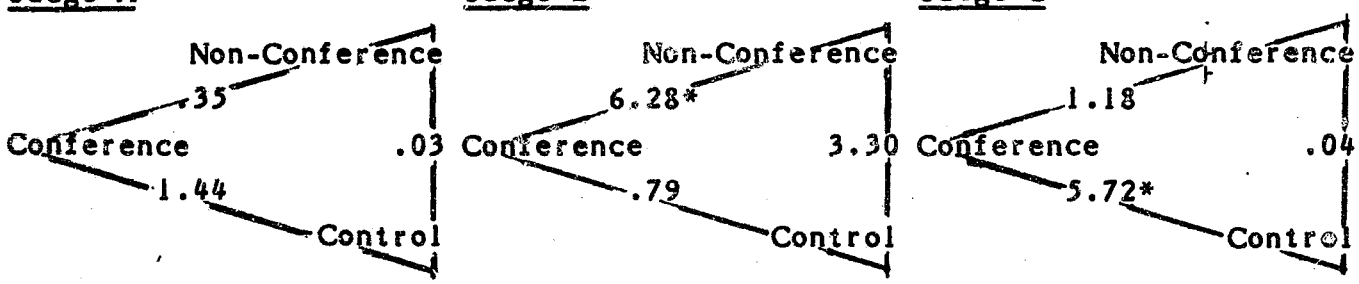
A. Differences Among Judges

Among three test judges in:	χ^2
a. Conference cases	18.31
b. Non-conference cases	.42
c. Control cases: test and comparison	22.45

B. Differences Among Conference Conditions

Among three	χ^2
a. Judge A	2.05
b. Judge B	7.79
c. Judge C	7.17

C. Location of Differences Among Conditions for Test Judges



a/ Chi square tests; * = sig. at .05.

E. Summary

Based on the current findings, the most appropriate conclusion is probably that the conference process, whether in the screening or in the dynamics of the session itself, did not result in any major changes in the kinds of decisions that were reached. The changes in the decision-making structure and the expansion in the variety of interests represented do not appear to have significantly altered the ways in which the criminal sanctions were utilized. The trend in the findings that the conference may have resulted in more lenient sentencing is too fragmentary to be conclusive.

The findings about the adjudication status produced a similar conclusion: the structural changes that were implemented did not significantly alter the decision outputs. The convictions rates and sentencing rates were generally similar with or without the conference.

CHAPTER IX

IMPACT OF THE CONFERENCE: EFFECTS ON LAY ATTITUDES

A. Introduction

The chapters on case processing and case output focused on the effects of the pretrial settlement conference procedure on the court system. At this point, the evaluation turns to the impact of the procedural change on the ways in which the lay participants (defendants, victims, police) in the courts perceived their experiences. The general hypothesis to be tested is whether the conference procedure would produce more positive perceptions about the ways in which criminal courts function. The underlying assumption was that the inability to observe and participate in the decision process is an important factor in structuring negative views of the courts. Among the expected changes associated with the implementation of the conference were more positive attitudes towards: a) the way in which the individual was treated in the courts, b) the decision in the case (adjudication and sentence), and c) more generally, the criminal justice system. In addition, the greater involvement was expected to provide more information about the way the case was handled; specifically, test participants would be more likely to be able to recall the disposition than control participants. Finally, to check for what might be termed increased coercion of defendants, attributed to the presence of the judge at the conference, ratings were made on the perceived pressure to plead guilty rather than go to trial. * Information about these attitudes and perceptions came from structured interviews with defendants, victims, and police in all test and control groups. (See Appendix B for discussion of interview procedures.)

The respondents were interviewed only after their cases closed. The nature of the respondent population is important for making generalizations about victims, police, and defendants. The cases selected and the respondents interviewed have in common the fact that the criminal offense was known to the police, that suspects were found, and that the case survived a preliminary hearing and arraignment. No case that did not meet all of these criteria was eligible for sampling. As a result, the victims, for example, do not represent all victims, since many do not report offenses and/or their casesdrop out of the court system. Therefore, those who wish their cases to go through the entire process are overrepresented in the sample. If an adjudication represents vindication for police effort, then the sample probably overrepresents relatively satisfied police. In summary, the sample is not drawn from the population of victims, defendants, or police; conclusions from the findings should take that fact into account.

The second purpose of the interview data is to compare the attitudes of those who were and were not involved in the conference procedure. Inferences about the impact of the conference (treatment effects) on attitudes can be made by making two types of comparisons. First, since the cases were

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*See Appendix B for items used in each index. For each index, the items were summed and divided by the number of items in the index. Each index thus forms an additive scale.

assigned to different treatment conditions, the tests for differences are made between a) the test group, b) the control group for the test judges, and c) the control group for the comparison judges. If the conference procedure made significant changes in the court's social environment, then differences should appear in these comparisons. If attendance is necessary in order to "feel the effects," then the tests for differences among the treatment conditions is an extremely high standard, since only a third to one half of the test group reported attending the conference. A very strong effect would be needed in order to modify significantly the score for the whole group.

The second analytical perspective compares the attitudes and perceptions of those who said they did and did not attend pretrial settlement conferences. Admittedly, such an approach has problems, since attenders may well vary systematically from non-attenders. However, since most of the benefits of the conference could be expected to accrue only to those who attended, it is important to look at those comparisons in any event. A further justification for comparing attenders and non-attenders is that some non-attenders did not attend because the conference was never held and/or they were not invited. (See Chapter VI for discussion of notification problems.) It is likely tht the non-attenders include some (unknown) portion of potential attenders. As a result, the attenders and non-attenders do not constitute distinct categories, so that differences in attitudes cannot be attributed solely to varying degrees of voluntariness or sense of civic duty.

It has been noted that those who attended did not differ significantly from non-attenders on the standard background questions dealing with age, sex, race, occupation, or language spoken. If support for the criminal justice system were a precondition for attendance, then the attitude questions about satisfaction with the criminal justice system ought to differentiate attenders from non-attenders. In our findings reported in this chapter we note, however, no such differences for defendants and victims. For police, attenders were somewhat more likely to approve of plea bargaining generally. The police were asked two questions about plea bargaining in general. On one of the two those who attended were more positive than those who did not. While suggestive that police attendance may have been affected by some preexisting attitudes, to be persuasive some more consistent pattern would be desirable. Nevertheless we will need to be more circumspect about making causal inferences from differences between attenders and non-attenders for police than for defendants and victims.

Each of these approaches has problems and advantages associated with it. Both will be presented in order to provide a balanced interpretation. The analytical procedure consists of three parts. First, a summary description of the perspectives of defendants, victims, and police will be discussed. Then tests for differences among treatment groups will be presented. Finally, comparisons of attenders and non-attenders will be analyzed. The three approaches, viewing the responses from different perspectives, should allow a greater understanding of how the conference process affected attitudes.

B. Knowledge of the Disposition

1. Description. As an indicator of the extent to which they understood

the processing of their case, respondents were asked whether they knew the disposition of their case. Such information was considered basic to an understanding of the way their case was handled. The point of the question was not on the accuracy of the information, but rather the perception of understanding. As an indicator of the extent to which the respondents felt they were kept informed, the test was whether the respondents thought they knew the answer.

On this measure of understanding, virtually all the defendants indicated they knew the answer. On its face, it would seem difficult for a defendant not to know the disposition, since her or his life would be directly affected by it. *

The victims and police present a quite different picture. One third of the police respondents and one half of the victim respondents reported they did not know the disposition of their cases. The state attorney's long-standing policy that victims and police must be consulted before a disposition is made does not require providing information later about what actually hapened. 1/ Since their presence is not required at the disposition, it is less likely that victims and police would receive this information. To inform them of the disposition if they were not present would place added costs on the system. The greater proportion of police who felt they knew the disposition may be explained by their greater access to the courts and availability of records and reporting systems that would provide the information. In addition, the informal networks of communication that develop between police and prosecutors in particular, based on relatively frequent appearances together, may facilitate the exchange of information.

2. Treatment effects. Comparisons between test, control, and comparison judges' control groups were made to test whether the conference procedure made any significant impact on the knowledge of the disposition among victims and police. The findings are presented in Table 9-1, page 114. As a point of reference, the mean knowledge score is presented for each group. The findings show no significant difference among the groups of victims or police in the rates at which they reported knowing the disposition.

Among the test judges, the victims in the test group were somewhat more likely to feel they knew the disposition than the control victims although the difference was not significant. The conference procedure does not appear to have changed significantly the level of information regarding the disposition process among the user groups.

The finding that the implementation of the conference procedure did not produce any change in the proportions knowing the outcome may not be surprising, given the findings reported earlier about the number of people contacted and the number of issues raised. (See Chapter VII on lay contacts.)

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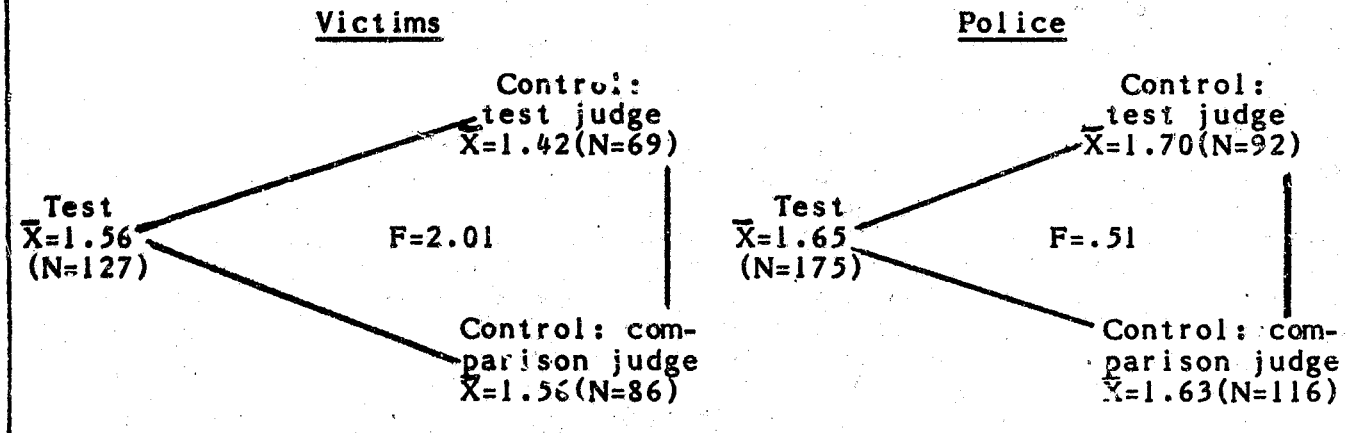
*The two out of 296 defendant respondents who said they did not know the disposition more than likely were given some relatively ambiguous sentence, for example, credit time served, where some degree of expertise would be needed to know the meaning of the disposition. Because of the lack of differentiation, no further analysis of the defendant responses on this measure will be presented. It is clear that for this minimal level of understanding, the existing court procedures were adequate to communicate the necessary information to defendants.

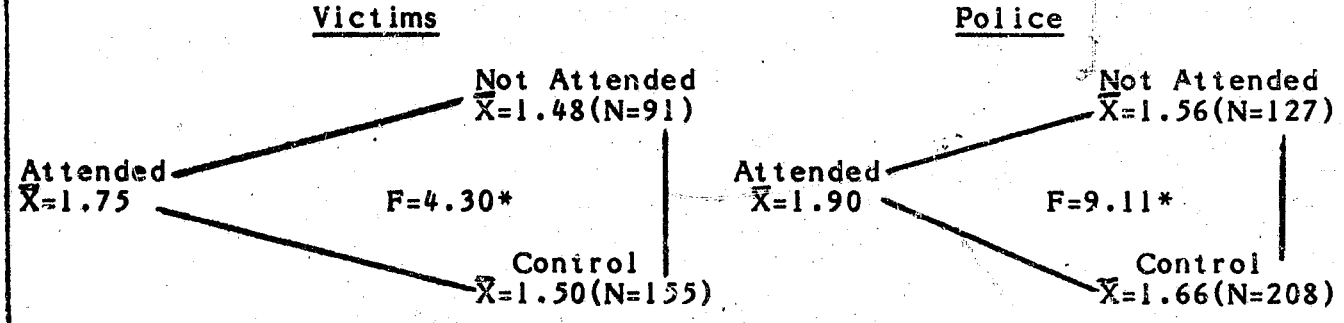
TABLE 9-1

LOCATION OF DIFFERENCES:[a/] KNOWLEDGE OF DISPOSITION

A. Differences Among Treatment Conditions



B. Attendance-related Differences



a/ Analysis of variance; * = F-ratio sig. at .05.

The extensiveness or intensiveness of the contacts increased only with attendance at the conference itself. It appears that court processing did not either include, or spread to subsequent contacts which would provide the final disposition to lay participants. Increased information was, then, probably a function of attendance, and, therefore, effort on the part of the information seeker (the victim or police) rather than the information provider (judge or attorney).

Support for the inference about the costs of obtaining information about the disposition is found in the comparisons between attenders and non-attenders reported in Table 9-1, above. For both victims and police, those who attended the pretrial settlement conference were significantly more likely to report knowing the disposition than either group of non-attenders. We have reported earlier that the attenders do not seem to differ on major social background characteristics from the non-attenders. The greater information that the attenders had does not seem explicable by variance in the background of the information seeker. Instead, it seems more likely that the information

about disposition is most readily available if one personally attends the proceeding at which it is discussed. While such an observation is hardly profound, it points to the problem that the costs of disseminating that information are relatively high. After the case is over in the trial court, the victim and police are no longer necessary for further prosecution. As a result there is no further reason for telephoning or writing them and thus possibly providing that information. It is certainly expensive for the system to do so routinely in a separate communication. The conference, which also serves other values, functions as a source of that information when it is not disseminated in other ways.

C. Satisfaction with the Disposition

1. Description. One aspect of the evaluation of the pretrial settlement conference was the extent to which the procedure might produce more acceptance of dispositions by lay participants. By allowing them to see how the decision was reached, it was thought the conference might reconcile the various parties to the final disposition. While the reconciliation process itself is difficult to conceptualize, the hypothesis was that the test group of lay parties would be more satisfied than the control groups.

Satisfaction with the disposition was measured by two items--one rated satisfaction with, and the other, the fairness of, the disposition in the respondent's case. The two items were then incorporated into an additive scale with a range from 1 to 5. * The focus of the index is on the output of the case; the final result of the court's processing.

The findings indicate a positive, if not overwhelmingly enthusiastic, evaluation of the case outcome, with the victims, defendants, and police reporting similiar views. The mean scores for each group are shown in Table 9-2, page 116. Even the defendants were relatively satisfied with the court's decision. Somewhat more than half of the defendants (55 percent) were on the positive, or satisfied, end of the scale (i.e., above the midpoint). Almost as many victims (52 percent) were on the positive end of the scale. It is interesting that the police were the least supportive, with only 49 percent giving an overall positive rating. The findings are comparable with those reported in other studies of levels of satisfaction in attitude surveys. 2/

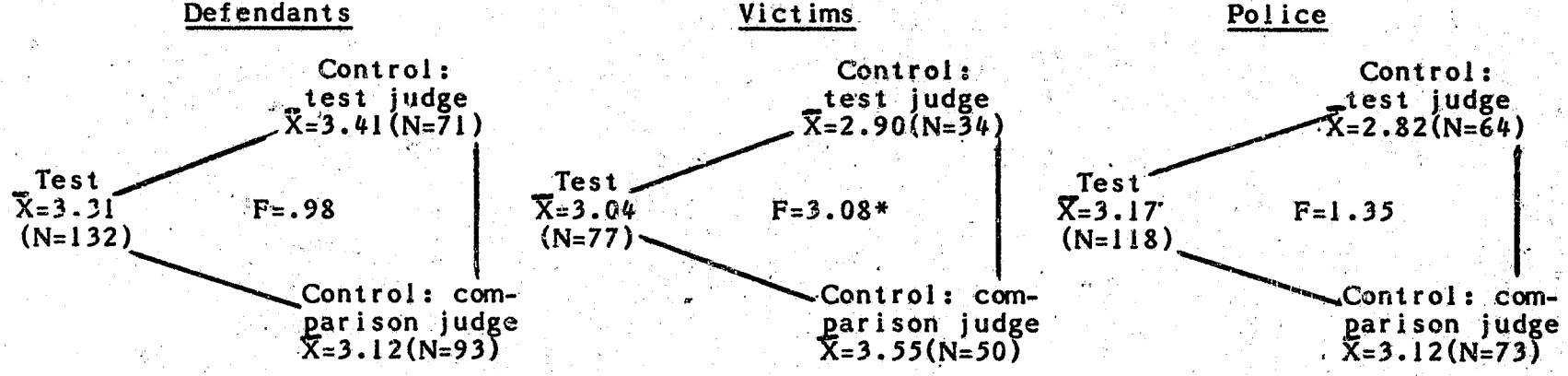
The relatively high degree of satisfaction among the three groups is an interesting finding, given the widely different perspectives represented by defendants, victims, and police. The defendants' satisfaction would seem counter-intuitive unless the expectations had been for an even more severe penalty than was actually received. While it is quite likely that many defendants were in fact guilty, the sentence is probably perceived to be more a matter of some discretion. With this discretion there could be expected some difference of opinion regarding the appropriate sentence. The findings reported here certainly do not suggest unanimous approval of the decision: one third of the defendants scored on the negative side of the scale. Nevertheless, the sense of the distribution is that a majority of the defendants, knowing that they could have received a harsher penalty,

*Respondents who did not know the disposition were not asked the question and have been excluded from this portion of the analysis.

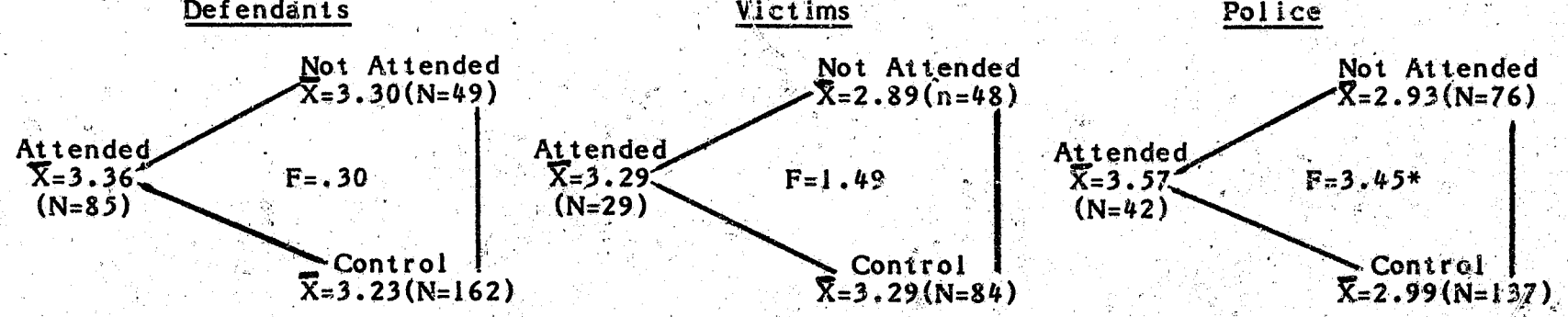
TABLE 9-2

LOCATION OF DIFFERENCES: [a/] SATISFACTION WITH DISPOSITION

A. Differences Among Treatment Conditions



B. Attendance-related Differences



a/ Analysis of variance, * = sig. at .05.

felt that what was given was not unreasonable.

The victims and police reported similar degrees of satisfaction with the disposition. It is important to point out that the victims and police represented in the samples were "successful" in the court system, in that their cases proceeded to a disposition, rather than being dropped at the police station or preliminary hearing. A further caveat on the findings for victims and police is that large portions of each group did not know the disposition of their case. The relative satisfaction should be viewed in the context of a likely skew in the victim and police population, where having achieved a disposition may be seen as an accomplishment.

2. Treatment effects. Given the generally positive interpretation of the disposition of the case, the question to be addressed is whether the conference procedure accounted in any way for that perception. The tests for that proposition are presented in Table 9-2, previous page. The analysis of variance test for differences is the set of numbers presented in the middle of each triangle. For defendants and police, the treatment conditions accounted for virtually none of the variance in the level of satisfaction. An examination of the mean scores for each group shows that the defendants in the test group were very close to their control counterparts in their level of satisfaction. Given the comparatively intense involvement in the processing of one's own case, it is probably not too surprising that the availability of the pretrial settlement conference makes relatively little impact on the way defendants view the final disposition, whatever it may be. In any event, for defendants, the treatment conditions do not help to explain the degree of satisfaction.

The overall treatment effects on police satisfaction with the disposition were not statistically significant. However, the mean score for the test police was, as hypothesized, more positive than the control police. Further analysis showed that for the police whose cases were assigned to one of the three test judges' courtrooms (Judge C), those in the test group were significantly more satisfied than those in the control group. *

The tests for differences among treatment conditions for the victims present a different analytical problem. The analysis of variance shows that the three treatment groups differed significantly in their levels of satisfaction with the disposition. An examination of the mean scores indicates that the critical dyad for measuring treatment effects showed little difference. The greatest distance was between the two control groups, not between either control group and the test. Further testing indicated that differences among courtrooms explained more of the variance than did treatment effects. Similar to the police findings, attitudes appear to be affected by the courtroom where one's case was heard.

The sensitivity of these attitudes to differences among the courtrooms deserves further discussion. Because of the lack of broad experience in other courtrooms on the part of the victims, it is surprising that the attitudes should be responsive to different courtroom practices. Particularly the victim would probably have virtually no personal knowledge of the differences in courtrooms. On the other hand, the differences in courtroom prac-

*F-ratio = 12.47, sig. = .00.

tices and style have already been demonstrated on several dimensions, including sentencing practices. (See Chapter VIII for discussion of sentencing practices.) If the personnel in various courtrooms behaved differently, it is not inconceivable that the observers (police and victim) would respond to the different practices. Unfortunately for this latter argument, the comparison among courtrooms of mean scores on satisfaction with the disposition do not bear the same relationship to each other as do the measures of sentence severity. Thus, the courtroom with the most severe sentences is not the courtroom with the most or least satisfaction. As a result, there is probably only the most tenuous, if any, direct relationship between courtroom differences in sentencing and perceived satisfaction by the lay parties. The explanation for the satisfaction, then, probably lies in the more complex mix of perceived practices and attitudes of courtroom personnel than in measurable differences in courtroom sentencing.

3. Attendance-related effects. The next question to be considered is whether attendance at the conference can aid in explanation of the findings. As indicated in Table 9-2, above, for the defendants and victims, the level of satisfaction with the disposition did not differ significantly between those who said they did and did not attend a pretrial settlement conference. Seeing how the disposition decision was reached did not measurably change the satisfaction level.

Among the police respondents, those who did attend a conference were more satisfied than either non-attenders or control group. The finding is in the expected direction. If attenders differed from non-attenders in pre-existing attitudes, then the mean scores for the two groups should lie at the extremes with the control group's mean score which would contain the whole range of attitudes located in the middle of the distribution, Instead, the absent and control groups are very similar, quite different from the more positive score of the attenders. While this pattern certainly does not prove a causal connection, it provides tentative support for the proposition that the conference procedure was contributing to the more positive attitudes.

In summary, approximately half those interviewed who knew the disposition felt that in their case it was generally satisfactory. The level of satisfaction was similar, in the aggregate, among defendants, victims, and police. No strong evidence appeared to show that the level of satisfaction was affected by the availability of the conference procedure. There was some suggestion, however, that attendance at the conference was associated with greater satisfaction among the police respondents. The professionalism of the police may have them responsive to an opportunity to participate in the disposition. Alternatively, the police, with more extensive experience in the courts, may have had firmer expectations regarding their disposition choices than the defendants or victims. If the expectations were relatively low, then observing the settlement process may have made the disposition more understandable, and therefore made it more acceptable.

D. Satisfaction with the Process

1. Description. One aspect of the evaluation of outcomes was the effect of the conference procedure on attitudes towards the way the courts processed cases. An index of satisfaction with the process incorporated items about the perceived responsiveness of prosecutors and judges to information given to them and about equality of treatment. The focus of the items was percep-

tions of one's own experiences, not on abstractions or generalizations about how the courts might have acted. Unlike the index of satisfaction with the disposition, all respondents who attended any court proceedings answered some portion of the items. *

The lay respondents were generally satisfied with the attention given to their cases, as indicated by group mean scores located toward the positive end of the scale for defendants, victims, and police. As shown in Table 9-3, page 120, the police were the most satisfied, with a mean score of 4.10 out of 5. Eighty-two percent of the police respondents scored above the midpoint on the scale. The victims, with a mean score of 3.9, had a similar proportion above the midpoint. The defendant's mean score of 3.3 out of 5 included 60 percent who were above the middle or neutral position. The distributions indicate a general consensus among the respondents that courts had been attentive to their views. Particularly for the police, the case that closes after an arraignment is to some extent a vindication of their effort. The positive evaluation of the courts' performance may well be affected by the view that the courts are performing well when they carry cases through rather than dropping the cases early.

The level of satisfaction is comparable with that reported in other studies. Knudten, et al., found a high degree of satisfaction among victims about the way they had been treated when they were interviewed after different court proceedings. 3/ The Rand study of court performance in Dade county found that a majority of defendants, victims, and police gave a relatively positive evaluation of their treatment. 4/ While some individuals no doubt are dissatisfied the pattern that emerges is one of approval.

2. Treatment effects. Against the backdrop of general satisfaction with the way the courts processed cases, the question is whether the conference procedure affected those evaluations. The findings are reported in Table 9-3. The defendants and police in the three treatment conditions (test group and controls for both test and comparison judges) reported similar evaluations in the way they felt their cases had been handled. At the level of overall treatment effects, there is no evidence to suggest that the conference procedure contributed to a more or less positive view. It should be noted that the conclusion is based on inferences from the research design and does not mean respondents were indifferent to the conference procedure itself. The respondents were not giving judgments about the conference in particular; instead, the inference is based on comparisons among respondents in test and control groups of their judgments about how their case was processed, regardless of method.

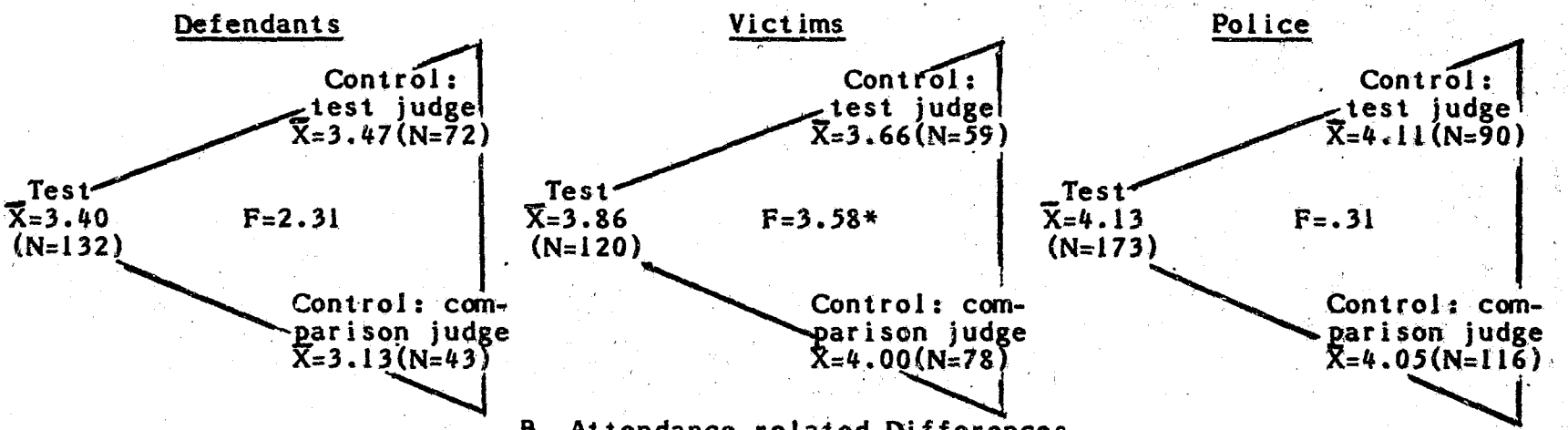
Among the victims there is some evidence that the conference procedure contributed to the overall positive evaluation of the way the courts processed cases. The differences among the three treatment conditions were statistically significant with the test victims being more satisfied than

*The index, with a range of from 1 to 5, is additive, with each respondent's total score divided by the number of items answered. Fifteen percent of the victims, 11 percent of the police, and less than one percent of the defendants reported attending no proceedings. The decision to exclude the evaluations by those who had never been to court was based on thestudy's focus on the way lay participants at court proceedings evaluated their treatment.

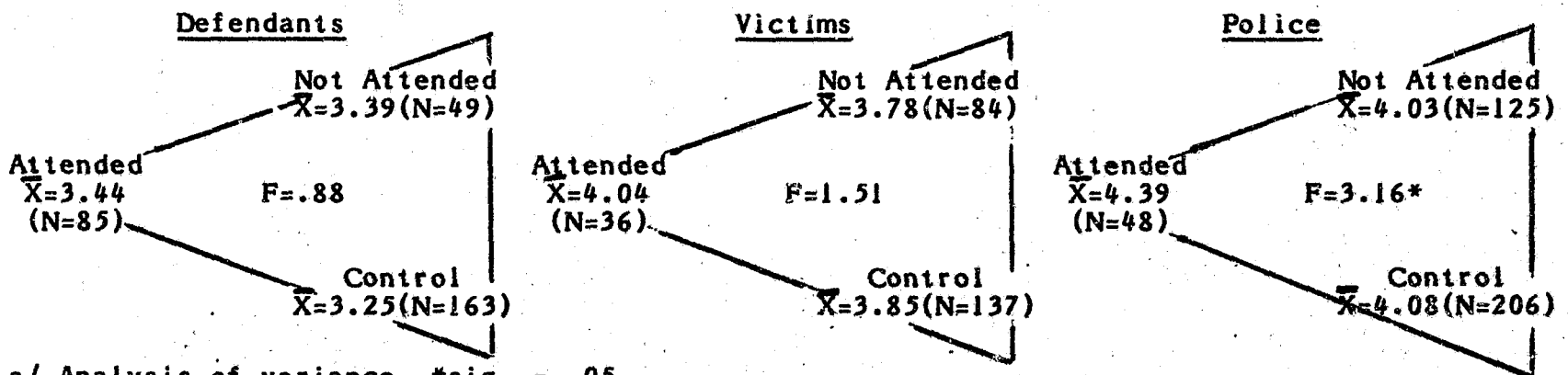
TABLE 9-3

LOCATION OF DIFFERENCES:[a/] SATISFACTION WITH COURT PROCESS

A. Differences Among Treatment Conditions



B. Attendance-related Differences



a/ Analysis of variance, *sig. = .05.

the control victims for the test judges, although less satisfied than victims from the comparison judges' courtrooms. Further analysis revealed that there were courtroom differences in the victim evaluations of the processing to the extent that the treatment effects could be localized primarily to one of the three test judge's courtrooms. The pattern of findings can probably best be summarized as modest or suggestive evidence that the conference procedure contributed to victims' level of satisfaction with court processing.

3. Attendance-related Differences. In the defendants' evaluation of their court experiences, those who went to conferences did not differ significantly from those who did not attend. The relatively large number of proceedings that defendants attend may tend to diminish the impact of the conference procedure. Further it may be recalled that the defendants participated least in conferences of any of the parties present. (See Chapter VI.) For the defendants, the opportunity to observe and, on a limited basis, to participate in the conference discussion, was not sufficiently salient to affect their feelings about court processing.

For the victims, also, the attendance-related effects were statistically insignificant, although those who attended were generally more positive than those who did not. It is interesting that no attendance-related effects appeared for the victims, since victims were the one group where there was some evidence of treatment effects. One would have expected that the increased satisfaction in the test group would have been located primarily among attenders. One explanation for this anomaly, assuming more than statistical noise is operating, may be that the increased satisfaction comes not from participation in the conference, but in the consultative process which included notifying victims of the conference opportunity. Thus, receiving information about the availability of the conference may be the key to the test effects.

Among the police, those who attended the conference were comparatively more satisfied with the way their case was handled than those who did not attend. The difference is in the hypothesized direction. The lack of overall treatment effects is most likely due to the relatively small proportion (28 percent) of police who recalled attending a conference or to pre-existing differences. Even if those who attended were totally converted to the utility of the conference, that support would tend to get swallowed up in the larger pool of test cases, especially given the high rate of satisfaction among all officers. It appears, then, that for the police, unlike the victims or defendants, attendance at the conference was associated with a more positive evaluation of the court's procedures although we cannot infer a causal connection. The police, who would have had greater prior involvement in court procedure, were perhaps more sensitive to the participation opportunities offered by the conference than were victims and defendants. Most of the latter two groups would lack a comparative perspective and, therefore, could be expected to know relatively little about alternative ways of handling cases other than that which was offered on their case. Without experience with other procedures, it is possible that the opportunities of the conference were not so distinctive that the victim and defendant respondents would pick up on them. The plausibly different ranges of experience in the courts of the police on the one hand, and victims and defendants on the other, may explain why the attendance-related differences appeared only for police.

E. Attitudes Toward the Criminal Justice System

1. Description. The preceding sections have focused on the ways respondents viewed their own experience in the courts. The problem in this section is to consider the impact of the conference procedure on views of the criminal justice system, defined more broadly. The focus was on the system's perceived fairness and ability to determine the factual truth in a situation. The reason for focusing on fairness and truth was that these ideas seemed to incorporate two major functions of the criminal justice system. Evaluations on these dimensions were used, then, to make a summary measure of system performance. The intention was not to obtain any comprehensive measure of all aspects of criminal justice system performance, but to look at those areas where the purposes of the conference might be most applicable.

The respondents were asked to make judgments in terms of their views of the criminal justice system in Dade County. The referent was specified in order to provide a common perspective. Further, the intention was to focus on the evaluations of system performance, rather than on the more abstract concepts of power and authority. Four items were used which asked about fairness of police, their general job performance, the willingness of courts to punish law violators, and the court's ability to determine accurately guilt and innocence. * These items were not included for police respondents because of their professional position in the criminal justice system. Their criteria for evaluation could be expected to be so different from defendants and victims that the area was well beyond the scope of the project.

The findings, reported in Table 9-4, page 121, suggest that defendants viewed the criminal justice system in a somewhat different light from victims. The defendants' mean score was 3.09 out of 5 while the victims' was 3.73. Put another way, only 47 percent of the defendants, but 84 percent of the victims were above the neutral or midpoint and toward the positive end of the scale. The victims' generally more positive view is not hard to understand, since the victims' cases represented successes in police work and, at least, court efficiency. While the respondents were specifically asked about general views rather than personal experience, it is likely that at some point the two perspectives (personal experience and general or citizen evaluation) inform each other.

2. Treatment effects. The tests for treatment effects, presented in Table 9-4, show some preliminary evidence of changes attributable to the conference procedure among defendants. Defendants in the test group gave generally more positive ratings of the criminal justice system performance than did their counterparts in the control group for the test judges. The difference is in the expected direction. However, an even greater difference than among the pairs of treatment groups is shown between the two control groups. Thus, it is most likely that the apparent treatment effects are in fact substantively insignificant. Further investigation revealed no differences for any of the test judges between test and control defendants. The pattern of findings suggests that the statistically significant treatment effects are more apparent than real.

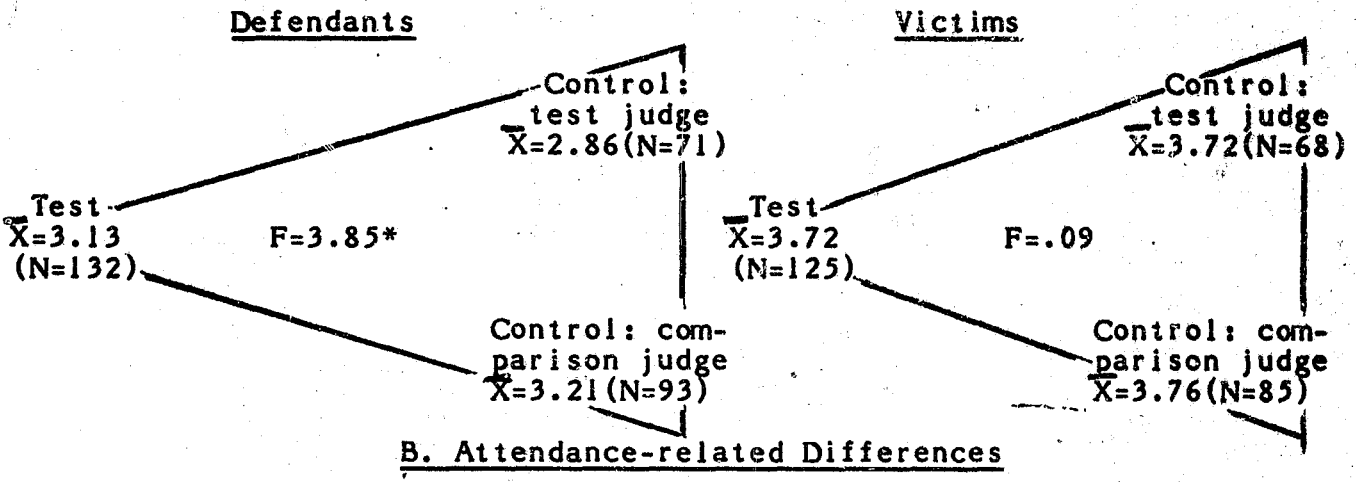
*For item working, see Appendix B. The responses were added together and divided by the number of items answered to make a summary scale with values from 1 to 5.

TABLE 9-4

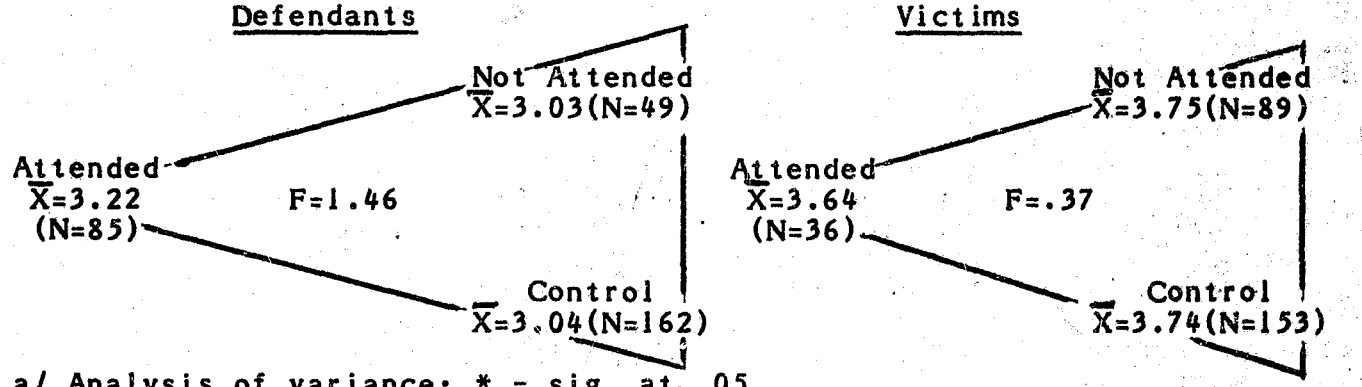
LOCATION OF DIFFERENCES:[a/]

SATISFACTION WITH CRIMINAL JUSTICE SYSTEM

A. Differences Among Treatment Conditions



B. Attendance-related Differences



a/ Analysis of variance; * = sig. at .05.

The victims in the three treatment groups were remarkably similar to each other and were generally satisfied with the criminal justice system. There is no evidence that the conference affected victims' views about criminal justice system performance.

3. Attendance-related differences. Attendance at a pretrial settlement conference did not seem to affect either defendant or victim attitudes toward the criminal justice system. For neither group were the differences statistically significant. Such a finding is consistent with the interpretation that there were no overall treatment effects. The two sets of tests tend to confirm each other, indicating that the changes entailed in the conference process were either not of sufficient magnitude or were not perceived to improve the criminal justice system.

There is a considerable body of research into the processes by which people form perceptions about civic authority and, more directly, legal authority. 4/ The affective and cognitive bases are generally thought to form early in life and to follow developmental sequences. 5/ The effects of subsequent experiences and, even more generally, the degree of continuity between childhood and adult perceptions is still little understood. The scale of satisfaction with the criminal justice system reported here probably taps some of these more fundamental orientations toward the legal system and, more generally, attitudes toward authority. The findings presented suggest that the conference procedure, which constituted a structural change in the court system, did not significantly modify the orientations toward the criminal justice system.

F. Expected Sentence Differential

1. Description. One concern about the conference procedure involved the impact on the defendant of the judge's participation in plea negotiations. Does the judge's presence increase the pressure on the defendant to accept the plea offer rather than offending the judge by insisting on a trial?

It is difficult to examine this concern because of the inherent coercion of the criminal justice system. Clearly if the judge used the conference to explicitly threaten the defendant with a more severe sentence if he did not accept the offered settlement, the conference would be more coercive. But is the judge who indicates that the sentence is three years now and will be the same after the trial, unless new evidence is presented to change the situation, being coercive? Or, to the extent that the judge has reduced the number of unknowns in the decision to invoke a trial, is the conference less coercive than a situation where the defendant must decide without that information?

Further, by giving the defendant direct information about the decision (thus reducing the extent to which the judge's decision is communicated by the defense attorney as an inscrutable fait d'accompli) is the process made less coercive? Finally, does the opportunity for the defendant to participate constrain the capacity of the judge and attorneys to make arbitrary or capricious agreements and thus reduce inappropriately coercive aspects of the plea negotiations?

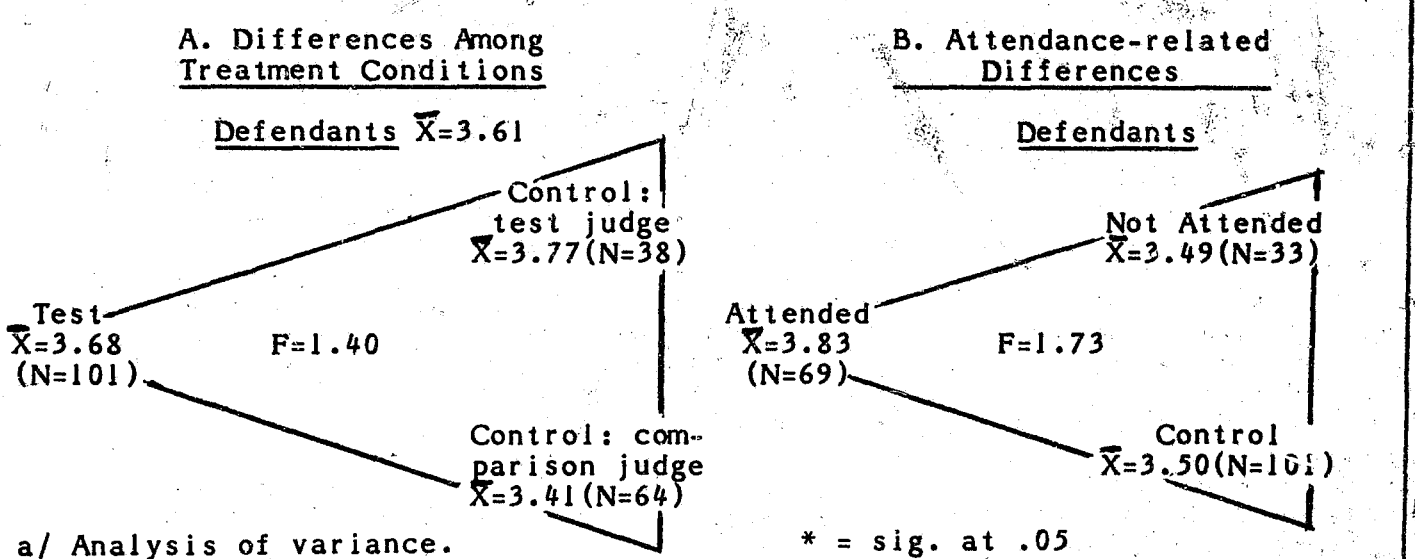
These considerations make it clear that considering the possible coercive impact of the settlement process is an extremely difficult thicket. 6/

For the purposes of the evaluation, the issue has been limited to the threat of a sentencing differential in the decision as to whether or not to go to trial. Two items were used for defendants who plead. (See Appendix B for wording.) An additive scale was created, ranging from 1 to 5, with a higher score indicating more pressure to plead. This approach does not begin to tap all of the dimensions of coercion or of the decision to go to trial. However, it does focus on one of the most basic issues in that decision. By comparing test and controls and attender and non-attender cases on the extent to which an expected sentencing differential affected the decision to plead, the findings should indicate whether the conference procedure exacerbated the choice. In this way, some evidence can be developed about whether the conference structure affected that choice.

The mean score on the expected sentence differential was 3.68 out of 5 (see Table 9-5, below). Fully 60 percent of the defendant sample who plead guilty reported that the fear or a more severe sentence at trial was an important, if not the critical, reason for pleading guilty. Whether the differential exists or not, it may affect the defendant's decision. Further, it suggests the problems involved in making the right to trial a reality.

TABLE 9-5

LOCATION OF DIFFERENCES:[a/] SALIENCE OF EXPECTED SENTENCE DIFFERENTIAL



a/ Analysis of variance. * = sig. at .05

2. Treatment effects. The mean scores are extremely close for the test and control defendants. The statistical tests for treatment effects indicate that the conference procedure had no impact on the perceived sentence differential. The defendants in the test group do not appear to have applied a different weight to this factor when they made the choice to plead guilty.

3. Attendance-related effects. The greater coerciveness of the judicial involvement might operate either as a threat of judicial presence at the negotiation session, or as a perceived reality (judicial behavior within the conference itself). Those who attended were somewhat more concerned about an anticipated sentencing differential than were those who did not attend, although the group differences were not statistically significant. It appears, then, that the conference procedure, either as a set of rules for structuring plea negotiations or as a decision-making process, did not significantly change the calculation of risk in deciding to plead guilty.

To summarize, the coercive effect of involving the judge in plea negotiations was conceptualized for the evaluation as an element in the calculation of risk in the decision about whether or not to go to trial. It was measured by the salience of the expected sentence differential were one to have gone to trial. Although for most defendants who plead guilty that

calculation was central to their choice, the findings showed that the conference did not affect the salience of the issue. The explicit involvement of the judge in the plea negotiations did not increase the defendant's perception that going to trial might result in a more severe sentence.

G. Summary of Case Outcomes

The pretrial settlement conference procedure, with its two provisions of judicial presence at all negotiations and invitations to attend extended to defendants, victims, and police, was expected to change lay perceptions of the courts. Four indices were used to measure the effects (knowledge of the disposition, satisfaction with the disposition, satisfaction with the process, and satisfaction with the criminal justice system). A majority of the defendants, victims, and police interviewed expressed satisfaction on these indices. Virtually all defendants, half the police, and one-third of the victims reported knowing the disposition of their case. When considering treatment effects measured by differences among test and controls, the lay parties whose cases were assigned to the test condition were generally similar to those in the control groups in their attitudes and perceptions. Of the ten sets of tests among treatment conditions, only two showed treatment effects. First, test victims were more satisfied with the way their cases were processed than their control counterparts. The discussion suggested that the consultative process itself might produce the more positive attitudes among the victims. The second significant finding was that the police in one of the test judges' courtrooms were more satisfied with the disposition of their cases than were the controls. Both of the significant findings were in the expected direction of more positive attitudes attributable to the conference process. However, the failure to find consistent results across the groups makes it unlikely that the implementation of conference procedures, based on the level of lay attendance achieved at this site, made substantial changes in public perceptions about the courts.

In the context of negligible changes in the environment in which the court system operates, there was somewhat more evidence of differences in perceptions for victims and police based on attendance at the conference. Of the seven sets of tests among the victims and police on the four indices, four showed that attenders wre more positive than non-attenders; victims who attended were more likely to report knowing the disposition of their case than non-attenders. Police who attended the conference were more likely to know the disposition and to be more satisfied with the disposition and processing of their case. For the defendants, attendance did not affect their attitudes. While pre-existing differences could not be ruled out, the patterns were consistent with hypothesized changes attributable to the conference.

On the question of the possible coercive effects of judicial presence on a defendant's right to trial, there was not evidence that the conference procedure, nor that attendance, affected the defendant's decision to accept a plea.

In general, at a systemic level the conference did not appear to affect attitudes and perceptions of the lay parties. At the individual level, based on personal experience of attending the conference, there is some evidence that the conference procedure produced more information and more positive attitudes toward the way cases were handled among victims and police. One

of the issues that this distinction between the systemic and individual level of effects points to is the substantial gap between the provision for voluntary lay attendance and the attendance itself. The benefits demonstrated at the individual level raise the possibility of systemic effects. It thus poses sharply the question of the potential victim utilization of the conference opportunity given optimum notification conditions. The need for further research is clearly indicated given the potential for substantial systemic effect.

CHAPTER X

DISCUSSION AND CONCLUSIONS

A. Introduction

The overwhelming reaction of judges and attorneys around the country upon first hearing of the proposed pretrial settlement conference was that it would not work. They pointed to a myriad of problems that foredoomed it. The charitable view was that it was fifty years ahead of its time. Thus, the most salient conclusion of the evaluation may be that the procedure "worked". It did not place undue stress on the felony disposition process in Dade County. The victims and defendants did not disrupt the conference, nor did they misunderstand the proceeding and accuse the judges or attorneys of improper conduct in disposing of the cases.

This discussion reflects serious predictions made in several jurisdictions about the potential problems with lay participation, particularly victim participation. A few lawyers in Dade County thought that lay presence inhibited the attorneys and judge from discussing possibilities of settlement with candor and openness. Other attorneys challenged this view. They asserted that the professional parties can find a way to say, in appropriate and non-offensive language, everything that needs to be said. The finding on settlement rates suggests that lay presence does not reduce the possibility of settlement.

The presence of both victims and defendants did not create problems, except in rare exceptions. These exceptions involved verbal, not physical confrontation. Nor did the conference create problems regarding the eye witness identification of defendants. None of the professional participants reported significant problems relating to the presence of lay parties at the conference.

Concern was expressed early on in the project that a defendant or, more likely, a victim would misunderstand what happened in the conference and go to the papers to compain about the result. On the other hand, one of the local papers worried that the conference was giving the victim too much influence in the outcome of the case. No public attacks were in fact made. Some defense attorneys expressed concern about victim influence, but at least as many felt that the victim had been helpful to the defendant.

The pretrial settlement conference did not seem as radical in the context of the Dade County criminal courts as it had elsewhere. Officials there had had experience with some elements of the proposal. This prior experience aided acceptance and implementation of the proposal. It may also have masked some of the effects of the conference process by reducing the contrast between the test procedure and the standard procedure. For whatever reasons, the empirical results were positive, but modest. On many parameters, there were no significant differences.

B. Judicial Participation

While their styles differed, all three of the test judges were the most

active participants in their respective conferences. Our conceptualization of their performance suggests that they differed in the amount to which they structured and controlled the conference and in the extent to which they actively involved the other participants, both lay and professional, in the conference discussions.

The original idea for the proposal foresaw the judge in a relatively passive role. The negotiating was to be done by the two attorneys with some input from the lay parties. The judge was expected to perform some procedural functions, but not to become actively involved until the parties had reached a tentative agreement. The judge would then indicate whether that agreement was acceptable.

The greater judicial involvement had at least one benefit and one cost. The benefit was that it seemed to focus the discussion and probably accounts in large part for the relatively brief conferences. The cost was one judge's sense that, by indicating at the conference what he thought the appropriate sentence should be, some defense attorneys were encouraged to try their cases. This result flows from the expressed policy independent of the conference procedure, of at least two of the judges, not to penalize the defendant for exercising his constitutional right to trial. Thus, the incentive to plead guilty was reduced. The extent to which this happened is not clear. The data on dispositions does not disclose a significant increase in the percentage of cases tried. *

Putting aside the question of how pervasive a problem this is, the dilemma can be avoided by not specifying that a particular sentence would be imposed if the defendant plead guilty, but rather indicating that the tentatively agreed upon sentence falls within a range of appropriate dispositions. This posture allows the judge to give the parties assurance of his acceptance of the proposed sentence without binding him under all circumstances to that disposition.

The greater judicial involvement also focused attention on the concern expressed by various parties about the coercive effect of the judge's presence. Our data disclosed no significant differences in the perceived pressure to plead between test and control defendants. Thus, the widespread concern about the inherent coerciveness of judicial participation is not supported by the evidence of this study. Of course, this is not to say that this concern is totally mistaken. These conferences were run in a controlled atmosphere. It seems plausible that in different circumstances involving different personalities there could be a coercive effect. On the other hand, the findings do suggest tht judicial participation can be structured, so that it is not perceived as any more coercive than other procedures.

A related concern involves the risk of loss of judicial dignity by in-

*On the other hand, this phenomenon was reported only at the end of the project period. It is possible that some defense attorneys learned over time to manipulate the conference process to their benefit. This change in behavior may have been masked by the larger number of cases which preceded it, although the rarity of trials makes generalization difficult. It is also possible that a few deviant cases overshadowed the normal pattern in the judge's mind.

judge that he thought that the conference had just the opposite effect. The fact that the judge took time to listen to the lay parties and to explain his decsion to them increased their respect for the judge and the judicial process.

The question still remains as to whether the Dade County practice of not transferring the case to another judge if settlement efforts fail should be recommended for future implementation project. * We suggest that, absent strong opposition in the next jurisdiction, a transfer policy be adopted. It would be instructive to see how such a policy works out. Further, given the widespread support of the view that the trial judge who will sentence if the case is tried should not participate directly in plea negotiations, and the serious concerns underlying the view, it would be preferable that the next implementations reflect that policy, if at all possible.

As indicated, the judges took a more active role than was originally foreseen. This change did not affect the scope of the conference, however. Despite the more active judicial involvement, it did not become an informal trial. It remained as plea negotiations, although more structured and formal. That is to say, the focus of the discussion was the appropriate punishment to be imposed if the defendant plead guilty. The conference did not become an informal assessment of the evidence or result in an advisory opinion regarding likelihood of conviction.

C. Lay Participation

While the lay parties differed in the frequency with which they attended the conferences, for none of the parties was attendance significantly related to offense severity. Defendants attended two-thirds of the conferences; the victims and police attended a third of them. The police were more likely to attend conferences for crimes without a victim than conferences for crimes with a victim. This difference apparently reflects, in part, the role that the police play as the complaining witness in victimless crimes.

The prosecutors and judges were not surprised, although some were disappointed, by the victim's relative non-attendance. They had experienced this reluctance in other aspects of the case disposition process and generally interpreted it as either a lack of interest on the part of victims or attributed it to the number of court appearances that witnesses are required to make.

The interviews with test cohort victims conducted after their respective cases had closed raises an additional point. Many of the non-attending victims said that the reason they had not attended was that they had not been notified of the conference. Of course, there can be a self-serving aspect to their claim. The best that can be done at this point is to withhold judgment about the likely extent of victim utilization of the conference pending further study.

There are, of course, costs in involving the lay parties in the conference for both the criminal justice agency personnel and for the lay parties

*It should be noted that the number of cases from the test cohort that were tried is small, a total of 26.

themselves. Some minimal time is involved in setting a time for the conference which is acceptable to all parties. In Dade County, this was done at arraignment and did not represent a significant time investment. Since the defendant is usually present at arraignment, no additional notification is necessary, although in fact the prudent defense counsel will contact the defendant before the conference, both to remind him of it and to prepare him for participation. Notice to the victim and the police officer, neither of whom are likely to be at the arraignment, is a substantial problem, as we have indicated several times in this report. While the costs of notification are real, there are some benefits. The notification can be used as a way of assessing the victim's attitude towards cooperation and encouraging participation in all stages of the disposition process. Another possible benefit lies in the fact of additional contact between officials of the court system and the victim enhancing the latter's sense that there is an active concern about his or her needs and viewpoint.

There are attendance-related costs for the victim in taking time from job, family, or studies and for transportation to the courthouse. The defendant, if not incarcerated, must bear the same types of costs. These considerations raise the issue of the possible impact on victim cooperation with later stages of the prosecution. Will another courthouse appearance, even if voluntary, decrease victim willingness to attend the trial if a settlement is not reached? The issues are somewhat different for the police. Since the conference process does not affect the overall trial rate, the conviction rate, or sentence severity, should the department assume the costs of officer attendance? Presumably, the officer would be involved in other police duties if not attending the conference. The increased police satisfaction with both the process and the sentence when they attended the conference suggests that a police administrator concerned about officer morale and about dissatisfaction with the criminal justice system might consider the attendance costs justified. *

The protocol and atmosphere of the conference was that of a business meeting, rather than a court proceeding. Nevertheless, the victims and defendants were less active than the judges and attorneys. Their role seems to have been basically that of observers with a limited and structured input. This is neither surprising nor disturbing. The conference proposal did not envision a "deprofessionalizing" of the negotiation process. Rather, it aimed at providing to interested parties a view of the process which previously had not been available and a limited opportunity to add relevant information.

Attendance at the conference was expected to increase the amount of information available to the lay parties and to make them more satisfied with the criminal case disposition process. It did not have these effects for the defendants, although on the issue of knowledge of the disposition, almost all defendants, not unexpectedly, knew the disposition of their case. Attendance at the conference affected the knowledge of disposition for both victims and police officers.

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*There is a caveat to these comments. Our analysis of the data indicates that the police conference attenders were more favorable to all plea bargaining than non-attenders. This finding raises the possibility that the attendance-related effects reported are in fact the result of pre-existing attitudes.

The evidence of the conference process' effect on lay attitudes towards the process and disposition is unclear. The evidence that does exist of attendance-related positive impact on victim attitudes point to the possibility of systemic effects if attendance was greater. This possibility reinforces the desirability of further testing of the conference process. The effect of attendance on attitudes was more pronounced on the police than on either the victims or defendants. Police who attended the conference were significantly more likely to know the disposition of the case and expressed greater satisfaction with both the process and the disposition, although the latter two differences may reflect systematic differences between attenders and non-attenders.

One of the test judges expressed substantial disappointment in the attendance rate of victims. This factor, along with a declining assessment of the value of the information that the lay parties had to offer, played a substantial role in his ultimate evaluation of the conference process. In fact, two of the judges appeared to undergo shifts in their attitudes toward the value of the information the victim had to offer. Their experience with the conference led them to reduce the value placed on victim contributions to the settlement discussion. The third judge, whose expectation about the value of the lay parties' comments was high at the beginning, seemed confirmed in that view and, perhaps, even more positive about the value of having all the lay participants at the conference.

In assessing the significance of these views, it is necessary to recognize the extent to which the judge controlled the discussion in the conference and, to that extent, influenced the amount of information contributed by the lay parties. Further, the professional parties routinely make the sentencing decisions without lay participation, which suggests that their perception of what was required for the decision did not need lay participation. In fact, their information needs appear to have been relatively low and generally satisfied by the court file and the material routinely available to the attorneys.

As indicated earlier, the presence of the victims and defendants did not create problems of order for the judges. The victims were not intransigent in their demands for severe punishment of the defendants. In only one conference did the victim ask for the maximum penalty for the defendant. One judge indicated that the police could, on occasion, be intransigent and thereby make it difficult to settle the case. However, another judge felt that the police presence had been very helpful. This same judge believed that the victim and defendant presence was extremely helpful in affording the judge an opportunity to gain a better understanding of their needs and motivations. He expressed the view that their presence helped the judge come to a fairer sentencing decision. It should be noted that this judge used the negotition style extensively and sought to involve the other parties in the conference and in the decision-making process.

In summary, the evidence suggests only modest benefits to all parties, both lay and professional, involved; and those were generally attendance-related. The police seem most appreciative of the opportunity the conference procedure provides when they attended. However, they attended the least often of the three lay groups. The evaluation also disclosed no major problems for any of the participants. The problem of disruption, both inside the conference and out, did not occur.

D. Impact of Conference on Court Processing

Contrary to a range of predictions about the effect of judicial and lay participation in plea discussions, there were no statistically significant differences in settlement or trial rates between test and control cases. Differences between conference and non-conference cases in the test group suggested that the likelihood of settling a case or a prediction of the likely sanctions may have affected the decision to convene the conference. Nevertheless, the conference procedure did not affect settlement rates, sentence severity, or the use of incarceration or restitution.

The professional interviews generally supported this point of view. Most judges and attorneys were of the opinion that the presence of the lay parties affected the outcome in a small number of cases, but not generally. There was a minority opinion, represented by one test judge and some of the attorneys, that the use of the conference had affected sentencing, both in terms of sentence severity and the use of restitution.

While one of the evaluation hypotheses was that the conference would increase the use of restitution, there were no specific assumptions regarding the impact on sentence severity or the use of incarceration. Thus these findings are not radically inconsistent with early predictions regarding the conference.

Somewhat surprisingly, the one area in which the conference did affect case processing was the length of time from arraignment to closing. Our findings disclose an overall reduction in the time to disposition for the test cohort of cases. Similarly, all three judges closed a greater percentage of test than control cases on or before the originally scheduled trial date. This result was not predicted by any of the professional participants nor by the project staff. It appears that the scheduling of a time at which the relevant parties meet to discuss the possibility of settlement is more effective than a series of sequential bilateral discussions. It is puzzling that this difference developed, since the test judges utilized status conferences in the control cases. The status conferences were usually held the week prior to the scheduled trial date. The official purpose of the status conference was to determine whether the case was ready for trial. In fact, the possibility of settlement was often explored as well.

Precisely what accounts for the difference is unclear. It may be that the presence of the lay parties facilitates the negotiation process by making communication easier between the attorneys and the defendant, on one hand, and the victim and police, on the other. It could also be that the avowed conference purpose of settlement focuses the parties' attention on the settlement possibilities and thus facilitates the discussion.

The views of the test judges on time-related issues were mixed, problematic, but important, because they played a central role in their ultimate evaluation of the usefulness of the conference process. Two of the three test judges thought that the conference process was more time consuming than traditional plea negotiations. None perceived the acceleration of dispositions which court records data disclosed.

The actual time consumed by the conference was not great. The average length of the conferences varied among the three judges from 9 to 12 minutes.

The entrance and seating of participants undoubtedly consumed additional time. All told, it was not, contrary to some predictions, a time-consuming process.

E. Conclusions of the Professional Participants

The conclusions of the attorneys on whether it would be desirable to adopt the conference process were mixed and do not fall easily into patterns. There were defense attorneys and prosecutors on both sides of the issue. The private defense attorneys who were interviewed, with one exception, supported the use of the conference. One judge reported that a few private defense attorneys had refused to participate. On the other hand, he also reported that a number of private defense attorneys had urged him to continue use of the conference.

To the extent that the conclusions of the attorneys can be organized into a pattern, it seems that two issues divide them. These are the extent to which the conference humanizes and personalizes the case disposition process and the extent to which it facilitates the disposition of cases. Those attorneys who value the former liked the conference process. Those who place more weight on the latter did not believe that it was an improvement. Unfortunately, the finding on the reduction of time to disposition was not available during our professional interviews. Thus, we do not know whether knowledge of this finding would have substantially changed the view of some of the attorneys.

The three test judges differed substantially in their evaluation of the conference process. One judge concluded that the use of the conference was unnecessary, except when specifically requested by one of the parties, because victims, for the most part, were not interested in having an opportunity to participate. They did want information about the results, but it would not be necessary to have a conference to accomplish that task. This judge indicated that whenever any party felt that he had information to offer the judge on the case, the judge should arrange a meeting in the presence of the other parties to hear that information.

One value this judge saw in the conference process was that it reduced ex parte settlement discussions and thus increased the confidence of various parties in the integrity of the system. Another value of the conference was that it encouraged the attorneys to study their files with a view toward disposition. This observation is interesting in the light of the finding on the reduction of time from arraignment to closing.

Another test judge concluded that, while there was a positive value in having the victim and police officer present because it gave them a sense of participation, the conference process took more judicial time than could be justified by its beneficial aspects. This judge felt that the lay participation did not provide any more information on the facts of the case than would be available in a discussion between the attorneys and the judge. He did allow that, when the defendant was willing to answer questions, the judge did have more information than was normally available in plea negotiations, although he pointed out that this information would be available in a presentence report. Such reports, however, usually are not prepared in plea cases.

The third judge took a markedly different view. He agreed that the

conference process took substantially more time, but he concluded that it was well worth the effort because it led to fairer decisions. The opportunity to meet with the defendant and victim, he believed, gave him much better insight into the case and not only led to better decisions, but also was more satisfying for him personally. This judge also recognized the difficulties in obtaining the victims' presence but felt that those that did attend approved of the use of a conference. For this judge, the scheduling of the conference did not prove to be either a problem or disruptive of his schedule.

The judges also differed in their views of what types of offenses are appropriate or inappropriate for the use of the conference. One thread of agreement was that in cases involving an individual with a long and serious criminal record, there was no purpose in discussing a possible settlement. Those cases were best tried and an appropriate sentence imposed if a conviction was obtained.

Thus, the overall pattern of empirical results is that none of the major problems materialized; and there is one substantial benefit--the reduction of time to disposition. While there is some evidence of other benefits, it is too early to make definitive judgments. Additional analysis of our data and experience in other jurisdictions are necessary.

F. Concluding Thoughts

Plea negotiation is, and is likely to remain, an area of ambivalence and concern for thoughtful observers of the criminal justice system. Even though there is growing support for the view that settlement without trial serves other legitimate purposes, most proponents rest their argument ultimately on the necessity of disposing of overcrowded court calendars. It is in this context that we must attempt to form judgments about the value of the pretrial settlement conference procedure.

Given the inconclusive results of our empirical evaluation, the question of basic values in the criminal process comes to the fore. Since settlement without trial is the predominant means of criminal case disposition, should not the defendant have a right to attend the crucial proceeding of the process? Addressing this issue from a slightly different point of view, one prosecutor, when asked whether the defendant's presence inhibited discussion of settlement, dismissed the issue by saying, "It affects him; he should be there."

The victim has not proved to be the obstreperous party that some feared. Further, many victims who did not attend claimed that they were not notified of the conference, thus confoundingany interpretation of their absence. Certainly, the victim has a right to be informed of the disposition of the case.

On balance, the promise of the pretrial settlement conference does not seem as bright as when we started. It will not solve as many problems as originally hoped. But the promise, if dulled, is also less fragile. The procedure has withstood the test of the felony disposition process. Its precise potential for contributing to the just and humane disposition of criminal cases is still undetermined, but it is clearly worth additional testing and evaluation.

NOTES

Chapter I, pp. 1-6

1. U.S. National Advisory Commission on Criminal Justice Standards and Goals, Courts (Washington, D.C.: U.S. Government Printing Office, 1973), pp. 46-49.

2. Norval Morris, The Future of Imprisonment (Chicago: University of Chicago Press, 1974), pp. 55-57.

3. Herbert S. Miller, James A. Cramer, and William F. McDonald, Plea Bargaining in the United States: Phase I Report (Washington, D.C.: U.S. Government Printing Office, 1978).

4. Ibid., pp. 1-2.

5. Morris, Future of Imprisonment.

6. Miller, et al., Plea Bargaining, p. 25.

7. Ibid., p. 28.

8. Ibid., p. 32.

9. Ibid., p. 19.

10. Milton Heumann, "A Note on Plea Bargaining and Case Pressure," 9 Law and Society Review 515.

11. Milton Heumann, Plea Bargaining: The Experience of Prosecutors, Judges, and Defense Attorneys (Chicago: University of Chicago Press, 1978).

12. Heumann, Plea Bargaining, p. 28.

13. Ibid., p. 29.

14. Ibid., p. 30-31.

15. Ibid..

16. U.S. National Advisory Commission on Criminal Justice Standards and Goals, Courts, p. 48.

17. American Bar Association, Standards Relating to Pleas of Guilty (Chicago: American Bar Association, 1967), pp. 71-77.

18. Federal Rules of Criminal Procedure, Rule 11.

19. U.S. National Advisory Commission on Criminal Justice Standards and Goals, Courts, pp. 59-63.

20. Albert W. Alschuler, "The Trial Judge's Role in Plea Bargaining: Part I," 76 Columbia Law Review 1059, 1154.

21. Ibid., pp. 1146-49.

22. Note, "Restructuring the Plea Bargain," 82 Yale Law Journal 286.

23. Frederic L. DuBow and Theodore M. Becker, "Patterns of Victim Advocacy," in William F. McDonald, ed., Criminal Justice and the Victim (Beverly Hills, California: Sage Publications, Inc., 1976), pp. 147-164.

24. Ibid., p. 150.

25. Morris, Future of Imprisonment, p. 53.

26. Ibid., p. 56.

27. Raymond T. Nimmer, Prosecutorial Disclosure and Judicial Reform: The Omnibus Hearing in Two Courts (Chicago: American Bar Association, 1975), pp. 1-3.

Chapter II, pp. 7-16

1. State v. Wolfe, 46 Wis. 2d 478 (1970) at 488.

2. Letter from William D. Delahunt, District Attorney of Norfolk District, to the authors, dated December 14, 1976, citting this passage as part of the proposed Massachusetts Rules of Criminal Procedure.

3. Pretrial Intervention Program, Annual Report, 1975, Eleventh Judicial Circuit, Dade County Florida, p.1.

4. Letter from Phillip A. Hubbart, Public Defender of Dade County, to State Representative Daniel J. Lehman, Jr., dated November 12, 1975.

5. U.S. Department of Commerce, "Population Characteristics of Housing, 1970 Census: Summary of the U.S., Vol. I (Washington, D.C.: U.S. Government Printing Office, 1974).

6. Florida Statutes, Chapter 775.082 (1976).

7. The descriptive information regarding the State Attorney and Public Defender Offices was obtained from senior persons in these offices.

8. See Milton Heumann, Plea Bargaining, for an interesting presentation of the process of adaptation of new attorneys to the criminal court process.

9. Gerstein v. Pugh, 420 U.S. 103 (1974).

10. Sorrel Wildhorn, Marvin Luvin, Anthony Pascal, Sandra Berry, and Stephen Klein, Indicators of Justice: Measuring the Performance of Prosecution, Defense, and Court Agencies Involved in Felony Proceedings (Santa Monica, California: Rand Corporation, 1976), pp. 73-78.

11. Miller, et al., Plea Bargaining.

12. For further discussion of issues relating to the joint implementor and evaluator roles, see Carol Weiss, Evaluation Research: Methods of Assessing Program Effectiveness (Englewood Cliffs, N.J.: Prentice-Hall, 1972) pp. 20-21.

Chapter III, pp. 17-25

1. David Easton, A Systems Analysis of Political Life (New York: John Wiley, 1965).

2. Donald T. Campbell and Julian C. Stanley, Experimental and Quasi-Experimental Design for Research (Chicago: Rand McNally, 1963); and Carol Weiss, Evaluation Research.

3. Jerry Goldman, "A Randomization Procedure for 'Trickle-Process' Evaluations," 1 Evaluation Quarterly 493 (1977).

4. Donald T. Campbell and Donald W. Fiske, "Convergent and Discriminant Validation by the Multitrait-Multimethod Matrix," 56 Psychological Bulletin 81 (1959).

5. Howard S. Becker, Sociological Work: Method and Substance (Chicago: Aldine, 1970); and Robert F. Bales, Interaction Process Analysis (Cambridge, Mass.: Addison-Wesley Press, 1950).

Chapter IV, pp. 26-31

1. Thorsten Sellin and Marvin E. Wolfgang, The Measurement of Delinquency (New York: John Wiley & Sons, 1964).

2. Rita James Simon, Women and Crime (Lexington, Mass.: Lexington Books, 1975).

3. Federal Bureau of Investigation, Crime in the United States: Uniform Crime Reports, 1976 (Washington, D.C.: U.S. Government Printing Office, 1977) p. 184.

Chapter VI, pp. 44-62

1. See, for example, Arthur Rosett and Donald R. Cressey, Justice by Consent: Plea Bargaining in the American Courthouse (Philadelphia: J.B. Lippincott Co., 1976) pp. 145-159, 182-184.

Chapter VII, pp. 63-92

1. Clerk of the Circuit Court, Criminal Division, Eleventh Judicial Circuit, Miami, Florida.

2. See Miller, et al., Plea Bargaining; David W. Neubauer, Criminal Justice in Middle America (Morristown, N.J.: General Learning Press, 1975); Abraham, Blumberg, Criminal Justice (Chicago: Quadrangle Books, 1967); and Donald J. Newman, Conviction: The Determination of Guilt or Innocence Without Trial (Boston: Little, Brown and Co., 1966); although see James Eisenstein and Herbert Jacob, Felony Justice: An Organizational Analysis of Criminal Courts (Boston: Little, Brown and Co., 1977) p. 233, for substantially lower figures in Baltimore.

3. See Eisenstein and Jacob, Felony Justice, pp. 235-36, for their use of judge names as surrogates for the more complex relationships among the parties.

4. These figures suggest that Dade County processed its criminal cases with considerable speed relative to other jurisdictions. As one researcher studying court delays said of Dade County, "They are all workaholics down there." See also Eisenstein and Jacob, Felony Justice, p. 233. They report median figures for arrest to closing of 226 days for Baltimore, 268 days in Chicago, and 71 days in Detroit. For our sample, Dade County, the figure is 108 days.

Chapter VIII, pp. 93-108

1. Ira Sharkansky (ed.), Policy Analysis in Political Science (Chicago: Markham Publishing Co., 1970).

2. Shari Seidman Diamond and Hans Zeisel, "Sentencing Councils: A Study of Sentence Disparity and Its Reduction," 43 University of Chicago Law Review 109, at 121.

3. Eisenstein and Jacob, Felony Justice, p. 233.

4. Florida Department of Offender Rehabilitation, Inmate Population Projections, July 27, 1977, p. 86.

5. "New York City's Judges Give More Criminals More Prison Time," New York Times, Monday, July 17, 1978, B1, col. 4.

6. Eisenstein and Jacob, Felony Justice, p. 275.

7. See Eisenstein and Jacob's analysis of the incarceration decision, ibid., pp. 278-87.

8. Although the state of Florida has a large prison population relative to other states, it has also expanded the available prison capacity. Prison capacity then, was probably not a factor in fluctuations in the sentence severity. According to sources in Dade County, during the period of the evaluation of the conference, no special in-service programs for the judiciary were held that might encouraged changes in sentencing practices. The findings from the comparison judges' courtrooms substantiate the impression that sentencing practices were not subject to any major review during the period of study. Conversation with Dade County Probation Office, June, 1978.

9. Since the trials were generally overrepresented in the non-conference group, one might conclude that the difference can be explained in terms of a penalty for going to trial and being convicted rather than pleading guilty. Two points argue against such an interpretation. First, the number of non-conference convictions is so small that the distributions may be particularly unstable. Second, while the effect is in the expected direction the trial cases may well have been the relatively more serious offenses, had poorer prior records, etc., so that the use of trial is not the critical variable. Hence, while it is beyond the scope of the current project to examine the penalties associated with invoking the right to trial, these findings give little support to the commonly held belief that insistence on a trial will be penalized by a more severe punishment. See William M. Rhodes, "Plea Bargaining: Who Gains? Who loses?" Promise Research Project No. 14, Final Draft, May 31, 1978, Institute for Law and Social Research Iv, pp. 45-47.

Chapter IX, pp. 109-125

1. Research staff survey of State Attorney's Office.

2. See, for example, Richard D. Knudten, Anthony Meade, Mary Knudten and William Doerner, "The Victim in the Administration of Criminal Justice: Problems and Perceptions," in William F. McDonald (ed.), Criminal Justice and the Victim (Beverely Hills, California: Sage Publications, 1976); Anne L. Schneider, Janie M. Burcart, and L. A. Wilson II, "The Role of Attitude in the Decision to Report Crime to the Police," in McDonald, Criminal Justice; and Wildhorn, et al., Indicators of Justice.

3. Knudten, et al., "The Victim."

4. David Easton and Jack Dennis, Children in the Political System: Origins of Political Legitimacy (New York: McGraw Hill, 1969); Robert Sigel, (ed.), Learning About Politics: A Reader in Political Socialization (New York: Random House, 1970); Jean Piaget, The Moral Development of the Child (New York: Kegan Paul, Tre ch, Trubner, 1932); June L. Tapp and Felice Levin, "Legal Socialization: Strategies for an Ethical Legality," 27 Stanford Law Review 1 (1974); June L. Tapp and Lawrence Kohlberg, "Developing Senses of Law and Legal Justice," in June L. Tapp and Felice Levine, (eds.), Law, Justice, and the Individual in Society (New York: Holt, Rhinehart and Winston, 1977).

5. See Piaget, Moral Development; Tapp and Kohlberg, "Developing Senses of Law"; and Robert D. Hess and Judith V. Torney, The Development of Political Attitudes in Children (Garden City, N.Y.: Doubleday, 1968).

6. Neubauer, Criminal Justice in Middle America, p. 165; also see Kenneth Kipnis, "Criminal Justice and the Negotiated Plea," 86 Ethics 93.

APPENDIX A

SAMPLE PROCEDURE

1. Unit of Analysis

The judges in the jurisdiction agreed to allow the research staff to designate which cases would be scheduled for a conference and, therefore, set the stage for random assignment of cases to test and control groups. The implementation of that opportunity was complicated, not by any lack of cooperation but by the intractable complexity and variety of a large court system. Two general problems required attention. First, a court "case" needed to be defined. Some strategic and ethical answers needed to be provided regarding how to count multiple defendants involved in a single criminal event and a single defendant charged with multiple cases. Second, we needed to maximize research staff control over case assignments but required judicial involvement in the process in order to set up the conference dates.

In the researcher's "ideal" world only one offender would commit any offense for which he or she would be processed and sentenced. Only after completing the sentence would that individual commit another offense. Thus, if defendants, operating alone, could be processed on only one case at a time, the job of the researcher would be much simpler than it is. Instead, a single criminal "event" may involve any number of defendants. Also, a defendant may be charged with any number of offenses, processed separately or at the same time. Because of these facts of life, simplicity would point toward using the defendant rather than the case as the unit of analysis, although no solution will resolve all of these issues.

We selected the case rather than the defendant as the unit primarily because of the ethical issues involved in providing the treatment"-- i.e., access to the pretrial settlement conference procedure. We wanted to randomly assign members to the test group (all of whom would have access to the conference). If we assigned defendants, rather than cases, we would run into situations in multi-defendant cases, where, for example, one defendant would be assigned to the test and another to the control group. While providing the conference option is within the scope of the court's discretion and, therefore, could be offered or denied, it was particularly troublesome to discriminate among the defendants within a single case. The potential for problems among attorneys and their clients when cases would be processed differently because of research needs seemed so great that it was decided not to split up defendants. As a result of this choice, the unit of analysis became the case, not the defendant. * All defendants in a case were, therefore, assigned to the same group, whether test or control. Thus, all the defendants in a case had access to the same procedures. Whether they used them or not was up to the participants, not the researchers.

Having decided to use the case as the unit, the next question is, what shall be used to represent the case? # If a case involved more than one

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* The sample includes 1074 cases--for 1291 defendants.

#At each point our basic goal was to develop solutions that a) would most completely represent the actions that courts take, and b) could be applied in the same way to the different sampling frames. Some of the choices that follow may seem convoluted and/or unnecessarily confusing on their face but were necessary in order to meet these goals.

defendant, we assigned all to the same group, tracked all of them until each closed and then randomly selected one to include in the analysis. To represent the group of defendants with summary scores seemed less desirable because of the variation it would include. For example, if one defendant is dismissed and another is sentenced to ten years, what should be the summary? Selecting a single person to represent the case loses some of the variety in the multi-defendant case but avoids such anomalous scores.

When a defendant was involved in more than one case, some additional choices needed to be made. The basic problem involved the discrepancy between the logic of the administrative unit, which would dictate separately counting each case number against a defendant, and the court's practice, which focused on all the cases against the defendant as a single entity. If we worked strictly with case numbers we would have the possibility of one case assigned to test and another to control. Unfortunately, if the court is awareof both the cases, which is generally the situation, it will treat them together. It would be beyond our control to force separate consideration to avoid diluting the distinction between test and controls. A second problem follows. The action in a "case" inevitably looked at the defendant as a whole. If several cases were involved the decisions about processing andthe final result would often reflect that view. For example, the official record might show four guilty pleas and four 2-year sentences to be served concurrently. Alternatively it might show one guilty plea and three cases dismissed with a total sentence of two years. In both examples the presence of multiple cases played a role in determining the final result. The different approaches often appeared to be a matter of courtroom style rather than differences in the defendants. It thus seemed important to modify the definition of case to meet these practices. We used the case number assigned by the court as our sampling unit. However, if more than one case was listed for a defendant, we assigned all to the same treatment condition, tracked them all, and summarized the action on all the cases. As a result, the "case" used in this study incorporates all the charges and court cases processed at one time. Such a choice was necessary in order to represent as completely as possible the action taken by the courts. The same definition was used in all the sampling and data collection points so that the test and control groups contain similar portions of these "muddy" situations. In the entire sample 16.7 percent of the cases involved multiple defendants and 17.2 percent incorporated multiple cases against a defendant.

2. Sampling Procedures

a. Assignment of cases to judges. The courts administer what they call a "blind File System" whereby each defendant, at the time of booking, is assigned to a track that will eventually deliver his or her case to one of the circuit court judges. This assignment is done solely according to the order in which the defendant is received at the County jail. The one exception to this order is if the defendant has a pending case before a judge (or is on probation). In such cases, the defendant is removed from the order and assigned to the judge before whom he or she had appeared already.

The judges appear to play no part in the assignment of cases. The administrative judge, for example, does not have any responsibility for case assignment. Cases may, however, be transferred from one judge to another in the Criminal Division. Cases may, on occasion, be transferred because of conflict of interests or case overloads when one judge may have a particu-

larly long trial that would seriously delay his calendar. Since these procedures are followed for all defendants, it should not lead to any bias toward repeat offenders or long cases in any particular courtroom, since each courtroom would get its share. The court's description of the Blind File System is provided at the end of this Appendix.

b. Sample selection procedures: test and control cases. The design called for cases to be randomly assigned by the research staff to test and control groups from each judge's calendar. A stratified sample might have produced information about some important issues. However, we could not know all the relevant issues on which to stratify at this early stage of research. For example, at one point it was suggested that drug cases and bad check cases should be excluded because conferences would be unecessary. Without prior experience, the ad hoc judgments about appropriateness ran the danger of incorrectly or incompletely identifying the appropriate criteria for selection. A random sample, since it does not require such prejudgments, constitutes the stronger design because of its greater inferential power.

Cases were added to the groups for approximately seven months. Working from the calendar of arraignments scheduled for the following day the research staff would go down the list of cases in order, identifying the first two as test cases, the third control, the next two as test, the next as control, etc. When several case numbers were listed for the same defendant, they were kept together as test or control, consistent with the preceding discussion. The staff notified the judge's secretary which cases were to be assigned conference dates if a not guilty plea was entered. The next step involved dropping from these pools of test and control cases those that did not enter a not guilty plea. Thus, ten cases might be scheduled for arraignment, but only two would plead not guilty. The others would be rescheduled, or, less frequently, plead guilty at that time.

The pool of control cases for each of the test and comparison judges was accumulated in the same fashion at the same time. Every third case on the arraignment calendar, as mentioned above, was assigned to the control pool. The staff then removed from the pool those cases that did not enter a plea of not guilty. The remaining cases formed the control sample.

The three test judges shared a willingness to participate in the experimental procedure. Based on descriptions by their colleagues and subsequent observations at the site, the three test judges represented substantially different styles of judging, judicial philosophy, use of plea negotiation, and courtroom discipline. As a result, the conference procedure was tested under three different conditions. We cannot hope to generalize from the experiences in these three courtrooms to the universe of judges, but the differences among the test judges give considerable power to the evaluation.

Although the judges had agreed to allow the selection of control cases, they were not informed which cases were to be used. The participants were informed of necessity which cases were in the test pool since they needed to schedule the conference. (See end of this Appendix for letters given by judge to defense counsel and defendant when conference date was set at arraignment.) Two issues are raised by the involvement of the participants and the research staff in the selection of cases. First, the procedure was obviously not "double-blind", as Campbell and Stanley suggest is desirable, since all parties knew which were test cases. 1/

This knowledge was unavoidable since the research staff and participants were all involved in the process. It is possible that this knowledge may have affected behavior. On the other hand, everyone knew that we were analyzing other cases as well. If performing well for the researcher was important, that effect should have occurred to some extent throughout the entire calendar since the participants did not know which were control cases and which were not included in the sample. Given the multitude of activities and priorities each has, it seems unlikely that the opinions of the research staff would be central in anyone's thinking. In addition, the judges and attorneys were interviewed by senior staff regarding their practices, thus spreading some of the effects of testing. Another approach to this problem was to minimize the description of the procedure as an experiment and to make clear that the procedure was directed by the court, rather than the evaluators. Finally, in the lay interviews, no reference was made to any court procedures as an experiment.

A second issue involves the use of the judge to assign the conference date at arraignment. Certainly there was the opportunity, if not the inclination, to ask for a continuance if a case were designated a test case. Although we could not prevent such manipulation we could find out how often cases assigned to the test group (i.e., had entered a not guilty plea) were not assigned a conference date. We found that 4 percent of the cases had no conference scheduled. Some of these occurred in the confusion associated with the introduction of the assignment process. A second reason was the inclusion of some co-defendants who may not have been scheduled because they were not arraigned at the same time. Most of the "errors," then, occurred as a result of administrative problems with staff and courtrooms in the assignment of conference dates. *

c. Sample selection procedures: pretreatment cases. For baseline comparisons we collected data on cases that were processed prior to the implementation of the experiment (i.e., prior to January 17, 1977). We have explained how the test and control groups were selected prospectively, in that the cases were selected at arraignment and then tracked until they closed, whenever that might be. The pretreatment cases had to be assigned retrospectively, using closed cases, identified by their proximity to the date of our intervention. The staff identified approximately forty cases from each of the test and comparison judge's disposition calendars by selecting every second disposition, going back in time from January 14, 1977. The procedure resulted in the inclusion of cases that closed primarily from November to January. To be comparable, all cases that closed some time after a not guilty plea had been entered at arraignment were eligible for selection. The research staff then collected data on these cases, regardless of how long they had been in the system.

The method of assigning pretreatment, test, and control cases imposed no constraints on the length of time involved in processing the cases nor in the types of offenses included. We should note that 8 percent of the test and control cases had not closed at the end of the data collection period. The evidence for the success of these sampling procedures lies in the simi-

*We are discussing the situation where a conference date was not assigned. We are not including here a consideration of those cases where a conference session did not take place even though it had been scheduled.

larity in the range of cases in each sample group. No statistically significant differences appeared on eight measures of defendant and offense characteristics, as discussed in Chapter IV.

SAMPLE COPY

TO: Defense Counsel

FROM: Judge Gene Williams

DATE: January 14, 1977

SUBJECT: Pretrial Settlement Conference

Attached to this memo is a document addressed to defendants in cases which will utilize a pretrial settlement conference. It explains briefly the purpose and participants of the conference.

The State Attorney and Judge have agreed that any charge and sentence negotiations in this case will take place in the conference. You of course are not required to enter into any settlement negotiations. However, if you wish to do so, all discussions will take place in the conference. If you choose to attend a conference, the defendant is not required to attend, but we hope he or she will do so. The conference is being held, in part, to provide an opportunity for the defendant to participate in and gain a more direct understanding of the possibilities of settlement in his or her case.

A tentative date for the conference will be/has been set at arraignment. There is sufficient time to allow the resolution of various pretrial motions, as necessary. The conference will not be held, however, unless you call the Assistant State Attorney handling your case at least three (3) working days in advance of the conference and confirm the date.

If you wish to use the conference, and the defendant wishes

to participate, it will be your responsibility to provide whatever additional notification you deem necessary. If the defendant is incarcerated, you may request the Assistant State Attorney to assist in making the necessary arrangements for his presence.

No statement made by any party at the conference will be admissible at a later trial of the pending charge if a settlement is not reached. If no settlement is reached, Judge will schedule the case for trial.

We believe that the pretrial settlement conference is an important innovation in the disposition of criminal charges. The use of the conferences is being evaluated by the Center for Studies in Criminal Justice of the University of Chicago Law School. A research staff member will observe each conference. Each defendant and victim will also be asked at the conclusion of the case to consent to an interview. You may receive a similar request to express your views about the pretrial settlement conference and about the current plea negotiation process. Your cooperation with this effort to improve the administration of criminal justice in Dade County is appreciated.

GW:

attach.

SAMPLE COPY

Notice to Defendants Regarding Pretrial Settlement Conference

The pretrial settlement conference is being introduced in Dade County in order to aid in the prompt and orderly consideration of the settlement of criminal cases before trial. The conferences will also provide you with an opportunity to participate in the discussion of possible settlement of the pending charge. All discussion of possible settlements will take place in a conference presided over by a judge, and while you are invited to attend, you are not required to do so. The fact that the defendant participated in the conference or made any particular statement at the conference may not be used in a later trial if a settlement is not reached.

The victim, if there is one in your case, and a representative of the police agency involved will also be invited to attend. They are not required to attend and they will not be able to prevent an agreement which has been reached by you, your defense attorney, and the Assistant State Attorney, with the approval of the Judge. If no agreement is reached, Judge will schedule the case for trial.

Additional information about the pretrial settlement conference is provided in the attached question and answer sheet. The use of the conference is being evaluated by the Center for Studies in Criminal Justice of the University of Chicago Law School.

We hope that you will avail yourself of the opportunity provided to participate in the pretrial settlement conference.

GENE WILLIAMS
Administrative Judge
11th Judicial Circuit
of Florida

Am I required to attend?

No. Participation by defendant, and victim is voluntary.

Will there be settlement discussions other than in the pretrial settlement conference?

No. All charge and sentence discussions will take place in the conference.

How was my case chosen for the project?

Three judges have agreed to participate in the project. From the cases assigned to each of these judges, a random selection has been made by the research staff of the Project for inclusion in the pretrial settlement conference process.

These cases will be compared with others to determine, among other things, whether the conference aids the defendant and the victim in understanding the process and the disposition.

Can statements made at the conference be used at a subsequent trial if a settlement is not reached?

No. Any statements made at the conference can not be introduced at a subsequent trial.

What is the purpose of the conference?

There are several purposes. These include making settlement discussions more open, providing the defendant, the victim, and the police officer an opportunity to attend, and aiding in a more orderly consideration of the possibilities of a pretrial settlement of the case.

Who will run the conference?

The conference will be presided over by the judge to whom the case is assigned. The other parties who attend will be given an opportunity to join in the discussion of any proposed settlement.

What happens if a settlement is not reached?

If a settlement is not reached, the case will be set for trial before the judge to whom it is assigned.

SAMPLE COPY

CLERK OF THE CIRCUIT COURT

SECTION ASSIGNMENT "BLIND FILING"
PROCEDURE OF THE CRIMINAL DIVISION

I. SECTION ASSIGNMENT SHEET

A. The Assignment sheet is designed so that cases will be distributed to the various Sections of the Court equally and in an unpredictable manner. The format is such that it may be expanded to allow for the allocation of additional Sections of the Court by the addition of a corresponding number of vertical columns; that it may be contracted to accommodate a lesser number of Sections by eliminating or blocking out the corresponding number of vertical columns; and that it may be modified to allow for the assignment of a lesser proportion of cases or a zero assignment of cases to such Judge or Judges, as the Administrative Judge may direct to be expedient, by the blocking out of the number of spaces in the vertical columns below the affected titled Sections to effect the desired proportions.

B. The Assignment Sheet presently in use is composed of 12 vertical columns, each titled with the name of one of the Judges of the Criminal Division, and 10 horizontal columns. Five of the spaces in the vertical column under Judge Williams' title are blocked out, thus allowing an assignment of 10 cases to each of the other Section Judges and 5 cases to Judge Williams, for a ratio of 2 to 1. This allocation is pursuant to the directive of Judge Williams as the Administrative Judge, by his memo of January 29, 1976.

Each sheet is serially prenumbered and initialed by the Chief Court Operations Officer or his designee and bears space at the top for the initials of the designated Supervisor with the date of initiation, and the initials of the Supervisor plus the date upon the closing, when all spaces are filled. Sufficient serially numbered assignment sheets are furnished in advance to the Court Operations Officer or the designated Supervisor and are kept securely, both before opening and after closing. The sheets are not available to other than designated personnel of the Clerk or for inspection by the Administrative Judge, at his request.

2. ASSIGNMENT AND POSTING PROCEDURE

A. Section Assignments are made only by the Chief Court Operations Officer, Operations Officer or the designated Supervisor and are not made in the presence of any unauthorized persons.

B. Upon receipt of the File Jackets and attachments from the Case Filings and Docketing Section after the initial processing detailed in "Case Input Procedure", the designated Supervisor again checks to ascertain that the files are in strict numerical order and that the lowest or first case number to be assigned or posted is in sequential ascending order to the last case number previously assigned or posted on the assignment sheet. Any discrepancy can be resolved by reference to the "Numbering" or "Case Log" Sheet, or the Assignment sheets.

C. With all cases to be assigned or posted in ascending case number order, the designated Supervisor begins by assigning

the Judge heading the first vacant block working from the left to the right in the horizontal columns and from the top to the bottom. If the first or lowest case has previously been determined, whether by assignment at the Magistrate level or by virtue of a pending lower case number, then the case number is inserted in the first vacant space in the vertical column below the appropriate Judge's title in descending order. Each successive case is assigned or posted in the same manner, working horizontally from left to right and from the top to the bottom of the Assignment Sheet. As each case is assigned, the Judge's name is written and subsequently stamped on the file jacket. The only exception to the assignment of a Section other than in case number order, is in the occasion of an assignment of a "Rush" case, that is an Extraordinary Petition, such as Habeas Corpus, Prohibition, etc., so that in all cases other than "Rush" the numbers in the vertical columns will be in ascending order when read from top to bottom. In the assignment of "Rush" cases the designated Supervisor notes in the space on the sheet in red next to the case number, the abbreviation "H.C." for Habeas Corpus; "Proh." for Prohibition; "Mand." for Mandamus; and "ExW" for any other Petition. When all cases have been assigned Sections or have been posted, the Supervisor returns all of the file jackets and attachments to the Case Filing Section for the final processing.

D. After completion of the Assignment Sheet when all vacant spaces have been filled, the Supervisor closes the sheet

by initialing and dating at the bottom right hand corner. Subsequently, the Operations Officer or Chief Operations Officer verifies the sheet, then signs and dates in the indicated space.

E. At the close of a Calendar month when all cases filed during that month have been assigned, should any sheets be open, the Supervisor draws a continuous red line horizontally and/or vertically, and below or to the sides of the case numbers assigned, then dates and initials in the right hand margin adjacent to the right line. In this manner the total filings for the particular month may be measured and the number of the last case filed and assigned may be determined.

3. PREDETERMINED SECTION ASSIGNMENTS AND AUTHORITY

A. Predetermined Assignments as referred to in Paragraph (2) are the Assignments in those cases which are "Blind Filed" by the Clerk at the Magistrate Level and assignments in those cases, whether directly filed or bound-over from the Juvenile-Family Division, wherein lower cases are pending. In both instances Local Rule 2 is the criteria since the same procedure and similar assignment sheets are employed at the Magistrate Level.

B. Local Rule 2 is also the authority for assignment when Informations or Indictments charging multiple Defendants require the consolidation of cases made on previously bound-over Magistrate or Juvenile-Division charges. In some instances Section Assignments may need to be changed when a new Defendant

not previously charged in the Magistrate or Juvenile Division, has the lowest pending case number of all of the Defendants named in the Information or Indictment.

C. Those cases in which an Information is refiled on a previously dismissed or Nolle Prossed Case, or in which an Information is directly filed after the dismissal of the same charge by the Magistrate, are assigned the same Section of the Court which was originally assigned, by the authority of the Administrative Judge Williams in his memorandum dated August 9, 1976. The Clerk's procedure in processing Informations filed or refiled in previously "No Informationed," Nolle Prossed or Dismissed cases is also to file and Docket such in the original file and under the original case number. This procedure avoids the necessity for transfer of pleadings, preserves the continuity for reference to original Section Assignment, Speedy Trial termination date, and Attorney teams, and prevents the possibility of delay, when, if separate files were made, the original was not brought to Court.

The described Assignment procedure and Assignment forms were effected on August 17, 1976. Documentation for the references made and sample forms are attached.

APPENDIX B

INSTRUMENTS AND SCALES

1. Court Records

a. Methods. The research staff collected basic information on each case about its processing in the courts, the offense, and defendant. Most of the data is self-explanatory.

b. Scales. Inter-coder reliability was achieved by checking the scoring with the original records. On a regular basis, staff meetings raised coding problems that were referred to senior staff for resolution. The senior staff reviewed all the coding. The court records were rechecked when the coding was unclear. Where discrepancies in the court records occurred, the problems were noted, additional documents were reviewed, and the supervisors in the clerk's office were consulted for assistance in order to resolve the issue.

The categorization of offenses was the most problematic. No single measure has been developed that is fully satisfactory. We used two, each with its own strengths and weaknesses. First, we assigned Uniform Crime Report codes as a measure of legal categories. These codes are a rough ordinal scale of offense severity. The UCR codes have the advantage of being relatively easy to use, since they correspond to the statutory labels used by the courts. We used the first 19 UCR felony categories. Anything that did not fit in those was put into a miscellaneous category. If several different charges were listed for a case, it would be assigned the code for the most serious one. Attempts were scored the same as a completed act, with the exception of homicide which was scored as aggravated assault.

The UCR index has some clear disadvantages since it uses rather gross categories and, therefore, underrepresents variations. Furthermore, since the UCR codes consider only indirectly the social definitions of the seriousness of the criminal event, they are difficult to use for many explanatory purposes.

In order to explore our data in the light of a social definition of offense severity, we adopted the Sellin-Wolfgang offense severity scale as a second measure. Using the Sellin-Wolfgang scheme, each event was first categorized by whether it included injury, theft, and/or damage. Then the coder indicated the presence and frequency of different types of injury, intimidation, damage, and forcible entry.

Weights as established by the Sellin-Wolfgang scale were assigned to these items, and the weighted items are totalled into a single score that represents the offense severity. Figure 2, page 155, shows the scoring procedure. Attempts were recorded under the categorization of the event, but the total score might well be zero. Zero in this scale meant no damage, rather than that no event occurred. Omitted from the index were victimless offenses which were treated separately. Drug cases, the most frequent victimless crime, accounted for roughly 20 percent of our cases and required special coding. Lacking national studies on the perceived severity of various drug offenses, we recorded the offense category (sale, possession, possession with intent or conspiracy), the type of drug (heroin, cocaine, amphetamines and barbiturates, and marijuana) and the amount of drugs seized.

FIGURE 2

SERIOUSNESS OF OFFENSE

Injury _____ Theft _____ Damage _____ Victimles _____

	#	Wt.	Total
I. # of victims of bodily harm			
a. receiving minor injuries		1	
b. treated and discharged		4	
c. hospitalized		7	
d. killed		26	
II. # of victims of forcible sexual intercourse		10	
A. # of such victims intimidated by weapon		2	
III. Intimidation (except II above)			
a. physical or verbal only		2	
b. By weapon		4	
IV. # of premises forcibly entered		1	
V. # of motor vehicles stolen		2	
VI. Value of property stolen, damaged, or destroyed (in dollars)			
a. Under 10		1	
b. 10-250		2	
c. 251-2000		3	
d. 2001-9000		4	
e. 9001-30,000		5	
f. 30,001-80,000		6	
g. Over 80,000		7	

VII. Drugs
a. Kind _____
b. Amount _____
c. Was charge: Possession _____
Possess. w/ intent _____
Conspiracy _____
Sale _____

The amounts were dichotomized for each drug, depending on what the jurisdiction informally defined as large enough to require jail time. The cut points are higher than the statutory ones.

"Large" was defined by State Attorney practice regarding the amount at or above which that office would seek jail time. For marijuana , it was 2 ounces or more; and for cocaine or heroin, 5 packets. Pills created greater definitional problems, since the practice was not as well articulated as for other drugs. More than one bottleful, while hardly precise, was the best available estimate.

One of the variables that gave the most trouble at first was determining whether a case was settled or litigated. This information is not recorded as such and we finally made the inference based on other information in the court records. (For a discussion of the coding decisions, see Chapter VII.)

The Diamond-Zeisel severity scale, a modification of the scale developed by the Administrative Office of the U.S. Courts, was the basis for comparing sentences between groups. The Diamond-Zeisel scale was developed for the federal system and required one modification to adapt to a state system. The scale ranges from 1 (for fine only) to 201 (for 99 years) with three the minimum if any incarceration is imposed. The state court used a wider range of combined prison/probation sentences than was available in federal courts. Instead of giving a flat score equivalent to the minimum prison and probation time combined for any split sentences, we scored the incarceration and probation time separately and used the total, whatever it might be.

A second problem arose when the sentence given for each count was different from the time that would actually be served. A defendant might be given a new sentence concurrent with one currently being served so that no new time was given although the records showed a substantial new sentence. In other cases, the judge might sentence a defendant to x years but indicate that some portion of x would not be served if no new problems arose. This discretion was independent of the parole board's policies of early release.

In order to deal with these differences, staff recorded two sentences. The first, or stated severity, used the modified Diamond-Zeisel scale to record the total time for the offense. If the sentences on two charges were concurrent, the stated time was the total that could be served for this offense. The second, perceived severity, subtracted from the stated sentence time that would be concurrent with an existing sentence or in which execution was stayed. The perceived sentence recorded any additional time that might be served on the new offense. Any time served awaiting trial was not subtracted from the sentence scores on the grounds that many of the effects of imprisonment would occur whether the time was served prior to disposition or after.

2. Observations of Pretrial Settlement Conference Sessions

a. Observation procedures. One of three full time members of the research staff attended each conference session. They rotated among the courtrooms so that any systematic differences in observation skills would not confound substantive interpretations. Before the session, the observer noted who was present. The observation instrument is included below. During the session itself the observer wrote down in sequence as much as possible of the verbal behavior, indicating the speaker, to whom the comment was addressed, and a paraphrase of all comments. After the session the observer made some

subjective ratings, provided descriptive data about the conclusion of the session, and categorized comments into one of eight substantive categories.

A comment was counted any time one of the following occurred: a) a different person made a codable statement; b) the same person made a statement that fit a different topic category than the immediately preceding one; or c) the same person made a statement that fit into the same category as the immediately preceding one but which expressed a different thought, although related to the previous one (e.g., provides new information).

These categories were defined as follows:

(1) Facts of the Case: This category includes statements about the charges pending against the defendant and the facts of the incident which are the basis of the criminal charges.

(2) Prior Record, Further Charges: We have grouped prior record and further charges, because both relate to the general question of whether the defendant has a criminal record. We coded this information separately from "facts of the case", because we wanted to see whether criminal record was introduced in settlement conferences.

(3) Law and Practice: This category deals with a variety of subjects. It can include statutory requirements, office policy, or an actor's general procedures.

(4) Maximum Sentence: Reflects a description of what the statutory maximum was as well as a suggestion or recommendation that the maximum sentence be imposed.

(5)(a)(b)(c)(d) Prediction of Trial Outcome: This category includes any discussion of the consequences of going to trial; (a) if go to trial the sentence will be more severe; (b) a trial might result in the disclosure of new evidence, which might make the sentence more severe; (c) if go to trial may get the maximum sentence; (d) the sentence will be the same after trial.

(6) Conference Precedent: This category includes any reference to dispositions or procedures in prior conference cases. Here, we are looking at references to particular prior cases, not general practice.

(7) Personal, Background History: This category includes work record, family life, drug or alcohol usage of either defendant or victim.

(8) Recommendations: This category reflects recommendations for disposition of the case.

A final coding category dealt with comments about procedure: the scheduling of another session, discussion of procedural options available, and conference procedures. That category is not presented in this report since the focus here is on substantive issues.

Early experience with the conferences indicated that a dichotomy between settled and litigated cases was insufficient. At many sessions, a single proposal would be discussed, but the attorneys would want to clear the agreement with clients or police; or the conference would conclude when an attorney indicated the intention to file an additional motion. We developed four categories that incorporated outputs from conferences that were held (as distinguished from those that were not held as scheduled). First, a conference is categorized as settled if a plea was taken following the conference or was delayed but agreement by all parties appeared assured. Second, a conference is called tentative if a single disposition was being discussed, but no firm commitment could be made. For example, the public defender, while not indicating dissatisfaction with the proposal, would say he would have to check with the client. A conference is called continued if it was adjourned for further motions or evaluation, or a single disposition was on the floor but there was not indication of its fate. Finally, a session was called going to trial if one of the parties indicated an intention of going to trial. These categories were based primarily on verbal behavior. The observers were instructed to select "going to trial", if that was verbalized, even if they felt quite sure that the parties would subsequently settle.

The observer made judgments about the judge's style in the conference according to preset categories. The procedure used the conversation in the conference as the raw data. The summaries and subjective judgments about the conversation became the data for analysis. One benefit of the procedure was that, during the conference session, the observer did not attempt to categorize the behavior, and thereby could concentrate on accurately and completely recording the sequence of verbal behavior. The record of comments provided the senior staff with a source for checking the summary judgments of the site staff.

c. Observer role. The three permanent staff rotated conference observations among the three judges. Each observer's training consisted of writing as complete descriptions as possible of some conferences, followed by review with senior staff regarding completeness and accuracy. From these narratives and extended staff consultation, we were able to establish common patterns of behavior in the conference, resolve technical issues that required clarification for the observer, and develop some reliable coding categories.

After the initial training period, each observer was responsible for recording the observations and then summarizing them. The observers were informed of the general issues on which we hoped to collect data and were consulted regularly to refine these issues based on their observations.

The staff's observer role was to maintain silence during the conference and to talk to the participants only to clarify what the observer had not heard or what was not clear. Because the staff became familiar to the participants, they were sometimes drawn into casual conversations before or after conferences that would provide additional insights regarding how the conference was functioning. In general, the staff observers were able to maintain their low profile. They never were asked to leave a conference, and the professional participants, when interviewed by the senior staff, reported that their presence had no effect.

A potential problem involved experimenter effects. The site director

and two assistants worked full time at the site in the court building. While the judges were responsible for the conduct of the conference procedure, project staff were involved on a daily basis with the implementation. The staff role was to conduct the evaluation, but that involved extensive liaison work to establish procedures for the implementation. At each step, the staff tried to ensure that the procedures could be carried out by the court system. If notification of victims and defendants about the conference depended on our staff, for example, we would not have tested whether a court system could absorb such a task. On the other hand, the requirements for the evaluation required staff identification of test cases for the judges and presence at each conference.

The site director carried out a facilitator role and, as such, became a participant in the experiment. Every effort was made to limit the intervention. In addition, the many goals and duties of the court participants probably acted to reduce the potential impact of the experimenter. It is unlikely that any changes due to the experimenter would be accomplished over the objections of the participants. Besides identification of cases, project staff were involved in three other major ways in the evaluation. First, one member of the project attended each conference session in order to provide systematic data collection. Second, the staff, with the assistance of college interns, interviewed participants in connection with the evaluation effort after cases had closed. Finally, the staff examined files in the Clerk's Office. The different tasks involved varying degrees of intrusiveness. The staff presence for more than a full year and the rather large number of cases involved in the study made their visibility and, hence, their potential effect less noticeable, as the staff became just another member of the court work group. 2/

d. Inter-observer reliability. Comparisons were made of the ratings made by the three observers to test the reliability of the data. Each observer attended roughly the same proportion of conferences for each judge. However, one observer attended the shorter conferences of each judge. That observer was engaged in directing the interviewing tests so he may have tried to attend only those that could be expected to take relatively little time. In any event, we know that there was some variation in the length of conferences each attended. Taking that finding into account, we analyzed the observer differences in ratings of descriptive and subjective data. The findings are presented in Table B-1, page 160. On the descriptive data, the observers provided substantially the same information with the variance being explained primarily by the length of the conference rather than the observer. For three of the six subjective ratings where comparability would be more difficult to achieve, the observers used similar ranges of ratings. For the other three, the observer differences were significant even after the length of the conference was taken into account. Therefore, the pattern of findings indicates that the subjective data are somewhat less reliable than the descriptive data. Fortunately, for our purposes, the subjective ratings are used only in conjunction with the more reliable descriptive material. Further, rotating the observers among the courtrooms minimized the bias. As a result, we feel that the observation data provide a reasonably good basis for substantive analysis.

TABLE B-1

RELIABILITY OF OBSERVATION DATA

	Summary Main Effects	Main Effects: Observer	Main Effects: Time	Interaction (Observer Time)
1. Observation Data				
a. Number of recommendations	7.27*	.22	9.80*	2.09
b. Total number of comments	64.15*	2.57	81.83*	3.85*
c. Total Number of topic changes	35.34*	.37	43.11*	2.75*
2. Subjective Judgments				
a. Structures Development of conference	5.00**	10.25**	4.27**	4.14**
b. Develops consensus	1.75	2.36	2.39*	.76
c. Gains Factual Base	5.25**	11.74**	5.10**	.48
d. Explains Decision	3.22**	2.99*	4.20	1.10
e. Imposes unilateral decision	.35	.22	.44	1.64
f. Number of different recommendations	5.16**	1.95	6.92**	1.30

*sig. = .05; **sig. = .0.; ***sig. = .001.

SAMPLE COPY

CONFERENCE OBSERVATION CHECKLIST

1. Case Summary

1. Project # _____ 2. Location: Chambers_____
Courtroom_____

3. Date _____ 4. _____ Conference of _____ (before this judge today)

5. Participants present (Check:)

____Judge
____Ass't. State Atty.

Defense Counsel
____Public Defender
____Private
____Clinic
____Court-app't.

Police:
_____ Arresting Officer
_____ Investigating Officer
_____ Department representative
_____ Defendant(s)
_____ Victim(s)
Others: _____
_____

6. Original Trial Date: _____

7. Original charges: _____

_____

_____

8. Negotiated charges: _____

_____

_____

9. Negotiated Sentence: _____

_____

10. Conference Outcome:
1. Negotiated prior to conference _____: 2. Settled _____;

3. Tentative _____; 4. Continued _____; 5. Trial _____

11. If case negotiated prior to conference, SPECIFY WHY _____

_____

12. Reason not settled because: (CHECK ALL THAT APPLY)

___ a. lack of time to complete negotiations

___ b. discovery process incomplete

___ c. additional motions to be filed

___ d. review tentative settlement

___ e. evaluation for any sort of specialized treatment

___ f. absence of critical person(s) (SPECIFY) _____

_____

___ g. other charges pending

___ h. other (SPECIFY) _____

_____

___ i. parties could not reach agreement

___ j. does not apply

13. Case going to trial: yes _____ no _____ don't know _____

14. Rescheduled trial date if any change: _____

No change: _____

14a. Next court date _____, or, none specified _____, N/A _____

15. Time: Start _____ End _____ Amount of recessed time _____

List in order of occurrence each statement that is made by listing, sending, receiver, style and comment content.

			COMMENT
Judge	1	Style	Facts of case ----------1
ASA	2		Prior record, further charges ----2
PD	3	Question = ?	Disposition ----------3
DC	4	Comment = (blank)	Law and practice ----------4
Vict.	5		Prediction of trial outcome -------5
Def.	6		Conference precedent ----------6
P.O.	7		Procedure ----------7
All	20		Personal history ----------8

	Sender	Receiver	Style	Comment	Code
1.					
2.					
3.					
4.					

CONTINUED

2 OF 3

SAMPLE COPY

III. Post Observation Summary

Before filling out the summary, review the observation work sheet

1. Code content of each comment.
2. Bracket each question-answer set in STYLE column.
3. Circle each different disposition recommendation in COMMENT column.
4. Draw line under each change in code.

A. Disposition Process

1. Tally the number of different recommendations made by each party.

A. Judge _____ D. Police _____

B. ASA _____ E. Defendant _____

C. DC _____ F. Victim _____

G. Other _____

_____

2. Whose recommendation, in your opinion, formed the basis for the settlement of the conference? (Check only the significant actors.)

A. Judge _____ D. Police _____

B. ASA _____ E. Defendant _____

C. DC _____ F. Victim _____

G. Other _____

_____

3. Record total number of different recommendations _____

4. Degree of participation in disposition (Check appropriate description)

___ A. One-tiered: Attorney and judge only

___ B. Two-tiered: Attorneys and judge with police consultation.

___ C. Two-tiered: Attorneys and judge with lay consultation.

___ D. Collaborative: Attorneys and judge with police working together

___ E. Collaborative: Attorneys and judge with lay working together

5. Who asks for PTI (Check the appropriate names only)

_____ Judge	_____ Defendant
_____ ASA	_____ Victim
_____ DC	_____ Other (SPECIFY): _____
_____ Police	_____ No One

B. Control Style

Circle the number that most accurately describes the judicial style

	1 Very little	2	3	4 A great deal
1. Structures the development of the conference				
2. If disagreements occur, actively seeks to develop a consensus				
3. Uses the conference to gain factual information				
4. Explains his decisions				
5. Imposes a unilateral decision				
6. If lay participation is not voluntary, actively seeks to involve:				
Police ----------				
Defendant ------				
Victim ----------				
7. Exhibits typical conference behavior for that judge				

SAMPLE COPY

C. Degree of Participation

1. Reference to prior negotiations (e.g., attorneys talking together or reference by one party regarding communication between them prior to the conference? Yes _____ No _____

2. Reference to lack of preparation time? Yes _____ No _____
IF YES, by whom? ASA _____ DC _____

3. Reference to plans to file motions in the future? Yes _____ No _____
IF YES, by whom? ASA _____ Type of Motion _____
DC _____ Type of Motion _____

D. Participation

1. Frequency of participation comments: Give proportion of total comments sent by all participants for each lay participant.

Police _____/_____ Defendant _____/_____ Victim _____/_____

2. Who started new topics? Give the proportion of total # of senders of code (i.e., topic) changes.

Judge ___/___ ASA ___/___ DC ___/___ P.O. ___/___ Def. ___/___

Victim ___/___ Other ___/___ SPECIFY _____

_____

F. Function of lay participation for the judge (Select the most appropriate one).

____ 1. Increase support for disposition reached.

____ 2. Gather information from lay participants for determining the disposition (e.g., Facts of the offense, home life).

____ 3. Bring lay recommendations into the decision process.

G. Reference to prior record

yes _____ no _____

IF YES, was content given?

yes _____ no _____

IF CONTENT WAS GIVEN, what was it?

	Arrest?	Charge?	PTI?	Conviction?

H. Additional Observations.

3. Interviews with Lay Parties

a. Procedure. Our goal was to interview all the defendants, victims, and police officers in all the test and control cases. Interviews with pretreatment participants were not attempted because of the longer time lag between the time the case closed and when interviews would have been started (6 months to a year), whereas it was only approximately 2 to 4 weeks for the test and control groups.

Where more than one victim, defendant, or police were interviewed we randomly selected one to represent that role in the case. As soon as a case closed the parties in the case were eligible to be interviewed. Names, addresses and phone numbers were listed in the court records. Where information was missing, telephone directories, reverse-listed directories, and sometimes neighbors were used to establish phone contact. As soon as a street address was available, a letter was sent to the respondent explaining in general terms the purpose of the project and saying that we would call shortly. The letter described the confidentiality protections. (See end of this Appendix for copy of all letters). In the letter we mentioned that a staff person would call their phone number (which we inserted, when available). If no phone numbers were available or if the respondent did not wish to be reached at the number we listed, he or she was asked either to call the staff office for the interview or to return a self-addressed, stamped postcard indicating when and where the interview could be conducted. Obviously, if we had no phone number a greater burden was placed on the respondent. Nonetheless, 80 victims and defendants called the office for interviews.

The police officers' home phones and addresses were unavailable to us. A letter similar to the one for victims and defendants was sent to each officer at the departmental address. (See end of Appendix for copy of this letter.) The letter referred to the defendant's name and case number in order to indicate which among the many cases in which the officers were involved the interview would cover. The letter indicated that we would call their departments for the interview or asked them to call the staff office.

Where the research staff had phone numbers, five attempts were made to reach the respondent at different times of the day and days of the week. 3/ If no answer was obtained on any of these, no further attempts were made. If the respondents' phone were busy or the respondents indicated that they were unavailable, additional attempts were made.

For defendants who were incarcerated, only in-person interviews were possible. No introductory letter could be sent. Instead, after the corrections officials had given approval, a list of defendants whom we wished to interview was given to the warden. The defendants on the list were then brought to an interviewing room where the staff person would explain the project and ask permission for the interview to take place. If they agreed, they first signed a consent form indicating they understood the request and were participating voluntarily. (See end of this Appendix for copy of letter.) Whether inspite of or becuase of the potentially coercive situation of inmates being brought to the interviewer by guards, only 7 inmates refused to take part in the interview.

If a defendant or victim were incapacitated (too young or old or hospitalized, or dead) some other adult member of the family was interviewed

instead. Six of the respondents were not the targeted respondent. A Spanish version of the instruments was available and several of the interviewers were bilingual. If a respondent wished, the interview was read in Spanish and the responses translated after the interview was completed. Eight percent of the victims and 3 percent of the defendant respondents were interviewed in Spanish. All the police were interviewed in English.

b. Attitude scales. Below are the items used to form the attitude scales reported in the text:

Satisfaction With Disposition

1) How satisfied are you with the outcome of your case? (a) very satisfied, (b) satisfied, (c) dissatisfied, (d) very dissatisfied, (e) don't know*.
2) How fair do you think the outcome of your case was? Would you say it was (a) quite fair, (b) fair, (c) unfair, (d) quite unfair, (e) don't know.

Satisfaction With Process

1) Were all the facts of the case presented to your satisfaction at the _____ (whenever the case was disposed)? (a) yes, (b) no, (c) don't know.
2) When you explained the facts of the case to the judge, what effect do you think it had? Did he gave your point of view (a) serious attention, (b) did he pay some attention, (c) only a little attention, (d) did he ignore what you had to say, (e) don't know.
3) When you explained your recommendation to the judge, what effect do you think it had? Did he give your recommendation (a) serious consideration, (b) did he give it some consideration, (c) only a little consideration, (d) none at all, (e) don't know.
4) Do you think the judge tried to find out the facts of the case you were involved in? Would you say he (a) definitely tried, (b) probably tried, (c) probably did not try, (d) definitely did not try, (e) don't know.
5) When you explained the facts of the case, what effect do you think it had on the Assistant State Attorney? Did he/she give your point of view (a) serious attention, (b) did he pay some attention, (c) only a little attention, (d) did he ignore what you had to say, (e) don't know. (Asked only of victims and police.)
6) When you explained your recommendation for the outcome to the Assistant State Attorney, what effect do you think it had? Did he/she give your recommendation (a) serious consideration, (b) some consideration, (c) only a little consideration, (d) none at all, (e) don't know. (Asked only of victims and police.)
7) When your case went through the courts, were you treated (a) better, (b) the same, (c) worse than other victims/defendants, (e) don't know. (Asked only of victims and defendants.)

Satisfaction with the Criminal Justice System

1) How would you rate the overall fairness of the police. Would you say it is (a) very fair, (b) fair, (c) unfair, (d) very unfair, (e) don't know.

*Don't Know responses were not offered but were used if respondent was unable to make a choice.

2) How good a job do you think the police do? Would you say the way they do their job is (a) very poor, (b) poor, (c) average, (d) good, (e) very good, (f) don't know.
3) If an innocent person is accused, what are the chances the courts will find him innocent? Would you say they are (a) very good, (b) fairly good, (c) about even, (d) fairly poor, (e) very poor, (f) don't know.
4) If the police caught the person who committed a crime, what do you think the chances are that the lawbreaker would be punished by the courts? Would you say they are (a) very good, (b) fairly good,(c) about even, (d) fairly poor, (e) very poor, (f) don't know.

Perceived Pressure to Plead (Asked only of defendants)
1) What did you think the most likely sentence would have been if you had been convicted by a judge or jury at trial? Do you think it would have been (a) much lighter, (b) lighter, (c) about the same, (d) heavier, or (e) much heavier if your case went to trial instead of the way yours was handled?
2) How important was your fear of a heavier sentence in your decision to plead guilty? Would you say it was (a) very important, (b) of some importance, (c) not very important, (d) of no importance, (e) don't know.

We looked at participation in terms of recollections of presence at proceedings. The self-reports of presence may or may not reflect actual behavior. People may forget, not wish to recall, or not be able to be precise about when they went to court. We felt that the self-reports of attendance would establish at least a baseline of personal recall against which their interpretations of their experiences could be measured. In addition, we asked respondents about the types of contacts that they had with various court personnel--for example, whether they discussed their recommendations for disposition with anyone, etc.

We could expect an overlap between attitudes toward personal experience in the courts and general ratings of the criminal justice system. Personal experience might color evaluations of institutions, while overall attitudes toward authority could be expected to shape interpretations of one's own experience. The interaction between these levels of attitude creates major measurement problems. If personal contact with the courts affects attitudes toward the courts as institutions, then we would expect participation to be a predictor of attitudes. Unfortunately, participation itself is quite likely to be a consequence of attitudes toward its utility, deriving from views about institutions. Comparisons of attitudes and different kinds of participation may help make some estimations of effect.

SAMPLE COPY - LETTER TO VICTIM/DEFENDANT ASKING FOR INTERVIEW

THE UNIVERSITY OF CHICAGO
CENTER FOR STUDIES IN CRIMINAL JUSTICE
PRETRIAL SETTLEMENT PROJECT
Metropolitan Justice Bldg., Room 308
1351 N.W. 12th Street
Miami, Florida 33125
Telephone: (305) 547-2976

Wayne A. Kerstetter
Project Director

Anne M. Heinz
Sr. Research Associate

Ben S. Meeker
Sr. Research Consultant

Charlotte Boc
Site Director

Dear _____:

In an effort to find out more about the attitudes of people toward the administration of justice in our courts, the Center for Studies in Criminal Justice of the University of Chicago Law School is conducting a study which will include personal interviews with a number of individuals.

This study is being done in cooperation with the Dade County Circuit Court, the office of the State Attorney, and the Public Defender's office. Your name has been selected on a random basis from a group of individuals whom we hope will volunteer to be interviewed.

The interview will be confidential as no names or addresses of individuals interviewed will be divulged to anyone. We are interested only in collecting information about the attitudes, experiences and suggestions for improvements or changes in the quality of justice from those we interview. It is our belief that improvements in the administration of justice will best be accomplished by seeking information from individuals such as yourself.

If you can be reached at phone number _____, we will call you within a few days to explain in more detail the purposes of this survey and to answer any questions you may have. If this number is not accurate or you wish to be called at another number, please phone us at 547-2976, or return the enclosed letter. Our staff person will also arrange a convenient time for an interview if you are willing to participate.

Sincerely,

Charlotte Boc
Site Director

SAMPLE COPY - LETTER TO POLICE

THE UNIVERSITY OF CHICAGO
CENTER FOR STUDIES IN CRIMINAL JUSTICE
PRETRIAL SETTLEMENT PROJECT
Metropolitan Justice Bldg., Room 308
1351 N.W. 12th Street
Miami, Florida 33125
Telephone: (305) 547-2976

Wayne A. Kerstetter
Project Director

Anne M. Heinz
Sr. Research Associate

Ben S. Meeker
Sr. Research Consultant

Charlotte Boc
Site Director

Dear _____:

In an effort to find out more about the attitudes of people toward the administration of justice in our courts, a study is being conducted in Dade County courts which will include personal interviews with a number of individuals.

This study is being done in cooperation with the Dade County Circuit Court, the office of the State Attorney, and the Public Defender's office. You were the police officer in a randomly selected case in the study. We hope you will agree to be interviewed about the processing of that case by the courts. The defendant in the case was _____. The case closed on _____. Your participation is entirely voluntary and may be terminated by you at any time.

The interview will be confidential as no names or addresses of individuals interviewed will be divulged to anyone. We are interested only in collecting information about the attitudes, experiences and suggestions for improvements or changes in the quality of justice from those we interview. The information collected will be disclosed only in summary form that will not identify individuals. It is our belief that improvements in the administration of justice will best be accomplished by seeking information from individuals such as yourself.

Would you please call us within the next week between 8:00 a.m. and 9:00 p.m. at our office, 547- 2976, for the interview. Please refer to I.D. _____.

Sincerely,

Charlotte Boc
Site Director

SAMPLE COPY - FOLLOW-UP LETTER TO POLICE

THE UNIVERSITY OF CHICAGO
CENTER FOR STUDIES IN CRIMINAL JUSTICE
PRETRIAL SETTLEMENT PROJECT
Metropolitan Justice Bldg., Room 308
1351 N.W. 12th Street
Miami, Florida 33125
Telephone: (305) 547-2976

Wayne A. Kerstetter
Project Director

Anne M. Heinz
Sr. Research Associate

Ben S. Meeker
Sr. Research Consultant

Charlotte Boc
Site Director

Dear _____:

This is a reminder that we have not yet heard from you regarding your case involving _____ that closed on _____. Since we are working with a sample of cases, your views and experiences are especially important to us.

The interview can be conducted by telephone by calling 547-2976 or you may come by Room 308 in the Metropolitan Justice Building Monday-Thursday 8 A.M.-9 P.M., Friday 8 A.M.-5 P.M., and Saturday 10 A.M.-6 P.M.

The interview will be confidential as no names or addresses of individuals interviewed will be divulged to anyone. We are interested only in collecting information about the attitudes, experiences and suggestions for improvements or changes in the quality of justice from those we interview. The information collected will be disclosed only in summary form that will not identify individuals. It is our belief that improvements in the administration of justice will best be accomplished by seeking information from individuals such as yourself.

While the interview is voluntary, we hope that you will take this opportunity to express your views. We look forward to hearing from you.

Sincerely,

Charlotte Boc
Site Director

Please refer to ID# _____

SAMPLE COPY - CONSENT FORM FOR INCARCERATED DEFENDANT

THE UNIVERSITY OF CHICAGO
CENTER FOR STUDIES IN CRIMINAL JUSTICE
PRETRIAL SETTLEMENT PROJECT
Metropolitan Justice Bldg., Room 308
1351 N.W. 12th Street
Miami, Florida 33125
Telephone: (305) 547-2976

Wayne A. Kerstetter
Project Director

Charlotte Boe
Site Director

Anne M. Heinz
Sr. Research Associate

Ben S. Meeker
Sr. Research Consultant

Name: _____

In an effort to find out more about the attitudes of people toward the administration of justice in our courts, a study is being conducted in Dade County courts which includes personal interviews with a number of individuals. This study is being done in cooperation with the Dade County Circuit Court, the office of the State Attorney, and the Public Defender's office. Your name was selected randomly from a list of individuals who have recently been through the Dade County courts. I would like to talk with you about the way your case that was closed on _____ was handled.

Your participation is voluntary and you may stop the interview at any time. It will be confidential, as no names or addresses of individuals interviewed will be given to anyone. The information collected will be presented in summary form that will not identify individuals.

The above description has been read to me. I understand it and agree to participate in the project. I understand that I may stop the interview at any time.

Signed _____

Date _____

PHONE INTRODUCTION: READ VERBATIM

Hello. This is _____. I am a research assistant on a project being conducted in Dade County with the Criminal Court, State Attorney's Office and Public Defender's Office. I sent you a letter about our project. Your name was selected randomly from a list of individuals who have recently been through the Dade County courts. We would like to talk with you about the way your case was handled.

Your responses will be confidential, since we will not give out any names or addresses to anyone. When we make our reports, we will not identify any person we have talked to.

The interview is voluntary. If there are questions you do not wish to answer, feel free not to. I would like to do the interview now if it is convenient for you. It should take about 20 minutes.

IF RESPONDENT WISHES REFERENCES FOR THE PROJECT, TELL HIM/HER TO CALL _____ IN THE STATE ATTORNEY'S OFFICE -- _____

APPENDIX C

DADE COUNTY IMPLEMENTATION AGREEMENT

The sequence of events for the implementation of the Pretrial Settlement Conference:

1. After the preliminary hearing, project staff will select from the cases assigned to each of the test judges those cases to be included in the test group. The selection will be done by a random sample method. The staff will use a table of random numbers in making the selection.

2. Prior to the arraignment date for the case selected for inclusion in the test group, a staff member will notify the particular participating judge of the selection of the case.

3. At the time of arraignment, the participating judge will notify the assistant state attorney, the defense counsel, and the defendant that the case has been selected for inclusion in the Pretrial Settlement Conference project. At that time the judge shall give the defense counsel (if other than a public defender) and the defendant documents that explain the process.

4. At the same time, the judge will set a tentative pretrial settlement conference date and designate a place for the conference to be held. The defense counsel will be informed that it is his responsibility to confirm the conference at least three (3) working days before the conference date. The defense counsel will do this by contacting the assistant state attorney handling the case and advising him of the defense counsel's desire to have the conference convene.

5. At arraignment, hearings on pretrial motions will be scheduled prior to the proposed conference date, as necessary.

6. After arraignment, the assistant state attorney will review

the case and decide whether he needs the victim or arresting officer as an eye-witness. If so, he will provide for consultation with victim or arresting officer, as the case may be, about possible settlement, but will not invite him to attend the conference.

7. Between the period of arraignment and the pretrial conference, all pretrial motions and discovery hould be completed.

8. If the defense counsel confirms the conference, the assistant state attorney will notify the judge that theconference will be held as scheduled. He will also notify the victim of the scheduled conference.

9. If the conference is going to be held and the defendant is in custody, the assistant state attorney will assist in having the defendant brought from jail to the conference.

10. If the defendant is out on bail, it will be the responsibility of the defense counsel to notify the defendant of the conference.

11. At the conference, the judge will indicate the purpose of the conference and will indicate to the defendant that for purposes of the conference, his guilt will beassumed. The explicit statement of this assumption is necessary inorder to make it clear that the defendant is not in fact making an admission of guilt by his participation in the discussion. The judge will further advise the defendantthat he is not required to make any statement supporting that assumption, and that in fact he may terminate the conference at any time he chooses. The judge will advise the defense counsel and the defendant that no statement made at the Pretrial Conference can be used in a subsequent trial if settlement efforts should fail.

There will follow a discussion of the possibility of settle-

ment in which those issues that the parties feel appropriate will be discussed. The victim and police officer may comment on the proposal, but will not be allowed to veto any proposed settlement.

It is important that the judge exercise discretion in keeping the conference discussion within the appropriate limits of pretrial discovery.

If a proposed settlement is reached between the prosecutor and defense counsel, it will be the judge's role to decide whether the proposal is appropriate given the interest of all parties involved, including the interest of society.

The judge will have available at this and all conferences a copy of the defendant's criminal history.

12. The defense counsel may wish to confer with his client and report back ata later time. This will be allowed.

13. If a settlement cannot be reached, the case will be set for trial.

14. If at trial date, it then appears that a settlement might be possible, another conference may be convened. The participants in this conference shall be the same, to the estent possible, as at the original conference.

15. If no settlement is possible at any of the conferences, the case will go to trial and, as indicated, the fact that a statement or admission was made at the conference will not be admissible at the trial.

WAK/fl

APPENDIX D

EXAMPLES OF CONFERENCE DISCUSSION

Case A

Participants: Judge, Public Defender, Assistant State Attorney, Victim
Location: Judge's Chambers
Charge: Larceny

Speaker	Person Addressed	
Judge	Defense Counsel	What is this case?
Def. Coun.	Judge	This is a shoplifting case. There was another woman associated with her who is a known shoplifter. The stores involved are _____, _____, and _____. Baby clothes, dresses, housecoats, and purses were taken. The defendant has no prior record.
Judge	All	Is she married?
Def. Coun.	Judge	Yes.
Judge	Def. Coun.	Any children?
Def. Coun.	Judge	One daughter.
Prosecutor	Judge	She was carrying a large shopping bag, cruising the store with this other person who has a record of shoplifting.
Judge	Prosecutor	The record ought to list what was stolen.
Judge	Victim	What was stolen?
Victim	Judge	Baby goods and women's apparel. The items have been recovered.
Judge	Prosecutor	Would PTI* be acceptable? What would you recommend?
Def. Coun.	Judge	When the security officer stopped her she didn't give any trouble and said she needed clothes for her family.
Judge	All	I think PTI should be tried. She has not prior record.
Judge	Victim	What would you recommend?

*PTI = Pretrial Intervention Program--diversion program for first offenders run by State Attorney's Office.

Speaker	Person Addressed	
Victim	Judge	When I talked to the defendant it was clear she knew these other shoplifters well. I think she planned this--it wasn't any whim. It is my personal belief that this is not the first time for her although she may well not have a prior record.
Def. Coun.	Judge	The police talked with me yesterday and said the defendant has given them information about the other shoplifters. I'm not arguing that no prior record means she hasn't done this before. I know the realities.
Prosecutor	Judge	I think you should give probation.
Judge	All	That's all right with me. If she violates it then she will get time.
Judge	Victim	What's your name?
Victim	Judge	_____
Judge	Victim	What was your loss?
Victim	Judge	About $100 worth of goods.
Judge	Victim	I want you to know I shop there too. (Laughter as victim and defense counsel leave.)

Time elapsed: 5 minutes.
Conference Status: tentative settlement with disposition probation (no length specified)

Case B

Participants: Judge, Defense Counsel, Prosecutor, and Defendant
Location: Judge's chambers
Charge: Possession of opium derivative, heroin.

Speaker	Person Addressed	
Judge	Prosecutor	Are there any prior convictions?
Prosecutor	Judge	No felony record is known. However, there is a misdemeanor.
Judge	Prosecutor	Has the defendant ever done any time?
Prosecutor	Judge	No.
Judge	Defense Counsel	Does your client have any special problems?

Speaker	Person Addressed	
Def. Coun.	Judge	I think he has a problem.
Judge	Defense Counsel	Where is your client now?
Def. Coun.	Judge	He is outside in the hallway.
Judge	Defense Counsel	Bring him in. I want to see him.
Def. Coun.	Judge	Okay.

Defendant is brought in, and the conference is resumed.

Judge	Defendant	Do you have a drug problem?
Defendant	Judge	No.
Judge	All	I am willing to consider withholding adjudication and awarding three years probation with special condition of 30 days in the county jail, plus a recommendation that this defendant be evaluated by TASC.
Judge	Defense counsel	I am saying this if your client wishes to enter a plea of guilty. You can let me know at the sounding conference.

Time elapsed: 4 minutes

Case C

Participants: Judge, Prosecutor, Private defense counsel, police officers
Location: Judge's chambers
Charge: Possession of controlled substance

At Sounding Conference in the courtroom prior to the pretrial settlement conference, the Private Defense Counsel stood up when there was a break in the proceedings and said "Your Honor, I have a conference and I don't know what a conference is. On the one hand, I have received the materials describing the case, but I don't understand it." The Judge replied, "The conference will be in my chambers and more informal, so don't worry, we'll take care of it."

Speaker	Person Addressed	
Judge	All	Let's turn to the _____ case. Where is the file?

Prosecutor leaves for one minute and returns with file which she hands to judge.)

Speaker	Person Addressed	
Judge	Defense Counsel	What are the facts about these charges?
Def. Coun.	Judge	I have subpoenaed the doctor who will testify that the defendant has been on these pills for diet therapy for 6 years.
Police	Judge	We've found him with these pills before.
Judge	Police	What are the drugs?
Police	Judge	Methaqualudes.
Judge	Police	How much is involved?
Police	Judge	One bottleful.
Judge	Defense Counsel	What do you know about the defendant's prior use of drugs? Is he an addict?
Def. Coun.	Judge	The defendant has a weight problem and needs treatment. He needs to take pills every day in order to keep the weight off. He is not an an addict.
Judge	Defense Counsel	Does he live alone or with his family?
Def. Coun.	Judge	His family lives in Miami but he has his own apartment.
Judge	Defense Counsel	Does he have a job?
Def. Coun.	Judge	No, he is in school.
Judge	Defense counsel	Does he have a prior record?
Def. Coun.	Judge	There is a petty larceny (a misdemeanor) which he plead guilty to and for which he completed PTI.
Judge	Prosecutor	What is your recommendation?
Prosecutor	Judge	I think probation would be appropriate.
Judge	Defense Counsel	What do you think?
Def. Coun.	Judge	There should be no time because he is in therapy.
Judge	Police	What do you think?
Police	Judge	Whatever you think is alright with us.
Judge	Defense Counsel	Will the defendant accept probation?

Speaker	Person Addressed	
Def. Coun.	Judge	My client has no prior record of drug charges so I didn't talk to him about the possibility of probation so I'll have to consult him.
Judge	All	I'm thinking about probation with special conditions.
Def. Coun.	Judge	What are the special conditions?
Judge	Defense Counsel	Evaluation for drugs and, if needed, to go into drug program.
Def. Coun.	Judge	I'll have to talk with my client about this. When should I report back?
Judge	Prosecutor	When are you back in court?
Prosecutor	Judge	April 4th.
Judge	Defense Counsel	What about you?
Def. Coun.	Judge	I'll be in trial the last week of March and may need that day to finish--what about April 5?
Prosecutor	All	That's fine.
Judge	All	I'll reschedule it for 9:00 a.m. on April 5.

Time elapsed (excludes time spent on other matters): 9 minutes
Conference Status: tentative settlement with disposition of probation (length unspecified with drug treatment)

Case D

Participants: Judge, Assistant State Attorney, Public Defender, Defendant, Arresting Police Officer
Location: Judge's chambers
Charge: Aggravated Assault

Speaker	Person Addressed	
Judge	Public Defender	Who is the defendant and what are the facts in this case?
Pub. Def.	Judge	The charge is aggravated assault, and the defendant is alleged to have threatened the victim with a knife.
Pub. Def.	Defendant	Explain the facts of this case to the judge.

Speaker	Person Addressed	
Defendant	Prosecutor	The guy claims that I attacked him, but I didn't. We just had an argument.
Pub. Def.	Judge	The victim claimed that my client had a knife.
Judge	Public Defender	Were there any eye witnesses?
Pub. Def.	Judge	No, there were not witnesses. The neighbors heard the argument but didn't see it.
Judge	Defendant	Did you, in fact, have a knife?
Defendant	Judge	No, Your Honor, I did not.
Judge	Police	What do you know about this case?
Police	Judge	We responded to a neighbor's call. The defendant's parked car had been struck by the victim's car. The two got into an argument. The victim says the defendant got a knife from the glove compartment and started waving it at him.
Judge	Police	Did you find the knife?
Police	Judge	No.
Judge	Public Defender	Does this man have any prior record?
Pub. Def.	Judge	Well, yes, there is a pending charge in another case.
Judge	Defendant	Have you had any prior convictions?
Defendant	Judge	Yes.
Pub. Def.	Defendant	Back in 1969, there was a charge of breaking and entering in the Carolinas, was there not?
Defendant	Public Defender	That's correct.
Pub. Def.	Defendant	How much time did you serve on that charge?
Defendant	Public Defender	Two and a half years.
Prosecutor	Defendant	Did you have two robbery charges in that case?
Defendant	Prosecutor	Yes, but they were dismissed. I wasonly charged with breaking and entering.
Judge	All	That is not a very good record.
Judge	Defendant	Are you married?

Speaker	Person Addressed	
Judge	Defendant	Do you have a job?
Defendant	Judge	I worked at _____ for 14 months but was laid off two months ago.
Judge	Prosecutor	What do you think should happen?
Prosecutor	Judge	The State wants three years.
Judge	Public Defender	What do you think should happen?
Pub. Def.	Judge	We were looking for time served and probation.
Judge	Police	Do you have a recommendation?
Police	Judge	Whatever you think is appropriate is all right with us.
Judge	All	I can't let him walk on probation. This is a serious charge and I need to protect society as well as look out for the defendant. I am thinking of 18 months and 3 years probation.
Pub. Def.	Judge	I'd like to see jail time but not prison. The victim was involved in the argument, too.
Judge	Prosecutor	Where is the victim?
Prosecutor	Judge	The victim is ill today.
Judge	All	The defendant's record is pretty bad. If the defendant pleads guilty I have to give 18 months and probation. This is not the first time he has been in trouble.
Pub. Def.	Judge	I'll have to discuss this with my client.
Judge	Public Defender	When can you report back?
Pub. Def.	Judge	I'm back here on April 4th.
Judge	Prosecutor	What about you?
Prosecutor	Judge	Okay with me.
Judge	All	Let's reschedule it for sounding on April 6. Thanks for coming.

Time elapsed: 14 minutes
Conference status: Tentative settlement with disposition of 18 months in prison followed by 3 years probation.

NOTES TO APPENDICES

1. Campbell and Stanley, Experimental Design; and Weiss, Evaluation Research, pp. 61-64.

2. See Eisenstein and Jacob, Felony Justice, pp. 21-28.

3. See Alfred J. Tuchfarber and William R. Klecka, Random Digit Dialing: Lowering the Costs of Victimization Surveys (University of Cincinnati: Police Foundation, 1976).

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