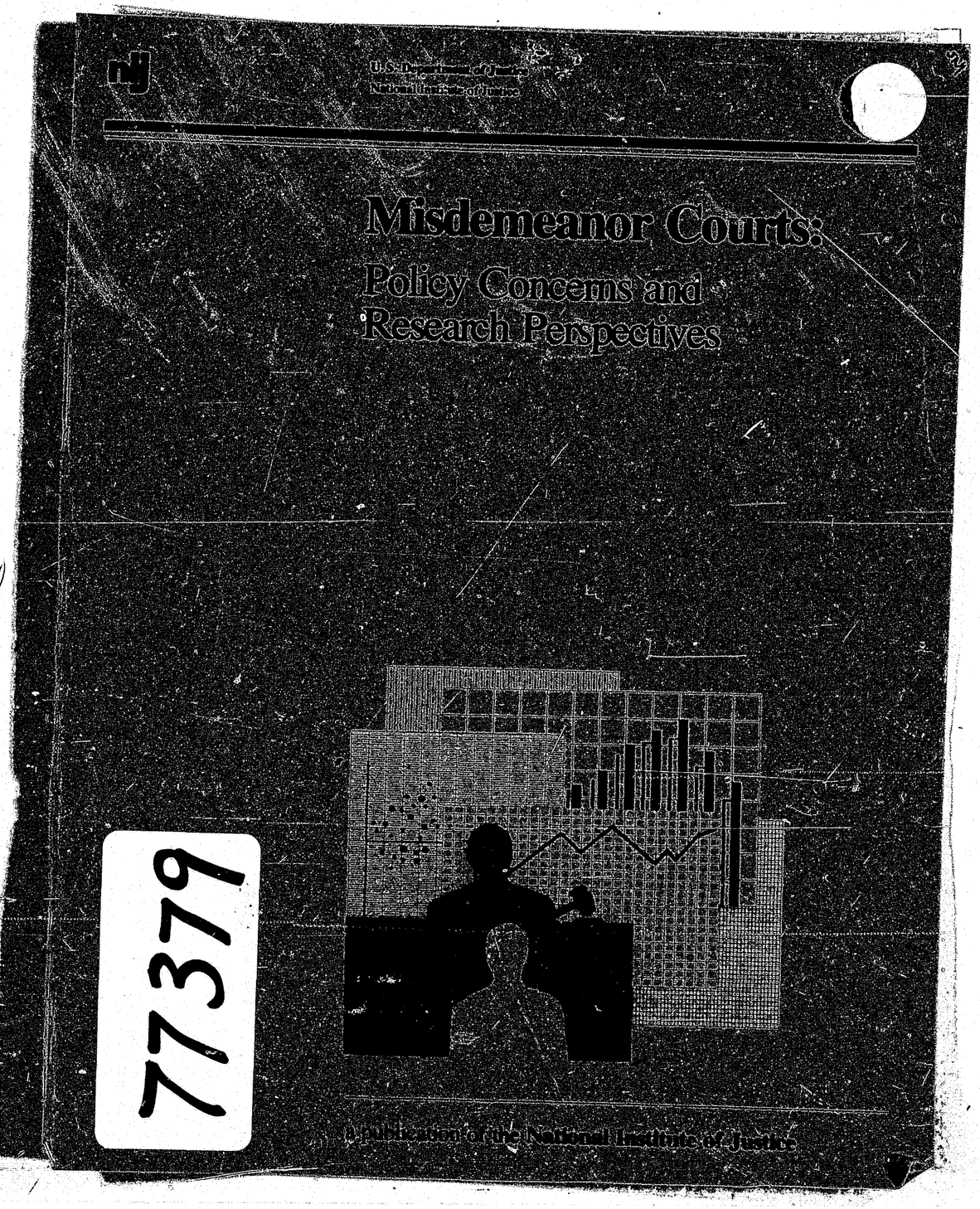

Misdemeanor Courts:
Policy Concerns and Research Perspectives

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Editor

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PREFACE

Insufficient attention has been paid to the misdemeanor courts. Systematic efforts to implement innovative programs in these courts have been few and far between. Where attempted, these efforts have gone largely unreported. Similarly, researchers have tended to bypass misdemeanor courts, focusing their attention on other trial courts and the appellate courts. Consequently, not only do we know very little about misdemeanor courts, but we also have a very poor sense of what we need to know.

The project which has resulted in this two volume report represents an attempt to address this situation. Conducted by the American Judicature Society and the Institute for Court Management, this two-phase project has been aimed at learning more about this nation's misdemeanor courts. The first phase of the project was oriented towards identifying management problems and research issues in these courts, and developing and testing (on a limited basis) two innovative programs in misdemeanor courts in Tacoma, Washington; Salem, Massachusetts; and Ayer, Massachusetts. During the second phase, the two programs developed during the first phase -- the Case Management Information System (CMIS) and the Community Resource Program (CRP) -- were implemented and researched in four misdemeanor courts.

The CMIS program is based on a simple, manual record-keeping system for case-progress monitoring and statistics, which is intended to provide management assistance to small city and rural area misdemeanor courts. The CRP, on the other hand, was designed to address resource problems of medium size courts in urban areas. Its four active components include a citizen advisory board, resource brokerage, community service restitution, and expanded volunteer services.

The first volume, Misdemeanor Courts: Designs for Change, describes and comments on these programs, the court environments in which they were implemented, and the implementation process. The staff of the Institute for Court Management carried primary responsibility for developing and demonstrating the two innovative programs. The Case Management and Information System (CMIS) was implemented in the Blue Earth County Court (Mankato, Minnesota) and the Nueces County Courts At Law (Corpus Christi, Texas). The Community Resource Program

(CRP) was implemented in the Pierce County District Court Number One (Tacoma, Washington) and the Travis County Courts At Law (Austin, Texas).

The second volume, Misdemeanor Courts: Policy Concerns and Research Perspectives, reports on the research conducted for this project. Primary responsibility for conducting the research was carried by staff members of the American Judicature Society. Part I of this volume contains literature and state-of-the-art reviews on the misdemeanor courts, misdemeanor court management, and misdemeanor probation services. Part II reports on the results of empirical research on various dimension of the CMIS and CRP programs, including analyses of the CMIS program in Mankato, the community service restitution program in Tacoma, and the experiences of citizen advisory boards in Tacoma and Austin. In addition, the overall change process in implementing the CRP program in the Tacoma and Austin courts is analyzed. Part II of this volume also contains a chapter that analyzes adjudication and sentencing practices in the Franklin County Municipal Court (Columbus, Ohio) and a chapter that reports on a national study of judges' perceptions of the effect of defense attorney presence.

This project would not have been possible without the cooperation of the judges, court administrative and probation officials, and clerical staffs in the various project sites. Their willingness to experiment with these programs and to allow us to look over their shoulders while they were doing so is very much appreciated. Moreover, their candor in revealing their perceptions of the inner workings of their courts greatly helped to insure the accuracy of our findings.

We are also indebted to the members of our two advisory committees. The advisory committee for Phase One included Jerome S. Berg, Esq., Honorable Dorothy Binder, Honorable J. Patrick Corbett, Professor Elmer K. Nelson, Honorable Robert Wenke, and Charles R. Work, Esq. Serving on the advisory committee for Phase Two were Dr. Jerry Beatty, Honorable Patricia Cocalis, Nancy Goldberg, Esq., Professor Milton Heumann, Professor Elmer K. Nelson, and Charles R. Work, Esq. We very much appreciate their support and advice.

The chapters contained in this volume were typed by Sharyn Eierman and Judy Byers. The authors wish to acknowledge their skill and patience in dealing with the idiosyncrasies and sensitivities of individual authors and word processing equipment.

Finally, we would like to thank Carolyn Burstein, Voncile Gowdy, Jack Katz, and Cheryl Martorana of the National Institute of Law Enforcement and Criminal Justice. Because of the multiplicity and diversity of these courts and the dearth of knowledge about their operations, there was a constant temptation in this study to try to do too much. If we have erred in this respect, this is one instance where it cannot be blamed on NILECJ for encouraging a "more is best" approach. On the contrary, NILECJ staff consistently cautioned us not to try to do the undoable.

Even then, this final product may appear to reflect different approaches to addressing widely divergent issues and concerns. For this, we offer no excuses. As this project unfolded, it became clear to us that, given the present state of our knowledge, the misdemeanor courts can be viewed as both political institutions and social organizations. As such, they are called upon to satisfy a broad range of social, political, and personal interests. To many, they are courts of law, expected to dispense even-handed justice. Others view the primary purpose of these courts as that of maintaining order, providing social welfare services, or furthering personal political interests. To some officials, they represent an important source of local revenue, and this revenue-generating function is considered paramount.

Analyses contained in individual pieces in these two volumes reflect these varying perspectives. It is hoped that, considered as a whole, they will advance our knowledge of the misdemeanor courts and contribute to a clearer understanding of their place in American society.

PART I

POLICY CONCERNS

The diversity of the state misdemeanor courts is mirrored by the different policy concerns over their operations. Some policymakers and reformers are troubled by the perceived inability of the high volume misdemeanor courts to process their caseloads efficiently and have advanced policy recommendations oriented towards structural and administrative changes. Others have characterized the operations of these courts as "mass production" or "assembly line" justice and have expressed concern over their ability to give effect to the substantive rights of defendants. Consequently, they have suggested procedural reforms such as expanding the right to counsel in these courts. Still others focus on the rehabilitative potential of these courts and have argued for expanded probation services, diversion programs, and other measures aimed at rehabilitating misdemeanor offenders.

The chapters in Part I review and assess these policy concerns. Chapter I reviews the literature and recent caselaw on the state misdemeanor courts. The analysis suggests that policymakers, reformers and researchers have failed to account for the diversity of these courts and that policy choices have been made in the absence of a clear understanding of their operating realities. Chapter II demonstrates that there is a dearth of literature on misdemeanor case management and suggests, moreover, that the general literature on case and caseflow management may be inapplicable to the misdemeanor courts. Chapter III discusses the numerous unresolved policy issues relating to the delivery of probation services in these courts.

These three chapters provide a basis for understanding the significance of the research pieces contained in Part II of this volume. They also establish a backdrop for the programs and implementation efforts described in the companion volume, Misdemeanor Courts: Designs For Change.

CHAPTER I

UNDERSTANDING MISDEMEANOR COURTS: A REVIEW OF THE LITERATURE AND RECENT CASE LAW

James J. Alfini

The state misdemeanor court has been the most maligned and least understood American judicial institution. Since the turn of the century, many reformers and national commissions have addressed "the lower court problem" and advanced policy recommendations intended to significantly alter the administration and operations of what have been variously referred to as the "inferior," "lower," or "minor" criminal courts. Recently, the U.S. Supreme Court has decided a number of cases dealing with lower court practices that are closely tied to these policy concerns. A close scrutiny of this literature and case law, however, reveals that these commentators and policymakers have often relied on gross generalizations and offered little or no empirical support for their wide-ranging recommendations and decisions.

This reliance on general impressions rather than empirical evidence is not surprising in light of the fact that, to date, there have been no attempts to systematically compare case processing practices and substantive outcomes in state misdemeanor courts. In contrast, recent empirical studies of felony trial courts reveal significant differences in operating practices and substantive outcomes in the felony courts. Researchers have advanced various explanations for this diversity. Levin (1978) focuses on differences in community politics and values to explain the diversity in sentencing severity in the felony courts in Pittsburgh and Minneapolis, while Eisenstein and Jacob (1977) develop the concept of the "courtroom workgroup" to help explain differences in adjudication and sentencing practices in the felony courts of Baltimore, Chicago, and Detroit. Church et al. (1978) attempt to explain differences in case processing time in large city felony courts by pointing to the "local legal culture," while Ryan et al. (1980) suggest that certain differences in court administrative procedures and judicial role perceptions can be tied to the local political culture. Because these and other recent studies (see e.g., Blumberg, 1967; Nardulli, 1978) have expanded our knowledge of the inner workings of the felony courts, they should aid in making more informed policy choices concerning their improvement.

Operational differences among state misdemeanor courts are not only unexplained, but are also largely unrecognized in the literature. Policy recommendations aimed at improving the misdemeanor courts generally have relied on impressionistic writings that list the ills of the "typical" misdemeanor court and thus ostensibly document a pervasive lower court problem. One commentator recently stated that, "the pervasiveness of the lower court problem is matched only by its longevity" (Robertson, 1974). He might have added that the pervasiveness of the "problem" is also matched by its elusiveness. There is no consensus in the literature as to the fundamental nature of this alleged "problem" in the state misdemeanor courts. Many claim that case processing in these "high volume" courts is grossly inefficient. Some commentators are shocked by courtroom conditions that may encourage disrespect for law and legal institutions. Others are concerned that the proceedings are too hasty and lack the necessary procedural safeguards to give effect to the substantive rights of misdemeanor defendants. Still others point to inadequate facilities and poorly trained personnel that prevent these courts from realizing their crime control or rehabilitative potential.

Unfortunately, most of this general commentary on the misdemeanor courts simply notes one or more of these situations, translates it into a "problem," and offers a ready-made solution. We therefore tend to learn only as much as the author needs to tell us to address the author's impression of the misdemeanor court problem. Even those writings which are based on studies of particular misdemeanor courts or court systems tend to adopt a problem/solution orientation which leads to highly impressionistic accounts rather than systematic descriptions of the handling of cases in these courts. The one study (Feeley, 1979) which systematically examines the handling of misdemeanors focuses on a single court and, standing along, may encourage unwarranted generalizations.

This chapter will assess what we know about misdemeanor courts, and suggest what we need to know, by reviewing the literature and recent case law. The organization of this chapter reflects the author's belief that most of the literature on the misdemeanor courts falls into two general categories: (1) writings advocating structural and administrative reforms aimed at improving the image of these courts and making their operations more efficient; and (2) commentary advocating procedural reforms intended to give effect to the substantive rights of the defendant. The writings of the administrative reformers are reviewed in their historical context, while

the more recent writings of the procedural reformers are considered in light of contemporary U.S. Supreme Court decisions that address procedural fairness issues. Empirical studies (including some of the pieces contained in Part II of this volume) are reviewed, where appropriate, to critique and analyze some of the underlying assumptions of these reformers and policymakers.

A. Structural and Administrative Reform

Although it has been suggested that there have been at least three misdemeanor court reform movements, or "waves of interest," during this century (Barkai, 1978), most of the written commentary on state misdemeanor courts has been heavily influenced by the writings and efforts of early reformers interested in promoting structural and administrative changes in the judicial machinery. Spawned during the "progressive era," the judicial reform movement during the early part of this century was part of a larger movement to make the agencies of government more efficient and businesslike, and less "political" (Wheeler and Whitcomb, 1977). The principal spokesman for the judicial reform movement was Roscoe Pound, who argued for change in the courts to adjust to the needs of a rapidly urbanizing society (Pound, 1913, 1930).

1. The municipal court movement. Because Pound and other early court reformers tied the need for change in the courts to the problems occasioned by urbanization, most of their writings focused on the agencies of justice in the urban setting. In 1913, Pound stated: "A modern judicial organization and a modern procedure would, indeed, be a real service to country as well as to city. But the pressure comes from the city, to which we are vainly endeavoring to adjust the old machinery" (Pound, 1913:312). Focusing on the need to make adequate provision for the great volume of "petty litigation" in the cities, Pound pointed to the Chicago Municipal Court as being, "unique in this country as an example of the thoroughly organized modern court with power to make the law an effective instrument of justice" (Pound, 1913:315).

The Chicago Municipal Court had been established in 1906 to replace numerous independent justice of the peace and police magistrate courts scattered throughout the city. To Pound and other early reformers this multiplicity of autonomous courts manned by nonlawyer judges appeared out of place in the modern city. (American

Judicature Society, 1917; Pound, 1913; National Commission on Law Observance and Enforcement, 1931). They applauded other cities who followed Chicago's lead in abolishing their justice of the peace and magistrates courts and establishing a single municipal court.

Although these early reformers viewed the municipal court experiment as a great advance, many of them were quick to point out certain shortcomings. These perceived shortcomings were reflected in a host of concerns over organization, personnel, and physical conditions that emphasized efficiency and respect for legal institutions and downplayed concerns over the fairness of the proceedings in these courts.

Organizationally, the reformers tended to view the municipal court experiment only as a step in the right direction. They bemoaned the fact that there had not been a concurrent attempt to unify and reorganize the entire judicial system (American Judicature Society, 1917; Pound, 1913). They pointed out that the "unification" efforts surrounding the establishment of the Chicago Municipal Court in 1906 were limited to the handling of minor cases in the city of Chicago. As late as 1931, there were 205 independent courts in Cook County (Lepawsky, 1931). Although municipal courts subsequently were established in other cities across the country, some of these cities retained their pre-existing justice and magistrate's courts, which compounded the organizational problems in the minds of some reformers (Ervin, 1931; Pound, 1913).

The reformers were also quick to point out a lingering problem with regard to the selection, tenure, and compensation of judges (American Judicature Society, 1917; National Commission on Law Observance and Performance, 1931; Seabury, 1932). They argued that, despite the improvement in organizational efficiency, the municipal court judges were underpaid products of the political spoils system. In fact, the 1931 report of the Wickersham Commission, which characterized the misdemeanor courts as "the least satisfactory part of our judicial system," viewed improvements in the selection, tenure, and compensation of judges as the key solution to improving the problems of these courts:

> It has been a universal experience that such cases are best disposed of summarily by a strong magistrate with a large measure of discretion... The power of passing upon conduct and appraising its moral aspects untrammeled by many rules, is a royal one. It requires a magistrate equal to exercise of royal powers... In tribunals or causes where there is not a

> defined, contentious procedure with both sides represented by competent counsel, the fundamental guaranties may be made effective only by putting on the bench magistrates who understand these guaranties and how and when to give effect to them on their own motion. (National Commission on Law Observance and Enforcement, 1931).

What is most revealing about this quote from the Wickersham Commission is an absence of insistence upon adversarial proceedings in the misdemeanor courts.

Although Pound voiced some concern over applying the "methods of the rural magistrate" in the urban municipal court (Pound, 1930:190), neither he nor other early reformers insisted on strictly adversarial proceedings in these courts. They were most concerned with courtroom conditions that gave the appearance of injustice and might encourage disrespect of law:

> The bad physical surroundings, the confusion, the want of decorum, the undignified offhand disposition of cases at high speed, the frequent suggestion of something working behind the scenes which characterize the petty criminal court in almost all our cities, create in the minds of the observers a general suspicion of the whole process of law enforcement which, no matter how unfounded, gravely prejudices the law." (Pound, 1930:190).

These courtroom conditions were described in a 1922 study, Criminal Justice in Cleveland, which was directed by Pound and Felix Frankfurter. In the chapter on the Cleveland Municipal Court, two prominent lawyers, Reginald Heber Smith and Herbert B. Ehrmann, concluded that the municipal court, which had been established in 1912 "in the belief that Cleveland had finally attained a modern city court," was a failure:

> nine years of experience do not justify any satisfaction with the handling of criminal cases. Lawyers and public officials appraise the criminal division of the Municipal court when they persist in calling it, as they called its predecessor, a 'police' court (Smith and Ehrmann, 1922:278).

The authors criticized the poor physical facilities, lack of courtroom decorum, judge shopping, numerous continuances, and lack of attention to individual cases. With regard to this latter condition, the authors explained that cases are, "apt to be disposed of before one can say the proverbial 'Jack Robinson.' This results practically in depriving of his day in court the poor and ignorant petty offender." (Smith and Ehrmann, 1922:282). They offered eighteen recommendations to improve the municipal court, including more adequate facilities, increased formality in the courtroom, a

strict continuance policy, and the establishment of a new filing system. Although the authors' observations and conclusions are generally impressionistic in nature, aggregate caseload statistics are presented to dramatize the inefficiency of the court, its failure to adequately punish the guilty, and its haste in deciding cases.

In light of their concern over informality and rapid case processing, it is somewhat surprising that these authors failed to recommend changes that would make the proceedings more adversarial in nature. In fact, the study does not include the kind of systematic examination of the adjudicative process that would reveal the extent to which the proceedings conformed to traditional notions of justice and would permit speculation concerning the desirability of increased adversariness. In this respect, the authors' succeeding analysis of proceedings in the Common Pleas Court (felony court) stands in stark contrast. For example, the authors' more careful analysis and critique of the adjudication process, particularly defense representation, in the Common Pleas Court results in a recommendation that a voluntary defenders office be established (Smith and Ehrmann, 1922:316).

In sum, the authors of the Cleveland Municipal Court study appeared to be more interested in the appearance of justice than its reality. The nature of their inquiry was aimed more at answering the question of whether the court encourages respect for the law rather than whether justice is done. There was no systematic examination of the types of misdemeanor offenses handled by the court, the background characteristics of defendants, the adjudication process, and the range and nature of sanctions imposed. Rather, the authors focused on court administration and courtroom conditions that lead them to general statements concerning the appearance of justice or injustice. In this sense, the study offered little more than corroboration for the concerns voiced in the more impressionistic writings of these early court reformers.

Taken as a whole, the writings of these early reformers reflect a relatively narrow view of the role of the urban misdemeanor court. They emphasized the role of misdemeanor courts in social control or order maintenance (see, e.g., Pound, 1930) rather than in case adjudication in an adversarial context.

2. The rural misdemeanor court. Because the literature on the rural misdemeanor courts is generally oriented towards pointing out the alleged shortcomings of the justice of the peace the concerns reflected in these writings are similar

to those of the early municipal court reformers. The "traditional" justice of the peace system has been described as, "the administration of petty justice by lay officials paid by fees" (Valandingham, 1964). As noted, these courts have generally been replaced in urban areas during this century by municipal courts staffed by salaried, lawyer judges. However, efforts to abolish the justice courts in rural areas has been much less successful. Even in many states where extensive structural and administrative changes in the court system have recently been effected, justice courts have been retained in the rural areas (Appendix A; Berkson and Carbon, 1978; Knab, 1977).

Although the movement towards abolishing these courts in rural areas has been much less intense, early court reformers during this century attacked the rural-area justices for much the same reasons as they attacked their urban counterparts. They argued that conditions in these courts lacked the necessary judicial decorum that would encourage respect for law and legal institutions (Harley, 1917; Sikes, 1932). More recent commentators, however, have pointed to an absence of procedural fairness in the proceedings caused by the justice's lack of legal knowledge and the fee-based system of compensation (Valandingham, 1964; Zimmerman, 1942). It has been argued that their lack of legal knowledge encourages them to place great reliance on local sentiments and personal knowledge and friendships in deciding cases (Zimmerman, 1942). Critics have also pointed out that it is difficult for the justice of the peace to be fair, impartial and unbiased when he is compensated by fees that are directly proportionate to the number of cases he handles (Valandingham, 1964; Zimmerman, 1942). All of these reformers have proposed abolition of the justices of the peace and replacement with county courts staffed by salaried, lawyer judges (Harley, 1917; Sikes, 1932; Valandingham, 1964; Zimmerman, 1942).

Those opposing abolition have argued that the justice of the peace courts are a matter of practical necessity in rural areas where qualified lawyers are scarce. Proponents of the justice of the peace system have argued that informality and common sense are desirable attributes for the administration of justice in these areas and the justice of the peace affords an opportunity for a speedy and inexpensive trial in these days of rising prices and crowded court dockets (Sleeper, 1962). They concede that nonlawyer justices often need legal assistance in determining proper procedures (sometimes causing them to place undue reliance on the local prosecutor), but they argue that such deficiencies could be remedied by making justices subject to the general supervision of the general trial court judge in their area (Oregon Law Review,

1974; Spanasel, 1939). In addition, it may be that the rural-area judge's use of personal knowledge in deciding cases is inevitable, regardless of his legal training. Although acknowledging the potential for bias, one author has argued that the reliance on personal knowledge in rural-area courts may lead to more accurate fact-finding and individualized treatment than is the case in urban courts (Ginsberg, 1974).

3. Latter day concerns. Much of the more recent writing on urban misdemeanor courts is similar in orientation to that of the early court reformers. Commentators have wrung their hands over the fact that conditions in these courts -- particularly the lack of attention to individual cases -- give the appearance of "assembly-line" or "mass production" justice, thus encouraging disrespect for law and legal institutions. They have continued the call for more and better official personnel, increased administrative efficiency, adequate facilities, and courtroom decorum (see e.g., Barrett, 1965; Nutter, 1962; Ploscowe, 1953; Pye, 1970; Vanderbilt, 1956). The commentators have also pointed out that these courts are the ordinary citizen's most frequent point of contact with the judicial system -- a consistent theme in the misdemeanor court literature -- in stressing the need for reforms that will insure, at a minimum, that justice appears to be done in these courts.

The "war on crime" has also encouraged an emphasis on the crime control and rehabilitative potential which these courts ostensibly possess. Various authors have claimed that most of the major crimes of violence are committed by persons who had previous convictions in a misdemeanor court (Clark, 1966; Hoover, 1961; Nutter, 1962; U.S. National Commission on Criminal Justice Standards and Goals, 1973). They therefore have stressed the need for additional resources or innovative programs in the misdemeanor courts aimed at rehabilitating these offenders at an early point in their criminal "careers" (Hoover, 1961; Nutter, 1962; Pye, 1970).

Finally, a number of these more recent commentators have looked beyond the courts to the local criminal justice system and have urged administrative changes that allegedly could reduce or stabilize "burgeoning" misdemeanor caseloads. In particular, they have recommended improved prosecutorial case screening techniques, police citation programs, and "diversion" programs (see e.g., Pye, 1970).

Consistent with these writings have been LEAA-funded "prescriptions," describing programs which ostensibly will lead to the more efficient and "meaningful"

handling of misdemeanor cases (Institute for Law and Social Research, 1976; McCrea and Gottfredson, 1974). The INSLAW program stresses the need for "systemwide" implementation of eight innovations, including: a mass case coordinator; police citation system; summons system; prosecutor's management information system; case screening; pretrial release program; short form presentence reports; and selected offender probation (Institute for Law and Social Research, 1976). However, there is virtually no research to support the efficacy of such a program. There have been very few experimental or empirical studies aimed at assessing the impact of administrative or rehabilitative changes in local misdemeanor courts or local criminal justice systems. The only element of the INSLAW program which has received such attention is the police citation program. In his study of the misdemeanor citation program in New Haven, Connecticut, Burger's preliminary findings indicated that such a procedure "could be added to the police arrest process without any negative side effects" (Burger, 1972). In contrast, Grau's assessment of a rehabilitative reform (community service restitution) in the Tacoma, Washington misdemeanor court suggests that such reforms can have certain undesired, if unintended, consequences (Chapter VII, this volume).

In one of the few empirical studies of the effect of an administrative change aimed at improving the efficiency of a local misdemeanor court, a group of law students evaluated a new arraignment procedure in the misdemeanor court in Cincinnati, Ohio (Cincinnati Law Review, 1972). On the basis of interviews with defendants, the authors concluded that certain negative side effects did result from the administrative change. In particular, their findings indicated that the new arraignment procedure encouraged many defendants to plead guilty for reasons other than a belief in their guilt (e.g., didn't want to return to court). Doan's analysis of the impact of a case management innovation in the misdemeanor court in Mankato, Minnesota suggests that administrative changes may have even more far-reaching consequences (Chapter VI, this volume).

Most of the more generalized studies of state misdemeanor courts have encouraged this reform orientation towards administrative efficiency by focusing on administrative shortcomings or parochial concerns and offering highly impressionistic accounts of conditions in individual courts or court systems (Berkowitz, 1972; Bing and Rosenfeld, 1970; Sheridan, 1964; Subin, 1966). However, these studies have provided little or no additional insight into the efficacy of particular administrative practices in

these courts. The one study that investigated urban misdemeanor courts in more than one jurisdiction similarly focused on outward conditions and appearances, and simply noted "wide variation in the practice and approach of these courts" and concluded by encouraging "a comparative analysis" of the misdemeanor courts (Harvard Law Review, 1956).

Relying heavily on these writings advocating, and ostensibly documenting, the need for administrative and structural reforms, three national commissions recently have called for "unification" of the trial courts and the outright abolition of the state misdemeanor courts (American Bar Association, 1974; President's Commission on Law Enforcement and the Administration of Justice, 1967; U.S. National Commission on Criminal Justice Standards and Goals, 1973). They cited the ineffectiveness of previous reform efforts in remedying these conditions and claimed that the maintenance of dual court systems for the handling of felonies and misdemeanors is unnecessary.

The efficacy of such recommendations is questionable on a number of grounds. First, the vast majority of states which recently have effected court organizational reforms have rejected the notion of consolidation of their trial courts into a single, statewide trial court system (Alfini and Doan, 1977). Moreover, a recent study in the state which has gone furthest in this regard (Illinois) suggests that this may simply be a paper reform. The general trial court has simply established specialized divisions and branches in urban centers where particular misdemeanor case types continue to be processed in highly routinized fashion (Lipetz, 1980). Finally, the efforts of these commissions have been criticized for lacking adequate documentation. In particular, it has been pointed out that their findings are deficient in their, "almost exclusive reliance on studies conducted by lawyers, with only scant attention paid to research by social scientists" (Neubauer and Cole, 1975; see also Gallas, 1979).

But the assertion that the national commissions generally paid little attention to social science research is somewhat misleading when applied to the commissions' findings on the misdemeanor courts. Relevant social science research on these courts was almost nonexistent at the time the standards were promulgated. In fact, the available studies of criminal courts by social scientists tended to support the commissions' conclusions. In the major organizational study of criminal courts at that time, the author claimed that there was little or no difference between felony and

misdemeanor courts (Blumberg, 1967). In the only systematic study of an urban misdemeanor court by a social scientist at that time, the author's orientation towards viewing the court as a formal organization (rather than a political institution) would also tend to encourage comparisons with the felony courts (Mileski, 1971).

Malcolm Feeley's recently completed book, The Process is the Punishment is the first major study of an urban misdemeanor court by a social scientist. Feeley systematically investigates the handling of cases in the New Haven, Connecticut misdemeanor court and concludes that primary sanctions in this court are meted out in the pretrial process rather than in sentencing. Feeley then contrasts his conclusion that, "the process is the punishment" with the traditional concern over doing justice, which is reflected in efforts to achieve the adjudicative ideal. He suggests that reform efforts aimed at increasing fairness by making the lower court process more deliberative may run counter to the desire for substantive justice. "They may make the process more costly, a punishment which would be meted out to the innocent as well as the guilty" (Feeley, 1979:34).

Although Feeley's study is the most comprehensive and systematic analysis of the lower court process to date, there is a risk of overgeneralizing the findings of this case study. The absence of similar analyses of the handling of cases in other misdemeanor courts encourages a view that Feeley's description of the process in the New Haven, Connecticut court is typical of misdemeanor courts generally. In fact, Ryan's study of adjudication and sentencing practices in the Columbus (Ohio) Municipal Court comes to the contrary conclusion that the outcome, not the process, is the punishment (Chapter IV, this volume).

4. Misdemeanor court diversity. Feeley may be correct in asserting that officials are generally concerned with "substantive justice" and that procedural reform efforts in courts like New Haven's may adversely affect this desire to do substantive justice. However, one could hypothesize that such reform efforts would be meaningful in misdemeanor courts (e.g., the Columbus Municipal Court) where ultimate sanctions are more onerous than process costs. Feeley is also somewhat misleading in assuming that court reformers have emphasized procedural reforms. As we have noted, the reform literature has emphasized administrative and structural reforms aimed at improving the image of these courts and encouraging respect for law rather than procedural reforms intended to give effect to substantive rights (among the few

exceptions are Allen, 1970; Dash, 1951; Enker, 1970; and Katz, 1968). What is missing from both Feeley's analysis and that of the traditional reform movement is an appreciation of the diversity in adjudication and sentencing practices among state misdemeanor courts.

Even when viewed at the state level, the number and diversity of misdemeanor courts is staggering. Each of the fifty states has provided for at least one type of limited jurisdiction court (or, in the case of four states, a class of judges or division within a general jurisdiction court) whose criminal jurisdiction includes the handling of state misdemeanor offenses (Alfini and Doan, 1977). In fact, a majority of states have more than one type of limited jurisdiction court (Knab, 1977; Appendix A). In addition to handling state misdemeanor cases, all of these "misdemeanor courts" also have jurisdiction over one or more of the following: minor civil cases, felony preliminary hearings, minor traffic offenses, local ordinance violations, juvenile matters, and (in four states) certain felonies (Knab, 1977; Appendix A).

The diversity occasioned by varying state grants of jurisdictional authority at the state level is further complicated at the local level. Although some of these courts now operate within a statewide administrative system as a result of "court unification" efforts, many of the misdemeanor courts have retained a large degree of local autonomy, even in states where other aspects of the court unification movement have taken hold (Berkson and Carbon, 1978). This autonomy apparently has led to the development of specialized workloads among courts and judges in particular locales. Although all state misdemeanor courts ostensibly have jurisdiction to try both civil and criminal cases, only 61% of the 13,221 state courts of limited and special jurisdiction identified by the U.S. Census Bureau in 1972, reported handling both civil and criminal cases; while 11% reported handling only civil and 28% only criminal (U.S. Department of Justice, 1973:Table 7). Within those courts handling at least some criminal matters, the census bureau survey revealed wide variation with regard to the percentage distribution of judge time spent on non-traffic criminal cases. Although the census bureau survey indicates that state misdemeanor cases are the predominant case type (in terms of distribution on judge time) in many of these limited jurisdiction courts; civil, traffic, or juvenile cases appear to be the predominant case type in at least an equal number of courts (U.S. Department of Justice, 1973:Table 18; see also, Appendix B).

In addition to this general jurisdictional diversity, there is considerable diversity among misdemeanor courts with regard to the mix of offenses included within their misdemeanor caseloads. Long's survey of 100 urban misdemeanor courts revealed considerable variation with regard to the incidence of the following most frequently tried crimes: traffic offenses (other than drunk driving), public intoxication, drunk driving, disorderly conduct, narcotics offenses, petty theft, disturbing the peace, assault and battery, prostitution, and writing a bad check (Long, 1976:167). The incidence of certain of these crimes may be affected by such factors as the varying success of decriminalization efforts, community mores, and local politics. Long noted a statistically significant linear relationship between certain crimes and city size. In particular, she found that the larger the city, the more frequently judges named disorderly conduct, drunk driving, and other traffic offenses as being among the most frequently tried cases. On the other hand, she found that prostitution was mentioned more frequently as city size declined (Long, 1976:168-170).

Even where the incidence of certain crimes within courts is similar, the range and severity of sanctions that may be imposed may vary. Although the maximum jail sentence that may be imposed by the misdemeanor courts in the majority of states is one year (with maximum fines ranging from $250 in Arkansas to $3000 in Oregon), the maximum permissible sentence in the Minnesota courts is 3 months and in the misdemeanor courts in 7 states the maximum jail sentence ranges from 2 to 7 years (Knab, 1977; Appendix A). Forty percent of the misdemeanor courts responding to the Census Bureau survey reported having a maximum sentence of 7 to 12 months, while 47% reported a maximum sentence of 6 months or less and 13% a maximum sentence of more than 12 months. (U.S. Department of Justice, 1973:Table 12). The range of maximum fines reported by these courts was similarly broad. Forty-two percent of the courts reported maximum fines of $101 to $500, while 19% reported maximums of $100 or less and 39% maximums of more than $500 (U.S. Department of Justice, 1973:Table 12).

The state misdemeanor courts may also differ with regard to procedures and practices that might directly influence a court's ability to give effect to the substantive rights of a misdemeanor defendant. Our national survey of a sample of state misdemeanor court judges revealed considerable variation with regard to case processing practices, the presence of prosecution and defense attorneys, the incidence of plea negotiation, the use of probation, and the legal training of judges (Appendix B).

The responses of many of the judges support the popular notion of a lower court in which cases are handled in a perfunctory, non-adversarial fashion. In some courts, the judges indicated that the vast majority of cases are disposed of by guilty plea at the first appearance. Defendants in many of these courts are seldom represented by counsel and some are prosecuted by police officers. The judges in these courts often are nonlawyers. Post-verdict services such as the preparation of pre-sentence reports and probation are either unavailable or seldom used. In short, these data suggest that case processing in these courts rarely approaches the adversarial or rehabilitative ideal. The responses of other judges, however, suggest a paradigm that is closer to the popular notion of a felony court. Few cases are disposed of at initial appearance in these courts. In fact, a case may move through numerous stages with the defendant represented by counsel and prosecuted by an attorney before a lawyer judge. Pre-sentence reports and probation are available and frequently used.

What is the effect of this diversity in jurisdiction, case-mix, and case-processing upon the quality of justice in individual misdemeanor courts? Does a court's jurisdiction or case-mix influence case-processing practices? Are substantive outcomes affected by the legal training of the judge or prosecutor or the fact that the defendant is or is not represented by counsel? Are there discernible differences in case outcomes between courts that process cases in a perfunctory, highly routinized manner and courts that employ procedures that allow for greater attention to be given to individual cases? These and other questions concerning the misdemeanor courts remain largely unanswered. Again, the diversity among the misdemeanor courts is generally unrecognized in the literature.

B. Procedural Reform

Unlike those authors who have advocated structural and administrative changes in the misdemeanor courts, the writings of procedural reformers have focused on substantive outcomes. In particular, they have argued for procedural changes that ostensibly would give effect to the substantive rights of the defendant. Although they also critique the operations of the "typical" misdemeanor court and their writings are therefore no less impressionistic (and no less sensitive to the diversity of these courts) than those of the administrative reformers, the procedural reformers characterize the misdemeanor court "problem" differently. Whereas the administrative reformers have tended to view administrative chaos and inefficiency as the critical problem, the

procedural reformers perceive the problem as an absence of procedural fairness in misdemeanor court proceedings.

1. Due process concerns. To the procedural reformers, the misdemeanor courts are "characterized by a marked departure from the model of due process" (Enker, 1970:186). Their critique of misdemeanor court proceedings generally involves a comparison with felony court proceedings:

> In the upper courts, at least the forms of due process are satisfied, if not always the substance. What is so disturbing about the lower courts is that not even the forms are observed (Enker, 1970:188).

In this regard, the procedural reformers tend to view the expanded provision of defense counsel to misdemeanor defendants as the primary procedural issue in the reform of the misdemeanor courts (see, e.g., Allen, 1970; Dash, 1951; Enker, 1970). They contrast the frequency of defense attorney presence in the felony courts with the relative absence of the defense attorney in the misdemeanor courts.

This is not to suggest that the administrative reformers have been any less concerned than the procedural reformers over procedural shortcomings that might adversely affect the substantive rights of misdemeanor defendants. Rather, the reform orientation of the administrative reformers appears to reflect a belief that the misdemeanor courts could not cope with their case volume if certain procedural reforms are adopted -- at least not until certain structural and administrative reforms are effected. Barrett (1965), for example, is concerned particularly with the prospect of extending the right to counsel to misdemeanor defendants. He points out that the misdemeanor courts have a "total dependence...on the routine guilty plea" and exclaims: "The system works now only because in the great bulk of cases defendants believe that it is not worthwhile to employ or seek the appointment of counsel" (Barrett, 1965:110, 121). The underlying assumption on Barrett's part is that any significant increase in defense representation would lead to a system breakdown in the high volume misdemeanor courts by delaying the proceedings and significantly increasing the percentage of cases that go to trial (for a fuller analysis and critique of this assumption see Chapter V, this volume).

Although procedural reformers have also been concerned over the ability of these courts to cope with procedural changes, they have conteded that there is a need

for procedural reform -- such as an expansion of the right to counsel -- not only for theoretical but also for practical reasons. For example, Dean Francis A. Allen explains that improvements in the administration and operation of the misdemeanor courts may be late in coming because these courts have enjoyed a "freedom from scrutiny" (1970:79). More specifically, those in the best position (lawyers) to analyze and critique administrative and operational shortcomings have not been present (in large numbers) in these courts until quite recently. The few lawyers who traditionally have practiced in these courts generally lack the influence (Allen, 1970) or are too corrupt (Dash, 1951) to constitute a force for reform.

The procedural reformers have exercised a good deal of caution in calling for an expansion of the due process rights of misdemeanor defendants. Like the administrative reformers, they have emphasized a need to reconcile "administrative imperatives" or "problems of feasibility" with procedural changes that ostensibly would give greater effect to these substantive rights (see e.g., Allen, 1970). Recent U.S. Supreme Court decisions indicate a sensitivity to such "administrative imperatives" and illuminate the need to develop a better sense of how differences in adjudication practices may influence substantive rights and outcomes. During the past decade, the court has issued two major decisions concerning the right to counsel in misdemeanor cases. It has also decided cases relating to a defendant's right to an impartial judge, to a law-trained judge, and to a jury trial in the misdemeanor courts. These cases are considered alongside relevant research to gauge the policy implications of these decisions and to suggest what we need to know with regard to the substantive effects of these procedural matters.

2. The right to counsel. Although there is a paucity of research on the effect of defense representation in misdemeanor cases, at least one study would appear to support the notion that represented defendants fare better than unrepresented defendants. In his 1967 study of the Cleveland Municipal Court, Katz found that a higher percentage of unrepresented defendants than represented defendants were convicted and that, among those convicted, represented defendants received lighter sentences than unrepresented defendants (Katz, 1967). These findings could lead one to conclude that defense representation injects fairness into the proceedings. However, the fact that the vast majority of defendants in Katz' study were presented by privately retained counsel prompted the author to suggest alternative explanations. He explained that one could argue that only defendants who believe themselves to be

innocent would hire defense counsel; or, conversely, that those who are guilty would not waste their money on defense counsel. Thus, the decision to hire defense counsel could be viewed, in itself, as a predictor of guilt or innocence. Katz also suggests an alternative explanation for the lighter sentences of represented defendants in that it was claimed that the judges often considered the cost of defense counsel in arriving at sentences.

Such alternative explanations would be eliminated if defense counsel were provided at no cost to the defendant. In fact, the U.S. Supreme Court may have set the stage for more meaningful research on the effect of defense representation in deciding Argersinger v. Hamlin (1972). In Argersinger, the court held that no person can be imprisoned for any offense unless, absent a knowing and intelligent waiver, the defendant was represented by counsel. In effect, Argersinger extended the right to counsel, established in Gideon v. Wainwright (1963) nine years earlier, to indigent misdemeanor offenders. In the majority and three separate concurring opinions in Argersinger, six of the justices attempted to assess the extent of the additional administrative burdens that the decision would place on the misdemeanor courts and suggested ways of easing these burdens. Chief Justice Burger, for example, pointed out that counsel need be provided to an indigent defendant only if the defendant is actually imprisoned, and suggested that the prosecutor assist the judge in predicting whether the defendant would be sent to jail if convicted. Such an approach to the provision of indigent defense counsel was supported by the Court's recent decision in Scott v. Illinois (1979). In a five to four decision in Scott, the court ruled that the right to counsel mandated by Argersinger did not extent to all cases in which there was a possibility of imprisonment, but only to cases where the defendant was actually imprisoned.

Although the Scott decision may have a detrimental effect on any increase in procedural fairness in the misdemeanor courts brought about by Argersinger, a few studies have questioned whether Argersinger has had such an impact in the first place (Ingraham, 1974; Rossum, 1974; University of Toledo Law Review, 1973). The most comprehensive study reported on a survey of a national sample of prosecutors, conducted one year after Argersinger was decided, and concluded that Argersinger had not increased "adversariness" in the handling of misdemeanor cases (Ingraham, 1974). It must be pointed out, however, that Ingraham's measure of adversariness was whether the prosecutors had noted an increase in the number of not guilty pleas since

Argersinger. Such a definition of adversariness fails to consider Argersinger's potential impact on guilty plea rates, dismissals, and the plea negotiation process. In fact, another post-Argersinger study (Feeley, 1979) indicates that defendants represented by attorneys in the New Haven, Connecticut misdemeanor court had slightly more favorable nolle (dismissal) rates and sentences than those without counsel.

The impact of the defense attorney on misdemeanor court proceedings is problematic (see Chapter V, this volume). More research is needed to examine the effect of defense attorney presence on such factors as guilty plea rates, the incidence and nature of plea negotiations, the pretrial process, and delay in the misdemeanor courts.

3. The right to a fair and impartial tribunal. In Ward v. Monroeville (1972), Ludwig v. Massachusetts (1976), and North v. Russell (1976), the U.S. Supreme Court ruled on the constitutionality of certain misdemeanor court procedures and practices. In each case, the court considered the impact of these procedures on a defendant's substantive rights, and also considered the constitutional relevance of the availability of a de novo appeal from the misdemeanor (or first-tier) court to a felony (or second-tier) court.

In Ward, the Supreme Court ruled that the defendant was unconstitutionally deprived of his right to a trial before a disinterested and impartial judge where he was tried by the village mayor, who was responsible for village finances and whose court provided a substantial portion of village funds through fines, forfeitures, costs, and fees. The court based its decision on principles it had laid down in a 1927 case, Tumey v. Ohio. In Tumey, the court reversed the convictions when it appeared that the judge (also the village mayor) received part of the court fees and costs levied by him, in addition to his regular salary. The court stated that "it certainly violates the Fourteenth Amendment, and deprives a defendant in a criminal case of due process of law, to subject his liberty or property to the judgment of a court the judge of which has a direct, personal, substantial, pecuniary interest in reaching a conclusion against him in his case" (1927:523). In Ward, the Supreme Court ruled that the fact that the defendant had a right to a trial de novo in the felony court (and that any unfairness might therefore be corrected at this level) had no constitutional significance. The court stated that the defendant was "entitled to a neutral and detached judge in the first instance" (1972:62).

Although the U.S. Supreme Court decisions in Tumey and Ward have encouraged many states to do away with fee-based compensation systems for these courts, a 1974 study indicated that at least sixteen states were still using a fee system (Washington and Lee Law Review, 1974). Some commentators (following the Supreme Court's reasoning in Tumey and Ward) have argued that this system of compensation results in a judge's having a financial interest in the outcome of a case which destroys his impartiality and thus results in a denial of due process. The principal justification for retaining a fee system, particularly in rural areas, appears to be that relating the judge's compensation to his workload will give him the necessary incentive to work full-time as a judge (Reynolds, 1964; West Virginia Law Review, 1967).

In states retaining some form of a fee-based compensation system, it has been argued that their systems have eliminated the constitutional objections by removing the judge's financial interest in the outcome of a case. One such system has been characterized as the "salary fund fee system," whereby the judge is paid a set salary which is derived solely from a designated fund consisting of fines and fees imposed by the judge (Washington and Lee Law Review, 1974). As this commentator points out, however, the possibility still exists that the, "salary fund will shrink to a level insufficient to pay the judge and that he will become financially interested in convicting defendants" (Washington and Lee Law Review, 1974:490).

Even in courts where judges receive fixed salaries, important economic issues concerning the administration of justice in urban as well as rural misdemeanor courts remain to be addressed through systematic research. As long as judges must look to limited local funds to run their courts, the extent to which judges can remain impartial and unbiased in deciding cases and administering justice is problematic. Unlike felony courts, misdemeanor courts generate substantial revenues. Even though fines and fees may be mixed, in many locales, with general county funds and the judge's compensation may be fixed by state statute, the judge is still required to look to local officials in most jurisdictions for the funding of court facilities and services (U.S. Department of Justice, 1978). They may thus be encouraged to overexploit the revenue-generating potential of their courts; or, conversely, discouraged from doing anything (particularly the use of certain sentencing alternatives) that would have an adverse effect on the amount of revenue generated by their courts (see Chapter IX, this volume). To date, there have been no empirically-based studies that seek to determine the effect of these and other local economic incentives and disincentives on the administration of justice in the misdemeanor courts.

Contrary to their decision in Ward v. Monroeville, the U.S. Supreme Court ruled in Ludwig v. Massachusetts (1976) and North v. Russell (1976) that certain procedural shortcomings in state misdemeanor (or first-tier) courts would be tolerated as long as a de novo appeal is available in a felony (or second-tier) court where these shortcomings can be remedied. In Ludwig, the Supreme Court upheld the constitutionality of Massachusetts' two-tier trial court system, where no trial by jury is available in the first-tier (misdemeanor) court, because a de novo jury trial is available on appeal to the second-tier (felony) court. In North, the Supreme Court similarly upheld the constitutionality of Kentucky's two-tier trial court system, where the defendant faces the possibility of incarceration by a nonlawyer judge in the first-tier (misdemeanor) court. The Court upheld the constitutionality of incarceration by a nonlawyer judge as long as the defendant has an opportunity for a trial de novo before a lawyer judge in the second-tier (felony) court.

Although the twenty-four states that utilize a two-tier trial court system (i.e., trial court systems in which the defendant has a right to a de novo appeal to the second-tier) differ with regard to the procedural rights accorded defendants in the first-tier (misdemeanor) court (Soto,1977), the effect of the Court's decisions in Ludwig and North is to encourage the perpetuation of two-tier trial court systems in which certain procedural rights are unavailable to the misdemeanor defendant in the first-tier. That is, these decisions may encourage the continued diversity among misdemeanor courts on procedural matters.

The most obvious research questions presented by these decisions is suggested by Justice Stevens' dissent in Ludwig. In his dissent, Justice Stevens argued:

> A defendant who can afford the financial and psychological burden of one trial may not be able to withstand the strain of a second. Thus, as a practical matter, a finding of guilt in the first-tier proceeding will actually end some cases...why does the Commonwealth insist on the requirement that the defendant must submit to the first trial? Only I suggest, because it believes the number of jury trials that would be avoided by the required practice exceeds the number that would take place in an optional system. In short, the very purpose of the requirement is to discourage jury trials by placing a burden on the exercise of the constitutional right (1976:635).

How often do defendants in two-tier court systems avail themselves of the right to a trial de novo in the first-tier? What is the extent of the financial and psychological burden on the misdemeanor defendant? To date, these questions remain unanswered.

Of more specific relevance to the Ludwig decision is the question of whether and how a defendant's right to a jury trial in a misdemeanor court affects substantive outcomes? Available research suggests that very few defendants are actually tried before a jury in misdemeanor courts where a jury trial is available (Feeley, 1979; Ryan, Chapter IV, this volume). However, in some of these courts the number of jury demands is very high (Ryan). This suggests the possibility that the mere availability of a jury trial may affect negotiation and adjudication strategies in these courts and thus affect substantive outcomes.

The North decision raises the question of whether and how misdemeanor courts staffed by nonlawyer judges differ from those staffed by lawyer judges. As we have indicated, the impressionistic literature suggests that nonlawyer judges (particularly in rural areas) have a greater potential for bias in deciding cases insofar as they look to others for legal assistance and may rely more on personal knowledge than the law in deciding cases.

Ryan and Gutterman found empirical support for some of the arguments of opponents of nonlawyer justices (1977). In analyzing the results of a questionnaire survey of rural justices in New York State, they compared the responses of nonlawyer justices with those of lawyer justices. Their data indicated, inter alia, that nonlawyer judges perceive local policemen to be substantially better witnesses and better investigators; view local prosecutors as being better prepared, more efficient, and more experienced in case preparation and presentation; and possessed attitudes that were less sympathetic to poor people. In addition, among those justices who indicated that they held pretrial discussions only with the prosecutor, almost all were nonlawyers. On the other hand, Hogarth's study of Canadian magistrates indicated that nonlawyer judges adhere strictly to formal legal requirements, while lawyer magistrates are more flexible in their interpretation of the law (1978).

The persistence of the nonlawyer justice court in rural areas of this country would argue in favor of the need for more research on these courts. A 1979 study reveals that nonlawyer judges are still authorized in an estimated 20,280 state judicial positions; and that 13,217 of these positions were in fact, filled by nonlawyers (Silberman, 1979). Certainly, the North decision does not encourage any reduction in their number.

C. Conclusion

This review of the literature and Supreme Court decisions indicates that important policy choices and recommendations concerning the misdemeanor courts have been made in the absence of a clear sense of the operational realities of these courts and the possible consequences of these policies. We know very little about the misdemeanor courts. We need to have a better sense of the nature and scope of their substantive outcomes and process costs and whether structural, administrative, and procedural differences influence process and outcome differences. As Gallas (1979) has emphasized, there is virtually a total lack of empirical research that ties recommended changes in court structure and administration to specified policy outcomes. Similarly, Rosenblum (1971) has pointed out with regard to policy decisions by the judiciary that there has been a "judicial proclivity to make observations or behavioral predictions with eloquence, intensity, and a cavalier sense of certainty without empirical support." In fashioning more thoughtful and meaningful policies relating to changes in the misdemeanor courts, we must begin by recognizing the diversity of these courts and analyzing structural, administrative, and procedural differences through comparative studies focusing on substantive outcomes and process costs.

Of course, it could be argued that an increased body of knowledge based on empirical studies might not have the right effect, or any effect, on policy-making bodies. There is no quarantee, for example, that state legislatures will look to empirical studies of the consequences of certain structural changes in state court systems in considering the structural and administrative changes advocated by the traditional reformers. Nor can we be certain that those state supreme courts which have been vested with greater administrative authority through recent "court unification" efforts will review the findings of researchers when considering administrative and procedural changes in their lower courts. Certainly, it cannot be assumed that the U.S. Supreme Court will weigh empirical evidence in considering the constitutionality of lower court practices that may affect the substantive rights of misdemeanor defendants. In fact, there has been an emerging dispute among legal scholars, socio-legal researchers, and members of the court as to how much reliance should be placed on social research findings (as opposed to normative principles) in deciding cases (for a recent discussion of these opposing views see Sperlich, 1980 and O'Brien, 1980).

It could also be argued that it is unreasonable to assume that social science evidence can be made available in a manner that would definitively address all or most important policy issues. Even if empirical studies are available, they may be just as likely to have resulted in negative or conflicting findings as in positive or conclusive ones (Rosen, 1972). Policy makers are then left in the difficult position of having to decide how much weight, if any, should be given to available research findings.

The fact remains, however, that important policy recommendations and decisions are being made concerning the misdemeanor courts in virtual ignorance of their operational realities. The remoteness of most policy makers from the misdemeanor courts would seem to make such quesswork all the more ludicrous. To argue against a more concerted effort to develop a body of knowledge concerning the inner workings of the misdemeanor courts would therefore appear to be close to arguing that no knowledge is better than some.

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CHAPTER II

CASEFLOW MANAGEMENT: THE STATE OF THE ART

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The 'art' of case management is an amalgam of principles, concepts, goals, objectives and procedures. Depending upon whom one talks to, case management connotes anything from a simple administrative tool to a goal oriented process that moves a case from filing to disposition. In its narrowest context, writers use it interchangeably with the term case assignment. In its broadest sense, case management is synonymous with court management.

The literature of caseflow management is reviewed in this chapter. The critique focuses on misdemeanor case processing. It should be noted, however, that distinctions in case-type -- whether between civil and criminal, felony and misdemeanor, or serious and less serious cases -- are rarely made in the caseflow management literature. Hence, the criticism that the large bulk of the caseflow management literature ignores important organizational and processing characteristics of misdemeanor courts could be similarly applied to other types of courts.

First, factors are outlined that have contributed to the development of case management as a legitimate concern for the courts. Second, a review of the relevant literature demonstrates that case management is a subject fraught with definitional and implementational complexities. Generally, such complexities are underestimated by practitioners, reformers and researchers alike. To assume, as many do, that the exercise of effective caseflow management is a simple enterprise misconstrues not only the nature of the topic but also the nature of trial court environments. Effective caseflow management -- that is, management which is not necessarily efficient in the systems-analysis or time-and-motion sense of the word but which is capable of producing a desired effect or result -- may impinge upon numerous aspects of court operations. Furthermore, its success depends on a host of attitudinal factors. Such attitudes, in turn, are shaped by the unique environment of the court. Only recently has the literature begun to reflect the realization that good management in the courts -- as in most organizations -- requires more than simply the appropriate procedures and techniques.

A. Caseflow Management: A New Concept

The emergence of case management as a legitimate concern for the criminal justice system -- and for the courts in particular -- results from a confluence of social variables. First, the rate of filings has increased dramatically during the past twenty-five years. Prior to the 1960's, most courts didn't have enough cases or enough judges to manage. Judges handled their matters leisurely and one at a time without any great backlog or pressure for early dispositions (Cohn, 1974). Since then the great deluge of filings has forced the courts to direct attention to matters of improved judicial efficiency.

As the "business" of the criminal justice system has grown, so has the system itself. Some court systems have developed into multi-level, hierarchical organizations. One need only survey past census data on state and local criminal justice costs for evidence of this growth. With this growth has come increased bureaucratization of the court and criminal justice systems (Berkson et al., 1978). Judicial assumption of responsibility for case management in this environment is not surprising. As case volume dramatically increases and as institutional roles become more distinct, the public perspective on the judge's appropriate role has expanded. Traditionally viewed as a neutral arbiter between adversarial parties, his role also has come to involve active management of the caseload. Judges and others recently have come to believe that "perhaps out of simple madness" there is a better way to conduct litigation than the traditional one of leaving lawyers to go about their work (Rubin, 1978). In fact, lawyers themselves have come to expect judges to impose limits on them (Flanders, 1978; Shayne, 1975). In many jurisdictions, this represents an important shift in case management responsibility from the prosecutor to the court. Such a shift could be viewed as a natural outgrowth of more precise institutional definitions and roles between attorneys and judges and the need for more active management precipitated by burgeoning caseloads.

Increased attention recently has focused on the dynamics and requirements of caseflow management since court control of case progress has been found to be a significant determinant of the amount of delay (Church et al., 1978; Friesen et al., 1978). Recently, research conducted on case delay has concluded that the degree to which a court asserts and maintains control over its calendar is an important independent variable in explaining case processing time. Friesen et al. view delay as

caused by the "absence of necessary organization, standards and management processes" (1978:42). Other research found that the "fastest courts (are) characterized by an automatic and routine system to move cases through all preliminary stages" (Flanders, 1978:33). Another study notes that the major procedural factor that distinguishes faster courts from slower courts is the strength of case management controls applied and the point in the case progress at which they are imposed (Church et al., 1978).

These same studies found contrasting results on the impact of different types of dispositions on the degree of case delay. For example, one study found "little relationship between trial utilization and either productivity or processing time" (Church et al., 1978:35). This report also notes that "mandatory pretrial (conferences) failed to shorten disposition time" (1978:35). In contrast, another study found that courts with high proportions of trials had less delay than those courts with fewer trials. Also, courts which disposed of proportionately more civil cases by trial tended to be courts where the dispositions per judge were greater. Similarly, Flanders (1978) observed that courts with high rates of dispositions per judge also had high rates of trials per judge. Another author states that his data suggest that "the activist-trial (judge) model yields the fastest average disposition times at the cost of the largest number of bench and jury trials, while the activist-settlement model yields somewhat slower average disposition times with considerably fewer trials" (Cunningham, 1978:240).

An explanation of variable case processing times is beyond the scope of this paper. The point here is simply to note that the procedures and methods courts institute to reduce delay and assert caseflow management control will differ from locale to locale and will produce differential impacts. The ultimate impact depends on the informal norms that operate within the court, court characteristics (e.g., size of court, type of caseload), and characteristics of the professional personnel (e.g., attorneys, judges, administrators) involved.

B. Caseflow Management: The Conventional Wisdom

The literature on "caseflow management" is a varied lot. Writings on the subject range from personal testimonials of practitioners as to the "best" techniques of caseflow management, to reform-oriented pieces that recommend systemic opera-

tional and procedural changes, to research work that attempts to explain why some courts experience greater backlog or delay reduction than others. In effect, the term "caseflow management" suggests different concerns to different individuals.

Briefly, the ensuing discussion will demonstrate the following points. First, a perusal of the literature indicates that the ultimate benefit to be derived from effective caseflow management is the reduction of case processing time. Although virtually everyone acknowledges the inherent virtue of good management (i.e., individualized attention to cases and more order produces better justice), delay reduction is assumed as the underlying rationale for better case management. Second, there appears to be a general consensus that the assumption by the court of control of the case process is the basic principle through which effective caseflow management is achieved. Third, the manner in which such control is operationalized is open to unending debate. Various writers offer numerous "techniques," such as master or individual calendaring systems and stricter continuance policies for improved caseflow processes. The success of these techniques in ensuring court control, however, is problematic. The slowly emerging research in this area questions the suitability and desirability to all courts of implementing these techniques. Fourth, the presumption that delay reduction is the ultimate goal overlooks the distinctive problems of those courts -- such as misdemeanor courts -- that may not suffer significantly from excessive case processing times. Finally, an additional question presents itself regarding misdemeanor caseflow management in particular and, perhaps, to other courts as well -- do the benefits of increasing court control outweigh the social "transaction" costs? Is it worth the effort? And, can the quality of justice be improved by means other than increasing control and standardizing procedures?

1. Goals. Acknowledged experts in the field of caseflow management cite as goals fairness and equal treatment to litigants and the overall effective and timely management of all cases. They also emphasize "speedy" disposition and note that such a goal includes facilitating early identification and disposition of cases that can be disposed of without trial (Solomon, 1973). Experts tend to view the caseflow process systemically noting that it involves all criminal justice participants -- judges, prosecutors, defense attorneys, probation staff and administrative staff. They emphasize the principles of effective caseflow management -- such as court control of case progress, greater judicial accountability, individualized attention to cases -- rather than attempting to prescribe specific procedures suitable for all courts.

Caseload monitoring of individual cases from filing to disposition is strongly and consistently advocated for the entire caseload. Reformers assert that continuous and comprehensive oversight permits the court to differentiate processes to suit the type of case. By so doing courts are able to minimize case processing time.

Practitioners, on the other hand, discuss caseflow management in terms of specific, and not necessarily related, procedures. The view is not so much of a "system" but rather a continuous flow of discrete, separable functions. Consequently the selection and development of caseflow management processes often are not guided by an overall institutional goal. Monitoring cases is rare. Where it does exist, many courts do not utilize it from filing of the case, but rather from the point at which an attorney indicates readiness for trial. And it is not unusual for only a particular type of case to be singled out for monitoring.

In a recent national survey of trial courts, judges and administrators were asked about the goals of their caseflow management process. The majority of respondents in each group talked of minimizing delay generally and agreed that a speedy trial was the system's most important goal. Both groups cited infrequently the reduction of backlog as a goal of their caseflow process. Despite the identification of an overall caseflow management goal, many judges and administrators (43% and 33% of the respondents, respectively) were unable to articulate operational procedures which supported these goals (Cooper, 1979). Different perspectives such as these between practitioners and experts regarding the goals of caseflow management highlight the disparity which exists between the ideal and the reality of its practice.

2. Principles. The principles of caseflow management are most fully developed in Maureen Solomon's Caseflow Management in the Trial Court (1973). This report was the first to address caseflow management on a comprehensive basis. In effect, sponsorship of the report by the American Bar Association served to legitimize and highlight the importance of this emerging concern. As such, many of its principles have come to be the standards against which trial courts are evaluated. In fact, these principles are reflected in the ABA's Standards Relating to Trial Courts (American Bar Association Commission on Standards of Judicial Administration, 1976:83-100).

Solomon conceptualizes caseflow management as a goal oriented process with a "basic principle" of court control of the progress of litigation once a case has been

filed (1973:3). Such control requires on-going monitoring of case progress and continued readjustments to the system. She defines caseflow management specifically as "management of the continuum of processes and resources necessary to move a case from filing to disposition" (1973:1). Given this definition, caseflow management becomes synonymous with court management. The term carries a much broader meaning than phrases such as calendaring, docketing, case scheduling or case assignment. While Solomon asserts that "(c)aseflow management is strictly a management process" (1973:4), decisions made in this sphere affect the adjudicative and quasi-adjudicative functions of the court. In fact, Solomon notes that the enhancement of the quality of adjudication is a "realistic and important result of effective caseflow management" (1973:5).

Without judicial assumption of the responsibility for caseflow management, few, if any, of Solomon's principles could be implemented. Court commitment is the "cornerstone" upon which case processing standards are adopted, restrictive continuance policies are implemented and administrative techniques are developed to minimize scheduling conflicts. "Continuing consultation" among the court, local bar, and prosecutor is also suggested. Further, the author emphasizes the need for case management information (e.g., size of pending caseload, age of pending cases) to allow ongoing evaluation of the court's adherence to its case processing standards. Although the report includes a lengthy discussion of the relative merits of alternative case assignment systems (e.g., individual, master, team, hybrid), it concludes that the selection of one over the other is not as important as the degree of general judicial commitment to case control.

A more recent publication presents an overall description, or model, of an effective court scheduling system that requires a similar commitment on the part of the court. In the Guide to Court Scheduling: A Framework for Criminal and Civil Courts (Institute for Law and Social Research, 1976), it is difficult to discern the distinction between the INSLAW definition of a scheduling system and Solomon's definition of caseflow management, although the former has been conceptualized further in terms of discrete functions. Although INSLAW does not address the court control issue as directly as Solomon, it is presumed that the court wishes to exert control over its caseload and that judges are committed to this management tenet. INSLAW's model scheduling system includes three parts: a calendaring component, a management component, and a data support component.

The calendaring component involves controlling and adjusting the day-to-day operations of the scheduling system. The primary functions of this component include monitoring the calendar; setting events, dates and times; minimizing attorney scheduling conflicts; consolidating police officer appearances; making necessary last minute adjustments in the calendar; and notifying all participants.

These calendaring functions can be evaluated only in terms of their ability to support the goals and objectives of the management component. The management component has three functions. The first is establishing objectives, such as choosing a case assignment system and calendar mode or defining a continuance policy. The second is planning scheduling operations with the aim to reduce uncertainty in the court by devising ways to minimize variability in its daily caseload. These operations include determining how priorities should be made operational (e.g., through sequencing procedures where some case types take scheduling priority), caseload forecasting, predicting case fallout ratios, and devising an overset factor.

Finally, the data support component is "essential" if courts are to fulfill the third management component function: evaluation. A comprehensive case tracking system could support all of the above functions. However, INSLAW notes that in some courts it may be more practical to emphasize one particular aspect of scheduling -- such as monitoring the schedules of attorneys.

The INSLAW model goes further than the ABA standards in that it attempts to operationalize the specifics of effective caseflow management systems. Accordingly, its model is a combination of policies, procedures and techniques that INSLAW staff observed in thirty different locales. Although this model is based on real experiences of particular court systems, INSLAW clearly states that none of the locales operated a management system as comprehensive as their model. As with the ABA Standards, little attention is focused on the complexity of implementing such a model. INSLAW discusses particular procedures and appendicizes examples of reports generated by some of the courts utilizing aspects of their court scheduling components. Yet it avoids suggesting how the court might structure an incremental approach to the adoption of such a model.

The most recent and detailed description of a model caseflow management system is presented by Ernest Friesen et al. in Arrest to Trial in Forty Five Days: A

Report on a Study of Delay in Metropolitan Courts. This report enumerates a point-by-point description of a successful caseflow management system modeled after that found in the Portland (OR) Circuit Court of Multnomah County. The report emphasizes, to an extreme, the necessity for court control of case progress. Its "critical factors" include "organization for control, " "organization for case inventory control," "arraignments with control," and "statistical information for control." The report concludes that delay is caused by the absence of "necessary organization (for control)," which includes time standards for case dispositions and overall case management processes (Friesen et al., 1978).

The analysis of caseflow management systems in Arrest to Trial extends to the interpersonal relationships between the participants. It notes that "the research, to be effective, had to identify the procedure and the human interplay in the procedure..." (1978:6). As such, the report recognizes the interactive nature of the case disposition process and suggests the necessity of a feedback mechanism through which standards of performance can be discussed and adopted. The authors believe the intrasystem communication must be routinized and they specifically recommend regular monthly meetings with advance agendas attended by representatives of all relevant criminal justice agencies. Without such particular procedures the authors are highly skeptical of the court's ability to monitor and control the management of cases. Thus, Friesen's Portland model stresses the interorganizational and systemic nature of effective caseflow management. It has expanded and greatly elaborated on Solomon's earlier recommendation for "continuing consultation" among participants. Furthermore, it considers this the predominant, if not most important, variable to ensure effective caseflow management.

Although it is not emphasized by any of these reports, the principles and models were devised for courts in urban settings with felony caseloads. Solomon notes that her principles, derived from extensive studies of metropolitan courts, are developed for courts of general jurisdiction. The INSLAW model is an aggregation of procedures observed in felony courts across the country, while Friesen's Portland model is derived from direct observation of one exemplary felony court. Nevertheless, the authors imply their recommendations are equally applicable to misdemeanor courts. For example, the introduction to Solomon's report notes that the principles and procedures are as relevant to limited jurisdiction courts as they are to felony courts and would require only slight modification to be implemented. Also, no distinction is made in

these models between urban and rural environments -- for either felony or misdemeanor courts -- even though the concerns of court administrative officials are apt to vary between the two locales.

The paradigm of the misdemeanor court, however, may be considerably different from that of a felony court. If we accept the premise that most courts exercise court control to reduce case processing time, then important distinctions must be made between misdemeanor caseflow management systems and other courts systems. In particular, recent research suggests that overall delay is not a problem in misdemeanor courts. Consequently, many of the caseflow management standards may be inappropriate. In one of the most comprehensive studies undertaken of misdemeanor courts, the author asserts that many misdemeanor courts in fact do not have significant delay with the aggregate caseload. The bulk of the caseload is processed quickly with only a small percentage encountering serious delay (Long, 1974). Long offers as a partial explanation for this result the different character of misdemeanor court caseloads (compared to felony courts) --felony courts process cases with more severe sanctions. Such cases require greater deliberative attention to due process considerations. The size of a misdemeanor court's caseload is apt to be much heavier than that of its felony counterpart but usually these less serious cases are processed administratively (e.g., traffic fines) or require only a truncated version of the felony court's case disposition process. That is, most cases are closed after one or two appearances and oftentimes these appearances are pro forma, perfunctory proceedings. A second important distinction between felony and misdemeanor courts is that the latter experience severe problems with defendants who fail to appear. As Feeley has noted, the central question for these individuals is not how to maneuver to reduce chances for conviction, a harsh sentence, or the number of court appearances, but simply whether to show up in court at all (1979). Rarely does a felony court experience any great difficulty with defendants who fail to appear. In a misdemeanor court, however, defendants will often miss an appearance or get "lost through the cracks" (Feeley, 1979:224).

Other organizational features are dissimilar between these two types of courts. In many misdemeanor courts attorneys still do not prosecute or defend the case. The role of the police officer assumes greater importance in these courts. Environmental influences may be stronger in misdemeanor courts since they are closer to the surrounding community (Alfini and Doan, 1977). For example, Feeley found that the

large downtown department stores pressed the prosecutor's office to pursue shoplifting cases more vigorously (1979). Given the political nature of his office, the prosecutor must be responsive to such demands. Along similar lines, the misdemeanor court may be more susceptible (than its felony counterpart) to local political influences -- such as the bar or county board -- especially if judges owe their positions to the local attorneys or if the court has an assigned counsel system of representation that serves as an important revenue-producing source for many lawyers. Furthermore, misdemeanor judges from small city and rural areas are more apt to feel pressure from local criminal justice actors -- particularly police and attorneys -- even though such actors may not regularly appear in their courts (Alfini and Doan, 1977:433-434).

All of these features of the misdemeanor court require flexibility in daily operations. In The Process Is the Punishment, Malcolm Feeley persuasively argues that the overriding characteristic (and strength) of misdemeanor justice (at least in the New Haven Court of Common Pleas) is the court's ability to retain a flexible and informal case disposition process. By so doing the court can render "substantive," although not necessarily deliberative, justice. The operating reality of these courts is the avoidance (or short circuiting) of the process as much as possible, since few individuals view misdemeanor cases as serious. Further, Feeley notes that prosecutor control of the calendar and the threat of more severe sanctions after trial helps to keep "time consuming defense tactics" to a minimum (1979:282). In effect, discretion in the case disposition process is dispersed among the various participants -- and not under the dominant control of the court. This dispersion of discretion gives the process its flexibility. If this court is typical (or at least not so atypical as to be unique) of other misdemeanor courts, then the applicability of conventional caseflow management standards to these situations is questionable. The critical question is not how to reduce overall delay, but, rather, is it possible to insure that the non-routine cases receive adequate attention without slowing up the overall case disposition process? That is, if caseflow management policies do not reduce (or do not appear to reduce) the aggregate time spent in court and the energy expended to reach all dispositions but, instead, lead to unnecessarily protracted, formalized proceedings, then it is unlikely these courts will implement or consider such innovations. Sharp differences between felony and misdemeanor courts -- 1) in the quantity and the quality of "clientele"; 2) organizational characteristics; and 3) the political and social environment -- will undoubtedly affect the nature of the courts' case processing goals. Variables such as these will determine whether and by how much the court can feasibly expect or desire to exercise control over case processing.

Striking comparisons result when one contrasts the reformers' prescriptive "models" of caseflow management to the real world operations of trial courts. Rarely is a court "organized for control." In fact, oftentimes the opposite is true. For example, a technical assistance project team conducting a "caseflow study" in one locale found it "virtually impossible to perform a management information study until some organizational and procedural adjustments were made" to the existing system (Criminal Courts Technical Assistance Project, 1976b:5). In 1975, a national survey was conducted of case progress control techniques of general and limited jurisdiction courts. The report concluded that comprehensive case progress monitoring and control, such as those recommended by Solomon, INSLAW and Friesen, is "absent in most courts and still in developmental stages in the courts that are attempting them" (National Conference of Metropolitan Courts, 1975:5). In reality, it seems systemic models of caseflow management do not exist.

Instead of comprehensive programs of affirmative case management, trial courts tend to adopt piecemeal approaches to managing the caseflow. In the literature, numerous techniques and procedures which purportedly facilitate the goals of caseflow management are discussed by practitioners. Generally these are in the form of recounting their "success" with particular pretrial practices, case assignment systems, restrictive continuance policies, or computer applications of information record-keeping functions. As Gallas (1979) has aptly pointed out, however, the success of these practices is suspect since such reports lack sufficient critical distance. It is difficult to make any independent assessment of the veracity of such success stories given the almost total absence of verifiable data that permits independent interpretation (Criminal Courts Technical Assistance Project, 1976a). Another writer asserts that these personal accounts of effective caseflow management may distort reality since practitioners' "impressions of the docket are heavily governed by the cases that engage most of (their) time. Normally this is a highly atypical and relatively small slice of the total docket" (Flanders, 1978:147).

3. Procedures. This section discusses some of the operational procedures for court control of the caseflow commonly extolled by practitioners. Although they differ in their views of the most effective caseflow management techniques, these studies do support the contention that court control and judicial commitment are necessary prerequisites. Research in this area has begun to demonstrate that these differences of opinion are justified. The success of caseflow management techniques

is problematic, depending upon the court environment and context in which they are attempted.

a. Pretrial practices. When judges speak of caseflow management they tend to emphasize procedural tools that encourage just, speedy and inexpensive dispositions. In particular, they advocate use of mandatory settlement conferences in civil cases (Rubin, 1978; Aldisert, 1968; Wenke, 1974) and plea bargaining sessions two to three weeks before trial in criminal cases (Cohn, 1974; Kleps, 1971). They contend that devices such as these do no alter the outcome of the case but merely "promote early dispositions in order to clear the calendar of those cases that will settle or be disposed of by plea anyway" (Cohn, 1974:480).

Judge Rubin suggests that the advantages to judicial assumption of responsibility for case control are numerous. Cases settled "by compromise" are settled earlier and more fairly; preliminary matters are handled more efficiently; trial time is shorter; judges can handle a greater volume of cases; the quality of judicial disposition is improved; and each case can be processed in accordance with its own characteristics (Rubin, 1978). While he does not offer case data to support such claims, it does appear that judges believe reductions in trial rates improve caseflow management by reducing delay and backlog.

Again, these practices are geared to felony cases where the legal issues are more significant. Even in these more complex criminal cases, however, it is questionable whether utilization of such practices should be mandatory for all cases. Although they reduce delay in individual cases they may cost the court more time and energy overall. In misdemeanor courts where case-by-case deliberation is kept to a minimum, the alleged advantages of such procedural tools may be inconsequential when compared to the potential costs. A more flexible approach to case management would identify those cases needing special attention instead of assuming that all or no cases need attention.

b. Case assignment systems. For every proponent of the individual case assignment system, there is an equally committed advocate of the master calendar system. The debate regarding the alleged superiority of one system over the other is likely to continue since ultimate success depends on the court's objectives. Solomon notes that the success of the system depends on the level of judicial commitment

(Solomon, 1973), and Friesen et al. asserts that the method used is not so important as the commitment of the body of judges (1971:133). Friesen et al. further assert that the solution to the conflict points to the establishment of a calendar control center. Under either a master or individual calendaring system, a control center "provides a mechanism for maintaining a continuing record of the current status of each case" (1971:187). This calendar control center allows the court to monitor not only cases but judges and attorneys as well. Despite this ongoing debate, it is possible to posit tentative observations about the two systems' relative strengths and weaknesses.

Some practitioners believe the individual assignment system is superior to the master because it increases judicial efficiency by fostering judicial familiarity with the assigned case. This, in turn, fosters realism and flexibility in calendaring matters. For example, a study by the Committee on the Federal Courts noted that "almost universally, counsel preferred the individual assignment system as against the master. . ." (Committee on Federal Courts, 1976:669) The reason most often cited for this preference was the value of judicial familiarity with the case. Court control of the progress of a case is emphasized under an individual assignment system. Where consensus favors the view that the judge is responsible for the disposition of cases, the individual calendar generally is preferred (Friesen et al., 1971). In that sense, the limits of the calendaring and processing flexibility are determined more by the judge than the attorneys. As such, the individual calendar presents greater potential for the creation of judicial subsystems within a multi-judge court. The adoption by individual judges of differing, idiosyncratic procedural and substantive styles is particularly likely in the absence of a strong central administrative mechanism.

Other writers believe that the "supremacy" of the individual calendar is due to the peer pressure (among judges) implicit in its operation through increased judicial accountability. Also, in an individual calendaring system, this sense of accountability extends to the judge's staff which may further encourage effective caseflow management. For example, one administrator believes that "the actual operation of peer pressures which is claimed as the major motivating factor behind the claimed supremacy of the individual calendar system, may be through the courtroom deputy. It is quite likely the courtroom deputy . . . considers it a matter of personal responsibility to keep the judge's calendar the lowest" (Cunningham, 1978:243).

The Committee on Federal Courts also noted that several judges believed "cases which are the responsibility of the courts as a whole, as under the master calendar system, are the responsibility of no one and hence are permitted to languish" (Committee of the Federal Courts, 1976:665). Judges are less motivated to press for prompt disposition since it is easier to just allow cases to pass on to the next judge. Conversely, Judge Wenke asserts that "several benefits" accrue to the court that has "successfully mastered its master calendar system" (1974:354). Generally, under the master calendar system, attorney control of the progress is emphasized since judge contact with each case is brief. In Wenke's court, however, the influence is minimized through the use of an extremely assertive and aggressive central scheduling office. The administrative office effectively restores control to the court. His court operates a sophisticated approach to case assignment that is based on the court's backlog mix. Once the backlog cases have been disaggregated into jury, non-jury and short cause matters, the calendar is set five months in advance, reflecting the backlog mix. This basic approach is supported by use of a trial setting conference, setting factors and an acknowledged effort to assign cases selectively. The absence of a random assignment system, which is generally recommended in the various standards (to avoid judge-shopping), is justified on the basis of perceived productivity. Although he has no case data to support his contention, Judge Wenke believes a selective process fosters "maximum productivity" with cases processed more expeditiously.

Such a perspective from a practitioner attests to his sophisticated experiential appreciation of the interpersonal complexities in designing an effective caseflow management system. The various standards and models of caseflow management, however, virtually ignore judicial preference and special expertise as important management variables. And, only recently has research indicated that the orientations of judges are critical factors in caseflow management. Wold and Mendes found that (under a master calendar system) "judges who staff 'key' courts, ones in which a large volume of cases must be handled, are usually bureaucratically oriented" and good administrators. Conversely, "judges who staff the trials and felony preliminary hearings are typically case-specific oriented." In other words, these latter judges adhere to a more traditional notion of judging whereby each case is handled "one at a time" (1975).

Neubauer notes that implementation of court management techniques such as case assignment systems "requires sensitivity to varying judges' attitudes" and that

these differing judicial roles "are intimately intertwined with how judges manage their dockets" (1979:230). He points out that the importance of these differences in judicial roles has been overlooked because management tools have been viewed as politically and socially neutral. Cunningham describes two basic types of judicial management styles in his court (federal trial court) and seems to imply that the significance of these styles is not so much their effect on case dispositions (i.e., case outcome) but their effect on the process. The "lawyer's model" emphasized the judge's role as neutral arbiter; the "judicial activist model," which takes two forms -- activist-settlement and activist-trial --emphasizes the judge's role in facilitating and monitoring case process (Cunningham, 1978:240).

Analysis of the Manhattan Criminal Courts' experiment with master and individual calendars corroborates the prevailing importance of judicial incentives when evaluating the relative merit of either calendaring system. Essentially, misdemeanor case data collected from that experiment showed similar results under both systems. Different calendaring approaches did not alter the average elapsed time to disposition, patterns of case dispositions (e.g., guilty plea rates), daily rates of case dispositions, nor secondary measurements such as continuance rates. Judicial commitment and incentives for managing the case dispositional processes were not changed by use of either the master or individual calendars (Nimmer, 1978). These results demonstrate that any reform -- whether of the judicial process itself or of the administrative process which supports it -- will only stimulate change if it provides adequate and appropriate incentives to the participants, especially the judges. Otherwise, the impact is negligible.

Since adequate and appropriate incentives are dependent upon the role(s) assumed by the judges, solutions will vary from felony to misdemeanor courts. For example, one might expect misdemeanor court judges to be more likely to adopt the "lawyer's model" of judicial role orientation if they do not feel pressured by the size or age of their caseload. Cases brought to misdemeanor court are less serious than those cases tried in felony courts and few view misdemeanor cases as real indicators of serious criminal misconduct. Consequently, judges may perceive their role as essentially passive since there is little public pressure to quickly dispose of a misdemeanor case. Often the judges will assume a more aggressive posture only when others' perspectives (e.g., the public's) indicate that greater judicial intervention is warranted and desirable. The court's passive perspective is apt to be permitted by the

other system participants. Furthermore, the effect of other participants' perspectives regarding the caseflow process may influence rural misdemeanor court judges more so than their urban counterparts. As was found in a 1977 survey, rural misdemeanor court judges cited police, defense counsel and prosecuting attorneys as sources of rapid case processing pressures more frequently than did urban judges (Alfini and Doan, 1977:434). Feeley describes the prosecutor in the New Haven Court of Common Pleas (a misdemeanor court) as "relatively passive" in the criminal process with his behavior predicated on the actions and initiative of other participants (Feeley, 1978:178). Defense counsel, who (when present) realize little in the way of financial rewards from misdemeanor cases might also be relatively passive. Conversely, if misdemeanor court judges do feel pressured by the size of their caseload they may follow the "judicial activist model." Precisely because the misdemeanor court's aggregate number of cases is so much larger than a felony court's, the former's judges (and supporting personnel) may believe it necessary to become more active to insure current dockets and avoid significant backlog.

c. Continuance policy. Regardless of the calendaring system used, all case management advocates maintain that a strict "no continuance" policy is essential to effective caseflow management. One judge reflects the general sentiment when he notes that "no metropolitan court can ever hope to become current unless such a policy is instituted" (Aldisert, 1968). Oftentimes, however, a "no continuance policy" means no continuances are granted except "for good cause" (Wenke, 1974). Yet, in most courts, guidelines for continuance policies are practically non-existent. What constitutes "good cause" is left to the discretion of individual trial judges. Hence, the grounds upon which a continuance motion may be justified "are limited only by the ingenuity of the parties involved" (Gorman, 1972:120). Case law in this area that could serve to limit the trial courts' discretion in granting continuances invariably "leads in all directions and allows little uniformity among or within jurisdictions (Gorman, 1972).

Despite the general consensus regarding the desirability of restrictive continuance policies, few studies of case data are presented in support of this policy. Research that has been conducted on the effect of continuance policies results in counter-intuitive findings. Most notably, Zeisel denies that a tight continuance policy has any significance in a court with a trial backlog (Zeisel, 1959). On the basis of his research he has even gone so far, according to one judge (Aldisert, 1968), as to advise

judges that they should grant continuances when requested because statistically this will not interfere with the aging of cases at the point of disposition. Zeisel's rationale is that by not trying the postponed case at a given time, a case younger in age can be tried and the statistics all even out in the end. It should be noted, however, that Zeisel's analysis relates to civil case disposition in an urban court and he notes that his conclusion rests on the requirement that "another case can be substituted immediately for trial" (Zeisel, 1959:53-54). He does comment that if continuances cause gaps in the trial schedule, then the court suffers "irretrievable loss." His exceedingly heavy emphasis on quantification of case delay obscures the importance of the complexity of social and behavioral interactions necessary to process a case through the court system. Furthermore, his data analysis depends almost exclusively upon secondary data sources rather than information collected directly from case files.

Other research on instituting strict continuance policies in misdemeanor courts shows negligible impact. In the Manhattan criminal court experiment the policy simply was not complied with by the judges. Not surprisingly, case processing time remained unaltered (Nimmer, 1978:125). Feeley found that continuances are not a relevant issue in misdemeanor justice since, in so many cases, a quick settlement is reached after one or two appearances. However, he did note that in the relatively rare occurrence where a case does not reach a quick settlement, continuances were readily agreed upon (Feeley, 1979:157).

d. Information systems. As in the Guide to Court Scheduling, most practitioners recognize the need for adequate data from which to evaluate their case management processes. Even so, few courts in the past have been able to collect management information. In 1971 few courts at any level kept statistics on court delay or the amount of judge time spent on different types of cases and data on backlog generally were not available (National Criminal Justice Information and Statistics, 1971). The National Center for State Courts found that in 1975 only twelve states reported the age of pending cases while only five states reported the age of cases at disposition. Individual courts may maintain such information but its lack of availability at the state level reflects it relative level of priority among practitioners (National Center for State Courts, 1978).

Unfortunately, the need for case information has been confused with the desirability of automation. Computers lend an aura of sophistication to the court's

clerical operation -- there is a sense of 'symbolic good' which the presence of a computerized information system suggests about a court's management (Cooper, 1979). Much support has been given by the National Advisory Commission on Criminal Justice Standards and Goals and by some state and local groups for the development and application of computer services for the court (Cooper, 1978). In many local governments there is a strong belief that "automation is the solution to all efficiency problems in the courts" (Mason, 1978:9).

The experience of many practitioners, however, demonstrates the limits of computer capabilities regarding caseflow management. Often practitioners attribute their success in backlog reduction to computer applications (Ellenbogen, 1966; James, 1973). However, the implementation of an information system may add problems rather than offer management assistance. For example, many courts have "operating computer systems with massive amounts of detail available in them," but basic management information can only be obtained by detailed analysis of undifferentiated information (Friesen et al., 1978:10). Furthermore, INSLAW found in its survey that many courts use computers for their recordkeeping requirements. However, they rarely operate them for scheduling purposes (INSLAW, 1976:20). Scheduling cases requires immediate access to accurate and timely case status data. Such accessibility is rarely available, particularly with computer services that do not have on-line capabilities.

One overlooked dynamic in the discussion of a court's computer adoption and utilization is the role played by the computer vendor. Judges and lay administrators generally find the subject of automation incomprehensible. Hence, the motivation and goals of the vendor can be highly influential. Suppliers often view court decision makers as conservative individuals who are "willing to change technology, but not operating procedures" (Long, 1978:47). Not surprisingly, many vendors remark that frequently systems have been adopted by courts which basically are "simply faster and more efficient duplicates of the same old procedures." As one vendor succinctly put it, "you just end up with a faster mess" (Long, 1978:49).

Since vendors do not perceive product characteristics as being the key to successful selling to the courts, it is not in their interest to emphasize the potential management uses of automation if such uses require different operating procedures for the court. In fact, vendors tend to minimize the operational changes that may be

necessary to accompany computer utilization. The process followed in introducing the product and maintaining on-going contact with the court is perceived by suppliers as the most critical factor for ensuring an ultimate sale. The general marketing strategies of computer vendors belie a sophisticated understanding of the adoptions of innovations and the nature of innovative behavior. Their strategy for selling to the courts has the following components --"a set of beliefs about how diffusion occurs among courts; the nature of the product being sold; the type of customer involved; and an analysis of the distribution of power among decisionmakers" (Long, 1978).

Nimmer also points out that the "faster-mess" syndrome often is overlooked by most reformers. Their "technocratic premise" assumes that systemic change will occur because computers are more efficient, provide more information and allow people more time for contemplation. Although these are the objective results of automation, the technology alone does not provide sufficient inducements for participants to want more information or know how to utilize the data once they become available. Technological changes do not ensure that behavioral changes will follow.

The assumption that most practitioners will quickly understand and utilize management information tends to discount some of the realities and constraints of court operations. Judges are rarely interested in numbers or statistics and oftentimes are unable to take the necessary time for detailed analysis. The literature offers little guidance as to what specific data individual courts should collect and how to interpret them. The literature focuses on predetermined management problems (e.g., delay) and solutions rather than focusing on the manner in which courts may analyze their own situations and discover the problems germane to their locales.

For misdemeanor courts, this criticism is particularly salient since many of the proposed solutions have been designed with felony courts in mind. Also, misdemeanor courts, more so than felony courts, rarely have the financial resources to acquire automated services. Misdemeanor courts with computers tend to utilize them for the administrative processing of traffic tickets. Often these computer services are not judicial automation systems but are facilities leased through the executive branch (e.g., division of motor vehicles). Consequently, bureaucratic "red tape" makes it exceedingly difficult to adapt these services to caseflow management needs.

C. Caseflow Management: Implementation

A host of variables confound the implementation of a caseflow management system. These variables relate to both the substance and the form of what the literature defines as a caseflow management system. First, in the reform literature a basic policy position which must be taken by the court masquerades under the guise of a neutral "principle" of effective caseflow management. Calling for court control of the caseflow process requires a judge to make fundamental policy determinations regarding: 1) his appropriate role in dispensing and administering justice; and 2) what the caseflow process itself should look like. Ramifications of such policy decisions are felt by numerous discretionary subsystems within the court environment, such as those that exist between judges, prosecutors, defense attorneys and law enforcement agencies.

The preceding discussion demonstrated the complexity of tasks and activities that are inherent in the art of case processing. The process must continually and carefully balance the interests and concerns of different organizational members who exercise varying degrees of discretion within the caseflow system. Despite this need for equilibrium, the thrust of the literature on caseflow management exhorts courts to assert control over the process and suggests the various forms such control may take. The reform literature generally presumes that all system participants -- if not already convinced of the desirability of court control --eventually will be persuaded by its wisdom. Yet empirical evidence refutes this presumption. Particularly within the context of the misdemeanor court decision-making process, most participants dread a "rationalized system of administration for the discretion-free application of the law" or a system where the discretion resides primarily with the judge (Feeley, 1978:85).

At a minimum, the reform literature requires, as a necessary prerequisite to success, the judge's commitment to control the case process. In reality, however, such commitment is generally not present. Most judges retain the traditional perspective of judging in that they concentrate on one case at a time -- whichever one is before them while on the bench. Judges rarely see the caseload as a whole, requiring their active intervention in management processes. Necessarily, these attitudes must change if a caseflow management system is to be successful. Attempts to alter the judicial perspective regarding caseflow management are much more subtle undertakings than attempts to change management techniques. One administrator has

commented that "converting the successful lawyer into an effective manager of a calendar involves a rather thorough resocialization" (Cunningham, 1978:243). For example, one statewide study found (generally throughout the state) that there was a tendency for the judges to see their roles as passive with respect to case management. In fact, one judge expressed the opinion that the court was at the mercy of the whims of attorneys. The report noted that such an attitude must change "in order to achieve court control of case processing" (Institute for Judicial Administration, 1976:3). The language of this report is not atypical. Although court control is called for, in most settings this requires instituting an entirely new ethos into the court environment. The caseflow management literature may underestimate the implementational complexities of this aspect of the reform.

Such underestimation of the complexities of the change process are most visibly evident in the language of the reform. The literature inevitably presents its recommendations in very "legalistic and mechanistic" terms -- as if the only objective was to change the mechanics of the process (Klonoski and Mendelsohn, 1970:6). Klonoski and Mendelsohn note that little attention is focused on the political, sociological and pychological variables relating to legal roles (1970:6). Furthermore, caseflow management reform proposals are extremely comprehensive and stress that individual recommendations cannot succeed unless adopted in concert (Institute for Judicial Administration, 1976). For example, Solomon refers to the process of change as possibly traumatic for judges, administrators, prosecutors, trial bar and perhaps police, corrections and other agencies (1973:56). Unquestionably this is true, yet the reports emphasis on the systemic impact of conversion to a caseflow management system reflects the view that change should occur on a comprehensive basis. In contrast, most adoptions of management innovations as reported by practitioners are accomplished incrementally, gradually and over a much longer period of time than originally was contemplated.

Also missing from these comprehensive recommendations are thoughtful analyses as to the approaches courts may take to evaluate their own caseflow management needs. For example, uniform court control is emphasized. But, in many courts, active court control of the case process every step of the way is counter-productive -- some cases require greater (and some less) management than others. Similarly, writers who recommend a policy of routine judicial intervention, for instance in settlement negotiations, fail to note that many cases, of less complexity, do not benefit from such

intervention. Finally, other evidence that a contemplative, problem-solving process is underemphasized is demonstrated with the courts' experience in computer applications. As noted previously, these courts have not effectively utilized their hardware for management purposes. This is the consequence of unavoidable limitations of computers in general but oftentimes these courts also do not have a pre-existing management scheme supported by a manual information system.

Practitioners assume -- not unreasonably given the thrust of the literature in this area -- that automation is a prerequisite for caseflow management systems, notwithstanding the lack of empirical evidence to support this conclusion. The caseflow management literature is replete with references such as "computers may or may not be necessary"and offers few manual alternatives for the collection of management information. Few if any of the reports reference the numerous options the private sector has devised for manual data collection needs. Only recently have experts begun to note in particular the usefulness of a simple manual system that helps to define the courts' caseflow problems (see Volume I of this report). Friesen et al. have concluded that at least in the initial stage of operation (and perhaps beyond that stage) a manual system is preferable. It permits the court to develop its caseflow system while keeping confusion to a minimum and allowing time to define what would be appropriate for automation (Friesen et al., 1978:42).

D. Conclusion

The caseflow management needs of trial courts vary according to each court's particular -- perhaps even peculiar -- characteristics. Courts differ in jurisdiction, resources, personnel, clientele, and purpose -- such differences "define the nature of any organization" (Long, 1976). To de-emphasize such differences and assert that caseflow management standards "apply equally to all trial courts, regardless of size or type of jurisdiction" (Solomon, 1973:1) obscures one's appreciation of the complex interactive nature of court administrative decision making. Interestingly, some of the recent empirical research that has been done on courts also fails to illuminate these differences. Most of this empirical research is directed toward felony courts (Heumann, 1978; Church et al., 1978; Eisenstein and Jacob, 1977). However, an underlying presumption seems to exist that these analyses are as germane to misdemeanor courts as to felony courts. For example, in Felony Justice, the authors assert that their organizational perspective of felony courts "is equally applicable to

misdemeanor courts" (Eisenstein and Jacob, 1977:12). They make such a claim despite the fact that the two types of courts are distinct in numerous and significant ways. The degree of similarily or dissimilarity between the two types of courts is a proposition that remains to be empirically substantiated.

The considerable volume of literature on caseflow management by reformers, researchers and practitioners alike reflects: 1) the enormous variety of trial courts and 2) the lack of one "right" answer to the courts' management concerns. To date, the literature has emphasized the need to reduce delay, impose case processing time standards, and apply technical innovations (e.g., case assignment systems). The manner in which a court may decipher its own caseflow problems (i.e., court control when and to what end?) and implement appropriate management innovations receives considerably less emphasis in the literature. At this juncture, detailed descriptive analyses of courts' implementation efforts with greater emphasis placed on the behavioral aspects of the change would be a valuable addition to the literature (see Volume I of this report). This is particularly true given the widespread support that many of these reform principles have received and the growing awareness of the disparate population of court environments.

With respect to misdemeanor courts in particular a number of specific issues warrant closer scrutiny. For example, the application of stringent caseflow management standards to reduce delay may have questionable relevance to the management problems of misdemeanor courts. Perhaps overall case delay is not a significant enough problem in these courts to warrant the imposition of strong court administrative controls for this purpose. That is not to say, however, that administrative controls would not be useful for purposes other than delay reduction. Second, an implicit presumption is made that criminal justice participants can be convinced that court control is desirable. However, particularly in misdemeanor courts, case processing requires discretion and flexibility so that the tenuous equilibrium among competing interests can be maintained. Attempts to upset this balance in favor of greater court control of the disposition process will meet with subtle but intransigent opposition from other actors. If, as Feeley contends, misdemeanor courts must operate with flexibility (1979), then encouraging uniform court control, restricting continuances or implementing formal administrative controls may be counterproductive. Substantive justice may be sacrificed for deliberative justice if greater control leads to more protracted proceedings for the caseload as a whole.

Neubauer and Cole, in their critique of the recommendations of the National Advisory Commission on Criminal Justice Standards and Goals, conclude that attempts to regularize and place limits on the discretion of the court's decision-makers may be counterproductive (1975:1036). They suggest that the report's tendency to assume all problems stem from discretion is misplaced. They note that formalizing the process or limiting the discretion may deprive the courts' "community of actors" of the opportunity to employ flexible and innovative means in dealing with individual criminal cases (1975:1019).

More general areas of worthwhile inquiry relate to the behavioral aspects of the implementation process. Specifically, the doctrine of caseflow management is framed around the judge's commitment to management of the case process. More often than not this commitment does not exist. The development of such a judicial outlook requires a rather thorough socialization process. The literature has only recently begun to suggest ways in which this socialization process may be structured. Related to this is the emphasis in the literature on structuring the change process on a comprehensive basis. Recommendations are couched in systemic terms and while the writers generally acknowledge the difficulty of implementing comprehensive changes, it is nonetheless reiterated that standards and procedures must be adopted concurrently. Research which focuses on the process which courts follow to successfully implement caseflow management systems may be the first step toward the development of generalized techniques or approaches through which a court may analyze its own procedures, determine its own problems and devise its own solutions to management constraints.

In sum, technological solutions and remedies to combat mechanical difficulties associated with caseflow management are in abundance. Lacking from the discussion is the suitability and feasibility of implementing these technological innovations within the given social and political environment that surrounds a court. Greater attention should be focused on how courts investigate their own operation, devise and apply workable solutions to the situation and, further, how judicial awareness of caseflow management concerns can be heightened. The latter is no easy task since it directly affects the judge's very personal viewpoint regarding the optimal administration of justice. Clearly, the different social and political environments of these disparate courts will influence the shape, scope and consequences of these management innovations. The same innovation may have very different (and in some cases totally

unanticipated) consequences in different court environments. The impact of case management innovations may go beyond merely changing case processing procedures. These innovations may alter court actors' traditional roles and relationships and, perhaps more importantly, may affect significantly case outcomes. The consequences of introducing these innovations, therefore, may be much more far reaching than anticipated by their proponents.

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CHAPTER III

MISDEMEANOR COURTS AND MISDEMEANOR PROBATION SERVICES: A REVIEW

H. Ted Rubin

The misdemeanor probation agency remains the "stepchild of state correctional systems" (President's Commission on Law Enforcement and Administration of Justice, 1967b:158) just as the misdemeanor court is the stepchild of the judicial system. Despite certain gains in recent years in the availability and quality of misdemeanor probation programs, their importance as a utilitarian and humanitarian function is undervalued.[1] The literature on misdemeanant probationers and misdemeanor probation services remains scant (McCrea and Gottfredson, 1974). The frequent isolation of these agencies, however, is yielding to new structures within judicial or executive agencies that, ostensibly, promote greater service availability and accountability, improved performance standards, and more thoughtfully designed intervention. Existing services have become more diversified in program offerings. Growing management capabilities in this field, increased criminal justice research, general budget tightening, and other factors are influencing an examination of misdemeanor probation's purposes and operations.

That comparatively little is known about misdemeanor probation and that so many issues in this field await resolution constitute important themes in this paper. Among the host of unresolved issues are the following:

-- What are the purposes of the probation function?

-- What probation methods best accomplish these purposes?

-- What organizational structure best accommodates probation effectiveness?

-- What information do judges need from presentence investigations to make informed sentencing decisions?

-- In what cases should a presentence investigation be conducted?

-- When should probation be awarded?

-- What should the court or probation agency require of probationers beyond conformity to legal norms?

-- How can a probation agency and the judiciary coordinate their respective responsibilities to achieve informed sentencing decisions and effective service delivery for misdemeanant probationers?

-- What services should be provided directly by the probation agency and what services should be provided misdemeanant probationers by external community agencies?

-- Do probation services, in and of themselves, reduce recidivism?

-- Can citizens assist the probation enterprise in advisory and advocacy roles?

The presentation that follows reviews these and other issues and comments on current developments in this field. It offers more of a court-related examination, since the study of which this paper is a part has been an examination of misdemeanor courts and their management needs. Probation began in a misdemeanor court, its evolution has been intimately related to the judiciary, its furture -- whether under judicial or executive administration -- will retain close linkages with the courts.

It is believed that the failure to provide effective probation resources to misdemeanants results, in too many cases, in "their eventual graduation to the ranks of felony offenders" (National Advisory Commission on Criminal Justice Standards and Goals 1973a:335). Also, it has long been contended that jail sentences for misdemeanants could be significantly reduced, without serious risk to the community, if misdemeanor probation services were more uniformly available, were strengthened, and made more effective use of existing community agency resources. The irony exists: persons charged with less serious offenses are more often incarcerated and less often sentenced to probation than persons charged with presumably more serious offenses in the same jurisdictions (President's Commission on Law Enforcement and Administration of Justice, 1967a:129).

The author's experiences with this project, with on-site studies of a number of misdemeanor probation agencies, with reviewing relevant literature, and in interacting with officials of these agencies at educational seminars over the years, suggest that the quality of misdemeanor probation services varies widely. A number of departments, both separate misdemeanor probation entities as well as combined agencies which provide misdemeanor and felony probation services, appear to perform competently. These are professional organizations, often well managed, maintaining good working relationships with the judiciary, now using more systematized caseload classification schemes as to the levels of supervision apparently needed by proba-

tioners, futhering in-service and out-service training opportunities for the better trained staffs they now have compared with a decade ago, providing short form presentence reports to assist judicial sentencing practices, and drawing more heavily on existing community agencies to augment the direct services they deliver. Volunteers are utilized in a variety of ways, student intern experiences are provided, data collection systems are maintained, and at least limited program evaluation is performed. Some also administer pretrial release/ROR and/or pretrial diversion programs; community service restitution provisions are moving into place, and serious efforts to collect money restitution to reimburse victims are increasingly apparent (Nelson, Ohmart, and Harlow, 1978).

Elsewhere, potentials have not been realized as clearly, or the picture remains depressed. On this end of the continuum, probation services are not available in many misdemeanor courts; presentence reports are not done or are performed only occasionally; caseloads total from 100 to 200 and beyond, and any significant service rendered is provided by volunteers who do not stretch far enough and fail to reach many probationers who might be benefited; probation departments may remain a bastion of judicial patronage; they tend to have little or no professional direction of their own, are dispirited or burned out, and are isolated and immune from the motion occurring in the probation field. They are a mirror of their lower court and its inferior status in the family of courts.

A. The Lower Courts and the Lower Probation

The adult probation movement celebrated its centennial in 1978, a Massachusetts statute one hundred years earlier having authorized the employment of a probation officer at public expense (Keve, 1978). This enactment followed in the aftermath of the volunteer services of a Boston cobbler, John Augustus, who, being in 1841, had successfully convinced judges of the police and municipal courts to suspend sentencing and afford Augustus an opportunity to counsel and assist defendants. He performed a reclamation role with several thousand offenders over eighteen years, serving as the forerunner of both the volunteer and paid probation officer movements (Jorgensen, 1970).

Over time, state after state as well as the federal government authorized probation through suspending the imposition or the execution of a sentence. While

probation agencies grew up with the courts and commonly were established as an arm of the judiciary, some statutes allocated this function to county administration or a state executive agency (Killinger, Kerper, and Cromwell, 1976). The municipal courts of the country's larger cities were among the first to initiate misdemeanor probation programs. Probation was a reform, born in optimism, influenced by a humanitarian preference for community supervision as opposed to oppressive jail conditions, and linked both with surveillance/reporting/social control strategy alternatives to jail and to the rehabilitation/social casework intervention movement. While all states had authorized probation services by 1925, the misdemeanor arena, particularly, has been characterized by non-existent or undermanned departments in numerous regions of numerous states. In such courts, judges have summarily sentenced misdemeanants on an ad hoc basis to pay a fine, to jail time, or to both (President's Commission on Law Enforcement and Administration of Justice, 1967b:78). Until recently, the inability to pay a fine resulted in a sentence to a local jail.[2]

Felony probation departments have held a clear edge in significance compared with misdemeanor agencies due to their linkage with the more prestigious judges of the general trial courts and the more serious offenses committed by felony probationers. The decision to imprison, more than the decision to jail, was perceived as needing the prerequisite of a presentence report. The decisional risks were significant for felony court judges in substituting felony probation for a felony prison sentence. These judges had incentives to encourage the provision of a suitable level of felony probation service delivery. This mattered less with lower court judges and their numerous and garden variety misdemeanants, often unrepresented by attorneys, but over-representative of the lower income echelon of society. Further, jail time was not too lengthy and might serve as a deterrent.

A study performed in 1965 for the President's Crime Commissions examined misdemeanant dispositions in three American cities. These municipal courts had entered an annual number of convictions ranging from approximately 17,000 to approximately 35,000 persons. Sentences to probation were ordered in 2.5 percent, 5.7 percent, and 19.8 percent of judicial decrees. The range of jail commitments was from 21 percent to 29 percent, and for fines, from 16 percent to 57 percent. Suspended sentences without probation, and other dispositions were utilized (President's Commission on Law Enforcement and Administration of Justice, 1967b:156-57). Further, the survey found that 11 states had no probation services of any kind for

misdemeanants and that about one-third of 250 counties in the national sample lacked such services. Among sampled counties having specialized misdemeanant caseloads, the average caseload size was 114. In addition, these probation officers conducted presentence investigations. While no misdemeanor probation caseload standard had been formulated, the felony probation caseload standard of the National Council on Crime and Delinquency was 50 units a month, with an active supervision case computed as one unit, and each presentence investigation calculated as five units (President's Commission on Law Enforcement and Administration of Justice, 1967b:158-60). More than 76 percent of misdemeanor probation cases were serviced by probation officers whose caseloads exceeded 100 offenders.

The President's Commission set an average workload ratio of 35 offenders per probation officer, preferring a flexible agency staffing ratio to a caseload formula. Based on this criterion, 15,400 misdemeanor probation officers were seen as needed as against the 1,944 then employed in order to "supervise only the rather modest proportion of the misdemeanant group that could be aided in the community," and "to provide minimal screening and classification services for the roughly five million persons referred to the lower courts each year" (President's Commission on Law Enforcement and Administration of Justice, 1967a:167, 169). The Commission recommended that probation services be available for all misdemeanants who need or can profit from community treatment,[3] suggested a unification of felony and misdemeanor probation programs, urged a requirement of presentence reports for all offenders, proposed a state funding mechanism to help finance local probation services, called for an expanded use of volunteers and paraprofessional aides, and stressed an activated probation staff collaboration with community agencies to assist offender integration or reintegration (President's Commission on Law Enforcement and Administration of Justice, 1967a:129, 144, 166, 168-69).

The President's Commission Report, more recently, has been evaluated as a valuable reference work but outdated due to the "decline in faith in the idea of rehabilitation," and the failure of the program directions implemented as a result of the report to combat the causes of crime and the nation's high crime rate (Walker, 1978).

It is important to note that the Commission also indicted the quality of the lower courts, and called for comprehensive improvements in their judicial manpower and

facilities, and their unification with general trial courts (President's Commission on Law Enforcement and Administration of Justice, 1967a:128-29).

The American Bar Association Project on Standards for Criminal Justice strongly endorsed the probation ideal on anti-prisonization, pro-liberty, effective community protection, rehabilitation, and cost/benefit grounds. Probation was projected as a sentence in itself, and as the sentence which should be invoked unless public protection or offender correctional treatment needs compelled confinement, or unless probation would "unduly depreciate" the seriousness of the offense. The standards proposed felony and misdemeanor presentence investigations in every case where incarceration for one year or more was a possible disposition or where the defendant was less than twenty-one years old or a first offender (American Bar Association Project on Standards for Criminal Justice, 1970:Standards 1.1, 1.2, 1.3, 2.1).

The National Advisory Commission on Criminal Justice Standards and Goals recommended housing probation supervision programs within state executive agencies, stressed that the primary function of the probation officer should be that of community resource manager (broker), urged that the same agency administer felony and misdemeanor probation services, and recommended that no misdemeanant should be sentenced to confinement without a presentence investigation (National Advisory Commission on Criminal Justice Standards and Goals, 1973a:Standards 10.1, 10.2, 10.3). Meanwhile, both the National Advisory Commission and the American Bar Association entered recommendations for unified trial courts, which would merge the lower courts and the general trial courts, and for unified state court systems (National Advisory Commission on Criminal Justice Standards and Goals, 1973b:Standard 8.1; American Bar Association Commission on Standards of Judicial Administration, 1974:Standards 1.10, 1.12, 1.50).

B. The Relationship between Misdemeanant Probation and the Unified State Court System Movement

The unification of trial courts and the establishment of unified state court systems, together with an increased state role in the funding of courts, have progressed rapidly (Berkson and Carbon, 1978). A shift from local judicial to state executive administration of probation services has not made significant headway. Instead, the growth in state court administration and state funding of courts is

stimulating state judicial systems to accept responsibility for enriching judicial branch probation services in an effort to ensure at least minimum standards of probation service delivery. This direction has taken different forms in different states.

One form involves recently created unified state court systems "grabbing back" adult probation services earlier vested in a state executive agency. Both South Dakota and Kansas have accomplished this, although only after a very bitter legislative process in the former state. South Dakota subsequently initiated a misdemeanor probation project, employing eight probation officers to handle this responsibility across the state. In both states now, state judicial system paid probation services are responsible for felony, misdemeanor, and juvenile probation. The South Dakota director of court services reports directly to the chief justice. A Kansas probation coordinator is employed by the Kansas state court administrator.

Recent Massachusetts enactments, which created a unified trial court for that state, have resulted in a stronger state role for the long-standing office of the commissioner of probation. That office's previous loose link to local probation organizations has now been strengthened, and its training, research, and technical assistance responsibilities to local probation, which is within the judicial branch, have been expanded. Here too, local probation officers including misdemeanor probation staff have become state employees.

The Texas legislature took a different approach, creating in 1977 an Adult Probation Commission which for the first time allocated state funds to locally employed probation departments. The Commission's six judge and three citizen members are appointed by the Chief Justice of the Supreme Court and the Presiding Judge of the Court of Criminal Appeals. Presently, it allocates approximately 17 million dollars to those local adult probation services that meet its standards. Local funds are used only for office facilities and maintenance and utility expenses. Authorities are hopeful that this funding provision will substantially improve that state's misdemeanant services which, where they existed, had been locally funded.[4]

An earlier approach to a statewide adult probation commission in Connecticut, affiliated with the judiciary but with probation staff members employed and paid by the Commission, had incorporated misdemeanant and felony probation services in one state agency. On January 1, 1979, the administration of this office was placed within the Connecticut Judicial Department.

Another example of state interest in locally administered probation is reflected in the state subsidy approach. Illinois, which for years provided a state subsidy to local judicial branch juvenile probation to help offset the salaries of probation officers who met state qualifications standards, expanded this approach in 1978 to include adult probation officers. A probation division was created within the administrative office of the courts to administer subsidy and provide an array of state level coordination, technical assistance, and training services. Arizona, also in 1978, enacted a probation subsidy act providing grants to local judicial branch probation services, with the subsidies restricted, however, to enriching services to first time adjudicated adult and juvenile felony offenders. The plan is administered by the Arizona Supreme Court.[5]

To some degree, the unified state court system movement has failed to incorporate municipal courts, one of the necessary centers for non-felony probation services. In states such as Arizona, Colorado, and Kansas, probation services in those courts have not been the beneficiaries of state funding or state court system efforts to improve probation quality or availability.

A greater state judicial interest in the probation function is not universal, but it is significant. State executive administration of the adult probation function has existed in a number of states for some years. Where adult probation services are organized under state executive auspices, service delivery responsibilities do not always include the misdemeanor courts.

There have been other forms of structural reorganization. The Minnesota Community Corrections Act of 1974 increased state assistance to local probation and other correctional programs under specified conditions, and resulted in some shift of probation administration from the local judiciary to a consolidated multi-functional organization within the county or regional executive. In other jurisdictions, some integration of misdemeanor probation with local correctional services has been noted (Nelson, Cushman, and Harlow, 1980). Also, the New York legislature, in 1971, transferred probation responsibility from the local judiciary to the local executive, a provision which was held constitutionally permissible.[6] State funds subsidize about 30 percent of local probation costs in New York.

C. Misdemeanor Probation Management: Philosophy and Practice

A review of the literature, and of management and program evaluations related to misdemeanor probation suggests certain priorities for the probation manager's docket:

-- a better definition of the purposes of the probation function;

-- the design of investigation, classification, and supervision strategies that accomodate legal system and budgetary realities and offer prospects for effective intervention;

-- more attention to basic management functions (personnel practices, records, information systems, budgeting, and planning); and,

-- strengthened probation department advocacy.

There is agreement that not every misdemeanant offender requires probation department assistance. For many, a fine is a sufficient sanction. For some, money restitution or community service restitution without probation supervision is a rational disposition. For others, participation in an alcohol information school will provide more assistance than monthly reporting to an overworked probation officer. However, there appears to be a continuous need for probation departments to determine what they should seek to accomplish, whom they should assist, what services they should provide, and how they should provide these services.

In an earlier era, the rehabilitation of lesser offenders would have been cited more prominently in a mission statement. Today, however, the protection of society is more generally seen as a first priority of court sentencing and probation purposes. It is not that the tarnished war on crime has eliminated the rehabilitation objective or that the discouraging research products in this and related fields have ended the quest for meaningful rehabilitation strategies. The call, rather, is for better targeted and more effective probation service delivery. The national interest in evaluation and accountability is promoting useful examinations, internal and external, of the state of probation services. However, basic questions regarding probation intervention are not readily resolved.

The corps of professionally-trained probation managers is growing. Their backgrounds, styles, priorities, and values differ, but greater managerial capabilities

are apparent along with an interest in looking critically at the status quo and revamping how things are done.

Of course, the political professionals are still there, leaders who dampen the ardor of the increasing number of probation personnel who have graduated with majors in criminal justice, social welfare, counseling, or the behavioral sciences. More graduate degrees are also apparent among these employees who are intent upon either moving up in the system, crossing laterally to work with a related agency, or moving out of field if better opportunities beckon or job frustrations mount. A tendency for professionally trained probation managers to leave this field when pay is deemed unequal to the responsibilities and skills demanded, or when bureaucratic or political constraints thwart higher level achievements, is also discernible.

The old, idealistic, rehabilitation ideology remains visible, but it has been hardened in the crucible of the prolonged crime rise and the more complex requirements of institutional maintenance, employee unions, and everyday realities. Recent legislation and appellate court decisions also have reordered the practice of misdemeanor probation. Operations have changed to meet the implications of such decisions as those granting the right to free counsel if indigent when charged with a misdemeanor or ordinance violation,[7] and disclosure of presentence reports to defense counsel.[8] Judicial system attention to case processing delay is forcing greater departmental efficiency in completing presentence reports. More probation managers are requiring that staff members specify particular objectives and methods for the work they undertake.

Additional managers seem willing to take a more active stance to convince judges of their departments' merits. They can speak a management language to funding bodies and their budget analysts. Today's professionally trained managers are more often hired on merit than their predecessors.

Many of the new probation managers have evidenced interest in developing combined risk and needs assessment classification schemes for probationers. Using what is presently known from research findings concerning factors associated with or dissociated from the probability of recidivism, numerous departments classify probationers into low, medium, and high supervision categories. The first group receives little or no supervision, while the final group may be scheduled for two to four

contacts monthly (Sullivan, 1979). In orderly fashion, cases are periodically reclassified to receive more or less supervision. In finding ways to procure services needed by probationers, probation agencies are assessing their own direct service delivery capability and the values inherent in a more systematic use of external services. Research brokerage appears to be increasing significantly, since this offers one obvious approach to dealing with the combination of heavy misdemeanor caseloads and restricted budgets (Dell Apa et al., 1976; Nelson, Ohmart, and Harlow, 1978).

Managers are recognizing that classification both as to the type of information needed for judicial sentencing and the extent of reporting or supervision services needed by probationers can be tailored more efficaciously. Presentence investigation reports, prepared for misdemeanor court judges, usually take the "short form" approach. The early casework model, founded on criminal activity as pathology and aimed at insight counseling, is yielding to a blend of classification, more intensive reporting and surveillance for those at risk, more reliance on community agencies to meet other probationer needs, and, for low risk probationers, inattention or severely limited attention after one or several reporting sessions. Some probation managers and officers are more noticeably fulfilling an advocacy role to obtain new or better services in the community for probationers, or to call to official attention that current agencies discriminate against probationers.

In general, nonetheless, the probation manager has not become a force in the criminal justice system. Probation departments too often accept what other, more powerful agencies relegate to the department: for example, the plea bargaining practices which facilitate court processing, but which may dump felons, bargained down to misdemeanants, upon an already overworked misdemeanor probation office.[9]

The impact of these newer probation strategies and management techniques is at present uncertain. Since correctional goals remain unclear, and more time is needed for the evaluation of these newer approaches, it is especially difficult to determine whether present probation directions will ultimately be assessed as useful and effective.

D. The Misdemeanor Probation Interface with the Judiciary

Adult probation administrators. attending an Institute for Court Management seminar in 1979, highlighted problems involving the judiciary as major impediments to

their managerial performance: judicial lack of knowledge of departmental functions, poor communication with judges, the department being caught in "hassles" between judges and county officials, judicial apathy toward departmental problems, and judicial interference in day-to-day departmental operations. They cited other impediments that may benefit from increased judicial attention and support: low pay, heavy caseloads, inadequate facilities, poor procedural guidelines, and insufficient training funds.

Regardless whether misdemeanor probation is organized under judicial or executive agency auspices, the need for close collaboration between the judiciary and probation administration is apparent. From the probation department perspective, judicial understanding of probation's capabilities and limitations should produce more appropriate sentencing decisions and demands for probation services that can be met. From the judicial perspective, it is necessary that the probation department comply with all statutory requirements and be held accountable for what it does and does not accomplish.

A prescriptive manual aimed at facilitating lower court improvements addressed the need for judiciary-probation collaboration in this context. It recommended that misdemeanor probation departments design "Selected Offender Probation" to provide a more highly supervised experience to middle level offenders thereby providing judges with an additional sentencing option. This more stringent supervision would be provided through probation personnel enhanced by well-trained volunteer counselors. The manual entered a warning to both judges and probation managers: "It is necessary, however, that the program operate on a highly selective basis, or caseloads will become excessively high and provide little actual control" (The Institute for Law, 1976).

Another collaboration issue involves the interface between the presentence report and the supervision function. Where presentence reports are performed, they tend to receive a higher priority than supervision services. What probation officers and administrators do not want is for judges to complain that presentence studies have not been completed on time. Avoidance of this criticism appears to take precedence over other departmental obligations. This issue is relevant in departments where individual officers execute the joint function of conducting presentence investigations and performing supervision of probationers. It is also a problem in departments which

utilize separate units in conducting studies and supervising probationers; the staffing of the former may be overweighted to avoid judicial opprobrium. The most recent series of standards in this field, published by the Commission on Accreditation for Corrections, specifies that "the (probation) agency assigns the highest priority to the supervision function" (Commission on Accreditation, 1977).

How judges and probation administrators communicate or whether they communicate is an unexamined area. How to achieve effective communication between these functionaries is another unresolved issue.

It appears that communication between lead judiciary and probation representatives, most frequently, is on an ad hoc basis, arranged on the initiative of one or the other group to discuss a policy or a problem. There seems to be insufficient attention to more deliberated joint planning and assessment. Not uncommonly, judges, even those responsible for the overall administration of probation services, show little or no interest in executing this duty. Often, probation directors give up on their efforts to interest judges in overall department planning and service delivery concerns. Other directors prefer to run their shops without judicial input or intrusion. Some have achieved exemplary working relationships with the judiciary.

Certain judges tend to protect the time of probation officers and avoid assignment of presentence reports or probation supervision where there is little apparent need for these. Seemingly, other judges fail to order these where there is need. Some probation managers have prepared probation policy and procedure manuals and submitted these for judicial input and ultimate approval, citing the approved manual as the source for their practices when judges fault a probation practice without realizing it has been approved.

Joint judicial-probation evaluation of present presentence report usage and content appears desirable. Whether the report should include a recommendation as to the sentence, and whether the report should recommend individually tailored probation conditions are other items for this agenda.

Joint collaboration may need to deal with such other interfacing issues as:

-- probation officers' differential design of report content and recommendations to meet different judges' biases and values;

-- a caseload crunch that prohibits quality probation services;

-- probation service delivery diminution because staff is regularly held up in court awaiting sentencing hearings; and,

-- the judiciary's determination as to the degree to which routine probationer reporting should be retained when services are brokered to community agencies.

While judges and probation managers have their own extensive functions and responsibilities to execute, examination of the interconnectedness between their respective roles suggests the need for increased collaboration.

E. Sentencing Biases and Misdemeanor Probation

Judges are caught in a cross fire of competing correctional ideologies, public pressures concerning crime, community processing norms, varying ranges of jail alternatives, personal biases, statutory guidelines, observable experience, and experiential mythologies. Probably, there is agreement that jail sentences would be used less frequently if effective alternatives existed, even though little is known about the general and special deterrent effects of jail sentencing, or for that matter, of the accomplishments of misdemeanor probation and related services. Despite increased judicial system research in the last ten to fifteen years, empirical data concerning misdemeanant sentencing practices remain largely invisible.

A 1965 sampling on the relative use of jail versus probation sentences revealed that more than three times as many misdemeanants were sentenced to jail than were placed on probation. In a special sample of 75 counties where full data were available, the commitment-probation ratio was almost 4:1. Probation was used in 21.6 percent of sentences; presentence investigations were performed in 19.1 percent of occasions (President's Commission on Law Enforcement and Administration of Justice, 1967b:159).

Of approximately seven hundred misdemeanor court judges responding in 1977 to a questionnaire used in conjunction with the American Judicature Society-Institute for Court Management study of these courts, 25 percent of respondents reported that they never had written presentence reports available at sentencing; another 38 percent of judges stated these reports were available infrequently (see Appendix B). Presumably, more careful attention to defendant characteristics and alternative sentencing sanc-

tions would have produced more individually crafted dispositions. Questioned as to how often they sentenced to probation, judges responded: frequently (68 percent); infrequently (26 percent); never (6 percent). However, only 51 percent of the judges sentencing misdemeanants to probation indicated that probationers were supervised by a probation officer.

One current report from Omaha, Nebraska reflects the use of misdemeanant probation in 64 percent of sentencing opportunities. Incarceration was utilized in 23 percent of occasions and a fine in 13 percent of sentences.[10] Some observers have suggested there is an increased use of split sentences, judges awarding a period in jail followed by probation supervision.

A relevant standard promulgated by the National Advisory Commission urged that sentencing criteria for nondangerous offenders should include "a requirement that the least drastic sentencing alternative be imposed that is consistent with public safety" (National Advisory Commission, Corrections, 1973, Standard 5.2). The Commission recommended imposition of the first of the following alternatives that would reasonably protect the public safety prior to resorting to total confinement in a correctional facility:

-- unconditional release

-- conditional release

-- a fine

-- release under supervision in the community

-- sentence to a community halfway house

-- sentence to partial confinement with work or educational release

The Board of Directors of the National Council on Crime and Delinquency pushed this direction further in its 1973 policy statement, "The Non-dangerous Offender Should Not Be Imprisoned" (Board of Directors, National Council on Crime and Delinquency, 1975). In support of this position, NCCD urged using an expanded array of community alternatives including diversion and restitution.

Despite these policy preferences, more sentencing institutes for judges, the expansion in pretrial release, diversion, and community correctional programs, the new

emphasis on money and community service restitution, and the discouragement to jailing defendants occasioned by the growing number of local jails which have been brought under federal court supervision, a significant decrease in jail utilization is not observable. In fact, the first national jail census in six years reported that in February 1978 more than 158,000 persons were being held in locally operated jails, a 12 percent increase over the 1972 total. Fifty-eight percent of those detained had been convicted of a crime, usually a misdemeanor. However, totals in several states did reflect a number of state prisoners held in local jails due to court-ordered population ceilings in state prisons.[11] Further, it is believed that the impact of Proposition 13-type measures and inflationary trends may curb misdemeanor probation expansion, erode certain present service levels and staff training opportunities, and result in additional incarceration or non-supervised probation.

On the other hand, certain developments point to a decreased use of incarceration. There is greater recognition that misdemeanors rank low on offense severity measures, and that there are suitable or superior substitutes for incarceration. Judges appear to be more willing to consider community-based service alternatives. Probation innovation remains visible, and probation departments often successfully convince judges of the merits of their mission as opposed to the jail experience. More sophisticated caseload classification and management practices by probation departments are encouraging a more strategic use of probation services and community resources. Law Enforcement Assistance Administration funds have supported programs aimed at expanding a judicial bias toward community-based services. Budgetary constraints are forcing probation managers to become more definitive with departmental goals and operations and seek more cost effective practices.

But here, as well, too little is known about who should be sentenced to probation, what should judges reasonably require of probationers, and "what works" with probationers.

F. Misdemeanor Probation Case Management

Most misdemeanor probation departments, or services addressed to misdemeanants by combined departments, organize around two functions: the presentence investigation report, and the supervision function. While probation seeks to be more of a people changing organization than a people processing agency (Hasenfeld, 1974), the

latter approach appears dominant to date, particularly in middle-sized and larger misdemeanant services. Because comparative data concerning the relative impact (in terms of workload and processing time) of performing particular functions is generally unavailable, data reported by participants in an Institute for Court Management adult probation seminar held in July 1978 is presented here.

1. Presentence investigations. Here the problems include obtaining presentence information for all appropriate cases, providing only that information which is relevant to sentencing, developing check off and fill in sheets that enable speedy completion, accelerating the time frame between plea/adjudication and sentencing (particularly for jailed defendants awaiting presentence investigation completion), and specifying alternative sentencing options. While, as will be shown, misdemeanor court judges often do not have an investigation report available as a sentencing guide, other judges have limited, short form reports for all cases (see Table One).

The Albuquerque, New Mexico municipal court probation unit acknowledges that its 8,000 annual presentence reports are "superficial," often taking only a few minutes, and relying almost entirely on information provided by the interviewee as augmented by computerized record information from law enforcement sources.[12]

A comparison of the presentence report workload data with the time required to complete data indicates that a court's heavy demand for these reports shortens their content. However, more sparing use still finds the time required for completion ranging widely.

Presentence reports, generally, are performed following plea or finding of guilt and prior to sentencing. Sometimes they are performed prior to adjudication as an aid to plea bargain negotiations. The Fresno County (California) Probation Department Annual Report of 1978 notes an Early Sentencing Program "designed to provide sentencing data to the municipal court at an earlier stage of the proceedings... As a direct result of ESP, municipal court referrals were down, for probation supervision, for the first time in years" (Fresno, 1978)! Such a practice follows the efforts of certain courts to front end plea bargaining, in this case reducing, through alternative sentencing approaches, the number of persons placed on probation.

TABLE 1. Annual Statistics for Selective Probation Agencies*

	Felony Supervision Cases	Misdemeanant Supervision Cases	Felony Presentence Reports Completed	Misdemeanor Presentence Reports Completed	Average Time Required to Complete Felony Presentence Reports	Average Time Required to Complete Misdemeanor Presentence Reports
Albuquerque, NM	447	1,500	415	8,000	6-8 Hours	1/2 Hour
Austin, TX	2,459	2,630	700	10	14.2 Hours	3/4 Hour
Bowling Green, OH	186	30	93	11	17 Hours	13 Hours
Caldwell County, TX	274	338	65	41	30 Hours	15 Hours
Cincinnati, OH	3,238	4,806	1,389	616	12 Hours	4 Hours
Connecticut (Statewide)	5,448	11,716	N/A	N/A	9 Hours	9 Hours
Cook County, IL	11,394	18,219	2,647	1,037	12 Hours	12 Hours
Dallas, TX	7,484	45	3,398	15	N/A	N/A
Decatur, GA	2,214	1,781	20	0	N/A	N/A
Elkhart, IN	N/A	403	300	176	16 Hours	5 Hours
Fort Wayne, IN	503	52	391	16	5-6 Hours	5 Hours
Kansas City, KS	219	224	122	180	10 Hours	10 Hours
New Jersey (Statewide)	18,823	8,986	18,286	2,797	11 Hours	4 Hours
Olathe, KS	550	330	329	319	36 Hours	30 Hours
St. Joseph MI	347	733	377	708	10 Hours	5 Hours
South Bend, IN	381	180	405	254	9 Hours	4 Hours
Trenton, NJ	882	336	1,065	40	25 Hours	8 Hours
Woodstock, IL	295	243	127	126	14 Hours	5 Hours

*Participant research immersion data, Institute for Court Management Adult Probation Seminar, July 1978

The data in Table Two indicate that one-half of the courts held sentencing hearings thirty or more days following plea or trial. The longer time span ostensibly permits a more adequate and better verified investigation, and more studied attention to sentencing alternatives. Yet, a greater time space between these hearings is not guarantor of a more useful report. Misdemeanant case processing is not always so speedy as is commonly believed, and the activation of probation supervision on other correctional programs may not begin for many months following the offense.

Useful innovation is occurring in reducing processing time delays. In 1976, following meetings between the judiciary, court administration, and probation, the Ventura County (California) Corrections Services Agency relocated misdemeanor presentence investigation staff at the courthouse under a plan designed to complete the report and the sentencing hearing on the same day as adjudication. More than 300 defendants a month now avoid the need to visit the probation office to arrange for an interview, to return for the interview, and to return several weeks later to the court for sentencing. However, the more serious misdemeanants are still handled in the manner formerly utilized for all misdemeanant offenders (Kuntzman, 1979). The Bronx (New York) sentencing project, operated by the Vera Institute of Justice, utilized a privately-funded external agency to conduct thirty-minute interviews with misdemeanants on the day of conviction and to verify background and record data as soon as possible. Certain data elements were scored and "score sheets" sent to the judges and defendants' attorneys prior to sentencing hearings (Cooper, 1977). For at least a decade, the Denver County Court has had a twenty-four hour turn around time from conviction to sentence for a presentence investigation which included certain psychological measures, along with a 4 p.m. staffing of the cases evaluated each day.

It has been noted that "In a jurisdiction with an active pretrial release agency, its records may well contain much of the information needed for a minimal presentence report, suitable in many misdemeanant cases" (Galvin et al., 1978). Arrangements to obtain this information for subsequent presentence report utilization have not always been negotiated.

A prioritization scheme used in Des Moines structured the completion of these investigations within two to four weeks "depending upon whether the individual is in jail (two weeks), on bond (three weeks), or under pretrial supervision (four weeks)."[13]

TABLE 2. Processing Times in Selective Misdemeanor Courts*

	Mean Processing Time Frames (in days) -- Misdemeanors (10 Cases) Where Presentence Investigation Performed				
	Offense Jail	Jail First Appearance	First Appearance or Settlement Trial	Trial/Settlement Sentencing Hearing	
Albuquerque, NM	1.0	6.0	12.0	N/A	
Bowling Green, OH	39.5	3.5	20.5	16.5	
Cincinnati, OH	1.0	4.2	31.7	16.6	
Connecticut	0	.7	279.0	35.0	
Cook County, IL	3.5	13.0	71.6	3.3	
Elkhart, IN	6.0	4.0	199.0	33.0	
Kansas City, KS	7.0	2.4	39.5	30.1	
New Jersey	16.9	2.7	6.9	36.7	
Omaha, NE	3.0	21.0	22.0	28.8	
Royal Oak, MI	1.0	1.0	59.1	22.2	
St. Joseph, MI	11.3	1.2	9.9	30.0	
South Bend, IN	1.2	1.2	27.5	7.0	
South Carolina	6.0	1.0	96.0	1.0	
Trenton, NJ	16.1	1.4	404.9	37.5	
Woodstock, IL	0	10.0	35.0	44.0	

*Participant research immersion data, Institute for Court Management Adult Probation Seminar, July 1978

In some probation agencies, students, volunteers, or paraprofessional employers may prepare some of these reports. While victim impact statements increasingly are included in medium and longer form reports, they tend to be ignored with ultra-short form methods. There have been important critiques of presentence investigation reports, and recommendations for their reassessment and reorganization (Carter, 1978; Kirkpatrick, 1978; Allen, Carlson, and Parks, 1979).

Increasingly, presentence reports are made available not only to judges but also to prosecution and defense counsel. Frequently, the reports are reviewed within the department by a supervisory official who attends the sentencing hearing. Elsewhere, the person preparing the report is present at the hearing. In a small number of departments, staff members are not present for the sentencing hearing except upon request. In medium and large-size departments, there are separate investigation units. Elsewhere, staff members both conduct these investigations and supervise probationers. The Albuquerque Municipal Court Probation Unit reported in 1978 that staff members maintained a caseload averaging 150 supervision clients, and conducted 65 misdemeanor presentence studies per month. The misdemeanor probation arm in St. Joseph, Michigan reported that year an average misdemeanor caseload of 103, officers also conducting ten presentence studies a month.

The Social Services Department for the Superior Court of the District of Columbia, a combined misdemeanor, felony, and juvenile probation agency, estimates that 17 percent of misdemeanants have had presentence reports completed prior to sentencing. For the remainder, a risk/needs assessment is performed by the supervision officer assigned to the case during the first month of the probation experience.[14] This assessment, then, is not an aid to judicial sentencing practices but, rather, is used by the probation arm to classify probationers as to supervision intensity needs. The Connecticut Office of Adult Probation, a statewide agency serving misdemeanor and felony courts, does not conduct presentence investigations with misdemeanor offenses.[15] The Fresno (California) Probation Department computer one page face sheet reports on misdemeanor offenders when investigations are specifically ordered by a judge.[16]

Overall, it appears that useful review is occurring as to what should be set forth in a presentence investigation report, but that significantly more evaluation and revision of this tool along with a more optimum use of investigation reports, is needed nationally and by individual probation agencies.

2. Supervision services. Most agencies providing misdemeanor services employ the traditional individual officer responsibility for the individual probationer case. Where formal assessment measures are not utilized, cases are assigned to individual officers by supervisors or administrators who seek to equalize caseloads among the staff. Based on some kind of intuitive prediction as to the abilities of certain officers to do better with certain types of cases, assignments may be made with the particular strengths of individual officers in mind. Some departments have utilized specialized caseloads, as with drug offenders, the particular officer carrying a large percentage or an exclusive caseload of such offenders. This officer may have attended specialized training seminars on drug offender characteristics and should have a superior knowledge of community drug abuse services for their utility for his caseload. The increased division of probationers into low, medium, and high supervision categories has resulted in more probation department specification of the frequency of probation officer contact with particularly classified probationers.

The Connecticut Office of Adult Probation, since 1977, has used a case screening management instrument with all persons assigned to probation. It is a rating scale comprised of a criminal index score (points assessed in relation to present offense severity; prior criminal record; and age) and a behavioral and environmental adjustment index (points assessed in relation to educational level; employment, schooling, and training; drug and alcohol abuse and/or mental health problems; and residence and family ties). "The primary goal of the system is to identify segments of the probation population which can safely be given minimal supervision, reallocating staff time and other resources to 'high risk' cases." The relatively low seriousness weight of the misdemeanor offense places more misdemeanants in the low risk/low intervention category that minimizes "personal contacts to avoid correctional intervention." There is no medium level of supervision intensity. High risk probationers are classified into Model II (surveillance) or Model III (treatment) depending on probation officers' subjective assessments of probationers' immediate needs and willingness or motivation to contract for service plans. Extensive brokerage to external agencies is used with Model III probationers.

An evaluation of this screening approach found low risk probationers successful in 95 percent of cases, and Model II (high risk, low motivation) and Model III (high risk, high motivation) clients successful in 71 and 78 percent of cases, respectively. The instrument was deemed an admirable management tool. Recommendations were made

for its refinement (not all subscores were found predictive, the rating instrument could be simplified, etc.) (New England Management Services, 1980:1, 4, 40-44).

The Fresno Adult Probation Division, which combines misdemeanor and felony probationers, takes a less systematized approach to classification. It utilizes a staff screening committee to conduct a post-sentence review of the court's special conditions, project a victim restitution plan, examine a probationer's employment potential, and erect intensive supervision plans for assaultive clients. At this stage, a substantial number of misdemeanants are slotted into a bank or paper caseload, including persons who have not received special probation conditions, whose offenses are non-serious, and who are not believed to require services.[17]

During the past five years, a number of departments have experimented with the community resource management team or resource broker approach to probation organization and service delivery. Classically, with this model, probationers receive a needs assessment and are serviced by a team of probation officers, each officer serving as a specialist in one or several types of program areas "needed" by probationers: employment, vocational training, education, drug services, alcohol services, mental health programs, and others. The particular specialist becomes the broker of that service most needed by the probationer at that time. The team is responsible for the probationer, and other team members are responsible for assisting the probationer if he visits the agency and the particular specialist with whom he is working is not in the office. Staff turnover creates fewer problems with a team approach, but there have been significant difficulties in reorganizing probation agencies into the team model and in having staff members relinquish their role definition as a counselor. However, brokerage has focused attention on new approaches to obtaining community resources, modified specialist/brokerage models have been instituted,[18] and promulgation of this model is causing a re-evaluation of alternative approaches to large caseloads.[19]

It is probably accurate to observe that, on a national basis, the primary services provided alcohol and drug abusing probationers are administered by external agencies offering educational and rehabilitational, out-patient and in-patient services in these categories. Analogs to presentence investigations are prepared by a number of these agencies for offenders using alcohol or drugs, and submitted for sentencing hearings and at the diversion stage, as well. These services, then, are brokered, and departmental reliance on these services encourages other brokerage efforts.

CONTINUED

1 OF 4

A summary listing should be made of the range of in-house services provided by misdemeanor probation departments. One or several departments offering these direct services are listed, though they are also available in additional departments:

-- court residential treatment center (West Texas Regional Adult Probation Department, El Paso; a sixty-bed unit);

-- weekly group counseling program (District Court Probation Department, Royal Oak, Michigan);

-- psychiatric clinic: evaluation and short term treatment (Recorder's Court, Detroit; Cleveland Municipal Court);

-- petty larceny school (Municipal Court Probation Department, Albuquerque, New Mexico);

-- community service restitution (Municipal Probation Service, Seattle Municipal Court, Washington; Pierce County Probation Department, Tacoma, Washington);

-- administration of work/educational release program (Corrections Services Agency, Ventura, California);

-- job development/job placement officer (County Probation Department Fresno, California);

-- antabuse supervision (District Court Probation Department, St. Joseph, Michigan);

-- traffic school (Municipal Court Probation Department, Albuquerque, New Mexico);

-- victim services program (Social Services Division, Superior Court, District of Columbia);

-- victim restitution program (Polk County Department of Court Services, Des Moines, Iowa); and,

-- volunteer programs (unbiguitous).

A processing issue arises when there is a violation of probation conditions. The violation may be a new criminal offense (probation conditions invariably specify a requirement of adherence to all laws). With reoffense, the options include a new charge filed through the prosecutor's office, a return to court on a motion for revocation or modification of probation by the department, both, or neither. Practices vary, though there is some move to place the decision with the prosecutor.

Another type of violation arises with an apparant breach of other general or special probation conditions: failure to pay costs assessed by a court; failure to report to the probation officer; failure to obtain permission of the department prior to leaving the jurisdiction; failure to observe conditions prohibiting the use of drugs or alcohol, etc. Any action to be taken is determined by department practice or court policy. Many such violations are handled informally by probation officers without court involvement. Others are brought to court attention and result in jailing or a warning by a judge.

Two other matters concerning probation supervision management merit comment. One concerns whether supervision services should continue with low risk probationers who are complying with all requirements and managing their lives well, and those who have completed community service restitution obligations, although a period of time remains before the assigned term is completed. The more general practice in these circumstances is to minimize or curtail supervision, either ignoring the probationer until just before the term expires or, in larger departments, placing the case in a paper caseload and perhaps requiring only a periodic mailed-in report or report-in by the probationer to a clerk or probation aide. An alternative is to negotiate a procedure with the judiciary to bring such probationers back into court for an early termination decree by the judge.

Also, note should be made of the expanding practice of charging probation supervision fees to probationers. Nine states permit or require such fees and other states are considering authorization. Despite professional and ethical concerns regarding such fees, they can generate substantial revenues (Sasfy, 1979). This is marked in Texas ($15 per month unless reduced or waived) where a significant percentage of departmental budgets are obtained from such fees. For example, more than six million dollars was collected in Texas in 1977. The Dallas misdemeanor and felony probation agency reported collecting $624,441 that year (Dallas County Adult Probation Annual Report, 1977). The Colorado practice is to charge misdemeanant probationers a single $50 supervision fee ($100 for felony probation).[20] Royal Oak, Michigan reports charging an "oversight" fee of $15 per month, but notes the occasional use of its community service program for probationers having severe arrearages in paying oversight fees (Grisdale, 1978). However, a fee charging regimen compels such questions as whether probationers will receive any significant service in exchange for payment, and whether the handling of payments and payment problems will become more important than assisting people.

Interesting changes are occurring with probation service strategies in a growing number of agencies. More evaluation as to the value of these alternative approaches is needed.

G. Misdemeanor Probation and Citizen Participation

The volunteer tradition in the misdemeanor probation field is a long and honorable one going back to 1841 and John Augustus, and receiving new impetus beginning two decades ago in Royal Oak, Mighigan (Morris, 1970). Citizen volunteers perform a variety of roles in countless probation agencies. It may be said that volunteers have been overutilized in an effort to enrich the limited services provided by many understaffed misdemeanor probation departments. It is not that citizen help has not been beneficial, but it should be more an enrichment of adequate services than a primary means to individualize and assist probationers attached to excessive caseloads. Conversely, these probation agencies have not been sufficiently attentive to the potentials of citizen assistance in broader advisory, policy making, and advocacy roles. The citizen advisory boards to the courts and probation departments in Tacoma, Washington, and Austin, Texas, reviewed in Volume I of this report, illustrate programs to incorporate volunteers in these broader functions. While many probation directors understand the political potential of citizen volunteers, their use in political advocacy appears quite limited to date.

One commentary on the use of volunteers reports that, while most programs emphasize the prevention of recidivism as a central objective, probation administrators justify volunteer programs on the basis of evidence that volunteers increase the humanitarian component of their probation services (Mattick and Reisch, 1975:160).

Typically, the volunteer program is administered by the probation agency. The department may employ a paid volunteer coordinator, often a former probation officer, to direct this program. There are examples of privately organized Volunteers in Probation organizations which recruit, train, and supply volunteers for public probation agencies. In some communities, probation agencies may rely on recruitment efforts made by centralized community volunteer bureaus that obtain volunteers for a wide variety of public and private health and welfare agencies. In other communities, recruitment and orientation of new volunteers may be done by other volunteers.

There is agreement that volunteers need both training and supervision in their work, that most but not all volunteer applicants can perform useful functions, and that any person assigned to work on an ongoing basis with an individual probationer should make a strong commitment to carry out these responsibilities over a period of time. The volunteer who fails to honor this commitment may well deal further injury to a probationer's self esteem.

Volunteers come from all walks of life and include ex-offenders, retirees, members of service clubs, active members of the military, many students, and countless interested citizens. They are used in numerous ways:

-- the one-on-one volunteer;
-- case manager for low risk caseload;
-- transportation volunteer;
-- job placement/training volunteer;
-- tutoring volunteer;
-- financial management volunteer;
-- family partnership volunteer;
-- clerical volunteer;
-- discussion group leader volunteer;
-- jail visitation volunteer;
-- volunteer coordinator volunteer;
-- physician/dentist volunteer;
-- presentence investigation volunteer;
-- probation department citizen advisory board;
-- community service restitution volunteer (program coordinator, agency locator, work hours monitor);
-- housing/emergency assistance volunteer;
-- training manual preparation volunteer;
-- questionnaire preparation/administration volunteer;
-- volunteer training volunteer;

-- annual report/interpretive materials volunteer;

-- research assistant volunteer;

-- meeting coordinator volunteer; and,

-- fund raising for special project needs volunteer.

In 1973, the San Diego County (California) Probation Department, which serves juveniles as well as adult offenders, recorded a contribution of 85,487 hours from its volunteers (Mattick and Reisch, 1975:166). The volunteer should be seen as an extension of the department offering more time and special resources than a probation officer can normally provide; but "the officer must continue supervision of those probationers assigned to volunteers."[21]

To the above listing should be added a new type of "volunteer," the probationer assigned to community service restitution who selects a particular community agency in which to perform a work experience in compliance with the court's order. In some communities, probationers are involved in assistant roles with the administration of these programs.

The volunteer movement in this field has been a significant one. More tests of citizen participation in policy advice and advocacy roles merit consideration.

H. Change and the Future of Misdemeanor Probation

Improving the quality of misdemeanor probation, like improving the quality of misdemeanor courts, is an old agenda. Certainly, these institutions are not alone in their need for reorganization, revitalization, and rehabilitation. But unlike, for example, the American public school and hospital/health care movements, they have never enjoyed widespread attention. While punctured panaceas and reformist over-expectations have characterized the correctional field for more than a century, certain knowledge we have acquired, attitudes we are facing, and directions that are in process offer promising approaches for the future. However, there are realistic limits to what a correctional enterprise can accomplish within a complex society, in competition with social, economic, and technological forces that impact upon citizen compliance with laws, and in competition with other, often politically more attractive, public agency budget requests.

The ongoing debate on the purposes of the probation function, the critical research on what rehabilitation can accomplish, and even the cutback management required with lowered budget allocations should have some utility in rethinking and reshaping what probation should do and can do. The use of short form presentence reports, the classification of probationers as to apparent supervision and service requirements, greater attention to helping probationers find employment,[22] and the increased use of brokerage of probationers to external agencies appear to be utilitarian directions. Though the expected impact of pretrial diversion programs may have been oversold, its use appears to have facilitated an appreciation of the need to grade the relative seriousness of particular crimes and to diminish the use of formal court processes for non-serious, first time, or lesser drug-abusing offenders.

The absence of misdemeanor probation services in many communities, their undernourishment elsewhere, poor pay levels, and high staff turnover,[23] suggest a strong priority for an increased state role in jurisdictions that have not accepted responsibility for a significant state-level responsibility in this field. The three basic possibilities here include total state funding, with probation organized either within the judicial or executive branch, partial state funding through subsidies to local probation agencies, or a limited state role of technical assistance, training, standards setting, and evaluation. This review indicates the need for state monies, at least, plus planning, evaluation, technical assistance, standards setting, and other services which add up to a state acceptance of responsibility for misdemeanor probation quality. Prescribing more precisely the degree of state funding and the degree of centralized management is probably unwise; no one model best fits all states and local subdivisions (see Skoler, 1977). It must also be recognized that in some states that have converted local probation officers into state employees or subsidize local, combined adult probation agencies, misdemeanor probation remains the least prioritized component of the probation arm.

The debate as to whether probation should be judicially or executive organized also is avoided here.[24] State constitutions do not dictate who has hegemony over this terrain, though it is an important determination. Around the country, probation's "home" is related to the interest or disinterest of governmental divisions, to the judiciary's concerns, to history, and to state and community cultures.

The performance and status of misdemeanor probation appears linked to the efficacy of its court counterpart. Its future, like that of the lower court, probably will require structural reorganization to substantially heighten its overall performance and status. Just as the judicial system reform movement has sought to re-establish misdemeanor courts within general trial couts in order to obtain a broader funding base, better qualified judges, improved facilities, and enhanced management, so restructuring seems necessary for separately organized misdemeanor probation agencies. At the least, merger with the felony probation department appears indicated. Yet, simple merger is not enough to achieve operational parity for the stepchild. Critical analysis of fundamental probation premises is needed; planful review should be conducted of where functional specialization as compared with integrated services should be utilized.

Finally, there is need for greater attention to policy and research issues in this context. Too little is known or has been vigorously considered in this field. It should be profitable to assess, among other concerns:

-- the nature of present misdemeanor probation services and structural and service characteristics on a national basis;

-- in-depth department studies of the execution of probation functions;

-- the type of offenses and offenders meriting presentence investigations and supervision;

-- the objectives of the supervision function;

-- the relationship between judicial sentencing practices and probation service/community agency availability;

-- the working relationships between probation administrators, under court or executive administration, and judges;

-- the potential for lobbyist support from citizens and the judiciary;

-- probation personnel career paths and turnover patterns; and,

-- organizational structures and characteristics that facilitate uniform service availability of respectable quality throughout a state.

I. Conclusion

This rather sweeping review of misdemeanor probation services suggests that while the future of this field is not in jeopardy, its doing business as usual will not be

good enough. Important cross currents are at work that will affect this enterprise. These influences seem to be imposed more externally from broader societal influences than derived internally from forceful leadership.

One direction proposes that misdemeanor probation is a useful concept that should be expanded and diversified to meet a variety of objectives, from reducing unnecessary jailing to, yes, encouraging rehabilitative gains on the part of lesser offenders in apparent need of social intervention. A counter direction catches misdemeanor probation in the governmental austerity net that seeks to maintain the present level of social prorgrams at reduced taxpayer expense. Cost/benefit arguments accompany both directions. Factoring into this equation is the ambiguity as to the purposes of probation and what, really, probation departments do accomplish that would be accomplished without probation services.

Quite possibly, probation accomplishes more than its critics indicate but less than its advocates contend. Numerous problems, large and less large, remain prominent, along with more questions than answers. Certain promising innovation and professionalization are visible in this field, but the results are not yet in. Every community has a stake in misdemeanor probation efficacy, and this aggregates to a national concern. This humanitarian endeavor needs to undergo rigorous search and research in coming of age. Our approach to less serious offenders is a serious concern.

NOTES

[1]Misdemeanant probationers, on a national basis, totaled 467,971 on September 1, 1976, while felon probationers numbered 455,093 (National Criminal Justice Information and Statistics Service, 1978). Yet the number of misdemeanant offenders processed by courts, compared with felons, is more like 8:1 or 9:1.

[2]This practice was held to violate the equal protection clause of the Fourteenth Amendment. William v. Illinois, 399 U.S. 235 (1970); Tate v. Short, 401 U.S. 395 (1970).

[3]As late as 1977, a Texas study reported, "We know, for instance, that approximately 8,000 misdemeanants placed on probation in Dallas County receive no supervision whatsoever" (Texas Center for the Judiciary, 1977:131). Also, a 1977 Utah report acknowledged that, "Until the last several years, the Utah State Division of Corrections provided little service to the lower courts. The services provided were selected misdemeanant presentence investigation reports and infrequent supervision, usually upon the request of the court" (Utah Council on Criminal Justice Administration, 1977:6).

[4]See Senate Bill 39, Texas Adult Probation Commission Act of 1977.

[5]Arizona Revised Statutes, Sections 12-261 through 12-266 (1978).

[6]Bowne v. County of Nassau, 371 N.Y.S. 2d 449 (1975).

[7]Argersinger v. Hamlin, 407 U.S. 25 (1972).

[8]State v. Kunz, 259 A. 2d 895 (N.J. 1969).

[9]"I believe the plea bargaining practice is one of the strongest arguments for misdemeanant probation. At least in California...the misdemeanor courts are handling much more serious offenders and offenses in that cases previously handled before the superior court are now being handled in the municipal court. Another factor in California that brings this about is the Determinate Sentencing Act. This act has led to a greater manipulation of the system through the plea bargaining process." Communication, Loren A. Beckley, American Justice Institute, Menlo Park, California, to the Institute for Court Management, October 18, 1979.

[10]Report, 4th Judicial District, Douglas County (Omaha), Nebraska, 1977.

[11]See Criminal Justice Newsletter, June 4, 1979, pp. 4-5.

[12]Communication, Michael Mason, Albuquerque Municipal Court Probation Department, to the Institute for Court Management, July 17, 1978.

[13]See National Institute of Law Enforcement and Criminal Justice, Law Enforcement Assistance Administration, Community Based Corrections in Des Moines: An Exemplary Project, Washington, D.C., undated, p. 7.

[14]Communication, Alan M. Schuman, Director, Social Services Division, Superior Court of the District of Columbia, to the Institute for Court Management, August 29, 1979.

[15]Communication, James O. Sullivan, Jr., Caseload Classification Manager, Office of Adult Probation, Hartford, Connecticut, to the Institute for Court Management, August 28, 1979.

[16]Communication, Don Hogner, Assistant Chief Probation Officer, Fresno County Probation Department, California, to the Institute for Court Management, August 29, 1979.

[17]Ibid.

[18]See Volume I, Chapter III of this report.

[19]See Final Evaluation Reports: Des Moines CRMT, Monterey County (California) CRMT, Wayne County (Detroit, Michigan) CRMT, Western Interstate Commission for Higher Education, Boulder, Colorado, 1978.

[20]Colorado Chief Justice Directive No. 10, November 16, 1978.

[21]Policies and Process of Volunteer Involvement, Training, and Utilization in the Travis County Adult Probation Department, Austin, Texas, undated, p. 7.

[22]"The research study...has concluded that the higher the number of months unemployed, the lower the probationer's relative adjustment, and the greater the likelihood to engage in criminal activity. The condition of high rates of probationer unemployment, particularly among blacks, cannot be overlooked. The administration of the probation delivery system and policy decisions relating to probation must begin to deal with this alarming rate of unemployment among probationers and start to effectively address itself to this crucial concern; for the effectiveness of probation and the protection of society are at stake." (Kavanaugh, 1975, pp. 59-60).

[23]"When queried about the most frequent reason for loss of employees, probation chiefs stated that staff either sought better paying jobs with more opportunity for advancement (in the federal probation system, for example), or got out because the rewards were not commensurate with the pressures and responsibilities" (Texas Center for the Judiciary, 1977, p. 159).

[24]"It appears that this question is not amenable to a definitive answer; what is important is a thorough consideration of the tradeoffs which characterize each alternative" (Allen, Carlson, and Parks, 1979, p. 57).

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PART II

RESEARCH PERSPECTIVES

There have been relatively few systematic attempts to analyze, through empirical research, misdemeanor court practices and concerns. The six research pieces contained in Part II thus represent a significant contribution to our understanding of the state misdemeanor courts.

The most comprehensive single study of an urban misdemeanor court, Feeley's The Process is the Punishment argues that primary sanctions in these courts are meted out in the pretrial process rather than in sentencing. However, the analysis of adjudication and sentencing practices in the Columbus (Ohio) Municipal Court, presented in Chapter IV, results in the contrary finding that the outcome, not the process, is the punishment.

Chapter V challenges the conventional wisdom concerning the impact of the presence of defense counsel in the lower criminal courts. In analyzing the results of a mail questionnaire survey of a national sample of state misdemeanor court judges, the authors suggest that certain assumptions concerning the effects of defense attorney presence on misdemeanor case processing are inaccurate.

The remaining chapters in Part II evaluate various aspects of the programs described in the companion volume, Misdemeanor Courts: Designs for Change. Chapter VI assesses the impact of the Case Management and Information Program (CMIS) implemented in the Blue Earth County Court (Mankato, Minnesota), while Chapters VII, VIII, and IX analyze various aspects of the Community Resource Program (CRP) implemented in the Pierce County District Court (Tacoma, Washington) and the Travis County Courts at Law (Austin, Texas).

The case study of the CMIS program contained in Chapter VI suggests that this management innovation resulted in a noticeable decline in the average age of cases in the court as anticipated. However, the innovation also had unanticipated consequences.

Similarly, Chapter VII's assessment of a rehabilitative reform (community service restitution) indicates that such reforms can have certain unintended (and undesired) consequences. In particular, the authors' analysis challenges the general belief that such reforms are beneficial to defendants.

Chapters VIII and IX attempt to define the limits of citizen participation and planned change in state misdemeanor courts. Chapter VIII's description and analysis of the experiences of three citizen advisory boards indicate that opportunities for popular participation in local courts may be more limited than their proponents suggest. Chapter IX's critique of change efforts at both the organizational and systemic levels results in the conclusion that the critical limitation on planned change is the distribution of interests and power within court institutions and throughout the court's environment.

CHAPTER IV

ADJUDICATION AND SENTENCING IN A MISDEMEANOR COURT: THE OUTCOME IS THE PUNISHMENT

John Paul Ryan[1]

A recently-published work on misdemeanor courts concludes that the primary punishment meted out to defendants occurs during the processing of their cases (Feeley, 1979). Feeley contends that the pretrial "costs" associated with arrests on misdemeanor charges typically outweigh any punishments imposed upon conviction. The need to make bail, to hire an attorney, to be present at court appearances, and even to help prepare one's defense drain the economic and psychological resources of many defendants, whether they are ultimately adjudicated guilty or innocent. By contrast, the punishments meted out to defendants upon conviction appear insubstantial. Few are incarcerated, and fines rarely exceed fifty dollars.

These findings and arguments have a distinct appeal. They provide a new and creative interpretation to the meaning of case processing in the lower criminal courts, one at variance from our understanding of felony courts. Yet as Feeley himself acknowledges, his work is a case study. His data are drawn exclusively from the New Haven (Connecticut) Circuit Court. What about other misdemeanor courts? Is it reasonable to believe that most lower courts are like New Haven? Studies of criminal justice and political culture might suggest otherwise. Levin's (1977) study of the felony courts of Pittsburgh and Minneapolis indicates substantial differences in sentencing severity between these two courts, attributable in part to the political culture or values of the two communities. Levin found that sentences were typically less severe in the highly partisan, ethnically diverse, working class city (Pittsburgh) than in the reform-minded, socially homogeneous city (Minneapolis). Eisenstein and Jacob (1977) found sentencing practices in Baltimore much more harsh than in either Detroit or Chicago, which they attributed to a heritage of conservatism and racism in that southern border city. Likewise, the working environments of courts differ. Church et al. (1978) found that the pace at which cases are processed differs markedly from one large city to another, in part due to intangible factors which they termed "local legal culture." And Ryan et al. (1980) found that various court administrative procedures, relationships among courtroom workgroup members, and judicial percep-

tions are sensitive to the partisan climate of the local political environment. In short, the character of a community -- its history, politics, and life-style -- affects what take place in its courts, both the process by which cases are adjudicated and the outcomes.

If the relationships between political culture and trial courts are viewed at all seriously (see Kritzer, 1979), one must question not only the generalizability of Feeley's data but also his arguments. More data are needed from different communities in order to assess whether the process actually constitutes most of the punishment. These data should speak to the processing of cases and defendants, for it can be expected that some courts minimize pretrial costs by expediting cases, liberalizing indigency requirements for counsel, and utilizing cash bonds infrequently. Perhaps even more important, additional data should be collected on case outcomes, for likewise it can be expected that lower courts vary in the severity of sanctions imposed upon convicted defendants.

We have collected data relating to process and outcomes in the Franklin County, Ohio Municipal Court in Columbus. Thus, our inquiry stands as one additional reference point for viewing the generalizability of Feeley. Indeed, the findings reported below stand as a counterpoint to New Haven, suggesting that court to be among the less punitive lower courts in the nation. By contrast, the Columbus court is sufficiently more severe in its sanctions -- and less demanding in its process costs -- that the outcome is the punishment.

A. Research Site and Methods

Columbus is a medium-sized American city, more populous and more sprawling than New Haven. Like New Haven, Columbus houses a major university (Ohio State); unlike New Haven, Columbus is dominated at the local level by the Republican party. All of the current misdemeanor court judges (n = 13), as well as the city's mayor, are Republicans. The Court's only Democrat resigned during the course of our study to launch a quixotic, and unsuccessful, race for mayor.

Though the similarities and contrasts between the two locales are striking, Columbus was chosen primarily because the municipal court was accessible. It is located within a short plane ride from our research base, and the judges voted to

cooperate with our study. Most important, the court's central scheduling office collects and maintains comprehensive, reliable data on the disposition of cases. This is achieved through a sophisticated, computerized system of case assignment, one whose efficiency far exceeds most misdemeanor courts.

We collected two kinds of data: (1) quantitative data on case characteristics, dispositions, and outcomes from computerized court records; and (2) qualitative data on the behavior and perspectives of prosecutors, defense counsel, judges, and other court-related workers through selected interviews and courtroom observations.

Quantitative data were collected on 2,764 cases. These represent the universe of cases scheduled for a "pretrial" during the months of March, April and May of 1978. Sampling from pretrials was necessitated by the court's assignment and scheduling systems: Only cases which are not disposed of at arraignment can be scheduled for a pretrial hearing. In turn, it is only for these cases that the central scheduling office need (and does) collect information; cases disposed at arraignment have no need for further scheduling. Nevertheless, cases scheduled for a pretrial are not an unrepresentative, or atypical, sample of all cases. Pretrials are routinely scheduled for nearly all cases which proceed beyond arraignment,[2] including -- as we shall see -- a wide variety of criminal and traffic cases.

We collected all available information on each of these cases, including type and seriousness of offense, number of charges, type of defense counsel, judge at pretrial and disposition,[3] mode of disposition, sentence (fines, imprisonment, suspension of driver's license), other sanctions; and for OMVI (operating a motor vehicle under the influence of alcohol) cases only, the defendant's prior record. Because of the court's computerized system, there were virtually no missing data on these items. We do not have the full range of variables for which Feeley collected data in New Haven, particularly defendant characteristics such as age, gender, and race. But most of these variables proved unrelated to adjudication or sentencing decisions in his analysis. Our variables do reflect some of those which Feeley found to be most significant and which other court researchers have discussed and analyzed.

We conducted formal, semi-structured interviews with the First Assistant Prosecutor, two assistant prosecutors, and the administrative assistant in the City Prosecutor's office. We interviewed the Supervisor of the municipal unit of the Public

Defender's office. We talked with supervisors in the Probation Department and in the Pre-trial Release program. Finally, we interviewed six of the thirteen municipal court judges. These interviews with court actors focused variably upon modes of case disposition, judicial styles in plea bargaining and sentencing, the treatment of OMVI cases, the operations of arraignment court, and the role of the pretrial in case management.

We observed in the courtrooms of ten of the thirteen municipal court judges, typically for several hours. We observed primarily pretrial sessions,[4] but also pleas on day of scheduled trial, and occasional court (non-jury) trials. We observed no jury trials, but we attempted to avoid them in order to preserve scarce resources. Our observations were directed primarily to judicial behaviors, including sentencing philosophy, involvement in plea negotiations, conduct in presiding at trials, relationships with prosecuting and defense attorneys, and case management orientations.

B. The Court's Caseload: An Overview

The Franklin County Municipal Court has jurisdiction over a variety of matters, including small claims, civil cases up to $10,000 and preliminary hearings in felony cases. Our focus is upon the court's misdemeanor caseload; more precisely, we examine misdemeanor cases which have proceeded from arraignment to a scheduled pretrial session. Table 1 presents a breakdown of this caseload by the most common types of cases.

Table 1. Distribution of the Court's Misdemeanor Caseload

	Percent	N
TRAFFIC		
OMVI	30.2%	(834)
Other Traffic	17.8	(492)
CRIMINAL		
Assault	17.1	(472)
Theft	10.8	(300)
Bad Checks	7.1	(196)
Other Criminal	17.0	(470)
	100.0%	(2764)

Almost equal proportions of traffic and criminal cases comprise the court's caseload. Forty-eight percent of the cases involve traffic offenses, whereas 52% are criminal offenses. Operating a motor vehicle under the influence of alcohol (OMVI) is the most frequent type of case, and it accounts for nearly two-thirds of all traffic cases. Other traffic cases include reckless operation of a motor vehicle (ROMV), driving without a valid license or with a suspended license, hit-and-run, speeding, and lesser traffic violations. The dominance of OMVI cases is not unique to Columbus. Although arrests for drunk driving are more frequent in Columbus than elsewhere in Ohio (Ohio Courts, 1978), other municipal courts also report a large percentage of drunk driving cases (including Austin, Texas; Tacoma, Washington; and Mankato, Minnesota reported in this volume; see also Neubauer, 1974).

Assault is the most frequent type of criminal case, followed by theft and passing bad checks. Other criminal cases include trespass, carrying a concealed weapon, obstructing justice, disorderly conduct, soliciting, drug use, public indecency, housing code violations, fleeing from a police officer, and resisting arrest. The Columbus

court's criminal caseload is affected by the operation of a night prosecutor program. This program screens all citizen-initiated complaints, and diverts interpersonal disputes (assaults of various types) and bad check cases, in substantial numbers, from the work of the court (see Palmer, 1975). Despite this, assault and bad check cases still constitute a significant portion of the court's criminal work.

The majority (58%) of cases involve a single charge against a defendant, but a substantial proportion (42%) involve more than one charge (typically, two or three charges). Multiple charge cases most often occur with the OMVI offense, where another more visible violation brings the intoxication of the driver to the attention of the police officer. Only 23% of OMVI cases involve a single charge; other violations, especially driving on the wrong side of the road, out of control, across lanes, or speeding, are likely to accompany a charge of drunk driving. Similarly, certain other traffic offenses -- such as driving without a valid license and hit-and-run -- are likely to involve multiple charges, as a result of more visible traffic violations. By contrast, most criminal cases involve only one charge against a defendant. This is particularly true for theft and passing bad checks, where multiple incidents may be consolidated by the court and treated as one charge.

C. Modes of Case Disposition

The court utilizes a number of ways to dispose of cases that proceed beyond arraignment. These include guilty pleas to the original charge, guilty pleas to a reduced charge, court trials, jury trials, bond forfeitures, dismissals, and in multiple charge cases, combinations of these. In addition, some defendants fail to appear, and these "no shows" are treated, for statistical purposes in the Ohio Courts, as case terminations, although many of these defendants actually appear subsequently.

1. Guilty pleas. Almost half of our sample of cases in Columbus were disposed through a guilty plea, similar to the percentage in New Haven (Feeley, 1979:127). The majority of these represent pleas to reduced charges, indicating a form of charge bargaining. Three-fourths of guilty pleas in OMVI cases are to the reduced charge of reckless operation (ROMV), a proportion that has increased sharply in the last few years. Pressures to reduce in OMVI cases are substantial, since a conviction on the original charge carries a statutorily-mandated three day jail term.[5] Conversely, pressures on the prosecutor's office not to reduce in OMVI cases are growing,

particularly because statewide data (Ohio Courts) indicate that some other large Ohio counties rarely reduce charges in OMVI cases. Consequently, the prosecutor's office has recently adopted guidelines for plea bargaining by individual prosecutors in these cases.[6]

Theft cases also represent an opportunity for a "standard" charge reduction (to unauthorized use of property). Four-fifths of guilty pleas in theft cases are to this reduced charge. By contrast, guilty pleas to the original charge are more common in non-OMVI traffic cases, bad check cases, and other criminal cases. This probably reflects the lack of statutory distinctions within lesser types of offenses.

Casetype emerges from our analysis of quantitative data as the most important factor in determining whether a reduction of charges will occur. Three other factors, not readily available in case files, were cited by the First Assistant Prosecutor as influencing his decision to reduce or not: prior record of the defendant, strength of the evidence, and actions of the defendant vis-a-vis the arresting officer or victims.

Where the arresting police officer takes offense at the actions or attitudes of the suspect, a charge reduction will infrequently occur. Historically, Columbus has been a misdemeanor court dominated by the police. Only lately have public defenders tried to foster the idea that the prosecutor, not the police, should run the courtroom. The public defender's office still feels that prosecutors defer "too much" to police officers. Strength of evidence, on the other hand, may be the kind of nebulous factor which operates more in the minds of prosecutors than in their actual behavior. Individual prosecutors, in this and other misdemeanor courts, rarely have the time or inclination to gauge precisely evidentiary matters.

Prosecutors and defense counsel are the primary actors in the forging of guilty pleas, particularly in charge bargaining. But what about the role of the trial judge? Trial judges in misdemeanor courts do not always restrict their role to ratifying bargains struck by other parties (see Ryan and Alfini, 1979). Our observations in Columbus suggest that at least a few judges do actively engage in plea bargaining -- sentence bargaining -- from the bench. For example, Judge H,[7] who has the reputation for making sentence commitments in advance as his normal practice, remarked to defense counsel in one case we observed: "If the defendant wants to plead, I'll put on a fine and wrap it up today" (assault case). Judge D also encourages

guilty pleas, through a mixture of occasional sentence leniency and frequent gratuitous comments to defendants about the "break" they are getting. Furthermore, Judge D sometimes intimates that he would find a defendant guilty were the case to go to trial ("you gotta keep your eyes open" to a defendant charged with jay walking, or "a driver has a responsibility, even under icy road conditions" to a defendant ticketed in an auto accident). Judge C, the acknowledged legal scholar on the court, does not typically make sentence commitments or pressure defendants into pleading, but he closely inquires into potential questions of law, thereby encouraging prosecutors to negotiate realistic pleas.

Determining exactly how much negotiating actually takes place in the guilty pleas entered in this court is not easily done. Charge bargaining may involve little more than the application of standard discounts, unless there are unusual circumstances (heavy prior record or trouble with the arresting officer). Sentence bargaining occurs in some guilty pleas, but this is quite variable from judge to judge. Nevertheless, the amount of bargaining accompanying guilty pleas in this court is almost certainly higher than in Neubauer's Prairie City (pre-Argersinger) or even Feeley's New Haven. Unlike Prairie City in 1970 or New Haven more recently, most cases in Columbus involve defendants represented by counsel. Defense attorney presence seems to lead inexorably toward increased bargaining -- increased adversariness -- in the guilty pleas entered in misdemeanor cases (see Neubauer, 1974:209).

2. Trials. Trials are highly infrequent in Columbus, but by no means are they the extinct species which Feeley reports in New Haven (1979:127). In our sample of 2,764 cases, 32 (1.1%) were resolved by jury trial and 46 (1.6%) by court trial.[8] We gained the distinct impression from our interviews and observations that trials are welcomed by judge and attorney alike, as an occasional relief from the monotony of calendar calls. Trials are the forum where lawyers can act and argue like lawyers, where judges can rule on an occasional question of law (formal motions rarely, if ever, occur in this misdemeanor court). Judge G remarked, "I enjoy trials when I get two good lawyers." The Supervisor of the Public Defender's Office noted of Judge G, "He gives you a good trial." Not surprisingly then, trials are heard in a thorough and unharried manner. We witnessed several court trials which consumed more than one hour, and none involved charges as serious as an OMVI case.

What kinds of cases are more likely to go to trial? Among jury trials, OMVI and assault cases are overrepresented. OMVI cases account for 30% of our cases but 41% of all jury trials in the three month sampling period. Even more dramatic, assault cases represent 17% of cases but 34% of all jury trials. Conversely, lesser traffic and other criminal cases are sharply underrepresented in jury trials. Court trials reflect a somewhat different composition of cases. Assault cases are overrepresented here also, but OMVI cases are significantly underrepresented (only 17% of all court trials). Instead, other traffic cases comprise a substantial share of court trials, and it was these kinds of cases that we observed during our field visits.

Conviction at trial is likely, but far from certain. Defendants fare better at jury trials, where the conviction rate for this period was 56.3% (18 of 32 cases). In court trials, the conviction rate was 71.7% (33 of 46 cases). Type of case appears to make a significant difference. Combining jury and court trials, the conviction rate was 5.5:1 in OMVI cases, 4:1 in theft cases, 3:1 in other traffic cases, 3:2 in other criminal cases, and a mere 2:3 in assault cases. The individual judge may also make some difference. Consider that two of the court's most active plea bargaining judges, Judges D and H, did not acquit a single defendant in the seven court trials which they heard. Their "inducements" to defendants to plead guilty, then, are reinforced by a reluctance or unwillingness to find for a defendant in a court trial.

3. Bond forfeitures. Bond forfeitures are not convictions in a legal sense. In the words of one assistant prosecutor, they represent a "hybrid between conviction and dismissal...a sentencing alternative occasionally used to dispose of cases expeditiously." There are two general situations where a BF disposition may be used in Columbus.

In one situation, a defendant may be arrested (e.g., for disorderly conduct), spend the night in jail, be released on a 10% appearance bond payable to the court, and then fail to appear at arraignment. In these "no-show" cases of a very minor nature, the court often will have collected from the bond as much or more than what any fine might be.[9] Feeley (1979:138) found approximately 8% of his sample of cases disposed by this kind of bond forfeiture. Our study, however, does not reflect this kind of BF disposition, since we have a sample of cases which have proceeded past arraignment because the defendant initially declined to enter a guilty plea.

In a second situation, the BF disposition may reflect a true "sentencing alternative" where the defendant has not skipped. We observed a number of cases resolved in this way, with the defendant present in the courtroom. The amount of the bond forfeiture is set at time of "sentence," typically $50. In one case, we observed Judge C to agree to dispose of a case with a BF, then consult with the prosecutor and defense attorney about the appropriateness of considering the defendant's prior record in determining the amount of the bond. The defense objected, and the prosecutor did not push for disclosure. In this case, Judge C set the bond forfeiture at $50 for each of two charges.

Prosecutors, public defenders, and judges all agreed that this second kind of BF disposition occurs in "difficult" cases, either presenting evidentiary problems for the prosecutor or sentencing uncertainty for the defense counsel. In this latter regard, the Supervisor in the public defender's office defined a "difficult" case as one where he wants a sentence commitment prior to entry of a plea, because he fears that the judge will "nail" the defendant. This public defender cited OMVI as an example (if he were unable to get it reduced to ROMV), but our data indicate that OMVI cases are least likely to be disposed by BF (only .7%). Bond forfeitures are much more common dispositions in bad check cases (18.9%) and in theft cases (13.7%). Across the entire sample of cases, 6.3% were disposed by bond forfeitures.

4. Dismissals. Dismissals are a frequent occurrence in Columbus. One-third (34%) of the cases are dismissed (technically, nolle prosequi). According to both the First Assistant Prosecutor and the Supervisor in the public defender's office, the most frequent cause of dismissals is the failure of the complaining witness to prosecute. These perceptions are supported by data collected by an administrative assistant in the prosecutor's office. Table 2 reports these data.

Table 2. Reasons for Dismissal of Cases*

	Percent	N
No Prosecuting Witness	29.8%	(170)
Civilian	(22.1)	(126)
Police	(7.7)	(44)
Request of Prosecutor	26.1	(149)
Violation(s) Corrected	16.3	(93)
Restitution	9.3	(53)
Other	18.5	(105)
	100.0%	(570)

*Based upon data for the month of January, 1979 from prosecutor's office records.

The lack of a prosecuting witness, typically civilian, accounts for almost one-third of the dismissals. This situation arises most commonly in assault cases, where the complaining party has a change of mind about prosecuting. In many instances, a reconciliation has taken place between parties who knew one another at the time of the incident. Occasionally, a police witness fails to appear at the proper time. In order to alleviate this problem, a Police Liaison Program has recently been instituted, whereby a small number of officers are regularly assigned to be present in court at pretrial sessions. Nevertheless, on the day of a scheduled trial, the arresting officer must appear.

A significant percentage (26%) of dismissals results from "request" of the prosecutor. This could stand for a variety of factors, including lack of adequate preparation by the assigned prosecutor (as one person in the prosecutor's office charged).[10] More realistically, these dismissals could be viewed as prosecutorial screening, since police-filed complaints are not subjected to any screening prior to the

pretrial session in court. The assigned prosecutor may conclude that the evidence is too weak or insufficient to sustain the level of charge. Given the history of prosecutor-police relationships in Columbus, it may be easier for prosecutors to request dismissals in the "full view," and occasional scrutiny, of the court rather than in the "secrecy" of an aggressive screening unit in the prosecutor's office.

The correction of violations accounts for about one-sixth of the dismissals. This might occur in housing code violations, where the court dismisses a high percentage of cases (63%) but usually only after some effort has been made to correct the situation. It also occurs in a variety of traffic cases. We observed one case where a defendant persisted in a plea of not guilty to driving without a valid license, but solely to gain time to obtain her license in the hope that the court would then dismiss the case.

Restitution accounts for one-tenth of dismissals, most often in bad check cases. Where the amount involved is small and the defendant does not have a reputation for this kind of illegal activity, dismissal upon promise of restitution is a plausible alternative. In the one case resolved by restitution which we observed, the amount of the check was a mere $8.61 to a local drug store. Furthermore, this defendant did not have a prior record (or at least, defense counsel so claimed). In other cases, restitution may be required as a condition of sentence.

The role of the judge in the decision to dismiss appears to be little more than ratification of prosecutorial (and sometimes defense) requests. According to the First Assistant Prosecutor, judges play a significant role only "very occasionally." The Supervisor in the public defender's office cited the instance of prosecutorial objection to a defense motion for dismissal as the only occasion for judicial scrutiny. Some judges, like K, are more sympathetic to prosecutors in these situations, whereas other judges, like C, are more sympathetic to the defense. Judges themselves typically indicated a minimal role in the decision to dismiss. In the words of Judge G, "prosecutors should know." Thus, just as prosecutors defer to police in the charging decision, judges defer to the prosecutor in the screening decision at the pretrial.[11]

5. Multiple dispositions. Cases having more than one charge may be disposed in more than one way. For example, one charge may be dismissed if there is a guilty plea to a second charge. This is, in fact, the most common pattern of multiple disposition in Columbus. It is also a common pattern in New Haven where Feeley

refers to this seeming give-and-take as "splitting the difference" (1979:134). There may, however, be less bargaining in these dispositions than Feeley suggests. It is hard to believe that many defendants feel a "sense of victory" when they are convicted on one charge rather than two. They will still have an arrest and conviction record, and may still face jail time. Having one charge dismissed may be somewhat better than extracting no concessions at all from the prosecutor, but it is not nearly so rewarding as having all charges dismissed. This must especially be the feeling among defendants who face conviction on drunk driving (or a reduced charge), the very defendants most likely to receive a "splitting the difference" disposition.

6. No shows. Defendants in Columbus who fail to appear for a pretrial session in the courtroom are not so lucky as some of the "no-shows" in New Haven. It is one thing not to show at arraignment in a petty case; these cases in Columbus typically result in a bond forfeiture and termination. Failure to appear at a pretrial invariably results in a bench warrant being issued by the judge, often with a substantial bond. The median amount is $300, with a few bonds set as high as $1,000 or even $2,500. Of course, not all of these defendants are ultimately apprehended. We have no precise data on the percentage of these defendants who do return to court for disposition on the original charges, but court participants tend to think that the figure is quite high. We do know that 11.5% of all defendants scheduled to appear at a pretrial session fail to appear. The "no show" rate fluctuates significantly by type of case: It is lowest in assault cases (6%) and highest in bad check cases (27%).

7. Summary. A variety of case disposition modes are utilized in the Franklin County Municipal Court, ranging from occasional trials and frequent guilty pleas to dismissals, and including "intermediate" dispositions such as bond forfeitures. Table 3 presents a distribution of case disposition modes, across all cases and for each type of case.

Table 3. Distribution of Case Disposition Modes, by Casetype*

	All Cases	OMVI	Other Traffic	Assault	Theft	Bad Checks	Other Criminal
Conviction at Trial	1.9%	2.2%	2.3%	1.9%	1.3%	1.0%	1.5%
Guilty Plea - Original Charge	17.3	19.5	35.0	5.1	7.3	9.2	17.1
Guilty Plea - Reduced Charge	28.0	64.1	18.1	4.7	27.0	1.0	11.2
Bond Forfeiture	6.3	.7	6.4	3.2	13.7	18.9	9.0
Dismissal	34.0	4.7	26.1	75.9	36.7	43.4	45.0
Acquittal at Trial	1.0	.4	.8	3.0	.3	0	1.1
No Show	11.5	8.4	11.3	6.2	13.7	26.5	15.1
	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
N	(2715)	(807)	(486)	(469)	(300)	(196)	(457)

*Dispostion for multiple charge cases has been coded as follows. Dismissals have been disregarded in the presence of guilty pleas or bond forfeitures. Where there were guilty pleas to original and reduced charges, the disposition was treated as a guilty plea to a reduced charge. These coding decisions flow from discussions of multiple charge cases in the text.

Almost half (47%) of the cases resulted in a conviction, either after a trial or more typically upon entering a plea of guilty. Charge reductions are the norm, accounting for a substantial majority of guilty pleas. One third (34%) of the cases resulted in a dismissal of all charges, and a tiny percentage (1%) resulted in an acquittal after jury or court trial. About 6% of cases were resolved by a bond forfeiture, representing the imposition of a sanction (fine) without formal conviction. The remaining 11% of cases were not immediately resolved, since the defendant did not appear at the pretrial. This overall pattern of dispositions in Columbus, particularly rates of guilty pleas and dismissals, parallels quite closely New Haven (Feeley, 1979:127).

The variations in disposition across types of cases is enormous. At one extreme, most assault cases (76%) are dismissed. This is partly because the civilian complainant often has a change of mind regarding prosecution, but partly reflects the poor conviction ratio (only 2:3) of assault cases actually tried. At the other extreme, OMVI cases are rarely dismissed (only 5%). The charge is a serious one (requiring a three day incarceration for conviction) and is typically accompained by other traffic violations. Furthermore, acquittal at trial in OMVI cases is rare (1 in 5.5). Between these two extremes, variations are modest. As we turn to a systematic analysis of the factors which account for variations in case disposition, it is clear that type of case -- especially if it is an assault or OMVI case -- makes a sizeable difference.

D. Correlates of Case Disposition: An Overview

We have a limited range of variables with which to explain case disposition. Some of these variables are characteristics of the case (or what Feeley calls "legal factors") -- type of case, seriousness, number of charges. Other variables bear upon individual courtroom actors (or "social factors") -- the type of defense counsel, the identity of the judge.[12] One final variable is related to the court's processing of a case (or a "structural factor") -- the number of court appearances. A brief explanation of these variables, including their distribution, follows.

1. Type of case. We have already discussed this variable extensively, including its distribution (refer to Table 1) and its relationship to disposition modes (see Table 3). Because casetypes seem rather distinctive in the minds of courtroom participants as well as in the patterns of adjudication, no further grouping was

employed. Each of the casetypes (except "other criminal") was operationalized as a dummy variable in subsequent multiple regression analyses.

2. Seriousness of case. Ohio law provides for five classes of misdemeanors, ranging in seriousness from "M1" through "MM" (minor misdemeanor). These classifications carry different maximum sentences (from 6 months and $1,000 for "M1" cases to $100 for "MM" cases). The Ohio Speedy Trial Law of (1974) also differentiates these classifications, specifying a maximum time of ninety days for "M1" cases and descending to fifteen days for "MM" cases. In multiple charge cases, seriousness was determined by the classification of the most serious charge. The overwhelming majority of cases in our sample (82%) were of the most serious type (M1), including all OMVI, theft, and bad check cases, and most assault cases. Some non-OMVI traffic cases and most "other criminal" cases were of a lower classification of seriousness.

3. Number of charges. Some misdemeanor courts open a new case file for every distinct charge lodged against a defendant. The Columbus court follows what is probably the more standard procedure -- consolidating multiple charges (arising out of the same incident, as in traffic cases) against one defendant into one case before one judge. This facilitates the opportunity, if not the reality, for "splitting the difference" in multiple charge cases. Across our sample of cases, 58% were single-charge cases while the remaining 42% involved two or more charges. OMVI cases were the most likely to involve multiple charges (75%), and other traffic cases were next most likely (54%). In contrast, assault, theft and bad check cases almost always involved only one charge.[13]

4. Type of defense counsel. Virtually all defendants in our sample were represented by counsel. Unlike Feeley's New Haven where 49% of the defendants were unrepresented, only 8% of defendants in Columbus represented themselves at the pretrial session.[14] Approximately one-third (32%) were represented by the public defender's office,[15] whereas the majority (60%) retained private counsel. The concentration of private counsel was not sufficiently great to warrant collecting the names of individual attorneys. The frequency of unrepresented defendants does not vary significantly by type, or seriousness, of case. By contrast, the type of counsel does vary across cases. Defendants in OMVI cases are much more likely to have private counsel (76%); those charged with theft are least likely to have private counsel (only 41%). These differences should not be surprising if one views crime classifications and arrest practices as class-based (see, e.g., Turk, 1969).

5. Judge. One of thirteen judges presided at the pretrial session in the courtroom. In all but a handful of instances, the same judge presided over the disposition of the case. There are very few transfers of cases from judge to judge, except for an occasional consolidation of cases against a single defendant. Each judge typically heard between 180 and 250 pretrials in our three month sample. One judge (F) heard substantially fewer (only 102); another judge (M) heard many more than the norm (303). The distribution of types of cases across judges is highly similar (as we would expect in an individual assignment system), with small random fluctuations.

6. Number of court appearances. Cases disposed at the first court appearance (arraignment) are not included in our sample. A significant percentage of cases scheduled for a pretrial were disposed at the pretrial (57%), without any further court appearances. Of the remaining cases, most were disposed at the next court appearance, which typically was the date scheduled for a jury trial. Only 12% of the cases proceeded beyond one court appearance after the pretrial, and most of these were disposed on the next scheduled date. OMVI cases were the least likely to be disposed at the pretrial (only 45%), confirming our interview-based impressions that courtroom participants and defendants view drunk driving cases with a special, and more serious, eye.

E. A Multivariate Analysis of Case Disposition

Most of the variables introduced in the preceding section are correlated, in bivariate analysis, with mode of case disposition. In addition, however, these variables themselves are intercorrelated. This pattern of multicollinearity renders lengthy discussion of the bivariate relationships fruitless. Instead, stepwise multiple regression is employed, both across cases (using casetype as an explanatory variable) and within casetype for comparative analysis.

Case disposition, a categorical variable, has been collapsed into two basic categories: adjudicated guilty or not guilty. Included in the "guilty" category are pleas to original or reduced charges, convictions at trial (jury or court), and bond forfeitures. Included in the "not guilty" category are dismissals and acquittals at trial. (No shows have been excluded from the analysis). Treating bond forfeitures as guilty dispositions stretches the legal meaning of the disposition, but not their functional meaning. In Columbus, bond forfeitures are little more than a variant of the guilty

plea ("another sentencing alternative" in the words of one prosecutor), just as "no contest" pleas are a variant of the guilty plea.[16]

On the basis of this dichotomization of case disposition, 60.5% of defendants were found guilty and the remaining 39.5% were found not guilty. The use of a dichotomous dependent variable in multiple regression analysis is less than ideal (see Goodman, 1972). Nevertheless, the distribution of case disposition is insufficiently skewed to warrant such statistical transformations as Goodman's log linear technique.

Table 4 presents the results of stepwise multiple regression for case disposition.

Table 4. A Multivariate Model of Case Disposition: Stepwise Regression

	Beta Weights*
Assault Case	.31**
OMVI Case	-.24
Number of Charges	-.16
Number of Court Appearances***	-.13
Seriousness of Case****	-.09
Public Defender Counsel	.05
R_2 = .60	
R^2 = 36%	
(N = 2279)	

*Each of the beta weights is statistically significant at .05; in no instance does the standard error approach B.

**Case disposition is coded: not guilty (high), guilty (low).

***Number of court appearances is dichotomized, based upon the non-linear relationship present in bivariate analysis: one appearance (after arraignment) versus two or more appearances.

****Seriousness of case is dichotomized, based upon a curvilinear relationship present in bivariate analysis: most and least serious coded high; in-between coded low.

Most of the explanatory variables entered into the regression equation are predictive of case disposition. The two most important variables are assault and OMVI cases. Assault cases are very likely to be dismissed (i.e., a "not guilty" disposition), whereas OMVI cases are very likely not to be dismissed (i.e., a "guilty" disposition). Other characteristics of the case are also significant. The number of charges has a moderate effect in the expected direction: the greater the number of charges, the more likely a defendant will receive a guilty disposition. The seriousness of the case has a smaller effect: The most and least serious cases reflect a higher likelihood of a guilty disposition.

The identity of courtroom actors bears very little upon disposition. The judge appears to make no difference once other factors are controlled. Neither Judge C (with the highest rate of dismissals) nor Judge D (with the lowest rate) is significantly predictive of disposition. Presence of counsel also makes no significant difference. Type of counsel shows a very small effect: Public defender cases are more likely to result in not guilty dispositions, when other factors are controlled, than private counsel cases. Finally, the one case processing variable for which we have data -- number of court appearances -- has a moderate effect. A disposition achieved after the pretrial is more likely to be a guilty one, regardless of the actual number of continuances after the pretrial.

Overall, the six variables listed in Table 4 account for fully 36% of the variation in case dispositions (R = .60). This is a rather large amount when one considers the limited variables which are available in the court files and, correspondingly, other variables which are surely important. The identity of the prosecutor may be one such variable, especially in a court like Columbus where "prosecutor-shopping" has historically been facilitated.

These findings parallel Feeley (1979) in some respects and contrast in other ways. He found the number of charges, seriousness of the case, and number of court appearances all to be predictive -- in similar directions -- of case disposition. On the other hand, he reports no data on the impact of casetype. With respect to unrepresented defendants, he found that they fare less well (as did Katz, 1968). One explanation for the different effects of defense counsel presence in New Haven and Columbus may be the different proportions of unrepresented defendants. The large number of defendants without counsel in New Haven suggests a reluctance in that

court to implement fully the spirit of Argersinger v. Hamlin (1972). In other words, it suggests a court which effectively "persuades" some defendants to plead guilty without "bothering" about counsel. Columbus is not such a court. Most defendants have counsel, but those without fare equally well in case disposition. Our courtroom observations support these interpretations. We observed judges who were typically friendly and patient with self-represented defendants, even in very minor cases. Correspondingly, we observed few instances where judges appeared to take advantage of unrepresented defendants. Indeed, in arraignment court, one judge consistently encouraged unrepresented defendants to consult with the public defender available in court before entering any plea.

Much of the variation in case disposition occurs as a result of casetype. Thus, efforts to account for variations within types of cases are necessarily likely to be less fruitful. In some casetypes (e.g., OMVI), there is very little variation left to explain (virtually all defendants are found guilty). In other casetypes (e.g., theft, bad checks), a key predictor variable -- number of charges -- becomes a constant. Only for assault cases do our independent variables effectively predict disposition (R = .49). Both the number of charges and the number of court appearances are predictors. Multiple charges and appearances beyond the pretrial are associated with guilty dispositions. Yet even in assault cases, some defendants are able to benefit from another court appearance by obtaining a belated dismissal. Thus, Feeley's interpretation notwithstanding (1979:134), delay or procrastination is in the interest of some defendants -- i.e., those defendants whose "victims" in assault cases, for example, ultimately change their mind and lose interest in prosecution.

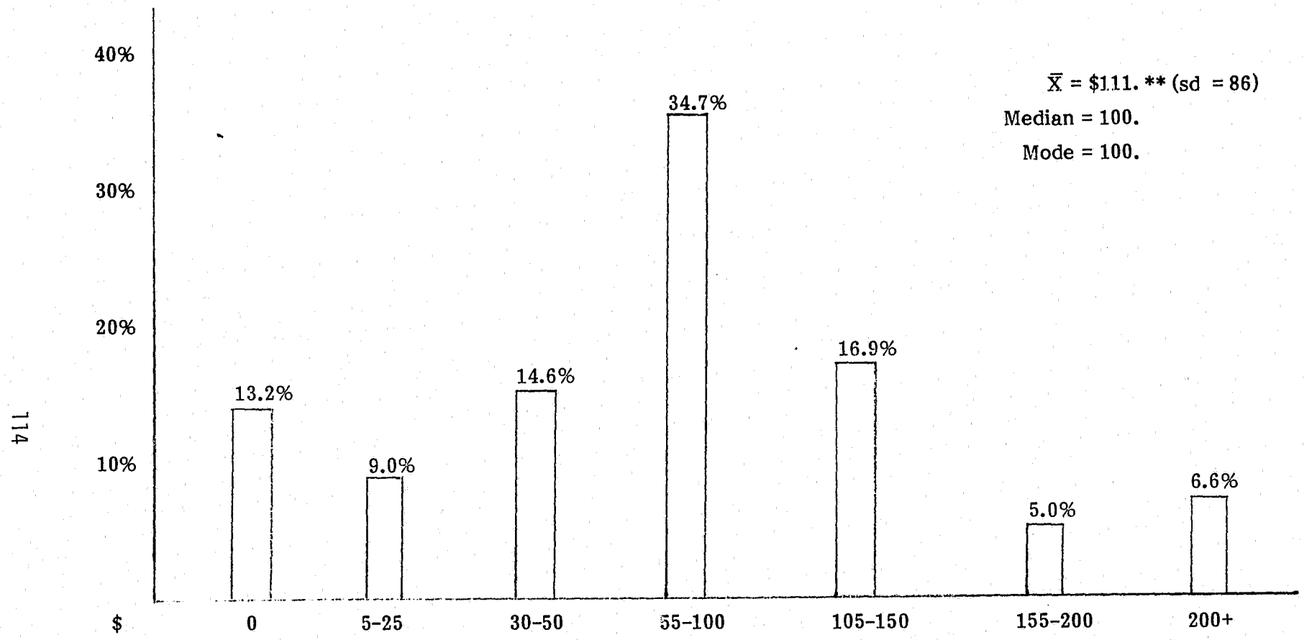
F. Forms of Sentence or Sanction

Misdemeanor courts inflict upon their convicted defendants a wider variety of much less severe sanctions than felony courts. The Columbus misdemeanor court is no exception. Fines, bond forfeitures, terms in the county jail or municipal workhouse, suspensions of a driver's license, attendance at "rehabilitation-oriented" programs for alcoholics and drunk drivers, and probation are among the primary sanctions available and employed by the court. Sometimes, convicted defendants receive only one form of sentence (e.g., a fine), but quite often they receive several sanctions. We will first examine each of the sanctions individually, then analyze their interrelationships.

1. Fines. Fines are routinely imposed upon convicted defendants in Columbus. Judges often hand out stiff fines, then suspend a portion of the fine. The practice may be designed to enhance a judge's popularity, as a skeptical Judge G remarked, declaring that "a heavy fine makes the police happy...suspending part of it makes the defense happy." Alternatively, the suspension may help to keep in line a defendant placed on probation, as Judge E noted. Neither of these judges themselves suspend many sentences. The motives of other judges who do suspend large portions of stiff fines, like Judge C, were not always clear.

The actual fine which the defendant must pay is the gross fine minus the suspended portion (if any). Figure 1 displays the distribution of "net" fines.

Figure 1. **Distribution of (Net) Fines***



$\bar{X}$ = $111. ** (sd = 86)
Median = 100.
Mode = 100.

N = 1281

*Cumulates fines imposed upon a defendant convicted on more than one charge.

**Statistics are based on a distribution excluding defendants not fined (0).

There is a substantial range in the net fines which defendants must pay. Only 13% escape a fine entirely. Of the remainder, fines range from a mere $5 to $1750. The mean fine is $111, and the median and mode are both $100. Not unexpectedly, OMVI cases draw the heaviest fines ($\bar{x}$ = 128) with the least variation (sd = 61).

These fines represent a significant amount of money to most defendants, even in our presently-inflated economy. This is particularly true for indigent defendants represented by the public defender's office. The severity of fines in Columbus is all the more striking when compared with Feeley's New Haven. Table 5 presents these data.

Table 5. Comparison of Fines in the Columbus and New Haven Lower Courts

	Columbus	New Haven
$50 or less	27.2%	96.0%
More than $50	72.8	4.0
N	(1112)*	(377)*

*For comparative purposes, only convicted defendants receiving some fine have been included.

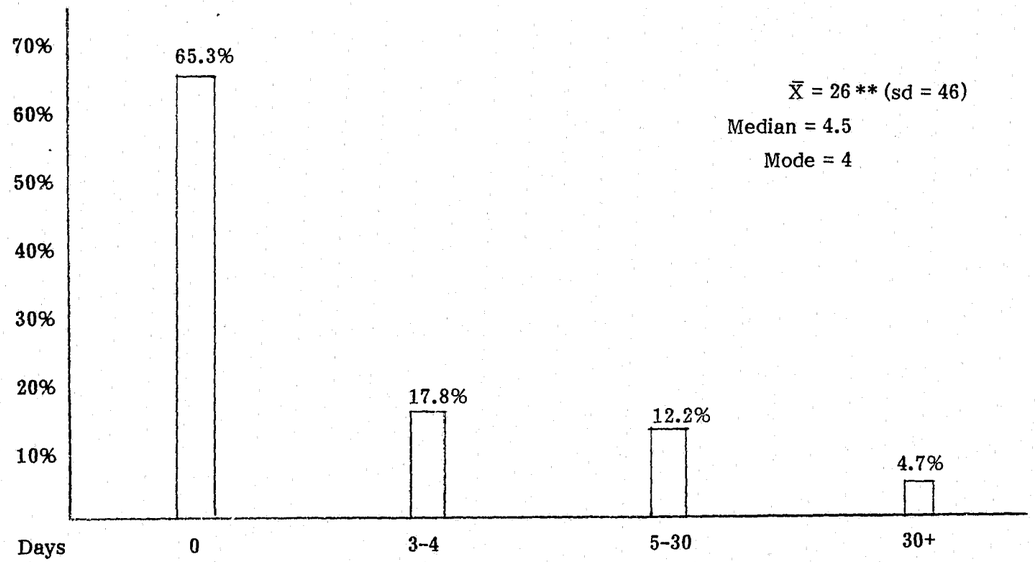
It is clear that the two courts differ substantially in the amount of the fines imposed. In Columbus, nearly three-fourths of the net fines exceeded $50 (typically, $100), whereas only a handful of fines (4%) in New Haven were greater than $50. Furthermore, in Columbus 87% of all convicted defendants must pay some fine, compared with only 45% in New Haven (Feeley, 1979:138).

There are several caveats to this comparison. The New Haven data were collected for three months in 1974, compared with our three months in 1978. It is possible that fines have generally increased in Columbus between the years of 1974 and 1978. Our interviews, however, with judges and court personnel do not support such a contention. In fact, Judge G, a veteran on the court, noted that "fines are less today than ten years ago," a diminution which he attributed to the "more lenient judges now on the bench." Secondly, the range of cases heard in the New Haven court is somewhat narrower than in Columbus. No traffic cases (OMVI or other) are heard in New Haven, and these cases in Columbus (notably, OMVI) draw consistently the heavier fines. Still, the New Haven court had felony cases (about 20% of the docket), indicating that in some respects the Columbus court hears more "petty" cases. Finally, our different sampling base is not an explanation. Cases disposed by guilty plea at arraignment appear, from our observations, to result in similar fines to cases disposed later. Thus, neither the different range in types and seriousness of cases nor the different time periods studied account for much of the variation in fines between the two courts.

2. Bond forfeitures. Bond forfeitures amount to fines, particularly in view of when the bond amount is set. The decision on amount is made at the time of case disposition, and the defendant agrees to pay the fine. The modal amount of bond forfeitures is $50, and the mean is only slightly higher ($\bar{x}$ = 57). Again, in comparison with New Haven (where Feeley reports most bond forfeitures to be between $5 and $25), the sanction is greater in Columbus.[17]

3. Jail terms. Substantial jail terms are announced to a sizeable proportion of convicted defendants. As with fines, however, a significant portion of the sentence is suspended. Figure 2 displays the distribution of "net" sentences which defendants must actually serve.

Figure 2. Distribution of (Net) Jail Terms*



$\bar{X}$ = 26 ** (sd = 46)

Median = 4.5

Mode = 4

Jail Term

N = 1281

*Cumulates jail terms imposed upon a defendant convicted on more than one charge.

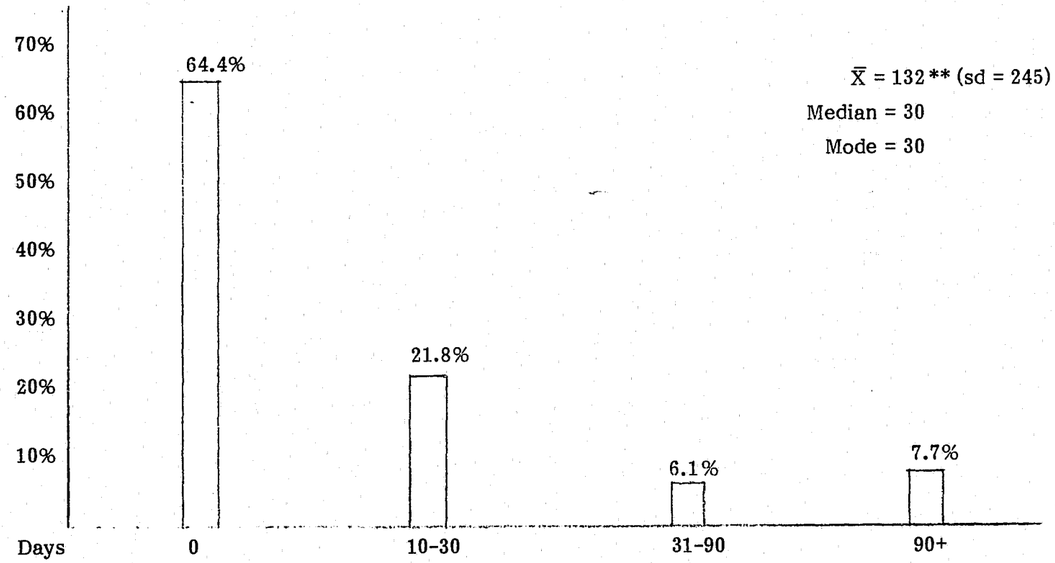
**Statistics are based on a distribution excluding defendants not incarcerated (0).

More than one-third (35%) of convicted defendants serve some jail time, most often in the city workhouse. About half of these defendants serve three or four days; most of the remaining serve either thirty days or a longer sentence. Defendants convicted in OMVI cases are most likely to be incarcerated (44%), but they typically serve a short sentence (3 or 4 days). The longer sentences are served in assault or theft cases.

Comparisons with New Haven reveal a substantial disparity in the proportion of defendants incarcerated. Excluding bond forfeiture cases, only 5.9% of convicted defendants in New Haven served a jail term (Feeley, 1979:138); almost six times as many defendants received a jail term in Columbus. There are some mitigating factors to consider in this comparison. Many defendants who do serve time in Columbus do not have their lives totally disrupted (e.g., by loss of job). It is common for shorter sentences, and even some longer sentences, to be served on weekends, a phenomenon growing in popularity elsewhere (see Parisi, 1980). Also, OMVI cases do contribute a moderately disproportionate number of jail terms in the Columbus court; such cases are not heard in the New Haven court. Nevertheless, it appears that across a similar range of criminal cases (assault, theft) a defendant in Columbus stands a much higher likelihood of incarceration, if convicted.

4. Suspensions of driver's license. In traffic cases the court acts as an administrative entity in monitoring and controlling the driver's license of individual citizens. In our highly motorized society, including a sprawling and decentralized Columbus, Ohio, the license is a valuable -- often, necessary -- commodity. For a variety of offenses, the court is authorized, or even required, to suspend licenses. The Columbus lower court uses its authority selectively, but not infrequently. Fully one-third (36%) of defendants convicted in OMVI or other traffic cases have their license suspended for a period of time. Figure 3 displays these data.

Figure 3. Distribution of Driver's License Suspensions in All Traffic Cases*



$\bar{X}$ = 132** (sd = 245)

Median = 30

Mode = 30

*Cumulates suspensions imposed upon a defendant convicted on more than one traffic charge.

**Statistics are based on a distribution excluding defendants whose licenses are not suspended (0).

The standard suspension of a driver's license is 30 days (21.5%). In a few instances, a suspension may be for sixty, ninety days or even one year. Sanctions of such severity usually occur only after repeated violations of a serious nature (i.e., OMVI) or driving with an already-suspended license. One judge (A) routinely incarcerates defendants who drive with a suspended license. In general, defendants convicted in OMVI cases are much more likely to have their license suspended than those convicted on any other traffic offenses.

5. Drunk driver programs. Rehabilitative and therapeutic in their ideal state, drunk driver schools and alcohol-control programs impose yet another kind of constraint upon convicted defendants. At the least, attendance at such programs cost defendants in time and transportation. Columbus' "AID" program, for example, is a regional alcohol center, where drunk drivers or other alcohol abusers receive counseling and "drying out" over a four-day period of confinement. Fully 25% of defendants convicted in OMVI cases are required to attend the AID program, and another 7% are required to attend other local programs as part of their sentence.

6. Probation. Probation is extensively used as a sanction, and as a form of supervision and control, in this court. A supervising officer in the probation department reported that more than 2,000 defendants convicted on misdemeanor charges are currently on probation, and he noted that probation is more frequently used now than ever before. The bulk of the department's caseload stems from theft, bad check, and alcohol-related cases, areas where recidivism is quite common. According to this officer, judges vary in how often they use probation. Some judges use it frequently, others selectively ("taking into account our caseload problems"), and one judge not at all. We have no further data on the use of probation, because the case files do not contain such information.

7. Multiple sanctions. Defendants in Columbus do not always escape with only one kind of sanction upon conviction. More than one-third have two or more sanctions imposed upon them. In criminal cases, about one defendant in five is incarcerated and fined. In traffic cases, fully half of all defendants face multiple sanctions involving some combination of fines and incarceration and/or suspension of the driver's license and/or attendance at drunk driver programs. Furthermore, the use of multiple sanctions is seemingly not considered in determining the severity of each sanction. No leniency in fines, for example, is granted to defendants who are sentenced to serve time in jail. Table 6 presents these data, by type of case.

Table 6. Breakdown of Severity of Fine by Incarceration, by Type of Case

	Mean fine for defendants...	
	Incarcerated	Not Incarcerated
ALL CASES	$121	$ 83
Traffic		
OMVI	132	105
Other Traffic	162	63
Criminal		
Assault	50	68
Theft	70	73
Bad Checks	50	23
Other Criminal	63	64

Across all cases, defendants who are sentenced to serve some jail or workhouse time are fined more heavily ($121 on average) than those not incarcerated ($83 on average). These differences, however, are primarily confined to traffic cases: drunk driving cases and, especially, other traffic cases. The large difference in other traffic cases probably reflects the wide variety of offenses in this category. Many traffic offenses are relatively minor (e.g., speeding) and result in modest fines with no possibility of incarceration. But some traffic offenses (e.g., hit-and-run) are rather serious, draw much larger fines, and carry the possibility of jail time.

In criminal cases there is a general lack of relationship between severity of the fine and whether the defendant is given jail time. Incarcerated defendants generally do not receive heavier fines, but also they do not typically obtain lighter fines. This is clearly the situation in theft and "other criminal" cases. Only in assault cases do incarcerated defendants receive slightly more lenient fines.

The use of other sanctions -- suspension of the driver's license and required attendance at drunk driver programs -- generally follow a pattern similar to that between fines and incarceration in traffic cases. Defendants do not typically attend a drunk driver's program, for example, in lieu of a (heavier) fine; it is usually in addition to the fine. The heaviest fines in OMVI and other traffic cases are levied against defendants who are incarcerated, lose their license for a period of time, and who must attend an alcohol-control program. On the other hand, confinement to an alcohol-control center often serves in lieu of the mandatory three-day incarceration.

In sum, the Columbus misdemeanor court views the variety of sanctions available in a relatively punitive, rather than ameliorative, light. Rather than choosing which one of the sanctions to employ against convicted defendants, this court often chooses how much of several sanctions. In this regard, the court is quite different from New Haven where fines are used much less frequently, and where combinations of probation and suspended sentence often serve as punishment. No wonder, perhaps, that Feeley viewed the process to be the punishment. In Columbus, the outcome is the punishment.

G. Correlates of the Use and Severity of Sanctions: An Overview

No single composite measure of sanction severity could adequately represent the variations described above. Thus, in the following analyses the correlates of two sanctions -- fines and incarceration -- are examined individually.

All of the predictor variables utilized in the multiple regression on adjudication (guilty - not guilty) are utilized here also. These are the characteristics of the case (type, seriousness, number of charges), courtroom actors (type of defense counsel, identity of judge), and case processing (number of court appearances). Two additional variables, particularly relevant for sentencing decisions, have been included in the analyses.

1. Prior record. Prior record of the defendant has typically been viewed by courtroom participants to be of the utmost importance in sentencing decisions. Previous research has cautiously, if not convincingly, demonstrated its predictive value (see Farrell and Swigert, 1978; Gibson, 1978; Rhodes, 1978; but also, see Eisenstein and Jacob, 1977). In Columbus, prosecutors usually -- but not always -- possess this information about a defendant. Based upon our observations and interviews, prior record appears to influence both plea bargaining practices and the sentencing decision of the judge.

Due to logistical difficulties in finding and coding prior record data, we restricted our collection efforts to OMVI cases. For these cases, we operationalized prior record as relevant prior convictions, defining "relevant" as OMVI, ROMV (reckless; the charge to which most OMVI cases are reduced), physical control (of an automobile), and intoxication. These were the types of cases cited by members of the prosecutor's and public defender's offices as bearing upon a sentence decision in OMVI cases. By this definition, a little more than one-third of the sample (37%) had a prior record; the majority of these had only one relevant, prior conviction.[18]

2. Case disposition mode. It has long been suspected that a defendant's pursuit of his right to a trial -- particularly, a jury trial -- triggers a penalty (or lack of break) upon conviction. Evidence has been marshalled by early studies (see, for example, American Friends Service Committee, 1971), but more recent studies utilizing sophisticated statistical techniques reach varying conclusions (see Eisenstein and Jacob, 1977; Rhodes, 1978; Nardulli, 1978, and Uhlman and Walker, 1979). Nevertheless, even Eisenstein and Jacob, who find no statistical effect, assert that the perception of a penalty for going to trial is still widely held by "court officials and defendants alike," one that is "instrumental in promoting a steady flow of guilty pleas" (1977:271).

Feeley was unable to study the effects of convictions at trial, as opposed to guilty pleas, because the New Haven court had no trials during his sample period. In Columbus, however, some 78 trials (including 32 jury trials) were held in our sample of cases, permitting analysis of the effects of disposition mode upon the use and severity of sanctions.

H. A Multivariate Analysis of Sanctions

The prospect of multicollinearity and the presence of small numbers when analysis is confined within types of cases again suggest the appropriateness of proceeding directly to stepwise regression analysis, much as we did for the adjudication decision. We first turn to the results of regressions on the case fine, where the dependent variable is measured in interval data.

1. Fines. The initial regression on the amount of the case fine yielded a weak explanatory model. Only 14% of the variation in fines was explained by the variables described above (R = .38). The single most important predictor variable was whether the case was OMVI or not (beta = .30); the number of charges was the next most important variable (beta = .17). The remaining contributory variables were individual judges. Analysis of variations in fines within different types of cases proved more fruitful, both in the amount of variation explained and in the contrast in predictor variables from one casetype to another. Table 7 presents these data.

Table 7. A Multivariate Model of Severity of Fines, by Type of Case: Stepwise Regression*

OMVI	Beta**	Traffic	Beta**	Theft	Beta**
Judge G	.17	Number of Charges	.27	Judge M	.36
Number of Charges	.15	Judge J	-.12	Judge G	.32
Disposition Mode***	.13			Judge J	-.25
Prior Record	.12			Disposition Mode**	.23
	$R = .33$		$R = .32$		$R = .64$
	$R^2 = 11\%$		$R^2 = 10\%$		$R^2 = 41\%$
	(N = 313)		(N = 269)		(N = 107)

*Equations for the other three casetypes did not reach standard levels of statistical significance.

**Each of the beta weights is statistically significant at .05; in no instance does the standard error approach B.

***Disposition mode: guilty at trial coded high; guilty upon plea coded low.

In OMVI cases, a number of different types of variables are about equally important in explaining a small amount of variation (11%). Judge G, who has the reputation of being the toughest sentencer on the court,[19] contributes to the likelihood of receiving a heavier fine. So do multiple charges, being convicted upon a trial, and having a relevant prior record. In traffic cases, a similarly small amount of overall variation is explained (10%). The key variable is the number of charges; in traffic cases other than OMVI, the case fine rises dramatically as the number of charges increases. In theft cases, a much larger proportion of variation is explained (41%). Three of the four predictor variables are individual judges; again, being in the courtroom of Judge G contributes substantially to the likelihood of a more severe fine. Conviction upon trial also has an effect in increasing the severity of the fine.

Two points bear further comment. First, the contrast in predictors between OMVI and theft cases suggests the degree to which the court has routinized the handling of OMVI cases. Judicial sentencing philosophies are muted; the variation in fines levied across judges is small. Only the court's tough sentencer, Judge G, is distinctively apart from the court's norm. This routinization is facilitated by the comparative frequency of OMVI cases (30% of the pretrial docket) and by the unquestioned seriousness with which all courtroom actors view this type of case. In the words of Judge E, a moderate sentencer, "Judges are swayed by the community in which they live...people don't want to see rapists, thieves or drunk drivers go free." Petty theft or larceny, on the other hand, may present value conflicts for some judges (e.g., the extent to which poverty should be a mitigating factor), thus accounting for the wide variation in sanction severity among the court's judges.

The second point to be emphasized is the effect on fines resulting from conviction at trial. Although not significant in the ordinary range of traffic cases (where most trials are highly abbreviated), going to trial in OMVI or theft cases is a different matter. In these cases, there is a distinguishable "penalty" attached to pursuing full constitutional rights. Or in the words of several Columbus courtroom actors, "rent is charged for the use of the courtroom."

2. Incarceration. Analysis of the incarceration sanctions is complicated by the two-fold question implicitly involved: (1) should the defendant serve any time in jail? and (2) if so, how much time? Accordingly, separate regressions were performed on the use of the sanction and on its severity where used. In the former instance, the

dependent variable is a dichotomy wherein 65% of defendants were not incarcerated and 35% were incarcerated. In the latter case, the dependent variable is interval in nature, ranging from three days to one year. This latter regression is based upon a much smaller number of cases (i.e., only those defendants incarcerated). Table 8 presents the results of both regressions.

Table 8. A Multivariate Model of the Use and Severity of Incarceration: Stepwise Regression

	Use of Incarceration	Severity of Incarceration
	Beta*	Beta*
OMVI Case	.19	-.37
Disposition Mode**	.12	.11
Judge M	.11	ns
Judge G	.10	.28
Number of Charges	.10	.13
Judge A	-.07	ns
	$R = .33$	$R = .44$
	$R^2 = 11\%$	$R^2 = 19\%$
	(N = 1271)	(N = 439)

*Each of the beta weights is statistically significant at .05; in no instance does the standard error approach B.

**Disposition mode: guilty at trial coded high; guilty upon plea coded low.

The decision to incarcerate is poorly explained by our model (only 11% of the variance). Six variables are statistically significant predictors, but the effect of each is small. The most important of these variables is whether the case is OMVI or not. OMVI cases are most likely to result in incarceration. Being convicted at trial, rather than entering a plea of guilty, also contributes to the likelihood of incarceration. Most of the remaining predictor variables are individual judges. Interestingly, four of the six predictor variables in the model of the use of incarceration also appear in the model of case fine severity. Thus, many of the same forces at work in one kind of sentencing decision are at work in another.

The severity of incarceration is somewhat better explained (19% of the variance). A similar set of predictor variables emerges, but with different relative beta weights and, in one instance, a different direction of effect. Again, the OMVI casetype is the most important variable, but in a negative direction. Most drunk driving cases receive very short sentences, usually three or four days. The court's reputed tough sentencer indeed lives up to that reputation, when it comes to length of a jail term imposed. As most defendants seem acutely aware, being in the courtroom of Judge G will result in a much longer sentence. Multiple charge cases and convictions at trial also contribute to longer sentences, though their effects are much smaller.

Attempts to improve explanation of the incarceration sanction by analyzing within types of cases were generally unsuccessful. The number of defendants in our sample who were incarcerated either in non-OMVI traffic, assault, theft, bad check, or other criminal cases was very small. As a result, distributions were too highly skewed (to predict the use of incarceration), or the numbers were too small (to predict severity). In OMVI cases, however, a substantial 26% of the variance in the use of incarceration was explained (R = .51). The most important predictor variable was the type of plea, whether to the original or reduced charge (beta = .36). This is to be expected, since a conviction on the original charge in OMVI cases carries by statute a mandatory jail term, which can be waived only by imposing alternative forms of confinement. Prior record was the next most important variable (beta = .16).

I. Summary and Conclusions

A test of Feeley's thesis in the Columbus lower court yields a quite different picture from New Haven. Outcomes are costly to convicted defendants. Fines are

substantial (typically, $100), incarceration is not infrequent (about 35% of all defendants convicted), and in traffic cases one's license is in jeopardy. In many cases, more than one type of sanction is imposed. Furthermore, courtroom actors including defendants behave as if the outcome is important. Defendants hope to avoid Judge G. Seemingly "minor" cases appear on the pretrial docket, indicative of a decision not to plead guilty at first appearance. Defense counsel stall at pretrial hoping for a more sympathetic prosecutor or bargain on the day of trial. Prosecutors operate under strict guidelines for charge reduction in OMVI cases. The outcome is important to defendants and courtroom actors alike.

By contrast, the process of having one's case adjudicated is not very costly in Columbus. Indigency requirements are liberally interpreted by the public defender's office and by judges in arraignment court. Few defendants await the outcome of their case in custody. Many receive personal recognizance release or supervised release without bond; others pay a 10% appearance bond directly to the court (90% of which is returnable upon appearance). Finally, the court requires few appearances of its defendants. Cases are not routinely continued. A substantial percentage (57%) are disposed at the second court appearance, and most of the remaining cases are disposed at the next scheduled date. In all, the median elapsed time from initial arraignment to disposition is approximately 30 days, and only 20% of our sample of cases required more than 90 days. Unquestionably, process costs may seem high to unconvicted defendants, but for convicted defendants the outcome is unmistakably the punishment.

Beyond these comparisons with New Haven, our data from Columbus suggest a number of additional themes which may have generalizability beyond one or two lower courts. First, the type of case (charge) structures the substance of the decision-making process. Throughout our analysis, case type is the most significant predictor of whether defendants are found guilty or go free, as well as which defendants go to jail if convicted. In particular, assault and drunk driving cases are handled in highly distinctive ways. In assault cases, prosecution is rare; in drunk driving cases, lack of prosecution is rare. Similarly, the sanction of incarceration is infrequently invoked except in drunk driving cases. These findings, though, are influenced by the character of Columbus, a community where traffic laws generally, and those relating to drunk driving in particular, are expected to be enforced. In cities having different traffic customs, traffic violations might be treated more variably, less distinctively.

Secondly, our data suggest that the adjudication and sentence decisions are often indistinct, rendering the Columbus lower court much like many felony courts where the determination of guilt and negotiations over sentence also run together. In Columbus, the two decision stages "merge" in the use of bond forfeitures where money is appropriated without any formal decision on guilt or innocence. The two stages also merge in plea bargaining in multiple charge cases, where a decision to dismiss one charge occurs in exchange for submission of a guilty plea on other charges. Finally, the stages merge in the overlapping uses of prior record. Decisions to dismiss or to dispose of cases by way of bond forfeiture are often made in light of a defendant's prior record, a piece of data ordinarily, and legally, reserved for the sentence decision alone.

Thirdly, the perceptions of courtroom workgroup members appear to conform quite closely to the realities of case processing and outcomes in this lower court. This is reflected in operational contexts. For example, attorneys perceive that "rent is charged for the courtroom" (in trials), and our case data indicate a clear penalty for going to trial in more serious types of cases. Prior record is perceived by attorneys and judges to be significant in plea bargaining and sentencing, and our case data indicate -- at least in drunk driving cases -- that a relevant prior conviction reduces the likelihood of a charge reduction and increases the likelihood of severe fine and a jail term. Furthermore, personalities appear to be perceived accurately. Everyone agrees that Judge G is a much tougher sentencer than any other judge on the court; Judge G himself says he is "likely to give the maximum," and our case data unmistakably paint Judge G as the dispenser of the heaviest fines and the longest jail terms. It is these kinds of convergences of perception and behavior which indicate the "rationality" of a court, a theme which has been insufficiently highlighted either in misdemeanor or felony courts. Courtroom actors may have an excellent sense of how their own court operates, even if their world view is limited (Heumann, 1977) or they are unable to articulate theories of criminal court processing.

Finally, we might speculate briefly on why New Haven and Columbus are such different courts in the severity of sanctions imposed. In searching for community-level variables which could explain these differences, we return to the opening theme of political culture and its role in trial courts. Sentencing differentials in New Haven and Columbus parallel Levin's finding of differences in Pittsburgh and Minneapolis. The political culture of New Haven is similar to Pittsburgh, and Columbus to

Minneapolis. New Haven and Pittsburgh both are older, ethnically diverse, eastern cities, located in partisan political climates. Columbus and Minneapolis, by contrast, are newer midwestern cities, located in "good government" political climates. The pressures on courts, in cities like Columbus and Minneapolis, to crack down on minor as well as serious offenders may simply reflect communities who fear that the dirt, congestion, and violent crimes of the industrial East are moving westward.

NOTES

[1] I wish to acknowledge the invaluable assistance of Jim Alfini in designing and conducting this research, the help of Jeff Huff and Tom Graham in collecting data from the Franklin County Municipal Court files, and the cooperation of Ron Horcher, the Assignment Commissioner of the Municipal Court. I also wish to thank Milt Heumann and Russ Wheeler for their comments.

[2] Cases in which there is no jury demand can be scheduled directly for a court (non-jury) trial, without the scheduling of a pretrial. These constitute a small percentage of all cases, perhaps one hundred or so in our three-month sampling period.

[3] Although there is a central scheduling office, the court operates under an individual case assignment system (after arraignment), in which the same judge hears a case from the pretrial through final disposition. The individual assignment system is mandated by Ohio Rules of Superintendence promulgated in 1971 and 1974 by the state supreme court. (Ohio Sup. R. 4).

[4] Pretrial hearings in this court are always conducted in the courtroom, in full view and hearing of all. Chambers are rarely used for plea negotiation discussions.

[5] Judges may substitute for the jail term a confinement of a similar period in a drunk driving program. For a theory of penalty-mitigation in OMVI cases, see Ross (1976).

[6] In part, the guidelines specify that prosecuting attorneys should not reduce an OMVI to reckless operation where the "breathahol" test reads .18 or above.

[7] All judges will be referenced by alphabetic letters selected at random, in order to preserve anonymity. Though such a promise was not required to conduct observations, it was needed to gain access to case data.

[8] But see note 2 above.

[9] Of course, if the defendant is released on a bail bond (rather than an appearance bond), this disposition option would not be available.

[10] Until 1980, prosecutors were assigned cases on a master calendar principle, from one to two weeks in advance of a court date. Thus, the prosecutor assigned for the pretrial probably did not follow a case through to the trial date, in the event it was not resolved at the pretrial.

[11] Interestingly, though most dismissals do occur at the pretrial session, a significant percentage of all dismissals (22%) occur on the scheduled trial date.

[12] Defendant prior record data were collected only for OMVI cases (because of the expense and difficulty in collecting these data). For those cases, we collected the data only for defendants actually found guilty in the belief that prior record would influence sentencing but not adjudication. Our observations, however, suggest that prior record is sometimes considered in decisions to dismiss, across a range of cases.

[13] Bad check cases often involved a series of incidents, but the court treated these together, as if they were one case.

[14] The percentage of unrepresented defendants in Columbus would undoubtedly be somewhat higher if cases disposed at arraignment were part of our sample. However, our observations in arraignment court before two different judges indicated that even when defendants plead guilty at the initial appearance, consultation with the public defender available in the courtroom often takes place.

[15] Indigency is assured where the defendant does not make bail. Among other defendants, a determination is typically made at arraignment by the public defender.

[16] In Columbus, "no contest" pleas are counted as guilty pleas for the purpose of statistical record-keeping. Some judges like to encourage defendants to plead "no contest" if it will facilitate a disposition, notably Judge D.

[17] It is more difficult to compare accurately BFs in the two courts, since Columbus also utilizes bond forfeitures in cases where defendants do not skip.

[18] Despite our best efforts, slightly more than half of all defendants are missing on this variable. A few case files in the prosecutor's office could not be located; many others did not contain this information. The court's records do not contain any prior record information.

[19] According to the Supervisor of the Public Defender's Municipal Unit, defendants initially ask two questions: (1) can I get a personal recognizance bond, and (2) is Judge G assigned to the case? In our interview with Judge G, he confirmed his tough sentencing philosophy ("I'm likely to give them the maximum"), noting that his association with crimes has primarily been with the victims of crimes (through his stint as a prosecutor).

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CHAPTER V

CASE PROCESSING IN STATE MISDEMEANOR COURTS: THE EFFECT OF DEFENSE ATTORNEY PRESENCE

James J. Alfini
Patricia M. Passuth

Before the advent of Argersinger v. Hamlin (1972), legal scholars arguing for procedural reforms in the misdemeanor courts questioned whether these courts could cope with their case volume if any substantial percentage of misdemeanor defendants were represented by counsel (see e.g., Allen, 1970; Barrett, 1965; Dash, 1951; Pye, 1970). Today, however, the misdemeanor courts appear to be coping with their caseloads even though a majority of the defendants in many of these courts are represented by counsel. This apparent contradiction suggests two research questions: What is the impact of the defense attorney on (1) case outcome and (2) case processing practices in the misdemeanor courts?

These and other questions concerning the impact of the presence of defense counsel have important policy ramifications in the misdemeanor courts. In expressing his concern that the volume problems of the misdemeanor courts make procedural reforms such as providing counsel virtually impossible, Barrett pointed out that these courts have a "total dependence" on the routine guilty plea in handling their large volume of cases (1965:10). He cited Judge Nutter's estimate that only a 5% increase in not guilty pleas in the Los Angeles Municipal Court, "would result in...a breakdown of the entire system" (Nutter, 1962:217). Do guilty plea rates in these courts decrease as defense representation increases? Even if guilty plea rates remain relatively constant, do defense counsel insist on more individualized treatment in a way that leads to significant slowdowns (or even breakdowns) of the system?

The policy implications of these questions are reflected in recent U.S. Supreme Court decisions dealing with the right to counsel in misdemeanor cases. In both Argersinger v. Hamlin (1972) and Scott v. Illinois (1979), the U.S. Supreme Court considered the impact of constitutionally requiring defense counsel for indigent misdemeanor defendants. In Argersinger, the Court extended the right to counsel to indigent misdemeanor defendants by holding that, absent a knowing and intelligent

waiver, no person could be imprisoned for any offense unless he was represented by counsel at his trial. In a five to four decision in Scott, however, the Court made it clear that this right to counsel extends only to cases where imprisonment is actually imposed and not where it is merely authorized by the statute under which the defendant is charged.

Certain Justices supported this limitation on the right to counsel in misdemeanor cases by expressing concern over Argersinger's potential impact (particularly in terms of additional administrative burdens) on the state misdemeanor courts. In particular, Justice Powell questioned whether a defendant's obtaining a fair trial in these courts is necessarily predicated upon the assistance of counsel and suggested that the most significant potential impact of Argersinger would be to increase delay and congestion in the "already overburdened" misdemeanor courts (Argersinger, 1972:62-66). He stated that the more frequent presence of defense counsel would be "likely to result in the stretching out of the process" due to delaying tactics commonly employed by zealous young defense attorneys (Argersinger, 1972:58-59). Although Justice Rehnquist favored limiting the right to counsel in misdemeanor cases, he noted in a footnote to his opinion in Scott, that there is very little empirical evidence on the impact of defense representation in the misdemeanor courts (Scott, 1979:Footnote 5).

Available research on the impact of the defense attorney on misdemeanor case outcome indicates that represented defendants generally fare better than unrepresented defendants. Katz's (1967) pre-Argersinger survey of a sample of cases in the Cleveland Municipal Court revealed that a higher percentage of represented defendants than unrepresented defendants were convicted, and that, among those convicted, represented defendants received lighter sentences than unrepresented defendants. However, because almost all of the represented defendants in Katz's sample were represented by privately retained counsel, Katz suggests that economic considerations, rather than increased adversariness, could explain the variations in conviction rates and sentencing. In particular, it could be argued that, because of the economic burden imposed on a misdemeanor defendant, the decision to hire defense counsel could be viewed as a predictor of guilt or innocence. Similarly, the variation in sentencing could be explained in terms of the judge's considering the economic burden imposed on the defendant with retained counsel and fixing a lighter sentence as a result.

Feeley's (1979) post-Argersinger study of the New Haven (Connecticut) Court of Common Pleas contains findings similar to those of Katz concerning the effect of defense representation on misdemeanor case outcome. In particular, Feeley found that defendants represented by attorneys had slightly more favorable nolle (dismissal) rates and sentences than those without counsel. In contrast, studies of the impact of defense counsel in felony and juvenile courts report mixed findings (Nagel, 1973; Stapleton & Teitlebaum, 1972).[1]

Although the Katz and Feeley studies suggest answers to important questions concerning the effect of legal counsel on misdemeanor case outcome, they do not address certain questions relating to the institutional impact of defense attorney presence. Are more cases likely to go to trial in misdemeanor courts where defendants generally are represented by counsel than in courts where defense counsel are seldom present? How is case processing time affected by the more frequent presence of counsel in the misdemeanor courts?

One post-Argersinger study does consider whether Argersinger has increased "adversariness" in misdemeanor court proceedings (Ingraham, 1974). Ingraham's study reported on a survey of a national sample of prosecutors, conducted one year after Argersinger was decided. He concluded, among other things, that Argersinger had not increased adversariness in the handling of misdemeanor cases in these courts. However, Ingraham's findings must be considered in light of his definition of adversariness. Ingraham's measure of adversariness was whether the prosecutors had noted an increase in the number of not guilty pleas since Argersinger. It could be argued that a more meaningful indicator of Argersinger's impact would be its effect on guilty plea, rather than not guilty plea, rates. Even in felony courts, where defendants generally are represented by counsel, a very small percentage of cases ultimately go to trial (Blumberg, 1967). It is therefore somewhat unrealistic to expect prosecutors to perceive a noticeable increase in not guilty pleas and trials as a result of Argersinger. A more realistic expectation would be that Argersinger would have the effect of increasing the incidence of plea bargaining, with the possible attendant effect of increasing the number of dismissed or reduced charges. This appears to be supported by Feeley's findings that represented defendants were more likely to receive nolles than unrepresented defendants. Again, this would tend to affect the incidence of guilty pleas, not the incidence of trials. In fact, Ingraham states that, "Argersinger may have the effect in the future of increasing the role of plea bargaining in

misdemeanor cases" (Ingraham, 1974:625). Ingraham also argues that Argersinger's most significant impact might be to delay or stretch out the proceedings in the misdemeanor courts (Ingraham, 1974:635), as predicted by Justice Powell in his concurring opinion in Argersinger (1972:58-59).

This chapter explores these and other relationships between defense attorney presence and case processing in misdemeanor courts by reporting on the results of a national survey of misdemeanor court judges. The judges polled were asked a series of questions to determine whether case processing differences can be tied to the frequency of defense attorney presence in their courts. We also examine the assumption that the institutional impact of defense attorney presence will be similar across all misdemeanor courts. Our findings indicate that, to the contrary, the effect of representation by counsel will vary depending upon the size of the community in which the court is located (as has been suggested by Nagel, 1973).

The basis for our analysis is data obtained from a mail questionnaire survey of a national sample of state misdemeanor court judges (see Appendix B for an explanation of the survey methodology). It must be stressed at the outset that our conclusions here about the functioning of misdemeanor courts are dependent upon the perceptions of the judges surveyed. We readily recognize that actual caseload statistics would have been a better data source for many of the variables included in the questionnaire. However, as other researchers have discussed (see e.g., Mileski, 1974), aggregate case and caseload statistics are grossly inadequate and not readily available in many of the misdemeanor courts. In addition, the cost of generating such data on a national level would be prohibitive. We therefore substituted the more feasible method of surveying the judges who sit in these courts. The judge was chosen to act as informant because we reasoned that the judge is in the best position to respond accurately to general questions concerning caseload volume and case processing practices. Unlike other courtroom actors, the judge is present in the court on a day-to-day basis and bears ultimate responsibility for processing the court's caseload. Finally, because of the non-threatening nature of the questions, there is little theoretical basis for assuming that the judges' responses are biased in any systematic manner.

A. Defense Attorney Presence in State Misdemeanor Courts

Before considering the relationship between defense attorney presence and case processing in the misdemeanor courts, we examine the pervasiveness and variation in

defense representation for the misdemeanor courts surveyed. Because many more cases in the misdemeanor courts are disposed of by way of guilty plea than by trial, we asked the judges in our sample to indicate the frequency in their court of defense attorney presence at the time the defendant pleads guilty. Only 8% of the judges responded that a defense attorney is "always" present at guilty plea. Half (50%) of the judges said that defense counsel is "frequently" present, while 39% stated that counsel is "infrequently" present, and 3% responded that counsel is "never" present.

These responses varied depending upon the size of the community in which the court was located and the type of indigent defense counsel system available to misdemeanor defendants in a particular locale. Table One indicates the frequency of defense attorney presence in misdemeanor courts in different size communities.

Table 1. Frequency of Defense Attorney Presence at Guilty Plea by Community Size[2]

Presence of Defense Attorney at Guilty Plea	Big City Judges	Medium-Size City/ Suburban Judges	Small City/ Rural Area Judges
Always/Frequently	94%	69%	45%
Infrequently/Never	6%	31%	55%
	100%	100%	100%
	(N=70)	(N=229)	(N=413)

Somer's d = .34, p .01.

The data in Table One indicate a linear relationship between defense attorney presence and community size. That is, a defense attorney is more likely to be present at guilty plea as community size increases.

Similarly, a defense attorney is more likely to be present in misdemeanor courts where a public defender, rather than private assigned counsel, system is the more ordinarily provided type of indigent defense service for misdemeanor defendants. Table Two indicates this relationship.

Table 2. Frequency of Defense Attorney Presence at Guilty Plea by Type of Indigent Defense System

Presence of Defense Attorney at Guilty Plea	Private Assigned Counsel	Public Defender
Always/Frequently	48%	69%
Infrequently/Never	52%	31%
	100%	100%
	(N=296)	(N=281)

Somer's d = -.21, p .01.

Possible ramifications of these differences in defense representation are addressed by several studies which have examined the differences between public defenders and private counsel in felony and misdemeanor courts (Nagel, 1973; Nardulli, 1975; Feeley, 1980). In his study of the handling of felonies in the Chicago courts Nardulli found that private "non-regular" attorneys had the highest dismissal rates while public defenders had the lowest. He constructed a hierarchy of defense attorneys in which private, non-regular attorneys fared best, private regular attorneys in the middle, and public defenders received the least favorable outcome for their clients. Explained Nardulli: "the preliminary hearing work groups are more inclined to pursue a conviction if the defendant is represented by a public defender or a regular private attorney, than by a non-regular attorney" (Nardulli, 1975:234). Similarly,

Nagel (1973) found that felony defendants fared slightly better (as measured by dismissal and acquittal rates and the percentage receiving suspended sentences or probation) when represented by assigned counsel as compared to a public defender.

Other studies, however, report no differences in outcome. In his study of the New Haven misdemeanor court, Feeley (1979) observed little difference between public defenders, private attorneys, and Legal Assistance Association attorneys. According to Feeley, all of these types of attorneys chiefly relied on negotiation and "simple pleas of justice" in their representation of the defendant. Similarly, we found no significant differences in case processing practices between courts using public defenders and those employing assigned counsel systems. However, as we shall later indicate, type of indigent defense system is one of many factors that distinguishes rural area courts from urban courts, and may help to explain case processing differences among courts in different size communities.

Two misdemeanor court studies have examined the relationship between type of indigent counsel provided and the size of the community in which the court is located (Silverstein, 1965; Ingraham, 1974). In comparing the results of his 1973 survey with those of Silverstein's 1965 survey, Ingraham noted a "startling increase" in the use of public defenders, particularly in small and medium-size counties (Ingraham, 1974:628). Ingraham's study revelated that public defenders were used in 67% of the large counties, 45% of the medium-sized counties, and 32% of the small counties. We also examined the relationship between these two variables with our 1977 data. As Table Three indicates, the majority of courts in the more rural communities rely on private, assigned counsel systems, while those in urban communities predominantly have public defender systems available to them.

Table 3. Type of Indigent Defense Services by Community Size*

Type of Indigent Defense Services	Big City Judges		Medium Size City/ Suburban Judges		Small City/ Rural Area Judges	
Private	11%	(33%)	40%	(55%)	62%	(68%)
Public	89	(67)	60	(45)	38	(32)
	100%		100%		100%	
	(N=54)		(N=181)		(N=343)	

*Ingraham's figures are indicated in parentheses.

Somer's d =-.29, p .01.

A comparison of Ingraham's 1973 data with this 1977 data (Table Three) shows a continuation of this trend toward increased use of public defender systems.[3] However, this comparison suggests also that the more dramatic increases have been in the more populous communities. Both Ingraham and Silverstein state that the relationship between type of indigent defense system and community size "probably reflects the fact...that the assigned counsel system becomes progressively more expensive and difficult to administer as the population size of the county increases, whereas the public defender system grows more economical and administratively easier to manage" (Ingraham, 1974:628).

A fuller explanation can be found for the greater prevalence of assigned counsel, rather than public defender systems, in rural areas by considering how many rural courts operate. As we shall see, our data indicate that certain differences in case processing (that apparently are linked to the frequency of defense attorney presence) tend to be exaggerated in rural area courts. In this respect, our community size

variable can be viewed as a surrogate for other variables that tend to distinguish misdemeanor courts in rural areas from those in urban areas. Our data show, for example, that as community size decreases, a prosecuting attorney is less likely to be present at trial and the judge is more likely to be a part-time nonlawyer (see Appendix B). That is, many rural area courts operate on a part-time basis. Court sessions are held less frequently than in urban areas and often are geared to accomodate the schedules of part-time prosecutors and judges. Even if the judge is not part-time, the judge may be required to "ride-circuit" or "hold terms" in more than one court. Introducing a public defender (even if only part-time) into this situation might create real administrative problems. To justify the existence of this new courtroom regular, more defendants might be provided counsel. This, in turn, might necessitate the more frequent presence of a part-time prosecuting attorney to even the score. Under an assigned counsel system, on the other hand, the court would probably feel less pressured to provide counsel so frequently and, when required to, would have more flexibility in finding a local lawyer whose schedule coincided with that of the part-time judge and prosecutor. In sum, rural area courts might find it less difficult to cope with case processing changes and pressures occasioned by extending the right to counsel if counsel was a local private attorney rather than a public defender.

B. Effect of Defense Attorney Presence on Guilty Plea Rates

As we have noted, Barrett (1965) and others have questioned the ability of the misdemeanor courts to cope with significant increases in defense representation in light of their reliance on high guilty plea rates to handle their case volume. His concern over the impact of defense attorney presence implies a belief that guilty plea rates will be significantly lower in courts where defense counsel are frequently present than in courts where they are seldom present. To determine differences in guilty plea rates among the courts of the judges in our sample, we asked the judges:

> Approximately what percentage of state misdemeanor defendants plead guilty to a misdemeanor offense?

As Table Four demonstrates, there is a relationship between defense attorney presence and guilty plea rates. Guilty plea rates do tend to be lower in courts where defense attorneys are more frequently present at guilty plea. However, these differences do not appear to be as dramatic as Barrett and others would have predicted.

Table 4. Guilty Plea Rate by Defense Attorney Presence at Guilty Plea

Percentage of Defendants Pleading Guilty	Defense Attorney Presence: Always/ Frequently	Defense Attorney Presence: Infrequently/ Never
81-100%	33%	46%
51-80%	41%	40%
0-50%	26%	14%
	100%	100%
	(N=384)	(N=265)

Somer's d = -0.18, p .01

In almost one-half (46%) of the courts in which a defense attorney is infrequently present, the judges reported that state misdemeanor defendants plead guilty 81 to 100% of the time, while in one-third (33%) of the courts in which a defense attorney is frequently present did the judges report a similarly high rate of guilty pleas. This relationship is strongest in small city and rural area courts, where the judges in courts where defense counsel are infrequently present stated that more than half (55%) of the defendants plead guilty 81 to 100% of the time, while less than one-third (31%) of the judges in rural courts where defense counsel are frequently present made a similar response (Somer's d = .28).

Ingraham's (1974) findings indicate that Argersinger's affect on the not guilty plea rates or trials in state misdemeanor courts was insignificant. However, our data indicate that the more frequent presence of defense attorneys does tend to reduce guilty plea rates. These findings are not necessarily inconsistent. As Ingraham

suggested, the introduction of defense attorneys into the misdemeanor courts would probably have the impact of increasing the incidence of plea bargaining. Similarly, Nagel suggests a greater incidence of plea negotiations for represented felony defendants (1973:410). A greater frequency of plea discussions between prosecution and defense could also result in a greater percentage of cases in which charges are dismissed. This would comport with Feeley's findings that represented defendants are more likely to receive nolles than unrepresented defendants in the New Haven misdemeanor courts. This increase in dismissals, coupled with an increase (however insignificant) in the trial rate, would be likely to reduce significantly the guilty plea rate.

C. Effect of Defense Attorney Presence on Case Processing

In addition to statements that the more frequent presence of defense counsel may lead to a decrease in guilty plea rates, some have argued that increased defense representation could result in unacceptable delays in misdemeanor cases. In his concurring opinion in Argersinger (1972), Justice Powell voiced a concern that requiring counsel for all misdemeanor defendants sentenced to jail is "likely to result in the stretching out of the process with consequent increased costs to the public and added delay and congestion in the courts" (Argersinger, 1972:58-59). Similarly, Ingraham concluded on the basis of his survey that Argersinger "may have the effect of delaying the proceedings" (Ingraham, 1972:635).

It is questionable whether a "delaying" or "stretching out" of the process is necessarily an unwanted result in the misdemeanor courts. Unlike felony cases, misdemeanor cases are often disposed of in perfunctory fashion at the initial court appearance. This situation has occassioned much critical commentary on the misdemeanor courts, characterizing proceedings in these courts as "assembly line" or "mass production" justice (see, e.g., Barrett, 1965; President's Commission on Law Enforcement and Administration of Justice, 1967; Pye, 1970). In addition, available data indicate that delay is not a significant problem in these courts (Long, 1976). Therefore, a "stretching out of the process" may lead to fairer proceedings without exacting an unacceptable cost.

To determine the percentage of cases disposed of at initial court appearance in the courts of the judges in our sample, we asked the judges:

Approximately what percentage of your state misdemeanor cases are disposed of by guilty plea, dismissal, trial, diversion, etc. at initial court appearance?

Table Five indicates a strong negative relationship between defense attorney presence and case disposition at initial appearance.

Table 5. Case Disposition at Initial Court Appearance by Defense Attorney Presence at Guilty Plea

Percentage of Cases Disposed at Initial Court Appearance	Defense Attorney Presence: Always/ Frequently	Infrequently/ Never
81-100%	17%	41%
51-80%	35%	39%
0-50%	48%	20%
	100%	100%
	(N=380)	(N=266)

Somer's d = -.36, p .01.

Forty one percent of the judges in courts where defense counsel are infrequently present reported that 81 to 100% of their case dispositions occur at initial court appearance. In contrast, only 17% of the judges in courts where defense counsel are frequently present reported a similarly high percentage of dispositions at first appearance. This relationship was even more pronounced in rural area courts. Over half (51%) of the judges in these courts where defense counsel are infrequently present claimed that they disposed of such a high percentage of cases at initial appearance; while only 17% of the judges in rural area courts where defense counsel are frequently present made a similar response (Somer's d = -.42).

That these case processing differences are more pronounced in rural areas indicates, again, that community size may best be viewed as a surrogate variable for other factors that encourage rural courts to rely more heavily on case dispositions at first appearance. Because many rural courts operate on a part-time basis, with part-time or circuit-riding judges and prosecutors, they may be encouraged to get the cases over with as quickly as possible to avoid future scheduling problems and conflicts. Thus, a significantly higher percentage of rural area courts report a high dispositions-at-first-appearance rate (51%) than is reported by all courts (41%) in which defense counsel are infrequently present. In contrast, there are no significant differences in the dispositions-at-first-appearance-rates among courts where defense counsel are frequently present when we control for community size. This suggests that the rural area courts may find it more difficult than courts in more populous communities to adjust to the more frequent presence of defense counsel.

Lower disposition-at-first-appearance rates in courts where defense counsel are more frequently present indicates that case processing is, in fact, more "stretched out" in these courts. To determine more precisely the nature of this "stretching out" process, we attempted to identify the guilty plea rates at different stages of the proceedings. We asked the judges whether most of the guilty pleas in their court occur: "at initial court appearance," "at pre-trial conference (other than trial date)," or "on day of trial." Table Six indicates a strong negative relationship between the judges' responses to this question and the frequency of defense attorney presence at guilty plea.

Table 6. Timing of Guilty Plea by Defense Attorney Presence at Guilty Plea

Stage at Which Most Guilty Pleas Occur	Defense Attorney Presence: Always/ Frequently	Defense Attorney Presence: Infrequently/ Never
Initial Appearance	43%	83%
Pre-Trial Conference	27%	7%
Trial Day	30%	10%
	100%	100%
	(N=364)	(N=256)

Somer's d = -.39, p .01

The vast majority (83%) of judges in courts where defense counsel are infrequently present reported that most of their guilty pleas occur at initial appearance, while less than half (43%) of the judges in courts where defense counsel are frequently present made a similar response. Of particular interest is the fact that more than one quarter (27%) of the judges where defense counsel are frequently present indicated that most guilty pleas occur at pre-trial conferences. This implies that many of the courts in which defense counsel are frequently present attempt to maintain high guilty plea rates through formalized pretrial negotiation conferences (see Alfini and Ryan, 1978). Again, these differences are exaggerated when we control for community size. In particular, our data show that only 19% of the rural area courts in which defense counsel are frequently present reported that most of their guilty pleas occur at pre-trial conference (in contrast to 43% of the big city courts). This indicates that rural area courts may find it most difficult to implement new case processing practices to adjust to the consequences of the more frequent presence of defense counsel.

These findings indicate that the effect of defense attorney presence on case processing in the misdemeanor courts may indeed be to "stretch out the process" in a manner that more closely approximates that in the felony courts. The question that still remains, however, is whether this has been accomplished at a cost that Justice Powell and others would find unacceptable.

D. Effect of Defense Attorney Presence on the Judges' Perceptions of Case-Processing Pressure and Delay

The conventional wisdom has it that the assembly line justice or rapid case-processing scenario endemic in the misdemeanor courts is caused by judges and other courtroom actors who feel pressured by heavy caseloads (see, e.g., President's Commission on Law Enforcement and Administration of Justice; 1967:29-31). Therefore, one way of determining whether the more frequent presence of defense counsel exacts an unacceptable cost on "our already overburdened local courts," is to assess whether the judges in these courts perceive themselves to be under greater case-processing pressure, and to be less able to stay current with their caseloads, than judges in courts where defense counsel are less frequently present. To measure the severity of the judges' perceptions of caseload pressure, we asked them:

On days when you hear state misdemeanor cases, how often are you under significant pressure to process a substantial number of these cases?

Table Seven indicates the relationship between the judges' perceptions of caseload pressure and the frequency of defense attorney presence in their courts.

Table 7. Frequency of Caseload Pressure by Defense Attorney Presence at Guilty Plea

Frequency of Caseload Pressure	Defense Attorney Presence: Always/ Frequently	Defense Attorney Presence: Infrequently/ Never
Always/Frequently	65%	52%
Infrequently/Never	35%	48%
	100%	100%
	(N=386)	(N=266)

Somer's d = .13, p .01

The data in Table Seven show a slight relationship between the judges' perceptions of caseload pressure and defense attorney presence. A higher percentage (65%) of judges in courts where defense counsel are frequently present indicated frequent caseload pressure than judges in courts where defense counsel are infrequently present (52%). Although these differences are slight, they would appear to support Justice Powell's contention that the increased presence of defense counsel would exacerbate case processing pressures in the misdemeanor courts. However, factors other than defense counsel presence may contribute substantially to case processing pressure in these courts. In particular, our data indicate that defense counsel are more likely to be present at guilty plea in the "high volume" courts.

In fact, Justice Powell's attention was directed towards the high volume misdemeanor courts. In Argersinger, he stated: "The primary cause of 'assembly-line' justice is a volume of cases far in excess of the capacity of the system to handle efficiently and fairly" (Argersinger, 1972:58). We asked the judges in our sample to characterize the total misdemeanor caseload volume in their courts as "heavy,"

"moderate," or "light." The relationship between defense attorney presence and case-processing pressure was rendered insignificant in courts where the judges characterized their total caseload volume as "heavy" or "moderate." Surprisingly, it is only in those courts where the judges characterized their caseload volume as "light" that defense attorney presence is substantially related to the judges' perceptions of case processing pressure (Somer's d = .34).

These data indicate the judges' perceptions of case-processing pressure are directly tied to their perceptions of total misdemeanor caseload volume. And, except in light volume courts, that defense attorney presence is unrelated to the judges' perceptions of case-processing pressure.

We also asked the judges a related question concerning their perceived ability to stay current with their workload:

> How often are you able to stay current with your state misdemeanor caseload?

As Table Eight illustrates, there is no relationship between the judges' perceptions of their ability to stay current and frequency of defense attorney presence.

Table 8. Ability to Maintain Current Workload by Defense Attorney Presence at Guilty Plea

Able to Maintain Current Workload	Defense Attorney Presence: Always/ Frequently	Defense Attorney Presence: Infrequently/ Never
Always/Frequently	90%	91%
Infrequently/Never	10%	9%
	100%	100%
	(N=384)	(N=266)

Somer's d = .01, not significant

What is most revealing about the data in Table Eight is the relatively small number of judges (less than 10%) who indicated any difficulty in maintaining a current workload. These data would indicate that Justice Powell's general belief that these courts are plagued by "delay and congestion" is not in line with the perceptions of the judges in these courts.

E. Conclusion

Commentators and policymakers have expressed concern over the institutional impact of extending the right to counsel to misdemeanor defendants. Barrett aptly summarized these concerns as: "The tensions between due process values and administrative imperatives" (1965:123). No doubt it was "administrative imperatives" that prompted the U.S. Supreme Court to delay extending the right to counsel to misdemeanor defendants -- there was a lapse of nine years between Gideon v. Wainwright (1963) and Argersinger v. Hamlin (1972) -- and then to limit this right in Scott v. Illinois (1979). To a great extent, Dean Francis Allen anticipated these

developments and explained that the caution of the U.S. Supreme Court in extending the right to counsel to misdemeanor defendants reflects overarching "considerations of feasibility" (1970:95).

In this chapter, we have suggested that certain assumptions related to these "administrative imperatives" and "considerations of feasibility" may not be entirely accurate. In comparing the perceptions of judges in courts where defense counsel are frequently present with those in courts where defense counsel are infrequently present, we found no significant differences in the judges' perceptions of caseload pressure or their ability to maintain current workloads. This implies that the increased use of counsel in the misdemeanor courts may not have contributed to the woes of these "already overburdened" courts in the ways that many have assumed.

It could be argued, however, that the courts in which defense counsel are now more frequently present have adjusted to this influx of defense attorneys by providing additional resources to cope with decreased guilty plea rates, increased trial rates, and a "stretching out" of the process in individual cases. However, our data indicate that although guilty plea rates are somewhat lower in courts where defense counsel are more frequently present, they are in no sense dramatically lower. In addition, other studies suggest that trial rates are not appreciably influenced by the presence of defense counsel. Rather, defendants with counsel are more likely to be advantaged in other ways -- increased likelihood of having their cases dismissed or receiving charge or sentence concessions through the plea bargaining process. These differences in case outcome do not anticipate the increased administrative burdens that some commentators have stated.

On the other hand, our data do show that the case process in courts where defense counsel are frequently present is more "stretched-out" than that in courts where misdemeanor defendants are infrequently represented. In particular, a lower percentage of cases are disposed at initial appearance and cases tend to go through more stages in courts where defense counsel are more frequently present. As we have pointed out, however, this may be a desirable result in courts that have been criticized for meting out "assembly-line" or "mass-production" justice by disposing of cases in rapid-fire fashion at the first appearance. Whether this "stretching-out" of the process actually leads to closer or more thoughtful attention to individual cases is problematic. Yet, "stretching out" the process arguably sets the stage for more individualized treatment without exacting unacceptable administrative burdens.

Although one might assume from much of the written commentary that a "stretching out" of the process would be least troublesome, administratively, in rural area courts, where caseload pressures should be less acute, our data indicate otherwise. The commentators and policymakers who have been most concerned about the institutional impact of extending the right to counsel have focused their interest on the high volume urban misdemeanor courts. Yet, our data reveal that case processing differences occasioned by the relative frequency of defense attorney presence are most exaggerated in the rural area courts. This suggests that the rural area courts may have more difficulty accomodating themselves to the more frequent presence of defense counsel than the urban area courts.

In sum, these findings and the findings of other empirical studies focusing on the impact of defense representation challenge some of the underlying assumptions of certain commentators and policymakers who have considered questions relating to the impact of extending the right to counsel to misdemeanor defendants. It is hoped that the results of these studies will lead to more informed policy recommendations and decisions.

NOTES

[1] In his national study of the impact of defense attorney presence on the processing of felony defendants, Nagel (1973) found that defense representation made a significant difference with regard to several factors. Specifically, attorney presence was particularly beneficial with respect to the defendant's receiving a preliminary hearing, being released on bail, and obtaining a short prison sentence. On the other hand, Nagel found that attorney presence was not significantly related to dismissal or acquittal rates. However, because his data show that represented defendants were more likely to receive suspended sentences or probation Nagel conjectures that the represented defendants may have a distinct advantage over the unrepresented defendant in plea negotiations. Stapleton and Teitelbaum's (1972) post-Gault (1967) study of lawyer representation in two juvenile courts also resulted in mixed findings. In one court (the "Zenith" court) there was a dramatic increase in dismissal of juvenile cases when the youth was represented by counsel (from 40% to 50%). In the other court (the "Gotham" court), however, no differences was found between represented and unrepresented youths (18% vs. 19% dismissal rate). The authors explain these conflicting findings in the two cities by arguing that the conservative methodological approach that they employed diluted the strict dichotomy between "project-lawyer representation" and nonrepresentation thereby rendering insignificant the differences found in Gotham. In the quasi-experimental research design, the experimental "project lawyer" group included those youths who were offered but refused lawyers while the control group included juveniles represented by other lawyers.

[2] See Appendix B for an explanation of the relationship between community size and population.

[3] The different data bases again should be noted. Ingraham's data are based on a national survey of local prosecutors while our data are based on a national survey of misdemeanor court judges.

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CHAPTER VI

CASE STUDY OF A MANAGEMENT INNOVATION IN A MISDEMEANOR COURT

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The literature review in Chapter II emphasized that a variety of factors affects a court's approach to caseflow management. In this chapter we present the experiences of one misdemeanor court in Minnesota that implemented new caseflow management techniques. This descriptive analysis is based on the premise that changes in management techniques are not (necessarily) socially or politically neutral events (Neubauer, 1979). On the contrary, such changes, if successfully implemented, may alter the roles and relationships among court participants and affect case outcomes. Our discussion generally focuses on three inquiries:

1) Does the management information system alter the relationships or roles of participants?

2) Does the management information system affect case processing procedures (e.g., continuance policies, scheduling practices)?

3) Does the management information system affect case processing outcomes (e.g., disposition mode, sentence, case processing time)?

Of particular importance is the extent to which the management information system results in both anticipated and unanticipated consequences in each of these three areas.

The first section of this chapter describes the more general court organizational context -- both state and local -- into which the management system was introduced. This section orients the reader to some of the potential external constraints that might be felt by the court adopting the innovation. The second section focuses on the specific relationships and internal operations of the local site, followed by a description of the proposed management innovation and implementation process and the initial reactions of the judges, attorneys and administrative staff to the change. The management changes adopted by the court subsequent to implementation are discussed. Finally, pre- and post-implementation quantitative data on the court's

caseflow process is presented to evaluate the innovation's effect on actual case progress.

A. State Organization Structure

1. Courts. In 1977, Minnesota enacted the Court Reorganization Act. This Act provided the system with its first comprehensive conceptual framework for judicial administration in Minnesota (Minnesota State Court Report, 1976-77). It unified the court system and simplified its structure by creating a two-tiered system of district (felony) and county (misdemeanor) courts. The plan is premised on two fundamental principles: 1) fixed administrative authority so that lines of accountability are evident; and 2) shared management responsibility between the state and local levels of the court system to maintain optimum flexibility.

The Chief Justice of the Supreme Court and the Office of the State Court Administrator exercise considerable authority within the state system. The Chief Justice may assign any judge of any court to serve on any other court outside his judicial district. Judicial districts are multi-county areas. Blue Earth County (our research site) is one of five counties within the 5th Judicial District. The state court administrator develops uniform personnel standards to assist local courts in the recruitment, evaluation and education of all non-judicial personnel (Minnesota State Court Report 1976-77). At the same time, the system is still open to local influences and initiatives since much of the courts' funding comes from local sources. In Minnesota only the salaries of judges are funded by the state. Operating costs are paid by the county. Within each district budgetary requests are centralized through the district administrator and/or clerk of court who formulates the court budget for the judges' approval. This budget is then submitted to the local county board for funding.

Complementing the state leadership is a local administrative structure composed of chief and assistant chief judges, and county and district administrators. Under this unified court system, the chief judges and county and district administrators are responsible for both the district (felony) and county (misdemeanor) courts in their jurisdictional area. The chief judge and assistant chief judge are elected by their peers within the judicial district. The district administrator is appointed by the chief judge on the advice and consent of the other judges in the multi-county district and with the approval of the Supreme Court. The judges of the district may also appoint a

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clerk of court for both the district and county courts. Generally, one individual performs these duties, and oftentimes has the dual title of court administrator. The district court administrators coordinate administrative activities within the several counties of their regions. They also serve as liaison between the state office and the court administrators or clerks of court at the local level. Oftentimes, caseflow management responsibility falls to these individuals.

In essence, this organizational structure aims at promoting and encouraging interorganizational cooperation among the levels of courts and their administrative staff support. The chief judge and assistant chief judge can be either district or county judges; the court administrator for both courts is the same individual, usually the Clerk of Court. The district court exercises administrative oversight of the county court when necessary and the district administrator plays an important liaison function between the local and state levels.

2. Prosecutor and public defender system. The availability of prosecution services to misdemeanor courts in Minnesota is somewhat limited. In Minnesota, prosecutor services are allocated on a county-wide basis with city prosecutors existing in larger municipalities. Generally, the county prosecutor's office assigns one assistant to the county court. In the majority of counties, these assignments are of a part-time nature with the attorney free to carry on a private practice in the civil litigation area. In contrast, the city attorney, at least in the larger municipalities, is a full-time position.

Some individuals feel that the "greatest problem in the (Minnesota) criminal justice system" is the quality of prosecutorial services (Oliphant, 1978:541). Although there are many excellent prosecutors, many good ones leave the lower court system within one or two years despite comparatively high salaries. Apparently, these observers feel that the civil service system retains and locks in some inadequate and lazy individuals who eventually acquire seniority within that system. Thus, the younger prosecutors who generally practice in the misdemeanor court leave, either due to poor morale or the fact that there is little chance for advancement. Some of this may also be attributed to the fact that the prosecutor is an elected position and appointment of assistants and their commensurate tenure are dependent upon political success.

Public defender services are available in Minnesota at the district court level. However, no allocation is made to the county court. This situation exists despite the fact that in 1967 the Minnesota Supreme Court established a rule requiring that counsel be available in all misdemeanor cases which carry the possibility of incarceration (Oliphant, 1978:548). Many counties have satisfied this directive with an assigned counsel system. Some counties have only recently begun to develop public defender offices for their county courts.

B. Pre-implementation: The Blue Earth County Court (Mankato, Minnesota)

1. Surrounding community. The two primary environmental influences affecting the Blue Earth County Court are the university, Mankato State College, and the retail business section which provides the community with most of its economic stability. The population of Mankato equals approximately 30,000 and is surrounded by a fairly rural area. Within the municipality the college has an estimated enrollment of 7,000 fulltime students. The presence of the university is felt within the community in the number of retail shops that proliferate in Mankato despite its small population. The retail businessmen appear to be a dominant force in the local political structure (see discussion below).

2. Local judicial organization.

a. Jurisdiction, caseload and casemix. The Blue Earth County Court is the misdemeanor court for Mankato and its surrounding community. The district court, the court of general jurisdiction, is the only other court operating in the community. The county court has criminal jurisdiction of misdemeanors and gross misdemeanors. The maximum penalty that may be imposed in these cases is 3 months incarceration and/or a $300 fine. The annual volume of gross misdemeanors for the Blue Earth County Court is approximately 8,000. According to pre-implementation estimates by the clerk of court, nearly 75% of these cases are disposed of at first appearance. The annual volume of petty misdemeanors, which includes ordinance violations, is approximately 50,000 cases that carry a maximum penalty of a $100 fine.

The judge of the district court within Blue Earth County exercises very little oversight of the county court operations. Judges' meetings of the two courts are held separately, although occasionally joint agendas are called. A low level of daily

interaction exists between members of the two courts. Communication is maintained through the district administrative arrangement. The presiding judge of the district is a district court judge from another county, while the assistant presiding judge is a member of the Blue Earth County Court. Quarterly meetings are conducted for all judges by the district administrators. These meetings serve to disperse information about general court activities within the district and to discuss policy matters.

b. Judges. Three judges are elected to the Blue Earth County Court, one of whom is the assistant chief judge of this district. As assistant chief judge he devotes considerable time to his district-wide administrative responsibilities. However, his peers on the county court do not view him as the presiding judge of the Blue Earth County Court. In other words, his administrative supervision of the district operates indirectly on the other two county-court judges. Because of his additional administrative responsibilities, he handles a reduced docket. He does not hear criminal cases except under special circumstances (i.e., when the other two county judges have disqualified themselves, or for some reason the case is sensitive enough to warrant special treatment) and his civil caseload is not as heavy as those of the two other county judges. To compensate for his decreased caseload, the state court administrator assigns a visiting judge to the county court. The visiting judge sits in Blue Earth County on the average of one day per week.

Theoretically, case scheduling for the three judges is relatively straightforward. Scheduling of civil cases for the assistant chief judge is handled by the clerk of the court and the court coordinator calendars cases for the other two judges and the visiting judge. The court has adopted an individual calendaring philosophy in that it prefers to have the same judge hear the case from post-arraignment proceedings to disposition. Due to exigencies of the system, however, considerable overlap exists in their caseloads. Oftentimes, one case will be traded back and forth between the two judges a number of times before reaching disposition.

Every six months the two county court judges rotate as arraignment judge. The judge not on arraignment "duty" will handle a large proportion of the civil, probate and juvenile caseload with some of these cases also assigned to the assistant chief judge. Neither judge views the arraignment assignment as particularly desirable. One of the primary reasons seems to be the logistical inconveniences that attach to such an assignment.

The arraignment courtroom is not in the same building as the other county court offices. Instead, it is located in the police department building downtown. Hence, every morning the arraignment judge, a deputy clerk from the clerk's office and a probation counselor must transport all relevant documents (e.g., case files, citations) to the downtown courtroom to hear cases. Arraignments take approximately two hours every day. Personnel estimate that 75% of the cases heard at arraignment are disposed of at this point by guilty plea. Pleas are accepted with a sentencing date set for one week following. The week permits the probation department to develop a case history on the defendant and submit it to the judge for consideration. Cases that are not disposed of at this point are evenly distributed to the two judges for subsequent court appearances.

Attorneys rarely are involved in arraignment court. City and county prosecutors follow a policy of handling misdemeanor cases after arraignment. Very few defendants appear with a private attorney at arraignment. Generally, individuals with more serious offenses hope to qualify for assigned counsel. If their financial statement, which the judge requires them to fill out at arraignment, does not warrant such an assignment the case will be continued for one week to allow the defendant time to secure counsel. Most cases in which assigned counsel is requested do qualify with the judge making the assignment on the spot. These cases do not automatically receive a next-action-date from the bench. Rather, the party is told to contact his attorney about his upcoming court date.

c. Clerk of court. Although a deputy clerk accompanies each judge to each arraignment session and to other court sessions, the judges perceive the members of the clerk's office as "working for" the clerk of court. The judges tend not to involve themselves in the operations of the office unless absolutely necessary. Similarly the clerk prefers to "bother" the judges as little as possible. Meetings between the judges and clerk are called on an ad hoc basis. Generally, the clerk is the impetus for these discussions with the judges providing policy guidance when requested.

In Blue Earth County, the clerk of court also holds the position of court administrator for the county. Accordingly, the clerk of court's office has administrative responsibility for both district and county court matters within Blue Earth County. The office has approximately twenty staff persons, with about half working in the criminal division and half working in the civil division. Each section has a

supervisor that reports directly to the clerk. The courts coordinator is not considered a member of either division and reports directly to the clerk. The coordinator is responsible for all case scheduling except that of the assistant chief judge's civil caseload. This individual has the discretion to grant or deny continuance requests. The only formal limitation of this authority is the judges' requirement that all continuance requests be made at least two days before the scheduled court date.

After the initial court appearance, the deputy arraignment clerk routes all "non-disposed" case files to the court coordinator. Without staff assistance, the court coordinator finds it difficult to remain current on subsequent case settings. According to her, most cases that proceed beyond first appearance are DWI offenses in which a jury trial is requested by the attorney. On the average, four to five jury trials are set per day per judge with the coordinator "living in fear that all will 'go' someday." In her efforts to coordinate the schedules of judges, attorneys, police officers and state chemists (expert witnesses), it often is necessary to set these dates at least seven or eight weeks in the future. The court coordinator does not handle cases in which the defendant fails to appear. Often as many as one-third of the cases set for arraignment on any given day "fail-to-appear" (FTA). Generally, these defendants have originally been cited for ordinance violations. However, after arraignment the prosecutor charges such individuals with the additional "FTA offense" which is a gross misdemeanor. These cases are placed in a "hold" file, awaiting follow-up by the city or county prosecutor.

The coordinator has very little direct contact with the judges. For most purposes, the weekly schedule of each judge is predetermined in that one day is used for evidentiary hearings, one day for court trials and three days for jury trial. Since she has the authority to grant or deny continuance requests, the judges leave her free to "simply" fill in the cases for each day. She prefers to seek guidance from a judge regarding his individual calendar only as a last resort.

d. Attorneys and police. Within the city and county attorneys' offices, one assistant from each is assigned to the misdemeanor court. Prosecutors from other municipalities within the county appear in court infrequently. Police no longer prosecute misdemeanor cases as they did five to ten years ago. The bulk of the court's criminal caseload comes from the Mankato city police and county sheriff or highway patrol. Hence, the assistant city attorney and assistant county attorney have the

greatest interaction with court personnel. The assistant city attorney is a fulltime position, reflecting his heavier caseload, while the assistant county attorney for the misdemeanor court is half time. Both assistants work with relatively little interference from their superiors. Each is free to organize his schedule as he sees fit and neither are under any severe policy constraints. In fact, according to the clerk, the assistant prosecutors generally have the discretion to determine their own policies regarding the prosecution of different types of cases. For example, in DWI cases, the assistant city attorney has set his own guidelines as to which cases will not be plea-bargained. The clerk believes his guidelines are unduly strict in that too few cases are negotiated, but has been unable to persuade the prosecutor to alter his criteria.

As noted previously, these attorneys only become involved in misdemeanor prosecutions after the first appearance. To determine whether a case is open after the arraignment, the assistant county attorney or his secretary would periodically check the clerk's records for the cases in which he had issued a complaint. Since no routine notice was issued by the court to him regarding dispositions, continued cases and FTAs, this system was dependent on how frequently his office checked the files. Open cases languished until their status was reviewed by his office. According to the assistant county prosecutor this follow-up was not conducted very often since he believed it to be "too cumbersome."

The assistant city attorney encountered less trouble in monitoring his misdemeanor caseload. The primary reason for this is the presence of the Mankato police liaison officer who attends all arraignments. This officer assists the deputy court clerk in calling the calendar and acts as bailiff in the courtroom. Despite additional responsibilities, his primary purpose in attending arraignments is to communicate the outcome of cases to both the arresting officer and the prosecutor. Since this function encompasses only those cases filed by the city police department the city attorney encountered problems similar to those of the county attorney for cases filed by the highway patrol and sheriff.

C. Reactions of Mankato Participants to the Management Innovation

1. Management system design and implementation plan. Entree to the court was gained through the regional court administrator's office. The administrator believed that the model case control and recordkeeping system proposed by the project

team was suitable for implementation in one of the county courts within her jurisdiction (see Misdemeanor Courts: Designs for Change, Chapter IV for a detailed explanation of the Case Management and Information System). On the basis of her recommendations, the clerk of the court of Blue Earth County requested ICM project staff to collaborate with him in the design of a system applicable to the needs of his court. His emphasis was not on problem-solving per se at the outset. Rather, he believed his present operations could be enhanced through better case management.

The management information system adopted by the court was premised on the goal of positive court control of the caseflow. The clerk agreed that a necessary prerequisite to such control was the successful installation of a fully operational recordkeeping system which supplied management information on which case management policies could be developed. Accordingly, as the first step to implementation, project staff met with key personnel in the clerk's office to design the system suitable to their operations. The development of a chronologically-filed case control card formed the crux of the system. The index card identified the case (defendant name, case number, defendant age, type of charge) and included information on all next-action-dates for each case, type of disposition, sentence imposed and age of the case at disposition. Finally, the card was designed so that it could be retrieved from the pending file according to the age of the case on the date in question. This latter function permitted the clerk's office to monitor the case as it proceeded through the system.

Given the centralization of criminal records within the clerk's office, ICM project staff and staff of the clerk's office deemed it appropriate to centralize the maintenance of the card system. Rather than have each judge or his staff maintain a separate file, the cards became the primary responsibility of one deputy clerk within the office. She created, maintained and closed out each card. She was accountable for maintaining the chronological file of the cards and, to the extent possible, ensuring that staff promptly returned cards to the file.

Another deputy clerk became responsible for the tabulation of the monthly performance statistics from these cards. Summary information, such as average number of continuances per case, frequency of types of dispositions, and number of days from filing to disposition, were collected from cases closed each month. Pending cases also were tabulated each month to determine their age. This clerk and the

criminal supervisor analyzed this information in a cover memorandum attached to the monthly report and highlighted any exceptional characteristics to the information that might interest the judges.

In the implementation of the card system and the subsequent development of case management policies, the project consultant emphasized a collaborative approach with the court staff. Prior to designing the card, meetings were conducted with the judges to solicit their suggestions for information they would find useful. Time standards for case disposition were also formulated at these meetings. The project consultant assisted the implementors in the installation of the card system into their recordkeeping process. She also provided early feedback to the system participants on their individual performances as well as the overall progress of the new system. Open discussions were held to answer questions from the clerk's staff, explore the first months' experience under the new system and provide guidance. Following the suggestions of the deputy clerks, several modifications were made to the system to increase its utility to the court.

Early feedback also was provided to the judges. A joint meeting between the project consultant, the clerical staff, the clerk of court, the regional administrator and all the judges was convened to discuss the first month's statistics. Again, emphasizing a collaborative approach, the consultant encouraged the deputy clerks, who had been working with the system, to present their analysis of the information and their recommendations for new policies. After thoroughly discussing the suggestions of the clerk's staff, the judges requested the clerk to draft policy statements for their signature. The feedback and joint discussions of the case management information continued to be encouraged by the consultant. Additional group meetings were held to modify the policies with the judges requesting on-going recommendations from the staff concerning administrative policy aimed at the issues raised by the monthly statistical information. (The substance of these policies are discussed in detail, infra.)

2. Initial judicial reactions to the management innovation. Early interviews were conducted with the judges to assess their interest in the new management system. At these discussions, it became evident the judges were frustrated with various aspects of their work. However, they clearly did not perceive a responsibility to manage the caseload. This outlook reflects not so much a perceived lack of responsibility as it reflects an uncertainty on the part of the judges as to what they

could or should accomplish. One judge was "curious" about changes in the number of jury trials and requested information about their frequency over a ten month period. Another judge remarked "I just wonder why I'm spending my weekends here. I'd like to know who does what around here." When the interviewer requested further clarification, he indicated he would like information on the distribution of cases per judge. Other than that he remarked that "it's hard to articulate what I want."

Most dissatisfaction was associated with the number of defendants who fail to appear on the day of trial. The judges also believed the average number of appearances per case was high. Nevertheless, they did not feel it was within their control to reduce the frequency since so many of the continuances were due to attorneys appearing in other courts. In any event, one judge noted that "the defendant has the right to a speedy trial but he's the last one who wants it." The implicit point he seemed to make was that little reason existed to expedite disposition if the defendant did not care. The consensus of the judges was that most -- "nearly all" -- cases reach disposition within sixty days. In estimating case processing times, one judge "guessed" thirty days elapsed between first appearance of the defendant and his evidentiary hearing; another thirty days elapsed between the hearing and trial date; and an optional ten days elapsed from the trial date to the sentencing date if a presentence investigation report was prepared.

As a group the judges professed mild curiosity in the installation of a new management system in the clerk's office. Their institutional perspective seemed premised on a fairly rigid demarcation of responsibilities between the court and the clerk's office. The general tone of the judges' remarks suggested they perceived the operations of the clerk's office as separate and distinct from their judicial functions. Furthermore, they perceived little reason (or need) to interfere with the office's internal operations. Consequently, the judges also believed it unnecessary, at this juncture, to become involved with the implementation of the management system.

3. Reactions within the clerk's office. From the outset, the clerk was enthusiastic about the management information system. The probable reasons for such enthusiasm are manifold, and not all of them relate to the desirability of the system itself. For example, this clerk is noted for his innovative behavior. More than one of the deputy clerks commented on the number of changes he had instituted during the previous year -- from changes in the subpoena form to spatial relocations of different

staff members. Since his management style encouraged change and seemed to be premised on maintaining flexibility with internal operations, his staff showed less intrinsic resistance to the innovations associated with the management information system. Second, the clerk and regional administrator maintain a close professional association regarding the management needs of his county. The regional administrator's initial enthusiasm no doubt had some influence on the clerk's receptivity to the management system. Third, the clerk clearly wanted to improve the operations of the court. However, he was unsure as to the most desirable approach to follow. He saw the manual information system as the first step toward knowing what management remedies would be suitable for his court. For example, when asked his objectives in implementing the information system he remarked: "We don't really know that much about what (it) can do for us. We're filling them (i.e., the case control cards) out but we want someone to come back and tell us what to do with them." Finally, the clerk saw his adoption of the "model" management system as a way to enhance his prestige within the state judicial system. Although he noted that the "management information is not really that relevant with our county funding," he believed the state court administrator would eventually want this sort of information. As further evidence of his perspective, the clerk, in conjunction with the regional administrator and the clerk's office criminal supervisor, presented the "Blue Earth County Case Management and Information System" to the Minnesota Association for Court Administration at its 1979 summer conference.

The criminal supervisor and deputy clerks working with the cards developed the clearest understanding of specific objectives they wanted the system to satisfy. The supervisor seemed to have the best working knowledge of the system and the utility of the management information it generated. Also, he evidenced the most concern with particular cases encountering delay. For example, prior to the monthly performance reports, he and the deputy clerk responsible for the card maintenance were aware that FTAs constituted a "big problem" and hoped this new system would help alleviate some of the associated administrative burden. Before any information was generated on the systemwide nature of this phenomenon, the deputy clerk would segregate these cases from her active pending file and wait until the prosecutors "decide what to do with these people." The supervisor attempted to have the judges follow-up on these cases by drafting a form letter for their signature. The letter demanded the individual to appear in court on a particular date with a warning that if he failed to do so a warrant would be issued for his arrest. The judges refused to send the letter out. One

judge stated: "We're not mad at these people. Our role is to remain neutral. It's not our responsibility to harass these people to show up."

The court coordinator hoped the information provided by the management-information system would help highlight to the judges specific problems she encountered in scheduling cases that she believed required their intervention. She also hoped the new system would impose greater uniformity in the scheduling procedures followed by the court. For example, although the judges have given her formal authority to refuse continuance requests, she believes it untenable for her to do so. Her frustration is evident: "What can I do? Tell them they can't go on vacation? Or they can't appear in district court?" Furthermore, despite the fact that attorneys are instructed to make all continuance requests to her, this procedure is not always followed. Many requests are made directly to the judge and oftentimes requests are made over the phone to other deputy clerks. During one observation period, a fourth request for a resetting on an initial appearance was accepted by a deputy without consulting the coordinator. Additionally, judges will occasionally set new dates from the bench without informing the coordinator. Hence, the new date is noted on the case but not on her master calendar sheets. Clearly, her scheduling problems are exacerbated by such actions.

4. Reactions of prosecuting attorneys. Neither the county nor city attorney were involved in the early stages of the implementation of the management system. Both, however, subsequently referenced specific case-processing problems which they believed to be significant. The assistant county attorney at the time of implementation had discontinued follow-up of FTAs. The only procedure available to him required manually checking the clerk's files and he simply "did not have the time" for such a "cumbersome" method of follow-up. Consequently, since he did not receive any notification from the court those cases languished indefinitely.

As noted previously, the city attorney encountered fewer problems with FTAs due to the presence of the police officer in arraignment court. Generally, the assistant city attorney felt that "selecting court dates after arraignment was routine primarily because I'm fulltime. They make sure I don't have any conflicts across the three judges." Also, the police officer liaison at arraignment facilitated future court settings among the arresting officers. The assistant city attorney did note that "anything that could cut down on trials would be great" and voiced some dissatis-

faction with the setting of DWI first appearances. He felt the coordinator set such cases too early to permit receipt in his office of the necessary back-up material, such as chemist's report. In such instances, an automatic continuance is granted until his file is complete. He "wished" the clerk's office would set dates for these cases further in the future and "save me a lot of time."

As this discussion attests, none of the participants believed case delay was a serious "problem" in their court. In fact, the disparate opinions of judges, administrative staff and attorneys appear to reflect the contrary. The judges indicated sixty days was a reasonable time frame and believed most of their caseload adhered to such a guideline. Administrative staff, while not saying delay was not a problem, referenced more pressing needs for implementing the information system. Although they were concerned about FTAs it did not seem that such concern was due to case delay but rather -- more basically -- what to do with these cases. Finally, neither of the prosecuting attorneys believed case delay warranted too much concern and one prosecutor preferred slowing down the procedure.

D. Qualitative Changes in Caseflow Management in Mankato

The management information system was implemented in Mankato in October, 1978. For approximately seven months after its introduction the project consultant conducted intensive implementation efforts aimed at encouraging the dissemination of information among participants. Policy development was approached as a courtwide undertaking, with staff from clerical, administrative and judicial levels participating in the formulation of new goals. During this initial implementation period, on-site staff visits were conducted once a month to maintain "visibility" of the project. These visits generally served as catalysts for regular monthly meetings among the court participants (see Misdemeanor Courts: Designs for Change, Chapter V for a complete description of the implementation plan). In the section below, we will describe changes in the perspectives of court personnel regarding their role in caseflow management. This discussion includes the modifications in the procedures that were effected during the course of implementation and the manner in which interactions among court participants were altered.

1. Judicial policies. At the outset of implementation, the judges professed difficulty in articulating case management policies except for the desire to dispose of

all misdemeanors within sixty days. Sixty days was deemed desirable in large part (it seemed) because they believed most cases already fell within that time frame. In other words, the objective was based on their perceptions of the present status of their caseload. At that point in time no data were available from which to evaluate conformity with such a goal. Additionally, no data existed to answer other questions posed by the judges. For example, two judges indicated dissatisfaction with the number of "no-shows" on the day of trial, and the average number of continuances per case. However, they lacked any statistical information from which to verify their perceptions of the court's current trends. Another judge wanted information on the rate of jury trials over a ten month period. And, in fact, the judges noted that the lack of information was one area of administration that could be improved. Furthermore, the arraignment judge, when asked about the number of FTAs at the first appearance, indicated that such a problem was irrelevant to his court. In effect, he was unaware of the number of no-shows because of the clerk's manner of calling the calendar. She culled the FTAs from the daily calendar list so that the judge never heard a name called of someone who was not already in the courtroom. Therefore, an administrative problem that plagued the clerk's office existed unbeknownst to the bench. In this sense, the clerk's routine was so well established that it insulated the judge from administrative problems. The effect was that the problem remained and was exacerbated as time went on without sufficient judicial attention focused upon it. Thus, lack of feedback existed in both directions. Administrative staff were unaware of the information needs of the judges. At the same time the judges also were unclear as to the information they desired since such information had never been available. Meanwhile, the judges were not cognizant of the needs and problems of the administrative staff, the difficulty with FTAs being the most obvious example.

In mid-November a joint meeting of staff and judges was held to discuss the first month's statistics. Data from the case control cards showed that 40% of the pending caseload was over the sixty-day time frame set by judges. At the meeting, both the clerk and judges professed a belief that these cases were DWI offenses, and their age was attributable to jury trial requests. However, the more detailed analysis supplied by the project consultant contradicted this assertion. The DWI offenses comprised only a small portion of the jury trial requests. Nevertheless, the statistics did indicate that the court held trials on a relatively high proportion of its caseload. Fully 20% of its case dispositions for the one month time period were reached by trial and the assistant chief judge believed the rate was continuing to increase. His hypothesis was

that the increase reflected a district-wide upswing in pro se trials held by county courts.

In response to this meeting, the judges began to acknowledge the value of greater court control of the caseload. This was due in part because the statistics showed a picture they did not expect. But also the staff suggestions regarding caseflow management policies encouraged judges to consider alternative procedures. Such policies addressed the immediate problems encountered by the staff in using the new management system. Essentially, the deputy clerks recommended the court adopt new procedures: 1) for the FTAs at first appearance; 2) for continued cases in which the attorney has notified the court verbally of his intent to change a plea; and 3) for the follow-up conducted by the court on cases in which conditions of sentence must be completed. In each of these circumstances, such cases tended to languish in the system without court cognizance. The magnitude of the problem was unknown until the management information system provided the relevant data.

The new case control policies were approved by the judges in December, 1978, to take effect on January 2, 1979. The policies, prompted by the card maintenance needs of the management information system, affected judges, attorneys and administration. With misdemeanor FTAs, the deputy clerk was instructed to notify the judge of such cases. He would authorize a future date for each case and the prosecutor would be contacted to locate the defendant. Similarly, judges would set a final date upon which conditions imposed in a sentence must be completed. The clerk noted that without these dates "we lost those cases where the conditions were never completed." The clerk's office would monitor the cases to determine when the conditions have been satisfied. Finally, attorneys are required to file written notification to the coordinator regarding any intent to change a plea. Formerly, verbal notification was sufficient with the result that many cases got "off" calendar with no future date set. Without written notification the case would remain on the calendar as originally set.

Each of these changes reflect relatively simple alterations in case processing characteristics of the Blue Earth County Court. Nonetheless, they represent an important dynamic of the change process in this court. First, this incremental change process was structured on the basis of management information regarding this court's particular needs. Comprehensive procedural changes were not advocated by the on-site consultant nor was the court instructed as to its management problems. Rather,

the consultant advised the court to use the new management information to discern its own problems. Second, the consultant emphasized utilizing the expertise of the court's own support staff. Consequently, the deputy clerks' management recommendations were heavily relied upon when developing new procedures. In this manner, the judges were able to benefit from the staff's insight while at the same time developing their own sense of the court's management needs. Finally, these changes encourage and facilitate the growing interaction and sharing of information among court participants.

At the December meeting the judges also requested the compilation of case management information on a monthly basis. Since that meeting the criminal supervisor, with the assistance of a deputy clerk, has compiled and analyzed these data for the judges. His cover sheet to each month's report highlights the more salient features of the data, such as trends in disposition rates and average ages of the pending caseload. Futhermore, subsequent to the request of one judge, he has also begun to suggest remedies for a growing caseload. His first recommendation -- to establish pretrial conferences -- was offered in March, 1979. Pretrial conferences were suggested because the data indicated that at least 40% of the dispositions exceeded the 60 day limit, with the percentage increasing each month. Since the majority (80%) of these "old" cases were disposed without trial, and fully more than half were ultimately dismissed, it was hoped that the pretrial conference would enable the prosecutor to more accurately evaluate the strength of his case earlier in the case disposition process. Accordingly, the criminal supervisor recommended the adoption of a policy whereby pretrials would be set within 45 days of the first appearance, no plea bargaining would be entertained beyond the conference and the trial would automatically be set no more than two weeks after the conference.

The clerk has also played a significant role in the court's adoption of a pretrial conference. He believes that "judges just feel over-worked with trials, and they are really concerned that they're doing more than normal. But they don't have time to come up with what to change." Accordingly, the clerk began to inquire into settlement procedures used by other county courts. He found that in counties utilizing pretrial conferences the clerks claimed they "dispose of 90% of their cases at pretrial." After canvassing a number of different counties, the clerk recommended to the judges a pretrial conference that required the appearance of all parties necessary to a settlement. Additionally, he suggested that the court coordinator attend the conference with the judge. In the event that a case is not settled at pretrial, she will automatically set a trial date that is suitable to the attorneys' calendars.

The judges adopted such a policy in June, 1979 authorizing the court coordinator to set pretrial dates for cases filed beginning with September, 1979. (Attorney reaction to these conferences are discussed below). Interactions such as these between the judges and the clerks office have continued with the supervisor offering suggestions with each monthly report. Most recently, he has suggested changes in the criteria used by the court for setting dates. For example, he believes the court should no longer be required to set cases in accordance with the officer's schedule, commenting that if they continue to do so the judges will have to reconsider their 60 day time limit. Clearly, the clerk's office does not expect all of its recommendations to be acted upon. Rather, the clerk sees his role as one of, "giving the judges something to chew on." Although it is too early to determine what action the court will take on these more recent recommendations, it is significant that increased communication and interaction between the court and clerk's office has continued.

2. Administrative procedures. Aside from the obvious changes in the clerk's office to accomodate the new recordkeeping system, (e.g., chronological index system) other aspects of office operations have been altered. The clerk's awareness of caseflow management concerns has been heightened as the information system has generated new data. In February, 1979 he was unclear as to what information from the system was significant. This was reflected in his request to the consultant concerning the monthly report cover sheets: "list samples of items I could mention -- what kinds of things should I emphasize?" Six months later he noted that the management information system has been able to "provide us with the facts that let us talk about concepts like the pretrial conferences and the county public defender system."

The clerk's second recommendation for structural change -- the creation of a county public defender system -- ultimately will affect significantly the scheduling operations of the clerk's office. Again, the clerk indicated the case disposition information was a factor in making the decision to recommend such a system. Not only were the number of court appointments escalating -- 146 in 1978 compared with only 75 in 1977 -- but the clerk also believed "a lot of cases are going to trial because attorneys get more money on court appointed cases -- there's no incentive to settle anything at all." (Court appointed attorneys are reimbursed on an hourly basis.) When the clerk supplemented financial statistics from the auditor's office with the data on the court's rate of trials, he persuaded the judges that the average cost per

misdemeanor case increased between 1976 and 1979 because assigned counsel were spending more hours per case.

The clerk hopes that a derivative benefit of these structural changes will be fewer scheduling conflicts in misdemeanor cases. First, reflecting his belief that most cases will settle at the pretrial conference, he hopes that the modal case will require only one setting (pretrial conference), rather than two (evidentiary hearing and trial). Second, the court coordinator will have fewer defense attorneys to accommodate. Rather than juggling schedules of seven or eight assigned counsel, she will be working closely with two, possibly three, public defenders. The clerk hopes these changes will facilitate scheduling by encouraging settlement and "shaking out a lot of these cases" since the prosecutors will have fewer attorneys to negotiate with. Hence, to the extent that such negotiations become more routinized between the institutional actors, early settlement probably will be encouraged.

Regardless of the ultimate effect of these formal structural changes, the court coordinator has perceived an improvement in scheduling practices simply with the introduction of the new management system. Changing the recordkeeping system to a chronological file has put some constraints on the attorneys' behavior since it requires that each case have a future action date at all times. Oftentimes, when dealing with attorneys they will ask her to leave the date "open" until they get back to her. With the case control cards she now feels more comfortable telling them she must settle on a date because her recordkeeping system requires it. In effect, the monitoring system is blamed for her inability to conform to their requests with, according to her, the end result being less time spent haggling with the attorneys.

3. Attorneys' perceptions. The local bar has a significant influence on the misdemeanor court operations. This influence was aptly demonstrated when the court decided to pursue the creation of a public defender program. The court made an early determination that funding from the county board would ultimately turn on the degree of local support for this new type of public agency. In turn this local support was predicated on a favorable reaction from the local attorneys most affected. The presumption was that such support was problematic at best since many attorneys supplemented their income through the assigned counsel system. And other attorneys, while they did not carry a significant portion of the caseload, believed it was important to retain the assigned counsel system to enable them to maintain their general practice status.

In an effort to curb any potential negative reaction from the bar, the clerk mounted a sophisticated public relations campaign. First, he convinced a local journalist to write about the district court public defender system, emphasizing its benefits and savings. A second article was then published on the county public defender system being formulated by the court. The latter article compared the actual cost of the assigned counsel system with the projected cost of a part time public defender system, noting the increasing rate of trials conducted in Blue Earth County. The article appeared in the paper two days before the county bar association voted on the matter. The media attention and public awareness of excessive costs of the assigned counsel system assured success -- 20 of the 32 members of the bar association voted in favor of the new system of representation.

Subsequent to this vote, members of the bar working with the court formed a committee to propose recommendations on the design of the system. The committee presented its report to the county board for consideration in its decision for the funding of such an undertaking. The board elected to fund the public defender program for a one year period as the report suggested. The system started in September, 1979 with three part time attorneys hired for the positions. Notably, the committee chairman serves as public defender with two other attorneys assisting him. It is the court's hope that by separating, "the legal end from the financial end, these attorneys will just give clients the best legal advice they can -- these legal decisions will be independent from the money they receive."

Generally, the prosecuting attorneys are favorably disposed toward the county public defender system. The assistant county attorney based his optimism on the fact that it will allow direct contact between the arresting officer and the defense lawyer. He believes this direct contact will allow a greater number of cases to settle by discouraging the "frivolous" practice of taking weak cases to trial. "Right now the only way the defense lawyer can get information is through the prosecutor. And lots of times, after the defense attorney reviews the file, that's the end of the case."

The reaction of the prosecutors to the pretrial conference is not as favorable. At best, the county attorney was skeptical about the desirability of a pretrial conference. Prior to its adoption, he expressed his opinion to the court and local bar that rather than decrease delay he believes it will only provide the defense attorney with one more dilatory option. When the policy was first being considered he attempted to dissuade the court from its adoption:

> I talked to them about it. When they start talking about pretrial hearings, I get concerned because it usually means more delay for the defense attorney who'll probably plead guilty in the end anyway. I'm not sure this will help any. It just means that much more of my time per case. It used to be that the prosecutor's appearance wasn't required on smaller misdemeanor cases but the judges didn't like that.

Despite his lack of enthusiasm, the court adopted the policy because, according to him, it was a "pet project of one of the judges."

The assistant city attorney voiced some pessimism about the new pretrial procedure but clearly supported the goals of instituting the conference. He feels that "anything that could cut down on trials would be great" and believes the conference will be useful if it permits him to know more about the strength of his case. Although the clerk believes him to be overly stringent with plea bargaining criteria, the assistant city attorney did remark that if he learns the defense has a "good" case he would not hesitate in reducing the charge or dismissing it outright. By way of example, he commented that a jury trial he recently prosecuted would never have gotten to trial if a conference had been required: "if John (the defense attorney on the shoplifting charge) and I had sat down, I probably would have reduced that case. I just didn't have the time to get with him." He hopes the court will "put some teeth into the conference" by ensuring the attorney's appearance and encouraging plea negotiations at the hearing.

Overall, the assistant city attorney has felt the impact of the court's management information system more than the county prosecutor. As a fulltime city prosecutor he handles the majority of the court's misdemeanor caseload which requires daily contact with the clerk's office. He is aware of changes as they are implemented and often has some influence in the form they take. For example, he worked with the deputy clerk in establishing next-action dates for the misdemeanor FTAs and suggested to the court coordinator that if she wanted to reduce continuances to notify his office of all cases requiring chemists' reports. To facilitate court settings his office then would check the chemist's schedule before selecting dates for those cases.

Both attorneys remarked upon the increasing pressure exerted by the court to dispose of cases. In reference to the statistical information generated by the court's management system the city prosecutor noted that "the information we've been hearing is that we try too many cases here" and he admitted that his office "does very

little plea bargaining." He feels the pressure most directly from the clerk's increased frequency of court settings. Specifically, he believes "one reason we're having more trials this year is that cases are being scheduled more rapidly. It used to be that cases were set two or three months in advance, now it's closer to ten days or two weeks." The county prosecutor voiced similar sentiments regarding the clerk's scheduling system: "they're trying to evolve into a pressure system. They want to pressure the attorney to dispose of these cases. I think sixty days is too short...I don't see any problem with setting speeding cases in two days, but with the DWIs I'd just as soon they were set a few weeks or at least a month later."

4. Conclusion. Introduction of the management-information system clearly affected the roles and relationships of participants in the local judicial environment. The system also produced an impact on the court's case processing procedures. Some of the changes wrought by the implementation of the management innovation were anticipated by the staff; other consequences of the system's introduction were not so easily foreseeable.

Perhaps the most striking result of the system's introduction was to upset the court's expectations regarding the amount of case delay within its system. The initial estimates of court personnel indicated that delay was not thought to be a significant problem. The judges believed most cases were disposed within sixty days and none of the staff perceived delay to be critical concern. Nonetheless, the management information system produced data that indicated nearly half (40%) of the court's caseload (that proceeded beyond first appearance) could benefit from a more expeditious process if these cases were to be disposed of within the court's sixty day time frame. Furthermore, the information on FTAs alerted the judges to the fact that many cases were getting buried within the court's institutional framework. These cases, if they were to be disposed of, would need additional attention from the bench.

In response to this information, the judges became more actively involved in the management of the caseload. Policies were implemented that required next-action-dates for all cases; follow-up procedures were designed for the FTA cases; and long range plans for pretrial procedures and a public defender system were initiated. Each of these changes reflected a shift in the court's perspective as to its appropriate role in case management. As stated earlier, at the outset of implementation the judges were skeptical of the need for (or appropriateness of) greater court control of the

caseload. The bench also was somewhat reluctant to follow-up on its FTAs until it realized the magnitude of this bottleneck. Once the court was aware of these characteristics of its case disposition process the desirability of greater judicial oversight gained credibility. The court authorized procedures for more follow-up of FTAs and disallowed "open" settings on its calendars.

From this result, it appears that the balance of decision-making discretion may have shifted in favor of the court and at the expense of the prosecutors and defense attorneys. Such a conclusion is plausible when one reflects upon the comments of the two local prosecutors. Both were beginning to feel the increased pressure exerted by the court to dispose of cases more quickly. Furthermore, the long-term continuation of this shift in discretion seems inevitable with the institutionalization of pretrial conferences and a public defender system. Also, one might reasonably expect that the fairly rigid plea bargaining standards of the city prosecutor (as perceived by some of the court participants) will undergo modification with the advent of both reforms. Regular dealings with only three public defenders, as opposed to the fifteen or so assigned counsel and various private attorneys, may encourage greater bargaining on the part of the prosecutor or routinize the negotiation process so as to facilitate early settlement. Similarly, the mandatory pretrial conferences -- attended by judges, attorneys and parties -- may alter the negotiation process, depending upon the role exercised by each of the judges. Of course it is possible that these institutional changes -- such as the pretrial conference and the public defender system -- could have resulted in the absence of the management information innovation. However, it seems fair to conclude that the system's introduction and the information it generated did encourage the court to focus upon its caseflow management procedures. In turn, the court implemented policies aimed at rectifying management problems it discovered in its caseflow process. These policies are apt to produce long range impact on the caseflow process. Undoubtedly, few would have predicted such far-reaching consequences from the implementation of an administrative tool such as a management information system.

Although the changes in relationships among the participants could not have been anticipated prior to implementation, it was clearly understood that the management information system would directly alter case processing procedures of the court. Some of these changes were inevitable in that they were required by the system's design. Most notable of these is the requirement that each case have an assigned

next-action-date. Necessarily, then, the system "forced" the court to decide its policy regarding FTAs. If the management information system was to retain its integrity, it was no longer possible to file these cases away, trusting follow-up to the prosecutor. Thus, in a very technical sense, the problems encountered by the clerk's staff in using the new system required the court to make particular caseflow management decisions.

Similarly, this next-action-date requirement buttressed the leverage the court coordinator could exert when negotiating future court dates with the local attorneys. Since the management information system was implemented under the auspices of the court , she felt justified in her refusal to leave cases "open." Plus, it was easier for her to insist with each attorney that they settle upon a date because it was now possible for her to blame the system for her scheduling needs rather than to blame any particular individual (be it the judge or the opposing counsel in the case). In this manner, changing the court's management system resulted in a change in -- and to some extent, a constraint on -- attorney behavior.

Scheduling procedures were also affected in that cases were being reset more promptly. Cases were not permitted to go "off-calendar" and languish in the file. These changes have resulted in fewer cases "slipping between the cracks," a problem which may be endemic to misdemeanor courts (Feeley, 1979). The importance of this change in allowing fewer cases "to slip" should not be overlooked since, in concrete terms, this means that the court is extending its direct control -- by exercising more of its authority -- over a greater proportion of its local citizenry. Again, it may be doubtful that such a consequence of the management information system was foreseen by the system participants.

Finally, the management information system generally has increased communication and interaction between the judges and clerk's office. The monthly performance reports are the most obvious example of this. Also, a number of changes in the courts procedural and structural operations are partially attributable to the introduction of the clerk's management information system. Case data generated by the system on the rate of trials prompted judicial and administrative staff to consider new case control policies. These policies led to the requirement of next-action-dates for all cases. The latter requirement enabled the clerk's office to monitor cases and, to some extent, has increased communication between that office and the attorneys. This sharing of information has been sustained through use of the monthly memoranda

from the clerk's office and, thus, interaction among participants is likely to continue. All of these modifications apparently affected the system participants in that they now feel greater pressure to process cases more expeditiously. In effect, the court's desire to dispose of all cases within its sixty day time period led it to assign a higher priority to settling more cases earlier in the process. In the following section, we will evaluate whether these shifts in court policy and procedures actually affected case processing outcomes and if they produced effects in the manner anticipated by the court.

E. Quantitative Data Analysis

This section presents case data to address the question of whether the new priority assigned by the court to more timely case disposition precipitated an actual reduction in overall case delay. Also, since judges and attorneys came to believe over time that they tried too many cases, case data are presented on whether the court's dispositional modes changed during implementation. We might reasonably suspect that in the effort to reduce case delay, courtroom participants attempted to reduce the number of trials. This section presents case data as to whether such a result was accomplished, with or without a corresponding change in the rate of guilty pleas or dismissals. Data is also presented on changes in case age at disposition.

1. General characteristics. As noted previously, the annual gross misdemeanor caseload of Blue Earth County Court approximates 8,000 filings. Pre-implementation estimates, however, indicated that only 20-25% of these cases (plus some petty misdemeanors) proceed beyond the arraignment. Unless otherwise noted, the description of case data presented in this section is based on all disposed cases over a twelve month period which did proceed beyond arraignment. The twelve month period surrounds the introduction of the management system.

Of all misdemeanors disposed in Blue Earth County between April 1978 and March 1979, 1060 cases proceeded beyond the first appearance. As such, processing these criminal cases through the system consumed a large part of the court's time. Most cases were gross misdemeanors (79%), however, a significant portion (21%) were the "less serious" misdemeanors punishable only by a $100 fine. By and large, the bulk of the caseload (64%) represents filings from the Mankato police (N = 666). The remainder are split fairly equally among the sheriff (10%), highway police (15%) and

other municipalities (10%) within the region. The three largest single categories of offenses are driving while under the influence (DWI) of alcohol (N = 247), other traffic (N=177) and theft (N = 119).

Defendants in most of these cases are not represented by attorneys, choosing instead to defend themselves. Of the 1060 cases, only 383 were represented by counsel, more often by private attorneys than assigned counsel. Fully 64% (N = 677) of the cases were disposed without the benefit of defense counsel. On the prosecution side, the city attorney was responsible for the largest portion of the caseload. He disposed of 49% (N = 516) of the court's caseload. The halftime county prosecutor handled the next largest portion of the caseload, disposing of 121 cases or 11% of the total. The remainder were prosecuted by various city prosecutors of outlying municipalities.

2. Case age at disposition. Court personnel estimated that most of the caseload was disposed of within sixty days and, hence, delay was not a particular problem in their court. Our sample corroborated that a majority of the cases are disposed of in sixty days or less. However, our case data also indicated that a considerable number of cases remained in the system much longer. For example, our sample of disposed cases before implementation of the management system showed that only 56% of the cases reached disposition within sixty days. Furthermore, our sample indicated that more than 20% were at least 124 days old before they reached disposition. Thus, although it appears that many cases are disposed of quickly, nearly half of the cases did not fall within the estimated time period and 20% of the cases exceeded twice the estimated time period. Consequently, if the management system and policies were successful in their goal, this portion of the cases should decrease in age over the twelve month period.

Comparisons of cases disposed before and after the implementation of the management system indicate that cases generally were disposed of more quickly after its introduction. For example, the median age of all cases disposed pre-implementation (N = 601) was 50 days old. After implementation the median age dropped to 45 days (N = 459). The mean age of cases at disposition showed a similar decline, dropping from 78 days to 75 days. (It should be noted that the age of disposition measure will not drop as quickly as might be expected since the court is disposing of its very oldest cases during this period. These are cases that may have

been languishing in the system for quite some time.) As Table 1 shows, when controlling for the level of charge (gross vs. petty misdemeanor), the drop in mean or median age is consistent whether the case was a petty or gross misdemeanor. However, the less serious offenses -- the petty misdemeanors -- show an average age that is considerably greater than that of gross misdemeanors.

Table 1. Disposition Age (in days) by Level of Charge

	Gross Misdemeanors		Petty Misdemeanors	
	Before	After	Before	After
Mean Age	73	69	97	91
Median Age	38	30	78	63

The median age of petty misdemeanors both before and after implementation is more than twice that of gross misdemeanors. The mean age is nearly one third greater than that for the gross misdemeanor. The older case age for petty misdemeanors may be partially explained by the fact that at least fifty percent of this court's bench trials (both before and after implementation) were heard on traffic related charges. These charges tend to be less serious misdemeanors such as speeding, driving after revocation of one's drivers license or violation of the city's local parking ordinances. Since this court has such a high percentage of cases with pro se representation it is possible that many of these trials are held to give the defendant an opportunity to "tell his side of the story."

By case type, the DWI cases showed the clearest reduction in case age over the twelve month period. This reduction was most evident with the mean age at disposition which consistently showed a drop in the number of days for each succeeding quarter period. Table 2 shows that the median age also showed a striking decline. It is difficult to determine, however, the degree to which the reduction in case age is

attributable to the introduction of the innovation. It appears this downward trend began sometime before the innovation was implemented and continued throughout the research period.

Table 2. Age (in days) of DWIs at Disposition

Months	Mean Age	Median Age
1-3	109	65
4-6	85	28
7-9	85	28
10-12	74	31

The wide differential -- at both pre- and post-implementation points -- between the median and mean ages of gross and petty misdemeanors indicated that some proportion of the caseload was requiring an inordinate number of days to be completed. Such a differential also lends support to the hypothesis reflected in the literature on misdemeanor courts that while overall delay might not be serious, some percentage of cases require greater time than others to be completed. Consequently, we compared the ages of the oldest 10% of the cases before and after implementation. These cases showed a considerable drop in age over the sample period. Prior to implementation, the oldest 10% of gross misdemeanors required at least 193 days to reach disposition. After implementation the number of days dropped to 170. Similarly, the minimum number of days required for disposition for the oldest 10% of petty misdemeanors dropped even more sharply from 215 to 170 days. This drop in case age for these gross and petty misdemeanors is particularly noteworthy since these older cases are precisely those targeted for court attention. Data on the age of disposition for DWI cases demonstrate this decline most dramatically over the twelve month period. The minimum number days required to dispose of 80% of the DWI caseload dropped from a high of 221 days to the court's stated goal of 120 days to disposition.

As Table 3 shows, this decline was linear over time and evidenced a considerable drop from quarter to quarter. Furthermore, the reduction in case age was accomplished without an accompanying change in the mode of disposition for these cases. For each quarter period, at least 85% of the DWI caseload reached disposition by a plea of guilty.

Table 3. Age of Disposition by Percentage of Cases -- DWIs

Months	80% of the DWI caseload disposed within ...
1-3 (N=53)	221 days
4-6 (N=81)	175 days
7-9 (N=61)	128 days
10-12 (N=51)	120 days

No changes in the average number of appearances per case resulted from the implementation of the management system or subsequent policies adopted by the court. Table 4 shows almost identical percentages of pre- and post-cases had the same number of appearances.

Table 4. Number of Court Appearances Before and After Implementation

No. of Appearances per Case	Before (N = 494)	After (N = 389)
1	8%	7%
2	37%	37%
3	24%	27%
4	13%	12%
5+	18%	17%
	100%	100%

Also, when controlling for attorney representation, the average number of appearances remained constant. Both before and after implementation, defendants with counsel had an average of more than five appearances per case. Defendants without counsel had an average of 2½ appearances per case both before and after implementation. This is some evidence that the actual case process did not appreciably change over the course of implementation. Given these averages, it appears that the availability of the management information had little impact on reducing the number of appearances necessary to dispose of a case. Similarly, it appears from our data that in addition to there being little change in the number of appearances, the management-information system had little direct effect on the mode of disposition.

3. Mode of disposition. As noted earlier, the court may have attempted to reduce the number of trials in an effort to cut case disposition time. From our data it appears the court succeeded in reducing its trial rate 1.6%. However, the significance of this change can only be evaluated on a long range basis. For example, greater shifts in the court's pattern of case disposition may be witnessed once the pretrial

conferences and use of a public defender system are implemented. Unfortunately, our research period was of insufficient length to enable us to track the long range impact of those changes. In any event, for purposes of this analysis, as Table 5 shows the mode of disposition remains relatively constant during our twelve month sample period.

Table 5. Mode of Disposition

Disposition	Before (N = 592)	After (N = 454)
Guilty Plea	66.7%	69.5%
Bench Trial	11.3	10.1
Jury Trial	1.7	1.3
Dismissal	15.2	16.0
Other	5.1	3.1

While the trial rate decreased slightly after implementation, the rate of guilty pleas and dismissals showed some increase, although here too the change was not significant.

Although these numbers for the aggregate caseload showed little change, we hypothesized that perhaps the mode of disposition was affected for particular types of cases. This seemed especially plausible for DWI cases which showed a marked decline in their age at disposition. However, even when controlling for type of charge, the mode of disposition showed little change. Consistently for each quarter, at least 85% of the DWI caseload was disposed by a plea of guilty. Very few of the DWI cases ever reached trial. For the entire twelve month period, only ten of these cases (out of 247 filed) were tried, split equally between bench and jury trials. Most bench trials were held in minor traffic offense cases such as speeding, driving without a permit or

driving after revocation. However, as with the DWIs, the majority of these cases for each quarter, at least 60%, were disposed of by plea. When controlling for level of charge, the rate of dismissals also remained relatively stable for the different types of charges. Thus, at the conclusion of the sample period, although there was little change in the mode of disposition, many cases were getting disposed of more quickly because their plea of guilty was being entered much sooner than at the outset of implementation.

According to our data, it also made little difference in disposition mode both before and after implementation whether the defendant was represented by counsel -- the likelihood of a particular disposition mode was essentially the same for both types of representation. The most noticeable shift in disposition mode occurred in the rate of bench trials for cases involving a defense attorney. At the outset we hypothesized that the trial rate would decrease as the court attempted to reduce case delay. However, contrary to our hypothesis, the trial rate for private and assigned counsel increased after implementation from less than 1% to approximately 8%. The rate of pro se bench trials decreased less than 1%. Again, however, this change should be evaluated on the long range basis. In all likelihood, the manner in which defense counsel dispose of cases will change considerably with the advent of the court's new public defender system.

4. Conclusion. From this analysis of the quantitative data, it appears that some changes have occurred in case processing outcomes. The average age of cases at disposition has shown a noticeable decline. Many cases still remain in the system beyond the court's sixty day limit. Nonetheless, the age of the oldest percentage of cases has shown a marked decrease since introduction of the management system, obviously benefiting from the court's increased attention to these cases. This result is especially apparent with the DWI cases. The average number of appearances per case showed little variation over time, with cases represented by counsel requiring the most number of appearances. It appears that disposition mode -- for the caseload as a whole -- has remained relatively constant over the twelve month period. However, the data do suggest that the rate of trials increased for cases in which the defendant was represented by counsel.

F. Discussion

The introduction of the management information system precipitated a number of changes in the Blue Earth County Court. Some of the most salient features of this change process occurred in the manner in which different system participants interrelated with one another. The specific changes in their traditional roles and relationships could not have been anticipated since so much of these interactions depend upon the exigencies of the local socio-legal environment. Other changes --such as those which affected the court's scheduling practices -- were clearly anticipated, and in fact, were necessary in order to implement the management information system. In the aggregate, case outcomes were less affected by the system than were the participants' roles and the courts' case processing procedures. However, the considerable drop in the age of the oldest percentage of cases suggests that the system does assist the misdemeanor court in reducing its case delay. It allows the court to identify old cases, monitor case progress and expedite disposition if it sees fit. This result was particularly apparent with the court's DWI cases --cases in which the court itself evidently believed a problem to exist.

Changes in case outcomes necessarily lag behind alterations in the court's case processing philosophy and procedures. It takes time for these procedures to take hold and for their impact to be felt. The relatively short post-implementation period precluded us from analyzing this more extended cause-and-effect continuum. For example, at the conclusion of our research period the court had initiated the implementation of the pretrial conferences and the public defender system. Unfortunately, given the time constraints of the project, we were unable to collect and analyze case data on the effect of these two innovations. The interaction of these institutional changes with the court's professed desire to reduce the number of trials is a fruitful area for futher research. We might hypothesize that the number of trials ultimately will decrease (with a commensurate increase in the rate of guilty pleas or dismissals) as the court, prosecution and defense counsel become more familar with one another's case processing goals and objectives. However, the high percentage of pro se case representation may compel the court to try a greater number of cases than it views as optimal. As yet, it is still unclear how the pro se defendant affects -- if at all -- the court's case processing. With the advent of the public defender system pro se representation is apt to decrease. This may reduce the number of bench trials more so than the introduction of the pretrial conference. The public defender system and

the pretrial conference program might also change the average number of appearances per case. Again, as the procedures become routinized and as the more limited number of participants become familiar with each other, the high rate of appearances for defendants with counsel may decrease. Rather than the average of five appearances per case with defense counsel it is possible that the rate will be reduced so as to come closer to the 2.5 shown for pro se representation.

Finally, the eventual impact of the court's pretrial conference program warrants closer examination. Part of the court's rationale in introducing such a program is to reduce the number of trials and amount of case delay. The city prosecutor shares this view that pretrials will reduce the trial rate and the incidence of delay since they will improve his familiarity with the case. However, an alternative result may occur with the use of pretrials. That is, pretrials will just become one more stop in an already overburdensome process for the misdemeanor defendant. They may be used simply as another dilatory option for defense attorneys who plan to plead guilty anyway. This potential "stretching out" of the process more accurately reflects the perceptions of the assistant county prosecutor regarding the pretrial program. The degree to which either of these hypotheses prevail in actual practice may influence the nature of the "substantive justice" (Feeley, 1979) delivered by this court.

Which of these alternative hypotheses more precisely predicts the long-term results may depend upon the role adopted by the judge(s). The already evident changes in judicial perspectives in Blue Earth County Court make it somewhat tenuous to predict the nature of future changes in role orientations. As this research project has demonstrated, the traditional roles of system participants -- and changes therein --are apt to be closely tied to characteristics of the local socio-legal environment. For example, this court may have elected against the use of pretrial conferences if a more liberal plea bargaining policy had existed in the prosecutor's office. Similarly, the court's increased attention to FTAs and their active role in disposing of these cases may not have been necessary if the prosecutor had developed a more workable policy on his own. Furthermore, the roles and relationships of both judges and prosecutors will be affected by the new public defender system. We can anticipate that plea bargaining roles are apt to change considerably with the introduction of the new institutional actor. The prosecutor may broaden his fairly narrow requirements and the judge may increase his involvement through the use of the pretrial.

In any event, so long as a management innovation impinges upon or alters the system participants' traditional relationships it will be difficult to anticipate all the consequences of that innovation's introduction. The Blue Earth County Court experience with its management innovation argues for the proposition that management changes are indeed not necessarily socially or politically neutral events. The consequences of introducing the innovation will differ depending upon the surrounding environment. The ultimate effect of these anticipated and unanticipated consequences on substantive justice should be evaluated in the context of that court environment over the long term.

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CHAPTER VII

WORKING THE DAMNED, THE DUMB, AND THE DESTITUTE: THE POLITICS OF COMMUNITY SERVICE RESTITUTION

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"In every town it passed through, the chain-gang brought its festival with it; it was a saturnalia of punishment, a penalty turned into a privilege."

Michel Foucault, Discipline and Punish

The nineteen sixties and seventies saw the rise of a movement to decarcerate, deinstitutionalize, and divert "the bad and the mad" of American society. Opposed by groups wanting greater direct repression of criminal behavior, and yet others who have challenged it as an expansion of the state's social control, the supporters of "community corrections" have forged political alliances with fiscal conservatives and state agencies, making the movement more than ideological. Large-scale community corrections programs have been initiated in California and Massachusetts. An infusion of federal money through the Law Enforcement Assistance Administration has provided financial incentives for local development of community corrections programs. Deinstitutionalization has become a politically viable if not universally accepted option in the field of corrections.

The ideology of this movement is straight-forward, if not consistent. Because crime arises from social conditions, and not the moral depravity of individuals, criminals should be rehabilitated, not punished. Penal institutions punish and isolate, breeding crime instead of preventing it. Only the community can cure crime. Thus, to be cured, criminals need to be reintegrated into community, not isolated from it (Hahn, 1975; Hudson and Galloway, 1977). Advocates depict community corrections as humane, effective, and cheap, and criticize institutions as inhuman, ineffective, and overwhelmingly expensive (Scull, 1977:42,43).

Certain critics, however, have charged that its proponents have failed to examine the social context within which penal institutions and their proffered replacements operate. Instead of viewing community corrections as a benevolent

transcendence of less-enlightened practices, they contend that community corrections is simply a new way to do the same old thing -- socially control deviants drawn from particular social classes. These critics have argued that the criminal justice system is systematically biased against certain social classes. Quinney (1977) characterizes the criminal justice system as a mechanism which dominates and represses the "surplus population," those unemployed and underemployed who are frequently victims of racism and sexism. Unable to make adequate livings in the marketplace, the surplus population depends on state welfare for its survival (O'Connor, 1973). It turns to criminal behavior out of frustration, deprivation, and resistance. The state represses this behavior to protect the social and economic order (Quinney, 1977:131f). Harrington (1979), Hofrichter (1978), and Scull (1977) have argued that the community corrections and alternate dispute settlement movements represent a qualitative and quantitative expansion of the state's social control over a growing surplus population.

A. Community Service Restitution

One community corrections program which has emerged in recent years is "community service restitution," which has been given the acronym CSR. CSR is billed as a judicial sentencing alternative to fines, incarceration, and probation. Offenders sentenced to CSR work a fixed number of hours per week for private or public community agencies.

As conceived by its advocates, CSR has retributive, rehabilitative, and reintegrative goals. Nelson (1978:30) emphasizes the retributive aspects of restitution -- victim compensation as well as CSR -- claiming restitution addresses the "moral needs" of the community. "Restitution appeals to many people on a very basic level: it satisfies the most fundamental notions of justice and fair play." Echoing Kant's respect for the moral dignity of criminals, Fry (1957) argues that restitution protects the offender's "essential dignity" by treating him or her as an individual capable of making decisions. Other proponents, however, have explicitly disclaimed retribution as a CSR goal, claiming that CSR actually reduces the "social need" for vengence (Galaway, 1977:83). Most proponents maintain that service restitution rehabilitates offenders and reintegrates them into the community. Restitution is billed as a "psychological exercise building the muscles of the self, developing a healthy ego" (Eglash, 1958:622). By giving offenders an "opportunity" to contribute to the community, they supposedly "gain status and approval for their action" (Harding,

1977:106). Moreover, CSR purportedly fosters a "clear sense of accomplishment" because offenders complete "concrete requirements," "express guilt" and "secure atonement" (Galaway, 1977:83). Beyond the gift of atonement, CSR promises to "combat isolation on almost any level" by helping offenders obtain a "sense of belonging to the outside world" (Harding, 1977:106).

CSR reintegrates offenders into the social fabric by allowing them to live and work in the community, and by permitting them to utilize their "skills" or to "establish entirely new ones" (Id.). Harding praises the "practical benefits" that emerge from community service.

> It gives opportunities for offenders to identify skills and work interests that they themselves did not suspect or regard as useful. It may help to identify entirely new skills, when existing ones are no longer appropriate or in demand, or test an interest or aspiration before the offender commits himself to lengthy training or employment. To a limited extent, it can be used to help the chronically unemployed to reestablish a work habit. Finally, it offers a more constructive use of leisure to those who, because of mental or physical handicaps or social factors, are unable to work, and at the same time counteract isolation (Harding, 1977:106).

Thus, by "facilitating, supporting and reinforcing positive outside community links" CSR reduces the isolation of not only offenders but of their families as well (Id.; NCCD, 1980). As if morality, atonement, and reintegration were not sufficient virtues, CSR is claimed to be cheap (Harding, 1977:105; Galaway, 1977:83). Thus, advocates emphasize that CSR will turn offenders' lives around by offering them impressive benefits. At the same time, they hope CSR will quench the thirst for "simple justice," put the idle to work, and reduce correctional costs.

In light of the serious questions raised by Scull and others about community corrections in general, it is important to ask "who gets CSR?" and "what do they get when they get it?" To explore these issues we studied the operation of a CSR program introduced by a misdemeanor court in Tacoma, Washington. This court began instituting CSR in mid-1977 as a judicial sentencing alternative to fines and jail. While judges actually determined who was sentenced to CSR, the probation department identified agencies to take CSR referrals, and referred offenders to the agencies. These questions are addressed in the context of this court's overall sentencing practices because CSR was introduced as an alternative to more traditional sentences. First, general sentencing practices in the court will be surveyed. Then the

social and legal correlates of sentencing will be analyzed. Following this analysis, the nature of the work performed by CSR referrals will be discussed. Research methods used are outlined in Appendix A.

B. General Sentencing Practices in Tacoma

District Court No. 1 is the largest of four District Courts in Pierce County, Washington. Its jurisdiction extends to limited amount civil actions and criminal misdemeanors, which comprise most of its caseload. The district court is not of record. It has no divisions and its policies are determined by majority vote in collegial meetings. The court is served by four judges, employs a professional court administrator, and utilizes the services of the Pierce County Probation Department.

Unlike the caricature of the chaotic court defiled in much of the lower court literature, District Court No. 1 operates orderly. Judges take care to protect the constitutional and procedural rights of defendants. For example, at arraignment, all defendants are handed a simple statement of their rights and of the consequences of pleading guilty, which the judge carefully explains to them. When defendants are unsure about their plea, judges encourage them to plead not guilty. Severe violations of defendants' rights also occur. In a bench trial on assault charges, for example, one judge withheld a determination of guilt pending receipt of a presentence report. Nevertheless, such violations were the exception rather than the rule.

Actual trials are rare. Jury trials comprise only 3.4% of all dispositions. Bench trials are more frequent.[2] Bond forfeitures for failing to appear account for 10.4% of the dispositions. Nearly 12% of all dispositions are by guilty plea. Most cases are disposed via a unique procedure known as the "reading of the record." Readings of the record technically are bench trials, though they are in fact negotiated guilty pleas. The prosecutor literally reads the record, which usually consists of the police report, to the court.[3]

Fines and court costs are the most frequently employed sanctions. (See Table One.) Jail is the next most frequent sanction, though over half of the jail sentences reported in Table One were entirely suspended. Slightly less than 10% of those sentenced are placed on probation. Overall, 2% receive community service restitution. There are only slight differences between the distributions of dispositions for

Table 1. Percentage of Misdemeanants by Type of Disposition*

	1977	1978	Total
Jail	18.2%**	14.8%**	16.1%**
Fine	54.1%**	50.0%**	50.1%**
Probation	9.7%	7.8%	8.5%
CSR	1.2%	3.1%	2.0%
Court Costs	26.1%	38.1%	32.6%
	N=329	N=386	N=751

*Columns do not add to 100% because of multiple dispositions

**Includes fully suspended jail sentences or fines

1977 and 1978, the two years during which CSR was being implemented in the court and probation department. CSR sentences increased from 1.2% in 1977 when the program was not fully operational, to 3.1% in 1978, when it became fully operational. The source of the increment is not at all clear from Table One because the percentages of misdemeanants receiving jail or fine sentences both declined. The decrease in the proportion assessed fines and increase in the proportion assessed court costs reflects a judicial policy to increase the proportion of court costs to fines in order to retain more revenue for the court.

Overall, the misdemeanant population is young, white, male, and lower-incomed. As one judge explained,

> (T)he development of the law that we know in common law seems to have filled the penitentiaries, jails, workhouses, overburdened probation officers with more crimes against property committed by petty offenders than it has ever been concerned with the rights of people. The right to property is more recognized in the criminal law, I still feel, it always has been, than the rights of persons...(It) always amazed me that, here we had a rigid set of rules, and we were more concerned about property offenses, as 'they will be committed by the people that didn't seem to have as much money'...The causes of crime can be revenge, they can be poverty, and they can be ignorance. And the lower court system, whether it's in the time of Hogarth's 18th century graphic depictions, or today, has the damned, the dumb, and the destitute. Those make up 90% of your offenders in the lower court. I call them the three D's.

C. Who Got CSR? Social and Legal Correlates of Sentence

Because judges exercise broad discretion in the fixing of sentence, a large number of legal and social factors can go into the actual determinations. We examined the effect of five social factors -- age, race, sex, employment status, and income -- and one legal factor -- charge -- on the decision to sentence offenders to CSR. Data were collected by probation officers for all CSR and probation clients processed by the department from October 1978 through July 1979. This group constitutes the entire population for each group during this period. Probationers are used as a control group because it was not possible to collect social characteristic data for other misdemeanants. Sentence, the dependent variable, is dichotomized between CSR and probation. Throughout this chapter we assume that probation is a less severe sentence because it seems to be less of an intrusion into their lives than does CSR. Probation requires the offender to report once a month to the probation department

for about one hour per meeting. CSR, on the other hand requires an average of fifty hours of work for a community agency. Our assumption is further warranted by the findings of others. Shover (1979:136) reports that many offenders feel that they are made to suffer more in the name of rehabilitation than if they had simply been punished for their crimes. Ross (1976:407) found that offenders preferred both fines and probation to "theraputic" alternatives. Fifty-three per cent (53%) of those offenders in his experiment who had been assigned to receive "therapy" instead chose to be fined or to be placed on probation. Only 1% of those assigned fines chose "therapy". No one assigned probation chose "therapy".

Of the total population of restitutors and probationers during the period examined, 18% received CSR (143) and 82% (652) received probation. Although a small group received both CSR and probation, we have dichotomized the sentence variable because we are interested in the factors contributing to the receipt of the presumably more severe CSR sentence (cf. Jankovic, 1978). This latter group is included in the group receiving CSR.

1. Employment Status. Abstractly, one criterion judges could use to decide who would be sentenced to perform community service is the amount of time the offender has available to perform CSR work. Judges presumably are loathe to sentence misdemeanants to work twenty hours per week while at the same time holding a full-time job. Several CSR proponents have advocated time availability as a major selection criterion. Harding, for example, recommends its use for the unemployed to "help" them "reestablish a work habit." Moreover, he urges CSR for those who are unable to work because of "social factors" in order that they make "more constructive use" of their "leisure" (1975:107). Of course, misdemeanants can have "leisure" time for different reasons. Some are young and still in school. Others work in the home, and judges may believe they have more "leisure" time than those formally employed full-time. Yet others could be unemployed or underemployed. Thus employment status indicates not only time available but class position as well.

Nevertheless, we used employment status as a rough indicator of time available to perform CSR, hoping to control for "class" by including income and income status variables. Looking for now at the simple relationship between employment status and sentence, Table Two indicates that persons employed full time were much less likely to receive CSR than were persons not full-time employed.

Table 2. Employment Status and Sentence Type

	Full Time Employed	Not Full Time Employed	Total
CSR	6% (25)	32% (116)	18% (141)
Probation	94% (397)	68% (243)	82% (640)
Total	100% (422)	100% (359)	100% (781)

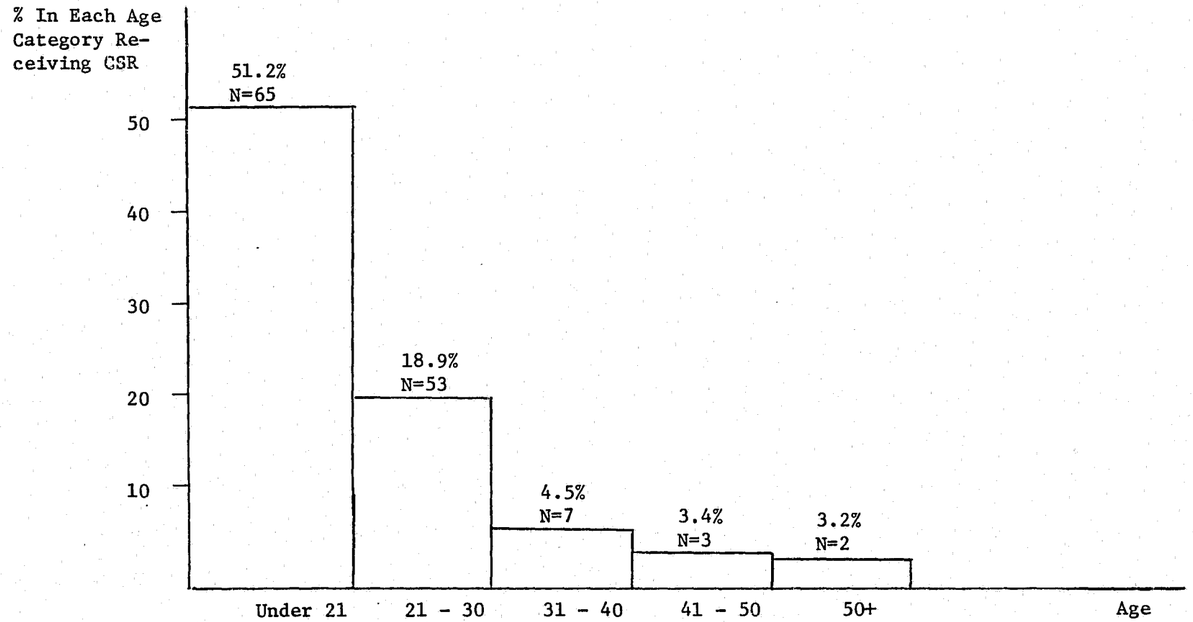
2. Age. There have been few studies of the impact of age on sentence severity (Hagan:1974). Clarke and Koch (1975) failed to find a relationship between age and the likelihood of receiving a prison sentence. Chiricos and Waldo's (1975) tables suggest an inverse relationship between age and severity. Similarly, Ragona (1980) found that in felony courts, young persons were more likely to receive more severe types of sentences. Our data indicate that younger misdemenants are more likely to be sentenced to CSR than are older misdemeanants (r=.28).[4] While less than one-fifth (18 percent) of our population received CSR, over half of the defendants under 21 years of age received it. (See Figure One.)

Nearly half of all those receiving CSR are under the age of 21; ninety percent are under thirty. The median age of CSR recipients is approximately 22, whereas that of probationers is roughly ten years greater. The median age for Pierce County is about twenty-five. Although age data are not available for the entire misdemeanor population, courtroom observations revealed most defendants to be between eighteen and twenty-five years of age, suggesting that judges favor older offenders by giving them probation. Although it can plausibly be advanced that younger offenders are more frequently sentenced to CSR because judges feel they have more "leisure" time, we uncovered no relationship between age and employment status. (r=.004) Age and income, however, are expectedly related, (r=.23), possibly accounting for some of the relationship between age and sentence.

The harsher treatment meted out to younger offenders suggests judges are trying to deter what they perceive to be high risk offenders from further committing violations. These attempts would be consistent with judges' and CSR advocates' stated goal of making offenders reflect more on their transgressions. Tacoma judges pursued this goal by sentencing youthful offenders to perform restitution work directly related to the nature of their offense. One sixteen year old who had ripped up rose gardens in a city park during the course of a car chase with police was sentenced to replant the gardens and resod the park. The point of this sentence was to "teach that young man a lesson." This quasi-parental attitude also was evident in judges' remarks that they would not sentence young offenders to pay fines where it was clear that their parents would foot the bill. "All that would do," claimed one judge, "is create disrespect for the law." A second possible explanation is that the older and presumably more "responsible" offenders were singled out for special treatment by being placed on probation.

FIGURE 1

Relationship Between Age and Sentencing Type



3. Race. A recent review of the literature addressing the relationship between race and crime concluded that because research findings were ambiguous, categorical statements about the extent of racial discrimination in criminal case processing and disposition were unwarranted (Pope, 1979). In misdemeanor cases, neither Feeley (1979) nor Mileski (1973) found race to be a factor in sentencing. Jankovic (1978), on the other hand, found non-whites to be more likely to get jail sentences for DWI convictions than were whites. We found only a slight relationship between race and sentence.

Although nonwhites receive CSR more often than do whites, the relationship between race and sentence type if small (r=.09). Intervening variables, such as employment status and income, may explain some of this. Nonwhites are no more likely than whites to be not full-time employed (r=.007) and only slightly less likely than whites to have lower incomes (r=.08). While nonwhites do have a greater probability of receiving CSR, both whites and nonwhites predominantly receive probation. (See Table Three.)

4. Sex. If deterrence is one of the implicit goals of CSR, then men, who comprise the vast majority of offenders, should be more likely than women to receive CSR. This is not the case. Our data suggest that women are more likely to be sentenced to CSR than are men. While women represent 14.5% of the misdemeanant population, they comprise over 30% of the CSR population. As indicated in Table Four, only 15% of the male probation client population received CSR, whereas 32% of the female population received it. Although this suggests that women tend to receive the harsher sentence in Tacoma, the relation between sex and sentence may well express multicollinearity between sex, income, and employment status. There is a sizeable correlation between sex and employment status (r=.-27); a greater percentage of women are not full-time employed than are men. As indicated above, those not employed full-time more often receive CSR than those employed full-time. Income may also be an intervening variable, because men received higher incomes (r=.18).

5. Charge. A number of writers have emphasized the importance of legal factors in determining the severity of sentences (see Hagan, 1974). We found type of charge, our one legal variable, to be related to the likelihood of receiving CSR. Those found guilty of DWI's (driving while intoxicated) were much less likely to receive CSR than were those convicted of non-DWI traffic or criminal offenses. (See Table Five.)

Table 3. Sentence Type by Race

	Whites	Nonwhites	Total
CSR	16% (108)	26% (34)	18% (142)
Probation	84% (551)	74% (96)	82% (647)
Total	100% (659)	100% (130)	100% (789)

Table 4. Sentence Type by Sex

	Male	Female	Total
CSR	15% (99)	32% (44)	18% (143)
Probation	85% (558)	68% (94)	82% (652)
Total	100% (657)	100% (138)	100% 795

Table 5. Sentence Type by Criminal Charge

	DWI	Non-DWI	Criminal	Total
CSR	4% (14)	37% (27)	26% (36)	13% (77)
Probation	96% (364)	63% (44)	74% (100)	87% (508)
Total	100% (378)	100% (71)	100% (136)	100% (585)

Because DWI's were considered by most judges to be a serious offense, these data seem inconsistent with our contention that CSR is a more serious sanction than probation. After all, if DWI's are a serious offense, then they should receive harsher penalties. In fact, they well may. Most judges reported that they jail second offense DWI's. First offenders, they indicated, usually are fined heavily and placed on probation with the added stipulation that they attend Alcohol Information School or some other alcohol program. Indeed, the mean fine for DWI offenses ($197) was substantially greater than that for all offenses ($103). Probation officers pointed out that it was important for these offenders to be placed on probation to permit the officers to monitor their compliance with the mandatory class attendance and the offenders' supposed drinking problems. Thus the combination of fine, mandatory classes, and monthly surveillance for a year is a significant sanction for the misdemeanant. While DWI offenders are more likely than other offenders to have high incomes (r=-.22, p=.001), they are much more likely to get CSR even when controlling for income.

6. Income. A number of writers have voiced concern over class discrimination in sentencing offenders to restitution. Nelson (1978:29) suggests that victim-compensation restitution programs may well discriminate against the poor, the nonwhite, and the lower classes. Because the basic selection criterion is "ability to pay", middle class offenders can avoid incarceration by buying their way out. This alternative is not available to the poor, who consequently go to prison. Service restitution has been criticized for discriminating against the poor where it used as an alternative to fines.

> When you have a situation in which community service...is posited in lieu of a fine, you have the obvious problem that the rich will pay and the poor will go to work off their fines...When you are positing fine or service as alternatives, the middle income, the better off people, do escape punishment. Paying off a $350 fine is of much less consequence to me than having to spend eighty hours of service... (Department of Youth Authority, 1975:25).

This possibility has led some observers to conclude CSR is vulnerable to equal protection challenges if they require community service for defendants unable to pay fines, or if indigents are incarcerated for refusing to perform community service (Beha et al., 1977:37-42).

These problems are particularly acute in the misdemeanor court because few misdemeanants are incarcerated by the lower courts. Consequently, CSR is used as an alternative almost exclusively for fines. In Austin, another locale experimenting with CSR, prosecutors and defense attorneys alike feared CSR would be used exclusively as an alternative for the poor. Predicting it would be used primarily for people unable to afford fines, one prosecutor claimed:

> It won't be used for richer clients because they won't agree to negotiate a plea that involved CSR.

In Tacoma, CSR referrals regularly were described as "destitute" and "unable to pay fines." "(W)e're talking about the destitute person that's emotionally destitute or even the financially destitute," explained one judge. The CSR coordinator was more explicit:

> The clients referred by the judges all share three things. They are all unemployed, unskilled, and uneducated. This makes it hard for me to get placements for them. This is happening because the judges sentence only those that can't pay fines to CSR. I don't think that a judge has sentenced anyone to CSR because it was too easy for them to pay the fine, except where there's been a high school student and the judge feared that the parents would just pay for the fine.

This practice was important to the coordinator, who desired to have the court refer misdemeanants with more skills in order to build a good reputation for the program.

The judges agreed that inability to pay a fine was the most important criterion in determining whether a misdemeanant would be sentenced to CSR. One judge claimed that he refers 90 to 99% of his CSR cases for financial reasons. In the other cases in which he has used CSR, he has thought that it would serve rehabilitative purposes. Another explained that "I take ability to pay into account on CSR's. I give it to some kids because otherwise their parents would just pay. And I give it to people who don't appear able to pay fines. It's better than jail for them." A third stated that "if a fellow doesn't have money,...if a defendant's financial situation is such that he's in a tight spot, yes. I'll allow him to do that (CSR)." He does not use it as an alternative to fine for the rich, however. He simply makes them pay their fines. The fourth judge also used CSR as an alternative to fines for those unable to pay them. Before CSR was available, she had fashioned her own work orders, requested misdemeanants to write essays, and suspended fines.

> Question: If you didn't have the CSR alternative and wouldn't have ordered your own service restitution before -- how would those cases been treated?
>
> Judge: Those cases would have been treated with the imposition of cautiously ordering them to write an essay of one thousand to five thousand words and to research it. You can print it, you can type it or you can write. "What I have learned from this experience." A lot of people laugh at that.
>
> Question: Would any of those people have been fined?
>
> Judge: Probably. Fined very highly, with $1000 fines, with $950 suspended, provided that within 90 days, I want them to sweat in that god-damed library, they write a 5,000 word -- five thousand words -- word essay on "What I have learned from this experience."...(When) there's no human way that guy can pay the fine, I have suspended fines. You know, the hell with the law. I'm sorry; I take that position. I don't think it's justice to sentence a man to do an impossible task and they're rare and they're infrequent, but they happen. That's what I had to do before CSR. (emphasis in original)

Thus the judges agree that CSR primarily is a sentencing alternative for fines, but only for those who cannot afford to pay them, and not for those who can too easily afford to pay them.

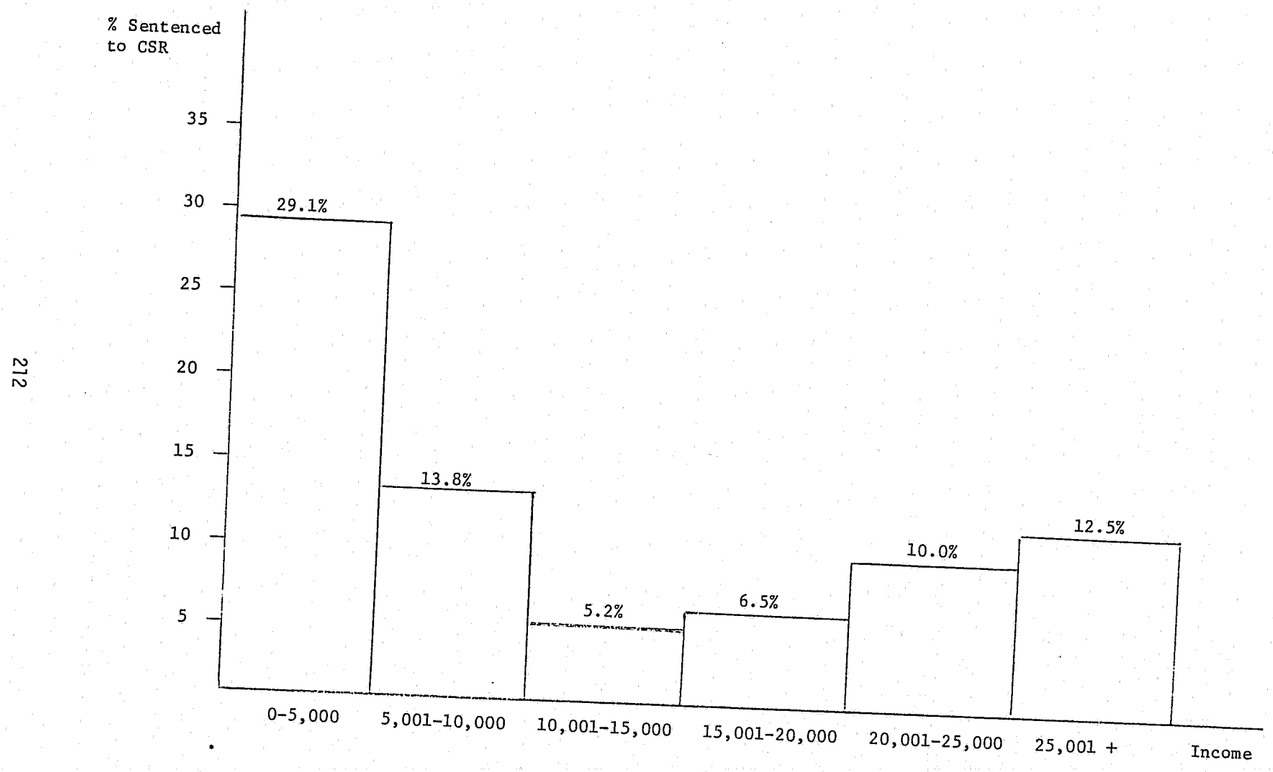
This point is poignantly illustrated by an anecdote told by one court official. A vice-president of a major American corporation was arrested in the court's jurisdiction for driving while intoxicated. He was found guilty. The judge considered sentencing the vice-president to CSR because on his high salary no fine would amount to a penalty. It would be too easy for him to pay the fine. Upon hearing this, the vice-president's attorney was enraged, charging that such a sentence would be degrading and humiliating for his client, an upstanding member of the community. The VP "got a fine and walked out the door."

Figure Two indicates the chance that an offender will receive CSR rather than probation is related to the offender's family income. The lower the offender's family income, the greater the probability the offender will receive CSR. Interestingly, the distribution is mildly curvilinear, suggesting that at high income levels, the probability an offender will receive CSR begins to increase.

Because income is related to age (r=.23), employment status (r=.31), and charge (r=.22), we further explored the relationship between income and sentence by controlling for each of them. In doing so we dichotomized the income variable. The

FIGURE 2

Effect of Income on Sentence



N = 690

X^2= 46.44

Sig. = .00

primary dichotomy is between incomes $5,000 or less and incomes greater than $5,000, representing "indigent" and "non-indigent" groups. Conceptually this eliminates the problems associated with use of income as a class indicator discussed by Jankovic (1978) and Chambliss and Seidman (1971). While our dichotomy does not attempt to establish marxist class categories (cf. Wright, 1978; Poulantzas, 1975), it does operationalize the low income criterion for CSR disposition articulated by probation officers, attorneys, and judges. The $5,000 figure is well below the median income for Pierce Co. in 1977 ($15,000), and is below the poverty level income (approximately $6,191 for a family of four in 1977). The secondary dichotomy we use is between incomes $10,000 or less and those greater than $10,000. We refer to the second group as the "low income group," as it roughly captures those with family incomes below the 1977 low budget line of $9,700.

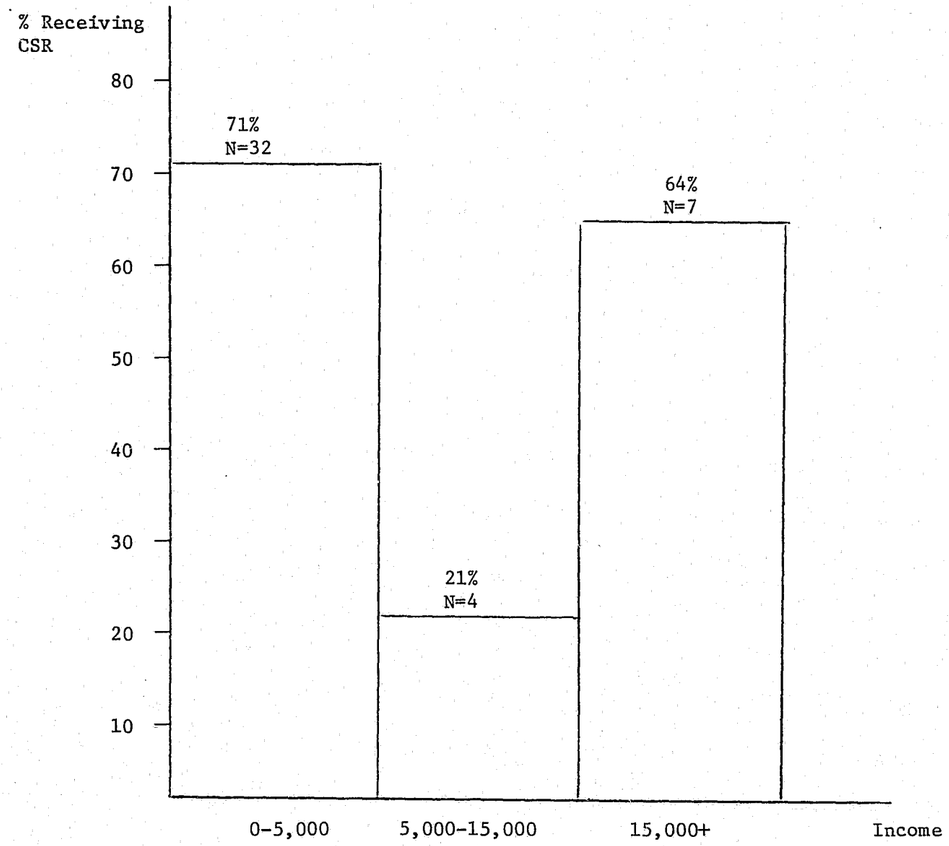
Furthermore, two groups of offenders are excluded from much of the remaining analysis. The first group consists of DWI offenders, who are excluded because virtually all of them receive probation rather than CSR. Because DWI offenders have higher incomes, their inclusion would overstate the direct effect of income on sentence. The second excluded group consists of those offenders under twenty-one years old judges feared would have parents pay fines for them. We have operationalized this category by excluding from the analysis all offenders younger than twenty-one years who report family incomes greater than $15,000, the approximate median income for Pierce Co. in 1977.

a. Age. Figure Three illustrates why the relationship between income and sentence is curvelinear, and thus why "rich kids" should be excluded from subsequent analysis. When young offenders' family incomes exceeds $10,000, the chances they will be sentenced to CSR increase significantly. This strongly corroborates judges' assertions that they sentence young offenders' whose parents they fear will pay fines for them. But even given this special offender category, young offenders with family incomes less than $5,000 are twice as likely to receive CSR than those with incomes greater than $5,000. (See Table Six.) In the 21-30 age group, the relationship between indigency and sentence remains strong. (See Table Seven.) Indigents in this age category are over 2.5 times more likely to receive CSR than non indigents. Similarly, low income offenders are over twice as likely to be sentenced to CSR than are non low income offenders. (See Table Eight.) Although indigents are over twice as likely to receive CSR than are all low income offenders, low income offenders are over three times more likely than "high" income offenders to receive it.

FIGURE 3

Sentence by Income, Offenders Less than 21 Years Old

(Excluding DWI Cases)



N = 75

$X^2 = 13.86$

df = 2

$p < .005$

Table 6. Effect of Indigency on Sentence for Offenders Younger than Twenty-One

(Excluding DWI Cases)

	Indigent		Non-Indigent		Total	
CSR	71%	(32)	37%	(11)	57%	(43)
Probation	29%	(13)	63%	(19)	43%	(32)
Total	100%	(45)	100%	(30)	100%	(75)

X^2=8.28 df=1 $p < .005$

Table 7. Effect of Indigency on Sentence, Ages 21-30

(Excluding DWI Cases)

	Indigent		Non-Indigent		Total	
CSR	43%	(17)	17%	(14)	27%	(31)
Probation	57%	(23)	83%	(61)	73%	(84)
Total	100%	(40)	100%	(75)	100%	(115)

X^2=12.63 df=1 $p < .005$

Table 8. Effect of Low Income Status on Sentence, Ages 21-30

(Excluding DWI Cases)

	Low Income	"High" Income	Total
CSR	33% (28)	10% (3)	27% (31)
Probation	67% (56)	90% (28)	73% (84)
Total	100% (84)	100% (31)	100% (115)

$X^2=6.45$ df=1 $p < .025$

Very few offenders over thirty were sentenced to CSR. Nevertheless, of the five offenders who received it between ages 31 and 40, four earned below $10,000. All 3 who received it between 41 and 50 earned less than $10,000. Both of those over 50 sentenced to CSR earned less than $10,000. Overall, offenders over thirty with low incomes were six times more likely to be sentenced to CSR than those with "high" incomes, as indicated in Table Nine. Thus, across all age categories, judges were much more likely to sentence low income offenders to CSR. Indigent offenders below thirty were the hardest hit group.

b. Employment status. Although offenders employed full-time are much less likely to get CSR than those not full-time employed, the chances of full-time employed offenders receiving CSR are noticeably less for "high" income offenders. (See Table Ten.) Twenty percent of those employed full-time receiving CSR earned less than $5,000; seventy percent earned $10,000 or less. The relationship between income status and sentence is just as clear for those not full-time employed once "rich kids" are excluded. (See Table Eleven.) Thus, of all those with "leisure" time available to "express guilt" and "secure atonement," the indigent were more frequently requested to work for the community than the non-indigent.

c. Charge. Finally, the inverse relationship between income status and probability of receiving CSR remains when controlling for charge, even though very few DWI offenders are sentenced to CSR. Table Twelve suggests that even in DWI cases, where 97% of all offenders are put into CSR, low income offenders are five times more likely to be put there than are "high" income offenders, though the small size of CSR cells requires interpretive caution. Less caution is required to interpret findings for the remaining offense categories. For both non-DWI traffic and criminal offenses, indigent offenders are more likely to be placed on CSR than are non-indigent offenders; indigent non-DWI traffic offenders are seven times more likely (see Table Thirteen); indigent criminal offenders are twice as likely (see Table Fourteen). The difference between these two non-DWI categories might be attributable to greater judicial reluctance to place "criminals" in community settings. Conversely, it also could reflect judicial sensitivity to agency hesitancy to accept "criminals," an attitude expressed by several respondents to our agency questionnaire.

It is more difficult to capture the indirect effects of income status than the direct effects. Table Fifteen indicates that the distribution of DWI charges over

Table 9. Effect of Low Income Status on Sentence, Ages 31+
(Excluding DWI Cases)

	Low Income	"High" Income	Total
CSR	18% (6)	3% (1)	10% (7)
Probation	82% (28)	97% (34)	90% (62)
Total	100% (34)	100% (35)	100% (69)

$X^2=4.07$ df=1 $p < .05$

Table 10. Effect of Income Status on Sentence, Full Time Employed
(Excluding DWI Cases)

	Low Income	"High" Income	Total
CSR	22% (14)	10% (6)	16% (19)
Probation	78% (49)	90% (56)	84% (101)
Total	100% (63)	100% (62)	100% (120)

$X^2=4.29$ df=1 $p < .05$

Table 11. Effect of Indigency on Sentence, Not Full Time Employed
(Excluding DWI Cases and "Rich Kids")

	Indigent	Non-Indigent	Total
CSR	51% (49)	33% (15)	45% (64)
Probation	49% (48)	67% (31)	55% (79)
Total	100% (97)	100% (46)	100% (143)

$X^2=4.05$ df=1 $p < .05$

Table 12. Effect of Income Status on Sentence, DWI Cases
("Rich Kids" Excluded)

	Low Income	"High" Income	Total
CSR	5% (10)	1% (2)	3% (12)
Probation	95% (199)	99% (205)	97% (394)
	100% (209)	100% (207)	100% (406)

$X^2=5.32$ df=1 $p < .025$

Table 13. Effect of Indigent Status on Sentence, Non-DWI Traffic Cases ("Rich Kids" Excluded)

	Indigent	Non-Indigent	Total
CSR	69% (27)	21% (10)	42% (37)
Probation	31% (12)	79% (38)	58% (50)
Total	100% (39)	100% (48)	100% (87)

X^2=19.98 df=1 $p < .001$

Table 14. Effect of Indigent Status on Sentence, Criminal Cases ("Rich Kids" Excluded)

	Indigent	Non-Indigent	Total
CSR	35% (20)	18% (16)	24% (36)
Probation	65% (37)	82% (75)	76% (112)
Total	100% (57)	100% (91)	100% (148)

X^2=5.89 df=1 $p < .025$

Table 15. Offense Type by Income*

(Including "Rich Kids")

Offense Type	Income 0-5000	5001-10000	10001-15000	15001-20000	20001-25000	25000+	Total
DWI	20%	27%	24%	17%	6%	6%	100% (576)
Other Traffic	41%	29%	15%	7%	4%	4%	100% (121)
Criminal	40%	34%	13%	7%	4%	2%	100% (205)

*Percent of total for given charge in each income category

X^2=69.00 df=10 $p < .001$

income is far less skewed than for either of the other offense categories. Only 19% of DWI offenders have incomes less than $5,000 whereas 40% of offenders in each of the other categories fall into this income group. On the other hand, half of all DWI offenders earned $10,000 or more, whereas fewer than 30% of other offenders did so. Curiously, the distribution of offenders across income categories is nearly identical for criminal and non-DWI traffic categories. This is anomolous, for it is more reasonable to expect that the distribution of charges for non-DWI traffic charges would parallel that of DWI traffic charges. This anomaly might be explained by discriminatory charging and prosecution practices. Assuming that the distributions of persons stopped by police for DWI and non-DWI traffic offenses are the same, police decisions to not charge and prosecutorial decisions to not prosecute offenders in the higher income categories would result in a distribution of sentences similar to that portrayed in Table Fifteen. Police and prosecutors in this scenario would hesitate to drop DWI charges because they perceive them as serious. If this explanation is valid, then income status exercises an indirect effect on sentence severity beyond that revealed in the foregoing analysis.

C. What Did CSR Referrals Get?[5]

Support for the claims of CSR advocates is ambiguous at best. Offenders sentenced to CSR worked an averge of fifty hours, usually in a janitorial or clerical capacity, more often for governmental than non-governmental agencies.

1. Number of CSR Hours. The distribution of CSR hours for defendants sentenced to CSR ranged from six to 480 hours. The mean number of hours was 49.85 and the standard deviation was 47.9. (See Table Sixteen.) The only social or legal variable correlated with CSR hours is employment status (r=.26, p=.002) indicating that offenders not employed full-time receive longer CSR sentences than those employed full-time. This is consistent with our hypothesis that time available is a factor in CSR sentencing.

2. Agency Types. The type of agencies participating in the CSR program ranged from community-based social agencies to governmental agencies (including the police, military, schools and county maintenance departments). Table Seventeen indicates the type of agency and number of referrals they served. Most of these referrals were to agencies of Pierce County and the City of Tacoma, where the

Table 16. Distribution of CSR Hours

Number of Hours Sentenced	Relative Percentage
1-20	17.2%
21-40	35.9%
41-60	19.5%
61-80	17.2%
81-100	5.5%
100+	4.7%
	100%
	N=128

Table 17. Distribution of Agency Type

Type of Agency	Percent of Total
Governmental Agency	56%
Pierce Co./City of Tacoma	45%
Other	11%
Community Agency	44%
Total	100%
	N=103

probation department and the court are geographically located. Only 44% of the referrals have been to the non-governmental agencies, such as churches, Goodwill, Inc., and the American Cancer Society. Twelve of the twenty agencies which completed our questionnaire were public agencies such as schools, the National Guard, park districts, and the police department. This finding corroborates the data from the probation case file (Table Seventeen).

3. Type of Work. If CSR is supposed to help offenders gain job skills and work habits, then it is important to know what kinds of CSR work they are performing, since the nature of the skills and the habits supposedly learned depend on the nature of the jobs in which they are learned. Agency respondents to our mail questionnaire cited forty-four tasks performed by their CSR referrals. Of the forty-four, thirty-two were janitorial, clerical, or maintenance-related. Thus, it seems that if CSR referrals learned any skills, they were probably janitorial or clerical skills. (See Table Eighteen.) Twelve of the twenty agency respondents indicated that they decided the work assignments of their CSR referrals. Five of the agencies reported that they consulted with the probation department when making assignments. No agency indicated that it discussed the decision with the offender.

4. Benefits to the Offender. As reported above, CSR proponents cite a broad range of benefits offenders will receive from CSR -- "healthy egos," status and approval, "a clear sense of accomplishment," "atonement," release of guilt, a sense of belonging, job skills, "better work habits," and "more constructive" use of "leisure." While the CSR literature cites numerous success stories, it does not systematically explore who gets how much of which benefits. We examined these questions through telephone interviews with a sample of offenders who had completed CSR and a questionnaire mailed to agencies that had received CSR referrals. But because our interview pretest revealed that nearly the entire population of CSR "graduates" would be inaccessible to us, we are forced to rely on agencies' employees' perceptions of offenders' gains and reactions, and to the inferences we can draw from the structural aspects of program. This is an admittedly second-best procedure, particularly because we expected that agency personnel would reiterate CSR goals. Given this expectation, the ambiguous pattern of responses is suprising.

Agencies disagreed whether misdemeanants received any skills as a result of the job placement. Nine of twenty indicated they had; seven indicated they hadn't. When

Table 18. Types of Work Performed by CSR Referrals

Type of Work	Frequency
Janitorial/Maintenance/Custodial	25
Clerical	7
Painting/Minor Carpentry	4
Mechanic	1
Art Work	1
PR Work	1
Program Assistants	2
Food/Clothing Bank	2
Eye Exams	1
Total	44

asked to list which job skills referrals gained, five of the nine agencies responded that their referrals gained maintenance or mechanical skills, while only one reported that its referrals had learned better work habits. Three agencies indicated referrals had improved their interpersonal skills. Eight of the two hundred twenty-six offenders continued as volunteers after completing their sentences and four were hired by their agencies, two full-time and two part-time.

Agencies were divided over whether their referrals were "better adjusted" to the community because of their CSR work experiences. Five agreed their referrals were "better adjusted", while five disagreed. Ten agencies responded that they didn't know. Seventeen of the agencies felt that referrals had gained a sense of accomplishment from the program. Six explained this was because the referrals had completed their required hours; five indicated it was because the referrals viewed their work as important. When asked how their referrals felt about the CSR experience, five agencies reported their referrals were "grateful" while eleven reported their referrals were "bored" or "resentful".[6] Four agencies indicated their referrals merely tolerated their work, or only saw it as a way of serving their hours. Only one agency reported its clients were "enthusiastic." A general lack of offender enthusiasm for the program is not surprising given that most of the work performed was menial and that work assignments were made by the agencies without consulting the offender.

D. Summary and Conclusions.

The decision to sentence offenders to CSR is influenced by a number of legal and social factors. DWI offenders are highly unlikely to receive it; young, not full-time employed, indigent, and other low-income offenders are more likely to receive it, as are "rich kids." Judges openly admit low income to be a criterion, consistently describing CSR as an alternative to fines for offenders unable to pay them. That it was only infrequently cited as an alternative to jail is not surprising given that this is a misdemeanor court which actually jails only 7% of its convicted defendants.

But its use as an alternative for the poor poses a serious problem. What would happen to these offenders if CSR was not available? They could not be jailed under Tate v. Short (1971) and related cases. Presumably, judges would fine them and face a high probability of default on the fines. Alternatively. they could be placed on probation, a less severe sanction than either CSR or fining, given the presumably high

marginal utility of money to this group. In either case, indigent and low income offenders are worse off when sentenced to CSR than when CSR was not an alternative because they must work an average of fifty hours rather than default on a fine or report twelve times to the probation department.

Interestingly, CSR advocates would have little problem with its differential impact on the poor. Indeed, these are the very people it is supposed to "help." Just what this "help" is, though, is unclear. Some of the aspects of "help" appear to be just that, such as the development of job skills. But other forms of "help" CSR advocates offer are little more than attempts to discipline offenders -- "helping" them establish work habits, "helping" them release (presumed) guilt, "helping" them attain "atonement," or "helping" them "make better use of their leisure time." But when the benefits that appear to really help poor offenders are probed beyond the surface, they are dubious. Can the courts really be expected to successfully provide employment training when far-better financed federal programs failed to during the sixties? Is it even reasonable to expect misdemeanor courts to provide solutions to structural social problems such as maldistribution of income and unemployment?

The evidence supporting contentions that CSR is beneficial to defendants is both thin and suspect. Agencies reported as many negative consequences as positive ones. Moreover, it is difficult to see new vistas of employment opening up for those who have pushed brooms for Goodwill or washed cars for the sheriff. Yet the very ambiguity of agency responses is surprising because their participation in CSR suggests that they accept its ideology and have a concrete interest in its continued operation. If agency responses about the benefits received by offenders are thus overstated, their ambiguous reports of "success" support the contentions of CSR advocates even less. Thus, it begins to appear that CSR is a penalty discriminantly inflicted on those unable to pay fines rather than the privilege it is claimed to be.

At a more theoretical level, the operation of this CSR program provides some substantiation for the claims of critical criminology and conflict theory that "when sanctions are imposed, the most severe sanctions will be imposed on persons in the lowest social class" (Chambliss and Seidman, 1971:475). In this case, CSR was differentially inflicted on the poor, even when legal factors were controlled. But if these findings provide some support for conflict theories of criminal justice, they also point out its shortcomings. Even though relationships between income status and

sentence were uncovered in all three charge categories, it remains that there was a very strong relation between charge type and sentence within income groups. Legal factors thus remain significant in explaining legal outputs, despite the efforts of Jancovic (1978:14) and others to dismiss them as "wholly irrelevant" to any perspective other than a pluralistic one. This radical dismissal of law as nothing more than an instrument of class rule precludes analysis of whether and how the legal form itself contributes to the reproduction of the social order (Beirne, 1979:378).

More significant than the veracity of the propositions of conflict theory are the broader dynamics of CSR and community corrections reflected in this experience. By farming out the tasks of discipline and punishment to agencies outside the legal system, the Tacoma court qualitatively expanded the state's social control apparatuses (cf. Harrington, 1979). Whereas CSR advocates see it integrating the criminal back into society, it just as truly integrates society into the state's social control apparatus. As daily life is made part of corrections, "correction" is made a part of daily life. Community corrections and CSR also represent a possible increase in the quantity of social control (Hofrichter, 1978), by enabling correctional agencies to handle increasing caseloads within severe budgeting constraints. Probation officials and officers in Tacoma claimed they soon would not be able to deal with the size of their growing caseload without incorporating the services of community agencies. A major impetus for expanding the use of community agencies in corrections in Tacoma was the budgetary freeze placed on the department by the county board. Faced with the twin prospects of mounting caseloads and severe fiscal constraints, the court and department turned to a program that could help them perform their functions without further straining their budgets. Because such correctional demands and budgetary constraints are increasingly common in the era of Proposition 13, other correctional agencies can be expected to expand their control networks into the community (Scull, 1977).

The type of agency to which offenders are referred is also of concern in the context of fiscal crisis. Over half of those referred worked for governmental agencies. Although this was more likely due to the success of the CSR program coordinator in cajoling sister state agencies to take referrals, it could have unintended long-range consequences. Like government at all levels, that of Pierce County faces a mounting fiscal crisis. As it intensifies it is not inconceivable that agencies now taking referrals to help the court get its program off the ground could come to rely on

the free labor provided through the program, thereby threatening public employees faced with lay-offs or inadequate pay increases. The court, also facing a fiscal crisis, would continue to provide this labor from the ranks of those unable to pay fines. Those able to pay fines, the court would continue to fine, for the fines provide it a source of revenue increasingly depended upon. Thus the dynamics inducing the court to put the poor to work could well spiral.

NOTES

[1]The authors wish to thank the director and probation officers of the Pierce County Probation Department for collecting data on their clients. Vicki Maenhout spent many long hours collecting data from case files. David McDowall and Tony Ragona assisted with the quantitative analysis, offering many helpful suggestions along the way.

[2]Because "readings of the record" were coded as bench trials, the percentage of bench trials we calculated is greatly exaggerated.

[3]Defense counsel is then given an opportunity to challenge the record. Challenges are rare, but when they occur, the prosecutor always knows about them beforehand. Counsel agree to go along with judicial determinations of discrepencies. After the judge (inevitably) finds the defendant guilty, the prosecutor and defense counsel present sentence recommendations. Usually these have been substantially agreed to beforehand. After the prosecutor makes a recommendation, defense counsel indicates areas of agreement and disagreement, presenting arguments where there is disagreement. Sometimes the prosecutor is persuaded to alter the recommendation, sometimes not. Where not, the judge usually splits the difference. The entire process typically takes less than three minutes in court. While this process evokes the image of assembly line, it actually is designed to protect the defendant's right to trial de novo in the Superior Court, a right that would be waived by a simple guilty plea.

[4]See Appendix C for a correlation matrix.

[5]Data for this section are taken from the Tacoma Probation File as well as from an agency questionnaire which we mailed to all agencies which the probation department indicated were participants in the CSR program. The response rate to the questionnaire was 40%. For the questionnaire, see Appendix B.

[6]While the question was open-ended, "grateful", "bored", and "resentful" were cited as exemplary, possibly structuring responses.

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Appendix A

Several methods were used to collect data. General sentencing data were collected from a random sample of cases disposed post-arraignment. Data were collected for charge, disposition, mode of disposition, sentence, and attorney presence among other variables. (n=1197) We also observed proceedings in court to help understand sentencing practices in the context of the judicial process. Extensive social characteristic data were collected. Individual case data were collected by the probation officers for every misdemeanant sentenced to probation or CSR for the period November 1978 to July 1979. Age, race, sex, charge, employment status, income and sentence were among the variables for which data were collected. Comparable data were not available for the rest of the misdemeanant population. (n=1103)

To determine what misdemeanants sentenced to CSR "got", two methods were used. The first was a mail questionnaire that was sent to fifty-one agencies which accepted CSR referrals. The questionnaire inquired into the nature and extent of the agencies' participation in the program, the types of tasks performed by misdemeanants, the quality of supervision, and misdemeanants' reactions to the program. (See Appendix B). Twenty agencies responded, a response rate of approximately 40%.

In addition to the mail questionnaire, we attempted to conduct telephone interviews with terminated CSR clients using a list provided by the probation department. A random sample of sixty clients was drawn from the population of 163. We conducted a pretest using that portion of the client population not included in the sample, but despite our best efforts, we were able to contact only three of the fifty individuals called. Pretest interviewees were telephoned between the hours of 7:00 and 10:00 p.m. and in most of the calls the interviewer was informed that the client no longer resided at the address indicated in the probation department's records. We decided not to conduct the telephone interviews because of the difficulty we encountered in locating terminated CSR clients.

Finally, judges were interviewed to establish how they perceived and used the program. Particular attention was paid to the criteria they used in their decision to sentence misdemeanants to CSR. Probation officers were interviewed along similar lines.

APPENDIX B

QUESTIONNAIRE FOR COMMUNITY SERVICE RESTITUTION AGENCIES

Instructions: Please respond to the following questions as completely as possible. Thank you.

Name of Agency_____

Type of Service It Provides _____

Person Completing this Questionnaire_____

What Is Your Title?_____

1. How long has your agency been involved in the Pierce County Probation Department's Community Service Restitution program?

_____months

2. How did your agency come to participate in this program? (Check one)

_____we volunteered

_____we were asked to participate

If asked, by whom? _____

_____Other (please explain)_____

_____

_____

_____

3. a. How many referrals have you had from the Community Service Restitution program?_____

b. Have you rejected any referrals? (check one)

_____yes

_____no

How many? _____

c. On what grounds do you reject referrals? (check as many as apply)

_____we don't have work

_____the referral's criminal record

_____the referral doesn't have appropriate skills.

_____the referral fails to appear at the agency.

_____other (please specify)_____

d. Who typically makes the decision to accept or reject a referral?

e. What is this person's official title? _____ _____

4. How satisfied are you with:

a. The qualifications of the referrals (circle one number)

Satisfied 7 6 5 4 3 2 1 Dissatisfied

b. The referrals' attendance at the agency. (circle one number)

Satisfied 7 6 5 4 3 2 1 Dissatisfied

c. The referrals' willingness to complete the tasks assigned to them. (circle one number)

Satisfied 7 6 5 4 3 2 1 Dissatisfied

5. a. To what kinds of tasks have the referrals to your agency been assigned?

_____

_____

_____

b. Who decided what referrals will do in your agency? (Check as many as apply)

_____ the referral herself or himself
_____ the probation department
_____ your agency
_____ other (please explain)_____

_____

_____

c. In general, how qualified have referrals been to perform their tasks? (check one)

_____ underqualified
_____ adequately qualified
_____ overqualified

6. a. Who has formal responsibility to ensure referrals complete their hours?

_____

b. What is this person's official title?

_____

c. Who actually ensures referrals complete their hours?

_____

d. What is this person's official title?

_____

e. What sort of contact does your agency have with the probation department client referrals? (check as many as appropriate)

___ Personal visits → How often?
___ weekly
___ monthly
___ other (specify)_____

_____

_____

___ Phone calls → How often?
___ weekly
___ monthly
___ other (specify)_____

_____

___ Letters → How often?
___ weekly
___ monthly
___ other (specify)_____

_____

___ other (please explain)_____

_____

_____

f. Overall, how satisfied are you with your contact with the probation department staff handling the CSR program? (circle one number)

Satisfied 7 6 5 4 3 2 1 Dissatisfied

Why (not)?_____

_____

_____

7. a. Have you ever hired referrals on a full-time basis?

___ yes
___ no

b. How many?_____

c. Have any continued as volunteers?

___yes
___no

d. How many? _____

8. a. In general, have your referrals gained any skills through the work they have performed for your agency?

___yes
___no

b. What skills?_____

_____

9. a. In general, do you think your referrals gained a sense of accomplishment by working for your agency?

___yes
___no

b. How?_____

_____

10. a. In general, do you think your referrals were any better adjusted to the community as a result of their work in your agency?

___yes
___no
___no opinion

b. Why (not)?_____

_____

11. a. In general, how have the referrals felt about the program? (e.g., resentful? bored? grateful?)

_____

_____

b. Did their feelings about the program change during the course of their work at your agency?

___yes
___no
___no opinion

c. If yes, how?_____

_____

12. What do you feel are the most important goals of the CSR program? Rank the following goals in order from "1" (most important) to "5" (least important). Place a "0" beside any goals you feel are inappropriate. Please write-in and rank any other goals you feel to be important.

	Rank
-Providing an alternative to jail for people who can't afford fines.	___
-Providing an alternative to jail for people who can too easily pay fines.	___
-Providing the referral with useful skills for future employment.	___
-Giving the referral a positive feeling toward the community.	___
-Providing services for community agencies.	___
-Other:_____	___
_____	___
_____	___

13. Have you received any referrals from the Adult Probation and Park Department? (check one)

___yes
___no

If yes. answer question #14. If no, go to question #15.

14. a. How satisfied are you with the work performance of their referrals? (circle one number)

Satisfied 7 6 5 4 3 2 1 Dissatisfied

Why?_____

_____

_____

b. How satisfied have you been with your contacts with the Adult Probation and Park Department? (circle one number)

Satisfied 7 6 5 4 3 2 1 Dissatisfied

Why?_____

_____

_____

15. Have you ever received any juveniles to perform service restitution under the provisions of the new juvenile code? (check one)

___yes
___no

If yes, answer # 16.

If yes, answer #16.

16. a. How satisfied are you with the work performance of these referrals? (circle one number)

Satisfied 7 6 5 4 3 2 1 Dissatisfied

Why?_____

_____

_____

b. How satisfied have you been with your contacts with the staff of the juvenile referring agency? (circle one number)

Satisfied 7 6 5 4 3 2 1 Dissatisfied

Why?_____

_____

_____

Thank you.

The end.

Appendix C

Correlation Matrix

	AGE	RACE	SEX	CH1	CH2	EMPSTA
RACE	.07204					
SEX	-.01379	.09925				
CH1	-.15499	.01136	-.01681			
CH2	-.17662	-.03773	-.25003	-.21335		
EMPSTA	.00357	-.07880	-.26914	.03491	.19593	
INCOME	.22869	.07713	.18391	-.04308	-.06344	-.30864
SENTENCE	-.27826	-.09214	-.12222	.20903	.22284	.34050

SENTENCE	-.13966		
	INCOME	N=412	All p < .05

Sentence is a dummy variable (CSR = 1, Probation = 0).

Age is age in years.

Race is a dummy variable (White = 1, Non-white = 0).

Sex is a dummy variable (Male = 1, Female = 0).

Charge 1 is a dummy variable (Non-DWI traffic offenses = 1, Any other charge = 0).

Charge 2 is a dummy variable (Criminal charge = 1, Any other charge = 0).

Employment status is a dummy variable (Not employed full time = 1, Employed full time = 0).

Income is family income in dollars.

CHAPTER VIII

CITIZEN PARTICIPATION IN THE COURTS: A STUDY OF THREE LOCAL ADVISORY BOARDS

James J. Alfini

Citizen group participation in government has expanded dramatically in the past two decades. Popular interest in governmental decision-making was heightened by the civil rights and reform movements of the late fifties and early sixties. In response to this increased citizen awareness and activism, many of the programs developed and sponsored by federal, state, and local agencies in the sixties and seventies incorporated the idea of "citizen participation" in their programs. Official recognition that local citizen groups are now an important force to be reckoned with is perhaps best evidenced by the publication of manuals and guidelines intended to aid local officials in dealing with these groups (see, e.g., Rodgers, 1977).

Coincident with this general citizen interest and participation in government, Nejelski (1977) has identified a "new wave" of popular participation in the courts. According to Nejelski, this "new wave" began in 1960 and is reflected in citizen involvement in judicial disciplinary commissions, court monitoring programs, judicial nominating commissions, and on-going court advisory committees. As Nejelski points out, however, little is known about the effects of this new wave of citizen involvement in the courts (1977:173). Written accounts are generally limited to program descriptions by those directly involved. For example, Fenoglio (1976) has described a courtwatching project initiated by the Illinois League of Women Voters and Wakeland (1976) has recounted her experiences as a member of a judicial disciplinary commission in New Mexico. This dearth of information on citizen participation in the judicial branch stands in stark contrast to the large body of literature analyzing the effects of citizen involvement in executive and legislative branch programs (see e.g., Hutcheson, 1976; Langton, 1978).

This lack of knowledge concerning the effects of citizen involvement in judicial branch programs has caused Nejelski and others (Johnson, 1978; U.S. National Commission on Criminal Justice Standards and Goals, 1973) to be somewhat cautious in encouraging greater citizen involvement in the judicial branch. They have been

concerned that citizen groups might have an adverse effect on the decisional independence of the judiciary. This is particularly true of their recommendations concerning the use of citizen advisory boards to local trial courts. In advocating the use of such advisory boards, they have been careful to limit their suggestions concerning the use of such boards to the area of administrative policymaking. Although there apparently is a history of the use of local advisory groups to juvenile courts (Nejelski, 1977:171), the experiences of these groups have not been systematically described and examined.

Despite their caution, proponents have advanced various claims concerning the efficacy of citizen advisory boards. Nejelski (1977) has stressed their value in developing community support for judicial policies. As such, they would "act as conduits for information between the courts and the community" (1977:172). Johnson (1978), on the other hand, has stressed their potential in opening the courts to community input on administrative policies. In effect, these are very different perspectives. Nejelski anticipates that the citizen board will function to support the judicial institution, while Johnson believes the board will change the institution. Regardless of the nature and purpose of the citizen board, however, Nejelski urges that, "citizen participants must possess a thorough understanding of the judicial system" (1977:172).

In light of these concerns, it might be assumed that the use of citizen advisory boards would be most meaningful in the misdemeanor court context. It is often pointed out that these courts are the average citizen's most frequent point of contact with the judicial system. It could therefore be argued that the business of these courts would be relatively understandable to the citizen participant. It could also be argued that the judges in these courts are not, generally speaking, politically influential and could therefore benefit from the political support for their programs that a concerned group of citizens could offer.

The purpose of this chapter is to describe and analyze the experiences of three citizen advisory boards in two misdemeanor courts. The performance of the Citizens Advisory Board to Pierce County District Court Number One (Tacoma, Washington) is considered over a two year period beginning with its establishment in November, 1977. The performance of the Advisory Board to the Travis County Courts-At-Law (Austin, Texas) is considered over a one year period beginning with its establishment in

November, 1978. To provide a basis for the analysis of the varying purposes, goals, and programs of these two citizens groups, data were collected through interviews with board members and judicial personnel and through observations at board meetings. In addition, members of both boards were surveyed by mail questionnaire.

This study also considers the experiences of a third citizens group, the Coordinating Council of the Travis County Courts-At-Law. However, because this group was in existence before this study was begun, data were collected through retrospective interviews and a mail questionnaire survey of board members.

Although the descriptions of the experiences of these three citizens groups may suggest different models of "citizen participation" in local courts, the purpose of this study is not to prescribe models of "citizen participation." Rather, the purpose is to consider broader questions suggested by Nejelski and Johnson concerning the efficacy of citizen participation in local court systems. In particular, questions are raised concerning the political uses of citizens groups, the effects of such citizen involvement on the judiciary, and the willingness and capabilities of the participating citizens to deal with the issues presented to them.

Before embarking on a description of the experiences of these groups, one caveat must be raised. I have not analyzed the relative influence of board membership on agenda setting, program development etc. More particularly, one could hypothesize that different types of "participation" would result depending upon who is asked to participate. Although I have indicated the occupations of the board members and this, in turn, may suggest different kinds of "participation," not enough variation exists among the boards and their memberships to deal adequately with such variables. A study, for example, of the kinds of participation one could expect from "elite" as opposed to "grass roots" citizens groups remains for future research.

A. The Tacoma Citizens Advisory Board

1. Board membership, goals, and activities. Efforts to establish a Citizen's Advisory Board to the Pierce County District Court Number One (Tacoma, Washington) were began in November, 1977. In his letter to prospective board members, the presiding judge of the district court stated that a primary goal of the board was "to encourage input from the public and to provide a continuing means of commu-

CONTINUED

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nication between the public and the Court" (presiding judge letter, November 18, 1977). In addition, the board was to assist the district court in implementing various aspects of a Community Resources Program (CRP). The CRP was designed to aid the court in making greater utilization of community resources and probation services, and to provide the court with mechanisms to develop community resources that were previously unavailable. In addition to the Citizen's Advisory Board, the CRP included three other components: community resource brokerage; community service restitution; and expanded volunteer services (for a comprehensive explanation of these three components see Rubin, 1980).

Thirty seven letters of invitation were mailed to prospective board members. The list of prospective board members was compiled by the court administrator in consultation with the four judges and the probation director. Twenty-one persons accepted membership, including: two law professors; a law student; five representatives of various local social agencies; three public servants, including a captain of the Tacoma police department; two insurance brokers; a labor union official; a businessman; a business consultant; a retired lawyer; a sociology professor; a housewife; and two private citizens whose work and activities were not identified.

In its first few months of existence, the board elected officers and divided itself into a court subcommittee and a probation subcommittee. The members felt that separate subcommittee meetings with court and probation staff would intensify their knowledge of these two entities and facilitate identification of policy areas in which board input would be most useful. The board also adopted a written constitution and by-laws.

Early on, the board expressed a strong desire to operate independently of court and probation officials. At the second meeting, the temporary (later permanent) chairman -- the law student and former director of a local felony diversion program -- took over the chair from the presiding judge. Perhaps the best example of this early desire to establish its independence from the court was the board's decision that the board, rather than the court and probation officials, would choose new members to fill vacancies on the board. Although the judges expressed a desire to continue to appoint board members, the board's constitution and by-laws fixed the board membership at not less than fifteen nor more than twenty-one members, and established a membership committee to recommend new members for election to the board.

During the first year of operation, the board and its two subcommittees met on a regular basis. The board did provide assistance to the court and probation department in implementing CRP components. In particular, an insurance broker member helped the probation department obtain insurance coverage for the community service restitution program. The board also reviewed CSR plans and participated in hearings on these plans and assisted the court in selecting a new probation director. However, it also spent a great deal of time attempting to define operational goals. Its constitution included a broad statement of purpose:

> The purpose of the Citizens Advisory Board is to establish a means of communication between the public and the Pierce County District Court in order to give the public a more realistic picture of the criminal justice system and to provide the court with an informed and balanced impression of what the public finds unfair and unjust about the system.

Certain members of the board became consumed with a desire to identify more specific goals. Toward this end, the court subcommittee articulated the following goals:

- -- studying the sentencing philosophies of the judges;
- -- dealing with the problems of the Pierce County Jail, because conditions there affect judicial sentencing;
- -- studying judicial philosophy; that is, how the judges perceive their function in the judicial system;
- -- studying the philosophies of the prosecutors' and public defenders' personnel; and
- -- addressing the court's space and budget problems.

Similarly, the probation subcommittee set the following goals:

- -- make the probation department better understood within the community;
- -- enhance the operation and administrative efficiency of the probation department;
- -- coordinate efforts of agencies within the community that are involved in misdemeanant service delivery; and
- -- expand opportunities for citizen participation.

The goals of both subcommittees appear to anticipate systematic study of the performance of both the court and the probation department. However, these performance evaluations were never undertaken in any systematic manner. Rather, the board's attention was soon diverted towards the development of three specific programs: a "citizen's dispute settlement program;" a "speaker's bureau;" and a "court monitoring program." Each of these programs had been identified by the end of the board's first year (board meeting minutes, November 13, 1978).

The idea of developing a citizen's dispute settlement program was actively encouraged by the court administrator and by the law professors and the law student member of the board. During the summer of 1978, the courts subcommittee met with the chairperson of the advisory committee of a dispute settlement center in Seattle. He described the Seattle program and offered advice on the development and implementation of similar programs.

The courts subcommittee also met with the dean of the law school at the University of Puget Sound. The dean expressed interest in a citizen's dispute settlement program and in having law students serve as screeners and advisors to such a program. He indicated that the law school was scheduled to move to downtown Tacoma within the next two years and he would be interested in renting space to a citizens dispute settlement program at that time.

The courts subcommittee subsequently developed a "white paper," outlining a citizens dispute settlement program for the district court. It envisioned the settlement of minor civil and criminal cases through mediation or arbitration without resort to the court system. This concept was discussed at board meetings during the latter part of 1978 and early 1979. However, at the board meeting held on July 19, 1979, the board voted "to yield" to the law school the further development of the citizens dispute settlement program, particularly for purposes of obtaining grant funding. It was agreed that the board would continue to be involved as a co-sponsor of the program (board meeting minutes, July 19, 1979).

By the end of its first year of operation, the board had also agreed to sponsor a speaker's bureau. The idea for a speaker's bureau originated with the board's vice chairperson, a community activist who believed that the speaker's bureau would be an important vehicle for establishing communication between the court and the community. However, the new presiding judge of the district court expressed strong opposition to having board members represent the court in meetings with community groups. The presiding judge's opposition (described in greater detail in the next section), coupled with the vice-chairperson's resignation from the board (for personal reasons) resulted in the abandonment by the middle of the board's second year of the idea of having a board-sponsored speaker's bureau.

The only major board activity which had been identified by the end of the board's first year that survived its second year of operation was the court monitoring program. However, this program was still in the development stage at the end of the second year.

The idea of having the board develop a court monitoring program surfaced primarily through the efforts of one of the judges. This judge had been elected to the court shortly after the board was established. During the board's first year of operation, the judge questioned the appropriateness -- at board meetings and in private discussions with the board chairperson -- of certain board activities, particularly the citizen's dispute settlement program and the speaker's bureau. He suggested that a court watching program would be a more appropriate activity for the board. To provide impetus for this idea, he brought to a board meeting a woman who had prior experience with a court-watching program as an officer in the Washington Association of Women Highway Safety Leaders. This organization sponsored a court-watching program that centers on DWI cases. She was voted on the board at that meeting. Another of the newer members of the board had also had prior experience with a court watching program, having been involved in a program in Seattle sponsored by the American Friends Service Committee.

These two new board members were subsequently appointed a committee of two to develop a court monitoring program for the board. They prepared a draft monitoring form to be used by "court watchers" and a statement of purposes for the monitoring program. At the January 11, 1979, board meeting they expressed their belief that the purpose of the court monitoring program should be twofold. First, it should seek to provide the consumer of court services with basic information concerning the court. This would be accomplished by developing a "booklet" on the court based on the observations and experiences of those involved in the court monitoring program. The booklet would include sections entitled, "Should I Plead

Guilty?", "Can I Be My Own Lawyer?", and "Do I Get Time Off for Good Behavior?". Second, the program should seek to provide feedback to the court based on the observations and data collected by those involved in the program. At that meeting, the board chairman, among others, indicated a belief that the primary goal of the program (at least initially) should be to provide feedback to the court concerning its operations. It was generally felt that the booklet might be developed later, after the monitoring program had collected sufficient information (board meeting minutes, January 11, 1979).

In January of 1979, the judge who had expressed reservations concerning the citizen's dispute settlement program and the speaker's bureau (and who had encouraged the development of the court monitoring project) became the presiding judge of the district court. He continued to actively encourage the development of the court monitoring project, explaining that it would be a vehicle for increasing the knowledge of the board members concerning the court operations and, at the same time, would provide useful information to the judges concerning the citizens' perception of court operations and judicial performance.

In the spring of 1979, the board member who had experience with the Seattle court watching program resigned from the court monitoring committee, explaining that his recent admission to the bar might conflict with monitoring activities since he might be representing clients in the district court. The board chairperson (law student) was his replacement on the court monitoring committee. The court monitoring committee subsequently developed three monitoring forms. The first form inquired into general courthouse and courtroom conditions and was intended to be completed by a citizen court-watcher. The second form asked similar questions, but was intended to be completed by an expert on such matters (e.g., an architect). The third form was aimed at collecting data concerning the handling of specific cases and was intended to be completed by the court monitor in the courtroom.

By the fall of 1979, the forms had been completed, but the board had not yet decided who would do the monitoring, how the information would be analyzed, or how the information would be transmitted to the judges and others. At a board meeting on September 13, 1979, the fate of the court monitoring program appeared to be tied to the fate of the board. At that meeting only four board members were present, including the woman who had assisted in the development of the monitoring forms, she

stated that she "had completed her job on the monitoring process and she had nowhere else to turn" (board meeting minutes, September 13, 1979).

Most of the time of the meeting was taken up with discussions concerning the future fate of the board. Various board members questioned whether the purposes and objectives of the board had ever been clearly set forth, how the chairpersons of the various committees could be held more accountable to the board, and whether new projects should be initiated. The presiding judge asked what the problems were with the board. He stated that he did not see dissolution of the board as a viable alternative and asked whether a new structure was needed (board meeting minutes, September 13, 1979). However, it was clear at this point that most of the board members had lost interest in continued participation in board activity.

Why had board members lost interest after developing a very ambitious program? At least a partial answer to this question can be found in the differing attitudes of the presiding judge and many board members toward board goals and programs.

2. Attitudes toward board goals and programs. The experiences of the Tacoma Citizens Advisory Board can be better understood by considering the attitudes of the judges and board members toward the goals and programs of the board. These attitudes tended to have a great influence over the identification of goals and the development of particular programs.

One factor which appeared to influence the board's goal identification and program development was the attitude of the presiding judge toward various goals and programs. During this initial two year period, there were three presiding judges of District Court Number One. All three were supportive of the idea of having a citizens board and attended most, if not all, of the board meetings during their respective terms as presiding judge. However, each judge related to the board differently and exercised varying degrees of influence over board operations. The three other judges who served on the court during this period were generally supportive of the concept of having a citizens advisory board but generally maintained a passive attitude toward board activities.

The first presiding judge filled that position only during the first two months of the board's operation and retired from the court one year later. Although his

impending retirement may have been a factor in the judge's developing a relatively passive attitude toward the board, he indicated that he didn't believe the board should become "a mouthpiece" for the court (Interview, November 8, 1978). He had had prior experience with a citizen's board and indicated that he was most interested in having the board develop a court monitoring program so that they could give the judge "an idea of the image you are projecting" (Interview, November 1, 1978). He also indicated an interest in having the board become knowledgeable about the court's fiscal and space needs. He said that the space the court presently occupied was insufficient and indicated that they had difficulty obtaining additional resources from the county board. Finally, he was interested in having the board review the court's jury management policies. However, this judge was anything but forceful in conveying these ideas to the board. He expressed a belief that it would be best for the board to develop its own agenda.

The second presiding judge was similarly careful to avoid playing a dominant, or dominating, role in board goal identification and program development. Although her agenda of potential items for board consideration was broader than that of the first presiding judge, she generally made no concerted attempt to influence the board to include a particular program or project on their agenda, or to dissuade the board from developing a particular program. Her only attempt to influence the board occured approximately midway through her tenure as presiding judge. The local sheriff asked the board to serve as a "blue ribbon" committee to investigate jail conditions because of reports of violence within the jail. This request was communicated to the judges who expressed a belief that separation of powers should preclude investigation of the sheriff (an executive officer) by the board (an entity created by the judiciary). On the recommendation of the board chairperson (who had discussed the situation with the presiding judge) the board declined the sheriff's invitation. All three of the major programs initiated by the board during this study -- the citizen dispute settlement program, the speaker's bureau, and the court monitoring program -- were begun during this judge's tenure as presiding judge. She expressed her support of all three programs and continued to offer other suggestions as well.

Unlike the first two presiding judges, the third presiding judge had very definite ideas concerning the efficacy of various board programs and made a concerted effort to convey his feelings on these matters to the board. In particular, he was opposed to the board's efforts in developing the citizen dispute settlement program and the

speaker's bureau and was instrumental in having the board include the court monitoring program on its agenda (interview, November 8, 1978). His opposition to the citizens dispute settlement program was lukewarm compared to his opposition to the speaker's bureau. With regard to the dispute settlement program, he believed that the board was "misdirected" and that that program simply did not fit with the board's advisory role (interview, November 8, 1978). His opposition to the speakers' bureau, on the other hand, went well beyond mere disagreement over the board's proper role. It was his feeling that the judges and not the board members should represent the court at community group meetings.

The judge's strong feelings on these matters resulted in tension between him and some of the board members. This tension intensified after he became presiding judge. At the close of the January 11, 1979, meeting of the board, he rose and stated:

> I sense a distance between the board and myself. The CAB (Citizen's Advisory Board) I support unalteringly is the CAB created by the Judges for the use and benefit of the court. We want to know how we look and act. It's important to know how we are perceived... I'm interested in monitoring but as a way to help the court and advise the court. The forms and its use, the booklet and its contents, as initially proposed are appropriate for the American Friends Service Committee, the ACLU, the Office of Assigned Counsel, or perhaps the bar association, but a defense oriented view is not appropriate for a court-sponsored CAB... The CAB must recognize its responsibilities as an aide to the court and not an adversary. The judges are responsible for the court. This is one of my ojbections to the Speakers Bureau. The CAB should speak about the CAB and the judges about the court.

As indicated in his statement, the presiding judge was supportive of the board only insofar as its interests coincided with those of the court. He was interested in having the board monitor and evaluate the performance of the judges but on his terms. In particular, he did not want the board to communicate its feelings about the court to the community at large. Rather, they were to communicate only with the judges.

The presiding judge's feelings concerning the proper role of the citizens advisory board conflicted with the beliefs of a majority of board members. After the board's first year of operation (and after the third presiding judge had made his statement to the board), a mail questionnaire was sent to the board members. Among other things, the board members were asked to rank order from "1" (most important) to "5" (least important) the most important goals or purposes of the Citizens Advisory Board. The members responses are indicated in Table One.

Table 1. Tacoma Board Identification (in Rank Order) of Board Goals

Goal	Mean
Improving communication between the court and and the community	1.4
Critiquing court operation and judicial performance	2.6
Aiding the court in obtaining resources from local agencies	3.2
Assisting the probation department in obtaining resources for the resource brokerage and service restitution programs	3.2
Screening applicants for positions with the court and probation department	3.9
Other	1.5

(N = 14)

As indicated, "improving communication between the court and the community" was far and away the most important goal in the eyes of the board. Eleven board members ranked this goal first, as opposed to only two who ranked "critiquing court operations and judicial performance" first. This appears to reflect a desire on the part of the board members to communicate with the community as well as the court. What is most surprising is that so many board members ranked this goal first even though it was phrased in non-threatening terms.

In interviews with individual board members and in open-ended responses to the questionnaire, a majority of board members indicated a strong desire to have the ability to communicate their feelings about the court to the community. However, they also noted that this was philosophically at odds with the presiding judge's position concerning the proper role of the board. Some members indicated considerable

frustration over a desire to be "action" oriented while serving at the pleasure of a court whose presiding judge wanted them to accept their "advisory" role in its strictest terms. In response to a question concerning members' satisfaction with board meetings, one member indicated dissatisfaction over the "unresolved dispute with one judge over the role of the board." However, the member noted: "my general feeling is that not enough action is taking place, but an action role is difficult to define when the group is 'advisory'."

The presiding judge's desire to have the board support the interests of the court was made even clearer at the board meeting held on May 10, 1979. Most of the meeting was consumed by a presentation by a local architect who had completed a space planning study for the court. His conclusion was that new space was needed and described a renovation project whose projected cost was $625,000. At the meeting, the primary objective of the presiding judge was to obtain a letter from the citizens advisory board to the county commissioners supporting these plans. One board member later stated: "the courtroom construction was a 'railroad' job brought to us without any direct or real input of the board, and we were asked to provide active complete support for a fait accompli."

These differences between many board members and the presiding judge concerning the proper role of the board appeared to account for much of the ensuing disinterest in board activities by many board members. Only four members attended the September 13, 1979, meeting of the board and the major topic of discussion was the board's future.

B. The Austin Advisory Board

1. Board membership, goals, and activities. Like the Tacoma Citizens Advisory Board, the Advisory Board to the Travis County Courts-At-Law (Austin, Texas) initially was established as part of a Community Resources Program (CRP). Unlike the Tacoma board, whose ambitious agenda reflected its broad statement of the purpose, the Austin board developed a limited agenda which reflected a singleness of purpose -- that of assisting the Travis County Courts-At-Law in implementing a community service restitution project.

The first meeting of the Austin board was held on November 14, 1978. Twenty four of the twenty five members initially selected attended the meeting. The chief judge, who had selected the board members with the advice of the volunteer coordinator of adult probation, explained the purpose of the CRP and indicated that she would like the board to be open with her and the other two judges. In addition, four speakers (three of whom were board members) explained various stages of the processing of misdemeanor offenders from arrest to probation.

The initial membership of the Austin board included: a law professor; five representatives of various local and state social agencies; two local businessmen; a police department representative; two assistant prosecutors; two criminal defense attorneys; a state legislator; a university psychologist; two clergymen who had been involved in social welfare programs; and four homemakers with prior experience in working with local citizen action programs. Because of "the quality of its membership," the director and volunteer coordinator of probation expressed a belief that the board would ultimately adopt a varied agenda and would act as an advisory body to the court on a wide range of judicial and probation matters.

Indeed, the board appeared to be aiming toward the development of a broadened agenda during its first few months. At its second meeting held on December 12, 1978, the board elected the law professor and the psychologist as co-chairpersons of the board. The psychologist distributed a questionnaire aimed at determining board members interests and expertise. She indicated that she would use the questionnaire responses to group members together into subcommittees that would meet at the next meeting (board meeting minutes, December 12, 1978).

At the next meeting, the psychologist distributed a list of subcommittee assignments and indicated that those members who were still unassigned should submit their questionnaires to her as soon as possible (board meeting minutes, January 9, 1979). However, potential disagreement between the co-chairpersons concerning the board agenda surfaced at the meeting. The law professor indicated that it was his belief that the board was charged with two basic goals: "(1) to formulate a policy on community service restitution, including a specification of its purpose and focus; and (2) to begin contacting agencies which can sponsor offenders in the program and to compile an inventory of these agencies" (board meeting minutes, January 9, 1979).

This potential disagreement over board agenda never materialized. The psychologist co-chairperson resigned before the next meeting due to health reasons. The subcommittee structure was never effectuated and the law professor co-chairperson ostensibly obtained a board consensus that, instead of maintaining subcommittees, the board would function as a committee of the whole and individual members would volunteer their services to perform specific tasks aimed at assisting in the development and implementation of the community service restitution (CSR) program (interview with volunteer coordinator, April 17, 1979).

During the early spring (1979), the board discussed various issues relating to CSR and prepared an extensive list of "recommendations;" including maximum and minimum CSR periods, types of agencies where CSR work might be performed, rates of exchange of CSR work in terms of dollar fines and days in jail, and stages in the criminal case process where CSR might be used. The board also went through a list of United Way agencies and assigned groups of agencies to each of three social work students. The social work students, who had been retained by the law professor, subsequently contacted the agencies to determine their willingness to participate in the CSR program.

At a meeting of the board held on April 17, 1979, the law professor co-chairperson led the meeting. There was lengthy discussion of thorny issues relating to CSR, the sole purpose of the meeting. Most of the meeting was devoted to a discussion of the agencies contacted by the social work students and other agencies to be contacted. Individual board members volunteered to contact agencies with which they had contacts.

The CSR program, conceived and developed by the board, was approved by the judges and the probation department. A presentation on the CSR program was made by the law professor to the criminal defense bar of Travis County in the late spring (1979). The law professor was supported at the meeting by the criminal defense attorney board members and the presiding judge. The judge indicated that she would be willing to use CSR as a deferred sentencing alternative.

At a June 12, 1979 meeting of the board only four members, including the two co-chairpersons, were in attendance. A law student intern assigned to the probation department reported on the first four cases recommended for CSR. The law professor

co-chairperson had assigned the law student to the probation department (as part of a summer internship program) to coordinate CSR referrals (see Chapter IX for analysis of the CSR program in Austin).

The county prosecutor attended the July 10, 1979 meeting of the board. In response to questions from board members concerning his feelings about CSR as a sentencing alternative, he stated that it would be his policy to personally approve each CSR case and that he would personally engage in plea discussions with defense counsel in cases involving CSR. The law professor co-chairperson subsequently indicated his belief that the county attorney's desire to be personally involved in CSR cases had discouraged defense counsel from recommending CSR. However, he indicated that a new Texas law officially authorizing CSR as deferred adjudication might ultimately encourage expanded use of CSR.

Ten members attended the September 11, 1979 meeting of the board. The county attorney was also in attendance. The board asked the county attorney why CSR referrals had been slow during the summer. He admitted that defense counsel probably were reluctant to deal with him, and indicated his belief that it would be best to have the program start slowly. However, the board learned that the county attorney had personally recommended CSR in two cases. The board persisted in questioning him about his feelings toward the use of CSR.

Eight members attended the October 16, 1979 meeting of the board. The probation department representative reported on CSR referrals. He indicated that there were fourteen active CSR probationers. The board indicated a desire to replace members who were not attending meetings and authorized the volunteer coordinator of the probation department to solicit new members from representatives of agencies participating in the CSR program. One of the board members volunteered to author a pamphlet describing the CSR program.

At the next meeting of the board (November 27, 1979) the probation department representative stated that 27 CSR clients were under active supervision. The board member preparing the CSR pamphlet reported on her progress and the board agreed that the potential audience should be potential clients and attorneys.

2. Attitudes toward board goals and programs. The attitudes of court officials and board members concerning the Austin board's goals and programs were closer than those in Tacoma. There was a consensus among officials and board members in Austin that the board's role should be limited. In particular, the board should concentrate on developing and implementing a CSR program for the Travis County Courts-At-Law.

Although the chief probation officials had initially indicated a belief that the board could develop a broad agenda, the fact that the Austin probation department deals with both felony and misdemeanor probationers precluded active involvement of these officials in subsequent activities of the board. Rather, they delegated the responsibility of dealing with the board to certain subordinates who were less likely to attempt to influence the board concerning its agenda and tended to adopt a supportive rather than an influential posture.

Although all three judges of the county court-at-law generally were supportive of the idea of having a citizens advisory board, as in Tacoma, the chief judge was clearly the most influential figure among the judges. However, she played a relatively passive role vis-a-vis the board. She attended few meetings and appeared interested in the board only insofar as the board and the CSR program it was developing helped to further her image as a reformer.

Perhaps the most influential person in setting the agenda for the Advisory Board to the Travis County Courts-At-Law was the law professor co-chairperson. He made it clear that he was inclined to see a limited life span for the board. He believed that the board would be most effective if it maintained a singleness of purpose and oriented its efforts towards development of a CSR program for the county courts-at-law (interview, April 18, 1979). He indicated that it would make sense for the board to remain active for a short period of time to monitor the CSR program. He did not believe that a broader agenda, including a systematic court monitoring program, would be helpful, because the judges had delegated their sentencing powers to the prosecutor and therefore very little happens with regard to sentence in the courtroom (interview, April 18, 1979).

A majority of the other board members apparently agreed with this singleness of purpose. After the board's first six months of operation, a mail questionnaire (similar

to that directed to Tacoma board members) was sent to the members of the Austin board. The members responses to a question asking them to rank order from "1" (most important) to "5" (least important) the most important goals or purposes of the board are indicated in Table Two.

Table 2. Austin Board Identification (in Rank Order) of Board Goals

Goal	Mean
Advising the court as to the proper nature and scope of the CSR program	2.0
Aiding the court in identifying local agencies that will participate in the CSR program	2.6
Assisting the court in overcoming opposition to the CSR program	2.7
Monitoring and critiquing court operations and judicial performance after the CSR program is established	3.00
Improving communication between the court and the community	3.08

(N = 12)

Whereas the goal of "improving communication between the court and the community" was far and away the most important goal in the eyes of the Tacoma board, it was ranked last by the Austin board. "Monitoring and critiquing court operations and judicial performance..." was ranked next to last, while a similar goal was ranked second by the Tacoma board. In Austin, both of these goals took a back seat to the three goals that were directly related to the development of the CSR program for the county courts-at-law.

In interviews with individual board members and open-ended responses to the questionnaire, the board members indicated their general satisfaction with the board's limited agenda. In response to a question concerning their satisfaction with board meetings, one member stated that, "we discuss what we need to and adjourn." Other members responded: "always goal oriented, agenda made explicit..."; "gets right to the business at hand;" "mostly right to the point...;" "chairman directs the group in right directions;" and, "discussions related to the board's mission were generally kept on track."

Unlike the Tacoma board, the Austin board did not appear to suffer from disagreements concerning its proper role. Although its success in gaining acceptance of a CSR program in Austin is problemmatic (see Chapter IX), the efficacy and success of the Austin CSR program appeared to be linked to factors other than board participation in the program.

C. The Austin Coordinating Council

Unlike the previously discussed citizens advisory boards in Tacoma and Austin, the Coordinating Council to the Travis County Court-At-Law Number Two was in existence prior to the initiation of this study. Therefore, the discussion of this citizens group is less extensive because it is based on more limited information. The author did not attend any meetings of this group, but relied on interviews with the presiding judge and council members and a mail survey of council members.

The council was established by the chief judge early in 1977 to assist her in implementing and maintaining certain programs. It has consisted of 15 to 20 members, including: five local businesspersons; a junior high school principal; four homemakers with prior experience in local political groups and citizen action programs; two influential clergyman; two college professors; and two federal employees.

It has functioned on an ad hoc basis, meeting only when asked to do so by the chief judge. One member analogized the board to a volunteer fire department. He stated that they meet only when the judge "rings the alarm bell" (interview June 2, 1979). Another board member was more blunt: "we are organized as a tool for Judge _____" (interview, June 3, 1979).

Each of the board members interviewed stated that they viewed the chief judge as a "reformer" and indicated that they were willing to serve on the board because she was trying to improve the county court. One member stated:

> I don't know how good a judge she is but she certainly is for reform... She was fighting everyone in that court. I don't know how she stood it.

Another member characterized the courthouse as "kind of a jungle" and stated that the judge was trying to do something about it and that's why the citizens group backs her.

The council was mobilized to provide support to the judge on at least two matters during its first year of existence. On one occasion, the court was in danger of losing federal funds that had been used for a court administrator. A board member who was a retired professor of business statistics collected case data that ostensibly demonstrated the need for a court administrator and board members lobbied various local officials and appeared before a regional planning board that had recommending authority on federal grants. The funds for the court administrator were reinstated. On another occasion, the presiding judge was encountering stiff opposition from the local criminal defense bar in trying to effectuate speedy trial rules. Board members attended public meetings at the courthouse and offered vocal support for the judge's rules.

Unlike the two previously discussed citizens boards, the Austin council is characterized by a strong personal commitment to the chief judge. Its primary goal appears to be that of supporting the chief judge in her efforts to "reform" the court. However, when the council members were asked to identify their goals in less subjective terms, there were some interesting relevations.

A mail questionnaire (similar to that directed to the other two citizens groups) was sent to members of the Austin council. The members responses to a question asking them to rank order from "1" (most important) to "5" (least important) the most important goals or purposes of the council are indicated in Table Three.

Table 3. Austin Council Identification (in Rank Order) of Council Goals

Goal	Mean
Critiquing court operations and judicial performance	1.8
Improving communication between the court and the community	2.4
Screening applications for positions with the court and the probation department	2.9
Assisting the court and probation department in obtaining resources for the community service restitution program	3.0
Aiding the court in obtaining resources from local agencies	3.3

(N = 10)

The rank ordering of goals by the Austin council indicates a citizens group most desirous of acting as a critic of the court and relating their findings to the community and least desirous of being used by the court to obtain resources from local agencies. These goals do not coincide with the council's program, which suggests just the reverse. In fact, the Austin council's rank ordering of goals was similar to that of the Tacoma board.

Some council members did indicate (in interviews and open-ended responses to the questionnaire) a certain amount of frustration with regard to their participation in the council's activities. They indicated a desire to develop a broadened agenda or, as one member stated, to "broaden its areas of concern." However, they noted that this was not feasible as long as the board was sponsored by the court. As one member stated:

> The weakness in this citizens group is that it was formed by the judge... I didn't think a citizens committee should be under the influence of a public official.

More specifically, she pointed out that the council had not met for some time and indicated a belief that they would not meet until the chief judge felt that it was politically advantageous (to the judge) to do so. She explained that the judge was "sitting back right now, running for district judge, and doesn't want to rock the boat."

D. Conclusion

One might conclude from the foregoing discussion that the citizen groups in Austin were more "successful" than the Tacoma group, because they achieved tangible results that were in line with the anticipated goals of the public officials that created them. However, such a simplistic analysis would fail to address an important normative issue: how should the purposes and goals of such boards utlimately be defined? All three boards were encouraged and provided with incentives only as long as their goals coincided with the interests of the sponsoring officials and institutions. When the Tacoma board attempted to pursue programs that were perceived as a potential threat to these interests, it was actively discouraged. The last presiding judge in Tacoma attempted to reorder the board's goals to aid him in improving his image on the bench and to prevent the board from communicating their feelings about the court to the community at large. The chief judge in Austin, on the other hand, appeared to be interested in both Austin groups primarily as a vehicle to increase the court's political leverage with local officials. Thus, the goals of all three boards ultimately reflected the political interests of the sponsoring officials.

These observations reflect a fact that reformers arguing for expanded opportunities for citizen participation in local courts often overlook or underplay: local courts are political institutions and participating citizens necessarily will be asked to accomodate their interests to the political interests of the sponsoring officials. In this regard, the experiences of these three advisory groups appear to come much closer to the Nejelski (1977) paradigm of citizen participation that supports the court by supporting policies and programs that are conceived by, or at least acceptable to, the judges than they did to the Johnson (1978) paradigm of citizen participation that changes the court by offering community input into the development of judicial policies and programs.

All three groups were asked to support certain policies and programs that had been predetermined by the judges. In certain respects, the Austin boards appeared to be less reluctant to play this supportive role because there was a clearer sense when they were established that this would be their purpose. This is not to suggest, however, that this supportive role is necessarily at odds with a board role that anticipates community input into judicial policies and programs. Although the community service restitution program was presented to the Austin board as a fait accompli, the sponsoring judge asked the board to play a significant role in developing the nature and scope of that program.[1] Similarly, the third presiding judge in Tacoma was interested in having the board develop a court monitoring program that would provide community input on judicial performance. In both cases, however, this community input was to be provided to the sponsoring judges on the judges' terms -- i.e., terms that they found politically acceptable.

It could be argued that such an outcome is both inevitable and legitimate. It has often been pointed out that the local courts and judges, in particular, are politically disadvantaged in having to succumb to the whims of other political officials in gaining necessary resources and effectuating certain management prerogatives (Friesen, et al., 1971). Why should they not be given the aid of a group of concerned citizens in pursuing legitimate political interests?

There are certain problems with this argument, however. First, it assumes that participating citizens will be willing to indulge in unquestioning compliance to these personal and institutional interests. Members of all three groups discussed in this chapter indicated that, in varying degrees, they felt that they were "used" and expressed some frustration over not knowing enough about the court and the specific programs to allow them to be included in key policy decisions over program development and implementation. Even if they were included in these decisions, it is questionable whether the boards would have been able to distinguish between legitimate institutional interests and the personal interests of the judges. In only very limited ways were the boards encouraged to develop the necessary resources (e.g., staff) and incentives to allow them to make such distinctions.

The argument also assumes that these citizens will use the political power they gain through participation primarily to serve the court and to influence public decision-making in very limited ways. It might be asked first whether this is fair and

second whether it is anticipated. As one commentator has stated, "citizens are often asked to participate at considerable personal sacrifice, in public hearings or on local boards, only to find themselves as powerless as before" (Perlman, 1978:66). Members of all three boards, particularly in their rank-ordering of board goals, indicated a strong desire to critique court operations and communicate their findings to the community at large. However, the experiences of these three boards indicate that the citizens had no power independent of the personal and institutional interests of these public officials. It is also questionable whether this result is anticipated by those who have proposed government-sponsored citizen participation programs. Much of the literature expresses a hope that even government-sponsored citizen groups will have some affect on public decision-making (Hutcheson, 1976).

Opportunities for popular participation in local courts may be more limited, therefore, than their proponents suggest. In particular, citizen participation on officially sponsored advisory boards necessarily will be limited to programs and activities that are compatible with the personal and institutional interests of the sponsoring judges. On the other hand, it is unlikely that local citizens groups that have motivations and resources independent of the court would be similarly constrained. Such citizen-initiated programs (e.g., court-watchers) may have a greater potential for participation that is less symbolic and more in keeping with the claims of their advocates. What remains problematic is the extent to which citizens' programs can influence judicial policies absent official sponsorship.

NOTES

[1] It is interesting to note that even though this program had the support of both the sponsoring judge and the board, its fate was in doubt because it failed to fully consider the interests of another political official — the county attorney (see Grau's analysis in Chapter IX herein).

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CHAPTER IX

THE LIMITS OF PLANNED CHANGE IN COURTS

Charles W. Grau

Although planned change has been studied in a number of organizational settings,[1] it has received little attention in the courts. Heavily emphasizing state court unification, most court reform literature identifies specific problems and proposes specific solutions without reference to change efforts in other fields, or to the systemic pre-conditions, consequences and limits of planned change (Nimmer, 1978:2; Berkson and Carbon, 1978:6-9). This chapter examines the process of planned change in two misdemeanor courts. The first section focuses on the attempts to implement a new probation program in Pierce County District Court No. One, in Tacoma, Washington. The second section focuses on efforts to institute a new sentencing alternative in the Travis County Courts at Law in Austin, Texas. In Tacoma, the important dynamics of change were largely internal to the court's probation department. In Austin, the dynamics were systemic. In both sites, the existing distributions of interests and power[2] among actors and institutions were critical to whether new programs were successfully implemented, and if so, in what form.

The dynamics of change in Tacoma were internal to the probation department, an organ of the court with defined formal goals and a fixed hierarchy. In Tacoma, the new program did not threaten to disrupt the expectations, interests, or power of the court, the prosecutor, the bar, or other elements of the probation department environment. On the other hand, actors and institutions external to the Austin court's formal structure disagreed on the need for change because it threatened established practices which embodied their pursuit of self-interest. Continuing conflict over the consequences, nature and extent of the program, as well as who would be responsible for it, inhibited its implementation. In Austin, we will examine how the interplay of sponsoring organizations, institutions, and actors affected implementation.

A. Organizational Limits to Planned Change: The Case of Tacoma

Organizational theorists enumerate many factors which affect planned change. Among them are historical and environmental factors (Greiner, 1967), the presence and role of an outside change agent (Gross et al., 1971), the magnitude of the planned change (Hage and Aiken, 1970; Dolbeare and Hammond, 1971), the degree of subordinate participation (Gross et al., 1971; Seeborg, 1978; Klein, 1961; Watson, 1967; Hage and Aiken, 1970; Pearlin, 1962), and how the proposed reforms affected professional autonomy (Albrecht, 1978). Even more important than these factors is whether and how the reform promises to alter existing interests and the ways in which actors and institutions heretofore had pursued them (Nimmer, 1977). Moreover, because the factors outlined by the organizational literature are categorical, they fail to capture the processual nature of change. It is not enough to examine the "magnitude" of a change without exploring what interests it effects, whose interests they are, and how those effected responded. Similarly, "subordinate participation" is not an abstract commodity that can be increased or decreased with an impact only on the degree of implementation, as Gross et al. (1971) suggest. The "success" of planned change may depend on whether the participation sought by managers was real or symbolic, designed to allow subordinates to alter change programs in accord with their interests, such as professional autonomy, or designed only to gain their consent. How do subordinates respond to these different types of "participation"? What are the consequences of different types of participation on the degree of program change and to the substance of the program ultimately adopted?

1. An overview of the research site.[3] Pierce County is the second largest county in the state of Washington. Commerce is its most significant economic activity, followed by lumber, agriculture, and service industries. County politics are dominated by organized labor, making it predominantly democratic in a traditionally two-party state. Located in Tacoma, District Court No. One is the largest of four District Courts in the county. Its jurisdiction extends to limited amount civil actions and criminal misdemeanors, which comprise most of its caseload. Misdemeanor jurisdiction is shared with Tacoma's Municipal Court, which handles municipal ordinance violations. The district court has no divisions, and its policies are determined by majority vote. The court is served by three full-time judges and one commissioner-judge who hears traffic cases four days per week. The court also employs a full-time court administrator, and is served by the Pierce County Probation Department. The

probation department is accountable to the court, which sets employee qualifications and appoints personnel with the consent of the county board. The county board retains funding control, however.

The department consists of a director and several counselors. Staff duties traditionally have included the preparation of presentence reports, client supervision, and referrals to external agencies. Before implementation of the new program, the counselors maintained individual caseloads of about one hundred probationers apiece. Though some of the counselors had specialized skills, probationers were not allocated to counselors on the basis of special needs. Counselors met with each probationer at least once per month, as required by departmental guidelines. Counselors typically met with ten to twenty probationers per week for about one hour each. Counselors also referred probationers to community agencies during this period, though the referral process was not systematic.

Prior to implementation, the department had experienced conflict between its director and staff. According to staff, this director, who resigned early in 1977 before the beginning of the new program, was absent from his office more often than not. They claimed he was inaccessible to staff and the judges, and that the department was in fact administered by one of the secretaries. As a result, they felt the quality of probation services deteriorated. Several judges became disgruntled and considered abolishing the department. The director compounded this dissatisfaction by complaining of the incompetence of his staff to the judges and blaming the counselors for the low quality of probation services. In a January 1977 memorandum to the Pierce County Commissioners, the counselors complained of the director's "excessive absence" from the office, his "frequent tee times," and his "misuse of his position...for personal gain."

In June 1977, the judges agreed to implement a "Community Resource Program" (CRP). Probation staff were not involved in the decision to implement the program. Rather, court and probation officials decided to implement the program at the suggestion of Institute for Court Management (ICM) staff who had developed the program as part of the current study of misdemeanor courts. (For a more complete description, see Rubin, 1980: Chapter 2.)

The CRP consists of four components which supposedly help courts identify, develop, and utilize various resources in the community without additional expense. The Citizen Advisory Board (examined in Chapter VIII herein), was to increase citizen participation in the courts, particularly in assisting the implementation of the other three components. Most court and probation officials were convinced that the program would improve the delivery of probation services without additional expenditures. The second component, Community Service Restitution, (analyzed above in Chapter VII herein) was to be an additional sentencing alternative for judges whereby they could sentence misdemeanants to work for community agencies in lieu of paying fines or being jailed. The final components were directly aimed at the probation department. The department was to increase its use of volunteers, having them perform various administrative tasks in order to free additional probation staff time for Community Service Restitution and the final component, Community Resource Brokerage (CRB). CRB, the subject of this section, required a major restructuring of the department and the services it provided. Individual caseloads were to be replaced by pooled caseloads administered by probation "teams" rather than individual counselors. Each team would cover a particular area of need, such as alcohol abuse. Counselors were to develop particular areas of expertise, which would be utilized in his or her "team." Rather than receiving services directly from counselors, the current practice, probationers were to be "brokered" out to community agencies for services. The program supposedly is better for probationers because it more directly addresses their individual needs. It supposedly is better for probation departments because, like Adam Smith's pin factory, it increases the division of labor through specialization. (Miller, undated; Wilson, 1978).

2. The implementation process. To help initiate changes, ICM project staff provided CRB training in August 1977 with the assistance of a consultant from the Western Interstate Commission for Higher Education (WICHE). (See Figure One.) The probation staff informally assessed Pierce County probationer needs, caseload characteristics, and available community services. The underlying theory of CRB was discussed, the consultant suggesting that caseloads be integrated into the community's social services network. Staff identified problems anticipated in the implementation of CRB and ranked them according to priority. The consultant also urged team-building. The probation director employed this consultant three months later to help refine the change plan and to assist team building. Ultimately, an implementation plan was designed which assigned team responsibilities in several areas. One counselor

was to handle clients with employment, vocational training, and academic training "problems." Four counselors were to "team up" on substance abuse and mental health. One counselor was placed in charge of transportation, financial assistance, housing, legal, and health need areas. Counselors were to deal with probationers only insofar as the probationers had needs in the counselor's specialty area. The counselor's main responsibilities would be to connect the probationer with an appropriate community agency for "treatment." These assignments were soon modified on the basis of client needs assessment findings and staff objections. In particular, staff feared that totally pooling clients would harm a significant number of probationers needing individual counseling. Some objected to their assignments as not reflecting their interests or backgrounds. Consequently, staff suggested adoption of the brokerage aspects of the CRB model but rejection of pooled caseloads. They offered the director an alternative model, Partners in Probation Progress (PIPP), which created two person teams: employment and education; alcohol abuse and physical health; and drug abuse and mental health. The director adopted the proposed "PIPP" revision, but did not eliminate the planned pooling of caseloads counselors.

To prepare for conversion to teams and case pools, the director instructed staff to develop new intake procedures and determine how to make client needs assessments. Staff also were instructed to design a referral sheet with a list to be checked and signed by the judge following an assignment to the probation department. The director required staff to complete additional paperwork. Quarterly reports were to be written in order to provide a narrative summary on each client for other team members. The director believed such a report was necessary because each client would be handled by several staff members, unlike the past where each counselor was familiar with each of the clients on his or her caseload. Staff disliked the team assignments and the additional paperwork they entailed. One counselor was angered that the director appointed someone else to head the alcohol team. Another was upset that he was appointed to the employment and education team because he desired to be a diagnostician. Counselors criticized the increase in paperwork, particularly the needs assessment form and the quarterly report, and completed it only with reluctance.

Fueled by a history of mistrust of previous probation directors, staff criticism of CRB grew. Conflict between the director and staff escalated to the point that charges of professional misconduct were levied by probation staff against the director,

the county personnel department, the prosecutor's office, the district court, the county commissioners, and project staff. Following a meeting in January 1978 between probation staff and the judges to "clear the air," the probation director resigned because he felt it was impossible for him to carry out his duties. Implementation efforts, themselves an important source of the conflict, ground to a halt.

The new director was familiar to most of the staff because he had served as the assistant administrator of the El Cid adult diversion program which was housed in the same building as the probation department. During the selection process, he indicated support for CRB implementation. As director, he resisted the pooling of caseloads, but continued to pursue increased brokerage and staff specialization. By the end of 1978, all but one probation officer had begun to specialize in six areas: alcohol services, drug abuse services, employment/education services, mental health services, volunteer services, and CSR. Furthermore, the number of referrals made to external agencies increased from 14 in December 1978 to 58 in July 1979, with nearly 90 being brokered each month between March and June. But despite greater staff specialization and growth in agency referrals, the program fell short of the CRB model initially envisioned. Individual caseloads were retained, 98% of all probationers being assigned to individual counselors. Specialists did not broker cases of a particular type; rather, they became familiar with relevant agencies and attempted to establish working relationships with them. Specialists also served as a staff expert on a particular type of service delivery, providing information to the other probation officers.

In early 1979, project staff made a deliberate effort to induce the department to adopt pooled caseloads. Project staff urged the probation director to resurrect the needs assessment process begun under the previous director, abandon individual caseloads, and phase in pooled caseloads. The probation director was requested to submit a proposed plan to project staff to expand brokerage. The request was refused.

To summarize, at the direction of the court, the first probation director initially sought to implement all aspects of CRB -- staff specialization, pooled caseloads, and increased referrals to community agencies. Staff did not participate in this decision. Plans to restructure the probation department were made, but modified at staff insistence. Relationships between the staff and the probation director deteriorated, partly because of implementation efforts. Implementation languished. Under the

second probation director, however, implementation efforts were more successful, with staff developing specializations and increasing the number of referrals. Nevertheless, the reorganization of the department entailed in the abandonment of individual caseloads and their replacement with "teams" was not realized. Although CRB was implemented, it was significantly modified.

3. Limiting factors. In Tacoma, implementation floundered because the proposed change threatened to drastically alter the nature of work performed by the probation staff and to decrease their control over it, and because the staff had little input into the decision to change and increasingly little say over the precise details of the change. Implementation proceeded when meaningful staff participation and control over change was increased, but their increased participation and control in turn significantly altered the nature of the proposed program.

a. Subordinate responses to the magnitude of the proposed change. Small incremental change is more likely to "succeed" than comprehensive reorderings of existing relationships. (Nimmer, 1978:181) Existing relationships tend to reflect the interests and power of actors within an organization or a system as they are bargained out through repeated interactions. (Nimmer 1978, 27-46, 175-181; Macaulay, 1966) Because proposals of massive change threaten to disrupt this web of interest, they encounter correspondingly greater resistance. Changes contrary to the interests of individuals, groups, and institutions can be expected to be resisted by those affected. Their ability to resist change -- or to promote it, should they perceive planned changes to further their interests -- is a function of the resources they have available. These may consist of the formal authority bestowed on the legally constituted head of an organization, authority ultimately buttressed by organs of the state. The resources may be informal as well, consisting of the refusal to perform as expected or requested.[4]

Community resource brokerage (CRB) threatened to drastically alter the nature and amount of work performed by the probation counselors; at the same time it threatened to decrease the control each of them exercised over their individual caseloads, thus threatening their professional autonomy. Moreover, the substance of the program was disconsonant with what many of them perceived to be the proper role of probation -- counseling and surveillance.

Before the decision to change to CRB, the probation department in Tacoma operated with individual caseloads administered by individual counselors. Each counselor had fixed and known responsibilities, and a sense that the responsibilities were being met, although it was acknowledged that service delivery would grow more difficult as caseloads grew. Pooled caseloads threatened to remove the familiar and to replace it with the unfamiliar. The change also threatened to take a caseload which the probation officer individually controlled and was responsible for and to replace it with one the counselor did not control. Moreover, the additional paperwork the probation director felt was needed for "casepools" and teams--needs assessments and quarterly reports for each probationer--both increased the quantity of work and decreased counselor control over it by increasing their accountability to the director. Counselors further feared that productivity would become a paper measure incapable of reflecting the quality and quantity of their actual work.

Still required to write presentence reports and to deal individually with caseloads of about one hundred apiece, the counselors found the additional paperwork overburdening. They complained of this to the director, who replied that the burdens were temporary and would be reduced as individual caseloads were reduced by the pooling of caseloads. While various plans were made to create different types of teams to deal with pooled caseloads, caseloads never were pooled. As a consequence, individual caseloads and workloads were not reduced.

CRB also challenged traditional notions about what "probation" means, thus questioning the meaning of the work performed by the counselors. This was reflected in staff criticism of CRB for not permitting close enough supervision for probationers:

> I fear losing people through the cracks. We're going into an assembly line and we'll lose people left and right. There will be greater quantity but what will happen to the quality?

These sentiments were echoed by another counselor:

> There will be lots of cases where we don't know what the hell is going on. One person can screw up the whole thing. An agency counselor who doesn't like paperwork leaves us without information. Many of our agencies haven't been known for their reliability. Monitoring is almost impossible. Clients can violate and we won't know it. We might know who's getting and not getting treatment. Reports are needed to evaluate. It's taken over

> nine weeks in some cases for us to get reports. I have to report to the judge, but the agency counselor doesn't. I found that one case had been terminated months ago. Not a damn thing had been done. CRMT assumes that everyone is conscientious. They're not.

Furthermore, CRB was not the only program change threatening counselors' workload, their control over their work and the meaning they receive from it, even though it was the most threatening. CRB was only one of three components of the Community Resource Program directly affecting the probation department. At the same time probation officers were to be specializing, pooling caseloads, and brokering clients, they were to be using volunteers and developing a Community Service Restitution Program as well. Even though the probation director attempted to minimize the additional burdens of these other components by procuring a CETA employee to develop guidelines, they continued to pose another set of pressures to staff. Moreover, the probation director attempted to initiate another major innovation along with the CRP -- orthomolecular therapy. Roughly, this corresponds to the adage, "You are what you eat." Relying on the work of Linus Pauling and others, the director maintained that much if not most criminal behavior has its root in diet. Because he saw this as an important innovation in corrections, he wanted all his counselors to become familiar with it and utilize it. He hired a new officer with a PhD in psychology and a background in orthomolecular theory to incorporate it into department practices. The advent of orthomolecular theory had a significant impact on a number of seemingly mundane working conditions and practices within the department. Orthomolecular theory was taken so seriously by the director that he often would be found in his office in the dark because he feared certain side-effects of limited spectrum light. Because he felt that caffeine increased irritabilty, no coffee was brewed in the staff lounge or anywhere else in the office. This theory was viewed with increasing skepticism by probation staff, who felt it had no innate advantages over more traditional counseling techniques. The depth of their resentment was not revealed until after this director's departure, when they informally critiqued and challenged the director's published claims of success with orthomolecular theory in the Pierce County Probation Department.

Under the first director, the magnitude of proposed changes in departmental operations was massive. Not only were new functions to be performed, but the very nature of work was to be dramatically restructured by CRB. The nature of the restructuring threatened to decrease the direct control counselors exercised over their

caseloads. CRB challenged traditional notions that probation officers ought to monitor probationers, drawing criticism for potentially letting probationers escape through the cracks. Finally, CRB promised to increase counselors' workload without increasing their pay. The resistence counselors exhibited to change also was considerable. They developed counter-proposals. They criticized. They continued counselling and smuggled in coffee. They secretly researched the director's background, and ultimately made charges to court and county authorities. They confronted the director.

That probation officers resisted encroachments on their work and their control over it is not surprising. Albrecht has studied the ways in which probation officers, fought for control of a management-introduced computer information system. Their goals were to preserve their professional autonomy, maintain control over their work, and give the appearance of a job well-done. When legal professionals attempted to introduce the information system to control the work of the probation staff, the staff developed a strategy to defuse the effort. This strategy ultimately resulted in the removal of the system from the court (Albrecht, 1978). Nor are such reactions to the massive changes CRB entails limited to Tacoma. CRB has encountered resistance in other sites that have attempted to implement it. (Lester, 1978:4-5; Giacinti, 1978a:4; Browne, 1978:2,8; Giacinti, 1978b:5; and Carr, 1978:7).

b. The consequences of symbolic and actual participation. Most observers argue that the higher the degree of subordinate "participation" in planning and executing change, the greater the probability of program success. Some observers see participation as a way of obtaining consent for programs. They emphasize that greater participation leads to higher staff morale, that greater participation results in greater staff commitment to the planned change, and that participation increases subordinates' understanding of an innovation. These observers seem to hope that symbolic participation will secure consent despite incongruity between subordinate and super-ordinate interests, and regardless of the extent to which subordinate input actually is incorporated (Gross et al., 1971:25-26). Other observers welcome the changes subordinate participation can cause in program substance, maintaining that participation enables subordinates to make "reality-based" contributions, to compile first-hand diagnostic data identifying areas in need of change (Seeborg, 1978:88), and to identify unanticipated consequences of projected changes, thereby protecting the "integrity" of the system by reacting against compromising changes (Klein, 1961:6).

These observers naively assume that the changes subordinates offer will be consistent with the goals of the original program rather than with their own interests, or even more naively that the interests of subordinates and super-ordinates coincide. Opponents of subordinate participation have been more sensitive to these latter two possibilities, arguing that subordinates should not participate because they do not know enough (or agree with) organizational goals or that they will resent refusals to adopt their suggestions (Seeborg, 1978:88).

In Tacoma, the first director and the judges treated the decision to implement as a management prerogative. Staff were not consulted over the decision to implement CRP; the decision was handed to them. To the extent probation officers' participation was solicited, it was with the aim of convincing them about the need for brokerage, teams, and casepools, and to elicit their ideas for pursuing these predetermined objectives. The director and some observers felt that the staff was encouraged to contribute ideas and criticisms, particularly at training sessions conducted by WICHE. During these sessions the outside consultant outlined arguments in favor of resource brokerage and encouraged staff to react and to speculate how they might go about reorienting their department along brokerage lines. But the counselors had misgivings about the training sessions that were conducted by a consultant from WICHE. The staff perceived the "team" model to have been presented too rigidly. They claimed that critical, theoretical, and practical questions they raised during these sessions were not considered seriously. Some staff alleged that the WICHE consultant and project staff demeaned them by suggesting that opposition to team building and brokerage only masked insecurity. They feared that the "consensus building" emphasized at the training sessions meant, in practice, uncritical acceptance of a predefined program, and not consensus reached through dialogue.

Believing the offer to participate in program development was genuine, staff offered a modified plan for specialization that offered to protect individual caseloads to some extent. The director agreed, but reinstated the component staff most objected to -- the pooling of caseloads. The failure to yield on the critical issue of the structure of caseloads proved the undoing of the strategy of "consent through symbolic participation." Staff resentment grew as they increasingly perceived the director's decisions to be "autocratic":

> At first, his attitude was, 'Let's do it as a team' but within a matter of months this changed to, 'We'll do it my way.'

Because the director was so concerned with getting the program operational, or at least to make it appear operational to the judges, staff claimed he would deny that problems existed in his plans. One counselor concluded that this refusal to hear problems and staff concerns resulted in "a real breakdown in communications." These concerns were echoed by another counselor, who claimed that the director treated the staff as though they were "irresponsible." He, too, asserted that the director refused to acknowledge problems within the department, particularly regarding implementation. A third counselor maintained that intradepartmental communication during this period was done in fear of the director, who allegedly managed by "divide and conquer." A fourth described conditions within the department at that time as "a state of paranoia."

Implementation floundered during this period.

Under the next probation director, however, the staff was encouraged to voice their concerns. Staff did so, and felt that their concerns were taken into consideration by the director. "Things are fifty million times better here," according to one counselor. Another agreed, pointing out that working conditions had dramatically improved with the advent of the second director. "Staff now has the ability to look at problems. We now have a director that is willing to recognize and deal with the problems. This is critical." A third maintained that there had been much more communication within the department under the second director than under the first. Whereas communication previously had been conducted in fear, it now was in the open: staff could freely discuss problems with cases and with implementation both informally and in weekly staff meetings. An outside observer noted that these meetings had been characterized by "a lot of give and take and solicitiousness by (the director)." He described the director's management style as "democratic/participative/consultative."

The increase in staff participation was evident in the delegation of responsibility for specialization discussed above. The CSR coordinator was "very excited" about her job because it allowed her creative expression in setting up and administering the CSR program according to her own plans. She admitted that she was "having fun" finding placements for CSR clients referred by the court. The education and employment specialist felt "thrilled" by the prospects for her specialization because it has allowed her to draw upon her previous experiences as an educator and in

job development. The alcohol specialist, too, was pleased that she had been given responsibility for the development of alcohol resources.

As control over specialization passed to the staff, morale increased, and staff channeled work time into the development of specialization. As specialization increased, so did the number of referrals to external agencies, though much of this increase was due to assumption of responsibility for all the court's Alcohol Information School referrals. On the other hand, to maintain staff morale and minimize conflict within the department, the probation director dropped "teams" and pooled caseloads as implementation goals, resisting the efforts of project staff to reinstate them as goals in early 1979. More than any other single factor, this concession to staff interests paved the way for higher morale, greater cooperation, and more "successful" implementation of other project components. This is not surprising, since staff resistance to the previous director's efforts to implement teams and pool caseloads contributed to his demise. Along with the rejection of orthomolecular theory, these program changes significantly reduced the threat CRB posed. Thus, subordinate participation and respect for subordinate's power furthered implementation of those parts of the program that did not threaten them.

These findings agree with those of Hage and Aiken, who maintain that the success of a new program initiated by organizational elites depends on the active cooperation of subordinates. If subordinates refuse to cooperate, as they may well when they perceive proposed changes to be contrary to their interests, the program can be defeated by their resistance. An elite can gain active cooperation by sharing the power of decision-making with them. (1971:101) But this creates a dilemma. If the elite refuse to share power, they risk increasing the intensity of power, rule, and status conflicts within the organization. If, however, the elite shares power with subordinates, cooperation increases. But the cost of this cooperation to the elite is a modification of the original change program. (Hage and Aiken; 1971:103) The exact tradeoff between program "success" and program modification is likely to reflect the relative distribution of power between organizational elites and subordinates. In Tacoma, the staff's "victory" over two successive probation directors signaled a relatively large degree of power within that organization.

B. Systemic Constraints to Planned Change in Courts: The Case of Austin

Planned change within courts is limited not only by organizational factors, such as those examined in the previous section, but by factors external to the court as well. Several different perspectives have emerged to understand these external factors. Organizational theorists have collectively termed them the court's "environment," but have yet to systematically study their environments. (Heydebrand, 1977 is an exception). Others, rejecting the notion that courts can be considered organizations in the same way hospitals and schools can, look to the social functions that courts perform, such as dispute resolution, law enforcement, or social control (Sarat, 1978). More than the court-organizational theorists, these "functionalists" have explored courts' relationships with their "environments." In particular, they have suggested that change efforts initiated by courts can be constrained by existing expectations within the local legal community (Church, 1978), ongoing relationships between and among local legal institutions and actors (Nimmer, 1978; Church, 1978), and by local power structures (Dolbeare and Hammond, 1971). Moreover, a number of writers have emphasized that reforms in court operations and procedure have important political consequences (Wheeler, 1978; Ryan, 1978; Gallas, 1979; and Good, 1980). Because court reform is political, it is of paramount importance to examine the interests outside the narrow confines of the courtroom that are likely to affect and be affected by change efforts.

This section analyzes the attempt to introduce a judicial sentencing reform into a community in which sentencing authority is de facto delegated to the prosecutor and in which there are strong institutional interests in maintaining the flow of fine revenues. The reform, Community Service Restitution, was designed as an alternative sentence judges could impose on misdemeanants rather than a fine or jail term. It consists of the misdemeanant being sentenced to work a fixed number of hours for community agencies. (For a detailed examination of the goals and consequences of CSR, see Chapter VII herein.) After providing an overview of the change program and of Austin, where it was to be implemented, we discuss the extent to which the change threatened to reorganize existing relationships, examining the interests, priorities, preferences, and behavior of important actors and institutions in the Austin legal community. Dolbeare and Hammond found that officials at all levels operated in accord with personal cost-benefit equations, concluding that when mandatory changes fail to provide benefits to critical local actors, local actors will not comply with the

changes. Similarly, Nimmer contends that the absence of incentives to change from mutually beneficial patterns of interaction constitutes a barrier to change (1978:181-192). In Austin, the proposed change promised many costs and few benefits, thus generating little incentive for change. Those desiring the change the most had few resources to effect it.

1. An overview of the CSR program and Austin. ICM project staff, who were responsible for obtaining local agreements to implement proposed changes and to provide techical assistance in doing so, depicted CSR as a new sentencing alternative for judges. Its goals were to reintegrate misdemeanants into the community and to decrease judicial frustration and isolation by providing a "creative" alternative to fines and incarceration. Misdemeanants sentenced to CSR would perform a fixed number of hours of work for private or public community agencies. It was to reintegrate offenders by avoiding incarceration, an inappropriate and harmful experience for many misdemeanants. Moreover, working for agencies was supposed to increase self-esteem and hopefully provide misdemeanants additional experiences and credentials with which to procure regular employment. Judicial creativity was to be exercised by matching work orders (or "service placements") with individual defendants' interests and skills (Rubin, 1980: Chapter II, 40, 41).

The Travis County Courts at Law[5] was the second court in which The Institute for Court Management assisted local court officials in implementing a Community Resource Program. It is located in Austin, Texas, a medium-size city of approximately 340,000 persons employed largely in government and light industry. The court has three elected judges and exercises jurisdiction over misdemeanors and limited-amount civil claims. Over 50% of its criminal filings are drunk driving or bad check cases.

Sentencing discretion in Austin has in practice been delegated to the prosecutor, whose recommendations reflect negotiated settlements between prosecutors and defense attorneys. "Going rates" for the various offenses are widely known and respected. (Feeley, 1979, reports a similar phenomenom in the New Haven misdemeanor court). Fine revenue is important in Austin. A higher percentage of misdemeanants receive fines in Austin (78%) than in Tacoma (49%). Austin's mean fine ($169) also is higher than in Tacoma ($103), Columbus ($111), or Mankato, Minnesota ($37). The judges in the misdemeanor court do not see themselves dying in

their current jobs; instead, the Courts-at-Law is a stepping stone to the more desired District Court bench.

At the court's disposal are the services of the Travis County Adult Probation Department, which is administratively responsible to the Presiding Judge of the District (felony) Court. Judges of the county courts at law have little contact with the probation administration. The probation department handles felonies as well as its annual caseload of 2,500 misdemeanants. Each probationer is charged fifteen dollars a month as a supervision fee; in addition, the state pays the probation department a subsidy of fifty cents per day for each probationer. Thus the department's revenue is directly linked to the size of its caseload.

In September 1978, the three judges of the court and the probation director agreed to implement the four components of the Community Resources Program, described in detail in Rubin, 1980: Chapter 3. No serious efforts were made to implement the volunteer and resource brokerage components, which will not be discussed here. Most efforts aimed to implement community service restitution (CSR).

The process of implementing CSR in the probation department began in October 1978, when project staff met with the court's three judges and the probation director, urging them to establish a Citizen Advisory Board to "expand the scope of sentencing alternatives...and to increase the flexibility of adult probation services." Though judicial opinion ranged from strong verbal support to skepticism, a board of 24 judicially selected people was created, holding its first meeting in November 1978. By March, under the direction of its co-chairman, a law professor at the University of Texas Law School, the citizen's board had commissioned undergraduate social work students to identify community service agencies that would be willing to participate in the CSR program. The co-chairman obtained a summer law student intern for the probation department to assist a probation officer designated to develop the program. Though this probation officer had formal responsibility for the development of the CSR program, de facto responsibility came to rest with the intern. She continued in this capacity through August 1979, identifying agencies willing to participate, interviewing and screening CSR candidates, developing referral procedures and forms, and monitoring client performance. When this intern left to return to law school, she was replaced by a probation department CETA employee. With the pending retirement of

the probation officer formally supervising the program at the end of 1979, the probation director assured project staff that his role would be continued with another probation officer. Nevertheless, implementation did not proceed smoothly or far. The prosecutor resisted the new sentencing alternative. Defense counsel did not seek it. The judges did not impose it. The probation department delegated few resources to develop it. The number of persons processed through the probation program was small. At the end of July 1979, only seven persons had been sentenced to CSR. Within a comparable time period, the Pierce County Probation Department in Tacoma had begun to process nearly ten new CSR cases per month.

In September 1979, the County Attorney began instituting his own CSR program, one which he would control. Unlike the probation administered program, the prosecutor's program handled only pre-adjudication cases screened and placed by the prosecutor himself. He used agency lists compiled by the probation department as a basis for his referrals. To understand the impediments Austin posed to implementation, we now turn to a discussion of the limits imposed by the interests and behavior of legal actors and institutions.

2. The interests and behavior of legal actors and institutions as limits to change. This section describes the substance of the CSR program which the Austin Court agreed to implement and analyzes it in terms of the changes it promised for existing relationships in the Austin legal community, and the costs and benefits it promised to bestow on various institutions, actors, and groups. In general, the substance of the proposed change was not clearly defined, the mandate for change was ambiguous, existing working and political relationships between judges, prosecutors, and defense attorneys were threatened, and more costs than benefits were perceived by critical actors.

The judge, the prosecutor, the probation department, and the bar all had strong interests in preserving the practices and relationships that characterized misdemeanor justice in Austin. The prosecutor dominated sentencing. Defense attorneys had a stake in this because the prosecutor's recommendations reflected plea negotiations. The bar also had a significant economic interest in misdemeanor practice and therefore had little incentive to rock the boat. The probation department, too, had fiscal interests in misdemeanor justice. The judges, desirous of advancement out of the court, had a strong disincentive to decrease prosecutorial control over sentencing -

- the bar was the key to selection and career advancement. Moreover, they had a strong interest in maintaining the flow of fine revenue to the court and the county, a flow CSR could disrupt. By promising to open a new area of judicial sentencing discretion in a system previously dominated by the prosecutor, CSR threatened to drastically alter existing relationships between judges, prosecutors, and defense attorneys.

a. The prosecutor. If there is one thing that everyone in Austin's legal community agrees on, it is that, "judges don't sentence, prosecutors do." "The judges go along with whatever the prosecutor's recommendation is," claimed one defense attorney. An assistant prosecutor echoed:

> The prosecutor plays an important role in recommending sentences, because judges can't review every case very closely. The judge usually takes the prosecutor's recommendation of a sentence.

The judges, too, admit to deferring to the prosecutor when it comes to sentencing. One acknowledged that he accepts the prosecutor's sentence recommendation in well over 90% of his cases.

The importance of judicial respect for the prosecutor's sentence recommendation lies in the fact that the recommendation reflects disposition and sentence bargains agreed upon between prosecutors and defense counsel. There is little bargaining over charges. Assistant prosecutors maintain that they have little discretion to make concessions in return for guilty pleas. Actually, the assistant prosecutors do not refrain from making concessions; rather, they refrain from deviating from specifically defined bargaining norms -- 'prices' for different offenses (cf. Feeley, 1979). Indeed, this 'price list' has been committed to paper and circulated among the assistant prosecutors and at least some of the criminal bar. In deferring to the prosecutor, the judges also defer to the defense attorneys, who participate in long-term sentence negotiations with the prosecutors. Not surprisingly, the probation department has no role in sentencing -- it does not even provide presentence reports in misdemeanor cases.[6]

The prosecutor perceived the CSR program as a threat to his hegemony over sentencing. He consistently resisted judicial efforts to elicit CSR recommendations because they would "blow open" the entire plea negotiation process. He

distrusted the citizen's board because it under-represented businessmen and law enforcement agencies. Moreover, the board favored giving "easy breaks" to criminals. It would have him "throw the criminal justice system out the window." This was especially true of the chairman, who "would stop at nothing to get an easy break for defendants." Moreover, he did not think that the people that put him in office would favor CSR. Defense attorneys corroborated this picture of the county attorney and his office.

> I just can't see him going along with it. We won't get the county attorney to go along with it. Unless he bends his attitude, we won't have it. The county attorneys have his recommendations and everyone gets the same deal. He doesn't want to be nice. At least (the former county attorney) was crooked. At least you could buy him off. But the people down there now are really straight-laced. They don't try to get along. He got up there without making any deals, and figures he doesn't have to make any now that he's there. With (the former county attorney), it was a big pay-off. But now (the incumbent) thinks it should work the other way.

The county attorney saw no reason to go along with the citizen board's plans for CSR implementation, promising that there would be no program to the extent that he could prevent one. The county attorney chided the board: "I don't think I could ever give so much to something I expect to get so little out of."

Given his opposition to CSR, it seems curious that the prosecutor would initiate his own program. Because he began this after the close of our data collection, direct evidence is lacking. Nevertheless, his behavior could be considered an attempt to coopt the advocates of CSR by adopting parts of their program. By controlling the programs himself, he eliminated a number of the objections he had previously voiced. No longer could the program threaten prosecutorial hegemony over sentencing because it would be used only prior to adjudication. Indeed, prosecutorial control over the program would serve prosecutorial control over sentencing by "stealing the thunder" of those who threatened to take it away, particularly those in the citizen's board whom the prosecutor feared would give away the courthouse with CSR.

b. Defense attorneys. While there is little question that CSR could cost the prosecutor a degree of control over sentencing, it is not clear whether defense attorneys would consider it a net cost or benefit. If they had felt that CSR would result in less severe treatment for their clients, or if it would facilitate the collection of their fees, they might have perceived it as a net benefit. But, at most, defense

attorneys expressed mixed feelings about CSR. Most felt it was a laudable idea, but one that was inappropriate for many of their better-off clients, who would rather pay fines. Many expressed fear that CSR would be used as an additional punishment. Said one:

> A defense attorney is bound to get his or her client the lightest sentence possible. They aren't going to want their client to have to pay the traditional fine and restitution and then do community service on top of that.

Another saw CSR as "a real possibility" and good substitute for jail. He thought he could convince the prosecutors to recommend CSR instead of jail. Nevertheless, he accepted it as an alternative only for clients who are quite poor. He feared that CSR would be wielded by the judge as an additional penalty. He predicted that it will never be recommended instead of probation. A third was asked whether she would seek CSR in any cases:

> Sure, I'll use it. I got one defendant CSR in a federal case... I'll use it for people who want to keep out of jail, poor people without money to pay fines, people with good jobs who don't want to lose them, young people, old people, and working people. I don't need it for people who would just get probation -- all that would do is cut their fines down. Anyway, the prosecutor won't buy it in these cases. Most defense counsel want it as an alternative to jail.

A fourth suggested that he was more supportive of CSR as a private citizen than he was as a defense attorney.

Others shared the defense attorneys' perceptions. One assistant prosecutor indicated that CSR could be used in three ways: to dismiss charges and order community service; to place the convicted defendant on probation, making CSR as a condition of probation; and to provide an alternative for people who couldn't afford to pay fines. He strongly disapproved of this final use:

> But these people, mostly blacks and chicanos, need to be on the job. They have families to support. It won't be used for richer clients because they wouldn't agree to negotiate a plea that involved CSR...the only people we'll probably see get it is the little rich kid that'll do anything to get off.

He predicted that the bar would oppose CSR because it threatens to be an additional penalty. "Their middle class clients would rather get probation." Another prosecutor

echoed the same view: private defense attorneys would not be inclined to allow the use of CSR for wealthy clients. Even the chairman of the CAB promoting CSR implementation realized that the bar had to be won over because it feared CSR as a potential additional sanction. Thus, the criminal defense bar of Austin clearly had severe reservations about CSR.

Moreover, the Austin bar had a broader economic interest in not tampering with existing patterns of relationships within the misdemeanor courts. The local bar has a large stake in misdemeanor practice. While misdemeanor practice is crucial to many young attorneys graduating from the University of Texas Law School and wanting to remain in Austin, it also is important to several larger firms that conduct high-volume practices. The economic importance of misdemeanor cases to the bar is reflected in the high percentage of cases in which defendants are represented, and the low percentage of cases in which counsel is assigned. Ninety-three percent of Austin defendants are represented by counsel, 86% of all defendants having privately retained counsel. Contributing to this high rate of representation[7] in Austin is the practice of not accepting guilty pleas at arraignment. Instead, defendants are strongly encouraged to retain attorneys. Both the economic importance of misdemeanor practice and the court's respect for it are illustrated by further common practices of requiring the defendant to come to court several times, some at the discretion of the attorney. There was general agreement among defense attorneys and court personnel that these practices are designed to assist counsel in collecting fees. In fact, one court administrative officer was instructed by the presiding judge to consider fee collection in scheduling cases.

The importance of the court's assistance in collecting fees was underscored by the furor arising over the presiding judge's attempts to establish time standards for case processing.

> No sooner had Judge _____ announced her 120 day limit than the Criminal Law and Procedure section of the Travis County Bar passed a resolution that six months was the minimum time needed to prepare, and, some attorneys openly stated, to collect their fees (Austin, July, 1979; 21-22).

"We had to take a lot of open hostility during this period," commented the judge. A former court administrator agreed, noting that even though many defense attorneys initially approved of a ninety day rule, they vehemently opposed the 120 day rule when it actually was promulgated.

Even though CSR did not directly threaten to lessen the profitability of misdemeanor practice or to disrupt the court practices that attorneys utilized to collect fees, CSR could generally disrupt established relationships of negotiation and judicial deference, indirectly disrupting the understandings and practices that create business and help collect fees. Thus attorneys had strong disincentives to support the change program.

c. The probation department. The CSR program presented mixed incentives for the probation department. On the one hand, it presented the opportunity to expand the influence of the department within the realm of misdemeanor justice in Austin. The director and several probation officials had expressed a desire to expand the department's sentencing role by completing presentence reports which judges presumably would then follow. As it stood, the department had not filed misdemeanor presentence reports. This makes sense systemically, because judges who had effectively delegated their sentencing discretion to the prosecutor had little use for reports recommending sentences. Probation officials saw CSR implementation as another opportunity to push for presentence responsibility, claiming that there would be no CSR without presentence reports. One probation supervisor indicated that she had been urging the use of presentence reports in the county courts at law for years. The probation director, who shares the desire to expand this aspect of the department's activities, suggested that project staff urge the citizen's board to support the director's efforts in this regard. The fact that the desire to do misdemeanor presentence reports preceeded CSR implementation suggests that some probation officials saw CSR as a means to obtain something they had wanted for a long time rather than as an end in itself. Indeed, the advent of CSR provided a new rationale for the presentence report -- it was needed to identify "proper" CSR clients.

On the other hand, some probation officials had reservations about CSR rooted in supposed additional benefits to misdemeanants and in the additional work CSR might pose probation workers. For example, one assistant director of probation was highly skeptical of the program. He feared that defendants with the option between CSR and a fine would 'play off' one alternative against the other. Nor did he relish "another damn form" and the supposed increase in work CSR would mean for probation officers. His feelings were not widely shared within the department, however, in part due to the low salience of the program to most officers.

More importantly, the probation department also has a large economic stake in existing institutional arrangements which provided a disincentive to change. Austin's misdemeanor court sentences a very high proportion of defendants to probation, thus providing an important source of revenue to the probation department. According to one assistant prosecutor, "99.9 out of 100 persons will get probation if they are eligible." Until the law was changed in late 1979 to expand eligibility, probation was available to anyone not arrested for the same offense within five years. In fact, 64% of Austin's misdemeanants were sentenced to probation; only 27% were in Tacoma. Most misdemeanor courts do not even have probation services at their disposal (AJS/ICM, 1978:43). Each Austin probationer is required to pay up to $15 per month in supervision fees to the probation department, amounting to $180 per year per probationers. In addition to this, the State of Texas pays the probation department fifty cents per day per probationer for a period of up to one year. Assuming roughly thirty days per month, this equals the revenue directly collected from the probationer. Overall, the probation department collects $360 per year per probationer. Estimating an annual caseload of 2400 (the actual misdemeanor caseload as of 1 January 1979 was 2430) the misdemeanor business can generate $864,000 per year for the probation department. The lucrative nature of the misdemeanor business thus provides a strong incentive to preserve the institutional arrangements that secure the probation department this source of revenue. After all, the prosecutor might quit recommending probation.

Perhaps the low importance placed by probation department officials is best reflected in who they assigned responsibility for implementing the program. The supervisor was a retiring court officer who spent little actual time on program implementation. Most of the work was done by an unpaid student intern from the University of Texas Law School. She worked for ten weeks over a single summer, leaving about the same time her supervisor retired. They were replaced by a CETA employee. It is not surprising that these actors were unable to overcome the powerful web of interests and incentives against program implementation.

d. The judges and the court. Potentially even more significant than the economic importance of the misdemeanor business to the bar and the probation department is the large amount of fine revenue collected by the court. It was commonly observed that fines in Austin were heavy and court costs high.[8] Several attorneys and court officials intimated that fines and court costs were severe because

they were an important source of revenue to the court. They also expressed fear that an expanded CSR program would significantly decrease fine revenues received by the court, evoking reprisals from the County Board which funds the courts. Dependence on fine revenues presents a powerful incentive to the judges to not replace fine sentences with CSR sentences. It also provides the prosecutor a powerful potential ally in resisting judicial encroachment on the prosecutor's hegemony over sentencing -- the County Board. Judicial sensitivity to these incentives is indicated by who they sentenced to CSR -- three of the seven had been convicted of welfare fraud, presumably without money to pay fines. The probation department, too, sought to gear CSR toward those who couldn't pay fines -- welfare fraud cases. Thus CSR seemed to be targeted for those who could not pay fines and therefore whose inclusion in the program would not decrease fine revenues.

In addition to the economics of misdemeanor justice in Austin, the political power of the bar acts as a strong incentive to the judges to continue 'playing the game.' Because judges want to move up from the misdemeanor court, they are unwilling to alienate the bar, which has significant influence over who can advance to the general jurisdiction bench. "The local bar runs the criminal justice system," according to one judge. Other system participants also pointed out the importance of the bar in judicial selection in Austin. Claimed one attorney:

> All the judgeships around here are bought and paid for by the big law firms. The county judges are appointed...and then stay in there.

Generally, a judge is 'annointed' by the county bar, appointed to an interim vacancy, and then runs unopposed in the next election. Thus judges 'owe' their advancement to the local bar. And advancement, particularly to the general jurisdiction courts, is an important goal of these misdemeanor judges. It was common knowledge in Austin that many misdemeanor judges have used that position as a stepping stone to higher judicial office. Many observers agreed that at least one of the judges had sights set on higher office. "I'm seriously considering running in the near future for the district court bench," she admitted. (Austin, July 1979: 23). "She will get a district judgeship next year," predicted one attorney, "it's part of her deal. She didn't run last time against the judge that had been appointed."

In response to these incentives, actual judicial support of CSR implementation was ambiguous, sometimes seeming to serve symbolic, political goals rather

than tangible, programmatic ones. There is some evidence that the program was at least partially viewed as a means of gaining favorable public relations for the judges and the court. Interestingly enough, when project staff arrived in Austin to negotiate site selection for the project, the presiding judge had called a press conference to announce that Austin had been awarded a national demonstration project in competition with other cities. While some complained that such public relations activities detracted from the administration of the court, others saw it as a necessary and desirable promotion of court modernization. While the resolution of this issue is not necessary in this context, it nevertheless appears that at times, the goal of securing favorable public relations overrode or replaced that of achieving concrete programmatic change. Indeed, the net effect of incentives facing the judges in Austin is to encourage the dissemination of symbolic rather than tangible rewards. (Boorstin, 1965; Edelman, 1967). Since the actual assertion of a new sentencing alternative by the judges would threaten the existing plea practices, judges do not push too hard for the actual implementation of CSR. To do so would risk alienating the very people upon whom career advancement depends. On the other hand, so long as existing practices are not disturbed, symbols of innovation and advancement can be admired by judge and lawyer alike. Indeed, symbols are equally valuable in impressing important officials outside the court, such as the governor, who frequently appoints to the district court bench. Furthermore, the electoral public is more likely to be exposed to laudatory reports of innovation and reform than to the actual practices of the courts-at-law, allowing it to readily confuse symbolic with tangible change. Neither the governor nor the public have readily available "reality-references" against which to evaluate the accuracy of this symbolism.

Even if the judges had desired to push more strongly for program implementation, they had few controls over the other institutions and actors whose cooperation was necessary for CSR implementation. The County Attorney was elected and independent. The probation department was administratively accountable to the general jurisdiction court, not the misdemeanor court. And while the court had some control over which attorneys would receive the 4% of all cases which are assigned, the attorneys collectively had more control over who would become judge. This lack of control made it extremely difficult for judges to further CSR implementation, as the following episode illustrates.

Urged by project staff to increase the number of CSR referrals, the presiding judge requested that the probation department provide her ten CSR recommendations in the month of September 1979. Indicating that she wished to reduce all obstacles to CSR, she also asked an assistant prosecutor to provide ten CSR recommendations. The probation director recommended to the judge that the CAB approve her request to "help hedge in (the prosecutor)." But the probation officer administering the program provided her with only two recommendations. This explanation is consistent with the prosecutor's known goal of preserving his hegemony over sentencing, which was threatened by such a direct judicial request. The failure to receive these ten recommendations angered the judge. "(The county attorney) doesn't run the court," she snapped. But the judge had little recourse against either the probation officer or the prosecutor. Thus the judge "most supportive" of CSR had little institutional control over other actors and institutions in the system. When this judge attempted to direct others to increase the rate of change, she was stymied.

Nor was the citizen's board of much assistance in overcoming political opposition to program implementation. Although its members accepted program implementation as a goal, they took few substantive steps to secure it. Given that most were members of the Austin misdemeanor community to begin with, this is of little surprise. The board's inaction merely reflects the higher interests of its members. The major exception, the law professor co-chairman, had few resources to allocate to program implementation, to induce other actors to more actively support the program, or to threaten to "punish" those actors who opposed it. Those resources which were at his disposal, such as the criminal intern program from which the de facto CSR coordinator was placed, he used to the utmost. But in the context of the interests and incentives inhibiting change, they were not enough.

Thus, the interests of most actors and institutions in the preservation of prosecutorial sentencing hegemony, continued fine and probation revenue, and career advancement stood in the way of change. Of those who promoted change nonetheless, some were more interested in the symbolism of reform rather than its substance. Those attempting to substantively reform practices lacked the resources to successfully do so.

C. Summary and Conclusions

At both the organizational and systemic levels, webs of interest, priorities, and power provided significant limits to planned change efforts. At the organizational level, planned changes threatened to decrease the control subordinates had heretofore exercised over their work, to increase the amount of work they performed, and to eliminate the basic nature of their work -- counseling. At the systemic level, the planned sentencing reform threatened prosecutorial hegemony over sentencing, which was reinforced by the interests of the court in maintaining fine revenue, of the judges in promoting career advancement, of the bar in protecting the sentence and plea negotiation process and minimizing clients' sentences, and of the probation department in maintaining its flow of revenue from its caseload. Because the reform failed to alter these incentives, its implementation was highly problematic.

The resistence generated by the reform was overcome within the organization by increasing subordinate participation in the fixing and attainment of goals. But the cost of this to organizatonal elites was alteration of the original program to eliminate the parts subordinates found objectionable. Of course, whether the program alteration is labelled a "cost" depends on where one is located in the organizational hierarchy. There is evidence that in Austin, too, an altered program -- one wholly controlled by the prosecutor -- might develop. In both cases, program substance was ultimately altered by the existing distribution of interests and power among actors, groups, and institutions.

The two change programs experienced different types of difficulties because they affected different interests in the two sites. Austin was characterized by prosecutorial hegemony. The introduction of a new sentencing alternative threatened this hegemony, thus indirectly threatening all the interests represented by prosecutorial hegemony. In Tacoma where sentencing was a judicial prerogative, a similar program was implemented without major problems. Nor did Tacoma's CRB program threaten any systemic interests.

At first blush, it seems that the lack of program clarity, a factor cited by some commentators (Dolbeare and Hammond, 1971) contributed to the lack of program success in Austin. But the greater clarity with which the CRB model was presented in Tacoma did not contribute to its success. Rather, program clarity, particularly

regarding team building and pooled caseloads, contributed to the intensity of opposition by illuminating the degree to which the program threatened important interests of the counselors. Thus program clarity would seem to contribute to program success only where the program promises net benefits to parties with sufficient power to effect them. Similarly, the absence of a bureaucratic mechanism in Austin to promote CSR appears to have constituted an obstacle to change. Nevertheless, Tacoma suggests that the presence of a bureaucratic mechanism is no guarantee of success. Not only must a planned change satisfy affected institutions and actors within a community, but the affected parties within any mechanism charged with responsibility for implementing it as well.

Thus, the critical limitation on planned change in courts is the distribution of interests and power within court institutions and throughout the court's environment. In this chapter, we have examined only those limits within one court organization and throughout another court's immediate environment. But there is good reason to believe that the circles of limitation continue to be drawn wider and wider. Dolbeare and Hammond (1971) cite community power structures as one important limitation on change imposed from above (i.e., the Supreme Court). Beyond the community are dynamics which comparative case studies would be hard-pressed to discover, such as the tightening fiscal constraints facing the state at all levels. This growing crisis will increasingly affect all misdemeanor courts, making them ever more sensitive to fiscal and budgetary constraints. (O'Connor, 1973). The broadening circles of constraint are critical to the opportunities for change within the courts, but as yet have been little understood. Indeed, existing court reform literature has consistently abstracted from the critical questions of interest and power for over a century. (See, e.g., Rosenbaum, Berkson and Carbon, 1978.) The problem is of immeasurable importance to those reformers who seek to help the powerless through their reforms, for the powerless have the fewest resources to invest in reforms that will further their interests. Reforms that promise to redistribute power are likely to be opposed by those who have it. Ultimately, the reformers must address the question of power.

NOTES

[1]See, e.g., Gross et al., 1971: Hage and Aiken, 1970; and Pearlin, 1962.

[2]By "power," I mean "the probability that one actor within a social relationship will be in a position to carry out his own will despite resistence." Weber, (1947:152).

[3]This description parallels that found in Rubin, 1980: Chapter 2.

[4]Dahl (1970:36) defines "political resources" as "the means by which one person can influence the behavior of other persons."

[5]Although technically three courts, each with a single judge specifically elected to it, the Court-at-Law in Austin share a common administration and budget. Throughout this chapter, they are collectively referred to as "the court."

[6]This total deference to the prosecutor stands in stark contrast to Tacoma, where a similar program was more "successfully" implemented. While the prosecutor's recommendation is often followed in Tacoma, it is just as common for the judge to take recommendations from both prosecutor and defense attorney, then splitting the difference in some way. Furthermore, Tacoma judges frequently request presentence reports, unlike judges in Austin. Most Tacoma judges follow sentences recommended in presentence reports when they are requested.

[7]Comparable rates in other project sites are: Tacoma, 53%; Columbus, 92%; and Mankato, Minnesota, 32%.

[8]Indeed, 78% of non-bad check misdemeanants were fined in Austin whereas only half were in Tacoma.

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APPENDICIES

APPENDIX A

Misdemeanor Courts

APPENDIX A
Misdemeanor Courts

State	Court	Criminal Jurisdiction*	Other Jurisdictional Areas**
Alabama	District	"Misdemeanors" (OTP)	FP; T; J; C ($5,000)
Alaska	District	1 year and/or $500	FP; OV; C ($10,000)
Arizona	Justice	6 months and/or $300	FP; C ($1,000)
	City	6 months and/or $300	FP; OV; T
Arkansas	Municipal	1 year and/or $250	FP; OV; C ($300)
	Justice	1 year and/or $250	FP; OV; T; C ($300)
	Police	1 year and/or $250	FP; OV; T; C ($300)
	City	1 year and/or $250	FP; OV; T; C ($300)
California	Municipal	"All Misdemeanor" (OTP)	FP; OV; T; C ($5,000)
	Justice	1 year and/or $1,000	FP; OV; T; C ($1,000)
Colorado	County	2 years	FP; C ($1,000)
Connecticut	Court of Common Pleas	1 year and/or $1,000	FP; OV; C ($5,000)
Delaware	Court of Common Pleas	"All Misdemeanors" (NGD)	C ($3,000)
	Municipal (Wilmington)	"Misdemeanors" (NGD)	FP; OV; T
	Justice+	"Minor Misdemeanors" (NGD)	T; C ($1,500)
Florida	County	1 year	FP; OV; C ($2,500)

*The maximum term for imprisonment is indicated in parentheses: NGD = no general definition of misdemeanor; OTP = other than in penitentiary.

**Other jurisdictional areas handled by misdemeanor courts are coded according to the following scheme: T = traffic; J = juvenile; C ( ) = civil (maximum limit); C (V) = civil, limit varies; FP = felony preliminary hearings; OV = ordinance violations; and P = probate.

+Judges from these courts were not polled in the AJS questionnaire survey.

Misdemeanor Courts
(continued)

State	Court	Criminal Jurisdiction*	Other Jurisdictional Areas**
Georgia	"State"	1 year	C (unlimited)
Hawaii	District	1 year and/or $1,000	FP; OV; C ($5,000)
Idaho	District (Magistrate Division)	1 year and/or $1,000	FP; P; J; C ($5,000)
Illinois	Circuit (Associate Judges)+	1 year	---
Indiana	County City Municipal (Marion County only)	1 year and/or $1,000 6 months and/or $500 1 year and/or $1,000	OV; T; C ($3,000) OV; T; C ($1,000) OV; T; C ($10,000)
Iowa	District (Judicial Magistrates and Associate Judges)	"Indictable Misdemeanors" (1 year)	FP; OV; T; C ($3,000)
Kansas	County City Magistrate	1 year and/or $2,500 1 year and/or $2,500 1 year and/or $2,500	FP; T; C ($1,000) FP; C ($3,000) FP; T; C ($3,000)
Kentucky	District	"Misdemeanors" (OTP)	FP; P; OV; C ($1,500)
Louisiana	City Parish	6 months and/or $500 6 months and/or $500	FP; C (V) FP; C ($1,000)
Maine	District	"All crimes and offenses not punishable by imprisonment in the state prison" (NGD)	FP; OV; D ($20,000)
Maryland	District	3 years and/or $2,500	FP; OV; T; C ($5,000)

Misdemeanor Courts
(continued)

State	Court	Criminal Jurisdiction*	Other Jurisdictional Areas**
Massachusetts	District	5 years	FP; OV; J; C (unlimited)
	Boston Municipal Court	5 years	FP; OV
Michigan	District	1 year and/or fine	FP; OV; T; C ($10,000)
	Municipal	3 months and/or $500	FP; OV; T; C (V)
Minnesota	County	3 months and/or $300	FP; OV; T; P; J; C ($5,000)
	Municipal (Hennepin and Ramsey Counties)	3 months	FP; OV; T; C ($6,000)
Mississippi	County	"Fine and/or imprisonment in Jail" (NGD)	FP; T; J; C ($10,000)
	Justice+		C ($500)
Missouri	Magistrate	1 year and/or $500-$1,000	T; C ($2,000)
	St. Louis Court of Criminal Corrections	1 year and/or $500-$1,000	FP; OV
	Municipal+	6 months and/or $500	OV; T
Montana	Municipal	6 months and/or $500	FP; OV; C ($1,500)
	City	6 months and/or $500	FP; OV; C ($1,000)
	Justice	6 months and/or $500	FP; T; C ($1,500)
Nebraska	County	"Most Misdemeanors" (OTP)	P; J; OV; C ($5,000)
	Municipal	1 year and/or $1,000	C ($5,000)
Nevada	Municipal	6 months and/or $500	T; OV; C ($300)
	Justice	6 months and/or $500	FP; C ($300)
New Hampshire	District	1 year and/or $1,000	FP; J; C ($3,000)
	Municipal	1 year and/or $1,000	FP; J; C ($300)
New Jersey	Municipal	"Specified misdemeanors where defendant waives indictment" (7 years)	OV; C ($100)

Misdemeanor Courts
(continued)

State	Court	Criminal Jurisdiction*	Other Jurisdictional Areas**
New Mexico	Magistrate	1 year	FP; C ($2,000)
New York	District	1 year and/or $1,000	FP; OV; C ($6,000)
	City (Outside New York City)	1 year and/or $1,000	FP; T; C ($6,000)
	New York City Criminal	"Non-indictable Misdemeanors" (1 year)	FP; OV
	Town+	1 year and/or $1,000	FP; T; C ($1,000)
	Village+	1 year and/or $1,000	FP; T; C ($1,000)
North Carolina	District	2 years and/or fine	J; C ($5,000)
North Dakota	County Court of Increased Jurisdiction	1 year and/or $1,000	FP; P; C ($1,000)
	County Justice	1 year and/or $1,000	FP; C ($200)
Ohio	County	1 year and/or $1,000	T; C ($500)
	Municipal	1 year and/or $1,000	OV; T; C ($10,000)
Oklahoma	Municipal (Tulsa and Oklahoma City)	3 months and/or $300	OV; T
Oregon	District	1 year and/or $3,000	FP; OV; C ($2,500)
	Justice	1 year and/or $500	T; C ($1,000)
Pennsylvania	Philadelphia Municipal Court	5 years and/or $5,000	FP; C ($500)
	Justice	3 months and/or $500	T; OV; C ($1,000)
	Pittsburgh City Court	3 months and/or $500	FP; OV
Rhode Island	District	1 year and/or $500	C ($5,000)
South Carolina	County	"All offenses except certain enumerated felonies" (NGD)	F; C ($1,000)

Misdemeanor Courts
(continued)

State	Court	Criminal Jurisdiction*	Other Jurisdictional Areas**
South Dakota	Circuit (Magistrate Division): lawyer	1 year and/or $500	FP; OV; C ($1,000)
	Non-lawyer	30 days and/or $100	FP; C ($500)
Tennessee	General Sessions	1 year and/or $2,000	FP; P; J; C ($3,000)
Texas	Constitutional County	1 year and/or $2,000	FP; P; J; C ($1,000)
	Justice+	$200	FP; T; C ($200)
	Municipal+	$200	FP; OV; T
Utah	Justice	6 months and/or $300	FP; OV; C ($300)
	City	6 months and/or $300	OV; C ($2,500)
Vermont	District	"Less than life imprisonment" (2 years)	J; C ($5,000)
Virginia	General District	1 year and/or $500	FP; OV; C ($5,000)
Washington	District Justice	6 months and/or $500	FP; OV; C ($1,000)
	Justice	6 months and/or $500	FP; C ($1,000)
	Municipal	6 months and/or $500	FP; OV
West Virginia	Municipal Magistrate	"Misdemeanors" (OTP)	FP; OV; J; C ($1,500)
Wisconsin	Municipal	6 months and/or $200 (OTP)	OV
	County (Milwaukee County)+	1 year and/or $1,000	C (unlimited); J
Wyoming	Justice	6 months and/or $100 (OTP)	C ($1,000)

APPENDIX B

Survey Methodology

APPENDIX B

Methods

In October 1976 the American Judicature Society conducted a mail questionnaire survey of state misdemeanor court judges.[1] The questionnaires were mailed to a random sample of 25 percent of the judges in all courts where it could be determined that (1) being a judge was the primary occupation of most of the judges on the court (thereby eliminating courts in which the judges are part-time in the extreme), and (2) misdemeanor cases represented the most significant portion of the court's total criminal workload (consequently eliminating general jurisdiction courts that handle both felony and misdemeanor cases). As a further refinement of the first criterion, we excluded those respondents who reported that they work less than 10 hours per week in performing all of their judicial tasks (n=63). Given these criteria, judges were polled in every state except Illinois.[2]

It must be stressed at the onset that our conclusions here about the functioning of misdemeanor courts are dependent upon the perceptions of the judges surveyed. We readily recognize that actual caseload statistics would have been a better data source for many of the variables

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[1] A follow-up mailing was conducted one month later.

[2] Although the Associate Judges of the Circuit Court in Illinois generally are limited in the criminal area to the handling of misdemeanor cases, certain of these judges have been designated by the Supreme Court of Illinois to hear any criminal case upon a showing of need. Thus, it was impractical to attempt to identify the universe of judges handling misdemeanor cases in Illinois.

included in the questionnaire. However, aggregate case and caseload statistics are not readily available in many of the misdemeanor courts and to attempt to generate such data would be cost prohibitive. We therefore substituted the more feasible method of surveying the judges who sit in these courts. Our assumption is that because these judges are present on a day-to-day basis, they should be able to accurately characterize various activities within their courts, and to make approximations (within relatively broad ranges) of various case dispositional rates. Our results must be tempered with the realization that our data reflect the judges' perceptions of case processing methods rather than the actual case information itself. We assume, however, that their responses are for the most part reflective of reality; a large body of social science literature supports this assumption.

Of the 1,594 misdemeanor court judges in the sample, 856 judges from 47 states returned the questionnaire, a response rate of 54 percent. We subtracted from this sample those judges who responded to the questionnaire but reported that they don't handle state misdemeanor cases (n=113). As mentioned previously, we also eliminated those judges who work less than 10 hours per week (n=63). Our analysis, consequently, is based upon a sample of 680 misdemeanor court judges. Table 1 summarizes this sample size information.

Table 2 gives the response rate of the judges based upon the state in which the judge presides. As can be seen in Table 2, 47 states are represented in our survey (Illinois was eliminated for reasons discussed above. The other two states not represented in the sample are Rhode Island and Vermont).

The judges were also asked to indicate the size of the community in which their court is located. Ten percent of the judges characterized the geographic area covered by their court's jurisdiction as "big city"; 14% described their community as a "medium-size city"; 18% described it as a "suburban area"; 18% said their area was a "small city"; and the greatest number (41%) characterized their community as "rural."

These characterizations tended to be corroborated by the judges' responses to our population question. A majority of the judges (56%) indicated that the population of the geographic area covered by their court's jurisdiction was 50,000 or less, with half of this number (28% of the total) indicating that the population of their area was 15,000 or less. Twenty-nine percent of the judges indicated that the population was 50,000 - 250,000 and 7 percent indicated that it was 250,000 - 500,000. Only 9 percent of the respondents indicated that their court served an area with a population of greater than 500,000. This data conforms relatively closely with the population statistics contained in the most recent census figures. In 1970, 17 percent of the population resided in population centers of 500,000 or more; 5 percent in places of 250,000 - 500,000; 15 percent in places of 50,000 - 250,000; and 64 percent in places of 50,000 or less.[3] Consequently, our sample of misdemeanor court judges is approximately representative of the U.S. population distribution with respect to area of jurisdiction. In terms of the population of misdemeanor judges, however, our sample is slightly overrepresented by judges from rural areas.

[3] U.S. Bureau of the Census, Statistical Abstract of the United States: 1975 (96th edition). Washington, D.C., 1975, p. 19.

In analyzing the questionnaire data, we found a parallel response pattern between the responses of "suburban area" and "medium-size city" judges and "small city" and "rural area" judges. For this reason, we have combined the responses of "suburban area" judges with those of "medium-size city" judges and the responses of "small city" judges with those of "rural area" judges in presenting the questionnaire data.

In addition to community size and population of area in which the court is located, our sample of judges can also be described in terms of the size of the court, as measured by the number of judges assigned to that court. The majority of our respondents (57%) are the sole judge in their courts, while 19% hear cases in courts of 2-3 judges, 12% work in courts with 4-9 judges, and 12% reside in courts with 10 or more judges. As we would expect, there is a high correlation between size of court and community size, with most of the large (10 or more judges) courts existing in big cities (58%) and the majority of 1-judge courts situated in small city/rural areas (78%).

Two characteristics of our sample of misdemeanor court judges which add to a general description of these judges are years of judicial service and lawyer status. Only 9% of our respondents have been a judge for one year or less. Thirty-one percent have served as judges for 2 - 4 years; an equal percentage (31%) have served 5 - 9 years; 15% for 10 - 15 years; and 13% of the judges have served for 16 or more years. In terms of the judges' professional status, the largest number of our respondents are lawyers (72%) while the remaining judges (28%) are nonlawyers. This variable, like court size, is also correlated with size of community. Most big city judges (94%) are lawyers while a significant proportion of rural judges (45%) are nonlawyers.

We also asked the judges to rank order the case types that comprise the heaviest portion (i.e., are most time consuming) of their workload. Table 3 reports the results. As the table shows, 51% of the judges rank state misdemeanor cases first while another 23% rank them second.

In analyzing our data of responses from misdemeanor court judges, the community size variable emerged as an important factor in most of our questions concerning misdemeanor courts. As a result, we present the distribution of responses from our survey with respect to the judge's community size response, as well as the cumulative totals. The tables listed in the remaining portion of this appendix present these data.

Table 1

Misdemeanor Court Judges Questionnaires

Total Number Mailed	Total Number Returned	Included in Survey	Response Rate	Total Number Included in Analysis
1,366	848	743	54%	680

Table II

State	Number of Judges Polled	Number of Judges Responding
Alabama	16	6
Alaska	20	8
Arizona	24	17
Arkansas	44	16
California	146	90
Colorado	25	21
Connecticut	16	9
Delaware	2	1
Florida	43	22
Georgia	22	9
Hawaii	4	2
Idaho	6	7
Indiana	43	20
Iowa	44	22
Kansas	29	24
Kentucky	32	6
Louisiana	14	10
Maine	6	3
Maryland	19	11
Massachusetts	45	18
Michigan	61	47
Minnesota	36	21
Mississippi	5	2
Missouri	36	32
Montana	16	10
Nebraska	16	13
Nevada	17	8
New Hampshire	23	12
New Jersey	97	36
New Mexico	16	6
New York	67	30
North Carolina	29	10
North Dakota	6	2
Ohio	58	35
Oklahoma	2	2
Oregon	24	13
Pennsylvania	145	65
Rhode Island	4	0
South Carolina	6	3
South Dakota	4	4

State	Number of Judges Polled	Number of Judges Responding
Tennessee	26	11
Texas	85	46
Utah	53	29
Vermont	2	0
Virginia	41	23
Washington	56	31
West Virginia	10	4
Wisconsin	42	29
Wyoming	11	8
Total	1,594	856
(Do not handle state misdemeanor cases)	- 113	- 113
	1,481	743
(Work less than 10 hours per week as Judge)	- 63	- 63
	1,418	680

TABLE III

Judicial Ranking of
Misdemeanor Court Workloads,
by Case Type

(1 = most time consuming)

Case Type	1	2	3	4	5	6	Don't Handle
State Misdemeanor*	51%	20%	10%	4%	3%	1%	11%
Other Traffic	21	23	16	13	7	1	19
Civil**	11	20	22	16	7	1	23
Local Ordinance Violations	9	11	14	14	20	8	24
Felony***	6	15	16	19	13	3	28
Juvenile****	3	5	7	7	6	7	65

N = 848

* including traffic offenses for which the defendant may be incarcerated

** including probate, mental health, small claims, etc.

*** including felony preliminaries

**** non-traffic

I. Misdemeanor Judge Characteristics

Are you a lawyer?

Lawyer Status	Community Size: Big City Judges	Medium Size City/ Suburban Judges	Small City/ Rural Area Judges	Total
Yes	94%	88%	59%	72%
No	6	12	41	28
	100%	100%	100%	100%
	(n=67)	(n=224)	(n=375)	(n=666)

How many judges, including yourself, are assigned to your court?

Number of Judges in Court	Community Size: Big City Judges	Medium Size City/ Suburban Judges	Small City/ Rural Area Judges	Total
1	9%	34%	76%	56%
2-3	8	27	18	20
4-9	16	28	4	13
10+	67	11	2	11
	100%	100%	100%	100%
	(n=64)	(n=217)	(n=375)	(n=656)

How many years have you served as a judge?

Years of Judicial Service	Community Size: Big City Judges	Medium Size City/ Suburban Judges	Small City/ Rural Area Judges	Total
1	8%	8%	10%	9%
2-4	36	31	32	32
5-9	39	33	29	32
10-15	13	15	16	15
16+	4	13	13	12
	100%	100%	100%	100%
	(n=67)	(n=222)	(n=371)	(n=660)

How would you characterize the total volume of cases handled by you?

Total Caseload Volune	Community Size: Big City Judges	Medium Size City/ Suburban Judges	Small City/ Rural Area Judges	Total
Heavy	86%	75%	40%	57%
Moderate	11	23	50	37
Light	3	2	10	6
	100%	100%	100%	100%
	(n=66)	(n=220)	(n=367)	(n=653)

On days when you hear state misdemeanor cases, how often are you under significant pressure to process a substantial number of these cases?

Frequency of Caseload Pressure	Community Size: Big City Judges	Medium Size City/ Suburban Judges	Small City/ Rural Area Judges	Total
Always	51%	27%	10%	20%
Frequently	39	44	36	39
Infrequently	6	20	32	25
Never	4	9	22	16
	100%	100%	100%	100%
	(n=67)	(n=220)	(n=364)	(n=651)

How often are you able to stay current with your state misdemeanor caseload?

Able to Stay Current with Workload	Community Size: Big City Judges	Medium Size City/ Suburban Judges	Small City/ Rural Area Judges	Total
Always	52%	56%	55%	55%
Frequently	36	34	36	35
Infrequently	10	7	7	7
Never	2	3	2	3
	100%	100%	100%	100%
	(n=67)	(n=217)	(n=366)	(n=650)

To the extent that you are unable to stay current with your state misdemeanor caseload, what is the single most important reason?

Cause of Noncurrent Workload	Community Size: Big City Judges	Medium Size City/ Suburban Judges	Small City/ Rural Area Judges	Total
Inadequate Hours	54%	34%	20%	29%
Attorney Delay	46	66	80	71
	100%	100%	100%	100%
	(n=26)	(n=68)	(n=108)	(n=202)

II. The Prosecutor and Defense Attorney in Misdemeanor Courts

What type of defense services are ordinarily provided for indigents?

Type of Indigent Defense Services	Community Size: Big City Judges	Medium Size City/ Suburban Judges	Small City/ Rural Area Judges	Total
Private	11%	40%	62%	50%
Public	89	60	38	50
	100%	100%	100%	100%
	(n=54)	(n=181)	(n=343)	(n=578)

How often is the state misdemeanor defendant represented by an attorney upon a plea of guilty?

Defense Attorney Presence at Guilty Plea	Community Size: Big City Judges	Medium Size City/ Suburban Judges	Small City/ Rural Area Judges	Total
Always	31%	9%	4%	8%
Frequenlty	61	62	43	51
Infrequently	8	28	49	38
Never	0	1	4	3
	100%	100%	100%	100%
	(n=67)	(n=218)	(n=366)	(n=651)

How often is the state misdemeanor defendant represented by an attorney at trial?

Defense Attorney Presence at Trial	Community Size: Big City Judges	Medium Size City/ Suburban Judges	Small City/ Rural Area Judges	Total
Always	48%	27%	23%	27%
Frequently	49	69	60	62
Infrequently	3	4	16	10
Never	0	0	1	1
	100%	100%	100%	100%
	(n=67)	(n=220)	(n=365)	(n=652)

How often does a prosecuting attorney conduct the prosecution at the trial of state misdemeanor defendants?

Prosecutor Presence at Trial	Community Size: Big City Judges	Medium Size City/ Suburban Judges	Small City/ Rural Area Judges	Total
Always	92%	77%	62%	70%
Frequently	8	17	20	18
Infrequently	0	6	15	10
Never	0	0	3	2
	100%	100%	100%	100%
	(n=67)	(n=223)	(n=370)	(n=660)

To the extent that the prosecuting attorney does not conduct the prosecution at trial, who usually prosecutes the case?

Person who Prosecutes Case Other Than Prosecuting Attorney	Community Size: Big City Judges	Medium Size City/ Suburban Judges	Small City/ Rural Area Judges	Total
Arresting Officer	25%	54%	63%	60%
Other Police Officer	50	30	9	15
Judge	25	16	28	25
	100%	100%	100%	100%
	(n=4)	(n=44)	(n=116)	(n=164)

How often does plea negotiation with respect to charge or sentence take place in state misdemeanor cases before your court?

Frequency of Plea Negotiations	Community Size: Big City Judges	Medium Size City/ Suburban Judges	Small City/ Rural Area Judges	Total
Always	18%	10%	3%	7%
Frequently	61	62	49	55
Infrequently	18	21	41	32
Never	3	7	7	6
	100%	100%	100%	100%
	(n=67)	(n=217)	(n=365)	(n=649)

III. Misdemeanor Court Case Processing

Approximately what percentage of state misdemeanor defendants plead guilty to a misdemeanor offense?

Percentage of Defendants Pleading Guilty	Community Size: Big City Judges	Medium Size City/ Suburban Judges	Small City/ Rural Area Judges	Total
91-100%	8%	8%	13%	11%
81-90	21	24	30	27
71-80	14	24	22	22
51-70	26	20	17	19
0-50	31	24	18	21
	100%	100%	100%	100%
	(n=65)	(n=210)	(n=366)	(n=641)

Approximately what percentage of your state misdemeanor cases are disposed of by guilty plea, dismissal, trial, diversion, etc. at initial court appearance?

Percentage of Cases Disposed at Initial Court Appearance	Community Size: Big City Judges	Medium Size City/ Suburban Judges	Small City/ Rural Area Judges	Total
91-100%	3%	5%	11%	8%
81-90	6	13	24	19
71-80	9	16	21	18
51-70	20	21	15	18
26-50	26	16	15	16
0-25	35	29	14	21
	100%	100%	100%	100%
	(n=65)	(n=217)	(n=364)	(n=646)

When do most of these guilty pleas occur?

Stage at Which Most Guilty Pleas Occur	Community Size: Big City Judges	Medium Size City/ Suburban Judges	Small City/ Rural Area Judges	Total
Initial Appearance	26%	50%	71%	60%
Pretrial	42	24	12	19
Trial	32	26	17	21
	100%	100%	100%	100%
	(n=59)	(n=203)	(n=351)	(n=613)

How often are written pre-sentence reports available to the court at the time of sentencing?

Pre-Sentence Reports Available at Sentencing	Community Size: Big City Judges	Medium Size City/ Suburban Judges	Small City/ Rural Area Judges	Total
Frequently	57%	49%	25%	37%
Infrequently	30	33	43	38
Never	13	18	32	25
	100%	100%	100%	100%
	(n=67)	(n=217)	(n=361)	(n-645)

How often do you sentence misdemeanants to probation?

Frequency of Probation	Community Size: Big City Judges	Medium Size City/ Suburban Judges	Small City/ Rural Area Judges	Total
Frequently	88%	76%	61%	68%
Infrequently	8	22	31	26
Never	4	2	8	6
	100%	100%	100%	100%
	(n=67)	(n=217)	(n=363)	(n=647)

To the extent that you sentence misdemeanants to probation, what is the nature of their supervision, if any?

Type of Probation Supervision	Community Size: Big City Judges	Medium Size City/ Suburban Judges	Small City/ Rural Area Judges	Total
Unsupervised	9%	12%	20%	16%
Judge	2	4	10	7
Probation Officer	58	56	47	51
Volunteer in Probation	5	4	4	4
Other	26	24	19	22
	100%	100%	100%	100%
	(n=64)	(n=212)	(n=331)	(n=607)

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