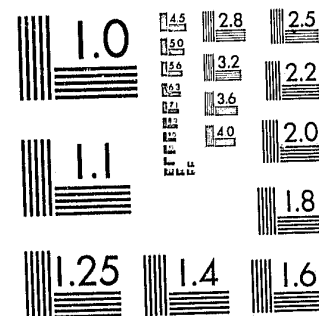


National Criminal Justice Reference Service

**ncjrs**

This microfiche was produced from documents received for inclusion in the NCJRS data base. Since NCJRS cannot exercise control over the physical condition of the documents submitted, the individual frame quality will vary. The resolution chart on this frame may be used to evaluate the document quality.



MICROCOPY RESOLUTION TEST CHART  
NATIONAL BUREAU OF STANDARDS-1963-A

Microfilming procedures used to create this fiche comply with the standards set forth in 41CFR 101-11.504.

Points of view or opinions stated in this document are those of the author(s) and do not represent the official position or policies of the U. S. Department of Justice.

National Institute of Justice  
United States Department of Justice  
Washington, D. C. 20531

EFFECTS OF CASE CHARACTERISTICS ON CASE PROCESSING TIME

David W. Neubauer  
Department of Political Science  
University of New Orleans

John Paul Ryan  
American Judicature Society

ABSTRACT

Delay is the most visible problem facing America's courts today. One common thread in the numerous discussions of the causes, consequences and potential solutions for delay is the role of case characteristics. This paper explores why some criminal cases take only a few weeks to reach disposition while others take months or even years. After sorting out a number of conceptual ambiguities in previous research, this paper systematizes nine hypotheses about the effects of case characteristics on case processing time. As part of a larger study evaluating delay reduction programs, 3,000 criminal cases were sampled from court files in Providence, Dayton and Las Vegas. Combining analysis of variance and step-wise multiple regression the results indicate higher levels of explained variance than previously reported. In all three courts bail status, mode of disposition and motion activity emerge as the best predictors. Contrary to expectations, factors like type of attorney, case complexity, type of charge and attributes of the defendant turn out to be poor predictors. While some of these variables are important in single courts, the relationships are typically weak. Interview and observation data are also used to place the statistical findings in context.

U.S. Department of Justice  
National Institute of Justice

This document has been reproduced exactly as received from the person or organization originating it. Points of view or opinions stated in this document are those of the authors and do not necessarily represent the official position or policies of the National Institute of Justice.

Permission to reproduce this copyrighted material has been granted by

Public Domain/LEAA

U. S. Dept. of Justice

to the National Criminal Justice Reference Service (NCJRS).

Further reproduction outside of the NCJRS system requires permission of the copyright owner.

delivered at the Annual Meeting of the Midwest Political Science Association April 16-18, 1981 Stouffiers Cincinnati Towers, Cincinnati, Ohio. to quote without permission of the author.

828/2

78-NI-AX-0076

NCJRS

APR 2 1982

ACQUISITIONS

#### EFFECTS OF CASE CHARACTERISTICS ON CASE PROCESSING TIME

Delay is the most visible problem facing America's courts today. Newspapers highlight cases that take years to reach disposition. Victims and witnesses complain that repeated continuances enact an unfair penalty on their normal activities and ultimately discourage prosecution. Judges and lawyers decry delay because it undermines their professional responsibilities. Reformers cite delay as justification for changing various aspects of the legal system. Though cries for speedier and more efficient handling of cases are by no means new, calls to reduce delay - both in criminal courts and increasingly in civil courts - have attracted new energy and attention in recent years.

The general concern that delay jeopardizes the effectiveness of the justice system, has not, until fairly recently, prompted systematic analysis and scrutiny. The net result is that we know less than we think we do about the causes, consequences and potential solutions to the delay problem. This is certainly the conclusion reached by Thomas Church (1978 b:x) and his colleagues.

Consideration of the 'state of the art' in pretrial delay research has led us to several broad conclusions regarding this literature. There are few accepted truths in this field. Commentators seldom support theories or perceptions with data. Research often is inadequately designed or executed, and leads to inconclusive results. Moreover, research frequently is concentrated on courts solely as they exist on organization charts. More study should be devoted to the less formal aspects of courts, especially the network of relationships, motivations, and perceptions among court participants.

One potentially fruitful avenue of inquiry for probing how the dynamics of courthouse justice relate to case processing time centers on the effects of case characteristics.<sup>1</sup>

Cases proceed through the criminal court process at different speeds. Some require only a few days or perhaps a few weeks before a decision is reached about the defendant's guilt or innocence. Other cases, however, languish for months or even years. Much of the variance in case processing time occurs between courts. But within individual courts there are also important variations in case processing time. Previous studies suggest that how quickly or slowly a case proceeds to disposition is related to case characteristics like bail status, seriousness of the charge and the type of legal representation (privately retained attorney or court appointed public defender). These studies, however, have typically suffered from: the lack of an adequate conceptualization of the dependent variable (delay); unsystematic and sometimes conflicting efforts at generating hypotheses and the failure to employ multivariate statistical tests.

The effects of case characteristics on disposition time is of interest from a variety of perspectives. From a policy perspective, these variables figure prominently in discussions of court delay. Often delay is projected as the product of the case itself. At a descriptive level, therefore it is useful to know what types of cases move quickly through the court process, proceed more slowly or don't seem to vary. Current descriptive information though is limited often contradictory and unsophisticated--typically no effort is made to control for other important variables. Thus better information on which cases are, or are not, experiencing delay can better inform policy discussions, by better identifying the perceived problem.<sup>2</sup>

An examination of the correlates of case delay, also contributes to a better understanding of the criminal trial court process. The nature of the case and the background of the defendant figure prominently in studies of substantive decision of the criminal courts: release on bail, pleading guilty and, of course, sentencing. Of inherent interest therefore is how these same factors affect important

procedural dimensions of the court process--case processing time in this instance.

Investigating how delay is influenced by case characteristics also contributes to a better understanding of the fairness of the justice system. Delay is commonly perceived as working to the benefit of some litigants while disadvantaging others. The assessments offered, however, may be somewhat contradictory. Some are concerned that delay works to the disadvantage of the defendant by applying untoward pressure to enter a plea of guilty and forfeit the constitutional protection of a trial. Others, however, are concerned that delay works to the disadvantage of society by forcing prosecutors to offer an unduly lenient plea agreement just to move cases. These contradictory assessments flow from differing philosophical perspectives but are typically buttressed by only scant empirical data. Whether delay imposes a differential and unequal tax requires greater scrutiny. Thus investigating whether some defendants are advantaged or disadvantaged by delay can contribute to the growing body of literature on the effects of "extra legal factors" in the judicial process. (Hagan, 1974).

Finally, the examination of this topic suggests that procedural and substantive aspects of the court process are inter-related. The social science studies as well as the literature of judicial administration tends to make an unduly sharp distinction between the two. Social scientists tend to treat judicial administration topics like delay as merely dimensions of paper shuffling. (Flango, Wenner and Wenner, 1975. 278) To be sure early studies of plea bargaining often discussed delay, but only in passing. The image projected was that plea bargaining would be more likely in delayed courts than in faster ones. Such notions, however, have remained largely untested. Clearly the interactions between court procedure and court output (the effects of delay on pleading guilty in this instance) require more systematic attention.

The judicial administration literature, on the other hand, treats judicial procedures as unconnected to the substance of the output of the courts. This

literature projects case flow management as existing in a state of suspended animation, somehow removed from other issues and problems in the criminal court process (Neubauer, 1979: 473). Analysis of case characteristics can contribute to a better understanding of the complex dynamics of what is commonly perceived as the "delay" problem, suggesting that the topic is not an apolitical one.

#### THE RESEARCH SETTING

Our investigation of the effects of case characteristics on case processing time is rooted in the courtroom experiences of defendants in almost 3,000 cases and the perceptions of more than 75 courtroom actors across the three courts. We played an active role in the selection of courts to be evaluated. From approximately twenty-five projects funded by LEAA's Court Delay-Reduction Program, we chose four. Two selection criteria, consonant with our mandate, were utilized. First, the projects to be evaluated had to focus on delay in criminal cases. Second, the projects to be evaluated must have begun their programs no later than September 1978, in order to insure an adequate amount of time after the innovations were introduced for impact analysis. The application of these two criteria resulted in the selection of Providence, Rhode Island; Dayton, Ohio, Las Vegas, Nevada; and Detroit, Michigan.<sup>3</sup> The first three are general jurisdiction trial courts that hear a range of criminal and civil cases.

#### Sampling from Case Files

Case processing information was gathered from official court records in each of the four sites. Key dates in the life-history of a case were collected, including the date of filing, arraignment, disposition, and sentence where applicable. Additionally, we gathered information on a wide range of case and defendant characteristics.

In constructing the sampling design, we made three key decisions. First, we sampled from the population of cases filed rather than from cases terminated. Earlier studies have typically used samples of cases terminated, but these are

not well suited for time series analysis. In addition using a sample of terminated cases can potentially bias the sample. Second, we sampled across a substantial period of time, 36 months in Providence where the court received two grants at different points in time, and approximately 24 months in the other sites. This large number of months facilitated the collection of data before, during, and after the introduction of programs designed to reduce delay in each site.<sup>4</sup> Finally we chose the defendant as the unit of analysis, so that in multiple defendant cases--where several defendants were assigned the same case number--one defendant was randomly selected. This eliminated any potential bias from consistently selecting the first defendant listed in multiple-defendant cases. These decisions resulted in sample sizes of 700 in Dayton, 894 in Las Vegas, 1381 in Providence. Table 1 provides further details on the courts examined and the samples drawn.

#### Interviews and Observations

The collection of qualitative data was an integral part of this project. Qualitative data provided descriptions of courts, the history of delay and delay-reduction programs, court participants' evaluations of the delay-reduction programs, and program implementation dates to facilitate the analysis of the quantitative data. The breadth and depth of the qualitative data also informed the quantitative analysis by providing explanations for unanticipated relationships between variables or dramatic changes in the quantitative data.

Formal interviews were conducted with key planners and courtroom actors in each site, including the chief judge, court administrator, prosecutor, public defender, judges hearing criminal cases at the time of our field work or during the delay-reduction program, assistant prosecutors and public defenders. These interviews typically lasted from thirty minutes to one hour. Most interviews were tape recorded to facilitate full accuracy. Respondents were guaranteed anonymity. Attribution to quotations in the Final Report is done so as to insure that respondents cannot be identified.

Observations were also conducted in each site. This included repeated observations of courtroom activity, such as trials, calendar calls, and guilty pleas. Also included were observations of case scheduling offices, arraignment courtrooms, and lower court proceedings, in order to gain a more complete picture of all the stages of criminal case processing in the sites.

#### Measurement Problems

Delay is a much discussed but seldom defined term. In a general sense it stands for abnormal lapses in the processing of cases. Divining the line between normal and abnormal time, however, is inherently subjective and unmeasurable. While the term delay calls attention to a major problem affecting many courts throughout the nation, it lacks the necessary conceptual clarity to guide analysis. A far better concept is case processing time. Case processing time involves an objective measure of reality--how long do cases take from start to finish. (Neubauer, et al, 1980; Luskin, 1978; Nimmer, 1978). But even this straightforward conceptualization requires further scrutiny and refinement.

Not all the time that a case spends on the docket is controllable by the court. Across our sites, two types of events outside of the courts control consistently occur: sanity hearings and defendants who fail to appear. A true measure of case processing time must therefore consider these factors. In cases where the defendant's sanity is in question, the defendant is frequently institutionalized in a hospital for a period of observation. Clearly sanity cases are handled very differently from "routine" ones. Therefore, these few cases were excluded from the analysis altogether. A defendant's failure to appear at a scheduled court date is far more frequent than commonly perceived. Days lost due to an outstanding bench warrant were subtracted from trial court case processing time. Some other events, idiosyncratic to a particular site--such as habeas petitions to the Nevada state supreme court--were

also deemed to be outside the court's control. These days were like wise subtracted out.

Having narrowed the data base<sup>5</sup> to essentially routine cases with case processing time controllable by the court, we also need to consider what segment of time is best analyzed. Criminal cases pass through a number of distinct steps: initial appearance, preliminary hearing, arraignment, entry of a plea and so on.

Measuring individual time spans between major (or minor) court events produces measurement problems as well as conceptual ambiguities. It seems most appropriate therefore to focus on major segments of case processing time. This article examines one such segment--trial court case processing time.<sup>6</sup> Trial court case processing time extends from the filing of charges in the trial court to the determination of guilt or innocence. It encompasses most of the major activities of the criminal court process--filing of motions, plea negotiations and the like.

#### Local Socio Legal Culture

The data in Table 2 clearly indicates that how long a case takes to reach disposition is heavily dependant on which court is involved. The average criminal cases in Providence takes three times longer than in Dayton. A similar conclusion was noted by Eisenstein and Jacob (1977) in their study of Baltimore, Chicago and Detroit. These major differences between courts indicates that case processing time is the product of institutional and organizational factors, a realization summed up as local legal culture by Church and his associates.<sup>7</sup> Each court through time has evolved a pace of litigation. Court routines structure the overall pace of litigation, but still leaves room for important variations.

Variations in overall case processing time and differences in delay reduction programs introduced are but two indications that the courts under scrutiny

operate in fundamentally different ways encompassing varying legal procedures; differing patterns of informal organizational process (often termed courtroom workgroups); and contrasting operating styles of the major agencies--judges, prosecutors and public defenders. We make no claim that Dayton, Providence and Las Vegas are representative of urban trial courts in general or that they reflect all major types of urban trial courts. The differences between the courts, however, will allow us some limited ability to compare and contrast when interpreting the differences but at times also important similarities in the statistical results.

(Table 2 About Here)

#### Variations Within A Court.

Focusing just on trial court case processing time we find that within a given court cases proceed at different rates. The divergence between the means and medians indicates that within each court a relatively few cases take a very long time to reach disposition. Conversely some are disposed with great alacrity. To illustrate this phenomenon we can look at just one court--Las Vegas. One-fourth of all cases reached disposition within a week of filing (compared to a median of 49 days). At the other end of the spectrum the lengthiest 10 percent consumed 190 days or more. Clearly there is substantial within court variance meriting analysis.

#### Quantitative Analysis Plan

To assess the effect of case characteristics on case processing time we will first present the distributions of the independent variables (see Table 3). This information provides a profile of the types of matters the 3 courts are called upon to dispose of and also allows us to highlight similarities and differences between the 3 research sites. We next explore bivariate associations (see Table 4).



Analysis of variance is utilized, so that the relationships are presented in intuitively understandable units of analysis—days of case processing time.

Bivariate analysis, however, has its limitations, even in relatively large data bases where some controls can be imposed. Multivariate forms of analysis facilitate the disentanglement of joint effects, especially where there is a large number of independent variables. We have chosen stepwise multiple regression, the most commonly-employed form of regression in the social sciences today. Stepwise regression allows an interpretation of the relative influence of a number of different variables upon the dependent variable, case processing time. This relative influence is measured by the standardized coefficient ("beta"). The direct effect of these variables, in days of case processing time, is measured by the unstandardized coefficient ("b").

The statistical analysis is presented for the full sample period, although we will have some occasion to discuss changes over time.

[Table 3 about here]

[Table 4 about here]

[Table 5 about here]

#### SPECIFYING THE HYPOTHESES

In testing whether case processing time is systematically related to case characteristics, we draw upon a wealth of relevant studies of the criminal courts. Nevertheless these studies advance opposing theories and provide contradictory findings. Four levels of conceptual ambiguity require diagnosis before we can proceed to specifying hypotheses.

##### Conceptual Ambiguities

One reason that discussions of delay are somewhat disjointed is that studies have, quite understandably, focused on different actors in the system -- defense attorney or prosecutor or judge. Given that these actors have conflicting tasks it is understandable that differing perspectives emerge. Research on defense attorneys, for instance, is more likely to emphasize tactical reasons for

requesting continuances while studies of judges are more likely to find the judge's working environment a more fertile ground for comment.

But conceptual ambiguities extend far deeper than the mere fact that one can not study the whole system all at once. There are also major disjunctures in levels of explanation, which can be roughly separated into activities of individual actors as opposed to institutional factors. Some studies stress the motivations of the individual participants. For example, one proposition holds that bailed defendants seek continuances to postpone the day of reckoning. Conversely others point to institutional factors as, for example, courts follow informal policies of assigning priority to jailed defendants. The failure to clarify the level of explanation has resulted in contrasting interpretations of the same data.

A third conceptual ambiguity centers on the vantage point for assessing the activities of the trial courts. Starkly divided do we examine the courts from the inside looking outward or from the outside peering inward? Some hypotheses view the court process from the inside and then work outward. Other studies reverse the equation examining the court first from the vantage point of outsiders and then proceed inward. As we shall see shortly these differing vantage points result in markedly different interpretations concerning case dismissals.

Finally differing normative values color efforts at hypothesizing and interpreting data. Some define delay as a problem because it undermines a defendant's constitutionally protected rights. More recently, however, there have been vocal expressions that delay erodes society's need for protection. Often these liberal versus conservative perspectives are well stated by the authors so the reader is forewarned if not forearmed. But at other times normative values are more masked. Approaches using an economic approach, for instance, focus quite properly on the individual motives particularly defendants. But often the stress is placed on the illegitimate desires of defendants thus resulting in an overall neo-conservative perspective (or some would say bias).

The following sections seek to sort out these often overlapping conceptual

ambiguities. At times these conceptual ambiguities appear to raise no great difficulty because they all point in the same direction. Nevertheless it is important to realize that some hypotheses are arrived at by quite different routes. At other times conceptual ambiguity produces contrasting assessments. Data drawn from case files is ill-equipped to test some of these differences (particularly as they relate to levels of motivations). While recognizing such limitations we can nonetheless use that case level data to focus attention on the contrasting assessments that merit further investigation employing complementary analysis.

In deriving hypotheses we attempt some synthesis and sorting out of the contradictions posed by previous research. Bearing in mind the conceptual ambiguities just noted, previous research suggests that cases involving jailed defendants, represented by a public defender, disposed by plea, and involving less serious charges would reach disposition more quickly. Correspondingly, cases involving defendants out on bail, represented by a private attorney, disposed by trial, and involving more serious charges should proceed more slowly. The specific hypotheses and their justification is the subject of this section. Given the unsettled nature of the literature, it seems best to proceed interactively with hypothesis immediately linked to the data. Therefore, we will first state the hypothesis, discuss its justification, present the empirical test and finally highlight what seems important.

Nine characteristics of the cases and the defendants have been identified as potential influences in case processing time. These are: 1. bail status 2. type of attorney 3. mode of disposition 4. seriousness of the charge 5. case complexity 6. nature of the crime 7. motions 8. defendant characteristics and 9. sentence.

#### Bail Status

We would expect to find a strong relationship between a defendant's bail status and the time it takes to bring a case to disposition. The National Ba

Study found that cases involving defendants out on bail took considerably longer to reach disposition than cases involving jailed defendants (Thomas, 1976:253).

The most commonly advanced reason offered to explain this relationship centers on individual level motivations. Defendants who have secured pre-trial release either by posting a cash bond, (usually through a bail bondsman) or who have been granted personal recognizance release (ROR) have more incentive to prolong the case (Wildhorn, Lavin, and Pascal, 1977:50). Because bailed defendants may wish to postpone the disposition of their case, their attorney can buy time by seeking delay for delay's sake. In addition, the attorney enjoys a freer hand in exploring legal matters that will in turn prolong the case.

By contrast, jailed defendants may want a quicker disposition. If the disposition is a dismissal or a finding of not guilty, the defendant will of course be released. If the sentence is likely to be prison, doing time in a state penitentiary is often viewed as easier or safer than in a county jail. For the incarcerated defendant, therefore the defense attorney is less likely to try to buy time and may be more restricted in pursuing legal issues that might prolong the case.

Though the motivations of the defendant and his or her lawyer certainly play a role, institutional factors are also important. For more than a decade, there has been great concern about defendants held in jail awaiting trial. Not only has pretrial detention been condemned because a defendant is considered innocent until proven guilty, but some have also suggested that the incarcerated defendant faces disadvantages when the case is disposed and sentence imposed. Formally and informally then, court systems assign priority to cases involving jailed defendants. We see this influence in state speedy trial acts



mandate quicker processing time frames for those in jail. Informally, judges and other court actors typically place cases involving jailed defendants as first priority.

In general, we expect cases involving defendants out on bail to take longer to reach disposition. Bailed defendants and their attorneys have more incentive to try to stall their cases, whereas a variety of factors push jailed defendants toward a quicker disposition.

RESULTS As Table 3 reports, most defendants in the three courts are out of custody at the time of disposition. Three out of four make bail in both Providence and Las Vegas while a slightly smaller percentage (seven out of 10) secure pretrial release in Dayton. These similarities, though, conceal differing bail mechanisms. Providence makes extensive use of ROR (70% of those released) while Las Vegas utilizes ROR only one-third of the time.<sup>8</sup>

In all three courts bail status has a major affect on case processing time. As expected jailed defendants receive more expeditious disposition. At the descriptive level (see Table 4) the difference is largest in Providence (almost 100 days) but more modest in Dayton (17 days) and Las Vegas (22 days). Controlling for the influence of other variables in step-wise multiple regression only has the affect of slightly increasing these differences (Table 5).

Our field research suggests that institutional factors provide the best explanation for why jailed defendants are processed faster. Each state has a speedy trial law. In Rhode Island those in jail must be processed within 180 days or be released. Similarly Ohio and Nevada law mandate faster case processing for pretrial detainees. Interviews and observations indicated that these formal legal requirements are reflected in local court practices; jailed defendants are assigned first priority in trial settings. Moreover our extensive interview failed to detect any sense that defense attorneys manipulated cases according to bail status. Indeed the case management systems in each of these courts largely precludes (but certainly can not totally eliminate) such tactical moves.

Having confirmed the basic hypothesis in all three research cities, it is also instructive to compare the three courts. What is most striking is that bail status makes such a big difference in Providence. The delay reduction programs, however, greatly reduced this disparity. During 1976 (prior to innovation) jailed defendants were processed 189 days faster than their brethren who awaited trial at home. After the innovations were in place, however, the difference had shrunk to 31 days still greater than the other two courts but a substantial decline compared to past practices. Coupling this finding with the fact that Las Vegas and Dayton employed case management systems suggests that court practices play a major role in the relationship between bail status and case processing time. In courts that manage their docket, the difference in case processing time between bailed and jailed defendants will probably exist but the gap is certainly attenuated.

#### Type of Attorney

Another court process variable that the literature strongly suggests is related to case duration is the type of legal counsel. Specifically, cases with privately retained counsel should take longer to reach disposition than those involving a public defender.

Levin's comparative study of Pittsburgh and Minneapolis suggests that private attorneys use delay as a tactic in pursuing strategies of economic maintenance, satisfying clients, and minimizing the time devoted to a case. Private attorneys, for example, may request a continuance because the client has not yet paid the full fee (Levin, 1977:78). Private attorneys also seek to project to the client that the lawyer is earning his fee. Case delay is one such ploy that can be utilized (Levin, 1977:78). Similarly, private attorneys seek continuances to mollify clients. "The simple passage of time is one of the most important, and sometimes one of the few, ways of minimizing a defendant's hostility and getting him to agree to his attorney's suggestion."

(Levin, 1977:78). Finally, privately retained counsel use continuances to avoid full-length trials, thus minimizing time spent per case (Levin, 1977:78).

The literature suggests that a different set of tactical considerations affect the public defender. Rather than concerns about collecting fees, keeping clients happy so that they will recommend other clients, or simply wishing to avoid a trial that wastes time, public defender. Rather than concerns about collecting fees, keeping clients happy so that they will recommend other clients, or simply wishing to avoid a trial that wastes time, public defenders have other concerns that stem from the institutionalized setting in which they work. Public defenders must worry about the level and demands of their caseload. And because individual public defenders typically practice before only one judge, they have less basis for seeking a continuance because of case scheduling conflicts than privately-retained counsel. Public defenders are also more directly tied to the ongoing court process and therefore wish to maintain good working relationships with their colleagues. They may be more sensitive, for example, to criticisms from judges about unnecessary motions, trials, and the like (Levin, 1977:79). Moreover, defense attorneys in general and public defender are typically more likely to be charged with serious offenses, await a disposition in jail, and have a prior criminal record. Thus, public defenders are more susceptible to pressure, or in the words of one prosecutor: "With the public defenders, we control the docket in court, so you hassle them." (Heumann, 1978:62). Wise aptly summarizes the institutional nexus affecting the public defender, when he notes the thoughts of most private attorneys:

The judges believed that they could best get through the mounting backlog of cases by having them placed within an institution more directly under their own control than among a loose assortment of individual private attorneys who might prove difficult to manage. (Wice, 1978:201).

RESULTS The majority of defendants in our three cities are too poor to hire their own attorney, but the mechanisms used to provide indigent defense varies. Providence has a slight majority of privately retained counsel with the remainder represented by the public defender. Las Vegas has the highest proportion of indigent attorneys who are represented by the public defender with a small but not insignificant 6%, represented by court appointed counsel. Dayton uses a hybrid system of 25% representation by the public defender and a surprising higher proportion of court appointed counsel (31%). The proportion of privately retained attorneys in Dayton falls midway between the high in Providence and low in Las Vegas.

At the descriptive level the data supports the proportion that defendants represented by private attorneys experience greater disposition time. In Providence private attorneys experience greater disposition time. In Providence private attorneys consume 62 more days than their public defender brethren. In Dayton and Las Vegas the comparable figures are 20 days and 13 days respectively.

A variety of studies though indicate that one can not merely compare the output of private attorneys cases with public defenders, for these attorneys represent different types of clients. (Skolnick, 1967, Neubauer, 1974). Clients of the public defender, for example are more likely to have a prior record, more likely to be charged with property crimes, less likely to secure pretrial release, and so on. Such differences must be considered before comparing the work of the two types of lawyers. As Table 5 shows, controlling for differences in other case characteristics washes out the apparent relationship between attorney type and case processing time in both Providence and Las Vegas. Only in Dayton do we find confirmation that privately retained counsel cases experience longer case duration. Even in Dayton the differences are more modest (14.8 days) than expected. Indeed in Dayton type of plea, bail status and the number of motions make greater contributions to case processing time

(measured by the unstandardized regression coefficient) than attorney type.

The lack of confirmation for the attorney type hypothesis in both Las Vegas and Providence is particularly significant given major differences in the structure and operations of the public defenders offices in the two courts. The same pattern of non-statistical results are the produce of marked contextual differences.

Prior to the innovations in Providence, cases proceeded toward disposition largely at their own pace with minimal case management imposed by the court. This suggests that Providence attorneys, whether privately retained or paid by the state, were equally as free to utilize tactics to delay cases. If delay was perceived in the best interests of the client, then both were free to maneuver toward that end. This is not to suggest that both types of attorneys pursued identical goals or adopted similar tactics. Rather it indicates that whatever the motivations, the end results were identical. The Public Defender's office, for example, automatically files motions to suppress whenever there is a statement by the defendants. Also both private attorneys and public defenders have large caseloads. These factors may reduce the relationship between type of counsel and delay found in other studies. After the introduction of delay reduction efforts, the controls applied to both private and court appointed counsel.

By contrast the sample of Las Vegas cases was drawn during a period when case management reforms had already been institutionalized. Regular routines had been established, routines that lessened the ability of attorneys to jockey cases by seeking a continuance or otherwise employing dilatory tactics. Moreover the public defender's office was a major backer of the court's efforts. They found numerous advantages to the team and track program because it simplified their professional lives. Pursuing these institutional level explanations we found that the private attorneys were less involved in the planning of team

and tracking and often more negative in their assessments. It is therefore surprising to find that type of counsel makes no difference in terms of disposition time.

It is only in Dayton that differences based on attorney type emerge in the predicted direction. Our field research failed to detect any contextual elements that might help us better interpret why clients rich enough to afford their own attorney experience slightly greater delay in case dispositions. Perhaps it is because public defenders are more likely to appear in court sooner than privately retained counter parts but this is only speculation.

The hybrid indigency system used in Dayton allows us to examine a long standing question concerning defense of indigents--what is most important the indigency status of the defendant or the type of attorney representing the indigent. Recall that Dayton makes extensive use of court appointed counsel, and many of these same attorneys also handle fee paying clients. What appears to be the most critical consideration is the indigency of the defendant (and probably the types of charges associated with indigency) rather than the type of attorney. Note in this regard, that court appointed counsel and public defender attorneys are very similar in terms of case processing time. Thus, the crucial distinction is not between an institutionalized defender versus office attorneys, but rather between indigency and non-indigency. Indigents represented by either public defender or court appointed counsel experience the same length of case processing time. The distinction between indigency and non-indigency suggests one of two possible explanations. One is that it is the type of defendant (poor and charged with different types of crimes) that is important. The other is that there are two types of legal service provided: one for the poor, another for the non-poor. Our data cannot disentangle this age old question.

### Mode of Disposition

Numberous studies discuss the relationship between delay and the dynamics of the disposition process. For example, Heumann reports that "as the trial approaches, the prosecutor's offer improves" (1978:73). The converse of this proposition, however, is not at all clear. Specifically, how the mode of case disposition affects case processing time suffers from much confusion.

One major area of difficulty is that plea bargaining practices typically have been explained on the basis of the court having too many cases and/or too few judges or other personnel to try those cases. Recent studies, however, have subjected this hypothesis to rather devastating criticism (Feeley, 1975; Nardulli, 1979; Eisenstein and Jacob, 1977:238 and Neubauer, 1979:311). The literature now seeks to understand the plea bargaining process in terms of factors like the norms of courthouse actors rather than delay or backlog.

A second problem lies in the failure to recognize or highlight anticipatory behavior among courtroom actors. The expectation about whether a case will "surely plead" or "possibly go to trial" is important in structuring the actions of defense attorneys. Cases that are likely or possible to go to trial will generate more motions, for example. The preparation time during preliminary states by attorneys--both prosecutors and defense attorneys--is likely to be much greater in cases that might go to trial.

PLEAS OF GUILTY. We expect cases disposed by the defendant's plea of guilty to ordinarily take less time than cases disposed by trial. One reason is that some defendants enter a plea of guilty relatively soon after charges are filed. Although it is generally assumed that delay works to the defendant's advantage, some studies suggest that defendants often benefit from quick dispositions (especially in non-serious cases). In his nationwide study of private defense attorneys, Wice likens the criminal justice system to a giant sieve in which the holes become smaller the longer a case remains in the system. Thus,

the longer a defendant remains emmeshed in the process and the more time and energy devoted to him, the less amenable prosecutors are to negotiations (1978:164). Note that these assessments contradict an earlier--stated view that the prosecutor's offer improves as a case drags out.

TRIALS. Conversely, cases disposed by trial should take longer to reach disposition than pleas (see, for example, Nagel, 1975:63 and Brosi, 1979:46). Trials take longer than most pleas, even pleas on the day of trial which are not uncommon (Brosi, 1979:37 and Mather, 1979). The primary reason centers on the difficulty in scheduling trials. Trial dates are usually assigned well in advance of the actual date. But given the frequency of late pleas, court actors often do not know until the last minute which cases will go to trial. The result is unexpected postponements, as for example when attorneys have two trials set for the same date. Additionally, the lack of predictability in trial scheduling can cause difficulties in the availability of witnesses.

We should also note that the small percentage of cases that actually go to trial in any jurisdiction are a special, and unrepresentative, subsample of all cases. Property offenses like burglary and theft rarely proceed to trial, whereas more serious offenses carrying the likelihood of substantial prison sentences, like murder and armed robbery, are much more likely to go to trial (Neubauer, 1974; Mather, 1979). Similarly, some defendants, such as those with an extensive prior record, are more likely to take the "risk" of than others. Thus, in exploring the relationship between mode of disposition and case processing time, we need to examine other factors as well.

DISMISSALS. We expect that cases resulting in a dismissal will generally involve extensive time, longer than for cases disposed by plea. This hypothesis flows from studies of the federal courts, which have found that dismissals take longer than pleas or even trials.

The literature suggests two radically different explanations as to why a defendant's chance of dismissal may increase with the passage of time.

The duality in interpreting the role of case processing time in terms of dismissals is best understood after we first examine potential differences between pleas, trials, and dismissals.

RESULTS. Not surprisingly pleas of guilty are the modal type of disposition in each of the three courts. In both Providence and Dayton 81% of the cases are disposed by the defendant's entry of a plea of guilty. In Las Vegas the respective figure is "only" 66%. Conversely only a handful of cases go to trial--roughly 5% in each of the research sites, a percentage that appears to be slightly lower than for most urban courts but differences in reporting methods mark cross-jurisdictional comparisons fraught with danger. Dismissals form the residual category. The relatively high rate of dismissals in Las Vegas (29%) appears to be a product of the plea bargaining process--typically a defendant pleads guilty to one charge with companion cases dismissed.

Turning to Table 4 we find the expected pattern: cases that go to trial consume more case processing time than those that end in a plea of guilty. Moreover in each of the three courts the identical pattern emerges: pleas are disposed of on the average faster than dismissals and trials take the longest. Focusing on the magnitude of the difference we see the same pattern that has emerged in earlier cross-court comparisons.

Because delay was extensive in Providence there is a greater difference between pleas and trials (209 days) than in the other two cities sites where disposition time was relatively short. Thus in Dayton and Las Vegas the difference between pleas and trials is narrower (46 and 50 days respectively) but still major. Turning to the results of the step-wise multiple regression, (Table 5) we find that the bivariate relationships are confirmed but the

magnitude of the these differences are diminished. In Las Vegas the effects are only slightly smaller (down to 31 days from 50) but in the other two courts the decrease is greater. This reduction indicates that the effect of the plea is partially diffused through other variables.

A major reason that plea cases consume less time on the court docket than other cases is that some cases end with a plea very shortly after the defendant is arraigned in trial court. In essence pleas are available demand. In all three courts there were a significant proportion of pleas within 30 days of arraignment. Often these cases represented situations where attorneys had already conferred during lower court appearances and moreover viewed the cases as straight-forward and not very serious. Typically in early plea cases the defendant was sentenced to probation. Thus these "routine" cases are disposed with dispatch. By contrast trials are not available on demand. If attorneys perceive a potential trial they need time for preparation and also must wait in the queue behind cases previously scheduled for trial.

DISMISSALS, AGAIN. Most discussions of the relationship between delay and dismissals are not so much interested in the effects of dismissals upon delay as they are on the reverse proposition--the effects of delay upon dismissals. Fundamentally different interpretations have been offered, however.

(Table 6 About Here)

Some suggest that delay causes cases to become weak; cases that otherwise would be prosecutable:

As time passes, it becomes more difficult to make witnesses appear, and trials of state cases based on hazy memories are hazardous for prosecutors because they are less likely to end in conviction" (Rosett and Cressey, 1976:22).

Similarly other studies (Hausner and Seidel, 1980: IV-4; Cannavale and Falcon, 1976) suggest that through time memories of the witnesses dim and victims lose interest in prosecution.

Perceptions of defense attorneys that delay sometimes is their only defense highlights the widely-held belief that the prosecutorial merit of a case deteriorates over time. Note that this explanation examines the court process from the outside looking in.

An alternative explanation is that old cases are more likely to be dismissed because they were prosecutorially weak at the beginning. In this view, in other words, weakness causes delay. Prosecutors bury their "losers" by laying them, either hoping that over time the case may somehow become stronger (through new evidence) or out of sheer reluctance to admit in open court that the case cannot be prosecuted (see Church, 1978a:59; also, Levin, 1977:196). Note that this explanation views the courthouse from the inside looking out.

These competing explanations have important policy implications. It is interesting to note that different studies have stressed one explanation or the other without placing them side by side. Our quantitative analysis cannot resolve these contradictory viewpoints, but our qualitative data based upon interviews and observations can be suggestive on this point.

To examine the potential affects of delay upon dismissals, Table 6 arrays the no conviction cases by disposition time. No conviction cases include dismissals as well as the small number of findings of not guilty at trial. In both Dayton and Providence we find that the proportion of no conviction cases increases with the passage of time. Note though that in each court a fair proportion of no convictions occurred relatively soon after the case reached the trial court. These slight differences stand in sharp contrast to a study of Chicago which reported that the conviction rate declined from 92% in cases that were tried promptly to 40% in cases that were delayed substantially. (Banfield and Anderson, 1968). Thus, the rate of increase is not as great as the proponents of cases deteriorating with the passage of time would project. Moreover a comparison of Providence and Dayton indicates a remarkable similarity in the percentage of no conviction cases.

Given the relatively speedy dispositions in Dayton as contrasted to the slower pace of Providence we might have expected to find a larger proportion of no conviction cases in Providence but no such major differences emerge.

An analysis based on case disposition data cannot fully resolve contradictory viewpoints about the affects of delay on dismissals. The statistical data however tends to suggest that cases resulting in no conviction were more likely to be weak from the start rather than having weakened over time. This interpretation is supported by our field research. In Providence we found that the attorney general's office was reluctant to dismiss weak cases. The vast majority of dismissals came on the motion of the court and not the prosecutor.

#### Seriousness of the Charge

We would hypothesize that serious cases take longer to reach disposition than less serious cases. This was the conclusion of a study in the District of Columbia: "Serious cases stay in the system longer because the District Attorney is reluctant to accept a plea to a lesser charge, or the defendant is less anxious to plea." (Hausner and Seidel, 1980: IV-8). Plea bargaining studies similarly indicate that court actors devote more time and attention to serious cases. We operationalize seriousness of offense by the maximum number of months of imprisonment authorized by the legislature. This legalistic definition, however, may or may not be related to informal definitions of seriousness used by prosecutors, judges, and defense attorneys. Gibson for example, shows that Iowa judges do not react to various crimes in the same way as legislators (1978: 914).

**RESULTS** At the descriptive level we find a slight relationship between seriousness and case processing time. In Dayton the graph in Figure 1 indicates a step-wise pattern, ignoring the one non-conforming data point. In Las Vegas though the relationship is distinctly non-linear. There is no relationship of 0-10 years, a general linear rise from 10-20 years and a sharp increment for cases having a potential sentence of life imprisonment or death. For both of these courts though the effect is felt the most among the relative handful of very serious cases. By contrast there is no relationship in Providence -- case process-



time varies randomly when graphed against possible imprisonment.

[Figures 1, 2, and 3 about here.]

These slight relationships, however, are not very powerful. As step-wise multiple regression indicates (Table 5). Seriousness is not a statistically significant predictor of case processing time in either Dayton or Providence. While seriousness enters the regression model for Las Vegas, the relationship is relatively slight (beta of .08).

In short seriousness of the case is not systematically related to case processing time in Dayton and Providence and contributes only slightly to our ability to predict in Las Vegas. This lack of a strong relationship stands in sharp contrast to studies of other dimensions of court processing. Crime severity has been found to be highly related to sentence severity (Gibson, 1978:914) and bail practices (Flemming, Kohfeld and Uhlman, 1980: 968). A cautionary note is in order, however. Our operationalization of the concept seriousness relies on statutory penalties. Perhaps an alternative measure based on perceptions of courthouse actors might produce different results.

#### Case Complexity

We would hypothesize that complex cases take longer to reach disposition than simpler ones. This was the conclusion of the D.C. study which found that "more serious and complex cases remain adjudicated for longer periods" (Hausner and Seidel, 1980: IV-8). One indicator of "complex" cases in that study was the number of charges, which we also use in our quantitative analysis. Another indicator of complexity that we adopt is the number of defendants involved in the same case. Wice's study of private defense attorneys suggested that multiple defendant cases present unusual difficulties for the lawyer:

"One of the most complex plea bargaining situations occurs in cases with multiple defendants...such cases often cause a race to the courthouse doors in order to achieve the maximum benefit from turning on co-conspirators. These cases, which offer great potential for immunized cooperation, present a real dilemma for the defense attorney who believes he may have a chance to win the case but realizes the practical necessity of protecting his client from being the fall guy. These situations

occur most commonly in drug cases... (Wice, 1978:164).

We should note that case complexity and case seriousness, while often equated are conceptually different. To be sure, some serious cases (like a sensational murder case) may indeed be quite complex because they involve numerous witnesses, extensive medical testimony, and perhaps a defense of insanity. But some less serious cases may also be complex. Drug cases, for instance, require an expert opinion that the substance seized from the defendant was an illegal drug. Thus, we might expect some less serious but still relatively complex cases like drug possession to take longer to reach disposition.

**RESULTS** The case complexity hypothesis can be quickly rejected. At the bivariate level the relationships between complexity and case duration are slight. Multi-defendant cases take slightly longer to reach disposition in both Providence and Las Vegas but unexpectedly move a little faster in Dayton. Similarly cases involving multiple charges take longer in all three courts. In Las Vegas though they take significantly longer (96 days, on average, versus 69 days). These weak relationships, however, disappear almost completely when other variables are controlled for using step-wise multiple regression. In Providence and Las Vegas case complexity does not begin to approach statistical significance in explaining trial court case processing time. While one of the complexity measures is statistically significant, in Dayton the relationship is weak; multiple counts is the least powerful predictor.

The absence of any but one weak relationship reflects the fact that most cases processed by state trial courts are typically not very complex. In our 3 courts over 85% of the cases name a sole defendant and 60% of the cases in Providence and over 83% in the other two sites specify only a single charge. Thus most cases involve "routine" street crimes - burglary, drugs, robbery, and theft. Rarely do state courts adjudicate multi-defendant drug conspiracy cases or major white collar crimes. It is these types of complex federal cases that have prompted the argument that the federal speedy trial act was intended for the typical federal criminal case, not the complex one.

### Nature of the Crime Charged

In conjunction with the seriousness of the crime, we would expect that different types of charges might proceed at different speeds through the courthouse. Thus, case processing time should be related not only to seriousness of the offense but also to the specific type of charge. Different charges present different problems for prosecutors and for court scheduling of police and civilian witnesses. The literature suggests differences across case types, but the differences are not consistent across jurisdictions. For example, in the District of Columbia robberies take longer than other types of cases (Hausner and Seidel, 1980: II-22), and in Portland Oregon (Wildhorn, Lavin and Pascal, 1977: 115), but in seven other cities robberies are processed more quickly (Brosi, 1979:55). Likewise, burglaries take longer to reach disposition than other types of cases in Portland, Oregon (Wildhorn, Lavin and Pascal, 1977:151), but less time in the Brosi study. Varying definitions of crime types account for some of these differences. Different jurisdictions may also have their own (different) reasons for deciding which cases should be given special attention. Nevertheless, the contradictory nature of the evidence to date suggests some fruitful lines of inquiry.

**RESULTS** To evaluate the effects of the type of crime charge on case duration, Table 4 presents average days of case processing time for the 6 most common crime charges. These 6 categories contain a sufficient number of cases to avoid the problem of inadequate samples. The myriad of results underscores the difficulty just noted - how long specific charges take seems to vary by court. Rank ordering (Table 7) within each court though highlights 2 commonalities. In all 3 courts burglary cases were disposed of faster than any other crime. Conversely, assault cases tend to take the longest. The other crime types vary within each court with no appreciable cross-court pattern.

Often the differences within each court are not great which explains why crime type turns out to be at best a weak prediction. In Dayton no crime type is statistically related to delay in the regression analysis. In Las Vegas, assault is on

of borderline statistical significance ( $p = .07$ ). Only in Providence does a crime type enter the regression results, but then only weakly. Miscellaneous charges (which include a pot pourri of not very serious crimes like destruction of property, obstruction of justice consensual sexual misconduct and extortion take longer.

[Table 7 about here]

While the relationship is weak (beta of only .09) the unweighted coefficient is quite high ( $b = 89.6$  days). This seems to indicate that the least serious cases received low priority consideration and were allowed to proceed at their own pace (particularly before the court delay reduction program). Respondents mentioned the least serious cases as taking the longest, referring to them as "junk" cases. They often simply fell between the cracks.

These results, coupled with previous research suggest two important conclusions. First, descriptive level data seems to vary by court. Thus a finding that a certain type of case takes the longest in one court says little about other jurisdictions. Note, for example, that we found that in all three of the courts studied burglary cases moved with the most dispatch, a finding that contradicts the results from Portland, Oregon. Different jurisdictions appear to have their own and often different reasons for deciding which cases should be given top priority (or low priority). Second, statistical controls for other variables are of vital importance when discussing the relationship between type of charge and case processing time. Typically previous studies have failed to examine multivariate relationships. In our three research sites there are pronounced differences by crime type only at the descriptive level. Step-wise multiple regression demonstrates that crime type exerts little virtually independent impact on case processing time.

### **MOTIONS**

Motions are requests for the court to make a legal determination. Some motions are simple and require little lawyer or judge time. Others, however, may require a fair amount of preparation time. We would hypothesize that cases involving motions would take longer to reach disposition. As Katz noted,

Motions...offer many opportunities for the use of delaying tactics by both sides...since few states require attorneys to submit at one time all the motions they intend to use, a lawyer bent on delay can introduce them singly over a period of months (1972:6).

Read closely, though, this quotation implies that motions time is not necessarily additive. That is, merely filing a motion, even a "heavy" motion that will be contested and require a court determination, does not necessarily add to case processing time. To the extent that a court has regularized motion practice to require a filing of motions several weeks before the trial date, motions will not necessarily increase case processing time. Conversely, where motions may be filed up to the day of trial, motions can increase case processing time substantially.

**RESULTS** Motion activity in each of these courts is fairly extensive. In both Providence and Las Vegas 40% of the cases involve at least one motion with a slightly lower proportion (27%) in Dayton. Not infrequently two or 3 different types of motions are filed in each case.

Cases without motions proceed more quickly, only 46 days on average in Las Vegas. But cases where one motion is filed take more than twice as long - (96 days) and cases with two motions take three times as long - (140 days). The linear additive effect of motions on case processing time also emerges in Dayton, although the magnitude is not as great. Cases where no motions have been filed reach disposition in 66 days on average compared to 117 where 3 or more motions have been filed.<sup>9</sup>

The unmistakable impact of motions upon case processing time emerges just as forcefully in the step-wise multiple regression analysis. For all 3 courts motions are the single most powerful predictor (Table 5) of case processing time. Examining the non-standardized coefficients we find that motions increase case processing time by 38 days (Providence), 17 (Dayton) and 44 days (Las Vegas).

Given the importance of motions in predicting extended case duration, it is useful to inquire into what types of cases are most likely to involve motions. Multiple regression analysis for both Providence and Dayton revealed an identical pattern. Motions were more likely to be filed in cases going to trial and in cases

carrying a heavy legislatively mandated maximum sentence. Taken together these two variables suggest that seriousness exerts an indirect effect on case processing time in these two courts (although it fails to establish any direct impact even when motions are removed from the analysis). Perhaps then motion practice reflects a surrogate measure for case seriousness. It represents the judgment of practicing attorneys about what cases are most worth fighting over. Motions seem then a better indicator of courthouse activity than the numbers state legislators sometimes abstractly apply to categories of criminal law violations. (Rosett and Cressey: 1976).

#### Defendant Characteristics

The relationship between attributes of the defendant and criminal court processing have been discussed in numerous studies. Normatively the concern has been voiced that the poor and minorities experience discrimination. The extent to which extra legal factors influence the court process (Hagen: 1974), has been examined in a variety of empirical studies investigating the nature of criminal violation charged, the type of legal representation, mode of case disposition, the setting of bail and of course the sentence imposed. Given the overall importance attached to the attributes of the defendant we need to analyze any direct links with case processing time, controlling for other variables. As other studies have noted (Wildhorn, Lavin, Pascal 1977:65) case files often contain incomplete information concerning the defendant's age, race, sex and prior criminal record. This proves to be the situation in the three study cities. Some but not all information is available (refer back to Table 3 for specifics). The information available reveals the expected pattern--most defendants are male, minorities are over-represented, some have a history of prior criminal convictions and the average age is about 28 (except in Las Vegas where defendants are about three years younger).

RESULTS Despite their prominence in the literature, the age, race sex and minority status of the defendant matters little in terms of case processing time. Turning first to differences of means we find that case duration varies little according to the defendant's background. More importantly though the minor differences that do appear are not systematical related to the dependent variable. In both Dayton and Las Vegas these variables do not enter the regression analysis (Table 5). In Providence age does enter the equation. While the relationship is statistically significant, it is nonetheless quite weak, contributing a mere 1.9 days to case duration. Moreover, even this weak relationship disappears over time. The influence of age is felt entirely prior to the court innovations. But interestingly in the post innovation period in Providence prior criminal history weakly enters the analysis. Defendants who have been previously convicted experience faster case processing time -- (11 days on the average).

With minor exceptions, then attributes of defendants are not systematically related to how long a case takes to reach disposition.

#### Sentencing

The relationship between sentencing outcomes and case processing time merits exploration. Delay may be advantageous to the defendant's sentence, for example. Levin (1977) found that delay facilitates judge-shopping. Defense lawyers seek continuances either to avoid judges who have a reputation for being tough or to maneuver their case before a judge known to be lenient. Likewise, defense attorney may seek delay to allow for pre-sentence rehabilitation -- enrollment in a drug rehabilitation program, for example. It is much easier for an attorney to argue that probation is an appropriate sentence option because the defendant has been a good citizen for the last several months than a speculative argument that in the future s/he is likely to be a good citizen. None of these discussions, however, offers a firm basis for drawing specific hypotheses. In particular, imposition of sentence is the final step in the process (before appeal) and might therefore be

affected by delay but not affect it. On the other hand, courthouse actors anticipate what the likely sentence will be for a defendant based on seriousness of the charge, prior criminal involvement and the like. To the extent sentences are anticipated, the sentence can be viewed as an independent variable. The potential linkage between sentence and case processing time appear to be complex and interactive.

RESULTS In each court a majority of defendants are placed on probation. Comparing length of incarceration is more difficult because each state employs different formal sentencing laws, compounded of course by correctional practices relating to good time and parole eligibility. Providence though appears to hand out the most lenient sentences with Las Vegas imposing the most severe.

Contrary to expectations, the type of sentence fails to exert any systematic influence on how long a case stays on the courts' docket. Only in Providence does sentence make a difference, with probation cases taking 82 days longer to reach disposition. Interpreting the meaning of this finding, though, is complicated by the fact that it is highly specific to the time period under examination. The regression results indicate that before the court implemented its multi-faceted programs probation cases consumed an additional 86 days (b) but after the innovations they actually proceed faster by 29 days! This sharp reversal in direction is a clear indication that the programs imposed routines on case disposition. Before the delay reduction programs, cases could linger which explains why the least serious violators were able to let their cases drag out--the court focused its attention on more serious offenders. After the innovations, however, the priorities given to cases became more geared to the goals of the trial court. Before, more extraneous factors affected a case processing time.

### THE COMBINED MODEL

Having individually examined the 9 independent variables, we need to return to Table 5 to assess their combined effects. Across the 3 sites three variables consistently emerge as strong predictors of case processing time: bail status, entry of a guilty plea and the filing of motions. What is remarkable is that in 3 very diverse courts, employing differing case management techniques and philosophies, we find the same three of independent variables.

The diverse nature of the 3 courts is reflected in the variables that enter the regression equation after bail, plea and motions. In each site at least two other variables are also statistically significant but they are never more powerful than the first ones. In Providence miscellaneous charge, a sentence of probation and age of defendant marginally increase explanations of case processing time. For Dayton privately retained counsel and multiple counts increase predictability slightly. Finally in Las Vegas seriousness of the offense, a grand jury indictment and a charge of assault increase the multiple R. In short, the variables' marginally predicting case processing time seem related more to specific contexts of the court than to any common patterns or processes across courts.

The combined model, then challenges conventional wisdom by showing that at least in Providence, Dayton, and Las Vegas some widely held suppositions do not withstand empirical tests. Table 5 though suggests another entirely different disjuncture from previous studies. Overall the levels of explained variance are higher than those reported in past research. Eisenstein and Jacob along with Peterson report low levels of explained variance - around 10%. The  $R^2$  in Table 5 are higher, ranging from 31% to 13% to 27%. At first blush these relatively high figures may appear to be the product of nothing more than the inclusion of the innovation variable. Actually removal of this variable decreases explained variance only slightly.<sup>11</sup>

We need then to take a hard look at what levels of explained variance we are likely to achieve when dissecting case processing time. Matching Tables 2 and 5 highlights the fact that levels of explained variance are highest in the court (Providence) with the most variance. Conversely, we are able to predict only 12 or 13% of case processing time in Dayton because in that court there was little variance to begin with.

In turn, the amount of variance in case processing to be explained is tied to court routines. As cases enter the system they are assigned forthcoming dates on the basis of common court practices. For example, in Las Vegas judges alternate civil and criminal dockets every 3 weeks; therefore, trial assignments are tied to the specific phase the judge is in at that time. Moreover, it is often difficult to compress or even at times extend these routines. Consider, for example, a defendant likely to enter a plea of guilty. Court routines mean that the defendant will have the opportunity to enter that plea either early (at arraignment) or on the trial date.

Given the operations of established court processing routines we can suggest three conclusions. First, the existence of court routines will result in overall low levels of explained variance. Second, we expect to find higher levels of explained variance in courts where adherence to routines is loose. Finally, future research needs to more directly investigate these routines. They operate as important intervening variables whose effects require greater specification.

# CONCLUSION

35

How long criminal cases take to reach disposition is partially the product of the characteristics of the case. Three variables consistently emerged in Providence, Dayton and Las Vegas. Defendants held in jail experience faster case dispositions. Cases terminated with a plea of guilty (as opposed to trial) likewise proceed more swiftly. The filing of pretrial motions, on the other hand, contributes to extended case processing time. Beyond these 3 variables, however, other factors are weakly and inconsistently tied to how long a case spends on a court's docket.

Our findings help to better identify the perceived problem of court delay. As we mentioned earlier, delay is often projected to be the product of the case itself. Such views require more precise analysis. Nothing in our analysis suggests that extended case processing time is inherently the result of the legal characteristics of the case. Armed robbery cases proceed no faster or slower than say a burglary or theft case. Similarly seriousness of the charge proves to be un-related. What emerges as correlates of delay are case processing characteristics. How the court manages the cases it has is more important than the types of cases it finds on the docket.

The statistical results also indicate the need to rethink some commonly accepted notions about delay in courts. Privately retained attorneys, we have repeatedly been told, will maneuver to gain delay. The results indicate that attorney status is statistically significant in only one site. Similarly the nature of the legal charge (both seriousness and type of the particular offense) has often been mentioned as an important factor related to case processing time. The empirical results though indicate that the nature of the legal charge operate only at the margins and only in some courts. Finally concern has been voiced that some types of defendants are more disadvantaged by extended case duration than others. In our 3 research sites the results are so marginal (age is very weakly related in Providence) as to suggest considerable need for revision.

36

Examining the correlates of case delay also deepens our understanding of the criminal court process. Bail procedures and plea practices of American courts have been the subject of intense scrutiny. They emerge as important factors in case processing time as well. But not all of our findings dovetail with previous studies of the criminal court process. Motion practice is an important predictor in all 3 courts, but this aspect of legal procedure has received only passing mention in the social science literature. Conversely, past studies have found seriousness of the offense to be related to sentencing, plea practices and bail. It is of particular interest then to find it is not related to case duration. Explanations for such a disjuncture awaits future research.

Our empirical results add to the growing body of literature concerning the effects of "extra-legal" variables. We were able to gather, often at great cost, extensive but not complete information on the race, gender, age and prior criminal history of the defendant. Quite unexpectedly we found that these defendant attributes contributed little. Only age of the defendant attained statistical significance and then only weakly in just one court. In short, delay does not appear to impose an unfair and unequal tax as some have suggested. Along with the research conducted by the National Center for State Courts, (Church, 1978b) our findings indicate that we need to approach claims about the consequences of delay with great skepticism. We need empirical assessments and not more speculative arguments.

Finally our study helps to better focus on the interrelationship between court procedures and the substance of court outputs. Both political scientists and judicial administrators have proceeded on the basis of an unrealistic separation of the two. Part of the difficulty stems from the failure to realize that many studies have employed contrasting levels of explanation. As a result, a number of studies appear on the surface to reach similar conclusions but a deeper probing reveals that the findings contrast. Certainly conflicting interpretations of how delay affects (or is effected by) dismissals stands as a clear case in point. A better understanding of the case processing routines employed by courts stands as a potent



key for investigating important court related decisions like case dismissals.

At this point an important caveat needs to be noted. Our results stem from an intensive examination of 3 courts. While the 3 courts are strikingly different they are not held out as representative of the universe. We would expect that similar studies of other courts might yield varying conclusions. Recall, for example, that after the regression analysis incorporates the first three variables, other more marginal variables enter. But these secondary variables vary by site. In short, the context matters greatly. Moreover, the 3 courts, while they vary between themselves, also shared a critical commonality; all three courts actively control the pace of criminal litigation. All did something about their self-defined problem of delay. It may be that in courts where delay is an extensive, untreated problem, extended case processing time might indeed serve as an unfair tax. Clearly the interaction of local socio-legal culture and case processing time requires further attention.

## FOOTNOTES

This study was funded by Grant Number 78-NI-AX-0076 awarded by the National Institute of Law Enforcement and Criminal Justice, Law Enforcement Assistance Administration, United States Department of Justice to the American Judicature Society. The analyses, conclusions, and opinions expressed are those of the authors and not necessarily those of the American Judicature Society or the United States Department of Justice.

A number of people participated in this research project. Marcia Lipetz and Mary Lee Luskin served as co-principal investigators supervising data collection in the field and contributing to the analysis. Research assistants Joy Charlton, Richard Fritz and Anthony J. Ragona were responsible for data coding in Chicago and also contributed by suggesting analysis strategies and performing some of the analysis.

1. Case characteristics refers to a variety of aspects concerning a criminal case including the type of case (type for charge for example), aspects of case processing (release on bail and entry of a plea of guilty for instance) and attributes of the defendant (age, race and sex). For ease of exposition we collectively refer to these varying dimensions simply as case characteristics.
2. In turn, this effort should demonstrate the difficulties involved in "modeling" the criminal justice process. In recent years a number of studies have searched for the sources of delay among case attributes. The hope expressed is that the application of management science can reduce court delay. Along with Flanders (1980) we are skeptical of the utility of such efforts largely because the judicial process more resembles a job shop than an assembly line.
3. The results from Detroit are not reported here.
4. In varying degrees these programs did reduce a processing time. In providence the decrease was substantial. In Dayton the decrease was modest although this must be interpreted against the backdrop that case dispositions were already very speedy compared to most other courts in the nation. Finally in Las Vegas overall case processing time decreased significantly but most of this reduction occurred in the lower courts.
5. Not all cases collected survived to inclusion in the final statistical results (compare tables 1 and 2). Besides the sanity cases that were deleted, cases that had not reached disposition were likewise dropped from the analysis. Oftentimes, these cases reflected defendants who failed to appear. Scrutiny of the cases not closed by the end of our field research were examined for possible sampling bias. Happily none emerged, particularly in Providence where the proportion of non-closed cases was high. Besides these deletions, listwise deletion procedures used in multiple regression also reduce the sample size utilized in the final regression results. Extensive discussions of the procedures used

- 40
- can be found in Neubauer, Lipetz, Luskin and Ryan (1980).
6. The larger study divided overall case processing time into three segments-- lower court, trial court and sentencing. Lower court time extends from arrest to the filing of charges in the upper court and includes bail setting, and conducting a preliminary hearing. Sentencing time extends from a determination of guilt to the actual imposition of sentence and involves primarily preparation of a pre-sentence report. The three time segments are essentially unrelated within these three courts. The failure to examine time segments appears to account for the fact that many studies have reported low levels of statistical relationships. For an extended discussion of these issues see Neubauer, Lipetz, Luskin and Ryan (1980 chapter 2) as well as Petersen. The correlates of lower court case processing time differ significantly from correlates of trial court case processing time.
  7. We prefer the term local socio legal culture, because the inclusion of socio better indicates the importance of informal organization phenomenon (often referred to as the courtroom work group).
  8. Information on OR bonds is not available in Dayton.
  9. Analysis of Variance data for Providence is not currently available.
  10. In each court other variables also enter the analysis but trial and seriousness are the most pronounced.
  11. In Las Vegas  $R^2 = 26\%$  and in Dayton  $12\%$ . Unfortunately the figure is not available in Providence at this time.

# REFERENCES

- Banfield, Laura and C. David Anderson (1968) Continuances in the Cook County Criminal Courts, 35 University of Chicago Law Review 259.
- Brosi, Kathleen (1979) A Cross-City Comparison of Felony Case Processing. Washington, D.C.: Institute for Law and Social Research.
- Cannavale, Frank J. Jr. and William D. Falcon (1976) Witness Cooperation. Lexington, Mass.: Lexington Books.
- Church, Thomas, Alan Carlson, Jo-Lynne Lee, and Teresa Tan (1978a) Justice Delayed: The Pace of Litigation in Urban Trial Courts. Williamsburg, Va.: National Center for State Courts.
- Church, Thomas W. Jr., Jo-Lynne Lee, Teresa Tan, Alan Carlson, and Virginia McConnell (1978b) Pretrial Delay: A Review and Bibliography. Williamsburg, VA.: National Center for State Courts.
- Eisenstein, James and Herbert Jacob (1977) Felony Justice: An Organizational Analysis of Criminal Courts. Boston: Little Brown.
- Feeley, Malcolm M. (1975) "The Effects of Heavy Caseloads." Presented at the Annual Meeting of the American Political Science Association.
- Flanders, Steven (1980) "Modeling Court Delay" 2 Law and Policy Quarterly 305.
- Flango, Victor, Lettie Wenner and Manfred Wenner (1975) "The Concept of Judicial Role: A Methodological Note," 19 AMERICAN JOURNAL OF POLITICAL SCIENCE 277.
- Flemming, Roy, C.W. Kohfeld and Thomas Uhlman (1980) "The Limits of Bail Reform: A Quasi-Experimental Analysis" 14 LAW AND SOCIETY REVIEW 947.
- Gibson, James (1978) "Judges' Role Orientations, Attitudes, and Decisions: An Interactive Model" 72 AMERICAN POLITICAL SCIENCE REVIEW 911.
- Hagan, John (1974) "Extra-Legal Attributes and Criminal Sentencing: An Assessment of a Sociological Viewpoint," 8 Law and Society Review 357.
- Hausner, Jack and Michael Seidel (1979) An Analysis of Case Processing Time in the District of Columbia Superior Court. Washington, D.C.: Institute for Law and Social Research.
- Heumann, Milton (1975) "A Note on Plea Bargaining and Case Pressure," 9 Law and Society Review 518.
- (1978) Plea Bargaining. The Experiences of Prosecutors, Judges and Defense Attorneys. Chicago: University of Chicago Press.
- Levin, Martin (1977) Urban Politics and the Criminal Courts. Chicago: University of Chicago Press.
- Luskin, Mary L. (1978) "Building a Theory of Case Processing Time," 62 Judicature 114.
- Mather, Lynn M. (1979) Plea Bargaining or Trial?: The Process of Criminal Case Disposition. Lexington, Mass.: Lexington Books, D.C. Heath.

- Nagel, Stuart (1975) Improving the Legal Process. Lexington, Massachusetts: Lexington Books.
- Nardulli, Peter (1979) The Caseload Controversy and the Study of Criminal Court, 70 Journal of Criminal Law and Criminology 89.
- Neubauer, David (1974) Criminal Justice in Middle America. Morristown, N.J.: General Learning Press.
- (1979) America's Courts and the Criminal Justice System. North Scituate, Mass.: Duxbury.
- Neubauer, David; Marcia Lipetz; Mary Lee Luskin and John Paul Ryan (1980) MANAGING THE PACE OF JUSTICE: AN EVALUATION OF LEAA's COURT DELAY-REDUCTION PROGRAMS Chicago, Ill. American Judicature Society.
- Nimmer, Raymond (1978) The Nature of System Change: Reform Impact in the Criminal Courts. Chicago: American Bar Foundation.
- Peterson, Robert Earl (1977) Pretrial Delay. Workload, Neophytes, and Charge Distribution. Unpublished Ph.D. Dissertation, University of Wisconsin, Madison.
- Rossett, Arthur and Donald R. Cressey (1976) Justice by Consent: Bargains in the American Courthouse. Philadelphia, Pa.: J.B. Lippincott Co.
- Skolnick, Jerome (1967) "Social Control in the Adversary System," II The Journal of Conflict Resolution 52.
- Thomas, Wayne H., Jr. (1976) Bail Reform in America. Berkeley: University of California Press.
- Wice, Paul (1978) CRIMINAL LAWYERS: AN ENDANGERED SPECIES. Beverly Hills, Cal.: Sage Publications.
- Wildhorn, Sorrel, Marvin Lavin and Anthony Pascal. Indicators of Justice. Lexington, Massachusetts: Lexington Books, 1977.

## BACKGROUND AND SAMPLING INFORMATION ON THE THREE COURTS

TABLE 1

City	Court	Court Jurisdiction	Sampling Period	Number of Months	Sample <sup>1</sup> Size	Type of Innovation
Providence R.I.	Superior Court	Providence & Bristol Counties	1/76-12/78	36	1381	Case Scheduling Office Push Program Whittier Team
Dayton, Ohio	Common Pleas	Montgomery County	7/77-6/79	24	700	Whittier Team
Las Vegas, Nevada	District	Clark County	1/77-1/79	25	344	Team & Tracking

<sup>1</sup> Based on a 30% sampling fraction.

TABLE 2

## CASE PROCESSING TIME IN THE THREE COURTS

	Total Case Processing Time <sup>1</sup>		Trial Court Case Processing Time <sup>2</sup>		N
	Mean	Median	Mean	Median	
Providence	355 days	190 days	232 days	101 days	1035
Dayton	122 days	97 days	75 days	56.5 days	520
Las Vegas	235 days	157 days	72 days	49 days	772

1 From arrest (initial appearance in Las Vegas) to imposition of sentence

2 From filing of charges (arraignment in Las Vegas) in the trial court to disposition on the merits (plea, trial, or dismissal)

	Providence	Dayton <sup>45</sup>	Las Vegas
DEFENDANT CHARACTERISTICS			
Age (mean)	28.3	28	25
Race (white)	Y	47%	71%
Sex (male)	Y	79%	84%
Prior Conviction	49%	30%	Y
N	~1145	~522	~768

1 In Dayton, there is 9% missing data on the bail variable.

2 Half of the 31% prison included county jail (15% of total sample). In addition 4% of defendants in Dayton received a form of rehabilitative sentencing.

3 In Providence 8.5% (97) defendants received a deferred sentence.

Y Data not available in this site

	Providence	Dayton	Las Vegas
TABLE 3 CASE CHARACTERISTICS			
BAIL STATUS			
Made Bail	73%	65% <sup>1</sup>	69%
TYPE OF ATTORNEY			
Public Defender	49%	25%	57%
Privately Retained	51%	44%	37%
Court Appointed	0	31%	6%
MODE OF DISPOSITION			
Plea	81%	81%	66%
Trial	5%	6%	5%
Dismissal	14%	13%	29%
SERIOUSNESS			
Maximum Penalty in Months			
6	—	6%	2%
12	5%	—	5%
36	5%	—	1%
60	31%	51%	4%
120	37%	8%	63%
180	—	12%	10%
240	5%	—	13%
300	—	15%	—
360	6%	—	+
480	—	2%	—
Life	9%	—	4%
MOST SERIOUS CRIME CHARGED			
Assault	14%	9%	6%
Burglary	22%	9%	18%
Drugs	16%	13%	21%
Theft	26%	39%	27%
Robbery	6%	18%	12%
Miscellaneous	8%	3%	
CASE COMPLEXITY			
Single Defendant	85%	33%	87%
Single Charge	61%	83%	92%
Indictment	17%	95%	14%
MOTIONS			
None	50%	73%	61%
SENTENCE			
No Conviction	17%	17% <sup>2</sup>	30%
Prison	17% <sup>3</sup>	31% <sup>2</sup>	29%
Probation	66% <sup>3</sup>	43%	36%



TABLE 4

## MEAN DAYS OF TRIAL COURT CASE PROCESSING TIME

	PROVIDENCE	DAYTON	LAS VEGAS
BAIL STATUS			
Bail	254 days	81 days	79 days
Jail	156	64	57
TYPE OF ATTORNEY			
Public Defender	200	65	64
Privately Retained	262	85	77
Court Appointed	—	68	88
MODE OF DISPOSITION			
Plea	203	69	56
Trial	412	115	106
Dismissal	349	89	99
SERIOUSNESS			
Maximum Penalty in Months			
6	—	73	85
12	203	—	57
36	196	—	—
60	255	72	61
120	199	82	62
180	—	64	79
240	357	—	94
300	—	82	—
360	222	—	—
480	—	110	—
Life	238	—	140
MOST SERIOUS CRIME CHARGED			
Assault	254	31	108
Burglary	190	59	53
Drugs	204	83	77
Theft	240	72	60
Robbery	220	71	75
Miscellaneous	368	69	90
CASE COMPLEXITY			
Single Defendant	230	77	71
Multiple Defendants	247	67	75
Single Charge	238	73	69
Multiple Charges	224	82	96
MOTIONS			
No Motions	136	66	46
One Motion	244	96	96
Two Motions	347	83	140
Three or more Motions	373	117	146
SENTENCE			
Probation	230	71	N.A.
Prison	148	71	N.A.

PROVIDENCE DAYTON LAS VEGAS

## DEFENDANT CHARACTERISTICS

Race			
White	Y	71	72
Non-White	Y	77	69
SEX			
Male	Y	74	71
Female	Y	77	74
HISTORY			
No Prior Conviction		75	Y
Prior Conviction		72	Y

Y = not available in this site

TABLE 5

## REGRESSION MODELS FOR THE THREE COURTS

	PROVIDENCE		DAYTON		LAS VEGAS	
	Beta*	b	Beta*	b	Beta*	b
Bail Status (in custody)	-.18	-114.3	-.17	-22.0	-.15	-30 (days)
Plea	-.14	-97.6	-.12	-18.3	-.16	-31
Number of Motions	.23	37.7	.22	17.1	.35	44
GJ Indictment	NS	NS	NA/NS	NA/NS	.14	40
Innovation <sup>1</sup>	-.41	-.4	-.11	-12.9	-.09	-28
Seriousness	NS	NS	NS	NS	.08	19
Assault	NS	NS	NS	NS	.06**	24
Privately Retained Attorney	NS	NS	.12	14.8	NS	NS
Multiple Counts	NS	NS	.08**	9.5	NS	NS
Age of Defendant	.06	1.9				
Probation	.08	40.9				
Miscellaneous Charge	.09	89.6				

$R^2 = .56$        $R^2 = .36$        $R^2 = .52$   
 $R^2 = 31\%$        $R^2 = 13\%$        $R^2 = 27\%$

\* All betas are statistically significant at .05 unless otherwise indicated

\*\* Borderline statistical significance  $p = .10 < > .05$

1 In Dayton & Las Vegas the innovation was measured with a dichotomous variable.  
In Providence the date the case was filed was employed.

TABLE 6

## PROPORTION OF CASES RESULTING IN NO CORRECTION BY TIME OF DISPOSITION

	PROVIDENCE	DAYTON	LAS VEGAS
0-60 days	10% (36)	12% (35)	22% (102)
61-120 days	12% (23)	16.5% (25)	45% (68)
121-240 days	18% (22)	23% (19)	46% (42)
241-365 days	36% (32)	18% (2)	50% (13)
366-547 days	25% (30)	-	50% (5)
548-730 days	24% (22)	-	50% (2)
731+ days	30% (20)	-	-
	17% (185)	15% (81)	30% (232)
	N= 1034	N= 538	N= 747

TABLE &amp;

## RANK ORDER OF CRIME CHARGED AND CASE PROCESSING TIME

	Providence	Dayton	Las Vegas
Assault	2	2	1
Drugs	5	1	3
Theft	3	3	5
Robbery	4	4	4
Miscellaneous	1	5	2
Burglary	6	6	6

Rank order of 1 indicates fastest case processing.

FIGURE 1

Breakdown of Case Processing Time in Providence by Seriousness of Offense

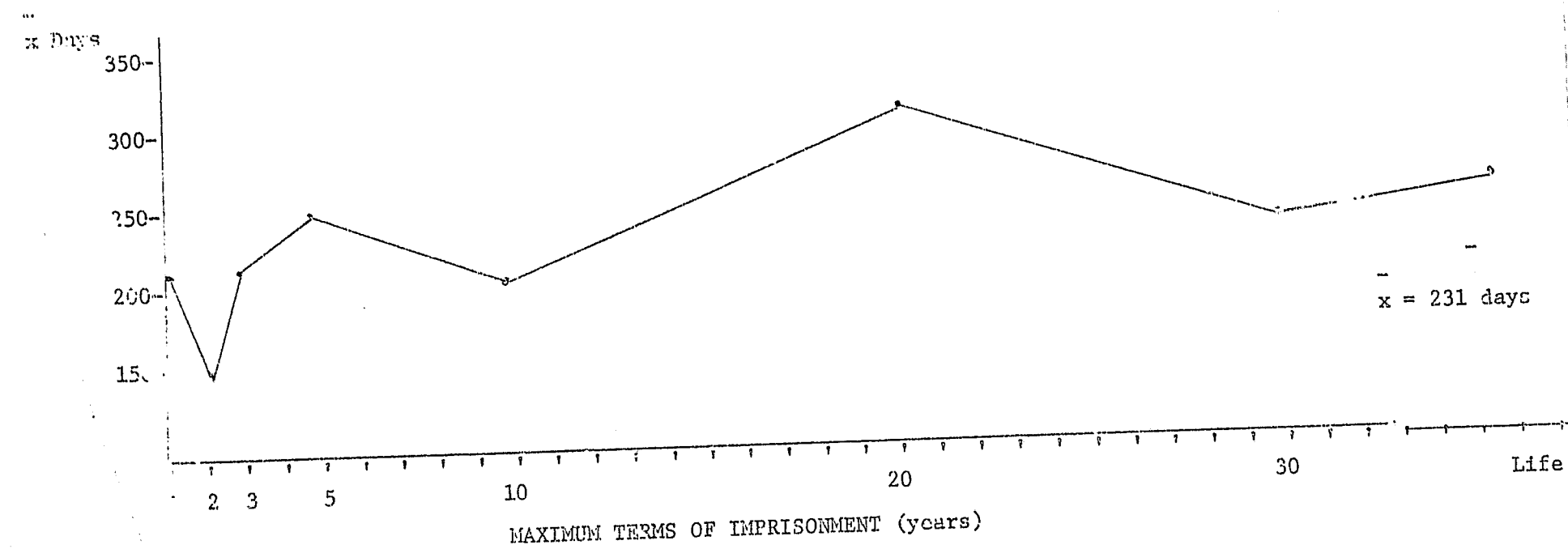


FIGURE 2

Breakdown of Case Processing Time in Dayton by Seriousness of the Offense\*

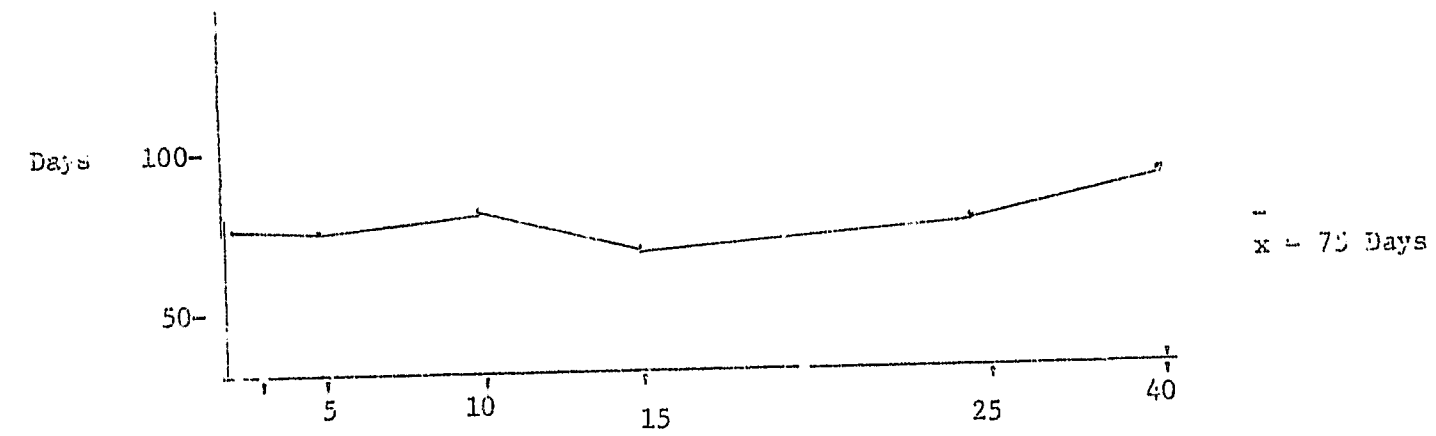
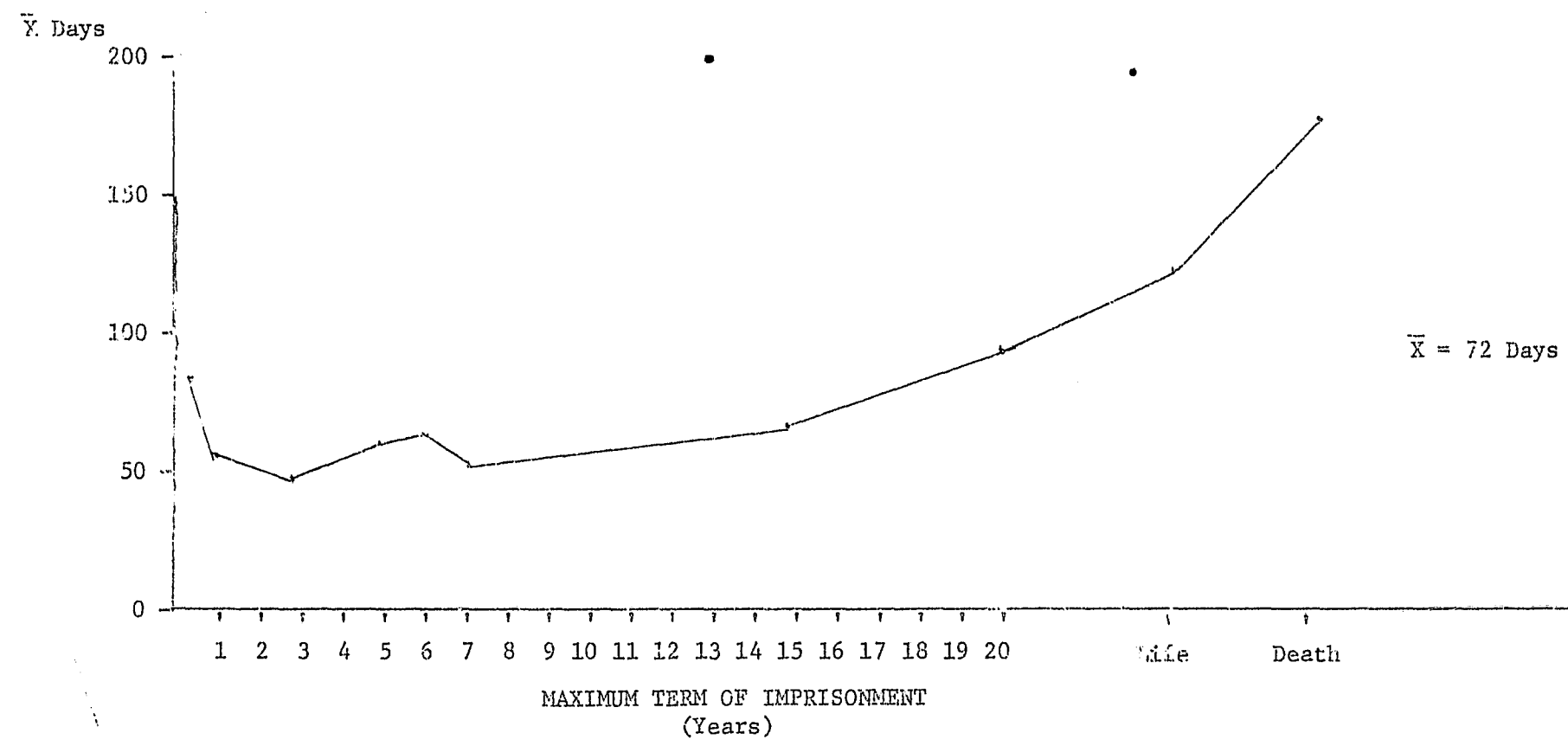


Figure 3

Breakdown of Case Processing Time in Las Vegas District Court  
by Seriousness of Offense





**END**