CRS 21
F-4-82

Explaining and Assessing the Pretrial Process: A Comprehensive Theoretical Approach and Operationalized, Multi-jurisdictional Application*

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82817

Law and Society Association: 1979 Annual Meeting
San Francisco, California
May 10-12, 1979

*This paper is drawn from a grant proposal submitted to LEAA April 27, 1979.
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79-NI-AX-0062

ABSTRACT

This paper outlines a research design that operationalizes and integrates for the first time three major theoretical approaches that have recently emerged in the study of criminal courts by studying misdemeanor and felony dispositions in a handful of nonmetropolitan courts in three states. It will also explore the social, economic, and political factors that produce variation in both local legal culture and in the characteristics of individual jurisdictions' patterns of case outcomes. More specifically, the research seeks to provide a theoretical framework and some focused practical research findings that will advance our ability to assess the potential for affecting criminal courts' consistency and efficiency by changing incentive structures and sanctioning systems.

The analysis of criminal courts produced will differ from previous studies in several significant ways. First, it will operationalize a number of concepts drawn from earlier research that have been measured only impressionistically (e.g., courtroom workgroup familiarity and goals, legal culture). Second, it will combine in a single analysis variables whose joint impact on outcomes have not been studied systematically (e.g., the interaction of individual role perceptions and values with courtroom workgroup characteristics and sponsoring organization policies). Third, it will analyze both individual case outcomes within jurisdictions and macro-characteristics of jurisdictions' patterns of case processing and their legal cultures. Fourth, it will provide the first multi-state empirical investigation of criminal courts outside of major metropolitan jurisdictions.

STATEMENT OF THE PROBLEM

The History of Criminal Justice Research

Empirical research on the criminal justice system in the United States began in the 1920s with the "crime surveys."[1] Beginning in the 1950s, better focused studies on discrete aspects of the criminal process (the "topical tradition") blossomed.[2] Both traditions produced a body of research exhibiting many of the shortcomings found as our knowledge of any social process advances from an initial point of near total ignorance. Much of it focused almost exclusively upon a single position (prosecutor or judge)[3] or upon only one stage in the criminal process (charging, bail, plea bargaining, sentencing).[4] Studies typically examined some aspect of felony courts, ignoring the fact that the overwhelming proportion of defendants faced misdemeanor charges. If empirical research was conducted, it focused on a single urban jurisdiction. Finally, few studies relied upon an explicit theoretical orientation,[5] and many did not possess even an implicit theory.

Gradually, researchers produced studies that exhibited fewer shortcomings. Increasingly sophisticated and rigorous empirical data bases provided the foundation for a number of recent studies.[6] Some of them gathered data from multiple jurisdictions.[7] More research designs encompassed larger slices of the criminal process, focusing on arrest through sentencing, for example,[8] rather than just a single stage such as sentencing or plea bargaining. Finally, several emerging theoretical approaches provided explicit conceptual guidance to both research designs and explanations.[9]

The Scope of the Research Problem

Despite the substantial progress made in the last five years, we have not yet reached the point where empirical research can provide meaningful guidance to public and private interests concerned with the criminal justice system's operations and outcomes. The fundamental questions raised by the research solicitation to which this proposal responds confirm this somber assessment nicely. We do not know what factors

explain variation in the consistency, efficiency, and fairness of criminal courts' operations. In fact, we have only approximated techniques to measure one aspect of efficiency, court delay.[10] A long range research program to develop performance measures for police, prosecution and defense, courts, and corrections, which will focus upon such questions has just begun.[11] But even if we possessed operational measures of consistency, efficiency, and fairness, we lack an adequate empirical and theoretical base to utilize them to guide decisions.

Several fundamental weaknesses in the current state of research and theory create particularly serious problems. Relatively few scholars to date have studied the misdemeanor process.[12] Furthermore, virtually no explorations of the possible links between misdemeanor and felony processes have been conducted.[13] Because nearly all empirical research examines metropolitan courts, the range of conditions and court settings covered fails to represent all criminal jurisdictions adequately.[14] Most significant, however, are the shortcomings of the theoretical approaches used in studying criminal courts. Three distinct theoretical frameworks have emerged in recent criminal court research. At the micro level, scholars have examined the attitudes and role perceptions of the main courtroom actors, with particular emphasis on judges.[15] Theories relying on the "courtroom context" offer a somewhat broader perspective.[16] Studies utilizing such theories focus upon case and defendant characteristics, the norms of courtroom workgroups, and the influence of sponsoring organizations on workgroups' composition and goals. Generally, they draw upon organizational frameworks. "Environmental" approaches offer the most broadly conceived theoretical explanations. They rely upon such concepts as local legal culture, local political culture, the structure of institutions, statutes, and precedents, and the like, as macro level variables shaping court outputs.[17]

Obvious problems plague all three theoretical frameworks. Although approaches relying upon organization theory offer especially interesting insights and explanations,[18] they do not rigorously measure many crucial variables.[19] Rather they rely on impressionistic observations, unsystematic interviews, and untested assumptions.

Furthermore, they do not confront and test alternative explanations of case outcomes derived from role theory relying upon attitudes and values.

The "attitude" theorists' research suffers from even more serious omissions. Measures of attitudes and role perceptions are often incomplete. The links between attitudes and behavior are typically examined for only one aspect (especially sentencing) of one participant's (judges') behavior. Finally, this research fails to confront the evidence and concepts found in the "courtroom context" approach. For example, it ignores the context in which judges make decisions, telling us nothing about interactions with fellow judges, other courtroom personnel, and the political and social environment.

The "environmental" approach is the least well developed. The concept of "legal culture" rarely if ever receives rigorous definition.[20] The dimensions of variation in legal culture remain unexplored. Few operationalized measures exist. The factors that shape the content of local legal culture seldom receive any attention.[21] Finally, other environmental variables that go beyond "local legal culture"--including the links between public attitudes, voters, elected officials, political parties, and the media on the one hand, and the major participants in the legal process (police, judges, prosecutors) on the other--are either ignored or discussed only unsystematically and impressionistically.[22]

These problems constitute a significant barrier to well-informed and productive inquiries into all aspects of criminal courts' operation, including their consistency, fairness, and efficiency in disposing of criminal cases. Until we expand the types of cases and courts examined, and until we operationalize and integrate our theoretical approaches, we will not succeed in answering such crucial questions. To what extent <u>can</u> consistency, fairness, and efficiency be manipulated by conscious intervention and manipulation? At what stage of the criminal process in what kinds of jurisdictions can what changes be introduced? What will be the effect of such changes? We believe narrowly focused research efforts which study only "controllable" factors will fail as long as the conceptual problems just identified remain.[23]

The recent advances made in both describing and theorizing about criminal courts' operations have prepared the foundation for significant theoretical synthesizing and development. The question is not "Which of the alternative approaches is correct?" but rather, "How can these various theories be integrated, operationalized, and applied?" The fundamental research problem to which this proposal is directed, then, is the development and application of such theory.

We do not propose, however, to confine our efforts to abstract theory building. The most significant advances in theories of criminal courts have grown out of focused empirical research. The ultimate concern which guides our research focuses upon questions of consistency, fairness, and efficiency. In doing so, we will examine the court disposition process, from arraignment to sentencing, for both misdemeanors and felonies.

PROJECT OBJECTIVES

This section seeks to clarify two distinct but related objectives of the proposed research. The first objective, broad in scope and ambitious in intent, is to make a major contribution to the development of a <u>comprehensive</u> theoretical approach to guide research on and increase our understanding of criminal courts. The second, narrower and somewhat less ambitious, seeks to advance our ability to use such theory in examining how courts can process cases more consistently, fairly, and efficiently.

Several significant considerations combine to make a compelling case for an effort at this time to develop a comprehensive theory. Regardless of how attractive the goal of comprehensive theory is, we simply had not advanced our understanding of criminal courts enough to attempt it until now. But such a theory is not a metaphorical Mount Everest, to be met as a challenge in its own right. Rather, it must inform efforts to deal with many of the "problems" of criminal courts that have attracted so much attention. The question of "efficiency" provides a good example. Efficiency typically is translated narrowly into the problem of "delay." But research that treats delay merely as an administrative problem, ignoring the interaction among courtroom participants and the possible conflict in attitudes toward delay generated

by different incentive structures, fails to understand the reality of courts' operations. This failure also impedes our understanding of the possible negative consequences of reform proposals on other criteria of performance. Furthermore, research restricted to a "courtroom context" perspective in examining delay runs the risk of ignoring "environmental" factors such as local legal culture that affect delay significantly.[24]

When the scope of questions examined expands beyond narrow definitions of "efficiency" to encompass notions of fairness and consistency, as it must in a democratic society, the necessity for a comprehensive theory that includes environmental variables becomes even more compelling. As research on the impact of Supreme Court decisions in such areas as school desegregation, school prayer, and right to counsel demonstrates, procedures or policies designed to enhance societal values cannot be effectively achieved by imposing hierarchical controls. The opportunities for circumvention and evasion of official policies by reluctant criminal justice system decision makers is matched only by their resourcefulness and skill in actually circumventing and evading them. At a minimum, decision makers must either be personally committed to such policies or face strong pressures in their immediate "courtroom context" to conform to them. But whether such values and pressures find expression depends on the degree of political support they generate in the community.[25] We cannot expect to explain and affect courts' performance with respect to fairness and consistency unless our theories encompass the cultural and political forces that define them and provide support for their realization.

Similarly, narrowly based theories cannot successfully predict the effect of potential sanctions and incentives designed to shape the behavior of criminal court decision makers. The determination of what constitutes a "sanction" and what potency it has varies from jurisdiction to jurisdiction. Defense attorneys in small jurisdictions with stable and familiar work groups, for example, may judge the sanctions accompanying a reputation for untrustworthiness far more serious than their brethren in large metropolitan courts.

Our efforts to operationalize and integrate the three approaches to studying criminal courts will be guided by three criteria. First, we must integrate the major concepts from all three extant theoretical approaches. Second, the theory must be general, applicable to misdemeanor and felony processes in small as well as large jurisdictions which represent a wide range of legal cultures and environmental contexts. Third, the key concepts drawn from all three approaches must be operationalized and utilized in classifying courts and analyzing outcomes. Terms such as "workgroup familiarity," "workgroup goals," "role orientations," and "legal subculture" require explicit definition, operationalization, and measurement.

The effort to build a comprehensive operationalized theory should facilitate attainment of the more modest goal of assessing the opportunities and obstacles faced by those who seek to implement specific changes in criminal courts' efficiency and consistency by altering structures of incentives and rewards. The likely success of such efforts to manipulate such "controllable" factors cannot be calculated absent a clear understanding of the impact on behavior of "uncontrollable" factors like the local legal culture, the political and cultural environment, or the personal values and goals of decision makers.

METHODOLOGY

UNDERLYING ASSUMPTIONS

Several important initial assumptions guiding the design of this research implicit in the proceeding pages require explicit identification. The approach we take is consistent with and flows from these assumptions. First, the legal process constitutes a part of the political process generally, and is subject to the same general forces that shape outcomes in other components of the political system. Furthermore, it performs essentially political functions in allocating both symbolic and material rewards and punishments to a variety of individuals and groups. These groups include: the general public; interest groups representing both "crime control" and "due process" interests; defendants, victims, witnesses and their

families; and those who make their living in the courts (judges, prosecutors, defense attorneys, court personnel, the police). Second, because the criminal process is a loosely articulated set of sequential stages that form a system, the entire process must be considered to understand the significance and impact of dispositions at any stage and their impact on subsequent stages. Third, no single "function" or "purpose" dominates the role the criminal justice system plays in society. Rather, it performs a variety of functions (dispute resolution, social control, resource allocation, symbolic reassurance) that different social interests support or oppose.

RESEARCH STRATEGY

In the last 18 months, students of criminal justice have increasingly recognized and called for the integration of alternative approaches. This development signifies a substantial advance in our understanding. But it is one thing to call for such integration and quite another actually to achieve it. The approaches to be integrated contain serious internal problems. Furthermore, the real world social processes the theories seek to describe--the operation of criminal disposition processes--present especially intricate and varied patterns of interaction shaped by a multitude of factors.

We cannot produce a full blown theoretical integration suitable for guiding the planning of the pretesting within the time and resource limits pertaining to the writing of a proposal for funding. But we can lay out our strategy for doing so and provide illustrations of what the theory will look like.

How should we undertake the task of achieving such integration? We believe the strategy adopted must contain two central and closely related components: (1) a literature based, speculative theoretical elaboration of the approaches and their interrelationship; (2) empirical field research guided by the theoretical elaboration. Realistically speaking, the two components cannot proceed in a strict time sequence of theorizing first and empirical testing afterward. Given the present state of knowledge, a continuous interaction between the two tasks promises to be most productive. Initial theorizing will guide the development of research instruments for

pretesting. The experience of pretesting will produce modifications and refinements in the theory as well as revisions in the research instruments. Implementation of the revised research design will produce further modifications in the theory, particularly as data analysis proceeds.

RESEARCH CONCEPTUALIZATION: THE MICRO AND MACRO ANALYSIS

The approach taken to implementing this strategy relies upon a basic distinction between what we call the "micro" and "macro" levels of analysis. The "micro" analysis probes the factors that affect the disposition of individual defendants' cases within a jurisdiction. It will permit us to answer for each jurisdiction studied two general research questions. The first is simply, how can we account for individual defendants' dispositions? It encompasses a number of specific questions of direct relevance for the counts' fairness, consistency, and efficiency. For example, why do some defendants receive probation and others jail sentences? How can we explain discrepencies in the bail level set for defendants? What differences do such factors as bail status, prior record, social status, or race make in a jurisdiction's disposition of a case? Although criminal justice research has repeatedly investigated such questions, their crucial importance to measuring courts' performance requires their inclusion in this research. A second general research question we will address in the micro level analysis, however, represents a major departure. How can factors drawn from "individual" approaches (participants' values, attitudes and role perceptions) be integrated with "contextual" variables (courtroom workgroup structure, sponsoring organizations' policies, and so forth) to explain case outcomes? This question bears directly on the effect incentive structures produced by the context have on crucial individuals' decisions.

The "macro" level analysis will examine two questions: (1) what relationships exist between "environmental" variables on the one hand and "contextual" and "individual" variables on the other; (2) what relationships exist between "environmental" variables and aggregate measures of jurisdictions' outputs (e.g., guilty plea rate). Both rely primarily on between jurisdiction comparisons. The first treats both characteristics of workgroups and individuals' attitudes, values, and role perceptions as

dependent variables and environmental variables as independent. It permits us to ask questions like: What relation is there between political culture and the attitudes of key participants? Do sponsoring organizations in high crime areas with high social conflict exercise stronger control over their members to dispose of cases quickly? The second question seeks to link environmental variables to jurisdictions' general performance in processing criminal cases. It recognizes that while external influences and contextual features of a jurisdiction rarely determine courtroom outputs or behavior, they can have a constraining effect. Public sentiment and resource support rarely determine a sentence or affect the submission of a guilty plea or the setting of a bond. But they can affect such things as minimally acceptable average sentences for various crimes, the guilty plea rate, and the local "bail tariff." In addition, such things as the nature of the indigent defense system, case assignment procedures, and familiarity may influence systemic reliance upon a guilty plea or slow plea system. Dependent variables like conviction rate, median length of disposition time, pretrial release rate, and sentence severity will be derived by aggregating individual defendants' case outcomes. Comparisons of such measures across jurisdictions will permit inferences about the contributions differences in the environmental characteristics of these jurisdictions make to producing particular case flow and disposition patterns.

Together, the micro and macro level analyses will help provide answers to several of our major research questions: how can the various extant approaches to understanding criminal courts be integrated; what implications does our improved understanding have for how changes affecting efficiency, consistency, and fairness can be made?

THE INTEGRATION OF APPROACHES: AN OVERVIEW

Our discussion of how we will conduct the micro and macro level analyses that follows presents the specific conceptualization and operationalization of variables, along with illustrative hypotheses, required to integrate the three approaches. We will describe how we will perform the major tasks integration requires: specifying

dependent and independent variables; operationalizing measures of them; gathering the data required to perform the operationalization; and deriving testable hypotheses. To clarify how the discrete elements of the three approaches combine to affect case outcomes, we have summarized the major interrelationships in Figure 1. It provides a broad theoretical overview of the interactions and relationships explained in more detail in the following sections. (Figure 1 on following page.)

THE MICRO ANALYSIS

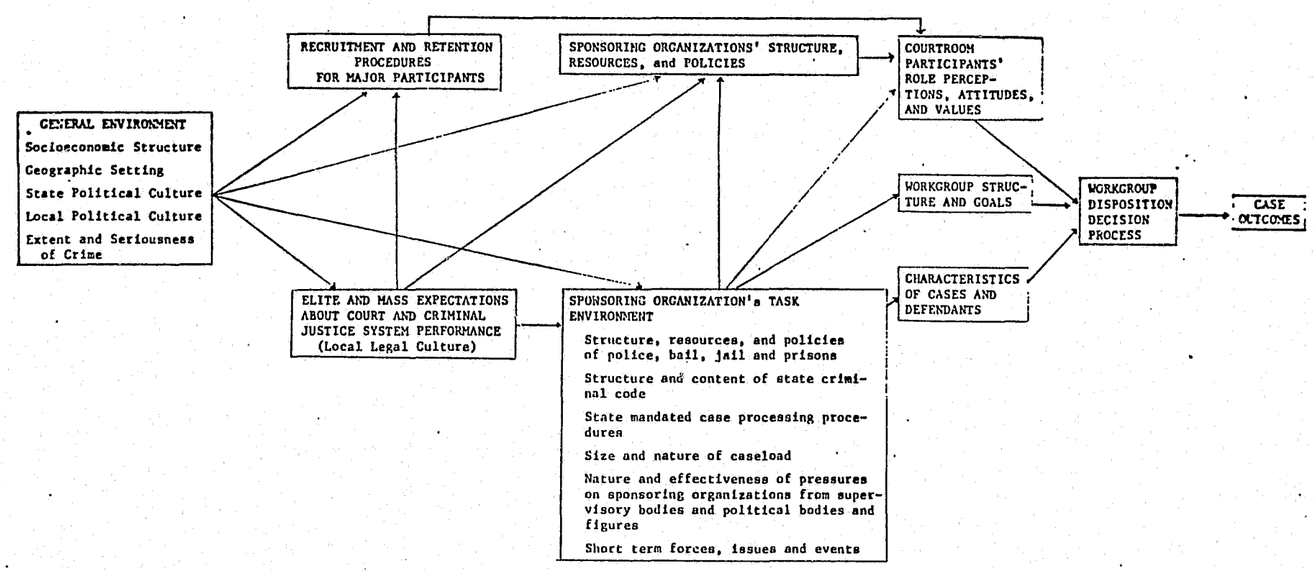
Introduction

How can we explain why a particular defendant's case results in a conviction or acquittal, a jail term or probation, a hefty bail or release on recognizance? Our effort to integrate the "individual" and "contextual" approaches begins with the proposition that these outcomes result from the interaction of three sets of factors: the role perceptions, attitudes, and values of the courtroom elite; the nature of the courtroom workgroup's structure and goals; and the characteristics of the case and defendant. We label this interaction the "workgroup disposition decision process" in Figure 1.

This model assumes that personal values and role perceptions always play some part in shaping decisions, but that the reality of the interaction of prosecutor, judge, and defense attorney in the courtroom workgroup determines the extent to which each's values and role perceptions shape outcomes. Not only must each participant's personal values and role perceptions compete with possibly conflicting values and role orientations of the others, but they must also compete with pressures from the workgroup and sponsoring organizations. The strength of these pressures itself constitutes a major variable. Thus, the degree to which a judge's values and role orientations significantly affect his or her sentences, willingness to grant motions for dismissal, or other crucial decisions depends upon the strength of the workgroup. This strength will vary. In some jurisdictions, where workgroups are unstable, its members unfamiliar with one another, and the sanctions and rewards available to each

FIGURE 1

Schematic Overview of Principal Variables and Their Interrelationships



meager, individual values and role perceptions will largely determine outcomes. But in jurisdictions with strong workgroups, individual variables will diminish in importance, giving way to workgroup characteristics as determining factors. The same logic applies to how much prosecutors' and defense attorneys' values and role perceptions shape outcomes. By combining individual and contextual variables, we can overcome the sterility of individual approaches which fail to examine the decision-making context while enriching the "contextual" approach by recognizing and measuring the part individual differences play. We will also be able to assess the extent to which manipulation of incentive structures and workgroup characteristics can affect the consistency, fairness, and efficiency of court dispositions in the face of key decision makers' individual attitudes, values, and role perceptions which run counter to the desired direction of reform.

Dependent Variables in the Micro Analysis

The micro-level analysis relies upon what has become a standard set of case outcome variables: length of case in days from arrest to final disposition; days spent in pretrial detention; dollar cost of pretrial release (bail fees) where available; an estimate of the total cost of the case to the defendant (if available); method and stage of disposition; whether the defendant was convicted or not; if convicted, whether the defendant received a prison or jail sentence as opposed to probation, a fine, or suspended sentence; if a jail or prison sentence was imposed, its length. We anticipate few problems in obtaining these measures, and consequently will not elaborate them further at this time.

Independent Variables in the Micro Analysis

The identification and operationalization of each of the three types of independent variables in the micro analysis--"individual," "contextual," and "defendant and case characteristics"--will be presented separately.

A. "Individual" Level Variables

So far, our search for measures and operationalizations of concepts like role and attitude as applied to local trial courts convinces us that providing them poses

one of the knottiest problems confronting this project. We have found a number of problems in the current research using the role concept in trial courts. First, some of it emphasizes the "precedent orientation" of judicial roles to distinguish "activists" from "restraintists."[26] But it is not altogether clear exactly what precedent refers to in the context of a local criminal court. Second, most research focuses on judicial sentencing. It is not clear whether the measures operationalized to study sentencing will display much explanatory power in other areas of judicial decision making. Finally, analyses explicitly based on role theory concentrate on judges, typically ignoring the other courtroom participants.

However, some of the previous work in this area provides useful starting points. Few researchers approach the relationship between judicial attitudes and sentencing with the thoroughness, rigor, or sophistication that Hogarth has shown. Attitudes, he suggests, are a set of "evaluative categories" learned or adopted by judges through their training and experiences on the bench which enable them to "classify the crime, or ideas and events associated with it, as culpable-exculpable, praiseworthy, truthful, erroneous, or in other evaluative terms." They consist of "beliefs about and feelings towards the issues involved as well as dispositions to respond to them in positive or negative ways."[27]

A full explication of Hogarth's procedures in developing a set of items with which to scale judicial attitudes would exceed our present purposes. Essentially, however, through extensive field testing and by employing various scale construction methods and validation procedures, Hogarth developed 107 attitude items. He constructed most scales from responses to five-point agree-disagree scales. Through factor analytic techniques, Hogarth extracted five dimensions or factors which appeared to structure attitudes regarding crime and punishment. The major factor, which he labeled "concern for justice," contained items with high loadings which related to the concept of "just deserts" and suggested an offense-orientation rather than an offender orientation. The other factors Hogarth termed "punishment corrects," "intolerance," "social defense," and "modernism." Aside from their labels, Hogarth's attitude items provide

us with an excellent base from which to develop a research instrument. The principle revision may be to reduce the number of items. In addition, we propose to incorporate these items into our interviews with other courtroom participants to determine their attitudes regarding crime and punishment and to ascertain the extent to which courtroom participants share similar or dissimilar perspectives.

Hogarth focused on sentencing. He did not develop items tapping attitudes about other kinds of disposition decisions such as personal feelings or evaluations regarding plea bargaining. This is an area which we will have to explore further. We need to construct items for attitudes about guilty pleas that will provide us with measures about when and under what conditions individual courtroom actors feel plea bargaining should occur, about the proper role of guilty pleas, and the extent to which they feel rules or laws ought to be formulated governing or limiting plea bargaining. We also need to construct items to measure prosecutor and defense attorney role orientations. Previous research suggests some lines of development. Carter argues that prosecutors differ according to their commitment to due process norms versus crime control and their need for mutually satisfying interpersonal encounters.[28] We will review his interview schedule to ascertain to what extent these dimensions are tapped by his questions and develop those we feel are necessary. Alschuler found defense attorneys differed according to whether they defined their role as "being good" or "being nice."[29] He also presents an impressionisticly derived classification of prosecutor role orientations that can serve as the basis for development of operationalized measures.[30]

Several other measures of attitude need to be incorporated. Gibson has measured judges' rankings of the relative seriousness of several categories of crime. Such measures (or an adaptation of the Sellin-Wolfgang measures) will be incorporated and administered to prosecutors and defense attorneys also. Gibson also presents general measures of liberalism--conservatism which can be readily adapted to encompass other participants besides judges. Finally, Gibson found that a crucial determinant of the

impact judges' attitudes had on sentence severity was the content of their beliefs concerning whether it was appropriate to let their personal attitudes shape sentences.[31] This will constitute a final important "individual" level variable.[32]

We have summarized these variables and indicated how we will operationalize them in Table 1 (see following page).

B. "Contextual" Variables

Our approach to understanding how courts dispose of cases assigns considerable weight to the effect of the "courtroom context"--the set of incentives and pressures produced by the character and nature of the combinations of prosecutor, defense attorney, and judge (the workgroup) that dispose of cases. We are more familiar with these variables and their measurement, and have discussed them elsewhere in print. Consequently, we will rely primarily on the summary of their content and operationalization presented in Table 2. As noted earlier in our discussion of the scope of the research problem, the principal weakness of prior research relying on such variables has been its failure to measure systematically its principal variables. Table 2 identifies the principal dimensions of the contextual variables we will utilize in the micro analysis and suggests briefly how we will derive measures of them.

C. "Defendent and Case Characteristics" as Independent Variables in the Micro Analysis

Previous research provides a standard set of case and defendant characteristics that have been shown to play a significant part in determining outcomes. They include the defendant's sex, race, age, occupation, prior criminal record, bail status, nature of the original charges, strength of the evidence, and nature of the defense attorney.[33] In addition to the standard measures of these variables, we will construct several composite measures as follows: the "dispositional value" of a case to the workgroup (i.e., the importance of obtaining a conviction), measured by the seriousness of the offense (its nature and the defendant--victim relationship) and the strength of the evidence;[34] the defendant's resources, measured by social status (race, income,

TABLE 1

"Individual" Level Independent Variables in the Micro Analysis

Nature of Variable	Illustrative Indicators and Measures
Attitudes toward crime and punishment "Concern for justice" "Punishment corrects" "Intolerance" "Social defense" "Modernism"	Adaptation and condensation of Hogarth's measures [Items below from "concern for justice" scale: (5 point agree-disagree)] "The frequent use of probation is wrong because it has the effect of minimizing the gravity of the offense committed." "Criminals should be punished for their crime in order to require them to repay their debt to society."
Attitudes toward appropriate disposition techniques	"Plea bargaining is a necessary evil that should be used as sparingly as possible."
Participants' beliefs concerning their proper role orientation. [e.g., for judges, Gibson's scales on: "activist" vs. "restraintist" "trustee" vs. "delegate," etc.]	"It is appropriate for judges to be involved in negotiations with prosecution and defense over the sentence accompanying a plea." "Prosecutors should avoid becoming too friendly with judges or defense attorneys." "A defense attorney will serve his clients better in the long run if he knows how to get along with and cooperate with the prosecution and the court." (Alschuler "being good" vs. "being nice.")
Commitment to due process versus crime control norms	(Measures derives from Carter's [1974] research)
Attitudes toward various offenses' seriousness	Gibson (1978) or Selling-Wolfgang measures
Political liberalism--conservatism	Standard questionnaires. [Items below from Gibson (1978)] "Private utility companies should be nationalized." "Most poor people are poor because of lack of motivation."

TABLE 1 (Continued)

Nature of Variable	Illustrative Indicators and Measures
	"In general, would you say that on most issues you consider yourself liberal, middle of the road, conservative, or what?"
Beliefs concerning extent to which personal values should affect decisions	[Examples below from Gibson (1978)] "How influential do you think the following factors should be in sentencing defendants... j. your own personal philosophy and values." "What about when public opinion and your own personal philosophy and values conflict? Which one should influence your decisions the most?"
Decision makers' backgrounds e.g., "local" vs. "cosmopolitan"	Place of birth; Type and location of law school; Prior political and legal experience; Career aspirations

TABLE 2

"Contextual" Level Independent Variables in the Micro Analysis

Nature of Variable	Illustrative Indicators and Measures
Workgroup stability	Percent of all jurisdiction cases handled by this workgroup; OR percent of each participant's cases in this workgroup OR percent of all cases in courtroom handled by most frequent workgroup.
Workgroup familiarity How well know each other? Predict others' actions in a given case? Can trust to keep word? Can have frank, confidential talk on a case? Degree of interdependence among members.	A standard interview or questionnaire for each workgroup member in sample ranking all other members. For example: "Please indicate how well you know the following" (5 point scale);[35] "I can predict how _____ will handle a case" (agree-disagree scale); "I would feel uncomfortable discussing settlement of most cases with _____ outside of open court"; "My job would be much more difficult if I developed nasty interpersonal relations with _____."
Degree of consensus on importance of alternative workgroup goals	Aggregate workgroup members' responses to questions assessing the importance of (1) disposing of cases, (2) doing justice, (3) maintaining cohesion, and (4) reducing uncertainty. Illustrative questions: "To be effective in my job, I have to alter the way I handle cases to maintain adequate relations with the (other workgroup members)." "In almost every case I see, everyone understands the crucial importance of disposing of it one way or another without taking too much of anyone's time." "The backlog is the most pressing problem facing the court." "The volume of cases has reached the point that it is hard to keep on top of it."
Workgroup members' perceptions of strength and content of sponsoring organization pressures and incentives	Closed and open-ended questions (e.g., for DAs and PDs). "How closely do your superiors supervise your handling of specific cases?" (5 point scale) "I can use my own discretion in handling cases as I see fit without worrying about my superiors." (5 point agree-disagree). "I find rules imposed by my office interfere with the best handling of a case: (5 point scale--very often to never). "What

TABLE 2 (Continued)

Nature of Variable	Illustrative Indicators and Measures
	policies of your office's head and his administrative staff, if any, most affect how you handle cases?" (open ended) "How do these policies conflict with your judgment on how to handle cases?" (open ended). "Do any of these policies complicate your relations with the judge and (prosecutor/defense attorney)? Which? Why?" (open ended). "My superiors keep track of outcomes of my cases and use it to evaluate my performance." (5 point scale--very much--not at all).
Actual content of sponsoring organization policies.	Interviews with sponsoring organization leaders and members. "How do you assign people to cases and courtrooms?" "What policies exist on plea bargaining?"
Pressures and incentives independent of workgroups and sponsoring organizations (police, the press, "public," etc.) including visibility of action to other consequences of visibility	Open and closed-ended questions. "How closely do the papers monitor your actions on routine cases?" "Do you know of any instances in which routine cases 'blew up' and gained coverage in the papers unfavorable to (the judge, prosecutor, defense attorney)?" "In what ways, if any, do your actions in routine cases affect your career?" "Which, if any, of the following are serious problems in this jurisdiction:" (List includes things like: The jail is too overcrowded. The jail's conditions are deplorable. Cases take too long (are moved too fast). Too many defendants make bail. The police publicly and effectively criticize the courts too much.)

employment status, community standing) and vulnerability to sanctions (prior criminal record, pretrial release status, and type of defense attorney).

The defendant and case characteristics variables have been used often. We anticipate little trouble in obtaining adequate measures. For the sake of brevity, we will not elaborate on their measurement further here.

Sources of Data for the Measurement of Dependent and Independent Variables in the Micro Analysis

We will gather much of the micro level data from official court records and prosecutors' files. All the principal investigators have had extensive experience in devising forms to collect such data, acquiring access to it, and developing coding procedures. We will explore the possibility of utilizing computerized case data gathered by state agencies, but we would check very carefully its accuracy before using them.

We plan to modify the techniques used to draw samples of cases depending on the size of the jurisdiction. In the smaller jurisdictions, misdemeanor cases enter the system rapidly enough to permit sampling from a single year. But it may be necessary to go back two or three years to obtain a large enough sample of felonies to permit statistical analysis. We will extend the sampling period back far enough to obtain data on about 500 cases in the smaller jurisdictions. Larger jurisdictions may present thorny problems in obtaining measures on courtroom workgroup members' personal values, views of role, and familiarity toward the other members for a random sample of defendants. The costs of tracking down and obtaining data from the total set of prosecutors, defense attorneys, and judges who disposed of a random sample of defendants in larger jurisdictions escalates as the number of such individuals increases. We cannot assess the practicality of interviewing all of them until we obtain reliable estimates of the number of prosecutors, judges, and defense attorneys active in the workgroups of larger jurisdictions. If the number is too large to permit interviewing all of them, we will explore the possibility of sampling workgroups first to insure variation in stability and familiarity and then gather data on all defendants processed by the sampled workgroups.[36]

Operationalization of many crucial independent variables drawn from both the "individual" and "contextual" approaches requires administering fairly structured, pretested interview schedules and questionnaires. As Tables 1 and 2 indicate, often we can rely upon the work of others in devising these instruments. We have allowed considerable additional time in our work plan for refinement of these instruments. We recognize the need to pay particular attention to the difficulty of obtaining workgroup members' evaluations on sensitive questions like others' reliability and behavioral tendencies.

The research instruments will be administered to the appropriate sample of the following crucial participants in each jurisdiction: judges and magistrates; prosecutors; and defense attorneys (including public defenders, assigned counsel, and retained attorneys). In addition, more broadly focused interviews will be conducted with the clerk of courts and other knowledgeable court personnel, the head of the probation department, representatives of major law enforcement agencies, political officials who determine budgets, and other local elites (newspaper editors and reporters, political party chairmen, etc.).

Observations constitute a third major data collection technique. We recognize the difficulties encountered because of the time and expense observation entails, particularly in courts with a low case volume. But observations can provide valuable supplemental information within the constraints imposed by case flow and the pace of activity. As access and time permit, we propose to observe the daily routines of a small sample of defense attorneys, judges, and prosecutors. We will focus on the quality of their interactions with other workgroup members, seeking answers to questions like the following: How much familiarity is exhibited? How is local legal culture manifested in interactions? What do interactions reveal about the content and potency of sponsoring organizations' (and other institutions') incentives? What qualitative distinctions can be made in the way bail is set (e.g., how often is bail setting "situational," "bargained" or "routine").[37] Are plea bargaining interactions "cooperative" or "adversarial" in nature)? As the pretesting progresses, we anticipate

we will be able to formulate more focused plans for gathering data through observations.

We plan to hire qualified research assistants living in each of the final jurisdictions studied where possible. This will facilitate access to records and key decision makers, particularly in smaller jurisdictions.

The Integration of Theory at the Micro Level

The "individual" and "contextual" variables just described provide the empirical basis needed to generate and test hypotheses about how they interact to produce case outcomes. A central general hypothesis of our micro-level analysis holds that as the interdependence and vulnerability of workgroup members increase, the importance of the role orientations, attitudes, and values the participants bring to the courtroom diminishes. The vulnerability or susceptibility of participants to each other's influence in turn depends on several workgroup characteristics--stability, familiarity, and the direction and strength of consensus on goals.

We can state these and other relationships more formally as hypotheses. We cannot present here a comprehensive inventory of the hypotheses which seek to integrate the micro level variables, but we can suggest for illustrative purposes their general form and content (see Table 3).

Standard techniques will be employed to code, keypunch, verify, and enter the data used to measure the variables included in the micro-analysis. The data will be analyzed using a standard statistical package (such as SPSS). Our operationalizations will permit multivariate analysis (regression or discriminant function). For example, hypothesis 7 could be tested with discriminant function analysis using method of disposition as the dependent variable and "degree and direction of consensus on preferred disposition mode" along with the standard set of defendant and case characteristics as the independent variables.

TABLE 3

Illustrative Hypotheses Integrating
Micro Level Variables

1. The greater the frequency of interaction among members of a workgroup, the greater the dependence of each participant on the others to achieve both personal goals and workgroup goals.

2. The greater the dependence of actors within a workgroup on each other, the greater the incentive to develop cooperative modes of interaction and case dispositions (for example, plea bargains).

3. The more cooperative the mode of interaction in a workgroup, the more similarity there will be in the "individual" attitudes and role perceptions of its members.

4. The weaker a workgroup member's perception of his dependence on other workgroup members, the stronger the relationship between "individual" variables and outcomes. For example, conservative law and order judges who perceive less dependence on other workgroup members will sentence more harshly than like-minded judges who feel dependent on the workgroup.

5. The greater the familiarity (or interdependence) of workgroups, the weaker the relationship between judges' personal attitudes relevant to sentencing and the actual sentence imposed.

6. The stronger perceived pressures from sponsoring organizations, the weaker the impact of workgroups on dispositions when workgroup norms conflict with sponsoring organization policies.

7. The stronger the consensus of the workgroup on goals, the greater the congruence between the disposition mode selected and the consensus. If the workgroup stresses disposing of cases and maintaining cohesion, plea bargains will be more important and evidence less influential in explaining outcomes. Where "doing justice" is stressed, adversary dispositions in which evidence strength plays an important role will more frequently arise.

8. The more explicit and rigidly enforced sponsoring organization policies are, the higher the congruence between "individual" views and sponsoring organizations' policies (the result of job-socialization).

THE MACRO ANALYSIS

Introduction

Though integrating individual and contextual variables would contribute handsomely to our understanding of courts, it leaves several fundamental questions unanswered. What accounts for variation in both individual and contextual variables? How can we account for differences in the patterns of disposition found between jurisdictions? Our fundamental perspective, that the legal process constitutes an integral part of the political and social system, suggests that criminal court organizations, like

other organizations, do not operate in a vacuum. Rather, they operate within the constraints imposed by legal, political, social, and economic factors.

The relationship between such environmental factors and criminal courts is clouded and made more complex by the intricate and varied patterns of decision making found in these courts. Courtroom actors do not automatically conform to external influences. They often respond in ways that insulate themselves and preserve their discretion. Some participants regard such pressures as illegitimate and attempt to ignore them. Furthermore, the effects of environmental factors often are mediated through several intervening causal links (recruitment procedures, sponsoring organization policies). Hence, the relationship between environmental factors and case outcomes is difficult to discern in any given jurisdiction. The fact that this relationship differs among jurisdictions further complicates the picture. Consequently, the impact of environmental factors on case outcomes must be approached in light of an understanding of the organizational context of criminal courts, the psychological predispositions of their courtroom actors, and the variety of social and economic contexts in which courts operate.

Dependent Variables in the Macro Analysis

The macro-level analysis provides opportunities to evaluate the efficiency, consistency, and fairness of courts by permitting comparisons of their performance. The measures of performance used for such comparisons are produced by aggregating for a jurisdiction measures of individual case outcomes. Table 4 presents the principal dependent variables to be used in the between jurisdiction comparisons in the macro analysis.

TABLE 4

Principal Macro-Level Dependent Variables

Variable	Illustrative Indicators and Measures
Stringency of pretrial release practices	Flemming's "Pretrial Punishment Profile"--ordinal scale ranking outcomes of pretrial release decisions; direct financial cost of posting cash bail; length of time defendants spend in jail.
Equity of pretrial release practices	Statistical association between social status of defendants and pretrial punishment scale scores.
Dispositional efficiency	Mean days between arrest and disposition; variance in disposition times
Dispositional mode relied upon	Proportion of cases disposed of by trial, guilty plea, and dismissal.
Stringency of post-conviction sentencing	Percent convicted defendants sentenced to prison; mean and variance of prison terms.
Equity in post-conviction sentencing	Statistical associations between social status of defendants and sentencing scale, controlling for dispositional value of case.
Jurisdictions aggregate disposition orientation	Scale based on court deviations from sample or court population medians for dismissal and guilty plea rates and for sentencing severity. Relatively high number of dismissals and light sentences indicates "case processing" orientation. Few dismissals and harsh sentences signifies a "law enforcer" orientation.

Independent Variables in the Macro Analysis

Table 5 presents the major macro-level independent variables along with illustrative measures and indicators. Those variables appearing to the left of Figure 1 are presented first, roughly parallelling their relative proximity to the final dependent variable, case outcome.

TABLE 5

"Environmental" Level Independent Variables in the Macro Analysis

Variables	Illustrative Indicators and Measures
Environment:	
Socioeconomic structure:	
Degree of homogeneity	Census data on: Racial and ethnic composition; percent foreign language speaking.
Social stratification	Gini index of income inequality; disparity in education levels; age structure.
Population characteristics size density stability	Census-based data on size, population/square mile; population growth trends; net in-out migration.
Geographic setting	Relationship between hinterlands and urban areas (adjacent or nonadjacent to SMSA?);38 media markets; proportion of labor force commuting out of the county.
State Political Culture	[Political culture defined as the "Pattern of individual attitudes and orientations toward politics among members of a political realm which underlies and gives meaning to political actions."]39 Elazar's classification (moralistic, individual, traditional);40 Johnson's modifications.41
Local Political Culture	Aggregate measures for locality based on level of political participation in voting; ideological orientation measured by vote in 1964, 1968, 1972 Presidential election; level of party competition;42 strength of party organization. Aggregate responses of local elites to attitude questions on interview schedules (see Table 1).
Extent and Seriousness of Crime	Uniform Crime Reports; Part I and total reported crime rate; Proportion of Part I crimes of total reported offenses.
Recruitment and Retention Process	Method of initial selection (appointment vs. election); role of partisan forces; length of term; method of retention.

TABLE 5 (Continued)

Variable	Illustrative Indicators and Measures
Local Legal Culture	
Salience of Crime and Criminal Justice:	
To Mass Public	Content analysis of local newspaper and electronic media coverage of crime, courts, police, etc.; opinion surveys (where available--e.g., Illinois).
To Elites and Interest Groups	Bar Association involvement in criminal justice issues and administration; Interest group activity in criminal justice issues, litigation; campaigns [derived from interviews with elites].
Commitment of resources to criminal justice	Local budget expenditures per capita for criminal justice system activities; proportion of public expenditures devoted to criminal justice system.
Degree and direction of consensus on criminal justice issues on:	Survey data (where available) and elite interview data (aggregated). Illustrative questions:
Value of Due Process	"Observing the strict requirements of due process should not be permitted to interfere with convicting guilty criminals."
Purposes of Punishment	"Should bail be used to insure whether defendants are punished or not?"
Appropriate Speed of dispositions	"How long should the average criminal case take from arrest to final disposition?"
Appropriate disposition techniques	"The use of guilty pleas should be avoided whenever possible."
Proper role to be played by prosecutor, judge, and defense	"Prosecutors aren't doing their job if they don't maintain a high conviction rate."
Sponsoring Organizations:	
Structure	For each sponsoring organization: formal duties; administrative subdivisions; number of personnel; frequency and nature of organization meetings; hiring practices. For example, is a chief judge designated? What are his powers and duties? How often does he call meetings of judges? How many judges are there? How are clerks chosen?

TABLE 5 (Continued)

Variables	Illustrative Indicators and Measures
Resources	Number of clerical and other supporting personnel; number of personnel standardized for population, workload; salary scale; level of budgetary support; computer, library, research facilities available; experience of personnel (related to turnover rates); etc.
Policies	Procedures for assigning members to courtrooms and cases (e.g., does public defender use man-to-man or zone defense); type of calender used by court (master versus individual calender); degree of discretion given workgroup representatives on key decisions (e.g., plea bargains, sentence recommendations); office policies on how to handle types of cases; stringency of supervisory efforts, sanctions imposed for policy violations; techniques for assigning indigents' defense counsel; criteria of evaluation used (conviction/dismissal rate; size of backlog; avoidance of adverse publicity, etc.); court policy regarding bail bond defaults; time between nonappearance and forfeiture.
Task Environment of Sponsoring Organizations:	
Structure, resources, policies of police, bail system, jails and prisons, nonprison alternatives, etc.	Wilson's typology of policing style (legalistic, watchman, service) measured by arrest rate for high-discretion crimes (traffic, drunk and disorderly, etc.) (Wilson 1968).
	Systematic characteristics of policing [fragmentation, multiplicity, independence, and dominance of police agencies]. 43
	Design capacity of jail; jail occupancy as a proportion of capacity; percent of average daily population pretrial detainees.
	Number of bondsmen/100 defendants; market shares of bondsmen (proportion of defendants released on surety per bondsman).
	Mean number of cases and presentence investigations per probation officer; number of "positions" in diversion programs, work release, etc., as percent of defendants convicted yearly. Size, resources, powers of pretrial release agency.

TABLE 5 (Continued)

Variables	Illustrative Indicators and Measures
Structure and content of state criminal code	Availability of lesser-included offenses or "plea bargaining" statutes (e.g., Michigan's 'Attempt' statute); discretion granted judges in sentencing; severity of punishment associated with specific crimes; availability of nonprison alternatives (ARD, Probation without verdict, etc.).
State-mandated case processing procedures	Elements affecting sponsoring organizations' resources. For example: Stringency of standards of proof for various offenses (from statutes); is preliminary hearing mandatory if defendant asks for it or discretionary with judge; any time limit on case processing (180 day rule?); if so, how stringently enforced; does DA screen all arrests before arraignment? Is there a 10 percent bail reform giving defense attorneys access to refunds as part of their fee? How are private appointed defense attorneys paid? What rules govern pretrial release and surety rates?
Size and Nature of Caseload	Number of defendants; nature of charges; characteristics of defendants; quality of evidence and investigation provided by police.
Nature and effectiveness of pressures on sponsoring organizations from:	
Supervisory bodies	Powers of state supreme court or court administrator over judges; power of state attorney general over prosecutor; power of state public defender officials (if any) over public defender; power of state or local bar association over private retained and court-appointed attorneys.
Political bodies and figures	How much control and constraint is exercised by agency appropriating funds locally? What role do party figures and interest groups (home owners, business organizations, ACLU) play? How active are they? How do they evaluate performance? What sanctions do they have available? [From open ended interviews].
Short term forces, issues, and events shaping sponsoring organizations' behavior	Existence of a well-publicized "crime wave"; scandal involving a sponsoring organization or its members; an election campaign; an overcrowded jail; serious crime committed recently by bailed defendant; assignment of extra personnel to handle an "emergency" backlog; etc. [Interviews, observations].

The Integration of Theory at the Macro Level

We have introduced a number of conceptual links between the larger environment and courtroom workgroups, the individuals comprising them, and the mix of cases and defendants they must process. Recruitment processes shape and channel the selection of individuals from the community who will occupy key decision-making positions. They provide an important link between the community context in which courts operate and the individual level role conceptions and attitudes that influence courtroom behavior. The task environment of sponsoring organizations (i.e., police policies, styles, and organization; local detention and pretrial release resources; and state-mandated rules, procedures, and institutional arrangements) affects the volume and composition of caseloads, the structure of workgroups, the attitudes of its members, and the policies of sponsoring organizations. Sponsoring organizations serve as critical boundary-spanning mechanisms, linking political pressures, community structure and values, and local legal culture with courtroom operations.

This suggests a principal way in which differences among states will be translated into different patterns of case disposition. State-mandated institutional structures determine the nature and potency of sponsoring organizations' constituencies. Depending on the interests and perspectives of these constituencies, sponsoring organizations, when faced with strong constituency pressures, find themselves in the position of a "broker." They must mediate external demands through their own policies and efforts to control the behavior of their courtroom representatives. Thus, the study of sponsoring organizations' relations with the larger environment on the one hand, and their effectiveness in governing the behavior of their members on the other, offers an excellent perspective for investigating the relationship between environmental factors and case outcomes.

Our operationalizations of these concepts will permit us to examine a number of hypotheses. We can look at the effect of local environments in different sized jurisdictions with the expectation that these factors in smaller jurisdictions will display greater influence on court policies than in larger systems where the bureaucratizatio

and greater internal resources of the sponsoring organizations may buffer courtroom participants from external pressures and thus reduce their impact on case outcomes. Below we list some illustrative hypotheses the macro analysis will explore.

1. The more heterogeneous and politically active a jursidiction's population is, the more diverse will be the values and role orientations of the courtroom elite. If combined with an unstable and unfamiliar workgroup structure, this will produce inconsistency in the disposition of cases with similar defendants, charges, circumstances, and evidence.

2. The more homogeneous and less stratified the population of a jurisdiction, the greater the reliance on informal procedures for disposing cases (ARD, probation without verdict, plea bargaining).

3. The more traditional the local political culture (low participation in politics, absence of governmental reform structures) the more insulated the sponsoring organizations will be from constitutencies and hence the smaller the relationship will be between court dispositions (bail levels, sentence harshness, etc.) and environmental factors.

Sources of Data for the Measurement of Dependent and Independent Variables in the Macro Analysis

There are a number of readily available sources of aggregate data on county level criminal courts and their environments in Illinois, Michigan, and Pennsylvania. The sources include information which could be used to construct measures of dependent variables of interest as well as measures of various contextual variants and environmental factors. For example, the annual reports from the state court administrators' offices provide a rich source of data on criminal court outputs by county. They can be used to construct measures of such things as average conviction rates, dismissal rates, guilty plea rates, etc. In addition they can be used to construct measures of sentencing severity as well as measures of the extent to which different counties utilize diverse sentencing options (proportion assigned to work release programs, proportion assigned to unsupervised probation, proportion sent to state penitentiary, etc.). We

feel confident that these data are similar enough across the three states to conduct comparable analyses. We have identified other important sources of data for construction of both dependent and independent variables. They include census data, voting statistics, expenditure data from state comptrollers' offices, crime and police data, and so forth. For example, data on county level elections and perceptions of the media interest can be used to construct measures of political insulation and levels of participation. Information on racial composition and income disparity from census data can be used to devise a measure of social homogeneity; other census data can form the basis to measure such things as urbanism and wealth. Crime data provide opportunities to develop some surrogate measure of the crime problem in each county. Presidential election data aggregated at the county level can be used as an indicator of conservatism-liberalism. Several sources of data can be used to measure resource sufficiency. One would be data on crime control expenditure per case. Another would be questionnaire data on such things as jail capacities, manpower levels, etc.

In addition, several relevant special reports or surveys are available. For example, the University of Illinois recently sponsored a massive public opinion survey in the state of Illinois which included responses from over 9,000 citizens on a wide variety of public issues, including crime and courts. We possess these data and have already aggregated them at the county level. In addition, the Administrative Office of the Illinois Courts recently sponsored an extensive survey of courtroom facilities and personnel (number of support personnel, number of judges, existence of a public defender's office, number and quality of courtrooms) in all 101 downstate counties and these data are also available.

Finally, we intend to use questionnaires to obtain other macro-level data. Our interviews with key courtroom participants in the sampled jurisdictions will include questions designed to measure their perceptions of local political and legal culture. Either a mail questionnaire or telephone survey of all trial court jurisdictions in each state will provide information on the nature of the indigent defense system, case and personnel assignment procedures, the size of the practicing criminal bar, prosecutor policies, and the perceived interest of the local media in criminal court outputs.

These data make possible two distinct types of macro-level analyses: "intensive" and "broad gauge." We will conduct an "intensive" analysis among the jurisdictions in which we actually conduct field research. In these jurisdictions, we will be able to relate a number of general system variables obtained from published sources (income inequality, crime rate, level of political participation, and so forth) to measures derived from the empirical field research. This will permit us to test the relationship between general system variables and contextual variables (such as local legal culture, workgroup member attitudes and goals, and so forth). Furthermore, it will permit us to validate surrogate measures for certain variables. For example, if we find a strong relationship between respondents' perceived case pressure and actual pressure as measured by published case flow statistics, we can utilize with some confidence measures of case pressure based on such publicly available information for all jurisdictions in the state. The "broad-gauge" macro-level analysis will explore the relationship between environmental variables and case flow characteristics for all jurisdictions within a state. For example, to what extent can variation in environmental variables as measured by census, voting, and crime data explain sentencing severity, conviction and dismissal rates, and guilty plea rates? This analysis will be augmented with the data on contextual variables (for example, procedures for assigning personnel to courtrooms) obtained by a phone survey or mail questionnaire of the nonsampled jurisdictions in each state.

As with the micro-level analysis, we will employ standard data collection, coding, and analysis techniques (including multi-variate analysis) for both types of macro-level analysis.[44]

TRIANGULATION: A RATIONALE FOR COMPLEXITY

The influence and impact of political culture, courtroom workgroups, and individual role conceptions and attitudes on criminal disposition decisions represent competing causal hypotheses. No <u>single</u> research technique (e.g., analysis of court records, interviews, participant observation) allows an investigator to build causal propositions

that will not be susceptible to rival interpretations, especially if he employs but a single level of analysis. Moreover, while we are concerned with integrating the major foci of current research, it should also be clear that each of the foci reflects an alternative underlying theory, albeit often implict and sometimes underdeveloped, which can only be tested if methods and data appropriate for that theoretical perspective are employed. Finally, as we have already stated, at present we lack an array of validated, reliable measures of major criminal justice concepts that we can use with confidence. This weakens the case for single measures and consequently argues for multiple measures whenever possible.

For these reasons our research design described in the proceeding pages is guided by a "strategy of multiple triangulation."[45] In its simplest form, triangulation refers to the use of multiple methods to investigate a particular phenomenon, but it is also possible to think of it as including data triangulation and theory triangulation. We have adopted this multiple approach for this project. The advantages of such an approach are striking. It provides the opportunity to move from one level of analysis to another for single courts, to compare courts across space (and to the extent data are available across time) and across levels of analysis, and to check the efficacy of alternative measures.

The methods to be used in this study can be classified as "survey" through the sampling and interviewing of courtroom participants and workgroups; "limited observation" of courtroom procedures and behavior; and "unobtrusive methods" through the collection of a variety of data describing case characteristics, dispositional outcomes, workloads and contexts of courts, and community characteristics. "Data triangulation" will occur as a result of the different methods. But most importantly, because the research design is comparative and follows a "most different systems" approach, by sampling and gathering data for a limited sample of jurisdictions that differ along major theoretically-derived dimensions, we can assess the impact of external, contextual, and internal variables on court policies. In other words, data triangulation will take place because of comparative analyses across courts and within courts at different levels of analysis.

SAMPLING COURTS: THE CHOICE OF RESEARCH SITES FOR INTENSIVE ANALYSIS

Because this project consciously establishes very ambitious goals, the choice of research sites poses particularly crucial, intricate, and vexing problems. Substantial agonizing and hard thinking about them has clarified our understanding and led to the development of a procedure for choosing a satisfactory sampling design.

In order to collect data on individual level variables and workgroup characteristics, we need to investigate intensively several courts chosen from each of the three states (Illinois, Michigan, and Pennsylvania). The major challenge arises in developing criteria to guide the choice of both the number and type of courts to be studied. In doing so, we believe maintaining a comparative, multi-state design is imperative. The three states differ in a number of important respects which may have policy consequences we want to investigate.[46]

Implications for the number of courts needed for the sample flow directly from the need to adopt a multi-state design. First, a minimum of two courts in each state is essential to separate the possible effects of state characteristics from local environmental or court-related variables. A comparative analysis would then be feasible both across states and across courts so as to determine the relative impact or influence of state and local environmental factors. This is a critical advantage if policy recommendations are to emerge from this research because it speaks to the question of which factors shaping courts' outputs are most susceptible to conscious, planned change. If the inter-state focus is not kept, we will not be able to draw conclusions regarding how formal institutional arrangements of state trial courts or their rules might be revised to enhance the quality of local justice. By the same token, if only one court in each state is selected, we will be less able to evaluate how local contextual or individual-level variables interact with state-wide policies.

Because of limited resources, it is impossible to draw a random sample of local jurisdictions in each state. But reducing the number of jurisdictions studied increases the importance of the sites that are chosen. The problem is compounded by our

desire to integrate three distinct perspectives into a coherent empirically-based theory. This goal requires that jurisdictions with only a single judge and courtroom be excluded from our sampling population. "With-in court" analysis of case dispositions where the judge's attitudes and role perceptions are expected to operate as independent variables would not be feasible since we would lose variation in these variables due to the presence of a single judge and a single courtroom context. More practical considerations born of resource constraints lead to the exclusion of very large urban courts. Thus, the sampling frame should include courts that are large enough to have several judges and courtrooms but small enough to allow adequate study with available resources. Finally, the total number of courtroom participants, particularly judges, for the entire sample of courts must be large enough to allow the use of methods to validate the individual-level measures that this research will generate. A minimum of 25 judges is necessary for use of these methods.[47]

By way of summary, then, we propose to study no less than two courts from each of the three states limiting the universe from which the courts are drawn to those jurisdictions with populations ranging in size from about 100,000 to 500,000. The remaining issue, described in the next section, is how these handful of courts should be selected.

TOWARD A SAMPLING PROCEDURE

No simple sampling procedure can satisfy fully all the goals and constraints of this project. Clearly, some form of stratified sampling is necessary to guarantee maximum variation in the key variables expected to exert influence on the pretrial processes and policies of local trial courts. Yet it is equally clear that the number of strata employed in the sampling scheme must be strictly limited given the relative handful of courts we expect to sample.

This problem is further compounded by the current state of theory and research on local trial courts. The choice of sampling strata ultimately has theoretical implications that at this time are only dimly perceived. Nor is there sufficient empirical research to inform us as to the nature and strength of relationships between

variables which might guide the choice between different operationalizations of such concepts as "political culture."

Given these problems we propose to select our final sample of courts only after a thorough examination of alternative ways of stratifying the court population. We can identify, however, the major factors we will examine: demographic characteristics (per capita income, income disparity, size of minority group population, degree of urbanization, population density); political culture (level of citizen participation, degree and direction of ideological consensus derived from voting statistics or existing public opinion surveys); and court policy orientations (high or low dismissal rates, guilty plea rates, and sentence severity relative to the median level for the court population as a whole). Policy orientation will be considered as a sampling stratification because we want to avoid drawing a sample in some other basis which might produce little variation in pretrial processes.

Considering the lack of firm empirically-grounded theory which would give us assurance that this would not occur we feel it is best to include this variable as a sampling strata at this initial stage.

TABLE 6

Number, Type, and Location of
Court Jurisdictions in Sampling Frame

Stratification of multi-judge jurisdiction*	Illinois	Michigan	Pennsylvania
A	a	a'	a''
B	b	b'	b''
C	c	c'	c''

*The number of strata shown is purely illustrative, but may not exceed three strata for a single variable.

This sampling scheme reduces the number of jurisdictions from fifteen originally proposed in the concept paper to nine. We prefer to study nine courts to permit flexibility in defining the stratifying variable and avoid putting us in the Procrustean-like position of dichotomizing what undoubtedly will be a complex variable. If, after our

pretesting experience and consultation with the advisory panel, we discover nine courts cannot be studied, we will move back to sampling six.

Once the stratifying variable is chosen, this sampling scheme neatly meets the needs of our project. Inter-state comparisons can be made while still retaining intra-state variation among courts on the stratifying variable. Equally as important, the courts in each state along each of the strata will be matched so that courts a, a', and a'' in Illinois, Michigan, and Pennsylvania respectively will be approximately similar in terms of certain key characteristics.

This design allows us to assess state-level differences, holding constant differences on the stratifying variable; to assess differences among courts due to their values on the stratifying variables, ignoring state differences; and to assess the interaction of both variables on case outcomes based on data drawn from samples of local dockets utilizing methods based on analysis of variance. The last aspect deserves a brief comment. If interaction effects are found between the two variables and case outcomes, this is a signal that the impact of one variable is dependent on the particular level of the other factor. Equally as important, interaction would indicate the presence of nonadditive or nonlinear relationships. Two significant advances would result from such a finding. First, the specification of relationships in our structural models would take on a heightened sophistication and be more precise. Second, the need would be demonstrated to consider the utility for "contingency theory" in criminal court research.[48]

This research design is both elegant and practical. It allows us to pursue our strategy of multiple triangulation by giving us the chance to shift from one perspective to another and integrate them. At the same time the number of courts and their size will not tax unduly the resources of the project.

PRETESTING

The development of feasible operationalizations of many of the independent variables constitutes a major challenge. This research can contribute signficantly to future empirical studies of criminal courts by producing field-tested techniques and

measures. Since the success of this project depends so heavily on devising such measures, we plan to devote considerable time, care, and effort to pretesting.

Much of the work involved in pretesting flows naturally from the research design. Initially, we will produce interview schedules, data collection forms, and self-administered questionnaires appropriate for each of the dependent and independent variables. Alternative measures of the same variables will be tested where appropriate. Throughout this phase of the prestesting, the principal investigators will critique and revise each other's instruments before field testing begins.

During the first stage of the pretesting, we plan to continue gathering macro-level data on the "environmental" characteristics of jurisdictions in the three states. We will use this data to assist in choosing pretest sites in each state. We will choose pretest sites as similar as possible to our best estimate of what the final research sites will be like. To insure each of the investigators implements standard data gathering techniques, all three will participate in at least some field testing of research instruments in one of the states.

Forms to record defendant-based case data, docket information, and observed interactions among workgroup participants will be filled out simultaneously and independently and cross-checked to remove ambiguities and insure identical techniques are used. Where appropriate, we will create and test preliminary coding procedures for the data generated. Techniques for identifying and acquiring access to key sources of information (records and individuals) will be consciously evaluated and refined. Those individuals interviewed or to whom self-administered questionnaires are given will be asked to critique and evaluate the research instrument. Final decisions regarding how many and what kind of jurisdictions will be included in the final site selection will be informed by the experience gained during pretesting. At the time the advisory panel meets to discuss final site selection, it will also have the opportunity to evaluate the pretested and revised research instruments.

FOOTNOTES

[1]For a discussion and critique of this research, see Peter F. Nardulli, The Courtroom Elite: An Organizational Perspective on Criminal Justice (1978), Chapter One.

[2]Nardulli (1978), Chapter Two.

[3]See, for example, B. Grosman, The Prosecutor: An Inquiry Into the Exercise of Discretion (1969).

[4]D. J. Freed and P. M. Wald, Bail In the United States: 1964 (1964); F. W. Miller, Prosecution: The Decision to Charge a Suspect With a Crime (1970); D. Newman, Conviction: The Determination of Guilt or Innocence Without Trial (1966); Wayne La Fave, Arrest: The Decision to Take a Suspect Into Custody (1965).

[5]Several notable exceptions deserve mention, especially Abraham S. Blumberg, Criminal Justice (1967); and Jerome H. Skolnick, Justice Without Trial (1966).

[6]These include: James Eisenstein and Herbert Jacob, Felony Justice (1977); Nardulli (1978); The Vera Institute of Justice, Felony Arrests: Their Prosecution and Disposition in New York City's Courts (1977); Thomas Church, et al., Justice Delayed: The Pace of Litigation in Urban Trial Courts (1978); Milton Heumann, Plea Bargaining: The Experience of Prosecutors, Judges, and Defense Attorneys (1978); Malcolm Feeley, The Process Is the Punishment (forthcoming book); Pamela J. Utz, Settling the Facts: Discretion and Negotiation in Criminal Court (1978); James Gibson, "Judges' Role Orientations, Attitudes, and Decisions: An Interactive Model" (1978); Steve Flanders, Case Management and Court Management In U.S. District Courts (1977); David Neubauer, Criminal Justice In Middle America (1974); Leif Carter, The Limits of Order (1974); Georgetown University Law School, "Plea Bargaining In the United States"; Roy Flemming, "Pretrial Punishment: A Political-Organizational Perspective" (1978); and Martin Levin, "Urban Politics and Judicial Behavior" (1972).

[7]See Eisenstein and Jacob (1977); Georgetown University Law School (1978); Hermann, Single, and Boston, Counsel for the Poor (1977); A. W. Alschuler's research encompassed ten jurisdictions, but the data relied upon is primarily qualitative in nature, and is derived from loosely structured interviews. See, for example, his "The Prosecutor's Role in Plea Bargaining" (1968).

[8]See especially Brian Forst, Judy Lucianovic, and Sarah J. Cox, What Happens After Arrest? (1977); The Vera Institute Study (1977); Eisenstein and Jacob (1977); and Nardulli (1978).

[9]The organizational approach in particular has guided several studies including Eisenstein and Jacob (1977) and Nardulli (1978). For a review of the emergence of the organizational approach, see Peter F. Nardulli, "Organizational Analyses of Criminal Courts: An overview and Some Speculation" (1978).

[10]For two empirical studies of delay, see especially Church et al. (1978), and Martin H. Levin, "Delay in Five Criminal Courts," Journal of Legal Studies (1975). For an early study, see Ziesel, et al., Delay in the Court (1959).

[11]LEAA Grant #78-NI-AX-0013, "Performance Measures in the Criminal Justice System: Courts," Research Triangle Institute.

[12]The major exceptions include Feeley (forthcoming); and M. Mileski, "Courtroom Encounters: An Observation Study of a Lower Criminal Court" (1971).

[13]Some indication of the interrelationship between them was uncovered in the research conducted on the Warrant Section of the Detroit Prosecutor's office in Eisenstein and Jacob's study (1977). A number of potential felonies were prosecuted as misdemeanors either because of fears the complaining witness would lose enthusiasm for the case or because a misdemeanor disposition could be obtained at relatively little cost within two days.

[14]An extensive review of the literature by the principal investigator confirmed what most published summaries of research on nonmetropolitan jurisdictions concluded: practically no systematic empirical research has been conducted. An excellent bibliography which references most of the research and writing on rural courts can be found in E. Stott, Jr., T. Fetter, L. Crites, Rural Courts: The Effect of Space and Distance on the Administration of Justice (1977). Two empirical studies of a smaller (but not nonmetropolitan) jurisdiction have been published. See David Neubauer, Criminal Justice In Middle America (1974); and Joel Handler, The Lawyer and His Community (1967).

[15]See especially John Hogarth, Sentencing As A Human Process (1971); Gibson (1978); Austin Sarat, "Judging in Trial Courts: An Exploratory Study" (1977); Greg Caldeira, "The Incentives of Trial Judges and the Administration of Justice" (1977); Larry R. Baas, "Judicial Role Perceptions: Problems of Representativeness, The Identification of Types, and the Study of Role Behavior" (1972).

[16]For a thorough review of this literature, see Peter F. Nardulli, "Organizational Analyses of Criminal Courts: An Overview and Some Speculation" (1978).

[17]See especially Levin (1972); Church (1978); Flemming (1978); Herbert Kritzer, "Political Culture, Trial Courts and Criminal Cases" (1979). Several studies conducted in Wisconsin, relying on previous work which classified the political cultures of four cities, sought to link the operation of the legal process to political culture. See Herbert Jacob, Debtors In Court (1969), and Neal Milner, The Court and Local Law Enforcement: The Impact of Miranda (1971). Other research touching upon the links between local political and legal culture and behavior of decision makers in the legal process includes Jack W. Peltason, Fifty-eight Lonely Men (1961); James Eisenstein, Counsel For the United States: U.S. Attorneys in the Political and Legal Systems (1978); and Richard Richardson and Kenneth Vines, The Politics of Federal Courts (1970), especially Chapter Three.

[18]For an insightful discussion of the use of organization theory in the study of courts, see Mohr (1976).

[19]See David Neubauer and Edward Clynch, "Trial Courts as Organizations: A Critique and Synthesis" (1977).

[20]For an excellent summary of existing research, see Kritzer (1979).

[21]Martin Levin (1972) provides one of the rare exceptions. See also Jacob (1969); and Church (1978).

[22]For a partial exception to the claim that links between public officials and court personnel are unexplored, see Wallace Sayre and Herbert Kaufman, Governing New York City (1960), Chapter XIV. See also James Q. Wilson, Varieties of Police Behavior (1968), especially Chapters 4 and 8.

[23]Although the term "uncontrollable factors" is typically used as if no ambiguity in its meaning existed, in fact this is not the case. Generally approaches which assign many factors to the "uncontrollable" category adopt very short time frames, seeking quick solutions to temporary problems.

[24]For an illustration of the value of incorporating the concept of legal culture in analyzing issues such as court delay, see Church (1978), especially Chapters 4 and 6.

[25]For an example of the relationship between political support for reform generated by organized concern in the community with conditions in Detroit's overcrowded jail, see Roy Flemming (1978).

[26]Gibson (1977), p. 999-1000.

[27]Hogarth (1971), pp. 100-101.

[28]Carter (1974), Chapter 3.

[29]Albert Alschuler, "The Defense Attorney's Role in Plea Bargaining," Yale Law Review (1975).

[30]Alschuler (1968), pp. 52-53.

[31]Gibson (1978).

[32]After reviewing the research using incentive theory (Sarat 1977; Caldiera 1977), we feel that it will not be made a part of this research. There are a number of reasons for this decision. The most basic one is that incentives as defined by Payne (1972) and Payne and Woshinsky (1972) refer to the emotional needs of actors and the kinds of satisfactions they seek. To determine these needs requires a lengthy interview (about one hour) involving approximately 20 open-ended questions and a coding procedure in which transcripts of interviews are read by at least three coders who then determine the basic incentive type based on whether certain themes and emphases emerge from the answers given to the questions. Putting aside the problems of validity and reliability plus the fact that the types are not scalable (although they could be used as dummy variables in a regression equation), we face the problem of limited interviewing time. It is difficult at this time to know precisely how long our interview schedule will take to administer. But given the number of items and areas about which we wish to gain information, it appears at present that incorporating those questions needed to gather data on personal incentives will not be feasible.

[33]For a description of these variables and their measurment, see Eisenstein and Jacob (1977), Chapter 7.

[34]For a full discussion of the notion of dispositional value, see Nardulli (1978), pp. 110, 112, 128, 133.

[35]We recognize the potential sensitivity of such questions and consequent problems in getting answers to them that may result. Less sensitive surrogate measures can be substituted (for example, "About how well would you say you know the attorneys who usually oppose you in criminal cases?"), but more direct measures will prvide greater analytical power. We plan to pay particular attention to this problem during the pretesting phase of the research.

[36]In such jurisdictions, we would first compile a list of workgroups and the number of cases each handled. We would then sample the workgroups and include all defendants disposed of by those workgroups. This requires the following steps: (1) examination of all docketed cases for a specified period to determine the membership of the workgroup for each case; (2) compilation of a roster of workgroups indicating the number of defendants each processed; (3) stratification of the roster according to the number of defendants processed; (4) sampling specific workgroups from the various categories in the stratification; (5) gathering of defendant based case data for all defendants in the workgroups sampled. This would produce a sample containing defendants processed by workgroups whose members worked together very often, sometimes, and infrequently. The task of obtaining data from the workgroup members would be substantially simplified. For example, only those prosecutors and defense attorneys who were members of the sampled workgroups would be interviewed. With proper weighting of the sample, we could still make some generalizations about the jurisdictions' case dispositions as a whole.

[37]Flemming (1977), pp. 71-80.

[38]A classification of every county in the United States according to degree of urbanization and whether it contains an SMSA or is adjacent to a county which does already exists and is in our possession. See Fred K. Hines, David L. Brown, and John M. Zimmer; Social and Economics Characteristics of the Population in Metro and Nonmetro Counties, 1970 (1975).

[39]Gabrial Almond and G. Bingham Powell, Jr. (1966), Comparative Politics: A Developmental Approach, p. 50.

[40]Daniel Elazar (1966), American Federalism: A View From the States.

[41]Charles A. Johnson (1976), "Political Culture in American States: Elazar's Formulation Examined," American Journal of Political Science.

[42]For a discussion of party competition measures, see Frank Sorauf (1972), Party Politics in America, p. 34.

[43]Elinor Ostrom, Robert Parks, and Gordon Whitaker (1978), Patterns of Metropolitan Policing, pp. 35-38.

[44]All three principal investigators have engaged in such activities in the past. For a discussion of the methods and procedures used, see Eisenstein and Jacob (1977), Chapter 7; Nardulli (1978), Chapter 5, and Roy Flemming, Allocating Freedom and Punishment: Pretrial Release Policies in Detroit and Baltimore (1977).

[45]Norman K. Denzin (1978), The Research Act.

[46]For example, Illinois and Michigan rely on sheriffs' departments headed by elected officials for law enforcement in unincorporated areas; Pennsylvania utilizes a statewide bureaucracy headed by a political appointee, the State Police, for this task. The states exhibit considerable diversity in the social and economic characteristics of their court jurisdictions. Some Michigan counties encompass Indian reservations. Illinois contains counties whose economy rests on "corn belt" farming. Pennsylvania contains poor Appalacian counties, and counties which depend on coal mining, steel production, oil production, and dairy farming. Both Pennsylvania and Michigan contain counties which rely upon "summer people" to sustain its economy. Pennsylvania and Illinois elect trial court judges on a partisan ballot while Michigan uses a nonpartisan ballot. Pennsylvania elects its lower criminal court judges (District Magistrates) in a partisan election. Illinois' "Associate Judges" are appointed by the Circuit Judges. Michigan elects its district judges in nonpartisan elections. Although the State Supreme Court has supervisory powers over lower courts in all three states, the extent to which they exercise it appears to differ. For example, Michigan's Court actively oversees lower courts' activities; Pennsylvania's does little supervision. Finally, according to Elazar (1966, p. 110), the states differ in their political culture. Michigan is moralistic; Pennsylvania individualistic, and Illinois individualistic overall with strong strains of moralistic culture in the north and traditionalistic culture in the south.

[47]Eugene F. Stone (1978), Research Methods in Organization Behavior, pp. 56-67.

[48]Paul R. Lawrence and J. W. Lorsch (1969), Organization and Environment.

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