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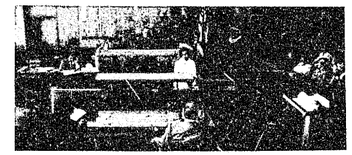
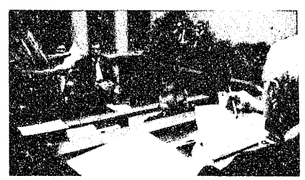
Examining Local Legal Culture

Practitioner Attitudes in Four Criminal Courts





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James L. Underwood
Acting Director

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Thomas W. Church, Jr.

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PREFACE

This study grew out of a research and demonstration project aimed at reducing trial court delay that was funded by the Adjudication Division of the Law Enforcement Assistance Administration and executed by the National Center for State Courts. I was principally responsible for the research component of the first phase of that project, an endeavor that culminated in publication of a monograph entitled Justice Delayed in late 1978.

A major conclusion of that research was that the pace of litigation in urban trial courts is strongly related to norms and attitudes held by local practitioners regarding the proper pace of litigation -- an element of what we termed "local legal culture." The suggestions of that research, together with clear implications of recent interview-based work on criminal courts conducted by others, are the foundation of this study. Its principal aim is to determine whether a concept as elusive as legal culture could be operationalized in quantitative terms and extended beyond the issue of delay.

I am reluctant to express my gratitude to those who contributed to this project for fear that the sins that undoubtedly pervade this manuscript may be inaccurately attributed to those who were so helpful to me in its preparation. Be that as it may, some acknowledgement of my manifold debts is inescapable. First, I must thank the practitioners who helped so much -- in the Bronx: Justice William Kapelman, Mario Merola, Archibald Murray, Leroy Brown, Joel Blumenfeld; in Detroit: Chief Judge Samuel Gardner, William Cahalan, Myzell Sowell, Michael Fried; in Miami: Chief Judge Edward Cowart, Judge John Tanksley, Janet Reno, Bennett Brummer, Hank Adorno, David Weed; and in Pittsburgh: President Judge Michael O'Malley, Judge Robert Dauer, Bob Colville, Lester Nauhaus, Charles Starrett, Walter Blunt. At the National Institute of Justice I received support and patience from Carolyn Burstein, Cheryl Martorana, and Debra Viets. Larry Sipes at the National Center for State Courts established exactly the right supervisory relationship: one of benign neglect. Michael Kenny and William Macauley were of enormous help in site visits and data analysis. Finally, I want to thank the following individuals who read and commented on all or parts of the manuscript: Joel Grossman, Milton Heumann, Martin Levin, Roger Marz, Steven Flanders, and Austin Sarat.

CHAPTER I

CONCEPTUALIZING LOCAL LEGAL CULTURE

This study examines the attitudes and beliefs of the judges, prosecutors and defense attorneys who control much of what happens to criminal defendants in the felony courts of four American cities. It investigates not their general views on politics, or crime, or even on the disposition of criminal cases. Rather, the focus is on how these practitioners believe a set of specific criminal cases could best be handled by a court system that was given adequate resources and staff. The rationale for embarking on this study requires some explanation.

CHANGING MODELS OF CRIMINAL COURTS

There once was a time, just 20 years ago, when observers could speak with certitude on the operation of American criminal courts. The unitary image portrayed resembled that depicted on the then-popular Perry Mason television series: deliberate, adversarial, unambiguously accurate in the vast majority of cases. It should not be assumed that this vision of reality was held only by the uninformed. Indeed, the Harvard Law School faculty put together in 1959 a series of lectures on the operation of the American legal system which discussed criminal justice in three segments: "The Adversary System," "Trial by Jury," and "The Rights of the Accused in Criminal Cases."[1] Nowhere in this te deum is found a mention of plea bargaining[2] (then, as now, the predominant mode of disposition in most criminal courts), the problem of delayed resolution of criminal cases,[3] or even the extraordinary diversity of dispositional patterns across American jurisdictions. Rather, the image portrayed was that of a unitary system, unfailingly adversarial and overwhelmingly fair to all concerned.

The decade of the 60's changed this image appreciably. It brought with it assassinations, urban and campus riots, a "crime explosion," and growing public distrust of all governmental agencies -- including the criminal courts. This period also saw publication of a number of highly critical accounts of criminal justice in America: the reports of two national crime commissions[4]

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1 Harold J. Berman (ed.), Talks on American Law (New York: Vintage Books, 1961).

2 "(T)he right to a fair trial is crucial. It is here that the question of guilt or innocence is finally decided." Ibid., p. 62.

3 "(T)he trial must be speedy. . ., and court rules giving priority to criminal cases are an essential element in the process of speedy determination of guilt or innocence." Ibid., p. 63.

4 National Advisory Commission on Criminal Justice Standards and Goals, Report on the Task Force on Courts (Washington: Government Printing Office, 1973); President's Commission on Law Enforcement and the Administration of Justice, Task Force Report: The Courts (Washington: Government Printing Office, 1967).

and the American Bar Association,[5] a book by a former Attorney General,[6] numerous scholarly accounts[7] and an influential newspaper series.[8] Like the more complimentary writings they replaced, this reform-oriented literature tended to generalize about the American criminal court system. But this system was described in terms of rampant and unguided plea haggling rather than adversarial trials, "assembly line" dispositions rather than the careful, individualized consideration of cases previously praised, hopeless delays in the place of "swift and sure" justice, and institutionalized unfairness to both criminal defendants and society at large.

Growing public concern with crime and criminal justice since the mid-1960's spawned a number of initiatives to effect reform. The documented results of a number of these attempts to reform criminal courts, together with a growing number of research studies, suggest that neither the pious rectitude of the Perry Mason model of American criminal courts nor the uniformly negative image of the early reformers fits very well with reality. Furthermore, the experiences of court reform over the past decade present a sobering picture of the difficulties involved in bringing about real change in the existing pattern of criminal court dispositions. A few examples may be instructive.

A major theme of the reform literature of the late 1960's was the injustice and irrationality of plea bargaining. The practice was condemned both by liberals (as being unfairly "coercive" to defendants[9]) and conservatives (for producing overly lenient sentences[10]). In response to these criticisms a number of local district attorneys set out to restrict if not eliminate the negotiated guilty plea. They were seldom successful. Rather than stopping plea negotiations, these reforms typically changed only the form of the bargains or the major participants in the process. One prosecutorial attempt to eliminate plea bargaining in drug sale cases, for example, resulted in cessation of defense-prosecutorial negotiation over

5 See the numerous publications of the American Bar Association Project on Standards for Criminal Justice.

6 Ramsey Clark, Crime in America (New York: Simon and Schuster, 1970).

7 The list is too extensive to report here. Perhaps the best known scholarly broadside is Abraham Blumberg, Criminal Justice (Chicago: Quadrangle Books, 1967).

8 The series, which originally appeared in the Christian Science Monitor, is collected in Howard James, Crisis in the Courts (New York: David McKay, 1967).

9 See Albert Alschuler, "The Prosecutor's Role in Plea Bargaining," University of Chicago Law Review 36 (1968): 50; National Advisory Commission, Task Force Report: The Courts, esp. p. 48.

10 These charges were typically made by practitioners, particularly those running for office. The major concerns are summed up in National Advisory Commission, Task Force Report: The Courts, p. 44.

charge; but in its place grew up defense-judge negotiation over sentence.[11] Similar experiences have been documented elsewhere.[12]

Another target of reform has been the problem of criminal court delay. "Justice delayed is justice denied" became the rallying call for a movement that has expended substantial federal, state and local governmental funds to speed up the disposition of criminal cases.[13] Court delay has been attacked in a number of ways: by temporary assignment of judges to courts with substantial backlogs, by legislative or appellate court imposition of speedy-trial rules, through institution of various pretrial conferencing schemes. Yet when these programs are evaluated on the basis of long-term result on disposition time the results are often disappointing. A temporary infusion of judges tends to produce a temporary acceleration in disposition time which often disappears soon after the program is concluded.[14] New speedy-trial rules are waived by both prosecution and defense and thus fail to alter the existing pace of litigation.[15] Elaborate pretrial conference programs are typically unsuccessful or even counter-productive.[16]

A similar picture has been presented by legislative efforts to alter sentencing practices in criminal courts. Mandatory minimum sentences and other attempts to restrict the sentencing discretion of local officers frequently fail to change the substance (as opposed to the form) of criminal dispositions. Prosecutors lower or drop charges carrying mandatory sentences in exchange for guilty pleas; judges agree in advance to find defendants not guilty after pro forma bench trials to avoid mandatory sentences believed to be inappropriately harsh. Police or prosecutors may not even bring charges carrying statutory minimum sentences in cases where the sentence is felt to be

11 Thomas Church, Jr., "Plea Bargains, Concessions, and the Courts: Analysis of a Quasi-Experiment," Law and Society Review 10 (1976): 377.

12 See Note, "The Elimination of Plea Bargaining in Black Hawk County: A Case Study," Iowa Law Review 61 (1975): 1053; Milton Heumann and Colin Loftin, "Mandatory Sentencing and the Abolition of Plea Bargaining: The Michigan Felony Firearm Statute," Law and Society Review 13 (1979): 393. Cf. Michael Rubinstein and Teresa White "Alaska's Ban on Plea Bargaining," Law and Society Review 13 (1979): 367.

13 Much of this literature is summarized in Thomas Church, Jr., et al., Pretrial Delay: A Review and Bibliography (Williamsburg, VA: National Center for State Courts, 1978).

14 See Thomas Church, Jr., Justice Delayed: The Pace of Litigation in Urban Trial Courts (Williamsburg, VA: National Center for State Courts, 1978), pp. 24-31, 79-81.

15 See Ibid., pp. 47-49, 78-79.

16 See Raymond Nimmer, "A Slightly Moveable Object: A Case Study in Judicial Reform in the Criminal Justice Process: The Omnibus Hearing," Denver Law Journal 48 (1976): 206. Cf. Anne Heinz and Wayne Kerstetter, "Pretrial Settlement Conference: Evaluation of a Reform in Plea Bargaining," Law and Society Review 13 (1979): 349.

out of line. The net result is often that the sanctions imposed for the type of criminal behavior addressed by the sentencing reforms are altered very little.[17]

These experiences demonstrate the extraordinary ability of criminal courts to absorb reform efforts both large and small without any substantial change in operation. That criminal courts exhibit such tenacity in maintaining existing ways of doing things can be attributed in large part to the well-documented resistance to change of many judges, prosecutors, and defense attorneys.[18] This resistance is inevitably accompanied by willingness to take diversionary action to circumvent unwelcome alteration in the status quo. Hence speedy-trial rules may be happily waived by both prosecutor and defense attorney, neither of whom are particularly anxious to move cases more speedily than they consider to be necessary. Or the judge and the attorneys in a case find a procedural device to circumvent a mandatory minimum sentence or prohibition of plea bargaining where it is felt by all to be inappropriate. As one trial judge described the process, "When faced with an unpleasant policy, resourceful attorneys, assistant prosecutors and judges will generally find acceptable ways to get around it."[19]

Why this uniform resistance to change? The answer advanced in a number of recent studies is that change disturbs a complex informal net of inter-relationships and expectations existent in any criminal court. Aptly termed by one researcher the "local discretionary system,"[20] this delicate series of expectations and habitual accommodations among formal adversaries allows the court to make decisions regarding individual defendants while insuring that the interests of regular participants in the process -- judges, attorneys, police and other court personnel -- are also protected. The formal adversarial nature of the system is thus overlaid by a quasi-organizational mode of operation in which regular participants cooperatively dispose of the criminal cases before them. Any attempt to alter existing practice threatens this

17 See Association of the Bar of the City of New York, The Nation's Toughest Drug Law: Evaluating the New York Experience. Washington, D.C.: Drug Abuse Council, Inc., (1977); James A. Beba., "And Nobody Can Get You Out: The Impact of a Mandatory Prison Sentence for the Illegal Carrying of a Firearm on the Use of Firearms and on the Administration of Criminal Justice in Boston," Boston Law Review 57 (1977): 96-146, 290-333; Heumann and Loftin, "Mandatory Sentencing and the Abolition of Plea Bargaining." See, generally, Albert Alschuler, "Sentencing Reform and Prosecutorial Power: A Critique of Recent Proposals for 'Fixed' and 'Presumptive' Sentencing," University of Pennsylvania Law Review 126 (1978): 550.

18 For a discussion of the problems generally encountered by reform in the criminal justice system, see Raymond T. Nimmer, The Nature of System Change: Reform Impact in the Criminal Courts (Chicago: American Bar Foundation, 1978).

19 Church, "Plea Bargains, Concessions and the Courts," p. 400.

20 Nimmer, "A Slightly Moveable Object."

entire informal system; hence the frequently observed cooperative effort of regular participants to circumvent changes and maintain business as usual.[21]

BROADENING THE ORGANIZATIONAL PERSPECTIVE

This study is an effort both to supplement and to modify the organizational understanding of the operation of criminal courts previously described. It is based in part on an observation made during a precursor to this research, a national scope project investigating the problem of pretrial delay.[22] During that research the project staff (of which I was a member) spent a considerable amount of time traveling to 21 urban courts that differed widely in the speed with which they handled civil and criminal cases. A common theme emerging from our interviews with lawyers and judges in those courts was not simply a general contentment with the existing pace of litigation -- no matter how fast or slow -- but a firm belief on the part of many attorneys and judges that their court's pace was really the only proper one, that any significant speeding up or slowing down would almost certainly produce injustice in individual cases. We thus theorized that the existing pace of litigation in a court was supported and influenced by shared local norms regarding how fast criminal cases ought to move. Efforts to alter that pace run up against the institutional inertia common to any complex organization. But in addition, such reforms face a general belief among practitioners that change in the speed of case disposition is not simply inconvenient but improper and unfair as well. This set of shared norms regarding case disposition speed we termed one aspect of "local legal culture."

The concept of culture implies at the least shared norms and attitudes concerning proper behavior. Originally utilized by anthropologists to describe the myriad formal and informal practices, rules, and inchoate communal judgments characterizing a particular tribe or other societal grouping, it has been borrowed by other disciplines as well. Political scientists have attempted to explain political differences among nations and even among American states in terms of political culture.[23] Social scientists of several disciplines have described the specifically legal

21 Studies adopting this organizational perspective in one degree or another include, James Eisenstein and Herbert Jacob, Felony Justice: An Organizational Analysis of Criminal Courts (Boston: Little-Brown, 1977); Heumann, Plea Bargaining; Lynn Mather, Plea Bargaining or Trial? (Lexington, MA: Lexington Books, 1979); Blumberg, Criminal Justice.

22 Church, Justice Delayed.

23 Good reviews of this literature and discussions of its applicability to judicial research can be found in Joel Grossman and Austin Sarat, "Political Culture and Judicial Research," Washington University Law Quarterly 1971: 177-207; Herbert Kritzer, "Political Culture, Trial Courts and Criminal Cases," paper delivered at the 1978 Annual Meeting of the American Political Science Association.

aspects of a society in terms of legal culture.[24] More recently legal culture has been applied in a much narrower context to the norms and attitudes concerning case disposition and participant behavior commonly held by practitioners in local trial courts.[25]

At the local level legal culture can be an extremely useful concept for sorting out differences among courts and for explaining individual and system-wide behavior. Anyone who has spent much time in different criminal courts is aware of both obvious similarities and striking differences. Courts vary along objective dimensions: size, organization, formal procedures. But they seem to differ very much in more subjective terms as well: Lawyers constantly speak of differences across courts in "local practice," a term that encompasses a great deal more than the legal profession's version of mutual assistance commonly termed "professional courtesy." In their daily work practitioners speak frequently of "garbage" cases, of an excessively harsh (or lenient) sentence, an "old" case, an "unnecessary" trial that wasted everyone's time, an attorney who is uncooperative or overly adversarial. Such statements imply existence of a set of shared standards regarding proper behavior of attorneys, judges, defendants.

As mentioned previously, shared norms regarding the pace of litigation have been hypothesized to exist in trial courts and be related to differences in actual disposition times observed across those courts.[26] Heumann suggests additionally that practitioners in the courts he observed shared views concerning the kind of case that was appropriate for a jury trial and the kind that was best settled by a plea bargain.[27] Others have described the "going rates" for criminal sentences that exist in particular courts.[28] Studies of other types of organizations -- from legislative committees to tribal councils -- suggest that such informal rules and standards can have a powerful influence on behavior.[29]

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24 See Henry Ehrmann, Comparative Legal Cultures (Englewood Cliffs, NJ: Prentice-Hall, 1976); Lawrence M. Friedman, "Legal Culture and Social Developement," Law and Society Review 4 (1969): 29.

25 In addition to the delay study previously mentioned (Church, Justice Delayed), see Martin Levin, "Urban Politics and Judicial Behavior," Journal of Legal Studies 1 (1972): 193; Herbert Jacob, Debtors in Court (Chicago: Rand McNally, 1969).

26 Church, Justice Delayed, ch. 4.

27 Heumann, Plea Bargaining, esp. ch. 5.

28 Heumann, Plea Bargaining, pp. 75-78; David Sudnow, "Normal Crimes: Sociological Features of the Penal Code in a Public Defender's Office," Social Problems 12 (1965): 52.

29 See, e.g., the literature on norms and informal rules in the United States Congress best represented by Donald Matthews, U.S. Senators and Their World (Chapel Hill: University of North Carolina Press, 1960); Richard Fenno, The Power of the Purse (Boston: Little, Brown. 1966).

This normative dimension to the actions of criminal court practitioners is sometimes overlooked in studies attempting to explain criminal courts solely in organizational terms. Such studies often view what goes on in court as part of an elaborate effort of practitioners to maximize income, minimize effort and preserve an existing system of relationships and expected professional accommodations. It is one thing to say that practitioners resist efforts aimed at court reform because of systemic inertia and a desire to maintain existing professional perquisites. When proposed changes additionally run counter to strongly held and shared beliefs concerning what is fair and just in individual cases, the resistance takes on a somewhat different coloration. Before our understanding of local legal culture can be appreciably advanced, however, the concept needs more specificity. As currently used, the term is rather amorphous.

This research attempts to operationalize and quantify key aspects of local legal culture that have been suggested in previous research. The measures developed will be applied in four courts to produce a kind of rough map of attitudinal agreement and disagreement among practitioners in the different courts. Finally, these normative measures will be related to actual dispositional patterns. The conceptual focus of the study is narrow: local legal culture will refer to the practitioner attitudes and norms governing case handling and participant behavior in a criminal court. As such, it differs from the typical anthropological use of the term in at least two ways.

First, it focuses exclusively on attitudes rather than the broader range of societal attributes generally held by anthropologists to make up a culture. And the attitudes of interest relate narrowly to the way in which particular types of cases should be dealt with and to accepted standards of behavior; more global legal views on the importance of law abidingness, for instance, or the proper role of law in the social order are not under investigation here. A second point of difference from anthropological usage involves the group of individuals being studied. We are dealing here with a narrowly defined subgroup of society: the practitioners in a particular court system. No attempt will be made to speak of the legal culture of even a city, let alone a broader area.

A conceptual difficulty lies in the close relationship between local legal culture thus defined and existing case handling procedures. Neither "causes" the other in any simple sense. To the extent that system-wide norms exist, it will be argued that they influence participant behavior in courts much as they do, for example, in congressional committees.[30] Causality undoubtedly runs in both directions, as Heumann's study of how new practitioners learn plea bargaining norms from experience in court aptly demonstrates: the norms of new practitioners are influenced by the way in which cases are dealt with in the court, but those practices are similarly supported against change by stable practitioner norms regarding proper procedures.[31] That the relationship is reciprocal lessens neither its theoretical nor its policy import. Neither does the difficulty of ascertaining the determinants of local legal culture. I suspect that local legal norms grow and change through a

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30 See Fenno, The Power of the Purse.

31 Heumann, Plea Bargaining, esp. chs. 4-6.

gradual process of accretion affected by political, economic and social variables, the number and type of criminal cases that make up court workload, recruitment patterns, levels of compensation for judges and trial attorneys, and simple historical accident. Given the current state of knowledge in the area, the search for their determinants in a particular court is likely to remain on the level of informed speculation for some time.

A major assumption of past studies under investigation in this research is the existence of distinctive and shared local norms governing the disposition of criminal cases. A somewhat different, indeed in a sense contradictory, hypothesis of this study originated in my hunch that in the rush to expose as false the theoretical pieties of the adversary system, social scientists may have overlooked aspects of the process in which real -- as opposed to purely formal -- conflict characterizes the disposition of criminal cases. This hunch has been nurtured by observing the obvious distaste many trial lawyers working in a district attorney's office seem to have for the defense side in general, a feeling often reciprocated by defense attorneys. (Possibly the most graphic evidence of this antipathy came from reports in Miami that the annual prosecutor-public defender softball game had degenerated into a fist fight the summer I was conducting interviews.) After years of scholarly debunking the "adversarial myth," it may be that the adversary system is in need of what Martin Diamond once called "bunking."

Quite obviously the formal symbol of the adversary process, the trial, does not typify the usual mode of handling criminal cases. But conflict can animate negotiation procedures as well, as the bargaining surrounding trade union contracts or international treaties well illustrates. Trials -- the legal equivalent of strikes or wars in the preceding analogies -- need not occur in every case to demonstrate that prosecution and defense take their adversary roles seriously. In particular if prosecution and defense hold substantially different views concerning what <u>should</u> be happening to criminal cases, at least the prerequisites for real conflict exist. The organizational literature has emphasized to such a great extent the absence of prosecution-defense conflict and their general agreement and cooperation to process criminal defendants through an almost bureaucratic process that very little room is left for these kinds of attitudinal differences.

These ruminations suggested the desirability of ascertaining in detail how participant attitudes vary both within and across courts. The following section describes the methodology used in this study to extract these practitioner attitudes.

ASSESSING LEGAL CULTURE

A project aimed at investigating a concept as indistinct as local legal culture immediately faces the problem of how to get an analytical handle on the subject of inquiry. Most previous studies of norms and attitudes of court practitioners based their findings on observation and in-depth interviews. Using the ethnographic tools of an anthropologist investigating an alien society, these researchers immersed themselves in the life of a courthouse. To the extent possible given constraints of time and money, they watched, listened, and gradually gained the confidence of the courthouse regulars.

The raw data for these studies are thus hurriedly scribbled notes on events in and out of the courtroom, tapes or notes of participant interviews, together with subjective impressions and hunches. At its best, this type of research probably provides as rich and illuminating a picture of local court norms and practices as can be obtained.[32]

This method has obvious shortcomings, however. It is time-consuming and therefore expensive, particularly when the researcher is interested in comparing several courts. Furthermore, it is always subject to the pejorative "impressionistic." This appellation is all too often applied unfairly by social scientists overly impressed by the importance, if not the infallibility, of quantitative data. It is undeniable, however, that thoughtfully designed quantitative inquiry does provide an opportunity to gain an added degree of analytical precision that is especially important in comparative research. Ethnography becomes particularly problematic when a researcher's goal is to dissect and compare relatively narrow differences in attitudes across several courts.

The major alternative to an anthropological approach is a general attitude questionnaire administered to a sample of practitioners in the courts being examined. Lawyers and judges are typically asked to categorize the extent of their agreement or disagreement with a number of general statements designed to reveal the attitudes under investigation. This technique has the advantage of permitting comparable quantitative data to be gathered in several courts at a relatively low cost per respondent.[33]

While this methodology can yield interesting results, legal professionals often resist answering general questions regarding case disposition. Trained to search for minute distinctions and to focus on the particular, lawyers tend to be uncomfortable with abstract questions concerning process. We are just beginning to understand the extent to which the disposition of criminal cases <u>is</u> complex and particularistic. Recent interview-based research has suggested that local attitudes regarding how a case should be handled vary considerably with its seriousness, the antecedant history of the defendant, the strength of the evidence. Hence much of lawyers' reluctance to generalize may be well-founded.

The difficulties inherent in the previously used methods for ascertaining practitioner attitudes argue for a different approach. If local legal culture exists as an influence on the disposition of individual criminal cases, then questions might best be directed toward specific factual incidents. This somewhat novel alternative was adopted in this research. A questionnaire was designed which included brief descriptions of 12 hypothetical cases.

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32 Good examples of such studies include Heumann, <u>Plea Bargaining</u>; Mather, <u>Plea Bargaining or Trial</u>; Lief Carter, <u>The Limits of Order</u> (Lexington, MA: Lexington Books, 1974).

33 See James Gibson, "Judges' Role Orientations, Attitudes, and Decisions: An Interactive Model, <u>American Political Science Review</u> 72 (1978): 911; John Hogarth, <u>Sentencing as a Human Process</u> (Toronto: University of Toronto Press, 1971).

The descriptions included a summary of the victim's story, the facts surrounding the defendant's arrest, witnesses and their testimony, physical evidence, and antecedant information on the defendant.[34]

The factual skeletons of the cases were obtained from actual closed files in the Wayne County Prosecuting Attorney's Office; they are thus not purely hypothetical. These facts were modified, however, so as to provide systematic variation in the 12 cases eventually used along the three dimensions found in previous research to affect disposition: 1) seriousness of the criminal incident, 2) prior criminal record of the defendant, and 3) strength of the evidence. Under these circumstances, it should be obvious that the cases are almost surely not a representative sample of any court's actual caseload. The attempt was not to be representative but to provide in a limited number of hypotheticals a mix of the factors generally held to influence the processing of criminal cases.

Three separate elements of local legal culture are analyzed in this research: norms governing mode of diposition, sentence, and disposition time. These particular dimensions were chosen because of suggestions of their existence in prior research and because of their clear policy importance. The latter reason was particularly crucial. Virtually every major criminal court reform in the past decade has been explicitly aimed at the manner in which cases are decided (plea bargain, jury trial, diversion, etc.), the length of time the cases take to reach a conclusion, or the sentences meted out to convicted defendants. The extent to which such reforms may run counter to conflicting practitioner attitudes is the major policy-related theme of this research.

In order to pursue these inquiries, practitioners in four cities were asked the same set of questions after each hypothetical case: one query regarding proper mode of disposition, one on the preferred sentence if guilty, and one on appropriate disposition time. Obtaining normative judgments on procedural issues is complicated by the problem of providing a clear context for the responses. Should respondents be requested to assume their existing caseloads in determining, for example, the appropriate mode of disposition for a case? Or should they assume some ideal system in which everyone involved worked on one case at a time and where there were no resource constraints? The former assumption ties the normative judgments of respondents too closely to existing practices; any differences observed between courts on this basis might simply be caused by unequal caseloads of participants or answers might reflect predictions of actual outcome rather than norms regarding proper outcome. The latter alternative is too ambiguous or speculative to yield consistent results. If legal culture exists as a day-to-day influence on case dispositions in a court, it is related to real cases in a real system and not to some ethereal ideal.

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34 A somewhat similar methodology was adopted in a study of prosecutors' offices in several cities. See Joan Jacoby, Edward Ratledge and Stanley Turner, Research on Prosecutorial Decisionmaking: Phase I Final Report (Washington, D.C.: Bureau of Social Science Research, 1979).

A middle ground was chosen between these two opposing alternatives. Respondents were asked to assume a court system with "adequate, but not unlimited, resources;" one in which "prosecution, defense, and the court have adequate resources to deal with their caseloads in a fair and expeditious manner." This formulation represents an attempt to obtain views concerning realistic goals for the criminal courts. The questions were designed in specific terms to ask the general question, "How would this case be dealt with in a properly operating and adequately funded court system?" A major policy implication of this research concerns the linkage between practitioner norms and resistance to reform. It was hoped that this relationship could be best illuminated by posing the attitudinal questions in terms of what might reasonably be expected of a real world criminal court system.[35]

The questionnaires were administered to judges, assistant district attorneys and defense attorneys in Bronx County (New York), Detroit, Miami and Pittsburgh. The cities were chosen from among those studied previously in the National Center's delay project because of the availability of extensive quantitative and qualitative data on the criminal courts in those cities. Existing data on the four courts show them to handle cases at different speeds, use trials and guilty pleas in different proportions, and sentence convicted defendants dissimilarily. It was expected that these differences in actual practice would be reflected in attitudinal differences among practitioners in the courts.

In each city, the presiding judge, prosecuting attorney, and head of the public defender or legal aid office were contacted and told about the project. In every case their cooperation was complete and gratifying. The defense perspective was represented exclusively by state-funded defense agencies in the Bronx, Pittsburgh and Miami. This choice was based primarily on the difficulty of sampling members of the private bar in each city and the fact that between 70 and 90 percent of the adult felony defendants in those cities were represented by such agencies. In Detroit the defense attorney sample was drawn from attorneys who were most frequently appointed by the court to represent indigent defendants since the city maintains no public defender office.

Sample sizes for each city and category of practitioner varied from 5 (Miami judges) to 42 (Miami prosecuting attorneys). The total number of questionnaires returned was 242. The questionnaires were distributed to all trial attorneys in district attorney and public defender offices by their supervisors.

To the extent possible, this distribution was preceded by a briefing of supervisors by the author concerning the nature of the research. Each judge sitting during the week project staff was at each court was contacted personally; those on vacation or otherwise absent were left a questionnaire with a cover letter from the presiding judge. Questionaires were completed anonymously and were returned separately by respondents in an attached stamped envelope. Each questionnaire was then manually checked to eliminate ambiguous or illogical responses before being keypunched and analyzed by computer.

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35 The questionaire is reprinted in Appendix A.

The exact number of prospective respondents actually given a questionnaire is unknown in most cases and thus a fully accurate rate of return cannot be computed for each sample. Table 1.1 indicates the maximum possible number of respondents in each category and the number of questionaires actually returned. The percentage indicated will therefore understate the actual response rate since potential respondents may not have been given questionnaires due to absence or inadvertance. Both the absolute number of questionnaires returned and the return rate varies substantially from category to category. There are obviously a number of respondent categories for which I would have wished for substantially more responses. This problem mandates that results be regarded as tentative rather than conclusive. It also argues against use of sophisticated statistical techniques.

When assessing findings reported here, it should be remembered that the percentages expressed in Table 1.1 are not based on samples; rather they represent the proportion of returns from the universe of all felony-level practitioners of each type in each city. The important issue regarding rate of return is the bias likely to be introduced into the substantive findings by a relatively low return rate among some groups of respondents. Such bias may very well be present in some categories here, but given the nature of the questionnaire, its likely direction is at the least not intuitively obvious.

Problems inherent with low return rates in some groups are lessened somewhat by existence of much higher rates among related groups of respondents. The analysis that follows will focus primarily on rather broad areas of agreement and disagreement among groups of practitioners within and across court systems. In this context, it is hoped that the overall patterns which emerge may be put forward with somewhat more confidence than the lowest return rates might suggest, since the data often reveal consistent patterns across groups with both higher and lower response rates.

In a sense, the "sampling" which took place in this reserach is roughly analogous to the self-selection process implicit in most interview-based research in the courts: for a variety of reasons, some practitioners simply do not want to take the time to be interviewed. Hence the group of practitioners interviewed in ethnographic studies seldom approximates a random sample, and the n's are of necessity considerably smaller than those reported here. Given the nature of the subject under examination and the substantial practical difficulties of obtaining a consistently high rate of response in a number of different organizational settings, this research might best be viewed as falling somewhere between the ethnographic studies which generated its theoretical framework and work utilizing the more rigorous quantitative techniques borrowed from psychology.

Measures of actual court performance were obtained from a random sample of approximately 500 disposed felony cases in each court. Two of these samples were originally drawn as part of the previous delay study; two were drawn specifically for this project. Information on original charge, mode of disposition, key dates in the case history, prior record of the defendant, and seriousness of the criminal incident were collected from court, district attorney, and police files. In three of the cities a supplementary sample of crimes against the person was drawn to allow a more detailed analysis of this category of case.

TABLE 1.1
QUESTIONNAIRE RESPONSES

	Maximum Possible Respondents	Questionnaires Returned	Percent Returned
Bronx			
Judges (Criminal Division)	24	9	38%
Assistant D.A.'s (Felony Trial Divisions and Felony Case Assessment Unit)	85	27	32%
Legal Aid Attorneys (Felony Divisions)	75	12	16%
Detroit			
Judges	23	9	39%
Assistant Prosecutors (Felony Trial, Warrant and Pretrial Divisions)	45	39	87%
Defense Attorneys	70*	31	44%
Miami			
Judges (Criminal Division)	14	5	38%
Assistant State Attorneys (Felony Divisions)	50	42	84%
Public Defenders (Felony Divisions)	28	11	39%
Pittsburgh			
Judges (Criminal Division)	14	7	50%
Assistant D.A.'s (Felony Divisions)	35	30	86%
Public Defenders (Felony Divisions)	25	20	80%

* Total questionnaires distributed to Detroit defense attorneys.

The next chapter describes the main features of the criminal court systems in the four cities examined in this project. Chapters III to V report the substantive results of the research.

CHAPTER II

FELONY COURTS IN FOUR CITIES

This chapter describes the setting, structure and operation of felony justice in the Bronx, Detroit, Miami and Pittsburgh. No attempt is made to provide a comprehensive picture. Such an effort would require four separate books. Instead the sections that follow give in broad outline the distinguishing characteristics of the felony courts investigated in this study.

The first four sections provide snapshots of the four court systems: the structure of the court and prosecuting attorney's office, provisions for indigent defense, an overall summary of the steps in the disposition of felony cases, and a brief overview of the operation of the courts in more quantitative terms. Statistics derived from samples of closed felony cases will describe the types of cases in the caseload, predominant modes of disposition, and the overall pace of criminal litigation. A final section summarizes the major points of similarity and difference among the courts.

BRONX COUNTY, NEW YORK

Bronx County is one of the smaller of New York City's five boroughs with a population in 1975 of 1,377,000. The Bronx was a flourishing residential city as recently as the years immediately following World War II. In the past two to three decades, however, rapid deterioration of neighborhoods, accompanied by substantial increases in unemployment and street crime, have made it a symbol of urban blight in America. This dubious distinction was formalized by visits of President Carter in 1977 and Pope John-Paul in 1979 to the "bombed out" areas of the South Bronx. These pilgrimages had all the flavor of war-time trips by heads of state to rally beleaguered troops in combat zones.[1] The population is now heavily black (24% in 1975) and Puerto Rican (22% of the 1975 population had Spanish surnames).

The major criminal justice agencies in the Bronx are housed in two buildings one block apart located near the once-fashionable Grand Concourse, two blocks from Yankee Stadium. A stately depression-era stone edifice houses the Bronx County Supreme Court (the county's court of general jurisdiction); a new cement and glass building contains the Criminal Court (the court of limited jurisdiction), Family Court, the main office of the Bronx County District Attorney, and central booking for the police department.

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1 One police station in the South Bronx that was under a virtual state of seige during the most violent years of the 1960's was dubbed "Fort Apache" by the police officers who worked there. By 1978 the surrounding area was so decimated that few buildings remained standing. Crime dropped in absolute terms with the precipitous fall in population. The precinct house is still in operation, although it is now referred to as "the little house on the prairie."

The Tammany Hall political machine is long dead in New York but remnants survive. Party politics are very close to the criminal justice system in all boroughs of New York, and the Bronx is no exception. Vacancies on the Criminal Court are filled by the Mayor; on the Supreme Court, through a complex system of nominating conventions. The bottom line in both instances is almost always party: the black robes of judicial office are seldom bestowed upon those who have not spent considerable time in party clubhouses. Party also provides lines of communication from the courts to higher levels of the judiciary and to borough and city governments. Relations are particularly close between the courts and the district attorney's office, a connection that also follows (Democratic) party lines.

The criminal division of the Bronx County Supreme Court has 29 judges with approximately equal numbers of permanent justices and judges on temporary assignment from Criminal Court and from other courts both within New York City and from surrounding counties. The criminal and civil divisions of the court represent more or less separate administrative units. The criminal division is presided over by an assistant administrative judge directly responsible to the administrative judge supervising all New York City courts. The administrative heirarchy of the New York State courts is extensive and comparatively strong, making these supervisory relationships significant.

The Bronx County District Attorney's office prides itself on being one of the more progressive in New York City. The office initiated one of the first bureaus in the nation designed to give special consideration to cases involving serious crime and habitual offenders. Many of the recordkeeping functions are performed by computer. The office is frequently involved in innovative programs. Most new assistant district attorneys (a.d.a.'s) are recruited from local law schools; in the past several years competition for the jobs has been keen. Political connections of applicants reportedly play only a minor role in the selection process. Turnover in the office has been decreasing over the past several years. At present, new a.d.a.'s are asked to stay a minimum of three years, trial attorneys generally have a minimum of one year experience in the office, and most bureau chiefs have been in the office five years or more.

Indigent defense in all of New York City is handled by the Legal Aid Society, a private non-profit organization under contract to the city. The Legal Aid Society is the oldest organization of its kind in the country. The Bronx office employs 80 attorneys to handle felony cases. Separate divisions handle misdemeanor cases, appeals, and civil matters. Like the district attorney's office, the Legal Aid Society recruits most of its attorneys from local law schools, although a substantial number of new attorneys attended other major eastern institutions. Turnover of trial attorneys is fairly low and, as with the district attorney's office, those handling felony trials generally have at least 1 to 2 years experience.

Assistant district attorneys are assigned to courtrooms (or "parts") for several months at a time. These assignments are not only of fairly short duration but are also flexible in that a.d.a.'s may move from part to part following a case that is specially assigned to them. These procedures, together with the fact that legal aid attorneys are assigned to cases without

regard to courtroom, means that close working relations are not easily established between particular judges, a.d.a.'s, and defense attorneys.[2]

Felony cases begin their court life in the Criminal Court -- the court of limited jurisdiction. Most are disposed in Criminal Court as well.[3] Relatively little screening of felony cases occurs prior to filing in Criminal Court, although recent efforts have been made to improve the quality of police investigations at this point to allow a more accurate assessment of a case to be made by an a.d.a. at its inception.

Volume and speed are the dual concerns in the lower courts, particularly in the courtrooms handling arraignments. Through unilateral prosecutorial reduction in charges, dismissals and -- more commonly -- plea bargains, defendants charged with crimes as serious as robbery more or less routinely plead guilty to misdemeanor charges and receive misdemeanor sentences (1 year incarceration or less). Those felony cases which cannot be handled as misdemeanors are sent to the grand jury for indictment and bindover to Supreme Court. The overall process results in very extensive screening of felony cases before they reach the Supreme Court. Per judge caseload in this court is quite low compared to the other three courts in this study,[4] but the typical case is substantially more serious.

Once in Supreme Court, most cases spend up to four months in an arraignment part. The primary goal here is to arrive at a satisfactory plea agreement. Immediately after indictment, a group of bureau chiefs in the district attorney's office discuss each case and set outside limits for plea negotiation. A.d.a.'s handling the case are generally bound by these determinations. After both sides indicate they are ready for trial and conclude that a plea bargain is not forthcoming, the case is transferred to a trial courtroom. Additional efforts to settle the case short of trial continue here for several more months until the case is formally pled, tried, or transferred to a special division designed to handle very old cases. Once in this special division (usually 8 to 12 months after indictment) cases are either settled by plea or tried in short order.

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2 Two special prosecutorial bureaus dealing with major offenses and homicide are exceptions. A.d.a.'s assigned to these divisions deal on a long-term basis with judges and (to a lesser extent) legal aid attorneys who are also permanently assigned to deal with such cases.

3 A recent study of criminal case processing in all five boroughs in New York found that 77 percent of felony arrests were handled in the Criminal Courts. Vera Institute of Justice, Felony Arrests: Their Prosecution and Disposition in New York City's Courts (New York: Vera Institute of Justice, 1977), p. 16.

4 In 1976, the average Supreme Court judge in the Bronx disposed of 111 cases. This figure compares with 354 in Pittsburgh, and 751 in Miami. Data is unavailable for Detroit Recorder's Court. Thomas Church, Justice Delayed, (Williamsburg, VA: National Center for State Courts, 1979), p. 34.

Table 2.1 depicts how a sample of felony cases were handled in the Bronx County Supreme Court in 1978. Several important characteristics of the court emerge from the table. The first is the overall seriousness of the caseload: 58 percent of the cases were crimes of violence against the person; 83 percent of those violent crimes were either rapes, robberies or homicides (these three offenses comprise over 43 percent of the total caseload of the court). The other side of this picture is the relative absence of property crimes (only 20 percent of the caseload). The extensive screening accomplished by the district attorney and the Criminal Court prior to indictment is reflected in the general lack of cases involving such crimes as assault and theft, for example, and also by the small number of dismissals occurring in Supreme Court. Pre-indictment culling of weak or less serious cases in the Bronx is the most extensive of any of the four courts examined in this study.

The overall emphasis on obtaining guilty pleas can be seen in the proportion of cases disposed by plea: 84 percent of the cases not dismissed were pled. This predominance of guilty pleas is apparent across all cases, although the proportion of defendants pleading guilty falls somewhat as the charges become more serious. Ninety-one percent of the cases involving property crimes were resolved by guilty pleas; 87 percent of the robberies but only 65 percent of the murders were pled. The row totals also indicate that those cases in which the defendant does not plead guilty generally proceed to jury trial: only 9 of the 581 cases in the sample were disposed of by non-jury trial.

As might be inferred from the preceding discussion of the steps in the disposition of criminal cases, felony cases move rather slowly in the Bronx. The median case in the sample took almost seven months from arrest to either guilty plea, dismissal or jury verdict; 25 percent required more than a year. The median jury trial was concluded approximately 10 months after the defendant was arrested.

DETROIT, MICHIGAN

Detroit, the automotive capital of America, shares many of the urban woes of the Bronx: declining population, high unemployment, racial tension. The population was 1,335,100 in 1975, of which 45 percent were black or of hispanic origin. According to F.B.I. uniform crime statistics, the per capita incidence of violent crime is higher in Detroit than in any of the other cities investigated in this research.

All crimes committed in the city of Detroit fall within the jurisdiction of Recorder's Court, a court with jurisdiction limited to criminal cases within the city limits. The court, the main office of the Wayne County Prosecuting Attorney, and various other criminal justice agencies are located in the 12-story Frank Murphy Hall of Justice, a comparatively modern and functional building located several blocks from the main downtown area. Immediately adjacent to the courthouse are police headquarters and the Wayne County Jail.[5]

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5 For an informative and comparatively recent description of Detroit Recorder's Court, see James Eisenstein and Herbert Jacob, Felony Justice: An Organizational Analysis of Criminal Courts (Boston: Little-Brown, 1977), ch. 6.

TABLE 2.1

BRONX COUNTY SUPREME COURT
CRIME TYPE BY MODE OF DISPOSITION
(1978 Dispositions)

Mode of Disposition	Homicide	Rape	Robbery	Assault	Drugs	Weapons	Burglary	Theft	Other	Totals (% of all Cases)
Guilty Plea	28 (54.9%)*	19 (45.2%)	124 (75.6%)	37 (71.2%)	47 (88.7%)	38 (76.0%)	61 (80.3%)	35 (77.8%)	35 (72.9%)	424 (73.0%)
Non-Jury Trial	3 (5.9%)	1 (2.4%)	2 (1.2%)	0 (0%)	0 (0%)	2 (4.0%)	0 (0%)	1 (2.2%)	2 (4.2%)	11 (1.9%)
Jury Trial	12 (23.5%)	7 (16.7%)	16 (9.8%)	8 (15.4%)	4 (7.5%)	8 (16.0%)	6 (7.9%)	2 (4.4%)	3 (6.3%)	66 (11.4%)
Dismissal	8 (15.7%)	15 (35.7%)	19 (11.6%)	7 (13.5%)	2 (3.8%)	2 (4.0%)	8 (10.5%)	5 (11.1%)	7 (14.6%)	73 (12.6%)
Other	0 (0%)	0 (0%)	3 (1.8%)	0 (0%)	0 (0%)	0 (0%)	1 (1.3%)	2 (4.4%)	1 (2.1%)	7 (1.2%)
Totals (% of all Cases)	51 (8.8%)	42 (7.2%)	164 (28.2%)	52 (9.0%)	53 (9.1%)	50 (8.6%)	76 (13.1%)	45 (7.7%)	48 (8.3%)	581 (100%)

*Percentage figures in body of table are column percentages, i.e., the percent of each crime type disposed by each mode. Percentages may not total 100 due to rounding error.

Party politics are less significant in Recorder's Court than in the criminal courts of the Bronx. All judicial elections are formally non-partisan in Michigan and contests for Recorder's Court are often wide-open and heavily contested. This fact, combined with the longstanding tradition of non-partisanship in city-wide elections in Detroit, militate against the kind of close courthouse-clubhouse ties present in older cities having more traditional political systems.

Detroit felony cases do not originate in a court of limited jurisdiction. Arraignment, preliminary hearing and trial are all conducted in various divisions of Recorder's Court. The court also handles all misdemeanor cases arising in Detroit. The court has 13 authorized judgeships and has regularly been allocated several visiting judges as well. Since at least 1972 the court has been in the throes of a progression of "crash programs" to deal with a growing backlog of cases.

In 1977 the most recent crash program was mandated by the Michigan Supreme Court. It placed Recorder's Court in a virtual state of receivership. A "special judicial administrator" was appointed with substantial authority over both the judges and a sizeable amount of federal grant money. The crash program lowered considerably the number of cases awaiting trial in Recorder's Court, although not without an accompanying charge that the backlog was reduced only by overly lenient plea bargains. The crash program ended in 1979 in all but a formal sense and primary authority for running the court was returned to the judges. The judges on the court, however, are heterogeneous in terms of race, political persuasion, judicial philosophy, and commitment to the job, and reports of internecine court warfare sporadically appear in local newspapers.

Like the Bronx County District Attorney, the Wayne County Prosecutor is a regular recipient of federal grants for new programs, computerized recordkeeping, and the like. Compared with other offices around the county, salaries for the 131 assistant prosecutors are high in Detroit, and turnover is low -- particularly at the supervisory level. Probably because of these factors, completion for professional openings in the office is keen.

New attorneys typically serve in the misdemeanor courts and on preliminary exams for a period of apprenticeship. They move then either to appeals or to one of the trial courtrooms. The more seasoned veterans are assigned to screen and write warrants and to hold the pretrial conferences in which plea negotiations are conducted. Office organization is complex and bureaucratic, reflecting considerable concern at the management level to control the actions of assistants through policy mandates and direct supervision.

Indigent defense in Detroit is decentralized, with no one organization having primary responsibility for the task. If a defendant can demonstrate indigency, counsel is appointed by the court from a pool of lawyers who have indicated their interest in such appointments. Many of these attorneys are newly in practice and use the appointments to gain both experience and supplementary income. A number, however, are long-time courthouse regulars -- once known as the "Clinton Street Bar" -- who earn the major share of their livelihood from Recorder's Court appointments. In response to a growing feeling that some appointed counsel were providing less than vigorous representation, the Legal Aid and Defender's Association was formed in the mid-1960's.

This private organization is controlled by an independent board; its philisophical orientation is left-of-center to radical and is militantly pro-defendant. After a series of scandals regarding Recorder's Court appointments the Michigan Supreme Court required that 25 percent of the appointments go to the Defender's Association. Representation fees obtained from the court are pooled to provide regular salaries for legal and non-legal staff of the association and to cover office expenses.

Recorder's Court operates on an individual calendar system in which felony cases are randomly assigned to one of the 13 judges at the preliminary hearing. Once assigned, a case will remain with that judge until it is disposed of. The prosecutor's office assigns assistant prosecutors to the individual judges on a semi-permanent basis. Hence assistant prosecutor and judge tend to develop some rapport through working together. Fairly rigid office policy, together with the constraints of the pretrial division's plea determinations, substantially restrict discretion of the trial assistants, however. The defense side is represented by a parade of different appointed and retained counsel which further hampers adoption of a "team" approach to securing dispositions.

The prosecutor's warrant division must issue all formal arrest warrants in felony cases. The morning after a defendant is picked up by the police, the arresting officer and the complaining witness meet with a prosecutor from this division. The officer will have filled out a detailed police report which includes information on the offense, names and addresses of witnesses, and a list of physical evidence. Based on this information and the interview the prosecutor will either issue a warrant for the offense he deems appropriate or send the officer back to do an additional investigation. Seasoned assistant prosecutors are typically placed in this division and the warrant decision represents a significant screening point. Once a warrant has been approved, it is routinely signed by a judge and the defendant is arraigned within several hours.

Criminal proceedings are conducted by information rather than grand jury indictment in Michigan. The defendant has a right to a preliminary examination at which the prosecution must establish probable cause. If the examination is not waived by the defense, it is held one to two weeks after the arraignment. The vast majority of preliminary hearings result in a finding of probable cause to bind over the defendant for trial as charged.

Several weeks after the preliminary examination, a pretrial conference is held between the defense attorney and a member of the prosecutor's pretrial conference division. The primary purpose of this conference is to discuss a negotiated plea. As in the warrants division, the assistant prosecutors assigned to the pretrial division are among the more experienced in the office. They evaluate a case, discuss it with the defense, and determine an appropriate plea offer. These offers are controlled to some extent by office policy regarding minimum acceptable pleas for particular offenses. The offer made at this point is, according to policy, non-negotiable and final, although some slippage reportedly occurs by the time a case is about to be tried. If the plea offer is acceptable to the defendant, he is immediately brought before a judge to enter the plea. If not, the case is set down for trial.

Table 2.2 shows the caseload of Recorder's Court to have less of a concentration of serious violent crime than that of the Bronx County Supreme Court. Crimes against person make up about one-quarter of the Recorder's Court caseload; homicides, rapes and robberies constitute 69 percent of the violent crime but only 18 percent of the total court caseload. Property crimes, on the other hand, make up fully one-third of the cases, drug cases almost a quarter.

Even though prosecutorial screening in Detroit is substantial, more than 25 percent of the felony informations filed in Recorder's Court are dismissed -- twice the proportion in the Bronx. As elsewhere the guilty plea is the predominant mode of case disposition: 82 percent of the non-dismissed cases ended in a guilty plea. This figure is almost exactly that of the Bronx, as is the proportion of property crimes disposed by plea (91%). More serious cases, however, are somewhat more likely to be tried in Detroit. Non-jury trials are more frequent in Detroit as well with more than one-third of the trials held without a jury.

Cases move expeditiously in Detroit, at least in comparative terms. The median felony case in 1977 moved from arrest to guilty plea, verdict or dismissal in less than three months -- less than half the time taken by Bronx cases. Three-quarters of the cases were closed in 228 days (compared to 365 days in the Bronx). The median jury trial was concluded six and one-half months after arrest.

MIAMI, FLORIDA

Miami is the major city in Dade County, a sprawling and rapidly growing sun-belt population center of one and one-half million residents. Although the city of Miami has benefited from the county-wide economic boom, it contains pockets of considerable poverty; over 45 percent of its population consists of Spanish speaking people of Cuban or Puerto Rican origin. Another 15 percent is black. Population density is low compared to Detroit and Bronx, however, and the incidence of violent crime is lower as well. Dade County outside Miami is remarkably diverse, containing poor communities alongside wealthy suburbs such as Key Biscayne and Coral Gables, the resort and retirement enclaves on Miami Beach, as well as rich agricultural lands of south Dade County.

The Eleventh Judicial Circuit Court in Miami handles the serious civil and criminal business of all Dade County. Of the 43 authorized judges on the Circuit Court, 12 are assigned to the criminal division located in the Metropolitan Justice Building, a part of the civic center complex several miles from downtown Miami and directly adjacent to the county jail and sheriff's headquarters. Also located in the Justice Building are the offices of the Dade County State Attorney (the prosecutor in Florida) and the Public Defender. All public facilities in the complex are modern and pleasant.

The entire court elects a presiding judge who then appoints administrative judges for the various divisions, including the criminal division. As in Detroit Recorder's Court, the criminal division is organized around an individual calendar system in which cases are permanently assigned to a specific judge.

TABLE 2.2

DETROIT RECORDER'S COURT
CRIME TYPE BY MODE OF DISPOSITION
(1978 Dispositions)

Mode of Disposition	Homicide	Rape	Robbery	Assault	Drugs	Weapons	Burglary	Theft	Other	Totals (% of all Cases)
Guilty Plea **	10 (71.4%)*	12 (48.0%)	22 (47.8%)	14 (36.8%)	70 (64.2%)	32 (51.6%)	38 (77.6%)	73 (68.2%)	13 (72.2%)	284 (60.7%)
Non-Jury Trial	1 (7.1%)	0 (0%)	5 (10.9%)	3 (7.9%)	5 (4.6%)	4 (6.5%)	1 (2.0%)	3 (2.8%)	1 (5.6%)	23 (4.9%)
Jury Trial	2 (14.3%)	7 (28.0%)	6 (13.0%)	6 (15.8%)	7 (6.4%)	3 (4.8%)	2 (4.1%)	4 (3.7%)	2 (11.1%)	39 (8.3%)
Dismissal	1 (7.1%)	6 (24.0%)	13 (28.3%)	15 (39.5%)	27 (24.8%)	23 (37.1%)	8 (16.3%)	26 (24.3%)	2 (11.1%)	121 (25.9%)
Other	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	1 (0.9%)	0 (0%)	1 (0.2%)
Totals (% of all Cases)	14 (3.0%)	25 (5.3%)	46	38 (8.1%)	109 (23.3%)	62 (13.2%)	49 (10.5%)	107 (22.9%)	18 (3.8%)	468 (100.0%)

*Percentage figures in body of table are column percentages, i.e., the percent of each crime type disposed by each mode. Percentages may not total 100 due to rounding error.
**Including Youthful Trainee Act defendants.

Dade County politics are typical of many "reform" cities. Commitment to a progressive "good government" model pervades most aspects of the metropolitan government, including the criminal justice system. The courts are well staffed and funded. The governor fills judicial vacancies from a list of candidates submitted by an independent commission. When the years remaining on his term are concluded, the judge must seek reelection on a non-partisan ballot. Incumbency is an invaluable asset in this election but it does not guarantee success; several gubernatorial appointees have been defeated by well-organized challengers in recent elections. Most judges were active in politics to some degree prior to their appointment or election but party ties and partisan activity are considerably less important in the selection process than in the Bronx or even in Detroit.

The State Attorney for Dade County is elected in a partisan election county-wide and is a significant figure in local politics. The pervasive non-partisan orientation of county government and the courts, however, decreases the operational importance of party ties. The office employs 110 attorneys. Turnover of new attorneys in the office has been something of a problem in recent years. Currently attorneys remain with the office an average of 2 to 3 years. Felony case handling in the office is accomplished by teams of three trial assistants assigned to each of the Circuit Court judges on a semi-permanent basis. Each team is responsible for early screening of the cases, determination of the proper charges, plea bargaining decisions and, ultimately, the trial.

The Dade County Public Defender is responsible for indigent defense. He is selected in a non-partisan county-wide election. Funds for operation of the office come directly from the state treasury. In 1979 the office employed 67 attorneys, 30 of whom handled felony cases. Office morale appears high; the average length of attorney service in the office is three to four years. As with the state attorney, the public defender assigns assistants to individual judges on a long-term basis, allowing the growth of stable relationships among judge, assistant state's attorneys and assistant public defenders.

Felony defendants are arraigned in the magistrate's division of the County Court, the court of limited jurisdiction. At this arraignment, the judge of the Circuit Court who will be assigned if the case is bound over is determined by a blind draw, despite the fact that many of the cases will be handled entirely in the lower court. The team of assistant state attorneys who work with that assigned circuit court judge conduct a pretrial conference with the arresting officer and complaining witness within two weeks of the arraignment in County Court. At this time a decision is made whether to file an information and what the charges will be. Court statistics indicate that over half of the cases brought by the police as felonies are dealt with as misdemeanors or dismissed altogether in county court.

Preliminary hearings are seldom held in felony cases in Miami. In their place has grown the practice of pretrial depositions of the important witnesses in a case by prosecution and defense. The formal information is thus supported by sworn statements of witnesses indicative of probable cause rather than by live testimony in a preliminary hearing.

Local court rule requires the state attorney to file an information within 14 days of the defendant's arrest. If an information is filed the defendant is arraigned on the information before the Circuit Court judge who was

assigned to the case at its inception. A trial date is usually set at this arraignment and if the defendant does not plead guilty, the trial typically begins in fairly close proximity to that assigned date. In the interim plea negotiations are conducted. The judge may or may not be involved in the negotiations, depending on individual temperament.

The caseload of the Dade County Circuit Court is less dominated by serious violent crime than felony courts in the Bronx or Detroit. While crimes against the person constituted roughly 22 percent of the cases in the sample, more than half were assaults. Table 2.3 shows that the most serious "person" crimes -- homicide, rape and robbery -- made up only 10 percent of the total caseload, compared to 18 percent in Detroit and 43 percent in the Bronx. Property crimes (including a substantial number of worthless check cases classified as "other" in Table 2.3) accounted for half the felony cases in the court.

About one-quarter of the cases in the Circuit Court sample were dismissed after bindover. In those cases remaining, 79 percent of the defendants pled guilty. Note, however, that the trial rate is much higher in the more serious violent crimes: almost half of the cases involving rape, robbery or homicide that were not dismissed proceeded to trial (compared to one-third in Detroit and one-fifth in the Bronx). The court also utilizes non-jury trials to a considerably greater degree than either in Detroit or the Bronx, with almost half the trials being held without a jury.

Median elapsed time from arrest to disposition for the cases in the Miami felony sample was 106 days, putting the court between the Bronx (200 days) and Detroit (87 days). The median jury trial ended 138 days after arrest.

PITTSBURGH, PENNSYLVANIA

Originally a dingy company town dominated by the coal and steel of the Frick and Carnegie empires, Pittsburgh no longer fits the aesthetic or economic generalizations of the past. The city's economy is diverse, now boasting the third largest number of corporate headquarters of any American city. The downtown area has undergone extensive and generally successful renewal.

Despite these significant changes, Pittsburgh remains an industrial town. The city is divided into a multitude of small ethnically defined communities or neighborhoods. The population is predominantly white with eastern and southern European origins. Blacks made up 21 percent of the 1975 population; residents of hispanic origin, 10 percent. Pittsburgh includes roughly one-third of the residents of Allegheny County. The county as a whole is considerably more wealthy than is Pittsburgh: median family income for the county was over $10,000 in 1969, compared with $6,100 for the city alone. The F.B.I.'s per capita crime rate for both city and county is the lowest of the jurisdictions in this study.

The Democratic Party machine that dominated Pittsburgh politics since the 1930's has been weakened by several major defeats and no longer controls the political life of the city as it once did. Party politics do continue to play a significant role in the selection of judges and other criminal justice personnel, however. Judges on the Allegheny County Court of Common Pleas (the court of general jurisdiction) are elected for 10 year terms in a partisan election in which party identification is clearly indicated.

TABLE 2.3

ELEVENTH JUDICIAL CIRCUIT COURT (MIAMI)
CRIME TYPE BY MODE OF DISPOSITION
(1978 Dispositions)

Mode of Disposition	Homicide	Rape	Robbery	Assault	Drugs	Weapons	Burglary	Theft	Other	Totals (% of all Cases)
Guilty Plea	3 (42.9%)*	3 (33.3%)	16 (44.4%)	29 (50.0%)	65 (63.7%)	15 (51.7%)	61 (65.6%)	41 (62.1%)	42 (47.7%)	275 (56.4%)
Non-Jury Trial	2 (28.6%)	0 (0%)	4 (11.1%)	11 (19.0%)	9 (8.8%)	2 (6.9%)	8 (8.6%)	2 (3.0%)	3 (3.4%)	41 (8.4%)
Jury Trial	1 (14.3%)	1 (11.1%)	7 (19.4%)	3 (5.2%)	4 (3.9%)	1 (3.4%)	4 (4.3%)	2 (3.0%)	0 (0%)	23 (4.7%)
Dismissal	1 (14.3%)	5 (55.6%)	9 (25.0%)	15 (25.9%)	23 (22.5%)	11 (37.9%)	19 (20.4%)	21 (31.8%)	43 (48.9%)	147 (30.1%)
Other	0 (0%)	0 (0%)	0 (0%)	0 (0%)	1 (1.0%)	0 (0%)	1 (1.1%)	0 (0%)	0 (0%)	2 (0.4%)
Totals (% of all Cases)	7 (1.4%)	9 (1.8%)	36 (7.4%)	58 (11.9%)	102 (20.9%)	29 (5.9%)	93 (19.1%)	66 (13.5%)	88 (18.0%)	488 (100.0%)

*Percentage figures in body of table are column percentages, i.e., the percent of each crime type disposed by each mode. Percentages may not total 100 due to rounding error.

As in other states, interim appointments are made by the governor. Although recent governors have invited local bar association input on these decisions, the relevant local party organization still appears to have the primary influence in the governor's selection.

The Court of Common Pleas has an authorized 31 judgeships, of which 14 are regularly assigned to handle criminal cases. The president judge of the court is elected by the full bench. Traditionally a position of considerable influence, the president judge appoints administrative judges to supervise the various divisions of the court: civil, criminal, orphans court. The criminal division of the court is housed in Pittsburgh's 19th century county courthouse, an architectural marvel centrally located downtown, across the street from the City-County Building which houses the other divisions of the court.[6]

Offices of the Allegheny County District Attorney are also located in the courthouse. As in Miami, the Bronx, and Detroit, the District Attorney in Pittsburgh is a partisan office of considerable political importance. Prior to the term of present incumbent, the office had undergone a number of damaging scandals involving various forms of political and legal malfeasance. The office was staffed primarily by part-time attorneys. The current district attorney has substantially professionalized the operation of the office, hiring a full-time staff of 65 lawyers. Considerable effort has been made to modernize and improve case-handling practices in the office as well.

Indigent defense is handled by the Public Defender's Office located a block from the courthouse on the second floor of a somewhat dank office building. The public defender is selected and funded by the county commissioners, making the office formally less independent than that in Miami or the Bronx. Many attorneys in the office supplement their income with a private law practice.

The Court of Common Pleas has jurisdiction over all but the most minor criminal offenses committed in the county. Only summary offenses carrying a maximum jail term of 90 days can be handled by the local magistrate's courts throughout the county. Felonies originate in magistrate's court with an arraignment mandated by state rule to be held within six hours of the arrest. Preliminary examinations are also held in magistrate's courts for other than summary offenses. Upon a finding of probable cause the cases are bound over to the Common Pleas Court. Under a federal grant, the district attorney sends a.d.a.'s to most of the preliminary hearings in the 65 magisterial districts throughout the county. A substantial number of cases are screened out in these hearings. Further screening of more serious cases by the district attorney occurs between the preliminary hearing in magistrate's courts and Common Pleas Court arraignment. In this interval the district attorney holds what is termed a "pretrial conference," a session that resembles the meetings of police, complaining witness, and prosecutor held in Detroit and Miami. The purpose of this conference is to insure that the case is adequately prepared,

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6 A useful, although somewhat out of date, description of Pittsburgh politics and its relationship to the Court of Common Pleas can be found in Martin Levin, Urban Politics and the Criminal Courts (Chicago: University of Chicago Press, 1977), chs. 2-4.

determine the appropriateness of the charges, and decide whether the case should be diverted out of the court into the Accelerated Rehabilitation Division (ARD) that handles first offenders and non-violent crimes. Cases neither nolle prossed nor diverted to the ARD program proceed to Common Pleas Court arraignment where an administrative official gives the defendant a copy of the information, and fixes the date of trial.

More serious cases, especially those involving serious crimes of violence, are assigned for prosecution to a.d.a.'s of various offense-based divisions of the office. Supervisors may set plea bargaining limits at the time of assignment but few office policies guide these determinations as in Detroit. Cases not preassigned are typically meted out to trial assistants on the day prior to trial. Plea negotiatons are generally concluded on the trial day, often in the hallway between the assignment room and the courtroom.

The separate judge, assistant district attorney and public defender who are assigned to a particular case in Pittsburgh may never have worked together on another case. The organization of the court and the district attorney's office does not encourage the development of stable "teams" to handle criminal cases as were present in Miami and, to a lesser extent, in Detroit.

As Table 2.4 indicates, serious violent crimes in Pittsburgh make up the smallest proportion of the felony court caseload of any of the courts examined in this study. Homicides, rapes and robberies constitute less than half of the crimes against the person and only 9 percent of all cases. As in Miami, property crimes make up nearly half of Pittsburgh's felony caseload.

As in Miami and Detroit, roughly one-quarter of cases filed as felonies in the court are ultimately dismissed. Of those remaining, 83 percent are resolved by guilty plea, 12 percent by non-jury trial, 4 percent by jury trial. Non-jury trials are used more in Pittsburgh than in any of the other courts examined in this study. It is not easy to specify the circumstances under which cases proceed to non-jury trials. Some such trials are reportedly "slow pleas of guilty" in which the defense is more concerned with informing the judge of mitigating circumstances than with denying the charges. Some, however, are undeniably adversarial proceedings with contested issues of law and fact.

The overall pace of criminal litigation in Pittsburgh is about that of Miami. The median felony case reaches dismissal, verdict or guilty plea 100 days after arrest. The presence of a 180-day speedy-trial limit, however, substantially reduces the number of cases requiring lengthy disposition times. Only 6 percent of Pittsburgh's cases exceed 180 days (compared to 23 percent in Miami, 30 percent in Detroit, and 52 percent in the Bronx). The median jury trial in the sample ended 133 days after arrest.

TABLE 2.4

ALLEGHENY COUNTY COURT OF COMMON PLEAS (PITTSBURGH)
CRIME TYPE BY MODE OF DISPOSITION
(1978 Dispositions)

Mode of Disposition	Homicide	Rape	Robbery	Assault	Drugs	Weapons	Burglary	Theft	Other	Totals (% of all Cases)
Guilty Plea **	3 (50.0%)*	4 (36.4%)	19 (59.4%)	26 (41.3%)	46 (80.0%)	17 (68.0%)	68 (75.6%)	85 (58.6%)	44 (46.3%)	312 (59.3%)
Non-Jury Trial	0 (0%)	2 (18.2%)	4 (12.5%)	11 (17.5%)	5 (8.5%)	3 (12.0%)	4 (4.4%)	11 (7.6%)	9 (9.5%)	49 (9.3%)
Jury Trial	2 (33.3%)	2 (18.2%)	3 (9.4%)	5 (7.9%)	1 (1.7%)	0 (0%)	1 (1.1%)	0 (0%)	0 (0%)	14 (2.7%)
Dismissal	1 (16.7%)	3 (27.3%)	6 (18.8%)	21 (33.3%)	7 (11.9%)	5 (20.0%)	17 (18.9%)	49 (33.8%)	42 (44.2%)	151 (28.7%)
Other	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)
Totals (% of all Cases)	6 (1.1%)	11 (2.1%)	32 (6.1%)	63 (12.0%)	59 (11.2%)	25 (4.8%)	90 (17.1%)	145 (27.6%)	95 (18.1%)	526 (100.0%)

*Percentage figures in body of table are column percentages, i.e., the percent of each crime type disposed by each mode. Percentages may not total 100 due to rounding error.
**Includes ARD diversion cases.

SUMMARY

The populations served by the four courts are very similar. Two of the courts have jurisdictional boundaries that coincide with city limits of large cities. Two include somewhat smaller cities and the surrounding suburbs. Detroit and the Bronx have especially heavy concentrations of black residents. Miami and the Bronx contain substantial numbers of hispanics.

The political systems of the four jurisdictions differ more than their overall populations. Bronx County and Allegheny County approximate the "traditional" model of city politics with the remnants of old-style political party machines still wielding considerable influence over staffing the court and related agencies. Detroit and Miami are much closer to the "reform" or "professional" model of city politics. Hence party affiliation and activity are much less important for elevation to the bench and patronage jobs in the court systems are largely non-existent.[7]

The per capita incidence of serious violent crime is highest in Detroit and the Bronx although rates vary across crime categories. There is generally less violent crime in Miami and Pittsburgh, both in absolute numbers and on a per capita basis. This divergence becomes even greater when the suburban areas of the counties are added into the statistics.

The amount of felony case screening prior to filing in the court of general jurisdiction differs significantly across the courts. Over three-quarters of the felony cases brought by the Bronx police are disposed of in the lower court, leaving only the most serious to be handled in the Supreme Court. Lower courts in the other cities are more reluctant to dispose of felony cases below, a fact which is supported by the higher proportions of less serious cases and dismissals in those cities' felony court caseloads.

All four of the courts dispose of roughly 80 percent of their non-dismissed cases by guilty plea. Cases involving serious crimes of violence, however, are much more likely to be tried in Miami and Pittsburgh than in Detroit or the Bronx. Miami conducts two-thirds of its trials without a jury; Pittsburgh, three-fourths. Use of non-jury trials is substantially less in Detroit and almost non-existent in the Bronx.

Substantial differences also exist in the speed at which the courts dispose of felony cases. The median felony in Bronx County Supreme Court took about twice the time of the analogous case in the general jurisdiction courts of Detroit, Miami and Pittsburgh. Time from arrest to jury verdict follows the same general pattern.

7 The "traditional" and the "professional" models of city government are discussed in Edward Banfield and James Wilson, City Politics (Cambridge, MA: Harvard University Press, 1963).

CHAPTER III

DISPOSITION TIME

Court delay is an old problem, probably as old as courts themselves. Only within the past few decades, however, has empirical research been brought to bear on the issue. That research effort commenced with Zeisel, Kalven and Buchholz's classic, Delay in the Court,[1] a work which examined civil court delay in New York City. The study was rich in insight and made artful use of aggregate data. The authors assumed -- almost as a self-evident truth -- that "while study is indispensable for disclosing the exact additional judge power needed to cure delay, it needs no ghost come from the grave to tell us that delay can be cured by adding more judges."[2] In the absence of the ability to augment "judge power," the study argued that courts must address the problem of delay through efforts designed either to reduce trial time, increase the proportion of cases that settle short of trial, or make more efficient use of the existing complement of judges.

These are straight-forward prescriptions that have a powerful appeal to common sense, particularly the common sense of judges and lawyers. Together they constitute the core of what has been the conventional wisdom of court delay for some time.[3] The response in many courts to a concern over excessive civil or criminal disposition time is institution of the pretrial settlement program currently in fashion, a "crash program" in which temporary judges are assigned to the court to clear the backlog, or -- perhaps most frequently -- a plea for more permanent judges.

The availability of federal funds for court reform efforts, together with growing public concern over the operation of the criminal courts, have led a number of courts in recent years to institute various delay-reduction programs. Unlike such initiatives in the past, many of these programs have been systematically evaluated to determine their impact on court operation.[4]

1 Hans Zeisel, Harry Kalven, and B. Buchholz, Delay in the Court (Boston: Little-Brown, 1959).

2 Ibid., p. 8.

3 For a discussion of the literature of court delay see Thomas W. Church, Jr. et al., Pretrial Delay: A Review and Bibliography (Williamsburg, Virginia: National Center for State Courts, 1978).

4 For studies of settlement programs, see Maurice Rosenberg, The Pretrial Conference and Effective Justice. (New York: Columbia University Press, 1964); Steven Flanders, Case Management and Court Management in the United States District Courts (Washington, D.C.: Federal Judicial Center, 1977); Raymond Nimmer, "A Slightly Moveable Object: A Case Study in Judicial Reform in the Criminal Justice Process: The Omnibus Hearing," Denver Law Journal 48 (1971): 18. Research on the impact of adding new judges is more fragmentary. A summary of this work can be found in Thomas Church, Jr., Justice Delayed: The Pace of Litigation in Urban Trial Courts (Williamsburg, VA.: National Center for State Courts, 1978), pp. 24-31. See also Church et al, Pretrial Delay, pp. 19-25.

Two inescapable conclusions emerge from a review of recent studies assessing delay-reduction programs: 1) the problem of court delay is complex and stubborn -- a pessimist might conclude it to be intractable -- and 2) it seldom responds to the therapy suggested by the conventional wisdom -- procedural tinkering or the addition of more judges.

Augmenting such assessments are a small but growing number of general studies of court delay across a number of courts. A common finding of these studies is the lack of any discernable relationship between the average caseload of judges and the pace at which a court's cases move. Furthermore, faster courts share no special procedures missing in the slower courts, no case-handling devices that distinguish them.[5] The one comprehensive study of state court delay -- the Pretrial Delay Project of the National Center for State Courts -- asserted that

> . . . much of the conventional wisdom concerning trial court delay is in need of revision. In particular, caseload per judge and the proportion of cases requiring jury trial, two key elements of the traditional model of court delay, have no relationship to the pace of either civil or criminal cases in the 21 courts we examined. Since delay-reduction efforts in many courts involve attempts to alter judicial caseload (by adding judges or diverting cases out of the court) or to change the trial rate (through settlement programs), these findings are significant.[6]

The conclusion:

> . . . both speed <u>and</u> backlog are determined in large part by established expectations, practices, and informal rules of behavior of judges and attorneys. For want of a better term we have called this cluster of related factors the "local legal culture." Court systems become adapted to a given pace of civil and criminal litigation. That pace has a court backlog of pending cases associated with it. It also has an accompanying backlog of open files in attorneys' offices. These expectations and practices, together with court and attorney backlog, must be overcome in any successful attempt to increase the pace of litigation. Thus most structural and caseload variables fail to explain interjurisdictional differences in the pace of litigation. In addition, we can begin to understand the extraordinary resistance of court delay to remedies based on court resources or procedures.[7]

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5 See R. W. Gillespie, <u>Judicial Productivity and Court Delay: An Exploratory Analysis of the Federal District Courts</u> (Washington, D.C.: Government Printing Office, 1977); Flanders, <u>Case Management</u>.

6 Church, <u>Justice Delayed</u>, p. 49, Much of the discussion in this chapter is based on the fuller analysis made in the previous study. The reader interested in pursuing these issues further should refer to <u>Justice Delayed</u>.

7 <u>Ibid</u>., p. 54.

This conclusion that differences among courts in the pace of litigation can best be explained by differences in local legal culture was based on interviews of practitioners in eight courts. It was supported by a striking similarity in the pace of civil cases in the state trial court and in the federal district court for the same geographical area. Interview data is always subject to overgeneralization and misinterpretation, however. A basic reason for the current study was to test the major finding of the pretrial delay project: that the pace of litigation in a particular court is supported by local norms regarding the proper pace of litigation. For this theory to be valid, legal communities must be shown to have distinctive attitudes regarding case speed, and the differences observed in the actual pace of litigation among those courts must be related to analogous differences in local attitudes.

DISPOSITION TIME IN FOUR COURTS

Two of the most commonly used summary measures of the pace of litigation in a court are median days from arrest to disposition[8] and median days from arrest to jury trial. Table 3.1 indicates these statistics for the felony case samples drawn in the Bronx, Detroit, Miami, and Pittsburgh. The overall measures include all felony cases filed in the general jurisdiction court that were closed by any means in the sample period. They indicate that Detroit, Miami, and Pittsburgh each process their median felony case in three to three-and-one-half months from arrest to disposition. The Bronx court, on the other hand, requires twice the time -- nearly seven months -- to dispose of its median case. Time to jury trial is not available in Pittsburgh because of the small number of cases in the sample that were tried before a jury. Of the other three cities, Miami's median time to trial is the shortest at four and one-half months, Detroit's is nearly seven months, Bronx County's is ten months.

Because of differences in the type of cases entering the four courts, it is possible that these statistics obscure as much as they reveal. Practitioners frequently assert that cases involving serious crimes necessarily require more extensive preparation, investigation, and discovery and thus will take longer to reach disposition.

TABLE 3.1
FELONY DISPOSITION TIMES

Court	Median Days: Arrest to Disposition	Median Days: Arrest to Jury Verdict
Bronx	200	297
Detroit	89	205
Miami	100	138
Pittsburgh	106	N/A

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8 This calculation in the analysis that follows is based on the number of days from arrest to either guilty plea, trial verdict, or dismissal.

In order to determine how cases of a similar degree of seriousness are resolved in the four courts, files of the prosecutor and police were consulted to obtain information for a sample of cases on the specific criminal incident and the prior record of the defendant. Relative seriousness was determined by means of the Sellin-Wolfgang scale, a measuring technique that assigns point values to various objective aspects of the criminal incident found to be indicative of its subjective seriousness.[9]

The use of this somewhat artificial construct was necessary because of insurmountable problems with using the only feasible alternative indicator of seriousness: the legal crime charged. Common sense suggests that there can be major differences in the seriousness of criminal acts given the same legal label. An assault can encompass anything from a drunken punch in a barroom brawl to an intentional shooting in which a victim is permanently paralyzed. A robbery can run the range from an intimidation which involved neither weapons nor injury to an armed mugging with serious injuries to the victim. So long as this dimension of criminal cases goes untapped, there is real danger that differences (or similarities) observed in the handling of criminal cases across courts may be due to differences in the seriousness of the cases found in the courts rather than in the respective dispositional processes. The Sellin-Wolfgang instrument is far from perfect for this purpose -- a fact that became abundantly clear when its simple categorizations were applied to the complex factual situations uncovered in real life criminal incidents. But its validity as a measure of subjective seriousness has been established in several independent studies and it was felt to be substantially superior to any available alternative.[10]

After cases were coded they were divided into four categories based on their seriousness index as measured on the Sellin- Wolfgang scale. The dividing lines between the categories are necessarily somewhat arbitrary. They were made with two goals in mind: 1) To define the categories in such a way that enough cases were present in each to permit reasonably reliable statistical analysis, and 2) To make the dividing points comport with common sense breaking points of seriousness (such as use of a weapon, for example, or the presence of injuries that required medical treatment). These goals conflicted somewhat. The resulting categorization represents the best compromise obtainable. The categories are described briefly in Table 3.2, along with examples of cases that would be included in each.

Figure 3.1 portrays median days from arrest to disposition by seriousness category for all cases in the samples that were disposed by either guilty

9 J. Thorsten Sellin and Marvin Wolfgang, The Measurement of Delinquency (New York: Wiley Press, 1964).

10 Jeffrey Roth, "Prosecutor Perceptions of Crime Seriousness," Journal of Criminal Law and Criminology 69 (1978): 232; Wellford and Wiatrowski, "On the Measurement of Delinquency," Journal of Criminal Law and Criminology 66 (1975): 175.

TABLE 3.2
SERIOUSNESS CATEGORIES

Sellin-Wolfgang Scores	General Description	Examples	Cases Excluded Because Too Serious
I 1-3	Property crimes involving relatively small amounts and person crimes with only minor injuries to victims	Assaults in which no medical treatment was necessary; robberies in which no weapon was used & amount obtained in which less than $250 was obtained; thefts of less than $2000; theft of motor vehicle that was recovered undamaged	Any case in which medical treatment was required for personal injuries sustained; any case in which a weapon was used to intimidate a victim; any case involving loss or damage to property in excess of $2000
II 4-6	Property crimes involving larger amounts of money & crimes against the person involving more serious injuries	Assaults involving multiple victims of very minor injuries or a single victim requiring limited medical attention; armed robberies with only one serious injuries & an amount of less than $250; multiple burglaries & thefts, or those involving large amounts of money	Any case in which a victim required hospitalization; any armed robbery involving multiple victims, or in which more than $250 was obtained, or where a victim received injuries requiring medical attention
III 7-11	Serious crimes against the person	Assaults in which a victim required hospitalization or several victims & less serious injuries; armed robberies involving two victims or injuries to a victim or more than $250; rape of one victim in which no weapon was used and no medical treatment was necessary	Armed rapes; homicides, multiple victims hospitalized; armed robberies with three or more victims or where serious injuries were sustained by a victim
IV 12	Most serious crimes against the person	Homicide; armed rape; armed robberies involving serious injuries, multiple victims, &/or very large amounts of money; any crime in which more than one victim required hospitalization.	None

plea, trial or diversion.[11] In each city there is a general trend for more serious cases to require more time to reach disposition than those that are less serious. There is also considerably more differentiation among the four cities than is revealed by the overall medians in Table 3.1. As could be expected from the more comprehensive statistics, Bronx cases uniformly move slower than those in the other three cities. The Detroit court, however, emerges on this figure as substantially faster than either the courts of Miami or Pittsburgh in two of the four categories. These latter two courts appear quite similar in disposition time except in category III cases where disposition time in Miami takes a sizeable jump.

Trial dispositions typically require more time than guilty pleas; the differences observed in Figure 3.1 might therefore be a result of differing trial rates rather than differences in the pace of litigation in the four cities. Figure 3.2 sets out the median disposition times for only guilty plea dispositions.[12] The general pattern is analogous to that in Figure 3.1: more serious cases continue to require somewhat more time than less serious cases in each of the four courts; Detroit guilty pleas occur earlier, sometimes substantially so, than those in the other cities; Bronx guilty pleas later. With the exception of a jump in disposition time for Miami Category III cases similar to that shown in Figure 3.1, there is a consistent ranking of the courts from slowest to fastest: Bronx, Pittsburgh, Miami, Detroit.

Figures 3.1 and 3.2 reveal the importance of looking beyond all-case medians in assessing disposition time across courts. This expedient was necessary in the Pretrial Delay Project because of the large number of courts involved and the accompanying expense of gathering seriousness data from each case file. The overall figures produced in this research indicate that three of the four courts process their median case at approximately the same speed, an observation that may be statistically correct but is also misleading. Figures 3.1 and 3.2 show that cases of a similar degree of seriousness are often processed at a very different speed in each of these courts.

LOCAL LEGAL CULTURE AND DISPOSITION TIME

The major conclusion of the Pretrial Delay Project was that individual court systems could be characterized by distinct local norms concerning the proper pace of litigation, and that these norms were linked to the actual speed at which cases move in the courts. It was suggested that the influence of practitioner norms upon practice was of a reciprocal nature and that the existence of the norms explains at least some of the legendary resistance of trial courts to attempts to accelerate the disposition of cases.

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11 The cases were not broken down by whether or not the defendants had prior criminal records for two reasons: first, preliminary analysis of the data showed prior record to have no clear relationship to disposition time; second, the cell sizes produced by further subdividing the cases would be uncomfortably small for reliance on the median. No dismissed cases are included in these data because Sellin-Wolfgang scores were not computed on them.

12 It would also be desirable to calculate similar statistics for cases disposed by trial but the samples included an insufficient number of trials for the medians to be reliable.

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Figure 3.1

Median Days Arrest to Disposition
(Actual Cases)

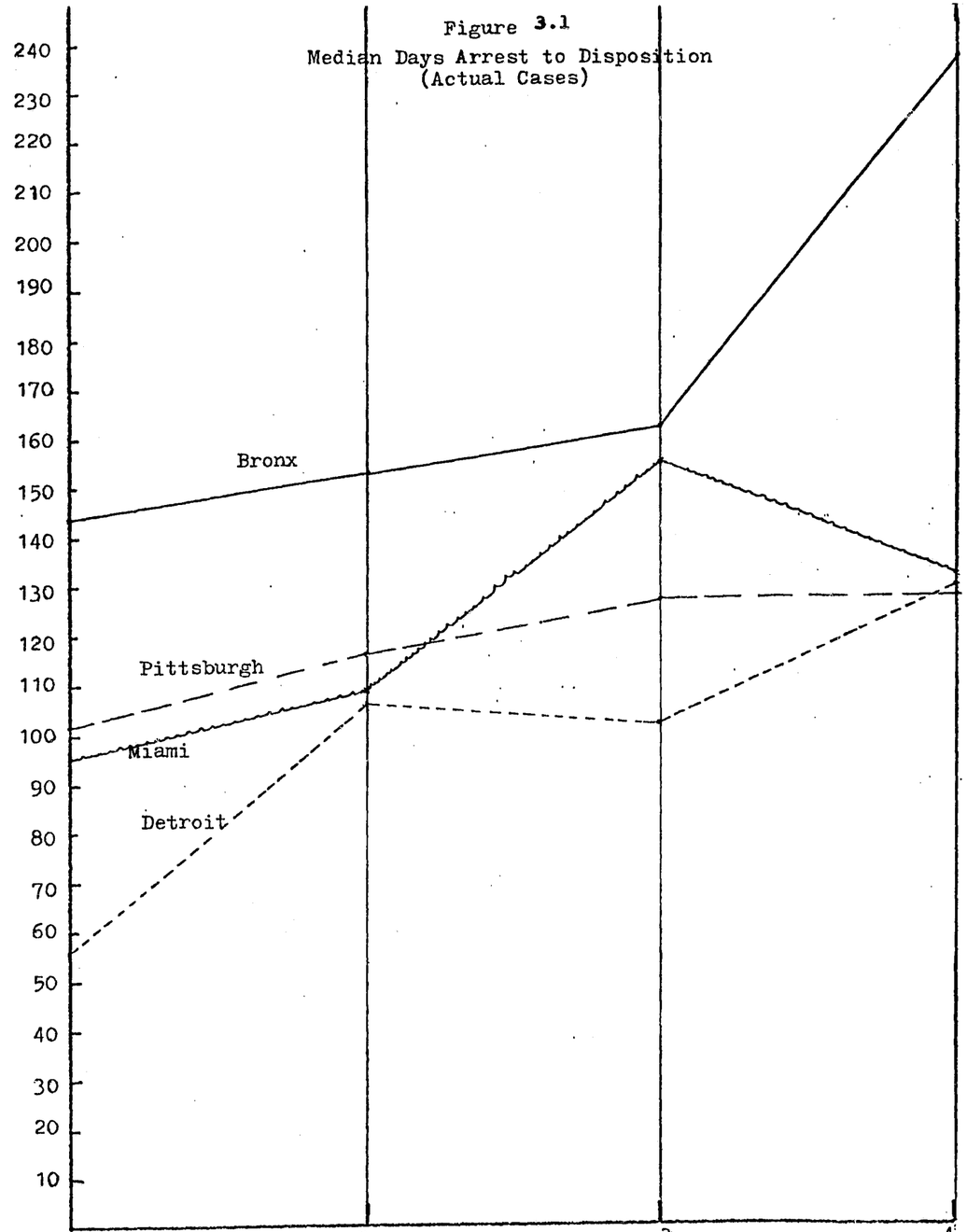
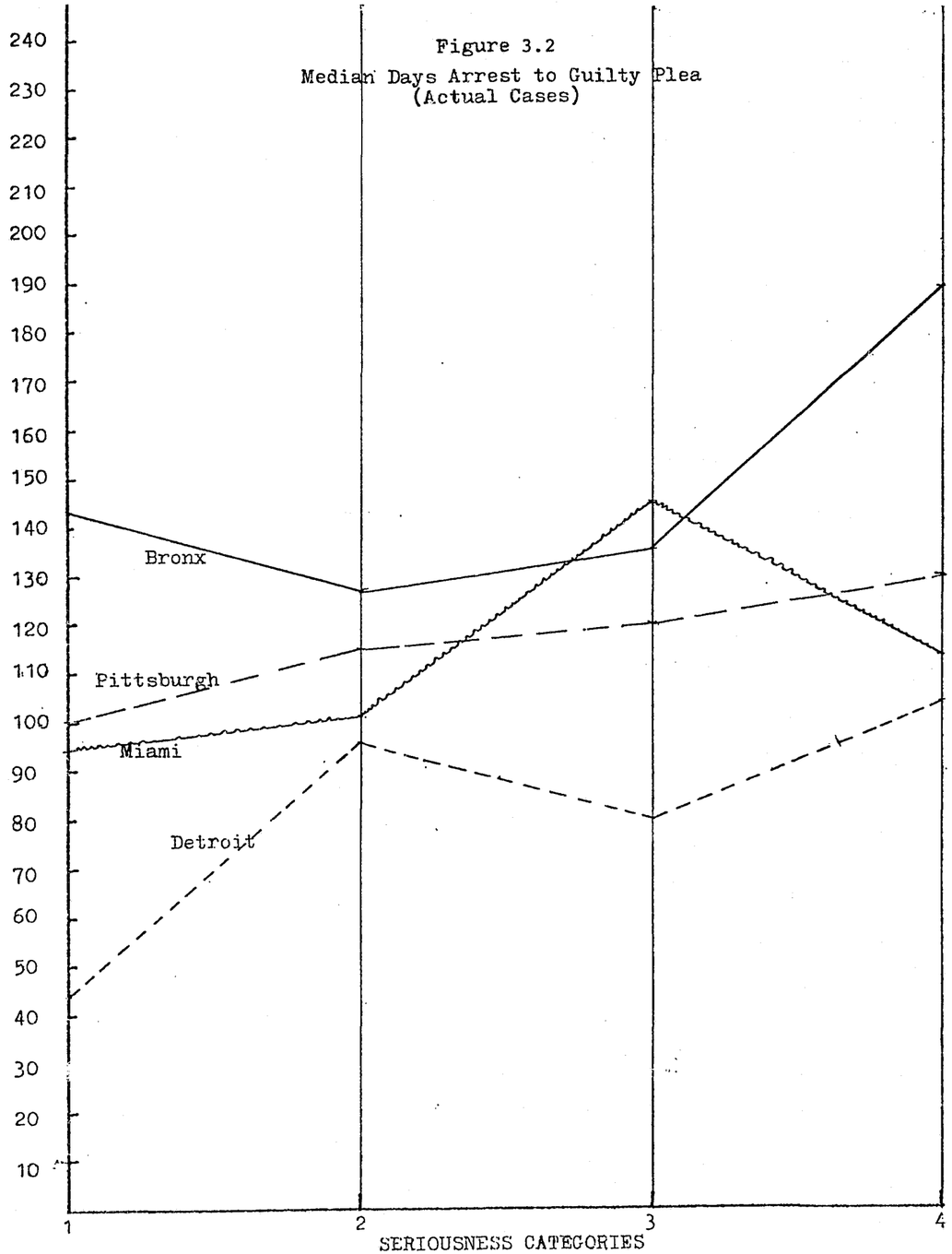


Figure 3.2

Median Days Arrest to Guilty Plea
(Actual Cases)



As indicated previously, a major goal of the present study was to obtain a more precise measure of disposition-time norms to determine whether the findings of the previous project were valid. Attitudes of respondents regarding disposition time were obtained in the hypothetical case questionaire by the following question, asked after each case:

> What would be an appropriate date for a jury trial to begin in this case, given adequate staff to handle the caseload of prosecution, defense, and the court in a fair and expeditious manner?

This question was designed to elicit respondents' beliefs concerning the speed at which cases in an adequately staffed court should be reaching jury trial. As such, its answer constitutes a kind of goal describing the minimum period of time felt to be needed to prepare cases in a well-functioning court.

Respondents were asked to assume that resources were "adequate" to allow "fair and expeditious" handling of cases for two reasons: first, to emphasize that the concern was with norms concerning how the courts should operate, not with predictions of how their court would in fact operate; second, to clarify the context of the question. This particular context was chosen because it avoids both speculation about the operation of some ideal system and the perceived resource constraints of the existing system. As such, responses have the greatest policy relevance: if practitioners in a court believe that an adequately funded and fair system ought to move particular types of cases to trial in six months, for example, then adding personnel to a court operating at about that pace will probably not change the predominant speed of disposition of such cases, and efforts to accelerate the process beyond that point are likely to be resisted. Similarly, jury trial was chosen as the dispositional alternative likely to raise the least ambiguity for respondents.

Figure 3.3 indicates the mean[13] number of days from arrest that each category of respondent believed a jury trial should begin in the average serious, and non-serious hypothetical case.[14] It provides strong support for the existence of distinctive practitioner attitudes regarding proper case

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13 The mean was used in this figure rather than the median because it is somewhat more stable when the sample size is small. Unlike the actual case data, there were few abnormally long disposition times indicated, making use of the median less crucial.

14 The twelve cases were divided into two seriousness categories. Less serious cases were defined as those involving 1) defendants without prior records and a Sellin-Wolfgang score of less than 12, or 2) defendants with a prior record and a Sellin-Wolfgang score of less than 4. This dividing line was based on the proportion of respondents in all four cities who believed a term of incarceration would be an appropriate sentence if the defendant pled guilty. Use of four seriousness categories analogous to those used for the actual case samples was not possible because of the small n's involved.

disposition time in each of the four courts. Adjacent curves[15] on the figure are often separated by as much as three weeks or more, indicating substantial inter-city differences for all types of practitioners. Furthermore, the curves are nearly horizontal, suggesting that there is little systematic disagreement among types of practitioners in a city. This similarity is even more pronounced when only defense attorneys and prosecutors are considered.

A comparison of Figure 3.3 to Figures 3.1 and 3.2 reveals that the relative ranking of the four cities on actual disposition time follows closely the attitudinal data. The only surprise is a switch in the position of the two fastest courts: Miami and Detroit. This anomaly may be due in part to the age of the Miami case sample (it comprised 1976 dispositions) in light of the fact that the court has been engaged since 1977 in a substantial effort to accelerate the pace of their criminal cases. Again, these data support the suggestions of the prior study that practitoner norms regarding disposition time are strongly related to a court's actual pace of litigation.

Table 3.3 provides a way of assessing the extent of agreement on norms in each city. A weighted average of disposition-time norms was computed for serious and for non-serious cases for all practitioners in each court.[16] Table 3.3 indicates the precentage of respondents in each category whose average response on the disposition-time questions for serious and non-serious cases was 30 days or more away from this court-wide average. Obviously, the lower this figure, the more general agreement within a city regarding the proper pace of criminal litigation. The total lines of Table 3.3 are plotted on Figure 3.4.

These data reveal substantial differences in the extent of attitudinal agreement concerning disposition time among the four cities. Bronx practitioners evidence very little agreement on this dimension: two-thirds to three-quarters of judges, prosecutors and defense attorneys in the Bronx indicated a disposition time for the average case (both serious and less serious) more than a month away from the city-wide mean. Alternatively, in Miami support is exceedingly high for its unusually speedy city-wide norms.

Table 3.3 and Figure 3.4 present data on intra-court agreement that is intuitively simple to grasp but has the potential of being statistically misleading. In particular, the percent of responses 30 days beyond the courtwide average may be expected to increase as the average increases.

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15 It should be pointed out that these "curves" connect three points which represent nominal-level variables: no continuum is implied by the fact that the values for prosecutor, defense, or judge responses in the same city are connected by a continuous line. After much experimentation, it became apparent that this somewhat unorthodox use of figures presented the clearest visual representation of these data.

16 The weighted average is the average of the means for each of the three participant types in each city rather than simply the average of all responses in each city. This was done to adjust for the unequal number of respondents in each category.

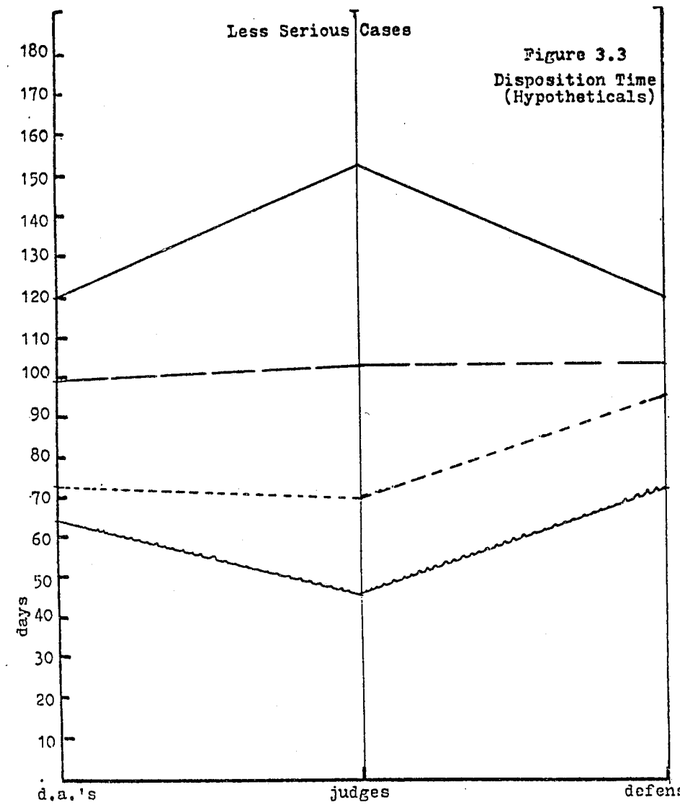


Figure 3.3
Disposition Time
(Hypotheticals)

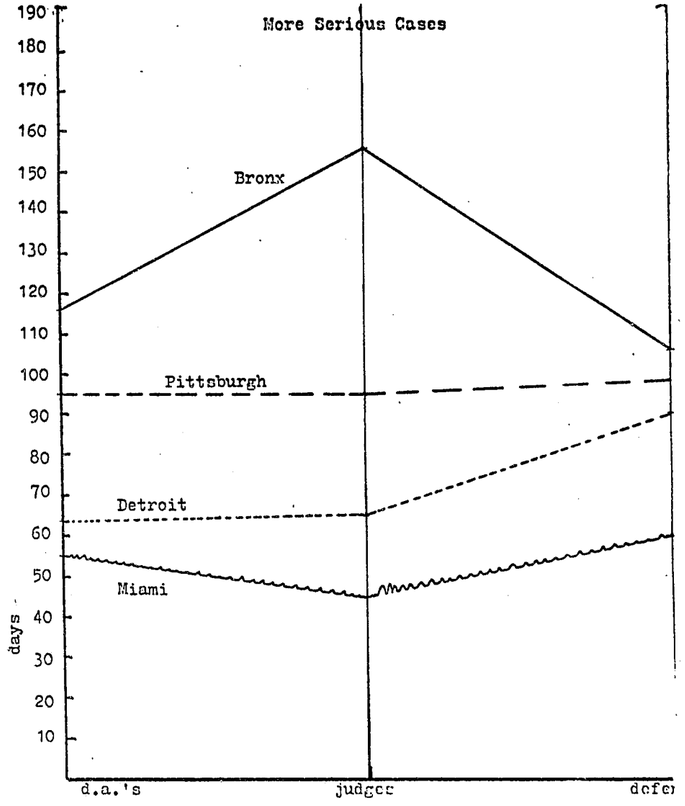


TABLE 3.3
INTRA-COURT AGREEMENT ON DISPOSITION TIME NORMS

	Bronx			Detroit			Miami			Pittsburgh		
	Judges (n=9)	DA's (n=27)	PD's (n=12)	Judges (n=9)	DA's (n=39)	PD's (n=31)	Judges (n=5)	DA's (n=42)	PD's (n=11)	Judges (n=7)	DA's (n=30)	PD's (n=2(
I. Serious Cases												
A. Respondents 30 days or more above court average[1]	22%	44%	55%	22%	15%	6%	0%	2%	0%	14%	10%	10%
B. Respondents 30 days or more below court average[2]	56%	30%	18%	11%	8%	39%	0%	12%	27%	0%	7%	5%
C. Total of A and B	78%	74%	73%	33%	23%	45%	0%	14%	27%	14%	17%	15%
D. Court average		132 days			80 days			61 days			102 days	
II. Less Serious Cases												
A. Respondents 30 days or more above court average	22%	56%	45%	22%	15%	6%	0%	2%	0%	14%	10%	10%
B. Respondents 30 days or more below court average	44%	22%	18%	11%	5%	29%	0%	10%	0%	0%	7%	5%
C. Total of A and B	67%	78%	64%	33%	21%	35%	0%	12%	0%	14%	17%	15%
D. Court average		127 days			73 days			53 days			96 days	

[1]Percent of respondents in each category who indicated an average number of days to jury trial in serious cases that was 30 days or more above the court-wide average for serious cases.
[2]Percent of respondents in each category who indicated an average number of days to jury trial in serious cases that was 30 days or more below the court-wide average for serious cases.

Hence a mean as low as that in Miami may necessarily imply a low proportion of respondents falling outside the 30-day period, while an average as high as that in the Bronx conversely implies proportionately more responses outside this limit.

Table 3.4 provides a somewhat different -- and more statistically abstract -- way of assessing intra-court agreement on disposition-time norms. For both serious and less serious cases it indicates the court-wide average, the standard deviation, and the coefficient of variability for each court on the disposition time. The coefficient of variability is simply the standard deviation divided by the mean. As such, it takes into account differences in the mean and therefore allows for comparsions of dispersion across populations with differing means.[17]

The coefficients of variability continue to reveal the Bronx as having the least intra-city agreement on proper disposition time. Differences across cities are somewhat less pronounced than those depicted in Table 3.3, particularly in the more serious cases. And Pittsburgh, rather than Miami, emerges as the city with the highest intra-court agreement on this dimension.

These data suggest that local legal culture and its link to the existing pace of litigation may be more complex than suggested in previous studies. Miami and Pittsburgh emerge as cities in which a fairly strong consensus exists regarding the proper pace of litigation. More divergence of opinion exists in Detroit and still more in the Bronx. The extent to which attitudes are shared by practitioners in a court system thus varies along with the substance of the attitudes themselves. These observations by no means undermine the underlying theory that practitioner norms regarding proper disposition time both mirror and support the existing pace of litigation in a court.

TABLE 3.4

INTRA-COURT VARIATION
IN PREFERRED DISPOSITION TIME

Court	Adjusted Mean*	Standard Deviation	Coefficient** of Variability	Adjusted Mean*	Standard Deviation	Coefficient** of Variability
Bronx	131.7	52.6	.40	127.3	65.3	.51
Detroit	79.5	28.3	.36	73.4	31.0	.42
Miami	60.6	21.7	.36	53.4	19.9	.31
Pittsburgh	102.0	24.6	.24	96.0	24.6	.26

* the mean number of days from arrest to trial indicated by respondents in each court, adjusted for the differing number for each type of respondent (judge, prosecutor, defense attorney).

** standard deviation divided by mean.

17 See Herbert M. Blalock, Social Statistics (New York: McGraw-Hill, 1960) pp. 73-74.

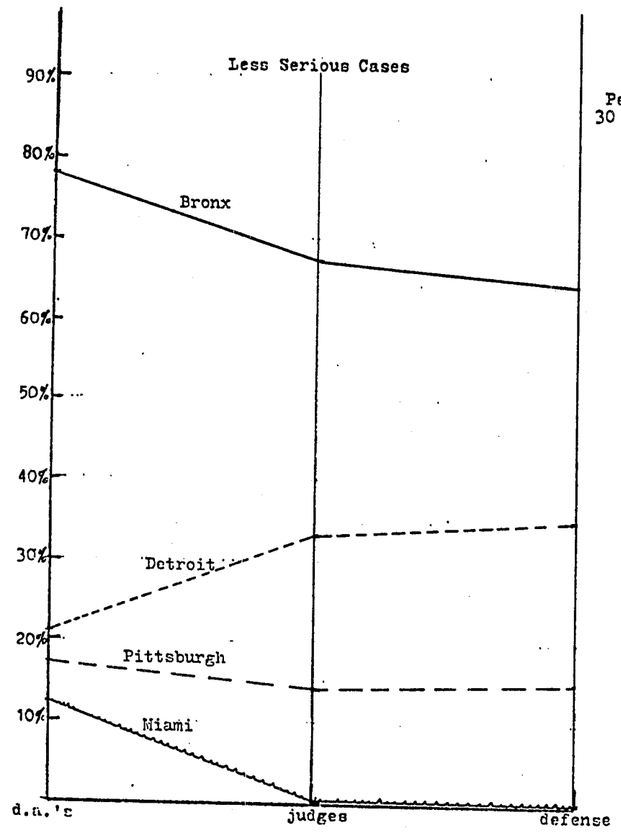
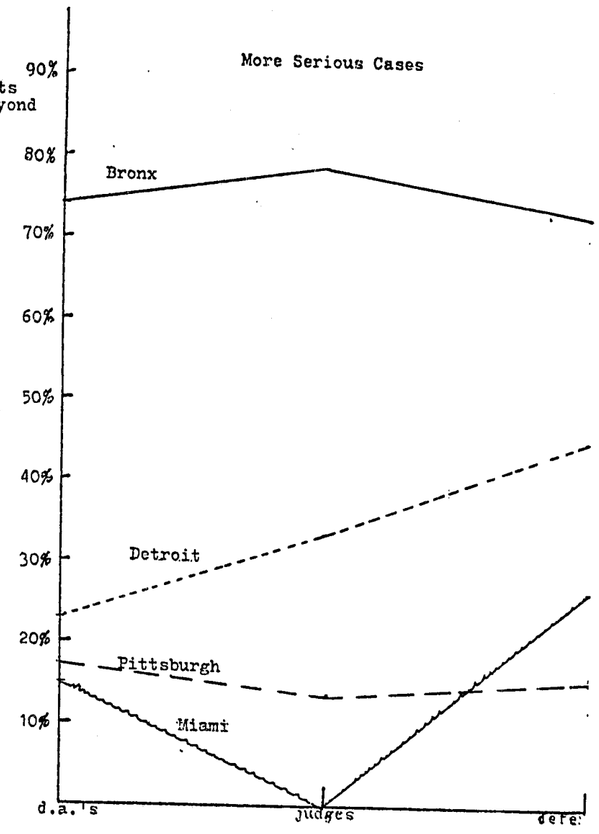


Figure 3.4
Percent Respondants
30 days or More Beyond
Court-Wide Mean



To the contrary, there is substantial correspondence between practitioners' notions of proper speed and the actual pace of cases. Even in the Bronx, where consensus is lowest, there is clearly much more support among practitioners for lengthy disposition times than in the other courts surveyed, a situation that reflects its unusually slow pace.

The divergence of opinion revealed here does suggest that generalizations regarding shared practitioner norms in criminal courts must be tempered by the existence of attitudinal disagreement on some dimensions. As indicated in Chapter 1, assertions of shared normative standards regarding proper case disposition are common in many recent criminal court studies. A finding of this research -- made even clearer in subsequent chapters on mode of disposition and sentence -- is the presence of both consensus and conflict in court system norms governing dispositional practices.

IMPLICATIONS

Much of the previous writing on court delay assumes it to be caused by some structural impediment to a speedier pace of litigation: an insufficient number of judges or attorneys, for example, archaic case-handling procedures, or a high trial rate. The prescription suggested by such analyses is simply removal of the impediment: add judges, modernize procedures, settle more cases. That an existing leisurely pace of litigation might be considered satisfactory -- even desirable -- by the judges and attorneys who ultimately control it was seldom considered.

The existence of distinctive local attitudes regarding the proper pace of litigation originally suggested in Justice Delayed is substantiated here. It thus appears that efforts in many courts to reduce delay must contend not only with the inertia and attachment to that status quo common to any complex organization. In addition, such reforms could run counter to the beliefs of practitioners concerning the minimum time necessary for adequate trial preparation, negotiation, and the like.

Local legal culture may not foreclose the possibility of changing the existing pace of litigation. But it does set an outside limit on practitioner cooperation with efforts to compel faster dispositions through case management controls imposed by the court or a mandatory speedy-trial rule. In those courts in which the lawyers exercise substantial control over case scheduling, these norms may determine the degree of success achieved by such non-coercive attempts to speed case disposition as adding judges or instituting settlement conferences. So long as continuances and postponements are generally granted when both sides agree, the mandate of professional courtesy between attorneys insures that cases will move at a speed felt to be appropriate by the attorneys involved. Stricter continuance policies and more court control over the pretrial period may force counsel to trial or disposition faster than they believe to be appropriate, but such actions by the court will generate (if experience is any guide) an intense outcry from practitioners who believe the accelerated pace to be improper. It should also be noted that attitudes of judges regarding appropriate disposition time are not necessarily more supportive of speedier dispositions than defense attorneys and prosecutors: a perusal of Figure 3.3 will indicate the average Bronx judge, for example, believes the appropriate pace to be fully a month longer than the already leisurely pace supported by other practitioners. Only in Miami do judges hold attitudes which support a somewhat faster pace of litigation than attorneys.

It may be unreasonable to expect a judge to push cases to trial at a speed that not only raises the righteous ire of attorneys but also is felt by the judge himself to be improper.[18]

Despite these cautionary notes, the data do provide evidence that practitioner attitudes might support modest acceleration in the pace of criminal litigation in all four courts. Direct comparison of the attitudinal data with the sample of closed cases on a court-by-court basis is not possible: the respondents were asked the appropriate date for a jury trial to begin in each hypothetical case and there are an insufficient number of actual jury trials in the closed case sample to produce reliable disposition time statistics.[19] However, a cursory comparison of the Figures 3.1 and 3.2 with Figure 3.3 shows that the average practitioner in all four cities believes that jury trials in the hypothetical cases should begin substantially sooner than either the median of all dispositions or even the median guilty plea occurred in the sample of actual cases. Since jury trials typically require considerably more time from arrest to disposition than do other dispositional alternatives, the apparent attitudinal support for a marginally faster pace may be greater still.

Too much should not be made of the above discussion, but there does appear to be some practitioner support in all four courts for speeding the pace of cases to a limited degree. It is also possible that practitioner attitudes might constitute the least impediment to delay reduction efforts in the Bronx, where they are most divided. In those courts where attitudes governing case pace are widely shared, however, to attempt to accelerate disposition time beyond relatively modest increments may be expected to meet resistance from attorneys and lack of cooperation from judges.

18 A fuller discussion of the implications of local legal culture for efforts aimed at reducing court delay can be found in Church, Justice Delayed, ch. 5.

19 We also cannot be sure that the hypothetical cases are representative of actual cases.

CHAPTER IV

PLEA OR TRIAL?

The Anglo-American judicial system is premised on the belief that just resolution of legal conflicts is achieved through a structured contest of the disputants before a neutral judge. The modern jury trial, a direct descendant of medieval "trial by battle," is the embodiment of that adversarial ideal. Yet it is well established that the vast majority of both criminal and civil cases in the courts of this country are resolved not by trial but through informal negotiation between the parties. Of the 21 urban courts examined in the Pretrial Delay Project, for example, the median city disposed of only five percent of its civil tort cases by jury trial, seven percent of its felonies.[1] Although some commentary has suggested that this relative paucity of jury trials is a new and ominous development portending "the twilight of the adversary system,"[2] recent historical studies have found substantial reliance on guilty pleas in American courts throughout the nineteenth century.[3]

It should not be concluded from the foregoing that American felony courts are uniform in their reliance on guilty pleas. The 21 courts examined in the National Center's pretrial delay study varied from a low of 1 percent to a high of 19 percent of felony adjudications obtained by jury verdict.[4] The causes or even the corollates of these differing orientations toward trial, however, currently exist only on the level of informed speculation.

Two general hypotheses have been put forward to explain differences in trial rates across felony courts. The first is widely shared by practitioners and is often taken as almost an article of faith among many critics of plea bargaining.[5] This explanation could be termed the "caseload hypothesis:"

1 Thomas Church, Jr., Justice Delayed: The Pace of Litigation in Urban Trial Courts (Williamsburg, VA: National Center for State Courts, 1978), pp. 31-35.

2 See, e.g., Abraham Blumberg, Criminal Justice (Chicago: Quadrangle Books, 1967).

3 Albert Alschuler, "Plea Bargaining and Its History," Law and Society Review 13 (1979): 211; Lawrence Friedman, "Plea Bargaining in Historical Perspective," Law and Society Review 13 (1979): 247; Milton Heumann, "A Note on Plea Bargaining and Case Pressure," Law and Society Review 9 (1975): 515.

4 A felony adjudication was defined as a case filed as a felony that was disposed by either a guilty plea, trial, or some form of pretrial diversion. Church, Justice Delayed, pp. 33-35.

5 See citations by Heumann, "A Note on Plea Bargaining and Case Pressure," pp. 516-17.

the higher the workload of judges and lawyers in a court, the heavier their reliance on guilty pleas (and, by implication, plea bargaining). This theory appeals both to common sense and to the interests of courts anxious to obtain legislative authorization for new judgeships, but it has not fared well under empirical examination. Study after study have found virtually no relationship between caseload and the trial rate. These uniformly negative findings apply both to studies of historical fluctuations in caseload of one court and to research comparing contemporary trial rates and caseload across courts.[6]

This lack of an explanation for differing trial rates in court system resources suggests that the answer may lie in less formal aspects of court systems. Several studies account for the general tendency to avoid trials characteristic of nearly all criminal courts by reference to the inherent pressure on regular participants in an adversary system to suppress conflict and avoid the risks endemic to trials.[7] The one study that attempts to explain differences among courts in these organizational terms poses the major alternative explanation of variation in plea rates across courts, what could be termed the "courtroom workgroup hypothesis."

TRIAL RATES AND COURTROOM WORKGROUPS

In a major study of felony courts in three American cities,[8] James Eisenstein and Herbert Jacob concluded that much of the variation in what happens to defendants in different courts can be attributed to dissimilarities in the structure of what they term courtroom workgroups: the judge, prosecutor and defense attorney who must work together to dispose of a criminal case. They theorize that differences in the utilization of trial in the three courts they examined are due in large measure to the way in which judges and attorneys are assigned to courtrooms and cases. Those courts in which a specific judge, prosecutor, and public defender are more or less permanently assigned to the same courtroom are characterized by "stable"

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6 See Church, Justice Delayed, pp. 31-35; Heumann, "A Note on Plea Bargaining and Case Pressure;" Malcolm Feeley, "The Effects of Heavy Caseloads," in Sheldon Goldman and Austin Sarat (eds.), American Court Systems: Readings in Judicial Process and Behavior (San Francisco: W.H. Freeman, 1978); Steven Flanders, Case Management and Court Management in the United States District Courts (Washington, DC: Federal Judicial Center, 1977); R.W. Gillespie, Judicial Productivity and Court Delay: An Exploratory Analysis of the Federal District Courts (Washington, DC: Government Printing Office, 1977).

7 Jerome Skolnick, "Social Control in the Adversary System," Journal of Conflict Resolution 11 (1967): 52; Jonathan Casper, American Criminal Justice: The Defendant's Perspective (Englewood Cliffs, NJ: Prentice-Hall, 1972), pp. 67, 74-75; Lief Carter, The Limits of Order (Lexington, MA: Lexington Books, 1974), pp. 86-88; Blumberg, Criminal Justice, Ch. 1.

8 James Eisenstein and Herbert Jacob, Felony Justice: An Organizational Analysis of Criminal Courts (Boston: Little-Brown, 1977).

courtroom workgroups. These practitioners are able to develop long-standing relationships of mutual reliance and trust. Under such circumstances, Eisenstein and Jacob hypothesize, informal plea negotiations will characterize the vast majority of felony dispositions. When prosecutors and defense attorneys must practice before many individual judges, they fail to develop these relationships. Courts that are organized in this manner are characterized by "unstable" courtroom workgroups. In these courts, the relative lack of familiarity and trust among the key participants in case disposition presumably result in fewer negotiated guilty pleas and a heavier utilization of adversarial trials. Hence, in the court with stable courtroom workgroups, they observed, "Familiarity produced pleas, because with familiarity negotiations reduced uncertainty."[9]

The courtroom workgroup hypothesis has not been seriously tested outside the three courts examined by Eisenstein and Jacob. The data generated in this study on felony case processing in the Bronx, Detroit, Miami and Pittsburgh are not supportive of the theory. Of the four courts, one -- Miami's Eleventh Judicial Circuit Court -- is characterized by long-term (one- to three-year) assignment of both prosecutors and public defenders to the courtroom of a specific judge. One court assigns individual prosecutors, but not defense attorneys, to a single judge on a semi-permanent basis -- Detroit Recorder's Court. In the Bronx, some assistant district attorneys are assigned to one courtroom or part but move from part to part frequently; legal aid attorneys have no permanent relationship to the judge or any particular assistant district attorney. The Pittsburgh court has virtually no workgroup stability; cases are assigned to judges at almost the moment of trial and the defense attorney and a.d.a. independently assigned to the case follow it to that courtroom. The four courts thus provide a kind of rough continuum in decreasing workgroup stability: from Miami (the highest), through Detroit and the Bronx, to Pittsburgh (the lowest).

Despite this wide variety in workgroup stability, the total proportion of felony dispositions obtained by plea (exclusive of dismissals) is remarkably similar in the four courts. See Table 4.1, below. If the stability of courtroom workgroups influences plea and trial rates in the direction hypothesized by Eisenstein and Jacob, that effect is not apparent from overall dispositional patterns in the courts examined here.

TABLE 4.1
PLEA AND TRIAL RATES

	Bronx	Detroit	Miami	Pittsburgh
Guilty Plea, Diversion	424 (85%)	284 (82%)	275 (81%)	312 (83%)
Non-Jury Trial	11 (2%)	23 (7%)	41 (12%)	49 (13%)
Jury Trial	66 (13%)	39 (11%)	23 (7%)	14 (4%)
Total Adjudications*	501 (100%)	346 (100%)	339 (100%)	375 (100%)

* Not including dismissals and nolle prosses

9 Ibid., pp. 251-52.

To a substantial degree, however, it is misleading to look only at courtwide statistics when examining trial and plea rates. We already know that the felony courts of Bronx County, Detroit, Miami and Pittsburgh deal with differing proportions of serious cases. And serious cases are more likely to be tried than less serious cases.[10] Hence the aggregate plea rates may be affected by different proportions of "heavy" and "light" criminal cases in the workload of the various courts.

Figure 4.1 subdivides the cases according to seriousness of the criminal incident and prior record of the defendant. It thus allows us to compare the trial rate of roughly similar cases across all four courts.

The left side of the figure depicts the trial rates of each court for felony cases in each seriousness category for defendants with no prior conviction record.[11] The right side gives analogous proportions for those cases involving defendants with prior convictions. These figures suggest several important facts concerning mode of disposition in the four courts. First, it is apparent that seriousness does affect mode of disposition in the direction suggested in previous research: in each city there is a general tendency for the proportion of trials to increase as the crime involved becomes more serious. This effect is present both for defendants with prior records and for those without, although there are a number of discontinuities in the relationship in the latter category.

More importantly, the figures demonstrate that the surface similarity in each court's plea rate was indeed a function of differing proportions of more or less serious cases. The courts are observedly dissimilar in the extent to which similar types of cases are tried. Furthermore, these differences follow a general pattern: in every category of case the lowest proportion of trials are held in the Bronx. In all but the most serious cases, Detroit's trial rate is consistently 5 to 15 percentage points above the Bronx. In these categories, Miami and Pittsburgh are almost always above Detroit and the Bronx in their proportion of trials, although their respective positions are not consistent: proportionately fewer defendants without criminal records are tried in Pittsburgh than in Miami, a situation that is reversed in most categories of case involving defendants who have prior records.

The category of most serious crimes exhibits the least stability in these patterns, particularly for defendants with no prior crimial record. That the water is relatively muddy in such cases may be due in part to two factors. First, this category is the only one that is "open-ended." While each of the other three classes contains cases with a range of only 3 to 5 points on the Sellin-Wolfgang scale, this final category encompasses substantial differences in seriousness.[12] Furthermore, this category contains all the homicides in

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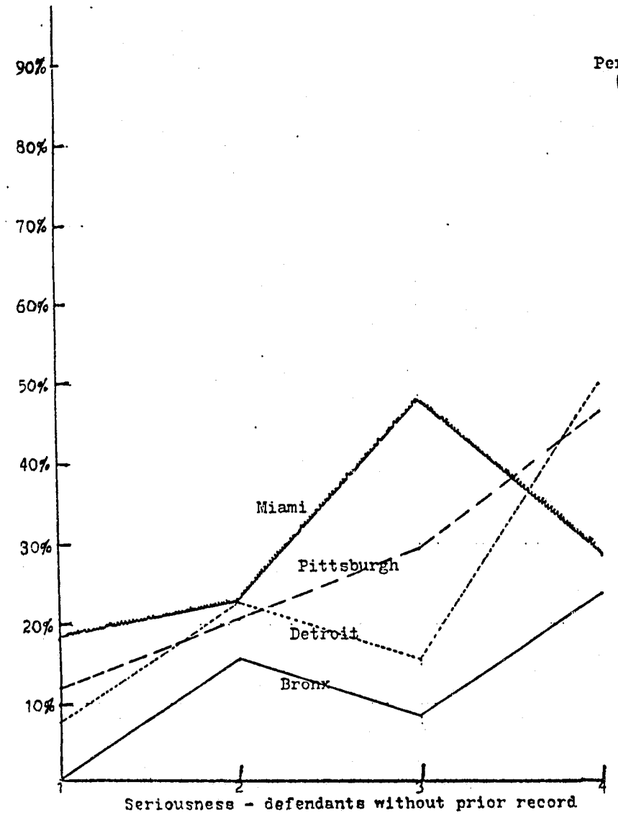
10 See, esp., Lynn Mather, Plea Bargaining or Trial? The Process of Criminal Case Disposition (Lexington, MA: Lexington Books, 1979).

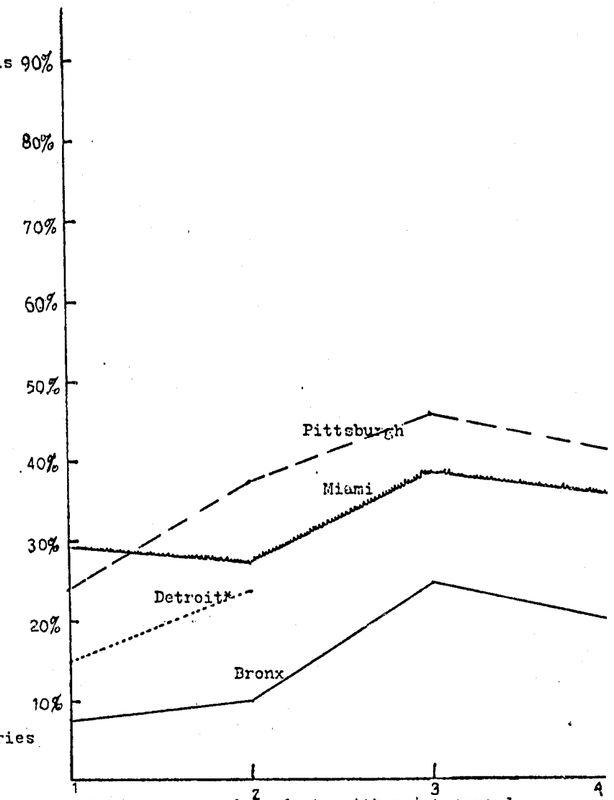
11 Minor offenses such as vagrancy or drunk and disorderly conduct were not counted in determining whether a defendant had a prior record. See Table 3.2 and accompanying text for a description of the seriousness caregorization used.

12 Cases range in seriousness in this category from an index of 12 to as high as 38. See Table 3.2.

Figure 4.1
Percent . . . Trials
(Actual Cases)



*too few cases
in two categories



the samples, crimes that can differ substantially in subjective seriousness depending on such ephemeral factors as intention and premeditation. The Sellin-Wolfgang scale does not take such subtleties into account -- the death of a victim is counted the same regardless of the circumstances surrounding it. For these reasons this category is likely to contain a very diverse group of cases and the anomalous results in it should not be especially surprising.

The general pattern that emerges from Figure 4.1 does not comport with the courtroom workgroup hypothesis. The court with consistently the lowest proportion of trials across all types of cases -- Bronx County Supreme Court -- affords very little opportunity for the growth of stable relationships among judge, a.d.a., and defense attorney. The one court with unambiguously strong workgroup cohesion -- Miami's felony court -- consistantly ranks at or near the top in the proportion of cases disposed by trial. The relationships among the courts are thus almost the opposite of what the courtroom workgroup hypothesis would suggest.

The presence of counter-examples does not conclusively disprove a theory, particularly after investigation of a non-random sample of courts in an area of research as young and amorphous as this one. But these observations do suggest that dispositional practices in a court system may be grounded in something more fundamental and permanent than the current assignment practices and management procedures of courts, district attorneys, and public defenders.

LOCAL LEGAL CULTURE AND MODE OF DISPOSITION

This research examines the hypothesis that dispositional patterns are influenced by locally held norms that define the way in which particular types of cases should be handled. Milton Heumann's study of newly recruited judges' and lawyers' adaptation to plea bargaining describes how new practitioners learn which cases are appropriate for trial, which ones should be pled out.[13] Existing practices undoubtedly exert a reciprocal influence on the attitudes of practitioners. But it is at least plausible that a major reason for the historically stable pattern of criminal court dispositions observed in most courts is the continued existence of a parallel set of supporting norms. If attorneys and judges evaluate how cases should be handled by reference to such norms, their joint decisions may be influenced more by the shared attitudes they bring into dispositional discussions than by the degree of their familiarity with the other parties to those discussions.

The attitudinal data generated in the hypothetical case questionnaire provide a unique opportunity to investigate these norms regarding proper mode of disposition. The specific question on mode of disposition asked after each case description was, "Assuming that prosecution, defense, and the court have adequate resources to deal with their caseloads in a fair and expeditious manner, how do you believe this case should be resolved?" The choices offered were: negotiated plea of guilty, non-negotiated plea of guilty, non-jury trial, jury trial, dismissal or nolle prosequi, and other.

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13 Milton Heumann, Plea Bargaining: The Experiences of Prosecutors, Judges, and Defense Attorneys (Chicago: University of Chicago Press, 1978), esp. chs. 4-6.

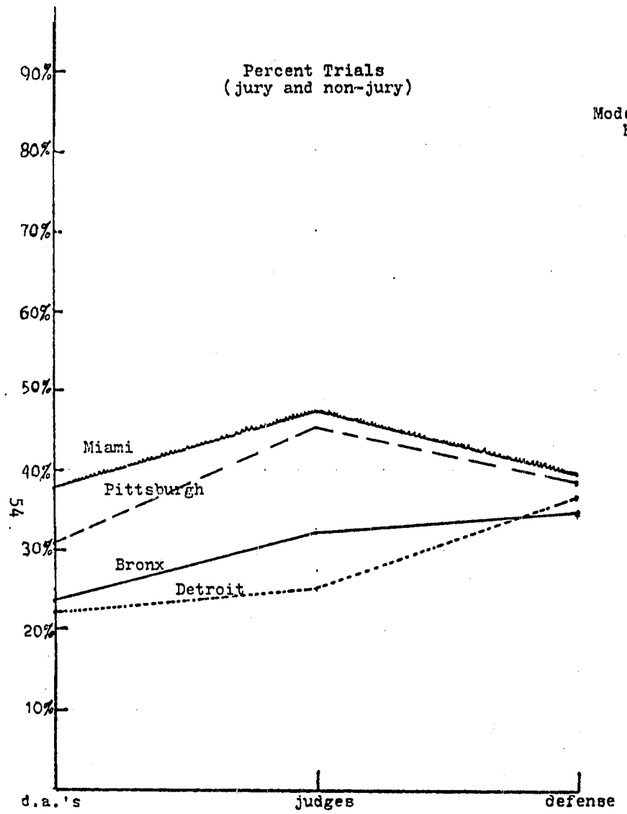
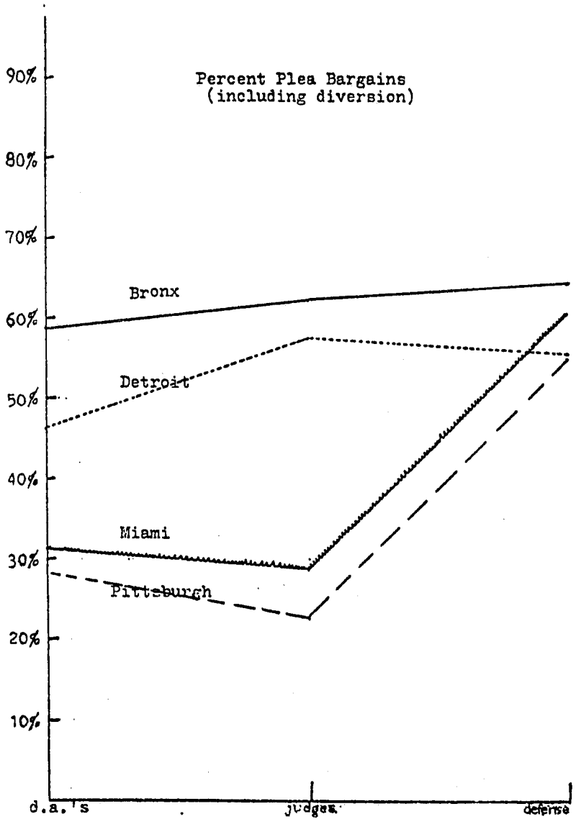


Figure 4.2
Mode of Disposition
Hypotheticals



While Figure 4.2 suggests the existence of distinctive normative orientations in the four cities regarding proper mode of disposition, it also indicates that such norms are not necessarily uniform across different groups of practitioners. Attitudes of judges and prosecutors regarding dispositional mode distinguish the four courts far more than those of defense attorneys. While this general effect holds true for trial responses, it is especially pronounced in the negotiated plea category. In particular, it would appear that defense attorneys in Miami and Pittsburgh are considerably more supportive of plea bargaining than the prosecutors and judges in those cities.

Several summary observations can be made from Figure 4.2 before proceeding to an analysis of subsets of the hypothetical cases. Practitioner attitudes regarding the appropriateness of trials in the hypothetical cases appear to be relatively consistent across all practitioner groups within a city. And while the individual courts as a whole evidence distinctive levels of trial preference, there is not a great deal of difference in the patterns of the four courts. When the focus is related to attitudes on plea bargains, intercity differences increase, and in two courts (Miami and Pittsburgh) substantial disagreement among practitioner types emerges.

The hypothetical cases are subdivided in the next four figures according to overall seriousness and strength of evidence. Figures 4.3 and 4.4 are directly analogous to Figure 4.2, except that the hypothetical cases have been divided into two groups according to their overall seriousness.[14] Across all the courts there is more support for trials in cases involving serious injury or a defendant with a prior record than in less "heavy" cases.

The low level of preference for trials in less serious cases is consistent across all courts and practitioner types, making comparisons difficult and inappropriate. It is in the more serious cases that distinctive orientations toward trial arise. The four courts are clearly and consistently distinguishable on this dimension; in descending order of support for trial in the hypotheticals, they are Miami, Pittsburgh, the Bronx, Detroit. And while the attitudes of defense attorneys and prosecutors in the same court are quite similar, the judges in Miami and Pittsburgh evidence a much stronger preference for trial than the lawyers appearing before them.

Figure 4.4, depicting attitudes regarding plea bargained dispositions by case seriousness, re-emphasizes the disagreement across and within cities on this dimension that was indicated on Figure 4.2. In both less serious and more serious cases the judges and prosecutors in each of the four courts evidence similar levels of support for plea bargains that are distinct from judges and prosecutors in the other courts. Attitudes of defense attorneys in the Bronx or Detroit are similar to those of prosecutors and judges in their cities; in Miami and Pittsburgh, however, defense attorneys show much stronger support for plea bargaining than do the judges and prosecutors.

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14 As in Chapter 3, less serious cases were defined as those involving 1) defendants without prior records and a Sellin-Wolfgang score of less than 12, or 2) defendants with a prior record and a Sellin-Wolfgang score of less than 4.

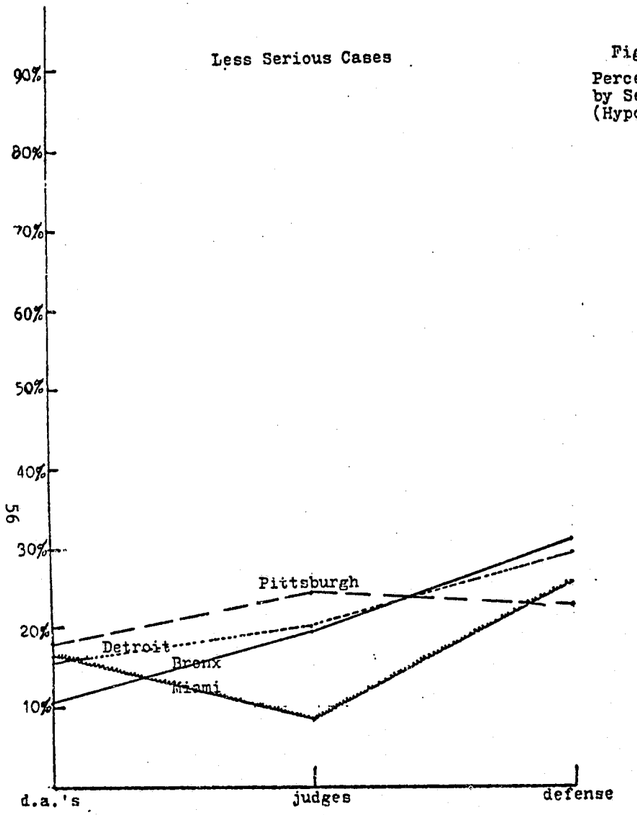
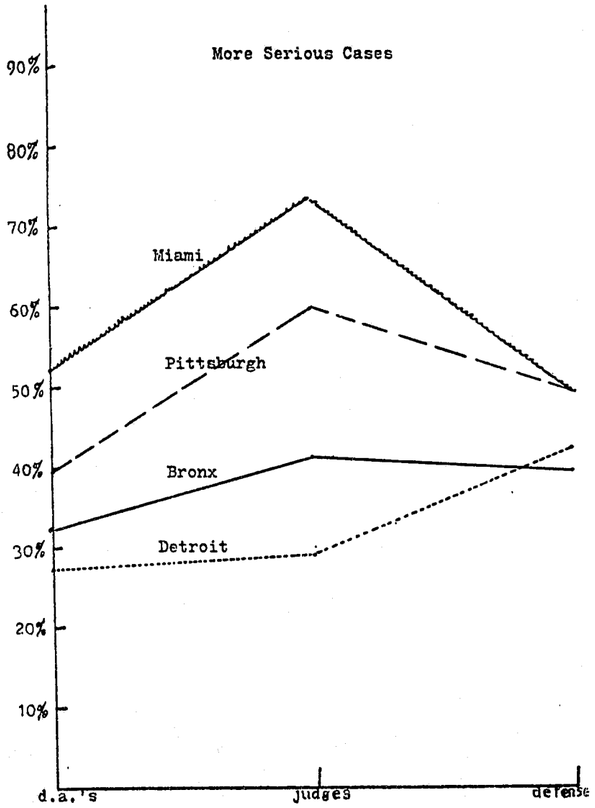


Figure 4.3
Percent Trials by Seriousness (Hypotheticals)



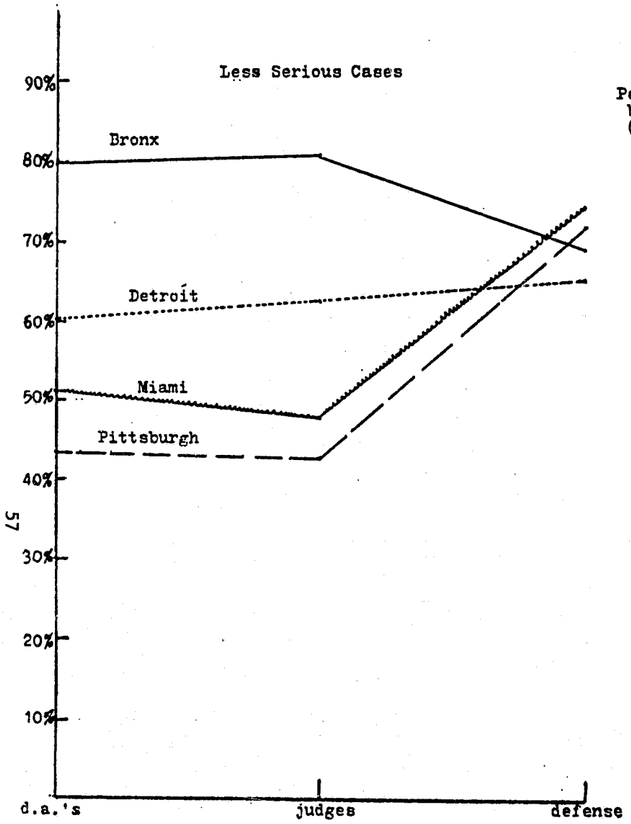
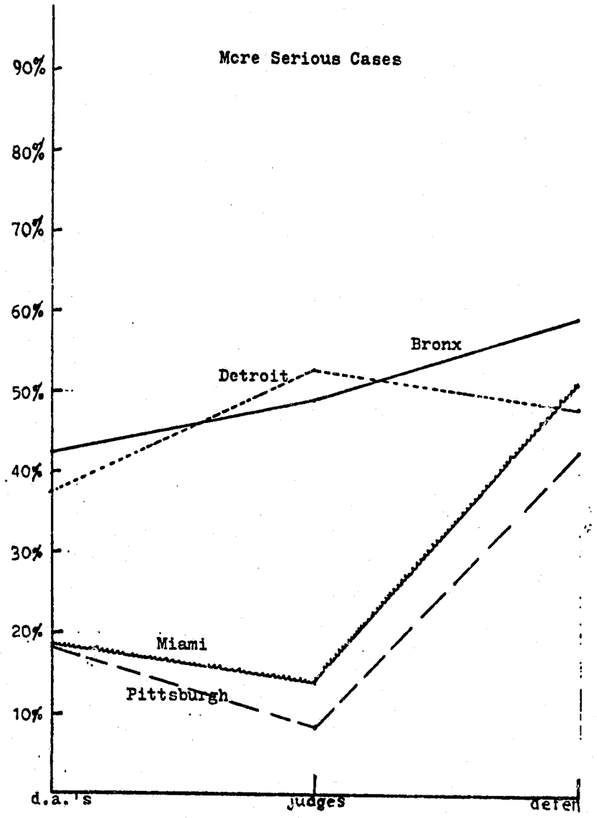


Figure 4.4
Percent Bargains by Seriousness (Hypotheticals)



The effect of the evidentiary strength on attitudes concerning mode of disposition is illustrated in Figures 4.5 and 4.6.[15] Not surprisingly, trials are chosen more often by all categories of respondent in the cases in which there are evidentiary questions. Again the same general patterns among the cities emerge with Bronx and Detroit practitioners supporting plea bargained dispositions substantially more than their brethren in Miami and Pittsburgh; the converse is true regarding trial dispositions. While judges in several instances evinced unusually high support for trials, the general orientation of the curves in Figure 4.5 is flat, suggesting fairly consistent attitudes within each court on the desirability of trial in both strong and weak cases. It is on the preference for plea bargains in cases where the prosecutor's evidence is strong that the clearest intra-city disagreement emerges: defense attorneys consistently show much more support for plea bargains in such cases than do judges and district attorneys. In weak cases, however, there is much less intra-court disagreement despite analogous intra-court differences.

Given the amount and complexity of the information presented in this chapter to this point, a brief summary is in order:

1. Samples of actual case dispositions in the Bronx, Detroit, Miami, and Pittsburgh, when broken down by seriousness, reveal that the courts handle similar cases differently. In particular, the Pittsburgh and Miami courts try more of most types of cases than do the Detroit and Bronx County courts. These patterns are not supportive of a work-group stability explanation of differential trial rates across courts.
2. The patterns of actual trial use do parallel attitudinal orientations of practitioners regarding preferred mode of disposition for the hypothetical case set. For each type of practitioner, those from Miami and Pittsburgh tended to prefer trials more and plea bargains less, than those from Detroit and the Bronx. Inter-city differences were found more in plea bargaining than in trial preferences.
3. Within courts, practitioner groups appear to hold similar attitudes regarding the desirability of trials in the hypotheticals, although in some instances there was stronger judge than attorney support for trial. Support for plea bargains in the Bronx and Detroit (courts with fewer actual trials and least normative preference for trials) was consistently high in all groups of practitioners for all subsets of the hypotheticals. Only in cases with strong prosecution cases was there significant disagreement between practitioner groups. In Miami and Pittsburgh, however, there was much greater intra-city disagreement over the desirability of plea bargaining: defense attorneys preferred negotiated dispositions substantially more than judges and prosecutors in nearly every category of case.

The preceding discussion centered on measures of central tendency, in particular, the average proportion of the hypothetical cases for which respondents chose a particular dispositional mode as most appropriate. We have yet to look at the extent of agreement within each class of respondent. This topic will be discussed in the next section.

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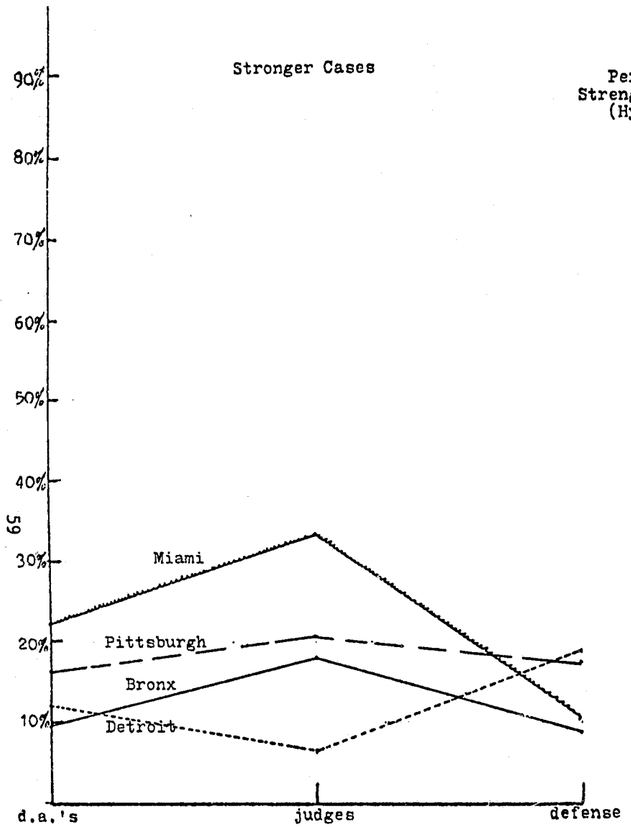
15 The hypothetical cases were divided into the categories of stronger and weaker evidence based upon the collective assessments of the respondents regarding the chances of a jury trial conviction in the case.

Figure 4.5
Percent Trials by Strength of Evidence (Hypotheticals)



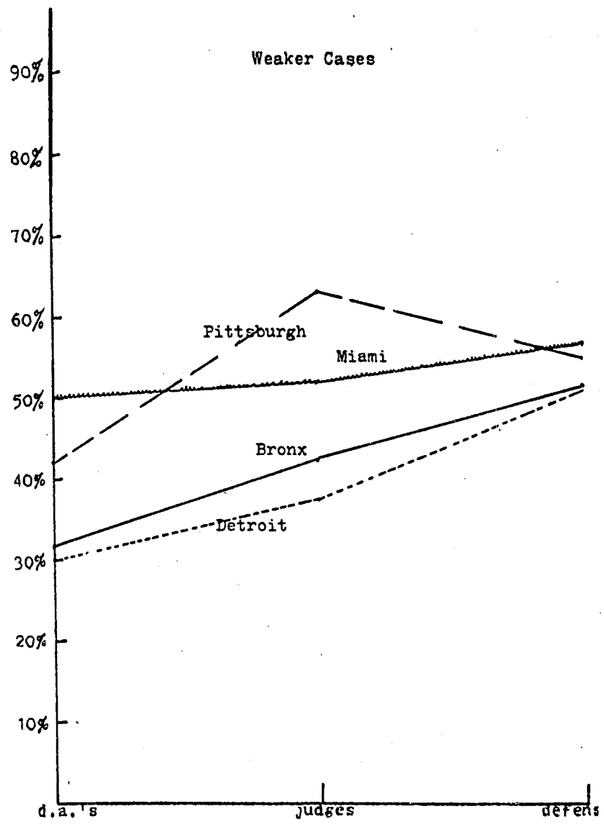
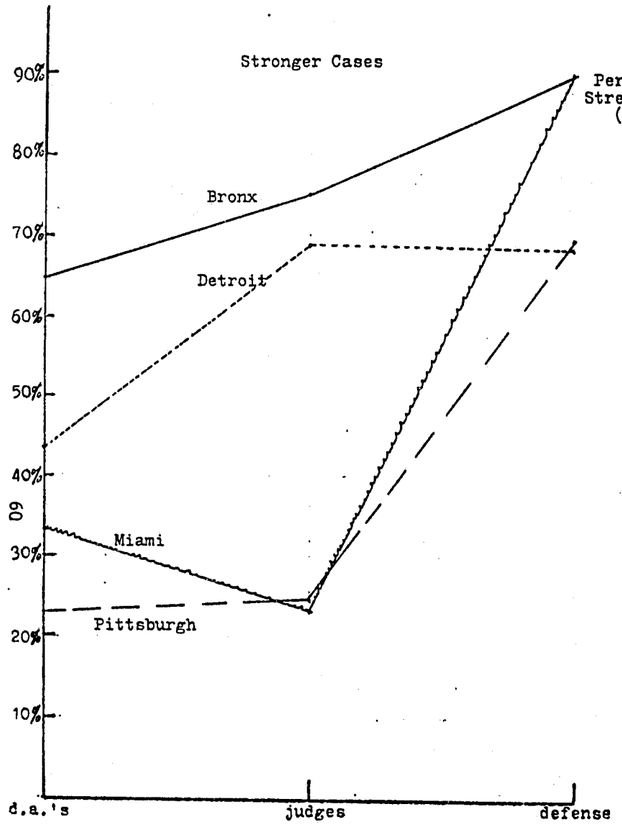
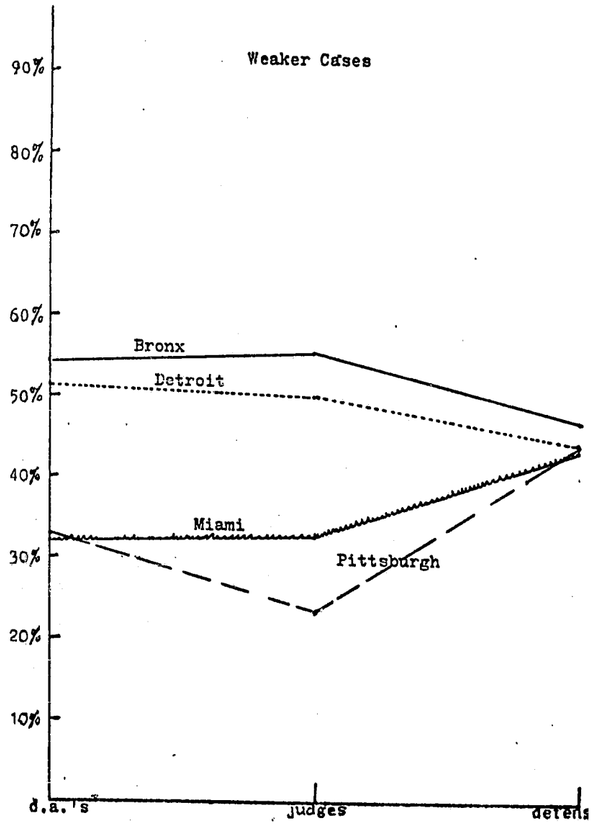


Figure 46

Percent Bargains by Strength of Evidence (Hypotheticals)





THE EXTENT OF INTER-CITY AGREEMENT

The previous section indicated that the four cities examined here can be distinguished by the proportion of the hypothetical cases that the average judge, defense lawyer and assistant district attorney indicated should be handled by negotiation and by trial. Average responses do not indicate the extent of agreement within each category of respondent, however. In statistical terms, the mean or average is a measure of central tendency, not a measure of dispersion. One corollary to the legal culture hypothesis is the expectation of finding some general agreement within and across classes of practitioners in a given court. But just as we might expect the content of those shared norms to differ from court to court, so might we expect the amount of agreement to vary among different courts and types of participants. In order to address these issues we need a way of looking at the extent of agreement on mode of disposition within the various court systems. Tables 4.2 and 4.3 depict for each of the 12 hypothetical cases the proportion of practitioners of each type in each city who indicated that the case should be disposed by negotiated plea (Table 4.2) and by trial (Table 4.3).

Agreement is obviously in the eye of the beholder. Statistics cannot provide an empirically derived index or breaking point by which to assess whether it does or does not exist within a particular group of respondents. To aid in interpretation of the tables a somewhat arbitrary figure of 70 percent was chosen as the point at which substantial agreement exists within a given group of respondents as to how a particular case should be handled. Each percentage which is at least 70 is circled on the tables. As an indication of substantial agreement that a particular case is best not handled by the relevant dispositional mode, figures of 30 percent or less are underlined.

There are a substantial number of circles and underlines on the two tables, but the numbers of cases in which circles or squares coincide for all groups in a city is relatively small. The first section of Table 4.4 indicates the number of hypothetical cases in each city on which at least 70 percent of all three groups of practitioners agreed that a negotiated disposition was most appropriate (the circles on Table 4.2), and on which at least 70 percent of each group believed some other form of disposition to be most appropriate (the underlines on Table 4.2). The second section of Table 4.4 indicates analogous figures for trial responses. Also included in each section are the number of cases in which at least two of the three groups of practitioners in each city agreed at the 70 percent level. The last line in each section provides an index of strong intra-city disagreement: the number of cases for each city in which there is agreement at the 70 percent level in one group that the relevant mode of disposition is most appropriate, and 70 percent agreement within another group that the mode is not most appropriate.

The strongest agreement in all four cities relates to preferences regarding trial dispositions. Line IIC1 indicates for each court the number of hypothetical cases in which at least 70 percent of all three practitioner types were agreed as to the appropriateness, or lack of appropriateness, of a trial. Agreement at this rather high level was achieved in half the cases in two courts, 42 percent of the cases in the other two courts. Attitudes regarding the appropriateness of plea bargained dispositions are much less consistent within the courts. Line IC1 shows that in only one city (Miami) was there substantial intra-court agreement on plea bargaining preferences in as many as a quarter of the hypothetical cases.

CONTINUED

1 OF 2

TABLE 4.2
PLEA BARGAIN RESPONSES IN HYPOTHETICAL CASES[1]

Case No.	Bronx			Detroit			Miami			Pittsburgh		
	Judges (n=9)	DA's (n=26)	PD's (n=12)	Judges (n=8)	DA's (n=37)	PD's (n=29)	Judges (n=5)	DA's (n=42)	PD's (n=10)	Judges (n=7)	DA's (n=30)	PD's (n=20)
1	100%[2]	92%	100%	89%	77%	100%	100%	64%	100%	50%	55%	95%
2	56%	30%[3]	27%	50%	26%	39%	20%	25%	27%	0%	23%	25%
3	44%	48%	42%	13%	41%	27%	20%	20%	0%	29%	27%	35%
4	75%	65%	11%	25%	55%	29%	40%	55%	20%	43%	54%	53%
5	56%	33%	58%	50%	34%	37%	0%	18%	60%	14%	7%	45%
6	89%	96%	83%	75%	76%	59%	60%	54%	80%	43%	43%	65%
7	56%	78%	67%	50%	68%	71%	80%	51%	80%	57%	53%	70%
8	89%	67%	100%	75%	26%	70%	20%	33%	100%	29%	13%	75%
9	22%	28%	33%	50%	46%	66%	20%	10%	22%	29%	26%	35%
10	67%	52%	100%	50%	24%	70%	0%	14%	100%	0%	3%	68%
11	44%	44%	50%	88%	65%	33%	20%	24%	40%	0%	30%	21%
12	56%	50%	100%	75%	24%	72%	20%	20%	100%	14%	13%	70%

[1]Figures indicate the percent of respondents in each category who indicated a case should be handled by either a plea bargain or diversion. Responses of dismissal or other were not considered in the percentages.
[2]Percentages of 70 or higher are encircled.
[3]Percentages of 30 or lower are underlined.

THE EXTENT OF INTER-CITY AGREEMENT

The previous section indicated that the four cities examined here can be distinguished by the proportion of the hypothetical cases that the average judge, defense lawyer and assistant district attorney indicated should be handled by negotiation and by trial. Average responses do not indicate the extent of agreement within each category of respondent, however. In statistical terms, the mean or average is a measure of central tendency, not a measure of dispersion. One corollary to the legal culture hypothesis is the expectation of finding some general agreement within and across classes of practitioners in a given court. But just as we might expect the content of those shared norms to differ from court to court, so might we expect the amount of agreement to vary among different courts and types of participants. In order to address these issues we need a way of looking at the extent of agreement on mode of disposition within the various court systems. Tables 4.2 and 4.3 depict for each of the 12 hypothetical cases the proportion of practitioners of each type in each city who indicated that the case should be disposed by negotiated plea (Table 4.2) and by trial (Table 4.3).

Agreement is obviously in the eye of the beholder. Statistics cannot provide an empirically derived index or breaking point by which to assess whether it does or does not exist within a particular group of respondents. To aid in interpretation of the tables a somewhat arbitrary figure of 70 percent was chosen as the point at which substantial agreement exists within a given group of respondents as to how a particular case should be handled. Each percentage which is at least 70 is circled on the tables. As an indication of substantial agreement that a particular case is best not handled by the relevant dispositional mode, figures of 30 percent or less are underlined.

There are a substantial number of circles and underlines on the two tables, but the numbers of cases in which circles or squares coincide for all groups in a city is relatively small. The first section of Table 4.4 indicates the number of hypothetical cases in each city on which at least 70 percent of all three groups of practitioners agreed that a negotiated disposition was most appropriate (the circles on Table 4.2), and on which at least 70 percent of each group believed some other form of disposition to be most appropriate (the underlines on Table 4.2). The second section of Table 4.4 indicates analogous figures for trial responses. Also included in each section are the number of cases in which at least two of the three groups of practitioners in each city agreed at the 70 percent level. The last line in each section provides an index of strong intra-city disagreement: the number of cases for each city in which there is agreement at the 70 percent level in one group that the relevant mode of disposition is most appropriate, and 70 percent agreement within another group that the mode is not most appropriate.

The strongest agreement in all four cities relates to preferences regarding trial dispositions. Line IIC1 indicates for each court the number of hypothetical cases in which at least 70 percent of all three practitioner types were agreed as to the appropriateness, or lack of appropriateness, of a trial. Agreement at this rather high level was achieved in half the cases in two courts, 42 percent of the cases in the other two courts. Attitudes regarding the appropriateness of plea bargained dispositions are much less consistent within the courts. Line IC1 shows that in only one city (Miami) was there substantial intra-court agreement on plea bargaining preferences in as many as a quarter of the hypothetical cases.

TABLE 4.3
TRIAL RESPONSES IN HYPOTHETICAL CASES[1]

Case No.	Bronx			Detroit			Miami			Pittsburgh		
	Judges (n=9)	DA's (n=26)	PD's (n=12)	Judges (n=8)	DA's (n=37)	PD's (n=29)	Judges (n=5)	DA's (n=42)	PD's (n=10)	Judges (n=7)	DA's (n=30)	PD's (n=2
1	0%[2]	0%	0%	0%	0%	0%	0%	0%	0%	0%	3%	0%
2	44%	47%	73%[3]	38%	32%	57%	80%	60%	73%	100%	57%	75%
3	56%	44%	58%	75%	49%	73%	80%	73%	100%	71%	60%	65%
4	25%	31%	89%	75%	34%	71%	40%	26%	80%	57%	38%	47%
5	44%	30%	33%	38%	29%	60%	60%	63%	40%	57%	33%	55%
6	11%	0%	17%	0%	11%	34%	0%	20%	20%	28%	17%	30%
7	44%	15%	33%	25%	27%	29%	0%	22%	20%	14%	13%	30%
8	11%	4%	0%	0%	6%	6%	0%	7%	0%	0%	7%	5%
9	56%	61%	67%	38%	29%	31%	80%	71%	78%	71%	38%	63%
10	22%	11%	0%	0%	14%	7%	80%	24%	0%	14%	7%	0%
11	57%	41%	50%	13%	24%	60%	80%	55%	60%	100%	48%	79%
12	11%	12%	0%	0%	11%	3%	60%	17%	0%	14%	17%	10%

[1]Figures indicate the percent of respondents in each category who indicated a case should be handled by either a jury or nonjury trial. Responses of dismissal or "other" were not considered in the percentages.
[2]Percentages of 30 or lower are underlined.
[3]Percentages of 70 or higher are encircled.

TABLE 4.4
INTRA-CITY AGREEMENT ON
PROPER MODE OF DISPOSITION

	Bronx	Detroit	Miami	Pittsburgh
I. Negotiated Guilty Plea[1]				
A. Most Appropriate				
1. Cases with 3 Group Agreement[2]	2	1	0	0
2. Cases with at Least 2 Group Agreement[3]	3	4	2	0
B. NOT Most Appropriate				
1. Cases with 3 Group Agreement	0	0	3	2
2. Cases with at Least 2 Group Agreement	2	2	7	8
C. Total of A and B, Above				
1. Cases with 3 Group Agreement	2	1	3	2
2. Cases with at Least 2 Group Agreement	5	6	9	8
D. Cases with Substantial Disagreement[4]	1	3	2	2
II. Trials (Jury or Non-Jury)				
A. Most Appropriate				
1. Cases with 3 Group Agreement	0	0	2	0
2. Cases with at Least 2 Group Agreement	0	2	3	2
B. NOT Most Appropriate				
1. Cases with 3 Group Agreement	5	5	4	6
2. Cases with at Least 2 Group Agreement	6	7	6	6
C. Total of A and B, Above				
1. Cases with 3 Group Agreement	5	5	6	6
2. Cases with at Least 2 Group Agreement	6	9	9	8
D. Cases with Substantial Agreement	1	0	2	0

Footnote: 1. Category Includes diversion

2. Number of hypothetical cases in which 70% or more of prosecutors, defense attorneys and judges agreed that negotiated guilty plea is most appropriate disposition.

3. Number of hypothetical cases in which 70% or more of at least two of the three types of practitioners agreed that a negotiated guilty plea is most appropriate disposition.

4. Number of hypothetical cases in which 70% or more of at least one group of practitioners indicated that a negotiated guilty plea was most appropriate and in which 70% or more of at least one group indicated that some other mode was most appropriate.

Practitioners in the Bronx and Detroit tend to agree on cases which are appropriate plea bargains and are not appropriate trials; there is little agreement that any particular case is an inappropriate plea bargain and virtually no agreement among types of practitioners that any case of the 12 should be tried. The situation in Miami and Pittsburgh is almost the converse. Practitioners in these courts show little agreement over the appropriateness of plea bargains in any of the hypothetical cases. As in the Bronx and Detroit, their strongest agreement comes on cases felt to be inappropriate for trial. But practitioners in Miami and Pittsburgh are in agreement that several cases are best disposed by means other than bargains and, particularly in Miami, that several cases should be tried.

These observations support those made in the previous section. That analysis concluded that the felony courts of Miami and Pittsburgh could be characterized as trial-oriented, Detroit and the Bronx as negotiation-oriented. These orientations affect not only the overall frequency with which practitioners chose particular dispositional modes as most appropriate. They also affect the types of court-wide agreement that is likely to occur on a particular case. Hence these data suggest that it is much less likely for an a.d.a., judge, and defense attorney to agree that a particular case should be tried in the Bronx than in Miami, for example. The converse is true regarding agreement that a case should have a negotiated disposition. The differences in actual trial rates in the cities depicted in Figure 4.1 are congruent with these suggestions, although the prevalence of specifically negotiated pleas could not be reliably ascertained from the case records.

IMPLICATIONS

This chapter has examined the methods by which four courts dispose of their criminal cases. It has shown that the courts try different proportions of similar cases. And it has shown that these differences in utilization of trial do not appear to be related to differences in the stability of relationships among judges, prosecutors and defense attorneys.

These distinctive patterns of actual dispositional mode, however, do follow differences in the attitudes of practitioners in the four courts regarding how criminal cases should be handled. The totality of these collective attitudes represents one way in which to view local legal culture: two of the courts herein examined could be fairly characterized as "negotiation-oriented," two as "trial-oriented." These relative orientations remain constant across serious and non-serious cases, strong and weak cases.

On a more discrete level, substantial agreement within the individual courts exists on the appropriateness of trial in the hypotheticals. This congruence of intra-court practitioner norms is illustrated in Figures 4.2, 4.3, and 4.5 by the horizontal orientation of the curves depicting practitioner attitudes toward trial in each city. It is supported by Table 4.4, which indicates substantial intra-city agreement in all four courts concerning trials in roughly half of the hypothetical cases.

On the issue of whether or not a plea bargain is appropriate in the hypotheticals, much less agreement is present among practitioners in the individual courts. As mentioned previously, the courts evidence distinctive

normative orientations toward plea negotiation that are consistent with actual disposition patterns. Hence the prosecutors, judges, and (to a lesser degree) defense attorneys in the negotiation-oriented courts prefer plea bargains in more of the hypothetical cases than do their counterparts in the trial-oriented cities. But within courts, the preferences of practitioners regarding plea bargains in the specific cases are far from uniform. The divergence of support for negotiated dispositions within courts is indicated by the frequently steep curves for each city on the figures depicting preferences for plea bargained dispositions (Figures 4.2, 4.4, and 4.6). It is suggested in the lack of intra-city agreement on the appropriateness of guilty pleas set out in Table 4.4.

It was argued previously that the trial/no trial distinction is primarily a procedural dimension of case handling, while the bargain/no bargain dichotomy implies substantive sentencing considerations as well. The attitudinal data presented in this chapter suggests that there is substantially more consensus within courts on the procedural issue of whether or not a trial is necessary to a proper resolution of a case than on the more substantive issue of whether or not plea negotiations -- and accompanying sentencing concessions -- would be appropriate. It may be, in other words, that cultural norms within a legal community are strongest and most specific on issues relating primarily to procedure. We have already seen substantial agreement in three of the four courts on the length of time necessary to bring specific cases to trial. Similar agreement is present on the appropriateness of such a trial in the individual cases. When the focus moves to an issue of more substance -- whether plea negotiations would be appropriate -- much more intra-city disagreement arises.

In its broadest sense, the concept of local legal culture may apply to whether a court tends to be "negotiation-oriented" or "trial-oriented." Both the actual case samples and the attitudinal data suggest that the former appellation might appropriately be applied to the Bronx and Detroit, the latter to Miami and Pittsburgh. But the notion of local legal culture as applied in this research implies more than simply a general normative orientation toward one or another mode of disposition. To the extent that it implies attitudinal agreement among practitioners in a court regarding the appropriate disposition of particular cases, then the data presented here suggest that it may have the most relevance when confined to questions of procedure. An investigation of the ultimate substantive issue in any case -- the sentence -- will provide another context to investigate these thoughts in Chapter V.

The data presented here also have implications for attempts to reform criminal court operations, particularly those efforts designed to reduce or eliminate plea bargaining. The alleged abuses of "bargain justice" constitute a dominant theme in much of the reform-oriented literature on criminal courts.[16]

16 See Albert Alschuler's series of articles on plea bargaining, esp. "The Prosecutor's Role in Plea Bargaining," University of Chicago Law Review 36 (1968): 50; U.S. National Advisory Commission on Criminal Justice Standards and Goals, Courts (Washington, DC: Government Printing Office, 1973); Kenneth Kipnis, "Criminal Justice and the Negotiated Plea," Ethics 86 (1976): 93.

A number of recent studies have challenged blanket condemnations of the practice on both practical and philosophical grounds,[17] but efforts directed at ridding the courts of plea bargaining continue apace.[18]

The analysis in this chapter indicates that the practice of negotiating guilty plea dispositions in at least some cases has substantial practitioner support in every court examined in this study. Furthermore, this support for plea bargaining was indicated in the context of adequate court system resources and fair procedures. Practitioners were thus not opting for plea bargains in cases solely because of caseload pressure nor did they believe such procedures to be inherently unfair and inappropriate. These data do not imply that substantial alteration in existing negotiation procedures is necessarily impossible. They do suggest that such efforts may not be welcomed by the very practitioners expected to put the reforms into effect. This fact, together with the history of unsuccessful efforts to impose court reforms on unwilling practitioners, suggests at the least that any serious attempt to eliminate plea bargaining will face serious obstacles.

17 See, e.g., Arthur Rosett and Donald Cressey, Justice by Consent: Plea Bargains in the American Courthouse (Philadelphia: Lippincott, 1976); Pamela Utz, Settling the Facts (Lexington, MA: Lexington Books, 1978); Thomas Church, "In Defense of 'Bargain Justice,'" Law and Society Review 13 (1979): 509.

18 See Sam W. Callan, "An Experience in Justice Without Plea Negotiation," Law and Society Review 13 (1979): 327; Michael Rubinstein and Teresa White, "Alaska's Ban on Plea Bargaining," Law and Society Review 13 (1979): 367; Milton Heumann and Colin Loftin, "Mandatory Sentencing and the Abolition of Plea Bargaining," Law and Society Review 13 (1979): 393; Thomas Church, "Plea Bargains, Concessions, and the Courts: Analysis of a Quasi-Experiment," Law and Society Review 10 (1976): 377; Raymond Nimmer and Patricia Krauthaus, "Plea Bargaining: Reform in Two Cities," The Justice System Journal 3 (1977): 6.

CHAPTER V

SENTENCES

Chapters III and IV dealt with the procedural issues surrounding the method in which criminal cases are handled. As was seen there, courts do not adjudicate guilt or innocence in most cases. Far more important in the vast majority of cases is the determination of sentence. Certainly the sentence to be imposed is the foremost concern of most defendants; an attorney interviewed in this research told of a client whose trenchant perspective is undoubtedly shared by many: "Hell, I'd plead guilty to raping my grandmother if the sentence were probation."[1] Public interest in criminal justice is similarly focused on sentences, a fact attested to by the number of judges who run for election on "get tough" platforms and by legislative imposition of minimum sentences and reinstitution of the death penalty in response to rising concern with crime.

Most research on sentencing has sought the determinants of sentences within a single court system. The effect of defendant race and economic status has been investigated in several studies.[2] Others have assessed the impact of judicial attitudes on sentencing decisions.[3] Relatively few studies have compared sentencing practices in different courts.[4] Fewer still have posited comprehensive explanations for such variation.[5]

We know, for example, that sentencing practices in different courtrooms of the same courthouse often differ.[6] And we know that at least some of those

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1 See Jonathan Casper, American Criminal Justice: The Defendant's Perspective (Englewood Cliffs: Prentice-Hall, 1972), esp. chs. 3, 4.

2 For general reviews of these studies see John Hagan, "Extra-legal Attributes and Criminal Sentencing: An Assessment of a Sociological Viewpoint," Law and Society Review 9 (1974): 357; James Gibson, "Race as a Determinant of Criminal Sentences: A Methodological Critique and a Case Study," Law and Society Review 12 (1978): 455.

3 James Gibson, "Judges' Role Orientations, Attitudes, and Decisions: An Interactive Model," American Political Science Review 72 (1978): 911; John Hogarth, Sentencing as a Human Process, (Toronto: University of Toronto Press, 1971); David Atkinson and Dale Neuman, "Judicial Attitude and Defendant Attributes: Some Consequences for Municipal Court Decision-Making," Journal of Public Law 19 (1970): 69.

4 Two exceptions: James Eisenstein and Herbert Jacob, Felony Justice: An Organizational Analysis of Criminal Courts (Boston: Little-Brown, 1977); Martin Levin, Urban Politics and the Criminal Courts (Chicago: University of Chicago Press, 1977).

5 One exception, Levin, Urban Politics and the Criminal Courts.

6 See Eisenstein and Jacob, Felony Justice, ch. 10.

differences may be explained by the attitudes held by judges.[7] What is missing is a broader comparative perspective in which to evaluate these differences. For example, the range of attitudes or practices regarding sentencing among judges on the same court might appear far less impressive were it set against the magnitude of such differences across courts.

If one common aspect of much sentencing research is its restriction to studies of one court, a second is its almost single-minded emphasis on the judge. Studies seek the causes of sentencing variation in judicial recruitment practices and orientation toward politics,[8] on judicial attitudes toward crime or "role orientation."[9] Even the one study explicitly directed at providing "An Organizational Analysis of Criminal Courts" focused on the identity of the judge -- and not the defense attorney or prosecutor -- in its empirical analysis of sentences in individual cases.[10]

This emphasis on the judge as sentencer is formally correct but incomplete in terms of the actual operation of most courts. Sentencing statutes almost always provide wide discretion. Court systems differ substantially, however, on the extent to which the choice of the final sentence imposed is shared between judge and counsel. In many courts the defense and prosecution agree on an appropriate sentence to follow a guilty plea (with or without the participation of the judge). That sentence is then "recommended" to the judge who formalizes it. Such systems give the judge little sentencing discretion other than the ability to upset the applecart and reject the arrangement. Even in courts where plea negotiations do not explicitly involve sentence, judges are constrained by the statutory sentencing limits when charges are reduced through negotiation between prosecution and defense. Perhaps more importantly, they are limited by settled local practice concerning how to handle common categories of offenses.[11]

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7 See Hogarth, Sentencing as a Human Process; Gibson, "Judges' Role Orientations, Attitudes, and Decisions."

8 Levin, Urban Politics and the Criminal Courts.

9 Hogarth, Sentencing as a Human Process; Gibson, "Judges' Role Orientations, Attitudes, and Decisions."

10 Eisenstein and Jacob, Felony Justice. Eisenstein and Jacob include "Identity of Courtroom" among their variables used to explain sentence. But in one of their three courts, this variable identified only the judge (since both district attorneys and defense attorneys moved from courtroom to courtroom) and in a second court, this variable identified a judge-prosecutor "team" but not the defense attorney. See pp. 274-87.

11 A common practitioner term for these generally agreed-upon sentences is "going rates." See Milton Heumann, Plea Bargaining: The Experiences of Prosecutors, Judges, and Defense Attorneys (Chicago: University of Chicago Press, 1978) pp. 75-78. See also David Sudnow, "Normal Crimes: Sociological Features of the Penal Code in a Public Defender's Office," Social Problems 12 (1965): 255.

The data gathered in this research addresses both of these problems, albeit in a limited and tentative way. The closed case samples provide rough comparative measures of actual sentencing practices in four courts. The hypothetical case data allow assessment of the attitudes held by judges, prosecutors and defense attorneys concerning sentences. These topics will be discussed in turn in the following sections.

COMPARING COURTS ON SENTENCING

A number of methodological obstacles make inter-court comparison of sentences difficult. There is first the variety in the types of cases handled by different courts. This difficulty affects attempts to look at mode of disposition, as observed in Chapter IV. It is even more problematic when the subject under investigation is not the relatively unambiguous plea/trial dichotomy but rather the almost infinite variety of sentencing alternatives possible for a particular defendant.

Past studies have analyzed sentence by crime type and (somewhat less frequently) defendant prior record. As discussed previously, such analyses can be seriously misleading because of the broad range of criminal behavior encompassed within the same legal label. This definitional problem, together with substantial dissimilarities in screening practices and in the incidence of serious crime, raise the possibility that variation in sentencing observed across courts could be caused by differences in the cases being compared rather than in court practices.

A further complication is caused by ambiguities in the operational meaning of sentences in different courts. Parole practices, "good time" provisions, and legislative penal guidelines differ substantially from state to state. For example, a defendant sentenced to three to nine years by a New York court would spend at least three years in prison. The same sentence in Pennsylvania would on average result in a little over two years incarceration -- a 33 percent difference. Comparing sentences imposed by the two courts without some adjustment for differences in their real meaning could thus be seriously misleading.

The Sellin-Wolfgang data collected on each adjudicated case in our samples provides a limited ability to segregate cases according to subjective seriousness. While it is true that formal sentencing statutes refer to legal categories of criminal acts rather than an index of seriousness, the statutes in all four states under examination provide a wide range of sentences for most crimes. Hence the statutes seldom preclude imposition of the sentence felt by practitioners to be appropriate, given the seriousness of the criminal act and the defendant. The same categories of seriousness used to assess mode of disposition will be used in this analysis of sentences.[12] The categories are obviously somewhat crude and would not support use of sophisticated statistical analysis. They were designed for the explicit purpose of making rough comparisons of trial rates, sentences, and disposition time across courts, however. I believe they are adequate for this limited task.

12 See Table 3.2.

The problem of varied operational consequences of sentences in different penal systems was addressed with the help of data collected as part of the hypothetical case questionnaire. On each case respondents were asked their view of the appropriate sentence if the defendant pled guilty. For sentences involving incarceration, they were then asked how long they would predict a defendant so sentenced would in fact remain in prison in their state, given existing parole and good time practices. By comparing imposed and actual sentences, it was possible to develop an adjustment factor by which to discount sentences in both the hypothetical case set and in the actual case data. This adjustment allows comparison of sentencing in the courts on approximately the same terms.[13]

Perhaps because of the paucity of reliable data comparing sentencing patterns across courts, no comprehensive theory exists to explain inter-court differences. Perhaps the most prominent hypothesis put forward by practitioners is the amorphous belief that sentences are higher in jurisdictions where crime is less prevalent, where judges and practitioners are not familiar with the kind of serious criminal cases routinely present in big urban courts. If this theory is founded on a rural-urban dichotomy, the sentencing data generated in this study can have little relevance since the courts examined here are unambiguously "big city" courts. The crime rates in the four jurisdictions differ substantially, however: the per capita incidence of violent crimes against the person, as measured by the F.B.I. uniform crime reports, for example, are highest in Detroit and the Bronx, substantially lower in Miami and, especially, Pittsburgh. If sentence levels vary inversely with crime rates, we would expect sentences to be comparatively high in Miami and Pittsburgh, low in Detroit and the Bronx.

A somewhat different theory is put forward by Martin Levin in his study of sentencing in Pittsburgh and Minneapolis.[14] Levin explains the comparatively light sentences imposed by Pittsburgh judges in terms of judicial recruitment patterns and the nature of the political system surrounding the two courts. Pittsburgh has a "traditional" political system where many judges are recruited from the ranks of party regulars. Such a system produces judges more sympathetic to the social and economic problems of defendants and thus less punitive sentencers.

In Minneapolis, on the other hand, judges come from less politically-oriented backgrounds. Many had successful law practices or business affiliations. The city political system approximates the reform model where material incentives are largely absent and government is "professionalized."

13 In three of the four courts this adjustment factor varied between .75 and .83 of the minimum sentence imposed in the typical x to y year sentence. This adjustment thus did not appreciably alter the relationships existing between cities in the unadjusted sentences. New York's sentencing procedures involved a more complex process. Indeterminate sentences (expressed formally as 0 to X years) were adjusted to one-third the maximum, but at least one year -- a state policy; defendants sentenced with a judge-imposed minimum always serve at least that minimum sentence, plus (if our Bronx respondents are correct) about 10% of the minimum.

14 Levin, Urban Politics and the Criminal Courts.

Levin explains the comparatively severe sentencing practices in Minneapolis in terms of these factors. Judges have less empathy for the defendants before them, they represent a segment of the community that feels especially threatened by criminal behavior, and the sentences reflect these factors.

The range of courts examined here allows a modest test of Levin's hypothesis. If Levin is correct, sentences will tend to be less severe in courts located in cities with traditonal political systems, more stringent in reform-oriented cities. Hence we should expect comparatively low sentences in the Bronx and Pittsburgh, higher sentences in Detroit and, especially, Miami.

Figure 5.1 indicates the proportion of convicted defendants in each of the four seriousness categories who were incarcerated. As on the figures in Chapter IV, defendants are separated as to whether or not they had a previous criminal conviction. The broadest range among the courts occurs for those defendants without prior records. For all four seriousness categories, the Bronx court incarcerates substantially more defendants than in Detroit, where substantially more defendants are incarcerated than in Pittsburgh. In Miami, relatively few defendants in the lowest two seriousness categories are incarcerated; in the more serious cases, Miami incarcerates the highest proportion of defendants of any of the four courts. For defendants with prior convictions, the utilization of incarceration is quite similar in the Bronx, Miami and Detroit; as with defendants without prior records, the rate of incarceration in Pittsburgh is substantially lower than in the other three cities.

Sending a convicted defendant to state prison is the most extreme sentence a court can impose, short of death. Figure 5.2 sets out the proportion of defendants sent to state prison in the various courts. In the Bronx and Pittsburgh, there is little utilization of county jail sentences; if a defendant is incarcerated, he is generally sent to a state prison. Because of this fact the curves for the Bronx and Pittsburgh are quite similar from Figure 5.1 to Figure 5.2. As in Figure 5.1, proportionally more defendants in the Bronx are sent to state prison in almost all classes of seriousness, substantially fewer in Pittsburgh, with Miami and Detroit occupying a middle ground.

Figures 5.3 and 5.4 provide data on the use of longer terms of incarceration in the four cities. Figure 5.3 gives the proportion of convicted defendants sentenced to prison terms that could be expected to last more than three years; Figure 5.4, more than five years.[15] In both of these figures, the position of the Pittsburgh court as the more lenient of the four remains unchanged. The major alteration in position is that of the Bronx. Although a higher proportion of defendants are incarcerated and sent to state prison in the Bronx than in the other three cities, the terms of incarceration tend to be shorter. In all but the most serious cases, the Bronx ranks third of the four cities in imposition of longer prison terms.

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15 These data are presented in categorical form (rather than by use of average sentences) because of the tentative nature of the adjusted sentences and the presence of several small cells. I am reasonably confident about whether a particular defendant will remain more than three, or five years in prison in a particular state; the exact length of incarceration, especially in the longer terms likely to have a large effect on the mean, is considerably less clear.

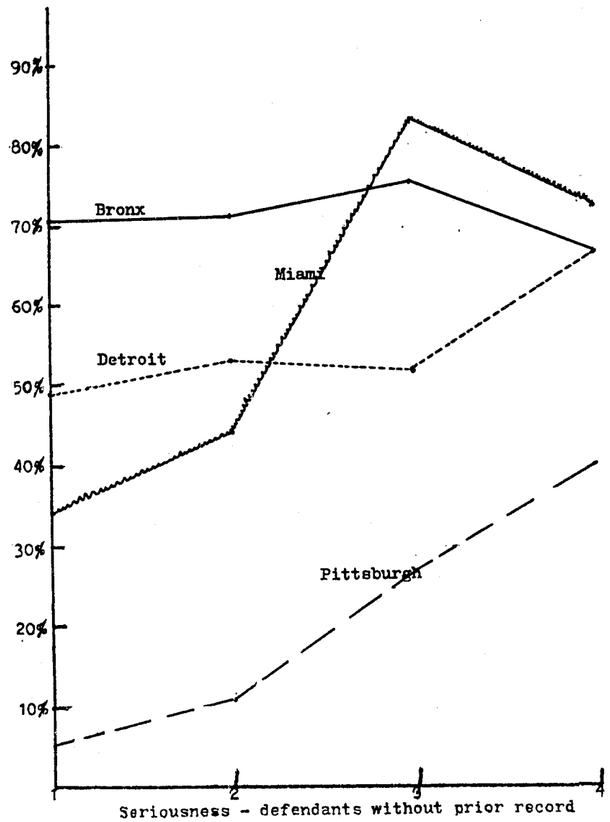
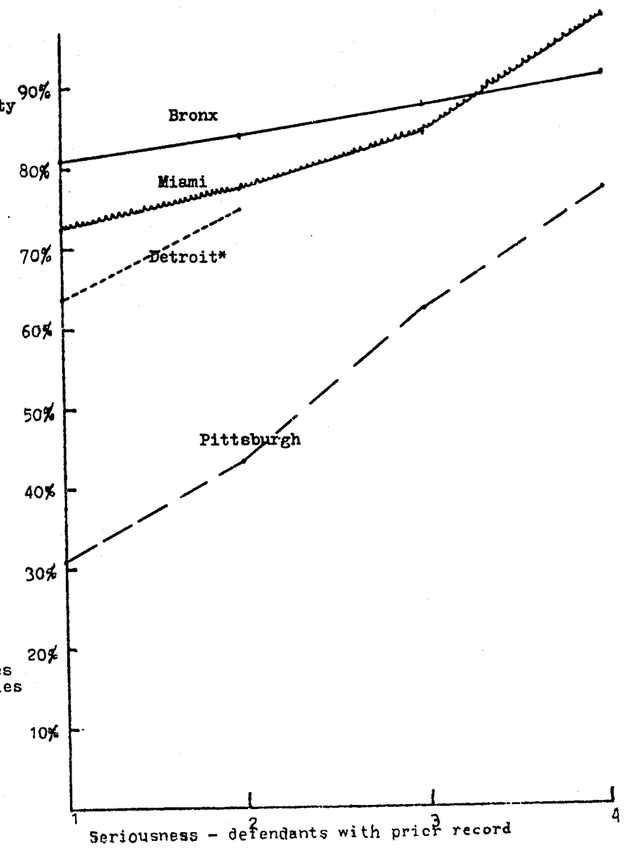


Figure 5.1
Percent of Guilty Incarcerated (Actual Cases)



*too few cases in 2 categories

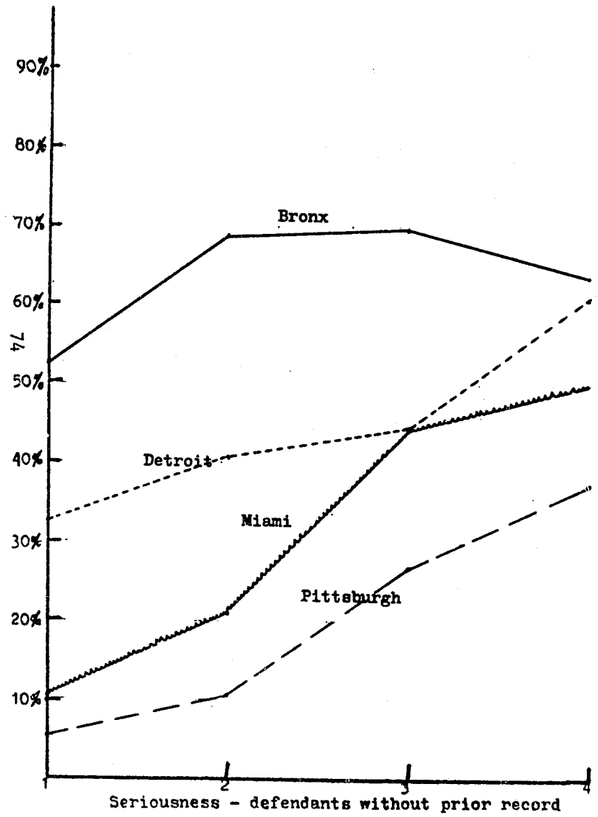
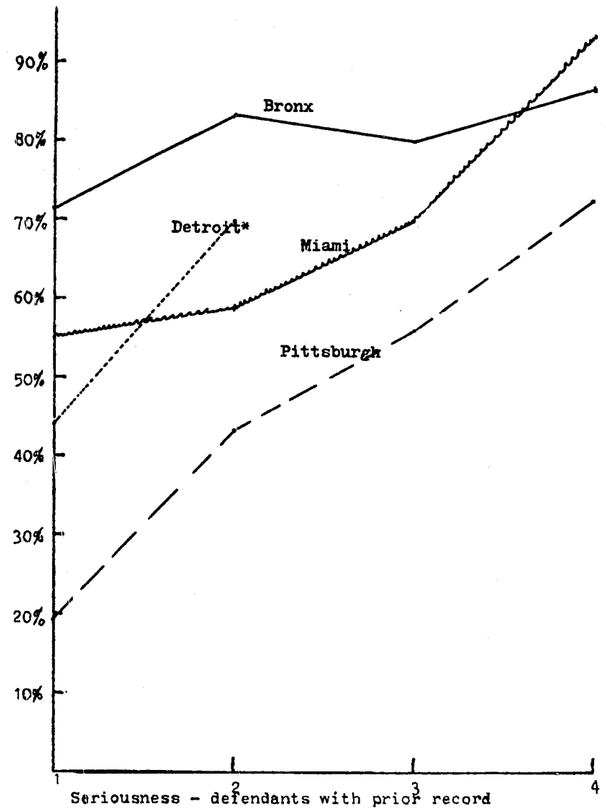


Figure 5.2
Percent of Guilty to State Prison (Actual Cases)



*too few cases in 2 categories

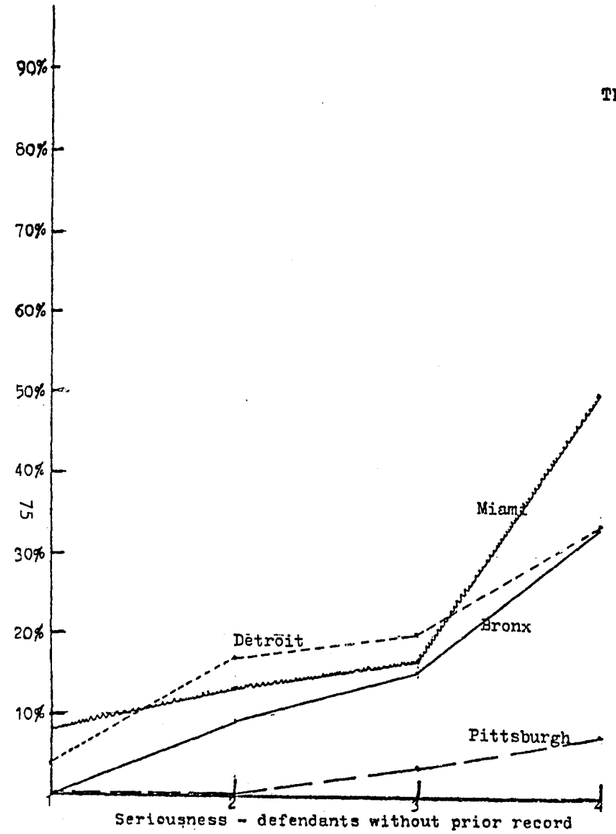
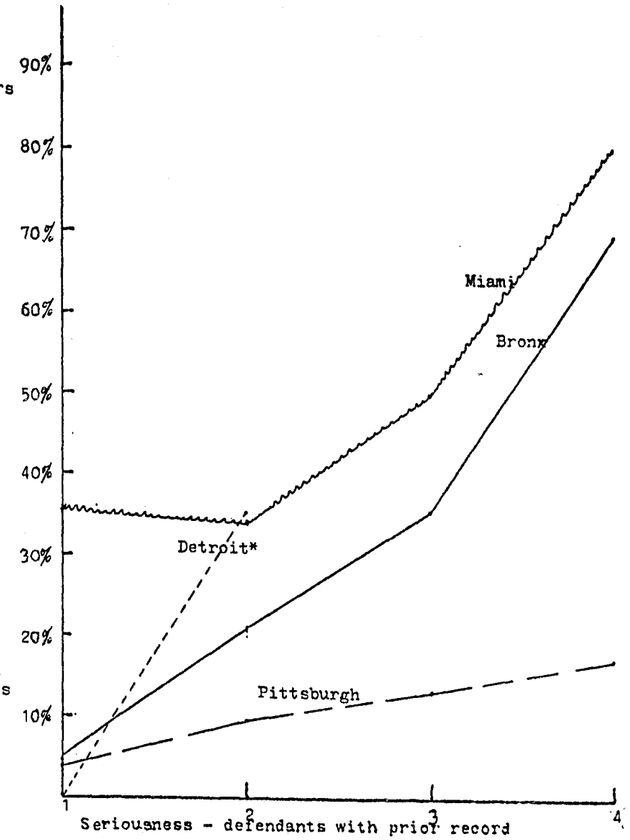
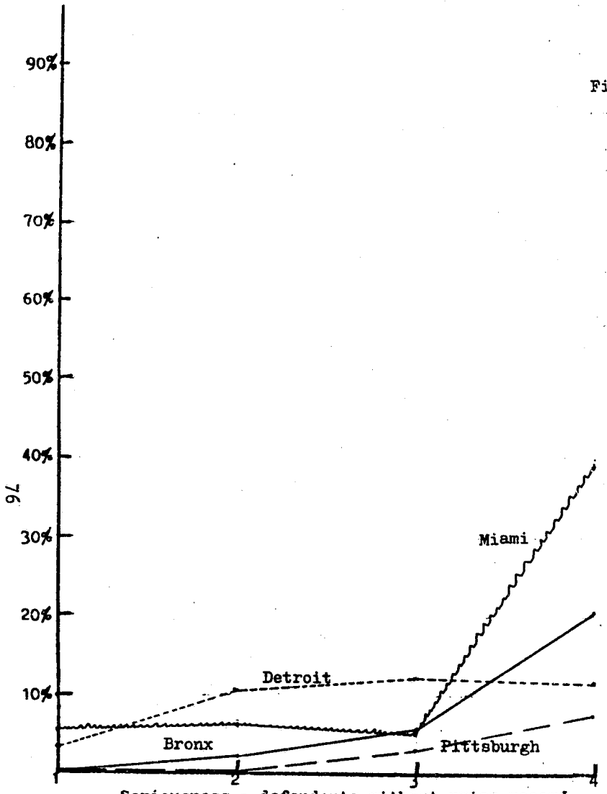


Figure 5.3
Three or More Years
in Prison
(Actual Cases)

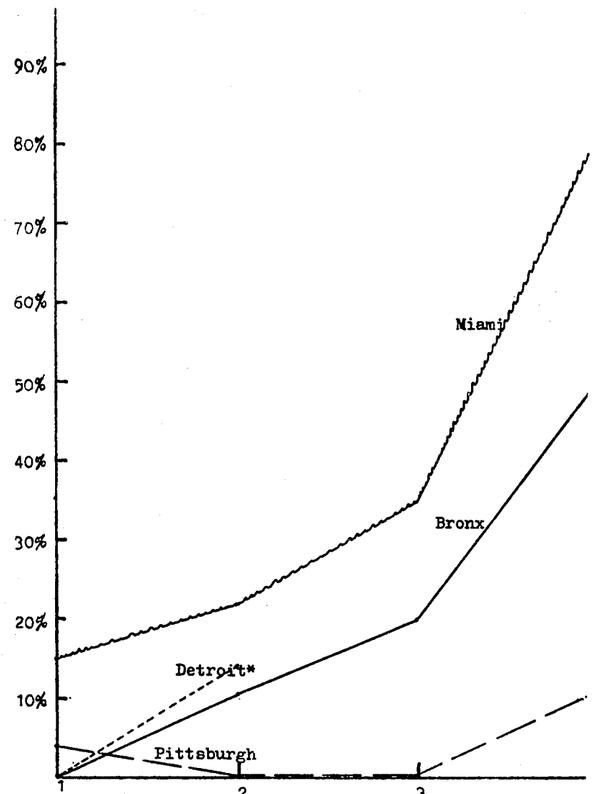


*too few cases
in 2 categories

Figure 5.4
Five or More Years
in Prison
(Actual Cases)



*too few cases
in 2 categories



These data provide evidence of substantial differences across the four courts in utilization of incarceration, state prison and longer prison terms. For example, it appears that a defendant convicted in the felony court of Pittsburgh has a substantially better chance of avoiding incarceration than a similar defendant convicted of doing a similar act in the Bronx, Miami or Detroit. The same can be said regarding the likelihood of avoiding state prison and of avoiding terms in excess of three and of five years. Similar patterns differentiate the courts of the Bronx, Miami and Detroit but they are less pronounced and the relative position of the three cities is somewhat less stable.

These data are obviously not of the level of refinement that would permit a definitive characterization of the sentencing practices of any of the four courts herein examined. The number of cases in many of the categories is small; the categories themselves are not as refined as they might be; the Sellin-Wolfgang scale may miss important dimensions of seriousness (such as the relationship of defendant to victim) which may affect the ultimate sentence imposed. Despite these limitations, the data remain suggestive of major differences in the way the four courts sentence similarly situated defendants: In Miami and Detroit defendants are more likely to be incarcerated, and incarcerated for a comparatively lengthy term. In Pittsburgh, considerably fewer defendants are incarcerated and the terms of imprisonment are shorter. Convicted felons in the Bronx are more likely to be imprisoned than in any of the other three courts, but the terms of incarceration are comparatively short.

These data are not supportive of the theory that sentences vary inversely with the incidence of violent crime in a jurisdiction. Were this hypothesis true, for example, we would expect Pittsburgh sentences to be unambiguously high rather than unambiguously low. Detroit sentences, on the other hand, would tend to be comparatively low when in fact the opposite is true. It may be that crime rate affects sentences between rural and urban courts. Here the gulf separating the seriousness of the routine criminal case may be very great indeed -- far greater than the differences among these four big city courts. When confined to the more modest differences in incidence of crime among such cities, the relationship in at least these four courts is not that suggested by the theory.

Martin Levin's suggestion that the political systems of the city affect its court's sentencing practices, on the other hand, finds some support in these data. The two cities with reform city governments -- Detroit and Miami -- tend to have the stringent felony sentences across the board. Pittsburgh -- with its traditional political system -- has sentences that are comparatively lenient in all categories. The Bronx -- another old-style political city -- is more difficult to categorize since proportionately more defendants are incarcerated than elsewhere but the terms are comparatively short.

As will be discussed in the final section of this chapter, Levin's theory is not inconsistent with the hypothesis that local legal culture influences a criminal court's disposition patterns. Before this relationship can be discussed further, however, practitioner attitudes toward sentencing must be examined.

SENTENCES AND LOCAL LEGAL CULTURE

Practitioners in the Bronx, Detroit, Miami and Pittsburgh were asked to indicate the appropriate sentence in each of the hypothetical cases were the defendant to plead guilty as charged. For purposes of this question, respondents were asked not to feel bound by the sentencing provisions in effect in their state. Since the cases were identical in each of the courts, responses to the sentencing questions provide a controlled look at specific sentence norms both across and within courts.

The 12 hypothetical cases separate into two distinct groups based on the proportion of respondents indicating a sentence involving incarceration. In seven of the cases, between 90 and 100 percent of each type of practitioner in each city indicated that the defendant should be sentenced to some term of incarceration. In the remaining five cases, considerably more respondents suggested use of sentencing options involving probation, fines, and special programs. This fairly clear dichotomy was the basis for the division of cases into the categories of "more serious" and "less serious" previously used to analyze mode of disposition. The figures that follow subdivide the cases into these same groupings.

Figure 5.5 illustrates the mean percentage of the more, and the less, serious cases that practitioners in each city believed should involve a sentence of jail or prison. As the right side of the figure indicates, there is broad agreement among respondents in all cities that some form of incarceration is the appropriate sentence in the more serious cases. The left side of Figure 5.5 reveals real differences in practitioner attitudes concerning incarceration in less serious cases in the four cities. The pattern of difference, however, is somewhat ambiguous, since the relative ranking of the cities changes from one type of practitioner to another. On Figure 5.5, the only reasonably clear conclusion is that Miami practitioners would incarcerate proportionally more convicted defendants than practitioners elsewhere; Bronx practitioners, proportionally fewer, with practitioners in Detroit and Pittsburgh somewhere in the middle.

The relative positions of the cities in terms of sentencing stringency emerges somewhat more clearly in Figure 5.6, depicting the mean percentage of less serious and more serious cases in which respondents opted for a state prison sentence. In the more serious cases there is still very strong support for incarceration in state prison among all groups of respondents in all four cities, although this support is somewhat greater in Miami and Detroit than in the Bronx and Pittsburgh. In the less serious cases, practitioners in Miami and Detroit also utilize state prison to a greater extent than those in the Bronx and Pittsburgh.

Figures 5.7 and 5.8 portray analogous percentages for incarceration over three and over five years respectively.[16] Here the most substantial variation among cities and practitioner types occurs in the more serious cases, with little usage of longer terms of incarceration in the less serious cases. In these figures Miami and Detroit practitioners are unambiguously higher than those in Pittsburgh in support of longer terms of incarceration.

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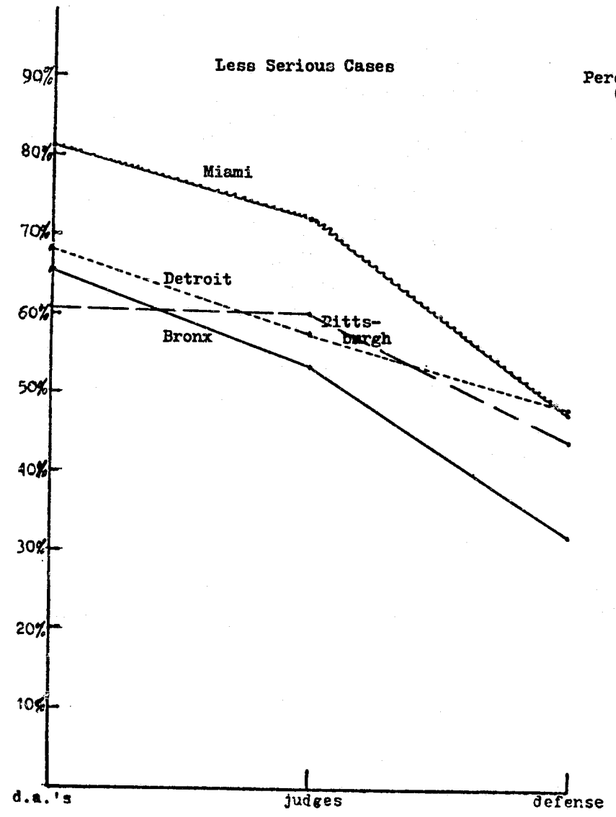
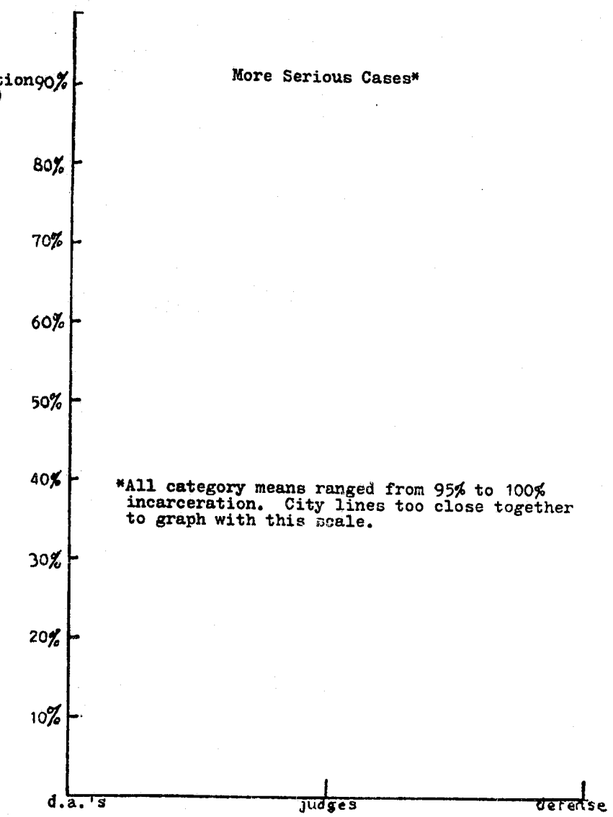
16 These figures are adjusted for parole and "good time" practices. See note 13 and accompanying text.

Figure 5.5
Percent Incarceration
(Hypotheticals)





*All category means ranged from 95% to 100% incarceration. City lines too close together to graph with this scale.

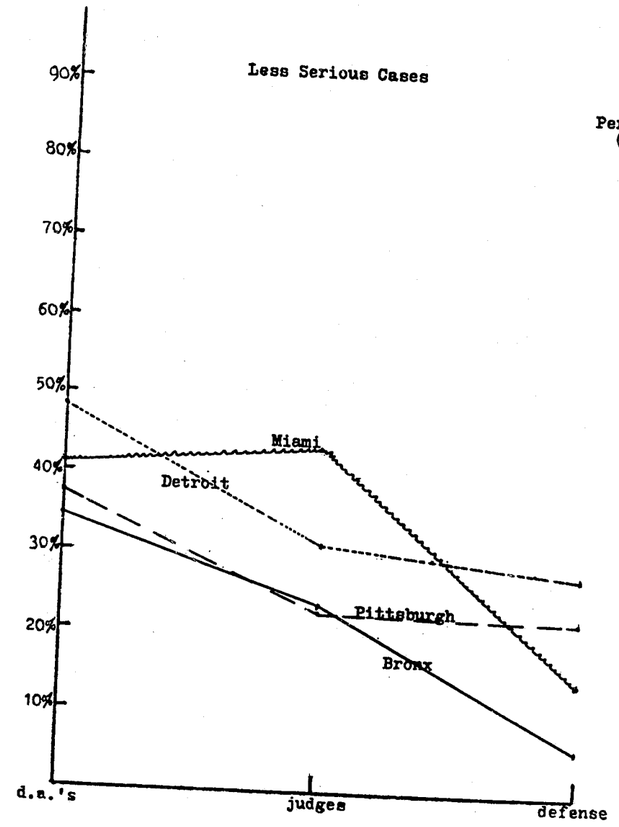
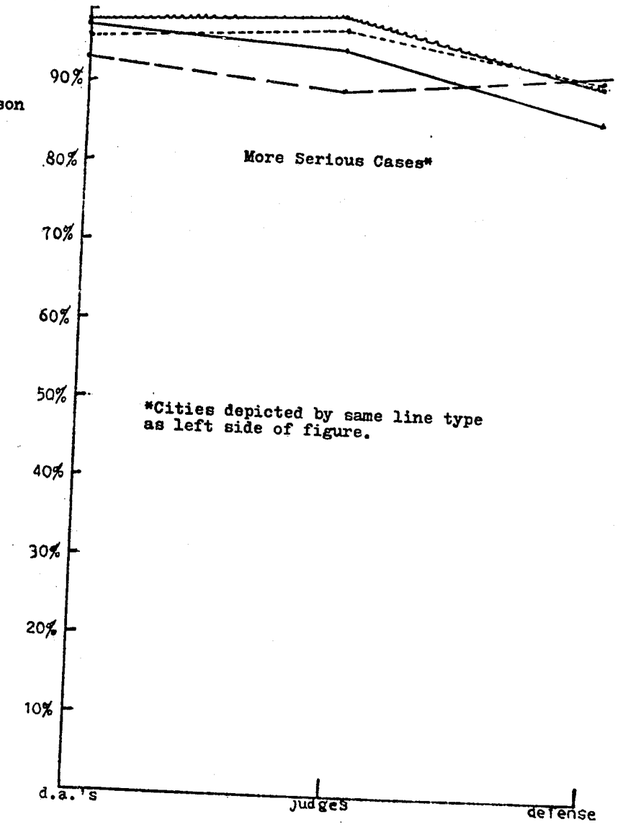


Figure 5.6
Percent State Prison
(Hypotheticals)



*Cities depicted by same line type as left side of figure.

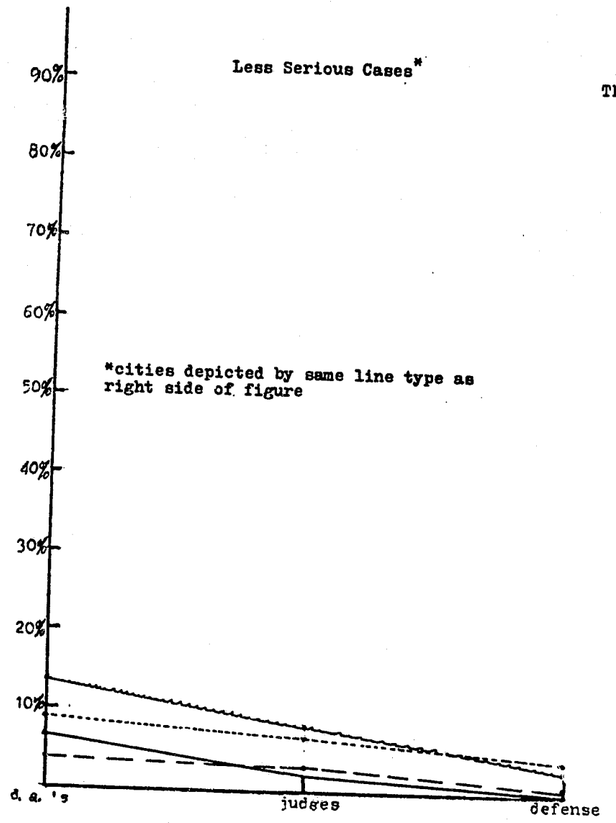


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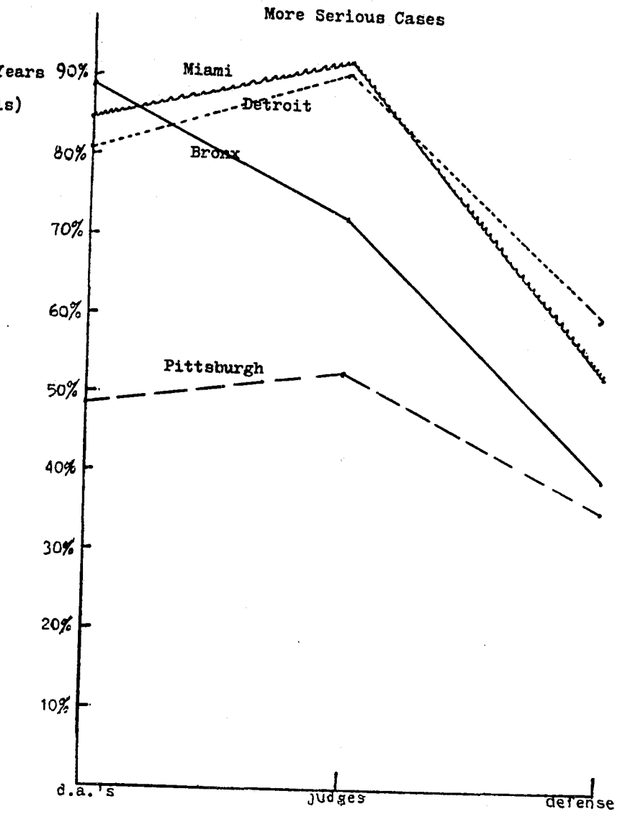
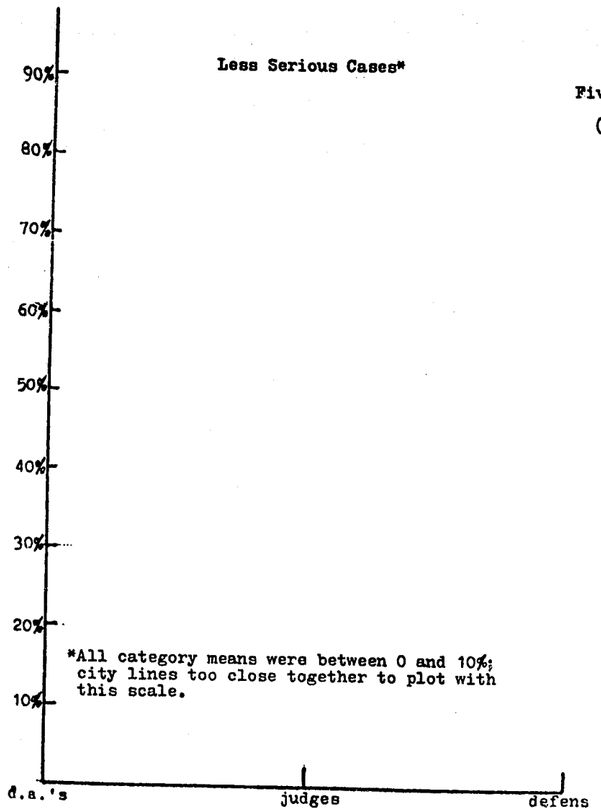
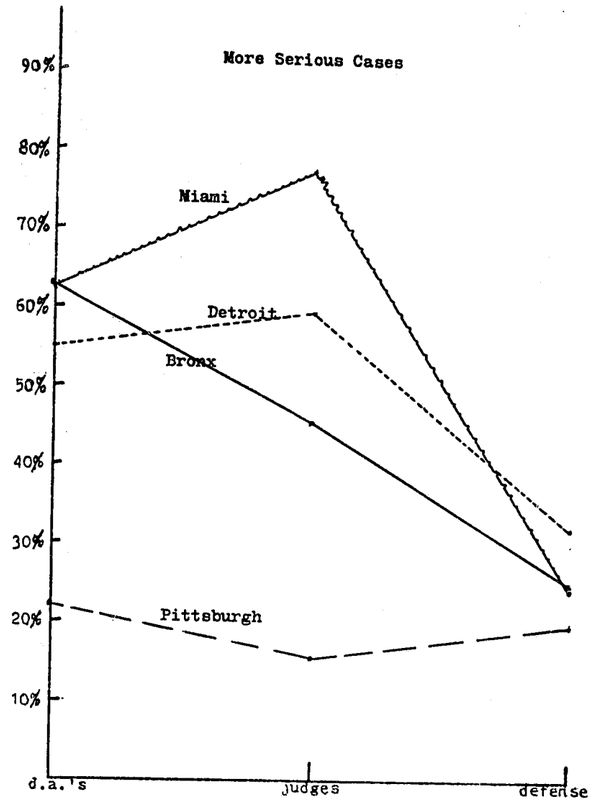
Figure 5.7
Three of More Years in Prison (Hypotheticals)





*All category means were between 0 and 10%; city lines too close together to plot with this scale.

Figure 5.8
Five or More Years in Prison (Hypotheticals)



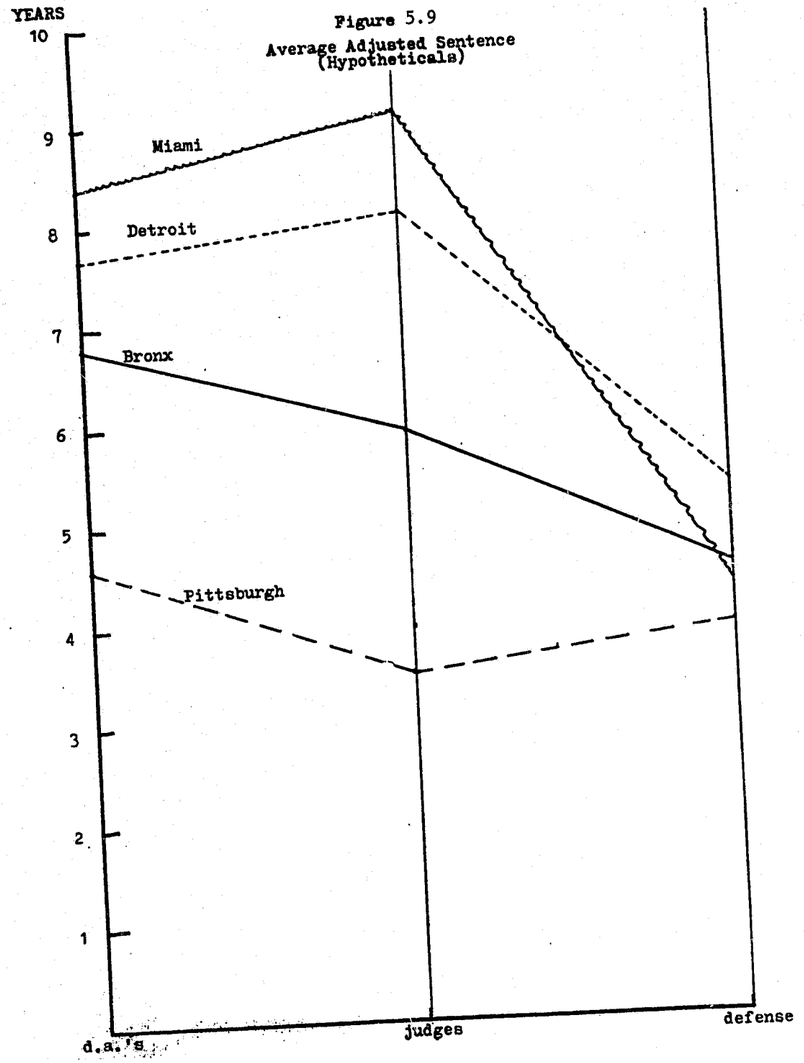


Figure 5.9
Average Adjusted Sentence
(Hypotheticals)

appropriate than does the average prosecutor in every city on almost every dimension of sentencing attitudes tapped in these data. These attitudinal differences are often very substantial. Indeed, the differences in attitude between types of practitioners within cities are often greater than inter-city differences. These differences are examined in more detail in the next section.

INTRA-CITY AGREEMENT

Tables 5.1 through 5.4 set out the percentage of respondents of each type in each city who considered various levels of sentence to be appropriate in each hypothetical case. As in the previous sections, the levels examined are incarceration, incarceration in state prison, an expected sentence of more than three years in prison, and of more than five years in prison. These data are helpful in examining the nature of practitioner norms concerning sentences and the extent of agreement within each court.

As in Chapter IV, all figures greater than or equal to 70 percent are encircled; all less than or equal to 30 percent are underlined. As might be expected from an examination of Figures 5.6 to 5.8, most respondents believed incarceration to be appropriate in the more serious cases; in those cases the disagreements tended to come concerning the length of the incarceration believed to be appropriate. Alternatively, there was considerable agreement on the less serious cases that longer terms of incarceration were appropriate; disagreement in these cases came on the issue of whether any incarceration at all was indicated, and if so, whether it should be in the state prison.

Table 5.5 summarizes for each city the number of hypothetical cases on each of Tables 5.1 to 5.4 in which at least 70 percent of two and of all three types of practitioners agreed the relevant level of sanction was appropriate. It indicates the same figures for the number of cases in which 30 percent or less of the respondents indicated the sanction to be appropriate. The last line in each section represents the number of cases in each city in which at least 70 percent of one type of practitioner believed the relevant sanction to be appropriate, and in which at least 70 percent of another group indicated that sanction <u>not</u> to be most appropriate.

The characterization of the Miami and Detroit courts as holding more stringent sentencing norms is illustrated by these data. These courts tend to have more cases in which there is substantial agreement that a particular level of sanction <u>is</u> appropriate (sections IA, IIA, IIIA and IVA on Table 5.5), fewer cases in which there is substantial agreement that any particular level of sanction is inappropriately high (sections IB, IIB, IIIB, IVB). Note, for example, that there were no cases in which even two of the three types of practitioners believed incarceration to be inappropriate in Miami. On the other hand, in half of the cases at least two practitioner groups in both Detroit and Miami indicated the appropriate sentence should result in more than three years in prison.

In Pittsburgh and, to a lesser extent, the Bronx, the opposite was true: practitioners tended to agree more on the fact that a particular sanction was inappropriately stringent. In these courts there was less agreement than in Miami and Detroit concerning the appropriateness of any particular level of sanction.

Bronx assistant district attorneys make more use of longer terms than a.d.a.'s in the other three cities; Bronx judges and defense attorneys, on the other hand, occupy a middle ground between Miami and Detroit, and Pittsburgh.

A somewhat different perspective on sentencing norms can be obtained from Figure 5.9 in which the average sentence (adjusted for parole and "good time") for all serious cases is set out for each participant category in each city. Again, Miami and Detroit practitioners indicate longer terms of incarceration than practitioners in the Bronx and -- especially -- in Pittsburgh.[17]

An examination of Figures 5.5 through 5.9 suggests that courts are distinct in terms of overall sentencing norms, but that the pattern of those norms is sometimes confused by very substantial differences existing between types of practitioners in each city. As a general rule, Miami and Detroit practitioners are oriented toward more stringent sentences; Pittsburgh practitioners, more lenient sentences. The position of practitioners in the Bronx is more complex: all Bronx practitioners tend to support less use of incarceration and state prison than those in Miami, Detroit or Pittsburgh. The same is true regarding use of longer prison terms by judges and defense attorneys; a.d.a.'s in the Bronx, however, rank highest of all the cities in preference for longer prison terms.

These data on participant attitudes generally parallel that from the closed case samples. Miami and Detroit emerged from that analysis as high in the proportion of defendants incarcerated, sent to state prison, and imprisoned for longer prison terms. The Pittsburgh court ranked low on these dimensions. In the Bronx, a relatively high proportion of defendants in all types of cases were sent to prison but analysis of the proportion of defendants sentenced to longer prison terms reveals that the typical prison term is relatively short, at least when compared to the proportion of defendants receiving longer prison terms in Miami and Detroit. The high proportion of Bronx defendants in all case categories who were incarcerated and sent to state prison is the only major inconsistency with the attitudinal data, since Bronx practitioners tended to utilize incarceration and state prison sentences in the hypothetical cases less frequently than those in the other three cities. A possible explanation for this anomaly lies in the extraordinary screening of cases in the Bronx Criminal Court prior to filing in the court of general jurisdiction. Generally, if there is <u>any</u> real chance of a non-prison sentence, the case is disposed below and is never filed in the Supreme Court. The Sellin-Wolfgang seriousness data and prior record information were collected in part to correct for differences in screening practices but it may be that the uniquely intense screening process in the Bronx skews the sample toward more serious cases in a way that is not uncovered by the Sellin-Wolfgang index. In any event, the use of longer prison terms in the Bronx is roughly what one would expect, given the attitudinal data, and this one aberration should not obscure the general tendency of sentencing practices to follow the overall orientation of practitioner norms.

Despite the fact that the ranking of each city's sentencing seriousness remains fairly constant across the three practitioner types, the figures reveal several substantial differences in the sentencing norms of judges, prosecutors, and defense attorneys within the same court. The average defense attorney, for example, believes relatively lenient sentences to be more

TABLE 5.1
USE OF INCARCERATION IN HYPOTHETICAL CASES

Case No.	Bronx			Detroit			Miami			Pittsburgh		
	Judges (n=9)	DA's (n=27)	PD's (n=12)	Judges (n=9)	DA's (n=39)	PD's (n=31)	Judges (n=5)	DA's (n=42)	PD's (n=11)	Judges (n=7)	DA's (n=30)	PD's (n=20)
1	0%*	26.9%	0%	22.2%	48.7%	16.1%	40.0%	69.1%	0%	14.3%	23.3%	5.0%
2	100%**	100%	91.6%	100%	100%	93.5%	100%	100%	100%	100%	100%	95%
3	100%	100%	91.7%	100%	100%	100%	100%	100%	100%	100%	100%	100%
4	11.1%	37.0%	8.3%	22.2%	35.8%	16.1%	40.0%	57.2%	36.4%	28.6%	33.3%	10.0%
5	100%	100%	91.7%	100%	97.5%	93.3%	100%	100%	100%	100%	96.7%	85%
6	100%	100%	66.7%	100%	92.4%	90.0%	100%	97.6%	80.0%	85.7%	93.3%	80.0%
7	44.4%	70.4%	25.0%	44.4%	73.6%	33.3%	80.0%	83.3%	30.0%	71.5%	53.4%	30.0%
8	100%	100%	58.3%	100%	89.4%	86.6%	100%	98.6%	90.0%	100%	100%	95.0%
9	88.9%	92.6%	91.6%	88.9%	97.4%	90.0%	100%	100%	70.0%	100%	93.4%	90.0%
10	100%	100%	83.3%	100%	97.4%	100%	100%	100%	90.0%	100%	100%	95.0%
11	100%	100%	91.6%	100%	97.4%	96.6%	100%	100%	100%	100%	100%	95.0%
12	100%	100%	91.7%	100%	100%	100%	100%	100%	100%	100%	100%	95.0%

*Percentages under 31 are underlined in Tables 4.1 through 4.4.
**Percentages over 70 are encircled in Tables 4.1 through 4.4.

appropriate than does the average prosecutor in every city on almost every dimension of sentencing attitudes tapped in these data. These attitudinal differences are often very substantial. Indeed, the differences in attitude between types of practitioners within cities are often greater than inter-city differences. These differences are examined in more detail in the next section.

INTRA-CITY AGREEMENT

Tables 5.1 through 5.4 set out the percentage of respondents of each type in each city who considered various levels of sentence to be appropriate in each hypothetical case. As in the previous sections, the levels examined are incarceration, incarceration in state prison, an expected sentence of more than three years in prison, and of more than five years in prison. These data are helpful in examining the nature of practitioner norms concerning sentences and the extent of agreement within each court.

As in Chapter IV, all figures greater than or equal to 70 percent are encircled; all less than or equal to 30 percent are underlined. As might be expected from an examination of Figures 5.6 to 5.8, most respondents believed incarceration to be appropriate in the more serious cases; in those cases the disagreements tended to come concerning the length of the incarceration believed to be appropriate. Alternatively, there was considerable agreement on the less serious cases that longer terms of incarceration were appropriate; disagreement in these cases came on the issue of whether any incarceration at all was indicated, and if so, whether it should be in the state prison.

Table 5.5 summarizes for each city the number of hypothetical cases on each of Tables 5.1 to 5.4 in which at least 70 percent of two and of all three types of practitioners agreed the relevant level of sanction was appropriate. It indicates the same figures for the number of cases in which 30 percent or less of the respondents indicated the sanction to be appropriate. The last line in each section represents the number of cases in each city in which at least 70 percent of one type of practitioner believed the relevant sanction to be appropriate, and in which at least 70 percent of another group indicated that sanction <u>not</u> to be most appropriate.

The characterization of the Miami and Detroit courts as holding more stringent sentencing norms is illustrated by these data. These courts tend to have more cases in which there is substantial agreement that a particular level of sanction <u>is</u> appropriate (sections IA, IIA, IIIA and IVA on Table 5.5), fewer cases in which there is substantial agreement that any particular level of sanction is inappropriately high (sections IB, IIB, IIIB, IVB). Note, for example, that there were no cases in which even two of the three types of practitioners believed incarceration to be inappropriate in Miami. On the other hand, in half of the cases at least two practitioner groups in both Detroit and Miami indicated the appropriate sentence should result in more than three years in prison.

In Pittsburgh and, to a lesser extent, the Bronx, the opposite was true: practitioners tended to agree more on the fact that a particular sanction was inappropriately stringent. In these courts there was less agreement than in Miami and Detroit concerning the appropriateness of any particular level of sanction.

appropriate than does the average prosecutor in every city on almost every dimension of sentencing attitudes tapped in these data. These attitudinal differences are often very substantial. Indeed, the differences in attitude between types of practitioners within cities are often greater than inter-city differences. These differences are examined in more detail in the next section.

INTRA-CITY AGREEMENT

Tables 5.1 through 5.4 set out the percentage of respondents of each type in each city who considered various levels of sentence to be appropriate in each hypothetical case. As in the previous sections, the levels examined are incarceration, incarceration in state prison, an expected sentence of more than three years in prison, and of more than five years in prison. These data are helpful in examining the nature of practitioner norms concerning sentences and the extent of agreement within each court.

As in Chapter IV, all figures greater than or equal to 70 percent are encircled; all less than or equal to 30 percent are underlined. As might be expected from an examination of Figures 5.6 to 5.8, most respondents believed incarceration to be appropriate in the more serious cases; in those cases the disagreements tended to come concerning the length of the incarceration believed to be appropriate. Alternatively, there was considerable agreement on the less serious cases that longer terms of incarceration were appropriate; disagreement in these cases came on the issue of whether any incarceration at all was indicated, and if so, whether it should be in the state prison.

Table 5.5 summarizes for each city the number of hypothetical cases on each of Tables 5.1 to 5.4 in which at least 70 percent of two and of all three types of practitioners agreed the relevant level of sanction was appropriate. It indicates the same figures for the number of cases in which 30 percent or less of the respondents indicated the sanction to be appropriate. The last line in each section represents the number of cases in each city in which at least 70 percent of one type of practitioner believed the relevant sanction to be appropriate, and in which at least 70 percent of another group indicated that sanction <u>not</u> to be most appropriate.

The characterization of the Miami and Detroit courts as holding more stringent sentencing norms is illustrated by these data. These courts tend to have more cases in which there is substantial agreement that a particular level of sanction <u>is</u> appropriate (sections IA, IIA, IIIA and IVA on Table 5.5), fewer cases in which there is substantial agreement that any particular level of sanction is inappropriately high (sections IB, IIB, IIIB, IVB). Note, for example, that there were no cases in which even two of the three types of practitioners believed incarceration to be inappropriate in Miami. On the other hand, in half of the cases at least two practitioner groups in both Detroit and Miami indicated the appropriate sentence should result in more than three years in prison.

In Pittsburgh and, to a lesser extent, the Bronx, the opposite was true: practitioners tended to agree more on the fact that a particular sanction was inappropriately stringent. In these courts there was less agreement than in Miami and Detroit concerning the appropriateness of any particular level of sanction.

TABLE 5.1

USE OF INCARCERATION IN HYPOTHETICAL CASES

Case No.	Bronx			Detroit			Miami			Pittsburgh		
	Judges (n=9)	DA's (n=27)	PD's (n=12)	Judges (n=9)	DA's (n=39)	PD's (n=31)	Judges (n=5)	DA's (n=42)	PD's (n=11)	Judges (n=7)	DA's (n=30)	PD's (n=20)
1	0%*	26.9%	0%	22.2%	48.7%	16.1%	40.0%	69.1%	0%	14.3%	23.3%	5.0%
2	100%**	100%	91.6%	100%	100%	93.5%	100%	100%	100%	100%	100%	95%
3	100%	100%	91.7%	100%	100%	100%	100%	100%	100%	100%	100%	100%
4	11.1%	37.0%	8.3%	22.2%	35.8%	16.1%	40.0%	57.2%	36.4%	28.6%	33.3%	10.0%
5	100%	100%	91.7%	100%	97.5%	93.3%	100%	100%	100%	100%	96.7%	85%
6	100%	100%	66.7%	100%	92.4%	90.0%	100%	97.6%	80.0%	85.7%	93.3%	80.0%
7	44.4%	70.4%	25.0%	44.4%	73.6%	33.3%	80.0%	83.3%	30.0%	71.5%	53.4%	30.0%
8	100%	100%	58.3%	100%	89.4%	86.6%	100%	98.6%	90.0%	100%	100%	95.0%
9	88.9%	92.6%	91.6%	88.9%	97.4%	90.0%	100%	100%	70.0%	100%	93.4%	90.0%
10	100%	100%	83.3%	100%	97.4%	100%	100%	100%	90.0%	100%	100%	95.0%
11	100%	100%	91.6%	100%	97.4%	96.6%	100%	100%	100%	100%	100%	95.0%
12	100%	100%	91.7%	100%	100%	100%	100%	100%	100%	100%	100%	95.0%

*Percentages under 31 are underlined in Tables 4.1 through 4.4.
**Percentages over 70 are encircled in Tables 4.1 through 4.4.

TABLE 5.2

USE OF STATE PRISON IN HYPOTHETICAL CASES

Case No.	Bronx			Detroit			Miami			Pittsburgh		
	Judges (n=9)	DA's (n=27)	PD's (n=12)	Judges (n=9)	DA's (n=39)	PD's (n=31)	Judges (n=5)	DA's (n=42)	PD's (n=11)	Judges (n=7)	DA's (n=30)	PD's (n=20)
1	0%	15.4%	0%	0%	20.5%	3.2%	20.0%	14.3%	0%	0%	3.3%	5.0%
2	100%	100%	83.3%	100%	97.4%	93.5%	100%	100%	100%	71.4%	96.7%	95.0%
3	100%	100%	91.7%	100%	100%	100%	100%	100%	100%	100%	100%	100%
4	11.1%	25.9%	0%	0%	17.9%	3.2%	20.0%	28.6%	9.1%	14.3%	13.3%	0%
5	100%	100%	91.7%	100%	94.9%	90.0%	100%	100%	90.0%	85.7%	90.0%	80.0%
6	22.2%	44.4%	0%	77.8%	82.1%	50.0%	60.0%	45.2%	20.0%	28.6%	53.3%	40.0%
7	44.4%	59.3%	8.3%	11.1%	36.8%	20.0%	40.0%	57.1%	20.0%	28.6%	26.7%	10.0%
8	33.3%	25.9%	25.0%	66.7%	78.9%	63.3%	80.0%	59.5%	20.0%	42.9%	90.0%	55.0%
9	88.9%	92.6%	83.3%	88.9%	92.1%	76.7%	100%	95.2%	70.0%	100%	86.7%	90.0%
10	100%	96.3%	83.3%	100%	97.4%	96.7%	100%	100%	90.0%	100%	96.7%	95.0%
11	88.9%	100%	83.3%	100%	97.4%	93.3%	100%	97.6%	90.0%	71.4%	96.7%	95.0%
12	88.9%	100%	91.7%	100%	100%	90.0%	100%	100%	100%	100%	93.3%	90.0%

TABLE 5.3

USE OF PRISON SENTENCES OF OVER THREE YEARS IN HYPOTHETICAL CASES*

Case No.	Bronx			Detroit			Miami			Pittsburgh		
	Judges (n=9)	DA's (n=27)	PD's (n=12)	Judges (n=9)	DA's (n=39)	PD's (n=31)	Judges (n=5)	DA's (n=42)	PD's (n=11)	Judges (n=7)	DA's (n=30)	PD's (n=20)
1	0%	3.8%	0%	0%	2.6%	0%	0%	7.2%	0%	14.3%	0%	0%
2	66.7%	81.4%	16.7%	77.7%	79.5%	42.0%	80.0%	78.6%	27.3%	80.0%	16.7%	94.7%
3	100%	100%	83.3%	100%	100%	100%	100%	97.6%	100%	100%	100%	94.7%
4	0%	3.7%	0%	0%	2.6%	3.2%	0%	9.5%	0%	0%	0%	0%
5	88.9%	100%	50.0%	100%	76.9%	56.7%	100%	90.5%	50.0%	28.6%	36.7%	26.3%
6	11.1%	3.7%	0%	11.1%	25.6%	6.7%	20.0%	11.9%	0%	0%	3.3%	0%
7	0%	18.5%	0%	11.1%	5.3%	6.6%	0%	23.8%	0%	0%	6.6%	0%
8	0%	3.7%	0%	11.1%	5.2%	3.3%	20.0%	16.7%	20.0%	0%	10.0%	5.0%
9	44.4%	81.5%	8.3%	88.9%	76.3%	40.0%	100%	88.1%	50.0%	85.7%	30.0%	15.8%
10	88.9%	92.6%	33.3%	100%	86.9%	70.0%	100%	83.3%	60.0%	71.4%	50.0%	36.9%
11	77.8%	80.8%	66.6%	77.8%	52.6%	63.4%	80.0%	69.0%	40.0%	42.9%	73.4%	47.3%
12	44.4%	88.5%	16.7%	88.9%	89.5%	46.7%	80.0%	85.7%	40.0%	42.9%	33.3%	16.7%

*Sentences were adjusted for good time and parole practices in each court.

TABLE 5.4

USE OF PRISON SENTENCES OF OVER FIVE YEARS IN HYPOTHETICAL CASES*

Case No.	Bronx			Detroit			Miami			Pittsburgh		
	Judges (n=9)	DA's (n=27)	PD's (n=12)	Judges (n=9)	DA's (n=39)	PD's (n=31)	Judges (n=5)	DA's (n=42)	PD's (n=11)	Judges (n=7)	DA's (n=30)	PD's (n=20)
1	0%	3.8%	0%	0%	0%	0%	0%	2.4%	0%	14.3%	0%	0%
2	11.1%	40.7%	16.7%	33.3%	41.0%	9.7%	40.0%	50.0%	0%	0%	0%	5.0%
3	100%	100%	83.3%	100%	100%	90.3%	100%	97.6%	100%	71.4%	93.1%	94.7%
4	0%	0%	0%	0%	0%	0%	0%	2.4%	0%	0%	0%	0%
5	33.3%	74.1%	16.7%	66.7%	56.4%	26.7%	66.7%	100%	10.0%	0%	16.7%	10.5%
6	11.1%	0%	0%	11.1%	5.1%	6.7%	0%	7.1%	0%	0%	3.3%	0%
7	0%	0%	0%	11.1%	0%	3.3%	0%	9.5%	0%	0%	3.3%	0%
8	0%	0%	0%	11.1%	2.6%	3.3%	0%	0%	10.0%	0%	3.3%	5.0%
9	11.1%	51.9%	0%	22.2%	34.2%	13.3%	60.0%	52.4%	10.0%	0%	6.7%	5.3%
10	66.7%	66.7%	25.0%	77.8%	65.8%	26.7%	100%	64.3%	30.0%	14.3%	10.0%	5.3%
11	66.7%	46.2%	33.3%	55.6%	28.9%	36.7%	60.0%	47.6%	10.0%	14.3%	16.7%	10.5%
12	33.3%	57.7%	0%	55.6%	55.3%	2.0%	80.0%	59.5%	10.0%	14.3%	13.3%	5.6%

*Sentences were adjusted for good time and parole practices in each court.

The most striking evidence of this fact comes in section IV of Table 4.5 where all three groups of Pittsburgh practitioners evidenced substantial agreement in 11 of the 12 cases that five years incarceration was inappropriate. In all the other courts this level of agreement was reached in only five cases. These data support a view of sentencing in which the broad outline of an appropriate sanction in a case is generally agreed upon by judge, defense attorney and prosecutor. In the more serious cases, there is a high level of agreement among all groups in all cities that incarceration, even incarceration in state prison, is appropriate. The disagreements come on the issue of its length. Alternatively in the less serious cases, there is broad agreement that a longer term of incarceration is inappropriately harsh; the disagreements come on the issue of whether a shorter term is proper or whether incarceration should be avoided altogether.

Within this broad level of agreement, substantial attitudinal differences emerge, both within and between courts. We have seen that defense attorneys in all four cities would set sentences more leniently than prosecutors. Furthermore, we have seen that where differences are present among courts in sentencing norms, Detroit and Miami tend to be on the more stringent side, Pittsburgh and (to a lesser extent) the Bronx more lenient. Furthermore, these inter-court levels generally follow actual sentencing practice.

IMPLICATIONS

The suggestions made in this chapter support those made previously concerning mode of disposition: courts do appear to have distinctive normative orientations toward sentencing. Within local communities, however, there is evidence of considerable disagreement among practitioner groups on the hard sentencing issues most relevant to day-to-day decisions. It may well be that few practitioners in any court would support a long prison term for a first offender convicted of a property crime. Alternatively, few would argue that a repeat offender found guilty of a serious crime of violence should be put on probation. But when separated by case seriousness, as in Figures 5.5 through 5.9, intra-court conflict is apparent on the relevant specifics of the sentencing choice. In less serious cases, this conflict would likely center on whether or not a defendant should be incarcerated for a short period of time. In more serious cases, the issue centers on length of prison term.

This established fact of general agreement among a court's practitioners concerning only the broadest outlines of a proper sentence but attitudinal conflict on specifics necessitates a reexamination of the applicability of the concept of local legal culture to issues surrounding sentencing. It appears that on this key substantive decision for most criminal cases, role strongly influences practitioner attitudes. Further, that influence follows the direction of what adversary theory would suggest: prosecutors opt for the harshest sentences, defense attorneys the most lenient, with judges somewhere in the middle. This structured disagreement generally parallels the pattern of attitudes on the appropriateness of plea negotiation reported in Chapter IV. It emphasizes the difficulty of conceptualizing practitioner norms regarding the substantive issues of a case in the same terms as purely procedural issues.

TABLE 5.5
INTRA-CITY AGREEMENT ON SENTENCING

	Bronx	Detroit	Miami	Pittsburgh
I. Incarceration				
A. Most Appropriate				
1. Cases with 3-group agreement	7	9	9	9
2. Cases with at least 2-group agreement	9	9	10	9
B. NOT Most Appropriate				
1. Cases with 3-group agreement	1	0	0	1
2. Cases with at least 2-group agreement	2	2	0	2
C. Total of A and B, above				
1. Cases with 3-group agreement	8	9	9	10
2. Cases with at least 2-group agreement	11	11	10	11
D. Cases With Substantial Disagreement	1	0	1	1
II. State Prison Time				
A. Most Appropriate				
1. Cases with 3-group agreement	7	7	7	7
2. Cases with at least 2-group agreement	7	8	7	7
B. NOT Most Appropriate				
1. Cases with 3-group agreement	2	2	2	3
2. Cases with at least 2-group agreement	4	3	2	3
C. Total of A and B, above				
1. Cases with 3-group agreement	9	9	9	10
2. Cases with at least 2-group agreement	11	11	9	10
D. Cases With Substantial Disagreement	0	0	1	0

(continued)

TABLE 5.5
INTRA-CITY AGREEMENT ON SENTENCING
(continued)

	Bronx	Detroit	Miami	Pittsburgh
III. Expected Incarceration Over Three Years				
A. Most Appropriate				
1. Cases with 3-group agreement	1	2	1	1
2. Cases with at least 2-group agreement	4	6	6	2
B. NOT Most Appropriate				
1. Cases with 3-group agreement	5	5	5	5
2. Cases with at least 2-group agreement	5	5	5	7
C. Total of A and B, above				
1. Cases with 3-group agreement	6	7	6	6
2. Cases with at least 2-group agreement	9	11	11	9
D. Cases With Substantial Disagreement	3	0	0	2
IV. Expected Incarceration Over Five Years				
A. Most Appropriate				
1. Cases with 3-group agreement	1	1	1	1
2. Cases with at least 2-group agreement	1	1	1	1
B. NOT Most Appropriate				
1. Cases with 3-group agreement	5	5	5	11
2. Cases with at least 2-group agreement	7	6	5	11
C. Total of A and B, above				
1. Cases with 3-group agreement	6	6	6	12
2. Cases with at least 2-group agreement	8	7	6	12
D. Cases With Substantial Disagreement	1	1	3	0

Defense attorneys and prosecutors may share common attitudes regarding the length of time a case should be taking to reach disposition, or the necessity of a trial to resolve the issues of law and fact presented. But these data show them to hold quite different notions of whether or not negotiations would be appropriate or the specifics of what a fair sentence would be.

These data suggest that practitioner norms on questions of substantive case outcome are shaped both by role and by the culture of the local court. As observed previously, courts appear to have distinctive orientations toward plea negotiation as opposed to trial, relatively harsh as opposed to comparatively lenient sentences. But within those orientations, there is no common attitudinal consensus on proper outcomes of cases. To the contrary, the data protray substantial normative conflict among prosecutors, judges, and defense attorneys.

The fact that the attitudinal conflict that emerged in this research is patterned around the role of the practitioner in the system suggests that the adversarial elements of the system may have more importance than has been recently argued. At least since the publication of Abraham Blumberg's classic Criminal Justice, the theoretical orientation of most research on criminal courts has emphasized their general lack of adversariness, the existence of attitudinal among practitioners as to how cases should be dealt with. Courts are often depicted as quasi-bureaucratic institutions in which judges, prosecutors and defense attorneys cooperate in a series of rituals which formally "process" defendants in accordance with agreed-upon informal norms.

The data presented in this and the preceding chapter give some cause to question the simplicity of such assertions. Defense attorneys have been shown to hold substantially different views than judges and prosecutors concerning how cases should best be handled on issues involving both plea bargaining and sentence. This divergence does not negate the existence of a distinctive legal culture in the criminal courts of these cities. But it does suggest that practitioner attitudes -- at least as they relate to non-procedural aspects of criminal cases -- are influenced by the imperatives of role in the adversary system as well as the culture of the local court.

CHAPTER VI

CONCLUSION

This research has examined local legal culture in four felony-level trial courts. It began with two observations from previous research regarding practitioner attitudes in such courts. First, several studies have documented the existence of shared norms in court systems regarding how particular general types of cases should be handled. Hence some categories of cases are viewed by courthouse regulars as "garbage" cases which should be bargained at a low sentence or dismissed, others as proper candidates for a trial with a heavy sentence for a convicted defendant. These attitudes have been shown previously to extend to disposition time as well, based upon general court-wide views of the length of time needed to adequately prepare a case for trial or other disposition. Second, some previous work -- particularly that of the National Center for State Court's Pretrial Delay Project -- has asserted that these attitudes differ systematically across courts and support existing case-handling practices. This research constitutes an attempt to examine these propositions.

Local legal culture was operationally defined as practitioner attitudes regarding the appropriate disposition of 12 hypothetical cases. Defense attorneys, prosecutors and judges were asked to evaluate the cases on three dimensions: appropriate mode of disposition, sentence, and elapsed time from arrest to trial. The context of the responses was a court system with "adequate but not unlimited resources" -- a "fair and expeditious" court.

The legal culture hypothesis found its greatest support in issues relating to procedure. In at least three of the courts, practitioners displayed considerable agreement concerning appropriate disposition time. The preferred pace of cases differed between the courts and generally followed observed differences in actual disposition time compiled from case samples. Similarly, practitioner attitudes regarding the appropriateness of trial dispositions for the hypothetical cases displayed a similar pattern of agreement within the courts, disagreement between.

On issues relating more specifically to the substantive outcome of the case, the courts tended to maintain distinct normative orientations that reflected actual practice. Two courts emerged as plea-bargain-oriented, two as trial-oriented; sentencing norms in one court were shown to be comparatively quite lenient, in two relatively stringent, with one court not susceptible to characterization. Attitudinal conflict within the courts, however, was quite apparent: defense and prosecuting attorneys in particular were shown to hold substantially different views concerning the appropriateness of plea negotiations and on the specifics of sentencing across nearly all courts and classes of cases. In every court, across all case types, defense attorneys believed negotiation and relatively lenient sentences to be appropriate where prosecutors tended to support non-negotiated dispositions and harsher sentences.

These findings suggest the importance of exercising care in conceptualizing local legal culture in terms of pervasive agreement on proper case disposition among practitioners in a criminal court. In addition, these

findings point to the need to reexamine selected aspects of the organizational model of criminal courts. Attitudinal conflicts between defense and prosecution were revealed in all the courts regarding both sentence and dispositional mode. That courthouse regulars hold substantially different views of how cases should be handled is at least an important caveat to a number of common strands of organizational analysis. For example, assertions of the existence of "going rates" of sentences presumes some agreement across participants on the appropriate level of sentences. Yet these data suggest that defense attorneys and prosecutors would often sentence the same defendant quite differently were the decision left up to them.

An analogous argument is applicable to the issue of dispositional mode. In at least two courts, defense attorneys and prosecutors share very different views of the appropriateness of plea bargains in specific cases. Hence the notion that practitioners generally agree on which cases are appropriate for trial or for negotiation needs to be qualified. In all four courts examined in this study there was general agreement that a majority of cases in the hypothetical case set were best handled by non-trial means. But particular cases produced considerable intra-court disagreement. This disagreement tends to parallel what would be predicted in an adversary system: where the prosecution has a strong case, for example, they tend to prefer non-negotiated dispositions while defense attorneys opt for a plea bargain. The reverse is true regarding cases in which the prosecution's evidence is weak.

This finding of structured disagreement between defense and prosecution regarding the most important aspects of criminal case disposition is evidence for adversariness on at least the attitudinal level. While such normative disharmony by no means undermines the basic institutional need for all participants to cooperate on a number of aspects of case handling, it does suggest that assertions of the organizational imperatives of criminal courts need to be tempered by an appreciation of those elements of the process that have retained their adversarial character. In particular, it suggests that further analysis of role in the criminal courts may prove to be fruitful.

The major policy implications of this research have been discussed in various contexts throughout this report. The extent to which current practice in a criminal court is supported by practitioner attitudes regarding proper practice is an indication of the resistance that can be expected to follow attempts at changing the status quo. The existence of local legal culture -- not necessarily as court-wide agreement on how cases should be handled but as at least an overall orientation toward major dispositional alternatives -- is a highly plausible explanation for many of the reported failures of past court reform efforts. Such attempts materially affect mode of disposition, sentence and disposition time. It may well be that practitioner attitudes regarding proper case handling set the outside limits of what is possible by way of reform in the criminal courts.

APPENDIX A

city ☐ /1

type ☐ /2

seq. ☐☐ /3-4

NATIONAL CENTER FOR STATE COURTS
Hypothetical Case Questionnaire

INSTRUCTIONS

This questionnaire includes descriptions of 12 hypothetical criminal cases. The information provided summarizes the prosecution's case against each defendant. Also included is antecedent information on the defendant and a brief indication of possible defenses where relevant. No short description can give the full information which a practitioner would require to evaluate an actual case. Please do the best you can with the information provided.

The questions that follow each case are designed to obtain your attitudes and beliefs concerning how the criminal justice system should operate, not necessarily how it does operate in this city. We thus are not interested in your prediction as to how these cases would be handled in this court. Rather, we want your own belief as to how they might best be resolved given adequate, but not unlimited, resources throughout the court system.

CASE #1

A. Complaint: On 8/1/79 at approximately 4:40 a.m., complainant was awakened in her bedroom by a noise. She observed her neighbor, the defendant, standing by her dresser and going through articles in her purse. She screamed and then yelled, "What are you doing? How did you get in here?" Defendant answered, "By the back stairs." She then yelled at him to leave and he left by the front stairway.

The screaming awakened complainant's sister, witness A, asleep in a nearby bedroom. She came out into the hall, observed the defendant leaving, and also recognized him as her neighbor.

Upon checking complainant noted that $3 was missing from her purse and that the entrance to her upper flat had been gained by forcing a screen off the rear porch window and entering through the open window. She then called the police.

B. Arrest: A police car manned by Officers B and C responded to the radio call. They took the initial report, and photographed the point of entry. After obtaining a warrant, they arrested the defendant at his home, and took him to the precinct station. The defendant was advised of his rights and interrogated by Sergeant D, at which time he confessed to breaking into the house and signed a statement to that effect.

C. Witnesses:

1. Complainant will testify to facts surrounding the breaking and entering as reported above.

2. Witness A, complainant's sister, will testify to seeing defendant in the hallway and recognizing him as her neighbor.

3. Officers B and C will testify to responding to the call, making the original report, and arresting the defendant.

4. Sergeant D will testify to advising the defendant of his rights and obtaining a signed confession.

D. Evidence:

1. Written confession, signed by defendant, that he broke into house and stole $3.

2. Photographs of point of entry.

E. Defendant Information:

1. Age: 19

2. Prior criminal record: none

3. Other: defendant has stable family background and lives with parents. Parents and pastor can testify as character witnesses. Defendant is currently unemployed.

F. Charge on Information/Indictment: breaking and entering with intent to commit grand larceny (felony)

QUESTIONS ON CASE #1:

1. Assuming that prosecution, defense, and the court have adequate resources to deal with their caseloads in a fair and expeditious manner, how do you believe this case should be resolved?
(Circle one number) Please ignore numbers in parenthesis.

Negotiated plea of guilty based on either a reduced charge, or sentence assurance, or both	1	(5)
Guilty plea without charge reduction or sentence assurance. . .	2	
Non-jury trial	3	
Jury trial	4	
Dismissal or nolle prosequi	5	
Other (explain)_____ . . .	4	

2. Setting aside your answer to the preceding question, assume that the defendant in this case pleads guilty as charged. What should be the appropriate sentence? You need not feel bound by the sentencing provisions in effect in your state.
(Circle all that may apply)

Suspended sentence.	1	(6)
Fine and/or costs	2	(7)
Probation and/or special program.	3	(8)
Incarceration in county jail.	4	(9)
indicate sentence in months. . . . . [|]		(10)
Incarceration in state prison	5	(12)
indicate sentence in years: minimum . . . . . . [|]		(13)
maximum . . . . . . [|]		(15)

(assume this sentence is subject to good time and parole practices now in effect in your state)

How much of this prison sentence do you predict would actually be served in your state? years. . . . . [|] (17)

3. Now assume that this case proceeds instead to instant jury trial:

a. Bear in mind that the defendant was arrested August 1, 1979. What would be an appropriate date for a jury trial to begin in this case, given adequate staff to handle the caseloads of prosecution, defense, and the court in a fair and expeditious manner?

______________________, 19____ (19)
(month) (day) (please ignore)

b. Considering the strength of the prosecution's case as detailed above, what is your best professional estimate as to the likely result of a jury trial?

Almost certain conviction.	1	(25)
Probable conviction.	2	
50/50 chance of conviction	3	
Probable acquittal	4	
Almost certain acquittal	5	

4. Comments regarding this case: [ ] (26)

CASE #2

A. Complaint: On 8/1/79 at approximately 3:00 p.m. a male, 5 ft. 10 inches, 175 pounds, dark hair, entered Jones' Fried Chicken located at 123 Smith. he was wearing a wide-brimmed hat that partially obscured his face. He approached the service counter operated by complainant and said, "This is a hold up. Give me the money. I'm not playing." The complainant observed that the man had his hand inside a brown paper bag as though he had a gun in it. She took approximately $207 in assorted bills from her cash register and give it to the man. The man then moved the bag toward the cashier at the next station, Witness A, who then removed approximately $170 from her cash register and gave it to the man. He placed all of the money into the paper bag and ran out the front door. Employees of the restaurant gave chase and the manager, Witness B, observed the subject get into a dark-colored car with license plate ABC 123 and drive away.

Police Officers C and D, patrolling the area in an unmarked car, observed the employees running out of the restaurant and stopped to investigate. They obtained information on the robbery and canvassed the area for suspects. They found the vehicle used for the escape abandoned in an alley nearby (the car was later found to be stolen).

B. Arrest: Approximately two hours later in further scouting the area Officers C and D, still driving in an unmarked police car, observed a Checker cab parked in front of a house four blocks from the scene of the robbery. On the front porch they observed a man answering the description of the man who robbed the restaurant.

The man looked up and down the street, then ran to the cab. Officers C and D followed the cab for several blocks, during which time the man looked furtively out the back window. The officers stopped the cab, showed their identification, and ordered the subject from the cab. He was patted down for offensive weapons and the fruits of the crime. The officers observed a large bulge in the defendant's left front pants pocket. They found it to be a roll of bills totalling $356. The defendant was taken to the police station and advised of his rights. He denied any knowledge of the holdup.

At 8:00 p.m. on the same day a lineup was held in police headquarters at which the complainant made a positive identification of the defendant as the man who robbed the restaurant. Witness A, the other cashier, was uncertain that the defendant was the robber. The defendant's lawyer was present at the lineup.

C. Witnesses:

1. Complainant will testify to being robbed and to identifying the defendant on the lineup.

2. Witness A (the other cashier) will testify to being present at the holdup and to the fact that defendant looks "similar" to the robber. She can neither confirm nor deny that defendant was the man who robbed the restaurant.

C. Witnesses (continued)

3. Witness B (restaurant manager) will testify to being present during the holdup and obtaining the license number of the getaway car.

4. Officers C and D will testify to observing employees running out of the restaurant, to facts surrounding recovery of the getaway car, and to arrest of defendant.

D. Evidence: $365 in bills obtained from defendant.

E. Defendant Information:

1. Age: 19
2. Prior criminal record:

9/17/77 Arrest: breaking and entering occupied dwelling (felony)
Conviction: larceny under $100 (misdemeanor)
Sentence: 10 months county jail; one year probation

F. Charge on Information/Indictment: armed robbery/felony

QUESTIONS ON CASE #2:

1. Assuming that prosecution, defense, and the court have adequate resources to deal with their caseloads in a fair and expeditious manner, how do you believe this case should be resolved?
(Circle one number) Please ignore numbers in parenthesis.

Negotiated plea of guilty based on either a reduced charge, or sentence assurance, or both 1 (27)

Guilty plea without charge reduction or sentence assurance. . . 2

Non-jury trial 3

Jury trial 4

Dismissal or nolle prosequi 5

Other (explain)_____ . . . 4

2. Setting aside your answer to the preceding question, assume that the defendant in this case pleads guilty as charged. What should be the appropriate sentence? You need not feel bound by the sentencing provisions in effect in your state.
(Circle all that may apply)

Suspended sentence. 1 (28)

Fine and/or costs 2 (29)

2. Appropriate sentence (continued)

Probation and/or special program. 3 (30)

Incarceration in county jail. 4 (31)
indicate sentence in months. . . . . (32)

Incarceration in state prison 5 (34)

indicate sentence in years:
minimum . . . . . (35)

maximum . . . . . (37)
(assume this sentence is subject to good time and parole practices now in effect in your state)

How much of this prison sentence do you predict would actually be served in your state? (39)
years . . . . . .

3. Now assume that this case proceeds instead to instant jury trial:

a. Bear in mind that the defendant was arrested August 1, 1979. What would be an appropriate date for a jury trial to begin in this case, given adequate staff to handle the caseloads of prosecution, defense, and the court in a fair and expeditious manner?

_____, 19____ (41)
(month) (day) (please ignore)

b. Considering the strength of the prosecution's case as detailed above, what is your best professional estimate as to the likely result of a jury trial?
Almost certain conviction. 1 (47)

Probable conviction. 2

50/50 chance of conviction 3

Probable acquittal 4

Almost certain acquittal 5

4. Comments regarding this case: (48)

CASE #3

A. Complaint: On 7/27/79 at approximately 9:40 p.m.. witnesses A and B, tenants in an apartment building located at 123 Fourth Street, heard people running in the second floor hallway outside their flat. They then heard one gunshot, a voice screaming, and two more gunshots. After waiting several minutes they opened the door and observed the body of the victim, a male aged 21 years, lying in the hallway, fatally injured. Police officers C and D responded to the call from the residents, collected evidence, and made the police report.

B. Arrest: The defendant was arrested at his home on 8/1/79 on a warrant issued as a result of police investigation of the offense. He was taken to police headquarters, advised of his rights, and made no statement.

C. Witnesses:

1. Witnesses A and B, residents of the apartment house, will testify to hearing the shots, discovering the body of the victim, and calling the police.

2. Officers C and D will testify to responding to the radio call, observing the victim lying in the hallyway, and making the police report.

3. Witness E will testify to knowing the defendant since high school. E, in partnership with defendant, had opened up a "dope pad" to sell heroin three weeks before the incident and deceased was a customer. The pad was robbed four days before the incident by a person introduced to E by the deceased.

   Witness will testify that he and the defendant were riding in E's van on the evening of the murder and that they saw the deceased on a street corner. They called him over to the van, he entered, and they rode around for several minutes. E asked the deceased if he had set up the robbery; deceased denied it. Defendant then stated that he would find out if he were lying or not and began to beat up the deceased in the rear of the van.

   Witness will testify that the defendant went "wild" during the beating of the deceased and scared the witness. Witness drove to an alley behind the scene of the offense and told the defendant to get out. Defendant left, armed with an M-1 .30 caliber rifle that the witness had left in the rear of the van. The defendant told deceased to get out. Witness became very frightened when he saw defendant with the gun and drove off as soon as defendant and deceased left the van. Witness left defendant at the door of the apartment building holding the rifle.

   Witness came forward to police with this report two days after the murder. He is 27 years old, has no adult criminal record although he has several juvenile convictions for drug-related offenses. His parents demanded that he be granted immunity from prosecution if he is to testify and the prosecution has granted immunity.

4. Dr. F, county morgue, will tesify to performing an autopsy on deceased and listing the cause of death as a gunshot wound to the back.

5. Witness G, deceased's brother, will testify to identifying body of deceased at county morgue.

6. Witness H, police crime lab, will testify to performing ballistics tests on .30 caliber spent casings found in apartment hallway and .30 caliber shell removed from body of deceased. Both were fired from the same M-1 type rifle. (No gun was recovered.)

D. Evidence:

1. .30 caliber shell found in apartment hallway.
2. .30 caliber shell removed from body of deceased.

E. Defendant Information:

1. Age: 28

2. Prior criminal record:

10/27/73	Arrest:	assault with intent to commit murder (felony)
	Conviction:	assault (misdemeanor)
	Sentence:	30 days county jail; two years probation
04/01/75	Arrest:	armed robbery (felony)
	Conviction:	unarmed robbery (felony)
	Sentence:	1-3 years state prison
11/13/77	Arrest:	armed robbery (felony)
		Dismissed

3. Other: Defendant has a part-time job as a bricklayer.

4. Defenses: alibi -- defendant's girlfriend will testify that defendant was with her entire evening of 7/27/79. (Witness has two misdemeanor shoplifting convictions.)

F. Charge on Information/Indictment: first-degree murder (felony).

QUESTIONS ON CASE #3:

1. Assuming that prosecution, defense, and the court have adequate resources to deal with their caseloads in a fair and expeditious manner, how do you believe this case should be resolved?
(Circle one number) Please ignore numbers in parenthesis.

Negotiated plea of guilty based on either a reduced charge, or sentence assurance, or both	1	(49)
Guilty plea without charge reduction or sentence assurance. . .	2	
Non-jury trial	3	
Jury trial	4	
Dismissal or nolle prosequi	5	
Other (explain)_____ . . .	6	

2. Setting aside your answer to the preceding question, assume that the defendant in this case pleads guilty as charged. What should be the appropriate sentence? You need not feel bound by the sentencing provisions in effect in your state.
(Circle all that may apply)

Suspended sentence. 1 (50)

Fine and/or costs 2 (51)

Probation and/or special program. 3 (52)

Incarceration in county jail. 4 (53)

indicate sentence in months. . . . . ⌊___⌋ (54)

Incarceration in state prison 5 (56)

indicate sentence in years:

minimum . . . . . ⌊___⌋ (57)

maximum . . . . . ⌊___⌋ (59)

(assume this sentence is subject to good time and parole practices now in effect in your state)

How much of this prison sentence do you predict would actually be served in your state?

years . . . . . ⌊___⌋ (61)

3. Now assume that this case proceeds instead to instant jury trial:

a. Bear in mind that the defendant was arrested August 1, 1979. What would be an appropriate date for a jury trial to begin in this case, given adequate staff to handle the caseloads of prosecution, defense, and the court in a fair and expeditious manner?

_____, 19___ ⌊___⌋ (63)
(month) (day) (please ignore)

b. Considering the strength of the prosecution's case as detailed above, what is your best professional estimate as to the likely result of a jury trial?

Almost certain conviction. 1 (69)

Probable conviction. 2

50/50 chance of conviction 3

Probable acquittal 4

Almost certain acquittal 5

4. Comments regarding this case: ⌊___⌋ (70)

CASE #4

A. Complaint: Complainant (female, 24 years old) and her boyfriend, Witness A, were stranded at the M&M Bar on evening of 7/31/79 when A's motorcycle would not start. Defendant, then drinking at the bar, offered to take them home for $10. The three drove to Witness A's house at 11:30 p.m. and stayed for two hours eating, drinking and talking. At 1:30 p.m. defendant left with complainant to drive her home. He drove to the parking lot of a shopping center and put his arms around the complainant but she pushed him off. He then drove to a deserted street, stated that he was "horny," and would "take a piece whether she wanted or not." He then began to grab at her breasts and pull at the zipper of her pants. When she resisted, he hit her in the face. She then kicked him in the groin, escaped from the car, ran across the road, and flagged down a passing motorist. The motorist, Witness B, drove her home. She suffered a black eye but was not treated.

Complainant appeared in the precinct station the following morning and made a complaint against the defendant to Officer C.

B. Arrest: Officers D and E proceeded to defendant's apartment on 8/1/79, arrested him, and brought him to police headquarters. After being advised of his rights by Officer E, he admitted to giving the complainant a ride home and making a pass at her. He asserted that he hit her only after she kicked him in the groin.

C. Witnesses:

1. Complainant will testify to events summarized above.
2. Witness A will testify to being at the bar with complainant and leaving with her and the defendant and to staying at his apartment for two hours with complainant and defendant.
3. Witness B will testify to picking up complainant after the assault, giving her a ride home, and to her black eye.
4. Officer C will testify to taking the report from complainant.
5. Officers D and E will testify to arrest and interrogation of the defendant.

D. Evidence: none.

E. Defendant Information:

1. Age: 22
2. Prior criminal record: none.
3. Other: defendant has full-time job as teller in local bank, has grown up in community. Numerous character witnesses available.
4. Defenses: self defense/provocation -- see story under "arrest."

F. Charge on Information/Indictment: assault with intent to rape (felony).

QUESTIONS ON CASE #4:

1. Assuming that prosecution, defense, and the court have adequate resources to deal with their caseloads in a fair and expeditious manner, how do you believe this case should be resolved? (1)
(Circle one number) Please ignore numbers in parenthesis. [2] (2-4)
dup.

Negotiated plea of guilty based on either a reduced charge, or sentence assurance, or both	1	(5)
Guilty plea without charge reduction or sentence assurance. . .	2	
Non-jury trial	3	
Jury trial	4	
Dismissal or nolle prosequi	5	
Other (explain)_____ . . .	6	

2. Setting aside your answer to the preceding question, assume that the defendant in this case pleads guilty as charged. What should be the appropriate sentence? You need not feel bound by the sentencing provisions in effect in your state.
(Circle all that may apply)

Suspended sentence.	1	(6)
Fine and/or costs	2	(7)
Probation and/or special program.	3	(8)
Incarceration in county jail.	4	(9)
indicate sentence in months.		(10)
Incarceration in state prison	5	(12)

indicate sentence in years:

minimum . . . . . (13)

maximum . . . . . (15)

(assume this sentence is subject to good time and parole practices now in effect in your state)

How much of this prison sentence do you predict would actually be served in your state?

years . . . . . (17)

3. Now assume that this case proceeds instead to instant jury trial:

a. Bear in mind that the defendant was arrested August 1, 1979. What would be an appropriate date for a jury trial to begin in this case, given adequate staff to handle the caseloads of prosecution, defense, and the court in a fair and expeditious manner?

_____, 19___ (19)
(month) (day) (please ignore)

b. Considering the strength of the prosecution's case as detailed above, what is your best professional estimate as to the likely result of a jury trial?

Almost certain conviction.	1	(25)
Probable conviction.	2	
50/50 chance of conviction	3	
Probable acquittal	4	
Almost certain acquittal	5	

4. Comments regarding this case: (26)

CASE #5

A. Complaint: At 11:30 p.m. on 7/31/79 a male (22-25 years old, 5 foot 10 inches tall, 185 pounds) entered the XY Bar where complainant was working as a barmaid and asked for a bag of potato chips. He then produced a blue steel automatic pistol and announced a holdup. He ordered the complainant to give him all the cash in the till. He then forced two customers in the bar, Witnesses A and B, to give them their wallets (total cash contents: $53). The man was not seen after his escape through the front door.

The police were called and Officers C and D responded. In the subsequent investigation they recovered several wallets and identification papers in some shrubbery approximately 30 feet from the front door of the bar . The wallets and identification papers of Witnesses A and B were among the material found. In looking through the other papers, the complainant observed a driver's license with a picture of the man who robbed the bar on it.

B. Arrest: Police Officers E and F arrested the man pictured on the driver's license at his home the following morning. He was taken to police headquarters and advised of his rights. He stated that he knew nothing about the robbery and that he lost his wallet and driver's license two weeks earlier.

A police lineup was held on 8/7/79. The defendant's lawyer was present. The complainant and Witnesses A and B positively identified the defendant as the man who robbed the bar.

C. Witnesses:

1. Complainant will testify to facts surrounding the robbery as indicated above and to identification of defendant from his driver's license and in the police lineup.

2. Witnesses A and B will testify to the holdup and to identification of the defendant as the man who robbed the bar.

3. Officers C and D will testify to responding to the call and making the report.

4. Officers E and F will testify to arresting the defendant, advising him of his rights, and questioning him.

D. Evidence: papers including wallets of Witnesses A and B and driver's license of defendant found near the bar.

E. Defendant Information:

1. Age: 31

2. Prior criminal record:

05/23/69 Arrest: breaking and entering (felony)
Conviction: attempted breaking and entering (felony)
Sentence: 30 days county jail; one year probation

06/14/75 Arrest: unarmed robbery (felony)
Conviction: unarmed robbery (misdemeanor)
Sentence: six months county jail; two years probation

3. Other: defendant has held down full-time job in automobile factory for three months, has wife and two children.

4. Defenses: alibi -- wife will testify that defendant never left home on evening of 7/31/79.

F. Charge on Information/Indictment: armed robbery (felony).

QUESTIONS ON CASE #5:

1. Assuming that prosecution, defense, and the court have adequate resources to deal with their caseloads in a fair and expeditious manner, how do you believe this case should be resolved?
(Circle one number) Please ignore numbers in parenthesis.

Negotiated plea of guilty based on either a reduced charge, or sentence assurance, or both	1	(27)
Guilty plea without charge reduction or sentence assurance	2	
Non-jury trial	3	
Jury trial	4	
Dismissal or nolle prosequi	5	
Other (explain)_____	6	

2. Setting aside your answer to the preceding question, assume that the defendant in this case pleads guilty as charged. What should be the appropriate sentence? You need not feel bound by the sentencing provisions in effect in your state.
(Circle all that may apply)

Suspended sentence	1	(28)
Fine and/or costs	2	(29)
Probation and/or special program	3	(30)
Incarceration in county jail	4	(31)
indicate sentence in months		(32)
Incarceration in state prison	5	(34)
indicate sentence in years: minimum		(35)
maximum		(37)

(assume this sentence is subject to good time and parole practices now in effect in your state)

How much of this prison sentence do you predict would actually be served in your state?
years ____.____ (39)

3. Now assume that this case proceeds instead to instant jury trial:

a. Bear in mind that the defendant was arrested August 1, 1979. What would be an appropriate date for a jury trial to begin in this case, given adequate staff to handle the caseloads of prosecution, defense, and the court in a fair and expeditious manner?

_____ (month) _____ (day), 19____ (please ignore) (41)

b. Considering the strength of the prosecution's case as detailed above, what is your best professional estimate as to the likely result of a jury trial?

Almost certain conviction	1	(47)
Probable conviction	2	
50/50 chance of conviction	3	
Probable acquittal	4	
Almost certain acquittal	5	

4. Comments regarding this case: (48)

CASE #6

A. Complaint and Arrest: Witness A was sitting on his front porch at 7:00 a.m. on 8/1/79 when he heard glass breaking at the bar located across the street from his home. He called the police and Officers B and C responded. When they arrived at the scene the officers observed that the rear window of the bar had been broken and glass lay on the ground under it. They also observed a young male running through the field behind the bar. The officers gave chase and followed the suspect to a dwelling two blocks away. The officers were let inside the house by the suspect's mother, who stated that no one was in the house but herself and her daughter. The daughter then came downstairs and told the officers that she had just let her brother into the house and that he was in his bedroom. The mother then allowed the officers to look in the room, where they found the suspect sitting on the bed with a large number of quarters.

The officers placed the suspect under arrest and returned to the bar to collect evidence. They noted that inside the bar the juke box had been broken into and Witness D, the proprietor of the bar (who had been summoned to the scene by Witness A) indicated that approximately $25 in quarters were missing.

The defendant was taken to the police station and advise of his rights. He stated that he did not know anything about the robbery at complainant's bar.

B. Witnesses:

1. Witness A will testify to hearing a noise near the bar and calling the police.
2. Officers B and C will testify to the facts surrounding defendant's arrest and the investigation of the scene.
3. Witness D, the bar owner, will testify to not giving anyone permission to enter the bar and to the fact that it was locked and secure at 2:00 a.m. the previous morning. He will also testify to the loss of approximately $25 in quarters.

C. Evidence: 105 quarters.

D. Defendant Information:

1. Age: 20

2. Prior criminal record:

   07/04/76 Arrest: assault (misdemeanor)
   Conviction: disorderly conduct (misdemeanor)
   Sentence: 12 months probation

   03/13/77 Arrest: breaking and entering occupied dwelling (felony)
   Conviction: attempted breaking and entering (misdemeanor)
   Sentence: 60 days county jail; two years probation

3. Other: defendant lives with mother, has part-time job in local auto parts store. Employer will testify as to good character and responsible position.

E. Charge on Information/Indictment: breaking and entering with intent to commit grand larceny (felony)

QUESTIONS ON CASE #6:

1. Assuming that prosecution, defense, and the court have adequate resources to deal with their caseloads in a fair and expeditious manner, how do you believe this case should be resolved?
(Circle one number) Please ignore numbers in parenthesis.

Negotiated plea of guilty based on either a reduced charge, or sentence assurance, or both	1	(49)
Guilty plea without charge reduction or sentence assurance. . .	2	
Non-jury trial	3	
Jury trial	4	
Dismissal or nolle prosequi	5	
Other (explain)_____ . . .	6	

2. Setting aside your answer to the preceding question, assume that the defendant in this case pleads guilty as charged. What should be the appropriate sentence? You need not feel bound by the sentencing provisions in effect in your state.
(Circle all that may apply)

Suspended sentence.	1	(50)
Fine and/or costs	2	(51)
Probation and/or special program.	3	(52)
Incarceration in county jail.	4	(53)
indicate sentence in months.	⌊__⌋	(54)
Incarceration in state prison	5	(56)
indicate sentence in years: minimum	⌊__⌋	(57)
maximum	⌊__⌋	(59)

(assume this sentence is subject to good time and parole practices now in effect in your state)

How much of this prison sentence do you predict would actually be served in your state?
years . . . . . ⌊__⌋ (61)

3. Now assume that this case proceeds instead to instant jury trial:
   a. Bear in mind that the defendant was arrested August 1, 1979. What would be an appropriate date for a jury trial to begin in this case, given adequate staff to handle the caseloads of prosecution, defense, and the court in a fair and expeditious manner?

_____, 19___ (63)
(month) (day) (please ignore)

b. Considering the strength of the prosecution's case as detailed above, what is your best professional estimate as to the likely result of a jury trial?

Almost certain conviction. 1 (69)

Probable conviction. 2

50/50 chance of conviction 3

Probable acquittal 4

Almost certain acquittal 5

4. Comments regarding this case: (70)

CASE #7

A. Complaint: Complainant, a 25-year-old man, has lived with defendant's sister for approximately two years. Relations between complainant and defendant became strained for several months prior to offense as a result of an argument in which the defendant allegedly threatened the complainant with a gun. This incident was not reported to the police.

On 7/31/79 at approximately 10:15 p.m. complainant answered the doorbell of his apartment and went to the lobby to see who was there. He was confronted by the defendant and an argument ensued. During the argument complainant struck defendant with his fist. At this time defendant reached into his pocket and began removing a handgun. Seeing this, the complainant began to run from the lobby. He went through a set of glass doors and heard a shot behind him. The bullet went through the door and struck complainant in the back of the right leg. It lodged in the calf. The defendant left the scene.

B. Arrest: Police Officers A and B responded to a call from neighbors of the complainant who heard a shot. The officers photographed the door and conveyed complainant to General Hospital where he underwent surgery and was hospitalized three days. Officers proceeded to defendant's home and arrested him. He was searched at the time of his arrest and a .22 calibre pistol was obtained and confiscated. After being advised of his rights by Sergeant C, defendant stated that he had wanted to see his sister but that complainant had answered the door. After a brief argument and scuffle, complainant ran back to his apartment and was returning with a handgun. Upon seeing complainant with the gun, defendant stated, he shot first in self-defense.

C. Witnesses:

1. Complainant will testify to assault by defendant on 7/31. (Complainant has one misdemeanor drug conviction in 1974.)
2. Officers A and B will testify to taking complainant to hospital, arrest of defendant, and preparation of report.
3. Sergeant C will testify to interrogation of defendant.
4. Dr. D will testify to treatment of complainant at General Hospital for a gunshot wound to the rear of the right calf.
5. Officer E from the police crime lab will testify that the bullet removed from complainant's leg was shot from the pistol taken fron defendant at the time of his arrest.

D. Evidence:

1. .22 calibre bullet removed from complainant's leg.
2. Photographs of broken door taken by Officer A.
3. .22 calibre pistol.

E. Defendant Information:

1. Age: 20
2. Prior criminal record: none
3. Other: defendant is newly married and has a small baby. He has a job as a security guard in a local factory. His mother will testify that complainant ordered defendant and his family to "stay away from me and my woman."

F. Charge on Information/Indictment: assault with intent to do great bodily harm (felony).

QUESTIONS ON CASE #7:

1. Assuming that prosecution, defense, and the court have adequate resources to deal with their caseloads in a fair and expeditious manner, how do you believe this case should be resolved? (1)
(Circle one number) Please ignore numbers in parenthesis. [3] (2-4)
dup.

Negotiated plea of guilty based on either a reduced charge, or sentence assurance, or both 1 (5)

Guilty plea without charge reduction or sentence assurance. . . 2

Non-jury trial 3

Jury trial 4

Dismissal or nolle prosegui 5

Other (explain)_____ . . . 6

2. Setting aside your answer to the preceding question, assume that the defendant in this case pleads guilty as charged. What should be the appropriate sentence? You need not feel bound by the sentencing provisions in effect in your state.
(Circle all that may apply)

Suspended sentence	1	(6)
Fine and/or costs	2	(7)
Probation and/or special program	3	(8)
Incarceration in county jail	4	(9)
indicate sentence in months		(10)
Incarceration in state prison	5	(12)
indicate sentence in years:		
minimum		(13)
maximum		(15)

(assume this sentence is subject to good time and parole practices now in effect in your state)

How much of this prison sentence do you predict would actually be served in your state?

years (19)

3. Now assume that this case proceeds instead to instant jury trial:

a. Bear in mind that the defendant was arrested August 1, 1979. What would be an appropriate date for a jury trial to begin in this case, given adequate staff to handle the caseloads of prosecution, defense, and the court in a fair and expeditious manner?

_____ (month), 19____ (day) (please ignore) (19)

b. Considering the strength of the prosecution's case as detailed above, what is your best professional estimate as to the likely result of a jury trial?

Almost certain conviction	1	(25)
Probable conviction	2	
50/50 chance of conviction	3	
Probable acquittal	4	
Almost certain acquittal	5	

4. Comments regarding this case: (26)

CASE #8

A. Complaint: On 8/1/79 at approximately 8:35 p.m., Witness A, a security guard in complainant's department store, observed defendant take several pieces of women's clothing (two jumpsuits, one blouse, two skirts; total value: $74) from a rack and place them in a large black purse. She then left the store without paying for the merchandise. Defendant was apprehended by the security guard after leaving the store. The police were called.

B. Arrest: Officer B responded to the call, arrested the defendant, and took her to the station. The defendant was advised of her rights and was interrogated by Sergeant C. She stated, "I took the clothes and put them in my purse. I then tried to leave the store without paying for them and I was caught."

C. Witnesses:

1. Witness A, the security guard, will testify to seeing the defendant put the articles in her purse and leave the store without paying for them.
2. Officer B will testify to responding to the call, making the arrest and police report.
3. Sergeant C will testify to advising the defendant of her rights and interrogating her.

D. Evidence: clothing held by security department of complainant department store.

E. Defendant Information:

1. Age: 32
2. Prior criminal record:

02/07/70 -11/03/75	Five separate misdemeanor convictions for shoplifting, the last three with sentences of 30 days in county jail.
04/07/77	Arrest: larceny in a building (felony) Conviction: larceny in a building (felony) Sentence: one to two years in state prison

3. Other: defendant has four aliases, no regular employment

F. Charge on Information/Indictment: larceny in a building (felony)

QUESTIONS ON CASE #8:

1. Assuming that prosecution, defense, and the court have adequate resources to deal with their caseloads in a fair and expeditious manner, how do you believe this case should be resolved?
(Circle one number) Please ignore numbers in parenthesis.

Negotiated plea of guilty based on either a reduced charge, or sentence assurance, or both	1	(27)
Guilty plea without charge reduction or sentence assurance	2	
Non-jury trial	3	
Jury trial	4	
Dismissal or nolle prosegui	5	
Other (explain)_____	6	

2. Setting aside your answer to the preceding question, assume that the defendant in this case pleads guilty as charged. What should be the appropriate sentence? You need not feel bound by the sentencing provisions in effect in your state.
(Circle all that may apply)

Suspended sentence. 1 (28)

Fine and/or costs 2 (29)

Probation and/or special program. 3 (30)

Incarceration in county jail. 4 (31)

indicate sentence in months. . . . . (32)

Incarceration in state prison 5 (34)

indicate sentence in years:

minimum . . . . . (35)

maximum . . . . . (37)

(assume this sentence is subject to good time and parole practices now in effect in your state)

How much of this prison sentence do you predict would actually be served in your state?

years . . . . . (39)

3. Now assume that this case proceeds instead to instant jury trial:

a. Bear in mind that the defendant was arrested August 1, 1979. What would be an appropriate date for a jury trial to begin in this case, given adequate staff to handle the caseloads of prosecution, defense, and the court in a fair and expeditious manner?

_____, 19____ (41)
(month) (day) (please ignore)

b. Considering the strength of the prosecution's case as detailed above, what is your best professional estimate as to the likely result of a jury trial?

Almost certain conviction. 1 (47)

Probable conviction. 2

50/50 chance of conviction 3

Probable acquittal 4

Almost certain acquittal 5

4. Comments regarding this case: (48)

CASE #9

A. Complaint: Complainant, a fifteen-year-old girl, was walking home the three blocks from her aunt's house at 11:00 p.m. on 7/30/79. In a darkened section of the sidewalk she was approached by a man she had never seen before who pulled out a gun, placed it to the complainant's neck, and stated, "This is a stickup; give me your money." The complainant said she had no money. He then grabbed the complainant's coat and pulled her across the street into a vacant house. He was forced to remove her clothes at gunpoint. The man got on top of her and forced her to submit to sexual intercourse. When he was finished, the man pulled on his pants, told the complainant not to move, and escaped on foot. The victim ran home and told her mother, Witness A, what had happened. The mother called the police.

Officers B and C responded to the call and took the report. The complainant was taken to General Hospital for an examination and for treatment of several lacerations and bruises. She described her assailant as a male wearing dark clothes, about five feet five inches in height, with a medium build and dark greasy hair.

B. Arrest: Two days after the incident, on 8/1/79, complainant observed the man who had raped her standing in front of a bar two blocks from her house. She notified the police. Officers/E and F arrested the defendant and took him to police headquarters. Defendant was advised of his rights and interrogated by Sergeant G. He made no statement. At this time he advised officers that his blood type was "O." Defendant fit the description given by complainant after the rape. On the day of the arrest, complainant positively identified defendant in a lineup as the man who had raped her. A week later a "negative" lineup was help in which the defendant was not present and complainant identified no one. Defendant's attorney was present on both occasions.

C. Witnesses:

1. Complainant will testify to events as described above and to positively identifying defendant as the man who raped her.

2. Witness A, complainant's mother, will testify to complainant's return home and description of being raped.

3. Officers B and C will testify to preparing the report and taking complainant to General Hospital.

4. Officers E and F will testify to arrest of the defendant.

5. Sergeant G will testify to advising the defendant of his rights, interrogating him, and conducting the two lineups.

6. Dr. H of General Hospital will testify that a physical examination of complainant's genitals indicated signs consistent with recent sexual intercourse.

7. Officer I from the police crime lab will testify that stains in the panties obtained from complainant at the hospital were sperm from a man with type "O" blood.

D. Evidence: panties obtained from complainant at time of examination.

E. Defendant Information:

1. Age: 19

2. Prior criminal record: none

3. Other: Defendant resides with his parents two blocks from the scene of the incident. Defendant is a part-time student at a local junior college. He has no verifiable alibi.

F. Charge on Information/Indictment: rape (felony).

QUESTIONS ON CASE #9:

1. Assuming that prosecution, defense, and the court have adequate resources to deal with their caseloads in a fair and expeditious manner, how do you believe this case should be resolved?
(Circle one number) Please ignore numbers in parenthesis.

Negotiated plea of guilty based on either a reduced charge, or sentence assurance, or both	1	(49)
Guilty plea without charge reduction or sentence assurance. . .	2	
Non-jury trial	3	
Jury trial	4	
Dismissal or nolle prosequi	5	
Other (explain)_____ . . .	6	

2. Setting aside your answer to the preceding question, assume that the defendant in this case pleads guilty as charged. What should be the appropriate sentence? You need not feel bound by the sentencing provisions in effect in your state.
(Circle all that may apply)

Suspended sentence.	1	(50)
Fine and/or costs	2	(51)
Probation and/or special program.	3	(52)
Incarceration in county jail.	4	(53)
indicate sentence in months.		(54)

Incarceration in state prison	5	(56)

indicate sentence in years:

minimum . . . . . (57)

maximum . . . . . (59)

(assume this sentence is subject to good time and parole practices now in effect in your state)

How much of this prison sentence do you predict would actually be served in your state?

years . . . . . (61)

3. Now assume that this case proceeds instead to instant jury trial:

a. Bear in mind that the defendant was arrested August 1, 1979. What would be an appropriate date for a jury trial to begin in this case, given adequate staff to handle the caseloads of prosecution, defense, and the court in a fair and expeditious manner?

_____, 19___ . (63)
(month) (day) (please ignore)

b. Considering the strength of the prosecution's case as detailed above, what is your best professional estimate as to the likely result of a jury trial?

Almost certain conviction.	1	(69)
Probable conviction.	2	
50/50 chance of conviction	3	
Probable acquittal	4	
Almost certain acquittal	5	

4. Comments regarding this case: (70)

CASE #10

A. Complaint: On 8/1/79 at approximately 9:00 p.m. the complainant, in the company of his mother-in-law, Witness A, was entering the lobby of complainant's apartment house. They were approached by a man who asked if they knew the manager. Complainant replied that they did not. The man then produced a knife and said, "Give me your money or I'll kill you." The complainant reached into his pocket and removed $51 in bills and handed it to the defendant. The defendant then stated, "Give me more money or I'll kill you." The complainant then reached out and grabbed the defendant's wrist and wrestled the knife out of his hand. The two grappled; both fell out the front door of the apartment building; the complainant landed on top of the defendant and subdued him. Witness A called the police. Complainant suffered several cuts and bruises from the fight but was not treated.

B. Arrest: A police car manned by Officers A and B arrived at the scene, arrested the defendant, and conveyed him to the police station. They confiscated $51 and a knife from the defendant. After being advised of his rights, the defendant was interrogated but made no statement.

C. Witnesses:

1. Complainant will testify to being robbed by the defendant, fighting with him, subduing him, and holding him for the police.

2. Witness A, complainant's mother-in-law, will testify to being robbed by defendant, seeing complainant fight with defendant, subdue him, and hold him for the police.

3. Officers B and C and Sergeant D will testify to facts surrounding the arrest.

D. Evidence:

1. $51 in bills confiscated from defendant.

2. Knife confiscated from defendant.

E. Defendant Information:

1. Age: 22

2. Prior criminal record:

03/13/75 Arrest: sale of controlled substance (felony)
Conviction: possession of controlled substance (misdemeanor)
Sentence: 30 days county jail; one year probation

12/21/75 Arrest: sale of controlled substance (felony)
Conviction: possession of controlled substance (misdemeanor)
Sentence: two months county jail

03/09/77 Arrest: breaking and entering (felony)
Dismissed

06/06/77 Arrest: sale of controlled substance (felony)
Conviction: possession of controlled substance (misdemeanor)
Sentence: one-two years state prison

3. Other: Defendant has been out of prison for approximately six months. He has no fixed abode or employment.

F. Charge on Information/Indictment: armed robbery (felony)

QUESTIONS ON CASE #10:

1. Assuming that prosecution, defense, and the court have adequate resources to deal with their caseloads in a fair and expeditious manner, how do you believe this case should be resolved? (1)
(Circle one number) Please ignore numbers in parenthesis. [4] (2-4)
dup.

Negotiated plea of guilty based on either a reduced charge, or sentence assurance, or both	1	(5)
Guilty plea without charge reduction or sentence assurance. . .	2	
Non-jury trial	3	
Jury trial	4	
Dismissal or nolle prosequi	5	
Other (explain)_____ . . .	6	

2. Setting aside your answer to the preceding question, assume that the defendant in this case pleads guilty as charged. What should be the appropriate sentence? You need not feel bound by the sentencing provisions in effect in your state.
(Circle all that may apply)

Suspended sentence.	1	(6)
Fine and/or costs	2	(7)
Probation and/or special program.	3	(8)
Incarceration in county jail.	4	(9)
indicate sentence in months.	↓[ ][ ]↓	(10)

Incarceration in state prison 5 (12)

indicate sentence in years:

minimum . . . . . [ ][ ] (13)

maximum . . . . . [ ][ ] (15)

(assume this sentence is subject to good time and parole practices now in effect in your state)

How much of this prison sentence do you predict would actually be served in your state?

years . . . . . [ ][ ] (17)

3. Now assume that this case proceeds instead to instant jury trial:

a. Bear in mind that the defendant was arrested August 1, 1979. What would be an appropriate date for a jury trial to begin in this case, given adequate staff to handle the caseloads of prosecution, defense, and the court in a fair and expeditious manner?

_____, 19___ [ ][ ][ ][ ][ ][ ] (19)
(month) (day) (please ignore)

b. Considering the strength of the prosecution's case as detailed above, what is your best professional estimate as to the likely result of a jury trial?

Almost certain conviction. 1 (25)

Probable conviction. 2

50/50 chance of conviction 3

Probable acquittal 4

Almost certain acquittal 5

4. Comments regarding this case: [ ] (26)

CASE #11

A. Complaint: The complainant, a 25-year-old woman, went to the home of defendant, her ex-boyfriend, at 10:00 a.m. 8/1/79 to get a hairdryer she left behind the previous evening when she and defendant broke up. Upon her entering the house, defendant dragged her upstairs to his bedroom and began hitting her with a rifle butt. She fled to the street and he shot at her from the upstairs window. She was wounded in the left shoulder but managed to walk to a cousin's house in the neighborhood. The police and an ambulance were called. Officers A and B responded and obtained a report before complainant was taken to General Hospital. Complainant was x-rayed, treated, and discharged.

B. Arrest: Police Officers A and B, after obtaining complainant's report, proceeded to defendant's home. He was arrested, conveyed to the police station, and advised of his rights. He then stated that he shot at the complainant with a .22 calibre rifle after she first shot at him with a handgun. He further stated that he tried to shoot over complainant's head. "I was standing on the side of the house when she shot at me. I hit the ground and returned her fire. She ran down the street."

C. Witnesses:

1. Complainant will testify to facts of the offense as summarized above. (Complainant has a criminal record which includes several misdemeanor convictions and one felony drug conviction.)

2. Officers A and B will testify to obtaining the report from complainant, arresting the defendant, advising him of his rights, and the interrogation.

3. Dr. D of General Hospital will testify to treating complainant on 8/1/79 for a gunshot wound in the left shoulder.

4. There are no known witnesses to the shooting except complainant and defendant.

D. Evidence: X-ray of shoulder.

E. Defendant Information:

1. Age: 29

2. Prior criminal record:

12/15/69 Arrest: armed robbery (felony)
Conviction: unarmed robbery (misdemeanor)
Sentence: 30 days county jail; three years probation

08/13/71 Arrest: sale of controlled substance (felony)
Conviction: possession of controlled substance (misdemeanor)
Sentence: two months county jail

12/03/72 Arrest: assault with intent to murder (felony)
(No disposition available)

04/05/73 Arrest: armed robbery (felony)
Acquitted by jury

06/17/74 Arrest: armed robbery (felony)
Conviction: armed robbery (felony)
Sentence: three to five years state prison

3. Other: Defendant has been employed five months driving a delivery truck.

4. Defenses: self-defense -- defendant will testify that complainant first shot at him with a handgun.

F. Charge on Information/Indictment assault with intent to murder (felony).

QUESTIONS ON CASE #11:

1. Assuming that prosecution, defense, and the court have adequate resources to deal with their caseloads in a fair and expeditious manner, how do you believe this case should be resolved?
(Circle one number) Please ignore numbers in parenthesis.

Negotiated plea of guilty based on either a reduced charge, or sentence assurance, or both	1	(27)
Guilty plea without charge reduction or sentence assurance. . .	2	
Non-jury trial	3	
Jury trial	4	
Dismissal or nolle prosequi	5	
Other (explain)_____ . . .	6	

2. Setting aside your answer to the preceding question, assume that the defendant in this case pleads guilty as charged. What should be the appropriate sentence? You need not feel bound by the sentencing provisions in effect in your state.
(Circle all that may apply)

Suspended sentence.	1	(28)
Fine and/or costs	2	(29)
Probation and/or special program.	3	(30)
Incarceration in county jail.	4	(31)
indicate sentence in months.		(32)

Incarceration in state prison	5	(34)
indicate sentence in years: minimum		(35)
maximum		(37)

(assume this sentence is subject to good time and parole practices now in effect in your state)

How much of this prison sentence do you predict would actually be served in your state?
years . . . . . (39)

3. Now assume that this case proceeds instead to instant jury trial:

a. Bear in mind that the defendant was arrested August 1, 1979. What would be an appropriate date for a jury trial to begin in this case, given adequate staff to handle the caseloads of prosecution, defense, and the court in a fair and expeditious manner?

_____, 19____ (41)
(month) (day) (please ignore)

b. Considering the strength of the prosecution's case as detailed above, what is your best professional estimate as to the likely result of a jury trial?

Almost certain conviction.	1	(47)
Probable conviction.	2	
50/50 chance of conviction	3	
Probable acquittal	4	
Almost certain acquittal	5	

4. Comments regarding this case: (48)

CASE #12

A. Complaint: On August 1, 1979, at approximately 9:00 p.m., the complainant parked her car in a parking lot near the entrance to City Medical Clinic, walked to the street, and then proceeded toward the clinic entrance. Two males walked toward her from behind. As they passed her, one of the men pulled a gun from inside his jacket, pointed it at her, and ordered her to give him her handbag. The complainant refused and the two men began to pull it from her hands. While pulling, the man with the gun (ultimately identified as the defendant) pushed it into her chest, threatening her again. The handbag was finally pulled from her hands and the men began running away.

Witness A, a private security guard, was sitting in his vehicle approximately 30 yards away and observed the entire incident. As the men ran towards the parking lot he left his vehicle and ordered them to stop. One of the men kept running and escaped. The defendant stopped and dropped the complainant's purse and a .30 calibre handgun.

The complainant had left the scene to call the police and was returning to the parking lot at the security guard apprehended the defendant.

B. Arrest: A police squad car manned by Officers B and C responded to the radio call, arrived at the scene, and arrested the defendant in the presence of the complainant. Officers B and C conveyed the defendant to the police station. He was advised of his rights by Sergeant D and interrogated. He made no statement.

C. Witnesses:

1. Complainant will testify to facts surrounding the incident and her identification at the scene of the defendant as one of the men who stole her handbag.

2. Witness A, the security guard, will testify to observing the robbery, never losing sight of the defendant, detaining him and turning him over to the police.

3. Police Officers B and C will testify to facts surrounding the arrest and making the report.

D. Evidence:

1. Brown lady's handbag containing sundries taken from defendant by Witness A.

2. $2 in bills taken from handbag.

3. .30 calibre handgun taken from defendant by Witness A.

E. Defendant Information:

1. Age: 19

2. Prior criminal record:

12/20/78 Arrest: felonious assault (felony)
Conviction: assault (misdemeanor)
Sentence: one year probation

04/03/79 Arrest: sale of controlled substance (felony)
Conviction: attempted sale of controlled substance (misdemeanor)
Sentence: 60 days county jail; one year probation

3. Other: defendant has just been released from county jail and is on probation. He has not obtained employment and is living with a friend.

F. Charge on Information/Indictment: armed robbery (felony).

QUESTIONS ON CASE #12:

1. Assuming that prosecution, defense, and the court have adequate resources to deal with their caseloads in a fair and expeditious manner, how do you believe this case should be resolved?
(Circle one number) Please ignore numbers in parenthesis.

Negotiated plea of guilty based on either a reduced charge, or sentence assurance, or both	1	(49)
Guilty plea without charge reduction or sentence assurance. . .	2	
Non-jury trial	3	
Jury trial	4	
Dismissal or nolle prosequi	5	
Other (explain)_____ . . .	6	

2. Setting aside your answer to the preceding question, assume that the defendant in this case pleads guilty as charged. What should be the appropriate sentence? You need not feel bound by the sentencing provisions in effect in your state.
(Circle all that may apply)

Suspended sentence.	1	(50)
Fine and/or costs	2	(51)
Probation and/or special program.	3	(52)
Incarceration in county jail.	4	(53)
indicate sentence in months.	☐☐	(54)

Incarceration in state prison 5 (56)

indicate sentence in years:

minimum . . . . . ☐☐ (57)

maximum . . . . . ☐☐ (59)

(assume this sentence is subject to good time and parole practices now in effect in your state)

How much of this prison sentence do you predict would actually be served in your state?

years . . . . . ☐☐ (61)

3. Now assume that this case proceeds instead to instant jury trial:

a. Bear in mind that the defendant was arrested August 1, 1979. What would be an appropriate date for a jury trial to begin in this case, given adequate staff to handle the caseloads of prosecution, defense, and the court in a fair and expeditious manner?

_____, 19____ ☐☐☐☐☐☐ (63)
(month) (day) (please ignore)

b. Considering the strength of the prosecution's case as detailed above, what is your best professional estimate as to the likely result of a jury trial?

Almost certain conviction. 1 (69)

Probable conviction. 2

50/50 chance of conviction 3

Probable acquittal 4

Almost certain acquittal 5

4. Comments regarding this case: ☐ (70)

END