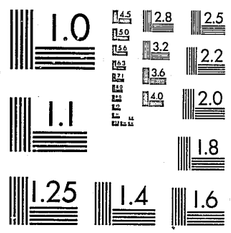






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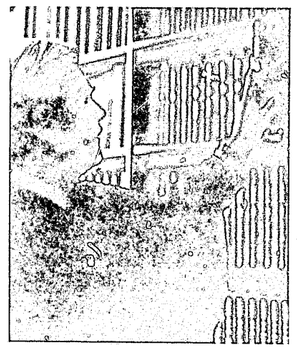
# Basic Issues in Courts Performance





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James L. Underwood
*Acting Director*



# Basic Issues in Courts Performance

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July 1982

U.S. Department of Justice
National Institute of Justice

**National Institute of Justice**
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# FOREWORD

This document is one of four produced under the National Institute of Justice's Performance Measurement Program, a long-range research program to improve performance measurement practices in criminal justice agencies. Like its companions, it entails a review and synthesis of performance and measurement concepts for the purposes of conceptualizing the general problem and of developing an agenda for future performance measurement research.

Each report deals with performance in the context of some function of the criminal justice system: Police, Prosecution and Public Defense, Courts, and Adult Corrections. "Performance" is therefore discussed in terms of the objectives and activities specific to that function as well as in terms of the general definitional and measurement issues frequently raised in the context of public accountability and administration. The result is a balance between the concreteness of the daily realities of quantitative management and the abstractness of measuring an elusive concept called public agency performance.

The volumes don't advocate a host of new measures, a "bottom line" or formula for improving the administration of the prosecution or public defense function. So many measures of performance have already been proposed that agency managements are faced with the prospect of expensive automation in order to produce an over-abundance of statistics. Rather than promote that kind of expenditure, the Institute embarked upon this effort to sort out perceived measurement needs and to crystallize competing perspectives on performance. The fact that each volume in this series offers a different perspective on the subject affirmed our assessment that we are still some way from mechanical application of measurement schemes.

Each volume contains an integrated, thoughtful assessment of some key performance issues, yet there is little redundancy. We encourage researchers and practitioners to read all four conceptualizations in order to familiarize themselves with the range of perspectives that can be taken. We hope that the studies will encourage others to refine their thinking on this difficult subject and to make other contributions to this critical but as yet under-developed aspect of criminal justice administration.

James L. Underwood
Acting Director
National Institute of Justice

## ABSTRACT

Performance measurement in the area of criminal trial courts is a newly emerging concept. While there is a growing consensus that courts need to adopt modern management technology to improve the efficiency and effectiveness of court administration, there is little in the way of guidance as to how this can be done in a comprehensive manner, particularly in the sense of a performance measurement system that has applicability across the diversity of courts systems found in states.

The purpose of this project has been to develop a foundation for meeting this need by developing a conceptual framework and methodology to be used in constructing performance measures for metropolitan, adult felony courts. The approach taken lays the groundwork for defining, operationalizing, and validating measures that will be useful to a wide range of individuals interested in the courts: criminal justice system planners, court personnel (judges, prosecutors, defense counsel, court administrators, etc.), scholars, and the general citizenry.

The project was designed to obtain information from a variety of sources. The literature on courts in general, and court administration in particular, was surveyed to gain a thorough understanding of court operating characteristics, both formal and informal. The survey emphasizes an identification of the issues involved in court administration that are germane to the area of performance measurement (e.g., court delay). The literature survey was supplemented by in-person site visits to a number of court jurisdictions. The site visits enabled direct observation of court operations and provided an opportunity to converse with key participants in the court: judges, prosecutors, defense attorneys, court clerks, court administrators, bailiffs, etc. The major purpose of the site visits was not to evaluate the performance of a particular court but rather to gain first-hand experience and understanding of how and why courts operate as they do.

The product from the first phase of the research is a synthesis of extant knowledge about the issues involved in performance measurement in courts. This will lay the foundation for work to be undertaken during the next stage of the project: research on unresolved performance measurement issues and the development and testing of a methodology for measuring the performance of courts in terms of selected types of performance indicators.

## PREFACE

In September, 1978 the National Institute of Law Enforcement and Criminal Justice (LEAA) initiated a program of research on the topic of performance measurement in the criminal justice system. The program encompasses the full scope of criminal justice activities: police, prosecution, defense, adjudication, corrections, and the system as a whole. Separate grants were awarded for each part of the system. The Research Triangle Institute has the responsibility for the adjudication component of the program.

The other components of the program and the grantees are:

| | |
|---|---|
| Criminal Justice System | Stuart Jay Deutsch<br>Georgia Institute of Technology<br>Atlanta, Georgia |
| Police | Gordon P. Whitaker<br>University of North Carolina<br>Chapel Hill, North Carolina |
| Prosecution and Public Defense | Joan E. Jacoby<br>Jefferson Institute of Justice Studies<br>Washington, D.C. |
| Corrections | Gloria Grizzle<br>The Osprey Company<br>Raleigh, North Carolina |

We have found the interactions among the grantees to have been most helpful in clarifying many of the issues involved in performance measurement. The collegial exchanges have been particularly helpful in identifying linkages among the various components of the criminal justice system.

We are grateful to the numerous court officials who gave generously of their time and, during the course of frank discussions, shared their thoughts both on the potential benefit and the problems associated with performance measurement in courts.

Several people have made time available to read and comment on all or parts of this report: Thomas Church, Oakland University; James Eisenstein, Pennsylvania State University; Lois MacGillivray, and Sally Johnson, Research Triangle Institute; and Bert Montague, North Carolina Administrative Office of the Courts.

The initial drafts of Chapters 1, 3 and 8, and the final version of the report was prepared by Thomas J. Cook. Ronald W. Johnson prepared Chapters 4 and 5. The initial drafts of selected chapters were prepared by the following: Chapter 2, Ellen Fried; Chapter 6, Mary Wagner; and Chapter 7, John Gross. James Eisenstein contributed to Chapter 3.





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# CHAPTER I. PERFORMANCE MEASUREMENT IN COURTS: OVERVIEW

## A. Introduction

As we move into the decade of the 1980's, public institutions are under increasing pressure to improve performance. Inflation, expenditure ceilings, and vocal citizen resistance to tax increases signal a future dominated by resource scarcity; the search will be for ways to maintain existing service levels in the face of declining public resources. One also hears the charge that public officials are not making the best use of available resources, for example, that management inefficiencies need to be identified and corrected. Hence, citizens and policy makers alike are taking a hard look at the way our public resources are expended, seeking ways to improve performance, and asking institutions to account for the costs and benefits that result from the decisions they make.

It is not surprising that the criminal justice system is the object of this type of scrutiny. That crime has become more prevalent and is of major concern to the citizenry of the United States is not seriously debated. Rightly or wrongly, the agencies of the criminal justice system are charged with the responsibility for dealing with the crime problem. They are also charged with carrying out these responsibilities within a constitutional framework that sets limits on the exercise of governmental authority. Taken as a whole, the criminal justice system also consumes a sizeable amount of public resources--$17.5 billion in 1975 (Washnis 1980). Finally, like other agencies, agencies of the criminal justice system increasingly are being held accountable for their actions.

The call for increased performance and accountability on the part of public institutions implies the need for a valid means of determining the extent to which performance goals are being met; objective performance measurements should replace rhetoric as the basis for assaying the value of policy choices. In recognition of this need in the criminal justice system, the Law Enforcement Assistance Administration, in 1978, supported a multi-year program for the development of new approaches to measuring the performance of each component of the criminal justice system. The following chapters represent the effort of a research team at the Research Triangle Institute (RTI) to develop a conceptual framework for measuring the performance of adult felony trial courts as the first phase of the program. This is only one part of a coordinated research program, with other research teams at other institutions devoting similar efforts to the areas of prosecution and public defense, police, corrections, and a broader view of the criminal justice system as a whole.*

B. Performance Measurement Program

> It is evident that there is no such thing as a criminal justice system in the sense that police, courts, and correctional agencies operate in concert to produce an agreed-upon social outcome. If anything, objectives of individual agencies create tensions among these bodies. It is equally evident that, even if there were coordinated criminal justice systems, they would differ significantly across states as to purposes and priorities. However, there is a growing conviction that one can determine within reasonable limits the relationships of agency policies to performance outcomes (Zedlewski 1979).

The performance measurement program flows from the central assumption expressed above: agency performance can be measured. Agreement that performance can be measured, however, accompanies considerable dissension on what "performance" means or how it should be measured (Zedlewski 1979, p. 490).

Prior research on performance measurement in the criminal justice system is reviewed in Chapter II, in which we will sketch some of the major shortcomings of prior research in terms of the two phases of the current program.

Phase I, which lasted 18 months and resulted in the material reported in this volume, centered on identifying the key issues involved in developing a conceptual framework for performance measurement in the courts area. We have delineated a way of looking at the courts for the purpose of designing a performance measurement system. A key concern has been to identify the principal operating characteristics of courts in terms of the felony disposition process and to establish the linkages between court operations and court outcomes. It is our view that a performance measurement system should allow one not only to measure outcomes but to identify the factors within the court operations that affect the outcomes. Only in this way can the performance measurement system serve to guide performance improvement efforts in the court system.

The performance measurement system should also contain an explicit comparative framework which may be interorganizational, intertemporal,

*Separate grants have been awarded for each part of the program. Principal investigators in the program are Gordon Whitaker of the University of North Carolina and Elinor Ostrom of Indiana University (Police); Joan Jacoby of the Bureau of Social Science Research, Inc. (Prosecution and Public Defender); Thomas J. Cook of Research Triangle Institute (Courts); Gloria Grizzle and Ann Witte of the Osprey Company (Adult Corrections); and Stuart Deutsch of the Georgia Institute of Technology (Inter-Systems Perspective).

or some other type. Later chapters will underline a central contention in our approach; namely, that assessing performance entails making comparisons. We will elaborate on this point in Chapter II where prior research on performance measurement in general and in the courts area in particular is reviewed. Several approaches towards comparative performance measurement will be identified in the discussion.

We have also stressed the importance of understanding the interrelationships between court operations and the operations of other components in the criminal justice system (e.g., police, prosecution and defense, corrections). As is pointed out in Chapter III, much of what the court does is affected by the actions of other actors and agencies within its environment. The interdependencies that exist among the various components of the criminal justice system, as well as the interrelationships between the criminal justice system and the larger sociopolitical system within which it operates, must be taken into account in any comprehensive approach toward performance measurement. Failure to recognize these interrelationships and their effect on performance has been one of the most glaring deficiencies of prior research in the area (Cook 1979).

In addition, we have adopted the view that a comprehensive performance measurement system will reflect the interests of a wide range of court constituencies. We define "court constituencies" as individuals and/or groups involved in, or affected by, the operations of courts. These various constituencies have information needs regarding the performance of courts; their information needs may reflect their view of how courts should operate or of desirable court outcomes. In Chapter VI



we have identified a number of these constituencies and their information needs. We show that there is a diversity of opinion regarding what courts should do and how they should do it. Prior research has tended to emphasize the interests of court management in devising performance measures (Reiss 1972). We concur that this group will be an important consumer of performance measurement information; however, we feel that a comprehensive performance measurement system must have the potential for providing information to a wider audience of consumers (e.g., community organizations, private individuals, higher levels of government).

Our Phase I approach has been to exploit three main avenues of information: documents, people, and direct observation of court operations. We have compiled an extensive library on courts covering a wide range of topics, including court administration, judicial behavior, court reform, organizational analysis of courts, and courts statistics. The material has been abstracted and much of it is reflected in this report.

Although we have found the court literature useful for gaining an appreciation of some of the important issues involved in court operations, it provides limited guidance for the task of framework development. Only recently has the focus of empirical research in courts shifted from a topical tradition (e.g., the role of defense counsel, the bail decision, sentencing practices) to a systematic examination of larger aspects of the judicial process (Nardulli 1978a, pp. 1-43). This broader, more comprehensive and integrated perspective on the courts has only in the last few years been expanded to the concept of performance measurement (Wildhorn et al., 1977). Although one can find philosophical exhortations promoting the idea of performance measurement in courts,

there is little explicit guidance on how one ought to proceed. Most of our literature review has consisted of knitting together fragments of ideas about how one ought to think about developing a performance measurement system that can be applied within the context of court operations. In addition, we have not uncovered a well-articulated consensus concerning such key issues as: what performance is, how performance should be measured, what the proper goals of courts are, what factors determine court outputs, or the meaning of such terms as "due process," "efficiency," and "justice."

Contacts with court researchers as well as organizations (e.g., National Center for State Courts, American Bar Foundation, American Judicature Society) proved to be useful sources of information. We were alerted to a variety of research efforts relevant to this project. In addition, we uncovered material that had not found its way into the mainstream of court literature, yet provided examples of local practices and innovations that might otherwise have been overlooked.

Perhaps the most fruitful activity during Phase I has been the field work. The direct experience of visiting court systems, talking with various court systems' participants, and observing the operation of the court from a variety of vantage points--the courtroom, the judge's chambers, the clerk's office--enriched our appreciation of the complexity of the system much beyond that gained from the literature; the details of the field work have been chronicled elsewhere (Research Triangle Institute 1979).

The contact with court personnel revealed an unexpected finding: many people in the court system are very interested in the idea of developing a performance measurement system for courts and, at least



verbally, are supportive of the effort. True, there is little agreement on specifics, but the perception that performance measurement is a real need, especially as expressed by court officials, augurs well for developing such a system and gaining acceptance of its implementation.

In Phase II, envisioned as an 18-month effort, the project focus will shift from the conceptual-descriptive stage to the operation-analytical stage. The abstract concepts developed in Phase I, and discussed throughout the remainder of this report, will be grounded in empirical operations. Where possible, we will capitalize upon extant data collection technologies. We will emphasize the determination of those factors within the courts operation that seem to affect court outcomes (i.e., explain performance variations) and distinguish between factors that, at least in theory, are under court management control versus factors that affect performance, yet are exogenous to the court system.

## C. Project Focus

We limited the focus of this study to the felony case disposition process in the adult criminal court system. The primary unit of analysis--court system--will be defined more fully in Chapter IV; for now, we will offer the concept of the local court organization as a frame of reference. In most states, the local court organization is the county court system; in other states it may be the district or circuit court. Regardless of label, our focus centered on the organizational unit responsible for the direct operation of the felony trial court of general jurisdiction, referred to hereafter as "the court."

We further restricted the study in that we did not emphasize the prosecution and defense functions as they may relate to court performance; another study addressed these concerns. Anyone who has been in a court and observed how it functions appreciates the difficulty of separating the performance of the court from the performance of the attorneys who practice in it. As Nardulli and others have pointed out, the "courtroom elite" (i.e., judge, prosecution, and defense) control the operations of the court and, hence, most directly affect court performance (Nardulli 1978b). Our interest is not in the behavior of individuals, which may tend to be idiosyncratic, but in the operation of the system. To the extent that factors related to the prosecution or defense (such as the policies of the prosecutor or the presence of a public defender in the jurisdiction) affect court system performance, they will be included in the analyses.

Another choice, dictated by the initial solicitation for the project, was the emphasis upon criminal case disposition. Most courts process both criminal and civil cases (and also domestic relations, probate, juvenile, and the like). We recognize the problems involved in limiting our focus to criminal cases, particularly with regard to questions of court productivity or case output: some courts assign judges to cases in ways that make it virtually impossible to separate the work they do on civil cases from the work they do on criminal cases. It will be difficult, therefore, to construct any case output per judge measures for the criminal side alone. Also, we run the risk that the performance measures developed for the courts will be less representative of the totality of the courts' work than performance measures for the other



agencies in the criminal justice system (police, prosecution and defense, corrections) if the measures are restricted solely to criminal cases.

The focus on felony cases also poses some conceptual problems. First, since misdemeanor cases make up the bulk of the criminal caseload of most court systems, we will be analyzing courts using a restricted sample of cases. Second, the average citizen is most likely to come in contact with the criminal courts in a misdemeanor proceeding. And how those cases are handled is an important component of how the court system as a whole performs, or at least is perceived to perform.

This leads to a final concern, our focus on courts of general jurisdiction. Although we will concentrate on general jurisdiction courts, we also examine case disposition processes occurring below the court of general jurisdiction (e.g., probable cause hearings in misdemeanor courts) in terms of their impact on the overall case disposition process. In our field work we followed cases from the initial point of contact with the court system, such as the magistrate's office, through the courts of limited jurisdiction, to the courts of general jurisdiction. This approach allowed us to gain an understanding of the overall case disposition process, the decision stages and decision makers at each stage of the process, and the interrelationships among the various types of courts involved. In Chapter IV, the disposition process is explicated in terms of an organizational model of courts.

D. Preview of the Book

The discussion thus far has provided some indication of the material to follow in the remainder of the book. In Chapter II we review the literature on performance measurement and the literature on courts,

with a special emphasis on previous research that has attempted to measure court performance. Chapter III describes our conceptual approach to performance measurement, which builds on the strengths and overcomes many of the limitations of this prior research. Chapter IV discusses the organizational characteristics of courts and provides a model of the court as an organization, focusing on the task environment of the court.

In Chapter V, we integrate the various threads of the conceptual framework discussed in the preceding chapters and apply the framework to a key decision stage in the case disposition process: the pretrial release stage. The components of the court organization model and their interrelationships are described as they apply to this decision stage.

Chapter VI elaborates the concept of performance measurement comprehensiveness by identifying the various court constituencies and their expectations regarding court performance. The constituencies are identified along with an indication of their information needs, or the issues of interest to them, relative to court performance.

The development of a performance measurement system requires the availability of good data. In Chapter VII we survey the availability of court data, noting in particular the gaps in extant data relative to the needs of a performance measurement system. We also review the state-of-the-art of court information systems and assess the applicability of these systems to performance measurement issues.

In Chapter VIII we summarize the major lessons learned regarding court performance. We have not covered all of the issues involved in designing and implementing a performance measurement system; one purpose of this chapter is to outline an agenda for future research in the area of performance measurement in courts.



In addition to previewing the remainder of the book, we should indicate what the reader will <u>not</u> find. First, we did not emphasize the behavior of individual court system participants. Our concern centered on the performance of the court as a system; performance of individuals (e.g., the judge) will be incorporated in the analyses to the extent that understanding individual performance is essential to an understanding of system performance.

The reader will not find a shopping list of performance indicators. Several lists of performance indicators are available in the literature; in Chapter III we will review prior research to avoid reinventing the wheel. This study was initiated to meet a major criticism of prior efforts: the absence of a conceptual framework for the development of a performance measurement system for courts. Hence, our attention has centered on performance measurement system development and not performance indicator development.

Finally, this book reports on the progress in the initial phase of a long-term research effort. Many questions remain unanswered, and issues are unresolved. Thus, the reader will not find a complete, intricately detailed blueprint for the construction of a performance measurement system. We have tried to provide the conceptual framework that will guide future development of such a blueprint.

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# CHAPTER II. PERFORMANCE MEASUREMENT IN COURTS: PREVIOUS WORK

The purpose of this chapter is to place our approach to developing a performance measurement system for courts in the context of previous work on performance measurement in general and the limited work on court performance in particular. We examine research that describes explicitly the concept of performance measurement as well as related research that is concerned only implicitly with the concept of performance measurement.

The following section offers our view of the concept of performance measurement as a reference point for later discussion and identifies some of the potential uses of performance measurement systems in the courts. Section B reviews non-court related literature including that dealing with improving government performance, that seeking to define performance, and that concerned with measuring performance. In Section C we consider prior work related to measuring performance in the courts. While we identify the strengths of prior efforts in measuring performance so as to capitalize on them, we also highlight their limitations as conceptual pitfalls to avoid in our design of a performance measurement system suitable for courts.

## A. Our View of Performance Measurement

A certain amount of confusion is inevitable when examining earlier works related to performance measurement. Despite the abundance of literature on the topic of "performance" and "performance measurement" a definitional consensus on these terms has yet to emerge (Connolly and Deutsch 1978; Zedlewski 1979). Various terms, including such concepts as productivity, effectiveness, and efficiency, are used interchangeably

with performance by some authors (see, for example, Hurst 1980). Other authors consider effectiveness and efficiency as types of performance measures (see, for example, Mills 1980). Our view follows the latter course, using the concept of performance measurement to refer to regular, periodic collection, analysis, and provision of information on the activities of an organizational unit or political jurisdiction and the consequences of those activities. In the next chapter, the key attributes of this view will be discussed in the context of a conceptual framework for designing a performance measurement system.

A performance measurement system with the features we are developing would be of use to court constituencies in a number of ways. The availability of regularly collected data allows for routine monitoring of ongoing court operations. When this monitoring is carried out within a comparative framework, potential problems can be identified. For example, intertemporal comparison allows constituents to see whether the court system is doing better or worse than it was last month or last year although it does not provide a basis for assessing how well the court <u>might</u> be doing. Assessing how well a court <u>might</u> perform implies some knowledge of a performance standard against which to compare a given court. As we point out in the following two sections, there are no absolute standards of court performance, but we can consider inter-organizational or interjurisdictional comparisons of similar units--in this case courts. For example, a court system may be processing an average of 1,200 cases a month, an improvement of 10% over the previous year. While the change over time indicates improvement, it does not inform constituents about how many cases could be processed for the amount of resources expended. Comparison with other similar courts



might show that an average of 1,500 cases per month is quite common. Thus, a 10% improvement, while still an improvement, is considerably below what might be achieved.

Once problems are identified through the routine measurement of performance, an in-depth evaluation can be instituted to determine whether the problems are due to a temporary peculiarity, or whether it is necessary to attempt to determine an underlying systemic cause. For example, the observed backlog in a jurisdiction may be due to systemic causes, such as the method of scheduling cases, or to a temporary aberration, such as a lengthy murder trial brought to the jurisdiction through a change of venue. Because the performance measurement system would include measures of activities as well as consequences, it could serve such a diagnostic function.

When problems have been identified, a performance measurement system should allow analysis that will suggest remedial actions, some of which may be administrative but others of which may require legislative action. One legislative remedy is the presumptive or mandatory sentencing laws that have been passed in a number of states in response to perceptions of arbitrary or capricious sentencing disparities among judges or geographical divisions. Since a performance measurement system results in data that are generated and analyzed on a routine basis, the effects of the changes can be studied to determine whether they are having the intended consequences and also whether they are having other, unintended consequences. A presumptive sentencing law may in fact have a number of unintended consequences, including an adjustment of charges to fit the perceived deserved punishment, a relatively large proportion of those found guilty receiving probation, and an increase in the number of cases appealed on the basis of sentence.

As this discussion suggests, a comprehensive performance measurement system should be useful to various constituencies in a number of different ways, among which are: identifying areas in which the court can improve, suggesting possible methods of improvement, and studying the effects of action intended to ameliorate problem situations.

B. Previous Efforts in Performance Measurement*

A considerable volume of literature already exists addressing some aspects of these uses of a performance measurement system. Much of it is concerned with systemic alterations designed to bring about improved performance while some of it focuses on organizational characteristics or processes hypothesized to be correlated with performance. Still a third group of related research has focused explicitly on performance measurement per se. This previous research is reviewed briefly in this section, and in Section C we consider the smaller body of research applied to courts. The relevant literature is quite extensive, and we make no attempt to be exhaustive here. In this section we consider three bodies of literature:

(1) research and analysis focusing on improving performance;

(2) research and theory defining performance; and

(3) applied research focusing on measuring performance.

1. Improving performance. Much of the literature explicitly aimed at improving the performance of government organizations does not attempt a specific definition of performance. In general, efficiency and/or effectiveness are the ends sought and the means to achievement is the design or redesign of decision-making systems; i.e., the decision

*This section draws heavily on prior RTI work including: Johnson and Lewin (1980); RTI (1977); Plotecia (1978).



systems design perspective. Drawing heavily from post World War II developments in operations research and systems analysis is an extensive body of literature on how to achieve governmental efficiency and effectiveness through structural arrangement of the resource allocation process. The classic application to governmental organizations is McKean's Efficiency in Government Through Systems Analysis, with Emphasis on Water Resource Development (1958). Relying on an economic concept of efficiency, this tradition has emphasized the application of systems analytic techniques to maximize outputs in relation to inputs or minimize inputs to achieve a given level of output. Where possible it also has argued that price imputations, shadow prices, or estimated dollar values should be attributed to the outputs of governmental projects to permit application of the cost benefit analytic model (Lee and Johnson 1977).

While the earlier decision system designs such as PPB (planning, programming, budgeting) lost favor in the late 1960's, the distinctive character of this approach in the sense of considering governmental performance synonymous with efficiency and effectiveness has not disappeared. Governmental organizations (federal, state, and local) routinely collect large amounts of data on program inputs and outputs. Output measures are usually quite specific with respect to program objectives--e.g., miles of highway paved, number of clients served, number of jury trials, and so forth. While useful to the specific activity that produced the output, these measures do not aggregate very well into a sense of the performance of the organization or governmental unit. For example, the time, materials, and equipment used in relation

to a number of miles of highway paved may say something about the efficiency of highway paving; however, since the department also may be responsible for patching holes, marking safety crossings, erecting crash barriers, and so forth, the separate efficiencies of each activity are difficult to aggregate.

In general, the decision systems design literature focuses primary attention on the design features of the decision-making system while measuring only the separate efficiencies of individual programs. Maximum system efficiency (hence performance) is obtained when the decision system is designed to compare individual programs, allocating resources across programs until any further reallocation would result in lesser returns (see Ferguson 1972).

2. Defining performance. In the research considered here, performance is considered to be a function of various individual, structural, environmental and task variables; e.g., performance is generally equated with effectiveness, which is defined as goal attainment or productivity. However, much of the literature does not include actual measures of performance; rather it measures such internal characteristics as structure, technology and individual morale/motivation that are hypothesized to be correlates of performance. Performance is thus viewed either in terms of goal attainment or as a product of a system of variables.

a. Goal model. The goal model of effectiveness has considerable similarity to the decision systems design approach, relying on a formal specification of a hierarchy of goals, objectives and measures of effect. (For recent critiques of the goal approach see Connolly and Deutsch 1978; Ostrom 1979). It does not rely necessarily, however, on



formal, official goals; in fact, much of this literature argues that formal goals are only one source.

Adherents to the goal model approach emphasize that effective organizations are ones which organize around a set of objectives, determine the activities necessary to achieve those objectives, and allocate resources according to those activities. Effectiveness is thus seen either as an undefined by-product of a goal and decision-making structure, or as a set of discrete measures of the effects of specified organizational activities. As applied to governmental organizations, the goal model of effectiveness has stressed particularly the analysis of program costs in relation to program effects. Military systems were among the early programs analyzed in this way (Hitch and McKean 1960; Knorr 1967), but extensions of the model have also been made to diverse functions such as health and welfare (Goldman 1968; Rivlin 1971).

b. Systems model. Although it may seem an overstatement, the fairest statement about how effectiveness is measured in the systems model is to say that it is not measured at all. That is, organizational effectiveness is such a difficult concept to operationalize that the systems model appears to posit effectiveness as an unmeasured resultant of a variety of system characteristics. Campbell describes the position in this way:

> The natural systems view makes the assumption that if an organization is of any size at all, the demands placed on it are so dynamic and complex that it is not possible to define a finite number of organizational goals in any meaningful way...Since ultimate criteria of organizational function are so hard to conceptualize and measure, the next best thing is to measure variables representing the state of the system (Campbell 1977, p. 20).

The search for an operational concept of effectiveness, in this view, is abandoned in favor of a search for the set of variables hypothesized to lead to effectiveness. One of the most important representatives of this approach is Seashore and Likert's (1964) speculative article in Harvard Business Review arguing that managerial style, participation by lower level personnel in organizational decision-making processes, and consultative communication patterns will lead to increased effectiveness. Literally thousands of pages of print have been devoted to identifying additional variables linked to a still largely unmeasured concept of effectiveness. Among these sets of variables are:

- Environmental characteristics
  - Input set
  - Output set
  - Task environment
- Individual characteristics
  - Motivations
  - Incentives
- Structural characteristics
  - Centralization/decentralization
  - Hierarchy
  - Leadership styles.

In that literature, preference is given to specifying the sets of variables and interrelationships that are theorized to lead to effectiveness. In the small subset of empirical literature that attempts to test some of the hypothesized relationships, effectiveness is measured as net profit or reputation for productivity in private sector organizations, or as multiple indicators of goal attainment in both public and private sector organizations.

3. Measuring performance. Specific measurement of the concepts of efficiency and effectiveness in governmental organizations have most



often come under the label "performance measurement" and less often, "productivity measurement." Two groups of applied performance measurement are considered here. The first has much in common with the social indicators movement in that long lists of indicators are identified and the focus is on one system at a time. The second group, smaller in number, argues that comparison across systems is essential to assessing governmental performance.

a. Performance indicators. Considerable credit for the early application of efficiency and effectiveness concepts to governmental organizations goes to the Urban Institute's local government service delivery effectiveness projects. (These have been funded by a variety of sources including the NSF/RANN program [now NSF/ASRA] and HUD/PDR.) Tying the need for effectiveness measures to program evaluation, the Urban Institute (UI) approach resembles the PPBS approach in linking performance measurement with analysis and from there to resource allocation decisions. It differs substantially in another respect, in avoiding recommending development of elaborate, hierarchical program structures. The focus is on specific services, however, regardless of which governmental unit produces the service, and is reminiscent of the close relationship between measures of effect and the analytical process of identifying causes found in the program budgeting literature. Whereas the PPBS-type approach is aimed at developing a comprehensive decision-making system, the UI approach focuses more narrowly on the potential outputs of governmental activities.

The UI approach begins with a statement of objectives for each service to be assessed. These general statements of objectives are the base from which measures are then derived. For example, one Urban

Institute document defines the objective for effective solid waste collection as:

> To promote the aesthetics of the community and the health and safety of the citizens by providing an environment free from the hazards and unpleasantness of uncollected refuse with the least possible citizen inconvenience (Hatry et al. 1977, p. 4).

The statement describes both the ends sought (promotion of aesthetics, health and safety) and the general means for accomplishment (keeping the environment free of the hazards of uncollected refuse). Performance (in this case, defined as effectiveness) measures are then derived from the key terms in the statement of objectives--aesthetics, health and safety, citizen convenience and satisfaction. Fifteen measures are derived including appearance ratings, rodent bites, and citizen complaints. None of the measures includes amount of garbage picked up, frequency of collection, or other measures of volume often associated with a service. These latter measures are not logically deducible from the statement of objectives and therefore are excluded.

One might argue that other measures are easily added to the Urban Institute set and that no one can be assured that all relevant measures have been included in any performance measurement system. Although this argument is true, the crux of the issue is not the number of measures but the methodology employed. The UI approach reflected above suggests that communities share the same, formally stated objective and proceeds to derive measures as a function of the definition of objectives. Ultimately the methodology is self-limiting either in the attempt to achieve a consensus definition of objectives across communities (or even within a single community) or in relying on the objectives as an a priori basis for defining measures.



Finally, the UI approach, as is true of other major performance measurement efforts, is hampered by the general limitations in data reduction technology to multiple performance indicators. Thus, both managers and citizens may find it difficult to interpret in an overall sense "good" performance on some measures and "poor" performance on others.

b. Comparative performance measurement. An important corrective to some of the deficiencies noted above is an approach that attempts no formal specification of program objectives but relies on comparison across governmental jurisdictions to provide citizens with reference points. As we indicated earlier, interjurisdictional comparisons allow constituencies to evaluate the performance of their governmental services relative to other similar services. Examples of this approach are not numerous with "probably the most extensive effort...by the Research Triangle Institute (RTI)" (Report to the National Productivity Council 1979). The logic behind this approach stresses the idea that governments do different things:

> Local governments vary in the kinds of services provided, data collection/accounting procedures, and level of professional competence, all of which complicate making broad generalizations about the kinds of performance measures to collect. In addition, performance can differ in different service areas in relation to area, topography, climate, population, citizen desires, etc. ...(Plotecia et al. 1978).

Service areas examined from this perspective in the RTI study included: (1) fire protection; (2) criminal justice (police services and courts); (3) solid waste collection; and (4) street maintenance. Police services and courts were examined under the rubric "criminal justice" because of the linkage between police outcomes, e.g., arrests and court-related activities.

From a core set of measures for each of these service areas, each local government about which performance data are collected is then encouraged to assess its own standing vis à vis other jurisdictions in light of its own goals and objectives and its own knowledge of the local circumstances reflected in the comparative data.

This comparative study was an extension of the comparative logic developed in a multi-phase analysis of fire service delivery systems, also conducted by RTI. Working initially with the Urban Institute's list of effectiveness measures and the theoretical structure of Schaenman and Schwartz (1974) for fire service productivity measurement, the RTI study developed a system for combining concepts of efficiency and effectiveness within a single comparative framework. In the first stage, the comparative performance of over 1,500 communities in the delivery of fire prevention and suppression services was measured, focusing on alternative service delivery patterns. Based on this first stage analysis, five communities were selected for a second stage intensive analysis of the underlying structural and process causes of performance variations (RTI 1977; RTI 1978).

The essence of the comparative approach is its definition of performance as a relative concept. Highly structured decision systems such as PPB systems involve comparisons across programs and over time in an attempt to optimize resource allocation decisions, but no attempt to compare across jurisdictions. The approach taken by the Urban Institute provides for comparison over time against a priori defined standards and with an element of citizen involvement and feedback. The RTI comparative program is the most highly developed use of citizen feedback as a



deliberate element in performance assessment. Comparison across jurisdictions focuses the attention of both citizens and officials on the relative performance of their own jurisdiction vis à vis other jurisdictions which they feel are similar. While there may be sound reasons for different levels of performance across jurisdictions, the interjurisdictional comparative framework provides the medium for citizens and officials to evaluate performance together and to determine the desirability and feasibility of changes.

C. Measuring the Performance of Courts

Interest in determining how well criminal courts are doing is not new, although the current emphasis on performance measurement is. Nardulli (1978), who provides a detailed discussion of prior research in the courts, traces these attempts back to the early part of this century. Two types of traditions are identified. The earliest, the crime survey tradition, had as its focus the efficiency of the courts and generally collected data on conviction rates and processing time. (Nardulli refers readers to the bibliography by Julian Leavitt in the Wickersham Report, among other sources.) The concern was, to a large extent, in crime control. The aim of this school was reform--they wanted to get politics out of the criminal justice system. Problems in the courts were seen as the result of environmental factors, and, according to Nardulli, no attention was paid to the organizational nature of the courts and the fact that some of the problems might be related to characteristics of the court system itself.

The second tradition, referred to by Nardulli as the topical tradition, was most active in the mid-1950's through the late 1960's. Here the primary interest was in the due process aspects of the criminal

courts. Attention was focused on inequities in such procedures as pretrial release, plea bargaining and judicial sentencing. A general question addressed by these researchers was whether or not extraneous factors, such as race of the accused, were affecting outcomes at particular stages of the case disposition process.

A third approach, not discussed by Nardulli, is still more recent. It focuses largely on improving efficiency and has concentrated on developing quantitative models (Jennings 1971). These efforts have been characterized as falling into three groups: (1) case flow models, which are intended primarily for use in the allocation of court resources in general; (2) case scheduling models, which are useful for evaluating the allocation of such specific resources as courtroom space; and (3) courtroom activities models, which are useful for the analysis of events that occur in that particular arena. Some of these models attempt to gauge the performance of the court organization with regard to specific problems, e.g., efficient jury use or the reduction of delay in the hearing of cases (see for example ABA 1973). A number of measures related to these concepts are reviewed in Chapter VII.

Nardulli raises two major criticisms that are applicable to all three approaches described above. First, each issue has been viewed in isolation. Researchers in the topical tradition, for example, have focused on one of the aspects of the disposition process such as pretrial release or sentencing and have not viewed them as an integral part of the total case-disposition process. Second, there have been few attempts to understand the nature of the courts from a theoretical and empirical point of view. Such an approach might have led earlier researchers to a better understanding of the processes involved in criminal case disposition as well as the actual structure of the courts.



Although their purpose was not to develop a performance measurement system for the courts, other recent work in the area has overcome some of the problems in earlier work by providing an empirically grounded, theoretical explanation of the interaction of key participants in the ongoing activities of specific court systems. They have brought organization theory to bear in attempting to understand how courts operate. In addition, they have viewed the process as a whole rather than examining particular aspects in isolation.

Primary among these studies that take an organizational-theoretical approach to courts is Eisenstein and Jacob's Felony Justice (1977). Organization theory, with a special emphasis on small group interactions, provides the framework for their analysis of the behavior and output of criminal courts in Baltimore, Chicago and Detroit.

> Thinking of (courts) as organizations directs our attention to courtroom work as a group activity. Most persons in the courtroom perform quite specialized functions, and their activity fits into a broader pattern and is constrained by it. Incentives and shared goals motivate the persons in a courtroom workgroup. Workgroup members develop relationships that are cemented by exchanges of inducements as well as by the shared goals. They operate in a common task environment, which provides common resources and imposes common constraints on their actions (Eisenstein and Jacob 1977, p. 10).

This perspective provides the framework for explaining differences in outcomes in the case disposition process in the three cities. Both qualitative and quantitative methods are used in this research, which demonstrates that the performance of courts is a function of complex interactions among numerous factors within the courtroom and outside it. Environmental characteristics, such as the organizations that employ the principal courtroom workgroup participants (e.g., the prosecutor's office and the public defender's office), the political atmosphere of the

local community, and activities of the police and legislature are seen as affecting the activities of the courtroom workgroup and, thus, the outcomes of the court. Although there have been criticisms of this work, for example, regarding the extent to which it demonstrated the actual process of decisionmaking (Clynch and Neubauer 1977; Nardulli 1978), there seems to be general agreement that it represents a significant advance in the area by demonstrating the usefulness of concepts from organizational theories in studying criminal court proceedings.

Nardulli (1977), using some of the same data as Eisenstein and Jacob and a similar approach, argues that courts can be viewed as goal oriented collectivities. He identifies three factors that should be taken into account in attempting to understand criminal courts: the interests of the courtroom elite (prosecutor, defense attorney and judge); environmental characteristics; and the court's setting. The common interests of the courtroom elite in processing cases expeditiously are stressed.

> ...what is unique about this organizational mode of analysis is not that it stresses environmental linkages but that it leads one to think about the impact that external factors may have in view of internal considerations, and in different settings (Nardulli 1977, p. 92).

Other authors have used an organizational mode of analysis in attempting to understand the courts. Review articles by Clynch and Neubauer (1977) and Nardulli (1978) for discussion of these works.

Unlike some of the previous work, we do not focus on the courtroom workgroup as the unit of analysis, although that focus is useful for some purposes. It is our contention that viewing felony courts as organizations provides a useful paradigm and allows the development of a



system of performance measurement which takes into account both the structure and process of courts in the context of their environments. In this way, it allows one to determine the effects that might be anticipated if there are changes in procedures, as well as suggesting causes for problems identified in the course of monitoring performance.

There have been a few recent attempts to develop performance measurement systems for the courts which, although they have not been completely successful, offer instructive experiences. As we noted earlier, one of the governmental services studied by RTI in its comparative performance measurement project was the courts. The constraints of the larger study dictated that only existing data on the courts be used. This led to the omission of types of measures that would probably be included in a performance measurement system for the courts, for example, measures tapping constitutional safeguards and budget information for the local courts. Nevertheless, the cross-jurisdictional indicators that were developed had face validity in the sense that courts that were high on such indicators as backlog tended to be in high crime areas and in areas with highly transient populations. The study demonstrated that interjurisdictional comparison is a fruitful area to pursue.

An immediate precursor to the current project was one carried out by Wildhorn et al., reported in Indicators of Justice (1977). Some of the problems they encountered, as well as their successes in attempting to develop a performance measurement system for the courts (including prosecution and defense), have informed our own thinking in the area. They discovered early in their project that an agency-goals approach to devising such a system would not be productive. When they attempted to

construct a hierarchy of goals for the criminal justice system and for felony proceedings, they found that even among practitioners in the field there was no consensus on a goal structure (Wildhorn et al. 1977, p. 8). The study turned, instead, to an identification of important issue areas and related performance measures for each of these areas.

The selected areas were:

-- Charging standards
-- Charging accuracy
-- Plea bargaining
-- Sentence variation
-- Evenhandedness
-- Delay
-- Efficiency (Wildhorn et al. 1977, pp. 6-7).

Although these areas cover a broad range of court activities, no theoretical link was provided among the extensive list of measures offered for these selected issue areas; they were simply areas of concern to practitioners in the field. Had a theoretical orientation, such as some of the organizational perspectives, been applied in the task of developing performance measures for the courts, the areas of measurement would have had a conceptual cohesion, which is lacking here.

The orientation toward practitioners rather than a recognition of the multiple constituencies with a legitimate concern and interest in performance measurement in the courts reveals another area in which our work differs from Wildhorn's. Although the Wildhorn study administered questionnaires to lay participants in the criminal proceedings, it was not done with a view toward including their expectations and judgments as determinants of what should be included as performance measurements or important issue areas.



This should not be taken to mean that we see little value in the work. The measures developed, data limitations identified, and the work on case audits were all useful enterprises. Statistical measures in each of the issue areas were developed and applied in two demonstration jurisdictions. Two types of comparison were carried out: intertemporal in one of the jurisdictions in which a new program was in operation, and interjurisdictional. Both of these efforts were hampered by a lack of certain data elements necessary for the performance measures. Although the authors were optimistic about the possibility of overcoming data problems, they viewed interjurisdictional comparisons as having very limited use--a position that we do not share.

In addition to statistical measures that might already be collected by court systems, the authors demonstrate the usefulness of a procedure they call case auditing. This consists of an in-depth examination of a sample of cases by a practitioner or other knowledgeable person. It might include such sources as: police investigative reports; prosecutors' records; court files; and interviews with prosecutors, defense attorneys, witnesses, and others involved in the case. Such studies can serve to validate findings from statistical analyses as well as to generate hypotheses about the way the courts are working.

Although our perspective on performance measurement in the courts, discussed in Chapter III, differs substantially from that of Wildhorn et al., we believe that their work has importance in demonstrating that performance in the court system can be measured.

D. Summary

This chapter presented our view of performance measurement and its uses and reviewed some of the literature pertinent to performance measurement in criminal courts. From our definition of performance measurement as regular, periodic collection, analysis and provision of information on the activities of an organizational unit or political jurisdiction and the consequences of those activities, we will derive several characteristics of such a system to be discussed in the next chapter. Among the uses for a comprehensive performance measurement system discussed in this chapter are: identifying areas in which the court system can improve, suggesting possible methods of improvement, and evaluating the effects of changes instituted to correct problem situations.

In reviewing both the general literature related to performance measurement and the literature on courts, we found several areas which, from our point of view, are in need of improvement. In some of the literature, this is due to a difference in orientation from ours, and in some it has been due to problems with the available data. First, while some prior work has suggested the need to expand the potential audience for performance data beyond strictly agency personnel, little has been done to date to incorporate the views of the multiple constituencies with an interest in the operations of felony courts. In Chapter VI we identify a variety of constituency groups that have interests in and expectations about the operations of criminal courts. There we take note of the diversity of viewpoints concerning the performance of courts; and it will be evident that opinions about the performance of courts depend to a large extent on the position of the opinion giver in the court system and in the community at large.



Second, most work that has focused on how well courts are performing has not been based on an understanding of courts as organizations operating in a socio-political environment. It is our view that a performance measurement system for courts should take into account the structure, process and environmental characteristics of courts organizations. In the courts literature that does not deal with performance, Eisenstein and Jacob and others have used organizational modes of analysis and we are indebted to them for bringing this perspective to the study of courts. Although their work has brought useful insights into the operations of criminal courts, our focus on courts as organizations is somewhat different, being less concerned with the courtroom workgroup. Chapter IV presents our understanding of courts as organizations and Chapter V applies this approach to the pretrial release stage of case disposition.

Third, only a limited amount of the work on performance has been comparative in its orientation. In fact, some of the literature has suggested that interjurisdictional comparisons have only limited usefulness. Previous work at RTI has demonstrated the potential of the comparative approach and indicated that it may be particularly effective in conjunction with a constituency approach. This will be developed more fully in future work.

A final point, which has been mentioned with regard to most of the previous measures of performance, is the lack of one overall measure. In general, when dealing with government agencies, performance is measured by a series of indicators and no attempt is made to combine them into an overall performance measure, in some cases because the techniques for doing so have not existed. Wildhorn, however, argues that

such a measure is not desirable. We contend that more work is needed to determine if an overall performance measure for courts can be developed and if such a measure would be useful in the quest to improve court performance.



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# CHAPTER III. CONCEPTUAL FRAMEWORK

## A. Introduction

Designing a performance measurement system for the courts necessitates an understanding of the courts: the characteristics of the environment within which courts operate; the major functions courts perform; and the key court system actors, their interrelationships and respective incentive structures. We have reviewed extant literature on court operations, site visited several court jurisdictions, and interviewed various key actors involved in the courts system--judges, prosecutors, defense attorneys, court administrators, clerks--in seeking this understanding. These observations have shaped a view of the type of performance measurement system suitable for courts and the approach most appropriate for its development.

In this chapter we present an overview of the courts within the context of the criminal justice system and draw upon this to trace the desirable attributes of a comprehensive performance measurement system. In addition, some of the key design issues entailed in developing performance measures will be discussed.

## B. The Fundamental Characteristics of the Criminal Justice System

The approach begins with what has become a commonplace observation: the legal process generally, and the criminal process as part of it, is an integral part of the larger political system (Easton 1965; Mills 1980). Its structure and functioning, including the way its participants make decisions, are subject to the same forces that shape behavior and outcomes elsewhere in the political system. Consequently, we can utilize the same general concepts and approaches applied to the study

and evaluation of other components of political life. Although the concept of "law" and modes of legal thought and reasoning exert some influence on the atmosphere and content of decision making in the legal process, so do pressures generated by interest groups, career ambitions, and the interpersonal dynamics of face-to-face interactions among human beings. The nature of courtroom workgroups, the pressures exerted by organizational hierarchies and political constituencies, and personal values and political beliefs all shape outcomes and must figure into any approach to performance measurement (Eisenstein and Jacob 1977, Chapters 2 and 3; Fleming 1978; Cole 1979; Clynch and Neubauer 1977; Neubauer 1979).

As organizations, courts produce decisions as the result of the interactions of individuals who come together from several sponsoring organizations--the prosecutor's office, the public defender's office and the private defense bar, and the court itself, including judges and support staff (Eisenstein and Jacob 1977, Chapter 3). Individual courts, defined as a single judge and staff permanently or regularly assigned to one court, are aggregated into organizations at what is nominally the county level, although centralized or unified state court systems may impose a higher level of organization over several counties. In these states the county court may be a meaningless concept, having been replaced by a district, circuit, or some other similarly named administrative jurisdiction.

Patterns of organization vary widely and may include: judges and associated staff assigned to single courtrooms; judges permanently assigned to single courts, with support staff assigned to trial judges as a group; and all court personnel available for assignment to any



courtroom or any case within the jurisdiction. Authority for assignment of personnel also may vary from a very decentralized election of judges to specific courts to strong central direction from a presiding judge.

Regardless of the type of organizational pattern, a felony case will fall within the legal and administrative jurisdiction of a collection of individual courts organized on a county, district, circuit, or similar basis; it will be processed through one or more of the courts within that organization. There will also be heavy involvement from other organizations, particularly the Prosecutor's Office and often the Public Defender's Office.

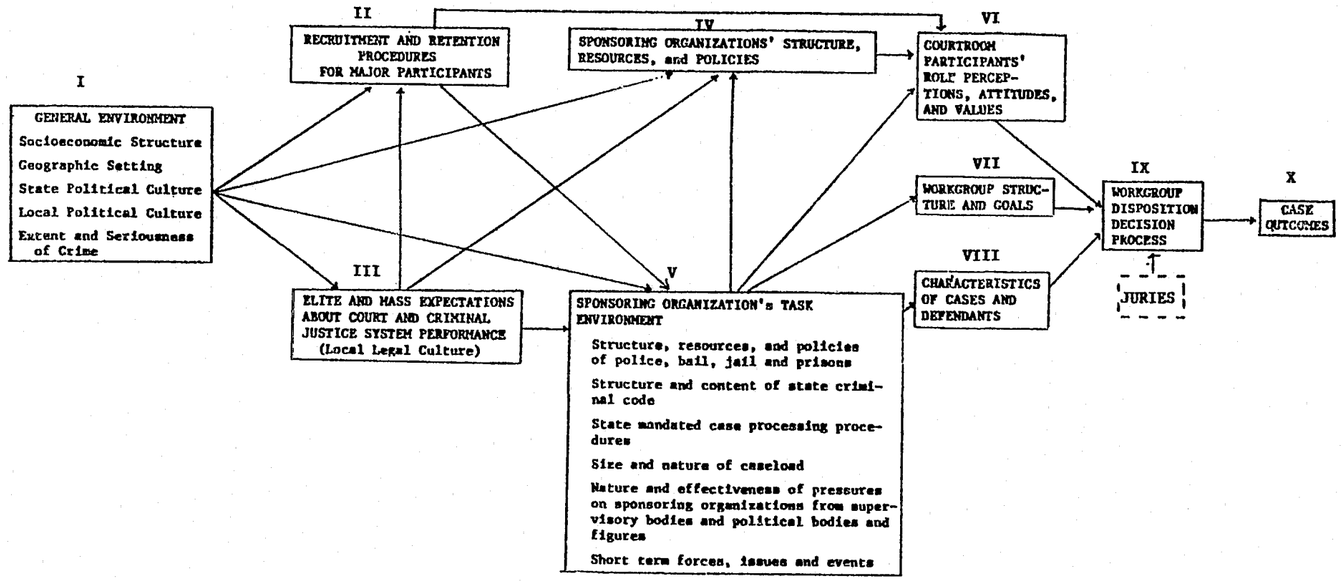
Figure I is a schematic representation of the variety and complexity of factors that contribute to the diversity found in court systems. It depicts courts as located in a complex web of societal institutions and interests.

The model presented in Figure I helps explain the existence of another fundamental characteristic of the criminal justice system--the tremendous diversity and variation found among American criminal jurisdictions. General environmental characteristics such as socioeconomic levels and state and local political cultures exert considerable causal influence both on how courts operate and on the outputs of court decision processes.

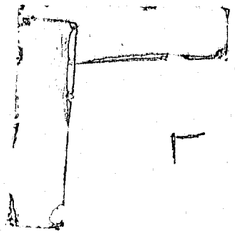
In particular, the context of state criminal codes, rules of procedure, and administrative management practices vary from state to state. For example, what might account for differences in the length of sentences imposed on defendants convicted of arson in two cities? A small sample of the potentially confounding factors involved illustrates the complexity of determining which is most decisive. Differences in

FIGURE 1

Schematic Overview of Principal Variables and Their Interrelationships




Source: James Eisenstein, et al., "Explaining and Assessing the Pre-Trial Process," Law and Society Association, Annual Meeting, San Francisco, California, May, 1979, p. 12.



statutory definitions of arson may allow different sorts of "crime" to masquerade under the same designation. Differences in statutory minimum and maximum sentences may enable a city that usually prescribes shorter sentences actually to be imposing a higher percentage of the maximum allowable. Differences in plea-bargaining systems may produce a set of defendants who plead guilty to unlawful entry but actually committed the more serious offense of burglary.

Despite the differences found among criminal justice jurisdictions, however, basic constitutional rights of defendants applied to the states by the U.S. Supreme Court impose a set of uniform constraints on all that provide a sound basis for comparisons (Wheeler and Whitcomb 1977). See Chapter IV for a discussion of this point.

In a formal sense at least, the adjudication process is rather consistent from court to court (Neubauer 1979). Courts: tell the defendant what he or she is charged with; determine eligibility for pretrial release; determine that there is a "probable cause" that a crime has been committed and that the defendant committed it; assign counsel if necessary; and then proceed to dispose of the case by dismissal, acceptance of a plea of guilty, trial, diversion, or some administrative variant of these. For defendants adjudged guilty, the courts have the further responsibility to impose a sanction. Courts may also have a supervisory function (e.g., probation). This basic set of due process constraints structures the nature of the tasks performed by courts in processing felony cases and provides us with an entry point for tying performance measures to the appropriate organizational unit of analysis. This concept of the task environment is developed in Chapter IV.

C. The Function of the Criminal Justice System

Our assumptions about the central purposes, goals, or functions of the criminal justice system constitute a final major attribute of the approach adopted here. The criminal justice system performs a variety of functions that change over time. Furthermore, perceptions of the functions appropriate to the criminal justice system vary depending on the values and societal position of the evaluator. Consequently, statements purporting to identify the central purpose or attribute of the criminal justice system are fundamentally misconceived and provide faulty bases upon which to erect a performance measurement system. Courts, for example, are not primarily people-processing institutions, do not primarily engage in crime control, do not primarily do any single thing. To focus on one of the many functions performed by courts necessarily leads to the exclusion of important aspects of performance that a measurement program which seeks comprehensiveness must include.

Our approach rests on a broad conception of the societal functions the criminal justice system performs and the roles courts are expected to play as part of the criminal justice system. They can be classified into two general categories: the exercise of social control; and the exercise of control over government's use of coercion.

The social control function encompasses many of the purposes or goals most commonly attributed to the criminal justice system. Foremost is the control of crime--the detection of criminal violations, the apprehension of perpetrators, the determination of guilt, and application of punishment. According to this outlook, crime is controlled through several distinct mechanisms: individual deterrence (criminals punished will desist from future criminal acts), general deterrence



(other potential wrongdoers, seeing some punished, will refrain out of fear of being punished themselves); rehabilitation (convicted offenders will be reformed and no longer commit crimes), and "warehousing" (imprisoned criminals will be isolated from society and, hence, from opportunities to commit crimes).*

Probably the most frequent mistake made in thinking about the criminal justice system is assuming that crime control is the only function performed. A broader conceptualization of social control, however, also includes the allocation of both material and symbolic rewards and punishments through the activities of courts.

In the material realm, courts provide protection to some segments of society and fail to protect others. The imposition of sanctions transfers wealth through fines, bail bond fees, and attorneys' fees. Patterns of family life are disrupted when defendants spend time in prison; tax revenues decline when jailed defendants stop working and welfare costs go up when their families seek alternative means of support. A number of individuals, including judges, prosecutors, court support personnel, corrections officers, and others receive employment. Jurors, witnesses, victims, and others receive and spend money as the result of court operations. These and other allocations of material benefits and deprivations fall within the realm of legitimate activities of government.

Though rarely acknowledged in discussions of the functions performed by the criminal justice system, these material allocations affect directly the interests and judgments of a broad range of individuals and

*The incapacitation thesis, of course, may overlook the fact of inmate crimes occurring in prisons.

groups involved in its operation. Consequently, they may affect both the judgments made about that system's performance and the behavior designed to affect it. A comprehensive performance measurement program cannot ignore them.

Although the symbolic impact of the criminal justice system's operation receives even less critical attention, it is no less significant. The allocation of material rewards and benefits and the symbols produced in the process profoundly affect a broad range of society with respect to their feelings of safety and well-being. The general public, prosecutors, police, victims, defendants--indeed the whole range of those touched by the system's operation--are reassured and threatened by what courts do. Because crime impinges so directly upon feelings of well-being, these threats and reassurances are important to people, important enough to affect profoundly their judgments and their behavior.

The foregoing distinction between the symbolic and material ramifications of criminal courts' social control functions applies with equal validity to the second major function performed--the limitation of government's use of its coercive powers. Although in the past 15 years, increased public recognition of and response to the "crime problem" has diminished the degree to which this limitation of power has been explicitly recognized, it has in no way diminished its status as a fundamental value in our democratic society. Concern about the effects of unrestrained governmental power over individuals runs throughout our history, from pre-revolutionary times to the present.

The potential for abuse in the area of police power attracts particular concern. The rhetoric of countless Supreme Court decisions



reflects this concern. For example, Justice Douglas, writing in 1948 in a search and seizure case, observed, "the right to privacy was deemed too precious to entrust to the discretion of those whose job is the detection of crime and the arrest of criminals. Power is a heady thing; and history shows that the police acting on their own cannot be trusted" (McDonald v. United States, 335 U.S. 451, 445 [1948]).

The concept of "due process" captures these limits on how and when government can employ its police powers against individuals. Due process shapes how and when government employs its coercive powers with respect to searches and seizures, arrest, interrogation, confinement, the determination of guilt and innocence, and the imposition of punishment. Although due process redounds to the immediate material benefit of certain segments of society (accused criminals), its appeal goes far beyond that group, precisely because it embodies and expresses one of the most fundamental values in society.

The link between limits on government's use of force and due process and courts acquires particular significance in our society because of the traditional role courts play in expressing basic values. Thurmond Arnold (1956) expressed this notion eloquently over forty years ago in his book, Symbols of Government.

> The center of ideals of every Western government is in its judicial system. Here are the symbols of all those great principles which give dignity to the individual, which give independence to the businessman, and which not only make of the state a great righteous protector but at the same time keep in its place...to greater extent than in any other, the symbols of moral and rational government ...For most persons, the criminal trial overshadows all other ceremonies as a dramatization of the values of our spiritual government, representing the dignity of the State as an enforcer of law, and at the same time the dignity of the individual when he is an avowed opponent of the State, a dissenter, a radical, or even a criminal.

If the criminal justice system in general and courts in particular perform the range of functions described above, there should be manifestations of these functions in the courts' operation and in society's reactions. Specifically, the diversity of functions and values postulated here should be reflected in the types of criticisms and judgments made about the criminal justice system. Our analysis of the types of criticisms and judgments made about the courts, which appears in Chapter VI, demonstrates that this is precisely the case.

## D. The Role Performance Measurement Plays in the Criminal Justice System

The principal elements of the approach outlined previously can be summarized as follows. First, criminal courts perform a variety of functions in society reflecting several fundamental values. Specifically, courts, as a component of the criminal justice system, participate both in social control (which includes control of crime as a crucial component) and in control of government's use of force. The concepts of "crime control" and "due process" encompass much but not all of these functions. The functions are carried out in the realms of both material and symbolic political allocation. Second, a wide range of groups and individuals display a legitimate and intense concern with how these functions are performed. Immediate short-range material interests receive reinforcement and grounding in basic societal values. Third, because the criminal justice system constitutes an integral part of the political process, its activities reflect the interplay of the expressed interests and activities of this broad range of concerned groups. As in other aspects of politics in a democratic society, the expressed demands and interests of a variety of groups determine procedures and outcomes.



The operation of law, despite the misperception of many that law and politics are separate, is intensely and legitimately political in the broad sense of the term.

Together, these three elements produce a fundamental assumption upon which our approach to performance measurement rests. The operation of the criminal justice system (and within it, criminal courts) already responds to the pressures of a broad range of groups whose expressed demands and behavior reflect implicit judgments of performance. Some of these judgments consist of decision makers' reactions to the behavior of other decision makers. Prosecutors respond to the demands of judges, defense counsel, and the police, among others, and vice versa. But they also respond to the demands of the press, the public, victims, and other outside groups.

This point is central to our argument, and deserves elaboration. Our basic approach to the criminal justice system emphasizes the importance not only of traditional legal factors in shaping decisions, but also of the content of the strategic environment, the personal values of the principal decision makers, and the organizational context (with its attendant pressures) in which decisions are made. An important element explaining why decisions are made as they are can be traced to the evaluations being made of performance--evaluations that impinge upon behavior. For example, much research identifies "conviction rate" as an important measure of a prosecutor's performance. Its importance helps explain the prominent role that plea bargaining plays in disposing of cases in most jurisdictions. But why are prosecutors concerned with the conviction rate? When we begin to answer this question, we find that underlying the many factors that can be cited is a process of evaluation

or performance measurement. Prosecutors know that the police expect a certain number of convictions, as do judges, the press, and others. If they fail to produce these convictions, they must suffer the consequences--public criticism, a more difficult worklife, and perhaps even impaired careers (including electoral defeat). These sanctions are invoked because these various constituencies evaluate prosecutors' performance, in part, on the basis of conviction rates.

Similarly, judges respond to expectations that certain numbers of cases result in convictions. When asked how their performance is evaluated, judges will rarely mention this factor, but hypothetical questions can uncover its importance. Any judge whose criminal docket is backlogged has the formal power to bring it up to current status merely by dismissing large numbers of cases. Why don't judges do it? Part of the answer is that such performance would be evaluated negatively by a number of constituencies capable of sanctioning any judge who did so. The anticipation of such sanctions effectively structures the behavior of a judge and deters him to the point that he usually does not even entertain the possibility. Thus, we argue that there is already an ongoing application of performance criteria by significant others, and part of our job is to make these performance criteria explicit.

We can expect, of course, considerable variation in performance expectations across jurisdictions and within the same jurisdiction over time. The range of groups participating actively differs, as does the nature of their participation and the manner in which they evaluate performance. In one important respect, however, nearly all criminal justice systems share a crucial characteristic: the quality and quantity of information about what the criminal justice system is doing, and



how well, is generally poor. Consequently, the types of judgments made about performance and the types of responses from members of the criminal justice system suffer; the link between each constituent group's interests and values on the one hand, and its judgments of performance on the other, is weak.

### E. Implications of the Approach for Developing a Performance Measurement System

The approach presented above has profound implications for how one goes about devising a performance measurement system. These implications provide the conceptual underpinnings used to produce what we believe is a comprehensive, theory-based and useful approach that significantly advances the state-of-the-art.

First, the approach suggests that a performance measurement system must be responsive to the information needs of the entire range of decision makers and societal groups who have a stake in and who already engage in evaluating the performance of the criminal justice system: groups which form the "court constituencies." Previous work in performance measurement provides an initial definition of these groups. Some are members of the system itself including judges, prosecutors, defense attorneys, the police, and corrections officers (jail and prison personnel, sheriffs, probation and parole officers). Others include defendants, jurors, victims, witnesses, the families of jurors, bail bondsmen, the press, local government officials, organized groups who take an interest in the system (homeowners and neighborhood groups, groups concerned with civil rights and civil liberties), bail reform agencies, and the "attentive" public (including voters). In Chapter VI we discuss some of the major constituencies into which these individuals and groups may be placed.

Although no single implementation of a performance measurement project in a jurisdiction can realistically include all groups, the underlying structure of such an effort must provide mechanisms for including all of them. The list of constituencies provides a natural basis upon which to evaluate the quality of a performance measurement system by allowing judgments about how broad a range of interests has been represented.

The second attribute, implied in the first, is that the performance measurement system should be comprehensible. The key concepts of the system and their interrelationships, the process of system development, and the interpretation of performance claims should be readily comprehensible by laymen and professionals alike. This rules out the use of concepts that are vague, ambiguous, and limited in understanding to a select few who possess a special knowledge. The requirement of public criteria is critical; the criteria must have, in Hempel's (1966) terms, clear-cut empirical import. A corollary requirement is that the system must permit replication. The requirement of replication exposes the underlying logic and key operating principles of the system to public scrutiny, permitting an independent assessment of both the validity and utility of the system.

Also, the location of the court within a given socio-political environment requires that a performance measurement system take into account the influence(s) of a diverse set of factors--both internal and external to the court--in assessing the performance of the court. Our point in Chapter II on the need to examine the factors that affect performance, as well as the performance outcomes in a comprehensive performance measurement approach, is relevant here: to the extent that



a factor either affects performance or is an indicator of some important aspect of performance it warrants inclusion in the design of the performance measurement system.

A third attribute is that performance measurement should assume some type of comparative framework. In the area of service delivery (such as courts) one assays the performance of a governmental agency in terms of either an explicit or implicit standard of performance. The standard of performance, or comparative framework, may take several different forms: temporal patterns of performance, the performance of similar service units, prescribed performance standards, or the expected performance held by a particular group. In the area of courts, the standards might include the performance of similar courts, the performance of the court at one point in time compared to previous or later points in time, or court operation as defined by the ABA Standards Relating to Trial Courts (1975). The underlying premise for the requirement of a comparative framework is that performance measures have no a priori meaning; their interpretability is contingent upon the presence of a clearly articulated comparative performance standard. A given disposition rate, for example, has meaning only in terms of some comparative standard: some people think it is too high, it is lower than last year's rate, it is higher than a similar jurisdiction's rate. In isolation, a given disposition rate is uninterpretable; interpretation depends upon an explicit comparative standard.

Further, a performance measurement system should be eclectic and capable of capitalizing upon the strengths of a variety of methodologies. A full understanding of the various court processes requires the application of various qualitative approaches, such as impressions

gained through informal observation of court processes and unstructured interviews. As many policy researchers are discovering, some of the most useful information about the operations of public agencies is gained through detailed case study approaches that use a variety of data collection strategies, including personal interviews, participant observation, and archival analysis (Eisenstein et al. 1979). Conversely, certain data lend themselves more to quantitative than to qualitative analyses. Researchers are beginning to explore the application of linear programming models, for example, in assessing court efficiency (Cook, Lewin, Morey 1981). Advances in the development of defendant-based transactions statistics have opened the way for computer-based simulations of court processes. In sum, a performance measurement system should possess the flexibility to accommodate a variety of methodological perspectives and data collection strategies; the use of a particular methodology should be based on a careful appraisal of its ability to provide useful information.

We also view a performance measurement system as a set of recurrent processes rather than a time-bound activity, in contrast to most program evaluations. The concept of performance monitoring applies here: a primary task is to generate routinely performance data which are responsive to the information needs of people involved in or affected by the activity of courts. The emphasis upon performance measurement as a routinized activity implies a corollary requirement; namely, that a performance measurement system should be conceptualized as a dynamic process, amenable to change and modification to meet the changing exigencies of the environment within which it operates. It should reflect change. System capacity should keep pace with current information needs.



Finally, the system also should provide answers to two thorny questions: what changes in performance can be considered "improvements"; and how can changes suggested by implementation of a performance measurement system be translated into reality? The first question is particularly troublesome. Because the operation of courts involves the application of competing values, as the distinction between "crime control" and "due process" suggests, any attempt by the developer of a performance measurement system to specify what constitutes an improvement will inevitably generate vigorous disagreement and opposition from constituents holding different views and emphasizing different values. Similarly, if the developer accedes to the definitions of a particular constituency or set of allied constituencies (for example, "crime control" oriented groups), the opposition to such measures by other constituencies is probably inevitable. Furthermore, such disagreement and opposition directly impinge upon the second question--the implementation of changes. Those who believe something defined as an improvement is in fact detrimental will mobilize their resources to resist and subvert attempts to implement such an improvement.

Thus, the approach presented here recognizes and accepts the inevitability of political conflict over performance measurement, and it offers a basically neutral stance. The question of what constitutes an improvement cannot be answered. What can and will happen is that changes inspired by the availability of new performance data will come about only through a political struggle over implementation. The responsibility of the performance measurement program is thus diminished, but it carries with it a crucial requirement. The program must offer equal access to the broad range of constituencies and must permit the

reflection of the entire range of values embodied in the operation of the criminal justice process.

F. Design Issues

As has been suggested above, the design of a performance measurement system for an area as uncharted and complex as the criminal courts is a potentially perilous undertaking; disagreement is almost sure to surface. Nevertheless, we will identify some of the basic issues involved in the actual design of such a system. We will focus our discussion on five key concerns:

(1) the unit of analysis for the performance measurement system,

(2) the level and process of abstraction in the performance measurement system,

(3) the criteria of measurement,

(4) the categories of measurement, and

(5) the dimensions of performance.

1. Unit of analysis. The primary unit of analysis for the purpose of developing performance measures is the local court organization. As indicated in Section B, the local court organization is the administrative unit directly responsible for the operation of the general trial court. In decentralized states, this unit is the county. In centralized or unified states, it may be a collection of counties. The basic datum is the individual case; aggregations of case outcomes yield system outcomes.

It is important to note that we will not be concentrating upon individual performance, since it does not make much sense to base measurements of the various outputs of trial courts upon the "responsible party." Rather, we will focus on what comes out of the process of



interaction between all of the court system participants. It is also important to note that key actors involved in the production of these outcomes are not always members of the court organization. The prosecution, for example, is a distinct institution with its own structure and process. This is not to say that we will ignore questions of individual performance (e.g., sentencing differences), but rather that we will be examining individual behavior patterns from the standpoint of their impact upon system performance.

2. Level of abstraction. One of the key issues involves both the level and process of abstraction included in the development of a performance measurement system. It is our position that the development of a performance measurement system is basically an inductive or inferential process. Hubert Blalock's (1968) point on the gap between the language of theory and the language of research is relevant here: one does not deduce a set of empirical indicators for an abstract concept, such as justice, in the same way that a set of axioms is deduced from a mathematical theorem. In the social sciences we rely upon auxiliary theories, such as operational definitions, to move between different levels of abstraction in our concepts, recognizing that there is no logical connection between the concepts and that any test of a theory involving the concepts will be indirect.

The issue concerning the level of abstraction is not trivial. In the courts area, for example, the term "justice" is often used, yet seldom defined in a way that permits a consensus of at least two people on the true meaning of the term, especially with relation to specific empirical indicators. One need only read the reviews of John Rawls' book, A Theory of Justice, to appreciate the controversy surrounding this commonly misunderstood concept.

As we see it, the issue boils down to two tasks: (1) selecting a level of abstraction as a starting point for the development of performance measures; and (2) developing a process of measurement that permits movement among various levels of abstraction. We propose the accomplishment of this second task through the development of a set of measurement criteria.

3. Measurement criteria. A major task is the development of a common set of standards that permits an assessment of overall performance measurement quality across various substantive areas. A key issue, therefore, is the identification of a set of measurement quality standards applicable to the conceptualization of the performance measurement process. These standards must serve both as a structure within which the performance measurement system can be developed and against which it can be evaluated. Below is a list of working standards:

(1) Is the measurement process reliable? Do repeated applications of the process produce consistent results? Is it possible to determine the reliability of the measure produced? Is it possible to periodically monitor the reliability of the measurement process? Are current reliability estimation procedures appropriate to the context of performance measurement in courts or will new procedures have to be developed?

(2) Is the measurement process valid? Are there clear-cut linkages between the performance concepts (e.g., equity) and the empirical indicators of these concepts (equivalent sentences given in equivalent situations)? Is there a particular model of measurement validity (i.e., construct validity, content validity, predictive criteria validity) that is applicable to the measurement process? Are the current conceptualizations of measurement validity appropriate to the performance measurement area?

(3) Is the measurement process amenable to standardization? In other words, does the measurement process involve a set of unambiguous procedures for conducting the measurements and accurately recording the results?

(4) Does the measurement process focus on controllable factors in the performance measurement area? That is, does the process allow a concentration on those aspects of courts performance that are under the administrative control of the court?



(5) Does the measurement process produce measures that are readily comprehensible? Are the measures produced easily interpreted relative to the decision-making concerns of those people actually using the performance measurement system? How does the measurement process insure that the measures produced are easily interpreted and comprehensible?

(6) Is the measurement process capable of producing unique measures? Is it capable of producing measures that fully capture all of the relevant dimensions of performance and guard against "underrepresenting" the concept of court performance?

(7) Is the measurement process capable of producing timely results? Does it permit data collection on performance within a time frame that will provide information useful for decision-making purposes?

(8) Can the measurement process operate within the financial and operational constraints of court systems? Is it feasible to implement the process?

(9) Does the measurement process readily lend itself to periodic "quality control" checks regarding the accuracy and integrity of the data collection procedures contained within the process?

4. Categories of measurement. We spent a good deal of time thinking about generic categories of measurement relevant to assessing court performance. The variables suggested in Figure I connote several possibilities. We make no claim to exhaustiveness; however, we think that the categories identified below offer a useful beginning point.

a. Demand measures. These measures refer to inputs to court decision making; an input requires the court to take some kind of action. For example, the size and nature of the caseload may determine the level of demand on court services; caseload size serves a co-production function in determining the level of court activity (Whitaker 1980). Similarly, the structure and content of state criminal code may create demand in that the code specifies the jurisdiction of the court (the types of cases the court will hear). Public expectations about the court could also create a demand in terms of the types of offenses that

should be prosecuted vigorously (e.g., drug offenses) and the types that should be ignored (e.g., prostitution).

b. Action measures. These measures refer to two distinct but interrelated types: decision-making activities and administrative procedures. The decision-making process includes: (1) the decision issues; (2) the decision options; (3) the decision-making participants; (4) the timing of the decision; and (5) the specific decision-making activities. We are also interested in the rationale for a given decision; that is, why the decision was made (e.g., to require a secured bond instead of releasing a person on his/her own recognizance).

Administrative measures encompass the traditional indices of any public agency's performance: costs of services both in the aggregate and on a per-case basis, efficiency of personnel, and the like. Other types of measures specific to courts would be relevant, such as calendar control and trial judge assignment, juror selection procedures, witness management procedures, and various caseload management measures. These measures differ from the decision-making activities measures in that they focus on the administrative procedures involved in the overall operation of the court.

c. Output measures. These measures refer to the immediate product of court action; that is, what the court decided or what the court did in a particular situation. The type and amount of bond set or the actual sentence imposed, for example, would be forms of court output.

d. Outcome measures. Outcome measures refer to the ultimate impact or effect of court output. Outcomes are largely a function of the subjective performance criteria (or expectations) held by a given court constituency. Although outputs may be viewed in a neutral, descriptive sense, outcomes carry the weight of someone's subjective

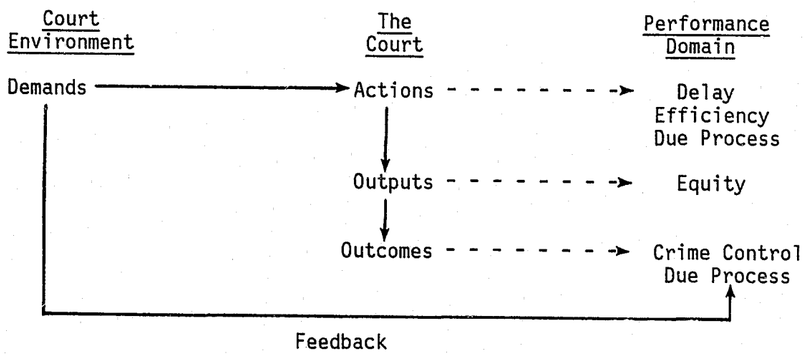


evaluation regarding the extent to which the court is performing well. In this view, outcome measures represent the most abstract level of performance evaluation. The crime control criterion would be appropriate to this category as well as more abstract concepts, such as equality, due process, and (the definitionally elusive) justice.

e. Contextual and environmental measures. This category refers to the broadly defined environment within which the court operates. Several types of measures are suggested: relationships with other criminal justice agencies, organization and management philosophy, resource availability, socioeconomic milieu of the court, community attitudes, geographic setting, state political culture, and local political culture. In measuring the performance of a public agency, some attempt must be made to distinguish between factors over which, at least in principle, the agency can exert control vs. uncontrollable factors. For example, the geographic setting of a court would be an uncontrollable factor that may affect court performance, whereas one could, in theory, affect the availability of court resources.

In Figure II we have provided a simplified model depicting the interrelationships among the various categories of measures discussed.

FIGURE II



The court environment refers to the source of demands for court action. The demands can originate from outside the courts (e.g., constituency expectations about court performance, change in criminal code by the state legislature, charging decisions by the police) or internally generated (e.g., courtroom participants' role perceptions, attitudes, and values). The court component is depicted in terms of the relationships between court actions, outputs, and outcomes. The dashed arrows connecting the various components of the court to the performance domain reflect our view that different types of measures are appropriate to different elements of the overall court operation. For example, court actions (i.e., decision-making activities and administrative procedures) require that we collect process-oriented measures of performance (e.g., efficiency, delay). Output measures, on the other hand, may reflect questions of equity; do people convicted of the same crime, based on the level and quality of evidence, receive the same sentence? Outcome measures present the thorniest conceptual problems, owing largely to their abstract nature, the lack of definitional consensus on what they mean (e.g., justice), and their dependence on the value preferences of the person or persons assessing court performance. A dismissal based on a procedural violation (e.g., illegal search) is viewed by one person as a plus on the due process side, while the crime control advocate views the same output as another example of how courts hinder the police and coddle criminals.

It is questionable whether the level of abstraction entailed in the outcome measure category can be achieved, despite the fact that such terms as "justice" appear in the everyday language of courts. Perhaps the best that can be hoped for is agreement on the need for multiple



indicators of such measures, recognizing that although each individual indicator is fallible to some extent, in combination they offer a way of measuring court outcomes.

5. Dimensions of performance. In Figure III we present an expanded version of the performance domain, designed to depict the relationship between the multiple dimensions of performance and the information needs of court constituencies, underscoring our earlier point that the court performance measurement system should be comprehensive.

The constituencies included in Figure III are a beginning point toward developing an exhaustive list of people and organizations interested in assessing court performance. In Chapter VI the various court constituencies and their information needs are identified more fully. The performance dimensions heading the columns of Figure III are envisioned as representing generic components of performance: efficiency, due process, equity, crime control, etc. There are several potential sources from which these measures could be obtained, including: (1) the expectations of the various court constituencies concerning court performance, i.e., what they think courts should do and how well they should do it; (2) legal norms that specify the requirements of constitutionally correct criminal procedure, as well as legal norms embodied in state statutes; (3) criticisms of the court or charges that the court is not performing adequately; (4) prescriptions regarding court performance as found in the literature on jurisprudence and legal theory; and (5) explicit or implicit goals and objectives of court related organizations. Other sources of performance measures are discussed in Chapter VI.

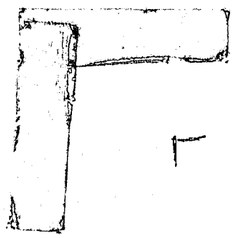
Figure III. Performance Measurement Matrix

| Court Constituency | | Performance Dimensions: $PD_1$ | $PD_2$ | $PD_3$ . . . | | | | | $PD_N$ |
|---|---|---|---|---|---|---|---|---|---|
| Local Court | $C_1$ | | | | | | | | |
| | $C_2$ | | W(I) | | | | | | |
| | $C_3$ | | | | | | | | |
| Local Community | $C_4$ | | | | | | | | |
| Higher Levels of Government | $C_5$ | | | | | | | | |
| | $C_6$ | | | | | | | | |
| Researchers | $C_7$ | | | | | | | | |
| | $C_N$ | | | | | | | | |

Legend: C = Court constituency

PD = Performance Dimensions

W(I) = Performance indicator, weighted by preference ordering



The performance dimensions heading each column can be further refined in terms of specific indicators of performance. The cell entry, W(I), is meant to suggest the weighting of each performance indicator according to the attributed importance of that indicator by a specific court constituency. The suggested procedure would be to survey the various court constituencies to obtain the following information: their expectations about court performance as expressed in the types of performance measures in which they are interested; their definition of the performance measure in terms of specific empirical indicators; and the relative importance of each indicator across all of the performance measurement dimensions. This procedure can be refined further to obtain this same information relative to each stage in the case disposition process: arraignment, determination of eligibility for pretrial release, determination of probable cause, assignment of counsel, and so on.

Completing this exercise for each of the constituencies permits the development of an individualized performance domain for each court constituency, with the preference ordering structure of that domain. Thus, for each constituency we would be able to reconstruct both a profile of their information needs about the court and the relative importance of various types of needs.

The matrix can be exploited in another way. Each column of the matrix would be headed by a general performance dimension and defined by the cell entries in the column in terms of specific performance indicators. Moreover, each indicator would be weighted in terms of its importance to a particular court constituency. Thus, summing down the

columns would permit an estimate of the overall importance of that performance dimension across the various court constituency groups; in effect, each performance dimension would be weighted in importance in terms of the preference ordering for each indicator of that dimension.

In summary, the performance matrix would provide two important types of information: (1) the performance domain for each affected court constituency, further refined in terms of the preference orderings (or weights) attached to specific, empirical performance indicators; (2) the relative importance of each performance dimension and associated performance indicators across the various court constituencies. As a heuristic device, the performance matrix forces a consideration of the relationship between constituency information needs and performance dimensions and, further, takes into account the concept of the differential importance of various performance dimensions.

## G. Conclusions

We have argued that any attempt to design a performance measurement system for the courts must begin with an understanding of how and why courts operate as they do, the environment within which they operate, the functions that courts perform within the criminal justice system and society in general, the key court system actors, their interrelationships, motivations, and incentive structures. This chapter has outlined our understanding of the courts; we offer it as a view of the courts, and the one we have adopted as the conceptual framework underlying our approach.

We have also highlighted some of the key implications of this view for the design of a performance measurement system. In addition to identifying the desirable attributes of such a system, we have discussed



the central issues involved in its development and offered a simplified model depicting the interrelationships among the measurement categories of interest. In the next chapters we will focus on the organizational context of court performance and develop a behavioral model of the court.

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CHAPTER III


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## CHAPTER IV. THE ORGANIZATIONAL CONTEXT OF COURT PERFORMANCE

As we have argued in previous chapters, our formulation of performance measures for the courts system stems from two perspectives--an "outward" looking approach which argues that performance measures should be responsive to the values of different constituencies of the courts and an "inward" looking approach which argues that performance measures also must reflect actual organizational processes or results of those processes. We depart from other literature on performance measurement in that we argue for measures that reflect the organizational "causal" variables as well as the outcome indicators of performance. This and the following chapter develop our model of the court as an organizational entity, focusing ultimately on the processes and outcomes of several key decision stages or events. Chapter VI then develops the notion of constituency expectations about these key stages or events.

There already have been a number of applications of organization theory to courts and court systems, and most of these have served their defined purposes well. The most notable are Blumberg 1967; Feeley 1973; Heumann 1978; Eisenstein and Jacob 1977; Mohr 1976; Gallas 1976; and Skoler 1978. A review and critique of these applications is beyond the scope of the present analysis except where such review helps expand our own framework. Although Mohr (1976) advances the argument that little is to be gained from applying organization theory to courts other than specific applications to choice or decision problems faced by courts, we believe an argument about whether courts "truly are or are not" organizations is particularly sterile. We do, however, extend Mohr's brief discussion of decision situations or contexts to the problem of measuring courts' performance.



While different constituencies stress the importance of different aspects of the functions courts perform (discussed in Chapter VI), there is general agreement among scholars and citizens alike on the general function of criminal courts in the social system. As already discussed in Chapter III, courts function as a "preserver of the social order," as a "guarantor of due process and other constitutional protections," and as "an allocator of values toward life and liberty." Despite considerable differences in state laws and procedures, criminal courts are in many respects remarkably alike, a feature which enables us to talk meaningfully about a common conceptual framework for performance measurement. Although there is considerable variation in the organizational structure of court systems, an underlying similarity between process and key events that are required constitutionally in criminal cases provides the organizational base from which we can begin to derive a common performance measurement framework.

This chapter provides a basic analysis of the organizational features of court systems in three parts. Section A is an analysis of the courts' environment, focusing on the task requirements that are common to criminal court systems across jurisdictional boundaries. Section B is an analysis of the independent organizational features common to most courts, focusing on size, division of labor, and structure. Section C is an integration of the discussions on the common task requirements and common organizational features.

### A. Courts' Task Environment

The concept of a task environment results primarily from the theoretical contributions of Thompson (1967) and Evan (1976). Critical in that theoretical development has been the concept that organizational

structure and function are determined, at least in part, by the nature of the organizational environment. Emery and Trist (1965) and Lawrence and Lorsch (1967), among others, have provided empirical evidence that the nature of the tasks to be performed, the nature of the environment within which those tasks are performed, and interactions between the two are important determinants in shaping the nature of an organization, its structure, and its performance. From that perspective we derive two important conclusions about courts performance:

-- The nature of courts performance, that is, the "what" it is that courts perform, can be understood, at least in part, by understanding the task requirements imposed on the courts by the environment.

-- The criteria for evaluating courts performance, that is, the "how well" it is that courts perform, can be understood, at least in part, by understanding these task requirements.

In our discussion of the courts' task environment, we are focusing on environmental constraints on <u>what</u> courts must do. These constraints, largely legal/constitutional in nature, provide a limited context within which all courts must operate; hence, they provide a basis for a common framework for courts and a common understanding of what courts performance means. In turn, these environmental constraints also lead to organizational process and structural characteristics that are shared by most courts. Other environmental constraints, including resource availability, may vary considerably from court to court.

Regardless of variations in state statutes and state constitutional requirements, the fundamental constitutional requirements of due process are a considerable set of constraints on courts' performance. These constraints focus on the minimum set of occurrences that must characterize the treatment of every defendant. The required events, discussed individually below, are:



1. Preliminary appearance/arraignment
2. Determination of eligibility for pre-trial release
3. Determination of probable cause
4. Assignment of counsel (if defendant is indigent)
5. Determination of guilt or innocence (by jury trial if desired by defendant)
6. Imposition of sanction on those found guilty.

Although there is some variation in sequence and considerable variation in timing of these events from jurisdiction to jurisdiction, the events do impose an important degree of uniformity on task performance, providing a common basis for developing comparative performance measures.

1. <u>Preliminary Appearance/Arraignment</u>. Every defendant must be informed formally of the charges lodged against him/her. This process normally occurs soon after arrest in a court below the felony trial court. In Dallas County, Texas, for example, it is performed by the Magistrate (city) or Justice of the Peace (county) depending on whether the defendant was arrested by city police or county sheriff and whether or not he/she is in the city or county jail at the time. In Detroit, separate courtrooms that are a part of the felony court (Recorder's Court) handle the function. Although arraignment is often perfunctory, with little opportunity for participation by the defendant, it serves the purpose of requiring police to inform the defendant of the charges in the presence of a third party (Judge). Other functions also may be performed, but the primary action is intended to insure the defendant is aware of the nature of the charge.

2. <u>Pre-trial release determination</u>. While often tied to arraignment proceedings, pre-trial release determination shows more variation

from jurisdiction to jurisdiction both in terms of process and outcomes. Various options are possible, including bail, release on defendant's own recognizance, and a simple, direct cash deposit. In some jurisdictions bail is automatically set by the police from a standard list of charges and bail. In other jurisdictions a court official whose sole function is pre-trial release performs this function. In still other jurisdictions determination of eligibility is made at arraignment by the respective judge. In most cases, arraignment is also used as an opportunity to review the release requirements set by other officials.

The presence of pre-trial release agencies in some jurisdictions affects this function by, in general, providing more investigative information about the defendant's background, including financial status, reputation, strength of family and economic ties in the area, and similar characteristics influencing the probability the defendant will show up for future proceedings. Not every case is eligible for bail--for example, first degree capital crimes in some states.

Bail or other requirements may be reconsidered at several points in the case disposition process. Although performed by all court systems, the pre-trial release decision is influenced by different attitudes toward its purpose. Although its formal purpose is to insure a defendant's appearance at future proceedings, bail is viewed by some as part of deterrence/punishment. The amount of bail in particular is a special issue since it is a key determinant of whether a defendant will be incarcerated during the case disposition process. In turn, whether a defendant is in jail or not at the time of trial is linked to both verdict and length of sentence. (For a discussi of the "crime control/deterrence" versus "due process" attitudes toward the purpose of bail, see Packer 1968, pp. 210-221.)



3. Determination of probable cause. Formally, determination of probable cause is a screening function exercised by the court system, often through a grand jury process. All accused defendants must be indicted through a grand jury or by prosecutorial information filed with the court. This provides the legal protection of preventing a person from being put through criminal proceedings without an independent judicial determination that there is sufficient reason to believe a crime has been committed and that the accused is involved. In addition, most jurisdictions conduct some version of a preliminary hearing in a lower court, which includes a formal determination of probable cause. In practice, however, the nature of the screening process varies widely across jurisdictions, with the court playing either lesser or greater roles. In some court systems, for example, the prosecution exercises a heavy screening role, eliminating weak cases prior to preliminary hearing. In other jurisdictions, the determination of probable cause is left to the grand jury. For example, in one jurisdiction we visited, the preferred mechanism for screening a case is to take even weak cases to the grand jury for it to return a "no bill". In the politics of that situation, the District Attorney cannot be accused of failure to prosecute cases.

The court system itself is involved in the determination of probable cause where that is included as one of the functions of the preliminary hearing. Formal rules of evidence are not as stringently applied, and the court may permit the prosecution to not reveal all of the particulars of the state's case.

4. Assignment of counsel. Every defendant charged with an offense that could lead to incarceration is guaranteed the right to counsel, including a publicly appointed defense attorney if the defendant is

indigent. Some jurisdictions obtain defense for indigents from the public defender's office, while others appoint and reimburse a private attorney.

Considerable variance exists in the timing of appointing counsel. Requirements for when the defendant must have a counsel vary from state to state. For example, there is no general requirement for counsel at the time of arraignment, but the arraignment hearing itself may be used as the time to determine whether the defendant requires a publicly provided counsel. In general, the defendant is entitled to counsel at any point in the disposition process where adversary judicial proceedings are initiated (Kirby v. Illinois, 406 U.S. 682 [1972]). The Court Coordinator (administrator) for the felony trial court in Dallas County interviews a defendant shortly after arrest and, among other things, recommends to the trial judge appointment of counsel if necessary.

Standards of indigency also vary across jurisdictions. Some adopt a view that indigency means complete inability to afford an attorney, whereas others do not require defendants to exhaust all their own resources before an attorney will be retained. Jurisdictions also vary considerably in the thoroughness with which a defendant's financial status is investigated.

5. Determination of guilt or innocence. Although every defendant in a felony proceeding has the right to a jury trial, the vast majority of cases is disposed of without a jury trial through guilty pleas, bench trials, and dismissals (Neubauer 1979, p. 308). Although considerable criticism of the criminal justice system is directed at the practice of negotiating the offense charged and the type and length of sentence in exchange for guilty pleas, the number of criminal prosecutions exceeds



the current capacity of the system for bench and jury trials; if most defendants exercised the right to a full jury trial, the resulting expenditure of time and money would likely cause major disruptions in current practice.

Although the choice of having a jury trial or not is the defendant's, it is clear that the prosecution and the court together exercise the dominant influence in determining the type and number of cases that go to trial. By offering only the maximum sentence to the most serious charge, the system can force most cases to trial, and conversely, by offering a substantial reduction in sentence or charge, most defendants can be persuaded to plead guilty.

The role of the court itself (narrowly defined to exclude the prosecution) in determining the method of case disposition is widely variant across jurisdictions. Only a judge, of course, may impose a formal sanction, and thus only the court can legitimate an agreement between the prosecution and defense.

For those cases which do go to trial, an important set of additional constraints is imposed. Most important are evidentiary rules and rules against self-incrimination. In addition, more and more states are adopting "speedy trial" statutes and other legislation to control the timing of the trial and the entire case disposition process.

6. Imposition of sanction. For those found guilty (or those pleading guilty), the court system imposes sanctions that range from incarceration to suspended sentences. All state statutes impose some limitations on court discretion, ranging from setting broad minimum/maximum limits on sentences to an increasing trend toward presumptive or mandatory sentencing statutes which impose a more narrow range of appropriate sentences for specified offenses.

The discussion above of the task requirements imposed on courts by constitutionally defined due process describes a general environment within which criminal courts operate. A number of performance features can be derived from these requirements, and they may be applied uniformly across jurisdictions given that the requirements themselves are constitutionally mandated. For example, while counsel must be assigned to indigent defendants, the time elapsed between arrest and representation may vary from one jurisdiction to another. Another example is that all defendants, except in certain capital crimes, are eligible for pre-trial release consideration, but the conditions imposed in return for release before trial may vary by type of defendant, type of case, and so forth. In other words, despite the fact that state laws and local practices vary widely, courts are like other organizations in that they exist within an environment that imposes some commonalities on the tasks they perform. In these commonalities one finds a basis for performance measures that are descriptive of courts' functioning even across different jurisdictions. Standards for judging different values of "good" or "bad" performance may be quite variable, of course. In the next section organizational features that describe court structure and process are discussed to provide a basis for deriving measures of the independent variables that may be the "causes" of court performance.

B. Court System Structure and Process

The discussion in the previous section focused on those elements of the courts' environment that impose considerable legal/normative constraints on court systems' performance. In turn, those constraints common to all courts can be expected to influence both structure and process in court systems. That is, all court systems will be organized



in some fashion or another so as to guarantee that the six events described in Section A above occur. In this section we focus on those structural and procedural characteristics that are common to most courts. From these, we derive in Section C an organizational model of court organizations, which in turn leads to our basic conceptual framework for understanding court performance.

One major difficulty to be faced at the outset is defining the unit of analysis. The empirical literature on criminal courts has focused on judicial behavior, small group behavior, and organizational behavior, implying perhaps at least three different units of analysis. The problem is compounded by the fact that few criminal cases are disposed of entirely by only one court. Except in those states where there is a single tiered general jurisdiction trial court, at least part of the case disposition process (arraignment, for example) is handled by a lower level magistrate's, justice of the peace, or similar type court. Thus, at least two "courts" are often involved in any one case. Hence, it is difficult to define a common unit of analysis and maintain some clarity about the actual referent when the word "court" is used.

The smallest organizational unit of analysis referred to in this study is the individual judge and courtroom, which is inextricably linked to prosecutors, defense attorneys, and others in patterns of interaction best explained in terms of small group behavior. Eisenstein and Jacob's (1977) analysis of the courtroom workgroup provides the most thorough description of the norms of behavior governing the interactions of judge, prosecutor, defense, and others at any given event. For any given event, the workgroup arrives at the decision associated with that stage (e.g., probable cause, eligibility for pre-trial release).

Thus, this study is not concerned with developing performance measures that focus on single individuals. At the smallest level, performance measures are indicative of the interactions among members of an informally defined workgroup. Even for this unit of analysis, data are rarely available without extensive data collection that would allow one to describe the performance of individual workgroups. Typically, data are aggregated to the level of a jurisdiction, such as a county, district, or circuit.

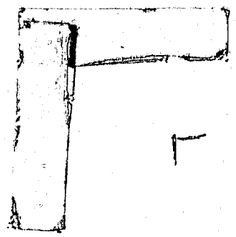
For the purpose of developing a performance measurement system, however, the courtroom workgroup is an inadequate unit of analysis. It focuses too much attention on the unique characteristics of individual actors and insufficient attention on the outcomes of the process. Although it provides an important conceptual framework for understanding why individuals behave the way they do--by reference to norms of stability and other small-group concepts--it does not readily organize notions of measuring performance. For purposes of developing performance measures that both reflect the expectations of various constituents of the court system and provide management information for intervention purposes, the next higher level of organization, the local court jurisdiction, is more helpful.

In our terms, the local court organization is usually the county court system in most states. In some states, where the role of the highest state court in administering the state court system is central, the local court organization may be a district or circuit. Whatever it is titled, the unit of analysis we focus on is the organizational unit responsible for the direct operation of the felony trial court of general jurisdiction.



Defining the unit of analysis in this way is, in part, an artifact of the pattern of organization imposed by each state's constitution and statutes. In large part, however, the choice of unit of analysis is dictated by the desire to develop performance measures that not only describe performance but also are, at least in principle, subject to intervention by persons responsible for the described performance. Thus, for the preceding section's example of elapsed time from arrest to assignment of counsel as a performance measure, the county is the appropriate unit of analysis in Texas, the District is appropriate in North Carolina, the Recorders Court in Detroit, and so forth. Each of these jurisdictions has managerial responsibility for defense counsel, although each exercises this responsibility in a different way. Thus, in comparing across jurisdictions, the performance measure, elapsed time, could be hypothesized to be a function of several variables, including the nature of the jurisdictions' organization.

In some states the local court organization will consist of a variety of magistrate's courts (limited jurisdiction courts with various titles) and general trial courts. In other states, the local court organization consists of circuit and associate circuit judges, both with the same legal jurisdiction and specialization occurring only as a result of judicial assignments (Missouri, for example). The local court organization may be directed by a chief or presiding judge, by all trial judges acting en banc, or each trial court may be virtually autonomous. Thus, considerable variation may occur in the way county (district, circuit) courts are organized. However, the commonality of the organizational task, which is insured by the fact that, in some form or another, six basic events must occur in the major felony disposition process, provides a major orienting feature for developing performance measures.



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In carrying out the basic task, local court organizations share two key features. Each item of business in a felony case process is handled by (1) a small number of (2) professionally intensive individuals. A natural size limit determined by a maximum number of cases any one judge can handle and the restriction that the judge will be involved in every case disposed of by a court dictates that every courtroom unit will be small, at least relative to many organizations. While several, more or less interchangeable, prosecutors may be assigned to a single courtroom, only one judge ultimately is responsible for a case. Allowing for individual differences, the staff of the prosecuting attorney can be more or less uniformly recruited, retained, and influenced by the District Attorney. As caseload increases, more staff can be added without necessarily radically altering the character of the prosecution staff in the jurisdiction. On the court side, however, an increased caseload ultimately can be managed only by the creation of additional court units within the local court organization.

Within multiple judge jurisdictions with common management procedures and shared support personnel, there may be less autonomy for the individual judge in the courtroom. However, even hierarchical systems, such as those with a chief judge, or unified systems centrally administered by the state supreme court are characterized more by the autonomy of the judge in his/her courtroom than by uniformity. The net consequence is that the local court organization whose performance is to be measured is managing a set of semi-autonomous professional units.

Second, despite the fact that not all judges who are involved in the criminal justice system are legally required to be lawyers, most are in fact lawyers with considerable similarity in professional norms and



educational background. Although there is considerably more variation in the degree of professionalization of other court personnel, the norm is, nevertheless, toward a highly professional staff.

Taken together, the small size and the degree of professionalization of court organizations have important consequences for court performance. Numerous studies have found that small, professional organizations are largely informal in operation with a high degree of shared norms, a high degree of informal communication, and a low rate of turnover in personnel (Etzioni 1975). Procedurally, the work activities performed by court organizations are highly labor intensive. Although extensive automation of recordkeeping functions characterizes many larger jurisdictions, every case requires some degree of individual, hands-on attention by at least one judge. The circumstances of each case and the individual personal and policy preferences of the judge interact to make standardization of task performance difficult at best. That is, decision requirements and work conditions vary considerably from case to case. The key features of organizations characterized by labor intensiveness and lack of standardized work processes are a high degree of uncertainty and a high need for flexibility or adaptability (Harvey 1968; see also Thompson and Bates 1957; Woodward 1965; Lawrence and Lorsch 1967). Further, these structural and technical characteristics are interactive in that organizations with variable work processes are more often also smaller, more labor intensive, problem solving organizations. Carter's (1974) analysis of the nature of courts' task performance similarly suggests that a combination of uncertainty, the need for case-by-case decisions, and legal/constitutional requirements leads to intensive technology.

Like most social processing organizations, courts largely have their workload presented to them with little opportunity to influence its quantity. Unlike some social service agencies, courts have no outreach function by which they attempt to reach particular segments of the population. Rather, their workload is largely determined by such variables as the level of criminal activity, the level of police activity, and the District Attorney's prosecution policies. This means that, as organizations, courts devote very little of their resources, if any, to market type activities that influence the volume of inputs. Rather, courts must rely on their informal interactions, primarily with the police and prosecution to influence the influx of cases. As a consequence, courts devote most of their resources to managing the volume of cases presented by external agencies.

Having described the major environmental constraints imposed on all criminal trial courts in processing felony cases and the organizational characteristics of structure and process shared by courts, we are now prepared to present a descriptive model of court behavior that accommodates the independent variables that may affect performance as well as the variables that serve as performance indicators. Following the description of the organizational model, Chapter V applies the model to a key decision stage--pre-trial release.

C. Organizational Framework

The organizational framework underlying our concept of courts performance measurement treats the local (county, district, circuit) jurisdiction with the direct, managerial responsibility for the general trial court as the focal organization with its multiple subunits organized primarily as small workgroups. Different degrees of organization



may be exhibited by jurisdiction-wide systems, ranging from completely autonomous courtrooms to a chief judge centrally presiding over the trial and lower courts. Similarly, different degrees of centralized administration may be exhibited by different state court systems. Performance measures for the local court organization thus reflect the processes by which the mandatory events of felony dispositions are handled and the results of decisions made at or during those events. Measures, then, often are some form of aggregate--average, variance, mode, etc.--reflecting the results of more than one court.

A model on which to base measures of court performance must be behavioral in the sense that it characterizes actually the informal and interactive relationships of organization members (i.e., intraorganizational) and systemic in the sense that it characterizes relationships of the court with its larger environment (interorganizational) (Evans 1976). The interorganizational focus stresses the fact that structure and process characteristics of individual courts both affect and are affected by relations between the court and its environment.

The environment with which the court interacts consists of individuals and organizations identified in Section A above and general social and political value sets. Some members of the environment provide resource inputs (inputs both in the financial sense and workload) to the court; other members of the environment receive or act upon the outputs of the court. The interactive effects are both multiple and complex. Court performance thus may be affected as much by the nature, quantity, and quality of cases brought before the court and the nature of the organizations and individuals bringing cases as by any internal court characteristics. Gallas (1976), for example, argues that court systems

are composed of multiple organizations employing multiple techniques for dealing with work flow problems generated both internally and externally.

Similarly, the organizations and individuals constituting the output set of court organizations may be a critical influence on both court structural features and performance. Correctional institutions and the general public may be counted among the members of this output set. Furthermore, even with apparently uniform structures and uniform procedural rules, courts in different communities may show significant variation in measures of performance depending at least in part on the normative expectations of the general community. Ehrlich (1936), Packer (1968), and Rawls (1971) offer three very different conceptions of law, all of which, nevertheless, stress the importance of public conceptions of the law in shaping the performance of legal systems. Similarly, variations in sentencing patterns, length of sentences, and proportion of suspended sentences, for example, may be affected more by the availability of correctional facility space than by any structural or procedural features of the court system.

1. Model elements. The model described here assumes that all decisions or all key events take place in the same court with the same presiding judge. This simplification aids presentation of the model, but in actual application would require modification. For example, performance indicators related to the bail decision may be measuring the performance of a different, and usually lower, unit than the trial court. This would not affect the utility of a set of indicators as far as measuring performance, but accurate interpretation of the causal determinants of that set of performance indicators would require recognition that the lower court and the trial court are different components of the organization.



Two sets of characteristics require specification, including:

-- Structural and process features of the court, and

-- Environmental input set.

A full specification of the model is not necessary to develop a set of performance indicators or to measure performance. A full specification would constitute a complete causal structure capable not only of measuring performance but also of explaining it. The ultimate objective of an empirical application of the model, of course, would be to both measure and explain court performance in order to focus on those elements of behavior that are controllable and, hence, subject to change in order to improve performance.

a. Structural and process features. As described in the first part of this chapter, courts are largely informally structured. Because of their size, it makes little sense to characterize them in terms of some usual structural characteristics, such as the number of levels of hierarchy. It is important, however, as Nardulli (1978) and others have stressed, to describe and understand the extent to which informal procedures and informal communication channels are used to expedite the work of the court. Therefore, degree of formalization and workgroup cohesion would be important characteristics to assess.

Second, based on research by Lawrence and Lorsch (1967) and others, we can expect a key structural feature of an organization's ability to deal with a complex environment to be its ability to obtain and process information about environmental inputs. Although courts do not necessarily require elaborate data processing systems, it is clear from our own field research (e.g., Dallas County, Texas) that courts with ready access to complete files on an individual case as soon as the case is

assigned to court and an ability to monitor progress of the case at any point in time are better able to manage their workload. Hence, information capacity, including quantity and quality of information and ability to retrieve information rapidly, constitutes a key structural characteristic of a court. Court recordkeeping systems and case management systems are important elements in the way work is organized to accomplish mandatory events even with a professional labor intensive process.

Both degree of specialization and degree of professionalization of personnel would be important structural characteristics potentially influencing court performance. In the previously discussed literature on organizational technology, the point was made that organizations in a highly uncertain environment generally require a higher degree of professionalization to adapt to environmental changes and the presence of information specialists. The most common function assigned to courts administrators or coordinators in jurisdictions that have them is information gathering and retrieval. Specialization can be subdivided into functional specialization in terms of task performance and boundary role specialization as in the use of a member of the court staff assigned especially to deal with other organizations such as the prosecutor's office.

b. Environmental input set. In the environmental input set we include only those characteristics that might be variable across courts. When comparing courts with other types of organizations, the legal/constitutional requirements of the task environment as discussed in Section A would be important differentiating characteristics. Here, however, where only courts are involved, the constitutional requirements are uniform (although court responses may not be).



Basic legislative requirements, however, do vary from state to state. The presence or absence of a speedy trial act, presumptive sentencing, and restrictions on plea bargaining all constitute constraints on the options courts have. Further, the adequacy of resource inputs, primarily financial, acts as an important constraint on court performance. Taken together, the above four concepts represent the degree to which a court is autonomous from its environment, a factor which in large part determines how much control a court has over its performance.

Other input set characteristics affect court performance but are not as strictly related to degree of autonomy. Of necessity the court will interact with the prosecution, and the District Attorney's policy set will influence those interactions (Jacoby 1980). That policy set may include policy on which types of cases to take to trial, which types of cases or defendants with which to negotiate pleas, which cases to decline to prosecute, and so forth. As previously discussed, the level of criminal activity and the level of police activity also constitute important environmental inputs.

Exhibit IV-1: Model Elements

Structural and Process Features

- Degree of Formalization
- Workgroup Cohesion
- Workgroup Stability
- Information Capacity
- Degree of Professionalism
- Degree of Specialization
  - Functional Specialization
  - Boundary Role Specialization

Environmental Input Set

- Speedy Trial Act
- Presumptive Sentencing

Restrictions on Plea Bargaining
Adequacy of Resource Inputs
Degree of Autonomy (combined index of above four variables)
District Attorney's Policy Set
Public Defender's Policy Set
Level of Criminal Activity
Level of Police Activity
Nature of Constituency Group Structure

2. Decision process model. Following from our discussion above of the key model elements, we are prepared now to describe the organizational decision process in a generic sense. It is based primarily on an amalgamation of the contingency theory approach (Thompson 1967; Evan 1976; Emery and Trist 1965; Lawrence and Lorsch 1967) and Cyert and March's (1963) theory of the firm. The following basic propositions constitute the core of the model:

-- Courts pursue a multiplicity of goals rather than one particular goal.

-- The expectations of members of the court organization about their own behavior and how that behavior leads to goal attainment are the primary determinants of court decisions.

-- In turn, the primary determinants of the expectations members of the court organization hold are three sets of variables:
    (1) The expectations of relevant constituencies (which constituencies are relevant is also variable),
    (2) The expectations and behavior of members of the courtroom workgroup, and
    (3) Environmental constraints in the form of required and proscribed behavior.

-- Based on their understanding of what the expectations of relevant constituencies are, court members will engage in limited search for information until a decision can be made that will satisfy the following constraints:
    (1) It is agreeable to other participants in the courtroom workgroup (or they will accept it because no further alternatives exist),
    (2) It satisfies the expectations of relevant constituencies, and



    (3) It satisfies legal and constitutional minimum and maximum conditions.

-- When court organization members are engaged in long-term interactions with members of courtroom workgroups and many members of the environment, short-run behavior will seek to increase the stability of the environment by engaging in behavior that reduces uncertainty (enhances predictability) and increases workgroup cohesiveness. This has two corollaries:
    (1) Short-term policy goals will be sacrificed to stability, and
    (2) Long-term policy goals will be modified or transformed and tend to merge with the policy goals of workgroup members and relevant constituencies.

3. Discussion. Each of the core propositions listed above is discussed briefly in this section. We believe they are consistent with the descriptive content of other major empirical research on felony trial courts, particularly Eisenstein and Jacob (1977) and Nardulli (1978), but the implications we draw for performance measurement are yet to be tested systemmatically in a field setting.

The first step in testing this conceptualization is to focus on the outcomes of choices at one or more of the key decision stages discussed in preceding sections to derive sets of indicators that are necessary and sufficient to describe court behavior and that provide empirical or observable referents for the value decisions of affected constituencies. The long-term goal is to develop indicators of each component of the model and test the causal linkages expressed in the set of propositions. This latter endeavor then provides the understanding necessary for managers and other court participants to vary behavior in order to bring about desired performance levels.

a. Multiplicity of goals. We can expect courts to pursue a multiplicity of goals that may not necessarily be either internally

consistent or consistent with the desires of major constituencies. As a standard against which to measure organizational effectiveness, goals do not provide ready criteria. As explanations for behavior, however, goals are an important model component. A trial judge, for example, may have elements of both the crime control and the due process perspectives in his/her orientation; his/her sentencing behavior in capital crimes may be a reflection of one while sentencing behavior in victimless crimes may be a reflection of the other. In a tightly controlled organization, a presiding judge's goals may dominate the entire organization. Similarly, a court's primary operative goal may be short-term disposal of the caseload. In many instances, pursuit of one goal may be inconsistent with attaining another goal. Performance indicators, therefore, must have behavioral referents that can be evaluated from a number of evaluative stances.

b. Expectations of members of the court. Expectations are implicit or explicit causal propositions that assert a linkage between a behavioral action and an outcome. Our second proposition basically asserts that individual members of the court organization act purposively and act according to at least an implicit theory that a particular action will yield an expected result. Often the causal antecedents will not be expressed, but the proposition that individuals act purposively argues that an expectation is at least implicitly linked both to an action and a consequence. In principle these causal propositions are testable. For example, one judge we interviewed stated he would be trying more cases this year because next year he would be up for reelection. Whether or not the number of cases tried is viewed as an appropriate performance measure, this judge's behavior is partially guided by



the expectation that more cases tried will enhance his chances for reelection.

c. Determinants of expectations. This third proposition is closely linked to (b) above. In essence, it states that expectations of members of the court organization are influenced primarily by the expectations of those in the near environment (non-court members of the courtroom workgroup and relevant constituencies) subject to the constraints of legal and constitutional requirements. For example, the judge referred to in the preceding paragraph believes that members of the electorate expect a judge to be active in conducting trials (one could further analyze the linkage in the minds of voters between trials and some desired outcome such as crime reduction). Given the electorate's expectation (or the judge's perception) and the judge's desired result--reelection--the judge will conduct more trials. A judge in another community who also desires reelection may exhibit quite different behavior because the electorate either pays no attention to number of trials or expects judges to do other things (achieve national prominence via lectures, consulting, and writing). This example also illustrates the importance of grounding performance indicators in behavioral actions rather than goals.

d. Limited search. Considerable organization research initiated by Simon (1947) has demonstrated that human beings do not engage in unlimited search for alternatives or for information. The implication of this proposition is that courts will not search for or evaluate all available information prior to making a decision if a decision alternative is found that satisfies other participants as well as the court. For example, in resetting bail a judge may not look for

or ask for information about the defendant's ability to pay if standard bail for a category of crime is the accepted norm in the organization. That behavior would be changed only if the norms changed or the judge decided a goal important to him/her could best be obtained by violating the local norms.

e. Stability/uncertainty reduction. In the second section of this chapter, considerable space was devoted to describing the extent to which courts do not control either the volume or timing of their own workload. In a highly uncertain environment, individuals will seek to reduce uncertainty by reaching agreement with other members of the environment who influence the focal individual's workload. Courts exhibit this behavior by attempting to establish informal, stable working relationships with the prosecution and defense attorneys. This may be accomplished through overt negotiations and bargaining and through adopting regular, predictable behavior patterns. In the latter instance, for example, a judge may be always prompt and always prepared in order to induce the prosecution and defense to behave similarly and, thus, reduce requests for postponements and other schedule changes. Since these other participants also seek to reduce uncertainty, their behavior is likely to be reciprocal. One consequence of this proposition is that policy goals may often be sacrificed in order to achieve stability. For example, a prosecutor may decide to drop a case in which he/she is convinced of the defendant's guilt in order to avoid requesting a lengthy continuance to gather important evidence. A further consequence is, over time, for the policy goals of members of the courtroom workgroup to merge.



D. Conclusion

The organizational framework developed in this chapter focuses attention on the characteristics of the felony trial court that make it conceptually possible to develop performance measures applicable across jurisdictions and develops a model suggesting intervention points for changing performance. Thus performance measures developed can be both comparative and management oriented.

Common to all court organizations is a mandatory set of events that must occur in the felony disposition process. The nature of these constitutional and legal requirements and the hands-on nature of the work of courts leads to organizational structures and processes to facilitate a professionally intensive technology. Finally, a model of intra- and inter-organizational relationships is developed to provide an explanatory framework for the outcomes of those five major decisions.

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CHAPTER IV


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## CHAPTER V. A BEHAVIORAL MODEL OF THE PRETRIAL RELEASE DECISION

In the previous chapter we developed a general behavioral model of criminal trial court decision making based on the perspective that the performance characteristics (both activities and their outcomes) of individual trial courts can be understood as attributes of organizational structure and process. From the work of Eisenstein and Jacob and others who have corroborated their findings, it was apparent that our model must account for considerable interaction among individuals constituting small workgroups in individual courtrooms (Eisenstein and Jacob 1977). It is our additional observation that these small group interactions are often highly structured from outside the workgroups by such variables as the degree of central management of the trial courts within a jurisdiction, single-tiered versus multi-tiered case processing, constituency expectations about court system performance, and the local legal culture (Church 1978; Johnson and MacGillivray 1980; and Johnson 1981).

It is our purpose in this chapter to apply the organizational framework developed in the preceding chapter to the pretrial release decision, one of the six decision stages into which we have subdivided the felony disposition process. The nature of the pretrial release decision is two-fold. First, it is a decision made on the basis of varied sources and types of information and mixed value judgments about what conditions should be imposed on a defendant in exchange for release. Second, the conditions imposed may have further consequences for the outcomes of the disposition process beyond the immediate, formal purpose of insuring the defendant's appearance. The participants in the



decision process have both individual views on pretrial release conditions and institutional roles to fulfill. Thus, as we argued generally in Chapter IV and now specifically in this chapter, performance measures related to pretrial release should tell us something about the effectiveness and possibly the efficiency of pretrial release decisions and should be linked to organizational variables that suggest management intervention points.

As discussed in the previous chapter, our primary unit of analysis for developing performance measures is the jurisdictional level at which management responsibility for court operations exists. For pretrial release decisions, the management responsibility may be exercised at a lower court, such as a magistrate's court, the primary trial court of general jurisdiction, or both. Both courts may be supervised by a presiding judge responsible for numerous courts, both may be autonomous except for the review role of the general jurisdiction court, or only the general jurisdiction trial court may exist as in a single-tiered or unified system. These variations do not alter the development of performance measures, but they do affect the development of structure and process variables that measure the presumed causes of performance. Thus, although performance measures derived from the theoretical framework developed in this report are applicable across jurisdictions and across states, the explanatory theory developed from organizational research literature must be tailored to individual circumstances.

There are considerable variations among and within the fifty states in terms of: who the participants in the pretrial release decision are; what their formal institutional memberships and responsibilities are; and what the legal, structural, and other environmental constraints are.

Thus, specific application to a local jurisdiction's trial courts would vary depending, for example, on such things as the presence or absence of a state or local pretrial release agency in place of entrepreneurial bonding agencies. Although we focus on the courts in our analysis of the pretrial release decision, we recognize that key decisions are made by other actors. For example, in some jurisdictions a member of the police department may set a "station house" bond at time of arrest, to be reviewed later by a judge.

This chapter is organized in four sections. Section A describes the participants and their normative expectations about the outcomes desired of their decisions. Section B is an analysis of the information and search behavior patterns affecting the participants' perceptions of the pretrial release decision and their ability to realize their expectations, and Section C is an analysis of structural and environmental influences on the pretrial release decision. Section D is a summary and conclusion.

## A. Participants' Expectations of Pretrial Release Decisions

Although state laws and local procedures cause considerable variation in participation in the pretrial release decision, we describe in this section seven major participants in terms of their roles in the process and their expectations regarding the decision process and its outcomes--judge, police, prosecution, defense attorney, defendant and bonding agent or pretrial release agency. Without attempting to explain differences from jurisdiction to jurisdiction, we describe the nature of each participant's role in determining the pretrial release status of a defendant and the expectation of the results intended.



1. Judge. In this discussion we describe the pretrial release decision as a judicial decision. In the jurisdictions where nonjudicial actors set bail for accused felons, a judicial review of the decision is always made shortly thereafter.* Although many jurisdictions have a multi-tiered structure for processing felony cases with initial release conditions determined in a lower court and reviewed in a higher court, we do not distinguish among judges in different courts or at different levels.

Although statutory requirements vary, the right of a defendant to have bail set is guaranteed in every state providing an environmental context within which the judge operates in making the pretrial release decision.** Despite the standards set by state statutes and constitutional provisions, however, judges are free to exercise a great deal of discretion in imposing release conditions on a defendant. Littrell (1979, p. 41) notes that judges "dominate the courts without peer."

One particular empirical study of judicial attitudes toward bail cites four different goals judges tend to have for the pretrial release decision (Wice 1974). First, judges see bail or other conditions of

*Of 11 metropolitan areas studied by Wice, three allow police to release defendants accused of felonies (Baltimore, Indianapolis, Atlanta p. 66). In the remaining eight areas (Washington, D.C., Philadelphia, Detroit, Chicago, St. Louis, San Francisco, Oakland, Los Angeles) only a judge or magistrate can make the initial pretrial release decision (p. 66). However, any bail or pretrial release decisions made by non-judicial officers are automatically subject to judicial review at the first court appearance (p. 68).

**In almost all states the right to have bail set in every case except a capital case is guaranteed in the state constitution; e.g., N.J. Const. Art. 1, paragraph 11. In other states admission to bail is guaranteed by statute, e.g., Georgia Code Ann. 27:901 (1953). In other states statutes allow denial of bail in felony cases at the judge's discretion; e.g., N.Y. Code Crim. Proc., 553. For a general discussion, see Kadish, Sanford H., and Monrad G. Paulsen 1975, p. 1098 in Criminal Law and U.S. Processes (third edition), Boston: Little, Brown and Company. See also Neubauer 1979, p. 258.

release as ir a defendant to return to court. An increasingly popular release option that meets this purpose is a court deposit bond-t deposits 10 percent of the required bond with the court, repercent of this deposit back if he/she shows up as scheduled. r the form, this is the most common statutory description of e of bond or other conditions. The remaining goals found b his study generally are not derived from statutes, but rather arjudicial exposure to a range of defendants seeking pretrial relea

A second pretrial release conditions, stressed also by Neubauer (1979s from what Wice suggests is a belief of some experienced juat many (or most) individuals brought before the court are in fminals. Thus, a judge may view the setting of bail or other condiof release as an opportunity to levy punishment before trial a undesirable elements of society (Wice 1974). To achieve this pu, a judge might decide either to set bail at a level he/she believesdefendant cannot raise or afford or may, in some states, under ce circumstances, set no bail.** A third purpose believed served retrial incarceration is to protect the public at large from repeatfenders.***

*Illinois Coof Criminal Procedures Section 110-7, for example.

**However, the ghth Amendment to the federal constitution technically protects a fendant from having to pay excessive bail. See Stack v. Boyle, 342.S. 1 (1951) ("...the modern practice of requiring a bail bond or the posit of a sum of money subject to forfeiture serves as an additical assurance of the presence of an accused. Bail set at a figure high than an amount reasonably calculated to fulfill this purpose is 'excssive' under the Eighth Amendment.")

***See, e.g., D.C. Code, Section 23-1321(a), 1973.



A fourth goal of pretrial release conditions is based on a belief by some judges that a brief period of detention may deter a young or first offender from committing later crimes. The theory here is that the shock of harsh jail conditions will discourage further criminal activity. To realize this purpose, a judge may decline to set an affordable bail until a few days after arrest, at which time conditions for release may be set to match the characteristics of the charge and the defendant.

Judges, of course, are not a homogeneous set of individuals with consensus views on the functions of the pretrial release decision. Any one individual judge may hold one or more of the above described goals simultaneously, and these goals may not be internally consistent. The point here is that one set of variables affecting the outcomes of the pretrial release decision is the expectations of judges about the goals for the decision. No assertion is made in this chapter that the causal theories implicit in these goals are actually borne out. Rather, we rely on previous research on judicial attitudes toward pretrial release to demonstrate that the pretrial release decision may reflect both a general goal such as preventing recidivist behavior and an implicit theory that difficult pretrial release conditions will achieve that goal.

2. Police. Although the primary police activities in a felony proceeding concern investigation, arrest, and testimony, police often play an important role in the pretrial release decision as well. Police seem to reflect two basic attitudes toward the pretrial release decision. First is a recognition of the most common statutory purpose of

the decision, insuring appearance at trial, and second is a belief that the purpose of release conditions is to keep criminals off the streets (Fleming 1978).

While they do not set the conditions for release, police can effect their goals for this stage in two ways. In some jurisdictions the initial conditions for release are a set of fixed bail amounts varying with the nature of the charge. This "station house" bail is set by the Desk Sergeant or booking officer and may be paid physically at the station. At this point in the process, the police may have sole temporary power to determine the charge and hence the amount of bail (Littrell, 1979). Thus, an initial, albeit temporary, authority to determine the nature of the charge provides police with the opportunity to use conditions for release to achieve a goal for this stage of the felony disposition process.

Even where not formally able to set the initial conditions for release, however, police may be able informally to accomplish the same purpose by recommending a bail amount to a judge. This recommendation may be made over the phone, if the defendant is being held at the station house and the Desk Sergeant is calling a judge for an immediate pretrial release decision, or it may be made during an initial hearing in court.* In these situations, the judge is the filter for police

*Wice remarks that while police were very influential in setting the initial bail decision 15 or 20 years ago, their role in this regard has been usurped by the growing presence of District Attorneys. For example, "assistant D.A.'s in both Los Angeles and Baltimore are now being placed in all regional police courts where bail is initially set. With their presence and expertise, the prosecuting attorneys have replaced the policeman as a fact source for the judiciary" (Wice 1972, p. 116).



actions and may or may not reflect the same goal in setting the conditions for pretrial release. Thus, the police have goals for the pretrial release process related to their responsibilities for "keeping criminals off the street" and for finding and bringing in defendants if they fail to show at later hearings, but their long-term ability to achieve these goals will be determined by their ability to affect the judicial process.

3. Prosecution. As an actor in the pretrial release process, the prosecuting attorney is primarily involved in the sequence of events following arrest. (The decision to arrest, in which the prosecuting attorney is heavily involved, is not considered here since it is not directly a part of the pretrial release decision.) Thus, the police may play an initially more important role in pretrial release decisions in some jurisdictions, but the prosecution's influence increases as the case progresses (Littrell 1979; Jacoby 1980). For example, in St. Louis a prosecutor will screen a case within 20 hours of booking and will make a bail recommendation. In Chicago, on the other hand, the District Attorney will not normally make a bail recommendation until the preliminary hearing.

As a group, prosecuting attorneys' goals for the pretrial release process are not dissimilar to those of judges and police--that is, insuring the presence of the defendant at subsequent hearings, punishment, protection of the public, and prevention of recidivism. One key difference, however, is that once initiated, a case belongs to the prosecuting attorney's office, and the outcome of the case is considered a reflection of the prosecution's judgment and skill. Thus, the decision

to prosecute a case usually reflects an attitude that the defendant is in fact guilty, and the pretrial release decision may be viewed more from a punishment and public protection perspective than from the defendant's rights perspective (Tushnet 1978). There also tends to be a noticeable consensus between judge and prosecution in stable courtroom workgroups (Suffet 1966).

4. Defense attorney. Of all the participants in the pretrial release decision, the defense attorney may be the least powerful, primarily because he/she may not even be present at the initial bail hearing, and may join the case after the initial pretrial release decision has been made. In many instances, therefore, the defense attorney's role is to try to change the initial decision to one more favorable to the client, usually by petitioning for a bail reduction or release on the defendant's own recognizance. In a few instances, a defense attorney may post personal bond for the defendant; more commonly, he/she may help the defendant find a bondsman or other third party who will agree to assume legal custody of the defendant before trial.

The defense attorney's role in the pretrial release process is, officially, as a partisan with the objective of minimizing the effects of the decision on the defendant. One variable influencing this partisan role, however, is the degree to which the defense attorney works regularly with the same prosecutors and same judges and has in fact adopted work group norms of expeditiousness. Feeley, for example, argues that the defense attorney may work with the prosecutor to set release conditions convenient to both with the defendant's interests as only an afterthought (1979). Others argue that members of a public defender's staff or court-appointed attorneys may be more members of a



stable courtroom workgroup and accepting of its norms than privately retained attorneys (Wice 1972; Wice 1978; Eisenstein and Jacob 1977). This may be especially true if the public defender's agency is structured so that one defense attorney (or one group) handles all bail hearings before a given court. In this situation, a greater opportunity arises for the courtroom actors to share in a common task since the workgroup remains stable and in relatively close contact over time.

5. Defendant. The defendant's perspective on the process is, naturally, the most partisan since he/she will suffer the consequences of the pretrial release decision. In that sense, the defendant's goal is basically to minimize the consequences. There are two levels to that goal. One is to remain free while awaiting trial and, succeeding in that, to remain free at the least cost. As an actual participant in the pretrial release decision, the defendant's primary role is to present information about him/herself that will lead to a favorable decision. As with the other participants, then, the defendant has both a goal and a set of causal theories about what is most likely to lead to that goal. The defendant will present, or allow to be presented, information that he/she expects to influence favorably the court's decision. This effort will be concentrated primarily on the judge because the defendant is not likely to be privy to any of the internal processes leading to the participation of the prosecution's office or the police in the pretrial release decision. Finally, the defendant will affect the process by the selection of defense counsel or requesting public defense and the timing of that selection/request.

6. Bonding agent. The participants described in this and the next subsection are the two actors whose basic role is analysis of the

defendant's practical eligibility for pretrial release and, for the bonding agent, providing the financial capacity to meet pretrial release conditions. The key distinction between the two is that the bonding agent is a private entrepreneur whose livelihood depends on an accurate assessment of the defendant's probable appearance at subsequent proceedings if released, whereas the pretrial release agency is a public organization with a different set of goals for the pretrial release decision.

In contrast to many stereotypes, bonding agents are now likely to be heavily regulated, performing primarily a financial service for a fee. Where there is no pretrial release agency, bonding agents are likely to be more competitive with each other and act primarily to maximize earnings. While it may seem that the primary source of cost to bonding agents is bond forfeitures, that appears not to be the case in some jurisdictions sympathetic to reliable bondsmen; some judges will rarely require forfeiture of bond by a bail bondsman when the defendant fails to show (Wice 1972).

7. Pretrial release agency. In those jurisdictions with a pretrial release agency, the primary role of the agency is background investigation of the defendant and application of statutorily determined criteria governing pretrial release. In many instances, the agency will also provide other services to the defendant, many of which are focused on helping the defendant meet his/her legal obligations upon release pending trial. For example, a pretrial release agency may arrange for a third party to incur legal custody of the defendant if that is a condition of release, or it may take responsibility for maintaining close contact with the defendant, supervising such release conditions as



obtaining a job, obeying a curfew, returning to school, and ensuring that the defendant is notified of his next appearance date (Wice 1972).

The staff of pretrial services agencies typically consists of a small core of full-time employees supplemented with part-time and/or volunteer groups including law students, Vista volunteers, Neighborhood Youth Corps, and others of various backgrounds. Funding varies from jurisdiction to jurisdiction, and within a given community several pretrial services agencies may exist under different sponsoring organizations. As one might expect, the size, ability to function in a given locale, and ability to survive of such organizations will be highly affected by the nature of the financial and political support backing each receives.

B. Information and Search Behavior

In the preceding section the roles of the seven major participants in the pretrial release decision and their expectations of the outcomes of that decision were described. Despite the accuracy of these actors' perceptions, each set of expectations involves both a desired result(s) and an implicit causal theory about how those results are achieved. Thus, each participant bases his/her decision behavior both on what he/she hopes will occur and on the information available about the causal variables and their results. This description of decision behavior does not presuppose that the causal theories are accurate, that all available information is actually attended to, or that more information is even desired by the participants. The analysis in this section is of the information available during the pretrial release decision and of the results of that decision, but only to the extent that previous empirical research has addressed the causal theories held by

participants in that decision process. Since both categories overlap each other and intersect the different roles of the participants, each participant is not discussed in separate subsections here.

As described in Section A, several goals are attributed to the pretrial release decision by judges, police, and prosecution, including providing incentives to return for trial, punishment, protection of the public, and prevention of recidivism. These goals presuppose a relationship between the specific conditions attached to release and the defendant's subsequent behavior. Judges, police, and prosecution devote explicit attention to certain kinds of information assumed to be relevant to a defendant's subsequent behavior. In a reactive mode, the defendant and defense counsel also pay attention to the same categories of information, but from a selective perspective, attempting to influence the decision in the direction of the defendant. Public pretrial release agencies are generally more responsible for gathering information on the defendant than for using it. Bail bonding agents often have their own categories of relevant information, and as will be discussed later, are often more accurate in their assessment of the probability a released defendant will return for trial.

Several states explicitly dictate the type of information to be considered in the pretrial release decision. For example, in Michigan bond is to be set "...with consideration of seriousness of the offense charged, the previous criminal record of the defendant, and the probability or improbability of his appearing at the trial of the cause."* Similarly, other states' statutes impose similar categories and add such characteristics as the general background of the defendant, especially his/her ties to the community.**

*Michigan Stat. Ann. Sections 28.892-28.893 (1954).
**Bail Rules for Pennsylvania, Supreme Court Rules, Section 400.



More detailed information about the defendant, the alleged crime, and the probability that the defendant committed the crime is, of course, the basis of the prosecution's case. In particular, the strength of the prosecution's case against a defendant may be an important determinant of the prosecutor's bail recommendation and the judge's subsequent decision, if the judge is made aware either in open court or informally of these details of the case. Thus, the nature of information examined by the prosecution and the judge is in part objective, consisting of essentially unambiguous characteristics such as defendant's prior record, family status, occupation, and so forth, and is in part subjective, consisting of probabilistic characteristics such as the defendant's likelihood of guilt, strength of ties to community, family, job, and so forth. To the latter group of more subjective characteristics can be added the defendant's attitude in court, personal bearing, appearance, and oral presentation (if it occurs). Often the defense counsel, if present, will make a presentation of these characteristics without direct oral participation of the defendant unless questioned.

Not every category of information described above is equally weighted by each participant nor is information in every category even sought out. Individual participants may actively seek some information and may utilize other information only if it is brought to their attention. In particular, the judge rarely conducts an extensive search for information bearing on the pretrial release decision. Rather, prior to the preliminary hearing (sometimes at arraignment), the judge will have been presented with a basic packet of information commonly containing:

-- a copy of the formal charges filed with the court;

-- a recitation of the statute(s) under which the defendant is charged; and

-- at least a sketch of the specific allegations about the defendant's behavior that led to the charging decision.

In addition, the material may contain:

-- summaries of information and bail recommendations from the arresting agency, the prosecution, and a pretrial release agency.

Much of the material available to the prosecution and judge at the time of the pretrial release decision stems from police procedures and practices. Defendant status at the time of arrest, including employment, home address, physical description, reported offense behavior, and whether or not the defendant knew the victim of the alleged crime are common elements contained in the arrest report. As the prosecution screens the case, a generally more complete account of defendant characteristics is developed, some or all of which may be made available to the judge for the pretrial release decision. If the pretrial release decision occurs (or is reviewed) during an arraignment hearing or a hearing to determine probable cause, witnesses' testimony may also be presented.

As described in Section A, the uses to which these types of information are put by the different participants in the pretrial release decision, and the extent to which they engage in active search vary according to the individual's role in the process and his/her basic values toward the purposes of the pretrial release decision.

First, any individual participant is formally an institutional adversary or a neutral. That is, the prosecution is in an adversarial position vis à vis the defendant with institutional reasons for pressing for stringent release conditions and presenting information in support of that position. Similarly, the defendant and counsel are advocates



and, thus, interested in presenting favorable kinds of information. The police may or may not view their institutional role as adversarial. Having made the arrest, they have an initial presumption about probable guilt, and they will likely be responsible for finding a defendant again should he/she fail to appear for a scheduled court event. Information search behavior for participants who are at least institutional adversaries thus is limited to some extent by the adversarial purpose that information is expected to serve.

The non-adversarial participants, institutionally defined, are the judge, bonding agents, and pretrial release agencies. Although these participants may have personal orientations toward particular defendants or toward all persons accused of a crime that cause them to adopt a more adversarial position, their institutional roles do not push them toward an adversary stance. Judges often do not initiate any search behavior beyond observation and questioning of the defendant in the courtroom. They may, however, utilize court personnel, such as administrative or clerical staff, to interview defendants and obtain background and other information of possible use in the pretrial release decision and subsequent decisions. Private bonding agencies as institutions are likely to be least concerned with guilt or innocence and more concerned with potential economic gain or loss. Pretrial release agencies are formally charged with the greatest responsibility for information search relevant to the jurisdiction's legal definitions of the purposes of pretrial release. Where the creation of pretrial release agencies has been treated as a major reform project connected with defendants' rights, the pretrial release agency's role may be more partisan, including actual

direct assistance to the defendant in meeting release conditions (Wice 1972; Wice 1978).

Thus, individual participants come to the pretrial release decision with both individual and institutional perspectives on the type of information necessary to their participation; hence, they also have varying limitations on their interest to search for that information. The final set of characteristics affecting information search consists of the regular patterns of interaction among these participants. As referenced in previous chapters, the recent work of a number of researchers has focused attention on the courtroom workgroup and the informal norms and processes that guide these same participants in the pretrial release decision. Where the interaction among participants is frequent, nonadversarial norms may override institutionally defined adversary roles. Overworked prosecution staff, judges, and pretrial release agencies may result in less searching for information relevant to a particular defendant and greater reliance on criteria about which information is easy to obtain (e.g., employment, home ownership, family status, nature of the charge). In the next section, the structural and environmental characteristics affecting the pretrial release decision are discussed, providing further insight into the effects of heavy workloads and institutional interactions.

C. Structural and Environmental Influences on Pretrial Release

In the previous two sections, we have described the major individuals directly involved in the pretrial release decision in terms of three characteristics--their perceptions of their role in the process, including their goals for pretrial release, the information purportedly useful to their participation, and their search behavior regarding



information. In this section we enlarge the unit of analysis to examine the structural and environmental influences on search behavior and the utilization of information. We are not primarily interested in the causal determinants of the various participants' perceptions of the pretrial release process. Rather, taking those perceptions as given, we are interested in the factors that shape interactions among the participants in utilizing information for the pretrial release decision.

1. Internal constraints. At the outset it is useful to remember that the collection of actors (and sponsoring organizations) contributing input to the pretrial process do not fit a classic organizational model. In part because of their adversarial nature, criminal justice systems are not structured hierarchically, there is no central agency responsible for the accountability of a case as it is processed through different stages, and there is no single management directing the flow of cases through the system. Instead, we find separately constituted groups with distinct functions and goals coming together only as regularly and predictably as the arrest rate requires. Hence, it is a variable external to all of the participating agencies--viz, the arrest of a defendant--that triggers the beginning of the interaction among arresting agency, defense counsel, the prosecutor, administrative personnel attached to the court and to the local correctional facility, any pretrial services agency present, and the judge. Until a case enters the system, none of these agents has a functional link with any other.

Because of the variety of functions each has within an adversarial context, the different groups participating in the pretrial process will develop information concerning a given defendant and case appropriate to

its own organizational goals. As a result, although they are all putatively engaged in a search for the truth, each agency involved will nevertheless search for and highlight facts and inferences favorable to its interest in the process. For example, a prosecutor's oral argument or written report may tend to focus on evidence that is thought to show a defendant guilty of a more serious crime (e.g., first degree murder) than that the defense counsel would concede (e.g., second degree murder). In this example, since a charge of first, but not second degree murder requires that the government establish that the defendant had premeditated intent to kill, a prosecutor will develop a case around evidence that suggests the defendant did intend to kill the victim, whereas defense counsel will try to bring out information showing that no intent was present. And, especially during the pretrial hearing, a prosecutor may highlight the seriousness of the crime charged, or antisocial features of the defendant's personality, while defense counsel and pretrial services agencies will call attention to the defendant's stability and social ties within the community.

By itself, this institutional variety is a theoretically desirable and necessary aspect of an adversarial process. However, a closer look at the pretrial process reveals an imbalance of input and resources suggesting that, with the exception of extraordinary or unusual cases, pretrial decision making relies much more heavily on the information (and recommendations) provided by the prosecution than that provided by the defense. For example, the prosecutor provides the judge with the charge leveled against the defendant and is the source of information about his prior criminal record--the two factors apparently relied on most heavily by judges in making the bail decision. The influence a



prosecutor has in the information used at the bail hearing is immense, especially in cases where a defendant has not secured an attorney by the time of the pretrial hearing and, hence, is under a practical disability when it comes to presenting a well-developed argument that he/she is stable enough to be released until the next court event. Further, even when defense counsel is present, if the courtroom workgroup has evolved into an coalition tending to act in concert in order to expedite the processing of a heavy caseload, defense counsel may not have much motivation to present, much less search for, information about a given defendant that might steer the judge towards a lower bail amount or even an unconditional release. A judge's use of convenient rule-of-thumb criteria--e.g., making a bail decision based on charge severity alone--may obscure information more sensitive to the individual background of a given defendant. Here, the common goal of enhancing rapid and smooth case flow can directly affect the nature and quality of information made available to the judge.

Two things that can skew this imbalance back toward equity are: (a) the presence of information favorable to the defendant supplied by a pretrial services agency, and (b) the presence of a concerned defense counsel at the bail hearing.

As discussed in Section A, the report presented by a pretrial services agency usually focuses on the defendant's social relationship to the local community. On the basis of verified information about the defendant's record of employment and schooling, church attendance, presence of family members, and activity in positive community activities, a pretrial services agency will typically make a recommendation to the court concerning conditions for pretrial release. In some places the

agency will also remark on the defendant's eligibility for pretrial diversion from prosecution into a rehabilitative program. Apparently, when this sort of information is present--or at least when there is a legitimately recognized pretrial services agency present in the community--more defendants tend to be released before trial than when an agency is not present (Kirby 1974; Ares 1963; Note 1954).

These limitations on the availability and utilization of information essentially are built into the nature of the roles played by different actors in the process. A more mundane but distinguishable way information can be lost in this sort of systematically uncoordinated milieu is simply by the way records are kept. Each agency coming into contact with an arrestee presumably maintains its own files on each defendant, and undoubtedly information is replicated in several places. However, each organizational unit will define the scope of the information it collects so as to fit its needs. For example, the extent of the information required by a prosecutor under the heading "Defendant's Background" may be simply prior criminal record and employment status at the time of arrest. However, under the same heading in a thorough defense attorney's or pretrial services agency's case record one would find a much more detailed account of the defendant's day-to-day activities within his/her neighborhood. In the packet of information he/she receives during the bail hearing, a judge may have little time to do anything other than pick up what is considered to be the most important information to distinguish one case from another. Hence, the judge usually will try to ascertain: (1) the nature and seriousness of the charge filed; (2) the defendant's prior record; and (3) the strength



of the state's case against the defendant. When looking over the documents at his/her disposal, a judge may be expected to turn to those he/she perceives as most useful and reliable given the amount of time available in a given instance. If we assume that the judge relies, in general, most heavily on the information supplied by the prosecutor, then he/she may feel justified in referring only to the "Defendant's Background" found there, assuming that it is the same information that is included elsewhere. This, then, may result in the loss of the other, more detailed information.

2. External constraints. Until now the discussion has taken the information actually collected and has noted several ways it might become lost or distorted within the institutional setting. In this section, we consider the utility of the information apparently available to the pretrial release decision, given the expectations of that decision held by the major actors.

As we have observed elsewhere, empirical studies have shown that judges tend to rely heavily on charge, prior record, and strength of case when making a bail decision (NCSC 1975; Smith 1972). We postulated that one reason for this reliance was a possible judicial belief that those bits of information acted as indicators of the likelihood of a defendant's reappearance at the next scheduled court hearing or of his/her recidivism if released. It was suspected that a reason for the use of this information set was its relative convenience as quick criteria for dealing with a large number of cases. The state of knowledge to this point, however, suggests that as empirical indicators of failure-to-appear rates and of rates of recidivism, they are not very good (NCSC 1975).

Put simply, there is no empirical research available that provides the criminal justice community with reliable predictors of recidivism or failure to appear based on defendant characteristics. Other factors, such as length of time between release and scheduled court date seem to affect the likelihood of failure to appear, but this correlation seems to be more a function of such administrative problems as providing inadequate notice of court dates to defendants than of things within the defendants' control (Wice 1972). As a result, judges lack a reliable way to tell which sorts of defendants will recidivate or fail to appear. This lack of relevant information allows judges to tailor the limits of their discretion by using criteria that may be convenient or politically safe, but which are not necessarily consonant with the constitutional purpose of setting bail described in Stack v. Boyle (to guarantee reappearance).*

The lack of available empirical research is part of a larger problem of the absense of useful feedback in the information flow surrounding the bail decision. With the exception of site-specific bail studies (often undertaken as part of a bail reform feasibility study) attempting to examine aggregate patterns of bail decisions and their ultimate outcomes, the feedback any particular judge will tend to receive on his/her bail setting behavior is sporadic at best. This problem is exacerbated in two-tiered court systems, where preliminary hearings for felony offenses are held by separate judges from those handling the more advanced stages of a prosectution. There, the judge conducting pretrial hearings may never learn what happens to most of the defendants for whom he/she sets bail. In single-tiered systems a judge may happen to recall that

*Stack v. Boyle, 342 U.S. 1 (1951).



he/she set bail for a given defendant reappearing for the next scheduled event, and can thus see what ensued from the bail decision. However, the aggregate beliefs about patterns of defendant behavior that a judge may come to develop with experience may be incomplete and biased. It would be easy to argue, for example, that the reason more defendants jailed before trial plead guilty is because they are in fact guilty and, hence, ought to be restrained before trial, instead of considering the possibility that most jailed defendants could not find a bondsman to sponsor their release. Or, again, it would be simple to infer that a certain class of defendants fails to appear because of a certain characteristic they have uniquely, when a more careful study could show failure to appear rates to be more a function of notice than anything else.

Thus, indequate empirical information about the consequences of pretrial release decisions and inadequate feedback to the participants leads to reliance on rules of thumb and convenient criteria that often are not adequate predictors of defendants' behavior. This reliance is reinforced by heavy caseloads and other constraints on time, in addition to the fact that informal norms of cooperation sometimes override institutional roles that might tend to bring more detailed information to bear on the pretrial release decision.

## D. Conclusion

In this chapter, an application of the concepts and propositions of the organizational context model of courts performance to the pretrial release decision has been presented. Relying on the current state of knowledge about the pretrial release decision process, we have presented material describing:

-- participants' role expectations and expectations about the consequences of their decisions;

-- the institutional, structural, and environmental constraints on information search and its use in the pretrial release decision; and

-- the extent to which informal, non-institutional norms and patterns of interaction shape the pretrial release decision.

This application of the general model to a specific felony process decision stage illustrates the direction a performance measurement system should take. Each of the actors in the pretrial decision engages in selective information search and selective use of information to influence that decision. This behavior is based on causal beliefs, generally implicit rather than explicit, about the consequences of the pretrial decision. These consequences may be in terms of realizing substantive goals such as insuring appearance at later hearings and preventing recidivism or informal, collegial goals such as easing case-load burdens. Performance measures, therefore, should be able to inform the participants about both the substantive and process outcomes of pretrial decisions and should also reflect the causal determinants of these outcomes. In the next chapter, the expectations of a larger set of actors are described in terms of court constituencies.



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# CHAPTER VI. COURT CONSTITUENCIES AND THEIR EXPECTATIONS OF COURT PERFORMANCE

A performance measurement system not only addresses issues of how organizations perform, but also considers how well they perform. Chapter IV addresses the first issue by describing the major characteristics and operations of trial courts that make them comparable as organizations. In considering the issue of how well courts perform, we must answer two additional questions: who evaluates courts, and what criteria are used to assess court performance? Answering the first question entails sorting out the complexity of audiences or constituencies that are attentive to courts, those individuals and groups who "wish to make an assessment of how the focal system, or some part thereof, is performing, generally with a view to taking some action which will impact the system" (Connolly and Deutsch 1979, p. 16). Answering the second question regarding assessment criteria requires that the expectations of court performance held by each group also be identified. These expectations help us define the values or dimensions of performance about which a performance measurement system should provide information. In Chapter V we discussed the expectations of various participants in the pretrial release decision stage. In this chapter we will broaden the concept of court constituency expectations to encompass the overall operation of the court.

It is not our purpose here to determine whether the expectations of court performance held by various groups are appropriate or to prescribe how a court should weigh the variety of sometimes competing expectations in directing its behavior. We will not attempt an explanation of the process whereby expectations held by court constituents are acquired;

the discussion to follow will suggest a vicarious process since relatively few persons have experience with direct involvement in the courts. We simply recognize that although reasonable people may differ about who is qualified to evaluate courts and about the appropriate criteria for that evaluation, the fact is that myriad groups are affected by court operations, as suggested in the preceding chapter on the pretrial release stage, and do form views about whether those operations are satisfactory in light of their preconceptions of what constitutes good court performance. A comprehensive court performance measurement system will provide information to assess courts against the range of expectations of court performance held by these groups.

Our inventory of constituents and their expectations of court performance relies on several sources. We have drawn on the limited literature that applies to perceptions of trial court performance and have catalogued the criticisms of groups that reveal views of how courts should be performing. Our field work in several metropolitan court systems has also provided us with firsthand reports by a variety of court participants concerning perceptions of court performance held by their peers.

A. Constituencies of Trial Courts

Several major sets of constituencies that are relevant to felony trial courts have been identified and will be discussed in this chapter, including: (1) the local community, (2) government organizations with decision-making power over local courts, (3) the "legal elite," and (4) researchers concerned with the criminal justice system. Prosecutors and defense attorneys will not be dealt with here because they have been discussed extensively in Chapter IV.



Clearly, there is overlap among these constituencies. For example, a legislator may also be a lawyer who has argued cases in a local court, and all individuals are members of a local community that is served by a court. This overlap is consistent with the fact that expectations of court performance are rarely unique to a single group but are often shared across various constituencies.

This overlap has a pyramid effect in that expectations of court performance held by the local community tend to be the most broad or general and serve as a base of expectations for other groups. Higher levels of government, as representatives of the public interest, may reflect public sentiments in policy decisions yet add their own set of expectations of what courts should do and how they should perform. The "legal elite," represented by such groups as the American Bar Association (ABA), also reveals its expectations of court performance in such sources as the 1976 Standards Relating to Trial Courts. The research community may address many of the same questions as these other constituencies, yet will often consider questions that cross jurisdictional bounds or are abstracted to a level of broad societal concerns.

Not only are there several groups with expectations of court performance, with the accompanying potential for conflicts or incompatibilities in demands on court systems, there is also room for considerable disagreement within groups as to which dimensions of court performance should be maximized by courts. In Chapter III we discussed the two models of court process that dominate views of court performance (Packer 1968, Chapter 8). The tensions between the crime control and the due process models are apparent in the diversity of expectations of court performance demonstrated by members of each of the court constituencies.

Despite the prevalence of overlap, sharing, and incompatibilities of expectations within and across constituencies, it is possible to identify the prevailing tendencies toward expectations of court performance that are exhibited by each group. These expectations are outlined in the following sections and relationships or inconsistencies between expectations are discussed where evident. The implications of these expectations for the kind of information needed from a performance measurement system are also pointed out.

1. Expectations of court performance held by the local community. For our purposes, the general public and the media are the segments of the local community that are of primary interest. Defendants, witnesses, and jurors are considered members of the general public who bring public expectations to bear on their direct interaction with the court system.

In recent years, it has become increasingly clear that public involvement in and satisfaction with government organizations are important to the effectiveness of those organizations. The criminal justice arena provides a particularly good demonstration of the reliance placed by service organizations on the cooperation of the public. Police depend on citizens' willingness to report suspicious conditions, report crimes, provide information, and take individual crime prevention actions. Courts, too, rely on the cooperation of citizens to present evidence as witnesses and to participate as jurors.

Citizens' willingness to cooperate with and assist criminal justice agencies is in part shaped by their evaluation of the agencies (i.e., "will it make a difference?") and by perceptions of the treatment citizens receive while interacting with them. It is not our intention here to



argue whether, in what way, or to what extent courts should respond to citizen evaluations of their performance. However, it is clear that citizens make such evaluations and that their perceptions and preferences regarding court services are made known through several mechanisms. Although public election of judges is becoming less common, "public opinion inevitably forces its way up to the legislative and executive branches, and the results are new laws about sentencing procedures, budgets and other matters vital to the courts....The judicial process will be measured by public opinion and will be challenged and changed by it..."(National Center for State Courts [NCSC] 1978, p. 70). A performance measurement system can provide the public with information to assess the extent to which their expectations of court performance are met.

A recent national survey by Yankelovich, Skelly and White, Inc. gives us the most systematic assessment of public views about courts available to date (NCSC 1978). Its findings suggest that "attitudes toward courts reflect attitudes toward political and social institutions in general" (NCSC 1978, p. 83) and that these attitudes demonstrate varying levels of discontent. Courts ranked only eleventh when a national sample of citizens was asked to describe their level of confidence in fifteen American institutions (NCSC 1978, pp. 5-69). Only 23 percent of respondents reported feeling "very confident" of state and local courts, 38 percent were "somewhat confident", and 37 percent were either "slightly" or "not at all confident." State and local courts ranked below medical, religious, business, and educational institutions, local police, and all branches of the federal government, including federal courts, in the confidence reportedly held in them by survey respondents.

When asked to evaluate different kinds of courts, overall only 1 or 2 percent of respondents rated the courts as "excellent" and generally less than 15 percent reported them to be "very good." Between 7 percent and 27 percent rated the courts as "poor" depending on the type of court, with among the highest proportion of respondents rating criminal courts as "poor."

This assessment of state and local courts is made despite the fact that a majority of citizens have had no direct experience in courts, particularly criminal courts. It is estimated that only 17 percent of citizens have been defendents, largely in traffic cases, 10 percent have been plaintiffs or victims, 6 percent have been jurors, 6 percent have been observers, and 4 percent have been witnesses. Not only has there been relatively little direct exposure to courts, the American citizenry exhibits a significant lack of familiarity with and understanding of court processes.

> Three out of four (respondents) claim that they know either very little or nothing at all about state and local courts. This self perception of low knowledge is matched by a low level of correct actual knowledge. The public is misinformed about many topics related to court jurisdiction, operation, and procedure (NCSC 1978, p. 6).

The authors of the survey report contend that the public can evaluate state and local courts--despite having little knowledge of what they do or how well they do it--by focusing on the symbolic function of courts.

> The wide discrepancy between the high expectations the public has for courts and insubstantial knowledge it commands about them probably indicates their underlying symbolic significance. For how could people set such high standards -- and offer such strenuous evaluations -- of institutions about which they admit to scanty knowledge unless the sources of those evaluations were essentially non-empirical. That is, people willingly judge courts in the absence of facts about them (NCSC 1978, p. 32).



Evaluations of court performance held by the public are, then, impressionistic in that they are based largely on perceptions of performance rather than empirical evidence. But what are the dimensions of performance against which the public evaluates its courts? What does the public expect of its courts?

The survey reveals three broad sets of expectations of court performance held by the public. They include: protection of society, equality and fairness, and quality performance of court personnel. It is also suggested that these expectations are held simultaneously (NCSC 1978, p. 32), although our understanding of expectations of court performance suggests that the emphasis or intensity of feeling attributed to these three expectations may differ markedly among individuals.

a. Protection of society. Recent victimization surveys from a number of American cities demonstrate a persistent fear among the cities' residents that they will be victimized by crime in their neighborhoods or in their communities at large. In the largest series of such surveys,

> "almost half, 45 percent, (of respondents) said that they felt either somewhat or very unsafe about being out alone in their neighborhoods at night ... More than 3 out of every 5 persons interviewed (63 percent) expressed the belief that their chances of being attacked or robbed had gone up" (Garofalo 1977, pp. 16, 19).

The Yankelovich survey results echo this concern for crime and demonstrate that "while the public by no means expects courts alone to solve the crime problem, it does clearly expect them to play a key role in the reduction of crime. Courts are currently not fulfilling this expectation for a large segment of the American public" (NCSC 1978, p. 32).

When respondents were asked to judge the seriousness of twelve social problems, a concern for street crime was the one most often cited as a "serious" or "very serious" problem. Forty-three percent of respondents cited "courts that do not help decrease the amount of crime" as a "serious problem that occurs often" (NCSC 1978, p. 35). Although there may be little consensus about how courts are effectively to exercise this crime control function (e.g., stiffer sentences vs. emphasis on pretrial diversion to rehabilitation programs), it is evident that the public expects them to do so.

Public concern for crime control will focus attention on such factors as the frequency with which bail and probation are granted, severity of sentences, recidivism rates, and, ultimately, reported crime rates. Interest in such statistics is evident despite a growing awareness of the complexity of criminal activity that takes it at least partially beyond the control of the criminal justice system or any single component of it.

b. Equality and fairness. In addition to a public concern for crime control, there is also a concern that court processes are carried out so that "equality" and "fairness" are assured (NCSC 1978, p. 32). While these concepts are not clearly defined, other authors cast further light on their meaning. Engstrom and Giles (1972) note that fairness is a layman's translation of due process as the "basic official normative principle governing judicial procedures and reflects the belief that the justness of judicial pronouncements is determined by the manner in which they are reached as well as by the specific outcome of the case." Due process constraints are intended to insure that the criminal justice system maximizes the accuracy of its fact finding



processes and the probability that the determination of guilt or innocence is accurate. Adherence to these due process constraints is intended to result in fair treatment of the accused by the criminal justice system.

Casper (1978), in defining "fairness," also notes this due process orientation. His notion of "adequate procedures" incorporates the due process concept but also includes more subjective perceptions regarding whether all parties are permitted to clearly present their sides and whether defendants perceive that courts "took the time and trouble to give them the feeling that they were being judged as people instead of files" (Casper 1975). Hustedler (1977) concurs in his discussion of impartiality and fairness.

> The judge must be willing to listen to the parties and to consider their cases without regard to many of the factors...that influence human beings emotionally. An element of that impartiality is patience--the kind of patience that is a willingness not simply to listen, but to hear and understand what the parties are saying before the judge begins to formulate fairly firm opinions about the result.

A national survey on the legal needs of the public, supported by the American Bar Association (ABA) and the American Bar Foundation (ABF) (Curran 1977) suggests that the belief that people in court are adequately heard is not shared by the majority of citizens. Only 42 percent of the sample agreed that "judges give adequate attention and time to each individual case" (Curran 1977, p. 232).

In discussing sentencing disparities, Neubauer (1979) contends that the emphasis on equality--i.e., persons convicted of the same offense should receive identical sentences--may conflict with the notion of individualization--i.e., not all deviations from strict equality are

unwarranted since "the law also strives for individualized dispositions based on the characteristics of the offender." Thus, while equality might dictate that two people found guilty of the same offense receive the same sentence, the concept of individualization, conversely, might include the defendants' prior record and perceived future potential for criminality in determining that the defendants deserved different sentences.

Although public attitudes may vary as to which of these two views should prevail, survey results reveal a perception that judicial decisions should be made independent of influences not relevant to a particular case.

> People tend to feel that certain factors, which should have no bearing on court processes, do have an influence. The most serious of these are court decisions that are influenced by political considerations, courts that discriminate against the poor (and) courts that discriminate against blacks. On the positive side, relatively few believe that courts disregard defendents' rights (or that) judges are biased and unfair (NCSC 1978, p. 32).

Survey results from the ABA/ABF project provide corroborating evidence in that over one-half (57 percent) of a national sample of citizens agreed that "juries are more apt to decide a case on the basis of their own feelings and prejudices than on the evidence presented to them" (Curran 1977, p. 229).

Attention to these dimensions of equality and fairness will lead to a need for information both on what goes on in a courtroom and on the way the outcomes of court decisions are distributed within the population. Court performance assessments would be based on treatment received by defendants and procedural correctness in following due process



prescriptions. Attention to outcomes such as bail or sentencing decisions would primarily seek to establish the extent to which groups of a particular kind (e.g., the poor, blacks, prior offenders) receive treatment in line with others or in line with what the observer feels is appropriate. "Appropriate" cannot be defined in the abstract, but will be shaped by the values of the evaluator.

c. Quality of performance of court personnel. Another concern of the public revealed in the Yankelovich, Skelly and White survey addresses administrative and personnel matters related to courts (NCSC 1978, p. 32). Part of this concern focuses on private attorneys' abilities and costs and is not directly relevant to our study of public concerns for the court itself. Two points are relevant, however. "Efficiency in the courts" was described as a "very serious" or "serious" problem by 57 percent of respondents and as a "moderate" problem by another 29 percent. Over one-third of the respondents believe the court process takes too long, with those who have actually been in the courts (43 percent) being even more firmly convinced of the seriousness of the problem. The ABA/ABF survey results indicate that lawyers are included in this perception of delay, with 59 percent of respondents agreeing that "lawyers are not prompt about getting things done" (Curran 1977, p. 229).

This concern for delay may be shared most vigorously by those interested in the crime control function of courts. "The crime control model requires that primary attention be paid to the efficiency with which the criminal process operates to screen suspects, determine guilt, and secure appropriate dispositions of persons convicted of crimes" (Packer 1968, p. 158). Those interested in assessing the extent of

delay in courts would be interested in information on the average length of time that elapses between arrest and arraignment or final disposition, or between other key stages in the criminal court process. The amount of time required of non-defendant public participants in the process may also be of interest.

A second issue focuses on judges.

> The principle source of public concern about judges is that there simply are not enough of them. 39% [SIC] see this as a major problem. Of secondary (and much lower) concern is the conduct and demeanor of judges--their diligence, sensitivity to the problems of those whose cases they deliberate, fairness, objectivity, and literal interpretation of law (NCSC 1978, p. 33).

A concern for the number of judges is consistent with the expectation that cases be handled expeditiously. Desiring the proper demeanor of judges may relate to the more general expectation of equality and fairness and to the expectation, discussed below, that victims, jurors, and witnesses be treated well in their interactions with the criminal justice system.

Consideration of these issues would lead one to examine the relative resources available to different courts (e.g., number of judges) and to observe judicial behavior in the conduct of court proceedings to assess the appropriateness of judicial demeanor.

Although these three sets of issues may be those expressed most directly by the public, it should also be recognized that individuals and groups do not always articulate the full range of their own needs or interests. An observer may be able to deduce further concerns or anticipate future concerns of a group that are not expressed by that group. An important work on the subject of public expectations of courts is



that presented at the Williamsburg II conference on "Courts and the Community." In summarizing the findings of the task force on that subject, Earl Johnson identified four key areas in which court performance may be improved (NCSC 1978, pp. 107-137). Two of these points are relevant to our discussion of felony trial courts: courts should enhance the access to courts and court resources of its users, and they should provide better treatment for jurors, victims, and witnesses.

d. Enhance access. This phrase is used to describe "developments which eventually may overcome the several present barriers to use of the judicial system" (NCSC 1978, p. 107). On the face of it, this concept may appear to have more relevance to the civil arena in which litigants choose to have disputes settled in the courts than to criminal courts in which citizens are brought to court by the state, generally against their will. Yet, in the context of the criminal court, access to the court includes access to resources that permit the defendant adequate participation in the judicial process. A court that is relatively more effective in overcoming the barriers to accessibility presented by economic constraints, lack of understanding of court processes, language differences, geographic distance, and forms of psychological stress is considered by Johnson as performing well according to this criterion of accessibility. Evaluation of court performance would then be based on the presence or absence of such elements as programs for language translation, geographically decentralized court facilities, court-sponsored educational programs for citizens, and high quality free public defense.

e. Better treatment of jurors, victims and witnesses. As statistics cited earlier point out, most citizens who have had direct

experience with courts have been jurors, witnesses, or victims, rather than defendants. Participation as a "volunteer" in the criminal court process has a direct affect on the perception of the court held by the participant and can, over time, be an important vehicle for shaping a community's view of its court system. In Dallas County, Texas, for example, the ten district criminal courts call between 600 and 700 persons per day to be available for jury duty. It would not take long before the proportion of the population that carried with it perceptions of that experience would be large enough to affect the community's evaluation of its court. This point becomes more important when we note that experience as a juror, witness, or victim is linked, in survey data, to poorer evaluations of courts than those made by non-participants (NCSC 1978, p. 16; Curran 1977, p. 235). A concern for positively evaluating the effects of this participation to the positive side would lead the evaluator of court performance to assess whether a court has such things as a witness assistance program and to measure the perceptions of victims, witnesses, and jurors regarding their treatment at the hands of judges, attorneys, and other courtroom personnel.

f. Responsiveness. One further expectation that is more general than the substantive issues of court performance described thus far should be mentioned. Citizens expect the courts to be aware of and shaped by the sentiments they express regarding court performance. Carter (1974) calls this ability of courts to absorb changes in information and public preferences "learning" and contends that we expect "those who do justice (to) maintain the capacity to learn new information about the cases they handle, about social preferences concerning crime, and about the consequences of punishment." These preferences are



expressed through the media, through election of judges and legislators, and through other pressures on policymaking bodies. Although there is no agreement regarding the extent to which the courts should reflect public opinion, the public expects courts to be instruments of the communities they serve.

The variation in sentencing patterns and in the diligence with which particular crimes are prosecuted from one jurisdiction to another reflects, in part, differences in community norms. In North Carolina, for example, it is commonly understood that courts in eastern counties tend to be more severe in sentencing than those in other parts of the state. In Dallas County, Texas, court officials readily acknowledge that the people of Dallas demand energetic prosecution and heavy sentencing and get performance from the courts that is in line with those demands. Although many members of courts argue that community norms should have no effect on their behavior and court policies, such as rotation of judges, work to minimize the potential influence of such factors, courts are products of the political and social cultures within which they operate. Regardless of the substance of their expectations regarding crime control, due process, or other values, the public expects its views and changes in them over time to be reflected in the behavior of its courts.

The potential for conflict between this expectation and that of equality and fairness is apparent. Citizens of eastern North Carolina may assess very positively the responsiveness of the courts to their concern for crime control as exhibited in the courts' stiff sentencing behavior. Martin Levin (1977, Chapter 7) in his case study of the Pittsburgh trial court describes that court as one in which leniency and

"giving the defendant the benefit of the doubt" are the norms that guide sentencing decisions there. Citizens in Pittsburgh who have a concern for the plight of blacks in the criminal justice system may view the leniency of the court system in that community as responsive to their concerns. Yet citizens, in comparing the treatment of defendants in the two courts, may see the clear differences as violations of their expectations of equality. Although both courts excel in the views of their communities on the grounds of responsiveness, the differences created by that responsiveness could be seen as "unfair." Such incompatibilities in expectations held by the general public are further complicated when we examine those held by other relevant constituencies.

g. Availability of information. One major vehicle for the expression of public sentiments regarding the performance of public organizations is the news media. In the context of criminal courts, the communications media sometimes serve as go-between vis à vis the courts and the public. The media, particularly newspapers, are responsible for communicating both news about the courts to the public and public sentiments and preferences about court performance and outcomes to the court. In addition to voicing public expectations, the media have their own expectation of courts. The media depend on the court for information to report to the public to fulfill their function. To the extent that the courts are open and accessible to the media and that reliable information is available, a court is performing well according to this criterion. "Many perceptions of the court emerge from what we hear on television or read in the newspapers. It is, therefore, essential that the communications channels from judges to journalists are always open" (NCSC 1978, p. 74). The extent to which these channels are open and serve to inform



accurately depends, of course, on the quality of reporting about courts; that is, the extent to which reporters really understand the operations of courts and are free to print what they know.

Although many journalists recognize their own responsibility in obtaining accurate information about the courts and communicating it clearly to their audiences, they require the cooperation of judges, court administrators, and attorneys in granting access to court information. Criticisms of the inaccessibility of courts point to "judges (who) refuse to grant interviews after a trial, refuse to brief journalists on the roots of law in a complex case, and just don't express themselves clearly" (NCSC 1978, p. 74). Of course, such inaccessibility may be in response to the judge's perceived need to avoid pre-trial publicity that may influence case outcomes.

Accessibility of the courts to the media has also moved into the realm of broadcast journalism, with a growing number of states now permitting the televising of court proceedings. Those interested in measuring the openness and accessibility of information in a court would determine whether such programs as televised trials and court/media liaison personnel are permitted and operate in a given court. In addition, they would assess the perceptions of reporters and other journalists about their experience and satisfaction with obtaining information about local courts and their actions.

2. Expectations of court performance held by government organizations with decision-making authority over local courts. Two sets of government organizations with authority over local courts are of primary interest. Legislative bodies define the law that courts administer. In states with centrally financed court systems, state legislatures may

also control the resources available to state courts. County and municipal legislative bodies hold similar powers in non-unified states. A second relevant constituency is the higher level courts in each state, including appellate and supreme courts and their administrative offices. These courts have the authority to review the legal aspects of trial court decisions and to set broad court policy, with the aid of a judicial council or advisory board in some states.

As elected representatives of the public, legislative bodies may share the expectations of court performance held by some segments of their constituency. As the emphasis placed by the public on one expectation or another varies across jurisdictions, so, too, may we find differences both within and among legislative bodies. The behavior of legislators in defining what constitutes a punishable offense and in setting limits on sentencing may reflect the mood and preferences of their respective political constituencies.*

Their responsibility for financing the courts gives legislative bodies a particular concern, however, for the efficiency of court operations. It has long been a rallying cry of those interested in improving court administration that "justice delayed is justice denied." Despite widespread support for more efficient court operations, the argument that more judges and more courtrooms are the answer to unacceptable case backlogs is falling on deaf ears in the post-Proposition 13 era in which government agencies at all levels are being forced to maintain or increase their services with the same or decreasing funds to support them.

*Similarly, legislators may have to resolve issues of competing demands for scarce resources that relate to court operations; the decision to remodel an antiquated prison, or build a new one, can affect decisions regarding, for example, sentencing policy as witnessed by the reluctance of some judges to sentence first-time offenders to serve time in overcrowded and, often, outworn prisons.



Indeed, recent research questions the assumption that delay is salvable by the infusion of more resources (Church 1978).

Speedy trial legislation and funding of positions for court administrative staff are two indicators that legislators expect the courts to deal expeditiously with their caseloads. Technological developments such as computer-based information systems are being used in many urban courts to facilitate caseflow management and calendaring activities (NCSC 1980). In addition, some states, such as Minnesota, have adopted open plea bargaining and pre-trial conferences in the face of legislators' arguments that these practices are "workable, fair, inexpensive and less delayed" (Leavitt 1977, p. 278).

This interest in efficient case management leads legislative bodies to attempt to identify those courts or judges whose productivity appears to be below the norm. Statistics on the number of cases of different kinds processed, on the number of trials conducted, and on the length of time required to move cases through the many stages of the court process as they vary by court and by judge are of particular interest to legislative bodies. Monitoring the amount of courtroom time spent by judges is also increasing in frequency. Legislative bodies also need indicators of structural and operational differences between courts so that statistics can be interpreted accurately.

Appellate and supreme courts may share a concern for efficient court management, but they have a further responsibility to review the correctness of legal decisions reached in felony trial courts. This review amounts, in large part, to a review of the legal competence of judges, not to an evaluation of the court system as a whole. The frequency with which decisions are reversed by higher courts--a rare event--is an often-mentioned indicator of legal competence. However, many

judges accurately contend that the likelihood of reversal is greatly influenced by the actions of the prosecution and is not an accurate reflection of a judge's ability. Also, this review is only given to judges who have cases appealed to higher courts by dissatisfied litigants. It does not, therefore, provide a comprehensive overview of the legal quality of decisions made in trial courts.

Systematic observation of trial procedures conducted by a broader sample of judges would be required to obtain such comprehensiveness. Often, however, judges eschew the role of evaluator of their peers out of strong support for the independence and autonomy of individual judges. In light of this view, a performance measurement system that would provide information for evaluating courts according to this legal competence criterion would need to offer a method for assessing legal decisions that would make higher courts the users, not the collectors, of this information.

3. Expectations of court performance held by the legal elite. Another constituency that demonstrates considerable interest in the performance of trial courts is composed of the leaders or leading organizations of the legal community, the "legal elite." They assume a leadership role in the legal community and are frequently involved in shaping efforts to reform the courts and improve their operation and performance. The legal elite is perhaps best represented by the major legal organizations or interest groups--the bar associations--as they are organized at the local, state, and national levels.* Although

*We could include organizations such as a County Criminal Trial Lawyers Association, where defense attorneys may examine financial screening procedures, as well as "Bench-Bar" committees that assist judges in formulating important rules of law.



individual members or leaders of particular units may express idiosyncratic expectations of trial court performance, the official national statements of ABA expectations can be found in the products of the ABA Commission on Standards of Judicial Administration, particularly in their Standards Relating to Court Organization and Standards Relating to Trial Courts.

In examining these standards, we find an echo of general expectations held by previously mentioned constituencies. A trial court is expected to be characterized by "fair and efficient administration of the law" (ABA Commission on Standards of Judicial Administration 1976, p. 1) in performing its three functions: "to decide conflicting contentions of law and disputed issues of fact; to formulate sanctions and remedial orders; and in some types of proceedings to supervise the activity of persons subject to the authority of the court" (ABA Commission on Standards of Judicial Administration 1976, pp. 3-4). Although these general expectations are similar to those discussed previously, the Standards contain several structural and procedural specifications for courts which are proposed for increasing the fairness and efficiency of court performance. The extent to which these structural and procedural standards are adopted by a state court system or a particular local trial court within it could be considered by this constituency as an improvement in court performance toward greater fairness and efficiency.

Structurally, the ABA Standards Relating to Court Organization call for a state court system characterized by "uniform jurisdiction," "simple jurisdictional divisions," "uniform standards of justice," and "clearly established administrative authority." Many of these characteristics

come under the rubric of a "unified" court system. The simplified structure is intended to aid in efficient allocation and use of resources, and the centralized policymaking and uniform standards are intended to ensure that like cases are treated in a like manner, thereby improving the equity of judicial decisions.

The ABA Standards Relating to Trial Courts further specify particular procedures, activities, or structures recommended for improving the performance of local trial courts. The following are examples of standards of a trial court exhibiting good performance: specific procedures for granting continuances; lengths of time allowable between stages in the trial process; requirements of plans for dealing with special circumstances such as mass arrests; programs for language interpreters, training and education of judicial and non-judicial personnel, and public information dissemination; and specification of entities such as a standing state-federal council. The performance of the court, from this perspective, can be assessed by the extent to which it incorporates the structure, procedures, and services specified in such standards.

In addition to compliance with the ABA standards, several other expectations might be considered, including: compliance with rules of criminal procedure; non-discriminatory judicial decision making; fewer crimes committed while on bail than previously committed; similar defendants obtaining similar plea and sentence outcomes; defense attorney familiarity with cases; effective use of witnesses; and existence of true evidentiary proceedings, especially in trials involving disputable facts.

Although the police do not meet the exact definition of the legal elite that is offered above, they are members of the larger legal community. Moreover, the actions of the police affect the operations of



the court, a point made in Chapter III, and, in turn, the actions of the court impact upon the operations of the police. Within this context, the police represent an important constituency of the court. Therefore, the expectations of the police regarding the performance of the court should be taken into account in the development of a comprehensive performance measurement system.

4. Expectations of court performance held by the research community. A final constituency that asks questions concerning trial court performance is researchers in the criminal justice field. Researchers can be members of the academic community who independently seek to expand our understanding of trial court operations and performance. They can also be members of institutions that specialize in judicial studies such as the National Center for State Courts and the American Bar Foundation. Researchers can also serve as the analytical arm for such broad policy organizations as the National Institute of Justice in the Department of Justice, or recommending bodies such as the President's Task Force on Crime Control.

In the area of applied research, analysts and researchers can be asked to perform evaluations of the courts that focus on the expectations of any one or a combination of the groups described thus far. The growing body of research on court delay and scheduling practices is an example of researchers' addressing questions generated by other court constituencies (Church 1978). In such a role, the measures of court performance of interest to researchers will be the same as those mentioned previously. There will probably be an emphasis, however, on comparison of courts along any of these performance dimensions across jurisdictions or over time. Preference would be, then, for measures

that could be compared, with assurance that they maintain the same meaning when applied to each court included in the analysis. This definitional and data gathering consistency may permit aggregation of the output or effects of individual courts so that broader questions concerning the social costs and benefits of court operations may also be addressed.

B. Observations on Court Constituencies and Their Expectations of Court Performance

Now that we have inventoried relevant constituencies of the felony trial courts and their expectations regarding court performance, several observations are possible that have implications for developing a court performance measurement system.

The various expectations of court performance fall into two categories. We have perceptions about the proper role and behavior of courts as they act on their environment, and we have expectations about the changes in the environment that should be generated by court actions. Deutsch (1976) makes a similar point in discussing organizational objectives by describing the criminal justice system as a two stage, stimulus/response system.

In the context of courts, we recognize that courts receive a stimulus from their environment (e.g., filing of a case by a prosecutor) to which we expect certain appropriate responses from the court (e.g., speedy processing of the case). This response of the court (efficient disposal of cases) is also expected to generate a response from the social environment within which courts act (e.g., reduction of crime through the prevention and deterrence effects of quick punishment of offenders). It is clear that this second stage of response is under considerably less



direct control of the court and is considerably more subject to influence from other sources than is the direct response of the court to the stimuli it receives. Further research is needed on the effects of controllable court actions and decisions on the characteristics of the court environment, such as the level of crime, before these outcomes can be readily accepted as appropriate measures of court performance.

The previous discussion has revealed several incompatibilities both within and between groups regarding the kind of performance they expect from courts. These incompatibilities mean that expending effort to improve performance along one dimension may work directly against the court's performance on another dimension. In an effort to be responsive to the demands of legislative bodies for efficiency, for example, courts could adjust procedures so that more cases could be disposed of in a given period of time by a given number of judges. At the same time, however, defendants may feel that, in the rush of case processing, their cases were not adequately heard so that decisions seemed unfair. Jurors and witnesses, too, could get short shrift in the more efficient processing and perceive that they were treated poorly. In such a scenario, the evaluation of court performance by the legislature could show a marked improvement while the evaluation by citizen participants in the court process would show a decline in performance when measured against citizen expectations.

The question of how public organizations can or should respond to multiple and sometimes incompatible expectations held by the various members of their constituencies continues to plague philosophers, politicians, and public administrators. The awkwardness of this position for our courts is recognized by members of the court who have described

their jobs to us variously as a "juggling act," a "balancer of the scales of justice," and "a weigher of competing interests." It is not the job of a performance measurement system or the researchers who aid in its development to determine which balance of expectations is appropriate for an individual court or for the courts system as a whole; that is ultimately a political question. In this nation of diversity it is not unreasonable to assume that different answers will emerge as the question is considered. It is the job of a performance measurement system, however, to provide information on a broad range of dimensions of court performance so that all formal or informal assessments of court performance made by the various constituents of the court are grounded in a comprehensive and accurate picture of what courts do and how well they do it.



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# CHAPTER VII. AVAILABILITY OF PERFORMANCE RELATED INFORMATION

## A. Introduction

From a practical standpoint, working definitions of and conceptual frameworks for performance measurement systems become irrelevant if the data necessary to implement the system are lacking. This chapter examines some of the data needs of a comprehensive performance measurement system and determines how well extant data on adult felony trial courts meet those needs. The scope of this chapter prohibits a thorough cataloging of every candidate measure likely to be of use to a performance measurement system. It also prevents a thorough description of the available data for adult felony trial courts in every jurisdiction in the United States. Rather, we look in general terms at the types of data required by measures found in three relatively broad measurement categories and the availability of those data in courts as characterized by two general data collection technologies.

Many of the measures in this chapter will be recognized as concerns of court constituencies discussed in Chapter VI; for example, measures of delay and of equality. For purposes of this discussion, however, we have grouped measures into three categories on the basis of their data requirements. These are: case disposition measures, resource utilization measures, and equity measures. Where possible we have used as examples measures that have been applied in court settings. We do not necessarily advocate the inclusion of any particular measure or measures discussed here; however, we have attempted to bring to the readers' attention situations in which particular measures can be misinterpreted or easily affected by factors external to the measure.

Three methods were used to determine the availability of data in the courts. First, we conducted an extensive search of the literature on performance measurement in the criminal justice system and the courts, court management information systems, and court statistics. We also reviewed a variety of studies dealing with particular aspects of court operations. These sources were especially helpful in providing examples of measures used.

Second, a letter was sent to the state court administrator or the closest equivalent in 45 of the 50 states and in Washington, D.C., requesting a copy of their annual report and any other data they publish concerning court operations in their states. The five states omitted are those in which RTI has conducted or is conducting extensive site work for another project dealing with the courts (Johnson 1981). We received annual reports from 37 states and letters from five others. These reports were helpful in determining the kinds of court data readily available at the state level, and to some extent, at the level of the local jurisdiction.

Third, project staff conducted site visits in a number of courts in several states. Among other things, we examined data collection and utilization practices at the sites (Cook et al. 1979).

It is apparent from review of these sources that two considerations are the major influence on what kind of information is available at the felony trial court level. First, all jurisdictions maintain case records for the purpose of providing a legal log of all court related events. In many of these jurisdictions, the record is still maintained in large, leather-bound ledgers. We label this "traditional recordkeeping," not so much because of the form, but because the information



logged is primarily for the traditional purpose of providing a formal, legal record.

Second, a subset of all jurisdictions, the number of which is unknown, have developed more extensive recordkeeping systems that perform the traditional functions and also make it easier to manage the jurisdiction's caseload. These management oriented information systems often are, but need not be, computer based and are characterized not so much by additional data as by format and access characteristics permitting ready access to caseload management information. Each of these is discussed further in the following sections.

1. Traditional methods of data collection. Data collection methods that fall into this category are probably as numerous as the number of jurisdictions. Typically, data collection in these courts evolved in a manner to fulfill localized information or reporting needs and interests as they arose. It is clear from the annual reports received by RTI that, with the exception of a few common elements, each state has its own philosophy concerning which items of data are important enough to be collected, compiled, and reported.

Data collected as recently as 1975 are reported to have serious problems. It is reasonable to assume that the nature of the problems occurring with court data collected in the traditional manner has remained the same. The National Court Statistics Project staff reported "great disparities in the accuracy" of statistics received from the states. They cite letters received from court administrators who questioned the quality of the data they themselves supplied. Several illuminating examples are provided in that report. Perhaps the most glaring example of inaccuracy is that of a state in which an audit

involving a 10-percent sample of pending cases found twice as many pending cases in the sample as reported for the entire state (National Center for State Courts 1978). Although this level of inaccuracy is probably the exception rather than the rule, there are various reasons to expect some degree of unreliability in court data.

Even if one assumes that personnel involved in collecting data are genuinely trying to do the best job possible in collecting and reporting data, it seems likely that problems will arise due to the nature of the collection process. Court data collection is, necessarily, a decentralized process. In states that have no standardized forms and definitions or trained data collection personnel, a variety of problems can occur. Tabulation instructions may be misinterpreted, as may definitions. Mistakes may be made in addition. Personnel may simply forget to include some data.

Beyond these unintended mistakes, there may be other causes of data unreliability. Eisenstein and Jacob (1974) point out that organizational incentives lead court systems to obscure rather than clarify measures of their productivity; the National Courts Statistics project echoed this same concern (National Center for State Courts 1978). Eisenstein and Jacob (1974) report that court data are scanty in part because of the "reluctance of many court organizations to compile information potentially damaging to the organization and its members." It is impossible to determine precisely the impact of this type of behavior on the quality of court data.

2. Jurisdictions using management information systems. The second set of data collection methods includes systems designed to collect data specifically for one or more branches of the criminal



justice system, primarily for some management purpose. Many of these systems exist in automated form, although such special data collection programs may be implemented manually. Although not all of these systems are formally named "management information systems" (MIS), we will refer to them as such in the following discussion.

It is difficult to know how many courts process data traditionally and how many use MIS. The MIS represent a broad spectrum of differing hardware and software technologies. Several jurisdictions have developed systems tailored to their particular environment. Thus, just as there is no typical court among courts using traditional methods of data collection, there is no typical MIS. We will examine data collected by three specific systems: the Prosecutors Management Information System (PROMIS) and two components of the State Judicial Information System, the Criminal Case History (CCH) module and the Offender Based Transaction Statistics (OBTS) system.

PROMIS was developed by the Institute for Law and Social Research with the aid of LEAA funding for the Superior Court Division of the U.S. District Attorney's office in Washington, D.C. It became operational January 1, 1971 (Institute for Law and Social Research 1977). As of January 1980, PROMIS was operational in 37 sites, was in the transfer process at 71 more, and was in the planning/evaluating stage in another 88 sites (PROMIS Newsletter 1979). Though PROMIS was developed for the prosecutor's office, the data collected are such that the system "could easily support a court's needs as well as a prosecutor's" (Polansky 1978).

The CCH and OBTS programs were both outgrowths of Project SEARCH (System for Electronic Analysis and Retrieval of Criminal Histories), first funded in 1969 by LEAA. The objective of the CCH program was to

"demonstrate the feasibility of a computerized system for the interchange of criminal history information among the states" (National Center for State Courts 1979). OBTS program objectives were to "design and demonstrate a computerized statistics system based on an accounting of individual offenders proceeding through the criminal justice system." OBTS data can also be compiled manually. The most recent survey of the status of CCH and OBTS systems showed that approximately one-half of the states have operational CCH systems and roughly one-fourth have OBTS systems in operation. With regard to future plans, approximately three-quarters of the states plan eventually to have operational CCH systems and about one-half plan eventually to have OBTS systems.

Regardless of the type of recordkeeping system, however, we can characterize the information available in terms of the three categories mentioned previously--case disposition measures, resource utilization measures, and equity measures. In the following sections we will discuss these three categories of measures. For each we will indicate: suggested measures, some of which have been used by others; problems that could arise with the measures; data necessary for the measures; and availability of the data.

B. Case Disposition Measures

In a pragmatic sense the day-to-day work of the courts can be seen as case disposition. Case disposition measures are a principal quantitative measure of what courts do. They can be used to reveal what is being done, who does it, how fast it is happening, where it happens, what factors alter the speed with which it happens, and when it is done.

1. Delay measures. Delay is a matter of concern to the general public and to legislators (see Chapter VI). Citizens who have had



experience in the courts are even more likely than others to think the process takes too long. Legislators express their concern, in part, through speedy trial legislation. These constituencies require information on delay in order to determine whether courts are fulfilling their expectations of appropriate performance. Common uses of measures in this category center on determination of the causes of delay and on the measurement of its length.

Delay measures can be calculated for total disposition time (i.e., time from arrest to final disposition), or they can be calculated to show the time elapsed between stages in the disposition process. Measures of court delay may be calculated in median and average times. Median times are considered more appropriate in some instances because they are not affected by a few cases that have been delayed for unusual lengths of time, as are average times. In some instances, these exceptional cases are considered special problems and, at times, justify the use of average delay as a measure.

Church et al. (1978a) calculated several measures of court delay. One of these was median upper court disposition time ("median days from date of filing of formal charges") to final disposition. Other measures were used in this study to give a sense of the extent of delay in those cases that exceed the median. One of these was a measure of the upper court disposition time of the third quartile case. A calculation of the percentage of cases taking longer than 150 days (180 days for total disposition time) to be disposed of by the upper court was used to determine the portion of cases delayed for periods that "represent an outside figure for the time limits specified in many speedy-trial standards" (Church et al. 1978a).

Nayar and Blevel (1973) depicted the disposition stages as queues. That is, each case was viewed as moving from one stage into a queue for the next stage. This type of measurement can help reveal the relative contributions to delay of the different stages in the disposition process.

A number of other measures relating to delay have been suggested in the literature. Several are mentioned in a publication concerned with delay published by the National Center for State Courts (NCSC) (Church et al. 1978b). One of these is referred to as "statistical delay" and is the "quotient of pending cases divided by average monthly dispositions." This measure is designed to reveal the approximate number of months needed to dispose of the current caseload. However, the authors point out it may be misleading because some cases are deferred to other agencies, and those tried may not be tried in the order filed, the calculation also includes cases that have just entered the system and may not be trial ready (Church et al. 1978b).

2. Descriptive measures. Measures that reflect the method of case disposition fall in this category. Such measures include calculations of the percentage of cases disposed of through pleas, jury trials, bench trials, diversionary programs, and dismissals. Heumann (1975) used such a measure in a study of the effect of the number of cases pending on the rate of cases settled by plea. Brosi (1979) looked at the effect of a career criminal program on the percentage of cases disposed of through various methods.

Measures are calculated to determine how well the court is performing in the effort to dispose of the cases brought before it. Instead of measuring the time taken to dispose of cases these measures reflect the ability of the court to handle its workload. One such measure is a



calculation of the percentage change in the pending caseload for a given period of time. This measure gives an indication of not only whether the court is gaining or losing ground against the caseload but the magnitude of the change. A similar measure is a calculation of the ratio of or a percentage of disposition to filings.

3. Problems of interpretation. Although the case disposition measures discussed above are only a sample, they illustrate the types of measures that fall into such a category and suggest the data needs. Unfortunately, even so common a term as "case" can have several shades of meaning depending on the jurisdiction or the circumstances. There are at least three important elements of a case that can vary and, as a result, confuse what is being counted. Some courts count as a case the trial of a defendant; thus, an incident involving several defendants would give rise to several trials and, hence, several "cases." In another jurisdiction the same situation might only be counted as one case. In still another jurisdiction, each charge brought against a defendant may be counted as a case. In fact, this situation exists (or did as of 1978) in Cook County, Illinois, where in the first district (the city of Chicago) a case refers to all charges and defendants associated with a given incident. In the suburban districts a case is defined as "one charge, one defendant" (Smith and Zuehl 1978).

The term "delay" carries clearly negative connotations, yet it is in some cases used synonymously with elapsed time. For instance, calculations of median elapsed times, such as those mentioned above, may be referred to as calculations of delay. This creates a problem because an individual unfamiliar with courts and the trial process could interpret any figure over zero as an indication of poor court performance. A more

serious problem is that no broad consensus has arisen among those familiar and concerned with the courts as to what constitutes undue delay. Some states have passed speedy trial laws requiring that cases be brought to trial within a given period of time (usually between 60 and 180 days) or be dismissed. There is no problem with the definition of delay in general terms, but, unless and until there is broad agreement as to how long a period from arrest to trial is reasonable and proper, measures of delay and elapsed time should be accompanied by careful explanations of their exact intent and use.

4. Data elements needed for case disposition measures. By looking at the measures mentioned above, we can determine what data are needed for their calculation. The measures cited would need the following data:

-- Elapsed time from arrest to disposition for each case or at least for fairly discrete categories of cases. Elapsed time by type of case would add precision, e.g., cases such as homicide cases, which might routinely require greater disposition time, could be controlled for or reported separately. Also, a distinction should be made between cases involving disputable legal facts versus cases not involving such facts.

-- Elapsed time by processing stage (i.e., preliminary hearing, arraignment, beginning of trial, sentencing, etc.), as noted above would add detail that could help give evaluators a sense of how each stage is operating and which stages are adding disproportionately to case processing time.

-- Data on the number of filings by type of case, compiled at least on an annual (if not quarterly or monthly) basis, would permit evaluators not only to see how the court is doing with its backlog, but also to determine proportionally which types of cases are adding to the backlog.

-- Data describing the method of disposition by type of case would inform evaluators of such details as a disproportionately high rate of dismissals for a particular type of offense or perhaps a type of case that is pled out with greater frequency than is typical.



5. Data availability. As mentioned above, we will look at courts characterized by two types of information-gathering technology. Courts that gather and process data traditionally will be discussed first.

a. Traditional data collection. Most courts collect what might be termed basic caseload data. Typically, these data are compiled annually and published in the state judicial system's annual report. We shall look at each of the suggested data elements in turn to determine if it is to be found in typical court data and at what level of detail.

Data on elapsed time for various stages and for the full disposition process by type of case as well as for criminal cases as a whole were suggested above as useful for a court performance measurement system. To some extent this type of data is compiled at the state level in a number of states, though by no means is this type the most common.

The NCSC publication, State Court Caseload Statistics: The State-of-the-Art, based on 1975 court statistics, listed a total of 24 states, including the District of Columbia, that compiled some type of elapsed time information. Twelve of those states kept data on either age of criminal cases pending or age at the time of disposition. Ten kept elapsed time statistics of some other type (National Center for State Courts 1978). Of the annual reports received by RTI, one indicated that a state was now compiling elapsed time data although it had not been at the time of the NCSC survey (Administrative Office of the Courts 1978). For those states that keep such data, case types are rarely more detailed than felony and misdemeanor. Of those giving elapsed times between processing stages, four reported data on elapsed time between more than two stages (National Center for State Courts 1978, p. 62).

Data on annual filings and dispositions are much more likely to be available than elapsed time data for the typical general jurisdiction criminal court. In 1975, 43 states reported numbers of filings and dispositions. Twenty-four states reported filings and dispositions for felonies as a separate category in 1975 (National Center for State Courts 1978). Few states publish felony filings by charge. Of the 37 states responding to our request for reports, only five (Delaware, Florida, Hawaii, Maine, and Tennessee) gave felony filings by charge or class of charge. Among these states the level of detail varies considerably, from filings by 24 types of charges to four types of charges.

Data on dispositions by type are relatively available, though again, this depends on the level of specificity indicated. The 1975 data showed 32 states using jury trial as a category of disposition for criminal cases. Thirty states used "non-jury," 25 used "plea," 18 used "dismissed," and 9 used nolle prosequi as dispositional categories.

Most jurisdictions seem to have adequate data for calculation of relatively crude case disposition measures (for example, annual dispositions as a percentage of filings for all criminal matters for each jurisdiction). However, more subtle measurement (such as monthly disposition as a percentage of filing by charge or elapsed time between stages by charges) from jurisdictions using traditional methods will have to wait for improved data collection or be accompanied by special data collection efforts.

b. Jurisdictions using MISs. Next, we examine the availability of the necessary data elements in jurisdictions using MISs. The CCH program is not designed to produce data of the type needed for the calculation of case disposition measures. For this reason it requires



no further discussion here. Conversely, the OBTS program is designed to describe in detail the flow of defendants through the criminal justice system, including the courts.

Data for the calculation of elapsed times from stage to stage in the disposition process are collected in considerable detail by the OBTS system. The evaluator with access to OBTS data bases would be able to determine dates for the following events and, thus, could calculate times between each:

- arrest
- initial appearance
- bail decision
- grand jury or prosecutorial information filing
- arraignment
- trial start
- trial finish
- sentencing.

In addition, OBTS data provide information on the most serious charge in each case and the method of final disposition. In general, OBTS data are "complete" in terms of data needed for calculation of case disposition measures. Of course the need for more detailed and sophisticated measures may arise in the future but for now it appears that OBTS data bases either are or are close to being the "state-of-the-art" for this category of measure (National Center for State Courts 1979).

Two caveats must be mentioned here regarding OBTS data. First, as noted above, definitions of case vary considerably and, because the OBTS system is defendant-based, there may be difficulty in using it in conjunction with systems based on criminal incident. Second, although all necessary data may exist in OBTS files, it does not necessarily hold that these data are readily accessible in formats needed to calculate the above measures. Considerable compilation work may be involved, especially in jurisdictions collecting and storing OBTS data manually.

The PROMIS data base is theoretically as complete as the OBTS system's with respect to data needed for case processing measures. As with OBTS, PROMIS collects data on the date of each major event in a case and on the type of charge filed (Cain and Ours 1976). Because PROMIS is designed to meet the needs of the prosecutor's office it is likely that the definition of a case used by a given PROMIS system will be quite similar to that used by the court in the same jurisdiction, yet differences across jurisdictions may occur since not all jurisdictions collect exactly the same data.

It appears that although data for case disposition measures may be scanty and incomplete in a majority of courts at this time, a sizeable and increasing number of courts collect and retain data that closely meet the needs of these types of measures.

C. Resource Utilization Measures

Next, we discuss measures used to describe and evaluate how well the court uses the resources at its disposal to accomplish its work. As we indicated in earlier chapters, legislative bodies, court administrative personnel, and the general public have expressed concern about this issue. There are a variety of resources at the disposal of the courts. We may view these resources as generally consisting of: judicial, clerical, and administrative personnel; physical facilities; office equipment and supplies; jurors; witnesses; and time.

Three terms used in this section require definition. The first of these is "productivity." Productivity may be defined as the "ratio of the services and products produced by an entity divided by the resources used to produce them" (Mason 1978, p. 1). "Cost effective," another term used in this section, "refers to an approach in which one first



establishes a desired effectiveness level, then costs associated with alternative ways of meeting that level." A solution to a problem in the courts that is most "cost effective" is the solution that "meets or exceeds the desired level of effectiveness while costing the least" (Mason 1978, p. 2). The third term is "cost benefit analysis." This refers to a method by which the costs of a process are compared with its benefits by attaching dollar values to both (a sometimes difficult process, especially on the benefit side). Given that several adequate systems or solutions to a problem exist, the one with the smallest cost-benefit ratio (or greatest benefit-cost ratio) would be chosen (Mason 1978).

Because the case disposition process is so complex and varies both in terms of the types of cases brought before the court and their disposition, and because a number of different resources are used, there is an almost limitless number of possible measures of resource utilization.

1. Judicial productivity/utilization. One of the charges occasionally leveled at courts by critics is that courtrooms and judges are "idle" while case backlogs increase daily. One study that looked at these issues in New York measured such items as the amount of time judges were: active on the bench, waiting, not present, recessed, and in chamber. They also calculated frequency with which other parties were late, when judges were waiting and ready to hold court (Coyne et al. 1976). Measures such as these help to determine not only how much time is wasted but also some of the causes for the delays.

Another measure of judicial productivity used is "felony adjudications per criminal court judge" (Church et al., 1978a). A more complex measure attempts to adjust for the variation in length of time needed to

process different types of cases (Gillespie 1977). Caseload weighting is the name usually given to this process in which equivalent "weights," based on the average processing time of a particular type of case, are assigned to all cases of that type. Except for a study of the Federal District courts (Federal Judicial Center 1971), most case weightings have not gone beyond assigning one weight to felonies and another to misdemeanors (California Administrative Office of the Courts 1977). As this method becomes more sophisticated, it may be possible to assign different weights to different felony charges, allowing more precision in such measures.

2. Jury utilization. In the last few years courts have begun paying greater attention to jurors as a valuable and costly resource. A study of court costs in Tennessee found that, during the two years of the study, jury costs accounted for approximately 73 percent of total administrative expenses for the county courts (Resource Planning Corporation 1977). The fact that there are a number of interrelated factors involved in the utilization of jurors has lead to the development of a variety of efficiency measures. One measure used to determine the efficiency with which jurors are used by a court is the Juror Usage Index (JUI). This measure is the quotient of the number of jury days (based on a 12-member jury) divided by the number of trial days. A decrease in this index implies an increase in efficiency (Keility and Caviness 1979). A similar measure is Juror Days Per Trial (JDPT), which has the same interpretation; i.e., as the index decreases, efficiency is assumed to improve (Carlson, Harper, and Whitcomb 1977).

A final set of measures used to determine how efficiently the jury pool members are being utilized was adopted by Wildhorn in a performance



measurement study of two courts. The first is a calculation of the portion of a juror's time that is spent in idleness such as wasting time waiting to be selected for a jury. The others are the percentage of time spent in jury selection and the percentage of time spent in trial (Wildhorn, Lavin, and Pascal 1977).

An aspect of the jury system that lends itself to a rating of effectiveness is the jury selection process. An NCSC study calculated measures that attempt to capture both the qualification and summoning aspects of the jury selection process. Such calculations are known as measures of "yield" (defined as: "a measure of effectiveness...based on the number of prospective jurors who report for jury service in proportion to the number of prospective jurors contacted in the selection process"). One of these is calculated by taking the product of two quotients to determine the "overall yield." The formula used by Keility and Caviness (1979) was:

$$\text{Yield} = \frac{\text{Number of Prospective Jurors Qualified}}{\text{Number of Qualification Questionnaires}} \times \frac{\text{Number of Jurors Serving}}{\text{Number of Summons Sent}}$$

It is clear that there are social and economic costs external to the court incurred by jury service; these costs have been estimated as being at least equal to as much as twice what the courts bear (Carlson, Harper, and Whitcomb 1977). However, we have discovered few systematic attempts to determine these costs. (For one example of such an estimate, see Merrill and Schrage 1969.) No doubt, this results partly from the difficulty of such a process both conceptually and practically and partly from the fact that these costs are not met by the courts. Nevertheless, constituencies of the courts might be concerned about such consequences.

3. Witness utilization. In addition to jurors, courts also use members of the community (including victims) as witnesses in criminal trials. Measuring witness utilization in general requires measures different from those used to measure jury utilization.

Witnesses are not always notified by the court if a case is to be continued and, as a result, at times spend several hours waiting in court to testify in a case that will not be heard that day (Neubauer 1979). Costs, although usually small, are imposed on the courts in terms of witness fees. Furthermore, as memories fade over time, witnesses become less useful. Several measures are used to capture the extent of this problem. One such measure is the number of witness appearances per disposition. This is a reflection of how many continuances were either granted after the parties had arrived in court, or were granted earlier, but witnesses had not been notified. A second measure used is time consumed per appearance. A final measure relating to witness utilization is the number of appearance-hours per disposition or the amount of time spent in court by witnesses divided by the number of dispositions (Wildhorn, Lavin, and Pascal 1977). As in juror measures, witness costs per disposition could be calculated.

As we indicated in Chapter VI, citizens who have participated in the courts are more likely to evaluate courts negatively than those who have not had such experiences. Measures growing out of these concerns are not typical resource utilization measures. A project designed to improve witness cooperation, in an effort to decrease the number of cases dismissed by the prosecutor's office due to uncooperative witnesses, was implemented in Washington, D.C. (Cannavale 1977). Such a study suggests that one should measure the attitudes of witnesses and



jurors serving under different programs as a means of determining the effect of such programs on attitudes. This was done with jurors in a one-day, one-trial study though results were somewhat inconclusive (Carlson, Harper, and Whitcomb 1977). Even if no innovative programs were being tried, witness and juror reactions to different aspects of their service might shed light on how courts could improve conditions for participants.

4. Personnel productivity. An aspect of court performance not directly related to the trial process that nonetheless accounts for a majority of the labor costs of the court is the wide variety of clerical and administrative operations that are a result of the day-to-day work of the courts. (For a detailed discussion of such measurement, see Mason 1978.) The clerical functions and measures that could be applied to them are too varied to be discussed here except in general terms. One might be interested in measures of the efficiency of the clerk's office, for example, costs per case filing. Other measures might include cost benefit analyses of new systems employed by the clerk's office, such as a microfiche filing system or a new typing system (Mason 1978).

5. Data elements. By looking at the measures cited in the preceding section, we can determine that a list of the data elements needed for court/judge utilization and productivity would include:

-- amount of time each day that court is in session;

-- reasons court was not in session (e.g., judge, defense attorney, prosecutor, stenographer, prisoner);

-- out-of-the-courtroom work related to case disposition (e.g., judge, defense attorney, prosecutor, etc.);

-- the number of trials for a given period;

-- case weightings (this implies data on average time per disposition by charge and the relative frequency of each charge);

-- number of judges.

Some data elements needed to calculate juror measures are:

-- the number of jury trials for a given period of time;

-- the number of jurors available during that time;

-- the number of jurors used each day;

-- amount of time spent by each juror in various activities such as trials, selection, and waiting;

-- costs related to jury (fees, expenses, data processing, and summonings, etc.);

-- juror attitudes.

Witness-related measures require the following data:

-- number of continuances for each case;

-- number of witnesses for each case;

-- number of appearances by each witness;

-- fees and expenses paid to each witness;

-- time spent by witnesses in idleness;

-- witness attitudes.

Some data elements for measuring personnel productivity are:

-- line item expenditures;

-- labor costs;

-- time spent on various tasks.

6. Data availability in traditional data collection environment. Clearly, much of the above-mentioned data are not normally collected by the courts. Beginning with courtroom utilization data, none of the annual reports received by RTI show data on the average number of hours per day court was in session. One state did calculate the number of



days of court held for the purpose of comparing this figure with the number of scheduled court days (Administrative Office of the Courts 1978b). Data on the reason court was not held were unavailable. The court utilization study cited earlier collected all its data through random observations in New York courtrooms (Coyne et al. 1976).

Data for the cruder measures of judicial productivity are available because they include only the number of felony dispositions by jurisdiction and the number of judges in that jurisdiction. Actually, though, if a more precise definition of the number of judges per jurisdiction is desired, such as the number of days judges are available divided by scheduled court days, the data are virtually nonexistent in annual court reports.

Weighted cases disposed of per judge are calculated by a few states, although as noted, all felonies receive the same weight in these instances. (See Alaska Court System 1978 Annual Report and Commonwealth of Virginia State of the Judiciary Report.) Data needed to calculate case weights (i.e., average courtroom time spent on each type of case) are unavailable.

Searches for data needed to calculate measures associated with jury utilization will fare little better than those for courtroom utilization measures. Although data are generally available on the number of jury trials held in a year, (32 states in 1975 reported jury trials as a method of disposition) (National Center for State Courts 1978), data on the number of jurors available, time spent in various activities, and number of jurors used on a day-to-day basis are not. In those cases where such measures were used, the data were collected as part of a special study. (See Carlson, Harper, and Whitcomb 1977; Keility and Caviness 1979; Merrill and Schrage 1979; and Wildhorn 1977. For Alaska

reported jury days per trial, see Alaska Court System 1978.) Total costs of juries are collected by a few states, although based on reports received by RTI (the NCSC study did not look at this type of data) the number is quite small. One state had data on several items of jury expenditures, such as meals and lodging expenses, juror fees, and per diem allowances, but this is an exceptional case (Indiana Judicial Report 1978). If courts administer questionnaires to determine juror attitudes, the results are not reported in their annual reports. We have no evidence that such data are collected on a regular basis in any jurisdiction.

Witness-related data are also difficult to find. Data on the number of continuances per case do not appear in information we received nor do data on the number of witnesses per case. Thus, it goes without saying that data on the number of appearances by each witness, time spent by witnesses in idleness, and attitudes of witnesses are all absent from data reported in annual reports. One state did collect data on witness fees (the same state that collected data on jurors fees) (Indiana Judicial Report 1978).

Only one state of those responding to our requests for annual reports reported some of the types of data needed to measure the efficiency of the clerical and administrative functions of the courts. This was the same state that reported the data for juror and witness expenses. This particular state reported court expenditures in over 50 categories; as noted before, this is highly unusual in state court reports (Indiana Judicial Report 1978). No state reported data on time spent in particular activities by personnel.

7. Data collected by MISs. Looking first at data use in measures of judicial productivity and courtroom utilization, one sees clearly



that none of the systems we are examining was intended to compile this type of data, and they do not. One exception is that PROMIS collects data on the number of continuances and the reason for each continuance. As for data needed to calculate measures relating to juror utilization, we find the same lack of data for the same reasons. Because these systems were designed with other purposes in mind, their normal operation does not call for the collection of this type of data. The case for witness utilization data is virtually no better. Although, as noted above, PROMIS collects data on the number of continuances, it does not gather information on the number of appearances by each witness. Data for the calculation of the efficiency of clerical and administrative activities are also absent in these data bases.

Thus, although measures of resource utilization may be considered quite important to a comprehensive performance measurement system, their calculation will call for considerable data collection in any jurisdiction. It is possible that these data could be collected through random sampling techniques as a less costly alternative to having the data collection implemented as an ongoing operation.

D. Equity Measures

Next we discuss measures of equity in the judicial process. Members of both the general public and the legal elite show their concern for equity in the processing of criminal cases through the courts. Whatever opinion is held regarding the role courts should play in the criminal justice system, there seems to be agreement that the actions of the courts should be equitable or evenhanded in nature. These two terms, used here interchangeably, mean the court makes its decisions based only on consideration of "appropriate variables," "legitimate factors" or

"legal attributes" to quote terms used by Belkin et al. (1976), Wildhorn et al. (1977), and Hagan (1974), respectively.

As we indicated in Chapter VI, however, there may be some disagreement over what those appropriate variables are. Depending on whether the evaluator was interested in individualization or in equality of treatment the factors that she/he would consider to be legitimate determinants of sentence, for example, would vary. There are some factors that would generally be considered illegitimate, including: race or ethnicity, pretrial custody status, type of defense counsel, method of conviction (trial or plea), and prison/jail crowding (Wildhorn et al. 1977). Other factors would generally be considered legitimate: the nature of the crime and the number of charges involved and prior criminal record. Still other factors, including behavior in court and perceived future potential for criminality, would be evaluated differently, depending on the viewpoint of the evaluator.

Sentencing has been the subject of a number of equity studies (Belkin et al. 1976), but any decision stage could be the subject of a discussion of equity. Other decisions that are likely candidates for such discussion are pre-trial custody status and conviction.

In some jurisdictions a questionnaire is filled out for each arrestee requesting information that reflects community and family ties and prior record. Each item is scored and the total score is used in part to determine eligibility for pretrial release (Wise 1972). Wildhorn et al. (1977) cite four indices of sentence severity, each reflecting a somewhat different philosophy of the severity of alternative sentencing options.



1. Data elements. Whatever method is chosen to quantify these various factors and whichever statistical technique is employed to measure their effect, the necessary data are the same. The following is a list of some of the data required for such analyses:

- -- detailed data on the defendant, such as age, sex, racial/ethnic background, prior criminal record, community and family ties, education level;
- -- data on the crime itself, such as the charge, any weapons used, severity (e.g., amount stolen or amount of injury) of the most serious charge, number of defendants;
- -- pretrial release status, such as bail, release on own recognizance (ROR), jail custody;
- -- type of attorney: public defender, privately retained, own defense, privately appointed;
- -- method of disposition: plea, nolle, jury trial, bench trial;
- -- verdict;
- -- sentence imposed: length of jail or prison sentence, fine, probation length; and
- -- jail/prison crowding.

Wildhorn et al. (1977) demonstrate the usefulness of case auditing methods to extract this type of information. These methods enable one to study cases in depth and to see some of the reasons events turned out as they did.

2. Traditional data collection. The data elements listed are generally found in the individual court case files. This may not be a serious drawback, however, because measurement of factors such as these might be accomplished through random sampling from case files. Regardless of the method of data collection, measures such as these use such a large amount of data per case that their calculation will probably never be easy or inexpensive. Still, such calculations are simplified if the data are compiled in a manner that enhances retrieval and compilation.

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3. MIS data collection. As noted above, the CCH program has as its purpose the collection and dissemination of criminal case histories; thus the data it collects would be of some use for measures of equity. With regard to defendant characteristics, the elements it records that are of interest here are age, sex, race, and date of birth. Some data on the type of offense are also compiled by the CCH program, as are data on the sentence imposed. It is unclear, based on our sources, whether CCH collects data on the method of disposition or pretrial release status. It does seem likely that some information on these elements is available because one of the referenced data elements is "court disposition data" and another is "bail pending results of appeal." Although CCH does not provide all of the necessary data on the defendant and the crime, it collects some of the data in virtually all of the categories mentioned above, except type of counsel and jail/prison crowding (National Center for State Courts 1979).

The OBTS program collects all the data that are contained in CCH files, including the method of disposition and pretrial release status. One additional element of data compiled in the operation of the OBTS program that is missing from the CCH data base is the type of counsel representing the defendant. No more data on the defendant or on the crime are available than with the CCH program (National Center for State Courts 1979).

The PROMIS data base is, of these three, the most informative because it not only contains all the information collected by OBTS but also includes more detailed data on the defendant, including marital status, place and length of residence, employment status, criminal record, and a PROMIS criminal score. The data base also includes more



information about the crime itself, such as: the relationship of the defendant to the victim, possession and use of weapon or physical force, property stolen and a crime severity index based on a scale developed by Wolfgang and Sellin (Brounstein and Hamilton 1977).

With the exception of prison/jail crowding conditions, many of the data elements that might be used in measurement of equity in criminal proceedings are potentially present in the PROMIS data base. The ease or difficulty that will be experienced in their retrieval and compilation cannot be determined here but will likely depend on the level of automation of the PROMIS system and the abilities of local data processing personnel.

A strong word of caution: MISs only provide a format for data collection, reporting, and analysis. The data must be compiled by local court staff. There is no guarantee that staff members will be any more conscientious, accurate, or complete in data collection for an MIS that they have been in traditional data collection situations. The quality of the data generated locally by an MIS system should not be assumed; data quality must be assayed through direct inspection of the process whereby the data are collected and recorded. These processes can vary, both in technical quality and completeness, across jurisdictions, making within- and between-jurisdiction analyses hazardous. Thus, the use of data generated by any MIS system, such as PROMIS, should be based on a verification that the data meet sufficient quality standards.

## E. Conclusion

Our purpose in this chapter was to examine the usefulness of extant court data for the calculation of performance measures. We presented

three categories of measures to illustrate the types of data that are available and the limitations of those data. The measures discussed in this chapter have taxed the available court data sufficiently to point out their major strengths and weaknesses, the purpose they were meant to serve. As a result, some general conclusions can be drawn regarding available court data.

In the court characterized by traditional data collection, some data will be available for the calculation of relatively crude case disposition measures. The detail and accuracy of the data will vary from jurisdiction to jurisdiction, but, in general, the available data will be classified into fairly broad categories and will be in the form of annual summaries.

For jurisdictions using either OBTS or PROMIS systems, case disposition data theoretically should be relatively complete, though as noted above, data collection for MIS input is often no better than that for traditional use. The PROMIS system generates a number of summary reports that should simplify the compilation of these data in PROMIS-equipped jurisdictions (Institute for Law Enforcement and Criminal Justice 1976).

With regard to resource utilization measures, we found that little is available anywhere that informs the calculation of these measures. Even in jurisdictions using one of the three MISs discussed here, the data are largely unavailable. Thus, it appears that measures such as these will require extensive data collection efforts or will have to wait until the courts begin to compile this information.

Finally, in the category of equity measures, we found that courts without special data collection programs are almost entirely lacking the data necessary for the calculation of these measures. Conversely, we



found that, although CCH data bases contained some of the necessary data and OBTS contained slightly more, the PROMIS data base was more complete in this regard, containing most of the data necessary for the calculation of these measures.

The reader may have noticed that issues of comparability were not raised in this discussion. Evaluators may wish to compare performance measures for two jurisdictions or they may wish to study a particular jurisdiction over time. The feasibility of these comparisons depends to a large extent on the data definitions and level of detail; and on the possession of the requisite skills to utilize the data within an explicit comparative framework. If there is variation between jurisdictions in the definition of case, a problem noted earlier, steps will need to be taken to make the data more comparable. The same holds true for definitions of felonies as a category and definitions of crimes within the various felony categories. With regard to measures of productivity, care must be taken to account for economies of scale. For example, every jurisdiction must hold court periodically, though smaller jurisdictions may show poor felony-per-judge disposition figures due primarily to the small number of felonies filed. Thus, those using measures for interjurisdictional or intertemporal comparison must pay careful attention to varying definitions, categorizations, and conditions, as well as variations in the technical competence of court personnel collecting and recording data, if their use is to be valid.

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CHAPTER VII


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# CHAPTER VIII. SUMMARY OF LESSONS LEARNED AND FUTURE RESEARCH NEEDS

> The feeling that a judge is an all-powerful figure can only be held by someone whose [sic] never been in the court system. A good part of a judge's function is that of a traffic manager, a manager who tries to see that a great number of things come together at the same time so that something can happen with the case. But even the best judge is constantly frustrated by his inability to make these things happen. Extraordinary cooperation between all sorts of people and agencies is required before anything can take place (Judge Harold Rothwax, New York City Criminal Court, Wainright, 1978).

## A. Introduction

As Judge Rothwax's comment suggests, the popular image of the courts, and particularly of the role of the judge, does not square with reality. This key lesson learned from the analyses of courts in Phase I bears directly on the development of a performance measurement system. In this chapter we will highlight this and other lessons relevant to designing a performance measurement system for the courts. In concluding the chapter, we will identify some research issues that warrant further attention to gain a fuller understanding of court performance and how best to measure it.

## B. Lessons Learned Relevant to Court Performance Measurement

1. What is performance? Although there is general consensus that the performance of public agencies can and should be measured, there is little agreement on exactly what is meant by the term, performance. As with the term, justice, everyone seems to have a general notion of what "performance" means, yet the discussions are vague on the specifics of how one should measure performance (e.g., the specific types of empirical data that would be collected to measure performance). As Connolly and

Deutsch point out, "there appears to be no satisfactory general definition for the term 'performance measure' as applied to a complex system such as an educational system, an economic system, or a criminal justice system," (Connolly and Deutsch, 1980). We would extend their observation to criminal trial courts. Although, as we will point out later, there is a general feeling that the performance of courts should be measured, as with other public agencies, there is little in the way of explicit guidance in the courts literature on how one could, or should, measure the performance of courts. This point was elaborated in Chapter II.

2. Support for performance measurement in courts. One of the most encouraging findings of Phase I was a general expression of support for the concept of performance measurement in courts by various participants in the court system. In numerous conversations, judges, prosecutors, defense attorneys, and magistrates, in general indicated a positive attitude toward the idea of measuring the performance of courts. We were encouraged, as well as surprised, by the positive attitude toward performance measurement; at the outset of the project we anticipated substantial resistance to the idea of measuring court performance on the part of court participants. At the same time, however, systematic performance measurement in court jurisdictions is virtually nonexistent. Hence, while there was encouragement for developing a performance measurement approach for the courts, there was little in the way of current practice upon which we could build our effort (Wildhorn, 1977).

3. What should courts be doing? One looks in vain for a well-articulated formal hierarchy of goals for criminal justice agencies against which the performance of these agencies could be measured. In Chapter II we pointed out that prior attempts to identify an agreed upon



set of goals for the court system were unsuccessful; apparent consensus broke down on the particulars of what courts ought to be doing. This is not to deny the possibility that in a given court system one will find agreement among the participants in that system about what the court ought to be doing, or what they as individuals in that system ought to be doing. Rather, the point is that there is little agreement on a generic set of goals for the court system.

An individual's evaluation of court performance, or his or her views about the goals or objectives that courts ought to be pursuing, tend to be contingent upon the position or role of the individual in the court system--people view the court from different vantage points. The defense attorney, for example, may view the disposition of a case from a "due process" perspective: how well does the operation of the court serve to insure that his or her clients' legal rights are protected during the course of a proceeding? The prosecuting attorney, on the other hand, may view the same case from a crime deterrence perspective: will a swift and "tough" disposition of the case serve as a warning to others not to commit similar crimes in that jurisdiction? The judge involved may evaluate the proceedings from still a third perspective: how can I avoid undue delay in the disposition of this case? Beyond these direct participants, others in the community, such as citizens groups or local interest groups, may raise additional questions about the disposition of a case. For example, a local civil rights group may evaluate the disposition of the case in terms of the disposition outcome: was there any discrimination on the basis of race in the disposition of the case?

The point on the absence of a common set of goals for the courts reflects the fact that courts do not serve a single, homogeneous constituency. Individuals and groups, often with conflicting views about what courts ought to be doing and how they should do it, make up the overall constituency of the court. We introduced the term "court constituencies" in Chapter III when talking about the various individuals and groups interested in and/or affected by the performance of the court. These constituencies often represent diverse preferences as to what should be the proper "goals" for the courts. In turn, evaluations of the performance of the courts are contingent upon these preferred goals. In the absence of a unified, dominant coalition of interests in a community, therefore, it is not surprising that one does not find a single set of agreed upon goals for the courts.

We contend that although one should not ignore a priori the possibility of finding a single set of goals for a court within a particular community, one is better advised to be open to the possibility of multiple constituencies within the environment of the court and, consequently, multiple and diverse expressions of the proper goals of courts (Connolly, Conlon, and Deutsch, 1980).

4. Courts as organizations. In the preceeding chapters, we have made the point that courts are complex organizations that do not neatly fit the model of hierarchical organizations in terms of well-marked lines of authority. We noted that it is often difficult to identify "who is in charge" as a case moves through the judicial system since both formal and informal processes are at work in the day-to-day operations of a court. The bail decision provides an example of this point. While the bail decision is the legal responsibility of the



judge, others, including the police, the prosecutor, and even the defense attorney (depending upon the operating "norms" of the jurisdiction) may be directly involved in the decision. Even the condition of the local jail (e.g., overcrowded) can affect the bail decision in a particular case.

The mixture of formal and informal processes in the disposition of court cases, coupled with the influence of the local socio-political environment upon the operation of courts, results in a good deal of diversity in the operating characteristics of courts across jurisdictions. On the surface it may appear that differences among courts outweigh similarities to the point of precluding intercourt comparisons. To a certain extent, this is true. For example, a court system where the police and prosecutor's office work closely to screen cases prior to the charging decision may have to process a very different type caseload from a system where the police, in fact, determine the charges to be filed. However, one can examine courts in terms of the common tasks that have to be performed for all cases regardless of their disposition.

In Chapter IV we introduced the concept of the "task environment" of the court. The task environment involves those constitutionally mandated tasks, common to all criminal trial courts, that have to be performed during the disposition of a case (e.g., arraignment, determination of eligibility for pre-trial release, determination of probable cause). All courts share a common task environment; the diversity among court systems reflects differences in how courts are structured and how they operate to manage their task environment. The differences may reflect a variety of factors, ranging from the stature and experience of the presiding judge to the procedures for assigning counsel to indigents.

While the diversity among jurisdictions cautions against naive inter-jurisdictional comparisons, the concept of the task environment offers a fruitful beginning point to approach the issue of performance measurement both from an intracourt as well as an intercourt perspective.

The point on comparative analysis was raised in Chapter II. There we discussed the fact that prior studies of performance measurement in relation to courts failed to examine performance within an explicit comparative framework. Our contention there was that performance measurement is, by definition, comparative since one is attempting to gauge the performance of a given unit against some type of standard. Regardless of the standard, and it may refer to performance in prior years or the performance of a similar court or agency, the attempt is to contrast the performance of the unit in question with an objective standard. In this book we have attempted to develop a conceptual framework with an explicit rationale for comparing courts relative to their performance.

5. Courts as part of the socio-political system. As one observer of the court system has put it, "state trial courts occupy an uneasy position between the rhetoric of judicial independence and the reality of political and administrative vulnerability." (Church 1980). While the mythology of the independent judiciary, impartially settling disputes, still prevails to some extent, the fact is that courts are, by the nature of their organization and operation, an integral part of the socio-political system. The organization of the state court system, as well as the jurisdiction of various courts--both legal and geographic--is determined either by legislatures or constitutions, or both. Legislatures define the salaries for judges in state courts. Legislatures



establish substantive penal law as well as the codes of criminal procedure. The state supreme court exercises appellate jurisdiction over trial court decisions. In addition, the state supreme court in many states, through the office of state court administrator, exercises additional authority over trial courts. At the local level, trial courts may be dependent upon local government for much of their financial support. Finally, most trial court judges gain office through some form of election; hence, they owe their jobs to the local electorate. Even in the case of appointed judges, local political leaders are often involved directly in the decision (Palmer, 1977).

In Chapter III we also pointed out that the decisions reached by courts are not neutral: some people in the community benefit while others are penalized. Through his or her sentencing practices, a judge can go a long way towards defining proper and improper behavior within a community or, at a minimum, indicate which norms will be strongly upheld and which will be less strictly enforced. The variation in sentencing practices across different communities suggests the responsiveness of judges to differing community norms. If we define politics at least partially in terms of norm enforcement, courts are clearly part of the political process.

6. Courts as part of the criminal justice system. In addition to the fact that courts are part of the socio-political system and constrained by forces within that larger system, they are also part of what has been loosely called the "criminal justice system." The other components of the system--police, prosecution and defense, corrections--affect and are affected by the actions of the court.

The caseload of a court is to a large extent determined by the actions of the police. The decision by the police, for example, to crack down on a certain type of offender (e.g., drug peddlers) ultimately may result in an increase in arrests and charges filed in the court. The decision of the district attorney and defense counsel to work out a plea bargain in a case rather than go to trial, assuming the defendant and judge go along with the agreement, avoids the cost of a trial, and may increase the overall disposition rate of a court. Similarly, the sentencing decision of the judge to grant probation rather than a prison term affects the operation of correctional agencies; the problem of overcrowded prisons is well known. In short, courts affect and are affected by the actions of other agencies within the criminal justice system and this interdependency must be recognized in assessing court performance.

7. The quality of court data. One of the key lessons learned about courts is that the data collected routinely by courts are generally inadequate for any systematic assessment of performance. There is no national requirement for state trial courts to collect uniform data on the disposition of cases. This makes comparisons between states particularly hazardous. Apart from the nonuniformity of the data collected routinely by courts, it is generally recognized that these data are of varying completeness and quality. This issue was discussed in Chapter VII.

The situation is not much better in the case of intrastate comparisons. Even in states operating with a unified court system (e.g., North Carolina), one will find variations in the quality of the data across the jurisdictions within the state. Moreover, the data collected



routinely in most states are only partially useful for purposes of measuring the court performance. For example, it is often very difficult to obtain reliable data on the operating costs of a court as a basis for assessing the relative cost-efficiency of different court systems. Similarly, cases of a comparable nature (e.g., homocide, armed robbery, assault) tend to be reported in the aggregate, making it very difficult to discriminate among cases in terms of the seriousness or complexity of the case, and the resultant drain of the case on court resources. (The exception is where jurisdictions have attempted to use a "weighted caseload" approach.)

C. Conclusion

In the above discussion we have outlined some of the key lessons learned during the initial phase of the study. In the concluding comments we will outline several issues that have not been addressed adequately to date. They serve as a research agenda for future research on court performance measurement.

1. <u>What factors affect performance?</u> Much of the discussion to date on the topic of performance measurement in courts has focused on the indicators of performance; what we would call the <u>outcome</u> side of the performance issue. Little attention has been paid to gaining an understanding of the factors that affect the performance of a court, and attempting to establish causal linkages between these factors and the performance outcomes for a court. For example, does the method of assigning counsel to indigent defendants affect the performance of a court? What aspects of the overall performance of the court are affected by the counsel assignment process? Does the type of counsel

assigned influence the final case disposition? Similar questions could be raised about the arraignment process and the setting of bail. Research on the ways in which courts are organized and actually function to process cases within their common task environments may provide an understanding of the linkages between the court processes and court outcomes. It will help identify which factors most affect court performance, and the nature of the linkages between court processes and court performance. We offered a starting point for this type of analysis in Chapters IV and V.

2. Intercourt comparative performance measurement. A clear research need is the development of a methodology which permits performance comparisons between court jurisdictions. The fact that courts are somewhat unique in terms of their individual operating characteristics, and may routinely collect data on case dispositions that are not comparable across jurisdictions, a point made in Chapter VII, does not gainsay the need for performance assessments across jurisdictions. One of the major court constituencies is state court administrators, who are responsible for the total state court system; fulfilling that responsibility requires performance data on the relative performance of local court systems. This is particularly the case where decisions must be made about the allocation of resources to local courts. Data on the relative performance of similar local systems, similar in the sense of comparable caseload characteristics and the amount of resources expended to handle their caseloads, would help, for example, to identify inefficiencies within the overall state system. An inefficient local court system, for example, would be one that produces fewer outputs (e.g., total case dispositions) per unit of input (e.g., number of court



days), in relation to similar court systems. Identification of relative inefficiencies could serve to pinpoint problem areas in the system in need of ameliorative action (Cook, Lewin, Morey 1981). In a period of declining resources and an increasing emphasis on "cutback management," this type of information could be very useful.

3. Performance for whom? Up to now, research on the performance of courts has emphasized single indicators of performance. Speed of case disposition, court delay, sentencing disparities, costs per case disposed, etc.--these types of indicators are generally examined individually without an attempt to gauge the performance of a court in a simultaneous fashion, measuring court performance across a number of different indicators at the same time.

In addition, there has been little attempt to examine the relative performance of courts in the sense of performance on different types of indicators. This point raises again the issue of multiple constituencies for courts and the need for a comprehensive performance measurement system to provide information on the performance of courts to multiple constituencies. Since not all constituencies may have the same information needs (or expectations) about court performance, a comprehensive performance measurement system should be capable of providing information specific to the information needs of different constituency groups. In Chapter III we suggested the development of a performance domain for a court system which permits the identification of information needs by constituency group, across a set of performance dimensions (e.g., efficiency, equity). Further work is needed to fill in the cells of the matrix. This, in turn, would provide a useful tool for routinely assessing court performance relative to constituency expectations, and

the matrix could be updated as new expectations emerge. In this way the performance measurement system will enable the assessment of current performance and provide a basis for future performance improvement.

As a final point, it may appear to some readers that we are pessimistic about the prospects for the development of a performance measurement system applicable to the courts area. The limitations of extant court data, for example, may be seen as an insurmountable obstacle. We view the situation differently. The limitations of current data reflect the absence of a conceptual framework within which performance measurement, in general, and courts performance, in particular, could be undertaken. We have attempted to provide the needed framework for such an effort. In the process we have raised numerous issues, some of which we have resolved, others await further research.



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CHAPTER VIII

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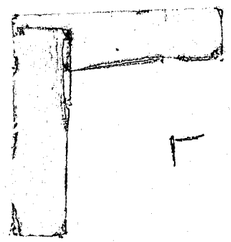

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