RULING OUT DELAY:

The Impact of Ohio's Rules of Superintendence on the Administration of Justice

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This study was funded by the National Institute of Criminal Justice, Law Enforcement Assistance Administration (Grant #79-NI-AX-0064), and by the American Judicature Society. The views expressed are solely those of the authors, and not necessarily those of the American Judicature Society or the United States Department of Justice.

ACKNOWLEDGEMENTS

This report embodies the work of many people. In addition to the project staff, to whom we owe our deepest gratitude, we would like to thank the project's Advisory Committee, our colleagues at AJS, both past and present, and our Project Monitor, Jack Katz. Special thanks are owed to Ohio's Administrative Director of State Courts, Coit Gilbert, his Assistant Director, Doug Somerlot, and the judges, attorneys and court personnel of Cincinnati, Columbus, and Youngstown, Ohio.

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CHAPTER ONE

INTRODUCTION

After a decade of court reform efforts, the Ohio Supreme Court adopted Rules of Superintendence to govern its general jurisdiction courts, the courts of common pleas. These rules, for the first time, asserted the Ohio Supreme Court's authority to monitor judicial performance and hold judges responsible for the state of their criminal and civil dockets. By specifying particular times in which cases were to be disposed, requiring individual calendars, and mandating monthly docket reports from judges, the rules shifted the burden of moving cases from attorneys to judges, who were now held responsible for delay, the perennial bane of the justice system. In these ways, the Rules of Superintendence challenged the ability of judges to determine the manner and pace of their work, both of which were subordinated to the supervision of the state supreme court and the gods of efficiency and speed.

This study examines the impact of these rules upon the administration of justice and the status of judges. Through a combination of qualitative and quantitative data, we examine the history of the rules, their implementation, the reasons for resistance and acceptance among judges, and their effects upon case processing time and the quality of justice. The rules' impact upon relationships among legal actors — what has come to be termed local legal culture — also is explored.

Court Structures

The Ohio court system's current unified structure was established in 1968 with the passage of the Modern Courts Amendment. That amendment vested

judicial power in the supreme court, granting it general superintending authority over all state courts. These courts include intermediate appellate courts, common pleas courts of general jurisdiction, and municipal courts of limited jurisdiction. The 1968 amendment also granted the supreme court extensive procedural rule-making authority subject to legislative disapproval. The constitution raised the position of state court administrator to constitutional status: the chief justice was appointed the administrative head of the court system, and authorized to transfer judges between districts. Despite repeated efforts by segments of the bar to replace the electoral system with merit selection, judges at all levels are elected in partisan primaries and non-partisan general elections.

Scope

Although the Rules of Superintendence addressed both civil and criminal delay, this study is predominantly concerned with their effects upon criminal cases. Given the difficulties associated with defining what constitutes a civil case, it was not within the purview of this study to explore the impact of the rules upon civil dispositions. But while such distinctions are easily made prior to research, they are not easily sustained in the real world of courts. When questioned about the rules, judges and attorneys responded with both civil and criminal examples. In particular, they reported that the emphasis on criminal case processing induced by the rules and subsequent Speedy Trial Statute resulted in neglect of the civil docket. The need to assess reform in terms of an interdependent system where changes in one sphere reverberate in the others is a recurring theme of this report.

Although our interest is in the Rules of Superintendence, they cannot be understood apart from another innovation which soon followed them — a speedy trial statute enacted by the legislature in 1973. Unlike the rules, which merely directed that criminal cases be disposed within 180 days from arraignment, the

statute required that jailed defendants be tried within 90 days and non-jailed defendants within 270 days. Failure to meet the statutory standards would result in dismissal with prejudice, an event which prosecutors and judges had particular reason to avoid for it would appear they were freeing criminals and leave them open to public criticism. Coming at the heels of the rules, the Speedy Trial Statute intensified concern for expeditious justice among judges, prosecutors, and attorneys. Consequently, it was necessary to examine the relationship between the rules and the statute and to assess their interaction.

Technocratic Solutions

"Fiscal crisis" has been defined as a growing structural gap between expenditures and tax revenues at all levels of American government (O'Connor 1973:9). To ameliorate this crisis, the state has developed new strategies to provide necessary services more economically and efficiently than before. Increasing demand for court services, and dwindling public revenues pose a specific fiscal crisis for the courts. When courts are afflicted by fiscal crisis, growing demand must be remedied without recourse to additional fiscal resources. Courts have responded to these growing demands and declining resources by "rationalizing" procedures and adopting new cost-saving technologies (Heydebrand, 1979).

Ohio was an early victim of the fiscal crisis of the state, her beleaguered taxpayers rejecting school bond referenda throughout the mid-sixties. As the Ohio Judicial Conference (1980) reported:

> Ohio judges are overworked with burgeoning dockets and filings mounting faster than they are being handled. At the same time, their struggle to increase salaries is made more difficult by declining state revenues and budget cuts.

As early as 1960, expanding caseloads and delayed dockets were perceived to be problems. Part of a broader movement to modernize Ohio's courts and reduce court delay, the Rules of Superintendence were proposed to ameliorate backlog and delay without additional expenditures, thereby embodying significant aspects of a "technocratic" strategy -- one which combines new management strategies with labor saving devices.

That the rules suggested a new approach is best understood when compared with two other strategies which previously have been utilized to deal with problems. A "professional strategy," in which the dictates of judges prevailed, was based on the assumption that an adequate flow of fiscal resources would allow the system to operate without structural modification (Heydebrand, 1979). Its answer to the problems of caseload, backlog, and delay was more judges, more support staff, and more facilities. A second approach, the "bureaucratic strategy", aimed to make better use of existing resources -- to be more "efficient" -- by extending the division of labor, subordinating routine work functions to centralized administrative control, and delegating work functions to non-judicial personnel.

Technocratic administration -- typified by Rules of Superintendence -- synthesizes, yet transcends these two strategies. It seeks to expand the type of resources available to courts and to make more efficient use of all resources. Unlike the professional strategy, which seeks to quantitatively expand judicial resources by increasing expenditures, the technocratic strategy seeks to qualitatively expand the resources utilized by the courts through the adoption of new technologies and management strategies. Unlike the bureaucratic strategy, which fashions purely hierarchical administrative structures, the technocratic strategy decentralizes the act of administration while centralizing accountability for it. Technical and managerial innovations characterize this approach, including data processing, audio-video technologies, forecasting models, professional court administrators, managerial use of social science research, and the redefinition and expansion of judicial boundaries (Heydebrand, 1979).

Methods

Several methodologies were used to accomplish this study: interviews, observations and statistical analysis of case file data. We intensively interviewed judges, attorneys, and court personnel in three common pleas courts to tap the ways in which Rules of Superintendence affected their everyday practices. Interviews were also conducted with state officials, during which time we ascertained information regarding the history of the rules and their current import to those charged with their enforcement. In addition to these interviews, which were tape recorded, we also engaged in courtroom observations to establish differences within and between sites and to assess the extent to which the rules affected courtroom activity. These observations also contributed to the generation of theory, enabling us to form hypotheses about the various sites.

Settings. To explore the impact of the Rules of Superintendence and their significance as a new administrative strategy, we studied three courts of common pleas -- Columbus, Cincinnati, and Youngstown. Columbus and Cincinnati differed in terms of their acceptance of the rules and the organization of their courts, despite their comparable size; both benches were also composed of twelve judges. As the state capital, it was important to study Columbus because its proximity to the Ohio Supreme Court could have affected court operations. Since the rules were designed to attack the problems of large courts, it was important to compare two larger courts, such as Cincinnati and Columbus. Youngstown provided a contrast to these sites because of the size of its court (four judges) and its depressed economy. The extent of its fiscal crisis afforded the opportunity to

explore the links between a county's economy and the operation of its courts. Its Democratic composition also distinguished it from the other two Republican sites, providing an additional basis for comparison. Because Ohio has an abundance of small jurisdictions —as do other states — it was important to assess the consequences of the rules in such a setting.

Qualitative Analysis. Most qualitative studies depend solely upon actors' renditions of reality to assess the impact of change in their lives. While these accounts reflect the ways in which they experience the world, they sometimes differ from the official indicators which chronicle change. Although the shortcomings of official agency statistics are well known (see Cicourel & Kitsuse, 1963), they can be used in conjunction with qualitative methods to further penetrate the reality of respondents. When quantitative data diverged from respondents' qualitative accounts, we recontacted significant actors to elaborate upon and explain these differences. Where differences remained, they allowed theorizing about the disjuncture between the actual and perceived impact of the rules.

Since the rules significantly affected judicial behavior, we interviewed thirty-four judges, five of whom no longer sat on the common pleas court. Because these individuals had served prior to the advent of the rules, they were interviewed to provide a comparative view of the changes which had occurred. In only one instance was an interview refused, and this was with an elderly judge about to retire. The court administrator and assignment commissioner in each site were also interviewed, as were journalists assigned to the courts. In addition, private attorneys, prosecutors and public defenders chosen via snowball sampling — a process by which one acquires a sample by following the recommendations of others — were interviewed to assess the rules' impact upon their practices and procedures. In these interviews, we were interested in contacting a mix of

individuals who had practiced before and after the rules and who were known for their criminal work. By asking respondents to name others who fit the established criteria, the same names soon began appearing, indicating that we were fulfilling our criteria. After preliminary interviews, we constructed interview guides to insure uniformity in data collection. As Lofland (1971:76) has noted, the purpose of such a guide is not to elicit choices to alternative answers, but to elicit what the interviewee considers to be important questions. Thus the interview guides served as reminders of topics to be covered and as stimuli to deeper probing.

On the state level, we interviewed the chief justice, two former justices and other officials responsible for administering the state courts. Taped conversations with the previous chief justice who was responsible for the rules, had been conducted prior to the initiation of the study. We contacted state legislators from the House and Senate Judiciary Committees to collect information on the rules and the relationship between the legislature and the court. Officials from state judicial organizations also were interviewed. During the course of our research, we attended the annual meeting of the Ohio State Judicial Conference to observe judges "backstage" and learn their private concerns. Collective strategy sessions regarding salaries, for example, helped confirm observations about fiscal crises, judicial power, and alienation at work.

In keeping with the tenets of qualitative methodology, the number of individuals to be interviewed within each category was not specified in advance. Instead, we used theoretical relevance as a guide. When interviews with particular types of persons failed to yield new insights, we knew that theoretical saturation had occurred (Glaser & Strauss, 1967). Admittedly, the decision as to when such categories are adequately sampled, or "theoretically saturated," is subjective. It is, however, guided and eased by the joint collection and analysis of data. We did not, for example, wait until all data were collected to assess the theoretical

significance of our findings; such assessments were ongoing throughout the collection process. Because data analysis is continuous in qualitative research, coding categories emerge during the process. At the conclusion of the project, we discussed our major qualitative findings and established final coding categories. Many of these reflected the topics in our interview guide, but topics which had not been so identified also were included. With the coding scheme in hand, the principal investigators read and coded the fieldnotes and interviews.

Quantitative Analysis. In addition to these qualitative data, we collected criminal case processing data from official court docket books in Cincinnati, Columbus, and Youngstown. Data were collected for a total of 2,267 cases from five separate years between 1967 and 1977. The dates of the five major events in the history of each case -- filing, indictment or information, arraignment, disposition, and sentencing -- were collected. Other important dates which could affect the length or outcome of a case were also gathered, including motions, continuances, and the issuance and return of bench warrants. Finally, we collected supplemental information on a variety of defendant and case characteristics, although not all information of this type was available in all sites.

To test the effects of both the Ohio Rules of Superintendence and the Speedy Trial Statute, data were drawn from several different years to properly assess their independent effects. Cases were sampled from five years falling throughout the period 1967-77. Two sample years -- 1967 and 1969 -- precede both the rules and the Speedy Trial Statute, and represent the baseline data for our study. The third year, 1972, is the first year that the rules became operational, and represents the rules as an independent factor. The years 1974 and 1977 represent the period when both the rules and the Speedy Trial Statute were effective, thus completing the cycle. By adopting a non-continuous time sample, we were able to assess systemic changes over time while maintaining a reasonable sample size.

The actual sampling technique in each city was based on lists of random numbers specifically formulated to yield a sample of 150 cases per city per year. To achieve this yield, it was necessary to generate about 150% of our desired sample size in random numbers, because cases where the grand jury refused to indict the defendant were discarded. A final sample size of 2,267 was achieved. Appendix One indicates the sample breakdown. Because the 1977 Columbus data were being entered into a computerized system at the time of data collection, they were unavailable (see Appendix One).

Organization of the Report

Chapter Two examines the Rules of Superintendence in the broader historical context of court reform in Ohio. Chapter Three analyzes the process used in making the rules, which are presented in Chapter Four together with the Speedy Trial Statute. The sanctions and incentives wielded by the supreme court to implement and enforce the rules are explored in Chapter Five; judicial responses to these efforts are presented in Chapter Six. Chapter Seven examines the changes the rules and the statute wrought on judging. Chapter Eight describes how our three courts operated prior to the rules, providing a baseline against which to gauge subsequent developments. Chapter Nine discusses the impact of the rules on relationships among courtroom actors. The rules' effects on delay are examined in Chapter Ten, as are those on the quality of justice in Chapter Eleven.

CHAPTER TWO

THE CONTEXT OF COURT REFORM IN OHIO

The Rules of Superintendence were but one part of a larger movement to reform the administration of justice in Ohio. This movement developed in response to proliferating legalization of social relationships, growing litigiousness, expanding judicial activism, and dwindling court budgets. In this chapter, we examine the court reform movement in Ohio and the problems it attempted to address.

Despite apparent consensus over the problems facing Ohio's courts, the claims that delay and court structure were indeed problems need to be critically examined. Although social problems are linked to objective social conditions, the labeling of particular conditions as problems depends, in part, upon the values of those affixing the label (Kitsuse and Spector, 1975). These values do not exist as a priori facts, but rather as reflections of the position of the value holder in the social order. Because the ability to purvey such values is differentially distributed, some groups consistently secure greater access to the means of value distribution, be it the television or the academic journal (Edelman, 1977). The problems perceived by powerful groups predictably center on how to exercise, maintain, or enhance that power, while their preferential access to media enables them to proclaim their problems to be those of society. Powerful groups can also decide certain situations to be non-issues by defining them as unproblematic. For these reasons, the definition of delay and court structure as problems by Ohio elites bears critical examination. After outlining the problems perceived by Ohio elites, we will examine the social conditions underlying their perceptions and the twin ideological lenses through which they focused their attention.

Defining the Problems

Existing accounts of Ohio's court reform movement (Milligan and Pohlman, 1968; Berkson and Carbon, 1978; Van Aken, 1980), as well as those recounted to us by state court elites explain the movement's origins. This "conventional wisdom" depicts the pre-1968 court system as archaic and confused. Structural confusion, the wisdom explains, led to excessive delay and mounting backlogs which, in turn, undermined public confidence in the administration of justice. Drastic restructuring was therefore required. These supposedly necessary reforms were embodied in the 1968 Modern Courts Amendment to the Ohio Constitution. The genesis of this amendment is critical, for the Rules of Superintendence are an extension of its logic and assumptions.

The movement leading to the passage of the Modern Courts Amendment was not sparked by public outrage, but by the persistence of four groups of state-level elites: the state bar association, state legislature judiciary committees, the supreme court, and state judges' organizations. As two commentators described it:

> The judicial reform of 1968 was distinctly not a result of an outraged citizenry battering down the doors of the State House. Dissatisfaction with the present system existed, but had not reached the point of being a major issue. The reform was primarily the result of efforts by thoughtful legislators, judges, lawyers, editors and laymen who recognized that real problems existed and cooperated to work out rational solutions before major surgery became necessary (Milligan & Pohlman, 1968).

Another described the reformers as "a relatively few members of the Ohio State Bar Association and the Judiciary" (Corrigan, 1970:728). These "thoughtful" citizens reached a consensus as to what the "real" problems were. The most pervasive problem, they agreed, was delay in hearing cases. A 1961 Legislative Service Commission Report labeled delay "the oldest and most publicized problem facing the courts of the state," and cited numerous causes for it. Congestion

forced cases to wait. Dilatory judges dawdled. Litigants and attorneys sought to gain advantage by continuing cases. The complexity of overlapping jurisdictions encouraged rampant forum and judge shopping, which in turn delayed dispositions as attorneys jockeyed for positions.

But the fundamental problem underlying pervasive delay was thought to be the weakness of the state's court system. According to the Legislative Service Commission:

> Matters of delay often are not the basic problem of the court system; delay is only an evidence of deeper problems. Remedies directed only at delay may fail to resolve the underlying weakness of the court system. Far more basic than delay is the failure to distribute the judicial manpower and to increase its productivity to meet the needs of state judicial business. Attempts to resolve the problem of inefficient use of judicial manpower are frustrated by the lack of any authoritative body of information concerning the administrative operations of the judicial function. As a result, precise conclusions about the court system cannot be made; a lack of common understanding of the problems of the court system prevails; and vague and sketchy remedies are often advocated as solutions to indeterminable problems (Legislative Services Commission, 1961:6).

Thus, as early as 1960, the problem of delay was linked to weaknesses in the state court structure. This linkage was reiterated in 1964:

> Ohio courts appear to be lacking in both organization and management. Some courts are unable to meet the demands of judicial business, despite extraordinary efforts of individual judges to correct the situation. Judges in other courts do not have sufficient business to operate on a full-time basis. While many lawyers and litigants are aware of serious congestion and delay in certain courts, there are no systematic and definitive reports as to actual court performance and the lack of this basic management tool makes evaluation of the performance and capacity of the courts more difficult (Legislative Service Commission, 1964:5).

The state bar also contended that court organization was the source of court problems. A 1964 report of the Ohio Bar Association's Committee on Judicial Candidates and Judicial Salaries concluded:

> Salaries alone are not a solution to the problem of judicial administration in Ohio or any other state. Regardless of the quality of the judges, a state must have a workable constitutional and legislative pattern so that the abilities of the judges can be used to their maximum (Milligan and Pohlman, 1968:812).

The lack of centralized administrative authority was lamented by others as well:

> Part of the problem in Ohio has been that there has been no one in charge of the judicial system. The more than 400 judges in the state's system have tended to operate independently. While this is desirable in the area of judicial decisions, the conclusion has been that independence in the administrative area leads to uneven and uncertain functioning of the system as a whole (Milligan and Pohlman, 1968:821).

Ohio's supposedly unworkable constitutional and legislative pattern was rooted in the administrative autonomy afforded its numerous constitutional and legislative courts. Lack of administrative hierarchy and a lack of statistical information rendered the use of judicial manpower inefficient: judges in less busy courts could not be transferred to assist those with congested dockets.

Auguring the onset of an era where courts' problems could not be remedied by increased expenditures (Heydebrand, 1979), none of the reform proposals recommended increases in expenditures for judicial resources. Although the Legislative Service Commission considered the creation of new judgeships as one possible response to the problems of congestion and delay (1964:64-69), it refused to recommend such action, maintaining that no fixed criteria could be established for the automatic creation of judgeships (1964:64-69). Even more significantly, it questioned the cost-effectiveness of new judgeships. Relying on statistics collected for several Ohio counties, the commission contended that visiting judges were cheaper to employ than new judges. Moreover, the commission downplayed judicial requests for additional judgeships, attributing the requests to motives other than need. Thus cost was one factor spurring reformers to systematize, rather than add to the courts.

The Dimensions of the Problem: Underlying Social Conditions

Though analysis is limited by the availability of relevant data, certain reservations should be maintained about whether Ohio's courts were faced with a mounting crisis. Data on case processing time were not reported by the Ohio court system in any usable form between 1950 and 1980. Caseload data, however, were collected and provide insight into the demands being faced by the courts. Beginning in 1957, Figure 2-1 presents criminal and civil filings for the entire state for the period 1960-1970. During the decade, criminal filings increased 54%, while civil filings increased only 17%. The mounting caseloads in two of Ohio's three largest cities grew more rapidly than the state average. As reported in Figure 2-2, in Cuyahoga County (Cleveland), criminal filings nearly doubled between 1960 and 1970 from 1, 908 to 3,533. In Franklin County (Columbus), they more than doubled from 861 in 1960 to 2,012 in 1970. In Hamilton County (Cincinnati), however, they increased only 27% during the same period, from 1, 917 to 2,446. Civil filings grew more rapidly in all three of these jurisdictions than in the entire state. Civil filings in Cuyahoga County increased about 22%, those in Franklin County 43%, and those in Hamilton County by nearly 24%. Thus, with the sole exception of Cincinnati's below-average increase in criminal filings during the decade, Ohio's largest cities experienced greater growth in their caseloads throughout the decade of the sixties than did the rest of the state.

During the sixties, Ohio dealt with its mounting criminal caseloads by adding judgeships to the court of common pleas, increasing their number from 165 in 1960 to 201 in 1970 (see Figure 2-1). This increase in judicial resources meant that the actual workload undertaken by judges grew at a slower pace than did the overall caseload. Thus, while the criminal filings for the state grew some 54% during the decade, the mean criminal caseload per judge grew only 26%, and civil filings per judge actually decreased some 4% despite a 17% increase in the civil caseload (see

Figure 2-1

JUDICIAL WORKLOAD: 1960 - 1970

Year	Criminal Filings	Civil Filings[1]	Number of Judges[2]	Crim. Filings Per Judge	Civil Filings per Judge
1960	14,900	42,555	165	90.3	257.9
1961	15,513	44,137	170	91.3	259.6
1962	14,415	44,991	170	84.8	264.6
1963	14,019	46,169	170	82.5	271.6
1964	14,292	45,760	170	84.1	269.2
1965	13,871	45,272	180	77.1	251.5
1966	14,318	-	179	80.0	-
1967	16,111	44,018	183	88.4	240.5
1968	16,755	-	183	91.6	-
1969	19,102	-	199	96.0	-
1970	22,943	49,922	201	114.0	248.4

[1] Excludes domestic relations cases.

[2] Excludes domestic relations judges.

Source: Ohio Courts

Figure 2-2

CRIMINAL AND CIVIL CASELOADS IN OHIO'S THREE LARGEST JURISDICTIONS: 1960 - 1970

	Criminal			Civil		
County (City)	1960	1970	% Change	1960	1970	% Change
Cuyahoga (Cleveland)	1,908	3,533	85%	9,923	10,869	22%
Franklin (Columbus)	861	2,012	134%	2,952	4,228	43%
Hamilton (Cincinnati)	1,917	2,446	27%	2,986	4,228	24%
Rest of State:	10,214	16,214	46%	27,694	31,135	12.4%

Figure 2-1). Criminal caseloads per judge actually increased less in Cleveland (25.7%) and Cincinnati (14.9%) than they did in the rest of the state (26.2%), though the increase in Columbus (79.9%) was triple that in the rest of the state (see Figure 2-3). The civil caseload per judge actually dropped in Cleveland 17% while increasing 19% in Columbus and .6% in Cincinnati. The civil caseload per judge remained relatively constant through the decade, increasing less than 4%. Thus, modest caseload increases were mitigated by expanding judicial resources, particularly in Cleveland, which had experienced a large absolute increase in caseload.

Despite the decline in per-judge civil caseloads and the modest increase in per-judge criminal caseloads, both civil and criminal backlogs grew throughout the decade. Figure 2-4 indicates that the number of criminal cases pending more than doubled, whereas the civil backlog grew some 12%. Closer examination of Figure 2-4 shows most of these increases occurred between 1965 and 1970, the same period in which all of the decade's growth in criminal filings took place. Much of this growth might be explained by the racial conflagrations that swept cities such as Cleveland in the late sixties, and by campus protests during the same period. In other words, this upturn may not have represented a secular trend, but specific historical events. This explanation seems plausible because criminal caseloads grew more slowly throughout the seventies, increasing some 38% between 1970 and 1978 in contrast with a 101% increase between 1965 and 1970. Indeed, most of the state's growth in criminal caseload in the seventies is attributable to Cleveland, which contributed 5,228 cases to the state's total growth of 8,632. Thus, it appears that the caseload "problems" of the late sixties were peculiar to that period, for the growth in caseloads between 1970 and 1978 was much slower than that between 1965 and 1970.

Figure 2-3

CRIMINAL AND CIVIL CASELOADS
PER JUDGE: 1960 - 1970

	Criminal			Civil		
County (City)	1960	1970	% Change	1960	1970	% Change
Cuyahoga (Cleveland)	100.4	126.2	25.7%	469.6	388.2	-17.3%
Franklin (Columbus)	86.1	154.9	79 %	295.2	352.2	19.3%
Hamilton (Cincinnati)	159.8	174.7	14.1%	248.8	263.6	5.9%
Rest of State	90.3	114.0	-26.2%	257.9	248.4	- 3.7%

Figure 2-4

CASES PENDING: 1960 - 1970

Year	Criminal Cases Pending	Civil Cases Pending
1960	5,438	44,199
1961	4,955	45,502
1962	4,974	46,741
1963	5,046	48,377
1964	4,959	47,876
1965	5,567	48,376
1966	6,416	51,926
1967	7,993	52,748
1968	-	-
1969	10,477	55,733
1970	11,202	60,461
% change 1960-1970	106%	36.8%
% change 1965-1970	101.1%	74.3%

Nevertheless, continued growth in caseloads eventually pressures a court system with constant resources. Throughout the sixties, increases in the number of judges kept the growth of caseloads per judge significantly lower than it otherwise would have been. But additional resources require additional expenditures, which in turn demand additional revenues. These budgetary realities impose fiscal limits on any resource-centered strategy for dealing with mounting caseloads. This problem is exacerbated by local courts' dependence upon local funding. Local government revenues traditionally are considered to be limited, particularly in comparison with state revenues (Baar, 1975:121). Across the United States, local courts depend upon local governments for an average of 74% of their budgets, but in Ohio, 87% was provided by local government (Baar, 1975:116-117). As a result, the fiscal base of Ohio courts was more tenuous than in most other states. Moreover, the demand for court funds from the state grew more rapidly during the late sixties than did state revenues. Between 1965 and 1970, state expenditures for all levels of Ohio's courts increased 64%, whereas general state revenues increased only 42%. Total expenditures for all Ohio courts grew some 73% (see Figure 2-5). Although the demands placed on Ohio courts decelerated in the seventies, new economic hardships such as those faced in Cleveland and Youngstown further deteriorated the courts' fiscal base, thereby undermining the viability of resource-oriented solutions to mounting caseloads.

Court Structure

In addition to evidence of mounting caseloads and tightening fiscal constraints, the structure of Ohio's courts before 1968 varied significantly from the ideal-typical unified court propounded by court reformers such as Roscoe Pound. Governing the Ohio judiciary for over a century, the judicial article of the 1851 constitution established five separate courts and authorized the legislature to

Figure 2-5

OHIO EXPENDITURES AND REVENUES: 1960-1970
(in millions of current $)

Year	Total Gen. Rev.	Total Gen. Exp.	State Judicial Exp.	Est. Total * Judicial Exp.
1960	$1,457	$1,401	NA	NA
1965	1,694	1,606	$3.71	$23.3
1970	2.406	2.487	6.09	40.7
% Change 1960-1970	65%	77%	NA	NA
% Change 1965-1970	42%	55%	64%	75%

* Estimated from Baar, 1975:116-117
Source: U.S. Statistical Abstracts 1960-1970.

create others. Among the constitutional courts were the supreme court, the district court (an intermediate appellate court), the court of common pleas (the general jurisdiction trial court), the probate courts, and the justices of the peace. In 1912 the intermediate appellate court was renamed the court of appeals, and the justices of the peace were abolished. Exercising its authority to create inferior courts, the legislature added superior courts, which had concurrent civil jurisdiction with the common pleas courts, insolvency courts, juvenile courts, municipal courts, county courts and mayors' courts. Consequently, in 1960, there were over 800 mayors' courts, and 330 separately created courts in Ohio.

At that time, county court structures varied widely. The most common structure consisted of a probate court with juvenile jurisdiction and a court of common pleas supported by several municipal and county courts, as well as various mayors' courts. A second pattern consisted of counties where the probate court had been combined with the court of common pleas. In a third, a domestic relations division had been created with jurisdiction over divorce and juvenile cases. Finally, the fourth pattern consisted of counties where a domestic relations division was established with jurisdiction over divorce only, juvenile cases being heard by independent juvenile courts with exclusive jurisdiction.

The three courts in this study possessed disparate court structures prior to 1968. Franklin County (Columbus) had three courts: a common pleas court with juvenile jurisdiction, a probate court, and a municipal court with county-wide jurisdiction. Mahoning County (Youngstown) had, in addition to these three types, a county court. Hamilton County (Cincinnati) had six courts: a common pleas court with juvenile jurisdiction, a juvenile court, a probate court, a county court, a municipal court with some county-wide jurisdiction, and another municipal court with criminal jurisdiction only within Cincinnati.

This abundance of courts was further complicated by overlapping jurisdictions. Many courts within the same county frequently had concurrent jurisdiction over the same cases. In Hamilton County, for example, it was possible to file a civil action when the amount in controversy fell between $300 and $500 in the common pleas court, the municipal court, or the county court, opening possibilities for forum shopping. In Cuyahoga County (Cleveland), 13 municipal courts, as well as the court of common pleas, exercised concurrent jurisdiction over controversies involving up to $7,500.

Within this system, no single body was charged with overarching administrative authority. Consequently, Ohio's more than 400 judges tended to operate independently (Milligan and Pohlman, 1968:821). Furthermore, the supreme court's rulemaking authority was circumscribed by the legislature (Milligan & Pohlman, 1968:829; Parness and Manthey, 1979:249, 251-259). Thus, it was perhaps an overstatement to speak of Ohio's courts as a "system." Not only was such a "system" difficult to manage, but its overlapping jurisdiction encouraged forum-shopping, which many reformers decried. The practice of law was also made more difficult by variations in procedure between courts, variations reformers sought to eliminate by authorizing the supreme court to adopt uniform rules of practice and procedure.

Consequently, there was a material basis to the problems perceived by judicial, legislative, and bar elites. Caseloads and backlogs mounted throughout the sixties even if not constituting a deluge. Judicial resources and expenditures were increased in response, but, at the same time, economic forces threatened already tenuous local funding. And court structures were complicated. Nevertheless, the questions remain as to why these conditions were perceived as a severe problem, and why the solutions which were forged were the ones chosen. The answers to these questions lie partially in the history and ideology of court reform, and partially in the political interests of the various elites promoting it.

The Ideology of Unification

The ideology of unification consists of a more or less consistent set of beliefs regarding the identification and solution of court problems. Its central tenets can be traced back at least as early as 1906, when Roscoe Pound decried the causes of popular dissatisfaction with the administration of justice in his seminal address to the American Bar Association (Pound, 1906). Pound claimed the nation's courts to be archaic and too numerous. Multiplicity caused duplication, waste, and inefficiency. Overlapping jurisdiction intensified inefficiency, while the inability or refusal to assign judges where they were needed wasted judicial manpower. Pound's solution was "unification" patterned after the English Judicature Act of 1873. Unification meant the creation of a single court embracing all state courts and jurisdictions, including a single court of final appeal (Pound, 1937, 1927; Berkson and Carbon, 1978). Pound's ideas were adapted by the American Bar Association in 1909 and by the American Judicature Society in 1914,and much later incorporated in the recommendations of the National Advisory Commission in Criminal Justice Standards and Goals (1973) and the ABA's Standards Relating to Court Organization (1974). Indeed, a recent study found that most treatments of court unification have included five basic components: consolidation and simplification of court structure; centralized management, centralized rulemaking, centralized budgeting, and state financing (Berkson and Carbon, 1978). Despite a paucity of empirical evidence that any of these elements actually remedies the evils of disorganization, waste, and inefficiency, they have come to comprise the "conventional wisdom" of state court administration (Gallas, 1976:35).

Delay as a Problem

Closely related to the ideology of court unification is the belief that delay is a major problem facing American courts. Historically, delay was decried for its

deleterious impact upon criminal defendants. The Sixth Amendment to the U.S. Constitution was not drafted to promote the rapid disposition of courts' mounting caseloads, but to protect criminal defendants from languishing in jail by guaranteeing them the right to a speedy and public trial by an impartial jury. Unlike unification and merit selection, concern with delay did not swell until the 1950's, spurred by publications such as Delay in the Court (Zeisel et al., 1959). This reborn concern for speedy justice sprang not from the substantive desire to protect criminal defendants, but from the administrative need to process civil and criminal cases. As early as 1953, the Institute of Judicial Administration published reports of delay in 100 American courts. In 1958, U.S. Chief Justice Earl Warren described delay as a "crucial problem for constitutional government...compromising the quantity and quality of justice (and leaving) vulnerable throughout the world the reputation of the United States" (Warren, 1958). Thus delay's status vaulted from a tangential problem of court reform to one bearing on the outcome of the Cold War. Numerous empirical studies of delay followed (see Luskin, 1978). Since 1967, three national commissions included proposals to ensure speed and efficiency in case processing (President's Commission, 1967; ABA, 1968; NAC, 1973). In response to this growing concern, many state legislatures as well as the U.S. Congress adopted speedy trial legislation. As with unification, a general consensus emerged. Although later studies developed more sophisticated analyses (Church et al., 1978; Neubauer et al, 1981), most work through the mid-seventies blamed delay on insufficient manpower, ineffective calendar control, the absence of judicial control of the docket, unwieldy rules of procedure, continuance practices, the availability of witnesses, and the unwillingness of judges and attorneys to speed things up (see, e.g., Miller, 1971).

The Ohio court reform movement linked the traditional perception of court unification as the panacea for courts' problems to the emerging ideology of delay

as a problem. Indeed, even before its popularization as an issue in the fifties, Ohio court reformers believed delay was rooted in the structural weaknesses defined by unification. As early as 1931, the Ohio Legislature commissioned the Ohio Judicial Conference, the Ohio State Bar Association and the Institute of Law of the John Hopkins University "to locate precisely and definitely the reasons for delays, expenses and uncertainty in litigation" and "to institute a permanent system of judicial records and statistics" (Judicial Council of Ohio, 1931). Based on its observations, the Council concluded that frequent and long delays resulted from insufficient organization of the state's judicial manpower. The Council's inquiries were curtailed by the economic crisis of the thirties, but its conclusions received renewed endorsement following the Second World War. In 1951, the Bar Association's Committee on Judicial Administration and Legal Reform linked the "idling of some courts" to the overloading of others, and recommended "a wide range of structural reforms to correct this"(LSC, 1961). Urging the unification of Ohio's courts, the Committee called for centralization of superintending authority, the creation of centralized state court administrative offices, the granting of rule-making authority to the courts, compulsory judicial retirement, and reconsideration of the popular election of judges. Increasingly, Ohio court reformers maintained that structural deficiencies resulted in congestion and delay. This relationship, largely unsupported by empirical evidence, logically led to the conclusion that structural reform would lead to delay reduction.

The Politics of Unification

Beyond this empirically unsupported syllogism laid the interests held by reform-minded elites in the consolidation and centralization of authority within the judiciary. The supreme court stood to gain from the enhancement of its authority over lower court centralization. Moreover, the constitutional grant of supervisory

authority would remove the legislature from the administration of the courts, thereby enhancing the supreme court's coequal status as a branch of government. Similarly, vestiture of procedural rulemaking authority in the supreme court, subject only to a take-it-or-leave-it legislative veto, significantly decreased the legislature's influence over the courts. Confided the late Chief Justice O'Neill:

> If the legislature had known then what they know today about the power they were to lose when they gave up authority to amend procedural rules, we wouldn't have gotten the constitutional amendment through. They gave up more than they really knew when they gave up the power to amend. Now they can make suggestions --the court can amend -- but they have to take the rules all or nothing.

The state bar association also had an interest in vesting rulemaking authority in the courts. This allocation of authority would more likely result in uniform rules of procedure for the entire state, thereby facilitating the growth of state-wide legal practices. Without uniform rules of practice and procedure, attorneys were forced to learn idiosyncratic local procedures, often finding themselves in violation of local rules with which they were not familiar. Although uniform rules can be of little consequence to attorneys whose practice is restricted to single jurisdictions, the firms capable of conducting state-wide practices traditionally are more influential within bar associations (see Auerbach, 1976), and therefore able to mobilize such associations in support of unification.

Judges, however, had conflicting interests regarding the prospects of reform. The centralization of authority in the supreme court threatened to undermine judges' autonomy vis-a-vis the court. Similarly, the prospect of merit selection replacing elections threatened some judges' self image as elected public servants. But many of the proposed reforms promised greater autonomy from the legislature and greater control over procedure. Presumably, judges could feel easier in expressing their views on adminstrative and procedural issues to the supreme court

than to the legislature because they would not be violating the separation of powers. When perceived through the ideological lens of court unification, the problems centralization augured for judges were minimized, while the gains were maximized.

In many respects the legislature had the most to lose from reform proposals which would force it to recognize the court's dominance over judicial administration and procedure. But this recognition was not tantamount to surrender, for the state legislature retained two important powers. First, it could still veto proposed rules of procedure, a provision which mollified many legislators regarding the Modern Courts Amendment. Second, since no one suggested the legislature abandon its hold over the purse strings, the legislature retained the right to review state court budgets and fix judicial salaries. Finally, by restructuring the judiciary in such a way as was thought to remedy the courts' problems, the legislature could divest itself of responsibility for court congestion and delay.

Consequently, all of the major groups which eventually supported the Modern Courts Amendment had concrete interests in judicial reform. These interests alone, however, cannot wholly explain why they defined delay as a problem or chose structural reform as a solution. Rather, their perceptions of problems were affected both by the external conditions they faced -- mounting caseloads and dwindling revenue sources — and the long-standing, unquestioned propositions of the national court reform movement. Although the actual growth in caseloads and backlogs provided a substantive basis to reformers' perceptions of court problems. Yet the ideologies of delay and unification structured those perceptions. The extent to which reformers entertained the ideology of unification is no better evidenced than in the reforms which were actually adopted.

The Modern Courts Amendment

Responding to the supposedly related problems of delay and court organization, two separate bodies drafted surprisingly similar proposals. The first body, comprised of the judicial selection and judicial administration committees of the state bar association, was known as the Modern Courts Committee. It was composed of fifteen attorneys, several judges, and one legislator. Its proposal called for consolidation of all trial courts into the one court of common pleas, centralization of administrative authority in the supreme court, vestiture of rulemaking authority in the supreme court, the creation of judicial retirement standards, and merit selection of judges. At the same time, the Ohio legislature instructed the Legislative Service Commission's Study Committee on Judicial Administration to study the Ohio courts. Its recommendations paralleled those of the Modern Courts Committee in most respects, except for the extent of lower court unification. While the bar's plan placed municipal and county courts within the common pleas court, the legislative committee's plan retained them as separate, legislative courts. Both committees were led by William Milligan, who served as co-chair of the Modern Courts Committee and as chair of the Judicial Administration Study Committee.

In late 1964, the legislative committee submitted its recommendations to the legislature. Extended debate over the merit selection and mandatory judicial retirement provisions prevented the bill from reaching the floor for a vote, despite its favorable report from the Senate Judiciary Committee. 1967 brought members of the Legislative Service Commission Study Committee to power in the positions of House Speaker, Majority Leader, and Judiciary Committee Chairman. The bill was favorably reported, reaching the House floor in June, where, though the merit selection provision was excised by a narrow margin, it was approved to be put before the voters of Ohio.

The proposed constitutional amendment, which had come to be known as the Modern Courts Amendment, substantially altered the structure of the state court system. It vested in the supreme court general superintending authority over all state courts, and authorized the chief justice to act as the system's principal administrative officer. The chief justice was authorized specifically to temporarily reassign new or retired judges in order to equalize caseloads. To assist the chief justice, the supreme court was authorized to appoint an administrative director. Court structure was also significantly simplified. Probate courts were eliminated as constitutional courts, probate authority being delegated to a newly created division of the common pleas courts. To further regularize court structure and operations, the amendment specifically granted rulemaking authority to the supreme court, subject to a legislative veto. The legislature was not authorized to amend proposed rules, and court rules were recognized to supersede conflicting statutes. In this way, procedure could be regularized and simplified, and rendered less vulnerable to ad hoc modifications. In addition to these structural changes, a mandatory judicial retirement age of 70 was imposed.

Support for the Modern Courts Amendment

After passage by both legislative houses, the Modern Courts Amendment to the Ohio Constitution was placed on the May 1968 primary election ballot, where it passed by a two-to-one majority. Major support was provided by the state bar association. Not only had the state bar already established the parameters for reform and lobbied for it in the legislature, but they hired a public relations firm to coordinate publicity and encouraged local bar associations to assist. Bar representatives in almost every county worked to achieve support from local bar associations, the press, and key voter groups (Milligan and Pohlman, 1968:819). In its fight for the Modern Courts Amendment, the bar association was led by

attorneys Earl Morris of Columbus and Kenneth Clark of Youngstown, both central figures in the organized bar. At the time, Morris, previously President of the Columbus and Ohio State Bar Associations, was the President of the American Bar Association. Like Morris, Clark was a past president of the Ohio State Bar Association (Van Aken, 1980:291-294).

Many judges, too, supported the amendment, even though some disagreed that delay was a problem (Milligan and Pohlman, 1968:818). Although the Judicial Conference took no position on the committee recommendations in 1964, by 1968 it had come to support the amendment. This shift resulted from the efforts of various judges to muster the conference's support, then Chief Justice Kingsley Taft among them, as well as widespread sympathy for most of the reform program among judges. One survey conducted in 1964 indicated that a "substantial majority" of Ohio judges favored the program, particularly the grant of supervisory authority and rulemaking authority to the supreme court. Support for mandatory retirement and merit selection were weaker, however.

The Modern Courts Amendment also received the endorsements of the Ohio Chamber of Commerce, the AFL-CIO, the state democratic and republican parties, leading newspapers and the electronic media. Thus, the definition of delay and court structure as critical problems to be remedied by far ranging structural reforms was widely endorsed.

Implementing the Mandate

The Modern Courts Amendment was but the first step in addressing the problems which gave rise to the reform effort. To a limited extent, the new judicial articles directly effected change, particularly by simplifying court structure, granting the power to assign judges, and centralizing administrative authority. But the granting of authority was not synonymous with its exercise. For the

reforms to succeed, the Supreme Court's authority had to be implemented, a matter of which many reformers were aware:

> Vesting of authority and responsibility is one of the main effects of the passage of Issue 3. In the past the supreme court has been blamed for shortcomings of other courts without the authority to do anything about it. This will now be changed. Successful operation of the new supervisory system will not be automatic. Vigorous application will be required by the supreme court and its administrative arm (Milligan and Pohlman, 1968:822).

The court was urged to promulgate uniform rules of practice and procedure, rules of general superintendence, and rules requiring recordkeeping pursuant to the authority granted by the new judicial article. It also was urged to define the duties of the administrative director of state courts.

The exercise of authority in these areas was instrumental to the systematization of the court system, and ultimately, to the reduction of delay. The major tool at the supreme court's disposal to implement the new judicial article was its rulemaking authority. At the direction of Chief Justice Kingsley Taft, and, when Taft died, of Chief Justice William O'Neill, the supreme court quickly surged ahead. One close observer described:

> The Ohio Supreme Court did not have effective rulemaking power at all until the Modern Courts Amendment to the Ohio Constitution in 1968. As soon as the court got the rulemaking power, it ran with that power. Rules of civil procedure, criminal procedure, appellate procedure, juvenile court procedure, traffic court rules and the Rules of Superintendence. I see this as part of a larger movement and the chief had the reputation of being the prime mover.

The aim of the first major set of rules undertaken, the Rules of Civil Procedure, was to standardize civil procedure throughout Ohio, modernize service, pleadings, venue, discovery, motions, and joinders. One underlying policy goal of the new

civil rules was, in the view of the Rules Advisory Committee Chairman, to intensify the pursuit of objective truth by substantially removing the old formalities which had fostered futile adversariness (Corrigan, 1970:727). A second objective was to expedite civil case processing. These rules were going to reduce delay. In the words of the first rule:

> These rules shall be construed and applied to effect just results by eliminating delay, unnecessary expense and other impediments to the expeditious administration of justice (Ohio Civ. Pro. R. 1B).

Consequently, many provisions attempted to speed the pace of civil litigation by eliminating possibilities for surprise, promoting settlement, or streamlining various procedures.

The twin problems of implementing superintending authority and reducing delay remained, but the civil rules had barely taken effect before the New Chief Justice C. William O'Neill turned to deal with them both. In a process explained in greater detail in the next chapter, O'Neill proposed rules of superintendence to further define the administrative hierarchy of the court system, to provide a reporting system to collect uniform statistics, to specify duties for the state court administrator, and to undertake other action with the specific goal of reducing delay.

Thus, by further systematizing the administration of Ohio's courts and developing specific programs to reduce delay, the Rules of Superintendence were a logical outcome of years of court reform. Moreover, by causally linking administrative structure to delay, the rules embodied the very assumptions underlying the movement which gave birth to the Modern Courts Amendment.

Speedy Trial Statute

The Rules of Superintendence, which are discussed in detail in the next two chapters, were not the last of major reforms to sweep the Ohio courts. In 1972, after nearly a decade of study by the Legislative Service Commission, the Ohio legislature adopted a total revision of substantive criminal law. It became effective in 1974, the first complete revision of the state criminal law since 1815. Although analysis of most of the revisions is beyond the scope of this report, one is of critical importance, the so-called "Speedy Trial Act", s. 2945 of the Ohio Revised Code. This statute fixed time limits for various types of offenses and defendants, and provided that defendants could, upon motion, be discharged if not brought to trial within the specified time limits. Because one goal of the statute was to reduce delay in the processing of criminal cases, any attempt to analyze the impact of the Rules of Superintendence must account for it. Consequently, we shall discuss the impact of the statute as well as that of the rules in the remainder of this report. The provisions of the Speedy Trial Statute are examined in greater detail in Chapter IV.

Summary

The problems perceived did reflect certain underlying conditions the courts faced, namely mounting caseloads and shrinking fiscal bases. But the definition of these conditions as a problem is also attributable to the interests of key groups and an "ideology of delay" espoused by a literature which first blossomed in the fifties. Similarly, the definition of court organization as problematic had roots in the ideology of unification, a set of assertions regarding how courts should be organized espoused by legal elites and court reform organizations since the beginning of the twentieth century. The organization of Ohio's courts prior to the 1968 reforms did not comport with that recommended by the unification ideology. Ohio court reformers long had causally linked delay to the perceived organizational

shortcomings of their court system, despite a paucity of empirical evidence. Nevertheless, their belief led them to forge reforms which would restructure their courts in the unification image, centralizing administrative control over the court system in the supreme court. How the court exercised that authority is where we now turn.

CHAPTER THREE

MAKING THE RULES

Rules of Superintendence are one part of what has been hailed as the most extensive use of state court rulemaking to date (Berkson and Carbon, 1978:65). That rulemaking activity, as the last chapter explained, was itself part of a broader effort to modernize the Ohio court system. Rulemaking authority, long a central tenet of court unification, was recognized by Ohio court reformers to be a critical element of the program they forged. In this chapter, we examine why rulemaking was considered so important, what issues it raised, and how these issues were manifested in the making of the Rules of Superintendence.

Rulemaking: An Overview

Since the turn of the century, centralized rulemaking has been an article of faith to the American court reform movement, with court reformers contending that rulemaking authority must be vested in the judicial branch if that branch is to function as an independent branch of government. Courts alone, they argue, are familiar with their operations and problems, and should decide the best ways of addressing them. If court procedures and administration were controlled by the legislature, uniformity, consistency, and relevancy would be sacrificed.

By 1978, twenty-nine states had vested this authority in their courts constitutionally, while only eleven relied primarily on legislatures or legislative grants of rulemaking authority. Thus, the recapture of the rulemaking authority Pound believed courts had surrendered, though long in coming, has become an accomplished fact (Korbakes, et al., 1978). Despite court reformers' jubilation

over the recapture of rulemaking authority, the relative demise of the legislature poses an important problem in terms of democratic theory. The legislature traditionally has been seen as the mechanism by which the public gained access to the rulemaking process and maintained accountability over the makers of rules (Grau, 1978:7-22; Weinstein, 1977:77-87). Legislative review of some form was thought necessary to redress court errors and deal with problems courts failed to address (Levin and Amsterdam, 1958:36).

In response to this concern, a growing number of commentators have urged the expansion of "public process" within the judicial branch (Parness and Manthey, 1980; Weinstein, 1977; Wheeler, 1979). Prescriptions for "public process" consistently advise courts to adopt quasi-legislative procedures akin to those mandated by the Federal Administrative Procedure Act for administrative agency rulemaking — notice, comment, opportunity for a hearing, established procedures, a reasoned record, revision provisions, and standing rules committees (Weinstein, 1977; Parness and Manthey, 1980). The goal of these suggested reforms is to provide better, more "informed" rules, and to legitimate the rules in the eyes of the public. Presumably, consultation with trial judges, attorneys, and other affected parties facilitates the accommodation of their interests. At the same time, the public would be more likely to accept the legitimacy of such rules, since they participated in their creation or at least had the opportunity to do so. Indeed, the work of organization theorists suggest that participation in organizational decisionmaking increases the probability of program success because it promotes modification of the program in accordance with affected groups' values and interests, and thus legitimates the program (Hage and Aiken, 1970).

Both of these assumptions, however, are subject to examination. If the effectiveness of a rule can be operationalized in terms of its ability to achieve what it intended , then the first assumption would suggest that rules developed in

consultation with those affected by them would be more effective. Similarly, those consulted would be expected to view rules as more legitimate than those who were not. Finally, rules might be expected to be more "effective" in those courts where the judges were consulted regarding their substance, form, and implementation than in those where they were not.

In the remainder of this chapter, we analyze the process by which the Rules of Superintendence were developed and promulgated, examining who participated, when, how, and over which issues. In doing so, we will examine both the role of the legislature and the specific procedures which the Supreme Court of Ohio used. These procedures will be compared with those used in other areas of the Ohio Supreme Court's rulemaking, those used in other states, and those discussed and proposed by commentators. The success of the rules in attaining their objectives is examined in subsequent chapters.

The Role of the Legislature

Most modern commentators agree that legislatures should be an integral part of the rulemaking process. Reflecting the desire to maintain separation of powers, some commentators question the propriety of leaving significant policy decisions to judges, who are isolated from popular control. Left totally to themselves, courts could create, alter, or abridge substantive rights under the guise of procedural reform without adequate public input or control (Levin and Amsterdam, 1958:13-24; Kay, 1975:4,41). Another concern is that without a legislative rulemaking role, courts inevitably will be forced to decide the validity of their own rules, thereby denying due process because they are "interested" in the outcome of the litigation (Weinstein, 1977:96-98).

Nevertheless, because courts are recognized to have a legitimate interest in controlling their own operations, as well as relevant expertise in the problems of

court operations, there have been few serious proposals to vest rulemaking authority exclusively in the legislature. Rather, most commentators have agreed that legislatures should share "concurrent" authority with courts, allowing courts to initiate self-regulation while reserving a veto and an authority to adopt rules to the legislature (Levin and Amsterdam, 1958:36; Kaplan and Greene, 1951:37; Kay, 1975:41; Joiner and Miller, 1957:653-654; Weinstein, 1977:78). Most states have reserved significant rulemaking authority in their legislatures, vesting comprehensive rulemaking authority in the courts while using the legislature to maintain accountability (Kaplan and Greene, 1951; Korbakes et al, 1978; Grau, 1978:17-21).

As in most other states, the legislature in Ohio plays a significant role in most aspects of rulemaking. Specifically, the legislature may disapprove of procedural rules by concurrent resolution (Ohio Const. art. IV §5(B)). However, because this veto power does not apply to rules promulgated under the supreme court's superintending authority (Ohio Const. art. IV §5(A)), the legislature played no formal role in the adoption of the Rules of Superintendence. Nor did it play an informal role. Considering the matter one solely internal to the courts, former Chief Justice O'Neill did not involve legislators in the definition of court administrative problems or in the formulation of solutions to them. Legislative leaders were only vaguely aware that such rules were being developed, yet insofar as they were, they considered superintendence rules to be an internal concern of the courts. Indeed, the rules were being promulgated pursuant to specific constitutional authority which the legislature had just approved. Moreover, the rules were, on their face, directed primarily at judges and did not create or abridge any substantive rights.

The legislature's unconcern with the Rules of Superintendence stands in marked contrast to the heated controversy that has arisen over the supreme court's attempts to promulgate rules of evidence under §5(B) of the judicial article. Twice

in the early and mid-seventies the court attempted to adopt such rules, only to have the legislature veto them. In 1979, a third attempt was successful, but only by virtue of parliamentary maneuvering. One house voted overwhelmingly to disapprove the proposed rules on the theory that portions --particularly the privilege provisions -- defined substantive rights in excess of constitutional authority. But the resolution of disapproval never reached the floor of the second house, where it probably would have passed, because the chairperson of that house's judiciary committee, a supporter of the evidence rules, refused to bring it out of committee until the legislature's deadline for disapproval had expired. Not suprisingly, many legislators were angered. Thus, it is clear from this contrasting example that the legislature's concern for rules which appear to affect substantive rights is far greater than those which seem directed only at the court's internal operations.

Internal Procedures in Ohio's Rules of Superintendence

Given the absence of legislative involvement in the development of the Rules of Superintendence and the growing concern over "public process" in rulemaking, it is important to examine the internal procedures used by the Ohio Supreme Court. This inquiry is further necessitated by the seeming disparity in existing accounts of the efficacy of the process used by the Ohio Supreme Court to formulate these rules. Moreover, if the delegation of the rulemaking authority to the supreme court consolidated administrative control of the courts vis-a-vis the legislature, it remains important to examine who exercised that authority and how. State-level officials, in particular, stressed the participatory nature of the process, maintaining that the rules incorporated the views of those affected by them. As one state-level official contended:

> The methodology employed by the court in developing the rules was, rather than superimposing them from the top, the court sought the advice of those to be affected by the rules -- that is, the trial court judges. In line with that, we had a series of conferences where various judges from different jurisdictions over the state were invited into the court and simply asked, 'What are your problems? After these meetings, it was apparent that there were a number of problems and that everybody had the same problems and so the rules were really drafted to address each one of the problems. They were generated, really, in response to what those people believed their problems were.

Two recent commentators, however, have recently argued that most Ohio rule-making is inaccessible to the public, an absence they deem "regrettable" (Parness and Manthey, 1979:249).

As described above, the higher circles of the Ohio judiciary wanted to exercise the newly-granted rulemaking authority to the utmost. They began, in 1970, by promulgating extensive rules of civil procedure modeled after the federal rules of civil procedure. The Rules of Appellate Procedure were added in 1971. Both of these sets of rules were adopted pursuant to the grant of procedural rulemaking authority contained in §5(B) of the judicial article. But the unfettered authority to adopt rules to superintend inferior courts granted by §5(A) had remained unflexed. To not exercise it might risk its atrophy and possible legislative inroads into the supreme court's administrative control over the court system. Indeed, O'Neill feared that the legislature might soon feel it had given away too much to the courts in the Modern Courts Amendment. As an abstract matter, it may have been easy for the legislature to accept the supreme court's superintendence of the court system, but in the future, some pressing issue may have invited legislative intrusions. This possibility needed to be pre-empted.

The supreme court did not immediately draft and issue a set of rules, however. Rather, Chief Justice C. William O'Neill, who had replaced Kingsley Taft after the latter's death in 1970, charted a specific course for the court. In many ways an incarnation of Weber's "charismatic leader" (Weber, 1964:358-359), O'Neill

personally controlled the making of the Rules of Superintendence from start to finish. As one Cincinnati judge put it:

> No one took charge until the 1968 amendment. Then O'Neill really took charge. No one thought he would do what had never been done before. He was a little dictator in a way.

The rules were described as "his baby," his "brainchild," "one of his crusades," and he was said to be "the prime mover," or "motivating force" behind them. His strong commitment to administrative reform benefitted from his skills as an adept politician, having served as attorney general, speaker of the house, governor, and associate justice of the supreme court before ascending to the chief justiceship. In the eyes of those who observed him, he knew how to get what he wanted through others. Describing O'Neill's tenure as chief justice, a Columbus journalist recounted:

> He made it look like a big deal. He put all kinds of people on committees...law professors, attorneys, judges. He just made it look like these are your own rules, not something he was shoving down your throat, although I think they always came out exactly the way he wanted them to.

A member of the civil rules committee told a similar tale:

> The academic consultants then met with the court while the court was going over the rules and deciding what it wanted to adopt, what it didn't want to adopt, how it wanted to reformulate things and I observed the chief at work and he moved those rules. He moved those discussions. After a period of time, he regarded the debate as over and it was time for the justices to vote on whether they wanted this or that or something else.

At first, some members of the court considered hiring a consultant, but at O'Neill's urging, the court decided against this because of its expense, and because they wanted to retain control over the process. O'Neill also declined to establish a committee to formulate rules of superintendence, in marked contrast to the process followed in the development of other rules, again because he felt the court should maintain control of the process.

Instead, selected judges met with the court to discuss the sources of and solutions to delay. O'Neill selected the judges who would testify, although other members of the supreme court contributed to the list. The list included the presiding judge of each of the eight largest counties and several smaller ones, a handful of trial judges from the larger counties, the Ohio Supreme Court's staff, and an entourage of lower court support staff to assist judges in their testimony. There was no public notice of rulemaking activity in the media. Nor was the bar notified, at this point, within the pages of the state bar journal. O'Neill contacted each invitee individually. In his words:

> I called them all on the phone and I said, 'Look, this is off the record. No publicity in advance, no publicity afterwards. You have half a day with the seven members of the supreme court to tell us what's wrong in your court and to recommend what rules we can adopt to use as tools to eliminate the problems that exist in your court.'

Judges were to express their feelings and perceptions without fear of any repercussions, political or otherwise.

The meetings were highly informal, distinguishing them from most judicial proceedings. Unlike traditional judicial proceedings, rules of evidence were not followed, a record was not maintained. Arguments were not formally presented, and witnesses were not cross-examined. The actual conduct of the meetings resembled a hearing before a legislative committee more than an adjudication or

administrative agency's rulemaking, though they were more informal and less open than even legislative hearings. As two attendees recollected:

> I remember sitting in a meeting with them in a great big circle up in the old supreme court room with all the justices sitting up front — no neckties and no robes — but sitting up front and trying to make it informal.

> It was more informal than formal...We were in a court conference room — not in the courtroom. And the court was sitting around the conference table in the old building and the other judges were given chairs and would speak in turn...whoever was invited was invited for the whole period.

A number of judges from our three sites — Columbus, Cincinnati, and Youngstown — lauded the opportunity to testify. Recounted one Youngstown judge:

> Judge O'Neill was very forthright in his views, of course, but he did demand interest and a contribution from the judges, and we were expected to give it, and I think we gave our fair share of what they now call input into the system.

Nevertheless, differences of opinion were registered with the court about what should be done. Judges from Cleveland, for example, resisted the notion that an individual calendar should be adopted. Another bone of contention was the efficacy of increasing the number of judges in order to reduce backlogs and contain congestion. Many testifying judges contended that this was the best solution. But emphasizing the fiscal constraints facing the courts, O'Neill adamantly refused, telling these judges, "Forget it. We'll first see what we can do with what we've got." The extent of disagreement is reflected in the recollections of a Columbus judge:

> Well, I would say primarily the rules, themselves, were put together by the late Chief Justice William O'Neill, and he called in either the administrative or presiding judges from the several large courts in the state, and also representatives from several of the small courts, so that there was a cross-section. We discussed and cussed, in many cases, some of the proposals. Many went into effect that some of us were very much opposed to.

After the initial testimony of selected judges, the supreme court met to discuss its findings. The major point at issue was the individual calendar. Some on the court felt it should not be mandatory, but O'Neill convinced them that a mandatory individual calendar was necessary to fix case processing responsibility. O'Neill then undertook two tasks. First, he directed court staff to begin working the ideas which had been discussed — primarily the single assignment system —into a body of rules. At the same time, he sought broader input from the rest of the judges of the courts of common pleas by soliciting written comments on how to reduce congestion and delay. Various drafts of the rules were sent to the judges for their comments, much as in administrative agency notice-comment rulemaking. Some judges responded, though the actual volume of responses was small. In terms of our sites, judges in Columbus and Youngstown were more likely to view the process favorably. For example, one Columbus judge recounted:

> Now, what happened is that they sent out for comments, and you could send in your comments of what you thought...on how to eliminate congestion in the courts. And I'm sure that other judges did the same as I. I sent in and said the first thing you ought to do is adopt a single assignment system. Everybody will tell you that because of the number of judges, you can't do it. I guarantee you that you can do it, and you're going to get a million reasons as to why it won't work, just like we did, but it will work. And I recommended that they reduce the number of grand jurors. I recommended they reduce the grand jurors from fifteen to six, like they have in Canada. Well, the supreme court reduced them from fifteen to nine. Now, I think that was my suggestion.

But in Cincinnati, judges tended to view the rules as a fait accompli masterminded by O'Neill, and were less likely to comment on them to the court. According to several Cincinnati judges:

> Most of the local judges knew that there was room for improvement. They didn't like all the records we had to keep because, in our opinion, it was a waste. In my opinion, it was a waste of time. It's still a waste of time.

> The fact is that the Rules of Superintendence were issued like a judicial fiat from on high, but there was no input. It wasn't like the legislature where you go up and argue against them. I mean the supreme court, I think, published the proposed rules and then said anybody that has any complaints, suggestions, etc., file it in writing -- otherwise they'll be made the rules in thirty days. And, in effect, nobody was really involved except the Supreme Court of Ohio which was dominated by the chief justice.
>
> I don't think the chief justice did that too much -- going around consulting with people. He would get an idea and it would become one of the rules. Oh, I guess there were committees, the judicial association and everything like that, that gave some input on their viewpoints, but I don't think that any one of the rules would have stopped just because 95% of the judges were against it, if in fact they happened to be. The chief justice was a forceful enough man that that's the way things happened.

The philosophy of involving groups specifically affected by the rules extended to doctors and lawyers. By involving these groups, O'Neill hoped both to utilize the expertise of the affected groups, and to co-opt them by making them responsible for the substance of the resulting provisions. This co-optive goal was described by O'Neill himself:

> When somebody griped about the first Rules of Superintendence, I'd say 'Who told us about this? The trial judges told us what the problems were. They recommended solutions, your colleagues.' When somebody griped about the power to remove a lawyer from a case, we said, 'The lawyers proposed this. They know the problem; they proposed it.'

In exchange, O'Neill gave the participating groups a limited opportunity to fashion solutions compatible with their interests.

The Ohio experience is unique in the great lengths to which O'Neill went to involve a group external to the courts -- medical doctors -- in the fashioning of rules to govern expert testimony. Judges portrayed expert medical testimony as a significant impediment to the disposition of many civil cases: too frequently cases were scheduled and rescheduled for the convenience of testifying doctors. O'Neill therefore decided doctors should partake in the development of rules addressing this problem. As he recounted:

> We formed a committee of doctors, we put a television deposition on for them. They said, 'That's great.' We've been teaching like that for ten years -- where's the law been? And now millions of doctors will not testify any other way. If you want them, you put them on video tape or you don't get their testimony. They don't want to blow a day, go from the capitol city down thirty miles to a small town to testify; they don't want to blow a half a day while the jury is out and the lawyers are arguing before the judge on a point of law and they sit and wait.

In the supreme court's discussions with judges, a number of attorney practices were cited as contributing to delay. Foremost in O'Neill's mind was the concentration of the trial bar. He turned to the state bar association for the solution:

> We said to the state bar, 'Well, here is what the facts show, all across Ohio. This is one of the most serious problems. It's a lawyer's problem. We don't want any procrastination; we want a blue ribbon committee to recommend an act for this.'

Despite the creation of this blue ribbon committee, appointed by a state bar association not necessarily representative of the trial attorneys who would be affected by the rules, the entire bar was given notice of the rules in the state law

journal only after the rules were drafted in near final form. The rules were published in June of 1971, the court inviting comments by September, when it announced it would take final action. Some final action already had been taken by June, because three of the "proposed" rules were indicated to have been adopted. Comments were to be sent to the supreme court. Few were received. In October of 1971, the state bar journal published the rules as adopted, as well as two additional rules proposed by the state bar association and a third proposed by the state bar foundation. The supreme court again asked for suggestions from the bench, bar, and public. Again, few were received.

Summary

The extent and nature of participation in the making of the Ohio Rules of Superintendence was limited. The entire process was directed by the chief justice, who controlled the agenda from start to finish. Those most directly affected by the proposed rules — judges — were expressly involved in the rulemaking process, some by oral testimony, others by written comment. Those outside, such as the general public or the legislature, were not included. In Columbus and Youngstown, judges viewed the rulemaking process as participatory, even though they disagreed with some of the rules. In Cincinnati, however, while there was some of this sentiment, many judges perceived themselves to have been excluded from the process, even though they formally were able to participate. This perception, according to organizational theorists, readily breeds resistance to change programs, ultimately, reducing their chances for success.

As chronicled in Chapters Nine and Ten, patterns of judicial response to the rules in Cincinnati varied from those in the other sites, and in Cincinnati the rules actually increased case processing time. Thus, the extent of participation, or at least judges' perceptions of it, may have affected the rules' ability to reduce delay.

Why Cincinnati judges perceived themselves more excluded from the process than those in Columbus or Youngstown despite their similar opportunity to participate in the rulemaking process, remains unanswered. The refusal to accept the supreme court's definitions of problems and solutions may have resulted in both the perception of exclusion and resistance to the rules. Alternately, the perceptions of Cincinnati judges could reflect a rationalization of why the reform had gone against them. The credibility of this explanation is enhanced by the fact that the rules sought to alter the very types of relationships and practices which characterized Cincinnati prior to the rules, a matter taken up in Chapter Eight.

CHAPTER FOUR

THE RULES OF SUPERINTENDENCE AND THE SPEEDY TRIAL STATUTE

Before exploring the impact of the Rules of Superintendence, their provisions and purposes bear scrutiny. Since the impact of the rules cannot be assessed independently of the subsequent Speedy Trial Statute, the latter enactment also should be explicated. Both the rules and the statute fixed time standards for the processing of cases. While the rules regulated both civil and criminal cases, the statute limited only criminal cases. And while the rules attempted to speed case processing administratively, the statute created a substantive right enforceable by criminal defendants.

The Rules of Superintendence

Adopted by the Ohio Supreme Court in 1971, the Rules of Superintendence attempt to reduce congestion and delay in the courts of common pleas in three ways. First, they create an administrative hierarchy which fixes responsibility for case disposition on individual judges, while specifying procedures by which the chief justice can monitor judicial performance. Second, this centralization of accountability is simultaneously coupled with a decentralization of means to reduce delay. Individual judges and courts are granted authority to induce attorneys to dispose of cases. Third, the court authorizes the use of various time-saving audio visual technologies, and fashions an alternate mode of civil case resolution. After examining the authority under which the rules were adopted, we will analyze these three major components of the rules as solutions to the problem

of delay. Because of the perceived success of these rules for the courts of common pleas, the supreme court in 1975 adopted superintendence rules for the municipal courts, Ohio's courts of limited jurisdiction. In this report, we are concerned only with the rules for the common pleas courts.

Source. The legal authority of the Ohio Supreme Court to promulgate the Rules of Superintendence is based on the 1968 Modern Courts Amendment to the Ohio Constitution. Prior to the 1968 amendment, there was no constitutional or statutory provision allowing the supreme court administrative control of the state's lower courts, though limited supervisory power existed over the municipal courts of the state (Ohio Rev. Code Ann. §1901.14(d)). The 1968 amendment, however, granted the Ohio Supreme Court supervisory control of all state courts. This authority was to be exercised by the chief justice pursuant to superintendence rules adopted by the courts (Ohio Const. IV §5(A)).

Prior to the new judicial article, the supreme court's rulemaking authority over practice and procedure had been defined by the state code. The 1968 amendment significantly reduced the legislature's power over rulemaking, however, by permitting it to disapprove but not amend court rules. The rulemaking section of the amendment reads, in part:

> The supreme court shall prescribe rules governing practice and procedure in all courts of the state, which rules shall not abridge, enlarge, or modify any substantive right. Such rules shall take effect...unless...the general assembly adopts a concurrent resolution of disapproval. All laws in conflict with such rules shall be of no further force or effect after such rules have taken effect. Ohio Const. IV §5(B)

This section establishes a more formal process for the court's making of rules of practice and procedure than does §5(A) for the making of superintendence rules. Also, the scope of the rules of practice and procedure is set forth in the section

which gives the rulemaking power. The §5(B) rules invalidate any law which conflicts with them; however, the rules themselves may not abridge, enlarge, or modify any substantive right. Although §5(B) rules supercede any conflicting law, superintendence rules do not (State v. Smith 47 Oh.App. 2d 317, 354 N.E. 2d 699 (1976); State v. Lacy 46 Oh.App. 2d 215, 348 N.E. 2d 381 (1975)). The §5(B) limitation that rules may not affect substantive rights has not been applied to the Rules of Superintendence, though it is unlikely the court would allow superintendence rules to alter substantive rights.

Stated Goals. The purpose of the rules is explicitly stated in the preamble: to expedite case disposition. The preamble emphasizes the seriousness of delay and the erosion of public confidence in the courts it breeds. It states in part:

> Delay in both criminal and civil cases in the trial courts of Ohio is always a serious problem in the administration of justice. It is to be remembered that the courts are created not for the convenience or benefit of the judges and lawyers, but to serve the litigants and the interests of the public at large. When cases are unnecessarily delayed, the confidence of all people in the judicial system suffers. The confidence of the people in the ability of our system of government to achieve liberty and justice under law for all is the foundation upon which the American system of government is built.

Although the preamble also suggests the rules are designed to safeguard the inalienable rights of litigants, the rules neither define such rights nor fashion remedies to protect them. Despite the rhetorical deference paid to inalienable rights, the Rules of Superintendence "are case control and case disposition rules" (rule 3, comment).

Centralizing Authority. One group of superintendence rules fleshes out the administrative hierarchy established by Article IV of the constitution, and provides

mechanisms to make judges accountable for the status of their dockets. To facilitate the prompt disposition of criminal cases, rule 8 fixes time limits for different segments of each criminal case. Grand juries are to take final action within sixty days of bindover, criminal cases are to be tried within six months of arraignment, and guilty defendants are to be sentenced within fifteen days of verdict. (A complete copy of the rules is contained in Appendix Two.)

The declaration of time standards, however, does not automatically ensure compliance. Three interrelated provisions of the rules induce judges to comply. Rule 4 mandates the use of an individual calendar for both civil and criminal cases. The individual calendar is important because it fixes responsibility for the disposition of each case upon a single judge. Once a case is assigned to a judge under this rule, all matters pertaining to that case are submitted to that judge for determination, unless that judge is unavailable. Thus, if a case exceeds the time requirements, the "responsible" judge can be identified. Secondarily, rule 4 seeks to reduce judge-shopping and equalize judicial workloads by requiring random assignment (rule 4, comment).

In order to inform the chief justice as to who is not complying with the time standards, rule 5 creates a statewide reporting system. Each month, judges must report the number of cases which are pending at the beginning of the month, newly filed, terminated, pending at the end of the month, and pending beyond established time limits. After approval by the administrative judge, these reports are mailed to the Office of the Administrative Director of State Courts. The Administrative Director compiles summary reports, which become public records (rule 5(c)), and publishes an annual summary.

Judges are required to review their dockets every three months and to dismiss civil cases which have been in the docket for six months without any proceedings having been taken. The official comment describes this provision as "a

powerful tool in keeping dockets current," and "an example of the intent of the rules...to expedite the disposition of cases." The dismissal sanction does not apply to criminal cases because it is superceded by rule 8, which requires only that cases exceeding the six month limit be reported to the chief justice (rule 6, comment).

Although judges are individually responsible for complying with time limits, completing reports, and conducting quarterly docket reviews, rule 3 establishes the position of the administrative judge, who is authorized to oversee individual judges. Directly responsible to the chief justice, the administrative judge is charged with primary responsibility for the implementation of the rules (rule 3(b), comment). The administrative judge assigns cases, monitors the completion of judges' monthly reports, and ensures that judges review their docket quarterly. To assure the accuracy of the monthly reports, administrative judges are empowered to formulate accounting and auditing systems.

Decentralizing Authority. Together with the trial judge, the administrative judge is vested with sanctions with which to regulate attorneys, signifying a dispersion of authority to effect the rules' purpose. Thus, while the ends are determined and results are monitored hierarchically, authority and discretion to achieve the end is delegated. As noted above, one important sanction against attorney induced delay possessed by judges is dismissal for want of prosecution (rule 6). Records of the number of cases conducted by each attorney must be kept by the administrative judge (rule 3). Similarly, trial judges are to record the number of continuances requested by each attorney and the reasons advanced for them, reporting monthly to the supreme court on uniform forms (rule 7(d)). If, on the basis of these lists, it appears that the size of an attorney's caseload brings about undue delay, the administrative judge may require that attorney to obtain a substitute. If the dilatory lawyer fails to provide substitute counsel, the administrative judge is

required to remove that lawyer from the case (rule 7(c)). Furthermore, rule 9 authorizes courts to adopt local rules which promote the speedy disposition of cases by the use of any device or procedure. Specifically mentioned are local rules restricting the volume of cases attorneys may undertake. Thus, local judges are granted additional authority to exercise the mandate of rule 7 relating to continuances and engaged counsel. Although this authority is to be exercised within the discretion of the lower court, each rule must be consistent with the rules of the supreme court.

Other Provisions. In addition to the provisions providing incentives to judges to dispose cases more quickly and those delegating them certain powers to accomplish this, the Rules of Superintendence provide for an alternate means of adjudication and for the use of audio-visual technology in court. Rule 15 authorizes each court to adopt a plan for compulsory administration of civil cases, providing guidelines for such plans. Proposed by the state bar association at the request of Chief Justice O'Neill, the rule provides a mechanism designed to funnel certain cases away from judges, thereby reducing judicial caseloads. Arbitration, it was believed, would prove to be an effective method of case disposition in appropriate cases (see rule 15, comment).

Audio-visual technology to record depositions also is authorized. Proposed by a state bar foundation committee whose membership includes medical representatives, this rule sought to eliminate delay caused by the exigencies of medical experts' schedules. Although the original rule authorized no more than taped depositions, the court drastically extended the use of courtroom cameras throughout the seventies. Entire trials are now videotaped, pursuant to the authorization of civil rule 40, Superintendence rule 15(b) specifying procedures to implement the civil rule. Finally, in 1979, the supreme court experimentally opened courtrooms to television cameras.

Summary. The Rules of Superintendence were designed to reduce congestion and delay in Ohio's courts of common pleas. Accordingly, they articulate a definite administrative hierarchy with the chief justice at the pinnacle, overseeing the efforts of the trial judges to meet specified time limits. Central to this scheme are the individual calendar, which makes judges entirely responsible for each case assigned them, and the monthly docket reports each judge files with the administrative director. To enable judges to discharge their new case processing responsibilities, the rules delegate certain powers to judges and local courts, decentralizing some aspects of administration while centralizing others. Other tools provided by the rules are mandatory arbitration and videotaped depositions, both intended to qualitatively expand the resources available to the courts to deal with their growing caseloads.

Speedy Trial Statute

Like the Rules of Superintendence, the 1973 Speedy Trial Statute fixes time standards for case processing. But the statute differs from the rules in its provisions, legal source and underlying purpose. Moreover, while the rules regulate both civil and criminal cases, the statute limits only criminal cases.

Provisions. The Ohio Speedy Trial Statute (Ohio Rev. Code Ann. §2945.73; see Appendix Three for a complete text) provides criminal defendants the right to be brought to trial within a specified number of days after arrest or service of summons. The statute prescribes different time periods depending on the offense with which the defendant is charged. For minor misdemeanors, the trial must be within thirty days after arrest or service of summons; for third or fourth degree misdemeanors, forty-five days; for first or second degree misdemeanors, ninety days. A person charged with a felony must be accorded a preliminary hearing within fifteen days of his arrest and must be brought to trial within 270 days.

Although sections of the Speedy Trial Statute set forth these time periods, other parts of the statute modify the time frames. For instance, each day an accused is held in jail in lieu of bail is counted as three days for purposes of the time period in which a hearing or trial must be held. This means that a person charged with a felony who is awaiting his trial in jail must be tried within 90 days, a third of the time required for a defendant who has made bail and is not confined to jail.

Other statutory modifications extend the time periods during which the hearing or trial must take place. The time is increased by:

(1) any period during which the accused is unavailable for hearing or trial by reason of other criminal proceedings against him, his confinement in another state, or pendency of extradition proceedings;

(2) any period during which the accused is mentally or physically incapable of standing trial;

(3) any period of delay necessitated by the accused's lack of counsel (other than that caused by lack of diligence in providing counsel to an indigent);

(4) any period of delay caused by the neglect or improper act of the accused;

(5) any period of delay caused by a plea, motion or action instituted by the accused;

(6) any period of delay caused by a removal or change of venue;

(7) any period in which trial is stayed by statute or by court order;

(8) the period of any continuance granted on the accused's motion and of reasonable other continuances granted;

(9) any period during which an appeal is pending.

Four of the factors (3, 4, 5, 6) that extend the time period for trial are generally within the control of the accused. The most unclear of the nine is that

which tolls the time requirements for the "period of any continuance granted on the accused's own motion and the period of any reasonable continuance granted other than upon the accused's own motion" (Ohio Rev Code Ann. §2945.72(H)). Commentators observe that this provision permits great judicial discretion over the effectiveness of the Speedy Trial Statute (40 Ohio St. L.J. 363).

Violation of the statutory time limits allows an accused to be discharged. Upon motion, the case is dismissed with prejudice, a disposition on the merits precluding the prosecution from recharging (Ohio Rev. Code Ann. §2945.73(A) & (B)). The statutory time limit is waived by a defendant who does not object. This sanction is far more stringent than that provided by the rules for a violation of the 180 day limit, for the rules provide only that cases exceeding the limit be reported to the chief justice.

Unlike the Rules of Superintendence, which were rules adopted by the supreme court pursuant to the superintending power granted by Article V of the Ohio Constitution, the Speedy Trial Statute was a legislative enactment, part of a broader modernization of criminal law undertaken in the early seventies. This difference in legal origin has important implications for the effect and operation of the two provisions. Because the supreme court is prohibited from creating substantive rights via court rule, the time limit established by the Rules of Superintendence is enforceable by the supreme court, but not by individual defendants. By contrast, the Speedy Trial Statute specifically creates a right enforceable by criminal defendants. Indeed, the enforcement of the statute depends upon the defendant, who must file a motion to assert the right. The individual defendant orientation of the statute is further reflected in its time standards. Whereas the rules fix a limit of 180 days for all felonies, the statute's felony time limit varies between 90 and 270 days, depending upon how many days a defendant is incarcerated. The stated limit is 270 days, but each day the defendant

spends in jail for not making bail counts as three against the limit. The differences in these provisions reflect a significant difference in the purposes underlying the rules and the statute.

Underlying Purpose. Because Ohio maintains no records of legislative history, it is difficult to establish the formal rationale for any legislative enactment. Consequently, statutory purpose must be inferred from the structure and content of the enactment from appellate court rulings, and from commentators' analyses.

This act creates a statutory right for a criminal defendant to be tried within a specific time limit. One recent commentator concluded from the statute's language that the legislature enacted it to specify and define the imprecise constitutional right to a speedy trial guaranteed by the Ohio and United States constitutions (40 Ohio St. L.J. 363, 364). Three policy goals were imputed to the legislature: to prevent undue trial delays; to minimize the anxiety accompanying public accusation; and to limit the possibility that delay will impede the defendant's ability to mount a defense. The latter two goals are defendant-oriented, seeking to protect two defendant interests in a speedy trial.

The Ohio Supreme Court has emphasized the protection of defendants' interests, contending that the Speedy Trial Statute sought "to insure that defendants are not held in jail for undue periods of time while awaiting trial" (State v. MacDonald, 48 Ohio St. 2d 66, 70 (1976)). By embodying specific, enforceable rights for criminal defendants, the statute's underlying rationale differs substantially from the case management rationale underlying the Rules of Superintendence.

Nevertheless, the Ohio Supreme Court has been increasingly willing to impute a case management rationale to the Speedy Trial Statute. In State v. Ladd, 56 Ohio St. 2d 197 (1978), the court asserted the legislative rationale supporting the

statute was "to prevent inexcusable delays caused by indolence within the judicial system" (at 200). It continued that "where the system is without fault, we will not enforce these rigorous time limitations when a narrowing construction or a finding of total inapplicability...would better comport with presumed legislative purpose" (at 202). The court subordinated defendants' speedy trial rights to the proper administration of the court system by promising to enforce the right only where the system was at fault through its indolency.

The court's increasing reliance upon an administrative rationale was further evidenced by its permissive interpretation of §2945.72(H) of the statute, which provides for an extension of the trial limits for the period of defense continuances or for any other reasonable continuance granted other than upon the defendant's motion. In State v. Lee, 48 Ohio St. 2d 208 (1976), the court declared it would permit continuances for crowded dockets if the trial judge stated his reasons in a journal entry prior to the expiration of the time limit. Although it subsequently disallowed a six-month continuance for crowded dockets, the court refrained from articulating any rule for determining when continuances for congestion were permissible (State v. Wentworth, 54 Ohio St. 2d 171 (1978); 40 Ohio St. L.J. 363, 376). In this way, the defendant's right to a speedy trial was subordinated to the administrative demands placed on the court system. Thus, while the statute's goal of securing defendant's speedy trial rights is in contrast to the rules' administrative emphasis, the Ohio Supreme Court's subordination of those rights to the judicial system's administrative realities reflects the concern for administration embodied in the rules.

Summary

Both the Rules of Superintendence and Speedy Trial Statute were designed to affect the time required to process cases. The rules embodied an administrative

rationale, attempting to hold all criminal cases to 180 days from assignment. The statute, on the other hand, was designed to define and protect defendants' constitutional right to a speedy trial. Its limit for felonies was at once less definite and more stringent than that provided by the rules. Under the statute, defendants had to be tried within ninety days of arrest if incarcerated, 270 if released on bail. The enforcement mechanism differed as well. The statute permitted the defendant to gain a dismissal with prejudice upon motion, while the rules created no remedy for individual defendants. Rather, the rules were administrative case processing guidelines which only the supreme court could enforce in unspecified ways. Despite the differences in underlying rationales, the Ohio Supreme Court has imputed an administrative rationale to the statute, limiting its effects where there was administrative justification to do so. A comparison of the rules and the statute is provided in Figure 4-1.

The declaration of time standards, creation of centralized accountability, and delegation of authority to deal with delay did not insure that the rules would successfully reduce case processing time, even if later reinforced by the Speedy Trial Statute. Consequently, it is necessary to examine the formal and informal sanctions and incentives wielded by the supreme court to give its edicts effect.

Figure 4-1

SUMMARY COMPARISON OF
RULES OF SUPERINTENDENCE
AND SPEEDY TRIAL STATUTE

	RULES	STATUTE
Source:	Supreme Court	General Assembly
Effective Date:	Sept. 30, 1971	Jan. 1, 1974
Time Limit:	180 days from arraignment (for all felonies)	270 days from arrest, each day in jail counting as three (for all felonies)
Enforcing Party:	Supreme Court	Criminal Defendant
Sanction for Violating Limit:	Unspecified	Dismissal with prejudice
Purpose:	Speed case disposition; centralize accountability; decentralize authority	Protect defendant's right to a speedy trial (from "judicial indolence")

CHAPTER FIVE

IMPLEMENTING THE RULES

The promulgation of the Rules of Superintendence in late 1971 did not assure they would successfully reduce delay, or even that judges would comply with them. The sociology of law is replete with examples of the limited impact of changes in formal rules (see generally, Friedman and Macaulay, 1969: 197-506). One explanation for the failure of change programs is that they do not provide incentives to targeted actors sufficient to change their behavior (Nimmer, 1978). This is especially pertinent to delay reduction programs, for delay has been thought to flow from the motives of court actors and and the incentives presented them by court structure (Levin, 1975). This problem is exacerbated for change programs undertaken at the state level because the incentives operating within local courts vary, constituting what Church and his colleagues christened "local legal culture" (Church et al., 1978). Furthermore, appellate courts have been shown to experience difficulty in ensuring compliance with their edicts, particularly when those edicts conflict with the interests of local power structures (Dolbeare and Hammond, 1971).

To understand the change process undertaken by the Ohio Supreme Court in adopting the Rules of Superintendence, it is necessary to examine the incentives and sanctions which were wielded to encourage compliance and the local systems which were affected by the rules. In this chapter, we will analyze the efforts of the chief justice, the constitutionally designated administrator of Ohio's court system, to implement the rules.

Sanctions and Incentives

Although neither the Modern Courts Amendment nor the Rules of Superintendence themselves provided the chief justice formal sanctions to induce compliance, they did provide the basis for various enforcement mechanisms. The new judicial article designated the chief justice as the administrative head of the court system, empowering him to administer the superintending rules promulgated by the court. Perhaps this authority was more symbolic than tangible, but even as a symbol it carried significance to judges socialized to follow rules. Nevertheless, the rules provided weapons to an administrator inclined to wield them, for they allocated cases to individual judges, and required judges to report on their dockets each month. Together, these provisions allowed the chief justice to monitor individual judges, thereby threatening to hold them accountable for the status of their dockets. Thus, the Rules of Superintendence provided a ready foundation upon which a structure of informal sanctions and incentives could be raised. In practice, these ranged from personal reprimands, to awards issued for maintaining "clean" dockets, to the "moral authority" of the supreme court.

The Flamboyant Administration of C. William O'Neill

The implementation of the Rules of Superintendence was no less Chief Justice O'Neill's personal crusade than their formulation and adoption had been. Among the higher circles of the Ohio courts, O'Neill's personal efforts to enforce the rules were legendary. He threatened to publicize the docket statistics of dilatory judges. He personally reprimanded judges. State officials reported:

> He had a real bug-a-boo about delay in justice and had been known to take a look at a particularly bad record of a judge and get in his car and arrive at that judge's chambers and ask him point blank, face-to-face, 'Why are you late?' You could imagine the moral effect that would have. Word got around pretty damn quick -- he was no respecter of persons. Many officials believed that press reports on dockets and

> unexpected personal visits worried judges, inducing them to move their cases more quickly.

> Over cocktails, after meetings, why I've had judges say 'I really don't want the chief justice knocking on my door.' Well, C. William O'Neill would do that. If he had one that really had a scandalous docket, he was known to get into his car and show up in the judge's chambers, quite unannounced, which was traumatic.

O'Neill publicly cultivated a flamboyant, pugnacious style. Speaking to an assembly of state supreme court justices, he recounted how he would leak information to the press, which in turn would "blast" enemies of the rules:

> When somebody got out of line and blasted the court, we depended upon the editors to blast them back the next day in the editorial columns, which they did.

O'Neill contended the press was responsible for the successful implementation of the rules:

> The real thing was made to work when we said those reports shall be matters of public record, open to the newspapers to write news articles on and comment on editorially. And that's what made the rules work.

But just what the sound and fury surrounding O'Neill actually signified is problematic. Few judges knew of the personal reprimands supposedly delivered, and only one admitted being a recipient. A Columbus judge observed that O'Neill could not have delivered many reprimands, for he knew of Columbus judges with severe backlogs who never received them. There was little evidence that backlog statistics were reported to, or by, the press.

Nevertheless, O'Neill's flamboyant style, manifested in even a few concrete reproaches, could have threatened judges fearful of poor publicity, at least

initially. Political creatures of Ohio's electoral system, judges were susceptible to the threat of adverse reporting, even if the threat remained latent. Even if the chief justice did not release docket statistics, their availability raised the possibility that someone else might. Some judges feared that an enterprising reporter, in search of a sensational story, might fail to understand their statistics but publish them anyway. Such fear is evident in the following remarks by Cincinnati judges:

> That's the fear of most people -- publicity. They don't understand what this is all about and don't really want to know what it's all about. From a personal standpoint, any judge would rather be criticized by the press than he would by his peers for a bad job, but I think he or she realizes that you're going to get due process in the assessment of your shortcomings from your peers or the chief justice and you will not from the press.

> The hammer hangs there. Very stressful. And, of course, because we have this wonderful political system in Ohio, political judiciary, why, an opponent in an election, or newspapers, can misuse the statistics. You know, you're emotional in newspapers. You know, the media can make whatever they want out of it.

But, with time, the absence of actual sanctions defused the latent threat that they could be inflicted. One Columbus judge, a self-styled "nut on administration," lamented the absence of coercion by the chief justice:

> Now in Ohio -- it's just like these statistics -- I remember years ago when O'Neill started it, and he said, 'All right, now I want to warn all you trial judges that we're not going to put these figures out for the public, individually, until we give you a chance to get your docket up to date.' Well, five years later, seven years later, they're not doing it, because they don't want to embarrass anyone.

Another Columbus judge related a view common among the judiciary:

> I wouldn't expect somebody to come and chop my head off. If I needed help, they'd suggest that we bring in a visiting judge or something like

> that. The sanctions? Well that's like your mother telling you, 'Well just be sure you get home at 12:00 or I'm going to tell your dad!'

O'Neill's implementation efforts hinged less on coercion than the rhetoric surrounding them suggests. Having served as Speaker of the House and Governor of the State of Ohio before ascending to the supreme court and the chief justiceship, he was no stranger to politics. As the chief justice, he was the political hub of the court system. As one Cincinnati judge explained:

> All of your supreme court justices are elected officials, and it's a political process. The chief justice has a strong influence on it. There are a lot of different people of different persuasions; they need support from a lot of areas. Everyone involved in this system is political, all the judges are elected to office; the legislature is political; the various state agencies that get involved directly or indirectly are political. It's a political process of people who will have input in various degrees. I am not saying strictly on party-lines. I mean, bar associations are political; lawyers are political. In the sense that we are all part of that, he's the hub.

Many judges explained that in functioning as the hub, O'Neill treaded softly, never reprimanding when encouragement or persuasion promised to be effective:

> If some judges were just so far behind in their dockets and in the work they were doing and there wasn't a good reason for it, I'm sure he would have gotten after them. But I'm saying the average run of the mill judge, particularly the ones in the larger cities, I think that he was able to get compliance by encouraging them to comply. The point is that he encouraged people to comply, rather than threaten them with what would happen if they didn't. (Youngstown judge)

To sell the rules to judges, O'Neill linked them to promised salary increases, contending that the legislature would reward a more productive judiciary. As one bar official commented:

> I think that O'Neill had made up his mind, and, of course, you know, it's a great selling point to the judges, and he says' And then when we come back to the public and we show what you've done, now the legislature will be glad to give you pay commensurate with your work.'

Once the rules were adopted, O'Neill quickly trumpeted their success, thereby lessening the likelihood of opposition. Few can easily argue with a well-publicized success, even if they doubt the standards being used to judge it. Moreover, O'Neill publicly praised the judges, crediting them with working hard and making the rules work. As one judge described it:

> His talk was almost always on the performance of the court and how the efficiency of the judges has increased since the superintendence rules were adopted. He was constantly reminding the public of the good job that the judges were doing and how they had reduced their caseloads and how this affects the public in speedy administration. He always, always emphasized that. (Columbus judge)

By praising the success of the judges for reducing their backlogs, O'Neill garnered support for the rules and undercut potential opposition. Because he portrayed the rules as a great improvement, the grounds upon which judges might oppose them were negated. As one judge noted:

> I mean, who can really attack them being a bad idea. Maybe the concept is wrong, but who can attack the idea? Everybody is screaming bloody murder because of the long delays and here we're doing something about it. (Cincinnati judge)

O'Neill also incorporated judges into the emerging administrative system by the use of a "travelling road show" conducted by state court officials. Each year he and the administrative staff would travel to the state's appellate districts to discuss the rules, the statistical reports, and the problems with the rules. Copies of summary docket reports would be handed out, encouraging judges to compare

their status with others'. According to state officials, the questions judges raised were uniformly technical, rather than expressions of opposition to the rules.

Judicial Service Awards

Even more important than the travelling road show in the eyes of most of our respondents were the "Superior Judicial Service" awards which O'Neill introduced. Although the name of the award and the criteria for which it is granted have changed somewhat in the past decade, the principles underlying awards remain the same: judges who report no cases pending beyond the prescribed time limit are awarded what judges dubbed "the Golden Gavel." These wood and brass plaques adorned the walls of judges' offices in every city we visited. Judges and attorneys described the attraction:

> Oh, they're crazy about them. Judges, God, they fill their offices with these things. There's nothing else in life though. That's it. It seems that some judges -- all they do for six years is try to get awards. (Columbus prosecutor)

> It sounds trite. If someone had said we'd be doing this, I would have laughed. It sounds idiotic that grown men would look forward to getting awards but they do. They look forward to getting the plaques. The impact of the awards was greater then. I think they have probably become fairly prosaic because there have been so many of them that have been handed out. I am not saying they weren't a good thing. I think they were. I was pleased enough to get them, to mount them at the time I had them. (Cleveland judge)

Judicial attitudes regarding the awards ranged from covetousness to contempt, Columbus judges viewing them most favorably, Cincinnati judges the least, and Youngstown judges somewhere between. The following judicial remarks illustrate this range in attitudes:

Columbus

If you're close to getting an award, you'd try to be there. If I'm just a little bit behind in May when the stats are compiled I'll see to it that my docket is clear.

It gave the initial program a good boost. I have heard several judges make fun of them, but they have always gotten in line to get their award.

Youngstown

I used to get them quite routinely; then they stopped. Here's one, two, three, four. You'd get most of them for having your criminal docket up to date. Frankly, we are paid a salary for being judges. I think it goes with the job, goes without saying that we're to extend every effort to comply with all of the rules and all of the laws that apply to us and very frankly, I don't think plaques should be awarded for doing our job. I mean, it's all right. It's a nice thing and it's an encouragement and the supreme court is to be complimented in their efforts to reward a fellow for a good job done.

Cincinnati

I think they're silly. I just think that was the dumbest thing that was ever done. It made it seem like a Coney Island freeway.

Well, I am proud to say that I have never received a plaque. Never, ever. And I don't want one. And I think that's going back to Boy Scouts days or something, because my caseload has always been at an acceptable level.

I thought it was ridiculous when the chief justice used to hand out these plaques -- I've got a drawerful of them somewhere, plaques for superior judicial service or something like that for keeping your docket up-to-date. I thought that was a little bit like giving you a gold star in kindergarten.

Awards from the supreme court? I received one and threw it right in the wastebasket.

Even though some judges disdained the awards, many found them politically useful. Judges exhibited their awards during reelection campaigns as symbols of merit and recognition by the supreme court. As a state court administrator explained:

Obviously, you have some judges who think it's a Mickey Mouse approach and in the beginning, many judges felt that way. But as I've seen the judges over the years, it's not so anymore. They're pleased to get these and I think in a sense, if you want to look at it that way, our judges are all elected in Ohio and it's a nice little feather in one's hat to have gotten an award from the chief justice for judicial service which is going to appear in your local newspaper. That's a motivational factor.

Some judges issued press releases when they received awards and reminded the public of the awards at election time. As several attorneys recounted:

They'll use those supreme court awards. In their advertising, they'll name the number of certificates that they've got. Because again, it's not obvious to the layman what that means. It looks impressive if you don't know that all that means is you've got a fairly current docket. And what does current mean? Six months. I'm not impressed but I assume a layman would be, because anything that's got the title of the state supreme court on it has got to be impressive. They use it. (Cincinnati attorney)

Our system in Ohio is a system of election, and whether they like it or not, whether they look at it as an onerous chore, or they look on it as a god-given mission to stay within 180 days, the fact is that is a weapon that can be turned against them at election time if they don't stay within 180 days. You know, you can always say, look at Judge X, he's not current. That's the little bit of the stick, you see. (Columbus attorney)

When a judge would get one of those things, even if he was not impressed with it particularly, his bailiff would say to the reporters, 'Hey, the judge got the outstanding plaque' and it would get a little article in the paper. Our judges, are made to be political animals. Of course they're sensitive to the kinds of publicity they get. (Youngstown attorney)

O'Neill encouraged the political use of awards. Even the disbursement of the awards was geared to provide favorable publicity in local news media. Typically, O'Neill would have his picture taken with each recipient. To uninitiated recipients, the award presentation promised pomp and circumstance, a ceremony celebrating their superior public service. Yet, the large number of judges receiving awards necessitated a more expeditious procedure which tarnished the golden gavels of those with greater expectations. As one Youngstown court official related:

> The first time that Judge (Jones) was on the bench, he got one, and because it was a new experience for him, when the letter came saying, 'Judge (Jones), you have been awarded...,'we were impressed with this, but the mimeographed sheet with the greeting typed in concerned me. It invited the judge to go to Cleveland to accept his plaque. So, I said, 'Hey, first time on the bench, fine, we ought to go.' He was a little hesitant too and I said, 'No, we better go, maybe it will be harmful if you don't go.' So up we drove to Cleveland and we were to be there at twenty minutes to two in the afternoon. I'm still not smart enough to recognize ...that's a good indication. If they're giving you some grand award, it would at least be at six o'clock in the evening, or ten in the morning, but not 1:40 in the afternoon. We got to a hotel in Cleveland, so I figured, a ballroom, I could see the gold tapestries hanging from the walls and the long trumpeters. Well, when we got to the room and looked in, there were two big lights there for pictures, Chief Justice O'Neill standing there, in the middle of this room, alone. So we were seated on a bench outside the hotel room and an aide came out to us and said, 'Your name please.' Judge (Jones) said, '(Jones), Mahoning County.' We went in the room. The chief justice went on with his business, and this guy went to one of a zillion paper cartons and he's saying, 'Adams, Abbott, blah, blah, (Jones),' and he pulled a plaque out of a brown paper bag. The aide walked over, took the plaque out of the bag and said, 'Hurry up, over here' to stand with the Chief justice, at which time the chief justice shook hands with (Jones), handed him the plaque, they took a picture of him and we left. And on the way home, (Jones) said, 'What in the hell happened?' But that was the ceremony.

The abbreviated ceremony symbolized the values that were central to the rules -- efficiency and speed -- ironically suggesting that the purpose of the awards was less to celebrate superior judicial service, than to politically reward docket-conscious judges.

Monitoring Monthly Reports

While the reporting system provided the basis for a system of rewards, it never provided the basis for a sanctioning system or for a rationalized system of judicial assignment. On its face, the reporting system was simple and straightforward. The state court administrative offices developed standardized reporting forms which judges completed monthly. The form reported how many cases were added to the judge's docket during the month, how many were terminated by each mode of disposition, and how many cases were pending over the established time

limits. The state administrative offices published a manual describing how the forms were to be completed and state officials discussed reporting procedures at the "traveling road shows." Judges forwarded completed forms to their administrative judges, who checked them for accuracy, approved them, and forwarded them to the state offices. State officials checked these reports only for statistical accuracy, that is, for whether the numbers summed properly. Despite the authority granted by Rule 4 to adopt practices to insure proper reporting, judicial reports were never audited. Such auditing was theoretically possible, for the reports could be compared with actual case files. Although efforts were made to ensure a modicum of consistency in how reports were completed, uniformity was not the goal. We found, for example, wide disparity in the interpretations judges gave the "disposition by pretrial" category, some interpreting it to mean "disposed at pretrial" and others perceiving it to mean "disposed before trial." State officials were unconcerned, for they did not view the statistics as scientifically valid or as state level management tools.

Nevertheless, inconsistent reporting practices led some judges to charge that the reporting system was a "numbers game," in which some judges "cooked" their reports. They viewed this cynically:

> I think the reporting of those things left a lot to be desired. You would get to judicial conferences, and people would handle certain things differently in the reporting forms, and they all semed to be acceptable. They could put certain cases in a certain category that made them look like they were current, or they weren't active, or whatever, when other jurisdictions wouldn't do that. So it seems to me that the reporting was somewhat inconsistent and contrived in certain jurisdictions for a certain result. (Columbus judge)

> No one ever does a good job of checking them to see if they're accurate. But I may know myself that figures that are being reported to the court are way out of balance. They're not anywhere near being accurate. And the reason they're not accurate is first of all, the judge relies on the bailiff. The bailiff doesn't know how to do it. And so the net result is that when I read all these statistics, I always take them with a grain of salt. (Columbus judge)

Many of these inconsistencies were in good faith — reasonable judges could interpret the reporting requirements differently. Nevertheless, the acceptance of inconsistencies by state level officials revealed their unwillingness to police judges.

State level officials declined to monitor reporting practices for they believed bad faith reporting to be minimal, and hesitated to impugn the integrity of the bench. As one explained:

> The underpinning of this is really based on the idea that the people in the field are following the rules appropriately and doing what they should do and it's dependent upon their integrity. These forms and these numbers aren't for us — they don't mean anything to us, which is true. They don't. They are meant for the judges. They are management tools for the judges.

The statistics were never part of a rationalized management plan by which judicial resources were shifted from one court to another on the basis of a fixed formula, as earlier reformers had envisioned, but individual statements to individual judges on the status of individual dockets. Consequently, the most pressure state officials exerted on judges was to issue monthly overage lists, indicating how many cases each judge had pending over established time limits.

Administrative judges, charged with monitoring the implementation of the rules locally, also treaded lightly. One told us that the monthly reports should be audited, but that he lacked authority to do so. Another reported he merely signed judges' monthly reports and asked them if they required help with their dockets. A third recounted:

> We have two people on the bench who are way behind again. I remind them at monthly meetings that we are still operating under the superintendence rules and we ought to keep as current as we can but some judges don't care. There are powers that are given to the administrative judge under the rules that enable one to shift cases and bring in visiting judges to assist. I have never done that. Nobody has ever complained to me about it. (Columbus judge)

Another Cincinnati judge explained that the circumspect role played by the administrative judge rested in bonds of collegiality:

> Now the administrative judge is supposed to double check, but the administrative judge is one of us and is he going to go around and call you in? In reality, no.

Administrative judges worked daily with the judges who elected them, faced the same local problems as their colleagues, and therefore empathized with their administrative problems. One administrative judge in Cincinnati recounted how some judges in his court faced mounting backlogs because of illness and personal tragedies. Rather than pressuring them to process cases, he sought aid from other judges to pick up the slack. The administrative judge, rather than being the agent of a burgeoning state judicial bureaucracy, remained one of the "good old boys."

Despite the low-keyed efforts of state officials and administrative judges, however, the rules provided a continuing threat to judges' professional status. For now, other officials had gained the authority to monitor judicial work, even if they exercised it cautiously. As we explore in Chapter Seven, this threat has effected a transformation in the meaning of judging. In the face of such a threat, judges' motivations to comply with the rules bear examination.

Judicial Motivations to Comply

Regardless of the reluctance of state court officials and administrative judges to monitor local judges, the mere presence of a regularized reporting system induced judges to pay greater attention to their dockets. Because individual statistics were recorded and circulated within each court, competitiveness and potential embarassment were introduced. Many judges checked their standing against others', even when they doubted the efficacy of the rules or the statistics upon which standings were based.

You see what's in that report and you know what the other fellows have in their reports and you know, I'd say 10% of my criminal cases are over time and what the hell is wrong here and we would sit down and go over each of them and find out why they are so far out. (Columbus judge)

I guess judges are no different from the human point of view than anybody else. If the judge has to turn in every month, a record of each case -- and I have my batch of cases -- then I take some pride or the reverse, I may suffer some embarrassment if my docket is behind and that's the guts of the whole thing. I think history has borne out that certainly it's an imperfect system, but history has borne out I think, the fact it is an effective system. (Cincinnati judge)

It's just like, well, playing any kind of an athletic contest or anything else. You tend to set a goal for yourself, or something else, and you try to achieve it, and you have to fight. I can't speak for the others, but as far as I'm concerned I have to fight against making the achievement of a specific preconceived goal the end result. That is not the end result. The end result is to do a good job. (Columbus judge)

Just having the reporting system gives me certain goals. My constable will come up to me from time to time during the month and say, 'Well, judge, you're even for the month, or you're 20 behind, or you're 30 ahead,' or whatever but we had come out ahead by one month recently and we had some other entries that we could have rushed through on the report for the 30th of June, for instance, and he said, 'well, we might as well save them for July 1st because it would look better.' (Cincinnati judge)

The new standards and procedures established by and pursuant to the rules were shrouded in the legitimate authority of the supreme court. To judges trained and socialized to be rule-abiders, compliance was a professional responsibility and duty. Law is publicly venerated by the legal profession. Legal training promotes obeisance to rules and to the authorities who interpret them. As the secular priests of the legal profession, judges must voice veneration for authority and hierarchy, if their own claims for elevated status are to be legitimated. Thus, by virtue of their training and their own desire for continued status, judges must be, or appear to be, law-abiding. When new rules are set forth, they tend to comply, even if a new rule is contrary to their personal views. From the perspective of Ohio judges, the Rules of Superintendence were promulgated according to law, and

therefore they felt duty-bound to comply. The following comments illustrate their attitude:

> One of the inbred trainings for any judge is that he is supposed to comply more explicitly with the law than anybody else, and certainly anything that is set up for his direction, he should comply with more implicitly than, perhaps, the man on the street. (Cincinnati judge)

> The supreme court had the authority to adopt the Rules of Superintendence and we are subservient to the supreme court. We have an obligation to comply with them. (Youngstown judge)

> Well we comply, because the chief justice says that we should, and the supreme court says that we should--not just the chief justice--but constitutionally, the supreme court has the power to adopt the rules and I suppose that we go along with it as a matter of accountability, and responsibility. (Cincinnati judge)

Moreover, as the rules transformed the meaning of judging to encompass more administrative tasks, many judges began to take pride in completing those new tasks. Their job became more meaningful as its products acquired concrete definition. Such pride is evident in the following remarks:

> The rules have given the judge personal responsibility for cases, triggering a sense of responsibility and pride in disposing of it. I think that judges generally have a feeling that they want to do a good job. Part of their job is what the Rules of Superintendence say. (Youngstown judge)

> I don't know whether anyone has seriously received any sanctions from the supreme court. Obviously, it does have the right to impose certain sanctions, but I would guess it's pride as much as anything else that makes me want to abide by what they say are proper guidelines. (Cincinnati judge)

> The only motivator there should ever be to comply is the internal desire to do the best job you can while you're on the bench. In other words, you have a commitment which you have accepted by virtue of election to office and if you have any personal feelings at all about your responsibility, you're going to try to do your best. (Cincinnati judge)

Routinization

As time passed, the operative aspects of the rules became more and more accepted as part of courts' normal operations, though, as we shall see, to varying degrees in different courts. Complying with the new rules came to be one of the accepted tasks comprising judges' work, a process organizational theorists have termed "routinization" (Watson, 1966; Hage and Aiken, 1970; Smelser, 1959; Mannard and Neff, 1961). Accelerated by O'Neill's death in 1978, routine structures and practices replaced the organizational impetus previously provided by his strong leadership. Underlying the routinization was the process of adapting the administrative patterns O'Neill promoted to the everyday demands of administering trial courts. This adaptation was evident in the manner in which enforcement efforts increasingly relied upon judges' good faith. As one supreme court justice explained:

> As far as the reports go, we're not policemen and it doesn't mean a thing to us whether a judge falsifies his report or not. That's between him and his God. The purpose of those reports is for the judge to know how he stands on his own docket, not for us to be policemen and call him up and say, 'Hey, you only got rid of thirty files and picked up fifty last month and you're falling behind.'

There is now little desire to use the press even as an implicit threat to induce compliance. Whereas O'Neill had claimed media access to judicial statistics was the key to the rules' successful operation, current attitudes downplay the media's significance. Asked whether statistics were given to the press, a supreme court justice replied:

> Yeah, well let the press find that out for themselves. We're not policemen. Those judges are elected the same way we're elected and if their community is not satisfied, they'll turn them out. Judges have been defeated and they'll be defeated again but I'm not anybody's keeper. And we're not policemen and we're never going to be

> policemen. We don't want to be policemen; the same way as we don't want to be prosecutors. Let the press come in and look at them.
>
> Does anybody come in and look at them?
>
> Very seldom. Newspapers are in the business of selling papers and advertising. They've got to do that. I mean, it's a private enterprise. They have to make money and fortunately for us, for this country, the private enterprise system is the way we do things. I'm sure that if a paper knows a judge is slow and they know, they can come in and get the statistics and publish them and make a story out of it that will sell that paper that day and maybe do it for a week. And if they want to, maybe get that judge defeated at the next election and get somebody that will do the work. But to instigate that, I don't think that that's proper. They're available and we're not ever going to call a newspaper and say that judge so-and-so is behind.

Even the judicial service awards have changed. Once attractive brass gavels riveted to wooden wall plaques, personally presented by the court system's administrative head, they are now mere lapel pins. Although this transformation owed largely to the alchemy of rising trophy prices and declining judicial budgets, it symbolizes evolution away from the flamboyant rhetoric and the flash of the photographer's camera, towards the routinization of the system's operations. Nevertheless, the decade of the Golden Gavel did induce Ohio's judges to complete their reports and to pay greater attention to their dockets, even if they were seldom sanctioned.

Summary

The implementation of the Rules of Superintendence depended upon the leadership of Chief Justice C. William O'Neill, a variety of implementation strategies, and the rule-abiding ethos of law-trained judges. O'Neill's charisma and political skill certainly cannot be underestimated in importance. He fixed and controlled agendas and induced judges to identify with the changes he sought. Central to his techniques were those which promoted judicial participation in the change process, inclusion in the rulemaking process and the "traveling road show"

being prime examples. He provided political incentives to comply with the rules, particularly the Golden Gavel awards and the promise of pay raises. He carefully avoided sanctions, though he maintained the threat of sanctioning.

Indeed, the entire state court administrative apparatus avoided sanctioning. Reports were not leaked to the press; they were not even audited. Variation in reporting practices were tolerated. Very few judges were sanctioned. There was little need for it. Judges obey rules, and the rules had changed. Nevertheless, the threat of sanctions and increased accountability remained, auguring ominous changes in the nature of judging. But to emphasize the importance of O'Neill's role is not to adopt Carlisle's view of history. O'Neill's charismatic leadership arose in the context of a much broader movement rooted in factors beyond the control of any individual. Nor would the changes O'Neill fostered have survived had they not been routinized, compromising the ideals of reform with the exigencies of daily administration. Whether the Rules of Superintendence would have evolved similarly in the absence of someone of O'Neill's stature is unanswerable. Certainly his techniques of participation and praise can be emulated, for the conditions he faced are not unique to Ohio. One of these conditions is the political power of judges, to which we now turn.

CHAPTER SIX

THE POLITICAL POWER OF JUDGES

Despite the changes portended by the rules, there was no organized opposition to them. In part, this can be attributed to the chief justice's efforts to solicit participation from trial court judges. Nevertheless, some judges disapproved of the rules. In this chapter, the grounds for their disapproval and the form which opposition took will be explored. We will also examine the ability of judges to organize, whether it be against the chief justice or the legislature, thus noting the type of power they are able to wield.

Judicial Disapproval

Although many judges regarded the Rules of Superintendence at least somewhat favorably, a sizable number disagreed with them as the following statement indicates:

> I believe from attending those judges' meetings, that the majority of those judges didn't agree with him. But I don't mean to imply that they rebelled, and said to the chief justice, 'No, we're not going to go ahead.' But basically, the chief justice made up his mind he was going to do this, and there were members on the high supreme court that were opposed to what he was doing. But he had that power in the constitution, and he knew how to take advantage of it, and what he did was he tried to kill you with kindness. But if you ask me if I believe that most of the judges agreed with it at the time, the answer is no. If you asked me today if most of the judges agree with it, I'd probably say no.

Judges who opposed the rules voiced a variety of complaints. Some charged that the rulemaking process was autocratic, not allowing judges sufficient opportunities

for meaningful participation. Others contended that the administrative centralization manifested by the rules infringed upon judicial independence and that the rules demanded too much recordkeeping.

As portrayed in the previous chapter, Chief Justice O'Neill strove to achieve a limited form of participation, limited to judges and other affected groups. The participation was also limited in that the rulemaking agenda seemed defined prior to consultation. Some judges, particularly those from Cincinnati, whose master calendar system of judge shopping served judges and lawyers alike, were unenamored with the participation process. As one judge explained:

> What basically happens is the chief justice comes to a judges' meeting and says we're going to do this. We have to do a better job of eliminating congestion in the courts and here's what I'm gonna do. And I've appointed a committee to do this, and I've appointed a committee to do that. (Cincinnati judge)

Judges also opposed the rules because of the threat they posed to already established work patterns. A particularly irksome change was the elevation of the chief justice from the patriarch of the court system to a supervisor. Required monthly reports, coupled with the possibility, and fear, of sanctions for falling behind, led some judges to believe that their independence was being threatened. With regard to such changes, judges expressed their resentment in the following ways:

> Well, I think basically they thought it was an infringement on their right on how to run the court and the chief justice was trying to assume power that he didn't have, and that they didn't want anybody else telling them how to run their court. You know, it's hard to change. (Bar official)

> There was the general opposition to change. Or, I should say, the opposition to change in general, and the fact that most people do not like new authorities breathing down their necks. I think it was all

> hammered out pretty much ahead of time before they came into being. (Cincinnati judge)

> There were probably judges throughout the state who had been on the bench for many years who felt a loss of some independence. I can recall the judges who had been judges for a number of years, there was some reluctance. They felt that they were losing their independence. I suppose this feeling, of course, relates back to the idea of local concerns, and let's face it, people in a local environment don't want interference from higher headquarters or authority. I would say that you would probably get some resistance from this, because here I am, a local Franklin County judge -- and I think there are those of us who would rather govern our own affairs locally. (Columbus judge)

> They didn't like to have their hand called or have someone looking over their shoulder. (Columbus attorney)

The record keeping system -- perceived as an instrument of the new administrative order -- was also greeted with resentment. Never before were judges required to keep records so extensive they could tell whether any case on their docket exceeded a time limit, let alone have to report upon their docket status to the chief justice. Even though many judges delegated much of this mundane work to their bailiffs, the change promised additional work and upset the patterns by which they ran their courts. Their reluctance, and disdain, are apparent in the following remarks:

> We're not school children. We don't have to keep records. We were judges who were independent and we are elected by the people of Ohio, not by the chief justice of the supreme court and we're responsible to the people and if they like us the way we are, that's the way we're going to be. There's a lot of people who operate on the theory and in fact I guess it's psychically true that man does not like change. We like things just the way they were yesterday in as far as our systems are concerned because we're familiar with them. Anything new is a nuisance. (Cincinnati judge)

> The grumbling I usually heard was at cocktail parties and at judicial conferences and occasionally a judge would stand up and vent his complaint at a public meeting. We can't do it. It's unfair. I think it just kind of galled them to have to do all the paperwork. A lot of them

would say well, I've got so much paperwork to do now, with everything the Supreme Court of the United States is making us do and this is just another piece of red tape. (Bar official)

Opposition to the Rules

Despite such disapproval, opposition to the rules consisted only of individual acts of defiance or avoidance; no organized opposition emerged and we found no evidence that any had ever been considered. One form of opposition was simple noncompliance with various provisions. Some judges continued to process cases as always, hearing motions, granting continuances, and generally running their courts in the way they wished, regardless of the time limits of rule 8 or rule 14's admonishments to be strict in the granting of continuances (see Chapter Four). These judges were unmoved by the Golden Gavel awards, and refused to accept that justice delayed was justice denied. Rather, they felt that justice takes time (see Chapter Eleven) and that it is necessary not to rush it. Such judges, however, did make efforts to comply with the provisions of the Speedy Trial Statute.

All of the judges, however, kept the records and filed the reports required by the rules. The lack of auditing by the state supreme court, however, enabled "creative" interpretations of categories and methods. Indeed, many judges complained that the emphasis on submitting "good report cards" to the supreme court induced a "numbers" game leading some of their colleagues to deliberately misstate their docket status in their monthly reports.

One judge was notorious for simply taking a bunch of cards out of his file and throwing them in the wastebasket. And, you know, the judge's name was used -- it wasn't Gibson, but say it was Gibson, that was called "Gibsonizing" the cases. And even now, if you threw away thirty civil cases, the chances are you would never hear about them again. Nobody would ever raise them and if they did, you would simply resurrect the cases, but you just dismiss thirty, and write them off. (Cincinnati judge)

Evidence that this occurred is apparent in the experiences of two Cincinnati judges who assumed the bench only to find their predecessors had more outstanding cases than had been reported. One reported 300 pending cases, but the new judge found 600. He attributed this discrepancy to the other judge's practice of discounting cases which had been assigned to a visiting judge, even if they remained open. The other judge described the discrepancy he discovered in the following way:

I was carrying my predecessor's count and it just didn't look right. I had the lowest docket here in the courthouse, and it just didn't look right because he wasn't that hard of a worker. So finally, we went to make a handcount and he didn't list more than 250 civil cases. So I had to amend my report to the supreme court this past year, and explain what happened. And here, every year, he was getting an award for outstanding judge, getting rid of his cases.

When the discrepancy was discovered this judge fired his bailiff, who had been an employee of the previous judge, for continuing past practices and failing to notify him about them. It must be emphasized, however, that "cooking" numbers is a rational response to the incentives of the system. Especially because the records are not carefully audited, it is the wise judge who does not call attention to his failure to comply by honestly reporting it.

Such examples of unreported cases are not meant to indicate that some judges are more honest than others but rather that while judges may lack the power to confront a chief justice they retain some means to circumvent his dictates. That these means are not challenged by the chief justice -- in demands for more accurate and uniform accounting -- is evidence he accords particular prerogatives to them. Another prerogative accorded them was the ability to use visiting judges, usually retired judges or those from less busy counties, for help with their docket. Although the visiting judge system was proposed by court reformers as a means of

equalizing the balance between judges and caseloads, it has not worked the way reformers hoped. Rather than being determined by caseloads, their use is affected by the solvency of the county and the disposition of the judge.

Determining which cases are to be allocated to a visiting judge, for example, is solely within the province of the sitting judge. Using caseload pressures or the necessity to comply with the rules as a rationale, judges can divert lengthy proceedings or politically "hot" cases from their docket. There are no guidelines for, or control over, a judge's choice, except for budgetary constraints which are not uniformly felt in all courts.

In utilizing visiting judges and manipulating statistics so that they appeared in the most favorable light, judges resorted to tactics long available to subordinates. When superiors dictate change, subordinates usually find some way to accommodate that is not too disruptive to these established patterns. Judges are particularly suited for such individualistic rear-guard actions. While the rules called for different practices, they did not, after all, obliterate all judicial prerogatives or challenge the aura of independence and honesty with which judges are cloaked. But even more important than these prerogatives in explaining judges' ability to mount limited resistance to, or avoid particular provisions of the rules is the very condition that leaves judges vulnerable to a variety of political incentives -- their electoral status.

Since all judges in Ohio are elected, the chief justice was limited in his ability to threaten them. Theoretically, he could leak reports of their poor standing to the newspapers, as O'Neill had threatened to do; if of the same party, he could encourage another candidate to challenge the nomination; or if of a different party he could support the challenger. He could also put the court in receivership and appoint a Czar to supervise it and move things along (see Neubauer et al., 1981). While all these are within the realm of possibility, they

have yet to occur in Ohio. Judges were cognizant of the practical limitations on a chief justice's power and his potential unwillingness to exercise it. Those practical limitations are apparent in the following remarks which speak to the hesitancy of a chief justice to assert his powers, given a shared professional status with other members of the bench, and the deleterious consequences which might attend their exercise.

> The day that the chief justice came up here and told us about that they were gonna install this new rule, I said, 'Now Judge, it will never work because you won't have enough guts to publish names of the judges that are loafing on the job.' I told him that it wouldn't work because of the politics.
>
> What was his response?
>
> He said, 'Oh don't worry. We'll take care of that.' Well they took care of it. They sent everybody a memo at the end of every year. (Youngstown judge)

> These judges are independently elected. What's the supreme court going to do? I'm going to come down and rule you from the bench. You don't do that to a fellow judge. All judges are elected by political means in this state. They all run for office. And even though you may be the chief judge of the supreme court in the state of Ohio, you don't go around snatching judges off their benches because they are behind in their dockets. You just don't do that. You don't remove judges in any state, unless they've gone totally insane or have been indicted for some felony or something.

Given their electoral status, the chief justice lacked the most important power available to a boss -- hiring and firing. As noted, he could try to embarass a judge but, as all our respondents agreed, electoral awareness of the judiciary is slim and embarassing disclosures do not necessarily -- or often -- result in electoral defeat. In addition, as political creatures judges have usually amassed local political support. Thus a challenge to any particular judge might be taken as a larger challenge -- or slight -- to the local powers which support him.

Despite such perceived limitations, and statements that there was little the chief justice could, or would, do to them, judges never challenged the chief justice's rule. In the following pages we will indicate why.

Limits of Judges' Political Power

That judges accepted the rules as a fait accompli, offering only limited and sporadic individual defiance, may, in part, be attributed to the charisma of Chief Justice O'Neill and the fanfare he generated about reforming the courts. But the imposition of the Rules of Superintendence also speaks to the inability of judges to combat those in authority who wish to change the conditions of their work. Despite doubts about the enforcement mechanisms available to the chief justice and his willingness to use them, judges worried that direct confrontations would result in unpleasant ramifications. Their fear was not so much of a particular person but of the possible and potential power of his office. Thus responses were limited to realms within the power of the individual judge to control. Their inability to organize stems from constraints inherent in the notion of judging, perceptions of proper professional conduct, and the power of judges to affect the decisions of their superiors and members of other governmental branches.

The working environment of a trial court generally keeps judges isolated from each other. Each judge works alone on cases which are considered to be his sole responsibility. In all our sites the physical location of courtrooms made chance encounters with other judges unlikely, and the absence of regular social occasions further negated interaction. Thus the very organization of the workplace diminishes the likelihood of their recognizing a common problem and then organizing to do something about it. As Kanter (1977:247) notes, the capacity to work effectively within the constraints of an organization -- to challenge dictates, for example — is determined by both formal job characteristics and informal

alliances. While the formal characteristics of judging resonate authority and respect, the organization of their work generally precludes informal alliances, especially on a trial court where decisions are made alone, without structured opportunities for counsel and discussion with other jurists. That the workplace, coupled with an ideology of independence and isolation, militates against alliances and collective awareness is evident in the comments of the following judge:

> Each judge is a kingdom unto himself. I've got a room adjoining another judge and I never see him. I mean, he's 20 feet away from me. We share the same johnny and the only time we ever see one another is there. So, I would say, we never consult. I'm busy all day long, either with trying cases or writing opinions, or keeping up with the law, and I assume other judges are similarly situated. (Cincinnati judge)

Even in Columbus, where judges have monthly meetings, their talk is limited to administrative matters and trying to achieve uniformity in courtroom practices. Like other professionals, they do not believe the evaluation of others' performances to be a part of their task (see Millman, 1976; Friedson, 1970), and their information about other courtrooms and problems is limited to stories told them by attorneys and staff. The failure to learn more about common problems or to organize and change conditions is related to individualistic conceptions of the job. As one judge described it:

> As you get further along in life, you tend to say to yourself, my job is to run my life and do my job to the best of my ability and I can't help it if Judge A is an ignoramous or Judge B is lazy or Judge C reads the book upside down. Until we constitute the perfect person, there's no use wasting your emotional energy worrying about the other fellow's docket. There's a long and I think justified tradition that if you're serving as an individual judge as you do in the trial court, that the handling of the docket or the handling of cases is that judge's own business. He is supposed to take resonsibility for it and it's not my business to tell him that he's lazy. And that's just as well. He's not your child — you're not going to bring him up. (Cincinnati judge)

Traditionally, judges have remained aloof from group efforts to organize or lobby; in acting as political proponents, many fear their independence will be compromised. Individual judges have, of course, acted as proponents for particular causes or reforms throughout history, but even the activists have worked as individuals, failing to construct a collective judicial movement. The notion that such collective efforts are somewhat improper is apparent in the remarks of a judge who questioned the notion of collective attempts to organize and lobby:

> I think a lot of groups in public office are not organized, well, not organized like insurance companies, or medical societies, or something like that. You can't be, for one. That's not the function of a judge, it just takes away from his independence. If we were our own lobbyists in the legislature, we go up to the legislature, then the impression is, 'You do this, or else when you come in front of me, you're in trouble.' (Columbus judge)

An emphasis upon doing one's job in the courtroom also militates against allocating time to causes outside of it. Judges, as we have noted, have generally not believed lobbying and politicking the state supreme court and the legislature to be a part of their job. They adhere to the separation of powers, believing it is their job to decide cases and the legislature's to make laws. But as legislative actions increasingly affect the nature of their work and their compensation for it, the barriers between them begin to wear thin. Lobbying and politicking, however, are difficult roles for judges to accept, given the legal and constitutional protections which have historically been accorded their positions. As Hurst (1950) notes, civil immunity, protected pay, and assurance against arbitrary removal are essential elements of judging at all court levels. Such protections, it might be argued, have allowed judges to eschew collective efforts. But while these protections remain, climates have changed. A provision against legislative tampering with pay, for example, does not mean that more will be added. And even if the legislature is

believed to be the proper body for the promulgation of law, their doing so without reference to its impact upon the court -- particularly with regard to procedural matters -- is vexing, thus leading to a reevaluation of collective efforts. However, even when judges accept the premise that they should be lobbying, their comments indicate that they believe they have neither the time nor the skill to conduct such a role:

> When preparation and approval of rules is involved, you'll find very few trial judges who have the time to keep on top of what is being proposed and considered and very little time to go to committee meetings, conferences and such where the language of proposed rules is presented. The result is that I don't think you'll find a great deal of activity by the trial court bench. (Columbus judge)

> We ought to be aloof. We ought to be removed. We have never really organized ourselves until the last couple of years, into an effective force.
>
> Why is that?
>
> The canons and now the Code of Judicial Conduct requires us to remove ourselves from politics. That's an unfortunate thing because we have to function at that level. We have organized ourselves and we have made new efforts to communicate. But it's very time consuming when you're carrying a full load. I'll be in Columbus on Friday. I was in Columbus a week before that. Now, every day I go I still take my ordinary caseload here. It's work that I do over and above that. If we can get to our people we could communicate with them and they could see our problem. But most legislation at the federal level and at the state level is passed with no comprehension of the judicial impact. (Cincinnati judge)

> I have, as past president of the State Judges' Association, been a chief lobbyist on pay bills and somehow I just felt a little bit, like a fish out of water when I went in to ask for a raise. I've always been treated very nicely by the committees. I can't say that I have always gotten what I would have liked but at least I've been there. (Columbus judge)

Judges' inability to win concessions from the legislature highlights their precarious political position. Many see themselves as stepchildren with little power to affect the legislature. While the political reasons for parsimony are

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apparent, legislative failure to sufficiently consider judicial predilictions and expertise is a direct attack upon their professional status. About the legislature and their relations with it one judge said:

> We always suffer at the hands of the legislature in every respect. A good example — the legislature had been fighting the adoption of the Federal Rules of Evidence and they had led all lawyers and judges to believe that it wasn't going through. Within twenty-four hours, it was suddenly announced that they were enacting the Federal Rules. There's been a great deal of discontent with the Federal Rules in that almost anything is admissible today, particularly opinion evidence. Another example is that the legislature, over the objection of the bar and the judges, has adopted a bill on comparative negligence. They don't know what they're doing. For example, we have isolated twenty-one different problem areas already in the bill that the legislature did not anticipate or address itself to. (Cincinnati judge)

Describing the futility of his efforts before the legislature, a Cincinnati judge described his attempts to win more judgeships:

> I was there for weeks -- might as well have found a girlfriend and laid out for all those days. You know, about as much was accomplished. It's a terrible thing. (Cincinnati judge)

Commenting further upon their difficulties with the legislature and explaining their inability to exert effective influence, other judges said:

> Judges are very poor lobbyists. They run very, very frightened about anything and everything. There's supposed to be a three-part government -- the judiciary, the legislature, the executive, and they're all equal. But they're not equal. We're under the legislature. It's possible to totally impoverish another branch of government. And they do it; they do it financially, the state legislature or the county commissioner or the city councils, whatever. They can do it manpowerwise, which they do. So you know, judges are under that onus. They don't want to make anybody upset up there, or we won't get a bone from the table. (Cincinnati judge)

> The judiciary is still functioning closer to what the Constitution intended than the other two. We are not treated as a separate, equal branch when we go with our negotiations to the legislature. We are still subordinate and then you add that subordinancy to what many judges believe to be senseless regulations and that adds up to frustration. You frustrate people long enough and they start to bite each other as well as rats. (Cincinnati judge)

Because the legislature is responding to a variety of audiences with different sets of exigencies, judicial discontent with their actions is not of paramount importance, given the relatively small number of judges in the state. It may be that judges were never able to influence the legislature but in the past it met less frequently and seemed to do less damage when it did.

Although the Rules of Superintendence did not galvanize judicial pursuit of political goals, the notion that it is unbefitting for judges to trek to Columbus is fading in the face of a perceived necessity to do so. The issue which has galvanized Ohio judges is salary. Unlike the rules which judges could try to circumvent or to which they might fashion individual adaptations, no judge can win more money from the legislature. Given the increased threat posed by the legislature in the areas we have described and dismal economic times, judges are beginning to believe in organization, thus indicating a change in their previous assumptions about judging. An example of this change is the 1968 establishment of the Ohio Judicial Conference to monitor legislative activity and influence legislation which affects the judiciary. Remarking on its role, an official said:

> We are sort of a bar association, only limited to judges. We try to respond to their questions. We sort of act as a 'keep in touch' with the legislature activity to at least be aware of legislation that's being introduced over there and try to alert the judges if it is going to involve their operation in the courtroom or problems that they are having in operating under given law. We try to go over there and make changes -- at least sit down with the legislators and explain the problems. It's communication problems, primarily.

Recognizing that their problems are not all alike, judges are organized by group (i.e., juvenile, common pleas) within the conference, with each group's interests attended by a conference official. Now, judges also have a full-time, independent lobbyist in Columbus. With organization they have begun to recognize that the legislature is not the monolithic body they sometimes assumed it to be; they have identified supporters and begun devising strategies to win more. At the 1980 Ohio Judicial Conference, for example, judges were admonished to "do a better job of public relations," and to "take the gloves off." They were further urged, with regard to salary increases, to "not be bashful of reminding the legislature that they have earned a raise." Other speakers, however, noted the possible futility of these strategies. Since so many legislators are former attorneys, judges believe they take some pleasure in seeing them grovel. Despite such obstacles, there is some evidence that collective efforts have had some impact. Describing the defeat of a juvenile justice reform bill, one legislator said:

> A senator told me, 'I had a call from my county chairman, he was calling me from a judge's chamber, he has not asked anything of me in the two years I've been down here, and he's asked me to vote against this bill.' In that particular county the juvenile judge is also the probate judge, and there had been many assignments of legal work from the judges to that particular county chairman and his small law firm. And this senator said to me, 'I'm sorry I can't support you, notwithstanding the merits of the proposal.' There was another senator from another county, where the judge was one of the better juvenile judges in the state, and was doing many of the things that were proposed in the bill -- he called every important person in that county who he felt could influence the decision of the state senators. And in turn, those people called, or wrote, their state senators saying, 'We oppose this legislation.'

From this vignette it is apparent that judges can exert effective influence on occasion. Their ability to win higher salaries, -- an issue which underscores their subservience to the legislature -- or to win more judges in Cincinnati -- has not been similarly successful. In matters requiring financial expenditures they are at a

particular disadvantage (see Baar, 1975). The days when judicial demands for more services were quickly answered are long gone; a new era in which cost accounting is extended to the courts has dawned and judges are only reluctantly becoming aware of it. They are also paying for their past independence and their failure to align themselves with other groups. When other civil servants demand wage increases they do not include judges. Concomitantly, judges are finding that their support of others' quests does not reap equivalent dividends. Judges in Ohio found that their support of the legislature in their own salary demands made little difference; their support was just not that important. Similarly, judges cannot be sure that the official support voiced for their demands by groups such as the ABA is maintained in less formal settings. Attorneys and their representative groups have little to gain by publicly opposing judicial entreaties to the legislature. Our fieldnotes suggest, however, that with regard to judicial salaries, the private posture of bar associations may be somewhat different and that this is communicated to the legislature. Judges, of course, have no way of combatting such strategies, especially if they are unknown to them. That relationships between judges and bar associations are not necessarily close is apparent in Ryan's (1980) finding that only a small percentage of judges, in a national sample, spent a significant amount of time on bar association activities. Such a lack of contact may militate against their winning effective support.

Despite past failure to receive legislative support for their efforts, most judges have begun to accept the necessity to establish liasons with, and argue their case before, the legislature. Describing the new aspects of the job, a former administrative judge in Cincinnati said:

> I'm half a whore, if maybe not a whole whore. I have to be a lobbyist. A lobbyist here with our commissioners, and the commissioners are controlled by a political party, or a chairman. So I have to be a lobbyist with him, or that executive committee of the party. You have to be a

> lobbyist with the state people in Columbus, the legislative councils up there, and the legislative committees. I've spent, probably six or eight days this year up there, lobbying.

This judge, who had been on the bench 10 years said this "whoredom" was a new -- and unwelcome -- part of the job. When asked to explain his additional trips to Columbus, he said he goes:

> To try and keep the idiots from imposing more law that is senseless and needless. It makes the whole system of justice more expensive to operate, if not impossible, to operate. Or, to try and get more money to operate what they insensibly imposed upon us. And then, of course, for our own individual needs; pay bills, fringe benefits, this sort of thing.

Until recently, expectations about the proper role for judges have kept them from developing a high political profile. While the Ohio Judicial Conference serves as their trade association, representing their views -- when they are communicated to the legislature -- it can be no stronger than the group it represents. Given the variety of audiences to which the legislature must respond, however, the judiciary is neither the most pressing or most threatening. As one judge described it:

> There's a chasm, a gulf between us. Many legislators look upon their judges in small counties as overpaid and underworked. They have a very nice niche. They've got a lot of power and a lot of authority and they seem to have a lot of time to enjoy themselves. You don't have that same feeling in the urban communities. But there are a lot more rural legislators than there are urban legislators and this is just a kind of traditional feeling.

The problems judges experience with the legislature extend to their relationship with the chief justice. Although individual judges are often assumed to be powerful persons in prestigious occupations, the power and prestige they experience is closely linked to the type of courts in which they sit. While traffic and

appellate court judges share the same designation, their worlds differ dramatically, in terms of the splendor of their courts and the substantive issues and defendants with which they deal. Given the hierarchy within the profession, judges also differ in the number and type of individuals they can influence and be influenced by. Conceiving of power as the ability to have others do your bidding (Weber, 1954), it is clear that all judges have some power, but that some have more than others, and some have power over others.

In terms of the cases they handle and the environment in which they operate, common pleas court judges have a better lot than those who sit on municipal court. But in terms of political power, even though all judges in Ohio are elected officials, they are subordinate to the state supreme court, particularly the chief justice. Not only is the chief justice the highest elected judge, with political contacts throughout the state, he is their constitutionally designated supervisor as well. Judges can not be sure that they will not need the chief justice sometime nor can they know the potential costs of recalcitrance. While this power may be enhanced when it is wielded by an especially astute or charismatic justice, such attributes are not essential. The power of the chief justice is thus inherent in the office and does not disapear when a new occupant appears. Given what they perceive to be a superior power, and isolated by their professional ideology as well as the ecology of their workplace, judges have adopted the stance that they are powerless to oppose the chief justice, even though they may question the types of action he might take against them. The following remarks indicate the relatively subservient position they have adopted:

> You don't grumble too much if (a) there's nothing you can do about it and (b) the guy you're grumbling about is chief justice of the supreme court of the state, because it's the old business -- you never know when I might need a favor from him. (Cincinnati judge)

Generally, my attitude is there's not a thing I can do with the supreme court and whatever they do, they're going to do, and I'm just a little fellow down here on the bottom of the totem pole and I think, generally, it's hopeless to fight city hall. (Cincinnati judge)

Summary

Although many judges resent the Rules of Superintendence, they offered no collective opposition to them. While this lack of collective activity may be linked to the sanctions the chief justice threatened to invoke and the incentives he offered to comply, judicial quiescence can be explained by the type of power available to judges. Isolated by the ecology of the workplace and a professional ideology which stresses independence, they are slow to recognize collective problems, and even slower to take actions about them. Fiscal pressures, felt from their pocket books to their benches, however, have forced them to reassess their practices. Their failure to sway the legislature, however, speaks to their relative lack of power on particular issues.

Thus while judges have power to affect the lives they confront in their courtrooms, their realm is tightly bound. As members of a lower court, they worry that public criticism by the chief justice may adversely affect them. They resort to surreptitious defiance rather than direct confrontation. The legislature is another body about which they have been able to do little. Thus, the dictates of judges which bring genuflections and obeisance in the courtroom do not have a similar effect outside it.

CHAPTER SEVEN

CHANGES IN JUDGING

Judging is a highly respected occupation in the United States. Studies of occupational prestige note that it is among the top-ranking occupations (see Featherman & Hauser, 1979; Blau & Duncan, 1978), and it is not hard to understand why. A significant number of both white and blue collar workers, for example, are dissatisfied with the quality of their working lives; dull, repetitive, seemingly meaningless tasks, offering little challenge or autonomy, are causing discontent among workers at all occupational levels (Work in America, 1973). In a society where work is often seen as an onerous, alienating task and where even professionals feel regimented, judging appears as a last frontier --one in which judges experience autonomy and independence (Mills, 1951; Aronowitz, 1973). To a lay observer, judges appear to reign supreme, with the trappings of their office further validating the notion that they are members of a favored profession. Such trappings, including massiveness, ornateness, and formality are commonly invoked to elicit awe and respect (Edelman, 1964). Among judges, we see them operating in the massiveness of their courthouse and courtrooms, the ornateness of their robes and the formalities of the procedings in which they engage.

Judges, of course, do little to disabuse notions of their supremacy. Commenting upon public perception of them, a federal district judge once remarked, "Judges are regarded by the public as the custodians of a special body of knowledge. In a way they are viewed like the Egyptian priests who are believed to have held within their bosoms the secret of life" (Goul[illegible]n, 1974:4). While remarks regarding such public adulation may display some hubris and be self-serving, the ideology of judicial independence and omnipotence seems to have an objective

base. Speaking of federal district judges, Goulden (1974) notes that there is no force on earth — apart from personal pride and peer pressure — which can compel a federal judge to work if he chooses not to do so. They can be impeached, but no such action has been taken since 1936. Failure to work, however, is no ground for sanction (Rosenbaum & Lee, 1978). While common pleas court judges answer to the electorate every six years, their accounts of judicial elections indicate that these are neither threatening or contested, nor a factor compelling industriousness. Historically, they too have been relatively free to run their courts as they pleased.

Trappings of the office and rituals associated with judging also contribute to an air of veneration. Commenting upon the necessity of such trappings and a judge's role in perpetuating them, United States Chief Justice William Howard Taft once proclaimed:

> Judges should be clothed in robes, not only that those who witness the administration of justice should be properly advised that the function performed is one different from, and higher than that which a man discharges as a citizen in the ordinary walks of life, but also, in order to impress the judge himself with constant consciousness that he is a high-priest in the temple of justice (Goulden, 1974:8).

Although the court system is hierarchical and stratified, reflecting differences in the social class of judges and the types of issues with which they deal, the generic nature of the title obscures such differences. Thus the lowliest judge can identify with the highest -- both being in the same business.

The expectation that respect will be accorded them and their claims to expertise, and that autonomy and independence are integral to their job, marks judging as a profession. Friedson (1970:137) suggests that autonomy is the prize sought by virtually all occupational groups, for it represents freedom from the direction of others and the opportunity to perform work the way one desires. Claims to autonomy are based upon a professional ideology which stresses the

specialized knowledge of the group, its ability to work without supervision, and the necessity for it to be self-regulating. Because professionals have convinced significant others that they are altruistic and unlikely to abuse the privileges granted them, they are largely left to control the universe of their work. Judicial disciplinary commissions, for example, may evaluate conduct but they are invoked only when untoward actions occur and are brought to their attention. Although some lay representatives sit upon these commissions, a preponderance of judges and attorneys assures a reasonably sympathetic audience (see Millman, 1976; Bosk, 1979), although their existence indicates that judges may not be as free of controls as they used to be.

As members of a legal fraternity, judges lay their claim to expertise on a body of knowledge which is, in part, created, but certainly disseminated, by members of the group. These members determine the content of knowledge to be taught and the standards by which individuals will be admitted to practice. They are their own gatekeepers, claiming a license to carry out certain activities and a mandate to define the conditions under which they are done (Hughes, 1971). The claim for such dominance is laid on the basis of their being the "only competent guardians of the rule of law" (Heydebrand, 1979). While members of the legal profession, however, judges are apart from it; other members must defer to them, accepting their interpretation of law and their predilections in the courtroom. In the profession of law, judges may then be seen as prestigious members (Blumberg, 1967; Auerbach, 1976), although many complain their remuneration is not equal to their status.

Judges may share the same professional claims as attorneys, but new dimensions are added when they "ascend" to the bench. While attorneys may claim autonomy and freedom from supervision on the basis of specialized skills, they generally work alone on particular cases and must please clients if their livelihoods

are to remain uninterrupted. Judges, however, are involved in larger networks and in defining the parameters of their work they do so for others as well. Just as physicians' claims to autonomy and expertise allow them to shape the organization of hospitals and tasks of other workers, so have judges been able to influence the organization of courts and the work of those who must operate within them.

Given the historically exalted position of judges within their courts one might conclude that their professional status and power are secure. But the power and status accorded professionals depend upon their recognition and acceptance by others. In addition, they are linked to the needs of the organizations in which they operate. Professional autonomy and self-regulation are thus not eternal qualities. When new demands are placed upon courts, with the traditional means of resolving them no longer available, judicial power over work arrangements can be challenged.

The Rules of Superintendence were such a challenge. By requiring that judges report to superiors, they created a new system of accountability which directly threatened their autonomy. This chapter will consider that threat. In doing so we will also consider the general nature of judging and the way it is perceived to be changing, at least on the trial court level, in response to a variety of new demands on the court. These demands are apparent in Heydebrand's (1979) observation that courts are faced with a contradiction between justice, the requirements of judges, such as salary increases and demands for more personnel, and disposing of cases. In the past such contradictions were generally resolved in favor of judges; their demands for additional resources were accepted as necessary, thus reinforcing their professional status and their ability to define and control the conditions of their work. Heydebrand contends that an era of professional administration has been supplanted by one stressing bureaucratic efficiency and a more efficient use of existing resources, which is accomplished by subordinating

routine work to central administrative control and promulgating new rules to expedite it. But given the fiscal crisis of the state, which is increasingly impinging upon the courts, the bureaucratic era is being superceded by a technocratic one in which differences between formal and substantive elements of law are reduced and technical innovations such as video technology and computerized caseload statistics are introduced to raise productivity (Eldridge, 1972; Coleman, 1977; Goldman et al., 1976).

The transition from one era to the next is not linear and court reforms often reflect various elements of the different eras. The Rules of Superintendence, for example, contain elements of both the bureaucratic and technocratic strategies. They challenge traditional notions of judicial autonomy by placing more demands on existing resources, attending to productivity and demanding more of it, and centralizing administrative control. The technocratic elements include the use of computers and video technology and the centralized compilation of docket statistics which can be used to measure judicial productivity. What both eras share, however, is a change in the nature of control accorded judges over their work. In analyzing the diminution of control over work, Braverman (1974) notes that it takes the form of lessened control over budgetary and policy decisions and over work activity, such as scheduling and technical matters. As both these provinces fall within the realm of professional administrators, the professionals whose activities they guide must adjust to a new reality at work. The changes impinging upon judges, however, are not limited to different mechanisms of control. In addition to these, changing and increased caseloads, coupled with more complex law and formal procedures have affected both the content and nature of the work judges do (see McKay, 1981). With these changes in mind, we will now consider their impact upon judges' views of their work.

Changes: The Job is Tougher

Most judges lament that the position is a tougher one, with some going so far as to term it a job, just like any other. The most obvious difference is that their calendars are more heavily scheduled and they no longer have the luxury of moving slowly or shutting their courts during the summer. Descriptions of summer in Columbus, for example, would have made almost anyone happy to be a participant.

> This court used to have a summer vacation. Everybody left except one judge. He was the motions judge. He stayed and they had one on a replacement basis. I just think they did it on the basis of two-week periods or a month or something. When I was trying cases in this court as a lawyer, there wasn't such urgency as there is now about a lot of stuff. (Columbus judge)

In contrast:

> Today it's not take the old summer off and leave at noon every day situation. (Columbus journalist)

The villain almost uniformly cited for this change is increased caseload. Judges continually cite volume as their nemesis and are bitter about a litigation culture which makes them responsible for outputs but gives them little control over inputs. As they, of course, note, the responsibility for outputs is another new element of their work. Commenting upon the volume of cases with which they are confronted, respondents noted:

> I remember the time, back in 1955 and 1956 when the court used to close down during the entire summer. The judges just didn't work during the summer and you could shoot a cannon in the halls at 11:00 and not hurt a soul. Well, a lot of it has to do with the volume. You know, Columbus has grown. There are more police. More arrests. I think the idea that everyone is entitled to a lawyer, public defender, what have you -- that has caused a lot more trials. (Columbus attorney)

> It's not as dragged out as it used to be, timewise. Your superintendence rules cut down the docket but, there's more cases. So consequently, the docket is still jammed because of the influx of new cases, not because they are sitting here. These courts over here have updated their dockets right up to snuff. You don't like to have cases sitting around and hanging fire, you get rid of them. But you have an influx of new cases --it's just like that pyramid. You put two drops in the bucket, and you only take one drop out. So what happens? The bucket's going to keep getting full, regardless of how much time and effort you put in there to try to take it out. There's just more cases piling up. (Cincinnati attorney)

Taking the state of civil ligation as commentary on society, a Cincinnati judge sadly noted:

> I think we have a society where the first thought is, 'Let's go to court' and I think it's a sad situation. But I suppose people are just generally unhappy and they're going to be contentious. Maybe someday there will be some way to get neighborhood disputes, and many of them are, resolved with a block leader or something like that. Most of the time, what they want to do is have a forum where they can have their say and be heard and get it off their chest, and it's over with.

Now that courts have become the available forum for disgruntled citizens, expeditious dispositions are all the more difficult to achieve. In addition to more cases, some are more complex, requiring greater time and legal acumen, conditions which all judges neither expected, or are able, to meet. For many, these are new requirements which, quite apart from centralized authority, make the position somewhat different from what they would have liked.

> There's more law today than there was in the old days. In the old days, there was just no criminal law at all. Either a person did it or he didn't. But now, you've got so many ramifications with your motions to suppress, you know, the body of criminal law has developed to the point where it's unbelievable. And also, the volume of civil suits has increased tremendously. And the complexity of some of them. And, I think, the general caliber of lawyers is better. (Cincinnati judge)

The toughness of a common pleas judge in the seventies and eighties as compared to what it was in the forties and fifties is that it's between 200 and 300 percent more difficult. (Cincinnati judge)

There is more litigation and there is a greater quantity of cases and many -- most of the cases have got more legal facets to them than they used to have. Pretrial motions and motions to suppress and all of these things that take time to decide and the Speedy Trial Statute. Many judges find that a very heavy burden to have to comply with that. (Cincinnati attorney)

Changes: The Job is More Formal

In addition to more complex cases, judges charge that even the most routine have become more time consuming. The symbolic performance in which judges must participate when sitting on the bench has become more involved. Attorneys' insistence to put things on the record has made judges more circumspect. Because they are now responsible for moving cases more quickly, procedures which keep them from doing so, and then hold them responsible for failing, are resented. As one judge described it:

I can't blame the rules for the increase in criminal work or for the increased work that's involved with nearly every case. You blame the law on that, or the upper courts, that have set the law, as to pretrial rights, post-conviction determinations, or whether they were represented by competent counsel. It's all idiocy. I have to go through a five or eight minute oration because of rights of people, before I can entertain a plea. Make sure he's feeling well, and understands everything, and is satisfied with his lawyers. Is he comfortable, do his shoes fit well. All of this mickey mouse out there, which theoretically is fine, but it takes a great deal of time. And then they sign. Then I ask, 'Are you sure you understand this?' And then, by another determination, I have to turn around and say, 'Now, you have the right to appeal in all of these procedures. Is there anything that you would like to appeal? If you're unable to retain counsel for that purpose, you qualify as an indigent person. You make the fact known to the court and the court will appoint competent, capable counsel to represent you on appeal, at no expense to yourself, as well as make available to you any necessary document, records or transcripts appropriate to the appeal. Do you understand your rights of appeal?' And you know what? They've pled guilty, they have plea bargained, in essence, sentence bargained, maybe, and NO APPEAL. They have the right to appeal. And so now the state, you, me, the citizens, appoint somebody and they go through

all this expense, and time consumption, of course, to appeal to nothing. (Cincinnati judge)

Thus the remembered past is one where a lot less attention was paid to detail because judges were free to determine what was important. The following remarks, for example, indicate the difference that new procedures have made:

Prior to the rules, things were much, much less formal. There was no such thing as advising a defendant of his rights. Oh, there was something about a little advising of rights, but generally it was up to the attorney. The court didn't assume any formal responsibilities in that regard. The proceedings are much more formal now and of course, we do have times within which to do things. (Cincinnati judge)

Being a judge has become much more complicated. In municipal court, I used to dispose of 200 cases in the morning and that's what we call wham, bam, thank you ma'am justice. Now, it would take weeks to do that kind of work. However, the end results are about the same. The expense of the operation is sky-rocketing and I sometimes wonder whether it's worthwhile. We can say now that the defendant was advised of his rights and all that business. The record looks good. And what I'm primarily concerned with now is that the record reads rights. Whether the guy understands it -- I mean he knows whether he is guilty -- and whether he has got a right to a lawyer or the right to remain silent or a right to face his accusers, what the hell does he care about that? All he wants to do is get the least possible sentence. (Cincinnati judge)

Of course, the Rules of Superintendence are not responsible for the increased formality of proceedings. Supreme court decisions regarding the rights of defendants and the revision of the Ohio Criminal Code all dictated a change in the rites associated with criminal cases. There is some question, however, whether such formality contributes to justice. While this may be a critical philosophical question, it has special importance for Ohio judges who believe their work is accomplished more slowly because of it. When they question the relationship between such procedures and justice, as the above judges did, it becomes all the more galling to comply. Thus it is not surprising that some judges, particularly

those who subscribe to a philosophy of professional administration perceive themselves as buffeted by forces over which they have less and less control.

Changes: Less Time to Think and No More Fun

Rather than being inherent in particular tasks, Kanter (1977) has noted that job dissatisfaction is related to the disjuncture between expectations about work and actual experiences. Those judges who believe in the ethos of professional administration and assumed the position with a vision of eminence in mind are resentful of changes. They generally want more time -- either to weigh legal matters or to think --and less supervision, attributes no longer available to --or associated with -- most trial court benches. Of course, the desire for more time to think about weighty legal matters and a distaste for complex and difficult cases is somewhat contradictory. Although judges may need more time for complex cases, time to think is really a residual category, reflecting an assumption about the philosophical nature of judging. For judges who believe ruminations about the meaning of life and law are essential aspects of the work, the trial court bench is a frustrating place. That a desire for such pursuits is voiced is indicative of the tendency of some judges to lump all judging together. If the supreme court is a bastion of intellectual ferment, why should so much less be experienced on a trial court. That so much less does exist can be seen in judges' comments about the transformation of their work from a position to a job. They believe their work is not sufficiently appreciated or recognized and that it has become more routinized.

> The fun is out of the job. If there's one thing that you talk to lawyers of my generation about -- there's just no fun in the job anymore. There was a feeling in the fifties that there was some recognition of the significance of your job. You were really doing something effective to make this a decent community to live. You just don't get the feeling that you are accomplishing anything any more. You are the hamster on the treadmill in the cage -- running, running, running and getting nowhere. (Cincinnati judge)

> Being a judge used to be a position. Now it's a job. You put in your eight hours and you plug it out. There's much more pressure than there was in 1972. (Cleveland judge)

> Being a judge used to be a real nice job. Now, it's work -- just like anything else. You're really not as free as you were before. The Rules of Superintendence have stopped me from being a judge the way I would like to be a judge. I like to go into the library and maybe take three days studying just to really get down to the bottom line on a good cloudy question of law. I no longer have that kind of time. (Cincinnati judge)

> I thought that you would have more time to really get into the cases -- have a lot more familiarity with them, have a lot more background with them, be very knowledgeable about the law that was involved in them. In other words, prepare a case for trial the same as counsel prepares it for trial. That was my perception of what a judge should be doing, and I'm not. We're not. (Cincinnati judge)

> It has become more of a work job than a fun job. I love the courtroom, always have, and that's where I like to be. But, with the statistics, which are good, it makes it tougher for us. We have to work harder. You are more conscious of your need to get stuff done than you are of enjoying yourself while you're doing something. (Youngstown judge)

Summing up the changes, a senior prosecutor noted:

> Twenty years ago the job of a judge was a nice political plum. You worked half a day. You didn't have to do that much work and nobody was looking over your shoulder. You had very few problems and cases were dispensed with very fast. If you wanted to work, fine. And if you didn't want to work, nobody was there to push you. Now, it's a boiler factory, because if you want to keep up with your trial docket, you can't think. And if you can't think, sometimes justice has problems in being properly dispensed because you are pressured. (Cincinnati prosecutor)

Changes: More Docket Conscious

Just as the movement from one era of administration to another is strewn with contradictions, so do judges differ in their ability -- and willingness --to adapt to change. Some who insist upon traditional professional perogatives resent the changes, believing them to have fundamentally affected the nature of the job.

They do not deny the necessity for administration but believe it to be someone else's responsibility, such as a court administrator. But there is only so much a court administrator can do; he has neither the power nor authority, for example, to make judges work harder. And because such power could only come at judges' expense, court administrators are limited in their duties. Some judges, however, are willing to accept what Heydebrand (1979) has termed the technocratic integration of administrative and professional functions as the wave of the future, either believing the changes associated with it to be minimal, or necessary, in a world where new demands are placed upon the court. Indicative of such acceptance are the remarks of the following judge who believed administrative responsibility to be synonomous with good judging.

> There's been a change, and it's tremendously for the better. Maybe my background is different than the judges who have had those violent reactions. I grew up in the probate court and I served as chief deputy of the probate court of this county for many years, and that court in this state is primarily administration. Administration was nothing new to me. In fact, I was surprised at how little administration we had when I got on this bench. The administrative offices were kind of a new animal at the time. But the court, itself, has to administer its own problems. (Columbus judge)

One of the most significant effects of the combination of administrative and professional functions is the need for judges to be docket conscious. They must now not only appear to dispense justice, but must do so expeditiously and inexpensively. To do so they must have a better knowledge of the cases in their docket and be more actively involved in moving cases towards completion, particularly in the civil area where no speedy trial statute motivates attorneys.

The necessity to be more responsible is apparent in the following remarks:

By a state official:

> They tend not to slack off so much. Instead of scheduling one case today and have it settle on the courthouse stairs, leaving the courtroom empty, they schedule three and four cases a day now and there is no such thing as a trial court sitting empty. If Case A settles on the courthouse steps, why they're all set to go with Case B. (Columbus official)

Such comments were corroborated by a court administrator:

> When I was a deputy sheriff here twenty-five years ago it was not unusual for judges just plain and simply not to be here for extended periods of time, and I'm not talking or referring to just vacation time. If a guy decided he wanted to go for a week, he just went and, of course, they were in a position of autonomy where nobody could mention this in any kind of way or have any clout about what he might be doing to his docket. We don't have that any more. It's a rarity that a judge will just say, 'Well, I have to go next Friday' — and cancel his schedule. (Youngstown administrator)

Judges also agree that they have become more conscientious:

> It made everybody more conscious of the size of the docket and the necessity for moving cases. When a judge is responsible for certain cases, he is going to be more concerned about those cases. Before single assignment, who cared about a case? We had no rules that said they have to be disposed within a certain period. A judge who just wanted to avoid his work could find many good reasons to do that. I suppose a judge, if he wanted, could take a month off, but he is still assigned cases and his caseload is going to go up. He is responsible for those cases and eventually, you know, accountability is going to be his. He's going to have to account to lawyers, the parties, and the people. (Columbus judge)

Docket consciousness affects traditional case disposition methods. Judges can no longer wait for attorneys; they must push them and their cases towards completion. Describing this change, one particularly disgruntled judge said:

> I am a kindergarten teacher, because I am now making these people do what they are paid and supposed to do. I make them come to a pretrial or a report. I have to set it; they don't request setting, or come in and set it themselves; I have to make them come in. Or, i.e., hang up your coat in the coatroom. I make them accomplish their discovery within a certain period of time, i.e., you will now go to lunch. I make them come in for subsequent reports, pretrials, forced settings. Let's see, you will now take a nap. (Cincinnati judge)

As if the demand to be more productive were not enough, judges must account for their time -- and prove their productivity -- through what many consider to be extensive recordkeeping. Even those who agree with the rules, and believe that good administration is essential to good judging, resent the attention which must be paid to recordkeeping. The following remarks provide evidence of such feelings:

> I have not felt put upon with the knowledge that there is this attempt at accountability and responsibility. That doesn't offend me at all. It's just the time limits, and this constant flagging monthly is causing me to examine and say, 'Well, I started out the month with 403 cases pending, now I've got 462 pending, boy, I really loused up this month.' When you do this over a period of months, why, all of a sudden you start getting a frustrating attitude that you can't do it. (Cincinnati judge)

> I have always been enthusiastically in favor of the Speedy Trial Statutes and I never had the feeling that the Rules of Superintendence were burdensome. I think I would be less than candid if I didn't tell you that there was sometimes an attitude that these reports were not ending up as being very meaningful to anybody. They were just prepared and then filed and nobody did very much with them. (Columbus judge)

Although judges assign the recordkeeping tasks to their bailiffs or clerks, it is a source of irritation. Most maintain that the time could be better spent elsewhere and that the resulting statistics are neither read nor used. More importantly, the compilation of output statistics signifies a reduction in their role; theoretically, their work can now be evaluated on the same basis as any other pieceworker. It is here that idealized notions of justice and judging conflict with the new order. The system of evaluation is at issue. Even judges agree that the traditional aspects of their job are difficult to measure, so once a system is established, output is the only quantitative measure. As one judge said:

> We all write good decisions. We all write bad decisions. But they are the decisions and, certainly, the supreme court could not, in any way,

> shape or form grade decisions. Nor can they grade you on the kind of case that you happen to be lucky, or unlucky, enough to catch. (Columbus judge)

Once such a system of evaluation is created, however, the subordinate status of judges becomes apparent. Some accept this status, accepting the necessity and legitimacy of the supreme court's supervision. Others, however, comparing the chief justice to an overseer, are not so sanguine, and decry the sacrifice of justice to the god of efficiency. While we will explicate their cries it is important to note the extent to which they may be part of a professional ideology, constructed to justify and maintain privileges. There is, for example, little evidence to indicate that there was more justice in the past or that speedy disposition compromises the ideals judges are pledged to uphold. That judicial interpretations of the requirements of justice are no longer supreme is evidence of a fundamental transformation. While the "appearance" of justice is necessary -- as it always was -- the supreme court maintains that judges are not the best architects of it. By constructing a policy with new parameters, judges are given notice that their past policies neither appeared to be -- or were -- the most just. Such a message is often difficult to accept, as the following remarks indicate:

> Given the propensity of most people when they are elevated to the common pleas bench, they feel they are independent. They have reached a point of great responsibility which they are capable of discharging and let me get at it. Let me do my job. Don't give me these mickey mouse rules to live by. Let me show you I can do the job. Any tendency of somebody else to reduce them to a subordinate state is resented. It's a degradation of my own ability to do this job. I'm a good lawyer or I can be a good judge. Let me prove it. Don't give me a primer or a handbook or something -- a table of regulations that I have to go back to. (Cincinnati judge)

> There's an obsession with speed. The preoccupation with numbers as being indicative of quality work. I am such a traditionalist that I would take more pride in a challenging case well-presented, well-tried and properly disposed of as being a superior mark of accomplishment than

all of the Golden Gavels you could hang on a wall. It's difficult to find the time, to take the time to consider and ponder, and just let a thought roam around your brain for a while. That is a change which has not been here. (Cincinnati judge)

Now the supreme court looks over our shoulder and makes sure that we are following the rules. Before that, all we had to do was answer to the electorate and we could be a drunk and a poor judge. But with a good personality, we would continue to get elected. Now I think it is pointed out to some of us that we do have a boss. Like I said, the supreme court looking over our shoulder and if we're not pulling our oar; we're going to hear from them. We have a boss and normally, prior to the Modern Courts Amendment, we were answerable only to the public at election time. (Youngstown judge)

Changes: Denigrated by Attorneys

It is also difficult for judges to accept what they perceive to be a denigration of their status on the part of attorneys. When this is added to judges' new responsibility to dispose of cases -- and move attorneys to do so too, the grounds for dissension are sown. In contrast to the past when attorneys were remembered as trying to work things out before rushing into court, and when giving their word was a pledge of honor, judges charged that attorneys now accepted "bad" civil cases, were unprepared, and then ready to settle or plead on the morning of trial. Their actions, which were beyond the power of the judge to control, were also cited as making the process more cumbersome. One Cincinnati judge, for example, known for his commitment to speedy justice, convened his court at nine A.M. only to recess a few minutes later. He called a researcher into his chambers to say that what had occurred was an example of a "typical morning," one at which "none of the attorneys are present so things can't move at a proper pace." Commenting further upon villainous attorneys whose chicanery has been aided by the law, one judge noted:

I don't think the lawyers particularly care (to move cases) on the civil end of it. They like to procrastinate. They like to chew on it, even get

ready for trial. All these wonderful rules of discovery were promulgated with the idea that this would really expedite cases and get ready for trial. That's a bunch of rot. It just runs the meter against their clients. The highest dollar involved in lawsuits is discovery, and lawyers have recognized that and they just discover the daylights out of things. I have one where the guy was in here the other day, I said, 'Well, how long has this case been going on,' and they said, 'Well, it's two or three years old.' 'Well, why haven't you discovered this before? Why two or three weeks before trial? No, I'm not going to give you a continuance.' But they would willy-nilly just go for discovery. Once you put the heat to them, then they want to discover, and then discover some more, and then rediscover. (Cincinnati judge)

Since judges believe there are more cases and more law associated with each, the strategies of the legal profession, when coupled with judges' responsibility to comply with time limitations, are a source of considerable delay. As if to add insult to injury, judges, who now have more to account for and more responsibility to hasten attorneys, now find they are accorded less respect. From their description of the past we see another way in which the majesty of the bench has been disminished.

There was a much easier relationship between the bench and the bar. There was a different feeling — a sense of respect from bench to bar and bar to bench that I find sadly lacking today. They did not view each other as adversaries. If we had a lawyer that we had some respect for -- we knew he had ability and character and some sense of ethics and he said, 'Judge, I need a continance,' you would say okay because they had to keep coming back to you. You trusted them. Their work was beyond reproach. Their integrity was never questioned. That's an invaluable asset. Some of the young people have lost sight of integrity. They seem to take a joy in trying to find some absurdity about which they could attempt to exculpate their clients. (Cincinnati judge)

Another change which I have noticed on the bench is the attitude of the practicing bar, particularly the young lawyer. They come and they seem to have no feeling of being a part of the judicial system. A lawyer will say, 'Well, my brother lawyer said so and so.' And the brother lawyer will say, 'Well, I might have said that, but we didn't put it in writing.' Well, when I started to practice law I could meet one of my opponents on the streets and say, 'Hey, in regard to so and so, how about' and he would say, 'Yeah, that's fine'. We didn't even have to shake hands on it. If it was said, it was going to be. Now you've got to get it notarized, and witnessed, and time stamped and everything else

before many of the practitioners feel they are bound by what they said. I just think that's a lack of professionalism. (Columbus judge)

The diminution of their role has led some judges to characterize the position as dramatically different from what they expected. One judge, who left the bench because of the quality of work he encountered, described the job in a way which summarizes many of the changes we have described:

> I don't think that a primary function of a judge should be to be a policeman. When litigants want to have their matter disposed of should be the professional responsibility of the lawyers who represent those litigants. If you file a case, some judge ought not to be continually on you to get your case to trial. I found that I was spending an inordinate amount of my time pushing cases through the system. I don't feel that that should be a judge's job, certainly not to the extent that it becomes when lawyers don't do theirs. I really got a feeling that I was pulling teeth. I don't think you can solve the problem, which is an overall professional problem for the legal profession, by saying, you, judge, we're going to make you policeman, and you've got to turn these cases through here and file reports telling us how you're doing on it. I think the answer is probably very complicated, but I sure didn't like fulfilling that role. (Cincinnati judge)

Summary

Because the nature of judging, as our respondents often told us, allows some people to become "little dictators," confusing the deference accorded the office with the respect due them as individuals, it is especially difficult to accept new dimensions of the role which they believe may diminish its importance. As Jacob (1973) notes, most trial court judges perform a variety of tasks which quickly become routine, and sometimes monotonous (see also Ryan, 1981). Criminal cases generally fall well within the bounds of "normal crimes," and once one is versed in the routines associated with them, there is not a great deal more to learn (Sudnow, 1965; Mather, 1979). There is also not a great deal — in terms of the work being performed — to distinguish one judge from another. By specifying conditions under

which the work will be accomplished, the Rules of Superintendence made the ordinary routine nature of the work more apparent and threatened the illusions of judges who recognized it as such and wanted it to be different.

Although they have power within their courts, and the outward trappings of prestige, trial court judges are not engaged in the types of legal issues which bring recognition, thus making it difficult for them to be perceived as major jurists. Even for the judge who believes himself to be one, there are few objective measures upon which he can lay his claim; judicial performance is difficult to measure and when philosophical arguments about its essential features are finished, there is still disagreement over which aspects should take priority. When rewards are based upon outputs, however, a judge who thinks himself a jurist is hard put to maintain the belief.

It is, however, difficult to establish the validity of judges' notions of the past. It is possible that they, like many others, remember a past that never quite was. Our knowledge of that past is limited by a dearth of research on judicial work, particularly on the trial court level. All that is available are personal reminiscences which cannot necessarily be taken as representative (see Botein, 1952 ; Lummus, 1937; Lide, 1953). Even the most comprehensive account of trial judging (see Ryan et al., 1980) focuses only upon the present and does not provide a basis to test subjective speculations about the past.

But even if we cannot prove that judicial morale is lower, or that they derive less satisfaction from their jobs than they did in the past, we can point to objective conditions which we can presume to have affected them, particularly given their idyllic remembrances of the past. These objective conditions, such as fiscal crises, more complex law and complicated cases, and centralized administrative control are not likely to change; trends throughout the professions, including the most rarefied ones indicate that diminished autonomy and control are the wave of the

future (see Derber, 1982; Larson, 1977; Aronowitz, 1973; McKinlay, 1977; 1979). Those who ascend to the bench expecting a "position" rather than a job are thus likely to be sorely disappointed as judicial work becomes more routinized and is conducted under greater supervision.

CHAPTER EIGHT

COURT DESCRIPTIONS

While courts perform important substantive functions, their role in society is more important than that. In addition to processing and condemning wrongdoers and settling claims among disputants, they must convey the notion that the process is legitimate and the system sacrosanct. Because the system which courts are charted to uphold is strewn with contradictions and inequities, doing justice --the public mission of the court -- is difficult to accomplish, even if it was a clearly defined and shared goal. In the absence of doing justice, the appearance of justice is of paramount importance. This appearance is maintained through a courtroom drama which pays symbolic homage to the adversary system (see Balbus, 1973) and through physical trappings which accentuate the legitimacy of the process. As Edelman (1974:96) notes, settings have a vital bearing upon actors and upon responses to acts. Political settings, in particular, are characterized by their contrived character; they are unabashedly built up to emphasize a departure from daily routine or the proceedings they are to frame (see Goffman, 1959). In our sites, the stages differed. While each conveyed the court's majesty, it did so in different ways, with one, in particular, reflecting a change in the way the court's mission is accomplished.

In this chapter we will describe our three sites, both physically and in terms of their operations and work relations. To establish the impact of the Rules of Superintendence, we must understand the environments they were directed to change. Thus we will describe the reigning atmosphere in our sites prior to the rules, indicating what was to be lost -- and gained -- by change. We found that the physical form of the courthouses we studied reflected a series of attitudes about

the people and how work should be conducted. Since its architecture is an essential aspect of a court's persona, we offer descriptions of it as evidence of the images courts are designed to convey and the changes they have undergone. We must note, however, that there is no necessary correlation between architecture and attitudes. But when a particular set of attitudes and relationships exist, physical trappings can both reflect and reinforce them.

Cincinnati

Cincinnati is a growing, and relatively prosperous town. While other cities in Ohio, such as Youngstown and Cleveland, experience large deficits, Cincinnati had a $174 million surplus in 1980 (Peterson, 1980). One reason for its affluence is a diversified economic base. Another reason is what is reputed to be the basic conservatism of the city; as a resident university professor describes it, "Cincinnati is all prudence. It's German and English character is money in the bank, plan for tomorrow, be careful" (Peterson, 1980). This conservatism is social, too, and is manifested in a total lack of pornographic institutions in the city. The prosecutor, the son of a former judge and a local power with a secure hold of his office, is well known for his dislike for such facilities and has, in part, made a career of closing them whenever they appear. Titilating materials are available to those who desire them but they must cross the bridge to Kentucky to acquire them.

Although not intentional, the Cincinnati courthouse, located in a run-down minority neighborhood, provides a bulwark between the prosperous downtown, with its skywalks, restaurants and convention center, and the area which most citizens and visitors have no reason to visit. Of neo-classical design and occupying a full city block, the courthouse, flanked with Ionic columns, is an impressive building. It houses twelve judges, a prosecutor's office with a staff of fifty-two attorneys who are also allowed private practices, and a public defender's office which concerns

itself only with misdemeanor cases; indigent offenders are represented by assigned counsel. Although its judges have argued for additional judgeships, their number has remained relatively constant. Only two judges have been added since 1926, although the volume of business with which they deal has risen. Despite their failure to win more positions, the Cincinnati judicial budget exceeds that in our other sites (see Figure 8-1).

Equipped with marble staircases and the appurtenances befitting superior beings, the courthouse overwhelms ordinary citizens. Although the public areas may once have been imposing they are not well kept. The halls are littered and not air-conditioned; the public restrooms are old. Individuals, however, are dwarfed by both the size and height of the courtrooms. The marble wainscoating which flanks each room is matched by the judges elevated marble benches. Decorated in colors chosen by the judge, the courtrooms range from muted grey to imperial blue to a red and green combination. Antiques -- be they sconces and ceiling fixtures or the lamps situated on judge's benches --are pervasive. Well polished brass railings also surround the bench and mark the attorneys' area from the spectators' section. Although the judges' chambers are generally small and poorly furnished, there is a stark contrast between what must once have been and is now. It may be this contrast which leads some Cincinnati judges to complain of inconveniences such as sharp edged chairs and old office furniture. It is a far cry from what their courtrooms led them to expect.

The remembrances of Cincinnati judges seem appropriate to their setting. Their description of the past evokes a time of elegance and grace when judges were freer to determine their environment. Equipped with a master calendar, it was left to them to determine their commitment to work. Judge and case-shopping were rampant and cases moved when attorneys decided to move them. The following description by a prosecutor indicates the atmosphere created by such an arrangement:

Everybody would have cases assigned to them and they would go down to the presiding judge who would call every case and find out what it was going to be. If it was going to be a jury trial, he'd farm it out. Sometimes it was so bad that the judge you were supposed to see would be ducking out the back door while you're going in the front and you couldn't find him and you'd go back and the cases would be continued. I can remember a situation of going in and saying 'Judge, we're here for a case' and the judge would say, 'What do you mean, you're here for a case?' And I would say, 'well, you got this criminal case -- Judge so-and-so is the presiding judge and told me to come in here' -- and the judge would say, 'You go back and tell him he gave me one yesterday and I don't want another one today. I'm not taking this case.' Then you would have to go back and say 'Hey, Judge so-and-so refused to take this case' and the original judge would say, 'What? -- okay, go down here.'

As other observers described it:

They had a system that would list the cases for call in a given courtroom on a given day. It might list fifty cases in the column. Now, obviously, you're not going to try fifty cases in a day. Everybody asked for a continuance and everybody got one and the call started at 9:00 and at 9:30 the courtroom lights were out. There wasn't anything going on, because all the cases were put over. Then the next judge who had the call would continue it and then the next judge until it would go round robin. (Cincinnati prosecutor)

It was a much more relaxed atmosphere. I can remember nine years ago, John Smith was in one of the judge's rooms and he was way behind on his docket. So, John convinced him to put everything, reports and trial setting, on one day. He called the first three or four cases and the attorneys would come up and say, 'It's going to be a jury trial' and he'd say, 'We'll let you know the date.' And John said, 'Judge, we're not doing anything. We're not accomplishing anything here. This is silly to have the attorneys here. Let's set a date.' And the judge got very irritated about the use of the word silly, and said, 'This court does nothing silly,' but nothing was settled that day. They didn't set anything down for trial. It was just kind of a walk through of all the cases that day. (Cincinnati attorney)

Some still spoke nostalgically of pre-rule mechanisms of case disposition and court procedures, such as judge and case-shopping, which were largely determined by judges and better suited to their predilections. That such methods were believed to have served them well is apparent in the following remarks:

We have to set up our schedule for our room only, and frankly what we're doing is we set two or three criminal or civil cases a day and then we find that so few of them actually go to trial -- you know, it's either feast or famine. Back in the old days, one room would take care of the entire civil docket and the other the entire criminal docket; then the assignment commissioner would rush around and find courtrooms where they could try the cases that wanted to be tried and it worked. Under the old system, we got more done than we do under the present system. We do move them around but we don't move them around like we used to. (Cincinnati judge)

Echoing his remarks, and noting the changes incurred by the rules, a Cincinnati prosecutor commented about the ways in which judge-shopping made the system more efficient:

As the classic example -- although Judge X was a thorn in the prosecutor's side, he kept the system contained because, basically, everybody would continue their cases until they got to him and then they would plead. So you would find him in criminal cases, having received maybe two or three times as many pleas, as even one or two judges combined before him, because he was giving most of the people probation. It had its effect by cleaning up cases. Judge X would be basically the cap that kept the bottle from exploding because the pressure would be taken off as a result of him -- so I mean even though it wasn't so good from the prosecutor's eyes, some good comes because it took the volume away.

With the practices just described, Cincinnati embodied a system the rules were directed at changing. As will be discussed in Chapter Ten, few Cincinnati judges felt the system bred delay. As will be discussed in Chapter Ten, few Cincinnati judges felt the system bred delay. Not surprisingly, there was some amount of foot-dragging associated with their implementation. Since seven of the judges currently on the court were appointed after the rules, and the former judges we contacted admit faulty memories, it is difficult to establish how much resistance was involved. One judge told us, however, that it took about nine months for the single assignment system to be implemented. Given the running battle Cincinnati has had with the legislature to acquire more judges, it is apparent

that its judges do not easily relinquish control over their environment or their interpretation of what is necessary for its proper functioning. As one judge described it:

> There's a feeling here that we're the stepchild of the state. We're running our own show. There's a tradition here of curmudgeonry.

Certainly, resistance to change or the desire to define the parameters of work are not caused by the splendor of courtrooms, but they are not discouraged by them either. What is apparent is that architectural trappings in Cincinnati contribute to a view of the judge as an imperial person. To the extent that judges accepted this, forgetting, as one judge said, that they put their pants on much like other mortals, it was difficult for them to accept challenges to their dictates, even when they came from the supreme court and especially when they were directed at practices which they held dear. As we shall see in later chapters, such changes were made, with new modes of organization supplanting the slow moving pace.

Youngstown

Imperial trappings do not always house judges with a philosophy of curmudgeonry. As does the Cincinnati courthouse, the Youngstown court conveys a sense of deja vu. With many buildings in the downtown area alternatively boarded or burned, and a once prominent hotel directly across from the court empty, the court appears a vestige of bygone and more prosperous eras. Built in 1910, it is a Gothic style granite building flanked with columns. Composed of stained glass windows depicting each township in the county, the courthouse dome is a lovely piece of art. White granite wainscoating marks the public areas which are graced by four granite staircases in each corner of the courthouse. A raised blue and gold wallpaper contributes further to the colonial aura. The beauty of the Youngstown courthouse

is even more impressive than that in Cincinnati, perhaps because of its comparison with a generally deteriorating downtown area. The four courtrooms in Youngstown, however, are not nearly so awesome. They are generally small and a bit worn, but they are full of mahogony benches and walls, and decorated with different murals above each bench. One such mural is of a meeting between a native-American tribe and settlers.

The court itself is composed of four judges, a court administrator, appointed for the first time in 1979, and a prosecutor's office staffed with five attorneys. There is no Public Defender office, leaving indigents to be represented by assigned counsel.

Despite its trappings the atmosphere communicated in Youngstown is different from that in Cincinnati. Because Youngstown had already adopted the single assignment system, the advantages of case-shopping had been lost by the time the rules were adopted. As members of a small court, respondents spoke of long-standing camaraderie. That this still exists is evident in the fact that judges were seen together at lunch and are willing to exchange cases. Where Cincinnati judges bemoaned the empty courtrooms created by the rules, Youngstown judges adopted an open courtroom system. The system works because judges are willing to rely on each other and trust that no one will abuse the arrangement by ducking cases or sending the hardest ones out. As one judge described it:

> When my first case went to trial, my second case went to another judge, under our open courtroom rule, which is becoming more common. I think the open courtroom policy is a good idea. It eventually will eliminate the dark courtroom, which we used to have here under our old system. Some days you'd sit here and, well, with nothing to do, and 100 jurors sitting upstairs. Just arbitrarily, when I can't try one, Judge A gets it. And if he's busy, then Judge B gets it. If he's busy, then it goes down to Judge Y. It's just a convenient way of doing it, that's all.

As with the other courts, Youngstown was a much more relaxed place to work prior to the rules. Because of a lack of air-conditioning, no trials were held during the summer. In an attempt to remedy the problems posed by this arrangement, air-conditioning was installed in two of the courtrooms after the rules were adopted. Financial problems kept them from equipping the other rooms so all trials must be held in the two more comfortable ones. This is a far cry from the problem experienced in Cincinnati, where all courts and judges' chambers are air-conditioned but there are complaints that the drone sometimes interferes with the ability to hear the proceedings. As in our other sites, the past is remembered in terms of less pressure and fewer cases. There was, of course, an Ohio state statute requiring criminal cases to be disposed within particular terms of court, but terms of court were variable and little attention was paid to cases which went beyond them. Along with their Cincinnati brethren, some Youngstown judges denied that delay had ever been a significant problem. They recognized that problems existed in other counties but they believed the rules were somewhat irrelevant to their own situation.

There is general agreement, however, that Youngstown's past was freer of financial woes. Of all our sites, the fiscal crisis has been occurring longest and has hit hardest in Youngstown. Although Ohio voters are well known for their rejection of tax referenda and their commitment to low taxes, this posed fewer problems when more of the population was employed. The Mahoning Valley, once the second-leading steel producing area in the United States, has been severely affected by the closing of major mills, such as U.S. Steel and Republic. In the early 70's the steel industry employed 25,000 people; now it employs fewer than 10,000 (Logue, 1980). The diminishment of the workforce, coupled with new taxpayer revolts, and the flight of other industries to more lucrative areas, has steadily eroded the community's tax base, resulting in an untenable situation today. This diminution of funds is communicated in the daily operations of the court.

Attorney fees for court-appointed cases have been cut, as have cleaning services for the court, and judges have only a bailiff for support staff. The court has also been presented with cases which are politically sensitive and indicative of the town's economic decline. During one of our visits, a judge was deciding a highly publicized case between the city and the police and fire unions over shortening the work week to save taxpayer money. Unlike Cincinnati, which has the luxury of a visiting judge system, and to which politically charged cases are often left, Youngstown judges must keep such cases for themselves.

Further evidence of the court's tenuous economic position is the fact that a $4800 bill for jury sequestion raised the ire of the county commissioners and, in every interview, the court administrator wondered how or whether the court would survive financially. Youngstown was also the only site in which the court administrator complained about the costs of complying with the rules. The $1500 paid to a data processing corporation to compile their statistics is a significant outlay for the court.

In a court where pennies must be so carefully pinched -- and judges cannot help but be aware of the dismal surrounding economic climate -- the persona of "judge" must be affected. It is difficult to maintain a supercilious attitude when the carpet in your office is worn and composed of a variety of unmatched pieces, the office is not cleaned regularly, and its furnishings are antiquated. The extent to which such surroundings indicate a change in the nature of judging -- or in the esteem in which it is assumed to be held -- have been discussed in the previous chapter. Thus it seems safe to say that those who decided to become judges did not do so with the expectation that their working conditions, and very possibly their status to the extent that it is measured by such things, would be reduced.

Columbus

Leaving Youngstown, a rather disconsolate place, one is struck by the vibrancy of Columbus, the newness of the courthouse, and the modern aura attending it. Here one leaves the past behind and plops firmly within the 20th century, or at least that part which is still prospering. As the state capital, Columbus is a white collar town, with government agencies the largest employer. State rollbacks, however, do not spell disaster because Columbus is also the home of major insurance companies and the world's third ranking center of science and technological research (Gapp, 1980).

The common pleas court is the embodiment of the technocratic court, both in its appearance and its operation. The courthouse is a modern high-rise, shorn of decoration. Inside an air of efficiency is communicated. The lobby is a cavernous expanse of exposed brick walls, upon which the friendly faces of the twelve common pleas court judges, two of whose positions were added in 1975, appear in framed color photographs. The modern elevators and escalators are immaculate, as are the public restrooms.

There are four courts on each floor with a shared area for the public to meet. Unlike the other courts where one must open the door to see what is happening within, there are electronically controlled signs above each door indicating whether the court is in session. Inside the courtroom, simulated wood paneling has replaced the rosewood and mahogony of yore and the judge's bench resembles a modern businessman's desk, shorn of decorative excess. Of all our sites, the twelve judges' chambers in Columbus were most impressive. Bailiffs (and clerks) had separate rooms --they were not left to sit in empty courtrooms as they were in Cincinnati -- and some judges had their own conference rooms, not to mention the personal toilets with which chambers are equipped. The efficiency -- and perhaps modern mania -- characterizing the court is also apparent in other offices. The Clerk's office, for example, is equipped with the latest fashion in computers for courts;

docket books have been forsaken for computer storage. The prosecutor's office also provides a stark contrast with the other sites, with each prosecutor having a private office. Columbus is also the only site to have public defenders handling felony cases. Established in 1976, the office reflects the court's emphasis on modern administration and reform (see Barak, 1980), and currently consists of thirty-nine attorneys, ten of whom are assigned to the common pleas court.

The physical emphasis on uniformity, precision, and efficiency reflects a similar commitment on the part of judges. Although the Rules of Superintendence did not mandate the individual calendar until September 1971, Columbus judges, evidencing early concern about case disposition time, adopted the single assignment system in June 1970. Thus they voluntarily elected to change a system which allowed judge and case-shopping. One judge, describing the motivation behind the change also highlights some of the differences between judges who are willing to forgo traditional case disposition methods and those who are not. His remarks also indicate the propensity of some judges to adopt administrative measures.

> Years ago, I always struggled for the single assignment system. I was a young judge in '65 and we had a very senior court. I kept trying to say, 'Hey, let's go to the single assignment system.' I wanted to go for a selfish purpose. I feel guilty if I feel like my docket isn't current, and I feel guilty going out and making excuses and saying I need more help and all this stuff. And I think the basics in getting the trial dockets up to date is everybody getting with it and say, 'Hey, I want to keep my docket up to date', and have someone looking over your shoulder to see if you do.

Despite their earlier movement towards having better dockets, descriptions of Columbus prior to the single assignment system sound remarkably like Cincinnati. Yesteryear was characterized by judge and case-shopping, freely given continuances, and slow dispositions.

The most frustrating thing — the worst thing — about the general assignment system is not the idea that you don't have a case. When you're on a busy trial bench, you're not really studying files before trials. You know what the cases are about, and you know that you settle nine out of ten. It's not that you can't walk into court a week ahead of time and pick up a file and be prepared. The biggest problem with the general assignment system is that one guy goes in and gets a continuance from one judge, or they file a motion. One judge rules on it one way. Then another motion is filed, somebody else rules on it. And then you're on the bench. And they don't like this judge but they like someone else, so they try to get a continuance, so you get into all kinds of problems. Any system that's any good has responsibility, and the general assignment system had no responsibility. I felt frustrated. (Columbus judge)

Parallels between the sites are also apparent in the following attorney's remarks about the past:

> You don't get the buck passing quite as much. Before a judge would say, 'Well, I'm not going to be the trial judge. This motion will be heard later on. This bond hearing will be heard later on.' Now, some problems come up, there's the judge, you know who it is.

In Columbus, however, judges did not remember the master calendar as one resulting in more expeditious dispositions. Most admitted that while cases were moved easily from one judge to another, and continuances easily granted, cases were moved more easily than they were concluded. The majority of judges saw problems with the earlier system and welcomed the change as the following comments indicate:

> I don't think the master system serves as an incentive to a judge to do the job the way he should. If a case was a hot potato — something that the judge wanted to avoid, he could very easily avoid it, because there could be any number of reasons why. Maybe one case wanted to go to trial and he would simply continue that case. Maybe one of the attorneys would want a continuance for no good reason and he'd be very happy to give a continuance because maybe the next time around, it would be assigned to a different judge. (Columbus jduge)

Unlike Cincinnati, however, where the single assignment system results in empty courtrooms, Columbus judges have attempted to remedy the problem by sharing cases, as they have in Youngstown. When a judge is faced with several cases all ready for trial, the court administrator searches for other rooms where the activity has been concluded. This search is sometimes aided by attorneys who volunteer information about a judge in front of whom they'd like to appear and sometimes hindered by judges who "hide" from the court administrator. But this attempt to collectively remedy problems is evidence of the court's commitment to administrative solutions. While collective solutions are not always achieved, Columbus judges meet monthly and attempt to achieve some uniformity in their practices. Discussions regarding uniform sentencing and courtroom practices are held, thus indicating a willingness to overcome isolation.

Summary

Although we have noted important differences in the settings and organization of the courts in our sites, some aspects of the past were remarkably similar. Everyone with whom we spoke remembered the courts as being much less formal places with less pressure to process cases. External constraints, such as an obtrusive state supreme court justice, or rigorous criminal law, were largely absent. Comments about such matters generally convey a sense of a bygone world which will probably never be retrieved.

The Rules of Superintendence, of course, are not primarily responsible for the increased formality of proceedings. Supreme court decisions regarding the rights of defendants and the revision of the Ohio Criminal Code dictated a change in the rites associated with criminal cases. But when the past is remembered, individual villains are not singled out. Instead they are often combined to contrast the old with the new and to indicate the changing nature of control — and respect — accorded the judge; a phenomenon we considered at length in Chapter Seven. Suffice to say that the past remembered by judges is one of simpler, more relaxed times, during which they were accorded the respect due individuals in their position. It was, of course, easy to expect this treatment to continue unchanged, given judicial perceptions about the accouterments necessary to the job. But with new pressures on the court, the desires and predilections of judges regarding court patterns can no longer reign supreme. In the following chapters we will more fully explicate these changes.

CHAPTER NINE

RELATIONSHIPS AMONG ACTORS

The Rules of Superintendence targeted judges as the locus of delay. To the extent that judicial practices discouraged expeditious dispositions, compliance with the rules would remedy the problem. By holding judges responsible for moving cases, a dramatic alteration of established practices occurred, indicating a change in traditional roles. The alteration, however, was accompanyed by problems. Assigning the task of court reform to judges, for example, ignores the complexity of the legal system, the various interests of courtroom actors and their differential ability to impede change.

Those seeking to explain the activity and productivity of courts have repeatedly pointed to such factors as crucial determinants in local systems. Describing their variations has become a popular pastime for social scientists who have generally attributed them to the machinations of workgroups (Eisenstein & Jacob, 1977; Nardulli, 1978) and local legal cultures (Nimmer, 1978; Neubauer et al, 1981; Church, 1978). These explanations have both emphasized the mutual interests of courtroom actors who are said to be united in their desire to accomplish their work without offending the other, despite the seemingly irreconcilable nature of their positions. Professional differences are thus said to pale in significance in the face of more important group norms. While such explanations have an intuitive appeal, they should not be accepted without further elaboration. The theoretical assumptions upon which they are based may be challenged as can their failure to specify particular elements of norms and cultures.

In this chapter we will examine previous accounts of courtroom activity and will examine the "patterns" in our three sites. While there are similarities between sites and shared norms within them, there are also important differences, thus indicating the importance of delineating actual relationships as actors describe them. By delineating these relationships, and by paying heed to actors' renditions of reality, we will describe workday worlds, thus contributing to an analysis of court reform. An understanding of these worlds, and the relationships of which they are composed, requires that the power and privileges of particular types of actors be examined. Although judges are the political and symbolic titans of the court, other components of the system affect their ability and willingness to do as they please. Prosecutors, for example, are often particularly adept at shaping circumstances, especially when defense attorneys are disbursed and a public defender's office is lacking. Explication of such components will help remove the notion of legal culture from the realm of theoretical abstraction to one where its various components can be isolated, debated and refined.

Workgroups and Local Legal Culture

A consensual model, emphasizing the mutual dependence of actors for the completion of common tasks has generally been utilized to explain courtroom activity. Eisenstein & Jacob (1977), for example, finding no hierarchy in courts, portray them as organizations where work is accomplished through the efforts of workgroups — complex networks of ongoing relationships which determine who does what, how and to whom. Shared goals and incentives are said to be their motivating forces, allowing members to develop predictable and expeditious work routines. All courtroom actors are said to have a similar stake in the process; there is little conflict about goals or strategy because the important ones are shared. Inefficient courts are said to reflect the shared desires of courtroom

actors and will not be changed unless the goals and values of actors are transformed. Thus a rule which affects any one party will not be successful if the others' interests must be sacrificed for it to be fulfilled. Because such research focuses on outcomes, the disposition of cases is taken as evidence that shared values and beliefs have motivated the process, allowing the product to be accomplished.

In addition to the research which stresses workgroup activity, local legal culture — variously defined as the established practices and roles of behavior of judges and attorneys (Church, 1978), or the workgroup norms which influence local expectations of and interaction in the judicial process — has become another popular explanation of courtroom activity. In a study of twenty-one general jurisdiction courts, Church (1978) concluded that court delay could be attributed to the attitudes and informal practices of lawyers and judges. As with the other research we have cited, those who advance local legal culture as the explanatory variable for courtroom behavior assume a consensus among courtroom actors, although in a more recent study Church (1981:85) suggests that the relationship between local legal culture and the pace of litigation may be more complex than previously suggested. After surveying attitudes in four courts, he notes that generalizations linking shared practitioner norms with the proper pace of litigation must be tempered by awareness of attitudinal disagreement within the court. This awareness of diversity is crucial to the mode of analysis we will undertake. As Grossman, et al. (1981:93) note, the concept is now subjective and illusive, and almost tautological in its insistence that local legal culture is nothing more than established practices and informal roles of behavior of judges and attorneys. It has thus come to represent a residual category by which differences between courts and delay reduction schemes are explained. Just as mental illness has been used to explain all untoward behavior which cannot be otherwise accounted for (see Scheff,

1966), so have differences in legal culture - or socio-legal culture (see Neubauer, et al., 1981) -- become the banner explanation for courts.

A focus upon end results, (i.e., the disposition of cases), however, does not necessarily illuminate the process of creation. While there is little doubt that people working together do establish mechanisms for accomplishing tasks, previous research has inferred such mechanisms from observations and attitude surveys, with little attention paid to the ways in which actors experience their work. While we found some values to be shared in the courts we studied, we also found disagreements and discord, particularly in Cincinnati where the policies of an entrenched prosecutor was a source of discomfort for other actors. In other sites, the prosecutor's influence was more benign but its potential to be otherwise indicates the importance of delineating actual courtroom relations as actors describe them.

Changing Courtroom Relationships

The criminal justice system is marked by a variety of domains in which particular actors appear to be dominant (McDonald, 1979). That defense attorneys defend, prosecutors prosecute and judges judge is common wisdom. But this official ideology suggests a system with clearly established, and unchallenged, divisions of labor which are unaffected by history or political expediency. As with other official pronouncements about organizations, this one confuses more than it clarifies. While each of the major actors in the criminal justice system lays claim to a particular domain, these claims can change as the system grows or as one component usurps some of the others' functions (McDonald, 1979; 45). Explanations which stress local legal culture generally ignore these changing domains, assuming that cultures adjust to change, thus resulting in the restoration of equilibrium. But power and coercion are significant factors in social life and these must be examined if cultural explanations are to gain greater credence.

That the prosecutor's domain has increased at the expense of other actors in the criminal justice system, particularly that of the judge, is a matter of historical record (see Nelson, 1974; Langbein, 1978; Forst et al., 1977). In earlier eras, for example, prosecutors wielded less power, making the composition and character of their offices less important in the disposition of a criminal case. Their increased importance reflects a fundamental change in the criminal justice system which affects the types of routines actors are able to establish. Noting the changes, McDonald (1979:46) has stated:

> Before the American Revolution the judge interrogated the defendant and served as prosecutor at the trial... The judiciary also once controlled the initiation of prosecution...and had a major influence in determining guilt and innocence and the sentence. The first two activities have been assumed by the prosecutor with the latter ones replaced by a system of administrative justice in which over 60% of the incoming cases are disposed of by the prosecutor and 90% of the convictions are obtained by plea bargaining in which the prosecutor plays a key role (McDonald, 1979:46).

Increased prosecutorial authority has corresponded with the growth of the criminal justice system and the necessity for one component to be responsible for coordination. The prosecutor's importance is also recognized in the proliferation of speedy trial statutes which fix primary responsibility upon him. In our sites there were important differences in the prosecutor's offices. The character of the chief prosecutor, his ideological stances, and office policies established a milieu whose impact reverberated through the courthouse, affecting relations with, and between, defense attorneys and judges, although these did not always affect case disposition time.

Cincinnati

Attorneys and judges in Cincinnati attributed a variety of local procedures to the predilections of the prosecutor's office. Since the practices associated with those predilections offended some of them, attitudes about the office were often disdainful. As more than one observer commented, this prosecutor ran a tight ship, with his personal philosophy influencing the disposition of cases and the type of justice rendered. His importance and the inability of judges to combat his policies is apparent in the remarks of the following attorney:

> The problem with the judges here is that they just don't have any guts. They won't take the prosecutor on. Some judges want lawyers to be in mortal fear of them. To make the system work, though, the prosecutor should be in fear, too. Here, the judges are subservient to the prosecutor.
>
> Why?
>
> The local legal culture. It's a conservative community and the elected judges believe the public demands they deal harshly with criminals. It's difficult to get anywhere with pretrial motions. They won't grant motions which will make things more difficult for the prosecutor, even though the prosecutor has the right of appeal. The prosecutor has some of the judges buffaloed. The rest just seem willing to give the benefit of the doubt to the prosecutor. It's not that they're fearful of the prosecutor. They're fearful of the electorate first, and given the conservative culture of Cincinnati, you have a situation where no one is anxious to fight the prosecutor.

Such remarks indicate the limitations of making judges solely responsible for change. While they are obviously important personages who can make prosecutors' lives more difficult, prosecutors have their own important resources. Attorneys, for example, charged that judges were reluctant to dismiss cases if the prosecutor wanted them tried, even if the judge believed otherwise. Commenting upon the problems posed by the prosecutors' policies, the remarks of the following judges reflect some of the hostility provoked by policies they cannot change:

> They indict on cases that should be ignored. We get cases that charge real serious offenses but when it gets down to the ultimate disposition, they'll take a plea to spitting on the sidewalk just to show that there was a guilty on that case number. That's a drastic example, but it's almost that bad. I had a case we finally disposed of after two or three years of wallowing around with it, where the defendants were indicted for engaging in organized crime which was a first degree felony. I ruled the statute unconstitutional and the case went through the appellate courts. The end disposition was they pled guilty and got a $250 fine and the prosecutor was tickled pink to see it.
>
> It is my opinion that the work load has doubled or tripled in the last few years here. If the prosecutor's office knew the purpose of the grand jury, it wouldn't be near as bad as it is. The grand jury is supposed to weed out the bad cases and only indict where there is probable cause that a crime has been committed and the defendant committed it. And we get so many cases where it should have been ignored by the grand jury and that's one reason why we have so many trials.

Discontent is not limited to judges, attorneys commenting upon plea bargaining, as the following remarks indicate, also expressed dissatisfaction.

> I think they want to dispose of cases but not at the expense of taking lesser pleas. They want the statistics or whatever they're doing it for. They won't sit down with you and say, 'Okay now, what's really happened in this case. It really isn't this — it's that.' Occasionally that's happened and I have had people that have done that. There's a lot of times I think you go to trial unnecessarily. I had a case last week in front of Judge X where he granted a directed verdict at the close of the state's case and his comments at the end of the trial were, 'I am astounded that this was ever bound over to the Grand Jury and I'm even more astounded that an indictment was ever issued.' The unspoken statement was I'm even more astounded that the prosecutor's office is trying this case.

While there is dissension regarding the prosecutor's use of the grand jury and the types of cases he brings to trial, these conflicts do not extend to continuance policies. If there is a shared value among respondents in all our sites it is that reasonable continuances should be granted. Although this is an area where judges have all the power, their failure to exert it —even in the face of rules which required greater stringency — show one of the ways in which local values may

affect change strategies. While there is consensus about continuances, the organization of the prosecutor's office keeps that consensus from extending to too many spheres. It also keeps the smoothly functioning workgroups, which Eisenstein & Jacob (1977) describe, from appearing in Cincinnati. While relevant actors do construct mechanisms to accomplish their work, they are not necessarily motivated by consensus and shared values.

The office milieu in Cincinnati allows little discretion to assistant prosecutors and the organization of the office enhances the chief prosecutor's authority. While assistant prosecutors may participate in plea bargaining, agreements cannot be sealed without the approval of the head prosecutor or his first assistant. It is not unusual for assistants' efforts to be disapproved, even after a particular judge has concurred with them. As one attorney described it:

> This is the worst, they have no individual discretion. Every kind of deal has to be cleared upstairs by a prosecutor that I never get to talk to or I've never even seen.

The official reason for this policy is the achievement of uniformity. By vesting control of plea bargaining in a few people, the office aims to avoid sentencing disparities. As the following comments indicate, there are some judges who accept this system as given and do not decry it as an intrusion upon their authority:

> It was known going in that assistant prosecutors were going to have to get their recommendations of plea bargains approved. It was always put in terms of, 'I'm going to have to get the approval of the first assistant.' And a tentative deal would be struck. The cards would be on the table, the lawyer would go to consult with his first assistant and again, nine times out of ten, or maybe ninety-nine times out of one hundred, it would come back and say it's been approved. On occasion, he would come back and say, 'I'm sorry. First assistant wouldn't buy it, we can't do it.' Well, that came as a disappointment, but not as a surprise, because that was a part of the process that everyone knew about. I don't think it was a bad aspect of the system.

Others were less sanguine. They complained of the time wasted in negotiating, checking, and renegotiating deals, about the decisionmaking capacity of someone removed from the case, and about the way in which the case -- or the deal --was presented, not to mention the ability of the assistant to present the deal effectively. Perhaps most importantly, most attorneys and some judges questioned whether the policy actually eradicated disparate penalties. This policy, which differentiates Cincinnati from out other sites, often contributed to a climate of antagonism. Whether it is actually as rigid as most defense attorneys claimed, or as erratic and time consuming, as some judges charged, is difficult to assess. The important point is that the policy was perceived to be so, thus provoking suspicion and some hard feelings.

A former prosecutor described the exigencies of the job, and the resulting relationships, in the following way:

> Everybody is assigned a stack of cases, and told to handle them. But you're not allowed to do anything without front office approval. And before the front office will give you approval on any kind of plea, you have to have the approval of all the victims, and the witnesses, and the police officer. Generally, you have so many cases that you don't really look ahead to anything, and so you put everything off. You really don't see the witnesses until a half hour before the trial is scheduled. You learn about the case and find out how everybody feels, and you go in and make your pitch to the front office.
>
> How often would the front office go along with what you had negotiated?
>
> It depended on what side of the bed they got up on in the morning. I left because it got to the point where I was a messenger boy. Handle these cases, but don't do anything serious with them until you get our approval. I never went in to get approval on anything that I didn't consider reasonable. One day they would approve it without asking any questions, and the next day, you'd be in there for a half hour answering all kinds of minute, inconsequential types of things, and then in the end, they wouldn't give their approval.
>
> What does that practice do to the relationships between prosecutors and judges?

> Judges resent it. They've got a prosecutor assigned to their courtroom who is supposed to handle the cases. And then he says, 'Well, I can't do anything until I get approval.' So the judge says, 'well, go over there and get approval' and it ends up that there are thirteen other prosecutors trying to get something approved, all at the same time, so the judges sit around for hours, wasting time, and waiting for the prosecutor to come back. So, most judges resent the fact that their own prosecutor can't make a decision on his own.

While judges are hesitant to confront the prosecutor about his policies, believing it to be a futile battle, they are not without defenses. When bargains could not be struck because of the perceived intransigence of the prosecutor's office, attorneys told of waiving jury trials to appear before a judge who would direct a verdict in accord with the previous agreement. That judges do attempt to rectify what they perceive to be prosecutorial mistakes is evidence of their power, but their inability to establish a mutually satisfying procedure with the prosecutor's office belies the notion of common norms and values as the prime characteristics of courtroom activity. Although prosecutors may come to working agreements with judges and assistant defense attorneys, they too must resort to surreptition and circumvention if such agreements are to be fulfilled. That they do so is apparent in the following remarks. But their need to do so indicates that common norms and values between actors and across different offices in the system cannot be assumed.

> The prosecutor knows the different ways something can be handled. If you've got a judge who will do it, and you can't get approval on a reduced charge from the prosecutor's office you can go in and recommend that the charge be reduced. The prosecutor will suggest that a plea of no contest be entered and the judge will find him guilty of what everybody is agreeable to. Some judges will, not all of them. I think prosecutors, generally, are willing to work with defense lawyers, and I think there are a lot of prosecutors in the office who realize that there are problems and who resent the fact that they have to run up and get everything approved. (Cincinnati attorney)

Defense attorneys can also circumvent the system by going over the assistant's head to the chief prosecutor. Although the option to approach the first assistant is available to attorneys, only two spoke of exercising it, and not with great success. One enterprising attorney, however, who spoke of making such appeals indicated that they worked when a client had something to offer, such as information on another case or an ongoing investigation. Every client, however, is not in a position to offer help to the prosecutor. From the comments of our respondents the accepted norm is for the argument to be left to the assistant prosecutor and, generally speaking, his good faith is expected. The terms offered by a prosecutor with more experience may be more credible but these must also receive approval. In practical terms, this results in a judge and defense attorney cooling their heels while the assistant argues -- or waits to argue -- the case.

Compounding the problems associated with a prosecutor's inability to seal deals is -- at least to attorneys -- the failure of the prosecutor's office to engage in early plea negotiations and the system by which assistants are assigned to courts. This and the inability of assistants to conclude negotiations sets the tone of the courtroom climate. With regard to plea bargaining, judges noted that most cases are settled on the date of trial and that prosecutorial policies are not solely to blame for delay. But some do charge that the system of assigning prosecutors -- which rotates them every two months -- adds to delay because the person first assigned to a case will not necessarily be responsible for it at the time of trial. Describing the difficulties inherent in this system, a defense attorney said:

> If the prosecutor is going to be there at the time of trial, he is more willing to try to work something out, so he doesn't have to do whatever preparation they do. If the file is going to be pushed on to somebody else, you really almost have to wait until that other prosecuting attorney is in there. That prosecutor will really have no idea of that case until maybe a week before, unless you alert him of the case and tell him, 'These are the facts, can we work out this deal?'

To combat delays, the court adopted the Whittier system in 1981 which requires that preliminary hearings and grand jury sessions be held on the same day, thus saving thirty to sixty days of time. Because this system affects the prosecutor's control over the disposition process, all were surprised that he accepted it. The explanation was that a promise of more office space -- he was to get the freed grand jury room -- was sufficient bait to lure him. At the time this study was completed, the new program had just begun.

Relations among actors in Cincinnati are not solely affected by the policies of the prosecutors office. Another area in which values are not shared and where hard feelings are evident is the use of a visiting judge system which allows judges to reassign excess cases to judges with whom local attorneys are often unfamiliar. Since the daily use of this system increased from 1.9 visiting judges in 1973 to 4.3 in 1979 (Hamilton County Annual Report, 1979), it has an important impact upon court operations, especially given the fact that visiting judges disposed of 432 cases in 1978, of which 16% were jury trials and 60% were criminal matters. That it also has an impact upon relations is evident in attorneys' charges that judges used the system to suit their own predilections. Because they were caught in the middle, they objected to the practice. Most felt frustrated by a system over which they had no control. To protest too loudly would risk offending judges in front of whom they would later have to appear. Thus they were left only to grin and bear up under a system which they believed to affect them adversely. So just as the policies of the prosecutor's office annoy some judges and attorneys, so does the use of visiting judges raise the ire of attorneys and prosecutors who have little recourse but to accept a judge's decision to dispose of a case as he sees fit. Once again it is evident that particular parties will utilize the power available to them to better their own situation even when it conflicts with the ease with which others accomplish their work.

In commenting upon the "culture" of the Cincinnati court, we must note a fair amount of discord. Rather than happy workers establishing procedures for the best of all, we find a climate where combativeness is accepted, and often expected, in particular matters as a way of life, thus leading to a perception that things take longer than they should. The chief prosecutor plays an important -- if not disproportionate -- role in forging that climate. He is an adept politician and the manner in which he runs his office is further testament to his ability to exert effective control. Although relationships between the bar and prosecutor's office are informal, the lack of discretion accorded assistants is often a bone of contention. For judges, it is a reminder of their lack of power vis-a-vis the prosecutor in particular instances. Rather than engage in confrontation, they utilize their own mechanisms to rectify decisions with which they disagree. The visiting judge system, however, also leads to harsh feelings. Thus, while cases are disposed in Cincinnati, their disposition does not reflect a universe of cordiality. Although judges are important personages, the prosecutor's practices suggest the expansion of his domain and his importance to perceptions of case processing time and relationships.

Youngstown

The climate in Youngstown is wholly different, reflecting a court where most of the major actors know each other and know they will be working together throughout their professional lives. When one speaks of a court characterized by common beliefs, Youngstown may be used as a prime example. As one attorney described it:

> In Chicago and New York you have such big staffs and such big areas to cover that you may have a case where you might meet that prosecutor one time in your entire career. In general law practice, you may see a lawyer one time in your entire career. With the number of lawyers we

have here, you're dealing constantly with the same lawyers. So your word here is more important. You get to know everybody. In New York if you had a real estate deal, everything would have to be put in escrow with the bank, and everybody standing there to make sure they get the check when they have the deed. Here if a lawyer says to me, 'I have a check in my trust account,' I know, I don't have to have him put that check in escrow. I can just send the deed over with the secretary and she'll pick up a check.

Although the chief prosecutor has a strong political base -- having been in office for thirteen years -- the tenor of his office is more congenial, thus contributing to cordial relationships with the bench and bar. Attorneys in Youngstown, for example, did not voice personal complaints about the chief prosecutor or the operations of his office. The contrast with Cincinnati is instructive:

Their attitudes have been constructive. Now, when they get a case, you go into court and you do battle and as a rule, there's no hard feeling afterwards. Somebody's got to win, somebody's got to lose. Up in other areas, their tactics are a little more underhanded. They're more batting average complex. They withhold discovery information from you until 4 o'clock of the day before the trial. As a rule, we don't have that around here.

This prosecutor's office is able to get through all the baloney and to really come up with what the defendant may be found guilty of. And I think the five or six attorneys here who do a great deal of criminal work are able to evaluate their claim and they're able to determine, will my client be found guilty of anything and if they would be found guilty, what would they be guilty of. And then, in effect, the prosecutor and the defense counsel really act as judge and jury between themselves and say, 'Okay, if we went to trial, this is what would normally happen, Therefore, I would plead to this, assuming that you would not recommend the maximum.' Usually both sides are able to say, 'Well, this is what is going to happen at the trial, probably, so I'll either give you that, or maybe a little less, to avoid all the time and I'll take the following position on sentencing and why should we go to trial.'

The ability of the prosecutor and attorneys to act as "judge and jury" indicates the decreased importance of the judge in criminal cases. While he retains the ability to scotch deals of which he disapproves, this is not a likely occurrence,

given a desire to dispose of cases rapidly -- encouraged by the Rules of Superintendence -- and the greater familiarity of the attorneys with the case. Thus the relationships established between attorneys are important determinants of the ease with which cases are disposed. This ability also reflects a court where there are agreements about the worth of particular cases and the way work should be conducted.

Informal relations permeate the court. While official policies in Cincinnati made discovery easily available, finding the prosecutor to obtain it was sometimes more difficult. Since there are so few prosecutors in Youngstown finding them, although they too are allowed a private practice, does not seem to pose any problem for attorneys. The role allocated to assistants is a likely explanation of the good relations we have described. As the chief prosecutor describes it, the system is less hierarchical than the one in Cincinnati, allowing assistants more responsibility for cases.

There is one assistant assigned to each trial court and they handle their own cases. At the time of filing, they are assigned a court number and ordinarily that is the court that it would remain with. The assistants are aware prior to the time that a case goes to the grand jury which cases they are going to handle. We require them to evaluate these cases before they go to a grand jury so that we will have some idea which cases are reasonably winable or which cases should be dismissed or whatever. One of the assistants will handle the matter for the grand jury and then the indictments are brought in. If there is anything to be done the assistants are required to make a written proposal to me which I review and approve or disapprove as to the disposition, whether it goes to modifying the charge, or modifying or recommending a sentence, or whatever, which would be the office position.

The propensity -- or what one judge termed the desire -- of the prosecutor to plea bargain also marks a difference between Youngstown and Cincinnati, although in each instance the policies of the prosecutors' office are important determinants of court practices. As in Cincinnati, recommendations have to be approved by the

chief prosecutor, but the system is not as cumbersome -- and is not charged with being as erratic -- as the one there. The reputed desire of the prosecutor to dispose of cases through plea bargaining, is encouraged by relationships with the bar. Commenting upon his policies, the chief prosecutor said:

> Where we have indicated that we would do a particular thing, we have done it. We have moved heaven and earth to do what we say we will do. We have made plea bargains which upon reflection we kind of regretted because of things that came to our attention or knowledge at a later time. That may happen from time to time. But we have attempted to deliver what we said we would. I think this office is deemed to be a very credible office from that standpoint. In a smaller county such as this, the assistant's office is just down the hall. They go and talk with the assistant. If they aren't able to strike some kind of a bargain based upon what they think is proper, the two of them (defense attorney and prosecutor) will come down to see me. We maintain an open door policy. I think that being available and being willing to meet with the individuals involved probably makes for a little better feeling on the part of the defense counsel.

Apart from the predilections of the chief prosecutor, another explanation for the propensity to plea bargain and swiftly dispose of cases may reside in the fiscal crisis affecting the county. While Youngstown does not have a public defender's office, it has a large number of indigent defendants. As in many other counties, these defendants are serviced through a system of assigned counsel. While the fees awarded in such a system are usually less than one would charge in private practice, the amount awarded in Youngstown poses a particular problem. While this study was being conducted, for example, suggestions were made that attorneys represent three cases for the price of two. Needless to say, this met with some resistance. The county's fiscal problems took precedence, however, and attorneys are accepting cases at reduced rates. While everyone denies that the cause of justice is affected by these arrangements, it is clear that a financial motivation for quick disposition exists. Since the court is generally grateful for attorneys' sacrifices, there is no desire to hassle them or unnecessarily prolong their efforts.

Youngstown's fiscal crisis has also led the court to adopt administrative solutions to its problems. To insure that no courtroom sits empty once a judge has disposed of his daily calendar, the judges adopted a buddy system which allows judges with clear dockets to adopt cases from those confronted with multiple trials or lengthy pieces of business. That the county's economic predicament influences the solutions available to the court is evident in the remarks of the court administrator who laments a lack of funds:

> If I could afford it, my thought was to have a visiting judge two weeks of very month. Hard to get a guy. It's really hard to get him. Besides that, for September till the end of the year, when the jurors start back up, I think I have $2,700 in my code for visiting judges - I can't keep a guy too long. Because it's $100 a day. Plus expenses. So, we can't afford it. That's a money consideration.

Thus the economic status of a court fashions strategies which may or may not be in accord with the desires of particular parties, but which influences the strategies in which they are able to engage. In Cincinnati, for example, attorneys and prosecutors resent the presence of visiting judges, believing them to be a hindrance to justice. But while some judges are leery about the practice, the Cincinnati court did not adopt collective administrative solutions, although some cases are occasionally exchanged. Thus, in contrasting Youngstown and Cincinnati, we contrast a court where administrative solutions are accepted and invoked with one where elements of professional administration are still retained. We also find that the model of close-knit consensus ridden workgroups is not necessarily generalizable to all courts. In both sites, however, it is apparent that the practices which do exist do not result from affected parties making equal contributions to the process.

Columbus

While the courts in Columbus and Cincinnati are similarly sized, their practices and the relationships among actors are substantially different. Here too the practices of the prosecutor have an important impact, but different office policies have contributed to a better working environment. The current chief prosecutor has been there only a few years and only narrowly won the last election. In addition, prosecutors work full time and are not allowed to have private practices, although they are allowed to work on private matters such as wills. This policy marks Columbus from the other sites and indicates its commitment to modern administrative solutions.

The discretion accorded assistant prosecutors contributes to a cordial working environment. Assigned to individual cases rather than particular courts, assistant prosecutors bargain directly with defense attorneys and judges, and are free to conclude agreements without the approval of their office. To insure that agreements do not diverge too much from accepted patterns, senior prosecutors review the files on particular types of cases to determine the strength of the case, including the credibility of witnesses. They then give the responsible assistant some indication of what is proper to offer or accept, althourh the assistant is not bound by these recommendations. Only in the most exceptional cases is it even conceived that the chief prosecutor might intervene. The difference in control accorded prosecutors in Columbus is apparent in the following remarks:

> The fact in this office has always been, 'Look you graduated from law school, you have got a license hanging on the wall, you are a lawyer. If you are a lawyer and you can represent your client, go out and do it. If you screw up, be ready to take the consequences. But if we did not trust you, then we would not hire you.' And I think that gives the staff a great deal of elan, of dash. There is a sense of actually 'I am in practice. This is my case. Nobody will tell me what to do with this case.' I have never once, going on nine years, had anyone in the front office come down and tell me you will take a plea on this case, or you will not take a plea on this case. I have had them discuss the case with me but I have never had them tell me do this or do that. I know of prosecutors in this office who are still here who got called in on a

> particularly sensitive case and been given a suggestion by the front office. They took the file and handed it to the person making the suggestion and said, 'You want to try the case? Here. You try the case. You make it your case.' And walk out. And the person who is making the suggestion said 'Come back here, take your case and go do what you want.' That's fantastic. You don't have them always having to be second guessed or always having to run to Daddy, to say, 'can I go out and play?'

Judges concur with this evaluation and it is clear that in Columbus, as in Youngstown, judges and attorneys do not have to await the chief prosecutor's benediction before concluding a case. One prosecutor termed the system one of "controlled autonomy" and the comments of the following judge indicate this to be an accurate designation as well as an indicator of easy relationships.

> Oh, I think there's a very good relationship with the prosecutor's office. I think it's traditional in this county for as long as I remember that there's always been a good relationship.

> Have you ever had someone from downstairs negate an agreement you struck with an attorney and with a prosecutor?

> Oh no. I think occasionally they do some checking when they're in doubt as to whether they should do something or whether they are on borderline grounds. They go down then. They have assistants who are at a higher level and they supervise the cases. I don't think there's any higher authority. It's up to him to decide whether this is near justice or not. After all, he's a lawyer, he's a prosecutor. He's supposed to talk to the police officers involved. He's supposed to talk to the victim. And as long as he does this, he's pretty well supervised.

Some attorneys complained, however, that prosecutors are assigned cases only a few weeks before trial, thus complicating their ability to ascertain information or engage in early negotiations. But if the pressure to conclude cases corresponds with the nearness of trial, and if criminal cases are as easy to dispose as attorneys indicate, this type of assignment system probably does not interfere with expeditious case dispositions. That it does not deleteriously affect relationships with the bar is evident in the following remarks by an attorney:

> It's a very open relationship. The prosecutors are pretty professional. They know what the rules of procedure are and abide by them. There's liberal discovery. They don't jockey around. They know what the attorney is entitled to and they give it to him.

Another factor which differentiates Columbus is the presence of a public defender system. Established in 1976, the office consists of thirty-nine attorneys, of whom ten are assigned to criminal work in the court of common pleas. Since its inception, the public defender's office has come to represent the large bulk of criminal cases. Given the number of cases they handle, and the relationships they develop with the prosecutor's office, they are essential to understanding the climate of the court. Although public defenders are in a better structural position to go to trial --they are not paid by the case, for example -- they are affected by the same pressures as other members of the court. An ever increasing caseload can reap havoc with even the most idealistic of defenders. Physical stamina alone dictates against trying a disproportionate number of cases, even if one believed they all warranted it. In addition, the public defender system was originally established to promote efficiency and economy. Reformers argued that as a dual agent of the client and the state, the office would exhibit a greater spirit of cooperation with the district attorney than would a privately retained attorney or one assigned to counsel. Supporters further maintained that such cooperation would reduce the frequency and duration of criminal procedings (see Barak, 1980; 64).

That this has been accomplished is evident in research which concludes that defendants see little difference between their public defenders and the prosecutor (see Caspar, 1976; Carlin et al, 1966; Blumberg, 1967; Sudnow, 1969; and Skolnick, 1967 for a contrary view).As Levine (1975) notes, although public defenders are sometimes not recognized as advocates by defendants, given that they are employed by the state, and often housed within the court, they are often more

willing to go to trial. Their clients, however, are less willing to trust them and plead guilty twice as often as defendants with retained counsel. Despite public defenders' knowledge of personalities, and policies, which are not generally available to attorneys who do less criminal work, or those who are not paid sufficiently to find out, research regarding case disposition methods is mixed (see Mather, 1979; Lehtinen & Smith, 1974; Greenwood, et al, 1976). That working closely together has cemented relations between prosecutors and public defenders in Columbus, however, is apparent in the words of praise they sing for each other.

> It has been my experience, that there is a great deal of respect between the Public Defender's Office and our office as far as both seeking justice. Occasionally we have clashes of personality or opinions, but that is in any trial situation. It would be highly unusual and unhealthy if you didn't. By and large, I think this office supports the public defender's function and the way that they are functioning. I think they do an outstanding job in this county in representing their clients. At times, I think they do a better job than the average member of the private bar. They don't play a lot of games with us; we don't play a lot of games with them. We know each other and I think in its own way justice gets done, often in the cases, smoothly.

The extent to which public defenders in Columbus share the administrative concerns of the prosecutor and court is evident in the following remarks:

> The court of common pleas has a very heavy case load. They're overworked and it's constantly growing. This puts pressure on the judges and they want more judges. Judges have longer administrative tails because you have to have a prosecutor working there and you have to have a bailiff, you have to have a court reporter, you have to have public defenders around for this judge. And since we can't get the legislature to give us that many more judges and it's so expensive, one of the things we do is we start entering into more and more plea negotiations. So justice becomes quicker and you get less of a feeling for justice, because the plea bargaining becomes more and more a part of the system --right now, about 90% of our cases do not end in trial. We dispose of them in some other way.

Although a part of the system, public defenders realize the problems this creates. As one noted:

> It's a fact that most people were unrepresented in the past, or represented themselves. And they got a bad taste of the criminal justice system. Then they started with appointed counsel and then they decided that it would be cheaper to have public defenders do it. And that is mainly why we are around. And we do do it cheaply, but we now have introduced a whole new element to the criminal justice system, because now, we are part of the system with office space and investigators. But we have a problem in that we're so much a part of the system now. We know the process; we go out drinking with the prosecutors, we know the judges; we go out to a bridge club with the judge, or something. In fact, that does detract from the adversary system a little bit. Maybe I have a distorted view but I don't think it's affected the system of justice here. I think people know their individual rules and fight for them and still like the fight.

Whether these last remarks are true is a matter of some dispute. What is evident, however, is that the public defender's office has not disappointed its supporters, as interviews with courtroom actors indicate that public defenders are well integrated in the Columbus system.

That complaints about heavy caseloads affecting practices are common in Columbus is testament to the failure of technology and values supporting it to resolve all problems. During the heyday of LEAA, Columbus was a model technological court and, as the following remarks indicate, took advantage of every possible program:

> I think we are probably more progressive than most places, especially for a fairly conservative community. We have a central computer system that our court system runs on. The pd's and prosecutor's office are becoming computerized. We've also thought of new ways of handling cases and our prosecutor has been very active in getting LEAA grants so we have an Individual Criminal Unit, we have a Diversion Unit, we have a Witness Assistance Unit. We have a Night Prosecutor's Unit in our city attorney's office. Some of these have turned out to be very successful and they help divert people from the criminal justice system. There's a whole bunch of people that come in and they go through all these elaborate processing steps and it gets down to the fact

> that this guy is guilty -- we knew he was guilty when they arrested him. They caught him stealing the stuff and now we have to go through all this cumbersome legal procedure. Now we're at the point of deciding what we're going to do with this guy. Maybe we could have decided that way at the beginning, rather than going through all this expense and rigamarole, and these are the types of things we need to look at. (Columbus prosecutor)

In Cincinnati, the chief prosecutor termed such programs "a waste of taxpayers' money" and no effort was made to install them or to computerize the recordkeeping systems. To the extent that reception to such innovations indicates a willingness to change established systems in order to move cases more quickly, court personnel in Columbus may be characterized as more forward-thinking. But while adopting the latest in court administration strategies may allow actors to feel good about their progress, such technology, coupled with values which support it, is not sufficient to change -- or solve --court problems, many of which emanate from external factors over which courts have little control.

Summary

To say that courts differ and that these differences may be attributed to the policies of, and relationships among, local actors is true, but also truistic. Attributing these differences to local cultures and shared values is no more enlightening. Knowing that there are a variety of cultures in the world, for example, and that people's lifestyles vary because of them, does not explain why these variations exist. To understand them, we must delineate the components of the culture and relate them to the factors which help shape them.

To the extent that local legal cultures -- or workgroups -- exist, they are not composed of undifferentiated masses of happy workers united in common desires and tasks. Given the increased importance of the prosecutor, the policies of the office and the predilections of the chief may have a disproportionate influence on

local practices. Especially where there is no public defender's office, leaving generally unorganized criminal lawyers, many of whom are court-appointed, to deal individually with local dictates, is that influence likely to be felt.

The role of the prosecutor has expanded in all our sites but in only one are there complaints about the practices. As one component of the courtroom culture, however, the attitudes and practices adopted by the prosecutor's office have an effect on the climate of the court and the ease with which judges are able to comply with administrative rules. When prosecutors prefer to plea bargain rather than try cases, as in Youngstown, quick dispositions are, at least, possible, especially when the criminal bar is small and participants know each other well. With a hierarchical system, where the chief prosecutor has a strong political base which he uses as a mandate to exert control, and prosecutors are allowed to have their own practices, moving cases can adversely affect relationships. In Cincinnati, as already noted, judges and attorneys must cool their heels while prosecutors check with their boss. In contrast, Columbus' system of "controlled autonomy", eliminates such delay and provides an atmosphere where --without the distraction of a private practice -- prosecutors can spend more time on their cases.

Those who have espoused notions of local legal culture tend to speak of it as an eternal feature, defining it in terms of attributes which are shared and passed on from one generation to the next. But while cultural continuity exists, cultural attributes are not packaged goods which arrive unmolested for new generations. Cultures are influenced -- and changed -- by a variety of factors, all of which must be delineated if patterns are to be understood. A different prosecutor, as well as the election of judges who welcomed administrative responsibilities in Cincinnati, would probably have an important effect upon the local climate. The challenger in Columbus' last prosecutorial election, for example, promised to abolish plea bargaining. Had he been elected one can imagine a dramatic change in the

relationships and operations which mark the court. Additional funding in Youngstown would also probably lead to a system more dependent upon visiting judges, with some of the same problems manifested in Cincinnati, although the small size of the bar and court may negate them. Thus, when speaking of local cultures and workgroups, we must stress their fragility. While the structure upon which they are based is not wholly precarious, it is tenuous. The arrival of different actors -- particularly judges and prosecutors -- with new agendas has the potential to affect established practices. That the potential is not always realized -- or that the newly arrived may choose, or prefer, to maintain the status quo -- does not negate their potential to do otherwise. When the culture is challenged, however, those with something to lose do not sit by idly. They adopt strategies which allow them to cope with, or negate, the latest mandates. The problem with prevailing theories about courtroom activity is that they conclude -- on the basis of cases being processed and people working together -- that it is shared values which allow them to fulfill the requirements of their job. Although courts are not characterized by a rigid hierarchy, and individuals appear to work together for a final goal, all are not equal partners to the process (Sheskin, 1981:85).

While researchers agree that relationships among actors influence production and output, more attention must be paid to the mechanisms through which these are mediated. Before seizing upon local legal culture as a general explanatory tool, the elements of which it is composed and the interaction between them must be described in greater detail, indicating the reasons for similarities and divergencies both between and within courts. Some of the critical differences between courts, for example, may be structural and attitudinal, such as those which distinguished pre-rule Cincinnati from the other two courts. Other differences may be related to individual predilections and professional socialization. Before concluding that internal cultures are responsible for differences among courts,

attention must also be paid to economic and demographic factors. Work arrangements in Youngstown, for example, probably have more to do with the county's fiscal crisis than they do with the predilections of courtroom actors. As the Rules of Superintendence themselves indicate, courtroom actors are no longer able to fully define the conditions and parameters of their work. Particular conditions outside the courtroom may thus have great impact upon what goes on within.

CHAPTER TEN

THE EFFECTS OF THE RULES ON CASE PROCESSING TIME

The explicit goal of the Rules of Superintendence was to reduce delay by providing judges incentives to hasten the disposition of criminal cases. There is little question but that the rules were actually implemented. Individual calendars were adopted. Administrative judges were elected. Monthly reports were filed. But whether the Rules of Superintendence succeeded in reducing delay remains to be examined.

"Delay" is an elusive concept. All cases take time to process, but some take more time than others. "Delay" refers to the time required to dispose of a case in excess of what an observer believes the case ought to require. Consequently, "delay" is a value-laden concept, for what is "acceptable" varies with the observer, local custom and convention. By contrast, "case processing time" (CPT) is a more objective and easily operationalized concept. Although observers might differ whether given cases suffered "delay," they can agree on how many days it took to process those cases. Consequently, when we speak of measuring the rules' ability to reduce delay, we actually mean we will assess their impact on case processing time (see Luskin, 1978; Neubauer et al., 1981; Church et al., 1978).

In critically examining the problems of Ohio's courts, Chapter Two contended that there was a material basis to the perception of rising caseloads and backlogs. Similarly, case file data suggest that Ohio courts faced increasing case processing times. Figure 10-1 presents median and mean case processing times for our three sites for the years 1967, 1969, 1972, 1974, and 1977. A comparison of means and

Figure 10-1

CASE PROCESSING TIME IN DAYS

Year	Cincinnati			Columbus			Youngstown		
	Median	Mean	S.D.	Median	Mean	S.D.	Median	Mean	S.D.
1967	99.5	116.4	113.7	73.0	138.4	168.3	83.7	123.4	144.6
1969	86.5	113.1	112.1	119.5	180.4	208.7	53.5	124.8	186.3
1972	88.0	132.5	155.4	89.0	112.6	104.0	31.0	62.8	89.3
1974	51.8	69.9	70.4	52.6	82.0	157.4	24.5	73.1	170.3
1977	59.8	78.1	82.7	NA	NA	NA	35.0	74.9	104.2

medians indicates the extent to which the delay problem reflected difficulties in processing many cases (indicated by a high median) or difficulties in processing a small number of cases which require long periods of time to process (indicated by a larger mean than median and a large standard deviation).

Pre-rules case processing times varied across the three courts we studied. In 1967, Columbus experienced the lowest median CPT (73.0), but the highest mean (138.4), suggesting it had the least problem of the three courts with standard cases, but that it had the greatest problem with difficult cases. By 1969, Columbus had by far the largest median (119.5) and mean (180.4) CPT's. In contrast, Youngstown's median CPT decreased from 83.7 days in 1967 to 53.5 days in 1969, indicating that normal cases were being processed more quickly than before. Youngstown's mean CPT, however, increased slightly from 123.4 in 1967 to 124.8 days in 1969, suggesting that certain cases were taking longer than before. In Cincinnati, mean and median case processing times actually decreased from 1967 to 1969, but only slightly. Cincinnati's mean CPT's for 1967 and 1969 were the lowest of the three courts, though its median CPT was the highest in 1967. Thus, while Cincinnati's court was not the fastest, it had the least difficulty with problem cases.

Judges' and attorneys' perceptions of pre-rule delay problems parallel these data. Columbus actors perceived delay to be a problem. Youngstown actors disagreed about the presence of a delay problem, reflecting the discrepency between the bulk of cases which did not present problems and the smaller group of cases which did. For example, one Youngstown judge maintained that Mahoning County had not had a delay problem prior to the rules.

> It was O'Neill's belief, I think, that simply establishing the system and getting it underway would have an effect upon the workloads of our courts. That they would help some of the laggards to spur on, and so on. I think it was directed principally to Cuyahoga County and maybe

> to Trumbull next door to us, and, at the time, I don't think Mahoning County needed it, but we got it. Our docket, in spite of the deluge of cases here recently, is still in not that bad of shape. The system of assignment that we had at that time was working perfectly well.

An attorney disagreed with this perception, claiming that Youngstown had a serious problem:

> I've been to a number of other counties in Ohio and it seems that most of the courts were bogged down. Ours was not an exception. In fact, we had a serious problem of a backlog of cases. But it seems as though we were not unique in the fact that we were behind, although we appeared to be behind more than necessary.

Cincinnati judges, however, denied that their court suffered from delay prior to the rules.

> We in Hamilton County, at least at the time that the rules came into effect, were not that far behind and we were way ahead of most other jurisdictions. Naturally, you can always find an extreme example of something, but I would say on the average, that most people were being tried within three to seven months after the time of their arrests, which is basically all right.

> I don't think it's true we had a delay problem. In some counties, that very well might have been true. In this county, we felt we were doing pretty well and wanted to keep doing it the way we were. We didn't have near the backlog we have now. We weren't moving criminal cases as fast as the Supreme Court wanted them moved but we were moving civil cases much better than we are now.

Whether these courts' case disposition times were "excessive" can be assessed by comparison with CPT's for a range of other courts. Such data were compiled for twenty-one courts by Church et al. (1978). Their median CPT's are presented in Figure 10-2, along with median CPT's from our three sites. All three of these Ohio courts fall in Church's lower two groups, suggesting that they experienced

Figure 10-2

A COMPARISON OF IN DAYS COURT PROCESSING TIMES

	Median CPT
Wayne County, Mi.	33
San Diego, Ca.	45
Atlanta, Ga.	45
New Orleans, La.	50
Portland, Or.	51
Seattle, Wa.	56
Pittsburgh, Pa.	58
Oakland, Ca.	58
Minneapolis, Mn.	60
St. Paul, Mn.	69
Cleveland, Oh.	71
YOUNGSTOWN	76
Pontiac, Mi.	78
Miami, Fl.	81
CINCINNATI	93
Phoenix, Az.	98
Ft. Lauderdale, Fl.	99
Houston, Tx.	99
Newark, N.J.	99
Dallas, Tx.	102
COLUMBUS	115
Philadelphia, Pa.	119
Boston, Ma.	281
Bronx County, N.Y.	328

relatively excessive CPT's. It should be noted that the Church data are from 1976, while the data from our sites represent median CPT's for the pre-rules period. This suggests that Figure 10-2 understates the problems of the Ohio courts, assuming that most of the other courts' CPT's would have been lower if measured in the late sixties.

The Rules of Superintendence appear to have significantly reduced mean and median CPT's in Youngstown and Columbus, but to have increased mean CPT in Cincinnati. In Youngstown, both the median and mean CPT's in 1972 were half what they were in 1969. In Columbus the median CPT for 1972 dropped over 30 days from 1969, while mean CPT fell 60 days. Cases were treated more uniformly, as the standard deviation halved. In marked contrast to the other sites, mean CPT in Cincinnati rose nearly 20 days to 132.5. Nevertheless, median CPT remained relatively constant, suggesting that the rules caused long cases to take even longer.

The Speedy Trial Statute appears to have reduced CPT in Cincinnati, for median CPT in 1974 fell 36 days from what it had been in 1972, while mean CPT was nearly half what it was in 1972. Cases also appear to have been treated more uniformly, for the standard deviation also was halved. CPT's rose imperceptibly in 1972. In Columbus, median and mean CPT's fell even further in 1974, as the median dropped another 26 days and the mean another 41 days. Thus, in Columbus both the rules and the statute appear to have reduced CPT. In Youngstown, however, the statute's effects are ambiguous. In 1974, median CPT dropped seven days, but mean CPT increased ten days. By 1977, mean CPT stabilized at 74.9 days, median CPT rose nearly ten days to 35. Overall, the statute appears not to have reduced CPT in Youngstown.

Collapsing the data into three time periods -- one before the innovations, one after the Rules of Superintendence became effective, and the third after the rules and Speedy Trial Statute both became effective -- gives a broader overview.

Figure 10-3

CASE PROCESSING TIME

(in days)

	Cincinnati	Columbus	Youngstown
PRE-RULES PRE-STATUTE	$\bar{X}$=114.9 s.d.=112.8 median=92.8 %> 180 days=13.7	$\bar{X}$=162.380 s.d.=193.3 median=115.0 %> 180 days=34.1	$\bar{X}$=124.0 s.d.=165.5 median=76.1 %> 180 days=21.1
POST-RULES PRE-STATUTE	$\bar{X}$=132.5 s.d.=155.4 median=86.0 %>180=23.0	$\bar{X}$=112.6 s.d.=103.2 median=99.0 %>180=18.2	$\bar{X}$=62.7 s.d.=89.3 median=31.0 %>180=8.4
POST-RULES POST-STATUTE	$\bar{X}$=73.8 s.d.=76.5 median=55.4 %>180=6.2	$\bar{X}$=81.6 s.d.=156.5 median=52.3 %>180=2.5	$\bar{X}$=74.014 s.d.=140.6 median=28.2 %>180=7.6

Figure 10-3 indicates that median case disposition times decreased with the introduction of each innovation in all three courts, though mean CPT increased with the introduction of the rules in Cincinnati and the statute in Youngstown. Figure 10-3 also indicates the percentage of criminal cases which exceeded the 180 day limit fixed by the rules. When the rules were introduced to Columbus and Youngstown, the proportion of cases exceeding 180 days dropped precipitiously. In Cincinnnati, however, the percentage of cases exceeding the 180 day limit increased significantly with the rules, from 13.7% before the rules to 23.0% after them.

The Causes of Case Processing Time

Many factors contribute to the time required to process a case: the mode of disposition, the extent of motions filings, the number of continuances granted, the type and number of charges filed, the number of defendants, the defendant's custody status, the type of attorney retained, and the court's caseload (Neubauer et al., 1981; Church et al., 1978). Before defining a mathematical model of case processing time which allows such variables to be controlled in measuring the impact of the rules and statute, it is useful to examine the role of each of these factors over time.

Trials take longer than guilty pleas for a variety of reasons. Attorneys and prosecutors require more time to prepare their cases. Witnesses are often deposed, evidence is examined, and strategy is determined. Witnesses must be notified, and their schedules coordinated with those of judge, prosecutor, and defense counsel. (Neubauer et al., 1980; Nimmer, 1978; Rhodes, 1978; Wice, 1978). Figure 10-4 indicates the changes in mode of disposition across time for our three sites. Neither Columbus nor Youngstown experienced increases in guilty pleas or decreases in trial rates between 1967 and 1977. In Cincinnati, however, the trial rate

Figure 10-4

MODE OF DISPOSITION

	Cincinnati			Columbus			Youngstown		
Year	Trial	Guilty Plea	Dismissed	Trial	Guilty Plea	Dismissed	Trial	Guilty Plea	Dismissed
1967	33%	57%	10%	9%	74%	17%	9%	74%	17%
1969	28%	63%	9%	13%	65%	22%	12%	64%	24%
1972	21%	63%	16%	11%	71%	18%	5%	78%	17%
1974	26%	67%	7%	5%	68%	27%	4%	82%	14%
1977	18%	75%	7%	NA	NA	NA	5%	75%	20%

Figure 10-5

MEAN NUMBER OF MOTIONS PER CASE

	Cincinnati		Columbus		Youngstown	
Year	$\bar{X}$	S.D.	$\bar{X}$	S.D.	$\bar{X}$	S.D.
1967	1.22	1.77	.41	.83	.30	.64
1969	1.02	1.43	.56	1.04	.37	.75
1972	.51	1.04	.56	.92	.22	.53
1974	1.01	1.57	1.18	1.49	.20	.53
1977	.96	1.12	NA	NA	.41	.75

fell from 33% in 1967 to 18% in 1977, while the guilty plea rate rose from 57% to 75%.

Motions also contribute to case processing time. Motions require supporting and answering briefs to be researched and filed. Judges must consider them, and sometimes hear oral arguments before ruling on them. Because motions take time to resolve, they can be used as delaying tactics by both sides. The mean number of motions per case is presented in Figure 10-5. Prior to the adoption of the rules, more motions were made in Cincinnati than in the other two courts. In 1972, under the rules, the mean number of motions per case in Cincinnati fell to the same level as Columbus, but remained at more than twice the Youngstown level. After the Speedy Trial Statute became effective in 1973, the mean number of motions per case doubled ...i the two larger courts, but remained stable in Youngstown.

The most common delaying tactic wielded by defense attorneys is the continuance. Continuances are requested, and granted, for reasons ranging from scheduling conflicts to the necessity for additional preparation. As reported in Figure 10-6, the mean number of continuances granted per case dropped significantly in Cincinnati from 1969 to 1972, when the rules became effective. By contrast, virtually no continuances were granted in Youngstown at any time. In Columbus, the mean number of continuances per case rose from .05 in 1969 to .19 in 1972 and .35 in 1974.

Retained attorneys are thought to handle cases more slowly than court-appointed counsel or public defenders. Private attorneys are paid by their clients, who often need time to collect payment. Because many defendants are disinclined to pay after their cases have been resolved, retained attorneys are induced to prolong cases until payment has been received (Neubauer et al., 1981; Blumberg, 1967; Heumann, 1978; Nardulli, 1978). The distribution of private and public counsel is presented in Figure 10-7. Between 1967 and 1977, the proportion of

Figure 10-6

MEAN NUMBER OF CONTINUANCES PER CASE

	Cincinnati		Columbus		Youngstown	
Year	$\bar{X}$	S.D.	$\bar{X}$	S.D.	$\bar{X}$	S.D.
1967	.37	.70	.15	.45	.01	.08
1969	.51	.79	.05	.27	.01	.09
1972	.06	.26	.19	.45	.02	.14
1974	.11	.36	.35	.69	.00	.00
1977	.07	.33	NA	NA	.05	.21

Figure 10-7

TYPE OF COUNSEL

	Cincinnati		Columbus		Youngstown	
Year	Private	Public	Private	Public	Private	Public
1967	41.8%	58.2%	23.1%	76.9%	50.0%	50.0%
1969	41.6%	58.4%	53.7%	46.3%	50.0%	50.0%
1972	38.1%	61.9%	56.4%	43.6%	52.1%	47.9%
1974	45.2%	54.8%	59.1%	40.9%	58.2	41.8
1977	31.7%	68.3%	NA	NA	76.5%	23.5%

defendants represented by public counsel grew some ten percent. The other two courts, however, experienced the opposite trend. In Columbus, the proportion of defendants retaining private counsel more than doubled between 1967 and 1974. In Youngstown, the proportion of privately retained counsel rose from one in every two cases in 1967 to two in every three in 1977.

Custody status also contributes to case disposition time (Nimmer, 1978; Nardulli, 1978; Neubauer et al., 1981; Rossett and Cressey, 1976; Casper, 1972). Jailed defendants are thought to seek speedier dispositions in the hope of reducing jail time. Figure10-8 presents the custody status of criminal defendants across time for our three courts.

Caseloads and delay traditionally have been linked, although this view has been challenged (Church et al., 1978). Large caseloads have been thought to create long queues which delay the disposition of cases scheduled at the end of the queue. Annual monthly criminal caseloads are presented in Figure 10-9. Caseloads grew steadily in all three courts.

Complicating the processing of any case is the number of defendants charged. Multiple defendants exacerbate scheduling and coordination problems, and complicate the strategic decisions of both defense and prosecution (Neubauer et al., 1981; Wice, 1978). The number of charges filed against a defendant similarly complicates cases. Finally, type of charge also can affect case processing time. Different charge types could be characterized by different patterns of case processing, each with a corresponding "normal" processing time (Neubauer et al., 1981).

A Multivariate Analysis of Case Processing Time

After surveying the variables of case processing time, we now turn to a multivariate mathematical model of case processing times. This model assesses

Figure 10-8

CUSTODY STATUS

	% Incarcerated		
Year	Cincinnati	Columbus	Youngstown
1967	19.5%	33.8%	35.9%
1969	38.2%	29.1%	41.9%
1972	36.5%	21.9%	36.8%
1974	52.7%	14.5%	43.9%
1977	37.3%	NA	22.9%

Figure 10-9

CRIMINAL CASELOADS

	Cincinnati		Columbus		Youngstown	
	Arraignments	Arr. per Judge	Arraignments	Arr. per Judge	Arraignments	Arr. per Judge
1967	1983	165	1237	124	349	70
1969	2002	167	1694	169	468	117
1972	2887	262	2107	211	476	119
1974	3168	264	2520	252	655	164
1977	2887	241	3232	269	685	171

the direct effect of each control and independent variable on case processing time, the model's dependent variable. The model can be stated mathematically in the following way:

$$Y=b_1x_1 + b_2x_2 + b_3x_3 + \ldots + b_{17}x_{17}.$$

In this equation, b_1 through b_{17} are the coefficients determined through the use of ordinary squares multiple regression, and x_1 through x_{17} are the model's variables. They are measured as follows:

Y= the number of days between the case's arraignment and disposition (CPT);

x_1 through x_7 are case types, scored as "1" if the appropriate type, and "0" if not;

x_8= the number of defendants;

x_9= the number of charges;

x_{10}= the number of continuances;

x_{11}= the number of motions;

x_{12}= type of counsel, scored "1" if a private attorney and "0" if not;

x_{13}= mode of disposition, scored "1" if by trial and "0" if not;

x_{14}= custody status, scored "1" if in custody and "0" if not;

x_{15}= caseload for the month in which the case was arraigned;

x_{16}= the Rules of Superintendence, scored "1" if they were in effect at the time of the case, and "0" if not; and

x_{17}= the Speedy Trial Statute, scored "1" if it was in effect at the time of the case, and "0" if not.

Ordinary squares multiple regression provides several analytically important statistics. The unstandardized coefficient, or "B", indicates how many days the associated variable increases or decreases case processing time. For example, if the B for the rules variable is -45.5, then we would know that the rules decreased CPT forty-five and one-half days. The second important statistic is the standardized coefficient, or "Beta", which indicates the relative importance of each variable's contribution to CPT. For both B's and Beta's, a negative value indicates that the associated variable decreased CPT. The third important statistic is the significance, which varies from .00 to 1.00. Significance indicates the probability that the relationship between the associated variable and CPT is due to chance. For example, a significance of .05 means that there is a 5% probability the relationsihp is due to chance, while a significance of .25 means that there is a 25% probability that it is due to chance. Generally, a statistical relationship is considered "significant" if its significance is .05 or less. The final statistic we report is R^2, which indicates the proportion of the variation in the dependent variable which the independent variables collectively explain. For example, if R^2=.30, then the independent variables collectively explain 30% of the variation in CPT. $R^2$is used to assess how well a model "fits" the actual data.

We have applied our model of case processing time to each of our three courts separately because, on the basis of theory, (Church et al., 1978, Neubauer et al., 1981 and our qualitative research), we expected to find differences between the sites. Beyond this, we have combined the data from the three courts in a single sample to measure the overall impact of the rules. The data consist of 2,267 cases randomly drawn from general jurisdiction criminal docket books: 892 in Cincinnati, 647 in Columbus, and 728 in Youngstown (see Appendix One).

Case Processing Time in Cincinnati

As reported in Figure 10-10, six variables effected CPT in Cincinnati: the number of continuances granted (Beta=.13), the number of motions (Beta=.41), whether the case went to trial (Beta=.07), the custody status of defendants (Beta=.09), the Rules of Superintendence (Beta=.33), and the Speedy Trial Statute (Beta=.-.31).

Both the number of continuances and the number of motions increased CPT. Each additional motion added twenty-eight days to a case, while each continuance added about twenty-five days. Comparison of their associated Betas indicates that motions (Beta=.41) were relatively more important than continuances (Beta =.13) in the determination of CPT. The strong impact of motions upon CPT was noted by many judges and attorneys who complained that the U.S. Supreme Court's expansion of criminal defendants' rights, attorneys' fears of malpractice suits, and judges' fears of reversal have forced judges to allocate more time to deal with motions properly.

Cincinnati was the only court where going to trial significantly increased CPT. Even so, the effect was relatively small, for going to trial added 17 days to the length of a case. Moreover, the relative importance of trials' importance in determining the length of a case (Beta=.07) was less than that of the rules (.33), the statute (-.32), number of continuances (.13) or motions (.41), and of custody status (.09). Incarcerated defendants faced shorter CPT's than those not in custody, their cases being disposed about 19 days before those of unincarcerated defendants.

Rules. In Cincinnati, the rules increased case processing time by over 69 days, the exact opposite of their intended effect. Studies of planned change in courts and other organizations suggest an explanation. Incremental changes are generally thought to be more likely to achieve their goals than comprehensive changes (Nimmer, 1978; Ryan et al., 1981). Change efforts which build upon existing

Figure 10-10

EFFECTS ON CASE PROCESSING TIME: CINCINNATI

Variable	B	Beta	Sig.
Case Type			
Assault	16.8	.04	.20
Rape	9.2	.01	.68
CCW	- 8.1	.02	.56
Robbery	-14.0	-.04	.28
Drugs	9.2	.03	.42
Homicide	2.6	.01	.88
Theft	- 5.3	.03	.52
Complexity			
No. Defendants	- 8.1	-.03	.31
No. Charges	.5	.01	.93
No. Continuances	24.6*	.13*	.00
No. Motions	28.4*	.41*	.00
Type of Counsel	6.4	.03	.34
Trial	17.0*	.07*	.02
Custody Status	-19.0*	-.09*	.04
Caseload	- 0.0	-.16	.27
Rules	69.4*	.33*	.02
Speedy Trial Statute	-63.3*	-.31*	.00

$R^2 = .30$

* Significant at the .05 level.

relationships do not threaten the distribution of values and power which those relationships embody, and thus are more likely to be accepted on their merits. If those affected by change efforts participate in their development, the chances for acceptance supposedly are enhanced. On the other hand, absent a consensus that the system is dysfunctional, changes which drastically alter it threaten the interests it embodies, thereby pressing those threatened into noncompliance or resistance. Though participation has been heralded as an effective method of reducing resistance, it has not proven to be a panacea (see, generally, Hage and Aiken, 1970; Nimmer, 1978; Grau, 1981).

Prior to the Rules of Superintendence, Cincinnati's common pleas court was characterized by rampant judge-shopping, which many Cincinnati judges recalled favorably, even though it was one of the evils the rules sought to banish (see Chapter Eight). The old system allowed attorneys to control the pace of litigation, never forcing judges to become "kindergarten teachers" as one judge put it. Judges simply were impartial arbiters. Work was more relaxed, as the chief justice was not looking over judges' shoulders to make sure reports were filed and dockets cleared. And Cincinnati judges believed they processed their pre-rule cases as expeditiously as anyone. In fact, they did process their cases more quickly ($\bar{X}$=114 days) than the courts in Youngstown ($\bar{X}$=124 days) or Columbus, ($\bar{X}$=162 days).

The rules posed a direct threat to these practices. The individual calendar was mandated, curtailing judge-shopping, attorney control of the docket, and the judges' role as impartial arbiter and law-applier. This comfortable system was to be replaced with one where the judge became an administrator and case-expeditor forced to report "mere numbers" of cases to the Supreme Court (see Chapter Seven). Many judges resented this. Their bitterness was intensified because the underlying premise of the rules -- that delay was a serious problem -- was less true in Cincinnati than in Columbus and Youngstown.

Nevertheless, although the rules directly increased CPT, they may have decreased it indirectly by reducing the number of continuances granted. As Figure 10-6 indicates, the mean number of continuances granted per case fell precipitously with the rules in 1972, and remained low thereafter. The rules also appear to have indirectly decreased CPT by lowering the mean number of motions per case (see Figure 10-5).

Speedy Trial Statute. Unlike the rules, the Speedy Trial Statute directly decreased case processing time by some 63 days (see Figure 10-10). In fact, the statutes decreased CPT nearly the same amount the rules increased it (69 days). Judges and attorneys attributed the statute's succcess to its stringent sanction — dismissal. This sanction posed a strong incentive to comply for both judges and prosecutors, for failure to comply might prove embarrassing by forcing them to free supposed criminals. As one attorney explained:

> I suppose you'd have to say the Speedy Trial Statute is the reason that the sanction is so great. In other words, the judge just doesn't want to have it appear in the paper that Joe Doe, the accused rapist, had to be dismissed because his trial wasn't within the time allowed by law.

To move cases more quickly, Cincinnati judges liberally resorted to visiting judges, (see Chapter Eleven), and instituted individual case file systems indicating the disposition dates for each case. While the statute directly decreased CPT, it appears to have increased CPT indirectly by increasing the mean number of motions filed per case (see Figure 10-5).

Case Processing Time in Columbus

No less than seven factors significantly effected case processing times in Columbus: two case types (robbery and drugs cases), the number of motions filed

(Beta=.32), custody status (Beta=.28), caseload (Beta=.11), the rules (Beta=-.24), and the Speedy Trial Statute (Beta=-.18). Robbery cases (Beta=.15) took nearly eighty-eight days longer than other cases, while drug cases (Beta=.11) lasted 48.4 days longer than the norm (see Figure 10-11).

As in Cincinnati, there was a strong relationship between the number of motions filed and CPT. In Columbus, each additional motion added forty-two days to the length of the case. The number of motions represented the most important cause of CPT in Columbus (Beta=.32). Custody status also exerted a relatively important effect on CPT (Beta=-.28). Incarcerated defendants' cases were disposed 99.4 days sooner than those of unincarcerated defendants.

Rules. The Rules of Superintendence reduced case processing time in Columbus seventy-five days per case. This reduction is attributable to the docket consciousness inspired by the individual calendar, the reporting system, and the "Golden Gavel" awards (see Chapter Five). One indication of the docket consciousness of Columbus judges was their adoption of an individual calendar a year before the supreme court mandated it. Columbus judges were worried about their dockets and viewed individual docket responsibility as a possible solution even prior to the rules. Their docket consciousness is further evidenced by the relationship between CPT and caseload. As the court's caseload increased, cases were processed more quickly (B=-.004, Beta=-.11), suggesting that judges speeded case processing in response to caseload pressures.

Judges, attorneys, and court personnel agreed that Columbus judges were docket conscious. According to one court official, Columbus judges strove to comply with the rules' time frames. He depicted them as hard workers who liked to clear their dockets, and then take on more cases. He explained that judges with empty dockets actually asked whether the assignment office was keeping them up to date. Attorneys corroborated this image:

Figure 10-11

EFFECTS ON CASE PROCESSING TIME: COLUMBUS

Variable	B	Beta	Sig.
Case Type			
Assault	20.3	.03	.57
Rape	16.5	.01	.78
CCW	5.5	.01	.87
Robbery	87.9*	.15*	.00
Drugs	48.4*	.11*	.04
Homicide	48.7	.04	.38
Theft	20.4	.07	.26
Complexity			
No. Defendants	9.4	.02	.56
No. Charges	21.4	.04	.36
No. Continuances	-25.5	-.08	.08
No. Motions	41.9*	.32*	.00
Type of Counsel	16.4	.05	.26
Trial	-21.1	-.04	.34
Custody Status	-99.4	-.28*	.00
Caseload	- 0.0*	-.11*	.01
Rules	-75.0*	-.24*	.00
Speedy Trial Statute	-60.0*	-.18*	.00

R^2 = .24

* Significant at the .05 level

I think that they all feel that moving the docket is their concern. I think some are more concerned about moving the docket than others. More concerned in the sense that moving the docket is an end itself. Others are concerned about moving the docket but only as a means to an end.

Some push right along. Some press right along, I should say. I don't have a sense that as a court this court disappears at 2:30 in the afternoon.

All the judges are conscious of the six month limitation. It's not that it's a rule that a case would be dismissed but all of them want a good record for the disposal cases.

Even one judge who complained judges paid too little attention to administration admitted that more attention was being paid to the docket because of the rules.

Well, it's true, that in spite of what I say, there is some attention given to the docket now. Some of the reporting is accurate. There is some pressure, and there is some excuse that you can give to that nice judge to say no to the lawyer if he wants a continuance.

Columbus judges' increased docket consciousness was reflected in new practices they adopted in response to the rules. They modified the mandated individual calendar by instituting a "buddy system" which allowed them to transfer cases to judges whose courtrooms had cleared for the day. Judges also delegated record keeping responsibilities to their bailiffs, who in turn reviewed docket statistics and case status with the judges.

Speedy Trial Statute. In Columbus, the Speedy Trial Statute reduced case processing time some 60 days. The statute achieved this by further increasing prosecutors' and judges' docket awareness, thereby reinforcing the incentives already established by the rules. Faced with the threat of dismissal, prosecutors

were forced to push cases. Their increased docket awareness is best illustrated by the systematization of time-tracking between judges and the prosecutor's office, the critical role being played by the scheduling office. The scheduling office monitored the progress of each criminal (and civil) case, compiling lists of cases approaching their time limits, and notifying the prosecutor and judge of this fact. In this way, this office backed up the case management systems of both judges and prosecutors. The prosecutor's office also established a new record keeping system to track the progress of cases to ensure they did not exceed the statutory limits.

The statute also reinforced the incentives provided to judges by the rules. Judges, of course, already compiled their monthly reports pursuant to the rules, and instructed their bailiffs to monitor caseloads in order to identify cases which threatened to exceed the 180 day limit fixed by the rules. But in response to the statute, the scheduling office began to provide a backup tracking system, maintaining a separate card file for each judge's caseload. Cards of cases approaching the ninety and 180 day limits would be specially tagged, and the judge informed when the limit was approached. Thus, three groups --judges, prosecutors, and the assignment office -- scrutinized cases to ensure compliance with time limits. Moreover, the scheduling office coordinated case tracking by providing information to both judges and prosecutors.

Case Processing Time in Youngstown

Case processing time fell dramatically in Youngstown with the advent of the rules, from a median of seventy-six days before the rules to a median of thirty-one days after their adoption. Six factors significantly effected CPT in Youngstown. The number of motions filed (Beta=.29) and the Rules of Superintendence (Beta=-.17) were the most important factors, followed by type of counsel (Beta=.15), custody status (Beta=.18), the number of continuances granted (Beta=.09), and

robbery cases (Beta=.-08). The Speedy Trial Statute, by contrast, had no demonstrable impact on CPT (see Figure 10-12).

Unlike Columbus, where robbery cases took longer, robbery cases in Youngstown took 11.5 days less to process than other cases. Youngstown resembled both Columbus and Cincinnati regarding the impact of custody status on CPT. Incarcerated defendants' cases were disposed more quickly than those of other defendants by some 43.4 days. But only in Youngstown did the type of attorney affect CPT. Cases litigated by private attorneys increased case length by nearly forty-four days. Motions and continuances also increased CPT in Youngstown. Each motion filed increased CPT by 65.2 days, while each continuance extended it 96.8 days.

Rules. The Rules of Superintendence reduced case processing time in Youngstown by 52.1 days by heightening the docket consciousness of Youngstown judges. As in Columbus, Youngstown judges adopted an individual calendar prior to the rules, and instituted a "buddy system" after the rules were implemented. The court administrator, who also served as assignment commissioner, described the growth in docket consciousness:

> There was the awareness on the part of the judges that their docket must continue to be moved. If it does not occur, I think it could become public, and conceivably become embarrassing to the judges. So I think there's an effort made to move the docket; at least there's more awareness of its movement than there used to be.

> Prior to the rules, judges had maintained hexible hours regardless of the status of their dockets. But with the advent of the rules, judge began to check with the assignment office before the took time off.

Figure 10-12

EFFECTS ON CASE PROCESSING TIME: YOUNGSTOWN

Variable	B	Beta	Sig.
Case Type			
Assault	-21.1	-.05	.27
Rape	6.6	.01	.84
CCW	- 29.1	.03	.37
Robbery	11.5*	-.03*	.03
Drugs	-22.7	-.05	.21
Homicide	-29.9	-.05	.23
Theft	-26.5	-.09	.06
Complexity			
No. Defendants	9.7	.02	.51
No. Charges	15.5	.05	.15
No. Continuances	96.8*	.09*	.02
No. Motions	65.2*	.29*	.00
Type of Counsel	43.6*	.15*	.00
Trial	-14.5	-.03	.50
Custody Status	-43.4*	-.15*	.00
Caseload	- . 1	-.10	.22
Rules	-52.1*	-.17*	.00
Speedy Trial Statute	19.4	.07	.41

R^2 = .19

* Significant at the .05 level

Judges also related greater concern for their dockets, attributing it to the rules:

> Well, I think it makes me more aware of being part of an overall supervisory system that we weren't aware of before. The judges, by and large, should be more aware, especially when somebody is looking over your shoulder to see how many cases you've disposed of.

> We're constantly aware of them. We look forward every month to getting the overage list from the computer people in Columbus. That is, cases that have not been disposed of within the time allowed by the Rules of Superintendence. The list gets longer and longer it seems. If we cut it down by 10 cases, it's a cause for a celebration around here. We have to watch. We really have to watch.

> I think it's been good generally. It's been good for me. It keeps you on your toes, keeps you aware that your caseload is falling behind or that you're behind the other three judges in this case, and it doesn't always make you feel good, but it at least keeps you aware of where you stand.

Judges' bailiffs recounted their scrutiny of the overage lists they received from the Administrative Director's office:

> We in Ohio have our court superintendence system. And we have a data processing computer readout they send back to us with a master list of all of our cases that was tremendously inaccurate. Almost every month when you got it, you had to go through the entire thing and see which cases were on that list that should not have been on there, that were disposed of and you didn't get credit for. And time and time again we went through that list and got rid of cases not credited as cases that were already gotten rid of.

Although the inaccuracy of the reports is of note, the fact that they checked them betrays concern with accuracy and an awareness of the actual state of the docket.

The rules also appear to have decreased CPT indirectly by diminishing the trial rate and systematizing guilty plea practices. The trial rate dropped from 12% in 1969 to 5% in 1972, after the rules became effective (see Figure 10-4). The increased docket consciousness evoked by the rules led judges to regularize guilty

pleas practices so as to minimize the time and other resources allocated to them. As one bailiff described:

> I devised a system over there. Suppose we had a case called in the morning and one in the afternoon each day for two weeks on the criminal docket. We would know whether they pled or not ahead of time because I'd check with the lawyers. We had our criminal docket down to about twenty cases, because they've always allowed a plea in a criminal case to go to a judge that was free, just to take the plea. And then the sentencing, of course, could come back to the judge to whom it was assigned. And so if you were say in a jury trial and the other judge was tied up, and this criminal plea came in and on your recess you take that plea. Or if you were free you'd take the plea instead of working on your own docket.

The rules also appear to have decreased CPT indirectly by reducing the trial rate from 12% in 1969 to 5% in 1972, where it remained through 1977 (see Figure 10-4 above).

Speedy Trial Statute. The Speedy Trial Statute did not significantly affect case processing time. One reason for this could be the presence of a "bottoming effect," a floor beneath which case processing could not drop absent a dramatic increase in judicial resources or vast reductions in criminal filings. Figure 10-1 indicates that the rules reduced median CPT to thirty-one days, an extremely low figure by any standard. But even though the statute could not reduce case processing time, it probably helped maintain it at low levels by reinforcing the incentives provided by the rules.

Our qualitative data corroborate this. The court administrator, who described the Rules of Superintendence as the second most important administrative change in the past ten years, placed them behind the Speedy Trial Statute. Judges, prosecutors, and attorneys all reported greater concern with it than with the rules. Violating the rules may have meant receiving a bad report card, but

CONTINUED

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transgressing the statute meant turning criminals loose. As defense attorneys explained:

> I'd love to walk people out of the county jail on a 90 days rule if I could. You know, you're not given the opportunity. They watch it so closely here. Basically all they have to do on the 89th day is call the trial. Call it for trial. I go over there and 'Oh my gosh I got to try a case. I better continue this.' So I talk to my client.

> The judges are required to send a report to the supreme court of cases that are not considered current, and we will get a memo from a judge saying that this case should be brought up, or that case should be brought up. What's happening in this case, or what's happening in that case, and the judges are mindful of that. But I've never heard of any judge who was more concerned about the six months than he was the speedy trial. The Speedy Trial Statute is the one that really is the determining factor because that's an acquittal rather than some little lack of merit point. We're talking about a completely different can of worms, then.

Judges viewed the statute as a "backup" to the Rules of Superintendence, perhaps even more important than the rules:

> I think it's a good backup to the rules, whether the rules back the statute or the statute backs the rules. But with the two of them together, you naturally have a tendency to move cases.

> We pay attention to the statutory time and the reason is if we blow it, we have to, by law, dismiss the case. We don't have to do that if we violate the Rules of Superintendence. You know, we have a hard enough time complying with the 270 day requirement, or the 90 day requirement. We have a hard enough time. We've got a lot of cases, a lot of cases.

Thus, contrary to the stark numbers generated by the case data, Youngstown actors agreed that the statute provided incentives which were equally or more important as those provided by the rules.

Effects on Case Processing Time: Summary

The overall importance of the rules and the statute can be assessed by analyzing the combined case samples from the three sites. The results are presented in Figure10-13. When the samples are combined, case type and case complexity variables bear no significant relationships to CPT. More interestingly, two factors universally thought to increase CPT, continuances and trial, are not related to CPT. Five variables do significantly effect CPT in the combined sample. Private counsel increased CPT some twenty days (Beta=.08), while case length was shortened by some forty-four days where the defendant was incarcerated (Beta=-.16). The number of motions, on the other hand, increased CPT at the rate of 34.7 days for each motion (Beta=.31).

Both the Rules of Superintendence and the Speedy Trial Statute reduced case processing time in the combined sample. The rules reduced CPT slightly more than nineteen days, while the statute decreased it thirty-nine days. Comparison of standardized coefficient indicates that the statute (Beta=-.15) was about twice as important as the rules (Beta=-.07) in decreasing CPT.

Although a combined sample provided an overview of the effects of the rules, the statute, and other variables, it masks important differences between sites. Figure 10-14 summarizes the effects of all variables significantly related to CPT in at least one of the three studied courts.

The number of motions increased CPT in all three courts as well as in the combined sample. Similarly, incarcerated defendants in all three courts had their cases disposed more quickly than did unincarcerated defendants. While the number of continuances did not significantly increase CPT in the combined sample, it did significantly increase it in Cincinnati and Youngstown, though the relative importance of the relationship was small in both courts. With one minor exception, caseload and case type were significantly related to CPT only in Columbus, the

Figure 10-13

EFFECTS ON CASE PROCESSING TIME: ENTIRE SAMPLE

Variable	B	Beta	Sig.
Case Type			
Assault	1.3	.00	.91
Rape	21.8	.02	.27
CCW	-16.2	-.03	.25
Robbery	4.3	.01	.68
Drugs	9.4	.02	.33
Homicide	10.3	-.02	.54
Theft	4.5	-.02	.54
Complexity			
No. Defendants	- 3.9	-.01	.59
No. Charges	5.3	.02	.37
No. Continuances	- 1.1	-.00	.87
No. Motions	34.7*	.31*	.00
Type of Counsel	20.0*	.08*	.00
Trial	4.6	.01	.56
Custody Status	-44.2*	-.16*	.00
Caseload	- 0.0	-.02	.30
Rules	- 19.2*	-.07*	.01
Speedy Trial Statute	-39.3*	-.15*	.00

R^2 = .18

* Significant at the .05 level

Figure 10-14

EFFECTS ON CASE PROCESSING TIME: SUMMARY

	Betas for Significant Relationships			
	Total Sample	Cincinnati	Columbus	Youngstown
Rules	-.07	.33	-.24	-.17
Speedy Trial Statute	-.15	-.31	-.18	N.S.
No. Motions	.31	.41	.32	.29
Pvt. Atty.	.08	N.S.	N.S.	.15
Trial	N.S.	.17	N.S.	N.S.
Custody Status	-.17	-.09	-.28	-.15
No. Continuances	N.S.	.13	N.S.	.09
Robbery	N.S.	N.S.	.15	-.03
Drugs	N.S.	N.S.	.11	N.S.
Caseload	N.S.	N.S.	-.11	N.S.

N.S. = Not Significant

former owing to judges' docket consciousness and the latter possibly to a lower priority assigned robbery and drug cases by the prosecutor. The minor exception is the slightly shorter time required to process robbery cases in Youngstown.

Although both the rules and the statute significantly reduced CPT in the combined sample, important variations by site must be noted. In two of the courts, Columbus and Youngstown, the Rules of Superintendence markedly decreased CPT by heightening judges' docket consciousness. One court took exception to the rules — Cincinnati. As recounted in Chapters Eight and Nine, there reigned a system quite different from that contemplated by the rules. In the minds of Cincinnati judges, this system allowed them to be "judges," not "kindergarten teachers" monitoring the speed of case disposition. In contrast, the Columbus and Youngstown courts viewed individual dockets and case responsibility as solutions to mounting problems, even prior to the rules. For them, the rules were an incremental change in directions they were already headed. For judges in Cincinnati, the change seemed massive and unwarranted.

The goals and incentives of the rules were strongly reinforced by the Speedy Trial Statute, which "put teeth" into the rules. Even in Cincinnati, the statute took its toll on case processing time, as prosecutors and judges were forced to comply or have cases dismissed. In Youngstown, where the statute did not further reduce CPT, judges and attorneys contended that the statute maintained the court's low case processing time. Although the rules reduced delay there to a low level, the statute was instrumental in keeping it there.

But speed in processing is only one dimension of "doing justice." Efforts to speed case processing not only transformed the nature of judging and the relationships among courtroom actors, matters examined in Chapters Seven and Nine, but altered the substance of justice dispensed as well. This issue is explored in the next chapter.

CHAPTER ELEVEN

IMPACT UPON THE QUALITY OF JUSTICE

Although court reformers have traditionally admitted that administrative reforms in the courts might affect the "quality" of justice, the nature and extent of those effects have received inadequate attention (Gallas,1980). Complicating the issue is the ponderous question of what "justice" is. The quality of justice can refer to many things, such as greater certitude in punishment, equal treatment in equal cases, individualization of treatment, or adherence to formal legal procedures. Critics of speedy justice often argue that it results in a rush to judgment which sacrifices procedural safeguards and individual treatment. They depict speedy justice as an assembly line where cases are mass processed in disregard for their individual merits. On the other hand, proponents of reforms designed to speed disposition contend that it improves the quality of justice by providing "fresher" evidence and swifter, more certain punishment (Ryan et al., 1981). We do not attempt to define "justice" here. Rather, we explore the perceptions of actors in our three courts as to the impact of the rules and speedy trial statute on <u>their</u> conceptions of justice. Since much of the criminal process hinges on the finding of guilt, we explored one "quality" of justice in particular — the impact of the two innovations on the determination of guilt.

<u>Impact On Conviction</u>

Both the critics and proponents of speedy justice agree that decreases in case processing time increase the likelihood of conviction, though they drastically disagree over how desirable this is. Although desirability cannot be empirically

determined, the supposed relationship between speed and likelihood of conviction can.

Data from our three sites are ambiguous on this point. Figure 11-1 indicates that decreases in median case processing time were accompanied by an overall increase in the conviction rate in only one site, Youngstown. In Columbus, the conviction rate fell as median case disposition time fell, contrary to the prevailing presumption. On its face, it appears that concern with decreasing delay led judges and prosecutors to "give away the courthouse". In Cincinnati, a more complicated relationship is seen. Initial reductions in median case processing time were coupled with a reduction in the conviction rate, but further and more substantial reductions in case time were associated with substantial increases in the conviction rate. Overall, however, Cincinnati's conviction rate rose only slightly while case processing time dropped noticeably.

To shed more light on these patterns, it is necessary to resort to multivariate analysis which can control for the effects of potentially confounding variables. For example, variation in case types, case complexity, type of counsel, and motion and continuance practice and caseload all could affect the determination of guilt.

To assess the impact of the two innovations on the determination of guilt relative to other factors, we used discriminant function analysis. This statistical method is appropriate here because the dependent variable, guilt, is dichotomous, and not subject to analysis by normal forms of regression. The form of discriminant analysis employed here derives standardized coefficients which are of analytic importance. The magnitude of each coefficient represents the relative contribution of the associated variable to that function. The coefficient's sign denotes whether the associated variable's contribution is positive or negative relative to the positive group centroid. In other words, the interpretation of these coefficients is analagous to the interpretation of beta weights in multiple regression.

Figure 11-1

CASE PROCESSING TIME AND CONVICTION RATES

(CPT in days)

City	Period					
	Pre Rules		Post Rules Pre Statute		Post Statute	
	CPT	Conv. Rate	CPT	Conv. Rate	CPT	Conv. Rate
Cincinnati	92.8	86.9%	88.0	79.5%	55.4	90.1%
Columbus	115.0	79.9%	89.0	76.9%	52.3	71.6%
Youngstown	76.1	78.5%	31.0	85.1%	28.3	86.2%

Furthermore, these coefficients can be used to "name" the functions by identifying the dominant characteristic measured by the function. The amount of variance in the dependent variable explicable by each function is measured by the statistic omega-squared, which is interpreted analagously to R-squared in multiple regression analysis. The means on the functions are referred to as group centroids which represents the most typical location of a case from that group in the discriminant function space. Comparing group centroids indicates how far apart the groups are along that dimension. In this analysis each function contains two groups -- innocence and guilt.

Data for 2,267 cases were collected from case files in Cincinnati, Columbus, and Youngstown. Criminal cases were sampled randomly from five years between 1967 and 1977 (1967, 1969, 1972, 1974 and 1977). The control variables employed were those used in Chapter Ten while the independent variables utilized were the pressure of the rules and statute, case processing time, whether the case exceeded the 180 day limit established by the rules, and whether the case violated the limits fixed by the Speedy Trial Statute (270 days for unjailed defendant's 90 days for jailed defendants). Case processing time (CPT) was measured in days, while dummy variables were created to indicate violation of the time limits. Other variables were defined as they were for the case processing time model. The dependent variable, case outcome, was scored as "1" where the defendant was acquitted, and "0" where the defendant was found guilty on at least one charge.

Since the bivariate analysis presented above suggest different patterns of relationship between case processing time and conviction, we have analyzed our data stratified by site. Figure 11-2 presents a comparison of the sites with the presence of the rules and Speedy Trial Statute included as dummy variables.

Figure 11-2

EFFECTS ON GUILT

Variable	Youngstown	Columbus	Cincinnati
Homicide	-.055	.122	-.101
Robbery	-.116	-.092	.191
Assault	-.072	-.272	.029
Theft	-.336	-.047	-.122
Rape	.006	.207	-.053
Drugs	-.178	.082	.000
CCW	-.052	.127	.010
# Defendants	.188	.142	-.040
# Charges	.020	-.182	-.280
Caseload	.034	.220	.134
Pvt. Atty.	.186	.087	.132
In Custody	-.047	-.020	-.063
Motions	.083	.249	.150
Continuances	.095	.136	-.207
Trial	.270	.464	.260
CPT	.665	.620	.746
Over 180	.181	-.228	-.176
Over 270/90	-.056	.072	.121
Rules	-.059	-.089	.150
Speedy Trial	-.055	.175	-.367
GROUP CENTROIDS			
Innocent	1.166	.650	-.740
Guilty	-.216	-.250	-.108
2			
OMEGA	.202	.112	.073

In only one of the courts, Cincinnati did either the rules or the statute exert a sizable effect on conviction. In Cincinnati, the Speedy Trial Statute decreased defendants' chances of being acquitted (-.367).

But in all these cities, the function predicting innocence is dominated by case processing time. In each of the three courts, the shorter the case processing time, the greater the likelihood of conviction. In Youngstown, the relative impact of CPT on outcome (.665) was twice that of the next most important variable, theft (-.336). CPT also was twice as important (.746) as the next most important variable in Cincinnati, the presence of the Speedy Trial Statute (-.367). Finally, CPT dominated the guilt function in Columbus (.620), though its relative importance was only about 50% greater than that of trial(.464). In Columbus, defendants who proceeded to trial were more likely to be judged innocent than those who did not. Nevertheless, in Columbus, as in Youngstown and Cincinnati, shorter case processing time increased the likelihood of conviction.

Although the direct effects of the Rules of Superintendence and Speedy Trial Statute on conviction were not relatively important, their indirect effects were important where the innovations reduced case processing time. By decreasing CPT, these innovations increased the likelihood of conviction for criminal defendants, confirming the empirical contentions of both the proponents and opponents of "speedy justice." Still, these data do not determine whether this resulted from a "rush to judgment" in which defendants' rights were trampled upon, or resulted in fewer denials of justice through delay. Many of our respondents, however, had strong feelings regarding the impact of these two innovations on the quality of justice.

Interviews revealed wide-ranging concern for the impact of the two innovations on the quality of justice. In the following pages we will delineate the problems respondents believe to have been provoked by -- or associated with -- the

Rules of Superintendence and the Speedy Trial Statute. While these two phenomenon can be quantitatively distinguished, it was more difficult for respondents to do so. For them, there was a general feeling that there indeed was a new emphasis on speed and that it had had some effect on courtroom life.

Speedy Justice

While the penalties associated with non-compliance with the rules were negligible, the necessity to submit docket reports was a reminder to judges of their obligation to move cases. Some judges, particularly in Cincinnati, complained that strict compliance with the rules would compromise the quality of justice. The Speedy Trial Statute exacerbated such misgivings, with some respondents worrying that too speedy justice would provide opportunities for abuse; in the rush to judgment some judges and attorneys worried that insufficient time would be allocated to hearing evidence and studying the law. That the pressure to dispose of cases might render rulings more arbitrary was another concern. In the following pages, we will discuss these concerns, indicating the extent to which they were believed to have occurred and their impact upon the court. Because the quality of justice is a difficult concept to define, consequences we will describe sometimes depend upon the views of actors disgruntled by the present system. That they may be measuring it against an ideal past or future which can never be attained is possible. But to the extent that speed is associated with the sacrifice of justice, such perceptions must be examined because they impact upon the morale and relationships of courtroom actors.

That tension between disposing of cases and achieving justice exists, is apparent in the remarks of a Columbus judge:

> One of the problems is are you going to dispose of a lot of cases or are you going to do a few of them really right. Where do you hit the

balance between justice and expedition? The public is out there wanting maximum sentences for everybody that's done anything from littering to murder. There is not really justice in that attitude. There's the pressure of the crowded jails and your own desire to be as fair as you can and make the best guesses to peoples' future chances and still make sure that you are protecting the public from their depredations. These are all things that will work in different directions, and you have to try to reconcile to the point where you have some kind of an answer. It's an educated guess.

Another judge was less reflective, asserting that speed had, in fact, sacrificed his ability to do justice:

> I think that has led to the biggest injustice that has happened in the court system in the State of Ohio because we are sacrificing good judicial talent for speed. I like to sit and study on a good legal question. I no longer have time to. Therefore I give a slip-shod shot at it and that's what most of the judges are doing that I have talked to.

In addition to sacrificing talent, some believed that too much concern with speed sacrificed legal rights in both civil and criminal cases. Noting the extent to which this has occurred, a Cincinnati judge commented upon the consequences of speed among his colleagues in the following way:

> Oh, I know there are situations where judges have been absorbed with numbers, getting the cases through the thing in a hurry. I don't mean they go out golfing. I don't know many judges who do that. This courtroom is open all day, practically every day, with all the judges here. But the business of getting cases disposed of has gotten in the way of listening to people and judges tend to shut off the evidence. Anybody who has anything to say about a case should be heard. I don't think any judge in this county, that I was aware of, actually subordinated the necessity to do justice to getting out the right numbers at the end of the month. It's a matter of degree and some judges automatically are more immediate in their decisions, and some a lot more prompt and some are a lot slower. You can always make decisions off the cuff and decide things before the lawyers have stopped talking, but I don't think that is justice. It's a peculiar balance you have to reach.

Another judge commented in a similar vein:

> I wonder, sometimes, because of the hurry up business, that we're not more interested in numbers than we are in what happened, and who got hurt in this case, and is the settlement a fair settlement, rather than a settlement for settlement's sake. (Youngstown judge)

One judge who was severely behind in his docket and who had been admonished by the administrative judge maintained that his concern for quality interfered with his ability to move cases, especially civil ones, as quickly as the chief justice mandated:

> I'm more interested in the quality than quantity of cases filed. Nobody ever considered what happens to the lawyers and the clients when they passed these rules. But lawyers complain about it. They are forced into trial, dismissals without prejudice, settlements, re-filings and plea bargains. (Cincinnati judge)

Especially with regard to civil cases, many of the attorneys with whom we spoke believed that a numbers game had been provoked by the rules and that the emphasis upon disposing of criminal cases because of the speedy trial statute had led to unfortunate miscarriages of justice. While we will discuss the relationship between speed and civil cases in greater detail, suffice to say that attorneys charged judges with arbitrarily terminating cases and forcing settlements.

> It's a numbers game because judges will terminate cases or force termination of cases that maybe shouldn't be terminated. There was a judge that was terrible in that regard. He didn't want a jury trial; he wanted this case terminated; he wanted to keep his records down. So sometimes they'll impose upon the individuals in the community something they may not want, just for the sake of getting this record keeping out of the way.
>
> We had one judge who was lauded very highly by the supreme court for moving his cases. I wouldn't try a case in front of him if you paid me

> because he was in such a big hurry to get his docket moved that he didn't want to hear about testimony, evidence, witnesses. It was just rush, rush, rush. He would use any pretext at all to grant a judgment. At pretrial hearings, he used to grant judgments, and you were constantly under the kind of pressure where he would not bend for half an hour or an hour. If you had to be somewhere else, he would tell you if you don't show up, there's judgment against you, that kind of thing. I think the rules kind of gave him an excuse. It was part of his makeup to begin with, to be like that, but it sort of put the stamp of approval on it, in a way.

Although attorneys complained of the miscarriages associated with undue speed, their comments took the form of general complaints; only one example of a mistake because of speed was ever given. As noted, however, such perceptions affected courtroom relationships, and bred cynicism about the enterprise in which they were engaged.

In addition to worrying about the rights of defendants, judges and prosecutors, in particular, worried about the societal effects of speedier justice. To the extent that speed effected unfortunate compromises, they worried that convicted felons would not receive their just desserts and would be free to prey upon society again. The very fairness of speedy justice, which is often just assumed by reformers, is an issue for those who are charged with dispensing it. A Cincinnati judge commented about this in the following way:

> Very often, we sacrifice quality for quantity, like I just did on that criminal case. That guy should have gotten considerably more time. If it weren't for the fact that I know that he will be paroled way before he would under any sentence that I would give him, why I wouldn't have done it. I was going to have him tried and then give him what he should get, but I know he is going to get out anyway and so it enables me to keep up or near up with the numbers by prostituting myself a little bit.

Referring to the Speedy Trial Statute, a Youngstown prosecutor provided another example of the threat speed poses to society:

> There's tremendous pressure upon this office to dispose of its criminal caseload. There shold be a priority given to criminal cases, but the way that the Speedy Trial Statute was put together was certainly not in the best interests of law enforcement or the courts. This idea of a bookkeeping thing that because somebody miscalculated somewhere along the line, then you're jeopardizing the entire prosecution. We had a criminal case that was reversed in the court of appeals. An individual was represented by a lawyer who was trying one of these desegregation cases in federal court. We called the case for trial four, five, six times and because the judge didn't enter it on his docket in such and such a way, and didn't have this, that, or the other thing written down, they tried to dismiss it on the grounds that he wasn't given a speedy trial. And, of course, the judge at the trial level, who had all these facts, overruled it and we proceeded with the trial, convicted him, sent him away to the pen. Of course, the appellate court threw the thing out, because he wasn't given a speedy trial. It was really a gross abuse. There was no requirement on him to go hire another lawyer, we couldn't force him to do that.

Continuance practices were another one of the problems the Rules of Superintendence were designed to correct. To meet the mandated time frames, state officials believed judges would have to restrict their availability. The difficulty with advocating such reductions is that continuances are often necessary to the disposition of a case. Putting judges in a position where they must sacrifice continuances to complete cases expeditiously contributes to a dilemma where judges must compromise justice to meet the requirements of the state supreme court. At its most extreme, judges might refuse all continuance requests, justifying their practice by the need to dispose of cases more expeditiously.

Many judges, however, did not decrease the numbers of continuances they granted. Only two judges in Cincinnati and three in Columbus were acknowledged to be extremely tough on continuances. Such judges believed it was their job to move cases and attorneys' job to meet the required deadlines. Believing that attorneys are a major source of delay, they took it upon themselves to insure that they would not be hoodwinked. Other judges, however, believed that allotting attorneys the necessary time to prepare their cases is an essential ingredient of good justice which should not be sacrificed. These judges maintained that continuances should be related to the merits of the case and that blanket refusals

did not constitute justice. But the Speedy Trial Statute did affect prosecutors' perceptions of their ability to win continuances.

Although defense attorneys complained about having to waive their clients' rights in order to gain a continuance, despite its being a provision of the statute, prosecutors believed that they could not win continuances without this carrot. They charged that judicial interest in disposing of cases becomes apparent when the possibility for waived time is not available. In such circumstances they contend that quality is sacrificed for quantity. As a Columbus prosecutor described it:

> The biggest problem is that it is a lot harder for the state to get a continuance. Defense counsel can come in and say, 'I got a trial in this other courtroom. I'm in progress here. I'm going to be out of town. I have my vacation scheduled.' 'Fine. Grant your continuance.' If they are retained, their client will wait. Even if they are not retained, normally their client will, especially if they are out on bond. If they are out on bond, they don't care. The only time you really run into a problem is if their client is locked up and he's looking at 90 days. Even then, I've seen cases go six months when the client has been in jail. But the prosecutor — we have a different point. The judge says, 'Okay, if you can't handle the case, get somebdy else. You got eighteen other guys up there. Get somebody else to handle it.' Well, they don't realize they got their own cases to handle first.

While the issue of what constitutes quality justice is still open to debate, respondents agreed that continuance policies were not the determining factor. Racist or sexist judges, or ones unfamiliar with the law, or those who charge rent for their courts, were more likely to be cited in this regard, but these were not within the province of the rules to correct.

Responses to Speed: Visiting Judges

Although there was disagreement as to whether speedier justice reduced the quality of justice, there was little argument that the necessity to move cases more quickly resulted in new procedures which affected defense and prosecution strategies. Youngstown and Columbus turned to a buddy system to dispose of cases within designated times. In 1972 Cincinnati turned to a system of visiting judges for docket relief. While this is helpful to sitting judges in disposing their caseloads, there was some controversy regarding their general value, with lawyers and attorneys complaining of the uncertainties they introduce. One of the charged abuses was that the wrong cases were allocated to visiting judges. Describing this phenomenon, a judge said:

> The majority of judges take the complex civil cases that are going to take time and get them to a visiting judge and keep the criminal cases which are probably going to result in a plea. As soon as you send a case to a visiting judge, that case is disposed of as far as your reporting is concerned. So, your long cases are going out, and they're chopped off your scorecard as, case disposed of, regardless of whether that case is going to be disposed of two years down the road by a visiting judge, and you lock up your pleas on your criminal side, and you wind up having a great looking report.

Although criminal cases must take precedence, there are ways to dispose of them without giving complex cases to a visiting judge. Commenting upon these alternatives a former judge said:

> I tried lengthy cases, and tried to juggle the rest of my docket as best as I could. And that's how I used v.j's. If a criminal case came up on Wednesday, I'd start a medical malpractice case on Monday, the case could not be resolved with a plea, it's going to go to trial — that's when I contacted them, I've got an emergency situation, criminal case, time is running out, I'm in progress, can someone handle it? That, to me, is what a v.j. is all ab·ut, not the way it's used in a lot of cases.

The Rules of Superintendence provided a rationale for avoiding such a use of visiting judges. While most agreed that difficult cases were the responsibility of sitting judges, they maintained that they were judged by numbers and not the types of cases they heard. Thus while some judges may never have wanted to try difficult political or complex lawsuits, the Rules of Superintendence now allowed them to be avoided with impunity. In addition to being avoided, the Rules could also be blamed for denying judges the chance to do what they wanted, or were elected, to do. There is no doubt that some judges sincerely regreted parceling out difficult cases to visiting judges and that they did so because they feared embarrassment if they were found to have disposed of an insufficient — or insignificant -- number of cases. But for many judges, the visiting judge system flourished because it served their interests, although they too decried its effects on the quality of justice.

While Cincinnati judges accepted the problems of the visiting judge system as inevitable, given what they perceive to be insufficient judicial resources, other courtroom actors were not so resigned. Attorneys and prosecutors complained that visiting judges were not attuned to the mores of the community — or the ways of the court -- and thus rendered unusual verdicts. Unfamiliarity with the judge, especially when a case is reassigned on the date of trial, also negated previously constructed trial strategies and militated against the possibility of constructing new ones. The unavailability of visiting judges to handle post-conviction motions -- or pretrial motions which have been handled by a different judge -- also introduced uncertainties. Prosecutors and attorneys also questioned the basic competence of these judges and worried that they might have a particular bone to pick. An example of such difficulties is evident in the following remarks:

> The visiting judges don't know you. A lot of times they're coming from counties where they are not seeing that much action. This being a more

> cosmopolitan area, things are a little more fast-paced. Maybe this is where more law gets created because of the fact that it's a city than, say, if you go out to Claremont County, Warren County. They have a slower way of dealing with things up there. They've got a little bit more of the 'good ole boy' style. They're not so hung up on being the machine the prosecutor's office is over here. The judges are a little bit more used to a different ballpark. There is only one visiting judge that I really think knows the law. The rest of the visiting judges — I don't think they ever had to know the law -- because of the way things are handled in the county. You know, its a different ballpark. (Cincinnati attorney)

The following prosecutor's remarks offer a particularly egregious example of the dangers of the visiting judge system:

> There is a judge who travels around the state from one of the smaller communities — who has been alleged to have said, and on more than one occasion, that, 'I am going to show you big city attorneys how to handle a case.' And he pitches quite a few. He dismisses them.
>
> How is that showing them how to handle cases?
>
> This is just a paranoia with them or whatever you want to call it. We have another situation with some of the visiting judges that bond cases involving public officials, where sometimes they are dismissed. And he goes out of the county. In my opinion, I think the visiting judge is more likely to dump a hot potato case.
>
> But it's the sitting judge that dumped that case to the visiting judge to being with, right?
>
> That's right, but very seldom does the finger ever point at the sitting judge. It's pointed at the visiting judge and he is out of town before the papers are even out on the street. What we've done is that there are a few visiting judges that we refuse to try cases in front of. They just dump all of our cases.

Apart from refusing to appear in front of some visiting judges, there was little prosecutors could do about intractable, or incompetent, visiting judges, except to complain about their impact on justice. As the following prosecutor's comments indicate, they believed incompetent visiting judges make convictions more difficult to attain or sustain.

> Let's say a probate judge is suddenly retired at age 70 after 30 years on probate. Then suddenly they put him on the bench to try a criminal case. He knows nothing about criminal procedures, very little about the Rules of Evidence, objections in a heated trial and there he is sitting there trying a case. Now, every time he makes a mistake for the defendant, fine. We have no right of appeal. When he makes a mistake for the state, the defendant then can file an appeal on the thing. We have had visiting judges who told the attorneys what was going to happen, walk out on the bench and then they can't even remember what they said in chambers. Some of them love to talk. They've got to explain everything and the reasoning is just completely giving the defendant a basis for appeal. Many of the visiting judges are very capable and competent, but we've got some humdingers.

While some prosecutors believed the incompetence of visiting judges aids the defense, defense attorneys were no more happy to appear before them. Thus, the visiting judge system contributed to a less than happy situation, especially in Cincinnati where they were used most frequently, allowing participants to believe the quality of justice was adversely affected.

Although visiting judges were utilized in Columbus, there was a belief that their use should be limited. As evidence of their lesser impact, neither the judges or attorneys spoke of their effects on the quality of justice. In contrast, visiting judges may be decried in Cincinnati but they were considered a necessary evil by the judiciary. Interestingly, by accelerating the administration of justice, the rules created a basis upon which the delegation of justice could be compromised, an unexpected result but one with great impact.

Responses to Speed: Civil Dockets

Civil justice appears to be another casualty in the rush to make Ohio courts more efficient. Although Rule 7(B) gave priority to criminal cases, this priority became mandatory and unavoidable with the advent of the Speedy Trial Statute, thus making civil justice more difficult to accomplish. Because this study was concerned with the effects of the rules in the criminal arena, quantitative data

were not collected on civil backlog and delay. In the course of this study, however, it quickly became apparent that moving the civil docket was already perceived as a problem.

When respondents were asked to comment upon problems confronting the court, they inevitably mentioned civil cases. In part, the problems associated with civil cases may be attributed to a litigation explosion affecting most areas of the country. But, as we have noted, the Speedy Trial Statute and priority given to criminal cases in the Rules of Superintendence made these cases more difficult to dispose. That court reform does not always render expected consequences is no surprise. In a seven state time series analysis, conducted from 1970-1972, France (1974:244) found that states with streamlined structures and extensive use of outside managers were no faster or efficient in processing tort-jury litigation than those which were not similarly equipped. Focusing upon Ohio, he found that the 1970 Rules of Civil Procedure, which were supposed to end delay, resulted in a significantly higher number of pending civil cases in most counties of the state, with particularly large increases in the more populous metropolitan areas. The length of time required to dispose of each percentage level of tort jury cases filed in that year also increased. Civil cases continued to plague our respondents. They were the ones most likely to be sent to visiting judges, attended by the deleterious consequences we have noted. While arbitration panels help to move some cases, they are not sufficient to remedy the problem. To meet the deadlines established by the rules, some worried that shortcuts were being taken. Judges noted in this regard:

> I'm not so sure that we're doing substantial civil justice. I think judges may opt for more summary judgments perhaps than they might otherwise do, in an attempt to alleviate the docket. I don't think it's a good thing in that regard. (Youngstown judge)

> The rules have been very problematic in that we just are unable to meet the standards in the civil area. You know, personal injury cases within two years, all others within one year after filing. We just aren't able to meet those things. That is very stressful to the judges. I mean you hate to have a mandate that you can't meet. This affects everything that you do. (Cincinnati judge)

Even when such shortcuts were not taken, judges complained that civil cases did not receive adequate attention, particularly in Cincinnati where the problem was perceived to be greatest. Attorneys complained that civil cases could not be heard because established trial dates were reset when criminal matters were not resolved. Validating such charges, the following judge noted the problems experienced with his civil docket.

> Because we have to abide by the rules we have to give precedence to a criminal case, so it's obviously going to slow the civil. I've got one sitting in here now that goes in three weeks and I've got my two week cutoff time on plea negotiations because I had to put it in at that time. So when the two week time comes, and I don't get a plea, then I'll have to call the civil side and say, look, I'm going to have to reset your case.

Others complained that the rules were not relevant to all civil cases and that the time allocated to particular cases was either arbitrary or impossible to meet:

> On this bench, you're dealing with many negligence cases where you have to let the case sit to find out how bad the injuries are. You can't demand immediate trial of a case where someone has a whiplash injury or has suffered some internal injuries because you don't know whether the injuries are permanent. It sometimes takes a year and one-half to two years just to find out how bad the injuries are going to be. I've got cases here that involve seven, eight, nine attorneys who have got to take multiple depositions. You can't possibly force those things to trial too quickly. They mature and yet if you let them mature and you keep a firm hand on them, make them report and so forth, most of the cases will settle because most cases are simply a matter of the attorneys and their clients, after discovery, finally accepting the fact that their case is only worth so much.

These last remarks reflect a belief that civil cases need time and that while judges have a responsibility for moving them, quick disposition is no measure of civil justice. A Youngstown attorney, for example, complained that one of the judges with the best civil docket dispensed the least civil justice, forcing settlements regardless of their merits. A Cincinnati attorney voiced a similar complaint:

> While judges say there are no sanctions, I think the rules have an effect on how they operate their courtroom. Judges don't get bogged down in motions. If there's a motion for summary judgment, rather than take the time to write out an opinion, they send a postcard that says, motion overruled because that takes two minutes, as opposed to two days. I think settlements are forced in civil cases. There's head-knocking to achieve settlements in cases, because that disposes of them. The obvious thrust of the rules is quantity over quality. In a given case, a mark in a "disposed of" column doesn't tell you anything. Was justice done? Was the right result received in the case? Was it a case that time was taken to achieve the right result that had to be taken? Most times, in civil cases, litigants have to live with the results at the trial level. They're not going to appeal it. If they do appeal it, it's time consuming, it costs them money, and it costs the public money. A judge who has a great record for disposing of cases and who is continually getting reversed by the court of appeals, is going to get a golden gavel for cases disposed of. He may well be rated unqualified by the bar association, which has happened here to golden gavel winners, and his record of reversal could be atrocious.

While attorneys recognized the necessity to give priority to criminal cases, they sometimes wondered whether this was not another instance of judges circumventing difficult work. As with their resort to visiting judges, this too led to more cynical relations between the bench and bar. Commenting upon these, an attorney said:

> I think it's a nice whipping boy. Judge X in particular is one of those judges that you never see unless you got a problem that only a judge can resolve. It's my understanding that his docket is in excellent shape. Judge X will grant a motion for summary judgment. Many of the other judges you wonder whether they ever do.

Judges and attorneys in Youngstown and Columbus noted that the civil bar had suffered some, but the complaints were not so numerous as they were in Cincinnati. As the following remarks indicate, respondents in Columbus and Youngstown expected more problems in disposing of civil cases. In response to a question about complaints from the civil bar in Columbus, a judge said:

> I could imagine that they might at some point complain in that regard. As a fact of life, we do have to give preference to criminal cases. We spend about 40 percent of our time in criminal matters where the civil docket only occupies about 30 percent of our caseload. So, we do have to devote more time to criminal than civil proportionately.

Our fieldnotes also indicate that Columbus attorneys experienced some of the frustrations encountered in Cincinnati.

> After observing a civil case I asked one of the attorneys about the impact of the Rules of Superintendence and the Speedy Trial Statute on civil cases. He explained that the current case was a typical example of time pressure placed on civil cases by the rules and statute. Three weeks ago, this case, a personal injury case, was set for this week. At that time, the defense attorney knew that his client could not be present in court. He asked the judge to re-schedule the case for the next week. He refused, citing other cases which had been scheduled as having priority. The attorney felt the judge just wanted to push the case through. He said that, in general, this judge doesn't care about attorneys' needs or their clients' needs. He wants to get cases off his docket.

In Youngstown, respondents also conceded that civil problems loomed in the future. They, too, noted ever increasing civil and criminal caseloads and insufficient judicial personpower to handle them. Because they cannot afford a system of visiting judges, they had little choice but to handle the work themselves. All respondents, however, prosphesized a rougher road ahead.

Summary

Many courtroom actors felt that the Rules of Superintendence and the Speedy Trial Statute had forced them to sacrifice the quality of justice for the quantity of justice. These reforms were important indirect factors in the determination of guilt. In particular, by decreasing case processing time, they tended to increase the chances of conviction. Judges and attorneys attributed this both to the positive effects of speedy justice on prosecution cases and to the negative effects on defendants' rights. Many attorneys complained that because of the reforms, judges refused to grant needed continuances, making it harder for them to prepare cases or to secure needed witnesses. Others claimed that time pressures induced some judges to dodge tough cases, transferring them to politically unaccountable visiting judges. Finally, judges and lawyers alike reported that the emphasis on processing criminal cases allowed civil cases to languish. Thus, while the rules and the statute did reduce delay, many respondents believed they also adversely affected the quality of justice.

CHAPTER TWELVE

SUMMARY AND CONCLUSIONS

The Rules of Superintendence were one part of a broad movement to reform the administration of justice in Ohio. In the past, mounting civil and criminal caseloads were defused by increasing judicial expenditures to add facilities and personnel. Dwindling revenue bases, however, severely curtailed the long run utility of this solution. The perceptions of Ohio court reformers were, shaped not only by the convergence of burgeoning caseloads and constricting budgets, but by a conventional wisdom of court reform which diagnosed court structure as the cause of pervasire delay and prescribed court unification as the solution. Supposedly the simplification of court structure and the centralization of administration would enhance judicial efficiency, thereby enabling courts to dispose of more cases more quickly.

Despite a paucity of empirical evidence causally linking congestion and delay to "disunified" court structures, Ohio reformers formulated a comprehensive program to restructure Ohio courts. The Modern Courts Amendment of 1968 strove to modernize the court system by simplifying court structure and centralizing adminstrative control over it in the supreme court and the chief justice. The Rules of Superintendence were a logical extension of the forces and reasoning behind the Modern Courts Amendment, for they sought to concretize the authority vested in the supreme court by the new judicial article. Moreover, the rules specifically attacked congestion and delay by transforming the administration of courts without increasing expenditures.

The Rules of Superintendence fixed the responsibility for reducing delay upon judges, delegating them certain powers to achieve that goal. At the same time

authority to reduce delay was decentralized, accountability for success or failure was centralized by the imposition of the individual calendar and the statistical reporting system. In addition to simultaneously centralizing and decentralizing court administration, the rules authorized and encouraged the adoption of new audio-video technologies to save time and personnel costs. In these respects, the rules epitomized what Heydebrand (1979) has labeled the "technocratic solution" to court problems.

The charismatic Chief Justice C. William O'Neill played an important role in formulating and implementing the rules. A skilled politician, O'Neill incorporated judges into the rulemaking process, asking them to express their perceptions of court problems and possible solutions. This process of participation served a dual purpose. Judicial input grounded the rules in the practical experience of the state's trial courts addressing the administrative concerns judges expressed. Participation also encouraged many judges to identify with the rules and the changes they embodied. O'Neill furthered this cooption by praising and rewarding judicial compliance with the rules, while rarely resorting to sanctions in the face of non-compliance. Nevertheless, many judges, particularly those in Cincinnati, disagreed with the premise that their courts suffered from delay and the conclusion that individual calendars and statistical reports would remedy it. The higher incidence of dissension in Cincinnati is attributable to the not-unrealistic perception of Cincinnati judges that delay was not a problem in their court, and to their satisfaction with a system that afforded attorneys free continuances and judges greater control over their dockets.

Despite such dissension, few judges actively opposed the rules' formulation or implementation. Given the structural imperatives prompting technocratic strategies, judges are in a poor position to resist them. Their mode of work and the notions of professionalism with which it is shrouded keeps them from consulting

with others or combining to protest change. That judges will comply with administrative rules may surprise those who see them as autonomous and independent professionals unwilling to brook interference in their domains. While some judges cling to such notions, their professional training — grounded in respect for rules, authority and law — generally assures compliance. But while judges may formally comply with administrative reforms, there is still room for maneuvering. Ohio judges, for example, submitted the required reports. Some found ways to obfuscate or "doctor" the submitted statistics to appear in a favorable light. That supreme court officials never challenged the validity of judicial statistics, even when they acknowledged that some might not reflect uniform categories or be completely accurate, speaks to the professional prerogatives accorded judges. Even in the face of increasing control over their work — the deprofessionalization of their status —the Ohio Supreme Court avoided outright confrontations.

Confrontation could be avoided because the rules served their intended purpose. Even when judges "doctored" their statistics, they were conscious of thier dockets and cognizant of their responsibility to move them. The rules did result in increased docket consciousness among judges. Whether their consciousness would have remained as high after it became apparent that the supreme court would not issue reprisals or without the Speedy Trial Statute is difficult to establish. It is possible that judges who disagreed with the rules would continue their formal adherence but that their opposition might be lessened. It is also possible that a state supreme court, intent upon successful reform, would intervene more actively in response to active opposition.

Judges generally complied with the rules. Whether compliance actually reduced delay is another matter. In Columbus and Youngstown, the rules clearly reduced criminal delay by increasing judges' docket consciousness. Even prior to the rules, Columbus and Youngstown judges viewed individual dockets and case

responsibility as solutions to mounting caseloads. In Cincinnati, however, the rules actually increased case processing time because they represented a substantial and unwanted change from the accustomed ways of the past. The Speedy Trial Statute strongly reinforced the rules' goals and incentives by inducing procecutors to process their cases or see them dimissed, thereby spreading the responsibility for combatting delay. The statute reduced case processing time in both Columbus and Cincinnati, and helped maintain it at a low level in Youngstown. The statute succeeded in Cincinnati where the rules had failed because it directly impacted upon the most important actor, the chief prosecutor. In Youngstown, the rules had reduced case processing time to such a low level that it could be reduced no further. If one were to look only at the impact upon case processing time to evaluate Rules of Superintendence, they were quite successful, particularly when reinforced by the Speedy Trial Statute.

But the rules and the statute had other effects as well. Together, they contributed to a broader transformation in the nature and meaning of judging. Rationalization, usually defined as the improvement of efficiency and organization to enhance security and predictability (Kolko, 1963), is not generally associated with professional workers (Hughes, 1971). Yet it is a key element affecting the transformation of courts and other societal institutions which were proviously dominated by professionals and their notions of expertise (Alford, 1975; Spangler & Lehman, 1981; Ehrenreich & Ehrenreich, 1977). Especially in public bureaucracies, rationalization generates new forms of cost control and increased mangerial control over workers, whether they be professionals or support personnel (Heydebrand & Seron, 1981; Heydebrand, 1979). Since judges have traditionally been accorded professional prerogratives, their removal constitutes an attack upon the very definition of their work.

Judges indicated that their work is less satisfying than they expected or than it was in the past, that they are underpaid for it, and do not receive the respect they should. Judicial discontent is likely to increase as their control over courts is diminished by technocratic innovations. Once an administrative apparatus is established, those charged with promoting it can define court interest differently than judges (Wheeler, 1978; Grau, 1978). Although there is general agreement that court adminstrators should not handle judicial functions, those functions can be variously defined. Whether some forms of judicial scheduling or assignment properly is a judicial or non-judicial function, is problematic, often depending upon observer's commitment of particular types of court administration. Wheeler (1978) suggests that court administrators will engage in more and more political brokering within and between courts at the possible expense of judicial control. Despite the powers inherent in judges' professional status, declining resources will strengthen those who promote administrative solutions to professional problems.

Judges, and many of our other respondents, believe that the rules had deleterious effects upon the quality of justice. They maintained that speedier dispositions did not necessarily mean better ones; if justice delayed is justice denied, speedy justice does not bestow better justice. Respondents pointed to the importance of continuances in particular types of case and worried that they would be sacrificed in the quest of speedy justice. While judges maintained that they would not be pushed into sacrificing quality justice for quantity, many judges worried that they might be an inadvertent consequence of technocratic reforms. Though it is difficult to gauge the validity of such sentiments, it is clear that by decreasing case processing time, both the statute and the rules increased defendants' chances to be judged guilty.

Worries and warnings about the sacrifice of quality justice may mask desires to continue old practices without interference and provide convenient rationales

for attacking change. Especially since so few examples of abuse associated with speedy justice were cited, it is difficult to conclude that sacrifices will necessarily be made if "justice" moves more swiftly. But perceptions of situations can also become self-fulfilling prophesies. If courtroom actors believe justice must be sacrificed for speed, they may well do so.

Visiting judges also were cited as a compromise which introduces uncertainty, and sometimes incompetence, to the judicial process. Many judges complained that the rules' and statute's emphasis on criminal case ultimately increased the difficulty of disposing of civil cases. In Cincinnati respondents spoke of civil delays and in Columbus and Youngstown respondents expressed concern that the prominence given to criminal matters would disrupt the working balance between the two. The civil dilemmas prompted by Ohio's administrative and statutory reforms suggest that too much emphasis on remedying one segment of a court's problems may merely shift them to another area. If subsequent studies find that the cost of the rules and Speedy Trial Statute's success was the neglect of civil dockets, what was won by reform should be questioned. Those who subsequently attempt to speed criminal dispositions should pay greater heed to the relationship between criminal and civil dockets. In short, even though superintendence rules can be used to reduce delay, particularly when reinforced by a speedy trial statute similar to Ohio's, they can exact significant hidden costs.

Even assuming that superintendence rules similar to Ohio's would be desirable in some states, whether they could be adopted elsewhere remains to be addressed. While state court officials generally hailed the rules, many respondents attributed their adoption and subsequent success to the cunning wiles of Chief Justice O'Neill. Many maintained that without him the rules would not have been adopted or would have been less successfully implemented. This local lore is inviting, and testimony to the Chief Justice's charisma, but a charismatic leader is not necessarily needed

for the same process to be accomplished elsewhere. Neither the problems which prompted the rules nor the solutions advanced to deal with them are unique to Ohio. In the face of declining resources, administrative and technocratic strategies are being introduced to resolve problems which were previously defined by adding new facilities and personnel.

When caseloads were lower, delay was not deemed to be the problem it has since become. But with increasing resort to courts -- prompted by the proclivity of individuals to seek redress of social-economic wrongs through litigation and the extension of the Bill of Rights to state courts through the 14th Amendment --delay and the traditional methods of disposing cases are more expensive than they used to be. Thus O'Neill and the supreme court were responding to a structural condition which is afflicting courts thorughout the country. While his persuasive skills may have made the rules more palatable to some judges, and may have insured minimal legislative interference with the process, the conditions with which he was confronted would eventually have demanded response. Moreover, the participatory and persuasive techniques he weilded can be emulated.

The rulemaking process O'Neill adopted is of particular interest in this regard. O'Neill relied upon judges, whom he perceived to be most directly affected by the rules and to bear the responsibility for their success, to discuss the rules during their formulation, their implementation, and thereafter. Participation, heralded by organization theorists as a panacea for resistance to change efforts, undoubtedly contributed to the success of the rules in courts such as Columbus and Youngstown, where the rules were more compatible with pre-existing practices than they were in courts such as Cincinnati. Nevertheless, the failure of the rules to reduce delay in Cincinnati indicates that no degree of participation will make rules succeed where they seek to drastically alter established practices.

As the rules promised to alter the content of judges' work, democratic principles suggest it was important to include judges in their formulation. The exculsion of virtually all other groups might be justified on the gounds that the rules were administrative, affecting only the internal administration of the courts. But the rules had important effects outside the internal operations of the courts. They demonstrably affected the probability that criminal defendants would be guilty, and in the eyes of many judges and attorneys, adversely affected the quality of justice by forcing the neglect of the civil docket and emphasizing quantity over quality. Effects which transcend the internal operation of the courts argue for a process which provides greater opportunity for public accountability than was afforded in Ohio. Nevertheless, the expanded access to and accountability of judicial rulemaking urged by so many commentators threatens to further politicize the administration of justice, subjecting it to political influences from which the courts are to be constitutionally insulated.

Thus, a charismatic leader is not essential to reform state trial courts; technocratic strategies are being proposed and will be adopted so long as they are believed to be a fiscally prudent response to growing demands facing courts. The conditions which gave rise to the Rules of Superintendence are not unique to Ohio. The structure of rules and the implementation techniques are generalizable. And superintendence rules can effectively reduce criminal delay. Nevertheless, this benefit must be weighed against the hidden cost of changing the nature of judging, prejudicing criminal defendants' rights, and neglecting the civil docket.

Appendix One

SAMPLE SIZE

	1967	1969	1972	1974	1977	Total
Cincinnati	186	138	191	195	182	892
Columbus	134	159	183	171	NA	647
Youngstown	149	130	148	148	153	728
Total	469	427	522	514	335	2,267

SUPREME COURT RULES
RULES OF SUPERINTENDENCE
Originally Effective September 30, 1971

Table of Rules

SUPERINTENDENCE RULE 1

A. Statement of Purpose. Section 5(A) (1) of Article IV of the Ohio Constitution reads as follows:

"In addition to all other powers vested by this article in the supreme court, the supreme court shall have general superintendence over all courts in the state. Such general superintending power shall be exercised by the chief justice in accordance with rules promulgated by the supreme court."

Caseloads in all our courts are increasing so fast that it is becoming difficult to provide criminal defendants with the speedy trial guaranteed them by the Constitution of the United States and the Ohio Constitution. In an attempt to bring criminal cases to trial promptly, it appears that more judges are being assigned to the criminal branches of our larger metropolitan courts. One direct result of this practice is to increase further the number of civil cases pending in many of these courts.

Delay in both criminal and civil cases in the trial courts of Ohio is presently the most serious problem in the administration of justice in this state. It is to be remembered that the courts are created not for the convenience or benefit of the judges and lawyers, but to serve the litigants and the interests of the public at large. When cases are unnecessarily delayed, the confidence of all people in the judicial system suffers. The confidence of the people in the ability of our system of government to achieve liberty and justice under law for all is the foundation upon which the American system of government is built.

The following rules are designed (1) to expedite the disposition of both criminal and civil cases in the trial courts of this state, while at the same time safeguarding the inalienable rights of litigants to the just processing of their causes; and (2) to serve that public interest which mandates the prompt disposition of all cases before the courts.

B. Applicability. Until further order of the Supreme Court these rules are applicable to all courts of common pleas of this state.

C. Citation. These Rules of Superintendence shall be referred to and cited as "Sup.R. _____"

SUPERINTENDENCE RULE 2

Presiding Judges. In counties having more than one common pleas judge, the judges thereof shall, pursuant to the Constitution, select one of their number to act as presiding judge to serve at their pleasure. The selection of the presiding judge shall be by majority vote of all the judges of all the divisions of the court, i. e., general, domestic relations, probate and juvenile.

If the judges are unable for any reason to make such selection, the judge having the longest total service on the court of common pleas in any division thereof, or service as a probate judge prior to May 7, 1968, shall serve as presiding judge until selection is made by vote.

The judges of all multi-judge courts of common pleas shall meet at the call of the presiding judge, and at least once each term of court, for the purpose of discussing and resolving administrative problems common to all divisions of the court. The presiding judge shall chair all such meetings and shall assign judges from one division of the court to serve another division as the business of the court may require.

Nothing in these superintendence rules prevents a presiding judge from serving simultaneously as an administrative judge of a division pursuant to Sup.R. 3.

SUPERINTENDENCE RULE 3

Administrative Judges. The judges of each multi-judge division (i. e., general, domestic relations, probate and juvenile) of a court of common pleas shall, by majority vote of all judges of the division, select one of their number to act as administrative judge. The administrative judge shall be selected for an annual term and may be re-elected.

If the judges are unable, for any reason, to make such selection, the judge having the longest total service on the court (as defined in Sup.

R.2) shall serve for the first term as administrative judge, which term shall not exceed one year in length, followed by the other members of the division in succeeding order according to their total service on the court. In the event two judges have equal total service, the first to serve shall be determined by the flip of a coin by the clerk of courts of the county.

The administrative judge shall be the presiding officer of his division and shall have full responsibility for and control over the administration, docket and calendar of the division which he serves. He shall cause cases to be assigned to the judges within the division and shall require such reports from each judge concerning the status of assigned cases as he may require to assist him in discharging his overall responsibility for the observance of these superintendence rules and for the termination of cases in his division without undue delay.

The administrative judge shall maintain records indicating the number of pending cases which each attorney is to try. In civil cases the attorney who is to try the case shall be designated as trial attorney on all pleadings filed therein. At the time of arraignment in criminal cases, the attorney who is to try the case shall be stated in writing by such attorney.

On or before January 1, 1972, the first administrative judge shall be selected and his selection shall promptly be reported to the Chief Justice of the Supreme Court.

SUPERINTENDENCE RULE 4

Assignment System. For the purpose of these rules, the individual assignment system is that system whereby, upon the filing in, or transfer to, a division of the court of a civil case, or upon arraignment in a criminal case, a case is immediately assigned by lot to a judge thereof, who thus becomes primarily responsible for the determination of every issue and proceeding in the case until its termination. Under such a system, all preliminary matters, including requests for continuances, must be submitted for disposition to the judge to whom the case has been assigned, or if he is unavailable to the administrative judge.

It is also permissible to relieve, by local rule, the administrative judge from a part of his trial duties during his term to permit him to utilize a part of his time to manage the calendar and docket of the division.

Each multi-judge general division of each court of common pleas shall adopt the individual assignment system as defined herein for the assignment of all cases to judges of the division for disposition, effective January 1, 1972.

SUPERINTENDENCE RULE 5

[See Appendix Infra]

Reports and Information. Each judge of a general division of a court of common pleas (and each judge temporarily assigned to a general division) is responsible for sending a report of his work in that division to the Chief Justice of the Supreme Court in the form specified by report Form A, attached hereto as an appendix. (The domestic relations category on Form A is for the use only by those general division judges assigned temporarily to a domestic relations division, who shall use only Part II, and by judges in divisions having domestic relations jurisdiction.)

In a multi-judge general division such report shall be submitted through the administrative judge and his signature thereon, as well as the signature of the reporting judge, shall attest to the accuracy of the report. It is the responsibility of each administrative judge, and he is empowered hereby, to formulate such accounting and audit systems within his division and the office of the clerk of courts, as will insure the accuracy of all reports required by these rules.

In the case of a judge temporarily assigned to a general division, only Part II of Form A shall be completed by an individual judge.

Each administrative judge of a general division is responsible for rendering a similar consolidated report of the work of his division on report Form A.

Each judge of a domestic relations, probate and juvenile division, or, in the case of a multi-judge division, the administrative judge thereof, is responsible for a report of the work in that division to the Chief Justice of the Supreme Court, as specified respectively, by report Forms B, C and D, attached hereto as appendices.

Each report required hereby shall be submitted monthly (except for Form C which shall be submitted quarterly) as well as annually and shall be in the office of the Administrative Director on the 15th day of the month following the close of the period for monthly and quarterly reports and the 60th day for annual reports.

The following definitions shall apply to report Forms A, B, C, D:

1. A case is considered "terminated" when a judgment entry is filed with the clerk for journalization or when a defendant is sentenced or granted probation.

2. A case is considered "terminated by court trial" if judgment is rendered after the first witness is sworn.

3. A case is considered "terminated by jury trial" if judgment is rendered after the jury is sworn.

4. The length of time a case is "pending" is to be measured from the date of the filing of the complaint, or the date of arraignment on the indictment or information.

5. The median age of cases terminated is to be determined by listing all cases tried in order according to the lapse of time in months from date of filing or the date of arraignment on the indictment or information to the date of trial. The middle case in the list will be the median case for that category of cases.

On January 1, 1972, a first report shall be filed with the Chief Justice of the Supreme Court by each judge and administrative judge showing the existing inventory as of January 1, 1972 (line 1, Part I, Form A). Thereafter, the monthly, quarterly and annual reports shall be made as directed herein, commencing February 15, 1972.

All reports required hereby, when filed, shall be public records. The Administrative Director shall keep, compile, publish and distribute the same at convenient intervals, not less than annually, so as to reflect the information called for by the reports and so as to provide a ready comparison of work of all courts and divisions. He shall devise such auditing methods and systems as may, from time to time, appear to be necessary to insure the accuracy of the reports.

The Chief Justice of the Supreme Court may, at any time and from time to time, require such additional information concerning the disposition of cases and the management of the business of all courts as he may deem useful to assist him in the assignment of judges, in the presentation of revised or additional superintendence rules for adoption by the Supreme Court and in discharging his constitutional duty to superintend the courts of the state. All judges, clerks and other officers of all courts shall, upon request of the Chief Justice, furnish him with any information concerning the disposition of cases and the management of their courts.

Amended Dec. 19, 1977; Jan. 1, 1979.

SUPERINTENDENCE RULE 6

Filing of Journal Entries. The judgment entry specified in Civil Rule 58 shall be journalized within 30 days of the verdict, decree or decision. If such entry is not prepared and presented for journalization by counsel, then it shall be prepared and journalized by the court.

SUPERINTENDENCE RULE 7

Dismissal of Cases; Rulings on Motions and Submitted Cases. Each judge of a court of common pleas shall review, or cause to be reviewed, quarterly, all cases assigned to him. Cases which have been on the docket for six months without any proceedings taken therein, except cases awaiting trial assignment, shall be dismissed, after notice to counsel of record, for want of prosecution, unless good cause be shown to the contrary.

Each judge of a Court of Common Pleas shall review, or cause to be reviewed, quarterly, all pending motions and cases submitted to him for determination after court trial. The number of pending motions and cases submitted for determination which have been pending more than 90 days shall be separately reported the month next following the end of the quarter on forms provided by the Administrative Director. With respect to motions, the 90 day period shall begin to run on the day the motion is filed or made. With respect to cases submitted to the Court for determination, the 90 day period shall begin to run on the day the trial is concluded. The Chief Justice of the Supreme Court may require specific information from the Administrative Judge or Judge reporting, or both, as to the reasons of delay in such rulings.

Amended Jan. 1, 1979.

SUPERINTENDENCE RULE 8

A. Grand Jury Proceedings. When an accused has been bound over to a grand jury after January 1, 1972, and no final action is taken by the grand jury within 60 days after the date of the bindover, the court or the administrative judge thereof shall dismiss the charge unless for good cause shown the prosecuting attorney is granted a continuance for a definite period of time.

B. Criminal Trials. All criminal cases shall be tried within six months of the date of arraignment on an indictment or information.

Any failure, and the reason therefor, to comply with the time limits specified in this rule shall be reported immediately to the Chief Justice of the Supreme Court by the administrative judge of the division in which such failure occurs. In a single-judge division such failure shall be reported by the judge. The Chief Justice is authorized to take such action as may be necessary to cause any such delinquent case to be tried forthwith.

C. Sentencing. Provided the defendant in a criminal case is available, the court shall impose sentence, place the defendant on probation or hold a hearing with all parties present, within 15 days of its receipt of a completed probation officer's pre-sentence investigation report.

Sections B and C of this rule shall apply to all cases in which an indictment is returned or information filed after January 1, 1972.

D. Probation After Serving Sentence. Subject to R.C. 2951.03 to 2951.09, inclusive, the trial court may, upon motion of the defendant made not earlier than thirty days nor later than sixty days after the defendant, having been sentenced, is delivered into the custody of the keeper of the institution in which he is to begin serving his sentence, or upon the court's own motion during the same thirty-day period, suspend the further execution of the sentence and place the defendant on probation upon such terms as the court determines, notwithstanding the expiration of the term of court during which such defendant was sentenced.

If a hearing is deemed necessary by the trial court in the determination of a motion for suspension of further execution of sentence and for probation made pursuant to R.C. 2947.061, the court shall hold the hearing within sixty days after the filing date of the motion and enter its ruling thereon within ten days of the hearing. If no hearing is conducted on such motion the court shall enter its ruling thereon within seventy days of the filing of the motion.

The authority granted by this rule and R.C. 2947.061 shall be exercised by the judge who imposed such sentence, unless he is unable to act thereon and it appears that his inability may reasonably be expected to continue beyond the time limit for such action. In such case, a judge of such court or assigned thereto may dispose of a motion filed under this section, in accordance with an assignment of the presiding judge, or as prescribed by the rules or practices concerning responsibility for disposition of criminal matters.

Amended eff. July 11, 1973.

SUPERINTENDENCE RULE 9

Nothing in these superintendence rules prevents any local rule of practice which seeks to promote the use of any device or procedure which would tend to facilitate the earlier disposition of cases, including the making of local rules of court restricting the volume of cases attorneys may undertake.

SUPERINTENDENCE RULE 10

Verbatim Transcripts; Recording Devices. Proceedings before any court, proceedings before a grand jury, and discovery proceedings may be recorded by stenographic means, by phonogramic means, by photographic means, by the use of audio electronic recording devices, or by the use of video recording systems.

Proceedings in any court which are recorded on videotape need not be transcribed into written form for the purposes of appeal. The

videotape recording constitutes the transcript of proceedings as defined in App.R. 9(A) and Sup.R. 15(H)3. A transcript of proceedings transcribed on videotape shall be transmitted in its entirety as a part of the record.

Transcripts of proceedings transcribed on videotape will be filed with the clerk of the trial court at the conclusion of the trial. Transcripts of proceedings transcribed on videotape and other original records of transcript of proceedings shall be maintained in the trial court in the manner directed by the trial court until the case is finally terminated.

Amended eff. Jan. 29, 1973.

SUPERINTENDENCE RULE 11

Conditions for Broadcasting and Photographing Court Proceedings.

(A) Presiding Judge.

The judge presiding at the trial or hearing shall permit the broadcasting or recording by electronic means and the taking of photographs in court proceedings open to the public as provided in Canon 3A(7) of the Code of Judicial Conduct. The judge, after consultation with the media, shall specify the place or places in the courtroom where the operators and equipment are to be positioned. Requests for permission for the broadcasting, televising, recording or taking of photographs in the courtroom shall be in writing and the written permission of the judge required by Canon 3A(7) shall be made a part of the record of the proceedings.

(B) Permissible Equipment and Operators.

(1) Use of more than one portable camera (television, video tape or movie) with one operator shall be allowed only with the permission of the judge.

(2) Not more than one still photographer shall be permitted to photograph trial proceedings without permission of the judge. Still photographers shall be limited to two cameras with two lenses for each camera.

(3) For radio broadcast purposes, not more than one audio system shall be permitted in court. Where available, and suitable, existing audio pickup systems in the court facility shall be used by the media. In the event no such systems are available, microphones and other electronic equipment necessary for the audio pickup shall be as inconspicuous as possible but must be visible.

(4) Visible audio recording equipment may be used by news media reporters with the prior permission of the judge.

(5) Arrangements between or among media for "pooling" of equipment shall be the responsibility of the media representatives authorized to cover the proceeding. Such arrangements are to be made outside the courtroom and without imposing on the judge or court personnel. In the event disputes arise over such arrangements between or among media representatives, the judge shall exclude all contesting representatives from the proceeding.

(6) The use of electronic or photographic equipment which produces distracting sound or light shall be prohibited by the judge. No artificial lighting other than that normally used in the courtroom shall be employed, provided, that if the normal lighting in the courtroom can be improved without becoming obtrusive, the judge may permit modification.

(7) Still photographers, television and radio representatives shall be afforded a clear view but shall not be permitted to move about in the courtroom during court proceedings from the places where they have been positioned by the judge, except to leave or enter the courtroom.

(8) The changing of film or recording tape in the courtroom during court proceedings is prohibited.

(C) Limitations.

(1) There shall be no audio pickup or broadcast of conferences conducted in a court facility between attorneys and clients or co-counsel, counsel, or of conferences conducted at the bench between counsel and the judge.

(2) The judge shall have the discretion to limit the photographing of victims or witnesses.

(3) This rule shall not be construed to grant media representatives any greater rights than permitted by law wherein public or media access or publication is prohibited, restricted or limited.

(4) Media representatives shall not be permitted to transmit or record anything other than the court proceedings from the courtroom while the court is in session.

(D) Revocation of Permission.

Upon the failure of any media representative to comply with the conditions prescribed by the judge, or the superintendence rules of the

Supreme Court, the judge may revoke the permission to broadcast or photograph the trial or hearing.

Amended eff. Jan. 29, 1973; June 1, 1979.

SUPERINTENDENCE RULE 12

A. Extraordinary Procedures for Administration of Justice During Civil Disorders. Orderly preliminary examination, fixing of bond if indicated, arraignment and trial of persons accused of crime in connection with problems arising out of any riot, civil disturbance, civil disorder or disaster, are essential to the protection of the constitutional rights of those accused and the administration of justice; and effective administration in the trial courts during such judicial emergency requires the adoption of a rule pursuant to Section 5(A) (3), Article IV, Ohio Constitution.

B. The Chief Justice or the acting Chief Justice shall have authority, during a judicial emergency, to suspend the operation of any local court rule, to promulgate temporary rules of court, and to do and direct to be done all things necessary to insure the orderly and efficient administration of justice for the duration of the emergency. In case of the absence or disability of the Chief Justice, the justice, who is not absent or disabled, having the period of longest total service upon the Court shall be the acting Chief Justice within the meaning of this rule.

C. The Chief Justice or acting Chief Justice may assign and transfer to emergency judicial duties judges of any court in the state inferior to the Supreme Court, including, where necessary, voluntarily retired judges within the meaning of Section 6(C), Article IV, Ohio Constitution, and judges retired under that section, who do not actively practice law.

D. The Chief Justice or the acting Chief Justice shall, whenever possible under the circumstances, consult with and report to the other justices any actions contemplated or taken in accordance with this rule.

E. Statutes governing payment and reimbursement of expenses of assigned judges in effect at the time of a judicial emergency shall apply to judges assigned under this rule.

SUPERINTENDENCE RULE 13

Assignment of Retired Municipal Court Judges. Any full-time municipal court judge who has voluntarily retired or who is retired by

virtue of Section 6(C) of Article IV of the Constitution of Ohio and who is not engaged in the practice of law, may be assigned with his consent by the chief justice or acting chief justice of the Supreme Court to active duty as a judge on any municipal, county or police court established by law in the state of Ohio.

While so serving, such retired judge shall receive the established compensation for such office, computed upon a per diem basis, in addition to any retirement benefits to which he may be entitled.

Nothing in this rule shall be construed to limit the effect of Sections 1901.10 and 2937.20, Revised Code.

SUPERINTENDENCE RULE 14

Continuances and Engaged Counsel in Civil and Criminal Cases.

The continuance of a scheduled trial or hearing is a matter within the sound discretion of the trial court.

When a continuance is requested by reason of the unavailability of a physician, or any other witness, at the time scheduled for trial or hearing, the trial court in exercising its discretion shall consider the feasibility of resorting to the several methods of recording testimony permitted by Civil Rule 32(A)(3)(e) and the use of such recorded testimony in the scheduled trial.

No party shall be granted a continuance of a trial or hearing without a written statement from movant's counsel, stating the reason for the continuance, and such statement shall be made part of the record.

No court shall grant a continuance to any party at any time without first setting a new and definite date for the trial or hearing.

The number of trial continuances requested, the name of the attorney making each request, the reasons advanced for each continuance (such as engaged counsel, sickness, vacation, etc.) and the continuances granted shall be reported by each trial judge in his next report to the Supreme Court. Engaged counsel shall mean counsel engaged in or subject to appearances for trial of or a hearing on a case in any court or state or federal administrative agency, at the time the case is called for trial.

If any attorney designated as trial counsel has such a number of cases assigned for trial in courts of record so as to bring about undue delay in the disposition of said cases, then said attorney may be required by the administrative judge to provide substitute trial counsel for those cases which cannot be tried by him. If upon request the attorney fails to provide substitute trial counsel, the administrative judge shall remove him as counsel in the case. When the attorney has been appointed by the court, the court shall appoint other trial counsel.

Added eff. Sept. 1, 1972.

SUPERINTENDENCE RULE 15

Testimony and Other Evidence Recorded on Videotape.

(A) This rule shall apply to all trial courts of record in this state in the reception and utilization of testimony and other evidence recorded on videotape and to all appellate courts in this state in the review of cases in which the Record on Appeal contains testimony or other evidence transcribed on videotape for use at the trial or where the transcript of proceedings, if any, is transcribed on videotape.

(B) Depositions.

1. *Authority.* Civ.R. 30(B)(3) permits a party taking a deposition to have the testimony recorded by other than stenographic means which would include a recording of the testimony on videotape (hereafter referred to as a videotape deposition).

2. *Notice.* The taking of a videotape deposition is subject to the requirements of Civ.R. 30(B)(3) regarding notice specifying the manner of recording, preserving and filing of the videotape deposition, but it shall be sufficient in this regard if the notice specifies that the videotape deposition is to be taken pursuant to the provisions of Sup.R. 15 regarding the recording, preserving and filing of the videotape deposition.

3. *Officer.* The officer before whom a videotape deposition is taken shall be one of those officers enumerated in Civ.R. 28. Upon the request of any of the parties, the officer shall provide, at the cost of the party making the request, a copy of the deposition in the form of a videotape, an audio recording, or a written transcript.

4. *Submission to witness.* When the videotape deposition has been taken, the videotape shall be shown immediately to the witness for examination, unless such showing and examination are waived by the witness and the parties.

5. *Certification.* The officer before whom the videotape deposition is taken shall cause to be attached to the original videotape recording a certification that the witness was fully sworn or affirmed by him and that the videotape recording is a true record of the testimony given by the witness. If the witness has not waived his right to a showing and examination of the videotape deposition, the witness shall also sign the certification.

6. *Filing.*

(a) *In absence of objections.* If no objections have been made by any of the parties during the course of the deposition, the videotape deposition, with the certification, shall be filed by the officer with the

clerk of the trial court upon the request of any of the parties in accordance with Civ.R. 30(F)(1) and notice of its filing shall be given as provided in Civ.R. 30(F)(3).

(b) *If objections have been made.* If objections have been made by any of the parties during the course of the deposition, the videotape deposition, with the certification, shall be submitted by the officer to the trial judge upon the request of any of the parties within ten days after its recording or within such other period of time as the parties may stipulate, for the purpose of obtaining rulings on the objections. An audio copy of the sound track may be submitted in lieu of the videotape for this purpose. For the purpose of ruling on the objections, the trial judge may view the entire videotape recording, view only those parts of the videotape recording pertinent to the objections made, or he may listen to an audio-tape recording submitted in lieu of the videotape recording. The trial judge shall rule on the objections prior to the date set for the trial of the action and shall return the recording to the officer with notice to the parties of his rulings and of his instructions as to editing. The editing shall reflect the rulings of the trial judge and shall remove all references to the objections. The officer shall then cause the videotape to be edited in accordance with the court's instructions and shall cause both the original videotape recording and the edited version of that recording, each clearly identified, to be filed with the clerk of the trial court.

7. *Storage.* Each trial court shall provide secure and adequate facilities for the storage of videotape recordings.

8. *Inspection or viewing.* Except upon order of the trial judge and upon such terms as he may provide, the videotape recordings on file with the clerk of the trial court shall not be available for inspection or viewing after their filing and prior to their use at the trial of the cause or their disposition in accordance with this rule. The clerk may release the videotape to the officer taking the deposition, without the order of the trial judge, for the purpose of preparing a copy at the request of a party as provided at paragraph 3.

9. *Objections at trial.* The effectiveness of a videotape deposition is greatly increased when all of the objections have been ruled upon, following the procedures set forth in this rule, prior to the time of trial. If, however, an objection is made at the time of trial which objection has not previously been waived pursuant to Civ.R. 32(D)(3) or previously raised and ruled upon, such objection shall be made before the videotape deposition is presented and shall be ruled upon by the trial judge in advance of that presentation. If such objection is sustained, that portion of the videotape deposition containing the objectionable testimony shall not be presented to the jury.

(C) Entire Trial Testimony and Evidence.

1. *Authority.* Civ.R. 40 permits all of the testimony and such other evidence as may be appropriate to be presented at the trial of a civil action by videotape. Civ.R. 40 is limited to cases where the *entirety* of the testimony and appropriate evidence is presented on videotape. Civ.R. 40 does not contemplate treating the entirety of the testimony as a collection of individual depositions. When Civ.R. 40 is invoked and all of the testimony is recorded on videotape, the videotape recordings shall be the exclusive medium of presenting testimony without regard to the availability of the individual witnesses to testify in person. The limitations placed upon the use of depositions do not apply when the entirety of the testimony is recorded on videotape pursuant to the authority of Civ.R. 40.

2. *Invoking Civ.R. 40.* The entire testimony and appropriate evidence may be presented by videotape recording under agreement between or among all of the parties and with the consent of the trial judge. In an appropriate case, having due regard for the costs involved, the nature of the action, the nature and extent of the testimony, and after consultation with the attorneys representing the parties to the action, the trial judge may order the recording of all of the testimony on videotape.

3. *Procedure.* Unless clearly inapplicable, the provisions relating to the taking of a videotape deposition shall apply to the recording of the entirety of the testimony on videotape. The order of the taking of the testimony of the individual witnesses and the order of the presentation of that testimony shall be at the option of the proponent. In ordering, or consenting to, the recording of all of the testimony on videotape, the trial judge shall fix a date in advance of the day assigned for trial by which time all of the recorded testimony must be filed with the clerk of the trial court.

4. *Objections.* All objections must be made and ruled upon in advance of the trial of the cause and no objections to any of the testimony may be entertained during the presentation of the testimony. Edited copies of all the videotape recordings shall be made as may be required to eliminate all references to objections and to reflect the rulings of the trial judge on the objections made.

5. *Presence of counsel and trial judge.* The counsel for the parties and the trial judge shall not be required to be present in the courtroom when the recorded testimony is played to the jury. The trial judge shall not leave the courtroom during the playing of the recorded testimony without admonishing the jurors as to their duties and responsibilities and without leaving the jurors in charge of a responsible official of the court. The trial judge shall remain within easy re-

call and shall bear the same duties and responsibilities as if he were physically present in the courtroom.

(D) Use of Electronic Devices for the Transcribing of Verbatim Transcripts of Proceedings.

1. *Authority.* Superintendence Rule 10 permits the use of electronic devices as a means of transcribing any court or grand jury proceedings.

2. *Determination of transcribing medium.* The trial judge, in the case of trial proceedings, or the administrative judge, in the case of grand jury proceedings, in exercising his authority over the operation of his court, may order the utilization of any means authorized by Superintendence Rule 10 for preserving the proceedings.

3. In lieu of requesting a copy of the transcript of proceedings, or portion of it, a party may view the transcript of proceedings on file with the clerk of the trial court or the clerk of the court of appeals as may be applicable.

4. Reference to a particular portion of a transcript of proceedings on videotape shall include reference to the event, the number of the reel of tape on which it is recorded, and the elapsed time counter reading.

(E) Equipment.

1. *Standard.* To minimize the incompatibility of equipment, the IEAJ Standard, the Japanese Standard one-half inch videotape specifications together with specifications for recording and play back equipment, is specified as the standard for use in the recording of testimony and other evidence on videotape for introduction in the trial courts of this state. If a party records testimony on videotape which is not compatible with the established standard, the party shall be responsible for the furnishing of reproduction equipment or for conversion to the established standard, all of which shall be at the cost of the party and not chargeable as costs in the action.

2. *Provision.* Each trial court shall make provision for the availability of play back or reproducing facilities. As may be appropriate, the trial court may purchase the equipment, may lease the equipment, or may contract for the furnishing of the equipment on the occasions of need for the equipment. In the exercise of each of the specified options, the trial court shall provide for the adequate training of an operator from within the personnel of the court, or for the services of a competent operator from some other source.

3. *Minimum equipment.* As a minimum, facilities shall consist of a videotape player and one monitor, having at least a 14-inch screen. Color facilities shall not be required. Where the trial judge relies upon the two track audio cassette system for ruling upon objections made in the recording of testimony on videotape, the trial court may purchase, or otherwise acquire, the modified equipment used in playing the soundtrack recording of the testimony and recording the rulings of the trial judge.

4. *Maintenance.* Proper maintenance of equipment is essential. The trial court shall take all reasonable steps to assure that the equipment is maintained within the operating tolerances. The trial court shall provide for competent regular maintenance of equipment which is owned or leased by the court, including the running of a standard test tape at least once every three months.

(F) Costs.

1. *Depositions.*

(a) The cost of videotape, as a material, shall be borne by the proponent.

(b) The reasonable cost of recording the testimony on the videotape shall be treated as costs in the action.

(c) The cost of playing the videotape recording to the jury in the course of the trial shall be treated as a general cost of the operation of the trial court.

(d) The cost of an audio reproduction of the videotape recording sound track used by the trial court in ruling on objections shall be treated as costs in the action.

(e) The cost of playing the videotape recording for the purpose of ruling upon objections shall be treated as costs in the action.

(f) The cost of producing the edited version of the videotape recording shall be treated as costs in the cause, provided that the cost of the videotape, as a material, shall be borne by the proponent of the testimony.

(g) The cost of a copy of the videotape recording and the cost of an audio tape recording of the videotape soundtrack shall be at the expense of the party requesting the copy.

2. *Civ.R. 40 testimony.*

(a) The cost of the videotape, as a material, shall be borne by the proponent of the testimony.

(b) The cost of copies for the benefit of the parties shall be borne by the requesting party.

(c) All other cost shall be costs of the action allocated between or among the parties as required by law as may be discretionary with the court.

3. *Electronically prepared Transcripts of Proceedings.*

(a) The cost of copies of the transcript of proceedings or such parts thereof as may be deemed necessary by a party for his use shall be borne by the requesting party or as provided by law.

(b) The cost of viewing a transcript of proceedings transcribed on videotape, as provided for in Sup.R. 15(D)3, shall be borne by the party requesting it or as provided by law.

(c) All other costs shall be costs of the action and payment shall be allocated by the court.

(G) Disposition of Videotapes Filed with the Court

1. *Ownership.* The ownership of the videotape used in recording testimony shall remain with the proponent of the testimony. Videotape may be reused for the recording of testimony, but the proponent shall be responsible for the submission of a recording of acceptable quality.

2. *Release of videotape recordings.*

(a) The trial court may authorize the clerk of the court to release the original videotape recording and the edited videotape recording to the owner of the videotape:

(i) upon the final disposition of the cause when no trial is had.

(ii) upon the expiration of the appeal period following the trial of the cause, provided no appeal is taken.

(iii) upon the final determination of the cause, if an appeal is taken. Provided, however, that if the testimony is recorded stenographically by the court reporter during the playing of the videotape recording to the jury, or to the court sitting without a jury, the videotape recordings may be returned to the proponent upon disposition of the cause following the trial.

(b) The trial court's order of release shall be by journal entry.

(H) Definitions. For purposes of these Superintendence Rules, the following definitions apply:

1. *Record.* The record consists of all papers and exhibits thereto filed in any court, the transcript of proceedings, or excerpts thereof, if

any, including exhibits, and certified copies of the docket and journal entries prepared by the clerks of the various courts.

2. *Original Record.* The originals of all items which are a part of the Record.

3. *Transcript of Proceedings.* The end product of whatever medium used to preserve the content of proceedings in a trial court.

4. *Transcribe.* The process of preserving the content of oral proceedings or the process of transferring the content of oral proceedings from one authorized medium to the same or any other authorized medium of preservation.

5. *Transcription.* A copy, either in the same medium as the original or in any other authorized medium of reproduction, of an original transcript of proceedings.

Added Sept. 1, 1972; amended Jan. 29, 1973.

SUPERINTENDENCE RULE 16

Arbitration

The judge or judges of general divisions of courts of common pleas shall consider, and may adopt, a plan for the mandatory arbitration of civil cases.

The plan shall specify the amount in controversy which will require submission of the case to arbitration and arbitration shall be required in cases wherein the amount in controversy does not exceed that specified sum. Arbitration shall be permitted in cases where the amount in controversy exceeds the sum specified in the plan for mandatory arbitration where all parties to the action agree to arbitration. The court shall determine at pre-trial whether a case is to be mandatorily arbitrated.

Every plan for the mandatory arbitration of civil cases adopted pursuant to this rule shall be filed with the supreme court and shall include the following basic principles:

A. *Actions Excluded.* Actions involving title to real estate, equitable relief and appeals shall be excluded.

B. *Arbitrators.* The court shall appoint a board of three arbitrators from a list of those lawyers who have consented to serve in such capacity and who have no interest in the determination of the case or relationship with the parties or their counsel which would inter-

fere with an impartial consideration of the case. The parties may agree to the appointment by the court of a single arbitrator.

C. *Report and Award.* Within thirty days after the hearing, the board or the single arbitrator must file a report and award with the clerk of the court and forward copies thereof to all parties or their counsel. Such report and award, unless appealed from, shall be final and have the legal effect of a verdict upon which judgment shall be entered by the court.

D. *Appeals.* Any party may appeal the award to the court if, within thirty days after the filing of the award with the clerk of the court, he:

(1) Files a notice of appeal with the clerk of courts and serves a copy thereof on the adverse party or parties accompanied by an affidavit that the appeal is not being taken for delay; and

(2) Reimburses the county for all fees paid to the arbitrators in the case.

All appeals shall be *de novo* proceedings at which members of the deciding board or the single arbitrator are barred as witnesses.

Exceptions to the decision of the board or single arbitrator based on either misconduct or corruption of the board or single arbitrator may also be filed by any party within thirty days after the filing of the report, and, if sustained, the report shall be vacated.

Added eff. July 2, 1973; amended Oct. 22, 1973.

SUPERINTENDENCE RULE 17

Standard Probate Forms.

(A) Applicability. This rule prescribes the format, content, and use of standard forms for designated applications, pleadings, waivers, notices, entries, and other filings in certain proceedings in the probate division of the courts of common pleas.

Where a standard form has not been prescribed by this rule, the form used shall be that required by the Civil Rules, or prescribed or permitted by the probate division of the court of common pleas in which it is being filed.

(B) Effective date; use of standard and non-standard forms

(1) This rule takes effect July 1, 1977 and applies to proceedings had on and after that date, including proceedings in pending cases.

(2) Except as provided in division (C) of this rule, when a standard form is prescribed by this rule:

(a) Either the standard form or a non-standard form may be used through December 31, 1977. If the standard form is used, no court shall reject it for filing solely because it is not in a form prescribed by such court.

(b) The standard form shall be used on and after January 1, 1978, and non-standard forms shall be rejected for filing.

(C) Modification of standard forms; pleadings and filings prepared for particular cases

(1) A printed, blank standard form may be modified by deletion or interlineation to meet the circumstances of a particular case or proceeding, if the modification can be accomplished neatly and conveniently. No court shall require the modification of a standard form as a routine matter. If any allegation, statement, data, information, pleading, or filing is required by an appropriate local rule of court and a standard form does not make provision therefor, it shall be provided in a separate or supplemental filing.

(2) Even though a standard form is prescribed, an original instrument may be prepared for filing. Any such instrument shall be typed on eight and one-half by eleven inch paper. The caption prescribed in Superintendence Rule 18 shall be used, and the instrument shall follow the format prescribed for the standard forms. Any such instrument may modify the language of the standard form, omit inapplicable matter required by the standard form, and add matter not included in the standard form to the extent required by the circumstances of the particular case or proceeding.

(D) Standard probate forms. The standard forms prescribed for use in the probate division of the courts of common pleas are as follows.

Appendix Three

SPEEDY TRIAL STATUTE

2945.71 Time within which hearing or trial must be held

(A) A person against whom a charge is pending in a court not of record, or against whom a charge of minor misdemeanor is pending in a court of record, shall be brought to trial within thirty days after his arrest or the service of summons.

(B) A person against whom a charge of misdemeanor, other than a minor misdemenanor [*sic*], is pending in a court of record, shall be brought to trial:

(1) Within forty-five days after his arrest or the service of summons, if the offense charged is a misdemeanor of the third or fourth degree, or other misdemeanor for which the maximum penalty is imprisonment for not more than sixty days;

(2) Within ninety days after his arrest or the service of summons, if the offense charged is a misdemeanor of the first or second degree, or other misdemeanor for which the maximum penalty is imprisonment for more than sixty days.

(C) A person against whom a charge of felony is pending:

(1) Shall be accorded a preliminary hearing within fifteen days after his arrest;

(2) Shall be brought to trial within two hundred seventy days after his arrest.

(D) For purposes of computing time under divisions (A), (B), and (C) of this section, each day during which the accused is held in jail in lieu of bail on the pending charge shall be counted as three days.

(E) This section shall not be construed to modify in any way section 2941.401, or sections 2963.30 to 2963.35 of the Revised Code.

2945.72 Extension of time for hearing or trial

The time within which an accused must be brought to trial, or, in the case of felony, to preliminary hearing and trial, may be extended only by the following:

(A) Any period during which the accused is unavailable for hearing or trial, by reason of other criminal proceedings against him, within or outside the state, by reason of his confinement in another state, or by reason of the pendency of extradition proceedings, provided that the prosecution exercises reasonable diligence to secure his availability;

(B) Any period during which the accused is mentally incompetent to stand trial or during which his mental competence to stand trial is being determined, or any period during which the accused is physically incapable of standing trial;

(C) Any period of delay necessitated by the accused's lack of counsel, provided that such delay is not occasioned by any lack of diligence in providing counsel to an indigent accused upon his request as required by law;

(D) Any period of delay occasioned by the neglect or improper act of the accused;

(E) Any period of delay necessitated by reason of a plea in bar or abatement, motion, proceeding, or action made or instituted by the accused;

(F) Any period of delay necessitated by a removal or change of venue pursuant to law;

(G) Any period during which trial is stayed pursuant to an express statutory requirement, or pursuant to an order of another court competent to issue such order;

(H) The period of any continuance granted on the accused's own motion, and the period of any reasonable continuance granted other than upon the accused's own motion;

(I) Any period during which an appeal filed pursuant to section 2945.67 of the Revised Code is pending.

2945.73 Discharge for delay in trial

(A) A charge of felony shall be dismissed if the accused is not accorded a preliminary hearing within the time required by sections 2945.71 and 2945.72 of the Revised Code.

(B) Upon motion made at or prior to the commencement of trial, a person charged with an offense shall be discharged if he is not brought to trial within the time required by sections 2945.71 and 2945.72 of the Revised Code.

(C) Regardless of whether a longer time limit may be provided by sections 2945.71 and 2945.72 of the Revised Code, a person charged with misdemeanor shall be discharged if he is held in jail in lieu of bond awaiting trial on the pending charge:

(1) For a total period equal to the maximum term of imprisonment which may be imposed for the most serious misdemeanor charged;

(2) For a total period equal to the term of imprisonment allowed in lieu of payment of the maximum fine which may be imposed for the most serious misdemeanor charged, when the offense or offenses charged constitute minor misdemeanors.

(D) When a charge of felony is dismissed pursuant to division (A) of this section, such dismissal has the same effect as a nolle prosequi. When an accused is discharged pursuant to division (B) or (C) of this section, such discharge is a bar to any further criminal proceedings against him based on the same conduct.

Appendix Four

CORRELATION MATRIX: CINCINNATI

	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18
CPT	1.000																	
RULES	-.116	1.000																
SPDY TRIAL	-.227	.670	1.000															
HOMICIDE	.062	-.110	-.058	1.000														
ROBBERY	.056	-.036	-.021	-.056	1.000													
ASSAULT	.038	-.056	-.020	-.054	-.082	1.000												
THEFT	-.109	.079	.072	-.157	-.239	-.228	1.000											
RAPE	.037	.061	.031	-.028	-.043	-.041	-.119	1.000										
DRUGS	.028	.124	.081	-.068	-.104	-.100	-.290	.052	1.000									
WEAPONS	-.013	.034	-.017	-.050	-.076	-.073	-.211	-.038	-.092	1.000								
# CHARGES	.022	-.185	-.104	.010	.074	.068	-.054	-.010	-.026	-.067	1.000							
# DEFNDTS	.015	-.119	-.103	-.042	.058	-.074	.128	.017	-.002	-.112	.002	1.000						
CASELOAD	-.073	.527	.447	-.077	-.069	-.035	.063	.016	.099	-.006	-.116	-.032	1.000					
PVT. ATTY	.082	-.047	-.027	.022	-.057	.067	-.139	-.012	.115	.114	-.033	.013	-.028	1.000				
IN CUSTODY	-.122	-.018	.032	.005	.120	-.007	.028	.062	-.077	-.095	.165	.027	-.024	-.299	1.000			
# MOTIONS	.433	-.098	.023	.111	.202	-.032	-.115	.058	-.012	-.035	.090	.087	-.064	.014	.027	1.000		
# CONTINS	.287	0,310	-.196	-.026	.147	-.039	-.001	0.22	-.066	-.072	.007	.079	-.176	.046	-.062	.362	1.000	
PLEA	-.264	.087	.107	-.152	-.102	-.044	.101	-.001	0.002	-.034	-.023	.010	.053	-.069	.003	-.235	-.115	1.000

Appendix Five

CORRELATION MATRIX: COLUMBUS

	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18
CPT	1.000																	
RULES	-.178	1.000																
SPEEDY TRIAL	-.152	.499	1.000															
HOMICIDE	-.023	.097	.115	1.000														
ROBBERY	.053	.051	.047	-.035	1.000													
ASSAULT	.000	.024	.033	-.027	-.060	1.000												
THEFT	-.051	-.074	-.078	-.121	-.266	-.202	1.000											
RAPE	.001	-.032	.009	-.015	-.033	-.025	-.112	1.000										
DRUGS	.115	.036	-.001	-.052	-.115	-.087	-.392	-.048	1.000									
WEAPONS	-.040	.127	.064	-.028	-.062	-.047	-.213	-.026	-.092	1.000								
# OF CHARGES	.050	-.038	-.011	-.029	-.034	-.049	.115	-.027	-.004	-.052	1.000							
# OF DEFENDANTS	.026	.183	.105	.020	.019	-.059	.058	-.062	-.018	-.068	.089	1.000						
CASELOAD	-.115	.530	.503	.093	-.017	.034	-.075	-.047	.021	.086	.025	.175	1.000					
PVT. ATTORNEY.	.131	.146	.082	.120	-.051	.022	-.113	-.124	.131	.019	-.021	.057	.122	1.000				
IN CUSTODY	-.230	-.212	-.180	.008	.115	.028	.080	-.024	-.095	-.034	.047	-.102	-.192	-.344	1.000			
# OF MOTIONS	.253	.172	.255	-.004	.000	.074	-.117	.025	.111	.066	.016	.063	.173	.150	-.126	1.000		
# OF CONTINUANCES	.018	.176	.158	.024	.015	-.037	-.124	.074	.101	-.044	-.026	.080	.045	.140	-.146	.345	1.000	
PLEA	-.214	.040	-.020	-.032	-.001	.022	.105	-.090	-.042	-.079	-.103	-.017	-.056	-.069	.061	-.233	-.075	1.000

Appendix Six

CORRELATION MATRIX: YOUNGSTOWN

	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18
CPR	1.000																	
RULES	-.180	1.000																
SPDY TRIAL	-.101	.656	1.000															
HOMICIDE	.034	-.050	-.083	1.000														
ROBBERY	-.026	.015	.034	-.096	1.000													
ASSAULT	.022	-.048	-.076	-.081	-.136	1.000												
THEFT	-.068	-.060	-.047	-.163	-.275	-.230	1.000											
RAPE	.050	-.013	.016	-.039	-.065	-.055	-.111	1.000										
DRUGS	-.022	.128	.153	-.090	-.151	-.126	-.256	-.061	1.000									
WEAPONS	.007	-.044	.027	-.040	-.067	-.056	-.114	-.027	-.062	1.000								
# CHARGES	.086	-.059	-.024	-.040	-.005	-.061	-.065	.025	.150	-.076	1.000							
# DEFNDTS	.011	-.029	-.090	-.060	.155	-.082	.105	-.039	-.141	-.088	.007	1.000						
CASELOAD	.040	.143	.356	-.030	.022	-.048	-.028	-.069	.101	.013	.055	-.027	1.000					
PVT. ATTY	.150	.100	.153	-.008	-.081	.071	-.093	.005	.084	.013	-.051	-.068	-.018	1.000				
IN CUSTODY	-.187	-.048	-.058	.040	.055	-.029	.031	-.004	-.075	-.049	.060	-.000	-.008	-.303	1.000			
# MOTIONS	.296	-.023	.017	.220	-.051	.006	-.047	.079	-.046	.028	.130	-.015	.045	-.083	-.010	1.000		
# CONTINS	.142	.075	.057	-.031	-.052	.112	-.089	-.021	.059	-.022	-.010	-.053	.052	-.007	-.049	.223	1.000	
PLEA	-.354	.111	.075	-.038	-.020	-.045	.131	-.066	.048	.028	-.234	-.073	-.051	-.083	.049	-.283	-.094	1.000

Appendix Seven

CASE CHARACTERISTICS: CINCINNATI

Variable	Pre-Innovation	Rules	Speedy Trial
Type of Charge			
Homicide	6.0%	1.1%	2.1%
Robbery	9.2%	6.9%	7.2%
Assault	9.5%	5.8%	7.0%
Weapons	5.1%	8.5%	5.3%
Rape	.9%	2.6%	2.9%
Drugs	6.3%	14.8%	13.9%
Theft	34.8%	39.7%	44.4%
Case Characteristics			
# Charges	1.34	1.12	1.15
# Defendants	1.24	1.18	1.15
# Motions	1.14	.52	.98
# Continuances	.43	.06	.09
In Custody	44.3%	37.0%	45.3%
Private Attorney	42.0%	37.8%	38.3%
Pleas	59.4%	63.3%	70.5%
Mean CPT	114.98 Days	132.52 Days	73.90 Days
Outcome			
Guilty	86.2%	80.3%	90.1%

Appendix Eight

CASE CHARACTERISTICS: COLUMBUS

Variable	Pre-Innovation	Rules	Speedy Trial
Type of Charge			
Homicide	1.1%	1.7%	4.7%
Robbery	6.4%	8.0%	8.2%
Assault	2.8%	3.4%	4.1%
Weapons	3.2%	6.9%	5.3%
Rape	1.4%	1.7%	1.2%
Drugs	9.9%	16.0%	12.4%
Theft	53.2%	46.3%	41.8%
Case Characteristics			
# Charges	1.06	1.05	1.06
# Defendants	1.14	1.29	1.28
# Motions	.46	.60	1.21
# Continuances	.10	.20	.33
In Custody	31.8%	22.5%	14.4%
Private Attorney	43.7%	57.1%	58.4%
Pleas	70.0%	72.2%	68.8%
Mean CPT	162.4 Days	112.6 Days	81.63 Days
Outcome			
Guilty	80.5%	78.5%	72.2%

Appendix Nine

CASE CHARACTERSTICS: YOUNGSTOWN

Variable	Pre-Innovation	Rules	Speedy Trial
Type of Charge			
Homicide	7.1%	7.6%	3.1%
Robbery	13.2%	11.8%	15.5%
Assault	12.0%	11.8%	7.6%
Weapons	3.4%	0.7%	3.1%
Rape	3.0%	1.4%	2.7%
Drugs	6.4%	11.1%	18.9%
Theft	7.1%	29.9%	29.2%
Case Characteristics			
# Charges	1.25	1.17	1.20
# Defendants	1.16	1.19	1.10
# Motions	.32	.22	.30
# Continuances	.01	.02	.02
In Custody	39.3%	37.1%	33.0%
Private Attorney	49.6%	52.4%	67.1%
Pleas	70.6%	79.2%	78.8%
Mean CPT	124.07 Days	62.79 Days	74.01 Days
Outcome			
Guilty	80.2%	86.1%	86.4%

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Constitutional and Statutory Provisions

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3. Ohio Rev. Code Ann. § 2945.71-.73.

END