

**Efficiency, Timeliness, and Quality:
A New Perspective from
Nine State Criminal Trial Courts**

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**EFFICIENCY, TIMELINESS, AND QUALITY:
A NEW PERSPECTIVE FROM
NINE STATE CRIMINAL TRIAL COURTS**



Prepared for the

National Institute of Justice and
the State Justice Institute

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ABSTRACT

A fundamental U.S. constitutional right is the right to “a speedy and public trial” (Sixth Amendment to the United States Constitution). Framers of this provision did not intend the pace of the legal process to be detrimental to other fundamental values, such as due process, equality, the protection against double jeopardy, excessive bail, self-incrimination, and so forth. However, striking this balance is not easy, and a basic challenge confronting the contemporary justice system remains: Is it possible to resolve cases expeditiously without sacrificing the quality of justice?

On the basis of an examination of nine contemporary state criminal trial court systems, researchers at the National Center for State Courts and the American Prosecutors Research Institute conclude that timeliness in felony case processing occurs in contexts that also are conducive to the achievement of case processing quality. In both faster and slower courts, the more serious, more complicated, and more difficult cases take a longer amount of time to resolve than the less serious, less complicated, and less difficult cases. This pattern suggests that courts generally adhere to a norm of proportionality, which states that the amount of attention that each case receives should be in proportion to the amount that it warrants. The difference is that in the more expeditious courts, the work gets done within tighter time frames.

The presence of more efficient work orientations among prosecutors and criminal defense attorneys underlies the tighter time frames. Attorneys’ views about their work environment and toward each other’s activities are linked to how timely their particular court is. In expeditious courts, prosecutors and de-

fense attorneys are adversarial in their outlook to the same degree that prosecutors and defense attorneys are in less expeditious courts, but they share views toward resources, management, and the competency of their opponents that are unlike those of their counterparts in less expeditious courts. In faster courts, prosecutors and defense attorneys are more likely to see each other as well prepared, well trained, and trial tested. Additionally, they are less likely to see resource shortages, even though their caseloads are no less burdensome than those of their counterparts in slower courts. A main policy implication from the inquiry is that the agenda of future national, state, and local judicial and attorney training programs should center on how judges and attorneys can become more efficient and how to use the gains in efficiency to secure both timeliness and case resolution quality. Furthermore, because the results, which demonstrate that greater efficiency enhances both timeliness and quality, are new and different from previous research, future work is essential to confirm (or disconfirm) the current study. Is it true, as this study suggests, that the work of criminal trial courts is strikingly similar? Do other courts tend to follow the norm of proportionality in handling cases? Are the views of prosecutors and defense attorneys in courts with tighter time frames distinctively different from those in other courts? Verification and refinement of the current results will improve greatly our understanding of fundamental functions of the criminal justice system.



EXECUTIVE SUMMARY

▮ Central Finding

Timeliness and the quality of justice are not mutually exclusive either in theory or in fact. *Expeditious* criminal case resolution is found to be associated with court systems in which the conditions also promote *effective* advocacy. Because effective advocacy underlies due process and equal protection of the law, it is an integral aspect of the broader concept of quality case processing. The evidence from this study suggests that well-performing courts should be expected to excel in terms of both timeliness and quality.

This central conclusion reached by researchers at the National Center for State Courts and the American Prosecutors Research Institute is based on data collected from nine different state criminal trial court systems located in various parts of the country (Albuquerque, New Mexico; Austin, Texas; Birmingham, Alabama; Cincinnati, Ohio; Grand Rapids, Michigan; Hackensack, New Jersey; Oakland, California; Portland, Oregon; and Sacramento, California). Data for each court system included multiple case and defendant characteristics drawn from a random sample of approximately 400 individual cases resolved in 1994; questionnaire responses from prosecutors and criminal defense attorneys; on-site observations and interviews with judges, prosecutors, and defense attorneys; and community and court organizational attributes.

The study's central finding emerges from a recent, thorough, and systematic inquiry into the perennial question: How are case processing timeliness and quality related? The current research challenges the traditional notion that the two values are in conflict so that a gain in one comes only at a loss in the other.

🔗 Analytical Framework

An analytical framework is developed to show how the values of timeliness and quality are affected by the concept of efficiency. *Timeliness* is measured in a direct way: the number of days from indictment or bindover to final resolution. There is far less general acceptance, however, on how to measure the *quality* of case processing. In this study, we draw on Standard 3.3, Equality, Fairness, and Integrity, of the *Trial Court Performance Standards* to develop a measure of case processing quality that relates directly to timeliness. Focusing “on what many consider the essence of justice,” Standard 3.3 explains that the decisions and actions of trial courts should be based on individual attention to each case. It further requires that the court’s decisions and actions be in proper proportion to the nature and magnitude of the case. In addition, we argue that meaningful and effective advocacy is more likely to occur in criminal justice systems that are well managed, adequately resourced, sufficiently adversarial, and home to competent counsel. Therefore, we focus on one critical dimension of quality case processing: the extent to which cases are given individual attention and whether the criminal court system is conducive to providing effective advocacy to cases. We then examine how this measure of quality varies among courts with different levels of timeliness.

Efficiency within the context of case resolution means to use resources in their most productive fashion to produce the most of what a court system values. Therefore, to be efficient, court leaders need to devote sufficient time to determining and clarifying what the court values. Few would argue against the statement that both timeliness and quality are each worthwhile values for courts to pursue. However, what is strikingly different from traditional thinking is our proposition that as judges, prosecutors, and defense attorneys become more efficient, they create the opportunity to increase timeliness and quality simultaneously. Well-performing courts have spent time examining the policies and practices that allow their organization to better use their personnel, procedures, and technology to achieve a range of desired ends. As a result, we believe that a fundamental challenge confronting courts is to increase efficiency as the means to improve performance across the board instead of seeing the value of timeliness inherently contrary to the value of quality, a so-called zero sum game.

Supporting Evidence

The majority of this report is directed toward putting the analytical framework to the test. To clarify the relationship between timeliness and quality, our analysis attempts to account for why some court systems manage to come closer to the time standards articulated by the American Bar Association (ABA) and the Conference of State Court Administrators (COSCA). Specifically, the analysis was divided into three parts:

1. Investigate the extent to which three important factors in the court environment (caseload characteristics, management strategies, and resources) contribute to differences in the pace of felony litigation.
2. Analyze why some cases are processed more quickly than others in each of the nine courts by testing the influence of a variety of individual case- and defendant-related factors thought to shape case processing time.
3. Examine whether attorneys' attitudes about key dimensions of case processing quality vary systematically with the speed of case processing.

The first part of the analysis examines the “commonsense” view that criminal court case processing is slowed down by a high volume of cases and an insufficient number of judges, prosecutors, and/or criminal defense attorneys (for greater detail, see Chapter 2). The variation in case processing time among the nine court systems studied is analyzed in relationship to separate caseload, structural, and resource measures. The primary question is whether there is a systematic connection between any of these separate court-level factors and timely court performance. Key findings include:

- The kinds of cases coming to the nine courts are more striking in their similarities than in their differences, despite that these courts are drawn from throughout the country and differ considerably in terms of demographics.
- The courts tend to handle predominantly drug-related offenses, followed by burglary and theft offenses. Very violent crimes against the person (capital murder, homicide, rape, and sexual assault) are a small minority of the cases filed in each court.
- The majority of cases are resolved by guilty pleas, and trials are rare in all courts.

- Most criminal defendants are released on bond, and most have a publicly appointed attorney.
- There is no relationship between either cases resolved per judge or resolutions per prosecutor and case processing time.

The second part of the analysis looks closely at the extent to which multiple individual case and defendant characteristics *in combination* affect how long it takes a state criminal trial court to resolve felony cases (for greater detail, see Chapter 3). At this stage, the analysis moves from a focus on aggregate court-level features to an examination of approximately 3,500 individual cases drawn from the nine jurisdictions studied. This type of individual case-level analysis is designed to uncover relationships sometimes missed or obscured by aggregate data. In addition, a primary issue is whether case- and defendant-related data show any evidence that more expeditious courts process cases differently from slower courts. Key findings include:

- Core case and defendant characteristics help explain some—but not all—of why some cases are resolved more expeditiously than others within each of the systems. The severity of the offense, the method of resolution (trial versus guilty plea), the defendant’s bond status, and the additional scheduling involved when a bench warrant is issued for the defendant’s failure to appear at a court hearing are key determinants of processing time in all courts. For example, cases involving the most violent crimes against the person that go to trial take about the same proportion of case processing time in the faster courts as in the slower courts.
- There is evidence that the nine court systems handle their common caseloads with the same *relative* degree of timeliness. The more serious, the more complicated, and the more difficult cases take longer to resolve than the less serious, less complicated, and the less difficult cases. This pattern of proportionality suggests that criminal court systems resolve cases purposively and with individual attention. Faster courts do not achieve their timeliness through the imposition of “assembly line justice.”
- An important way in which the nine court systems differ is in the time frame that it takes to resolve all of the cases. The *absolute* elapsed time (measured in days) is longer in some of the systems than in others. In fact, there were three broad categories of overall case processing times. Three courts were quite expeditious, on average, three courts were moderately so, and the remaining three courts were slower than the others. In

the faster courts, the judges, court staff, and attorneys have developed the ability to get the same, basic job done in a shorter period of time.

In summary, the results indicate that a consistent set of case- and defendant-related characteristics underlie differences in the time to resolution in all nine courts. Moreover, there is evidence that the variation is in proportion to the nature and seriousness of the case and the characteristics of the parties. However, differences in case- and defendant-related characteristics do not explain all of the differences in case processing time between courts. So while these findings suggest that the norm in most courts is to provide a proportional degree of individual attention to cases, they do not explain how practitioners in some courts are able to achieve this goal within much tighter time frames.

Consequently, the third step in our analysis is to begin to unpack the concept of “local legal culture,” with an eye toward clarifying how some courts are able to achieve higher levels of both quality and timeliness (for greater detail, see Chapter 4). This task involves an in-depth examination of the views of criminal defense counsel and prosecuting attorneys in the nine court systems toward their work situations, including the actions of the judges and opposing counsel. Data were gathered concerning the attorneys’ views toward four aspects of their work situation: (1) the adequacy of available resources, (2) the extent of clear court policies governing the pace of litigation, (3) the competency of opposing counsel, and (4) the effects of opposing counsel’s practices (e.g., plea bargaining negotiation) on the timeliness of case resolution. For purposes of the analysis, the nine court systems were divided into three groups of three courts according to each court’s relative speed of case resolution.

The assumption of the current research is that the attorneys’ views toward these four aspects indicate whether their working conditions promote or inhibit effective advocacy. When attorneys believe that they have adequate resources, that the court articulates clearly and firmly what the pace of litigation should be, and that opposing counsel is considered to be well skilled and well prepared, then they are working under conditions that foster their effectiveness as an advocate for the community’s interest (prosecutors) or the defendant’s interest (defense attorneys). Inadequate resources, uncertainty concerning the court’s expectations about how long cases should take to be resolved, and the effort required to clear away the underbrush created by inexperienced and ill-trained opposing counsel frustrate effective advocacy. Finally, effective advocacy means that prosecutors and defense attorneys in all courts should maintain their adversarial positions.

Key findings include:

- The more expeditious courts are most conducive to effective advocacy. Attorneys in the most expeditious courts were much more likely to believe that they had sufficient resources, that the court promulgated clear and decisive policies on case resolution, and that opposing counsel were well trained and well prepared, although they were just as likely to view the practices (e.g., plea negotiations) of opposing counsel critically.
- In contrast, in the less expeditious courts, the prosecutors and defense attorneys tended to see resource shortages, even though the number of cases per prosecutor and the number of cases per judge were not higher in the less expeditious systems. The attorneys, moreover, perceived little evidence of effective case management policies. Their views on the competency of counsel were reciprocal but negative. Prosecutors and defense attorneys were less likely to see the other side as well trained and skilled.
- The subjective working conditions of attorneys in the expeditious courts are more conducive to effective advocacy, due process, and quality than the conditions in the less expeditious courts.

Taken together, these findings imply the need for a basic rethinking about timeliness and quality in American state criminal courts. There is evidence that the world of state criminal trial courts is a purposive and deliberative process of proportionality by which cases receive the amount of attention that they deserve. The process operates more expeditiously in some systems than in others, and one way to view these differences is through the lens of efficiency. Efficiency is fundamental to timeliness and a court system's provision of effective advocacy. Hence, a real need for courts is to learn from each other on how to get essentially the same job done in a tighter time frame. That challenge should and can be the agenda for future national, state, and local judicial and attorney training programs (see Chapter 5).

¶ Methodology

Data for each site were obtained from case files for approximately 400 cases resolved in 1994, responses to mail questionnaires sent to prosecutors and criminal defense attorneys, on-site interviews with judges, court managers, prosecutors, and criminal defense attorneys, and contextual measures of community and court organizational characteristics.

The methodology for analyzing the individual case-level data involves the use of an interactive regression model. This model has distinct advantages over techniques used in previous research. Specifically, the model distinguishes the influence of each potential causal factor on case processing time in each separate court and directly compares and contrasts the influence of each factor across all of the courts combined. Looking at Oakland, for example, one can compare the time it takes to resolve a case in which the offender was represented by a publicly appointed attorney and was convicted of a violent crime at trial with the time it takes to resolve a case in which a drug offender was represented by a privately retained attorney and was convicted by a guilty plea. Additionally, one can examine whether the same factor influences case processing time in the same way in the nine courts. For example, does case resolution by a guilty plea affect case processing time in Portland in the same way that it does in Austin (or any of the other courts)? Finally, having all nine courts integrated into a single model provides the basis for knowing how well and consistently a common core of case- and defendant-related characteristics explain case processing time.

The methodology for analyzing the questionnaire responses was to construct four “scales” (i.e., particular combinations of questionnaire items) that were substantively connected and intercorrelated. The scales measured the subjective views of the attorneys toward resources, court management, opposing counsel’s competence, and opposing counsel’s practices. Finally, the demographic and court-related data were examined in two ways. One way was to compute the average processing time associated with the presence or absence of a given factor (e.g., grand jury). Does the use of a grand jury appear to result in longer, shorter, or about the same average processing time? The other way was more quantitative. Specific organizational factors, along with individual case characteristics, were tested for their effects, as mentioned above in the discussion of the regression model.

Thus, the current research demonstrates the utility of an integrated, comparative approach. Almost all previous research on timeliness has focused solely on differences in caseload characteristics and aspects of organization, management, and resources to explain variations in case processing times. Other researchers subsequently focused on the qualitative social and political dynamics within courts to understand case processing times. This study attempts to bridge the world of structure, organization, caseload, and resources with the world of attitudes held by the key actors in court systems. Specifically, we examine case pro-

cessing time in nine courts taking into account differences in (1) court context (e.g., structure, personnel, and resources) and the volume and type of criminal cases entering each court, (2) individual case processing and resolution, and (3) attorneys' views and perceptions about critical work elements of the court system. Few, if any, prior studies have systematically examined all of these factors.

Chapter 1



WHAT DO WE NEED TO KNOW?

¶ Introduction

The state criminal court system is an important institution in the attempt to limit criminal activity and to restore a measure of justice when laws are broken.¹ The relationships among state judges, prosecutors, and criminal defense attorneys constitute the criminal court system, while the outcomes of their individual and joint decisions are basic to the public's perception of the system's effectiveness. One key measure of court effectiveness is how long it takes to resolve cases. The U.S. Supreme Court emphasized the importance of the speedy trial in the criminal process by stating that this right was "as fundamental as any of the rights secured by the Sixth Amendment."² The Texas Supreme Court also reminded observers how insidious court delay can be:

Delay haunts the administration of justice. It postpones the rectification of wrong and the vindication of the unjustly accused. It crowds the dockets of the courts . . . pressuring judges to take shortcuts, interfering with the prompt and deliberate disposition of those cases in which all parties are diligent and prepared for trial, and overhanging the entire process with the pall of disorganization and insolubility. . . . [P]ossibilities for error multiply rapidly as time elapses between the original fact and its judicial determination. If the

¹ State criminal trial courts handle the overwhelming majority of serious criminal cases each year. In 1996, they resolved over two and a half million felony cases, while the federal courts resolved 60,000 cases, which included both felonies and misdemeanors (Ostrom and Kauder, 1997).

² 386 U.S. 223, 87 S.Ct. 993, 18 L.ed. 2d 1 (1967).

facts are not fully and accurately determined, then the wisest judge cannot distinguish between merit and demerit. If we do not get the facts right, there is little chance for the judgment to be right.³

Responding to concerns about the timeliness of case resolution, researchers have produced a body of literature seeking to understand what causes some courts to take longer in resolving criminal cases. Over the past few decades, numerous reports, monographs, and research articles addressed delay in state criminal trial courts.⁴ A primary reason for the past and current interest in the topic is that identifying what factors produce delay, and how and why they produce delay, has remained difficult.

❧ Statement of the Problem

A natural starting point for research on criminal court delay has been to examine aspects of the adjudication process that enter from outside the court (e.g., the individual characteristics of cases and defendants) or that can be manipulated by the court (e.g., case management procedures and court organization). However, there are four unsettled issues that emerge from an examination of previous research results. First, there is no cumulative evidence that indicates which of the many possible case and defendant characteristics have the largest impact on case processing time. A wide range of factors have been tested, but even the best studies in this line of research have identified characteristics that explain only a small portion of the variation in criminal case processing times. Such studies offer little guidance to courts wishing to better understand why some cases take longer than others.

The second unsettled issue concerns how the norms of the courtroom “work group” influence the pace of litigation and the adjudication process in general.

³ *Southern Pacific Transportation Co. v. Stoot*, 530 S.W. 2d 930 (1975).

⁴ Comparative research on state criminal court delay all but ceased in the 1990s, although practical efforts at delay reduction continued during this period especially with the advent of specialized drug courts. Our review of the literature found no cross-jurisdictional studies completed and published since 1991. Past research in this area includes, for example, Church, Lee, et al. (1978); Friesen, Jordan, and Sulmonetti (1978); Neubauer et al. (1981); Flemming, Nardulli, and Eisenstein (1987); Luskin and Luskin (1987); Mahoney et al. (1988); Goerdt and Martin (1989); Hewitt et al. (1990); Goerdt et al. (1991). Because our focus is on case processing in the state courts, we do not discuss delay in the context of the federal courts.

A major contention is that the substance of case processing reflects the views of practicing attorneys about how long cases should take to be resolved. Efforts to either speed up or delay case processing from the prevailing local norm will be seen as a threat to justice and frequently resisted. Yet, the research on this topic has reached only the rather modest conclusion that judges and lawyers live up to their expectations.

A third unsettled issue is the lack of a comprehensive view of the criminal justice system. Few studies have attempted to integrate data on the mix of cases and defendants, case management, and resources (e.g., number of judges) with data on the important qualitative aspects of local court communities (e.g., attorneys' attitudes). Because past studies tend to focus exclusively on case characteristics or on "local legal culture," the ways in which these different sets of factors come together to influence timeliness remain conceptually murky and are seldom subject to rigorous testing. As a result, the court community is left with a fragmented and partial understanding of what distinguishes operations in faster courts from those in slower courts.

The fourth unsettled issue is how the *pace* of litigation relates to the *quality* of litigation. While relative newcomers to the age of standards, courts have moved quickly to embrace case processing time frames that spell out explicitly the divide between acceptable and unacceptable time to disposition. The standards movement raises critical questions as to whether courts can reduce delay while simultaneously maintaining quality along other dimensions of case processing, such as due process, accessibility, affordability, equality, and so forth. Addressing this issue requires assessing whether court environments that come closest to meeting established time standards are also conducive to quality case processing. Case characteristics should not be examined in isolation. Rather, researchers should investigate whether cases receive individual attention in both fast and slow courts. Likewise, a priority in examining local legal culture in courts should be to make use of practitioner experience to clarify how the effectiveness of the advocacy process varies between faster and slower courts.

The current research is intended to increase understanding of how factors such as the types of cases entering the court, case management, resources, and attorneys' attitudes about key aspects of local court communities are related to the *pace* of litigation. Moreover, the research offers a framework for analyzing how this blend of quantitative and qualitative information can be used to determine whether *quality* case processing varies between faster and slower courts.

❧ The Need to Untangle Timeliness, Quality, and Performance Standards

Today, a well-functioning court system is expected to process a large volume of work while maintaining high performance within demanding time frames. The growing nationwide interest in standards of court performance, and time standards in particular, is where these two expectations intersect and create the challenge to process more work within an environment that wants increased accountability.

Time to disposition can be measured and compared among courts. However, other dimensions of court performance centering on the *quality* of case processing are more difficult to define and measure. Are cases given the needed level of individual attention? Is the relationship between prosecutors and defense attorneys sufficiently adversarial, and do the opposing attorneys have the requisite skills? Do prosecutors, criminal defense attorneys, and judges have sufficient opportunities to discuss problems in system effectiveness and to create mutually beneficial responses? If case processing time is reduced, are other aspects of fair and equitable case processing compromised? Is there a cost to delay reduction? Do courts face a trade-off between timeliness and quality?

In discussions of delay reduction, time standards are a natural *cynosure*. Time standards can provide general boundaries for case processing by *balancing* the concerns of “quality” and “timeliness.” The very notion of criminal *justice* reflects two legitimate but competing perspectives. One perspective emphasizes the importance of timeliness and the need to resolve cases as quickly as possible. For example, early pleas of guilty are preferred over late pleas to permit courts to keep up with the incoming cases. The other perspective emphasizes “quality” case processing to ensure justice, including the importance of a thorough review in every individual case and the need to protect the defendant’s constitutional rights at all stages of the legal process. For example, limited restrictions on motions for continuances are preferred over tight restrictions to give defense counsel ample time to prepare the strongest case possible. Therefore, the effort to structure case processing through standards seeks to resolve the competing principles of timeliness and the quality of justice.

Standards that balance timeliness and quality are necessary to give courts direction and to provide guidance on the manner in which they conduct their business. In response to this need, without removing local court discretion in managing caseloads, professional organizations of attorneys as well as judges and court managers have established guidelines for case processing that reflect

how long it should take to resolve cases.⁵ However, the American Bar Association (ABA) and Conference of State Court Administrators (COSCA) Time Standards focus primarily on delay reduction (“timeliness”), and none of the standards assess explicitly whether case processing quality suffered or improved under tighter time lines.⁶ As a result, many important questions are left unanswered. Are there both positive and negative consequences of delay reduction? Is there evidence that courts with faster average case processing times also have other characteristics associated with quality case processing?

Answering these questions means coming to terms with what quality case processing means. Steps have been taken in this direction with the development of the *Trial Court Performance Standards* (TCPS).⁷ The TCPS offer an extensive system of performance goals and measures geared to enhancing public accountability and understanding overall trial court performance. In this study, we draw on Standard 3.3: Court Decisions and Actions, which falls within the Equality, Fairness, and Integrity area of the TCPS, to develop a measure of case processing quality that relates directly to timeliness. Focusing “on what many consider the essence of justice,” Standard 3.3 states that the decisions and actions of trial courts should be based on individual attention to each case. It further requires that the court’s decisions and actions be in proper proportion to the nature and magnitude of the case. In addition, we argue that meaningful and effective advocacy is more likely to occur in criminal justice systems that are well managed, adequately resourced, sufficiently adversarial, and home to competent counsel. Therefore, we focus on one critical dimension of quality case processing: the extent to which cases are given individual attention and whether the criminal court system is conducive to providing effective advocacy to cases. We then examine how this measure of quality varies among courts with different levels of timeliness.

⁵ American Bar Association Standards and COSCA Standards.

⁶ The Committee on Court Delay Reduction appears to believe that reducing court delay will naturally improve the quality of justice: “As the steward of public trust in our legal system, the court system is obliged to dispose of court business without delay. To do less is to compromise justice” (pp. 5-6). But no standards or measures are developed to assess the validity of this assumption.

⁷ Commission on Trial Court Performance Standards (1990). There are multiple standards in five areas of performance: access to justice; expedition and timeliness; fairness, equality, and integrity; independence and accountability; and public trust and confidence.

❧ A Conceptual Framework for Understanding Timeliness and Quality

The basic framework proposed in the current research is that a court's ability to meet both the goals of timeliness and effective case processing is part of a larger criminal justice system context.⁸ This idea implies that research should take into account the many and often divergent pressures that influence timeliness and fairness. On the one hand, judges preside over an adversarial system in which the motives and goals of prosecutors and criminal defense attorneys are often in conflict. Incentives abound for both prosecutors and defense attorneys to speed or retard action on their cases. On the other hand, the fundamental assumption of case management is that court procedures are malleable. The premise is that through improved management practices a court can respond proactively to a growing volume of work and, thereby, achieve higher levels of institutional performance.

The theoretical framework of this study rests on the assumption that time standards reflect society's choice on what is an "optimal" solution to the tension between quality and timeliness. Moving closer to this optimal state requires that court systems improve their efficiency. Efficiency within the context of case resolution means to use resources in their most productive fashion to produce the most of what a court system values. Therefore, to be efficient, court leaders must first devote the time necessary to determine and clarify what the court values. Few would argue against the statement that timeliness, individual attention to cases, and effective advocacy are worthwhile values for courts to pursue. To achieve both timeliness and quality, a well-performing court must determine the policies and practices that will allow it to better use personnel, procedures, and technology to improve overall effectiveness. The key is efficiency.

From this orientation, the primary purpose of this study is to address a set of fundamental questions that include: What features characterize criminal courts that come closest to meeting nationally recognized time standards? Is timeliness achieved primarily through "assembly line justice" (e.g., treating all cases the same, relying heavily on plea bargains), or are timely courts still able to provide individual attention to cases? By drawing on a wide range of attorney attitudes about case processing, how does the effectiveness of the advocacy process differ between fast and slow courts?

⁸ Eisenstein, Flemming, and Nardulli (1988).

▮ Specific Objectives of the Current Research

This report offers an integrated approach to studying how case processing time varies across courts. Almost all previous research on court delay focused solely on differences in caseload characteristics and aspects of organization, management, and resources to explain variations in case processing times. Because these studies failed to explain much of the variance in the pace of litigation, other researchers subsequently focused on the qualitative social and political dynamics within courts to understand case processing times. This study attempts to bridge the world of structure, organization, caseload, and resources with the world of attitudes held by the key actors in court systems. Specifically, we examine case processing time in nine courts taking into account differences in (1) court context (e.g., structure, personnel, and resources) and the volume and type of criminal cases entering each court, (2) individual case processing and resolution, and (3) attorneys' attitudes and perceptions about critical elements of the local court system. Few prior studies have systematically examined all of these factors. Our investigation involves conceptualizing, defining, and constructing a set of empirically based measures that will allow direct comparison of the impact of each major attribute (i.e., caseload and resources, management, and legal culture) in the nine courts.⁹

▮ Research Design

The National Center for State Courts (NCSC) and American Prosecutors Research Institute (APRI) conducted this study in nine large urban trial courts (county populations ranging from 400,000 to 1.2 million) in eight states representing various regions of the U.S.¹⁰ Project staff obtained four types of data from each juris-

⁹ The movement within the nation's state courts toward the implementation of time standards, growing public concern with the accountability of public institutions, and long-standing practitioner and scholarly interest in the determinants of court delay place a premium on comparative research. Without data on several courts, it becomes difficult to see whether differences in structure, resources, practices, procedures, or views of practitioners are related to any observable differences in case processing. Our goal is to take the first steps toward determining whether timeliness in case processing tends to appear in court environments that are conducive to other dimensions of case quality or if a focus on delay reduction appears to reduce a court's ability to offer quality case processing.

¹⁰ A detailed description of the methodology is included in Appendix 1.

diction. First, the court in each site provided moderately detailed data on about 400 randomly sampled felony cases disposed in the general jurisdiction court during fiscal year 1994-95. Second, the court administrator, prosecutor's office, and indigent defense program in each site provided data on their felony caseload, staffing, and case management procedures. Third, during visits to each county interviews were conducted with judges, attorneys, and court managers about a range of issues related to felony case processing. Finally, 15 to 30 prosecutors and about the same number of defense attorneys in each county completed a brief questionnaire that solicited their opinions and observations on a range of issues related to felony case processing in their respective jurisdictions. These four types of data will be analyzed throughout this report.

📍 Organizational Roadmap

In this study, we focus on nine court *systems* by bringing together case-level data, interview data, and survey results from prosecutors and defense counsel in each jurisdiction. The basic approach, questions to be addressed, and report organization are discussed below.

The Context of Criminal Case Processing

Court delay is a concern of the courts and has been the subject of a series of studies over the past few decades. The “commonsense” view that criminal court delay is basically caused by too many cases and an insufficient number of judges, prosecutors, and/or defense counsel remains strong among practitioners. Following the lead of numerous studies of delay conducted by the National Center for State Courts and others, Chapter 2 of this report begins with a seriatim examination. Case processing time is analyzed in relationship to separate caseload, structural, and resource measures one at a time. The following questions are examined:

- How do the courts compare in terms of case processing time as measured by both arrest to disposition and indictment or information to disposition?
- How do the courts compare in terms of key workload and resource measures, felony caseload mix, and disposition types?
- Is there any connection between each of these separate court-level factors and timely case outcomes?

This section also serves to build a comparable descriptive profile of the nine participating jurisdictions.

Multivariate Statistical Analysis of the Influence of Caseload Factors of Felony Case Processing

One reason that many previous studies have not found a strong relationship between case processing time and court caseload, structure, and related factors may be that basic descriptive statistics (e.g., average processing times for high versus low caseload volume courts) obscure as much as they reveal. Practitioners and researchers alike assert that case processing time is influenced by an interaction of a wide range of case attributes, such as the seriousness of the charge, the defendant's prior record, type of legal representation, and so forth.

- What case and defendant attributes are significantly related to case processing time?

One of the few consistent findings in the literature is that case and defendant characteristics explain less than half of the variation in case processing time. We expect the data from these nine courts to show the same pattern. However, the primary interest here is to determine whether case- and defendant-related data show any evidence that more expeditious courts (i.e., those that are closer to meeting established time standards) process cases *differently* from slower courts.

- Are the same factors found to be statistically significant in explaining why some cases take longer than others in fast courts also significant in slower courts? What patterns in the significance of case- and defendant-related factors emerge across the nine courts?

In Chapter 3, a statistical model is employed to compare the impact of case- and defendant-level factors on case processing time across the nine courts.

The analysis then takes a further step to clarify whether fast courts process cases differently than slower courts. Is faster case processing time achieved by essentially treating all felony cases the same, or does faster case processing still allow for differentiation between cases (e.g., more serious cases are given more time than less serious cases)? Do fast courts give more serious cases *relatively* the same amount of time as courts less concerned with timely disposition of cases? The primary questions are as follows:

- If more serious, complex felony cases (e.g., homicide) take longer than less serious cases (e.g., burglary) to resolve, do case processing time patterns in faster courts look *relatively* the same as patterns in slower courts? We know the *absolute* measures of case processing time (measured in the average number of days from arrest to disposition) vary widely between courts. However, do fast courts achieve their timeliness by processing all cases

with about the same speed (regardless of seriousness), or do fast courts provide more serious cases about the same proportion of their (shorter) case processing time as slower courts?

This analysis is conducted by building a uniform profile of a “complex case” from a small, common set of significant factors and comparing its time to resolution both within and among the courts. This approach allows a direct comparison of relatively how much time complex cases take in the nine sites.

The statistical analysis in Chapter 3 provides part of the answer for understanding how and why case processing speed varies across the nine sites. However, as indicated in previous studies, caseload characteristics explain only a limited amount of the variation in case processing times. In addition, there are more similarities than differences between courts in how case characteristics affect case processing. Hence, there is reason to examine elements of the social context of criminal court case processing.

Efficiency, Quality, and Attorneys’ Attitudes

A primary goal of this project is to add conceptual clarity and systematic evidence to the debate about case processing quality and timeliness. Chapter 4 begins by developing an analytical framework called the productivity frontier to show how the goals of timeliness and quality are affected by the concept of efficiency. Efficiency is a pertinent and helpful idea because high levels of both timeliness and quality can be shown to be achievable in more efficient court systems.

Our operational definition of case processing quality focuses on a court system’s ability to provide due process through individual attention to cases (examined in Chapter 3) and effective advocacy. This phase of the project draws on the work of the TCPS and other court management experts to construct an observable and measurable set of work-related factors that we believe are associated with effective advocacy. Over the past decades, court practitioners and researchers have isolated certain fundamental aspects of court operations and case processing that, when present, create the opportunity for effective advocacy. We argue that meaningful and effective advocacy is more likely to occur in criminal justice systems that are well managed, adequately resourced, sufficiently adversarial, and home to competent counsel. We do not claim that we have assembled an exhaustive set of factors that definitively define effective advocacy. Rather, our goal is to suggest measurable elements, determine what findings flow from an analysis of those elements, and provide a concrete basis for improved future research.

Chapter 4 unpacks key underlying components of case processing quality to examine and assess whether attorneys' attitudes vary systematically with the speed of case processing. We examine attorneys' attitudes among the following four key dimensions of the work environment surrounding the attorneys in the nine court communities:

- *Adequacy of resources*: Are resources sufficient in the sense that there are enough judges, prosecutors, and defense attorneys for the workload?
- *Characteristics of management*: Is the court system well managed with effective leadership and the opportunity for interagency coordination and communication?
- *Jurisdiction practices*: How do judges, prosecutors, and defense attorneys assess the effectiveness of delay reduction efforts within the court system?
- *Quality of opposing counsel's performance*: Do prosecutors and defense attorneys see each other as having sufficient experience and skill to achieve high levels of performance?

We then examine attorneys' attitudes on these dimensions by controlling for whether the respondent is a prosecutor or a criminal defense attorney. Do these two sets of attorneys in faster courts share attitudes that are different from their counterparts, or are prosecutors (or defense attorneys) alike in their views regardless of the pace of the courts in which they work? In addition, analysis of the questionnaire data provides a basis for assessing the extent of agreement or discord among prosecutors and public defenders within jurisdictions and whether patterns exist among faster and slower courts.¹¹

Finally, Chapter 5 concludes the report with a review of the major findings and a discussion of their implications for policy, practice, and future research.

¹¹ Let us be clear, however, that we are not looking to establish causality in the analysis of attorneys' attitudes and the pace of litigation. We do not assert that particular attitudes lead to timeliness or vice versa—it almost certainly goes both ways. Our goal is to examine whether and how practitioner attitudes differ across faster and slower courts. These attitudinal differences should provide substantial insight into why some courts are faster than others.

Chapter 2



WHAT DO THE NINE CRIMINAL COURT SYSTEMS LOOK LIKE?

¶ Introduction

This chapter provides an overview of the felony case processing times in the nine courts under study and the contexts in which they operate. It is intended to achieve three objectives. The first goal is to understand the similarities and differences in felony case processing times among the nine courts. The second objective is to determine which of the jurisdictions approach a desired pace of litigation using the American Bar Association (ABA) time standards as a guide. The third goal is to examine the extent to which caseload characteristics, management strategies, and resources contribute to differences among courts in the pace of litigation.

Certainly many readers will be familiar with the received tradition on how and why caseload characteristics, management strategies, and resources do or do not affect timeliness. For that reason, some readers might only want to scan the contents of Chapter 2. However, every reader might find it illuminating to see how similar these nine courts are to each other. Furthermore, all readers might find it interesting to see how the specific courts with which they are most familiar share key attributes with one or more of the nine courts on many of the multiple dimensions under study. The pattern of similarities that we see among the nine courts, moreover, is one that is not stressed in the literature.

¶ Measuring the Pace of Felony Litigation

One of the important roles of courts in the American adversarial legal system is to balance the sometimes competing interests of speed with individual justice.

Figure 2.1

How Long Does It Take to Resolve Felony Cases?*

Time from Arrest to Disposition

	Number of Cases	Percentage Resolved Within		Number of Days*	
		180 Days*	365 Days*	Mean	Median
Cincinnati	478	86%	97%	121	81
Grand Rapids	460	82	95	151	93
Portland	448	79	90	158	105
Oakland	416	58	83	230	144
Sacramento	187	40	82	251	227
Austin	404	43	74	280	201
Birmingham	457	11	57	401	316
Hackensack	405	9	57	395	336
All Courts Combined	3,255	52	89	245	169

Time from Indictment/Information to Disposition

	Number of Cases	Percentage Resolved Within		Number of Days*	
		180 Days*	365 Days*	Mean	Median
Cincinnati	477	89%	98%	97	67
Grand Rapids	459	83	96	129	91
Portland	453	80	90	180	91
Oakland	414	71	89	178	95
Sacramento	200	67	92	163	120
Albuquerque	359	64	92	190	154
Austin	477	56	83	222	154
Birmingham	457	51	76	280	181
Hackensack	406	49	87	211	183
All Courts Combined	3,702	68	89	184	118

* The American Bar Association stipulates that 98 percent of the cases should be resolved within 180 days after arrest and that 100 percent should be resolved within 365 days.

Courts must constrain the natural conflicts and strategies of prosecutors and defense attorneys while managing their own resources wisely to ensure that the quality of justice is not denigrated by a process that is either too speedy or too slow.

But what is the “optimal” balance (or best combination) between expedition and quality justice? As indicated earlier, three key professional organizations, the ABA, the Conference of Chief Justices (CCJ), and the Conference of State Court Administrators (COSCA),¹² tackled this question in the mid-1980s. They all recognized that what constitutes delay is based on the needs of the particular case, so there cannot be a single time standard that applies to every case.¹³ After weighing the respective values of speed and due process, all three groups drew on the experience and ideas of seasoned practitioners to formulate estimates of how long it should take to resolve most or all cases. Because these standards are goals toward which courts should aspire,¹⁴ they are assumed to provide a fair and valid measure for assessing the effectiveness of local justice systems in the area of expedition and timeliness. (See Figure 2.1.)

The ABA standards, for example, suggest that from the date of arrest to the date of disposition (e.g., entry of guilty plea, verdict, or dismissal) courts should dispose of 90 percent of their felony cases in 120 days; 98 percent in 180 days; and 100 percent within one year.¹⁵

ABA Felony Case Disposition Time Standards

(arrest to entry of judgment or dismissal)

90% in 120 days

98% in 180 days

100% in 365 days

¹² ABA (1987); Otto (1985b).

¹³ The ABA standards define “delay” as any time that is not necessary for a fair preparation and disposition of a case (ABA, 1987).

¹⁴ Disposition time standards are goals toward which courts should aspire, but they do not have the force of law such that a defendant could have his charges dismissed if the court or prosecutor fails to obtain a disposition within the time frame suggested in the relevant standard.

¹⁵ Although this study uses the ABA standards as a framework, it should be noted that they are similar to the standards promulgated jointly by CCJ and COSCA. The CCJ/COSCA Criminal Standards state that 100 percent of felony cases should move from arrest to trial in 180 days except in individual cases in which the court determines exceptional circumstances exist. Since 1985, most states have adopted disposition time goals (besides speedy trial rules) for adjudicating all felony cases. The NCSC’s Information Service has compiled a report on state disposition time goals for criminal, civil, and other cases, which is available upon request.

There is substantial variation among the courts in the number of days taken to move a case from the time of arrest to the time of disposition as shown in Figure 2.1.¹⁶ Cincinnati, Portland, and Grand Rapids are the best performers on the one-year standard; each disposed of at least 90 percent of their felony cases within a year. In fact, these are the only three courts that have an *average* time from arrest to disposition of less than 180 days. On the other hand, three jurisdictions disposed of 74 percent or fewer of their cases within a year and two disposed of less than 12 percent within 180 days of arrest. Overall, no court in this study meets the ABA standards.

Despite calls from national and statewide authorities to measure time beginning with arrest, we faced two practical considerations that steered us away from using arrest to disposition as our measure of case processing time. First, we were informed that arrest dates in some jurisdictions were unreliable. Second, arrest dates were completely absent in one court. As a consequence, and in the interest of inclusion, this study employs a modified version of the ABA standards that focuses on “upper-court” case processing—the time from indictment/information to disposition. Although data restrictions drive much of our decision, there are other reasons to focus more specifically on the general jurisdiction trial court phase of felony adjudication.

One justification for looking at the upper court is that in felony adjudication various stages of the legal process frequently occur separately in two different courts.¹⁷ In most court systems, the first stage of the felony process is handled in a limited jurisdiction court (e.g., municipal, county). This “first appearance” is when the defendant is told of the charges that have been brought against him or her and bail is set, usually within 24 hours of arrest. The limited jurisdiction court also conducts the preliminary hearing to determine whether there is probable cause for continued prosecution, or a grand jury might determine probable cause. If the judge finds a reasonable basis for a felony charge after a preliminary hearing (or the grand jury issues an indictment), the felony case is transferred to the general jurisdiction trial court. If probable cause for continued prosecution is not found, the case may be dismissed or the prosecutor

¹⁶ Arrest dates could not be obtained in Albuquerque, so it is excluded from analyses of elapsed time from arrest to disposition.

¹⁷ Figure 2.7 shows that eight of the nine jurisdictions employ a two-tiered court system; only Sacramento has a unified court system.

may agree to a guilty plea on a nonfelony offense. The general jurisdiction court, which arraigns the defendant on a felony charge and either accepts a guilty plea or sets the case for trial, also handles almost all pretrial motions and trials in felony cases. Therefore, meeting the ABA standards requires that the limited and general jurisdiction courts not only operate well separately, but also actively coordinate their work.

In addition, speedy trial rules in almost every state start the clock when the indictment is issued or the defendant is arraigned in the general jurisdiction trial court on the indictment or information. Courts and prosecutors take these rules seriously to avoid dismissal of felony charges. Moreover, a trial in the general jurisdiction court is the ultimate forum for adjudicating felony charges, and many felony offenders wait until a trial is imminent to enter a guilty plea. Trial scheduling practices can have a ripple effect on the pace of adjudication for all felony cases regardless of how they are disposed. For example, if an excessive number of cases are scheduled for trial, defendants can expect their trial to be postponed with the need to reschedule another trial on an already overcrowded trial docket. This situation may offer a strategic advantage to the defendants by allowing them to get their “best deal” by pleading guilty to a reduced charge in exchange for agreeing to drop their requests for trial. As a result, the pace at which a case moves from arrest to disposition rests largely on how cases are handled in the general jurisdiction court.

Thus, for all of these reasons, this study adapts the ABA standards’ call for 98 percent of all felonies to be resolved within 180 days after the initial arrest to establish the standard that 98 percent of all cases should be disposed within 180 days after indictment or bindover. Measured against this modified standard, the nine courts tend to fall into three relatively distinct clusters: three courts tend to be the most expeditious (Cincinnati, Portland, and Grand Rapids); three other courts are intermediate in terms of timeliness (Oakland, Sacramento, and Albuquerque), and the remaining three courts are slower (Austin, Hackensack, and Birmingham). Figure 2.2 shows that only Cincinnati, Portland, and Grand Rapids resolved at least 80 percent of their felony cases within 180 days after indictment, while the three slowest courts disposed of only 56 percent or less of their cases within this time frame. The three fastest courts, moreover, are relatively expeditious regardless of case type. They produced the most timely performance in each case category (i.e., most violent, other violent crimes against the person, burglary, and drug cases).

Figure 2.2

How Long Do Specific Types of Felony Cases Take to Be Resolved?

Percentage of Felony Cases Resolved Within 180 days After the Date of Indictment or Bindover

	All Felonies	Most Violent	Other Violent	Burglary & Theft	Drug Sale & Possession	Other Felony
All Courts Combined	68%	48%	64%	69%	71%	75%
Faster Courts						
Cincinnati*	89	75	90	89	88	95
Grand Rapids	83	65	74	86	92	83
Portland*	80	90	88	82	79	69
Moderate Courts						
Oakland	71	44	64	82	78	72
Sacramento	67	51	63	71	70	82
Albuquerque*	64	45	69	66	57	75
Slower Courts						
Austin	56	41	57	48	66	67
Birmingham*	51	10	40	60	53	58
Hackensack*	49	55	35	54	45	64

The Average Number of Days from Indictment to Resolution

	All Felonies	Most Violent	Other Violent	Burglary & Theft	Drug Sale & Possession	Other Felony
All Courts Combined	184	303	183	179	172	170
Faster Courts						
Cincinnati*	97	153	103	90	96	88
Grand Rapids	129	264	151	119	97	130
Portland*	180	225	182	174	150	455
Moderate Courts						
Oakland	178	480	175	107	141	205
Sacramento	163	219	165	144	162	132
Albuquerque*	190	269	166	202	208	140
Slower Courts						
Austin	222	255	166	262	207	191
Birmingham*	280	483	334	236	278	217
Hackensack*	211	195	243	199	233	164

* This jurisdiction charges most of its felony cases by grand jury indictment.

Examining the Context of Felony Adjudication

Reason, experience, and the research literature suggest that the factors that shape the overall pace of felony litigation are a rich mosaic. Practitioners and researchers have focused on several key elements of local justice systems, including variations in the size and complexity of their caseloads, organizational and management strategies, jurisdictional practices, resources, and practitioners' norms and attitudes. Chapter 3 of this report will examine differences in case processing times through a multivariate statistical model that analyzes the interaction of case-level variables and some key court-level factors. In anticipation of that analysis, the context of felony adjudication in each of the nine courts is examined. An overview of key community characteristics is provided to facilitate a "quick" understanding of the environment surrounding the courts under this study. The utility of this contextual information is that it suggests that virtually every state trial court in the country likely shares some key attributes with one or more of the nine courts. Consequently, the nine courts are not an odd sample that bears no relationship to the rest of the world. Hence, the findings should be relevant to a wide range of trial courts and a basis against which courts not included in the study can compare themselves.

The "conventional wisdom" regarding how several key factors are expected to influence the pace of litigation is then examined to discern whether patterns emerge that are consistent with the expected patterns. To facilitate this analysis, throughout the remaining tables in this chapter we have listed the nine courts in order from highest to lowest on the percentage of felony cases resolved within 180 days after indictment or bindover.

County Demographic Characteristics

As Figure 2.3 indicates, the counties¹⁸ in which the nine courts are located are from eight different states representing five regions of the country (Northeast, South, Midwest, Southwest, and West Coast). The counties are all large urban or suburban areas, ranging in population from 499,000 in Bernalillo Co., New Mexico (Albuquerque), to 1.3 million in Alameda Co., California (Oakland). Population density varies substantially, from less than 600 people per square mile in two counties to more than 3,500 per square mile in Bergen Co., New Jersey (Hackensack), a suburban area outside New York City. Travis Co., Texas

¹⁸ To ease the exposition, we tend to use the primary city rather than the county name.

Figure 2.3
 What Do the Communities Look Like?*

	% Disposed in 180 days**	Violent crime for 100,000 pop., 1991	Persons	Population, 1995 Density per sq. mile	% Change 1980-1990	Income, 1989 Median household	% Below poverty line	Race, 1990 % White	% Black
Faster Courts									
Cincinnati	89	780	863,908	2,140	-0.8	\$29,498	13.3	77.7	20.9
Grand Rapids	83	808	525,355	598	12.6	32,358	9.2	88.7	8.1
Portland	80	1,464	614,104	1,380	3.8	26,928	13.1	87.0	6.0
Moderate Courts									
Oakland	71	1,180	1,323,312	1,773	15.5	37,544	10.6	59.6	17.9
Sacramento	67	903	1,103,499	1,132	32.9	32,297	12.5	75.1	9.3
Albuquerque	64	1,123	522,328	428	14.4	27,382	14.6	76.9	2.7
Slower Courts									
Austin	56	543	644,802	620	37.4	27,488	16.0	73.3	11.0
Birmingham	51	1,467	657,827	591	-3.0	25,858	16.0	64.2	35.1
Hackensack	49	161	845,189	3,565	-2.4	49,249	3.9	87.0	4.9

* All data are from the *City and County Data Book, 1997*. ** Case processing time is measured from indictment or bindover to disposition.

(Austin), and Sacramento Co., California (Sacramento), represent rapidly growing cities; both grew in population by more than 32 percent during the 1980s. Hamilton Co., Ohio (Cincinnati), and Hackensack, conversely, experienced a decline in population during the 1980s.

On measures of wealth, Hackensack has the highest median household income (\$49,249) and the lowest poverty rate (3.9 percent).¹⁹ Jefferson Co., Alabama (Birmingham), and Austin have the highest poverty rates (16 percent each), but Albuquerque has the lowest income per capita (\$17,518). Oakland and Austin exhibit the greatest racial diversity, while Hackensack and Kent Co., Michigan (Grand Rapids), are the least diverse, with Caucasians comprising at least 86 percent of the population. Violent crime rates also vary remarkably, ranging from 161 per 100,000 population in Hackensack to 1,467 per 100,000 population in Birmingham and 1,464 per 100,000 population in Multnomah Co., Oregon (Portland).²⁰

Felony Caseload Characteristics

Felony caseloads in urban jurisdictions vary in seriousness and complexity. Both researchers and practitioners agree that numerous case- and defendant-level characteristics influence both the workload and the quality of case processing. Four categories of factors are distinguished when investigating these claims: the severity of the charge at indictment, procedural aspects, defendant resources, and the manner of case resolution. This section reviews the received tradition on how case and defendant characteristics in each category are thought to complicate the adjudication process and contribute to a particular pace of litigation.

Severity of the charge at indictment. Many practitioners have asserted that the composition of a court's caseload is a primary determinant of case processing time. Composition may matter if certain types of cases (e.g., most violent felonies) are inherently more complex (e.g., more motions, more trials, more attention to victims and witnesses) and thereby require more court time and attention to resolve than other felony cases. In addition, judges and prosecutors may believe that more serious cases deserve more time and attention from the court and may establish explicit or implicit priorities to meet that goal. For example, establishing a special court to expedite drug cases may leave other judges in the court

¹⁹ The income level, however, is undoubtedly offset to some extent by the relatively high cost of living in the New York City area.

²⁰ For a more detailed description of the felony adjudication process in each jurisdiction, see Appendix 2.

Figure 2.4

What Do the Cases Look Like?
Composition of Felony Caseloads

Most Serious Offense Charged in Indictment/Information

	Case Type					Number of Sample Cases
	Most Violent ¹	Other Violent ²	Burglary & Theft	Drug Sale & Possession	Other Felonies ³	
Overall	6.2%	16.8%	31.5%	34.2%	11.4%	3,779
Faster Courts						
Cincinnati	4.3	12.8	27.8	40.2	14.8	485
Grand Rapids	5.0	14.5	44.9	18.8	16.8	463
Portland	4.6	12.7	23.5	53.4	5.7	455
Moderate Courts						
Oakland	8.4	22.8	14.4	45.3	9.1	417
Sacramento	11.5	26.5	18.0	32.0	12.0	200
Albuquerque	5.3	25.9	39.5	18.1	11.2	375
Slower Courts						
Austin	7.0	17.2	35.9	28.3	11.6	499
Birmingham	7.1	11.1	36.2	38.7	6.9	478
Hackensack	5.2	15.2	35.1	29.7	14.7	407

¹ Most violent crimes include capital murder, homicide, and rape.

² Other violent crimes include robbery, assault, kidnapping, manslaughter, and child abuse.

³ Other felonies include weapons possession, DWI, destruction of property, and escape.

with more time to devote to resolving more serious, violent cases. Finally, because the expected sentence is typically longer for more serious crimes, defendants may wish to put off the day of reckoning and, perhaps, realize a lower subjective probability of conviction through delay.

The research literature, however, is mixed in its findings. In the four courts he examined, Church (1982) found that more serious cases took more time to resolve. Hausner and Seidel (1979) reached a similar result in their study of case processing in the District of Columbia. In contrast, Neubauer and Ryan (1982), Luskin and Luskin (1987), and Flemming, Nardulli, and Eisenstein (1987) found that the seriousness of the offense had a weak relationship to case processing time.

Our initial results are also mixed. As shown in Figure 2.2, almost all of the nine courts take longer to adjudicate murder and rape cases than the other less serious case types. One might expect, then, that courts with a larger proportion of violent crimes would have somewhat longer overall case processing times than courts with a smaller proportion of violent crimes in their caseload. This result is not apparent from examining Figure 2.4, which illustrates the similarities and differences among the nine courts in the proportion of most violent crimes; other violent crimes against the person; drug cases; burglary and theft cases; and other felony crimes that were concluded in 1995. (The specific offenses that make up each of the five general categories of offenses are indicated in the figure.) The three faster courts had the smallest proportions of violent cases (19.5 percent or less) among the nine counties. However, violent crimes also accounted for 20 percent or less of the caseload in Hackensack and Birmingham, which are the two slowest courts.

In addition, the proportion of drug cases varies across the nine courts. Portland (53 percent) has almost three times the proportion of drug cases as either Grand Rapids (19 percent) or Albuquerque (18 percent). As with violent crimes, there is no clear pattern between these percentages and the way the courts rank on case processing speed. There is also a notable range in the percentage of burglary and theft cases (from 14 to 45 percent). But again, these differences are not related systematically with case processing times in these courts. (See Figure 2.4.)

One possible interpretation is that almost all courts give more time and attention to violent crimes, but are less consistent in their treatment of other offenses. The lack of a clear relationship between caseload composition and case processing time may reflect explicit court practices and priorities. Some have noted that courts exercise some control over their case composition; it is not necessarily

Figure 2.5

What Recognizable Case- and Defendant-Related Characteristics Are Present?

————— Percent of Cases or Defendants With These Characteristics —————

	Reduced category of offense	Weapons charge	Multiple defendants	Bench warrant for failure to appear	Prior felony convictions	On bond	Privately retained attorneys
Overall	27%	14%	25%	21%	43%	64%	25%
Faster Courts							
Cincinnati	8	12	19	16	75	67	20
Grand Rapids	40	12	22	8	40	69	15
Portland	25	5	23	28	48	69	9
Moderate Courts							
Oakland	27	26	27	13	55	34	18
Sacramento	31	21	47	27	28	66	13
Albuquerque	38	19	27	16	43	74	29
Slower Courts							
Austin	34	12	16	34	30	69	34
Birmingham	23	13	23	24	30	49	41
Hackensack	17	16	34	25	28	81	47

thrust on individual judges and attorneys from the outside world.²¹ For example, the highest proportion of violent criminal cases is 38 percent in Sacramento. In Sacramento, the system is structured to focus intense effort on obtaining guilty pleas prior to the preliminary hearing in the municipal court. This system substantially reduces the number of less serious (nonviolent) cases that are bound over to the superior court for trial, thus producing a relatively high percentage of violent cases in the superior court caseload. Another way that a court can affect its case composition is by processing one type of case in a highly efficient manner. For example, the largest proportion of drug cases is in Portland, where an effective drug court processes over 50 percent of the caseload with only 10 percent of the judicial resources. As a consequence, Portland was able to not only prosecute more drug cases, but also make the timely processing of its remaining, relatively more serious caseload a priority and a reality. Portland used the judicial resources that were “freed up” by the drug court to maintain firm trial dates, accommodate a higher trial rate, and move cases to disposition relatively quickly. These two examples illuminate two points. First, courts can and do set priorities for the processing of different types of cases. Second, establishing priorities can affect both the composition of cases handled and the time allocated to each type of case.

Procedural aspects. Particular crime and defendant characteristics are believed to increase the procedural complexity of cases and be associated with lengthier time to disposition. For example, a substantial majority of states impose a mandatory sentence enhancement for cases in which offenders use weapons in committing crimes. Some observers expect that these mandatory sentence enhancements raise the stakes for defendants, so they may be less likely to plead guilty or at least delay a final disposition longer in an effort to avoid the enhancement. Figure 2.5 shows that from 5 percent to 26 percent of felony cases involve weapons charges. But most courts are considerably similar in this respect. In seven of the nine courts, the percentage of cases involving weapons charges falls within 12 to 21 percent. Overall, there is no apparent relationship between the respective percentages and the corresponding court case processing times.

Cases with multiple defendants can be more complex because they require separate criminal defense counsel and, as a consequence, have greater potential for problems with scheduling and coordination.²² Extra time also might be re-

²¹ Neubauer and Ryan (1982).

²² Luskin and Luskin (1987); Neubauer and Ryan (1982); Wice (1978).

quired to get one or more defendants to testify against the other. Figure 2.5 indicates that from 16 to 47 percent of the nine courts' cases involved multiple defendants, but in six of the nine courts the percentage is between 22 and 34 percent. Again, there is no visible connection seen between these numbers and case processing times in the nine courts.

Most states have some type of sentence enhancement for offenders with prior felony convictions, especially those involved in violent or drug crimes. These enhancements, like those for the use of a weapon, raise the stakes for defendants and may make them less inclined to plead guilty or to do so early in the process.²³ Figure 2.5 suggests that between 28 and 75 percent of felony cases involved defendants with prior felony convictions. Interestingly, the four fastest courts had higher percentages of defendants with prior felony convictions than the four slowest courts. This finding is counterintuitive, but interviews in some sites suggested that prosecutors viewed these types of sentence enhancements as another type of "hammer" that they can use in plea negotiations. For example, defendants facing a habitual offender sentence enhancement may be induced to plead guilty to the underlying charge sooner (and probably at the maximum sentence for the current charge) if the prosecutor offers to waive the repeat offender enhancement.

Charge reduction rates also might affect felony case processing. Some prosecutors might "charge high" in some or many cases with the expectation that they will negotiate a guilty plea to a lesser (but more realistic) charge. Other prosecutors interviewed in this study suggested that having something to "offer" the defendant (e.g., reducing a charge or dropping one or more charges) often facilitates the plea negotiations. Figure 2.5 shows that the percentage of cases involving reductions in the type of charge (i.e., the most serious charge at conviction was of a less serious type than the one in the indictment or information) ranged from 8 to 40 percent. Most courts are quite similar on this point. In seven of the courts, the percentage falls between 17 and 38 percent and the variations on this issue do not appear to be related to case processing times.

Criminal defendant resources. Researchers and practitioners alike often assert that two economic characteristics of the defendant are associated with case processing time: bail status and the type of criminal defense attorney. Defendants who can afford to make bond may gain some strategic advantage through delay²⁴

²³ Luskin and Luskin (1987); Flemming, Nardulli, and Eisenstein (1987).

²⁴ Luskin and Luskin (1987); Nimmer (1978); Nardulli, Eisenstein, and Flemming (1988).

because state laws usually require courts and prosecutors to bring cases to trial more quickly if the defendant is held in custody before trial. This requirement can complicate the adjudication process to some extent.²⁵ Courts with a larger proportion of defendants held in custody may exert more pressure on defendants to plead guilty than courts in which a larger proportion of defendants are out of custody.²⁶ Conversely, detained defendants are likely to be accused of more serious offenses. These cases are more likely to go to trial and, therefore, take longer to resolve. Figure 2.5, however, shows substantial similarity among the courts. Six of them detain 26 to 34 percent of defendants in custody before disposition, though the range is from 19 to 66 percent. Again, there is little or no relationship seen between the proportion of defendants in custody and upper-court case processing times.

The proportion of cases handled by court-appointed attorneys might influence the overall pace of litigation. Cases handled by public defenders might move more swiftly because public defenders' offices are generally systematic in their assignments and handling of cases and have a clear understanding of court operations.²⁷ Privately retained attorneys, on the other hand, may not be regular members of the local courtroom work groups, so they might not be as knowledgeable about "going rates" for sentences and other nuances of the social relationships within the court community.²⁸ Defendants who can afford privately retained attorneys also might have economic resources to file more motions and contest every significant piece of evidence through pretrial motions. Furthermore, out of consideration for the privately retained attorneys, judges may postpone disposition in some cases until the attorney has been paid.²⁹ Thus, there is a reasonable basis for expecting that courts with a larger proportion of cases involving privately retained attorneys will have longer overall case processing times. Figure 2.5 supports this notion. The four slowest courts had the largest percentages of cases with privately retained attorneys (29 to 47 percent, versus 9 to 20 percent among the five fastest courts). This finding supports the contention that, in general, privately retained attorneys contribute to longer case processing times in felony adjudication.

²⁵ Neubauer and Ryan (1982).

²⁶ Casper (1972).

²⁷ Hanson, Ostrom, et al. (1992); Hanson, Ostrom, and Jones (1998).

²⁸ Eisenstein and Jacob (1977).

²⁹ Banfield and Anderson (1968); Eisenstein and Jacob (1977); Nimmer (1978).

Figure 2.6

How Are Cases Resolved?

	Disposition Type			
	Guilty Plea	Trial	Dismissed	Deferred
Overall	78.9%	5.2%	12.1%	3.8%
Faster Courts				
Cincinnati	88.4	7.2	3.2	1.3
Grand Rapids	83.5	3.9	11.4	1.1
Portland	73.2	11.5	12.3	3.1
Moderate Courts				
Oakland	83.6	3.6	7.0	4.3
Sacramento	81.5	4.5	10.5	1.5
Albuquerque	73.5	1.9	22.7	2.4
Slower Courts				
Austin	64.8	2.6	15.4	17.2
Birmingham	82.8	5.7	11.5	0
Hackensack	87.5	5.4	5.9	0.7
	Average Time (Days) to Disposition			
	Guilty Plea	Trial	Dismissed	Deferred
Overall	161	272	284	268
Faster Courts				
Cincinnati	93	143	98	101
Grand Rapids	100	272	283	247
Portland	147	237	241	533
Moderate Courts				
Oakland	162	237	157	314
Sacramento	151	166	246	228
Albuquerque	169	184	264	145
Slower Courts				
Austin	206	194	244	266
Birmingham	228	450	566	
Hackensack	198	315	298	230

Courts also differ in the extent to which they experience problems with defendants failing to appear for scheduled hearings. Courts with a more substantial problem in this area are likely to experience problems related to scheduling hearing and trial dates, so delays could be more common.³⁰ In this study, from 8 to 34 percent of the cases in the nine jurisdictions involved bench warrants for failure to appear. The three slowest courts had 24 percent or more cases with bench warrants, but only one of the three fastest courts had bench warrants issued in 20 percent or more of its cases. This factor appears to be weakly connected to overall case processing times.

Manner of case resolution. Judges typically spend a substantial portion of their time conducting trials. As the trial rate increases in a court, the length of time to reach trial is likely to increase unless the court can shorten the average trial time or reduce the amount of time judges spend on other activities. The time from filing to trial also can affect the average disposition time for cases disposed by other methods. If a court is not realistic and firm in the scheduling of trials, many cases will end in a guilty plea only when the actual occurrence of a trial, as opposed to its scheduling, is imminent. Conventional wisdom suggests that higher trial rates, especially jury trial rates, will be associated with longer overall case processing times.³¹ Figure 2.6 indicates that two of the fastest courts, Cincinnati and Portland, have the highest jury trial rates (7.2 percent and 11.5 percent, respectively), while the two slowest courts, Hackensack and Birmingham, have the next highest jury trial rates (5.4 and 5.7 percent, respectively). Higher jury trial rates do not necessarily lead to slower case processing times.

Figure 2.6 also shows that six of the courts have similar guilty plea rates, from 80 to 90 percent. Two courts have guilty plea rates around 75 percent. To the extent that there are differences in guilty plea rates, these differences are not associated with differences in overall case processing times.

❧ **Management Strategies: Characteristics of the Court, Prosecutor's Office, and Indigent Defense Program**

The court administration literature naturally emphasizes the importance of court organization and case management for achieving efficient and effective case pro-

³⁰ Luskin and Luskin (1987).

³¹ Nimmer (1978); Luskin and Luskin (1987); Neubauer and Ryan (1982).

Figure 2.7

What Do the Nine Courts Look Like?*

	Criminal Court Structure	Primary Felony Charging Procedure	Felony Judges' Docket Type	Primary Calendar System	State's Goals for Felony CPT
Faster Courts					
Cincinnati	Two-tiered	Grand jury	Combined docket (felony & civil)	Individual	Arrestment on indictment to disposition: 100% in 180 days
Portland	Two-tiered	Grand jury	Felony only	Master hybrid	1st appearance to disposition: 90% in 90 days; 98% in 180 days; 100% in 1 year
Grand Rapids	Two-tiered	Preliminary hearing and bindover	Felony only	Individual	1st appearance to prelim. hearing: 100% in 12 days. Bindover to disposition: 90% in 91 days; 98% in 154 days; 100% in 10 mos.
Moderate Courts					
Oakland	Two-tiered	Preliminary hearing and bindover	Felony only	Master hybrid	1st appearance to prelim. hearing: 100% in 90 days. 1st appearance to disposition: 100% in 1 year
Sacramento	Unified	Preliminary hearing and bindover	Felony only	Master	1st appearance to prelim. hearing: 100% in 90 days. 1st appearance to disposition: 100% in 1 year
Albuquerque	Two-tiered	Grand jury	Felony only	Individual	None
Slower Courts					
Austin	Two-tiered	Grand jury	Felony only	Individual	Complaint to announcement of trial readiness by state: 120 days
Birmingham	Two-tiered	Grand jury	Felony only	Individual	1st appearance to disposition: 90% in 9 mos; 100% in 1 year
Hackensack	Two-tiered	Grand jury	Felony only	Individual	Indictment to disposition: 100% in 120 days

* In the general jurisdiction court.

cessing.³² Although this is a commonsense position, simple categories of organization (e.g., unified vs. multi-tiered courts) or management strategies (e.g., individual vs. master calendars) seldom explain much variation in case processing times among criminal courts.³³ Nevertheless, these beliefs remain strong in the minds of many practitioners, so a review of the case management strategies and resources in the nine courts is an important step in this analysis.

Court Structure and Case Management Procedures

Figure 2.7 shows data on general jurisdiction trial court structure and felony case management characteristics in each county. (For more information on the case management system in each jurisdiction, see Appendix 2.) The courts differ in whether they use a grand jury or a preliminary hearing before a judge to determine whether there is probable cause for charging a felony. Six of the courts in this study use a grand jury process, and four of these (Albuquerque, Austin, Hackensack, and Birmingham) are the slowest courts in this study. Yet, the grand jury process occurs before a felony case reaches the general jurisdiction trial court, so using a grand jury cannot fully account for long case processing times. Furthermore, Cincinnati and Portland also use a grand jury, and they are the two fastest courts on virtually all measures of case processing time at both the pre-indictment and post-indictment stages.

Courts often structure their case assignment and calendar systems with an eye toward improving case management efficiency. Most large urban courts, including eight of the nine in this study, have developed specialized felony dockets whereby they designate specific judges to handle only felony cases for a period of time. However, more variation exists in the type of calendar system used by courts. In an individual calendar system, a court manager or administrative judge typically assigns felony cases (in some random fashion) to an individual judge soon after the bindover or indictment. The assigned judge handles all motions or other proceedings until the case is concluded. Conversely, in a master calendar system, different judges may handle the arraignment, motions, and trial, depending on who is assigned to handle those duties and who is available on the scheduled date. Much has been written about the pros and cons of individual and master calendars.³⁴ The choice of a calendar system involves weighing the compet-

³² Zeisel (1959); Friesen, Jordan, and Sulmonetti (1978); Solomon and Somerlot (1987).

³³ Luskin and Luskin (1987); Flemming, Nardulli, and Eisenstein (1987).

³⁴ Luskin and Luskin (1987).

ing values of equity, efficiency, and accountability.³⁵ Judges perceive individual calendars as fair because each judge receives the same number of cases. Master calendars may be more efficient because they supposedly maximize the use of available judges' time. However, it is also true that judges who work more quickly or efficiently than others receive more cases, which might have the appearance of inequity to some efficient judges. Previous research in 39 large urban courts, however, found no correlation between calendar type and felony case processing times.³⁶ Indeed, as shown in Figure 2.7, calendar type shows no association with case processing times.

There is some evidence from the study of large urban courts, however, that firm trial dates and early resolution of pretrial motions affect how long it takes to resolve felony cases.³⁷ This finding supports central tenets of the proponents of case management.³⁸ However, the basis for concluding that firm trial dates and early resolution of motions are effective ways to reduce case processing time is limited because the effects of competing factors were not screened out by the use of appropriate statistical analysis. Rival explanations were controlled for one at a time rather than simultaneously, and the most likely counterexplanation (i.e., size of the pending caseload per judge) was not taken into account. Hence, explanations of variation in court processing times await firmer evidence.

In part because of the lack of a clear relationship between these organizational and procedural factors and the pace of adjudication, courts and professional organizations have begun to focus more on court performance than on structure and procedures.³⁹ In other words, courts should be given performance standards and goals and then should be allowed to determine the organizational and procedural features that help them achieve the standards or goals. As indicated in Chapter 1, the ABA and other major professional organizations in the legal community have advocated adoption of disposition time goals as a management tool to inspire improved court performance and reduce delays.⁴⁰ Given the constitutional right to a speedy trial in criminal cases, every state has a rule or law

³⁵ Flemming, Nardulli, and Eisenstein (1992).

³⁶ Goerd et al. (1991); Flemming, Nardulli, and Eisenstein (1987).

³⁷ Goerd et al. (1991).

³⁸ Friesen (1984); Solomon and Somerlot (1987); Mahoney et al. (1988).

³⁹ Commission on Trial Court Performance Standards (1990).

⁴⁰ Melcher (1984); ABA (1987); Solomon and Somerlot (1987); Mahoney et al. (1988); Mahoney and Sipes (1985).

that requires courts to provide a trial for a felony defendant within a stated period of time. But only a small percentage of cases actually go to trial, and many defendants, especially those who are out of custody prior to trial, waive their right to a speedy trial. Because speedy trial laws do not necessarily prohibit substantial delays in felony adjudication, time standards that are applicable to all criminal cases would appear to be desirable.

Figure 2.7 displays the state's disposition time goals for all felony cases in eight jurisdictions (New Mexico does not have overall disposition time goals for felony cases other than its speedy trial rule). On closer examination, New Jersey (Hackensack) and Texas (Austin) seem to have the most stringent goals: 100 percent of felony cases should be concluded within 120 days after indictment (in New Jersey) or filing of a complaint (in Texas). Hackensack and Austin, however, are among the three slowest courts in this study and do not come close to meeting established goals. Ohio (Cincinnati) also has stringent goals: all felony cases should be disposed within 180 days after arraignment on the indictment. Among the states represented in this study, only Oregon (Portland) has adopted the ABA's disposition time standards without modification. Michigan (Grand Rapids) also has very strict goals for processing felony cases in the lower court: 100 percent should move from first appearance to preliminary hearing in 12 days. Michigan's standards for the trial court are also quite demanding: 98 percent should be disposed within 154 days after bindover and 100 percent within ten months. Given that Hackensack and Austin arguably have the most stringent disposition time goals but some of the longest case processing times in this study, the mere adoption of disposition time goals is not enough to achieve expeditious case processing times.

Prosecutors' Case Management Strategies

Prosecutors are the gatekeepers of the local criminal justice system. Through their discretion to charge and to negotiate guilty pleas, they have the capacity to affect the volume, nature, and pace of felony litigation. As elected officials in most states, chief prosecutors can also claim a public mandate for their policies, which enhances their power and authority.⁴¹ Figure 2.8 shows information on some key elements of the prosecutors' case management systems in this study.

⁴¹ In five states, prosecutors are appointed through either the governor's or the attorney general's office. Hackensack is in one of the five appointment states.

Figure 2.8

What Do the Prosecutors' Offices Look Like?

	Prosecutor Screening of Felony Cases	Plea Offer Authority	Case Assignments
Faster Courts			
Cincinnati	A chief assistant DA screens cases before grand jury	DA Supervisors	Horizontal and vertical
Portland	Handled by one DA within appropriate unit	DA Supervisors	Horizontal
Grand Rapids	Handled by two DAs: one experienced and one inexperienced	DA assigned to case	Horizontal and vertical
Moderate Courts			
Oakland	Handled by experienced attorneys with trial experience	DA Supervisors	Horizontal and vertical
Sacramento	Handled by experienced DAs with trial experience	DA Supervisors	Horizontal and vertical
Albuquerque	Experienced DAs	DA Supervisors	Horizontal and vertical
Slower Courts			
Austin	Four ADAs handle regular felonies; two ADAs handle family cases	ADA assigned to case	Horizontal
Birmingham	Four DAs screen cases and one DA supervises; positions are rotated every 12-18 months	DA Supervisors	Horizontal and vertical
Hackensack	Handled by three DAs, one with extensive experience	DA Supervisors	Horizontal and vertical

Most informed observers and researchers assert that having experienced prosecutors screen cases and charge is critical to efficient and effective case management.⁴² This practice has become such a fundamental principle of case management for prosecutors that all of the prosecutors' offices in this study use at least one experienced prosecutor to conduct screening and charging activities.

Allowing individual, assistant prosecutors to negotiate the terms of a plea agreement is another means for expediting felony adjudication. Of course, allowing individual prosecutors to negotiate guilty pleas introduces greater opportunities for disparities among attorneys in the way they negotiate pleas. Most jurisdictions have resolved this conflict between efficiency and equal treatment of cases by assigning the responsibility for determining the terms of a plea agreement to one or more supervisors among the prosecutors. This strategy reduces the possibility of unequal treatment while achieving some degree of improved efficiency because at least the chief prosecutor does not have to make the determination in every case. In this study, seven prosecutors' offices assign the responsibility to determine the terms of plea agreements to one or more supervisors. Only in Grand Rapids and Austin are assistant district attorneys assigned to cases allowed to negotiate pleas without prior approval by a supervisor.

Most prosecutors' offices in urban communities use a horizontal assignment system to manage their caseloads. In a horizontal assignment system, one or more teams handle all pre-indictment matters in the lower court while another team (or teams) handles all post-indictment trials through sentencing. Prosecutors in all nine courts use horizontal assignments (see Figure 2.8). In some courts, prosecutors also use a vertical assignment system for special case types. For example, a team of prosecutors will handle all capital murder cases or all rape or child sexual abuse cases from the first appearance in the lower court through sentencing in the trial court. Six jurisdictions in this study use a combination of vertical and horizontal assignment systems.⁴³

⁴² Jacoby (1976); Mahoney and Sipes (1985).

⁴³ This examination of prosecutors' case management procedures reveals no noticeable relationship between these procedures and overall case processing times. One reason for the lack of any observable relationship is the absence of variation in the procedures prosecutors use to screen and assign cases. Clearly, the nature of the screening and plea bargaining policies, the way these policies are applied in practice, and the qualities and skills of the attorneys involved in the plea negotiation process are more important to the pace of litigation than who has authority to determine charges and plea offers or what type of assignment system is used.

Figure 2.9

What Do the Indigent Defense Programs Look Like?

	Percent of all felony dispositions handled by indigent defenders*	Types of indigent defense structures	Case assignment
Faster Courts			
Cincinnati	80%	Assigned counsel: 100%	Vertical
Portland	91	PD: 57%; contract attorneys: 38%	Vertical
Grand Rapids	85	PD: 55%; contract attorneys: 45%	Vertical
Moderate Courts			
Oakland	82	PD: 89%; assigned attorneys: 11%	Vertical
Sacramento	87	PD: 95%; assigned attorneys: 5%	Vertical
Albuquerque	72	PD: 90%; assigned attorneys: 10%	Vertical
Slower Courts			
Austin	66	Assigned attorneys: 100%	Vertical
Birmingham	59	Assigned attorneys: 100%	Vertical
Hackensack	53	PD: 90%; assigned attorneys: 10%	Vertical

* Statistics obtained from the case samples examined in this study include all cases handled by assigned counsel, contract defenders, and full-time public defender offices.

Indigent Defense Program Case Management Strategies

A full-time public defender's office can contribute to greater efficiency in case processing by more effectively coordinating the training and supervision of new defense attorneys, sharing information among public defenders, and coordinating assignments and scheduling. On the other hand, defense attorneys might impede efforts to improve timeliness through their power to file motions or their refusal to cooperate in special programs or projects. Public defender offices can also complicate the case management process by using a case assignment system that increases the likelihood of scheduling conflicts.

Figure 2.9 provides basic information on some of the key aspects of the indigent defense programs in the nine courts. First, it is clear that the courts vary significantly in the percentage of felony cases that are handled by publicly appointed attorneys, from just 53 percent in Hackensack to 91 percent in Portland. Notably, the four slowest courts had the smallest percentages of cases handled by publicly appointed attorneys, producing a substantial association between a lower percentage of cases with publicly appointed attorneys and longer overall case processing times.⁴⁴

How does each court provide legal services to indigent defendants? There are three basic models for indigent defense services. Many courts establish a public defender's office with full-time attorneys on staff. Some courts use "contract attorney" systems in which a private law firm or group of lawyers provide indigent defense services to a preestablished number of offenders for a fixed price. Many courts, however, simply assign cases with indigent defendants to private lawyers who volunteer to be on the "assigned counsel list." These lawyers are paid an hourly fee or a flat fee per case, depending on the type of case and the payment system operating in the court. Some courts use a combination of public defender and contract attorney systems. Even where public defenders or contract attorneys are used, however, some percentage of the cases will still be assigned to other attorneys to cover cases with multiple defendants (because of conflicts of interest). Figure 2.9 shows that three courts rely solely on an assigned counsel list; two of these jurisdictions (Austin and Birmingham) are among the three slowest courts. But Cincinnati, the fastest court in the study, also employs an assigned counsel list program to handle all of its felony cases with indigent

⁴⁴ Note the data on this issue in Figure 2.9 are the inverse of the data in Figure 2.5 for percentage of defendants with privately retained attorneys.

Figure 2.10

What Are the Felony Caseloads Per Judge and Per Prosecutor?

	Felony Caseload, 1995*			Number of FTE handling felonies**	
	Filings	Dispositions	Clearance Rate	Judges	Prosecutors
Faster Courts					
Cincinnati	6,830	6,646	97%	7.5	20
Portland	7,871	7,119	90	18	39
Grand Rapids	4,370	3,688	84	5	30
Moderate Courts					
Oakland	4,919	4,823	98	14	35
Sacramento	6,079	6,995	115	21	48.5
Albuquerque	3,734	3,167	85	6.5	42
Slower Courts					
Austin	3,244	2,834	87	4	22
Hackensack	2,297	2,367	103	7	11
Birmingham	2,644	2,251	85	5	15
	Dispositions per FTE		Weighted Dispositions per FTE***		
	Judge	Prosecutor	Judge	Prosecutor	
Faster Courts					
Cincinnati	886	332	845	317	
Portland	396	183	476	220	
Grand Rapids	738	123	896	195	
Moderate Courts					
Oakland	345	138	531	212	
Sacramento	333	144	507	209	
Albuquerque	487	75	768	119	
Slower Courts					
Austin	709	131	903	167	
Hackensack	338	215	424	212	
Birmingham	450	150	608	203	

* Caseload and staffing statistics for fiscal year 1994-95.

** FTE = full-time equivalent handling felonies in the general jurisdiction court (excludes judges and attorneys assigned to the limited jurisdiction court).

*** We employed the case weights used by the state of Washington: murder, rape, manslaughter, and robbery cases are given a weight of 3.5, and all other felonies are given a weight of 1.0. We used the case samples from this study to determine the proportion of various types of cases (see Figure 2.4) and the caseload data in this table provided by the courts to ascertain the number of weighted cases in each court.

defendants. Portland and Grand Rapids, two of the fastest courts, use a combination of public defenders and contract attorneys. In general, there is no apparent relationship between the type of indigent defense program and the overall pace of litigation.

Finally, indigent defense programs, like the prosecutor's office, could handle cases horizontally (different attorneys at the pre-indictment and post-indictment stages) or vertically (the same attorney from start to finish). Most publicly paid defense attorneys believe that establishing a relationship with the client is critical to effective representation. Many offenders mistrust public defenders and view them as part of the system that is trying to put them in prison. Defense attorneys, therefore, argue that vertical representation is essential to effective representation. All nine jurisdictions in this study place defense attorneys on a vertical assignment system for all felony cases, although there are jurisdictions where public defender offices handle at least some felony cases in a horizontal manner.

¶ Court, Prosecutor, and Indigent Defender Resources

Court and Prosecutor Caseloads

Probably no other factors seem so clearly connected to the pace of litigation as judge and attorney workload. Most judges, prosecutors, and defense attorneys believe they are working hard already and will point to caseload size as a primary cause of delay in felony adjudication. However, numerous multiple-jurisdiction studies in urban courts have found that there is no correlation between filings or dispositions per judge and overall case processing times.⁴⁵ Figure 2.10 displays information on the filings and dispositions in each jurisdiction and the number of full-time equivalent (FTE) judges and prosecutors who handled felony cases in the general jurisdiction court. As one would expect, there is substantial variation in the number of dispositions per judge and per prosecutor, but these figures do not exhibit a connection with overall case processing times.

One of the problems with previous studies, however, is that filings or dispositions per judge (or attorney) may be a good measure of "caseload" but not a good measure of "workload." This study has attempted to address this concern by adjusting the caseload statistics from each court to produce a measure of the

⁴⁵ Nimmer (1976); Flanders (1977); Church, Carlson, et al. (1978); Mahoney et al. (1988); Goerd et al. (1991).

“weighted caseload” in each jurisdiction. Most weighted caseload studies indicate that serious violent offenses require much more judge and attorney time than other, more typical cases. These cases are given “weights” to reflect the relative amount of judicial resources required to adjudicate them. Several states have developed weighted caseload systems to help them determine their needs for new judgeships.⁴⁶ In Figure 2.10, we have used the weighting system adopted by the state of Washington, which gives a weight of 3.5 to all serious violent offenses and a weight of 1.0 to all others. Using the case samples obtained for this study to estimate the percentage of serious violent cases among the dispositions in each jurisdiction, we applied this weighting scheme to the data to obtain statistics on the number of weighted dispositions per judge and per prosecutor. Wide variation exists in the number of weighted dispositions per judge, from a low of 424 in Hackensack to more than twice that number in Grand Rapids (896) and Cincinnati (845). Cincinnati also has the largest number of weighted dispositions per attorney (317), which is more than 2.5 times the figure for Albuquerque (119).

One would expect that weighting these caseload figures would help reveal an association between caseload per judge or prosecutor and overall case processing time. Surprisingly, there is no obvious association between weighted dispositions per judge and overall case processing times. There is a moderate relationship, however, between the number of weighted dispositions per prosecutor and upper-court case processing times. Faster overall case processing times tend to exist where there is a larger number of weighted felony dispositions per prosecutor. The number of weighted dispositions per prosecutor (and per judge) is a measure of system productivity, so jurisdictions that move cases more quickly probably should manifest a larger number of dispositions per prosecutor. The fact that the number of weighted dispositions per judge is not associated with overall case processing times may indicate that prosecutors’ policies, practices, and level of efficiency may be more important to explaining the pace of litigation than the weighted caseload of judges.

Prosecutors’ and Public Defenders’ Salaries and Tenure

Most observers expect that better salaries attract higher-caliber attorneys and that greater experience contributes to greater effectiveness. Some observers also contend that prosecutors tend to receive higher salaries to attract and retain better

⁴⁶ Flango and Ostrom (1996).

attorneys, thus enhancing their advantage over public defenders.

Figure 2.11 displays information on the salaries and average tenure of attorneys employed by the full-time public defenders' offices in six of the courts in this study. These salary figures are not adjusted for differences in the cost of living among the jurisdictions, so it is difficult to evaluate or critique the levels of compensation among the various jurisdictions.

Entry-level salaries for public defenders in Oakland and Sacramento are about twice the level that similar public defenders receive in Portland and Grand Rapids (\$52,000 vs. \$27,000). Even at the upper levels of experience, Portland and Grand Rapids retain the lowest average salaries for public defenders while Sacramento and Oakland maintain average public defender salaries that are substantially higher than those in the other jurisdictions. Oakland and Sacramento prosecutors are also the most highly paid, while prosecutors in Cincinnati receive the lowest average salaries at each experience level.

How do the salaries of prosecutors and defenders compare within the various courts? The news is mixed. In Portland and Grand Rapids, prosecutors' salaries are higher than public defender salaries at each level of experience. At the top level (five years of experience or more), the prosecutors' average salaries are \$20,000 to \$25,000 more in each jurisdiction. This difference could be attributable in part to the average tenure of prosecutors and defenders; the average tenure for public defenders in Grand Rapids was six years, whereas the average tenure for prosecutors was nine years. On the other hand, public defenders' salaries are higher than prosecutors' salaries at each level of experience in Oakland and Sacramento. In Oakland, public defenders have a longer average tenure than prosecutors (12.5 years vs. 10 years), though this would not account for the differences in salaries at the entry and mid-levels of experience.

In Albuquerque, prosecutors make more money at the entry and mid-levels, but at the upper level, public defenders achieve parity. In Hackensack, public defenders have higher salaries at the entry and mid-levels, but prosecutors achieve parity at the upper level. More important in Hackensack, however, is the significant advantage in average tenure among the public defenders (10 years) compared to prosecutors (3 years). The lack of experience among prosecutors in Hackensack could be one of the reasons for the court's performance on measures of case processing time. In the other courts, prosecutors and public defenders are substantially similar in terms of their average years of experience. In general, there is no clear pattern in the average levels of compensation or tenure for prosecu-

Figure 2.11

What Are the Prosecutors' and Public Defenders' Salaries and Average Tenures?

■ Prosecutors

	Average Attorney Compensation			Average Attorney Tenure (Yrs)
	Entry (< 2 years' exp.)	Mid-Level (2-5 years' exp.)	Upper-Level (> 5 years' exp.)	
Faster Courts				
Cincinnati	29,115	35,940	42,627	10
Portland	33,554**	45,434**	65,000**	8
Grand Rapids	32,000**	50,000**	60,000**	9
Moderate Courts				
Oakland	44,496	54,970	87,423	10
Sacramento	45,036	66,378	85,476	n/a
Albuquerque	33,986**	47,000**	50,854	7
Slower Courts				
Austin	n/a	n/a	n/a	n/a
Hackensack	36,254	42,182	62,858	3
Birmingham	37,000	47,000	59,000	n/a

■ Public Defenders

	Average Attorney Compensation			Average Attorney Tenure (Yrs)
	Entry (< 2 years' exp.)	Mid-Level (2-5 years' exp.)	Upper-Level (> 5 years' exp.)	
Faster Courts				
Portland	\$26,784	32,742	40,485	n/a
Grand Rapids	\$26,500	32,000	40,000	6
Moderate Courts				
Oakland	\$52,296*	69,398*	90,973	12.5
Sacramento	\$52,510*	73,829*	97,892*	10.5
Albuquerque	\$31,000	38,000	55,000	7.5
Slower Courts				
Hackensack	\$45,000*	52,000*	60,000	10

* Public defenders' average salary is more than 10 percent higher than prosecutors' average salary at this level of experience in this jurisdiction.

** Prosecutors' average salary is more than 10 percent higher than public defenders' average salary at this level of experience in this jurisdiction.

tors and public defenders within jurisdictions. Nor is there a clear pattern between levels of compensation or average tenure for attorneys and overall case processing times.

¶ Summary

Several important points can be drawn from the foregoing discussion. First, none of the courts actually achieve the ABA time standards. Cincinnati, Grand Rapids, and Portland come close, but most courts are some distance away from meeting these standards. Second, looking at each of the caseload characteristics one at a time does not reveal any strong association with felony case processing time.

Third, contextual factors (e.g., the level of court resources and court management strategies) also have no obvious influence on the pace of litigation. One reason for the lack of correspondence between the contextual factors examined here and the pace of litigation may be that the similarities among the jurisdictions overshadow their differences. A related possibility is that the contextual factors tend to be measured in a very blunt manner (e.g., master vs. individual calendar). Elemental measures of management strategies, for example, do not capture what is truly important: the quality or effectiveness of the management system. It is reasonable to assume that there are aspects related to the “quality” of the adjudication environment, rather than the formal organizational structure or management strategies, that are most important for understanding differences in the nature and pace of criminal adjudication. It is not just what type of calendar system is used or who is responsible for screening cases in the prosecutor’s office that is important for timely case processing. Rather, it is how well these functions are handled. Chapter 4 will venture into this realm of analysis through an examination of attorneys’ perceptions about four key dimensions of the quality of the adjudication environment: the adequacy of resources, the effectiveness of management strategies, local practices, and attorneys’ performance.

Finally, the focus of Chapter 2 has been entirely at the court level. This level of analysis is important for understanding the context of felony adjudication, but it does not have the same potential power of examining individual case- and defendant-related characteristics from a large sample of disposed felony cases. Focusing directly on individual *case-level* data (e.g., the specific case involves a homicide charge rather than armed robbery, the particular defendant was out on bond, and a particular privately retained attorney represented the defendant) rather

than *aggregate-level* data (e.g., the percentage of homicide cases, the percentage of bench warrants, and the percentage of defendants represented by privately retained counsel) might help uncover the extent to which each specific characteristic affects the time it takes cases to be resolved. The need to determine the effect of each case- and defendant-related characteristic on case processing time, after taking into account the simultaneous influences of the remaining characteristics, is responded to in the next chapter.

Chapter 3



WHY ARE SOME FELONY CASES RESOLVED FASTER THAN OTHERS?

❧ Introduction

This chapter looks closely at the extent to which multiple individual case and defendant characteristics affect how long it takes a state criminal trial court system to resolve felony cases. Why do some cases take longer than others? Do the same characteristics consistently appear influential across different courts?

As articulated in the last chapter, there is a long-standing belief that much of the variation in case processing time ought to be related to (1) *individual* case-related factors and (2) *organization-related* factors. The individual perspective acknowledges that case and defendant attributes, such as how serious the charge was, whether the defendant was released on bond, and whether the case was resolved by trial rather than a guilty plea, distinguish one case from another and that each attribute has its own independent effect on the time needed to resolve an individual case. Organizational explanations focus on the effects of the court structure and operations, such as the type of calendaring system in place, the sufficiency of resources, the use of case management practices, and other procedures, on case processing time. Assessing the relationship between timeliness and the quality of case processing requires that both types of factors be examined.

In this chapter, attention is devoted to determining the consequences of individual case-related factors. More specifically, we examine why some cases are processed more quickly than others in each of nine courts by testing the influence of a variety of independent variables (e.g., severity of the offense) thought to shape case processing time. It is reasonable to assume that some cases will take longer to resolve simply because they are more serious (e.g., violent felony of-

fenses vs. nonviolent felony offenses), require greater attention and commitment from the prosecutor or the court (e.g., there are multiple defendants involved or the case is disposed by a jury trial rather than a guilty plea), or are being processed in a less efficient (or more overworked) court. Yet, despite the intuitive importance of case-related characteristics, there is no clear relationship between case processing time in the nine courts and each court's individual case- and defendant-related characteristics, resource levels, and basic organization and management, as shown by the data in Chapter 2.

The challenge of sorting out the extent to which case- and defendant-related factors are associated with differences in case processing time has been a perennial topic among the research community. However, it may be that examining case processing time against each potential factor separately (i.e., the bivariate approach of Chapter 2) understates and obscures the *simultaneous* impact of all of the factors. The true effects of case- and defendant-related characteristics on a court's case processing time might be revealed only when a complete and relevant constellation of causal factors is taken into account.

For all of these reasons, we develop a statistical model that allows us to compare and contrast the *simultaneous* impact of multiple case- and defendant-related attributes within and across the nine courts. Two fundamental questions shape the analysis:

- To what extent do familiar individual case- and defendant-related characteristics account for variation in each court's case processing time?
- Do the same factors influence case processing time in a relatively similar way in the nine courts?

Answering these questions requires distinguishing the effect of each characteristic on case processing time from the effects of all the other characteristics. For example, Figure 2.3 shows that violent crimes against the person take longer, on average, to resolve than other types of offenses. Do certain offenses by their *nature* (e.g., a violent crime against the person) require more time to resolve? Or does a longer average processing time for violent offenses actually reflect the fact that they also tend to be resolved in particular way (e.g., by trial rather than by a guilty plea)? In addition, the type of analysis should establish the extent to which the full range of individual case- and defendant-related characteristics have differential consequences on case processing time across different courts. Does the severity of the offense have a greater effect (i.e., produce longer case process-

ing times) in Albuquerque than in Birmingham or any other court? Is a homicide offense likely to take three times as long to resolve as a drug case in Albuquerque but only twice as long in Birmingham and the same time in Hackensack? The results will clarify the role of individual characteristics and will help shed light on how the magnitude of their effects are influenced by how the courts organize and manage themselves.

🦋 Review of Literature

An overarching result from previous studies of court delay is that individual (i.e., case- and defendant-related) characteristics are not strong statistical explanations of the variation in how long it takes to resolve cases. Individual attributes found to be important in one court are found to have marginal effects in others. In addition, combining factors drawn from quite exhaustive sets of case-level data produces results that have relatively low explanatory power.⁴⁷ Even the best of the earlier statistical studies are marked by the modest conclusion that “courts differ” in what shapes processing time⁴⁸ and the acknowledgment that no one has uncovered “a small number of common, influential factors” to explain why one case takes longer to resolve than another.⁴⁹

Moreover, even with the development of larger sets of individual factors, prospects for stronger results are considered to be dim. For example, Flemming, Nardulli, and Eisenstein (1987) warn that “substantial limits may exist for building theories of case processing time solely on the basis of case and disposition information. . . . [C]ourts display idiosyncratic patterns of statistically significant variables that undermine prospects that a few key indicators of a court’s ‘raw material’ or its ‘technology’ can substantially explain case processing times.”⁵⁰ This despairing view is magnified by Luskin and Luskin (1986), who see virtually no systematic patterns between potential causal determinants and processing time. They write: “Not every variable varies in every court, and even the variables that do have varying effect.”⁵¹

⁴⁷ Luskin and Luskin (1987); Flemming, Nardulli and Eisenstein (1987); Neubauer and Ryan (1982).

⁴⁸ Luskin and Luskin (1986), p. 225.

⁴⁹ Flemming, Nardulli, and Eisenstein (1987), p 199.

⁵⁰ Flemming, Nardulli, and Eisenstein (1987), p.194.

⁵¹ Luskin and Luskin (1986), p. 225.

The inability of case-related factors to account for why some cases take longer than others to be resolved has led some researchers to stress the importance of organizational factors, such as the type of judicial calendar, the number of filings per judge, the existence of speedy trial rules, and the extent of interagency cooperation among the professional participants in the criminal justice process. In fact, a good deal of attention has focused on the point that timely case processing is primarily the result of the beliefs and behavior of judges, prosecutors, and criminal defense attorneys.

In 1974 Nimmer observed that the “local discretionary system” is a major obstacle to criminal court reform efforts. He went on to claim that lengthy case processing times are “most directly associated with prevailing informal norms of the judicial process and with the personal motivations of participating attorneys and judges.”⁵² In 1978, after a study in 21 state courts, Church, Carlson, et al. (1978) developed the idea of “local legal culture” to describe this blend of informal court system norms and practices. The concept of local legal culture has come to imply that the pace of litigation is *primarily* governed by shared beliefs, expectations, and attitudes within the local court community about how fast criminal cases *should* move.⁵³

Since this landmark study, the concept of local legal culture has become a regular part of the discourse about the criminal court process.⁵⁴ Yet, few researchers have ventured to probe the nature and effects of local legal culture on criminal adjudication.⁵⁵ While incorporating court contextual factors into the analysis of case processing time has strong appeal, the traditional approaches used have run

⁵² Nimmer (1987), p. 93.

⁵³ Church (1986) offers a conceptual definition: “Local legal culture will refer to the practitioner norms governing case handling and participant behavior in a criminal court” (p. 451). This definition implies that individuals working in a particular court system come to share—to some unspecified extent—a common set of behavioral attitudes. In each jurisdiction, cases move according to a long-standing, relatively stable set of practitioner attitudes and practices regarding proper procedure.

⁵⁴ Church, Carlson, et al. (1978); Eisenstein and Jacob (1977); Nardulli, Eisenstein, and Flemming (1988); Eisenstein, Flemming, and Nardulli (1988); Flemming, Nardulli, and Eisenstein (1992). Their multimethod approach drew on organizational and statistical information to study the influence of courts’ political context, formal and informal organization, and power relations on case processing and sentencing outcomes.

⁵⁵ Church, Carlson, et al. (1984) conducted a study in four criminal courts that explicitly examined and tentatively confirmed a relationship between judges’ and attorneys’ beliefs and expectations and felony case processing times. See also Eisenstein, Flemming, and Nardulli (1988).

into at least four methodological problems.⁵⁶ First, early attempts to assess and measure local legal culture were primarily qualitative. For example, Levin (1977) and Nimmer (1978) both reached the basic conclusion that cross-court patterns in court delay reflected differences in local norms and practices without the benefit of systematic information on case characteristics or numerous contextual factors. Even Church's argument for local legal culture rests on visual inspection of data on timeliness and practitioners' views in one instance⁵⁷ and comparisons of responses to hypothetical cases by participants in four courts in another.⁵⁸

The second concern arises because the opportunity to analyze the simultaneous influence of several contextual variables is quite restricted.⁵⁹ Quantitative studies of case processing time employ a statistical model that validly can incorporate only a limited number of contextual factors. For technical reasons, the number of contextual factors must be less than the number of courts being analyzed.⁶⁰ As a result, the contextual factors must be selected carefully—unless the number of courts examined is very substantial. Given that researchers have been able to study only nine courts or fewer because of the high cost of gathering information on individual case characteristics, a detailed and extensive analysis of contextual factors has not yet taken place.⁶¹ In addition, theoretical knowledge of what aspects of context “matter” remains relatively primitive, thus inhibiting the correct choice of the specific factors that will have the most explanatory payoffs. Absent a better understanding of the precise contextual factors to examine,

⁵⁶ One aspect of the difficulty follows Church's (1986) warning that “[t]here is obviously a close—some might say tautological—relationship between local legal culture thus defined and existing case handling procedures” (p. 451). How powerful is it to say that a court has slow case processing time because its norm is to be slow?

⁵⁷ Church, Lee, et al. (1978).

⁵⁸ Church (1982; 1986).

⁵⁹ Flemming, Nardulli, and Eisenstein (1992).

⁶⁰ Simply adding more contextual factors into the model will result in problems of multicollinearity. According to Stipak and Hensler (1982): “Because perfect multicollinearity will result from attempting to estimate as many contextual effects as there are contexts, the contextual analyst has limited ability to disentangle the effects of different contextual variables if there are only a few contexts.”

⁶¹ An approach employed by some researchers is to specify a number of specific contextual factors (e.g., type of judicial calendar: master vs. individual vs. hybrid). The problem with this approach is twofold. First, one is constrained by the number of courts (K) since the model can include no more than K-1 contextual variables without the variables becoming linearly dependent. Second, the approach does not allow one to distinguish the impact of the contextual factor in one court, say Portland, from the impact in another court, say Austin.

most studies are said to be shooting in the dark when selecting a handful of potential contextual indicators to include in a statistical model.⁶²

A third concern is the strong possibility that many contextual factors (e.g., the type of calendar and the particular design of delay reduction efforts) are mutually intertwined and therefore difficult to distinguish individually. Moreover, the limits on the number of variables that can be included in the model preclude the possibility of turning each possible combination into separate variables. Additionally, as shown in Chapter 2, there turns out to be little variation across the nine courts under study. For example, judges in eight of the nine courts hear only felony cases on their docket, all of the prosecutor offices use senior attorneys at screening and horizontal processing, and all criminal defense attorneys use vertical processing. Because there are few cross-court differences among many basic contextual elements, it is not productive to use these factors to differentiate case processing time across courts.

The fourth, and most fundamental, concern is that identifying the *existence* of a particular aspect of context is not the same as measuring its actual *effect*. Many courts have, for example, implemented delay reduction programs with specific procedures, but the actual consequences of these procedures on case processing time vary dramatically. This situation is not surprising since saying is not the same as doing. A successful delay reduction effort depends on the interaction of numerous (and often difficult to measure) factors, such as judicial leadership in articulating and enforcing time goals; interagency cooperation between the judiciary, prosecution, and defense bar in achieving the time goals; efficient use of resources; and sufficiently skilled attorneys. *The objective of assessing many contextual factors is not simply to note their presence or absence, but to measure the level of acceptance and effectiveness among the critical court actors.*

Hence, a general observation that one can draw from the literature is that the efficient resolution of criminal cases is an interactive process requiring the cooperation and coordination of judges, prosecutors, and defense attorneys. Our approach builds on the recent wave of court studies that recognize the centrality of uncovering the *dynamics* of case processing.⁶³ Basic case- and defendant-re-

⁶² This view is expressed also by Luskin and Luskin (1986): “[I]ntercourt differences in effects must be functions of structural or environmental differences. Identifying the differences responsible is the hard part” (p. 225).

⁶³ Myers and Talarico (1987); Nardulli, Eisenstein, and Flemming (1988); Eisenstein and Jacob (1977).

lated characteristics tell part of the story, but a fuller understanding of case processing in a particular court context means also paying attention to how judges, prosecutors, and defense attorneys interact and work together. This latter point suggests that an awareness of the efficiency and effectiveness of the justice system *context* (e.g., organization, resource allocation, and management) is essential if our understanding of the determinants of case processing is to progress.

The two-stage approach employed in this study recognizes the limitations of past attempts in the model-building process for sorting out the impact of individual and organizational factors on case processing. We begin in Chapter 3 by using the statistical technique of multivariate regression to analyze an extensive set of individual case-level data. The goal is to examine the extent to which a common set of case- and defendant-related factors explain case processing time in nine jurisdictions. What distinguishes this analysis from earlier studies is the use of a particular form of statistical analysis to pool the data sets to uncover basic similarities and differences in how individual case attributes influence case processing among the nine jurisdictions. Building from this comparative baseline analysis, Chapter 4 will examine prosecutor and criminal defense attorney views on the efficiency and effectiveness of the case processing context.

🦋 Data and Methods

Data

The data cover 3,702 cases resolved in 1994 in each of the nine jurisdictions. The cases were randomly drawn as nine individual samples, one from each jurisdiction. A minimum of 400 cases were sought for each of the nine samples.⁶⁴ Drawn from nine metropolitan communities, the data include a wide range of offense and defendant types and aspects of important legal variables.

Variables

The dependent variable is the number of days taken to resolve each case as measured from the time of indictment (or information) to final disposition, ad-

⁶⁴ A more complete description of the data is given in Chapter 2, and the basic project methodology and data collection strategy is described in Appendix 1.

Table 3.1

Variables Used in Regression

Variable Name	Description	Expected Impact on CPT	Mean	Standard Deviation
Severity of Charge at Indictment				
Most Violent	Capital murder, homicide, rape and sexual assault?	+	.06	.24
Violent	Other violent crime?	+	.17	.37
Burglary and Theft	Burglary and theft?	0	.32	.42
Drug	Drug sale or possession?	0	.34	.47
Other Felony	Other felony?	0	.11	.50
Procedural Aspects				
Charge Reduction	Conviction charge reduced from indictment charge?	+	.27	.44
Weapon	Indictment included a weapons charge?	+	.14	.35
Multiple Defendants	Case involved multiple defendants?	+	.25	.43
Bench Warrant	Bench warrant issued?	+	.21	.41
Prior	Defendant had at least one prior felony conviction?	+	.43	.50
Manner of Resolution				
Guilty Plea	Case resolved by guilty plea?	-	.79	.43
Trial	Case resolved by trial?	+	.05	.27
Deferred	Case resolved by deferred judgment?	+	.04	.19
Dismissal	Case dismissed?	+	.12	.33
Defendant Resources				
Bail	Defendant released on bail?	+	.64	.48
Private Counsel	Defendant had a privately retained attorney?	+	.25	.43

Note: All variables are dichotomous, coded 1 for yes and 0 for no.

justed for a criminal defendant's time out on bench warrant.⁶⁵ Table 3.1 summarizes the independent variables and provides the mean and standard deviation of each variable.⁶⁶ Each variable is more completely described and the common expectation of their impact on case processing time is discussed more fully in Chapter 2.

Method

The statistical approach used in this analysis allows us to compare and contrast *directly* the impact of each of the independent variables on the time it takes to resolve an individual criminal case in each of the nine jurisdictions. This result is achieved by developing a fully interactive regression model. Each of the independent variables interacts with (or is multiplied by) a set of nine "dummy" or categorical variables representing each of the nine jurisdictions.⁶⁷ The rationale for this manipulation of the data is to help disentangle the contextual or organizational influences on case processing time brought on by the fact that a particular case is being resolved in one court system rather than another (e.g., Portland vs. Austin). Variation in the basic "facts" of each case (e.g., the severity of charge, the presence or absence of a prior record, the manner in which the case was disposed) might not exert a similar influence on case processing time in different jurisdictions. With an interactive model, one can determine, for example, whether

⁶⁵ Our primary goal is to ascertain how a number of case- and defendant-related characteristics influence case processing time while the defendant is under *court control*. Approximately 21 percent of the defendants in our sample had a bench warrant issued for failure to appear (Figure 2.5). For cases in which a bench warrant was issued, we have deducted the number of days that the defendant was outside of court control (bench warrant time) from total case processing time.

⁶⁶ The model with the greatest explanatory power also turned out to be among the most streamlined. All independent variables are structured as dichotomous variables. The variable is coded as 1 if the criterion applies in a particular case or 0 if the criterion does not apply in the particular case. Researchers call these categorical variables "dummy variables." Many other possible models with different configurations and ways of measuring the independent variables were analyzed. For example, prior record was measured as the *number* of previous felony convictions, and misdemeanor convictions were also distinguished from felony convictions. Several alternative offense severity scales were tested. Many other case characteristics were examined, including the existence of multiple charges. "Extralegal" factors, including the defendant's race, gender, and age, were examined. In all instances, these additional variables or alternative ways of measuring the variables (dichotomous vs. interval) did not improve the statistical performance of the model and were thus rejected in favor of the less complex alternative.

⁶⁷ This expands the number of independent variables in the model from 14 to 136 (14 times 9).

resolving a case at trial versus by guilty plea influences how long it takes to resolve a case in Portland versus Austin.⁶⁸

The dual benefit of building an interactive model is that it distinguishes the influence of each independent variable on case processing time in each separate jurisdiction and compares and contrasts directly the influence of each independent variable across all of the sites combined. Looking at Oakland, for example, one can compare the time it takes to resolve a case in which the offender was represented by a publicly appointed attorney and was convicted of a violent crime at trial with the time it takes to resolve a case in which a drug offender was represented by a privately retained attorney and was convicted by a guilty plea. Additionally, one can readily examine whether the same determinant influences case processing time in the same way in the nine jurisdictions. For example, is the impact of case resolution by guilty plea in Portland similar to or different from the impact of case resolution by guilty plea in Austin (or any of the other jurisdictions)? Finally, having all nine jurisdictions integrated into a single model provides the basis for knowing how well and consistently a common core of case- and defendant-related characteristics explain case processing time.

Results

Regression analysis of the variables listed in Table 3.1 for the pooled data from all nine sites is the statistical technique of choice.⁶⁹ The results from applying

⁶⁸ The current approach circumvents many of the methodological roadblocks discussed earlier. One past technique has been to include a set of dummy variables that indicate the identity of each court participating in the study (e.g., Portland, Austin). However, including a dummy variable for each site (rather than using an interactive model) does not allow one to investigate the existence of a differential impact of case and defendant characteristics across sites (e.g., whether the existence or absence of a prior record makes a substantial difference in how long it takes to resolve a case in one court but not in another). Rather, all aspects of court context are “rolled up” into a single indicator and the effects of the context are assumed to be independent of the case characteristics. As a result, this past approach assumes that individual case characteristics do not have a differential impact on processing time depending on whether the case is filed in, say, Austin or Portland. It is assumed that the Austin context affects the time necessary to dispose of cases by trial or guilty plea to the same degree as the Portland context. Hence, from previous studies one will never know whether the Austin “context” affects the processing of guilty plea cases in a manner different from the manner in which the Portland “context” does.

⁶⁹ Regression analysis is a standard statistical technique used to sort the overall impact of several independent variables on a single dependent variable and the relative importance of each independent variable. Impact is measured by the extent to which variation in each independent variable is associated with variation in the dependent variable.

this tool are displayed and the statistically significant regression coefficients are indicated in Table 3.2. Examining the individual coefficients in Table 3.2 reveals the effect of each individual characteristic alone or in tandem controlling for the influence of all other factors in the model. *The numerical value of coefficients in the table shows the number of days (as well as the statistical significance) that each factor, on average, exerts on case processing time within and across courts.* The strength of this modeling approach is that it captures the interaction of case- and defendant-related characteristics on case processing time within and across the justice system context of each of the nine jurisdictions. Finally, the table also shows the R^2 , which is the proportion of the total variation in case processing time in all nine sites that is explained by the model.

A distinguishing feature of the results is that this single model “explains” 30 percent of the variation in case processing time for all nine courts combined. This relatively small number of common case and defendant characteristics accounts for about one-third of the variation in the time it takes to resolve criminal cases in all nine courts.

There are two ways of interpreting these results. First, there is the “glass is half empty” point of view that emphasizes that some two-thirds of case processing time remains unexplained. Following this viewpoint, one might conclude that courts are too different and peculiar for the findings from one court (or even nine courts) to extend and clarify our understanding of case processing time in other courts across the country. Such an interpretation is in line with many past studies that stress the differences in case processing among courts.⁷⁰ However, meaningful *differences* among courts should not be overstated to the point that important *similarities* are overlooked. This gives rise to the second interpretation that the “glass is half full.”

From our perspective, it is valid, important, and useful to recognize that a common core of elements are influential, and statistically significant, factors in

⁷⁰ Past studies have always constructed separate models for each jurisdiction being investigated rather than employing an interactive technique such as the model used in this study. For example, Flemming, Nardulli, and Eisenstein (1987) constructed nine separate models, one for each of the nine jurisdictions in their study. They found that the explained variation (R^2) varied from a low of 10 percent to a high of 29 percent. A central conclusion in their study was that “the most striking feature . . . is the dissimilarity among statistically significant variables across courts” (p. 191). The extensive set of case characteristics examined by Luskin and Luskin (1986) with a separate model for each of the three courts resulted in values of R^2 ranging from .28 to .47. Despite the higher levels of explained variation, their primary conclusion was that courts differ.

Table 3.2
Regression Results: Factors Affecting Upper-Court Case Processing Time

Dependent Variable: Upper-court case processing time measured in days

	Faster Courts			Moderate Courts				Slower Courts		
	Cincinnati	Grand Rapids	Portland	Oakland	Sacramento	Albuquerque	Austin	Hackensack	Birmingham	
Severity of Charge at Indictment										
Most Violent	38.6	104.5 ***	23.5	282.1 ***	110.1 ***	106.3 ***	62.1 *	26.4	151.8 ***	
Violent	-12.3	20.1	-3.8	10.1	67.6 ***	5.1	14.4	48.2 **	19.7 ***	
Burglary/Theft	-31.2 **	2.9	3.7	12.7	12.6	9.3	5.0	4.3	-4.1	
Other Felony	-52.3 *	13.3	12.8	-12.1	60.6 *	-20.8	-26.2	-24.1	10.7	
Procedural Aspects										
Charge Reduction	-21.2	13.4	5.1	25.8	-11.0	97.2 ***	11.1	45.9 *	73.9 ***	
Weapon	44.8 *	-5.3	37.8	65.7 ***	-35.6	-17.2	-12.4	17.6	-6.2	
Multiple Defendants	23.6	-30.4 **	-7.8	28.6 **	34.9 **	23.7	-48.5 *	40.9 ***	26.2 *	
Bench Warrant	39.5 **	29.0	43.4 ***	84.3 ***	32.5	89.9 ***	69.3 ***	14.2	67.1 ***	
Prior Record	-4.3	-19.5	-23.4 **	-12.0	-10.6	8.0	1.7	26.1 *	-7.4	
Manner of Resolution										
Trial	37.4 *	133.2 ***	85.1 ***	157.7 ***	26.9	121.6 **	146.9 ***	52.7 **	118.0 ***	
Deferral	28.8	128.0 **	342.5 ***	138.5 ***	98.0	-87.6 *	13.8	-0.5	66.2 **	
Dismissal	18.6	146.3 ***	26.4	-50.7 *	127.8 ***	-10.4	123.1 **	32.9		
Defendant Resources										
Bail	19.7 *	32.8 ***	19.0	60.0 ***	24.7	39.2 ***	95.1 ***	77.1 ***	118.8 ***	
Private Counsel	25.0 *	60.1 ***	12.8	-28.9	-19.3	25.2 *	31.0	12.1	53.1	
Constant									67.7**	

R²: .30 Adjusted R²: .27 Number of cases: 3,152
* p < .10; ** p < .05; *** p < .01 (statistical significance)

shaping case processing time in both the faster courts and the slower courts. There are some basic consistencies in how case- and defendant-related characteristics influence case processing time within and among courts. Certainly, as seen in Table 3.2, not all factors under study are significant or have the same effect on case processing time. However, there is evidence that a core set exerts a relatively similar impact on case processing time in these courts. This result suggests that the same factors related to the seriousness and complexity of cases influence case processing time in all courts.

Individual Characteristics

One can glean basic patterns of similarities across the nine courts by looking at each of the five groupings of independent variables. First, under *severity of charge at conviction*, the time to resolve cases for those offenders convicted of most violent felony charges (i.e., capital murder, homicide, and sexual assault) is longest in eight of the nine courts (and significantly longer in six of them). Each of the coefficients under severity of charge at conviction shows the average number of days of case processing time that a particular charge adds or subtracts compared to a drug sale or possession case. Drug sale or possession is the category or charge that is held out of the model and is the base category against which other charge types are compared.

Simply stated, more serious charges take more time and the relationship holds true in all courts. Cases that result in an offender being convicted of a “most violent crime against the person” take, for example, about 39 days longer than drug cases in Cincinnati and 152 days longer than drug cases in Birmingham. In addition, five of the nine courts exhibit the same pattern in which the cases involving the most violent offenses and cases involving other violent offenses (e.g., armed robbery) take the longest to resolve.

Second, factors assessing the *procedural aspects* of the case show inconsistent relationships with case processing time. To begin with, cases involving the issuance of a bench warrant take considerably longer to resolve in all nine courts (and significantly longer in six).⁷¹ When a defendant jumps bail, court proceed-

⁷¹ Recall that the case processing time dependent variable is calculated by deducting the number of days that the defendant has absconded. Therefore, the bench warrant variable is *not* influenced by the length of time that defendants are outside court control. Instead, the bench warrant variable can be interpreted as the additional court time related to processing a defendant who has been apprehended after jumping bail (e.g., additional hearings).

ings are missed and new and additional hearings are required subsequently. The additional court time taken to process a case involving a defendant who has been re-arrested after failing to appear at an earlier scheduled hearing is, for example, about 29 to 44 days longer in the faster courts (i.e., Cincinnati, Grand Rapids, and Portland) and about 67 to 90 days longer in the slower courts (i.e., Albuquerque, Austin, Birmingham, and Oakland).⁷²

In addition, cases involving a charge reduction add time to the process of case resolution in seven of nine courts (though only significantly for three of them). Necessary negotiations must be accommodated. The three courts where charge reductions significantly add to case processing time are among the slowest (Albuquerque, Birmingham, and Hackensack), but charge reductions add little or nothing to case processing time in the fastest courts. Additionally, the potential procedural complexity measured by the existence of a weapons charge, the presence of multiple defendants, or the existence of prior felony convictions have little or no consistent relationship to case processing time.⁷³ The presence of multiple defendants in a case has significant consequences in six of the nine courts, but the effect in Grand Rapids and Austin (to reduce case processing time) is the opposite of the effect in Oakland, Sacramento, Hackensack, and Birmingham (to increase case processing time). Weapons charges and the existence of a prior record have significant effects in few courts. This finding may be surprising, particularly because prior record is a primary determinant at the conviction and sentencing stages according to the well-established literature.

Third, as shown under *manner of resolution*, cases that are resolved by trial rather than by guilty plea take significantly longer to resolve in eight of the nine courts. Resolving a case by trial takes, for example, about 147 days longer in Austin and 133 days longer in Grand Rapids. A significant coefficient on the trial variable also indicates that trials lead to longer case processing time *independent* of other factors. It is more time-consuming and complicated to assemble jurors, witnesses, the defendant, attorneys, the judges, and court staff regardless of the type of offense and other characteristics of the case and defendant. In addition, trials have a significant impact in courts of all speeds, but the relative impact tends to be less in the faster courts. In Cincinnati and Portland, for example, defendants wait only 37 and 85 days longer, respectively, for a trial to resolve

⁷² An exception is Hackensack.

⁷³ Oakland is the one jurisdiction where both weapons and multiple defendants are significant.

their cases than do defendants who resolve their cases by pleading guilty. These two courts are probably better able to accommodate trial dispositions because of a well-organized and managed scheduling office and more clearly specified pre-trial procedures.

Cases that are resolved by deferral or dismissal take longer—often far longer—than cases resolved by guilty pleas in these nine courts. Although conducting a court hearing to dismiss the charges can be completed in minutes, the elapsed time that it takes to arrange and schedule such hearings comports with the view that prosecutors are reluctant to dismiss the charges against a defendant who has made it through the screening and indictment process. Deferrals are a rare form of disposition except in Austin, where they tend to be treated much the same as a traditional guilty plea. The very lengthy deferral process evident in Grand Rapids, Portland, and Oakland reflects the fact that the defendant's progress under the terms of the deferral are initially monitored before a final disposition is entered.

Fourth, examining the two factors associated with the level of *defendant resources* shows that in seven of the nine courts, case processing times are significantly longer for cases in which criminal defendants have been released on bond. As expected, to minimize the cost of imprisonment and the defendant's loss of liberty, courts give priority to handling cases in which criminal defendants are detained. Out-of-custody defendants have their cases resolved less quickly than in-custody defendants. The size of the net effect, however, tends to vary. In the three fastest courts (Cincinnati, Portland, and Grand Rapids), release on bond adds about 19 to 33 days to case processing time, while in the three slowest courts (Austin, Hackensack, and Birmingham), the effect of bail is to add between 77 and 119 days to case processing time. Additionally, there is little support for the belief that privately retained attorneys are a consistent source of delay. Although the bivariate analysis in Chapter 2 (Figure 2.5) showed that the slower courts tend to have a higher proportion of cases in which the defendants were represented by privately retained attorneys, there is no independent effect of attorney type when all other characteristics of the case are taken into account. In only three courts (Cincinnati, Grand Rapids, and Albuquerque) are privately retained attorneys associated with significantly longer case processing times.

The Relative Impact

The regression model used in this chapter helps identify the case- and defendant-related characteristics that exert the most substantial influence on case processing time in each of the nine courts. There are some notable similarities. Four

factors—a most violent felony charge, a resolution by trial, the issuance of a bench warrant, and pretrial release on bond—tend to increase significantly time to resolution in faster courts as well as in slower courts. Yet, the effect is most visible on a relative rather than absolute scale. That is, while the absolute number of additional days of case processing time associated with these factors tends to be smaller in the faster courts and larger in the slower courts, the *relative* impact is quite similar.

One way to see more clearly the impact of these individual characteristics is to select two or more of the “important” case- and defendant-related characteristics (e.g., violent offense, trial, bench warrant, and bond) and create a “defendant profile.” For example, one can isolate the impact on case processing time brought on solely by a defendant being charged with a most violent felony offense who seeks to have his or her case disposed by trial. The effect of all other potential case- and defendant-related characteristics can be removed (or set to zero). That is, we assume that the case involves no charge reduction, no use of a weapon, no additional defendants, no bench warrant, no prior record, no release on bond, and no privately retained attorney. By building such a profile, one can compare the relative impact that a particular type of case has among jurisdictions.

Figure 3.1 shows the point in the distribution of case processing times (arrest to disposition) where our particular “defendant profile” case is expected to be disposed in each of the nine jurisdictions.⁷⁴ The profile is composed solely of defendants who are charged with a most violent felony and whose cases are disposed at trial. Again, no other case or defendant characteristics are assumed to be present (i.e., no bail, no privately retained attorney, no weapon, no prior record, etc.).⁷⁵ As can be seen, the expected disposition of such a case would occur at the far right of the distribution (beyond the 75th percentile) in all courts (with the

⁷⁴ The charts show arrest to disposition in eight counties; because arrest dates were unavailable in Albuquerque, the chart for this site shows indictment to disposition. In the three faster courts, a large proportion of cases are disposed within the first two to three months after arrest. Only a small percentage of cases remain after eight months in these courts. Among the slowest courts, the disposition graphs peak much later in the process. In these three courts, dispositions are spread out over a longer period of time, with many cases disposed beyond the 18-month mark.

⁷⁵ Of course, adding in the effect of additional characteristics to this defendant profile will typically serve to increase the expected case processing time (moving further to the right on the distribution of case processing times). That is, one can augment the defendant profile by adding or subtracting the days of case processing time as measured by the regression coefficients on, for example, bail, privately retained attorney, or multiple defendants.

exception of Hackensack). This type of case is among the most time-consuming.⁷⁶ However, “time-consuming” has a different meaning in different courts. Note that a case like this defendant profile case takes six to nine months to be resolved in the faster courts and 13 to 19 months in the slowest courts.

Our interpretation of this result is that the courtroom participants in some court systems are able to get the same job done within tighter time frames than their counterparts in other court systems. Some degree of case differentiation is evident in courts of all speeds. The norm is that case processing time will be longer for cases in which the defendant is convicted of a more serious felony charge, the disposition occurs by trial, a bench warrant has been issued, and the defendant has been released on bail. In most every system, one can see similarities in the relative amount of time needed to resolve different types of cases. As a result, the *average* speed with which more serious and complex cases are processed is different from court to court, but the *relative* speed of cases within each court is affected by a similar set of characteristics. Homicide cases take longer to resolve in some courts than in others, but in almost all courts, homicide cases take longer than burglary cases, drug sale and possession cases, or cases involving driving under the influence.

The fact that a parsimonious set of factors account for a considerable amount of the variation in how long it takes cases to be resolved resonates well with one of the basic principles of modern case management. The principle of proportionality⁷⁷ states that every case should receive individual attention, but the amount of the attention should be proportional to the attention that the case warrants.⁷⁸ More complicated cases, more difficult cases, and more serious cases should receive more attention than routine, uncomplicated, and less serious cases. The idea of proportionality is intended to maintain equality and due process in the

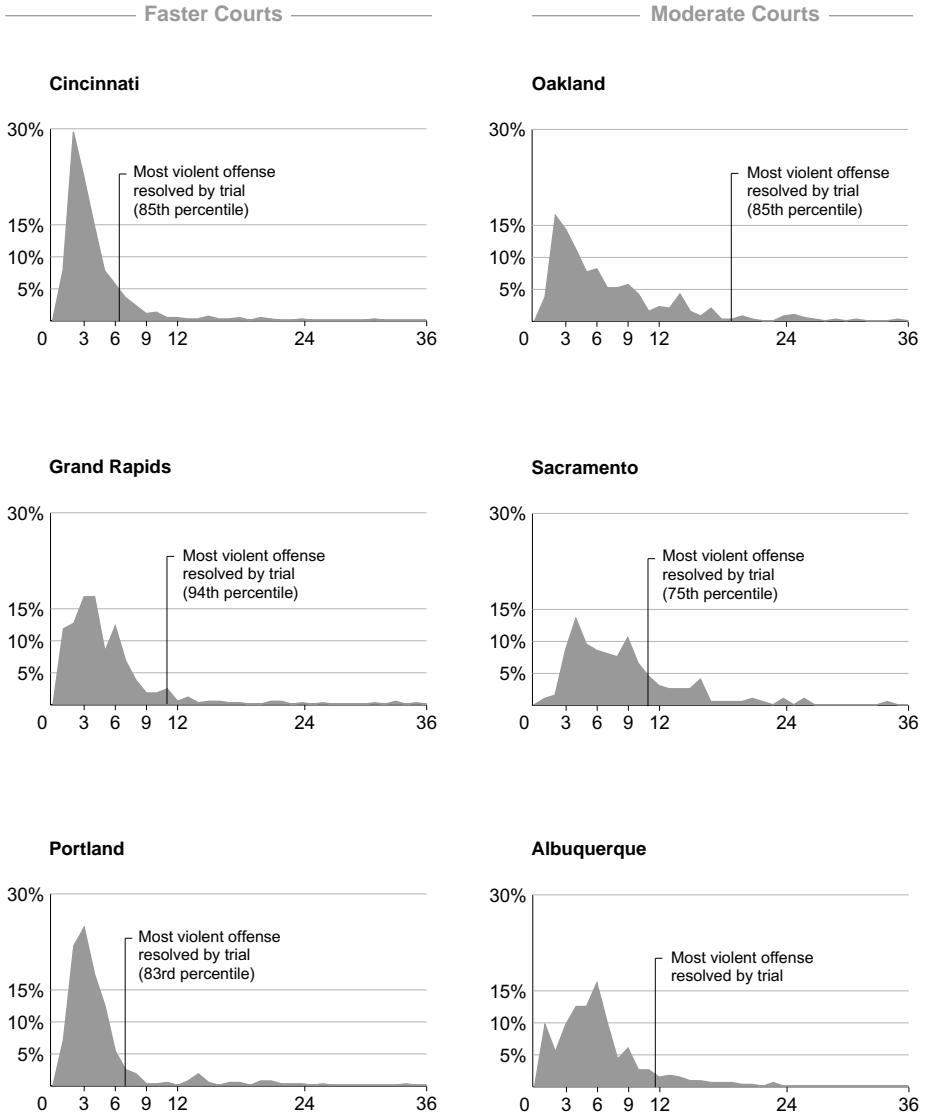
⁷⁶ One further observation is that the expected time to disposition for this complex defendant profile is at the 83rd to 94th percentile in the four fastest courts and at the 75th percentile in the slower courts (50th in Hackensack). This pattern may indicate that the faster courts are better able to differentiate cases early in the process and move the less serious and less complex cases to timely disposition.

⁷⁷ Chapper and Hanson (1983); Woolf (1996).

⁷⁸ The principle of proportionality comports well with the goal of differentiated case management. As noted in *Differentiated Case Management* (Bureau of Justice Assistance, 1993), “Inherent in the concept of DCM is the recognition that some cases can—and should—proceed through the court system at a faster pace than others. In a DCM system, the traditional ‘first-in-first-out’ rule for case scheduling is replaced by a case management system that accommodates the diversity of case processing events and timeframes appropriate to the individual cases filed” (p. 1).

Figure 3.1

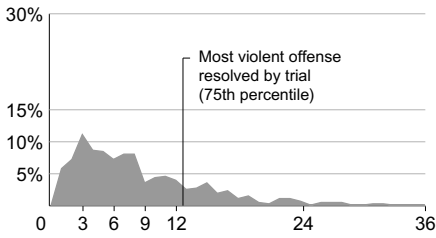
Percentage of Felony Cases Disposed Within 36 Months
(Arrest to Disposition)



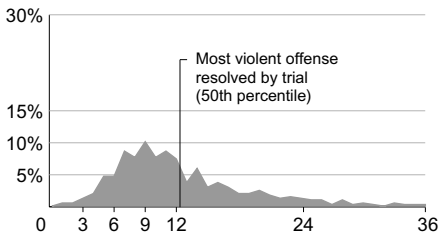
Percentage of Felony Cases Disposed Within 36 Months, continued

Slower Courts

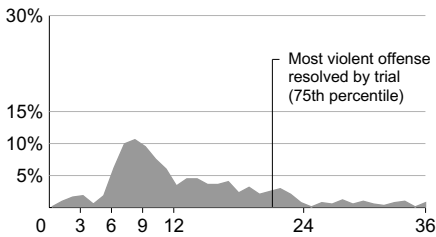
Austin



Hackensack



Birmingham



treatment of cases, but it also is intended to achieve those standards in an efficient manner.⁷⁹

In addition, some court contexts accomplish the proportional treatment of defendants without undue delay. Defendants who want to have their cases resolved by trial or who were out on bond need not have their case languish. *How much* impact case- and defendant-related characteristics have on case processing time is within the court's control. The consequences can be large or small, likely depending on how the court, prosecution, and defense are coordinated and managed. Hence, judges, attorneys, and court staff interested in improving their court's performance should find hope in the result that a portion of the variation in case processing time is explained by case- and defendant-related characteristics and that these factors are susceptible to court control. That is, they are not stuck with causal factors that cannot be managed. Just the opposite is true. Serious and complex cases, such as homicide cases, need not take forever to resolve. The fast courts under study manage to resolve these cases in shorter time frames while adhering to the norm of proportionality just like the slower courts.

¶ Summary

Two major observations emerge from an analysis of the role that case- and defendant-related characteristics play in explaining differences in case processing time. First, a common set of case- and defendant-related characteristics account for approximately one-third of the variation in case processing time among nine courts. This result supports the notion that basic facts about individual cases explain differences in the time it takes for cases to move through the system. Second, a common core of factors tend to explain case processing time in courts at all levels of timeliness. Timeliness is not achieved by a disregard for the severity of the

⁷⁹ A contrary principle to proportionality is the idea that all cases should receive the same amount of attention. However, the principle of equal attention, in addition to being one of inefficiency, makes no sense constitutionally. The Equal Protection Clause of the U.S. Constitution surely does not require that all cases be treated alike. Equal Protection requires that like cases be treated alike. However, Neubauer and Ryan (1982) assert that too much differentiation in how cases are treated (e.g., trials take many months longer to resolve than guilty pleas) is undesirable disparity. Case differentiation, they argue, is appropriate but should be constrained so as to ensure access to speedy justice regardless of the severity of the charge or the manner of case resolution. Yet Neubauer and Ryan's point of view is in a real sense only a note of caution that proportionality has some limits and is not the only principle of case management.

offense or the method of resolution. More serious and more complex cases take longer than less serious and less complex cases in all courts. However, in more expeditious courts, the time frame for all cases is tighter. Hence, the principle of proportionality rather than assembly line justice guides the resolution of cases.

Why some courts are able to resolve cases in tighter time frames, however, is not answered by the principle of proportionality or the role of case- and defendant-related characteristics. Other researchers acutely recognize the limitations of case-related data, although in a somewhat different context. For example, consider the words of Nardulli, Eisenstein, and Flemming (1988):

We will not learn much by continuing to conduct multivariate analyses of case, defendant, and decision maker attributes. . . . We do not suggest a total abandonment of studies that focus on case outcomes; they are still the bottomline of what criminal courts do. Instead, we suggest a move away from the preoccupation with deviation from system norms to a focus on the differences in norms across court communities. Such a reorientation . . . would open new vistas for court research and broaden the scope of research into these vital and complex institutions.⁸⁰

They later note:

A more systematic analysis and mapping of court community norms and values could help identify key differences across court communities.⁸¹

We agree and contend that a “more systematic analysis and mapping of court community norms” requires a structured framework for conducting comparative, cross-court analysis. The first stage of our analysis—examining the role of case- and defendant-related characteristics in determining case processing time—establishes that a common set of these factors are influential in most courts. The efficiency and effectiveness with which a court *responds* to its particular input of cases and defendants are the subjects of Chapter 4.

⁸⁰ Nardulli, Eisenstein, and Flemming (1988), pp. 383-43.

⁸¹ *Ibid.*, pp. 369-70.

Chapter 4



IS THERE A LOCAL LEGAL CULTURE THAT FOSTERS TIMELINESS AND QUALITY?

❧ Introduction

This chapter takes up the challenge of defining, measuring, and analyzing key dimensions of quality in state criminal trial courts with different degrees of timeliness. In so doing, we examine whether higher levels of timeliness are associated with higher or lower levels of case processing quality.

We have argued that the development of time standards focuses attention on two competing goals for the resolution of criminal cases. Time standards honor the achievement of both expeditious case resolution and justice in individual cases (quality). Yet, there is clearly competition, or even a trade-off under some conditions, between these two alternative aspirations. In the context of our criminal justice system, it is often said that procedural expediency is relinquished to allow the accused a presumption of innocence. One possible extension of this relationship is that actions taken to reduce the time to resolution will be contrary to the goal of effective advocacy. Speed, it is argued, encourages attorneys and judges to cut corners, to give all cases the same and often perfunctory treatment, and to rely on procedures that minimize court involvement (e.g., attorney-negotiated plea agreements rather than trials). This point of view suggests that faster case processing is detrimental to the quality of justice.

On the other hand, some observers see timeliness as only one of many positive and compatible attributes that characterize well-functioning court systems. Other important values such as affordability, access, and due process—like timeli-

ness—will be achieved only if court leaders and managers clearly articulate key values and then organize their resources to monitor their performance and meet their new expectations. As a result, the achievement of time standards may not necessarily be in conflict with quality. Both timeliness and quality have a common prerequisite: sound management, competent practitioners, and effective use of resources. That point of view guides the current research.

❧ Statement of the Problem

Untangling the relationship between timeliness and case processing quality requires defining and conceptualizing each idea. We measure timeliness as the number of days between the indictment of the defendant on a felony charge and the final resolution of the case. Describing quality in the context of case processing is far more difficult.

Legal philosophers have discussed the quality of justice for thousands of years, but they have rarely, if ever, stated their conclusions specifically and concretely enough to be applied precisely by others to the everyday work of the courts. Certainly, there is no argument that a central feature of quality case processing is the extent to which trial courts provide due process and equal protection to all who come before them. The goal of courts is not simply to decide cases, but to decide them in a fair and impartial way. Yet, despite (or, perhaps, because of) the fundamental importance of quality, there has been relatively little effort to develop indicators of quality that can be used in a systematic way to measure court performance.

In this study, we draw on Standard 3.3, Equality, Fairness, and Integrity, of the *Trial Court Performance Standards* to develop a measure of case processing quality that relates directly to timeliness. Focusing “on what many consider the essence of justice,” Standard 3.3 explains that the decisions and actions of trial courts should be based on individual attention to each case. It further requires that the court’s decisions and actions be in proper proportion to the nature and magnitude of the case. In addition, we argue that meaningful and effective advocacy is more likely to occur in criminal justice systems that are well managed, adequately resourced, sufficiently adversarial, and home to competent counsel. *Therefore, our use of the term quality case processing focuses on one critical dimension of quality: the extent to which cases are given individual attention and whether the criminal court system is con-*

*ducive to providing effective advocacy to cases.*⁸²

Evidence of individual attention to cases in the nine sites was gleaned from the statistical model presented in Chapter 3. Courts tend to treat cases in *relatively* the same fashion. The more serious cases generally take longer to resolve than the less serious cases in almost all courts, although there may be absolute differences in case processing time for each given category of offense in faster and slower courts. For example, homicide, armed robbery, and sexual assault cases take longer to resolve than burglary and theft cases, drug sale and possession cases, and cases involving driving under the influence of drugs or alcohol. This finding, which we interpret as adherence to a norm of proportionality, calls into question the notion that faster courts achieve their speed by adopting “assembly line” justice. The case-level data suggest that defendants get individual attention based on the severity or complexity of their case whether the overall case processing time in their court is among the most or the least expeditious. Yet, evidence of proportionality does not explain why some courts are able to provide individualized attention to cases within much tighter time frames than other courts.

Do court systems that achieve timeliness also provide effective advocacy, or are tight time frames achieved at the expense of effective advocacy by attorneys? Of course, determining whether a particular court system maintains effective advocacy will always involve some degree of subjectivity. In response, we delineate and construct a set of measures that experts in the field of judicial administration have identified as key ingredients of effective court operations. Our measures are based on the attitudes of prosecutors and criminal defense attorneys in four areas: (1) the presence or absence of clear court management policies, (2) the degree of interagency coordination and cooperation, (3) the competency of opposing counsel, and (4) the sufficiency of court system resources. We assert not only that information on these four areas provides critical insight into alternative criminal court system environments but also that the information on attorney attitudes aids the understanding of important dimensions of case processing quality. Therefore, the fundamental hypothesis in this chapter is that the attorneys’ views

⁸² We acknowledge that we have not discovered a universal definition of quality that applies to every circumstance, every situation, and every aspect of the American legal process and all of its possible outcomes. We are limited in our scope to the handling of felony cases, which is the setting in which the value of timeliness also is based.

on these four areas are related in particular ways to timeliness and the potential for effective advocacy.

The remainder of this chapter is organized into a two-stage process. The first stage is the development of an analytical framework based on the concept of efficiency that clarifies the relationship between timeliness and quality.⁸³ Efficiency is a pertinent and helpful idea because efficient court systems can be shown to be in a better position to achieve both greater speed *and* case processing quality than less efficient courts. As a result, the real challenge confronting courts is to increase efficiency as the means to improve performance on multiple dimensions (e.g., timeliness, affordability, access) instead of seeing the interests of timeliness and the interests of quality as polar opposites. The goals of timeliness and quality are jointly achievable, at least under some conditions, rather than mutually exclusive under all conditions.

Second, we analyze a set of mail questionnaire responses received from prosecutors and defense attorneys in the nine courts to determine if and how the four attitudinal dimensions of quality vary by average court processing time. Perhaps the shorter overall processing times in faster courts are not achieved by a reduction in proportionality, but by an excessive and unsustainable strain on resources. One might argue that the avoidance of delay is paid for by a reduction in the adversary posture of the attorneys,⁸⁴ increased bickering about staffing and caseloads, and a general drop in job satisfaction among prosecutors and criminal defense attorneys. On the other hand, faster courts may simply be making more efficient use of their resources without sacrificing quality. Successful and sustained initiatives to improve case processing time might occur only in court environments that also support and encourage an overall commitment to case processing quality. Thus, to determine what differentiates work orientations in faster and slower courts means coming to terms with the fundamental question: Must some aspect of quality suffer to improve timeliness? Or can a court have more

⁸³ The “efficient” solution often connotes, in everyday language, the fastest or cheapest approach. This definition is not the formal definition of efficiency nor the one that we employ. Another way to think of the level of efficiency is as the level of “jurisdictional effectiveness.” This definition focuses attention on the goal of efficiency: to use resources in their most productive fashion to produce the most of what a jurisdiction values. A promising starting point, based on our reading of the literature on time standards, is that jurisdictional effectiveness can be gauged by reference to two fundamental values of courts: timeliness and quality case processing.

⁸⁴ See, for example, Sudnow (1965) and Blumberg (1967).

productivity, quality, and speed simultaneously?

Attorneys' views on these four broad issue areas allow us to clarify what practitioners know about issues related to court performance, to determine how they feel about each issue and how it is seen in their court, and to assess the likelihood that the individual will take action based on the attitude. Our analysis is designed to test the basic hypothesis that there are distinct differences between the attitudes among attorneys in faster courts and the attitudes among attorneys in slower courts.

🦋 Analytical Framework: Efficiency and the Productivity Frontier⁸⁵

In efficient court systems, the prosecution, defense, and judiciary perform the key activities and procedures necessary to resolve criminal disputes *better* than their counterparts in less efficient courts. Focusing on efficiency means determining the policies and practices that allow an organization to better use its personnel, procedures, and technology to achieve its desired ends. For example, judges can better manage the flow of cases by limiting continuances and ensuring firm trial dates, prosecutors can positively affect the flow of cases through early screening of cases, and defenders can work to ensure the early appointment of defense counsel. This concept also covers improving interagency coordination and cooperation between the prosecution and defense bar. One obvious example is ensuring the early and complete exchange of discovery so that pretrial negotiations can proceed in a fair and timely fashion.

Differences in efficiency among court systems are pervasive. Some prosecutor and defender offices and courts are able to get more out of their available resources than others because they eliminate wasted effort, employ more ad-

⁸⁵ This section draws extensively on some basic principles of economics related to the concept of efficiency. Getting as much as possible out of scarce resources—using resources effectively—is what is meant by efficiency. We use this idea to examine the relationship between timeliness and case processing quality. Because this topic is complex, we attempt to analyze and clarify central issues through the use of a model called the “productivity frontier.” Because the goal is to understand whether different levels of case processing quality exist in faster and slower courts, we begin by thinking about and focusing our attention solely on these two, albeit important, features of court performance. We use this model because thinking analytically is a good warm-up exercise for viewing the world in which we live. The benefit of the exercise, of course, is to better understand court performance in the real world. While we believe using the language and models of economics furthers our understanding, economics also acknowledges that the world is a complex place.

vanced technology, inspire employee motivation, or have greater insight into managing particular activities or sets of procedures. Such differences are important because they directly affect how cases move between the events that occur from filing to disposition.

The Productivity Frontier

One way to recognize and to appreciate the critical role of efficiency is to imagine a *productivity frontier* that shows the maximum amount of quality and timeliness that a court could produce using the sum of all existing types of “best practices” (see Figure 4.1). That is, the frontier represents *efficient* operation: the highest combination of quality and timeliness (or “justice”) that a court system can attain if it maximizes available attorney skills, management techniques, and available technology.⁸⁶ A court’s choice between achievable degrees of timeliness and case processing quality can be expressed with this diagram by measuring the quality of case processing along the vertical axis and timeliness along the horizontal axis.⁸⁷ Any particular combination of timeliness and quality case processing is called *efficient*⁸⁸ if it corresponds to a point on the frontier (for example, point A₂) rather than to a point in the interior of the region (for example, point A₁).

The concept of a frontier also underscores that a court’s resources can be used to achieve very different combinations of quality and timeliness. For example, a court system might allocate its resources so as to process all of its cases in a *very* timely fashion, but with little concern for individual justice and effective advocacy. Such a situation of speedy case processing with lower levels of

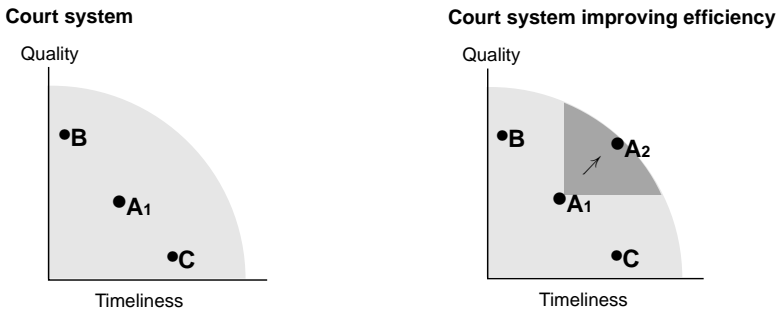
⁸⁶ What is considered efficient or inefficient only has meaning in reference to using resources to produce more of what is valued. For us, the many and distinguished groups that have promulgated or come out in favor of time standards have determined that both timeliness and quality case processing are primary values of the courts. The model of the productivity frontier can apply to a wide range of potential values. One could examine the relationship between specific values such as, say, accessibility, affordability, or avoidance of bias and, say, public trust and confidence. Efficiency would then be judged on how well resources were used to produce this alternative set of values. It follows that disagreements in society about the relative efficiency of particular goals in the criminal justice system (such as timeliness and quality case processing or accessibility) are really disagreements about the relative value assigned to those goals. The question is not, “What is *really* more efficient?” but rather, “Who has the *right* to determine what are the primary goals of the administration of justice?”

⁸⁷ Moving up the vertical axis or to the right on the horizontal axis represents higher levels of quality and timeliness, respectively.

⁸⁸ By definition, a court has organized its resources *efficiently* if it is someplace on the productivity frontier. Being on the frontier means that more of, say, quality case processing can be produced only by sacrificing some degree of timeliness. If one is on the frontier, it is impossible to increase the output of both goods at the same time.

case processing quality is represented by point C. On the other hand, a court system might choose to provide exquisite attention and detail to every case but ignore timeliness (point B). However, a court can avoid these extreme choices by choosing to shoot for one of many possible arrangements of timeliness and case processing quality indicated by the curve of the productivity frontier.

Figure 4.1: Productivity Frontier



The frontier is an analytical tool for discussing improvements in efficiency that will allow a court to achieve more of what is valued in court performance.⁸⁹ For court systems in the real world, the frontier is primarily of value in clarifying that timeliness and quality are not necessarily antithetical to one another. No court system, of which we are aware, is currently operating at the frontier or, in other words, at maximum efficiency represented by point A₂ on the figure.

As a consequence, the current levels of quality and timeliness provided by actual court systems can be shown by locations within the interior of the frontier. Three possible examples are points A₁, B, and C in Figure 4.1. Moreover, these three points reflect what practitioners and researchers often say about courts (e.g., “court B is slow, but it has a real commitment to ensuring public trust and confidence” or “court C really moves the cases, but everyone is overworked”).

⁸⁹ This discussion of efficiency also helps underscore that timeliness and quality case processing are both “economic goods.” All economic goods have value in the sense that in order to get more of any good, we are willing to forgo some amount of any other good. The temptation is to think that the term *goods* applies only to tangible goods. This temptation must be resisted. Economic goods are “all valued things that are scarce” (Posner, 1979), from the most mundane tangibles like guns and butter to the most metaphysical intangibles like “justice.” Justice is a valuable good for which most of us are willing to forego some amount of other valued goods. This concept is underscored in our criminal justice system in which procedural expediency is relinquished in order to give the accused a presumption of innocence.

Because judges and court managers commonly believe that courts are good at some aspects of performance and not so good at others, one can see why they are concerned about a trade-off between timeliness and quality case processing. In our example, one court is more oriented toward quality (court B), one court toward timeliness (court C), and the third is somewhere in between (court A₁), but no court is better on *both* dimensions. However, visualizing efficiency through a framework like the productivity frontier demonstrates that timeliness and quality are not incompatible; more of both is possible (e.g., court A₁ moves toward point A₂). This conclusion will be demonstrated by addressing two key questions: (1) What are the benefits of improved efficiency? and (2) How do we measure the current position of different courts systems with respect to the productivity frontier? We address the first question below and the second in later sections of this chapter.

Improving Efficiency

A central point of this discussion is that if a court is operating inefficiently (inside the frontier), then the court has the opportunity to achieve more of *both* speed and quality. This improvement is signified by moving in the direction from A₁ to A₂ inside the shaded area. An allocation of timeliness and quality case processing in one court is said to be “Pareto-preferred”⁹⁰ (or more efficient) in comparison to another court system if in the first arrangement the court is performing at a higher standard with respect to *both* timeliness and quality. Consider two different combinations of timeliness and quality called A₁ and A₂. A₂ is Pareto-preferred to A₁ because A₂ represents both greater timeliness and enhanced case processing quality relative to A₁. A court system operating at point A₂ is performing at a higher level—more efficiently—than a court operating at point A₁. Simply stated, “More of what we value is preferred to less of what we value.” This last point also suggests that critics of efficiency are logically confused. A society or court that placed “too high a value on efficiency” would be one that placed too high a value on using its resources in the most valuable way. That’s an odd notion at best.

The productivity frontier can apply to an entire court system, as discussed above, to groups of linked activities like plea bargaining, or to individual attorney activities. We reference Figure 4.1 again, but use the framework to discuss improvements in the efficiency of individual attorneys. As a basic illustration, consider two attorneys (corresponding to points A₁ and A₂ in Figure 4.1) with relatively similar caseloads who structure their time quite differently in prepar-

⁹⁰ Named for Vilfredo Pareto, Italian economist and sociologist, 1848-1923.

ing for pretrial and trial activities. One attorney (A_2) might sort out the routine from the more complex cases and attempt to resolve several of the routine ones individually, but within a designated period of time, and to set aside the complex cases, each of which requires a concentrated block of time to research, investigate, and analyze. The other attorney (A_1) might follow the principle of first in, first out and develop a work schedule that fits the exigencies of each individual case regardless of its complexity.

It is our assumption that the work required to establish gradations of cases has payoffs in the long run. Attorney A_1 's orientation accentuates the uniqueness of each case despite that the attorney has a limited amount of time to devote to all of the cases. On the other hand, attorney A_2 is fitting the cases into his or her available work time rather than letting the nature of each case determine what work is required. Hence, in the end, attorney A_2 not only gets the job done within a shorter time frame but also might actually be better prepared in all instances. This situation is illustrated by showing attorney A_2 's position above and to the right of attorney A_1 's position in the figure.

Our basic supposition is that in efficient court systems, the participants will resolve the same type of case in a shorter period of time—with no loss of quality—than the participants in less efficient court systems. *Judges and attorneys in almost all court systems provide proportionality in case processing, but the participants in some systems accomplish the necessary tasks more efficiently than their colleagues in other systems.* In addition, we suggest that courts often can improve on multiple dimensions of performance at the same time. What were once believed to be real trade-offs—between quality case processing and timeliness, for example—may simply be illusions created by inefficiency or unfounded fears about diminishing due process. Hence, we contend that an underlying basis for the observed variation in overall processing times among the nine court systems under study is the variation in the extent to which the systems are efficient.⁹¹ Focusing on improved efficiency underscores the necessity of developing a workable measure of quality case processing in the courts.

⁹¹ There is a contrary point of view based on confusion over the term *efficiency*. Basically, the counterargument is that timeliness is in conflict with quality and that every case deserves as much time as every other case. This contrary point of view, of course, fails to fully consider the concept of scarcity, the sad fact that to get more of any good we must forego other valued goods. Bazelon (1971), for example, rejects as meaningless the notion of a trade-off between quality and efficiency. We agree. The proper trade-off is between quality and other valued goods such as timeliness, because efficiency is defined as the optimal trade-off between valued scarce goods.