ADJUDICATION AND SENTENCING IN A MISDEMEANOR COURT: THE OUTCOME IS THE PUNISHMENT

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A description and analysis of the Columbus (Ohio) Municipal Court is presented in the context of comparison with Malcolm Feeley's recent study of the New Haven lower court. The findings suggest that the Columbus court is much more severe in the sanctions imposed upon convicted defendants. These differences are attributed, in part, to contrasting local political cultures whose influence upon courts is mediated by police department orientations, police-prosecutor relationships, and methods of judicial assignment.

I. INTRODUCTION

A recently published work on misdemeanor courts concludes that the major punishment of defendants occurs during the processing of their cases (Feeley, 1979). Feeley contends that the pretrial costs associated with arrests on misdemeanor charges typically outweigh any punishments imposed after conviction. The need to make bail, hire an attorney, be present at court appearances, and even help prepare one's defense drain the economic and psychological resources of many defendants, whether they are ultimately adjudicated guilty or innocent. By contrast, the punishments meted out to defendants upon conviction appear insubstantial. Few are incarcerated, and fines rarely exceed fifty dollars.

These findings and arguments have a distinct appeal. They provide a new and creative interpretation to case processing in the lower criminal courts, one at variance with our

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understanding of felony courts. Yet as Feeley himself acknowledges, his work is a case study. His data are drawn exclusively from the New Haven (Connecticut) Court of Common Pleas. What about other misdemeanor courts? Is it reasonable to believe that most lower courts are like New Haven's? Studies of criminal justice and political culture might suggest otherwise. Levin's (1977) study of the felony courts of Pittsburgh and Minneapolis indicates substantial differences in sentencing severity, attributable in part to the political culture or values of the two communities. Levin found that sentences were typically less severe in the highly partisan, ethnically diverse, working class city (Pittsburgh) than in the reform-minded, socially homogeneous city (Minneapolis). Eisenstein and Jacob (1977) found sentencing practices in Baltimore to be much more harsh than in either Detroit or Chicago, and they attributed the greater harshness to a heritage of conservatism and racism in that southern border city. Likewise, the working environments of courts differ. Church *et al.* (1978) found that the pace at which cases are processed differs markedly from one large city to another, in part because of intangible factors which they termed "local legal culture." And Ryan *et al.* (1980) found that various administrative procedures, relationships among courtroom work group members, and judicial perceptions are sensitive to the partisan climate of the local political environment. In short, the character of a community—its history, politics, and life-style—affects what takes place in its courts, both in terms of process and outcomes.

If the relationships between political culture and trial courts are viewed at all seriously (see Kritzer, 1979), one must question not only the generalizability of Feeley's data but also his primary argument. More data from different communities would help to show whether the process actually constitutes a substantial punishment in the lower courts. These data should speak to the processing of cases and defendants; because it can be expected that some courts minimize pretrial costs by expediting cases, liberalizing indigency requirements for counsel, and utilizing cash bonds infrequently. Perhaps even more important, additional data should be collected on case outcomes, for likewise it can be expected that lower courts vary in the severity of sanctions imposed upon convicted defendants.

Data relating to process and outcomes in the Franklin County, Ohio, Municipal Court (Columbus) are reported below. This inquiry, like Feeley's, is a case study, but one that serves

as a counterpoint. The findings suggest that New Haven may be among the least punitive lower courts in the nation. The Columbus court is sufficiently more severe in its sanctions—and less demanding in its process costs—that the outcome is the primary punishment. Throughout the article, comparative reference is made with an eye toward dramatizing the very real differences between the two courts. In the conclusion, some explanation as to why the courts differ is provided. As background for that analysis, an overview of the two cities and their courts follows.

Columbus and New Haven: Contrasting Local Political Cultures

Columbus is a medium-sized American city, more populous and more sprawling than New Haven. Over half a million people live in the city of Columbus, a figure sharply on the rise in the 1960s and early 1970s, compared with a steadily declining population in New Haven of only 125,000. The citizenry of Columbus is better-educated, more affluent, and of different ethnic origins than that of New Haven. Feeley (1979: 37-38) aptly characterizes New Haven as a town "beset with the standard ills of many old urban areas—shrinking population, declining tax base, deteriorating housing, smog, poor schools, encroaching superhighways, and an increasing underemployed minority population . . . ." In a comparative vein, Feeley goes on to say:

> It [New Haven] represents neither the worst nor the best of American urban centers. It does not convey the sense of hopelessness and decay that observers report in such urban centers as Newark or Gary, nor . . . the same sense of optimism as do new and more culturally homogeneous and prosperous cities as Des Moines or Minneapolis . . . [or, one might add, Columbus].

These differences in the physical and cultural characteristics of the two cities predictably presage differences of political culture. New Haven is predominantly Democratic in partisanship; Columbus is heavily Republican—an "urban Republican stronghold" (Barone *et al.*, 1980: 694). Differences in partisan orientation are evident in Presidential votes, mayoralty elections, and congressional representation. Columbus has not had a Democratic mayor in the last decade; New Haven has not had a Republican mayor in two decades. Two conservative Republicans represent portions of Columbus and its surrounding suburbs in Washington; one liberal Democrat represents New Haven. The political affiliation of judges, too, parallels community orientations, though judges are formally appointed on a statewide basis in Connecticut and

elected locally in Ohio. Feeley (1979: 63) reported four Democratic and three Republican judges in the New Haven lower court. At the time of the study in Columbus, twelve Republican judges sat with a lone Democratic judge in that municipal court. Equally important, the significance of partisanship in the delivery of public services is much greater in New Haven than in the "good government" atmosphere of Columbus.

The political structure of the two communities also differs. Though both claim mayor-council forms of government, the similarity ends there. New Haven has been described as having a pluralistic leadership structure (Dahl, 1961; Feeley, 1979: 37). More impressionistically, Columbus has been described as relatively monolithic, dominated economically by big banks and insurance companies and ideologically by the Wolfe family and their newspaper (Barone *et al.*, 1980: 694-695), and lacking New Haven's "vigorous group of residents involved in actively trying to cope with problems" (Feeley, 1979: 38).

The courts also look quite different in their personnel, operations, and informal relationships. These differences are often traceable to the local political culture. Feeley (1979: 53-61) reports a substantial patronage system surrounding the New Haven courthouse, even after reforms intended to alleviate political influence in the courts were enacted. For example, judgeships are viewed as rewards for faithful party service. Prosecutors and public defenders are likely to be drawn from families active in the local political organizations. Lower-level personnel (deputies, clerks, etc.) are likely to come from the ranks of "ward leaders and vote mobilizers." Columbus, by contrast, reflects little political influence of this kind in its courts. Judgeships come either from association with the governor or a popular local campaign, possibly aided by bar endorsement. Prosecutors and public defenders need not have political sponsors. Lower-level court personnel are recruited through an elaborate system of checks and balances designed to remove partisan politics and judicial whim.

The orientation of the police department and its relations with the prosecutor's office are also quite distinctive in the two communities. Feeley (1979: 45-47) describes the New Haven police department as oriented to dispute resolution or, in Wilson's (1968) terminology, "order-maintenance." Accordingly, it is not surprising that the police appear to play a small role in the development of prosecution cases, having little communication with the prosecutor and rarely appearing as

witnesses in court. Prosecutors seem dominant vis-a-vis the police in the New Haven court, albeit both share dispute-processing views of the role of the lower court. In Columbus, the police department is much better characterized as "law enforcement" oriented, accounting for the importance which police officers attach to successful prosecution of minor cases. Officers regularly appear as witnesses in brief trials and are ready to appear on other occasions when a plea is entered. Indeed, when police officers "hang around" the Columbus court waiting for their cases to be called, they often sit in other courtrooms watching outcomes (with occasional astonishment at the perceived leniency of some judges). In short, by custom the police in Columbus have been an important, perhaps dominant, force in the lower court, much to the chagrin of the local defense bar.

Finally, there are differences of court structure, rooted in political history, that affect relationships among courtroom actors, notably between judges and others. Connecticut, unlike Ohio, does statewide assignment of judges (Feeley, 1979; Ryan *et al*., 1980), which in practice means that lower-court judges are frequently rotated. Feeley (1979: 67) argues that one important consequence of rotation is the gravitation of judicial responsibility toward prosecutors and others permanently assigned to one court. Judges in New Haven have been heard to ask prosecutors about the "going rate" for particular offenses, suggesting a desire to adhere to work-group norms. In Columbus, the judges—who are elected or appointed to that municipal court—are much more individualistic and autonomous in their approach to sentencing.

New Haven, in sum, is a criminal court system that reflects the "particularistic values of ethnic, religious, political, and family associations" in its rendering of "swift, substantive justice" (Feeley, 1979: 61). Columbus, by contrast, is a system that reflects the universalistic values of professional competence and technical efficiency in its rendering of swift but formal justice through the mechanisms of an adversary system as applied to a misdemeanor court.

II. METHODS OF DATA COLLECTION

Data were collected on 2,764 cases in the Franklin County (Columbus) Municipal Court. These represent the universe of cases scheduled for a "pretrial" during March, April, and May of 1978. Sampling from pretrials was necessitated by the court's assignment and scheduling systems: only cases which

are *not* disposed of at arraignment can be scheduled for a pretrial hearing.[1] Nevertheless, cases scheduled for a pretrial are not an unrepresentative sample of all cases. Pretrials are routinely scheduled for nearly *all* cases which proceed beyond arraignment,[2] including a wide variety of criminal and traffic cases.

All available information was collected for each of these cases, including type and seriousness of offense, number of charges, type of defense counsel, judge at pretrial and disposition,[3] mode of disposition, and sentence or sanctions imposed. Because of the court's effective computerized system, there were virtually no missing data on these items. Additionally, prior record information was collected from prosecutor files for OMVI (drunk driving) cases.

Formal, semi-structured interviews were conducted with the supervisor of the municipal unit of the prosecutor's office (hereafter, Prosecutor), two assistant prosecutors, and an administrative assistant. Also interviewed were the Supervisor of the municipal unit of the Public Defender's office (hereafter, Defender), supervisors in the Probation Department and the Pre-Trial Release Program, and six of the thirteen municipal court judges. These interviews focused variably upon modes of case disposition, judicial styles in plea bargaining and sentencing, the treatment of OMVI cases, the operations of arraignment court, and the role of the pretrial stage. In addition, ten of the thirteen municipal court judges were observed, typically for several hours at a time, usually in pretrial sessions[4] but also at arraignments, in trials, and in the entry of guilty pleas. The observations focused upon judicial behaviors such as sentencing philosophy, involvement in plea negotiations, and relationships with prosecuting and defense attorneys.

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[1] The percentage of cases disposed at arraignment is not available.

[2] Cases in which there is no jury demand can be scheduled directly for a court trial, without the scheduling of a pretrial. These constitute a small percentage of all cases, perhaps one hundred in the three-month sampling period.

[3] Although there is a central scheduling office, the court operates under an individual case assignment system (after arraignment), in which the same judge hears a case from the pretrial through final disposition. The individual assignment system is mandated by Ohio Rules of Superintendence promulgated for the lower trial courts in 1974 by the state supreme court. (Ohio Sup. R.4).

[4] Pretrial hearings in this court are always conducted in the courtroom, in full view and hearing of all. Chambers are rarely used for plea negotiation discussions.

III. THE COLUMBUS COURT'S CASELOAD: AN OVERVIEW

The Franklin County (Columbus) Municipal Court has jurisdiction over a variety of matters, including small claims, civil cases up to $10,000, and preliminary hearings in felony cases. As Table 1 indicates, the court's misdemeanor caseload is composed of almost equal proportions of traffic and criminal cases. Operating a motor vehicle under the influence of alcohol (OMVI) is the most frequent type of case, and it accounts for nearly two-thirds of all traffic cases. Other traffic cases include reckless operation of a motor vehicle (ROMV), driving without a valid license or with a suspended license, hit-and-run, speeding, and lesser violations. The dominance of OMVI cases is not unique to Columbus. Although arrests for drunk driving are more frequent in Columbus than elsewhere in Ohio (*Ohio Courts*, 1978), other municipal courts also report a large percentage of drunk driving cases (see Neubauer, 1974).

Table 1. Distribution of the Court's Misdemeanor Caseload*

	Percent	N
TRAFFIC		
OMVI	30.2	834
Other Traffic	17.8	492
CRIMINAL		
Assault	17.1	472
Theft	10.8	300
Bad Checks	7.1	196
Other Criminal	17.0	470
	100.0	2764

* Limited to cases scheduled for a pretrial.

Assault is the most frequent type of criminal case, followed by theft and passing bad checks. Other criminal cases include trespass, carrying a concealed weapon, obstructing justice, disorderly conduct, soliciting, drug use, public indecency, housing code violations, fleeing from a police officer, and resisting arrest. The Columbus court's criminal caseload is presumably lightened by the operation of a night prosecutor program which screens all citizen-initiated complaints and diverts interpersonal disputes and bad check cases, in substantial numbers, from the court (see Palmer, 1975).

The majority (58 percent) of cases involve a single charge against a defendant, but a substantial proportion (42 percent) involve more than one charge (typically, two or three). Multiple-charge cases most often occur with the OMVI offense, where another more visible violation brings the intoxication of

the driver to the attention of the police officer. Only 23 percent of OMVI cases involve a single charge; other violations, especially driving on the wrong side of the road, out of control, across lanes, or speeding, are likely to accompany a charge of drunk driving. Similarly, certain other traffic offenses such as driving without a valid license are likely to involve multiple charges, as a result of more visible traffic violations. By contrast, most criminal cases involve only a single charge against a defendant.

Modes of Case Disposition

The court utilizes a number of ways to dispose of cases that proceed beyond arraignment. These include guilty plea to the original charge, guilty plea to a reduced charge, court trial, jury trial, bond forfeiture, dismissal, and—in multiple-charge cases—combinations of these. In addition, some defendants fail to appear, and these "no shows" are treated, for statistical purposes, as case terminations.

Almost half of the sample of cases in Columbus were disposed through a guilty plea, similar to the percentage in New Haven (Feeley, 1979: 127). The majority of these represent pleas to *reduced* charges, indicating a form of charge bargaining. Case type is the most important factor in determining whether a reduction of charges will occur (see Table 2). In OMVI cases in particular, a charge reduction is common. This reflects some uneasiness in imposing the required incarceration where a defendant is convicted of drunk driving.[5]

Three other factors, not readily available in case files, were cited by the prosecutor as influencing his decision to reduce charges: prior record of the defendant, strength of the evidence, and actions of the defendant vis-a-vis the arresting officer. Where the arresting police officer takes offense at the actions or attitude of the suspect, a charge reduction will not usually occur. This reflects the police dominance of the lower court described earlier. Only recently have public defenders fostered the idea that the prosecutor, not the police, should run the courtroom. The public defender's office still feels that prosecutors defer "too much" to police officers. Strength of evidence, on the other hand, may be the kind of nebulous

[5] Conviction of drunk driving carries a statutory minimum incarceration of three days. Judges may substitute for the jail term a confinement of a similar period in a drunk driving program. For a theory of penalty mitigation in OMVI cases, see Ross, 1976.

factor which operates more in the minds of prosecutors than in their actual behavior. Individual prosecutors, in this and other misdemeanor courts, rarely have the time or inclination to gauge evidentiary matters precisely.

Prosecutors and defense counsel are the primary actors in the forging of guilty pleas, particularly in charge bargaining. But what about the role of the trial judge? Trial judges in misdemeanor courts do not always restrict their role to ratifying bargains struck by other parties (Ryan and Alfini, 1979). Observations in Columbus suggest that at least a few judges do actively engage in sentence bargaining from the bench. For example, Judge H,[6] who has the reputation for making sentence commitments in advance as his normal practice, remarked to defense counsel in one case that was observed: "If the defendant wants to plead, I'll put on a fine and wrap it up today" (assault case). Judge D also encouraged guilty pleas, through a mixture of occasional sentence leniency and frequent gratuitous comments to defendants about the "break" they were getting. Furthermore, Judge D sometimes intimated that he would find a defendant guilty were the case to go to trial ("you gotta keep your eyes open" to a defendant charged with jay walking, or "a driver has a responsibility, even under icy road conditions" to a defendant ticketed in an auto accident).

Determining exactly how much negotiating actually precedes the guilty pleas entered in this court is not simple. Charge bargaining may involve little more than the application of standard discounts, unless there are unusual circumstances. Sentence bargaining occurs in some guilty pleas, but its frequency varies from judge to judge. Nevertheless, the amount of bargaining accompanying guilty pleas in Columbus is almost certainly higher than, say, in Neubauer's Prairie City or even Feeley's New Haven. Unlike Prairie City in 1970 or New Haven more recently, many more cases in Columbus involve defendants represented by counsel. Defense attorney presence seems to lead inexorably toward increased bargaining in the guilty pleas entered in misdemeanor cases (see Alfini and Doan, 1977: 431; Neubauer, 1974: 209).

Trials are very infrequent in Columbus, but they are by no means the extinct species which Feeley reports in New Haven (1979: 127). In the sample of 2,764 cases, 32 (1.1 percent) were

[6] All judges will be referenced by alphabetic letters selected at random in order to preserve anonymity. Though such a promise was not required to conduct observations, it was needed to gain access to case data.

resolved by jury trial and 46 (1.6 percent) by court trial.[7] One gained the distinct impression from interviews and observations that trials are welcomed by many judges and attorneys, as an occasional relief from the monotony of calendar calls. Judge G remarked, "I enjoy trials when I get two good lawyers." The defender noted of Judge G, "He gives you a good trial." Not surprisingly then, trials proceeded in a thorough and unharried manner.

Comparatively serious cases are more likely to go to a *jury* trial. For example, OMVI cases account for 30 percent of the sample of cases but 41 percent of all jury trials, and assault cases represent 17 percent of the sample of cases but 34 percent of all jury trials. By contrast, less serious cases more frequently go to a *court* trial. For court trials, OMVI cases are significantly underrepresented, whereas other traffic cases comprise a substantial share.

Conviction at trial is likely, but far from certain. Defendants fared better at jury trials, where the conviction rate was 56.3 percent (18 of 32 cases). In court trials, the conviction rate was 71.7 percent (33 of 46 cases). Likelihood of conviction varies by case type. Combining jury and court trials, the conviction rate was 5.5:1 in OMVI cases, 4:1 in theft cases, 3:1 in other traffic cases, 3:2 in other criminal cases, and a mere 2:3 in assault cases. The individual judge also makes some difference. Consider that two of the court's most active plea-bargaining judges, D and H, did not acquit a single defendant in the seven court trials which they heard. Their "inducements" to defendants to plead guilty, then, were reinforced by a reluctance to find for a defendant in a court trial.

Bond forfeitures are not convictions in a legal sense. In the words of one prosecutor, they represent a "hybrid between conviction and dismissal . . . a sentencing alternative occasionally used to dispose of cases expeditiously."[8] In Columbus, cases are sometimes disposed by bond forfeiture upon agreement of both sides. There may be evidentiary problems for the prosecutor, or uncertainty by the defense as to the outcome of a trial or plea negotiations. The court

[7] But see note 2 above.

[8] Bond forfeiture is also used to dispose of petty cases (e.g., disorderly conduct) where the defendant fails to appear at arraignment, after having made bond with the court. Feeley (1979: 138) found that 16.6 percent of his sample were disposed in this way.

receives some money, and the defendant escapes the stigma of conviction. Bond forfeitures occur most often in minor cases.

Dismissals are a frequent occurrence in Columbus. One-third of the cases in the sample were dismissed (*nolle prosequi*). According to both the prosecutor and the defender, the most frequent cause of dismissal is the failure of the complaining witness to prosecute. These perceptions are supported by data collected and analyzed in the prosecutor's office. An examination of dismissals in January, 1979, revealed the lack of a prosecuting witness to be the most frequently noted reason. Most often it was a civilian witness, but occasionally it was the failure of a police witness to appear.[9]

Other reasons cited for dismissals were "at the request of the prosecutor," correction of code violations, and restitution. Some prosecutor requests for dismissal probably do result from lack of preparation (as one person in the prosecutor's office charged),[10] but primarily it is a screening decision. Because police-filed complaints are not screened before the pretrial session, this court appearance offers the first opportunity to weed out weak cases. Given the power of the police in municipal court, it may be easier for prosecutors to request dismissals in the "full view," and occasional scrutiny, of the judge rather than in the "secrecy" of an aggressive screening unit in the prosecutor's office.

The role of the judge in the decision to dismiss appears to be little more than ratification of attorney requests. According to the prosecutor, judges play a significant role only "very occasionally." The defender cited the instance of prosecutorial objection to a defense motion for dismissal as the only occasion for judicial scrutiny. In interviews, judges themselves typically indicated a minimal role in the decision to dismiss. In the words of Judge G, "prosecutors should know." Thus, just as prosecutors defer to police in the charging decision, judges defer to the prosecutor in the screening decision at the pretrial.[11]

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[9] To alleviate this problem, a Police Liaison Program was recently instituted, whereby a small number of police officers are assigned on a regular basis to the courtroom for pretrial sessions.

[10] Until 1980, prosecutors were assigned cases on a master calendar principle, from one to two weeks in advance of a court date. Thus, the prosecutor assigned for the pretrial was not necessarily the prosecutor on the day scheduled for trial, in the event it was not resolved at the pretrial.

[11] Interestingly, though most dismissals did occur at the pretrial session, a significant percentage of all dismissals (22 percent) occurred on the scheduled trial date.

Cases with more than one charge may be disposed in more than one way. For example, one charge may be dismissed if there is a guilty plea to a second charge. This is, in fact, the most common pattern of multiple disposition in Columbus. It is also common in New Haven, where Feeley refers to this apparent give-and-take as "splitting the difference" (1979: 134). There may, however, be less bargaining in these dispositions than Feeley implies. It is hard to believe that many defendants feel a sense of victory when they are convicted on one charge rather than two. This must especially be the feeling among defendants who face conviction in drunk driving cases, the very defendants most likely to receive a "splitting the difference" disposition.

Defendants in Columbus who fail to appear for a pretrial session in the courtroom are not as lucky as some of the "no-shows" in New Haven. It is one thing not to appear at arraignment in a petty case; these cases in Columbus typically result in a bond forfeiture and termination. Failure to appear at a pretrial invariably results in the issuing of a bench warrant by the judge, often with a substantial bond.[12] No precise data are available on the percentage of these defendants who return to court for disposition, but court participants think the figure is quite high. For the sample period, 12 percent of all defendants scheduled to appear at a pretrial session failed to appear.

Table 2 illustrates that the variation in disposition across types of cases is enormous. At one extreme, most assault cases (76 percent) are dismissed. This is partly because the civilian complainant often has a change of mind regarding prosecution, but partly reflects the poor conviction ratio (only 2:3) of assault cases actually tried. At the other extreme, OMVI cases are rarely dismissed (only 5 percent). The charge is a serious one and is typically accompanied by other traffic violations. Furthermore, acquittal at trial in OMVI cases is rare (1 in 5.5). Between these two extremes, variations are modest.

[12] The median amount is $300, with a few bonds set as high as $1,000 or even $2,500.

Table 2. Distribution of Case Disposition Modes, by Case Type*

	All Cases	OMVI	Other Traffic	Assault	Theft	Bad Checks	Other Criminal
Conviction at Trial	1.9%	2.2%	2.3%	1.9%	1.3%	1.0%	1.5%
Guilty Plea - Original Charge	17.3	19.5	35.0	5.1	7.3	9.2	17.1
Guilty Plea - Reduced Charge	28.0	64.1	18.1	4.7	27.0	1.0	11.2
Bond Forfeiture	6.3	.7	6.4	3.2	13.7	18.9	9.0
Dismissal	34.0	4.7	26.1	75.9	36.7	43.4	45.0
Acquittal at Trial	1.0	.4	.8	3.0	.3	0	1.1
No Show	11.5	8.4	11.3	6.2	13.7	26.5	15.1
	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
N	(2715)	(807)	(486)	(469)	(300)	(196)	(457)

* Disposition for multiple charge cases has been coded as follows. Dismissals have been disregarded in the presence of guilty pleas or bond forfeitures. Where there were guilty pleas to original and reduced charges, the disposition was treated as a guilty plea to a reduced charge. These coding decisions flow from discussions of multiple charge cases in the text.

IV. A MULTIVARIATE ANALYSIS OF CASE DISPOSITION

We have a limited range of variables with which to explain case disposition. Some of these variables are characteristics of the case (or what Feeley calls "legal factors"); others bear upon individual courtroom actors; one reflects the court's processing of a case. No information about the characteristics of defendants—e.g., race or age—was available.

A stepwise regression model was used to analyze data, in order to facilitate the disentanglement of joint effects among these variables. Type of case was operationalized as a series of dummy variables; also included were seriousness of charge (Ohio has five classifications of misdemeanor offenses ranging from six months incarceration to a $100 fine), the number of charges, the number of court appearances, the type of defense counsel, and the identity of the disposition judge. For the distribution of these variables, refer to Table A-1 in the Appendix.

Case disposition, a categorical variable, has been collapsed into two categories: adjudicated guilty or not guilty. Included in the "guilty" category are pleas to original or reduced charges, convictions at trial, and bond forfeitures. Included in the "not guilty" category are dismissals and acquittals at trial. (No-shows have been excluded from the analysis.) Treating bond forfeitures as guilty dispositions stretches the legal meaning of the disposition, but not their functional meaning. In Columbus, bond forfeitures are little more than a variant of the guilty plea.[13] Based upon this dichotomy, 61 percent of defendants were found guilty, and the remaining 39 percent were found not guilty.[14]

Table 3 illustrates that most of the explanatory variables entered in the regression equation are predictive of case disposition. The two most important variables are assault and OMVI cases. Assault cases are very likely to be dismissed, whereas OMVI cases are very likely *not* to be dismissed. Other case and structural characteristics are of some predictive value. By contrast, the identity of courtroom actors bears little upon disposition. The judge appears to make no difference once

[13] In Columbus, "no contest" pleas are counted as guilty pleas for the purpose of statistical record keeping. Some judges like to encourage defendants to plead "no contest" if that will facilitate a disposition, notably Judge D.

[14] The use of a dichotomous dependent variable in multiple regression analysis is less than ideal (see Goodman, 1972). Nevertheless, the distribution of case disposition is insufficiently skewed to warrant such statistical transformations as Goodman's log linear technique.

other factors are controlled. Presence of counsel also makes no difference. Type of counsel shows a very small effect: public defender cases are slightly more likely to result in not guilty dispositions, when other factors are controlled, than are private counsel cases.

Table 3. A Multivariate Model of Case Disposition: Stepwise Regression*

	Beta Weights**
Assault Case	.31
OMVI Case	−.24
Number of Charges	−.16
Number of Court Appearances***	−.13
Seriousness of Case****	−.09
Public Defender Counsel	.05
R_2 = .60	
R = 36%	
(N = 2279)	

* Case disposition is coded: not guilty (high), guilty (low).
** Each of the beta weights is statistically significant at .05; in no instance does the standard error approach B.
*** Number of court appearances is dichotomized, based upon the nonlinear relationship present in bivariate analysis: one appearance versus two or more appearances.
**** Seriousness of case is dichotomized, based upon a curvilinear relationship present in bivariate analysis: most and least serious coded high; in-between coded low.

The six variables listed in Table 3 account for fully 36 percent of the variation in case dispositions (R = .60). This is a large amount when one considers the nature of the variables available in the court files and, correspondingly, other variables which are surely important but not available. The identity of the prosecutor, for example, may be important, especially in a court like Columbus where "prosecutor-shopping" has been facilitated by the office's horizontal assignment system.

These findings parallel Feeley (1979) in some respects and contrast in other ways. The most important discrepancy occurs in the impact of counsel, where Feeley found that unrepresented defendants fare significantly less well (see also Katz, 1968). One explanation may be the different proportions of unrepresented defendants in New Haven and Columbus. The large number of defendants without counsel in New Haven suggests a reluctance to implement fully the spirit of *Argersinger* v. *Hamlin* (1972). Columbus is not such a court. Most defendants have counsel (or access to counsel at arraignment), but those without fare equally well in case disposition. Limited courtroom observations support these

interpretations. Indeed, in arraignment court, one judge consistently encouraged unrepresented defendants to consult with the public defender available in the courtroom before entering any plea.

V. FORMS OF SENTENCE OR SANCTION

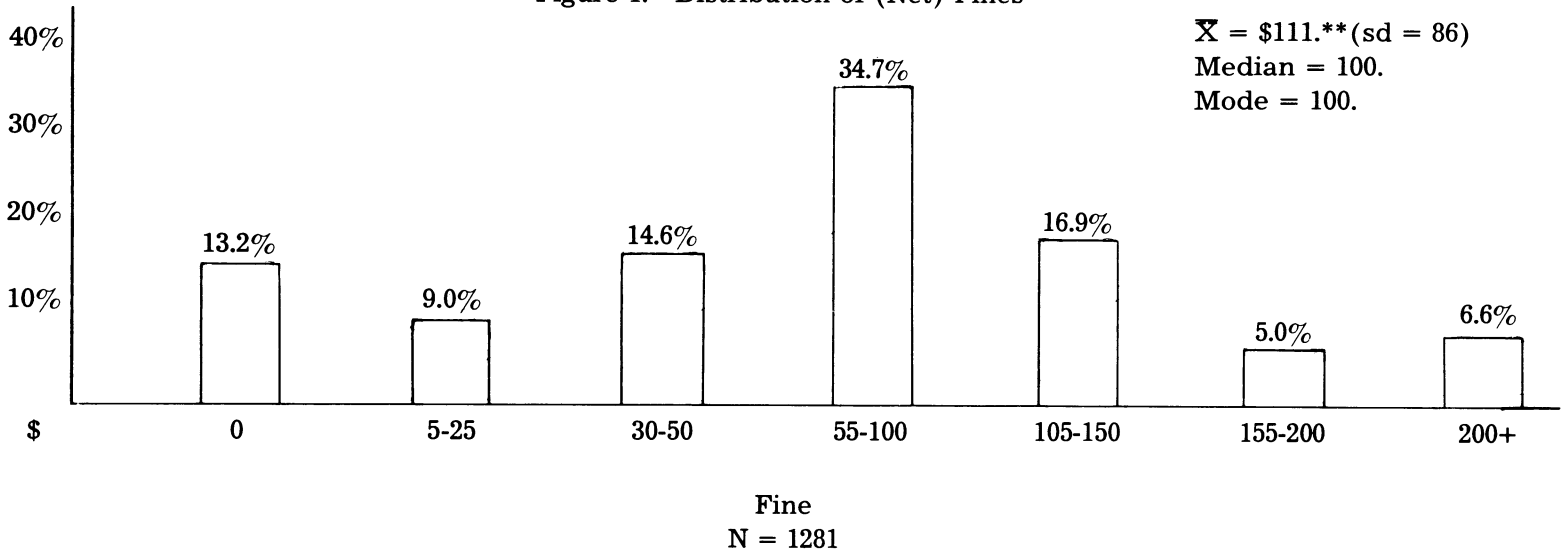
Misdemeanor courts inflict upon their convicted defendants a wider variety of less severe sanctions than do felony courts. The Columbus misdemeanor court is no exception. Fines, bond forfeitures, terms in the county jail or municipal workhouse, suspensions of a driver's license, attendance at programs for alcoholics and drunk drivers, and probation are among the primary sanctions available and employed by the court. Sometimes convicted defendants receive only one form of sentence, but quite often they face several sanctions.

Fines are routinely imposed upon convicted defendants in Columbus. Some judges frequently hand out stiff fines, then suspend a portion of the fine. The practice may be designed to enhance a judge's popularity, as a skeptical Judge G remarked, declaring that "a heavy fine makes the police happy . . . suspending part of it makes the defense happy." Alternatively, the suspension may help to "keep in line" a defendant placed on probation, as Judge E noted. Both of these judges occasionally suspend portions of fines. The motives of judges who frequently suspend large portions of stiff fines, like Judges C and M, are not always clear.[15]

Figure 1 displays the net fines imposed, once suspensions are taken into account. Only 13 percent of defendants in Columbus escape a fine entirely. Of the remainder, fines range from a mere $5 to $1750. The mean fine is $111, and the median and mode are both $100. Not unexpectedly, OMVI cases draw the heaviest fines ($\bar{x}$ = 128).

[15] Judge C suspended some portion of a fine in 69 percent of his cases; the amount suspended averaged $150. Judge M suspended part of a fine in 63 percent of his cases, on the average for $135. Together, these two judges accounted for 56 percent of all cases in which a fine was suspended in whole or in part.

Figure 1. Distribution of (Net) Fines*



* Cumulates fines imposed upon a defendant convicted on more than one charge.

** Statistics are based on a distribution excluding defendants not fined (0).

These fines represent a significant amount of money to most defendants, even in our presently inflated economy. This is particularly true for indigent defendants represented by the public defender's office. The severity of fines in Columbus is all the more striking when compared with New Haven (see Table 4). The two courts differ substantially in the amount of the fines they impose. In Columbus, nearly three-fourths of the net fines exceeded $50, whereas only a handful of fines (4 percent) in New Haven were greater than $50. Furthermore, in Columbus 87 percent of all convicted defendants paid some fine, compared with only 45 percent in New Haven (Feeley, 1979: 138).

Table 4. Comparison of Fines in the Columbus and New Haven Lower Courts

	Columbus	New Haven
$50 or less	27.2%	96.0%
More than $50	72.8	4.0
N	(1112)*	(377)*

* For comparative purposes, only convicted defendants receiving some fine have been included.

Several caveats should be applied to this comparison. The New Haven data were collected for three months in 1974, compared with three months in 1978 in Columbus. Nevertheless, according to Judge G, a veteran on the court, "fines are less today than ten years ago," a diminution which he attributed to the "more lenient judges now on the bench." Also, the range of cases heard in the New Haven court is different from Columbus. No traffic cases are heard in New Haven, and these cases in Columbus (notably OMVI) draw consistently the heavier fines. Still, the New Haven court had felony cases (about 20 percent of the docket), indicating that in some respects the Columbus court hears more petty cases. Thus, neither the different range of cases nor the different time periods studied appear to account for the variation in fines between the two courts.

Bond forfeitures are tantamount to fines, particularly in view of *when* the bond amount is set. The decision is made at the time of case disposition, and the defendant agrees to pay the fine. The modal amount of bond forfeitures is $50, and the mean is only slightly higher ($\bar{x}$ = 57). Again, in comparison with New Haven (where Feeley reports most bond forfeitures

to be between $5 and $25), the sanction is greater in Columbus.[16]

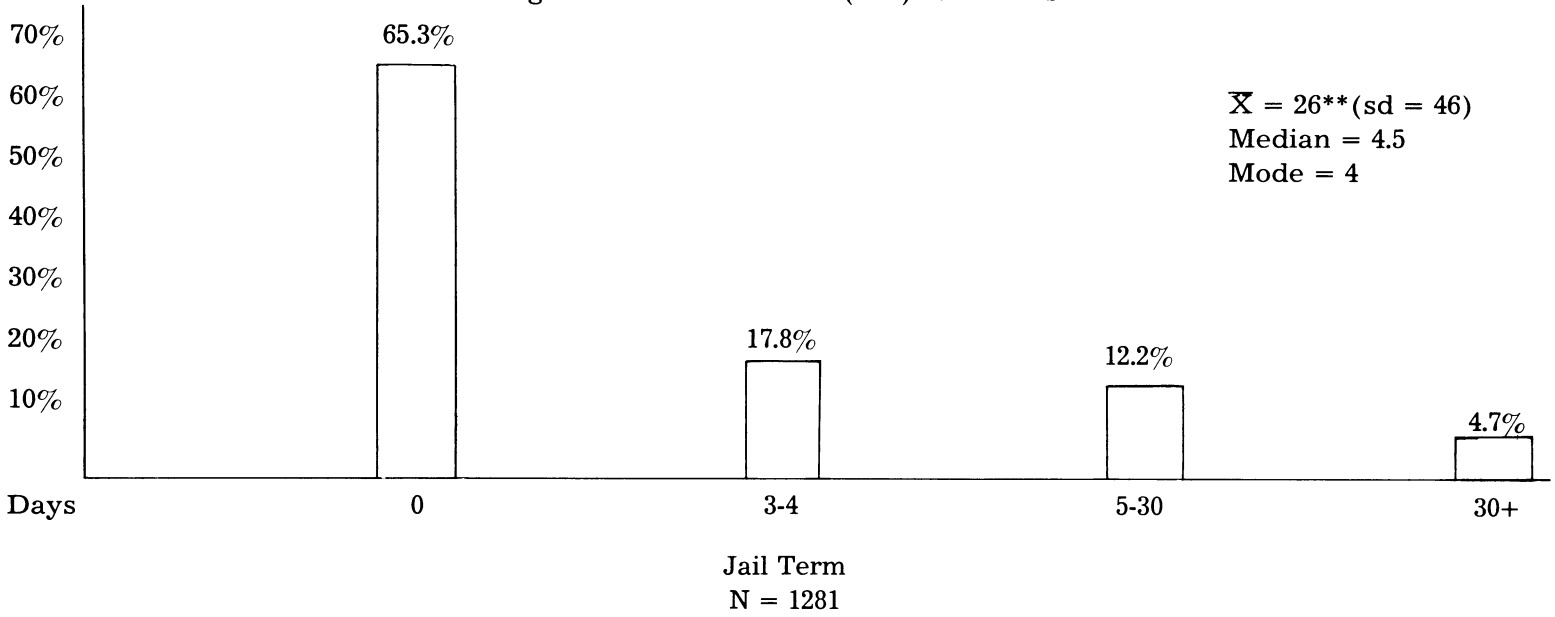
Jail terms are announced to a majority (52 percent) of convicted defendants. However, one-third of these terms are entirely suspended, and many others are suspended in part. The use of suspended sentences for *jail terms* is much more widespread among the court's judges; nine judges suspend, in part or whole, more than half of their jail terms. Figure 2 reveals that 35 percent of convicted defendants serve some jail time, most often in the city workhouse. About half of these defendants serve three or four days; most of the others serve either thirty days or a longer sentence. Defendants convicted in OMVI cases are most likely to be incarcerated (44 percent), but typically serve a short sentence (3 or 4 days).

Comparisons with New Haven again are striking. Only 4.9 percent of convicted defendants in New Haven served a jail term (Feeley, 1979: 138), whereas almost *six times* as many defendants received a jail term in Columbus. Some mitigating factors should be considered in this comparison. Many defendants who do serve time in Columbus do not have their lives totally disrupted (e.g., by loss of job). It is common for shorter sentences, and even some longer sentences, to be served on weekends, a phenomenon growing in popularity elsewhere (see Parisi, 1980). Also, drunk driving cases contribute a moderately disproportionate number of jail terms in the Columbus court. Nevertheless, it appears that across a similar range of criminal cases (e.g., assault, theft) a defendant in Columbus stands a much higher likelihood of incarceration, if convicted.

In traffic cases the court acts as an administrative entity in monitoring the driver's license of individual citizens. In sprawling and decentralized Columbus, the license is a valuable—often, necessary—commodity. For a variety of offenses, the court is authorized, or even required, to suspend licenses. The Columbus lower court uses its authority selectively, but not infrequently. Fully one-third (36 percent) of defendants convicted in OMVI or other traffic cases have their license suspended for a period of time. The standard suspension is 30 days, but in a few instances the term may be for sixty, ninety days, or even one year. Defendants convicted in OMVI cases are much more likely to have their license suspended than those convicted of other traffic offenses.

[16] It is more difficult to compare accurately BFs in the two courts, since Columbus also utilizes bond forfeitures in cases where defendants do not skip.

Figure 2. Distribution of (Net) Jail Terms*



* Cumulates jail terms imposed upon a defendant convicted on more than one charge.

** Statistics are based on a distribution excluding defendants not incarcerated (0).

The Columbus court also frequently requires attendance at drunk driver schools and alcohol-control programs upon conviction in traffic cases. At the least, this constrains defendants in time and transportation, no matter how "therapeutic" the program may be. Fully one-third of defendants convicted in OMVI cases are required to attend one or another local program as part of their sentence.

Probation is extensively used as a sanction in this court. A supervising officer in the probation department reported that more than 2,000 defendants convicted on misdemeanor charges are currently on probation, and he noted that probation is more frequently used now than ever before. The bulk of the department's caseload stems from theft, bad check, and alcohol-related cases—areas where recidivism is high. Judges themselves vary in how often they use probation, some imposing it frequently, others selectively ("taking into account our caseload problems"), and one judge not at all. We have no further data on the use of probation, because the case files do not contain such information.

Finally, more than one type of sanction is often imposed. In criminal cases, about one defendant in five is incarcerated and fined. In traffic cases, fully half of all defendants face multiple sanctions involving some combination of fines, incarceration, suspension of the driver's license, and attendance at drunk driver programs. Furthermore, the use of multiple sanctions is seemingly not considered in determining the severity of each sanction. For example, leniency in fines is generally *not* granted to defendants who are sentenced to serve time in jail. Indeed, defendants who are sentenced to serve jail time are fined *more* heavily ($121 on average) than those not incarcerated ($83 on average), differences mostly attributable to traffic cases. Similarly, defendants do not typically attend a drunk driver's program in lieu of a (heavier) fine; it is usually in addition to the fine. The heaviest fines in OMVI and other traffic cases are levied against defendants who are incarcerated, lose their license for a period of time, and who must attend an alcohol-control program.

In sum, the Columbus misdemeanor court views the variety of sanctions available in a relatively punitive, rather than ameliorative, light. Instead of choosing which one sanction to employ against convicted defendants, this court often chooses *how much* of several sanctions. In this regard, the court is quite different from New Haven where fines are used much less frequently, and where combinations of

probation and suspended sentence often serve as punishment. No wonder, perhaps, that Feeley viewed the process to be the primary punishment. In Columbus, the outcome is the punishment.

A Multivariate Analysis of Sanctions

No single measure of sanction severity could adequately represent the variations described above. Thus, the correlates of two sanctions—fines and incarceration—are examined separately. All of the predictor variables earlier utilized were included here, as were two additional variables relevant for sentencing decisions: prior record and case disposition mode.

Defendant's prior record has been viewed by courtroom participants to be of the utmost importance in sentencing decisions. Previous research has cautiously, if not convincingly, demonstrated its predictive value (see Farrell and Swigert, 1978; Gibson, 1978; Rhodes, 1978; but also, Eisenstein and Jacob, 1977). In Columbus, prosecutors usually possess this information about a defendant. Based upon observations and interviews, prior record influences both plea bargaining practices and the sentencing decision of the judge.[17]

It has long been suspected that a defendant's pursuit of the right to trial—particularly, a jury trial—triggers a penalty upon conviction. Evidence was marshalled by early studies (see, e.g., American Friends Service Committee, 1971), but recent studies utilizing more sophisticated statistical techniques have reached varying conclusions (see Eisenstein and Jacob, 1977; Rhodes, 1978; Nardulli, 1978; Uhlman and Walker, 1979). Nevertheless, even Eisenstein and Jacob, who find no statistical effect, assert that the *perception* of a penalty for going to trial is still widely held by "court officials and defendants alike," one that is "instrumental in promoting a steady flow of guilty pleas" (1977: 271).

The regression equation for fines yielded a weak explanatory model. Only 14 percent of the variation was explained by the predictor variables (R = .38); the most important of these was whether the case was OMVI or not

[17] Due to difficulties in finding (in the prosecutor's basement) prior record information, collection efforts were restricted to OMVI cases. For these cases, prior record was operationalized as *relevant prior convictions*, defining "relevant" as OMVI, ROMV (reckless; the charge to which most OMVI cases are reduced), physical control (of an automobile), and intoxication. These were the types of cases cited by members of the prosecutor's and public defender's offices as bearing upon a sentence decision in OMVI cases.

Table 5. A Multivariate Model of Severity of Fines by Type of Case: Stepwise Regression*

OMVI	Beta**	Traffic	Beta**	Theft	Beta**
Judge G	.17	Number of Charges	.27	Judge M	.36
Number of Charges	.15	Judge J	−.12	Judge G	.32
Disposition Mode***	.13			Judge J	−.25
Prior Record	.12			Disposition Mode***	.23
R = .33		R = .32		R = .64	
R^2 = 11%		R^2 = 10%		R^2 = 41%	
(N = 313)		(N = 269)		(N = 107)	

* Equations for the other three case types did not reach standard levels of statistical significance.

** Each of the beta weights is statistically significant at .05; in no instance does the standard error approach B.

*** Disposition Mode: guilty at trial coded high; guilty upon plea coded low.

(beta = .30). Analysis of variations in fines by different types of cases proved more fruitful. Table 5 presents these data.

In OMVI cases, several variables are about equally important in explaining a small amount of variation (11 percent). Judge G, who has the reputation of being the toughest sentencer on the court,[18] contributes to the likelihood of receiving a heavier fine. So do multiple charges, being convicted upon a trial, and having a relevant prior record. In traffic cases, a similarly small amount of variation is explained (10 percent). The key variable is the number of charges; in traffic cases other than OMVI, the amount of the fine rises dramatically as the number of charges increases. In theft cases, a much larger proportion (41 percent) of variation is explained. Three of the four predictor variables are individual judges. Again, being in the courtroom of Judge G contributes to the likelihood of a more severe fine; so does conviction upon trial.

Two points bear further comment. First, the contrast in predictors between OMVI and theft cases highlights the degree to which the court has routinized the handling of drunk driving cases. Judicial sentencing philosophies are muted; variation across judges in fines levied is small. Only the court's tough sentencer, Judge G, is far from the court's norm. This routinization is facilitated by the comparative frequency of OMVI cases and by the unquestioned seriousness with which all courtroom actors view this type of case. In the words of Judge E, a self-characterized middle-of-the-road sentencer, "Judges are swayed by the community in which they live . . . people don't want to see rapists, thieves or *drunk drivers* go free" (emphasis mine). Petty theft or larceny, on the other hand, may present value conflicts for judges sympathetic to poor people, accounting for the wide variation in sanction severity among the court's judges.

The second point to be emphasized is the effect on fines resulting from conviction at trial. Although not significant in the ordinary range of traffic cases where most trials are highly abbreviated, going to trial in OMVI or theft cases is a different matter. In these cases, there is a distinguishable penalty attached to pursuing full constitutional rights. Or in the words

[18] According to the Defender, defendants initially ask two questions: (1) can I get a personal recognizance bond, and (2) is Judge G assigned to the case? In the interview with Judge G, he confirmed his tough sentencing philosophy ("I'm likely to give them the maximum"), noting that his association with crimes has primarily been with the *victims* of crimes (through his stint as a prosecutor).

of several Columbus courtroom actors, "rent is charged for the use of the courtroom."

Analysis of incarceration directs attention to two questions: (1) should the defendant serve any time in jail? and (2) if so, how much time? Accordingly, separate regressions were performed for the use of the sanction and for its severity where used. In the former instance, the dependent variable is a dichotomy wherein 65 percent of defendants were not incarcerated and 35 percent were incarcerated. In the latter case, the dependent variable is interval, ranging from three days to one year. Table 6 presents the results of both regressions.

The decision to incarcerate is poorly explained by the model (only 11 percent of the variance). Six variables are statistically significant predictors, but the effect of each is small. The most important of these is OMVI; such cases are the most likely to result in incarceration. Four of the six predictor variables for incarceration also appeared in the model for case fine severity. Thus, many of the same forces at work in one kind of sentencing decision are at work in another.

The severity of incarceration is somewhat better explained (19 percent of the variance). Again, OMVI is the most important variable, but in a negative direction. Most drunk driving cases receive very short sentences, usually the three days mandated by statute as the minimum. The court's reputed tough sentencer lives up to that reputation. As most defendants seem acutely aware, being in the courtroom of Judge G will result in a much longer sentence.

Attempts to improve explanation of incarceration by analyzing within types of cases were generally unsuccessful, probably because of skewed distributions and small numbers. In OMVI cases, however, a substantial 26 percent of the variance in the use of incarceration was explained ($R = .51$). The most important predictor was the type of plea, whether to the original or reduced charge (beta = .36). This is to be expected, since conviction on the original charge in OMVI cases requires some type of confinement. Prior record also showed a significant effect (beta = .16), suggesting the importance of tapping this difficult-to-collect variable.

VI. SUMMARY AND CONCLUSIONS

The Columbus lower court yields a quite different picture from that of New Haven. Outcomes are costly to convicted defendants. Fines are substantial, incarceration is not

Table 6. A Multivariate Model of the Use and Severity of Incarceration: Stepwise Regression

	Use of Incarceration	Severity of Incarceration
	Beta*	Beta*
OMVI Case	.19	−.37
Disposition Mode**	.12	.11
Judge M	.11	ns
Judge G	.10	.28
Number of Charges	.10	.13
Judge A	−.07	ns
	R = .33	R = .44
	R^2 = 11%	R^2 = 19%
	(N = 1271)	(N = 439)

* Each of the beta weights is statistically significant at .05; in no instance does the standard error approach B.

** Disposition mode: guilty at trial coded high; guilty upon plea coded low.

infrequent, and in traffic cases one's license is in jeopardy. In many cases, more than one type of sanction is imposed. Furthermore, courtroom actors including defendants behave as if the outcome is important. Defendants hope to avoid Judge G. Seemingly minor cases appear on the pretrial docket, indicative of a decision not to plead guilty at first appearance. Defense counsel stall at pretrial hoping for a more sympathetic prosecutor or bargain on the day of trial. Prosecutors operate under strict guidelines for charge reduction in OMVI cases. The outcome *is* important to defendants and courtroom actors alike.

By contrast, the process of having one's case adjudicated is not very costly in Columbus. Indigency requirements are liberally interpreted by the public defender's office and by judges in arraignment court. Few defendants await the outcome of their case in custody. Many receive personal recognizance release or supervised release without bond; others pay a 10 percent appearance bond directly to the court (90 percent of which is returned upon appearance). Finally, the court requires few appearances of its defendants. Cases are not routinely continued. In all, the median elapsed time from initial arraignment to disposition is approximately 30 days. Process costs may seem high to unconvicted defendants, but for convicted defendants the outcome is unmistakably the more important punishment.

Why outcomes are more punishing in Columbus than in New Haven cannot be answered definitively. But differences in the political culture and structure of the two communities, described earlier, clearly play a key role. The political culture of Columbus breeds a climate of severity. This is manifested in the institutional domination of the police in the lower court, in the Columbus police department's orientation to law enforcement rather than order maintenance, and in the community's expectations that traffic laws will be enforced. Moreover, judges in Columbus may be more responsive to community expectations of full enforcement and meaningful sanctions[19] because they are elected locally and attached permanently to Columbus, unlike the rotating judges who serve

[19] It seems clear that judges in Columbus perceive the community to be basically conservative and expecting of tough sentences. A major newspaper article about this study appeared in *The Columbus Dispatch* on June 22, 1980, in which the municipal court was characterized as "tough" and "efficient." The administrative judge was quoted in the article as being delighted that "somebody thinks that we're doing a good job." The author of the newspaper article inferred from my comparisons that, because Columbus was tougher, it was a better court.

the New Haven lower court. More precise linkages of the nexus between political culture and lower court outcomes must necessarily await comparative research.

The data from Columbus suggest several additional themes. First, the type of case structures the substance of the decision-making process (see also Feeley, 1979: xv). Throughout the analysis, this is the most significant predictor of whether defendants are found guilty or go free, and which defendants go to jail if convicted. In particular, assault and drunk driving cases are handled in highly distinctive ways. This apparent "pigeonholing" of cases in lower courts contrasts, at least in degree, with felony courts.

Secondly, the adjudication and sentence decisions are often indistinct. In this respect the Columbus lower court is like many felony courts where the determination of guilt and negotiations over sentence run together. In Columbus, the two decision stages merge in the use of bond forfeitures where money is appropriated without any formal decision on guilt or innocence. The two stages also merge in plea bargaining in multiple-charge cases, where a decision to dismiss one charge occurs in exchange for submission of a guilty plea on other charges. And the two stages merge in the overlapping uses of prior record. Decisions to dismiss or to dispose of cases by way of bond forfeiture are often made in light of a defendant's prior record, a piece of data ordinarily, and legally, reserved for the sentence decision alone.

Finally, the perceptions of courtroom work group members conform quite closely to the realities of case disposition in Columbus. For example, attorneys perceive that "rent is charged for the courtroom" (in trials), and the case data indicate a clear penalty for going to trial in more serious cases. Prior record is perceived by attorneys and judges to be significant in bargaining and sentencing, and likewise the case data indicate (in drunk driving cases) that a relevant prior conviction reduces the likelihood of a charge reduction and increases the likelihood of severe fine and a jail term. Furthermore, personalities are perceived accurately. Everyone agrees that Judge G is a much tougher sentencer than any other judge on the court; Judge G himself says he is "likely to give the maximum," and the case data unmistakably paint Judge G as the dispenser of the heaviest fines and the longest jail terms. Such convergences of perception and behavior indicate the *rationality* of the court, a theme insufficiently highlighted either in misdemeanor or felony courts. Courtroom

actors may have an excellent sense of how their own court operates, even if their world view is limited (Heumann, 1977) or they are unable to articulate theories of criminal courts.

Table A-1. Frequency Distribution of Selected Case Characteristics*

	Percent	N
Seriousness of Offense		
M1	82.4	2273
M2	3.7	103
M3	3.5	97
M4	6.4	173
MM (Minor Misdemeanor)	4.0	111
Number of Charges		
1	57.6	1586
2	28.3	780
3	10.3	284
4	2.5	70
5	.8	22
6 or more	.5	13
Type of Defense Counsel		
Private	59.6	1626
Public Defender	32.2	880
Pro Se	8.2	225
Number of Court Appearances		
1 (disposed at arraignment)	____**	____**
2 (disposed at pretrial)	59.7	1577
3	30.4	801
4	8.0	211
5	1.6	43
6	.3	7
Prior Record***		
None	62.8	206
1 conviction	23.5	77
2 or more convictions	13.7	45

* For the distribution of case type, refer to Table 1; for disposition mode, refer to Table 2.

** Cases disposed at arraignment, due to their unavailability, were not included in this study.

*** Refer to Footnote 17 for operationalization of prior record; includes only OMVI cases.

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