Courtroom Encounters

An Observation Study of a Lower Criminal Court

MAUREEN MILESKI – *Yale University*

This is a study of the criminal trial court as a formal organization. The processing of defendants through court can be seen simply as a task for the courtroom personnel—the cases presenting not only occasions for moral outrage or legal acumen but also presenting problems for the legal bureaucracy as such. From one perspective, defendants are as deviant if they do not conform to the routines of the court as they are if they do not conform to the rules of the state. Like the wider society it supports, the court has a social integrity which can be disrupted. The court processes persons alleged to have been deviant in the larger society. The defendants are then subject to the moral exigencies of the court itself. The discussion treats the court as a business as well as a prime sanctioning center for the outer society. But the control of crime is more than a business; it is an industry. The immediate suppliers of the court—the police—act upon and in turn are conditioned by courtroom configurations. Several features of this police-court interrelation also form a part of this study.

AUTHOR'S NOTE: *Donald J. Black offered many helpful suggestions on this and an earlier draft of the paper. His aid and support is gratefully acknowledged. Together we systematically observed courtroom encounters in another city and developed a lengthy observation form to facilitate the*

This paper divides into two basic parts. In the first, compositional features of courtroom encounters are discussed. This section concerns the types of offenses lower courts process, the rapidity of courtroom encounters, the processing of defendants in groups, the apprising of rights, the presence of legal counsel in encounters, and the pleas of defendants. The second section investigates the dispositions of cases. The overall task of this paper is to detail some prominent patterns in the lower court's day-to-day operations.

METHOD AND SETTING

Attention directed toward criminal courts displays an emphasis on matters apart from courtroom encounters themselves. Thus, for instance, it is widely believed that in order to understand many courtroom outcomes it is essential to understand the place of the negotiated plea. Nevertheless, the courtroom encounter can be approached in its own right. Although some stages may be set and some denouements may be neatly written in prosecutors' offices, the ways in which these sketchy plots are acted out in the courtroom remain largely unexplained.

Much information on courtroom behavior derives from official court statistics and records. This method has weaknesses resulting from omissions in the sources. Although a series of legally relevant factors is highlighted in official records, a number of other factors that may bear on legal outcomes, such as the defendant's deference before the court or his apparent social-class status, are left out. The court, like many formal organizations, has no interest in maximizing outsiders' access to information about its ongoing activities. In consequence, certain of its operations go unrecorded. The courtroom clerk, for example, does not make a notation of

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collection of data. This form was modified for use in the present study. I also want to extend thanks to Stanton Wheeler, Albert J. Reiss, Jr., John Griffiths, and Abraham Goldstein for comments. A more diffuse form of guidance by Professor Reiss is also acknowledged; from an early point in my graduate career he intermittently extolled the virtues of the observational method. Support from the Russell Sage Foundation allowed me the time to revise this paper.

each time the judge scowls at a defendant or appears incredulous at a defendant's account of his behavior. Furthermore, plea-bargaining encounters are conspicuously omitted. Something similar to the "blue curtain" that hangs about police departments surrounds the courts and creates an intelligence problem for the outsider who would use what the court writes down about itself. It might be added that lower courts have particularly incomplete record-keeping systems. Indeed, some lower courts have no reporters whatsoever.

Direct courtroom observation, by contrast, does not procure all the information that officially gets recorded; for example, defendants' criminal histories are not always read aloud in court although they go on record. Observer bias may be an added problem. Observation, nevertheless, allows the opportunity to investigate the situational factors that may be associated with various kinds of cases and their dispositions. Unfortunately, the few past studies that rest upon direct observation of courtroom encounters offer little in the way of quantified data (an exception is Lefstein et al., 1969). At many points in the criminal process, unrecorded situational contingencies might come to the fore. Studies of the police, for example, demonstrate that extralegal, situational factors often are central in field dispositions (see Piliavin and Briar, 1964; Black, 1968; Black and Reiss, 1970).

Data for this study were gathered over a three-month period by direct observation on Mondays and Fridays in a criminal court of the first instance of a middle-sized eastern city. Two judges presided over the court. The prosecutor and five of his assistants rotated during the observation period. A total of 417 cases comprise the final sample. These are arraignments and final dispositions. Many more than 417 defendants passed before the judge during the 11 full days of observation, but encounters that fall within the broad category of continuances (under half of the cases observed) are not analyzed (for an examination of continuances, see Banfield, 1968).

The city where observation was done, like many, has two levels of trial courts, the court of the first instance and a higher-order court. The court of the first instance has final jurisdiction over all

municipal ordinances and all offenses punishable by a fine of no more than $1,000, one year's incarceration, or both. The lower court may also take final jurisdiction over crimes punishable by a $1,000 fine, five years' incarceration, or both, if the prosecutor deems that a penalty of no more than $1,000 and/or one year is necessary in a given case. The court thus has final jurisdiction over misdemeanor cases and minor felony cases. If a defendant has been charged with a crime carrying more than a five-year maximum or if the prosecutor decides that a suspect might receive more than one year's incarceration, the suspect must be bound over to the higher court for final disposition. However, the lower court does handle serious cases at preliminary stages—arraignments and probable cause hearings—before they reach the higher court.

The city parcels the business of the lower court system into two physically separate rooms. The proportional volume of serious cases is smaller in one of these rooms. This courtroom disposes of most of the city's minor cases—matters of public drunkenness, breach of the peace, and so on. This was the room selected for observation. The observational method suits it both because the volume of cases is high and because plea bargaining has little or no relevance in the handling of lesser offenses. Two attorneys and a language interpreter employed by the court reported that plea bargaining is simply nonexistent in routine cases of intoxication and disturbances of the peace. Since most defendants are charged with minor offenses of this sort, a field observer frequently witnesses the total post-police processing.

There are a number of constraints on drawing inferences from these data that the reader is advised to bear in mind throughout the discussion. First, there is the question of how representative the court is of all lower criminal trial courts in cities of roughly the same size. Surely it differs in certain ways from courts in cities much larger or smaller. Although nothing was found to suggest that the court investigated is distinctive among those in its class, its representativeness remains unknown. Second, there arises the problem of how much of the court proceedings can be attributed to the individual prosecutors and judges who happened to make their way into the present sample of cases. Again, even though the two judges observed were not characterized as particularly

amicable or nasty or particularly lenient or harsh by others involved with the court, the impact on the court of their personal peculiarities is unknown. Only two of the eight judges who hear cases over the course of the year are in the sample, but five of the six or seven prosecutorial personnel are included. Thus questions concerning the prosecutors' distinctiveness become largely questions of the whole court's possible distinctiveness. Finally, this city's allocation of lower court cases into two separate courtrooms presents problems for interpreting differences between minor and serious cases. In this courtroom most cases are very minor; it may be that the few serious cases which are assigned to it are somehow different from those that are processed through the other courtroom of the lower court division. The lawyers with whom these matters were discussed, however, gave no indication that this is the case. While these questions remain unresolved, courtroom behavior is nevertheless considered in general terms in the following discussion. As long as these possible limitations are understood, it would seem unduly ascetic to refrain from generalization and some amount of speculation simply because the study is a case study.

A SKETCH OF THE LOWER COURT

The great bulk of criminal cases start and end at the lower court level. Our understanding of courts does not reflect court volume since accumulated knowledge disproportionately pertains to the higher courts. Offenses break down into the legal categories of felony and misdemeanor. Within each of these categories, offenses divide into three finer classes for purposes of analysis: offenses against the public order, against property, and against the person. Examples of misdemeanors against the public are intoxication, breach of the peace, and underage possession of alcohol. Typical misdemeanors against property are petty larceny and minor but malicious destruction of property. Simple assault and resisting arrest are misdemeanors against the person. In the felony category, a narcotics offense is an offense against the public, breaking and entering an offense against property, and robbery or aggravated assault an offense against the person.

Charges in this lower courtroom overwhelmingly (81%) accumulate in the misdemeanor categories:

Offense Charged	Percentage	
Misdemeanor against Public	66	81
Misdemeanor against Property	6	
Misdemeanor against Person	7	
Misdemeanor, Unspecified	2	
Felony against Public	2	14
Felony against Property	4	
Felony against Person	5	
Felony, Unspecified	3	
Other Offenses, e.g., Traffic or Unspecified	6	
Total Percentage	101	
Total Number	417	

From the standpoint of legal seriousness, the operations of this court are of minor importance. The court rises in importance, on the other hand, from the standpoint of volume.

Court sessions are called to order in the morning at approximately ten and run until one or two o'clock in the afternoon, depending on the caseload. On many days there is one recess of roughly a quarter-hour. Unlike some more informal courts, the prosecutor is always present in the courtroom along with the judge. Other personnel routinely present include a clerk, a reporter, a bailiff, a policeman, a probation officer, a secretary for the public defender, and a family court and juvenile court liaison man. In addition a female probation officer and a female police officer are present when a female defendant is scheduled for appearance, as is a Spanish interpreter when a defendant who would need his services is scheduled for appearance. Bail bondsmen and attorneys frequently work their way up to the front of the courtroom to pass the time with others while awaiting cases. Thus at least twelve officials or their assistants may literally

surround a defendant as he goes before the bench. All but the most obvious three or four of them may have functions ambiguous to the average defendant.

The public area of the courtroom seats about sixty persons; it is more than full at the opening of the day's session. Adjacent to the courtroom is the "lock-up," as it almost always is called by the participants. Its door bears three locks and a sign reading "No admittance. Attorneys only. No food, candy or cigarettes." The door's trappings symbolize a great deal, but those behind it are not treated like outsiders to the extent that it might first appear. It is not uncommon for a wife, sister, or friend to have a hamburger passed to a prisoner through the guard at the door. Relations between the policeman-guard and the prisoners are rather cordial. Slightly over one-half of the defendants enter the courtroom through the lock-up, the others approaching the bench from the public seating area. The remaining public, of course, is witness to the courtroom encounters.

COMPOSITIONAL FEATURES OF ENCOUNTERS

Mass Justice

Many American courts have a workload problem. Court systems have what their participants, spokesmen, and critics consider too much to do. Heavy workloads do not pressure all bureaucracies; in fact, some bureaucracies are faced with the opposite problem, that of having work insufficient even to justify their maintenance (Messinger, 1955). Such is not the plight of the court.

One obvious way the court can allay pressures from heavy caseloads is to handle the accused rapidly. In this court 72% of the cases are handled in one minute or less (see Miller and Schwartz, 1966; Wenger and Fletcher, 1969; Lea, 1969: 142, on the duration of other types of hearings). It is noteworthy that routine police encounters with citizens in the field last on the average far longer than court encounters. The climax of many an alleged offender's contact with the criminal justice machinery is dwarfed by his police contact on the one side and the time he is

incarcerated on the other. The sluggishness that often characterizes governmental organizations does not carry over to the courts. The notion of delay in the courts refers to the number of weeks, months, or even years necessary to bring various cases to a close. Furthermore, it is usually used with reference to courts that handle civil or private law cases. Once a criminal case surfaces in the courtroom, the encounter often has an extremely short life. In this city, it usually takes one or two hours to obtain auto license plates, but it takes a matter of minutes to dispose of accused auto thieves in court. Typically, justice in court is quick.[1]

An additional device to allay caseload pressures is to process two or more defendants simultaneously. Not infrequently in a lower court the prosecutor strings defendants out in a line before the judge and processes them partly as a group. When the prosecutor mass-processes defendants, he calls out a list of names from his records. Those called step up to the bench from the public area of the courtroom or from the lock-up adjacent to the courtroom. This allows the judge to accomplish part of his task more efficiently than he could if defendants were sent to him one by one. For example, if it takes a given judge one-half minute to apprise one defendant of rights, four-and-one-half minutes would be saved if he were to apprise an assembly of ten defendants. If this is done twice or thrice per session, an extra full trial can be worked into a day of the same length.[2] After the judge handles the defendants as a group—this usually consists only of rights apprisings—he considers each case separately. Yet the line in front of the bench remains.

Only half (51%) the defendants see the judge individually. Thus only half the defendants in the lower court engage in what fits the popular and even academic image of the judge-defendant confrontation. The remainder of the defendants see the judge only in conjunction with others. Sometimes the group is large; 15% of the total defendants face the judge with ten or more others alongside them. Most criminal defendants presumably commit their offenses alone and go on to receive their sanctions in the midst of strangers. Decisions as to dispositions may historically have become more individualized, but numerous encounters in contemporary lower courts are not.

The shape of courtroom encounters surely conditions the legal outputs thereof. One characteristic of many preliterate control systems is that they are relatively informal and nonbureaucratic, whereas contemporary societies maintain bureaucratized systems of control. A corresponding distinction is found in the study of legal control within the two types of societies. Anthropologists almost consistently use the conflict resolution model; sociologists more frequently use the rule enforcement model in investigations of control systems. This analytical difference is no doubt to some extent a result of empirical differences. The extent to which the outputs of the two polar types of control systems differ—whether primarily rule enforcement or conflict resolution—may in part be due to differences in the structures into which legal problems are poured and from which solutions emerge. Conflict resolution or order maintenance literally takes time and requires attention to individuals on a case-by-case basis. Highly bureaucratized courts with caseload problems lend themselves more easily to rule enforcement than to conflict resolution. Legal decision-making with a goal of conflict resolution almost necessarily entails particularism; with a rule enforcement end, it entails a greater degree of universalism. Thus where encounters are rapid and where defendants are processed in groups, more universalistic rule enforcement would be expected. A consequence may be that the recent trend toward individualized treatment of offenders is stunted by the bureaucratization of the processing organizations.[3] Similarly, when citizens complain about the movement away from the foot patrolman on the neighborhood beat, a movement to a highly bureaucratic police force, the real touchstone of their complaints may be an increase in rule enforcement over conflict resolution. The form of any social activity affects its substance and, consequently, its impact.

Apprising of Rights

A defendant moved through the criminal justice machinery might be informed of his constitutional rights at various points. The police officer out on the street or in the station might do so, the judge in the court and an attorney might do so. It is not yet

clear that the law requires officers to warn suspects of their rights before questioning them in field settings. Of course attorneys are under no procedural obligation to warn their clients. Police officers in the station, however, are required to warn felony suspects of their rights before interrogating them. Judges, by statute, must inform defendants that they have a right to remain silent, that their testimony can be held against them, and that they can have a reasonable amount of time to obtain an attorney. Finally, if a felony defendant cannot afford to retain private counsel, he has a right to court-appointed counsel.[4]

Apprisings of rights in the lower court generally are like so many clerical details performed and reperformed. From one perspective they simply are part of the job of the judge. There are a number of forms by which the judge informs suspects of their rights, if he informs them at all. He may inform a group in the audience, a smaller group assembled before the bench, a group before the bench with an individual follow-up, or an individual before the bench. These four forms are elaborated below.

First, to launch the day's session of the lower court, the prosecutor requests the judge to apprise all defendants seated in the public area of the courtroom of their rights. Such announcements roughly run as follows:

> All of you who have charges against you, listen. You have a right to remain silent if you wish. If you speak, what you say can and probably will be held against you. You have a right to an attorney and to have time to get one. You also may have a right, in some cases—if you have no money—to apply for a court-appointed attorney, and under certain conditions one will be assigned to you. And if your offense is bondable you have a right to bond.

If a defendant happens to be talking to his neighbor, if he is for some other reason inattentive, or if he arrives in court later than the scheduled ten o'clock, he is not formally informed of his rights unless the judge later informs him in a face-to-face encounter, as he sometimes does. Inattention or tardiness, then, may carry with it whatever are the consequences of ignorance of constitutional rights. Moreover, there is the matter of the defendant's inability to

comprehend various rights—something that is inaccessible to an observer.[5] The degree of comprehension may vary according to the form of apprising.

A second form is the apprising of rights to a group of defendants who are lined immediately before the judge's bench. The groups range from a pair to a dozen. While the content of the apprising usually is the same as that for the courtroom audience, the form is doubtlessly more effective for a more thorough transmission of rights. Because these defendants are arrayed before the judge, they undoubtedly are more aware that he is speaking to them than are those when apprising takes the first form. Those before the judge are on stage, the center of attention; the members of the audience obviously are not. In short, the spatial arrangement of rights apprisings may have a bearing on the extent to which defendants are informed. What is more, defendants immediately before the judge have a license to speak, a license that audience members lack; a defendant on stage before the judge may say that he does not understand, may ask for elaboration, and so on. For at least these two reasons, defendants warned of their rights in groups before the judge probably understand these rights better than those warned through general announcements to the larger courtroom.

In the third setting, the judge apprises some defendants in a group before him, after which there is an individual follow-up. Here the judge warns the defendants as a group and then asks each if he "heard" and/or "understood" his rights. This embellishment surely adds to the probability that the defendant is made aware of his legal options. In the fourth form, the judge informs defendants of their rights individually, in a one-to-one interchange.

It may be that only those defendants who fall into the fourth category are apprised of their rights in a way that an appellate judge would deem adequate. In any case, it is not clear that any of the first three forms of apprising is deviant from a sociological standpoint. That is, even though these apprisings may not stand high against the spirit of procedural law, judges are rarely if ever sanctioned through reversal or through orders for retrial for using these forms. Perhaps judges risk sanctioning only when they do not warn defendants of rights at all.

There is reason to believe that the four forms in their respective order—group in audience, group before bench, group before bench with individual follow-up, and individual before bench—are progressively more effective ways to transmit rights to defendants. In *reverse* order they contribute progressively to an efficient judicial bureaucracy. It is work and time for the court to apprise individual defendants of their rights. If there are to be apprisings at all, it is most expedient, from a bureaucratic point of view, to apprise as many defendants as quickly as possible in a situation where questions are not likely to be asked. Moreover, if a defendant understands and asserts his rights, it can be to the detriment of court efficiency. For instance, if a defendant decides that he will seek an attorney, his case must be delayed. Where bail is involved, another officer of the court—the bailiff—is interjected into the process. If the defendant successfully obtains an attorney, it often happens that the attorney will request a delay. The prosecutor again has to reschedule the case for a later date. Complicating the situation is the fact that the involvement of an attorney increases the likelihood of a "not guilty plea." While the not guilty plea is a basic right on which the system rests, from another standpoint it gives rise to the expenditure of a relative wealth of court resources. Not guilty pleas in turn introduce the potential of acquittals—blemishes on the prosecutor's record. On the other hand, when the judge apprises groups of defendants simultaneously, the defendants are less likely to be fully informed, and the court bureaucracy is less likely to be heavily overloaded.[6] Thus, a norm of justice and a need of the formal organization run counter to one another.

In a quarter (26%) of the lower court cases, the judge does not apprise the defendant of his constitutional rights at all (see Table 1). Moreover, defendants are warned in groups of one type or another in half (52%) of the cases. The judge warns a defendant of his rights as he stands alone before the bench in only 22% of the cases. Thus, of those who are apprised, most are apprised in groups.[7] Not infrequently, the judge transforms his manner after the apprisings. That is, after a routine apprising he then pauses and directs his full attention to the defendant for the first time. It is as if the case only then begins. The judge or prosecutor inquires:

TABLE 1
PERCENTAGE OF COURTROOM ENCOUNTERS ACCORDING TO THE OFFENSE CHARGED, BY APPRISING OF RIGHTS

	Offense Charged				
	Misdemeanor				
Apprising of Rights[a]	Minor[b]	Serious[c]	Felony	All Cases	
None	35	06	–	26	
In courtroom audience	22	11	05	18	52
Groups before bench	20	23	38	23	
Groups before bench with individual follow-up	06	28	25	11	
Individual before bench	18	31	32	22	
Total	101	99	100	100	
(n)	(220)	(35)	(37)	(292)	

a. Highest possible code category was used; e.g., if defendant was present for general announcement but also was apprised alone, apprising was coded in the latter category. Defendants who had previous encounters were not tabulated if they were not apprised since they may have been apprised on a previous occasion.

b. Misdemeanors against public and against property.

c. Misdemeanors against persons.

"Well, do you want to wait or do you want to get this over with now?" "Getting it over with" perhaps sounds desirable to many defendants, and they agree, proceeding without attorneys.

The seriousness of the offense charged has an effect on whether and how defendants are apprised. When the offense is serious, the judge more often apprises defendants of their rights; when the case is more serious, the chances are greater that the judge apprises defendants individually. In minor misdemeanor cases, the judge fails to apprise 35% of the time. There is a failure to apprise in only 6% of the serious misdemeanor cases and in none of the felony cases where an apprising was clearly required. Individual apprisings are likewise more common in felony and serious misdemeanor than in minor misdemeanor cases (32, 31, and 18%, respectively).

If individual warnings were required for each case, the judge would have to alter his work style in two-thirds of the cases. One consequence of this sort of constraint might be an even further routinization of apprisings.[8] If the judge were to repeat the

catalog of rights roughly forty or fifty times each day, it is likely that the intonation and clarity with which the words are spoken would decline. The present permissible variability in forms of apprisings allows for certain more emphatic apprisings from time to time. These more emphatic apprisings attach to the more serious cases, where full recognition of rights may be more crucial for the defendant's future.

There is more control operating over the judge and prosecutor when they handle serious cases than when they handle minor cases. Because appeals—even though very improbable—are more likely in serious cases, there is a higher probability in these cases that any judicial errors will be caught. It is therefore not surprising that the court processes these cases with relative care. In serious cases, a good deal of each defendant's liberty is at stake; the judge often takes precautions against unduly intruding on that liberty by giving individual rights apprisings. However, these precautions guard against an upset of the lower court's integrity at the same time as they guard against the violation of individual rights. The court does not so often guard against a violation of individual rights when the likelihood of appeal is extremely low. Lower court judges, like policemen (see Skolnick, 1967), may relate to procedural rules largely as obstacles, dodging them when their behavior is unlikely to be monitored at a later time. A very serious case for a defendant, then, is a very serious case for a judge.

LEGAL COUNSEL

Legal counsel attends only 16% of the defendants. Very typically, it is a defendant rather than a lawyer who contends with the judge and prosecutor. The judge and prosecutor, correlatively, do not usually go through the screen of an attorney in their relation to the typical defendant. The lower court is by and large a court without attorneys; both the legal and bureaucratic intricacies of the defendant-court relationship are minimal.

Counsel is far more likely to be present, as would be expected, in encounters involving relatively serious charges. Felony suspects are not only more likely to be apprised of their rights; they are also more likely to have an attorney's aid in taking advantage of

their rights. Excluding arraignments, only 12% of the misdemeanor suspects were professionally represented, whereas over five times as many (64%) of the felony suspects were represented. Nonetheless, one out of three defendants charged with a felony provides his own defense.

Some defendants who appear in court unrepresented before the time of the final disposition of their cases plan to retain an attorney or to seek court-appointed counsel in the future. These are defendants involved in arraignments. Fifty-eight percent of the misdemeanor suspects and 18% of the felony suspects at the time of their arraignments have no plans to acquire any sort of legal counsel (see Table 2 for a further breakdown of plans for an attorney). If all the defendants who planned to obtain counsel were successful, the proportion of defendants represented would rise from 16 to approximately 25%. Still, the proportion of total defendants who plead their own cases remains large. The seriousness of the offense has a strong bearing on the likelihood that legal counsel will be sought, as it does on the likelihood that legal counsel is present at the final disposition stage. Neither finding is surprising, because there are pressures on both the court and the

TABLE 2
PERCENTAGE OF ARRAIGNMENTS ACCORDING TO THE OFFENSE CHARGED, BY PLANS FOR ATTORNEY

	Offense Charged					
	Misdemeanor					
Plans for Attorney	Minor	Serious	Unspecified	All	Felony	All Cases
None	60	60	(1)	58	18	40
To obtain private attorney	25	07	–	16	24	20
To apply for public defender	10	27	(1)	18	18	18
Public defender to be assigned	–	07	–	03	24	13
Not ascertained	05	–	(1)	05	15	10
Total	100	101	–	100	99	101
(n)	(20)	(15)	(3)	(38)	(33)	(71)

https://doi.org/10.2307/3052769 Published online by Cambridge University Press

defendants that give rise to the patterns. The court must provide impecunious felony defendants with counsel. Also, the risks of relying on his own lay defense are obviously greater for the felony suspect. While the accused misdemeanant plainly has a right to obtain his own counsel, courts in this state need not offer it to him if he is indigent. The misdemeanant is in various ways the forgotten man of the criminal legal system, even though offenders like himself comprise the great bulk of the police and court workload.

The court presents the defendant or his lawyer not only legal battles to be dexterously fought and won, but also a configuration of bureaucratic relationships to be manipulated more or less adeptly. When a defendant obtains a lawyer to fight his case, he not only obtains a legal buffer between himself and the judge, he also—even if unwittingly—wedges his fate into a series of organizational battles irrelevant to the legal status of his case. The prosecutor balances his need to prosecute cases against his need to maintain good relations with the judge, public defender, and many other attorneys who frequently take cases to court; all are members of the "team" that maintains orderly operations of the court. They share a worksite. Together they can make their worksite a fractious, turbulent one or an orderly and predictable one. Though the interests of some of the parties are formally at odds, in operation they share common interests. A certain level of cooperation between them obtains.[9] Where relationships between parties are enduring, cooperation or bargaining may often be found beneath a formal façade of conflict or coercion, as they are, for example, in the relations between prisoners and prison guards (Sykes, 1958). Adversarial behavior is often disruptive in the court, a formally adversarial organization (compare the view taken in Skolnick, 1967). There may be more conflict between the police and the court than between the average attorney and the prosecutor. There is a sizable literature on this sub-rosa cooperation and, more narrowly, on plea negotiation (for example, see Newman, 1956 and 1966; Sudnow, 1965; Blumberg, 1967a and 1967b; Skolnick, 1967; Alschuler, 1968).[10]

The question arises as to whether the assignment of the public defender is to the benefit of the court, the defendant, or both. On

one hand, the defendant is assured of at least some legal assistance free of charge. On the other hand, it is to the benefit of the court that the public defender be at least as adept at working well within the court bureaucracy as he is at legal matters as such. Because the public defender is in that class of attorneys generally cooperative within the bureaucracy, his attachment to serious cases deflates an underlying potential for disruption. There is a felicitous meshing between the formal requirements of law and those of the courtroom bureaucracy. Sixty-three percent (27 cases) of the public defender's load concerned a client charged with a felony, even though felony cases comprise only 19% of the cases observed.[11] Furthermore, in a few of the most serious of felony cases, the judge assigned the public defender without even requiring the defendant to apply formally for his services. Court-funded counsel not only protects the defendant from the state, it also protects the state from the potential disruption of defendants in serious cases.

Lawyers no doubt receive positive or negative reinforcement for their own behavior in the judicial bureaucracy. One attorney, to give a minor example, noted that whenever he obtained an "unreasonable" acquittal, the prosecutor penalized him by not calling his cases until the end of the day's session. This "penalty" would last about a week after the disapproved disposition. Not only the lawyer but also his client, then, must sometimes sit all day in court for reasons irrelevant to the substance of the cases at hand. Ordinarily, clients with attorneys have their cases scheduled for very early or very late in the day's session. The court thus allows the attorneys to salvage most of each day for out-of-court matters. Defendants without attorneys are told the day, but not the time, of their court appearances. This favor may add to the court's leverage in coaxing attorneys toward routine cooperation.

Perhaps the obvious or only available way in which the system can reward or penalize an attorney is to reward or penalize his client, which in turn affects the lawyer's reputation. For instance, an attorney who appeared in this court claimed that one of his clients was given a sentence which was considerably more severe than that usually given for similar offenses. He attributed the severe sentence to his own numerous requests for "probable cause

hearings" for other defendants. These hearings consume valuable court time. An attorney in another city commented on the general phenomenon (Alschuler, 1968: 80):

> Sure I could suddenly start to negotiate by saying, "Ha, ha! You goofed. You should have given the defendant a warning." And I'd do fine in that case, but my other clients would pay for this isolated success. The next time the district attorney had his foot in my throat, he'd push, too.

Thus, in more ways than one, the unrepresented defendant fights his own case: he must plead his case on his own, without the aid of someone with legal sophistication; but the merits of his case are not coded in light of any cooperative or disruptive behavior in totally different cases.

The attorney's long-term standing in the court's informal organization may affect his client's future in other ways as well. Contemporary formal procedure does not require pretrial disclosure of incriminating evidence to the defense upon request; this puts the defense at an obvious disadvantage since preparation for any and all trial contingencies is necessary (Goldstein, 1960). However, one attorney who regularly pleads cases at this court, reported that the prosecutor always allows him to see the state's case against his client before trial time. It is understood by the prosecutor that if he does not disclose his case then that attorney will in one or another fashion not cooperate with the prosecutor. He may, for example, ask for a probable cause hearing in a felony case where he would not ordinarily request one. Preliminary hearings take the judge's and the prosecutor's time and the state's money. Under this pressure, the prosecutor tends to respond to the attorney's informal pretrial inquiries about the state's case.[1 2] An unrepresented defendant is without this advantage, as is the client of an attorney who is not part of certain informal workings of the court. Some important portions of the attorney's functions are served before his case goes to court.

To be sure, the attorney also serves important functions in the courtroom. Nevertheless, in a typical case the facts are not problematic because the plea is guilty. Indeed, because the guilty

plea is so common, it is somewhat misleading to call trial courts fact-finding courts. Much of the attorney's function in court in the cases observed is to enter particularistic appeals—and sometimes words of contrition—on behalf of his client. Particularistic appeals have to do with the offender rather than with the offense. An unrepresented defendant may not be cognizant of the relevance of such information. He may feel that it is inappropriate or unwise to report on potentially mitigating circumstances. By contrast, attorneys observed almost invariably inject such information in seeking low or no bond or low or no punishment. Their clients are hard workers, new fathers, long residents of the city, ordinarily upstanding, good students, unfamiliar with English, respectable businessmen, or even caring for sick mothers (see Boudin et al., 1970: 55, where attorneys are recommended partly for their deliverance of particularistic appeals).

Thus it is not that the attorney in the courtroom plays no adversarial role whatever, even when he enters a guilty plea for his client. His strategy very commonly is adversarial at the sentencing stage. Instead of arguing that his client is innocent, he argues that his client does not deserve a severe penalty. The lower court is largely a sentencing court, rarely a trial court—more a sanctioning than a truth-seeking system. The lawyer may step into either context as an advocate. It is not insignificant that one attorney, when asked to evaluate the court in this city, remarked that the court is "pretty good, pretty fair." By this, he said he meant "pretty lenient." He evaluated his success and the court's quality by the severity of sentences rather than by the rate of acquittals. In the lower court, the attorney *is* an advocate, but an advocate for freedom rather than for innocence.[13]

Needless to say, when a plea is not guilty, what is problematic is whether a criminal act occurred, and, if so, whether the defendant committed it. To understand the function of the attorney in this kind of case, it is crucial to understand the position of his formal opponent, the prosecutor. The prosecutor can dismiss charges in cases that are factually or procedurally questionable before they ever reach the court. Generally he need not introduce to court any cases but those that are quite certain to be won by him (Blumberg, 1967a: 45-46). He prosecutes primarily "sure cases" because his

performance is judged chiefly by the ratio of his cases lost to his cases won. However, to route cases through the system according to this personal-success criterion may not always be to the benefit of the public. For example, the prosecutor may dismiss or nolle a case where the defendant has a particularly adept attorney even though the evidence strongly points to the defendant's guilt. While the prosecutor is formally a public servant, he must in fact detour to bureaucratic role ends that may be in conflict with the public interest. His wide discretion can virtually assure a high rate of personal success.

This puts the attorney in the position of having very tough cases to win in court. In the typical case, the weight of evidence is far heavier on the state's side because cases with weak state's evidence often do not enter court. In the few trials observed, each defense contained little beyond what is summed up in the not guilty plea itself; the judge hears the defendant merely plead not guilty with very scarce elaboration, while he hears the prosecutor pile up his relatively tall body of evidence. In the trials observed, the judge almost always responded to these cases as open-and-shut convictions.

While lower courts are called fact-finding courts, most fact-finding goes on before the court-appearance stage. Operationally, the police and the prosecutor play more of a fact-finding role than does the judge. The highly bureaucratic form of contemporary courts and the heavy caseloads almost force much of the judicial function to be relegated to the police and prosecutor. In many instances, the judge simply ratifies the judicial decisions of the processing agents who work at earlier stages of the process. It should therefore be no surprise that a main function of the attorney in court is to enter particularistic appeals for his client. It is about all there remains to be done.

THE PLEA

It is well known that in lower courts across the country very few suspects take advantage of their right to defend themselves against the state's accusations. Some guilty pleas are subsequent to successful negotiation. Moreover, fewer than half the defendants

who go to trial are acquitted. Thus, the prosecutor is highly successful in his aim to win cases. While a given defendant may be unaware of broad prosecutorial success patterns, he may nonetheless be aware that it would be difficult to fight the state, whether he is or is not innocent. It takes, of course, considerably more time and energy for a defendant to fight than it does to succumb to the state. To fight a court case is a disruption in the life of the defendant. What is not so often recognized is that to fight a case is also a disruption in the life of the court. Plea bargaining lessens the frequency of those disruptions.[14]

Of the defendants who enter pleas in this court, 85% plead guilty. Some of the defendants who plead not guilty in arraignments doubtlessly change their pleas in later stages of their cases. Consequently, fewer than 15% of the defendants must be given trials by the state. In the few more serious cases, the prosecutor may do some out-of-court work to obtain this high rate of guilty pleas. Still, once cases are in court for final hearings, the prosecutor hardly ever meets opposition.

Various factors are associated with the likelihood of a guilty plea. The more serious the offense charged, the less likely is the guilty plea (see Table 3). In felony cases, there is a guilty plea 44% of the time; in serious misdemeanor cases, 68%; and in minor misdemeanor cases, 89%. Further breaking down the category of minor misdemeanor, in public drunkenness cases the guilty plea rate jumps to 98%. Those who have made very minor trouble for

TABLE 3
PERCENTAGE OF COURTROOM ENCOUNTERS ACCORDING TO OFFENSE CHARGED, BY PLEA

	Offense Charged				
	Misdemeanor				
Plea	Minor	Serious and Other	All	Felony	All Cases
Guilty	89	68	86	44	84
Not guilty	11	32	14	55	16
Total	100	100	100	99	100
(n)	(246)	(37)	(283)	(18)	(301)

https://doi.org/10.2307/3052769 Published online by Cambridge University Press

is minor. Or it may be that minor suspects plead guilty largely of their own accord. Whatever the sifting processes at the entrance to the court, it is plain that almost all the cases which do enter inconvenience the court very little. As a whole the plea pattern in the lower courtroom is such that the judge and prosecutor have little in-court work to do aside from the sentencing of defendants.

THE DISPOSITION

The discussion now turns to what is done in court rather than how and in what context it is done. After a brief introduction to dispositions in the lower court, this section investigates five areas:

(1) the relation of dispositions to the offense charged;

(2) some highlights of the handling of drunks;

(3) the impact of reduced charges on dispositions;

(4) the relation of dispositions to two indices of mass justice;

(5) the relation of dispositions to situational courtroom sanctions, such as oral reprimands by the judge.

The lower court processes persons judged to have been deviant, typically by at least a police officer and a prosecutor, if not also by a parent, spouse, acquaintance, boss, stranger, or whomever. Having failed to exit from the variegated social control net at an earlier stage, the suspects are sent before the judge to be officially stamped as deviants or to be officially released as nondeviants. The police also wield an official sanctioning power, but it is a power that is not always seconded by the court. Perhaps in large measure because of the arrest sanction, however, even when a defendant's court case is dismissed or acquitted, some stigma of the deviant attaches to him (Schwartz and Skolnick, 1962).[16] The legally innocent defendant obtains an ethereal stamp as deviant. Indeed, it may well be that it is more consequential in a defendant's private life to be acquitted of a felony than to be convicted of a misdemeanor. In this way, the police sanction informally encroaches upon the finality of the court sanction. Furthermore, the

stigma of previous arrest can have consequences in the court itself. For example, after a guilty plea or a conviction, the prosecutor sometimes announces that the accused has a police record or that he was acquitted in an earlier case. In addition, there are more mundane ramifications of official accusation and processing. The state does not compensate a suspect who is found not guilty for losses he incurs, nor does the public clamor to establish any such compensatory mechanisms. At least in a behavioral sense, the official system penalizes suspected though legally innocent persons. In sum, there is this sense in which all persons processed by the court—from those acquitted to those placed behind bars—can be considered deviants sociologically, if only because they are processed.[17]

Along with situational correlates of dispositions there is an underlying concern in this section with some implications of court dispositions for deterrence and for police practice. Both deterrence and police practice feed back upon the court. To the extent that the court deters both those it finds guilty and other potential offenders, it lessens its own workload. Complicating the courts' deterrent role, however, is the relation between the court and the police. It is the police relation to appellate courts that is emphasized in discussions of the criminal justice system. Surprisingly, students of the criminal process have slighted the routine, day-to-day relations of trial courts and the police (a recent exception is Chevigny, 1969). The practices of trial courts surely are highly associated with police behavior. Faced with a lenient court, police officers sometimes take the law into their own hands, becoming self-appointed judges and applying informal sanctions from time to time (Westley, 1953). Or, police themselves may not sanction suspects at all when they have reason to believe that the judge will not uphold their sanction with one of his own. A consistently harsh court might give rise to more professional police behavior. Trial court practice feeds back on police practice; together both have implications for deterrence. The manner and degree to which the specific deterrence function is served by the court can only stem from the cases that the court obtains for processing, which depend primarily upon police arrest practices. But the court's handling of these cases in turn affects police arrest

practice to some degree. The impact of any control system is always limited by the nature of the cases it comes to process.

There are four possible final dispositions:[18] the suspended sentence, the fine, the probationary period, or incarceration. First, the suspended sentence in operation usually means that "nothing happens" to the offender. The judge specifies a period of incarceration, but whether or not the defendant in fact is incarcerated depends upon his subsequent contact with the police and the court.[19] Second, the judge may ask that the offender pay a fine to the state. Third, an offender might be placed on probation by the court. If the standards of probation are not met, probation can be revoked and the offender can be incarcerated. Last, the judge can incarcerate an offender. The judge also hands out various combinations of these four dispositions.

Aside from the statutory maxima and minima, the court organization is such that the judge's decisions can be swayed by the prosecutor on one occasion, an attorney, the defendant, the public, probation and prison authorities, or personal predilections on other occasions. It is not that the judge deliberates amid some cloak of informal pressures each time he sentences a defendant. His modus operandi becomes routinized so that he handles typical cases in typical ways, deviating primarily in the face of an extraordinary offense or offender or under sporadic pressures from the public or the prison. Still, on paper he has legitimate use of a wide range of discretion.

The set of final dispositions that immediately precedes a case sometimes exerts an influence on a given disposition. What could be called situational precedents and standards are set and then destroyed again and again as the court grinds out its cases. It appears that the judge gauges the desirable severity of a given punishment partly in relation to the punishment or punishments he has just meted out. Thus, for example, while there is relatively little variability between the sanctions for all defendants who have the same charge and who are brought before the judge in one group, there is variability between the groups themselves. When the judge requires five days in jail for the first defendant in a group of defendants with intoxication charges, he is quite likely to require the same for all or most of the remaining defendants in the

group. Later, when another group is before him, however, the judge may begin and follow through with a sanction of ten days in jail, suspended sentences, or whatever. This procedure might be called a pattern of situational justice; it is neither individualized justice nor justice with absolute standards. The pattern might be understood in terms of the larger legal and organizational context; it flows from the great range of legal discretion and the general lack of external supervision over consistency on the part of the judge. Neither purely legal nor purely social factors operate in such a way as to compel the judge to follow any clear principles of disposition. Within this seeming void, the judge allows his dispositions to be carried along by the rhythms of clusters of cases as they come before him.

OFFENSE AND DISPOSITION

Statutory maximum penalties, varying considerably over offense categories, symbolize degrees of official condemnation of diverse criminal acts (see Dahrendorf, 1968: 38-41). If the perceived possibility of future punishment deters criminal behavior at all, and surely it does, a question arises as to whether the deterrence function flows from the statutory maxima or the actual sentences typically given by the court. There is no ready reason to believe that citizens are more aware of maximum punishments than they are of actual punishments. What *does* befall offenders should be considered in conjunction with what *can* befall them when questions about deterrence are raised. That is, the issue of deterrence should in part be approached as the "bad man" (Holmes, 1897) who seeks to predict court behavior would approach it.

The offense charged in each encounter observed (except one case of trespass) is punishable by incarceration. Still, a mere 17% of all persons convicted of any offense in this court are incarcerated (see Table 5). Hence it is first of all evident that rarely does the court punish defendants to the extent that it is able. In fact, the proportion of incarceration is lower than that for police arrest in the field when they have evidence of a criminal violation. When a suspect is available in the field situation, the

TABLE 5
PERCENTAGE OF COURTROOM ENCOUNTERS ACCORDING TO OFFENSE CHARGED, BY DISPOSITION

	Offense Charged				
	Misdemeanor				
Disposition	Minor	Serious	Felony	All Cases	
Suspended sentence	38	–	(1)	36	
Fine	39	64	(3)	40	
Probation	04	09	(2)	04	
Probation and fine	01	18	(1)	01	
Incarceration	17	–	–	16	17
Probation and incarceration	–[a]	09	(1)	01	
Total	99	100	–	99	
(n)	(221)	(11)	(8)	(240)	

a. Totals .5% or less.

police make arrests of adults in felony incidents roughly 60% of the time and in misdemeanor incidents roughly 50% of the time (Black, 1968: 201-202, 225-226, 249). Both the police and the court frequently allow suspects and offenders to go free. By no means, as it is sometimes assumed, is it clear that the greater range and use of discretion is lodged in the police. What is more, many offenses and offenders are never made known to the police, let alone to the court. Coupling this with the high proportion of suspects released by the police in the field, there is a great slippage of alleged deviants at the police level. The court plainly does not attempt to compensate for this slippage with heavy use of incarceration. The question then becomes whether potential offenders know more about the law in action than do lawyers and social scientists. If they do, then for many offenses the deterrence potential of the threat of incarceration surely withers to a bare minimum.

The various offenses can be considered in broad categories–minor misdemeanors, serious misdemeanors, and felonies–as they relate to the disposition categories. The judge sends 17% of the minor misdemeanants to jail.[20] However, he incarcerates only 9% of those convicted of a serious misdemeanor. Oddly enough, the more serious misdemeanant is less likely to be incarcerated. In

some part this results from differences in the criminal records of defendants charged with the two levels of misdemeanor.[21] Finally, the judge incarcerated only one of the eight defendants convicted of felonies. The sample is far too small for confidence in the finding on felonies. If only because there are so few felonies, a trip through this court rarely culminates in a jail or prison visit. This pattern should not be taken as representative of the dispositions in the complete lower court system in a city similar to the one where this court is situated. As noted earlier, there are two courtrooms, only one of which was selected for observation. In the second court a greater number of serious cases are heard. It might be that more defendants convicted there are incarcerated, although nothing in the present findings compels that prediction.

Offenders must pay in dollars more often than in days in all offense categories. Of the minor misdemeanants, 38% pay fines for their offenses. Sixty-four percent of those convicted of serious misdemeanors receive fines. In other words, the more serious misdemeanant is more likely to be fined. Thus this pattern is just the opposite of that for incarceration. Undoubtedly this stems in part from the high representation of indigent offenders in the minor misdemeanor category. Often, if they are to be sanctioned at all, they must be incarcerated because they have no funds. Of the eight convicted felons observed, three received fines. If the characteristically indigent misdemeanants were removed from consideration, almost all penalties for misdemeanors would be monetary. This deprivation of money is striking against the backdrop of the market economy; the fine might not be so frequent a punishment in societies where the economic sphere is not so salient (see Christie, 1968).

A full third (36%) of all sentences are suspended. Very commonly, the court goes through the whole process of convicting offenders but then does not sanction them in any formal way. It accepts for prosecution cases the police send along but does not underscore the police sanction with a court sanction. In the long run this might lower the workload of the court somewhat, since it might decrease police incentive to arrest. In turn, however, the pattern of double leniency surely could deflate the deterrence function of the criminal process in such a way that the two forces

could cancel one another out, and the number of persons formally processed would remain more constant than either factor considered alone would suggest.

Thirty-eight percent of the offenders in minor misdemeanor cases are given suspended sentences. By contrast, the judge never releases a serious misdemeanant with only a suspended sentence. Here there is a clear difference in sanctioning that flows in the expected direction. On the other hand, one of the eight convicted felons received a sentence that was suspended. In short, while incarceration varies inversely with the seriousness of misdemeanors, still some sort of material punishment is more likely as the misdemeanor is more serious. The state more frequently punishes crimes that are relatively serious and harmful, yet it reserves its jails in good part for those who repeatedly commit the pettiest of misdemeanors.

Overall, the outstanding pattern is that of legal leniency in the treatment of persons convicted by the court. It is difficult to say whether the court is more or less lenient than are the police, since the court has a variety of sanctions and the police formally have only the arrest. Considering incarceration alone, the court is far less harsh than the police. In general, the police are legally required to make an arrest whenever possible when a criminal offense is made known to them. They plainly do not (Piliavin and Briar, 1964; Black, 1968). The judge is under no such formal obligation to penalize all convicted offenders. Likewise he does not. The formal law is different for the police and for the judge, but the rates of sanctioning are quite similar. Unless social control agents themselves are regularly penalized for failing to sanction, there is no reason to expect that any control system, formal or informal, would penalize all the offenders it could. Instead they select from among the available deviants those that are to be sanctioned formally. Overlapping this group are those each social control system selects to sanction informally. The criteria of selection could be many: those singled out can be the ones who most flagrantly violated the rules, the ones who are disrespectful toward the social control agents, the ones who have a particular ascriptive characteristic such as a certain ethnicity or a certain age, or whatever.

The deterrence value of any social control system, it seems likely, is ordinarily, though not always, undermined by under-enforcement of rule violations. And, among the instances of deviance that are in fact controlled, the deterrence function surely is served for the better or worse depending upon the criteria of selection. From all available evidence, neither the court nor the police appear to select for sanctioning purely on the basis of race (see e.g., Green, 1961; Trebach, 1964; Skolnick, 1966; Black, 1968; Black and Reiss, 1970). Both the police and the court in part select to sanction on the basis of the seriousness of rule violations; the more serious the violation, the more likely some sort of sanction. Furthermore, the police and, it seems impressionistically, the court select to sanction on the basis of suspects' disrespect toward control agents. What deterrence there is, then, might reach into two pockets: prevention of relatively serious victimization of the general public and prevention of victimization of the control system itself.

THE DISPOSITION OF DRUNKS

A somewhat misleading portrait of dispositions is drawn when the offenses are not finely broken down. The patterns in the treatment of very petty misdemeanants contaminate the overall portrait of dispositions. This section more closely investigates the contours of intoxication cases. It elaborates on one underlying reason for the unexpected disposition differences across charges—namely, the variation in defendants' records. More generally it describes the movement of drunks through court. Three areas are briefly discussed: criminal records, race, and situational excuses.

Criminal Records

Approximately one-half of the defendants in drunkenness cases are released without any penalty whatsoever. The pettiest of offenders account for much of the broad pattern of leniency seen above. (On police leniency, see Bittner, 1967.) There is something behind the recurring statement of the police, voiced by them as a complaint: "I might as well not arrest him; the court won't do

anything anyway." It might also be noted that the police disproportionately are brusque or use illegal force against persons who have committed petty offenses such as public drunkenness (Black and Reiss, 1967: 38), a compensation, it is possible, for a soft court. In general, then, the court is far from maximally punitive in the handling of drunks.

On the other hand, it must be noted that, when incarcerated, a few of these defendants receive the maximum or close to the maximum number of days in jail. For example, four percent spend twenty or more days in jail. (The maximum is thirty days, $20.00, or both.) Since many convicted felons spend very little or no time incarcerated and instead receive probation, their penalty in loss of freedom is little or no more than that of some defendants convicted of mere drunkenness. When we view the treatment of drunks in isolation it appears lenient, given what legitimately can befall them. Their treatment takes on a different cast, however, when examined beside what in fact befalls many convicted felons. If length of time incarcerated can be taken as one index of the extent to which a defendant is to be considered a deviant, then it often is more deviant to have been drunk than, for example, to have burgled for the first time. The statutory maximum for burglary may be small consolation to a drunk sentenced to a month in jail when he sees a convicted burglar placed on six months' probation.

A factor that increases the probability of incarceration is the offender's criminal record. We can safely assume that persons convicted of intoxication have disproportionate records. In fact, the police-court-drunken suspect relation has been characterized as a "revolving door" (Pittman and Gordon, 1958). No defendants in intoxication cases who had clean records were incarcerated. Nearly all (92%) were released on suspended sentences (see Table 6). Incarceration increases quite strikingly as the length and recency of records increase. The judge incarcerates 7% of those with light records, 20% of those with intermediate records, and 41% of those with heavy records. Thus the court tends to sanction through incarceration not so much for public intoxication per se but rather for repeated instances of court appearances for intoxication, to say nothing of actual repeated instances of public intoxication. It

TABLE 6
PERCENTAGE OF INTOXICATION CASES ACCORDING TO LENGTH AND RECENCY OF DEFENDANT'S CRIMINAL RECORD, BY DISPOSITION

Final Disposition		Length and Recency of Defendant's Record: No Record	Light Record[a]		Intermediate Record[b]		Heavy Record[c]		All Cases	
Suspended sentence		92	52		64		44		55	
Fine	$1-10	08	37		10		04		18	
	$11-20	–	04	41	05	15	11	15	07	25
	$21 or more	–	–		–		–		–	
Jail Term	5 days or less	–	04		05		–		02	
	6-10 days	–	–	07	05	20	16	41	07	20
	11-15 days	–	03		10		18		09	
	16 or more days	–	–		–		07		02	
Total		100	100		99		100		100	
(n)		(12)	(44)		(19)		(45)		(120)	

a. One or two offenses, five or more months in past.

b. One or two offenses, two to five months in past; or four or more offenses, five or more months in past.

c. A record longer, more recent, or both, than the above.

is of some interest that when the judge inquires into the criminal history of a petty misdemeanant he usually asks whether the defendant has ever been *in court* before, whereas when he inquires into the past of a more serious offender, it is more common for him to ask whether the individual has ever *committed such an act before.* Never does the judge ask whether a defendant in an intoxication case has previously been intoxicated in public. To the extent that the comparison can be made, routine drunks seem more of an administrative problem for the court than their deviance is a problem of disruption for society. Individuals who commit crimes without victims, who are repeatedly arrested and processed through court, in some sense victimize the court itself, or at least they are responded to as though they do.

Race

Race differences in dispositions of intoxication cases can be examined, controlling for prior record. While the court clearly

https://doi.org/10.2307/3052769 Published online by Cambridge University Press

TABLE 7
PERCENTAGE OF INTOXICATION CASES ACCORDING TO LENGTH AND RECENCY OF DEFENDANT'S CRIMINAL RECORD AND DEFENDANT'S RACE, BY DISPOSITION

	Length and Recency of Defendant's Record								
	No Record or Light Record[a]		Intermediate Record[b]		Heavy Record[c]				
Final Disposition	White	Black	White	Black	White	Black	All White	All Black	All Cases
Suspended sentence	62	58	73	(4)	40	53	54	55	55
Fine $1-10	25	38	09	(1)	–	13	12	26	18
$11-20	03 } 28	04 } 42	– } 09	(1)	07 } 07	20 } 33	04 } 16	11 } 37	07 } 25
$21 or more	–	–	–	–	–	–	–	–	–
Jail 1-5 days	06	–	–	(1)	–	–	03	02	02
Term 6-10 days	–	–	09	–	20	07	10	02	07
11-15 days	03 } 09	– } 09	09 } 18	(1)	23 } 53	07 } 14	12 } 29	04 } 08	09 } 20
16 or more days	–	–	–	–	10	–	04	–	02
Total	99	100	100	100	100	100	99	100	100
(n)	(32)	(24)	(11)	(8)	(30)	(15)	(73)	(47)	(120)

a. One or two offenses, five or more months in past.

b. One or two offenses, two to five months in past; or four or more offenses, five or more months in past.

c. A record longer, more recent, or both, than the above.

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treats black and white offenders in these cases differently, there is no consistent pattern that could be called discriminatory. Slightly over half the offenders of each race only receive suspended sentences; here neither race is favored (see Table 7). This is not true, however, for incarceration. The court incarcerates over three times as many white defendants as black defendants (29% and 8% respectively) for intoxication. Black defendants disproportionately receive monetary fines. The judge fines 37% of them, but only 16% of the white defendants. The treatment is plainly different, but not plainly discriminatory. If there is discrimination, whites are the victims. For example, the judge incarcerates whites with heavy records half the time (53%), but he incarcerates blacks with similar records just 14% of the time. It is quite unlikely that the black defendants would prefer the aggregative pattern to which whites are subject. Nevertheless, justice is not always evaluated in terms of aggregative patterns of disposition across races. For example, one time when a group of defendants all charged with intoxication was processed, the one black defendant in the group was alone in being incarcerated. Some black boys seated behind the observer commented: "See, only the coon goes to the clink." In fact, however, he was the only one in the group with a record classified as "heavy." The boys were unaware that in the aggregate black drunks are jailed less often than are white drunks.

The type of offender and the type of violative behavior that give rise to intoxication charges vary somewhat across race and in good part account for the above race difference. The white defendant rather frequently falls into the category of a "skid row drunk." He usually is over fifty years old, sometimes has no established living place, dresses in extremely shabby clothes, and seemingly is in very poor financial condition. His black counterpart—even when he has a record of court appearances—is younger, is more often employed, and dresses comparatively well. Furthermore the circumstances of the typical intoxication offense vary across race. Often the white offender is found nearly or already passed out. The black offender is more often, say, on the street, perhaps making some noise or creating a disturbance. The average defendant of each race presents a specifiable configuration of personal attributes and engages in a specifiable kind of behavior

that violates the intoxication law. If these extralegal and situational factors are controlled along with the offender's record, the race difference in intoxication dispositions diminishes. That is to say, the court usually treats a skid row black the same way it treats a skid row white. It is simply that proportionately more white defendants in drunkenness cases chronically visit the court in these circumstances. Were skid rowers of either race fined for their misdeeds they would "work it off" in jail anyway. On one occasion the judge mistakenly gave a black skid row-type drunk a five-dollar fine. The offender rather meekly walked over to the lock-up to "work off" the fine in time. The prosecutor shortly told the judge what had occurred, and the judge had the offender called out to the bench again. "Haven't you got five dollars today, Jimmy?" the prosecutor asked. He shook his head. "Fine remitted," the judge responded. The judge apparently had classified him as a typical black drunk rather than as a typical skid row drunk.

Situational Excuses

There is a sufficient number of intoxication cases, finally, to investigate the relation between situational excuses by defendants, and dispositions. It is rare for a defendant in the courtroom to give an "account" (Scott and Lyman, 1968) for his violative behavior or to try to excuse himself from punishment on the grounds that his future behavior will be inoffensive. In only 14% of the intoxication cases did the offender present an excuse. Yet, virtually all of them had earlier pleaded guilty to their charges. The data show that penalties of self-excusers are considerably more severe than those of other defendants. While over half the latter receive suspended sentences, merely 18% of the former are freed on suspended sentences (see Table 8). Furthermore, 54% of the self-excusers are incarcerated, whereas only 15% of the other defendants are incarcerated.

Numerous explanations of this pattern could be suggested. Perhaps defendants who somehow realize that their chances for suspended sentences are slight tend to excuse themselves from punishment. On the other hand, an underlying factor may again

TABLE 8
PERCENTAGE OF INTOXICATION CASES ENCOUNTERS ACCORDING TO SITUATIONAL EXCUSE, BY DISPOSITION

Disposition	Did Defendant Attempt to Excuse Himself? Yes		Did Defendant Attempt to Excuse Himself? No		All Cases	
Suspended sentence	18		56		51	
Fine $1-10	18		20		20	
$11-20	05	28	10	30	08	29
$21 or more	05		–		01	
Jail 5 days	–		02		02	
Term 10 days	27		03		06	
15 days	18	54	07	15	08	20
20 days or more	9		03		04	
Total	100		101		100	
(n)	(22)		(136)		(158)	

relate to considerations of bureaucratic efficiency. The court is a system whose currency of operation is information. Citizen witnesses, police reports and testimony, prosecutorial investigations, the defendants, and sometimes attorneys together provide information through which the judge sifts to determine guilt or to set penalties. Information allows the court to work, but *extra* information drives the court toward *extra* work.[22] If the court disproportionately uses the sanction of jail as a defense against the injection of extra information during the courtroom encounter, then defendants might come to offer it less often. Were the court to bend immediately to the excuses of the defendants, defendants might in a short time learn always to excuse themselves. Alternatively, were the court to probe further into the defendants' excuses to find whether they could be considered justified, much time would be lost. To respond more often with jail sentences to defendants who excuse themselves is at least a relatively rational way to respond not necessarily from an ideological standpoint but from the standpoint of the court as a bureaucracy. Even if such does not *account* for the pattern, it speaks to part of the consequences of the pattern.

In sum, criminal records and situational excuses increase the likelihood of a jail term for offenders in intoxication cases. Race itself has little or no impact on disposition when the criminal record is controlled. However, certain correlates of race-specific intoxication violations do condition whether the offender is fined or incarcerated, if he is not released on a suspended sentence. The prevalence of criminal records in intoxication cases goes part of the way toward an explanation of why minor misdemeanants are incarcerated more commonly than serious misdemeanants or even than felons. Upon release from court or jail, many of these defendants return to the streets, to drink, to arrest, and then to more of the same court treatment.

CHARGE REDUCTION AND DISPOSITION

Offenses can be categorized along two dimensions: according to the official *charge* and according to the *substance* of the alleged violative behavior. In this court the acting prosecutor nearly always states aloud the offense with which the citizen is charged.[23] In addition to the charge, the prosecutor at times presents details from the police report on the behavior that purportedly led to arrest.[24] While the charge is never more serious than the substance, the substance is at times more serious than the charge. For example, one defendant charged with breach of the peace had tried, according to his own admission and the prosecutor's statement, to strangle his wife. Another charged with breach had used a knife to threaten two window-breaking youngsters. It seems clear that both defendants could have been charged with aggravated assault, a felony, but only misdemeanor charges were lodged against them. When the alleged substance of the offense is more serious than the charge, the charge most often falls into the category of "misdemeanor against the public." Official charges alone suggest that the court is more a court of petty offenses than it actually is. While most inputs into the court system are minor, through charge reductions the police and the court further minimize the seriousness of the cases processed.

The disposition of defendants for whom there is a discrepancy between the charge and the alleged substantive offense can be

compared to that of defendants whose charge and substantive violation apparently fall into the same category. It might be expected that defendants who allegedly commit an offense more serious than suggested by their formal charges will be treated with corresponding severity. Only the composite category of breach of the peace and intoxication charges includes enough cases to allow this comparison. This tabulation categorizes defendants as having allegedly committed a more serious substantive offense if they were said to have committed two minor misdemeanors, a more serious misdemeanor, or a felony, but were charged with breach of the peace or intoxication. A disparity between the charge and the substance does not necessarily indicate that there occurred an actual bargain between the defense and the prosecutor. The police may be responsible for some reductions. However, it does indicate that the prosecutor probably could have pressed more serious or additional charges, unless the evidence on the higher charge was very slim. Since no information was available on whether a bargain preceded a courtroom encounter, the fact of a relatively serious substantive offense coupled with one minor charge is here simply called a reduction.[25]

A defendant whose charge is reduced only infrequently is given the luxury of a suspended sentence. He receives a suspended sentence in 18% of the cases, whereas a defendant whose charge is not reduced receives a suspended sentence 51% of the time (see Table 9). Hence a material sanction of some sort is by comparison very common for an offender with a reduced charge. When the charge is reduced the judge imposes probation six times as often and levies fines almost twice as often. Probation and fines, it is recalled, also are more common sanctions for serious misdemeanor charges than for minor misdemeanor charges. Thus, defendants whose charges are *reduced* from something more serious to minor misdemeanors are in much the same position as those who are *charged* with serious misdemeanors. Finally, jail terms, quite unexpectedly, are less frequent when the substance of the charge is reduced than they are when the charge and substantive offense are the same; the respective percentages are eight and fifteen. Even though jail terms are a surprisingly uncommon disposition for reduced charges, the contrast is the same as that between minor

TABLE 9
PERCENTAGE OF CASES WITH PETTY MISDEMEANOR CHARGES ACCORDING TO CHARGE REDUCTION, BY DISPOSITION

Disposition	Petty Misdemeanor Charges According to Whether the Charge was Reduced					
	Charge Not Reduced			Charge Reduced		
Suspended sentence	51			18		
Fine $1-10	19			11		
$11-20	09	31		07	57	
$21 or more	03			39		
Jail 5 days	02			04		
10 days	05	15		—	08	
15 days or more	08			04		
Probation, other	03			18		
Total	100			101		
(n)	(183)			(28)		

misdemeanor charges and serious misdemeanor charges. It is plain that, within the misdemeanor category, the court does not reserve jail terms for the more serious offenders. Nonetheless, as noted earlier, the judge gives some sort of sanction to 82% of the defendants with reduced charges but to only 49% of those who apparently committed no more than a petty misdemeanor. A reduction in charge is therefore not at all a prelude to a reduction in the probability of punishment.

Because the judge ordinarily does not penalize persons to the extent that he is legally able, charges can be reduced without thereby necessitating a reduction of penalties in those cases. At the same time, the prosecutor can use the threat of the maximum penalty against the defendant with a charge not yet reduced. The prosecutor's end of the plea bargain looks much more enticing to the defendant if he always compares the *maximum* penalty for the higher charge to the bargain penalty he offers the defendant than it would if he were to compare the *typical* penalty for the higher charge with the bargain penalty he offers the defendant. From what is known about plea bargaining, it seems that the prosecutor does make the former comparison. As the expression goes, the prosecutor threatens to "throw the book" at the defendant.

Assuming there was indeed a bargain in these cases, the defendant who cooperates in the bargain avoids the statutory maximum, to be sure, but he does not necessarily avoid the typical penalty for the higher, original charge. He wagers against the book, not against practice. Since the judge disposes of defendants with charges reduced to minor misdemeanors in much the same way as those who are charged with serious misdemeanors, the former seemingly receive a good deal less than that for which they may bargain. Yet, this pattern very likely is no more visible to them than it has been to social science.

Perhaps within the more serious charge categories, the trade-off is between harsh and lenient punishment rather than between punishment and freedom, as it is in minor misdemeanor charges. The overlap between scales of punishment for various offenses is great enough so that the level of punishment can remain generally the same as the level of criminal offense lowers. Even if charge reduction is not found to reduce penalties as much as might be expected, it does operate to reduce the gravity of some convicted persons' records. There is good reason to assume, moreover, that it is the record rather more than the criminal conduct itself that is fateful for the person who is processed through the criminal justice system. At the same time, the process reduces the official appearance of serious crime in the community.

If in some of these cases there was insufficient evidence to prosecute on the more serious charge, then from a legal standpoint there was no reduction. For instance, the prosecutor may charge a defendant with drunkenness, a charge to which the defendant pleads guilty, and then go on to announce that the police record includes some loose evidence of a breach of the peace. The defendant may protest the latter. The judge can still proceed as though the mere announcement of these additional bits is incriminating and sanction him accordingly. Whether there in fact were bargaining sessions, lack of evidence, or reduction of charges by the police rather than the prosecutor in the cases investigated here, it remains that for those petty misdemeanor cases, where there is an informal courtroom allegation of a relatively serious offense, the defendant is more likely to be sanctioned than is the average petty misdemeanant. It is as if these defendants were processed for more serious charges.

TABLE 10

PERCENTAGE OF COURTROOM ENCOUNTERS ACCORDING TO OFFENSE CHARGED AND ACCORDING TO RACE, BY DURATION OF ENCOUNTERS (table excludes arraignments)

	Offense Charged				Defendant's Race		
Duration of Encounter	Petty Misdemeanors	All Other Misdemeanors	Felony	Other or Unspecified	All White	All Black	Total Cases
One minute or less	69	24	10	(4)	67	52	60
1.1-2.0 minutes	15	21	30	(1)	16	16	16
2.1-4.0 minutes	10	26	20	(1)	08	18	13
Over 4 minutes	06	29	40	(2)	08	13	10
Total	100	100	100	–	99	99	99
(n)	(232)	(38)	(10)	(8)	(156)	(132)	(288)

https://doi.org/10.2307/3052769 Published online by Cambridge University Press

MASS JUSTICE AND DISPOSITION

Table 10 shows the relationship between the duration of encounters and the race of defendants.[26] The court processes white rather than black defendants with striking rapidity. Thus the race differences run in the opposite direction from what a discrimination hypothesis would predict. White defendants are processed in two minutes or less in 67% of the total cases, while black defendants are processed in this length of time in only 52% of the cases. For Spanish-American defendants the proportion is in the middle, at 60%. These differences are all but erased when the seriousness of the offense charged is controlled. Proportionately more whites than blacks have minor misdemeanor charges; these are cases on which the court spends very little time. Furthermore, a disproportionate number of the defendants in intoxication cases are white; intoxication cases are by far the speediest, 96% of them concluding in two minutes or less. Correlatively, black defendants account for a disproportionate number of the more serious cases. More serious cases are longer regardless of race.

Thus the court seemingly orients itself more to the varieties of its workload than to race, a legally irrelevant characteristic of the individuals it processes. In serious cases, defendants are more likely to protest their innocence; trials are therefore more common. Further, in serious cases, lawyers more often are present; witnesses may be heard; the judge may set penalties more carefully; and procedural restrictions and requirements are more stringent. Minor cases are simple. The court handles so many minor cases that it can and does establish routines for processing them. Each legally serious case is a relative novelty for the court. Consequently, the court cannot feed it as quickly through its machinery. The court can handle rapidly what it handles most often. It should not be assumed that minor cases are quickly disposed of only because they are legally petty. While they are minor in the formal legal system, they likewise are common and routine in the legal bureaucracy. There is a convergence between the formal and organizational networks of the law.

Pressures toward rapid processing derive not only from an overloaded court but also from the defendants themselves. In

other words, at times there is an identity of interests between the parties at conflict—the state and the defendant; they contribute for different reasons to a rapid system of justice.[27] For example, when the judge asks, as he frequently does, if the defendant has "anything to say" the usual reply is a brief "no." Also, defendants often say such things as, "I'd like to get this over with." One defendant, assuming he would be fined rather than incarcerated, said he would plead guilty so that he could salvage more of the remaining day for his job. In brief, while the court cannot allow lengthy moments in court for all defendants, most defendants do not appear to want them anyway. After all, any given defendant or his representative need only speak longer if he cares to stretch his encounter.

There could be a point beyond which this option remains open only with certain negative consequences for the defendant. It seems that the judge and the prosecutor have a notion of a defendant who "talks too much." For example, the three most loquacious defendants in the study met with treatment uncharacteristic of the court. The first of the three, a middle-class, white young man, inquired with some detail into his rights. He then embarked on a relatively lengthy account (roughly two minutes) of his alleged offense (vagrancy). He concluded with a statement as to why he should be fined rather than incarcerated. He was more than reasonably polite, but he apparently also was too verbose. The judge interrupted him, dismissed him with, "That will be all, Mr. Jones." and asked that the police officer on duty place him in the courtroom lock-up. The second loquacious defendant—a black in his thirties charged with breach of the peace—behaved similarly, although with antagonism toward the judge and prosecutor. He, too, was interrupted and placed in the lock-up. Moreover, when he knocked on the lock-up door to ask the police officer if he could see the judge, the prosecutor announced that he would be found in contempt of court upon the next rap at the door. The third, a white lower-class female, was more subtly stopped from taking up court time. However, she received a penalty more severe than most in her offense category. Defiance of authority may be what more basically is at issue; but devouring time may in and of itself defy the court. Even though

the number of cases is minute, and though other factors could be at work, these cases do suggest that behavior which uses extra time may not be advisable for the defendant.

Rapid encounters occur in the context of a highly bureaucratized court with a heavy caseload and in some sense surely are a function of the context. Nevertheless, similarly short encounters can emerge in different contexts. Preliminary observation was done in a small city's night court, a court which is considerably less bureaucratic. There the average court session runs one-and-one half to two hours; the total number of cases processed in a single session is usually four. However, the impact that this seemingly leisurely pace has upon the duration of the encounters is the opposite of what might be expected—it does not lead to lengthy encounters. Defendants in this lower court spend only insignificantly longer periods of time in contact with the judge. The majority of the cases last five or six minutes or less. The short encounters plainly stem from a lack of behavioral routines for processing the accused. Most court time is consumed not by attention to defendants but by organizational details: the prosecutor must be found so that he can be asked a question; a late policeman is awaited; a lengthy crime report is typed; the statute book has to be located so that the judge can ascertain the limits of punishment for a particular offense. In the busy and bureaucratized setting, these matters usually are not problematic. Indeed, when they are problematic, the high volume of cases itself contributes to a more efficient use of time; if one case is not ready for hearing, then the next in line can be heard. Where there are only three or four cases per session and where bureaucratization is at most primitive, the courtroom personnel and the defendants must literally sit and wait for one another.

In the bureaucratized court, encounters of short duration along with mass processing are two means that mitigate some of the caseload pressures. As in the duration of encounters, differences in patterns of mass processing are a function of the seriousness of the offense rather than of the race of defendants. Defendants accused of minor offenses are disproportionately processed in groups regardless of their race. As would be expected, then, defendants before the judge in groups tend also to be defendants who spend

little time with the judge.[28] Eighty-four percent of the defendants who stand before the judge with ten or more other defendants spend only one minute or less in their courtroom encounters. Only 17% of this group engage in encounters of two to four minutes, and none at all has an encounter lasting over four minutes. By contrast, only slightly less than half the defendants processed singly have encounters of just one minute, and 13% of them see the judge for over four minutes. In short, the characteristics of mass justice cluster in the handling of certain defendants.

A number of dimensions along which felony and misdemeanor cases are handled differently have been discussed. Overall, felony cases take longer to process; the court more often processes felony suspects alone instead of in groups; the judge more often apprises them of their rights; he more often apprises them individually; and they more often receive the services of the public defender. The misdemeanant does not nearly so frequently meet this kind of treatment by the court. At the same time, he also does not receive the kind of punishment that the felon receives; nor does he receive the informal approbation from peers and relatives, nor does his criminal record follow so closely and consequentially on his heels when he finally emerges from the criminal justice system. He is handled with less caution, but his trip through the system has relatively few ramifications for him. So little does his penalty affect his future that it is not worth his while to appeal. The lack of control from the minor defendants on one side and from the higher courts on the other allows the lower court to send misdemeanants routinely and smoothly through the system.

Somewhat surprisingly, the court does not take its time and care in direct proportion to the severity of the sanctions it dispenses. To examine this relationship, it is necessary to hold constant the charge. (Since mass processing, the duration of encounters, and disposition are associated with the seriousness of the charge, patterns uncovered without controlling for the charge would largely be a function of the charge level.) Again, the only charges with sufficient cases to allow examination are drunkenness and breach of the peace. It should now be quite evident that the elements of mass justice are particularly characteristic of the petty

case. The variation of the elements of mass justice *within* the petty misdemeanor category is now investigated as it relates to disposition.

When the court fines a petty misdemeanant, the chances are that it processes him alone (see Table 11). The court individually processes 52% of the defendants with low fines and 70% of those with high fines. Contrary to what might be expected given this pattern for fines, when the judge sends an offender to jail, very rarely does the offender see the judge alone in his courtroom encounter. A mere 10% of those sentenced for 10 days and 12% of those sentenced for 15 or more days are processed individually. Not only is the mass-processing pattern for the fine and incarceration the reverse of the expected; the percentage difference is substantial. The judge, it could be said, expends more official energy on those he fines than on those he incarcerates. Further, it is noted again that most minor misdemeanants have no contact whatsoever with the judge or prosecutor outside the courtroom encounter itself. A trip to jail, then, very often is a result of one quick and impersonal contact with the judge.

A higher proportion of those incarcerated than of those fined are recidivists. Moreover, a disproportionate number of those both incarcerated and mass-processed are recidivists. Repeaters are thus the most apt to be handled impersonally and in turn incarcerated. The court takes relatively little care with its failures, more care with its newcomers. It would appear that, in so doing, the court may in part abdicate its deterrence role with those it has not been able to deter. It is as if the court gives up.

A slightly different but fundamentally similar pattern obtains in the relation between the duration of encounters and dispositions. Exactly half of all offenders who are jailed are disposed of very quickly, that is, in less than one minute (see Table 12). Offenders whom the judge fines are not quite so often processed with this rapidity (41%). This mirrors the relation between mass processing and dispositions, although the percentage difference is not nearly so great. At the other end of the time scale, 13% of those who are incarcerated have encounters of four or more minutes; this is true of only 5% of those fined. Thus, even though it is common for an

TABLE 11
PERCENTAGE OF PETTY MISDEMEANOR ENCOUNTERS ACCORDING TO DISPOSITION, BY NUMBER OF DEFENDANTS

Number of Defendants in Encounter	Disposition											
			Fine			Jail						
	Suspended Sentence		$1-20		$21 or More	5 Days	10 Days		15 or More Days		Probation		All Cases	
One	46		52		70	(3)	10		12		58		48	
2-5	21		07		20	(1)	10		31		–		17	
6-9	04	53	30	48	03	(1)	70	90	12	87	17	42	16	52
10 or more	28		11		07	–	10		44		25		19	
Total	99		100		100	–	100		99		100		100	
(n)	(99)		(56)		(30)	(5)	(10)		(16)		(12)		(228)	

https://doi.org/10.2307/3052769 Published online by Cambridge University Press

offender to be sentenced to jail in very short order, the judge does spend more time with slightly over one out of ten offenders he sends to jail. Again, however, what is of far greater interest is that decisions to incarcerate are very quick decisions more often than are decisions to fine.

Augmenting this contrast between the fine and incarceration are the contrasts within the two categories. As the fine increases, it is *less* likely that the encounter lasts *less* than one minute. By contrast as the jail term increases it is *less* likely that the encounter lasts *more* than one minute. Hence, not only is the briefest of meetings characteristic of encounters that result in incarceration; in addition, extremely short encounters are still more likely as the length of time in jail increases.

These dual patterns—between and within the categories of incarceration and the fine—may seem surprising, since a jail term is obviously a greater deprivation of an offender's liberty than is a fine. The court does not allocate its time and resources according to the severity of the punishment imposed. A possible factor underlying this finding is that the rapidly processed incarcerated defendants are very likely to be the "regulars," well-known in intoxication cases. While these defendants repeatedly "cause trouble" on the street, they uncommonly "cause trouble" in the court. The court is familiar with them, and they are familiar with the workings of the court. They neither question their charges nor do they say that they do not understand their rights. In brief, they present no trouble to the court during the encounter itself, and the court need not anticipate a protest about court treatment once they are released. The court can afford to process these defendants quickly, even though in doing so it often sends them to jail. They are routine failures; the court routinizes its failures.

SITUATIONAL SANCTIONS

Defendants face the teeth of material sanctions, if they face them at all, only after they depart from the courtroom. They must work off days in jail or months in prison, muster funds to pay fines, or arrange their lives to accommodate periodic rendezvous

TABLE 12

PERCENTAGE OF PETTY MISDEMEANOR ENCOUNTERS ACCORDING TO DISPOSITION, BY DURATION

	Disposition									
		Fine			Jail Term					
Duration of Encounter	Suspended Sentence	$1-20	$21 or More	All Fines	5 Days	10 Days	15 or More Days	All Jail Terms	Probation	All Cases
Less than one minute	67	61	03	41	(2)	40	57	50	33	52
1-3½ minutes	31	36	87	53	(1)	60	24	37	25	39
4 or more minutes	03	04	10	05	(1)	–	19	13	42	10
Total	101	101	100	99	–	100	100	100	100	101
(n)	(101)	(56)	(30)	(86)	(4)	(10)	(16)	(30)	(12)	(229)

https://doi.org/10.2307/3052769 Published online by Cambridge University Press

with probation officers. On occasion, defendants also receive what could be called situational sanctions during their courtroom encounters with the judge. The judge's manner toward them may be harsh or severe rather than good-natured or distant and bureaucratic. Besides the relative subtlety of a harsh manner, the judge at times openly reprimands defendants in the courtroom. The judge traditionally has been a moral agent not only in his actions but also in his style.

Only a small portion of defendants are singled out to be situationally sanctioned during courtroom encounters, and the selection does not directly follow the seriousness of the charge. The courtroom is removed from the immediacy of the criminal event. Thus it is removed from the tension, disgust, outrage, or defensiveness that might attach to the witnessing of violative behavior and its consequences in the field. The courtroom is usually the stage for the comparatively dull aftermath of the passion, disruption, fun, or danger of deviance.

It appears that a minor disruption in the courtroom or a show of disrespect for its personnel is more likely to give rise to situational sanctioning than is the allegation of a serious criminal offense. Details from some of the more dramatic instances of such informal deviance and response are presented in the preceding discussion. Unfortunately, there are not enough cases to control for offense and to show quantitative findings on the matter of court disruption and situational sanctioning. Instead, we examine situational sanctions, first in relation to the offense charged and then in relation to the disposition.

The judge's manner toward the defendant may be classified into four categories: good-natured, bureaucratic, firm, and harsh. First, the judge may be very courteous, affable, or even subservient toward the defendant. For example, in one case three brothers, middle-class and neat in appearance, were brought in on breach charges. One was still in uniform, having just been discharged from the service. When the judge learned that their behavior consisted of some raucous but seemingly harmless antics on a public street, he smiled knowingly and said, "Well, I guess you just got a little overly excited to see your brother back. Okay. Sentences suspended."

Secondly, the judge might behave in a routine, bureaucratic, businesslike way toward the defendants, a manner that at least borders on the impersonal. Many times these cases run as follows: The judge frequently apprises the defendant of his rights at the outset. The prosecutor then says, "Mr. Jones, you're charged with intoxication; what is your plea?" "Guilty." The judge, speaking for the second time, says, "Twenty dollars," or "Five days," or whatever. The case is over. Sometimes the judge does not even make the disposition decision. For example, the prosecutor says, "I recommend twenty-five dollars," and the judge echoes, "Twenty-five dollars." Some cases are more lengthy, but the personal involvement of the judge remains minimal. He is routine and affectively neutral in his outward behavior.

In other encounters, the judge is firm and displays his legal authority over defendants. While this third manner does not imply that the judge orally reprimands defendants, the tone, force, and sometimes the content of his words and his demeanor convey moral authority. Instances of firmness are: "I hope you understand that you are in serious trouble"; "Now I'm going to fine you twenty-five dollars for this. But I want you to pay it out of your own pocket so you can appreciate the consequences of what you have done. You can pay me on a weekly basis, but I don't want your father to pay for you."

Last, and to be clearly separated from the third type of judicial demeanor, is a harsh, nasty, abrasive style of behavior. The judge's demeanor is so categorized only when it goes beyond firmness to personal vindictiveness. For example, a white defendant charged with abusing an officer and breach of the peace protested: "I have never been arrested before. This is ridiculous. The record says I abused a police officer. I never touched him. This was a traffic violation." The judge responded, "Don't give me that disgusting look. Your case is bondable. Your bond is one hundred and fifty dollars."

The judge is formal or firm in 14% of the encounters. To the extent that a formal demeanor is the stereotype of judicial behavior, the stereotype is far from accurate. Secondly, it is extremely rare for the judge's demeanor to take on either extreme: he is harsh in a mere 5% of the cases, good-natured in

only 3% of the cases. By far the most common demeanor of the judge in the courtroom encounter is routine and bureaucratic. In over three-quarters (78%) of the cases, he behaves in this fashion.[29]

Perhaps the high proportion of cases in which the judge is routine and affectively neutral should not be surprising since the lower court, after all, is a bureaucracy—one in which criminal legal work happens to be done. The patterns of judicial demeanor may be very close to those for bureaucratic workers in other legal or even nonlegal settings. Crime, however, is a topic which periodically generates a great deal of moral outrage on the part of the citizenry. Yet the judge in the courtroom usually does not behaviorally uphold these moral sentiments. Most often he remains personally detached while he sanctions offenders or allows them to go free. Judicial affective neutrality may be compared to that of police officers, the control agents who are closer in social space to the deviant act. In a contrastingly low 60% of their contacts with suspects, police officers behave bureaucratically (Black and Reiss, 1967: 55). Thus the police officer is less often distant or detached even though, formally, he is not empowered to perform a judicial function.

On the average, a businesslike manner is slightly more frequent in felony than in misdemeanor cases (see Table 13). One might have expected the opposite. This pattern surely is the opposite from that of the larger community's response to violations. A firm demeanor is in general more frequent in misdemeanor cases: the judge is more often firm in either level of misdemeanor cases (13% in minor misdemeanor cases and 27% in serious misdemeanor cases) than in minor felony cases (5%), and is more often firm in serious misdemeanor cases than in serious felony cases (21%). Thus the judge's demeanor does not *parallel* the gradations in the law; instead it seemingly *complements* these gradations. Perhaps the judge can afford to be routine and impersonal in a greater majority of felony cases: the charges alone extend a good deal of moral authority and official condemnation. Accordingly, the judge can be impersonal, allowing the rules themselves to impart official morality. When the charge is not serious in the legal hierarchy of offenses, the judge more often attempts to impress upon the

TABLE 13
PERCENTAGE OF COURTROOM ENCOUNTERS ACCORDING TO OFFENSE CHARGED, BY JUDGE'S SITUATIONAL DEMEANOR

	Offense Charged				
	Misdemeanor		Felony		
Judge's Demeanor	Minor	Serious	Minor	Serious	All Cases[a]
Good-natured	03	04	–	–	03
Bureaucratic	79	65	85	79	78
Firm	13	27	05	21	14
Harsh	05	04	10	–	05
Total	100	100	100	100	100
(n)	(278)	(26)	(20)	(19)	(343)

a. Arraignments had to be included in the tabulation to supply a number of cases sufficient for analysis. However, this presents problems for interpretation since proportionately more felony cases were arraignments, cases in which the defendants are still legally innocent. Nevertheless, on a number of occasions judicial harshness did not appear to be inhibited by the presumption of innocence. Furthermore, judicial firmness is not unexpected in an arraignment. Were the judge merely to say, for example, "Now you're charged with a felony; this is a serious matter," his demeanor was categorized as firm or formal.

defendant the seriousness of the matter. Formal and informal authority mesh in such a way as to homogenize condemnation across the categories of offense.

Rarely is the judge affable and good-natured, and even then it is only in misdemeanor cases, never in felony cases. Although a felony charge might appear sufficiently serious so as not to call for judicial firmness, at the same time a felony charge might be rather dissonant with judicial affability. Whether or not this is the motive for the judge's avoidance of affability with felony suspects, it is the pattern. The case of the three drunken brothers is an example of good nature and friendliness, implying that even the judge does not seriously relate to petty matters. In one case the judge was kind toward a man who could barely hear. At other times the judge's demeanor simply takes on the cast of a concerned, helpful social worker rather than that of a stern or impersonal authority figure. Overall, though, judicial good nature is extremely uncommon.

At the other extreme, in only 5% of all cases does the judge behave harshly toward the defendant. In serious felony cases the

judge is never harsh. While harsh treatment is more characteristic of minor felony cases (10% of the total) than of misdemeanor cases (an average of 5%), there were only two cases of the former. One of them seemingly can be rather easily explained. The defendant in this case was a boy home on leave from the service. He had been arrested for possession of drugs. The judge, feeling that he should not detain the defendant from his military duty, let him off with no penalty whatsoever. He was not, however, let off without situational sanctioning. The judge behaved quite harshly toward him. The harshness, in short, seemed to be a substitute for formal punishment. In the remaining cases, the judge's harshness may have been a response to some situational violation on the part of the defendants; they were disrespectful, unrepentant, argumentative. Again, it is very uncommon for the judge to vent any hostility during the courtroom encounter.

Situational sanctioning can be examined in relation to disposition as well as to charge. The relation between disposition and judicial demeanor is first examined with intoxication cases excluded, since they are in many ways a class unto themselves. Although incarceration is a more serious deprivation of liberty than is probation, the judge is much *more* likely to behave in an impersonal way toward the defendant he incarcerates than toward one he places on probation. The respective percentages are 71 and 42. Correspondingly he is *less* likely to be firm (21%) and *less* likely to be harsh (7%) toward the defendant when he incarcerates him than when he places him on probation (37 and 21% respectively). In short, the incarcerated offender is relatively immune to sanctioning in the face-to-face encounter. Often when the judge places a defendant on probation, he says, "Now I'm going to give you a break. You're going to be put on probation. You don't have to go to jail now, but if you do anything wrong. . . . " He "gives him a break" in material punishment but he comparatively often informally sanctions the defendant during the encounter. Situational harshness or firmness might in this sense be viewed as a substitute for harsh punishment, a compensation for mild punishment.

We consider the relation between disposition and situational sanctioning in intoxication and breach of the peace cases

separately. Judicial demeanor relates to dispositions in petty cases, but the pattern is very different from that in more serious cases. Put briefly, in cases of intoxication and breach of the peace, as the penalty is stiffer, the likelihood of firm and harsh treatment is greater. Situational sanctioning in minor cases goes hand in hand with relatively stiff punishment. However, the same pattern of complementarity between situational and material sanctioning found in the other cases should not be expected in these minor cases because of the high proportion of "regulars" involved. The court, as suggested earlier, in some ways gives up on its failures. Even though many chronic drunks are given suspended sentences, the judge does not bother to sanction them situationally for their behavior. They are sanctioned neither materially nor informally. In these cases the court almost completely gives over its deterrence role to the police. To some extent the police have, operationally, final jurisdiction over skid row drunks. Only occasionally does the court intervene with any material sanction, and almost never does it intervene with any situational sanctioning. Correspondingly, these defendants are probably more concerned with getting caught than they are with the morality of their behavior (see Reiss, 1960). At any rate, the intoxication cases present an interesting exception to the broader pattern of complementarity between material and situational sanctioning.

The informal lecture is a second major means of situational sanctioning. An example of a lecture is a drug case in which the judge reported on findings from a local newspaper article on drugs. He then drew out various implications of the findings and concluded that drug use is a serious and immoral matter. On another occasion the judge commented to a black boy who had abused a police officer: "I hope you understand that just this kind of behavior by you people is what will get us a man like George Wallace for president." Usually the "lecture" is unstructured and undetailed, lasting a matter of seconds. It is very uncommon for the judge to lecture or moralize in the courtroom. Opprobrium is discursively verbalized in just 15% of the cases. The judge penalizes the offenders, but almost never does he tell them that their behavior was wrong.

Furthermore, the probability of a lecture does not increase directly with the seriousness of the offense charged. Neither does the judicial lecture complement the seriousness of the charge quite as neatly as does the situational sanction of firm demeanor. Minor misdemeanants are less likely (13%) to be lectured than are minor felons (20%; see Table 14). Conversely, serious misdemeanants are slightly more likely to be given a lecture by the judge (27%) than are serious felons (21%). Hence, with the exclusion of minor misdemeanor cases, the same complementarity between seriousness of offense and situational sanctioning does obtain. That is, the judge is comparatively likely to emphasize the immorality of the act of a defendant who is not very immoral legally. Perhaps the judge attempts to deter the serious misdemeanant from moving into more serious criminal patterns, whereas this seems unnecessary for the minor misdemeanant and too late for the felon.

Finally, the relation between the situational lecture and disposition is examined. Considering again all but intoxication cases, these findings coincide, with the exception of the low-fine category, with those on the relation between disposition and judicial demeanor. When a defendant is placed on probation, the judge moralizes during the encounter in half the cases. By

TABLE 14
PERCENTAGE OF COURTROOM ENCOUNTERS ACCORDING TO OFFENSE CHARGED, BY SITUATIONAL LECTURING ON THE PART OF THE JUDGE

	Offense Charged				
	Misdemeanor		Felony		
Did the Judge Informally Lecture?	Minor	Serious	Minor	Serious	All Cases
No	87	73	80	79	85
Yes	13	27	20	21	15
Total	100	100	100	100	100
(n)	(279)	(26)	(20)	(19)	(344)

https://doi.org/10.2307/3052769 Published online by Cambridge University Press

contrast, when a defendant is incarcerated, the judge moralizes or delivers a lecture in less than a quarter of the cases. Likewise, when the judge gives a stiff fine to the defendant it is more likely than not that he delivers a lecture. Thus, for all cases except intoxication, both kinds of situational sanctioning—the lecture and harsh or firm judicial demeanor—tend to be more common when the material penalty is slight. This pattern does not appear in the relation between either form of situational sanctioning and the dispositions of petty misdemeanor cases.

When the court expends its time and facilities to process a case, and when it requires a defendant to go to the trouble of submitting to its processing but ultimately gives that defendant only a minor penalty, a situational lecture or judicial firmness perhaps goes part of the way toward upholding the legitimacy of the court. A minor material penalty alone might seem pointless to the defendant, given the effort both he and the court had to go through to reach it. By situationally sanctioning the defendant whom he only penalizes lightly, however, the judge in effect says that the defendant is indeed a "bad man," even if his behavior does not merit a harsh material punishment. Not only might situational sanctioning somehow compensate for the legitimacy lost, it might in some small part compensate for the deterrence value lost by a lenient court.

In sum, the judge typically does not bother to condemn or chastise defendants with his tone or with his words. The fact that the persons processed by the court are official deviants slips beneath the surface of courtroom interaction. The style of in-court work belies its content; the routines hide the substance. There are no formal or informal requirements that the judge be the personal moral spokesman for the state, and he usually is not. While the fundamental elements of a "status degradation" (Garfinkel, 1956) are present in the courtroom encounter, the degradation usually is not dramatized; it is unceremonial. The judge's work becomes routinized, as do all work roles. Surely some deterrence value of the encounter is lost to the extent that routinization sets in.

The situational sanctioning that the judge does engage in is woven in unexpected patterns. First, it is suggested that persons

who violate the informal rules of the court, regardless of their violations of legal rules, are particularly susceptible to situational condemnation. Indeed, when the disruption is sufficiently severe, the court can invoke the legal rule against contempt of court. The court protects itself as it protects the larger society, responding to its own victimization at the same time as it responds to the victimization of others.

Second, situational sanctioning relates to the seriousness of the charge and to the seriousness of the material penalty. It seems, overall, to be more common with minor than with serious charges. Thus it is possible that situational sanctioning works in such a way as to compensate for the lesser degree of condemnation that a minor charge itself carries. Furthermore, situational sanctioning is more common, in all but petty misdemeanor cases, when the penalty is slight. Indeed, when a defendant is not punished severely, his encounter with the judge more often outwardly appears as a degradation ceremony. With opprobrious words the judge might buoy the legitimacy of processing minor offenders and offenders he does not severely punish. In a greater majority of felony cases and in a greater majority of cases where the penalty is relatively stiff, by contrast, the judge can remain uninvolved without jeopardizing the manifest condemnation of the offender.

CONCLUSION

This paper reports findings from an observational study of a criminal court which handles primarily minor cases. Because the empirical patterns examined here are somewhat diverse and numerous, the discussion closes with a list of generalizations, some of which are clearly more tentative than others.

(1) The lower court processes defendants with striking rapidity.

(2) The lower court frequently processes defendants in groups rather than individually.

(3) The judge typically but not always apprises defendants of their legal rights. However, most apprisings are to groups rather than to individual defendants.

(4) The judge is less likely to apprise accused persons individually or at all in legally nonserious cases, cases where the defendants are less likely to protest their dispositions.

(5) Attorneys represent only an extremely small portion of the defendants.

(6) Attorneys handle more serious than minor cases.

(7) The attorney's involvement in informal relational networks of the court generally has beneficial consequences for the fate of his client; but the court sometimes sanctions uncooperative attorneys by sanctioning their clients.

(8) The attorney's role as an advocate for leniency supersedes his role as an advocate for freedom.

(9) Since the vast majority of defendants, particularly those in minor cases, plead guilty, the court is much more a sentencing than a fact-finding enterprise.

(10) Black defendants plead not guilty more often than do white defendants.

(11) The court is legally lenient in its dispositions, releasing many offenders on suspended sentences, incarcerating very few.

(12) In drunkenness cases, a criminal record and a situational excuse increase the likelihood of incarceration.

(13) There is no clear evidence of racial discrimination in dispositions.

(14) A reduced charge nets the defendant roughly the same type of punishment as that typical for a higher charge; in these cases, many a defendant is punished for what he seems to have done rather than for what he was convicted of having done.

(15) The court allocates its time and official energy according to the nature of cases rather than according to race.

(16) In minor cases the more severe the punishments, the less time and official energy the court spends.

(17) The judge very rarely moralizes to or lectures defendants in the courtroom.

(18) In all but drunkenness cases, the probability of judicial moralizing and lecturing increases as the charge is relatively minor and as the disposition is milder.

One theme in this analysis concerns the court in relation to segments of its larger environment—the prosecutor's office and the police. Ideally, a broad approach to the court would include other external organizations and actors that play a part in molding court operations, such as trial courts with jurisdiction over more serious cases, appellate courts, some municipal officials, the general public, and correctional personnel and facilities. These organizations and actors exert a constant, largely indirect set of pressures over time. In short, part of what occurs inside the court is conditioned by and conditions factors outside of it.

Besides this broader approach to the court, this analysis directly confronts courtroom encounters as units of study in their own right. It is shown that various characteristics of face-to-face encounters cohere with others. Encounters are in turn analyzed in the context of their immediate environment, the court itself. The court can be seen as a formal organization with a legal content; its workers are bureaucrats with legal roles. Thus encounters come into being and are played out in a bureaucratic setting. The control of crime is as much a bureaucratic as it is a moral enterprise.

NOTES

1. No information was obtained on how much time was spent with individual defendants outside the courtroom itself. As noted, however, it was said that no time whatsoever is spent with defendants charged with drunkenness and little or no time is spent with other petty offenders.

2. Defendants can learn from the processing of other defendants that they observe; this saves time. For example, a judge not uncommonly asks after a rights apprising if the defendants "understand." The judge offers clarification to the first defendant who says that he does not understand. These restatements are not necessary by the time he asks the last few defendants. In unknown other ways, a defendant may learn from another defendant how to "work the system."

3. Furthermore, a disproportionate number of the cases that would even allow for conflict resolution do not come to the contemporary criminal courts. Some cases that potentially could work their way through the courts are weeded away from the criminal processing funnel by the police. Police arrest practices vary according to a number of factors. Significantly, patrol officers disproportionately leave cases to informal mech-

anisms of resolution—that is, they arrest and make out crime reports less frequently—when the offender-victim relation involves intimates rather than strangers (Black, 1968; 1970). Strangers in criminal incidents are connected momentarily only because of the offense itself. There is no enduring relation that requires mending. Where the victim and offender are linked in enduring relations, conflict resolution on a case-by-case basis is possible. In sum, not only does the court handle defendants in an impersonal way by processing them rapidly and in groups; impersonality also characterizes the bulk of the offender-victim relations that eventuate in court processing.

4. In some jurisdictions, misdemeanor defendants have a right to court-appointed counsel.

5. Aubert (1963: 19) makes the general point that perhaps many facets of the law are not written to be understood by the laymen subject to them: "Legal terminology addresses itself to the task of providing the technical means by which the courts, or attorneys, may solve conflicts with the appearance of precision and certainty. . . . The language of the law is shaped more profoundly by the function of solving conflicts than by the function of influencing the legally naive."

6. Many defendants, on the other hand, surely are sufficiently aware of their rights but choose to decline various options open to them. What is work, time, and money for the court is also work, time, and often money for the defendant.

7. In addition, only a quarter of the apprisings were classified as clear. This means at least that the judge was careful in the communication of the right to counsel and for court-appointed counsel, and at most that he was precise with regard to all rights.

8. The study (Wald et al., 1967: 1552) of police interrogation after the 1966 Miranda decision reports that at times the interrogating detective delivers statements of rights to suspects in "a formalized, bureaucratic tone to indicate that his remarks were simply a routine, meaningless legalism."

9. Alschuler (1968) suggests that this cooperation stems more from friendship patterns as such than from more strictly legal gamesmanship.

10. The remaining remarks on counsel are very speculative. Information of the enduring court-attorney relationship was provided only through passing remarks from attorneys and inferred from a few remarks among the courtroom encounters. There was no systematic attempt to procure information on this cooperative relationship in part because of all of the prior attention to it. Conclusions about attorneys' in-court behavior, on the other hand, are tentative simply because so few defendants in the court are attended by counsel. Still, it seems appropriate to add what little these observations provide to the picture of the attorney's role.

11. Only 46% of the 13 defendants who indicated they would apply for the public defender had been charged with felonies. However, it would be expected that they would be more successful than the misdemeanor applicants.

12. Hence in operation the system becomes much like courts in civil law countries, where it is formal that the prosecution cannot introduce material with which the defense is unacquainted. Trials thus are seen by all as quite anticlimactic. For a discussion of this and other features of Soviet courts, see Feifer (1964).

13. Attorneys rarely raise procedural matters in the courtroom. Just once during observation a lawyer invoked the constitution; the point was dismissed. One defendant said that he believed his arrest was improper. The judge replied, "Well, we don't want to talk about those matters now." One judge once mentioned the Supreme Court. Only in these few instances were constitutional matters brought to the fore.

14. Plea bargaining is not new. A form of it is to be found at least as early as the Middle Ages. However, it appears to have been quite devious. For example, see Lea (1969: 170).

15. The presence of legal counsel has a relation to pleas. Excluding all cases of simple intoxication, where not guilty pleas and attorneys are extremely rare, the breakdown is:

Attorney	Percentage of Guilty Pleas
None	88
Private or Legal Aid	62
Public Defender	55

The presence of an attorney appears to condition the probability of a guilty plea independently of the offense charged. The pattern, however, is uneven. Considering only minor misdemeanors, the presence of an attorney decreases the likelihood of a guilty plea. In all other misdemeanors the direction is reversed. This finding on more serious misdemeanors may result from previously bargained charges and pleas. Overall, there are too few cases attended by attorneys to say anything with a high degree of certainty about their effect on plea patterns.

16. Furthermore, a related stigma may fall upon the defendant's relatives. This is a phenomenon analogous to that in less-developed societies where whole families are penalized for the misdeeds of one member. These penalties or stigmata have interesting implications for deterrence. It is possible that informal family pressures against the violation of formal rules are stronger as the likelihood of a negative reaction against kin members is stronger.

17. This phenomenon can be formalized. During the Inquisition, if a defendant was not convicted he was liable to trial on the charge of suspected heresy. This was divided into three levels: light, vehement, and violent. There was no admissible evidence for the defendant, and he had no possible defense (see Lea, 1969: 208-212). Likewise members of a licensed occupation sometimes can be penalized for behavior which gives the appearance of unprofessionalism.

18. Of course charges can be dropped in some cases or a nolle prosequi can be entered. Then there is no other final disposition.

19. Remitted fines are very uncommon in this court and are included with suspended sentences for purposes of tabulation. There were no more than three during the observation period. A remitted fine is analogous to a suspended sentence except that the sanction is in dollars rather than days.

20. The one defendant charged with a minor misdemeanor who was both incarcerated and placed on probation was a black who had pleaded not guilty and who had allegedly thrown a brick at a policeman. His case was substantively more serious than virtually all other minor misdemeanor cases.

21. See pp. 503-505.

22. Leon Mayhew suggested to me before the study that the court might be resistant to information overload.

23. In some larger-city courts the prosecutor states the defendant's violative behavior numerically. While this may have the effect of removing some situational stigma from the defendant, it also would seem to be an instance of depersonalization of those processed through many judicial and correctional organizations.

24. Very frequently when substantive details are made public in the courtroom they pertain to verbal or physical abuse of a police officer. Many defendants accused, formally or informally, of abusing policemen in the most minor of fashions are admonished by the judge in a way, indeed, that the most serious felons usually are not.

25. If the prosecutor does not inject information on the substance of the offense that conflicts with the charge, the substantive offense is coded like the charge.

26. Race differences in the duration of arraignment encounters are negligible:

	White (n=28)	Black (n=61)
One minute or less	29%	34%
1.1-2.0	25	28
2.1-4.0	29	26
More than 4 minutes	18	11
Total	101%	99%

27. Longer meetings between the judge and the defendant obviously disrupt a busy court; they also have consequences unfavorable from the defendant's standpoint. Whatever else a quick encounter may be, for example, it also is a relatively short "degradation ceremony" for the defendant.

28. The duration of the encounter of a defendant who is mass-processed is estimated as the sum of the time the judge spends with him individually and a fraction of the time the judge spends with the group.

29. As justice historically is taken off the streets and put inside the courts, much informal, situational condemnation drops away. In many primitive societies situational sanctioning often is at least a concomitant of material punishment, if not nearly the whole of many punishments. For example, the Kapauku (Pospisil, 1958: 270) "consider being shamed by a public reprimand, which sometimes lasts for several days, much worse than anything except capital punishment. . . . [The public sanction is] the favorite sanction of the Kapauku. . . . It consists of intermittant public scolding, shouting of reproaches, and the dancing of the mad dance in front of the squatting defendant. The Kapauku consider this punishment the most effective of all."

Even in further-developed societies, situational sanctioning seems to have been relatively common. To be placed in stocks in a public place, for example, was as much for the purpose of being exposed to informal condemnation by passers-by as it was a material punishment in and of itself. Penitents during the Inquisition were required to wear the yellow cross (Lea, 1969). The historical emergence of prisons encroached upon the domain of situational condemnation (Durkheim, 1900). As the prison arose, punishment moved behind its walls. There is a distinctive impersonality in the contemporary accusation, conviction, and punishment of deviants, even though this is a contrast of which the general citizenry may be unaware.

CASE

MIRANDA v. ARIZONA 384 US 436 (1966)

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