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## THE CASELOAD CONTROVERSY AND THE STUDY OF CRIMINAL COURTS

PETER F. NARDULLI\*

### INTRODUCTION

In the past several years there has been a growing controversy over the impact of caseload pressure upon the processing of criminal defendants. In traditional criminal justice research, pervasive "dysfunctioning" in the criminal courts system has been attributed largely to caseload pressure. Some criminal justice scholars, however, have recently questioned the central role accorded caseload pressure and have supported their arguments with empirical evidence. While these recent studies suffer from certain shortcomings, the questions which they raise are extremely important and timely. Furthermore, these studies have significant implications for both theory and policy. The demise of caseload pressure as a central concept in the study of criminal courts would leave a large gap in our theoretical understanding of how these units function. If caseload pressures do not account for high dismissal rates, pervasive plea bargaining, and the weakening of the adversary system, what does? The policy implications of this controversy are just as significant. If increasing court resources—which decrease caseload pressures—will not significantly improve the operations of criminal courts, what will?

Because of the significance of the controversy, this article will briefly review the traditional role of caseload pressure in the study of criminal courts, as well as the recent studies attacking it. The impact of variations in caseloads will then be reexamined from a somewhat different analytical perspective than that used by earlier researchers. The results of this reexamination support the revisionist thinking of scholars such as Heumann and Feeley, and the implications of these findings for the study of criminal courts will be discussed. Finally, an attempt will be made to reconceptualize the role of caseloads in light of an organizational perspective on the operations of criminal courts. Two sets of

data will be used to conduct a rough examination of some of the ideas presented.

### THE CASELOAD CONTROVERSY

#### *Traditional Thought*

Concern with the impact of caseloads upon criminal court operations was evident as early as 1920. In the *Cleveland Crime Survey*, perhaps the first systematic, empirical examination of American criminal justice, Reginald Heber Smith observed that heavy caseloads in the Municipal Court of Cleveland resulted in unnecessary dismissals of many cases, as well as the occasional conviction of an innocent defendant.<sup>1</sup> Similar observations were made in other crime surveys conducted during the 1920's. Arthur Lashley noted that Missouri prosecutors were so overworked that they could not perform such rudimentary tasks as preparing instructions for juries, interviewing witnesses, and attending coroner's inquests.<sup>2</sup> In his summary analysis of the crime surveys for the Wickersham Commission report, Alfred Bettman attributed the high guilty rates observed in the surveys, in part, to the "immense volume of cases thrown upon prosecutors."<sup>3</sup> Increased criminal justice resources were an integral part of the reform proposals advocated by the crime survey researchers.

While criminal justice research was largely dormant during the depression and war years, a renewed interest was evident by the mid-1950's. During this period, Samuel Dash, like Bettman twenty years earlier, saw a direct connection between caseload pressure and guilty pleas.<sup>4</sup> In Dash's view, caseload pressures created an unhealthy state of affairs because the substantial sentencing differentials that were necessary to induce guilty pleas and discourage trials led many innocent defendants to plead guilty. Thus, caseload pressures indirectly accounted for many substantive injustices. Donald Newman and Albert Alschuler also saw plea bar-

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<sup>1</sup> R. SMITH, *CRIMINAL JUSTICE IN CLEVELAND* 54 (1921).

<sup>2</sup> Lashley, *Preparation and Presentation of the State's Cases*, in *THE MISSOURI CRIME SURVEY* 136 (1926).

<sup>3</sup> Bettman, *Criminal Justice Surveys Analysis*, in 4 U.S. NATIONAL COMMISSION ON LAW OBSERVANCE AND ENFORCEMENT, *REPORT ON PROSECUTION* 96 (1931).

<sup>4</sup> Dash, *Cracks in the Foundation of Criminal Justice*, 46 *ILL. L. REV.* 400 (1951).

gaining as a practice which evolved to cope with rising caseloads.<sup>5</sup> Alschuler hypothesized that as caseloads increased, sentencing concessions in guilty plea cases likewise increased.

In one of the more extensive treatments of the impact of caseloads upon courtroom operations and outputs, Harry Subin contended that two of the most significant consequences of caseload pressure were that it led both to the compromise of legal theory and to the substitution of speed for care in courtroom deliberations.<sup>6</sup> Subin believed that caseload pressure influenced the development of a system which emphasized compromise rather than confrontation and in which guilty pleas replaced trials as the primary mode of disposition. He observed that large caseloads resulted in inconveniences to witnesses, victims, and jurors who suffered from long delays, inconsistent and superficial treatment of defendants, strained relations with police, because their cases were being mishandled, and reduced courtroom dignity. In sum, he found that the problem of volume was pervasive. The President's Commission on Law Enforcement and Administration of Justice echoed many of Subin's points.

#### *A Restatement*

Underlying these sometimes rather disparate expectations concerning the effects of caseload pressure upon courtroom operations is an implicit, but generally shared, model of courtroom processes. This model can best be explicated and analyzed through the introduction of the notion of dispositional strategy. The term "dispositional strategy" can best be conceptualized as a plan or design for handling workloads in criminal courts (*i.e.*, for disposing of cases). Similar plans operate in most organizations<sup>7</sup> and their role is to foster the transformation of inputs into outputs. They specify what tasks to perform on what inputs in order to

produce the desired type or mix of outputs. They also specify how the various tasks are to be performed.

Incorporating the notion of dispositional strategy, Diagram 1 is a loose, somewhat simplified representation of the traditional researcher's model.<sup>8</sup> Within the model it is presumed that, under optimal conditions (*i.e.*, no caseload stress), the procedures used by criminal courts to process cases are those dictated by Anglo-Saxon notions of due process and embodied in the formal rules of criminal procedure. These factors were determinative of a court's dispositional strategy because of the importance of what might be termed the "legal man assumption" in traditional criminal court thinking. The legal man assumption is the belief that the legal profession develops people who are socialized to respond in their official capacities to legal norms and professional canons of ethics. Unlike the economic man, the legal man is not an omniscient being motivated by his own self interest.<sup>9</sup> This assumption plays a crucial role in traditional thought concerning the impact of caseload pressure upon courtroom operations because of its relationship to another basic assumption. That assumption is that most criminal courts are operating under severe caseload stress (*i.e.*, beyond optimal levels), given their present level of resources. This caseload pressure makes it impossible for criminal justice officials (judges, prosecutors, and de-

<sup>8</sup> Oddly enough, perhaps the most explicit statement of some of the relationships expressed in Diagram 1 can be found in the preface to A. BLUMBERG, *CRIMINAL JUSTICE xi* (1967):

Intolerably large caseloads, which must be handled with limited resources and personnel, potentially subject the participants in the court community to harsh scrutiny from appellate courts and other public and private sources of condemnation. Thus there is an almost irreconcilable conflict: intense pressures to process large numbers of cases, on the one hand, and the stringent ideological and legal requirements of "due process of law," on the other. The dilemma is frequently resolved through bureaucratically ordained short cuts, deviations, and outright rule violations by members of the court, from judges to stenographers, in order to meet production norms.

This is peculiar because Blumberg does not belong to the same intellectual tradition as most of the researchers described above. He does not really adhere to the legal man assumption (to be discussed in the text), nor does he believe that increased criminal justice resources are a panacea for criminal court problems. Given the thrust of his arguments, the centrality he attributes to caseload pressure is puzzling.

<sup>9</sup> For an extended discussion of the role of the legal man assumption in the study of criminal courts see P. NARDULLI, *supra* note 7, ch. I.

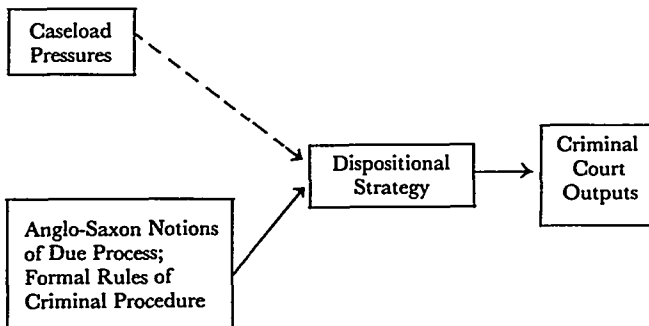
<sup>5</sup> Newman, *Pleading Guilty for Consideration: A Study of Bargain Justice*, 46 J. CRIM. L. C. & P. S. 780 (1956); Alschuler, *The Prosecutor's Role in Plea Bargaining*, 36 U. CHI. L. REV. 50 (1968).

<sup>6</sup> H. SUBIN, *CRIMINAL JUSTICE IN A METROPOLITAN COURT—THE PROCESSING OF SERIOUS CRIMINAL CASES IN THE D.C. COURT OF GENERAL SESSIONS* (1966).

<sup>7</sup> The notion of dispositional strategy is an adaptation of James Thompson's concept of an organization's technology. For his development of the role of technology in the study of organizations, see J. THOMPSON, *ORGANIZATIONS IN ACTION* (1967). The applicability of this concept in the study of criminal courts is developed at some length in P. NARDULLI, *THE COURTROOM ELITE: AN ORGANIZATIONAL PERSPECTIVE ON CRIMINAL JUSTICE* (1978).

DIAGRAM 1

Restatement of the Traditional Role Attributed to Caseload Pressure



fense counsel) to handle cases in accordance with the formal requirements of due process; although the legal man assumption indicates that they would if they could.

Within this model as caseloads increase beyond optimal levels, speed and compromise begin to displace due process values as determinants of a court's dispositional strategy. It is this displacement, caused by caseload pressures, which accounts for the observed dysfunctioning in criminal courts. The prevalence of the legal man assumption leads to the belief that this dysfunctioning can be curbed by increasing criminal court resources. As resources increase and caseload pressures decrease, due process values would begin to displace administrative values in the processing of criminal cases. This expectation formed the basis for most traditional programs of criminal court reform.<sup>10</sup>

The sentencing decision can be used to illustrate the dynamics of the traditional model. During periods when caseload stress was not significant, the criteria embodied in the sentencing decision would be expected to be largely reflective of considerations consistent with contemporary notions

<sup>10</sup> This is, of course, an admittedly oversimplified view of traditional thought. No one, for example, believed that all of the ills plaguing criminal courts could be resolved by reducing caseloads. While such a reduction was expected to eliminate the evils associated with such things as plea bargaining and delay, it was not expected to do too much about the problems caused by incompetent judges or racial discrimination. Moreover, Diagram 1 could be made significantly more complex. One could, for example, note that increased caseloads were expected to lead to increased delays which, in turn, would cause problems implementing the prevailing dispositional strategy. Thus increased delays would be expected to have an indirect effect upon outputs. These qualifications notwithstanding, the above analysis captures the essence of traditional thinking about criminal courts and is adequate for present purposes.

of due process. Examples of such criteria would be the seriousness of the case, the defendant's penological needs, and his conduct since his arrest. However, as caseloads increased beyond optimal levels, other types of criteria would be expected to become important. As speed and compromise begin to displace due process values, such factors as the mode of conviction (guilty plea, bench trial, jury trial) and the extent of the defendant's compliance with informal courtroom norms would expectantly become important in the determination of sentences. Moreover, as continued increases in workloads are experienced, the displacement of due process values would be accentuated. Continued increases in workloads would put prosecutors in increasingly weaker bargaining positions. Thus, the sentencing differential between guilty pleas and jury trials would, for example, become larger.

#### *The Work of Heumann and Feeley*

As is evident from this brief summary and elaboration of traditional thought, the impact of caseload pressure upon the operations of criminal courts was considered to be pervasive. But, despite the almost sacrosanct position which this concept has enjoyed for almost half a century, some contemporary criminal justice scholars have become increasingly skeptical. In separate works, Milton Heumann and Malcolm Feeley have recently challenged some of the traditional expectations concerning the effects of caseload pressure using quantitative and qualitative analyses to support their arguments.

In studying plea bargaining in the Connecticut Superior Courts, Heumann conducted three analyses to demonstrate that trial rates do not increase with reductions in caseload pressure.<sup>11</sup> First, he

<sup>11</sup> Heumann, *A Note on Plea Bargaining and Case Pressure*, 9 L. & Soc'y Rev. 515 (1975).

presented the aggregate trial rates in the courts (which handle misdemeanor and minor felony cases) for most years from 1880 to 1959, and found no marked decrease in trial rates. Second, he separated the various Superior Courts on the basis of average number of cases disposed of each year and compared trial rates for low-volume and high-volume courts during the same period. He found that after 1905 there were no systematic differences in trial rates between the two and no systematic decrease over the years. His third analysis compared trial rates for each Superior Court before and after a jurisdictional change. The change allowed the transfer to Connecticut Circuit Courts of some minor felony cases which could previously be handled only by the Superior Court. Although this jurisdictional change was unaccompanied by a reduction in manpower, there were again no systematic differences in trial rates.

Feeley, like Heumann, did a macro-level analysis of Connecticut lower level trial courts.<sup>12</sup> He compared aggregated statistics on courtroom outputs in a high-volume court with those in a low-volume court. Feeley found no significant differences in trial rates, average number of motions filed, release statistics, bail structure, and sentencing structure. He did not compare guilty plea rates per se, but he did examine differences in guilty pleas to reduced charges. Here he found a markedly higher rate of such guilty pleas in the high-volume court. When only felony cases were considered, the differences were even greater. Although Feeley did not treat conviction rates explicitly, it appears from his data that the low-volume court had a significantly higher conviction rate than the high-volume court. Feeley also reported that decorum in the low-volume court seemed to be better than in the high-volume court. However, because judges in the low-volume court spent less time on the bench (an average of one hour per day) than judges in the high-volume court (an average of about three hours), court time per case was about the same in both jurisdictions.

While there are significant differences between the works of Heumann and Feeley, the thrust of both is similar: caseload pressure does not have the pervasive impact which has long been attributed to it. Both studies are ground-breaking efforts because they challenge some of the most basic and widely held beliefs concerning the operations of criminal courts. However, while Heumann's work

is consistent with the proposition that the demise of the adversary system (reflected in average trial rates) is not a recent phenomenon, it cannot be said that either work is a valid examination of traditional expectations concerning the effects of caseload pressure on courtroom processes.

Several rather fundamental methodological problems prevented such an examination. For example, Heumann's first analysis did not deal with caseload statistics. He regressed (in a non-technical sense) aggregate trial rates with yearly changes, not with a measure of system caseload adjusted for manpower. Hence, this analysis does not speak to the relationship between caseload pressure and trial rates unless one presumes that the caseload per judge has steadily increased over the years. However, there is no justification for such a presumption. Indeed, the reverse may be true. In the 1929 Illinois Crime Survey, for example, it was reported that seven criminal court trial judges handled 5,253 cases (an average caseload per judge of 750).<sup>13</sup> In 1972, however, sixteen judges in the criminal division of the Circuit Court handled only 4,281 cases (an average caseload per judge of 267).<sup>14</sup> This calculation represents more than a fifty percent decline in caseload per judge. In 1975, Feeley also presented indirect support for this point by noting that in 1919 Cleveland judges handled an average caseload of 11,999, while the judges had average caseloads of 7,300 and 4,500 in the Connecticut courts he studied. In light of these figures, it does not appear that the presumptions underlying Heumann's first analysis are wholly valid.

There are similar measurement problems in Heumann's second analysis where he attempted to compare trial rates of low- and high-volume courts over time. Instead of categorizing courts by average caseload adjusted by manpower, he categorized them in terms of average number of *dispositions* per year, unadjusted for manpower. For this analysis to be meaningful, though, one would have to assume that manpower (number of judges, for example) in the high-volume courts was not significantly different from that in the low-volume courts.

<sup>13</sup> ILL. ASSOC. FOR CRIMINAL JUSTICE, *THE ILLINOIS CRIME SURVEY* 201, 207 (1929).

<sup>14</sup> The 1972 figures were computed from data included in *Statistical Report: Bonds, Cases, Fees, Fines, and Costs; December 1st to November 30th 1970-73*, at 5 (unpublished report by M. J. Danaher, Clerk of the Circuit Court of Cook County). The data in this report had to be adjusted to be comparable to the 1927 data because they dealt with the number of indictments handled, not the number of defendants. The average number of indictments per defendant in 1972 was computed, and this figure was used to adjust the data contained in the clerk's report.

<sup>12</sup> M. Feeley, *The Effects of Heavy Caseloads* (paper presented at the 1975 Annual Meeting of the American Political Science Association Sept. 2-5, 1975).

One would also need to assume that there was a *very* strong correlation between docket size (number of cases pending) and number of dispositions, and that this relationship did not vary with the size of the docket or over time. However, no support was given for any of these assumptions.

Heumann's third piece of evidence (a change in jurisdiction unaccompanied by systematically different trial rates) is his strongest, but it too is not without problems. First, he again did not document differences in caseloads before and after the change in jurisdiction. Instead, he only documented differences in outputs. However, even more serious methodological problems are present. With the change in jurisdiction in the Connecticut court system came changes in the types of cases handled by the Superior Courts. If the types of cases handled by the Superior Courts after the change in jurisdiction had systematically lower trial rates in the *pre-change period*, then the lack of a change in aggregate trial rates may reflect a change in courtroom procedures. The reduction in caseload (if it in fact occurred) may have been reflected in modified decision rules for handling cases, as traditional researchers would have expected. These modifications may not have been reflected in aggregate trial rates because of changes in the characteristics of the cases handled in the post-change period.

Feeley's work does not suffer from the measurement problems inherent in that of Heumann. Feeley did employ a system-level measure of caseload pressure adjusted for manpower, rather than an unadjusted measure of aggregate level of dispositions. However, because he compared aggregate outputs without controlling for differences in inputs, Feeley cannot make valid inferences concerning the impact of different levels of caseload pressure upon the internal court procedures used to process cases. A second point is also relevant here. Unlike Heumann, who compared the impact of a change in jurisdiction upon outputs within a given system, Feeley compared outputs in two different jurisdictions. This is methodologically troublesome because, even if meaningful differences in outputs could be determined, without further analysis one could not make valid inferences concerning the effect of differences in caseload pressure upon the internal processes which produced those outputs. Differences in the court systems' environment or immediate setting may account for whatever differences or similarities are observed. For example, differences in community expectations as to the handling of certain types of cases (such as traffic cases, marijuana cases, and rape cases) or the ap-

propriateness of different modes of disposition (guilty plea or trial) may account for whatever differences or similarities were observed quite independent of differences in caseload pressure.

#### THE IMPACT OF CASELOAD PRESSURE REEXAMINED: A MICRO PERSPECTIVE

The criticisms of Heumann and Feeley really should not be over-emphasized; their theoretical analyses are still sound. The problem is that the methodological shortcomings noted above give rise to certain questions concerning the inferences that they, and others, draw from their empirical analyses. Despite these questions their work does cast considerable doubt upon traditional expectations concerning the effects of changes in caseload pressure. This article seeks to build upon their work by examining the effects of changes in caseloads from a somewhat different analytical perspective, a micro-perspective. To do this a sample of 816 adult felony cases disposed of during 1972-73 in the Criminal Division of the Circuit Court of Cook County, Illinois was used.<sup>15</sup> Over this period of time monthly caseloads of Chicago judges varied considerably. Moreover, extensive data were available on each case in the sample. These data permitted an examination of the impact of variations in caseload pressure upon various facets of courtroom operation while controlling for various case level attributes such as seriousness of the crime, defendant characteristics, and evidentiary factors. Those facets of courtroom operations to be examined include the guilty plea decision, the sentence in guilty plea cases, and the decision to pursue a case to trial.<sup>16</sup>

<sup>15</sup> The data base to be used here is the Chicago trial sample of cases used by J. EISENSTEIN & H. JACOB, *FELONY JUSTICE: AN ORGANIZATIONAL ANALYSIS OF CRIMINAL COURTS* (1977). Of the 816 cases in the entire data base, 596 were the result of a random sample. The other cases were derived from a systematically selected observational sample. The merged sample of cases is a representative sampling of the types of cases handled by the trial courts during the period of this study (1972-73). The data cover Chicago cases only.

<sup>16</sup> A few comments are in order concerning the decision to pursue a case to trial. In Chicago, during the period of this study, the preliminary hearing courts engaged in extensive screening. Only about 12% or 13% of all felony cases initiated were sent to trial courts, and were the objects of this study. Thus, the presumption of guilt was quite heavy in trial court cases. One consequence of this is that, in most cases, little thought was initially given to a dismissal. Rather, efforts were generally made to negotiate a guilty plea. But in many cases, about 44%, negotiations failed. It is in these cases that the decision had to be made to dismiss a case or pursue it to trial.

Given the nature of traditional thought, a negative relationship would be expected between caseloads and sentences in guilty plea cases and between caseloads and the decision to pursue a case to trial (scored 0 if case is dismissed and 1 if the case is pursued to a trial). A positive relationship would be expected between caseloads and guilty pleas (scored 0 if the case was not disposed of by a guilty plea and 1 if it was). When caseload pressure is high, prosecutors would be expected to offer more sentencing concessions more easily, resulting in lower sentences in guilty plea cases. On the other hand, as caseloads increase, prosecutors and judges would be expected to exert more pressure on defendants and their attorneys to secure guilty pleas. This added pressure, in conjunction with the expected lower sentences, would result in higher guilty plea rates. Finally, as caseloads increased, fewer cases would be pursued to trial because prosecutors would not have the necessary resources to conduct the additional trials.

#### *Caseload Measures*

To gauge the effect of variations in caseload pressure two indicators of caseloads were used. The first caseload variable was the number of cases on a given judge's docket in each of the twenty-four months included in the sample.<sup>17</sup> There was a significant amount of variation observed in this variable both across judges and over time. For example, the lowest caseload observed for a full-time judge was 109, and the highest was 559. The mean caseload was 282 cases. The lowest mean caseload for a full-time judge was 157, and the highest was 407. The second caseload variable was the total number of cases pending in the entire

criminal trial court system in each of the twenty-four months under consideration, and there was a substantial amount of variation in it. While the number of full-time judges remained constant at sixteen, the monthly caseload for the entire system varied from a low of 3,786 cases pending to a high of 6,120. The mean was 5,030 cases.

The system caseload variable is important to include in any analysis of the effects of caseload pressure because, while a given judge's docket might be low in a given month, the system's overall volume may be high. This system-level caseload pressure may, in turn, be reflected in pressure applied to individual judges by the presiding judge of the Criminal Division who functions as the administrative head and whose job it is to "get things moving." During the time of this study, the presiding judge would send weekly disposition sheets to each judge which listed, by courtroom, the business transacted in the preceding week (number of trials, number of dismissals, defendants sent to the penitentiary, total number of dispositions, etc.). Whether more subtle forms of pressure were used is not known. To determine whether such systemic pressures combined with pressures emanating from a judge's docket to affect dispositional procedures, an interaction term involving both caseload variables was used in each analysis.

#### *Data Analysis*

To analyze the effect of variations in caseload pressures, while controlling for other important factors which are not relevant for the purposes of this analysis,<sup>18</sup> multiple regression analysis was used.<sup>19</sup> Because of space constraints, only informa-

<sup>17</sup> Like the next caseload variable to be discussed, this variable is only a crude measure of caseload pressure. It equates a simple unauthorized use of a weapon case with a complex murder case. Obviously, a judge with one hundred murder cases is laboring under much more severe caseload pressure than a judge with one hundred weapons cases. In reality, however, such gross disparities in judges' dockets do not exist (at least not in Chicago for this study). What is crucial to the analysis, however, is the assumption that the complexity of cases does not systematically vary with caseload volume to any great extent. That is, the relative proportion of different types of cases remains relatively constant over changes in caseload volume. One last point should be noted with regard to this measure of caseload pressure. In Chicago, certain prosecutors, public defenders, clerks, and support personnel, are permanently assigned to each judge. Hence a judge's caseload in a given month is the same as those of the prosecutors and clerks. Therefore, this is a fairly general measure of caseload pressure.

<sup>18</sup> In the limited space of this article it is not possible to discuss the types of factors affecting each of the three decisions being analyzed here. Needless to say, the types of factors affecting each varies considerably. A full discussion of the relevant variables, as well as the procedures used to measure them, has been presented elsewhere. See P. NARDULLI, *supra* note 7, chs. V-VIII.

<sup>19</sup> It should be noted that the use of dummy dependent variables, such as the pursued and guilty plea variables, formally violates certain basic assumptions underlying multiple regression analysis. It is assumed, for example, that the variance around every value of the dependent variable is constant. This *cannot* hold true for dummy variables except in the unusual case where the proportion of cases in one category equals the proportion of cases in the other category (i.e., fifty percent of the cases are coded 0 on the dependent variable and fifty percent of the cases are coded 1). But, while this is a formal assumption underlying multiple regression analysis, it is also known that, except in extreme cases, a violation of it is not very costly. D.R. Cox, a noted English mathemati-

TABLE 1  
SUMMARY OF QUANTITATIVE RESULTS FOR THE JUDGE CASELOAD VARIABLE

Dependent Variable	N	Simple Bivariate Correlation	Increase in Explained Variance Due to Addition of Caseload Variable	Partial B Coefficient	F Value of Increase in Explanatory Power
Guilty plea decision (0 = no guilty plea; 1 = guilty plea)	410	.10	.000	.000	.006
Sentence in guilty plea case (scored in months)	275	.19	.001	.02	.73
Decision to pursue (0 = dismissal; 1 = trial)	241	.00	.000	.003	.002

TABLE 2  
SUMMARY OF QUANTITATIVE RESULTS FOR THE SYSTEM CASELOAD VARIABLE

Dependent Variable	N	Simple Bivariate Correlation	Increase in Explained Variance Due to Addition of Caseload Variable	Partial B Coefficient	F Value of Increase in Explanatory Power
Guilty plea decision (0 = no guilty plea; 1 = guilty plea)	410	-.02	.000	.000	.003
Sentence in guilty plea case (scored in months)	275	.05	.001	-.002	.68
Decision to pursue (0 = dismissal; 1 = trial)	241	-.12	.003	-.02	.87

tion relevant to the impact of the caseload variables will be reported. Tables 1 and 2 summarize the

cian-statistician, writes in his ANALYSIS OF BINARY DATA 16 (1970) that:

... it is known that quite appreciable changes in var (Y<sub>i</sub>) induce only a modest loss of efficiency. Further, at least in the range, say,  $0.2 \leq \theta_i \leq 0.8$ , the function  $\theta_i(1 - \theta_i)$  changes relatively little. Therefore, within this range, there is unlikely to be a serious loss of efficiency arising from the changes in var (Y<sub>i</sub>).

Empirical studies have shown that other more complicated techniques which are formally more appropriate for use with dummy dependent variables produce very similar results. See, e.g., Gunderson, *Retention of Trainees: A Study with Dichotomous Dependent Variables*, 2 J. ECONOMETRICS 79 (1974). Gunderson compares regression analysis with logit analysis, probit analysis, and other sophisticated forms of analysis designed for dichotomous dependent variables.

Given these findings, the problems associated with the use of other methods (some of which are noted in Gun-

impact of the two caseload variables; neither variable contributed any statistically significant explanatory power to the analysis of the three dependent variables examined. The probability of a guilty plea occurring did not vary with caseload pressure, nor did the sentence given in a guilty plea

der), and the greater familiarity of multiple regression (on the part of the author as well as most readers) multiple regression analysis was chosen over other methods. There is a 56-44 split in the guilty plea variable used here and a 70-30 split in the pursued variable. Thus, both clearly fall within the 20-80 split which Cox discusses, and the plea variable comes very close to the ideal 50-50 split. In choosing multiple regression with a dummy dependent variable it is felt that this work falls well within conventional modes of statistical analysis in the social sciences. Other recent uses of this technique include Wright, *Contextual Models of Electoral Behavior: The Southern Wallace Votes*, 71 AM. POL. SCI. REV. 497 (1977); and Mason, *Change in U.S. Women's Sex Role Attitudes, 1964-74*, 41 AM. SOC. REV. 573 (1976).



case. The decision to pursue a case to trial did not appear to be affected by caseload. In no instance was the interaction term involving these variables insignificant.<sup>20</sup>

Because the results were not consistent with traditional thought, further analyses were undertaken. It was found that the judge's or system's caseload in the month prior to the month of disposition had no statistically significant effect upon decision making. It was also found that caseload in the month after a case's disposition had no statistically significant effect upon decision making. This variable was included because cases reflected in the next month's figures were received by a judge in the previous month. For example, a judge was able to anticipate caseloads in November during October because he received new cases throughout October which were reflected in November statistics. An aggregate judge caseload variable was constructed by adding the judge caseload variable for the three-month period surrounding the case's disposition ( $T - 1$ ,  $T$ ,  $T + 1$ ). The aggregated caseload variable also had no significant impact.

### Discussion

The rather meager impact of caseload pressure on the decisions examined here leads to several questions. First, given the centrality of caseload pressure in the traditional criminal court literature, why does variation in caseloads not significantly affect three of the most important aspects of criminal court operations? On its face, the position of traditional researchers seems eminently reasonable. When a system is operating at or beyond capacity, increases in workloads would necessarily appear to result in changes in the procedures used to process cases. The key to this dilemma lies in the assumption of traditional researchers that most criminal justice systems are working at or beyond their

capacity. If one were to view criminal court caseloads in light of the resources necessary to process them in a manner consistent with the ideals embodied in the adversary model of criminal justice, one could legitimately argue that courts are experiencing severe stress. Most contemporary criminal courts, however, do not process cases using decision rules aimed at maximizing due process values.

The court system in Chicago at the time of this study was clearly not due process oriented. Nine months of courtroom observations supported by quantitative analyses revealed the importance of administrative criteria in the performance of many tasks. Guilty pleas dominated the conviction procurement process, accounting for about eighty percent of all trial court convictions. Moreover, there were marked disparities in sentences given after a guilty plea and those given after a trial. A defense attorney's relationship with other members of the courtroom team had a significant effect upon his client's sentence in guilty plea cases. Additionally, in trial cases convicted defendants who violated informal trial court norms by using delaying tactics, raising legal motions, or invoking jury trials, were routinely given markedly more severe sentences than other defendants. Special scheduling considerations were given to a select group of private defense attorneys by courtroom regulars. These considerations were returned in kind. In sum, the clubhouse atmosphere in the trial courts of Chicago led to a dispositional process which facilitated the expeditious handling of caseloads.<sup>21</sup>

If criminal court resources are examined in light of the procedures actually used to process cases, one might justifiably contend that many criminal court systems have considerable *excess* capacity. Clearly there was much idle time in the trial courts of Chicago. In an average day most judges spent no more than two to three hours on the bench and did very little in their chambers after court was recessed.<sup>22</sup> Moreover, throughout the two year period examined, the average number of dispositions each month for each of the sixteen courtrooms in Cook County was twenty-one, or about one per

<sup>20</sup> The N's reported in Tables 1 and 2 differ from the 816 reported earlier for a variety of reasons. Of the 816 cases, only 674 were disposed of during the period of this study and no dispositional information was available for the remaining 142. The sentencing analysis included only cases convicted by means of a guilty plea. The pursued analysis excluded all guilty plea cases because the concern there was with what happened to cases not negotiated. All 674 cases were relevant only for the guilty plea decision. Only 410 cases are reported there because of a missing value problem with one of the control variables. Further analyses showed, however, that the effect of the caseload variables, as well as the other control variables, was essentially the same for the 674 cases as for the 410. Hence, the smaller subsample with the more reliable set of information was used.

<sup>21</sup> The empirical analyses which support these assertions are reported in P. NARDULLI, *supra* note 7, chs. VII & VIII.

<sup>22</sup> This observation was confirmed by a newspaper exposé on the Chicago courts which was done at about the same time the study was in progress. Investigators noted that trial court judges spent an average of 2.75 hours per day on the bench, and another 1.5 in chamber activity. Chicago Sun Times, January 20, 1974.

working day.<sup>23</sup> This norm of a "disposition per day" is all the more remarkable when it is realized that during this time period approximately seventy percent of the dispositions were guilty pleas or dismissals. The empirical findings reported in Tables 1 and 2 are consistent with the notion of excess capacity. Within the range of variation observed, the criteria used to make the basic decisions analyzed earlier did not systematically vary with changes in caseload pressure. This would be expected if changes in caseload did not lead to stress in the implementation of prevailing dispositional procedures.

To suggest that variations in caseload pressure do not affect basic criminal court tasks because of excess capacity, generated by heavy reliance upon expeditious dispositional procedures, highlights a second shortcoming in traditional thought. Because of traditional researchers' adherence to the legal man assumption, excess capacity and administratively oriented dispositional procedures were mutually exclusive phenomena. Within their model, due process values were displaced by values such as speed and compromise only because of caseload pressure. The "legal men" who processed criminal cases would, if they could, adhere to the ideals embodied in lofty notions of due process and articulated in the formal rules of criminal procedure.

The observation that reductions in caseload pressure do not result in the reemergence of due process criteria emphasizes the void in criminal court thinking left by the demise of caseload pressure as a central concept. If variations in caseload pressure do not affect the nature of the criteria employed in making basic criminal court decisions, what are the determinants of these decision rules? What accounts for the discrepancy between the decision rules actually employed in criminal courts and those which would be employed in an adversary system of criminal justice? Moreover, if increased resources will not enhance the significance of due process considerations in the processing of criminal cases, what will?

#### CASELOADS: AN ORGANIZATIONAL PERSPECTIVE

The void can be filled by the same, rather recent intellectual developments which led insightful criminal justice scholars such as Heumann and Feeley to question initially the caseload hypotheses.

<sup>23</sup> This figure was computed from official reports compiled by and furnished by the Cook County Clerk of the Circuit Court's Office—Criminal Division.

These developments speak to the legal man assumption and concern the emergence of organizational approaches to the study of criminal courts. While the works which are commonly acknowledged as organizationally oriented studies of criminal courts constitute a rather disparate body of literature, common to them is at least one basic thesis.<sup>24</sup> That is the general contention that factors emanating from the collective efforts of judges, prosecutors, and defense counsel to pursue common interests have important consequences for the processing of criminal cases. Further, to abstract a bit from what has been argued in the studies, these common interests can be defined as the shared desire to process cases expeditiously. This shared desire is important because those who share it enjoy a virtual monopoly of power within the courtroom setting. This state of affairs leads to the development of a dispositional strategy that is reflective of the interests of the courtroom elite and which emphasizes the expeditious handling of cases.

This situation is not unique. James Thompson contends, for example, that coalitions are very apt to emerge in organizational settings where individuals are vested with discretionary power and where the results of increased power due to the formation of a coalition can be shared.<sup>25</sup> That is, in fact, what has transpired in many American criminal courts, Chicago being a case in point. Because the benefits of a dispositional strategy oriented toward the expeditious processing of cases can be shared by judges, prosecutors, and defense attorneys, they have been able to maintain a resilient coalition which is a viable force within the dispositional process.

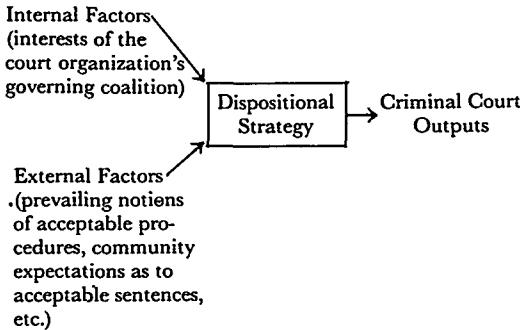
While internal factors such as the interests of the courtroom elite must be considered when attempting to understand the operations of criminal courts, external constraints upon the ability of these individuals to pursue their own interests cannot be ignored. Environmental considerations must play an integral role in any organizational analysis of criminal courts. The importance and role of environmental considerations in the operations of organizations is perhaps best stated by Thompson:

<sup>24</sup> These works included A. BLUMBERG, *supra* note 8; J. EISENSTEIN & H. JACOB, *supra* note 15; Cole, *The Decision to Prosecute*, 4 L. & SOC'Y REV. 331 (1973); Feeley, *Two Models of the Criminal Justice System: An Organizational Perspective*, 7 L. & SOC'Y REV. 407 (1972); Mileski, *Courtroom Encounters: An Observation Study of a Lower Criminal Court*, 5 L. & SOC'Y REV. 473 (1971); and Mohr, *Organizations, Decisions, and Courts*, 10 L. & SOC'Y REV. 621 (1976).

<sup>25</sup> J. THOMPSON, *supra* note 7, at 126.

DIAGRAM 2

Organizational Model of Factors Affecting the Processing of Criminal Cases



We and others have emphasized the coalitional nature of complex organizations, but always in terms of agreements among individual members, each having something to contribute and each receiving something in exchange. There is, however, a larger sense of configuration, which we will refer to as *co-alignment*.

Perpetuation of the complex organization rests on an appropriate co-alignment in time and space not simply of human individuals but of streams of institutionalized action. Survival rests on the co-alignment of technology and task environment. . . .<sup>26</sup>

To summarize, if the legal man assumption is rejected and it is acknowledged that criminal justice personnel, like most individuals, attempt to maximize self interests, then insights into the operations of criminal courts can be gained by viewing the system from an organizational perspective. While the interests of the court's dominant coalition have a strong impact upon the structure of its dispositional strategy, environmental considerations are also important. Thus, a court's dispositional strategy, within a given jurisdiction, might be viewed as *largely* the result of the tension between internal and external factors.<sup>27</sup>

If Diagram 1 were modified to incorporate these observations it would look like Diagram 2.

This reconceptualization is important because it has significant implications for understanding the role of caseload pressure. Moreover, it is clear that these implications vary depending upon whether the resources of the court system being examined are over or under utilized. If, considering the procedures actually used to process cases, the court system is working at or beyond optimal levels, the

<sup>26</sup> *Id.* at 147.

<sup>27</sup> This general perspective is developed in much more detail in P. NARDULLI, *supra* note 7, ch. III.

expectations concerning the effects of increases in caseloads would not be much different from those put forward by traditionalists. Increases would probably bring about bargaining concessions, resulting in lower sentences in guilty plea cases and higher guilty plea rates. They would also probably result in a reduction in the likelihood that a given case would be pursued to trial if negotiations failed. Modifications would be expected as a response to stress resulting from continued increases in demand during periods of over-utilization. Under these conditions similar responses would be expected from other organizations which, like the court organization, have little control over inputs or resources.<sup>28</sup>

During periods of excess capacity expectations concerning the effects of variations in caseloads are wholly different. It was mentioned earlier that, within a given court system the set of procedures used to process cases, the court's dispositional strategy could be viewed roughly as the result of tension between internal and external considerations. If variations in caseload pressure during periods of excess capacity are viewed from both an external and internal perspective, a better appreciation of their role will be obtained. Moreover, the data exists to conduct a limited test of some of the relevant expectations.<sup>29</sup>

#### *The Role of Caseload: External Considerations*

If the role of variations in caseloads during periods of excess capacity is viewed in light of the court organization's relationship with its environment, several things become clear. The first is that

<sup>28</sup> It should be emphasized that these expectations differ from those held by traditional researchers in that their inverses are not expected to hold true. That is, increases in criminal court resources leading to optimal utilization of excess capacity would not be expected to result in the displacement of administrative values by due process values. When viewed from the organizational perspective alluded to earlier, the prevalence of administrative criteria is due to the nature of the power and interest structures within criminal courts. Mere increases in resources would do little to affect those structures and are consequently expected to have only marginal effects upon the values maximized in the dispositional process.

<sup>29</sup> One of the presumptions underlying the following analyses is that, over the period of time studied, the criminal courts in Chicago enjoyed considerable excess capacity. No direct proof for this proposition can be marshalled. But the indirect evidence is considerable. The January 20, 1974 Chicago Sun-Times finding that judges spend less than five hours a day in courtroom activity, which was supported by my own observations, and the finding that dispositions averaged one per courtroom working day lend strong support to the belief that the courts were not working to their potential.

criminal court caseloads are determined by the court's environment and the court organization has only marginal control over them. In a loose sense, different caseload levels are demands for different levels of service by the community served by the court system. Increased caseloads are indicative of an increase either in crime or in the public's propensity to pursue crimes committed against it. Whichever the source of the increase, if criminal courts process their workloads in a manner similar to that of other organizations, they will not ignore these environmental considerations. Rather, they will respond to the increased demands for service

mine whether, in the judge—months examined, the number of indictments disposed of in a given judge—months was positively related to the two caseload variables and the interaction term involving them. Equation 1 and Table 3 contain the results of the data analysis.<sup>30</sup> Unlike the previous analyses, each of the three caseload variables had a significant, positive impact upon the dependent variable.<sup>31</sup> While changes in caseload pressure did not appear to affect the way in which cases were processed, they do appear to result in a higher level of outputs (*i.e.*, more cases were processed using the same set of decision rules).

#### EQUATION 1

$$Y = 28 - .05 X_1 - .003 X_2 + .00002 X_1 X_2 \quad (R^2 = .16, n = 367)$$

Where

Y = Number of indictments disposed of in a given judge-month

X<sub>1</sub> = Number of cases on a judge's docket

X<sub>2</sub> = Number of cases pending in criminal trial court system

by increasing outputs. Stated differently, it is expected that the court organization would respond in a manner very similar to a private organization. If such an organization experienced an increase in demand for its product or service at a time it had excess productive capacity, it would be expected simply to increase outputs using the same production techniques and procedures it used at lower levels of output.

This hypothesis can be examined using a set of aggregate data on Chicago criminal court outputs, over the same period discussed in the micro-level analysis (1972-73). Unlike in the micro-level analysis, where the defendant was the unit of analysis, in this data set the judge-month is the unit of analysis. For each of the sixteen judges in the twenty-four month period of examination, data were available on each of the two caseload variables (judge caseload and system caseload), as well as on a number of aggregate indicators of court outputs. This analysis, however, will be concerned with only one output indicator—the total number of indictments disposed of by each judge in each month. It has already been established that in 1972-73, the decision rules relating inputs to outputs did not appear to vary with changes in caseload. The question to be addressed now is whether the court organization responded to increases in demand for its services by merely increasing outputs. Such a response would be expected in times of increased demand and excess capacity.

Multiple regression analysis was used to deter-

TABLE 3

SUMMARY INFORMATION FROM REGRESSION ANALYSIS

Variable	Bivariate Correlation	Contribution to R <sup>2</sup> *	F Value**
X <sub>1</sub>	.36	.131	2.7 (32.0)
X <sub>2</sub>	.26	.014	1.5 (5.8)
X <sub>1</sub> X <sub>2</sub>	.39	.010	4.5

\* This contribution is based upon variables forced into the equation in the order reported. The contribution attributed to X<sub>2</sub> would have been significantly greater if it were entered first.

\*\* The F values in parentheses are those determined before the interaction term was entered into the equation.

#### *The Role of Caseloads: Internal Considerations*

To process cases in a manner consistent with the interests of the courtroom elite, various informal norms reflective of those interests have emerged. These norms are an integral part of the court's dispositional strategy. It was quite clear in the observational phase of this study that an individual's failure to comply with informal norms in the

<sup>30</sup> It should be noted that only judge-months involving full-time judges working a regular schedule were included in the analysis. This accounts for the discrepancy between the expected n of 384 (16 × 24) and the reported n of 367.

<sup>31</sup> The coefficients for X<sub>1</sub> and X<sub>2</sub> are negative only because of the interaction term; their bivariate and net contribution is positive. The B coefficients for X<sub>1</sub> and X<sub>2</sub>, before the interaction term was entered, were .03 and .002 respectively.

trial courts of Chicago frequently resulted in some type of sanctioning. Cases involving recalcitrant defense attorneys would often be heard near the end of the daily call; their trials would frequently be interrupted while the court disposed of other matters, often stringing them out over several days. Moreover, uncooperative private defense attorneys could expect few assignments from judges and even fewer referrals from clerks or bailiffs. Uncooperative judges and prosecutors could expect more trials and problems in obtaining informal discovery of defendants' cases.

Quantitative analyses also demonstrated the important role which sanctioning played. The clearest example was the analysis of sentencing in trial cases. Cases disposed of by a trial were largely viewed by courtroom personnel as unsatisfactory dispositions. Trials usually involved more work and more uncertainty than guilty pleas. Thus, defendants convicted after a trial were expected to receive more severe sentences, in similar types of cases, than defendants pleading guilty. This was empirically verified. However, many trials were little more than slow pleas performed to placate uncooperative defendants. Other trials were adversarial affairs which did much violence to "cordiality norms" usually prevailing in Chicago trial courts. Hence it was hypothesized that the greater a defendant's resistance to informal processing, the

The importance of sanctioning in the court's dispositional strategy is stressed here because it can shed some light on the role played by caseloads during periods of excess capacity. It is expected that, in some instances, sanctioning will be more severe when caseloads are heavy than when they are light. The sentencing decision in trial cases can be used to illustrate and examine this somewhat general proposition. More specifically, it is expected that the effect of two of the resistance indicators upon sentence, the jury trial and legal motions variables, will vary with caseloads. Even during periods of excess capacity when the judge and prosecutor are under enhanced pressure due to increased caseloads, the problems associated with the invocation of jury trials and the use of legal motions are more troublesome. Thus, it is expected that defendants who resist expeditious processing would be more severely sanctioned during periods when caseloads are high than when they are low. What is expected, then, is an interactive relationship between workloads and the jury trial and motions variable.

To examine these expectations, the judge caseload variable, found to be insignificant in the three micro-level analyses discussed earlier, was trichotomized and two interaction terms were created.<sup>33</sup> Equation 2 and Table 4 report the results of the analysis ( $R^2 = .77$ ,  $n = 95$ ).

#### EQUATION 2

$$Y = 12.6 + .59 X_1 - 70.8 X_2^* + 3.0 X_1 X_2 - 33.6 X_3^* + .0007 X_4^2 - 15.5 X_5 + 41.5 X_2 X_5$$

Where

Y = Sentence in a trial case

$X_1$  = Seriousness of the first offense

$X_2$  = Type of trial (bench = 0; jury = 1)

$X_3$  = Number of legal motions (0, 1, 2)

$X_4$  = Delay variable for confined defendants only

$X_5$  = Trichotomous caseload variable

\* These B coefficients are negative only because of the presence of the interaction term; the bivariate and net impact of the variable is positive.

greater his sentence in trial cases. Three resistance indicators were used to examine this hypothesis: whether or not the defendant demanded a jury trial, the number of legal motions his attorney raised, and evidence of stalling tactics (a delay variable). Controlling for offense seriousness, each of these variables was strongly and positively related to sentence in trial cases. The regression equation explained seventy-three percent of the variance in sentence.<sup>32</sup>

<sup>32</sup> For a more complete analysis of sentencing in trial cases see P. NARDULLI, *supra* note 7, ch. VIII.

As is evident, the expectations were partially realized. While the interaction term involving the caseloads variable and the jury trial variable was not significant, the interaction term involving the caseload variable and the motions variable was, well beyond the .01 level. Table 5 reports predicted

<sup>33</sup> Cases sentenced in months when caseloads ranged from 109 to 239 were scored 1; cases sentenced in months when caseloads ranged from 240 to 313 were scored 2. Those higher than 313 were scored 3. This caseload variable, like the continuous version, had no significant impact on the decisions examined earlier.

TABLE 4  
ESSENTIAL DATA ON THE SECOND TRIAL REGRESSION  
ANALYSIS

Variable	Approximate Percentage of the Variance Accounted for	Beta Weight	F Value
X <sub>1</sub>	30.0	.12	3.5(40.2)*
X <sub>2</sub>	19.0	-.19	3.5(34.8)*
X <sub>1</sub> X <sub>2</sub>	13.0	.61	27.4
X <sub>3</sub>	2.0	-.15	1.1(9.6)*
X <sub>4</sub>	10.0	.34	31.5
X <sub>5</sub>	1.0	-.07	.62(4.6)*
X <sub>3</sub> X <sub>5</sub>	2.0	.42	7.0

\* Figures in parentheses are F values before the interaction term was entered.

ditional thought. Empirical evidence was offered to support the seminal work of Heumann and Feeley. It was found that, in Chicago during 1972-73, variations in caseloads did not affect the guilty plea decision, the sentence in guilty plea cases, or the decision to pursue a case to trial. The role of caseloads was examined from a theoretical perspective developed more fully in an earlier work. This examination led to several insights. It was noted, for example, that the effects of changes in caseloads may vary depending upon whether the court system's resources were over or under utilized. Finally, some data were used to examine certain expectations during a period of excess capacity. It was found that when caseloads increased, outputs in-

TABLE 5  
IMPACT OF MOTIONS VARIABLE UPON PREDICTED SENTENCE IN MODAL ARMED ROBBERY CASES ACROSS CATEGORIES OF  
THE CASELOAD VARIABLE (IN MONTHS)

Motions Variable	Caseload = Low			Caseload = Medium			Caseload = High		
	0	1	2	0	1	2	0	1	2
Predicted Armed Robbery Sentence	129.1	137.1	186.5	113.7	163.1	212.5	98.7	189.5	280.5

sentences (in a typical armed robbery case involving a released defendant convicted after a jury trial) for the three categories of the motions variable in each of the three categories of the caseload variable. As documented in Table 5, the impact of the motions variable upon sentence is much greater when caseloads are high than when they are low. The predicted differential in sentence due to variations in the motions variable (between 0 and 2) is 57.4 months when caseloads are low, but 181.8 months when caseloads are high. Thus it appears that when workloads are more pressing, defendants are sanctioned more severely for violating cordiality norms.

#### CONCLUSION

It can be said that traditional views of the role of criminal court caseloads were inadequate, primarily because of the assumptions underlying tra-

creased, and that sanctions meted out to those violating informal norms also became more severe.

These results lend support to an emerging view of criminal courts as organizations. But, just as important, they shed light on important questions of criminal justice policy. The results underscore the arguments made earlier by others: mere increases in criminal court resources will not eliminate the evils long attributed to caseload stress. The prevalence of administrative considerations in the operations of most contemporary criminal courts is not solely due to caseload stress. Rather, it is rooted in the power and interest structures of American criminal courts.<sup>34</sup>

<sup>34</sup> This observation has important implications for the structure of criminal court reform. However, a discussion of these implications is beyond the scope of this work. For a discussion of criminal court reform from the perspective articulated here see the postscript to P. NARDULLI, *supra* note 7.