2000

Straight Release: Justice Delayed, Justice Denied

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"STRAIGHT RELEASE": JUSTICE DELAYED, JUSTICE DENIED[1]

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On an average day in the Cuyahoga County Common Pleas Court Arraignment Room, half the persons scheduled to appear fail to show-up to answer the felony indictments brought against them. Today, there are some 12,500 felony warrants outstanding for these no-shows. The majority of these are the direct result of the Cleveland Police Department's arrest, release-without-charge, and indict-later policy. No other city or county in Ohio has such a problem or such a policy.

Although the Cleveland Police Department (CPD) has a 24-hour charge-or-release rule, it does not have sufficient detective manpower to charge that quickly, so all but the most serious cases are released to the streets to await charges by mail notice. To make matters worse, CPD regularly releases prisoners before they can be positively identified. The experienced criminals know this, and the use of false names and addresses is a common practice. Some use a new name each time they are arrested and are released again from jail before their fraud is discovered.

The Cuyahoga County Grand Jury is so backlogged that it takes several extra months for the low-priority straight-release cases to be indicted. As a result, the CPD Narcotics Unit has a stockpile of over a thousand straight release cases at any one time awaiting indictment. Since suspects often provide police with false addresses or fail to respond to summons, there are often long periods of delay between the indictment, re-arrest, and appearance at arraignment. In the long periods of delay between arrest and arraignment, drug-addicted criminals commonly victimize others, sometimes with tragic results. The unnecessary delays resulting from the straight-release-and-indict-later policies have been a major contributing factor in making Cuyahoga County the slowest county in Ohio for disposing of criminal cases.

I. THE UNNECESSARY HOMICIDE

On June 7, 1999, at approximate 8 p.m., Susan Locke was working alone in her office at the Bond Court Office Building in downtown Cleveland. Struck repeatedly and savagely by a burglar who had taken a baseball bat from another part of the office, Locke died by her desk, her skull crushed.

More than a month later, a man was apprehended while burglarizing an office at the Cuyahoga Community College downtown Cleveland campus. Community College Police Officers Linda Corney and Camille Copeland arrested the man, who fought and kicked both officers while spouting gross and abusive language at them. The man provided the false name of Melvin Jackson, along with other incorrect identification.[3] In diligently investigating the man,[4] Officers Corney and Copeland determined that his real name was Victor Washington. A 31-year-old man with a long history of felony arrests, Washington had just been released in August 1998, after serving an eight-year prison sentence for a variety of burglary, theft, and escape crimes. He repeatedly failed to adapt to probation or rehabilitation programs. Upon learning of Washington's colorful record, the next day Corney and Copeland passed on their report to a cooperative Assistant City Prosecutor, who issued felony bindover papers for Mr. Washington.[5] Even though the case was put on a fast track, indictment CR-380212 for burglary did not occur until August 26, 1999.

But twice before the murder, Mr. Washington had briefly been behind Cleveland jail bars, arrested separately for cocaine possession and for assault of a police officer. He was also a named suspect in two March burglaries of St. Vincent Charity

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[3]He later provided Cleveland Police Booking with yet another false name, John Johnson, another address of 9120 E. 93rd, Cleveland, which should have been immediately apparent as an impossible address for any numbered street in Cleveland. This points out the fact that no real effort is made by CPD to ascertain the real identification of even their felony arrestees. Instead of putting the burden of proof on a suspect to prove who he is to police, or not be eligible for a bond hearing or release, the duty appears to have shifted to CPD. The suspect is in effect saying "You prove I'm not who I claim to be and you've only got 24 hours to do it." Many criminals are confident from past experience that CPD will not, as they do not have the time (with CPD's 24 hour rule), manpower, or experience. If civilians conduct key aspects of the booking procedure, most police believe that it is more likely a false identification will pass muster.

[4]Officers Corney and Copeland stated they were not about to allow Washington to get away with entering the system with a false name. They spent over an hour interrogating him despite the verbal abuse he was dishing out. They checked each name and Social Security number he provided. Little by little, they extracted enough information until they were able to decipher his true name and record. They even later reviewed the wanted posters in their department and connected Mr. Washington to the Charity Hospital burglaries by the wanted posters CPD Officer Aleck had posted around the area.

[5]Police are fully aware that the City of Cleveland Prosecutor's Office operates on a work-avoidance basis. They are looking for reasons not to directly charge anyone in Municipal Court. Standard procedure is to tell police to take it directly to the Grand Jury. Officers Corney and Copeland realized that if they did not personally go down and persuade an Assistant City Prosecutor of the importance of immediately charging the suspect, he would have been simply straight released to the streets and free to pick up where he left off on his crack-induced trail of mayhem.

Hospital officers for which he should have also been arrested.[6] A beneficiary of Cleveland Police Department's straight release policy, Mr. Washington, by using false names, was simply released to the streets each time within 24 hours to wait while the system charged, indicted and tried him. But Washington was not waiting for the slow-moving system to catch up with him before he committed his next crimes, including Susan Locke's murder.

While he was in the Cuyahoga County Jail awaiting trial on the CCC burglary case (he still had not been indicted yet for March burglaries of Charity Hospital, an April 2, 1999 cocaine crime, nor the May 10, 1999 assault on a peace officer), Washington tried to con his way out of the situation. He called Cleveland homicide detectives and claimed he had information that could help them solve a high-profile murder. Washington attempted to persuade police that a criminal associate of his, named Gene Turner, had committed the grisly murder of Susan Locke. Homicide Detectives Bob Matuszny and Mike O'Malley questioned Turner, and Scientific Investigation Unit (SIU) examiner, Mary Kelly, took a handwriting example from Turner to establish whether he had been the person who signed into the Bond Court Building visitors' book as Michael Jones the night of the murder. Turner, Kelly determined, was not this "visitor."

Cleveland Police SIU Superintendent Vic Kovacic, suspicious of Turner's accuser, asked for a handwriting sample from Mr. Washington instead. SIU records showed that Washington had been arrested once before, "a.k.a. Michael Jones," and had signed himself out of jail on April 3, 1999, under that name. On the jail log he had misspelled Michael, just as the Bond Court murderer had done in the visitor's sign-in. SIU's handwriting examiner, Mary Kelly, determined the two Michael Jones' signatures matched. She immediately knew they had discovered the real killer and notified Homicide they already had their man in jail.

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[6]On March 10, 1999, at 8:04 p.m. Mr. Washington broke into an office area in St. Vincent Charity Hospital at the corner of East 22nd Street and Community College Boulevard and stole a lap-top and a palm computer. A police report was made by the hospital and follow-up work was requested of the Detective Bureau. Nothing was done by them.

On March 16, 1999, Mr. Washington broke into another part of Charity Hospital and stole business equipment and a purse with cash and credit cards from the Rosary Hall Alcohol and Drug Treatment offices. Good police work by off-duty CPD Officer Peggy Aleck, who was working security, resulted in her solving the crime and identifying the thief via the security films. She even located a social worker, who had previously spoken to Mr. Washington when he was apparently casing the place, and positively identified him from the film as the thief in the Rosary Hall theft and the earlier burglary at the hospital president's office. On March 19, 1999, a comprehensive report was sent to the District Detective Bureau. She requested per standard police procedure that a detective be assigned and follow-up work be done on the case. The police report by Officer Aleck provided the detective with Mr. Washington's correct name, address, apartment number, phone number, date of birth, height, weight, and description. The other red flag provided was the fact that he was just released from prison on August 20, 1998.

Officer Aleck stated, "My God, I handed it to the Detective Bureau on a silver platter complete with a film of the crimes. All they had to do is get a warrant or go over to his house and arrest him. I even obtained his photo from the Ohio prison website, made wanted posters and put them up in the Third District station. I was sick to my stomach when I heard that nothing was done on the case and the guy killed that girl."

Washington was indicted for aggravated murder with death penalty specifications and aggravated robbery on September 21, 1999, in docket #CR-382711; however, he died of an aneurysm on December 11 while awaiting trial in the County Jail. Ironically, the inept justice system lumbered on: the backlog for the Grand Jury is so bad that Washington was not indicted for his April 2, 1999, drug arrest until December 16, 1999, which was five days after he died. Even more absurdly, the Clerk's Office sent summonses out to the dead man on December 27, 1999 and January 4, 2000, to the false address he had supplied police. Naturally, since these were bogus addresses, the summonses came back marked "undeliverable."

The Cleveland Police Department, to its credit, had completed an extensive and time-consuming investigation of Locke's murder,[7] an investigation that took Homicide Unit police over 2,000 hours to solve. Considering that a major rationale behind the straight release policy is to save police overtime costs, Locke's murder makes the City's cost savings rationale appear dubious at best.

The Assistant County Prosecutor who handled the murder case noted the unfortunate decision that led to this tragic death: "If he [Washington] had not been straight released, Locke would not be dead. Period. It is that simple." Proper identification of Washington during his earlier arrests, says this prosecutor, would have kept him off the streets.

Washington's case, although truly a worst-case example, illustrates the potential consequences of Cleveland's administration policies regarding the 24-hour straight release rule. In rushing to release a suspected criminal, police regularly fail to positively identify arrestees.

II. THE COURT OF COMMON PLEAS

The Court of Common Pleas, created by Article IV of the Ohio Constitution in 1851, has original jurisdiction in all criminal felony cases and all major civil cases. Of the 88 counties in Ohio, Cuyahoga, whose seat is located in Cleveland, has the largest population, of 1,412,140 persons and the largest number of Common Pleas judges at 34. This breaks down to 166,879 persons per judge. Within Cuyahoga County there are also 13 municipal courts for the 37 cities and villages. There are 62 different police departments and 49 municipal jails. All of these departments, cities, courts, and jails transfer felony crimes to the Cuyahoga County Jail and the Court of Common Pleas. In 1998, there were 13,407 felony criminal cases (approximately

[7]The murder was solved thanks to teamwork and experience. Homicide Detectives Matuszny and O'Malley learned from the falsely accused Gene Turner that Victor Washington "steals for a living" since his recent release from prison. Mr. Turner had purchased a stolen gold watch, a "boombox," and also a painting taken from the law offices were Mr. Washington's girlfriend worked as a "temp." The detectives searched Mr. Washington's East 37th Street apartment (near Community College and Charity Hospital) and located a Bagel Company tee-shirt similar to the one the murderer wore on the June 7, 1999 security tape. The girlfriend of Mr. Washington had also worked as a temp on the 18th floor of the Bond Court building where Susan Locke was killed. The detectives considered this information as very important and later used it in prompting admissions from the suspect. They also discovered that Mr. Washington was on parole as a "Class A" high-risk offender who had two violations while in prison. The detectives went to the County Jail on October 16, 1999 and interrogated him until they obtained a detailed confession from Mr. Washington for the murder of Susan Locke.

400 cases for each of the 33.5 receiving courts)[8] and 19,356 civil cases (approximately 578 cases for each). Cuyahoga County's Common Pleas Court is the busiest in Ohio; in terms of numbers of cases disposed, it is the fifth highest in the country. In terms of speed in disposing criminal cases, it is the slowest county in Ohio and one of the slowest courts in the country.

The reasons for this putrid pace are unusual. The majority of the time on felony cases is spent waiting to get started. There is an inexcusable and harmful amount of time wasted between arrest and arraignment. This is the fault of several groups: 1) CPD and the City of Cleveland, whose arrests comprise the majority of the felonies in Cuyahoga County; 2) the Cuyahoga County Prosecutor's Office, which has failed to appreciate its responsibility of seeing that felony cases are handled, indicted and tried promptly; and 3) the Court of Common Pleas for accepting the above and lacking the leadership to correct it.

Cuyahoga County's police, public officials and judges, each in his or her own way, have tried hard to combat and reduce crime in this county, and they have enjoyed some success.[9] In the 1990s, crime rates for violent crime fell dramatically, consistent with national trends. The United States is in an eight-year crime decline. For instance, the total number of homicides in the City of Cleveland in 1999 was 85, down two from 1998, but there was a time 30 years ago when the homicide number[10] was triple that figure.[11] And yet, despite these drops, Cuyahoga County's number of outstanding felony warrants remains steady. Most of those warrants are for individuals who have been indicted for crimes but do not show up for their arraignment hearings. At any given time, over 10,000 indicted individuals are wanted in Cuyahoga County.

This would not be the case, if the traditional legal procedures were followed.

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[8]The Administrative Judge handles a half docket.

[9]The effects of each agency are largely individual. There is remarkably little coordinated effort between the agencies.

[10]In 1970, there were 292 homicides in Cuyahoga County, of which 271 occurred in Cleveland. Cleveland's population in the 1970 census was 750,903, compared to an estimated 500,000 in 2000. Much of that quarter-million drop in population has moved to suburban areas. Cleveland was in 1970, and still is, the focal point for a total urban population of approximately two million people.

[11]According to FBI statistical reports, serious crime in the USA has been on the decline since 1991. (May 9, 2000 A.P. report.) Crime has fallen every year since reaching an all-time high in 1991. There was a 4% drop in 1997, 5% in 1998 and 10% the first half of 1999. During the first six months of 1999, Cleveland's murder rate dropped another 8%, rapes fell 25% and robberies 13%. Professor Alfred Blumstein, a criminologist at Carnegie Mellon University, stated in a June, 2000 NEW YORK TIMES article, *Decline in Murders* . . . over the past few years, "If the trend continued, we would have a negative homicide rate, and that would occur in 2007." Criminologists therefore believe the end of the downturn in crime may be near. In other words, the present low level of crime might be as good as this society is capable of achieving.

III. INDICTMENT PROCEDURE IN CUYAHOGA COUNTY

The normal procedure for indicting a criminal in Ohio, and every police department in the county, except the Cleveland Police Department,[12] is to arrest a suspect for a felony, have that individual's case reviewed by a City Prosecutor, and have appropriate charges drawn-up and signed. Then, a Municipal Court hearing is held within 48 hours to notify the defendant of the charges. At this hearing, a judge sets bond and schedules a date, usually a week or two later, for the bindover hearing.[13] Most of the time, defendants are freed on bond, but required to be present for all subsequent court proceedings.

At the bindover hearing, the prosecution is required to demonstrate to the Municipal Court judge by at least a single witness, whether it be a police officer or a victim, that probable cause exists to bind the suspect's case over to the Grand Jury. This bindover hearing is not a trial, and usually takes a short time. The key or identifying witness may be the only person called, and is asked one or two questions on direct examination by the prosecutor and a very limited cross-examination by defense counsel. (*Example: By prosecutor:* "Mr. Victim, were you held up at your store last night at gunpoint? Do you see the individual in the courtroom who held you up?" *By defense counsel:* "Are you absolutely sure this is the right person? What exact description did you provide to responding police?") Once the Municipal Court judge has ruled there is sufficient evidence to bind the case over to the Grand Jury, the police detective can present the case to the Grand Jury to request an indictment.

The other type of indictment is called an "original" indictment, which bypasses the normal bindover procedure. For an original indictment, prosecutors do not charge a defendant nor does that individual appear in the local Municipal Court. Police take an individual's case directly to the Grand Jury which returns an original criminal charge against the defendant.

In 1991 the Cuyahoga County Grand Jury returned 22,826 indictments for individuals accused of felony crimes. In the following years, the number of indictments declined: in 1992, there were 18,802; in 1994, 16,763; and in 1997 that number was down to 13,048.[14]

Once an indictment is handed down, the Clerk of Court's Office mails out via certified and regular mail a copy of the indictment and its charges, and the scheduled date and time for arraignment. Each new case file must have a Criminal Information Form (CIF), to be completed by the police agency that presented the case to the

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[12]The Cleveland Metropolitan Housing Authority (CMHA) uses the straight release practice similar to the Cleveland Police Department because CMHA has no jail facility. Instead, they turn their prisoners over to the Cleveland City Jail. (See Chapter IX.)

[13]By statute that bindover hearing has to be held in ten days, although Court records show it seldom is. Some counties have a direct indictment system where the County Grand Jury indicts the accused felon before the preliminary hearing is held. (See infra discussion of Summit County's successful program to eliminate the "dead time" between arrest and indictment.)

[14]The disposal rate of cases at the Court of Common Pleas decreased in the 1990s, consistent with the fall in numbers and percentages of indictments in that same period. The 1997 total of disposed cases, 14,110, represented an 18% decrease from the 1996 figure. There was a similar 17% drop in the number of arraignments in that 1997 year.

Grand Jury. The CIF identifies the defendant and provides his or her address, Social Security number and other pertinent information. The address given to detectives is often inaccurate, and because the County Clerk's Office uses the address given on the CIF, the individual may not receive the summons and so fails to appear at his or her arraignment. Police must also provide a description of the particulars of the crime for which the defendant has been indicted. For example, in an aggravated robbery case the CIF will have a one-sentence summary such as, "On January 1, 1999, at 12:35 a.m., the defendant held up Joe's Deli at gunpoint with a .38 caliber revolver." This information is used by the Bond Commissioner's Office to recommend a bond appropriate to the crime and the judges to evaluate the seriousness of the crime and how quickly to set it for trial.[15]

IV. ARRAIGNMENTS

After a suspect has been indicted by the Cuyahoga County Grand Jury, the true bill is file-stamped and recorded by the Clerk of Courts, who then sends a notice by certified mail to the defendant.[16] This letter is mailed to the address the defendant provides to police upon his or her arrest, or if the individual is already incarcerated, to the jail. The letter tells the indicted defendant he or she has been charged with a crime, and provides a copy of each count of the indictment. It also informs the defendant of the date and time an arraignment on these charges at Common Pleas

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[15]CIF forms are usually delivered at intervals and sometimes in large quantities to the Clerk's Office from the Cleveland Police Department. The Clerk's Office then processes the information, inputs it into the Justice Information System (JIS) computer, and sends the Prosecutor's Office a copy. When large quantities of CIFs come in together, a considerable delay can occur due to the time that it takes to process each form. These delays add to the length of time between arrest and the case being sent to the felony court.

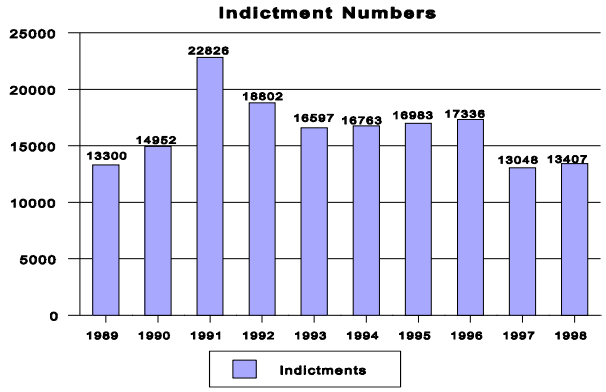
Unfortunately, some of the CIF forms are xeroxed by Cleveland police with the Ohio Revised Code section language for drug offenses. For example, in drug cases the pre-typed and copied form can simply repeat the statute: "The subject knowingly had cocaine on or about his person, in violation of R.C. § 2925.11." This type of CIF offers no factual information to the Bond Commissioner or the Court, and a reader deciding what amount to set bond based on the CIF does not know if the offender is being accused of having a trace amount of cocaine or a large quantity. Long waits to process a CIF form that provides little information is valuable time wasted. It is senseless to delay the indictment processing (and thus the indictment) awaiting a document that adds nothing to anyone's knowledge of the case. For the best outcome, a CIF form should include the details relevant to that unique case.

[16]A second regular mail letter is also sent at the same time. This also does precious little good if the address supplied to police is false. Other counties in Ohio do not use the mail. Instead, and with far greater success, the Sheriff's Office personally serves the felony-indicted defendant with copies of their indictment and a summons to appear at their scheduled arraignment. In the first eight months of 2000, the Lake County Court of Common Pleas has had only one person not appear at the scheduled arraignment who was personally served. False addresses are not a problem to the Lake County Sheriff because every police department in Lake County, like the rest of Ohio, verifies identification before anyone is released on bond. Straight releases are considered substandard police work and are not used. Of the 245 indictments in Lake County through August 31, 2000, capiases were issued for 28 for FTA who otherwise went on the lam. In Cuyahoga County the Sheriff's Office does not believe personal service would improve the situation. Until CPD starts providing them with accurate identification and addresses of the people charged, the Sheriffs would often be delivering summonses to vacant lots.

Court Arraignment Room, usually a date about two weeks after the indictment. The defendant is instructed to report there with an attorney if he or she has the means to hire one (or one will be appointed), and the individual is warned that a capias[17] will be issued for his or her arrest upon failure to appear.

An arraignment is a very brief but important point in a case, and occurs when a defendant is indicted and stands before a court to answer the charges. The defendant may have been notified by mail and came to court as scheduled, or, the defendant may be in jail and brought there by the Sheriff. The average length of each arraignment is only a minute or two. However, in that rapid proceeding the defendant, via his or her counsel, acknowledges the defendant has received the indictment and understands the charges, but pleads not guilty (rarely does anyone enter a guilty plea in the Arraignment Room). Only after arraignment can the individual judges of the Court of Common Pleas get to work on the case.[18]

In *Felony Justice, an Organizational Analysis of Criminal Courts,*[19] James Eisenstein and Herbert Jacob observed: "Arraignments are simple, highly ritualized ceremonies. But the organizational context in which they occur help explain their significance." In Cuyahoga County, the Common Pleas Court only gets involved in the non-jail cases after a long period of time has elapsed. This is especially true in the straight release cases from Cleveland.



The defendant's Municipal Court bond[20] is reviewed at the arraignment if it is a case bound over from a Municipal Court, or bond is set for the first time if the

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[17]A "capias" is a bench warrant.

[18]Since this has traditionally been viewed in Cuyahoga County as the starting point of Common Pleas' responsibility, little attention has been paid to the period between arrest and arraignment by the Court. This is where the major problem lies in Cuyahoga County's slow-moving criminal docket. The period between arrest and arraignment is where the criminal justice system has broken down. No one – especially the police and County Prosecutor's offices – did anything to stop the problem and it spun out of control during the 1990s with the vast increase in CPD's use of straight releases. The period between arrest and arraignment has developed into a "black hole" for which no one wanted to notice or take responsibility.

[19]JAMES EISENSTEIN & HERBERT JACOB, FELONY JUSTICE, AN ORGANIZATIONAL ANALYSIS OF CRIMINAL COURTS 193 (1977).

[20]A review of the case studies and Arraignment Room records in Cuyahoga County conclusively demonstrate that the number of capiases resulting from cases bound-over from

indictment was an "original" indictment. A judge is then assigned to the defendant's case by the clerk or by random draw. However, if he or she has separate criminal cases already pending in another courtroom, the defendant's new case is also assigned to that same judge's docket.

In Cuyahoga County, the indigent defendants are assigned counsel at arraignment by the judge[21] who is presiding that day. Local Court Rules require the Cuyahoga County Public Defender to be assigned to 35% of the indigent cases. In the other 65% of the cases, private counsel is chosen and assigned at the discretion of the judge.[22]

According to the records of the Bond Commissioner's Office, the percentage of persons not appearing at their arraignment has been fairly consistent since 1991, averaging 9,606 per year. Despite the downward trend of crime, the percentage of

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Municipal Courts after the suspect posted a bond are fewer than capiases stemming from CPD's straight release cases. Thus, the process in the criminal justice system that should be given the first priority in terms of reform is the inefficiency and safety issues flowing from the abuse of the straight release/original indictment process.

[21]Other urban counties in Ohio use magistrates to perform the perfunctory rituals in the Arraignment Room, as is permitted by statute. These counties' administrators state that using judges is a waste of valuable judicial time in the mornings – the most productive part of the court's day. As soon as the patronage aspect of indigent appointments takes place, the judiciary loses its desire to spend hours hearing not guilty pleas.

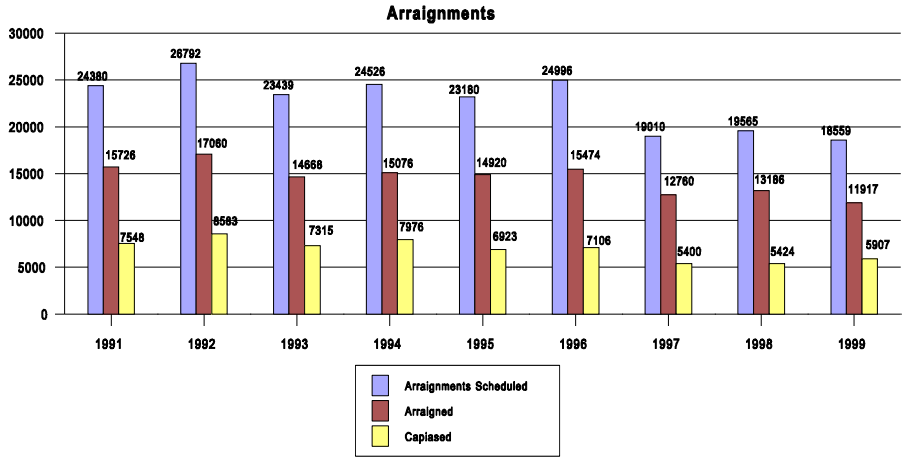
[22]The actual appointment of counsel can take place during the arraignment hearing itself, or the Arraignment Room judge does it later in the day. After being assigned the defendant's case, it becomes the attorney's duty to find out when the first pretrial is scheduled and notify the defendant. This is usually done by letter. Unfortunately, the address of the defendant provided at arrest is frequently changed or is in fact a girlfriend/ boyfriend or a family member whose address the defendant uses as a mail drop.

This process adds further unnecessary delay to disposing of the case and puts the initial pretrial off a week or more, or a capias is issued for the defendant if the attorney is unable to locate the defendant prior to arraignment.

Other counties employ a far more efficient system where the defendant is assigned the judge and his first pretrial date and time right at arraignment. The attorney has been assigned *before* the arraignment. Therefore, the attorney is present with the defendant at arraignment and the process of representing his/her client has already begun. They are both given the dates and times of their pretrials and possibly trial dates when the arraignment takes place. The court's computer is set to schedule the pretrials and even trials according to each individual courtroom's preferences. The defendant facing serious charges is never without counsel. This all adds up to less delay between arrest and the start of court proceedings.

An additional benefit to the counties preassigning indigent counsel is that it allows the court to predetermine who is really eligible and in need of free counsel. Right now in Cuyahoga County there is no screening whatsoever taking place. In other counties, such as Montgomery (Dayton, Ohio), there is a formal process whereby the person requesting appointed counsel fills out a form, detailing all assets, income, and employment history. If they are determined to be in need of a court-appointed attorney, the indigent defendant then must sign a contract agreeing to repay the court for attorney's fees paid on his behalf. A payment plan is immediately set up that fits his income and it is collected and monitored by the same court agency. Since failure of those capable of paying is potentially contempt of court, the court has had considerable success in being reimbursed. More importantly, the system has saved a significant percentage of the expenses of the assignment process, as it weeds out the non-deserving and the frauds.

people who fail to appear is steady. No-shows averaged approximately 30% of all arraignments (including jailed defendants) in the 1990s.



The 1999 statistics reveal that 11,917 arraignments were held by October, 1999. If that pattern continued, 1999 would have a total in a range similar to the 1997 and 1998 figures. Table 4-C below shows how the number of criminal indictments has fallen considerably in recent years, yet the percentage of indicted felons who are wanted or failed to appear for their cases by the Court of Common Pleas has not significantly decreased. This phenomenon is a direct result of the inefficiency of the straight release, failure to properly identify and indict much later policies that operate in regard to Cleveland felonies.

Year	Arraignments Scheduled	Arraigned	Capiased
1991	24,380	15,726 (64.50%)	7,548 (30.90%)
1992	26,792	17,060 (63.68%)	8,583 (32.04%)
1993	23,439	14,688 (62.60%)	7,315 (31.20%)
1994	24,526	15,076 (61.40%)	7,976 (32.50%)
1995	23,180	14,920 (64.30%)	6,923 (29.80%)
1996	24,996	15,474 (61.90%)	7,106 (28.55%)
1997	19,010	12,760 (67.12%)	5,400 (28.40%)
1998	19,565	13,186 (67.40%)	5,424 (27.20%)
1999 (to Oct.)	18,559	11,917 (64.21%)	5,907 (31.83%)

Table 4-C

These capias percentages above are artificially low. Those totals include everyone who was scheduled for arraignment, including those sitting in jail and those indicted but released. Naturally, almost 99% of inmates scheduled for arraignment appear at their court date. They don't have any choice, the Sheriff simply delivers the indicted defendant in jail to the video arraignment set-up in the County Jail. This near-perfect percentage of jail arraignment lowers the overall average of no-shows.

PERCENTAGES OF BAIL CASES AND JAIL CASES SCHEDULED FOR ARRAIGNMENT COMPARED TO HOW MANY WERE ACTUALLY ARRAIGNED		
Month	Non-Jails Arraigned	Those Already in Jail Arraigned
1998		
January	54.98%	99.02%
February	54.70%	99.47%
March	52.69%	99.43%
April	48.99%	99.84%
May	53.27%	98.54%
June	52.34%	98.58%
July	48.59%	99.48%
August	46.34%	98.69%
September	47.13%	98.86%
October	56.19%	99.34%
November	52.79%	96.75%
December	48.87%	98.73%
TOTALS: (January to December, 1998)	51.41%	98.89%
1999		
January	50.50%	98.87%
February	49.53%	99.61%
March	50.20%	98.60%
April	48.98%	98.06%
May	43.74%	98.60%
June	47.85%	99.24%
July	37.60%	98.56%
August	38.98%	98.99%
September	56.43%	98.87%
October	42.23%	98.85%
TOTALS: (January to October, 1999)	46.60%	98.83%
November	45.38%	97.27%
December	40.16%	98.89%
TOTALS: (For all of 1999)	44.05%	98.33%

Table 4-D

When non-jail defendants are examined separately (above, in *Table 4-D*), the statistics disclose that approximately half of those individuals do not appear for arraignment. In 1998 only 51.41% of the persons not already in jail showed up to the Arraignment Room to answer the felony charges against them. In 1999, even fewer non-jails appeared: 44.05%. No other Ohio county, urban or rural, has such a problem.[23]

V. NATIONAL URBAN ARREST-TO-DISPOSITION RATES AND TRENDS

The latest U.S. Department of Justice, Bureau of Justice Statistics report, released in October 1999, tracked a scientifically valid sampling of cases from the 75 largest counties in the United States from 1990 to 1996. The most recent study analyzed cases filed in May 1996 in 40 of the nation's larger counties.[24]

Of all urban felony arrests, 36.8% are for drug charges. Three of every eight felony defendants were already active in the criminal justice system at the time of their arrest. Sixty percent had a prior felony arrest record. The average age of those arrested for felony drug charges was 31. Thirty-five percent arrested for drug trafficking were under age 25 and 19% were under 21.

The U.S. Department of Justice concluded that the median time it took from arrest to adjudication for felony drug offenses, including trafficking, was 90 days. Sixty percent of the cases were completed within six months and 83% within a year. The exact cases with warrant out at the end of the year is unknown.[25]

The national urban median time from arrest to disposition for felony defendants charged with drug trafficking and released was 140 days and 50 days for those detained in jail. Felonies for assault, theft, and weapons took on the average 120 days to go from arrest to adjudication. Rape cases released on bond took longer, with a 190 day median. Murder cases were the slowest of all, but the median number of days for all violent offenses, including murder, rape, and robbery was 105

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[23]Unfortunately, the Supreme Court of Ohio does not keep any kind of statistics in reference to numbers of capiases issued, much less the percentages of indicted individuals failing to appear at their arraignments in the 88 counties of the state. The only way to obtain such information is to contact county courts directly. Conducting a random survey, it was discovered that no other county keeps FTA (fail to appear) rate statistics. Very few consider it a real problem, as most have an estimated FTA rate at 10% or less. All the counties contacted adjoining Cuyahoga County, Lake, Lorain, Geauga, and Summit, fall in or below that 10% FTA rate. Several urban counties considered their FTA rate at arraignment a serious problem: Lucas (Toledo) at an estimated 15%; and Franklin (Columbus) and Hamilton (Cincinnati) at an estimated 20%. Montgomery County (Dayton) reports they used to have a problem FTA rate until they recognized its existence and put a plan into action to combat it. They hired a case flow manager and started a program where they gather considerable biographical and other data from the prisoners before they are released from jail. With confirmed identifications and addresses, they are able to give the prisoners a court date for their next appearance before they are released from jail. Of course, none of these counties has a city who straight releases felons without knowing their identification.

[24]Cuyahoga County was not part of the survey.

[25]Bureau of Justice Statistics, pages 2-21. This is based on a study of 19,504 felony drug cases. *See* U.S. Department of Justice, *Felony Defendants In Large Urban Counties, 1996, State Processing Statistics* available at National Archive of Criminal Justice Data at University of Michigan, <http://www.ojp. usdoj.gov/bjs>.

days. For about half of the felony defendants in the largest 75 counties in the U.S., adjudication of the case took place within three months of arrest and six of seven, or 85%, within one year. Seventy percent of those adjudicated within one year were convicted. The highest probability of being convicted of a felony was for those charged with drug trafficking (68%). Only 3% of all drug cases went to trial. One percent were acquitted and 30% eventually dismissed.[26]

From the studies conducted of methods of adjudication of the felony cases, the longer the cases were delayed, the more likely the cases would end in dismissal or trial. Guilty pleas resulted in 94% of the convictions obtained within a year of arrest. Twenty-five percent of the felony pleas occurred within the first month, and half of the felony pleas took place within three months. Forty percent of the cases reduced to misdemeanors came within a month of the arrest, and 66% within three months.[27]

Time from plea or conviction to sentencing in drug cases was a day or less in 59% of the cases. Ninety-three percent were sentenced within 60 days. In all criminal cases, five of six defendants were sentenced within 30 days, including 79% for felony convictions and 90% for misdemeanors.[28]

These studies by the U.S. Department of Justice also revealed that 31% of all defendants released from jail before disposition of their felony cases engaged in further misconduct, which resulted in new arrests, failure to appear at court, or a rules violation serious enough to result in re-jailing.[29] The highest percentage of misconduct after release occurred in drug trafficking cases (40%), followed closely by other types of drug offenses (38%). Those charged with drug trafficking were the most likely to be re-arrested for a new felony while awaiting trial (23%). Murder releases by comparison only had an 18% misconduct rate, and rape 12%.[30]

The national urban rate of those who were released from jail who failed to appear prior to disposition was 22%. Seventy-eight percent made all scheduled appearances at court. The highest percentage of offenders' failure to appear was for drug offenses (29%). Eight percent of drug offenders remained fugitives after one year. But 71% of all those charged with drug offenses made all court appearances as compared to 78% for all types of appearances.[31] A 1998 study and report, *Measuring the Pace of Felony Litigation,* in "Examining the Work of State Courts, 1998: A National Perspective from the Court Statistics Project," concluded that in all 17 medium-sized cities[32] studied, the median number of days from arrest to disposition was 126 days.

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[26]Bureau of Justice Statistics, *supra* note 25, Report Table 23 at pg. 24.

[27]*See supra* note 26, Figures 18 and 19, at 28.

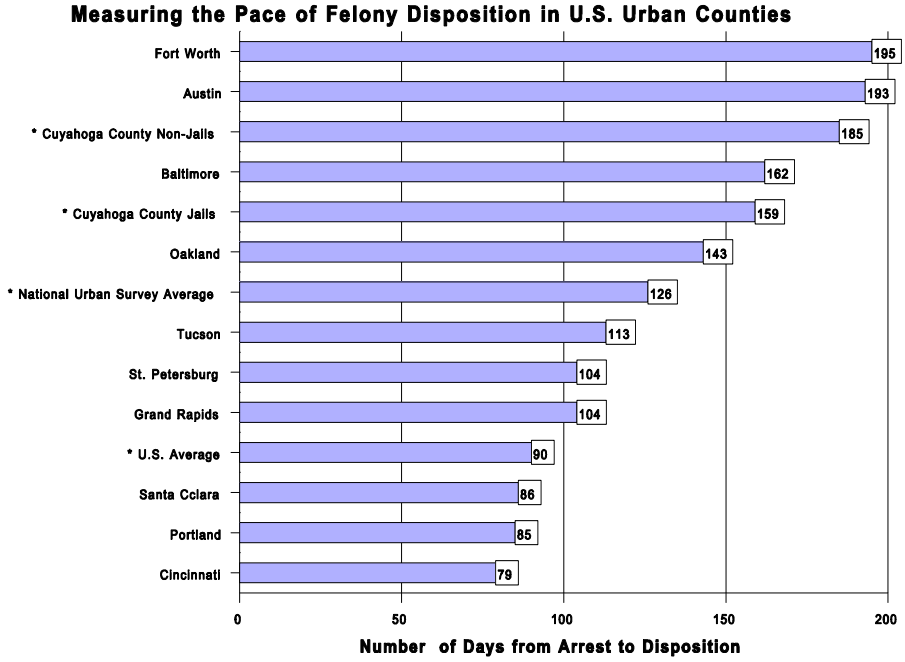
[28]*See supra* note 26, Pg. 29, Table 29, at 29.

[29]It would be logical to be concerned that the percentage of misconduct in Cuyahoga County may be even higher than the national average since the pre-indictment delay is considerably longer.

[30]*See supra* note 26, Table 19, at 21.

[31]*See supra* note 26, Tables 19 and 20, at 21. Interestingly, persons charged with rape are most likely to make all court appearances (94%).

[32]Neither Cleveland nor Cuyahoga County was included in that specific statistical analysis.



	Number of Days
Cincinnati	79
Portland	85
Santa Clara	86
U.S. Average	90
Grand Rapids	104
St. Petersburg	104
Tuscon	113
National Urban Survey	126
Oklahoma	143
Cuyahoa County Jails	159
Baltimore	162
Cuyahoga County Jails	185
Austin	193
Fort Worth	195

F1: National Median Days from arrested disposition in 75 large urban counties surveyed; The National Center for State Courts' study examining the work of state courts, 1998.

F2: This is labeled "Cuyahoga County" and not "Cleveland" because these averages include all suburbs whose cases are indicted and disposed of faster. If Cleveland felonies were considered alone, the average would be higher.

F3: National average of all areas from arrest to adjudication. Rape, assault, theft and weapons cases were slower. Faster than average were murder and non-jail drugs.

F4: The fastest county and the slowest county have not been included with this graph.

Table 5-A

The faster-performing courts fully disposed of their felony cases within 100 days of arrest (*examples:* Seattle, Washington, 59 days; Cincinnati, Ohio, 79 days;[33] Portland, Oregon, 85 days; Santa Clara, California, 86 days). The moderate-performing courts fully disposed of cases in anywhere from 104 to 143 days (*examples:* Grand Rapids, Michigan, 104 days; St. Petersburg, Florida, 105 days; Tucson, Arizona, 113 days; Oakland, California, 143 days). The slower-performing courts were found to fully dispose of their felony cases anywhere from 162 days (Baltimore, Maryland) to 314 days (Hackensack, New Jersey).[34] Cuyahoga County Common Pleas Court's performance would place it in the slower court category. There the percentage of processing time from arrest to arraignment is over 50%.

The *Measuring the Pace of Felony Litigation* report, which was compiled by the State's Justice Institute, the Bureau of Justice Statistics, the National Center for State Courts, and the State Court Administrators, noted: "Paying attention to case processing time remains a critical issue for court management because delay has a negative effect on the quality of justice and continues to be perceived by the American public as a problem of major importance."

In the courts examined by the National Center for State Courts' study, those with a moderate or average disposition speed spent only 12% of the time processing the case from arrest to indictment. In contrast, the percentage of the total disposition time eaten up between arrest and arraignment in Cuyahoga County was 50% in 1998 and even higher in 1999.[35] In the national study, all the slower courts had extremely high rates of time spent between arrest and indictment. The slowest-moving courts

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[33]In Hamilton County (Cincinnati, Ohio), the County Prosecutor's Office has a real appreciation of the importance of promptly disposing felony cases. According to Hamilton County Common Pleas judges and the assistant prosecutor in charge of the direct indictment program, they recognize the existence of a direct correlation between the public safety and reduction of wasted time processing felony cases. The reason they have one of the fastest averages in the country for disposing of felony cases is that they have eliminated the dead time between arrest and arraignment; that is, the time period where the offenders can re-engage in crime, hurt others and themselves. The prosecutors also recognize that their chance for convictions is greater, as well as the deterrent value, if the case is handled timely.

As a result, the Hamilton County Prosecutor's Office has set up a direct indictment program that causes the case to be indicted *sooner* than the normal bindover process. It saves time, money, and unnecessary victims.

There is no such animal as straight release allowed in Hamilton County. The prosecutor has provided the resources to see that the accused felony is indicted within ten days of arrest. The Hamilton County judges are very proud of the fact that most cases are on their dockets fourteen days after the arrest. According to the Hamilton County judges and administrators, it is just a matter of being determined to get the job done. The ball is handed off to the judges quickly, and thereafter, the responsibility of seeing that the case is handled expediently is shared.

[34]Cuyahoga County's performance in the late 1990s is worse than that of Manhattan at the height of its crime wave in 1988 when median time there from arrest to disposition was 153 days.

[35]The prolonged period between arrest and indictment greatly increases the percentages of persons who will not appear at arraignment. As a result of CPD's unique straight release practice, Cuyahoga County has an unusually high period of average time between indictment and arraignment. This is time totally wasted and is a major contributing factor in Cuyahoga County's slow disposition rate.

in the study were in Austin, Texas with 32%, Birmingham, Alabama with 41%, and Hackensack, New Jersey with 37%.[36] No other court cited was anywhere near the 50% rate in Cuyahoga County.

The faster-moving courts studied spent little time in the arrest-to-indictment stage. If Cuyahoga County were able to reduce the time spent from arrest to arraignment to even 20% of its total disposal time, the average disposition rate would fall all the way to 107 days instead of the present 185 in non-jail cases.[37] Such a disposition rate would put Cuyahoga County into the "faster courts" category in the national average instead of its present "slower court" standing. In other words, the Court itself is working at a very acceptable speed once the arraignment is achieved. Therefore, reform should be first focused on reducing the amount of time spent between arrest and indictment and indictment and arraignment. Most of this unnecessary delay can be traced back to the CPD's straight release practice, CPD's failure to identify, and the long delay in obtaining indictments from the County Prosecutor's Office's controlled Grand Jury.[38]

VI. CUYAHOGA COUNTY JAIL

Overcrowding has been a problem for over 25 years at the Cuyahoga County Jail. A new modern jail was opened in 1977. It was soon filled beyond its 764 bed capacity and remained so until a Federal Court order in the late 1980s forced the County to distribute prisoners to other facilities. The order also limited the use of the County Jail.

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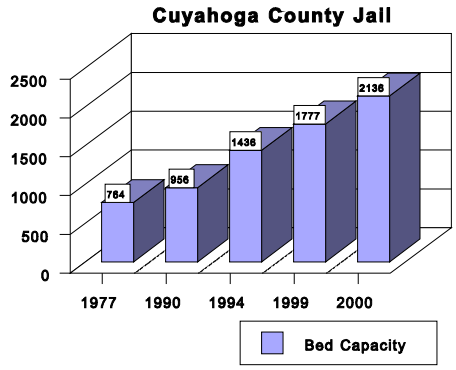
[36]Although these cities were ranked for only indictment and not arraignment, the figure here is still a useful, valid comparison tool because in communities other than Cuyahoga County there is normally only a short delay between indictment and arraignment.

[37]In 1999, it took an average of 104 days to get non-jail felonies in Cuyahoga County from arrest to arraignment and another 81 days to disposition.

[38]Although the Court of Common Pleas pays for and provides space and staff for the Grand Jury, it is essentially an arm of the County Prosecutor's Office. A Grand Jury may exercise a certain independence in its decisions, but it is the Prosecutor's Office who decide what cases and what witnesses it will hear and for how long. The Prosecutor's Office has control of the docket and speed of the Grand Jury. The Grand Jury hears as many or as few cases as the prosecutors choose to present. They are the managers and are ultimately responsible for the Grand Jury's output, or lack thereof. The County Prosecutor's Office also has in its discretion the ability to give "drop dead" deadlines to police. If police do not timely present their cases (police reports and requests for charges), the County Prosecutor's Office is within its rights to refuse to accept the case. The Prosecutor's Office could put an immediate stop to the City of Cleveland's dubious straight release program by simply announcing it will no longer accept this after a date certain. If the County Prosecutor's Office established a policy requiring timeliness and declined to let the case to into the Grand Jury, especially major drug felonies, the police would be left with the choice of going to the City Prosecutor's Office or being prompt in the future. The County Prosecutor's Office would, of course, have to become current in its docket at the Grand Jury before such sanctions could even be imposed. As it stands right now, the police could not get into the Grand Jury in what would be considered a timely fashion in other counties even if they wanted to. If the County Prosecutors reorganized its Grand Jury indictment process to be current, they could have cases indicted within thirty days of the crime and arrest instead of the three to six months so many of these straight release cases have to wait now.

The County Commissioners responded by building additions to the County Jail. In 1990 the first expansion project increased capacity to 956 prisoners. In 1994 the new Jail II tower increased capacity to 1,436. In 1999 renovation increased the capacity to 1,777, yet as of March 1, 2000, there was still considerable overcrowding with 2,136 prisoners in the jail. In addition, the County averages 160 prisoners in city jails up to 100 miles away, at an average cost to the county of $11,000 per day or $4 million per year. There are plans in progress to build a separate jail to alleviate the current overcrowding and to provide a location for felons to serve local sentences.[39]



In all jails in Cuyahoga County there are an average 2,670 inmates. There are approximately 7,000 persons out on bond awaiting trial or sentencing, and approximately 10,000 people in Cuyahoga County on probation and another 10,000 on supervised parole.[40]

Only about a third of the County Jail population is actually serving a jail sentence imposed by either the County's felony court or by the suburban municipal courts.[41] Approximately two-thirds of the County Jail population is awaiting trial or sentencing.

Since the majority of the jail population is awaiting the hearing or disposition of their cases, every improvement in the rate of disposition represents a reduction of the jail population and overcrowding. Efficiency in disposition of cases would save the County a considerable amount of money as well as provide room for the Court to

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[39]The Corrections and Planning Board is currently in the land purchase stage of an already partially funded plan to build another 200-cell facility adjoining a 700-cell misdemeanor jail. Money has been set aside for years, but the land site has not been able to be agreed upon by the potential entities involved.

[40]Statistics provided by Robert Pace, Director of Corrections at the Cuyahoga County Corrections Center, and from Ute Vilfroy of the Corrections Planning Board.

[41]The City of Cleveland has its own separate jail, the Cleveland House of Corrections, a.k.a. the "City Workhouse," where it sends those people convicted and sentenced to jail by Cleveland Municipal Court. The "Workhouse" name is a misnomer since no manual labor by inmates has been done at this dilapidated facility in over a quarter of a century. The Cleveland Police Jail at the Justice Center has a 50 person capacity. Four out of five Cleveland Police district jails have capacity for anywhere from 34 to 40 prisoners each. None of the city cells meet requirements for long-term stays. Cleveland Municipal judges regard their jail space situation as "ridiculous."

impose local sentences. Right now, each of the 34 Common Pleas judges is allotted only four jail spaces to use for local sentences.[42] When those spots are filled, the judge is forced to choose between state prison or probation.

VII. THE CLEVELAND POLICE "ARREST, RELEASE AND INDICT LATER" PRACTICE

As of December 31, 1999, there were a total of 12,501 active felony capiases and warrants on file in the Sheriff's Office.[43] That number, instead of falling with the lower crime and decreased number of indictments, is increasing.

A very high percentage of indicted persons are simply not showing up for their day in court. No other county in Ohio has such a problem. Why? The number of capiases being issued for individuals who fail to appear at court for original indictments is twice as high as the failure-to-appear rate for indictments that come from a normal arrest, charge and bindover to the Grand Jury procedure. That means approximately two out of every three no-shows at arraignment are from cases that were "original" indictments (*i.e.,* cases where police and prosecution skipped the normal bindover process and went directly to the Grand Jury). Thus, this study concludes the major cause for the low appearance rate at felony court is the failure to promptly identify and prosecute the people arrested by CPD. And this is because of the "straight release" policy of the Cleveland Police Department.

The problem swelled to its current proportions when in the 1990s there was a steady increase in the use of "straight releases" by two police agencies: the Cleveland Police Department and the Cuyahoga Metropolitan Housing Authority. Both of these no longer follow the normal process of "arrest and charge" for felony drug cases that are not considered major arrests. Instead, they "straight release": police arrest an individual and release him or her within 48 hours without a formal charge; later, police seek an original indictment from the Grand Jury.

The original indictment concept is nothing new. What is new is the manner in which "originals" are now used or over-used. Traditionally, CPD and the Cuyahoga County Prosecutor's Office used original indictments *only in exceptional cases* for legitimate strategic purposes to bypass the normal charging system. For an original indictment, the County Prosecutor does not wait for the case to be bound over from the Municipal Court to the Grand Jury. Instead, the Prosecutor goes directly to the Grand Jury for indictment. In the past this was done to expedite indictment in major cases or to avoid unnecessary exposure. For example, in a multi-kilo cocaine possession arrest, police have always been permitted by the County Prosecutor to go directly to the Grand Jury for indictment in order to avoid exposing informants or

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[42]These limits are imposed because of the limited number of beds available in the County Jail. The rest of the space in the County Jail is largely used for persons awaiting felony trials in Common Pleas Court, Federal Court, or are being held awaiting sentencing, parole or probation violations. Cuyahoga County has an unusually high percentage of cells used for persons awaiting trial.

[43]Sheriff's Office Chief Deputy Dan Pukach and Inspector Dan Calvey who oversee the Sheriff's Office's Detective Bureau and the Warrant Unit have file cabinets bulging with these warrants. Pink warrants represent the Cleveland CMHA's straight release felony warrants and blue envelopes symbolize the bond forfeiture capiases that come from Municipal Courts. The Sheriff's Office does not have an exact breakdown but any drawer pulled reveals more pink than would be found in Liberace's bedroom. Blue, BFC, represent a decreasing percentage of the warrants according to the Sheriff's Office.

undercover police at the preliminary bindover hearing. In the past, police purposely circumvented Municipal Court in order to avoid possible low bonds set by Municipal Court officials who were sometimes *ex-parted* into setting low bonds by unscrupulous bondsmen or attorneys. Police feared the suspect could abscond before he or she was indicted, so they used "originals" to speed up the process. Direct indictments have also been deemed advisable in rape cases to spare the victim from cross-examination so shortly after the sexual attack, when the victim may still be in trauma. Lastly, in some major cases, the prosecution worried the defense would attempt to turn the preliminary hearing into a mini-trial to test or belittle the State's witness or evidence before the scientific aspect of the case could be prepared. Those were historically considered legitimate and understandable reasons to bypass the normal or original indictment process. It took specific approval by a person of supervisory rank in the Prosecutor's Office to undertake the unusual original indictment route. The indictment was also achieved rapidly so that the defendant did not have to be released from jail. Original indictments used to be the fastest-moving cases in the criminal justice system.

Now, however, the original indictment route is used for contradictory purposes. Instead of being employed selectively to hold a dangerous criminal in jail, "originals" are now used to release suspected felons without charges or any means to monitor their whereabouts. Instead of bypassing Municipal Court in order to obtain a speedier indictment, the original indictment process is now exploited by CPD to delay charging the suspects for several extra months. Criminals take advantage of this delay to undermine the system. In effect, they get six months of freedom from prosecution.

In *Felony Justice,*[44] Eisenstein and Jacob conducted studies in Chicago, Baltimore and Detroit, and concluded that a decision to set an accused felon free before trial was not based on race, the charge, or the evidence, "but rather differently structured workgroups responding to their own incentives, applying unique standards." In Chicago it was concluded that the police and victims had the most influence. In Baltimore the defendants, with the help of an active public defenders system, had the most influence in the decision. Of course, those authors were dealing with bond decisions. Straight release, like Cleveland's, has no precedent for comparison.

For a number of reasons, both sound and otherwise, there has been a tremendous increase in the use of straight releases by the Cleveland police in the past decade. This is partly because of an increase in cases, coupled with marginal staffing and support at the detective bureaus.[45] Originally police officials explained away their

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[44]FELONY JUSTICE, *supra* note 19, at 194.

[45]There has been a major shift in priorities at Cleveland City Hall. Community policing has been the buzzword of the '90s there. Manpower has been allocated to make it possible. In accord with the "fixing broken windows" concept, many more arrests for minor misdemeanors have been made. However, since there has been no increase in the number of police officers in Cleveland, numerous high-ranking police officers believe Peter has been robbed to pay Paul. (For instance, when New York City began its successful community policing program, it started by hiring 5,000 new police officers. It did not have to degrade its ability to investigate serious crimes while restoring order in the streets with arrests for petty ordinances.) Cleveland's total number of police has remained relatively stagnant, but Cleveland's ability to investigate felonies has degraded in the meantime due to its depletion of detective bureaus.

increased use of straight release as a way to avoid costly overtime associated with detectives' follow-up visits to the City Prosecutor, and the immediate investigative work and court appearances necessary after an arrest; this also alleviated the serious overcrowding at the Cleveland police jails caused by increased drug arrests.

But straight releases for most drug felonies and other minor felony offenses are the norm now in Cleveland. It is unusual to have Cleveland Narcotics or Vice Units follow the typical arrest, charge, and bindover procedure used by the other cities in Ohio. Since Cleveland felony arrests still account for the majority of Cuyahoga County's felony cases, straight release becomes a serious cause of the disappointing disposition rate of cases.

The decision of individuals to enter into illegal activities can be explained by the same model of choice that economists use to explain legal activities. In the classic study, *Crime and Punishment: An Economic Approach,* Gary S. Becker[46] formulated a measure of social loss resulting from criminal offenses. He then finds those expenditures of resources and punishments that minimize loss. The optimal amount of enforcement depends upon the cost of apprehending and convicting offenders, types of punishment, and the responses of the criminals to changes in enforcement.[47] Becker concluded that "the anticipation of conviction and punishment reduces the loss from offenders and thus increases social welfare by discouraging some offenders." If illegal activities would not pay more than could be received in less risky enterprises, fewer people would make the choice of crime. Thus, increasing the probability of conviction and punishment increases the marginal cost and decreases the percentage of risk-takers. Evidence of actual probabilities and punishment in the United States bears out this general behavioral model.[48]

Drug addicts and dealers have the greatest economic incentives in an urban society to engage in repeated theft or drug distribution crimes. Lax criminal justice procedures encourage these individuals to remain in their illicit enterprises. Like capable tax attorneys and businessmen who find the loopholes in the tax law, these criminals find and exploit the opportunities presented by administrative failures in the criminal justice arrest and charging process. Eisenstein and Jacob concluded, "Although those who commit crime do so to some unknown extent in response to individual personality pathologies, they are responding to social conditions which the exercise of political power reinforces. The felony disposition process plays an essential role in this drama."[49]

If the initial response of police, prosecutors and courts to their arrests reveal disinterest or incompetence, the offender, especially a career criminal, takes this into account when he or she conduct a cost-benefit analysis. For the crack addict, that opportunity will likely come sooner rather than later if the individual is immediately straight released from jail. If, on the other hand, the normal criminal process in Ohio

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[46]JOURNAL OF POL. ECON., 169-17 (Mar./Apr. 1968).

[47]Becker recommends the careful development of optimal policies to combat illegal behavior by logical allocation of resources. His theory calls for optimal decisions by police and courts to minimize the social loss in income from the offense.

[48]Social loss is the total damages, which include costs to the victim and expenditures in arrest, conviction, and punishment.

[49]FELONY JUSTICE, *supra* note 19, at 289-90.

is employed, then the defendant is charged with a crime, goes in front of the court and a bond is set, offering the court and community some protection. It increases the likelihood of the defendant's return to court to answer charges sooner, and he or she is less likely to continue engaging in crime than in a straight release. Since the police have actually conducted identification checks on the person charged, he or she will be held for any other pending case for which the individual is wanted and not unwittingly released. The police, the prosecutor, and the court know who they are dealing with and their criminal past, and a bond is set accordingly. If a bond is made by the defendant or his or her family, there is a certain pressure to bear on the offender, along with rehabilitation/treatment considerations that a court would impose. The charged individual knows that there is a court date in the immediate future.

VIII. CLEVELAND POLICE NARCOTICS UNIT

The majority of all felony indictments in Cuyahoga County, approximately 55%, originate from Cleveland Police arrests. And most of those indictments come from the Narcotics Unit, whose detectives process the drug arrests of their own unit and those of all five police districts' zone cars. In the first eight months of 1999, zone car narcotics arrests totaled 7,521. In 1998, there were 9,575 arrests; in 1997, 9,457; and in 1996, 8,443. (These figures also include misdemeanor arrests but not Vice Unit arrests.)

The actual number of felony drug arrests made by the Narcotics Unit detectives themselves has declined considerably over the past five years, consistent with their reduction in Narcotics Unit manpower. The arrests made by detectives are generally of more important, dealing-related offenses than patrol car arrests. The arrests made as a result of the narcotics detectives' investigations take more time and effort but have traditionally proven worthy of the cost.

The Narcotics Unit's own cases arise from citizen complaints or other intelligence obtained regarding drug dealing out of a house, apartment or store. Narcotics detectives first watch for the hours and methods of dealing, then use a confidential, reliable informant to go in and purchase drugs. With this information, a search warrant is obtained from a Common Pleas judge. To make the charges stick in court and to overcome anticipated defense strategies, narcotics detectives make another drug buy with an informant shortly before they execute the search warrant. The search is inventoried and the results filed with the Court of Common Pleas.

Narcotics detectives report that due to reduced manpower, they can only work on a small fraction of the crack houses and dealers that are now operating openly in the City of Cleveland. It is common knowledge amongst even low-level dealers that the CPD Narcotics Unit closes down at 8 p.m. The Vice and Strike Force Units do their best to pick up the slack, but they have other, non-drug-related duties they must fulfill.

Narcotics Unit arrests for drug dealing declined dramatically in the 1990s. In 1992 the Narcotics Unit made 1,322 arrests and in 1993, 1,378; but by 1998, the unit accounted for only 316 arrests for drug-dealing activity. When the Police Department relies instead on patrol car arrests, major dealers and suppliers all remain safer, for the street distributors are willing to assume the risk of arrest. The dealers can safely insulate themselves when police only conduct superficial investigations. The illicit drug suppliers' only concern then is merely the street surveillance. If the major dealers are allowed to be free of fear of arrest, the patrol car arrests will have

little effect on long-term drug distribution in the City. There will always be drug addicts available to assume the street sales positions.

The felony cases presented to the Grand Jury by the Narcotics Unit detectives have remained relatively consistent despite the overall decline in violent crime in Cuyahoga County and the nation. In 1995 Narcotics Unit detectives presented 3,160 cases to the Grand Jury; in 1996, 2993; in 1997, 3,011; and 2,982 in 1998. Drug-related arrests, more often than not straight releases, continue to comprise the majority of the felony arrests in the City of Cleveland.[50]

The Cleveland Police Department has not tracked the number of normal process arrests, where people are charged and bound over to Municipal Court, versus the shortcut method of straight releasing. Nor are there records kept to indicate exactly how long it takes police detectives to get into the Grand Jury to present their case and ask for an indictment. However, a review of the cases and discussions with the narcotics detectives who make the arrests and prepare and present the cases show that the average waiting period to present a straight release case is four months.[51]

When the Central Detective Bureau was decentralized, the detective bureaus in the five police districts created their own policy and procedures distinct and apart from each other. Policies can differ from shift to shift. There is no formal protocol regarding the decision on whether the individual case will be pursued for a formal charge through the City Prosecutor's Office or to straight release the prisoner and go for an indictment later at the Grand Jury. The decision appears to be made by each individual detective guided by the policy of the lieutenant or sergeant in charge. There are no statistics kept to compare the patterns between units or detective bureaus.

The straight release became prevalent during a period when City Jail overcrowding was a serious problem. The police jail was and is inadequate in both size and facilities to handle the influx of crack cocaine cases. That jail has a limited number of beds and no exercise, medical, or dining areas. At times in the late 1980s, the Cleveland police jails simply had no room for all the people they were arresting.[52] The City and CPD did not want to be forced to release criminals for lack of room, and the money was not available to build a new jail since the City was in financial crisis. Ironically the straight release process the police employed to

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[50]These narcotics arrests are accomplished by the Narcotics Unit, Street Crimes Units, the Vice Units, five police districts, or the Strike Force Units. Each of the numerous units has a separate lieutenant in charge. There is a division of labor of those police sometimes doing identical work. The Narcotics and Street Crimes Units report to the Commander of Special Operations who also oversees Homicide and other special sections. The six Detective Bureaus and all the District Vice and Strike Force Units report to a different high-ranking commander, the Deputy Chief of Field Operations.

[51]CPD has just recently started a new statistical method that may account for these offenses as a result of its desire to address the problem raised here. Also the May 21, 1999 Arraignment Room study, addressed later in this report, provides a good sample of how long the average case takes and generally corroborates the estimates of narcotics detectives as well as the other 476 case sampling.

[52]Although it has been obvious to everyone in the Cleveland Police Department and at City Hall for the past decade that there is a serious shortage of jail cells to hold the people they arrest or sentence, no real effort has been made in all that time by Cleveland to build any, nor has anything else been done to solve the problem.

alleviate the dilemma has resulted in more serious problems than did the overcrowding crisis.

The long and short of it appears to be that Cleveland, wittingly or unwittingly, decided to place more importance in making high numbers of arrests than they did in obtaining convictions. To convict, a police department has to be willing to provide the manpower necessary to properly follow up on cases. To prosecute a case successfully, detectives must invest the time required to shepherd a case through the prosecution and court process. The City has not placed an equal amount of resources into timely prosecuting its felony cases, instead placing valuable resources into street arrests as a short-term solution to the City's drug problems and the political pressures that accompany them. In the long-run, this practice negates the positive effect of the street arrests. The criminals know they have little to fear if they are arrested for low-level felonies. They will likely be back on the street charge-free in short order.[53]

In units such as the Cleveland Police Narcotics Unit, severe downsizing in the number of detectives, in order to staff community police programs,[54] encouraged or

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[53]Numerous experienced police officers of all rank and grade interviewed complained that the City of Cleveland's administrative goals and policies were in conflict with sound police practice. The performance measures used by the City Administrators were those which generated money for the City, not necessarily safety for the citizens. For example, the formal performance measure statistics form has dropped search warrants executed as a category but now carefully monitors how many seatbelt tickets are issued. Search warrant executions and dealer arrests have fallen dramatically since the reduction in detectives and change in priorities. The statistics appear to corroborate the officers' viewpoint that there is at the very least a subtle pressure on the Police Department's leaders to produce results in the cash production categories while discouraging police overtime and court time at the same time. City Hall has redirected CPD's limited resources in terms of manpower in a manner to encourage arrests for minor crimes such as loud music and open containers in an effort to make neighborhoods more livable.

[54]In 1982, James Q. Wilson and George L. Kelling wrote in an article the theory by which they advocated "fixing broken windows," or what became known as "community policing." They explained how neighborhoods can decay into disorder and crime if they are not attended to and maintained by police and others:

> If a factory window is broken passersby observing it will conclude that no one cares or no one is in charge. In time a few will begin throwing rocks to break more windows. Soon all the windows will be broken, and now passersby will think that, not only is no one in charge of the building, no one is in charge of the street on which it faces. Only the young, the criminal, or the foolhardy have any business on an unprotected avenue, and so more and more citizens will abandon the street to those they assume prowl it. Small disorders lead to larger and larger ones, and perhaps even to crime. (*See* James Q. Wilson, forward in FIXING BROKEN WINDOWS: RESTORING ORDER AND REDUCING CRIME IN OUR COMMUNITIES, by George L. Kelling & Catherine M. Coles (Simon & Schuster, 1996.))

The authors and others looked at policing and, in particular, at the failure of the old reform model that has been dominating American police practices since at least the 1940s. Rather than seeing their function as the traditional role of maintaining order in communities and on neighborhood streets, police became focused on "fighting crime." They became aloof from the citizens instead of viewing themselves as just another component of the community. Communication and response with police became dependent upon 911 calls. This was a far cry from the original purpose of police as outlined by the father of modern policing and the founder of the London Metropolitan Police, Sir Robert (*i.e.,* "Bobbie") Peel, who said, "...the police are the public and the public are the police."

left little choice in their administrators' eyes but to begin using straight releases. All of the zone car arrests came to the Narcotics Unit, along with the unit's own normal arrests following investigation, and as the City's administrative policy sharply reduced police overtime due to the City's economic crisis of the early 1990s, the Narcotics Unit became more and more dependent upon straight releasing prisoners. As the 1990s progressed, detectives simply did not have the time to promptly follow up on each case. Their case numbers remained high while the number of detective personnel decreased, until the unit was down to approximately a dozen detectives.[55]

According to police sources, City Administrators reasoned that, by straight releasing suspects, police would not have to wait for a CPD Scientific Investigation Unit lab test report. (These lab reports were necessary before the narcotics detective went to the City Prosecutor's Office for charges to be filed.)[56] Nor was there a need to visit the City Prosecutor or the Cleveland Municipal Court for a bond hearing or, later, a preliminary hearing.

In the 1990s, New York and other cities began moving in the direction of the community policing Wilson and Kelling advocated, with great success. Police focused on order maintenance in neighborhoods and gave increased attention to low-level disorderly behavior, not just the major index crimes like rape, murder and burglary.

In none of these example success cities did the police deplete their detective bureaus' efforts to arrest and prosecute felons. The successful cities' use of community policing increased the numbers of police. There was no robbing-Peter-to-pay-Paul tactic employed. Failure to identify criminals prior to release from jail is virtually an unknown phenomena that no one, not even Cleveland, plans or attempts to justify. It is simply an error, and the police administration recognizes it as such. Likewise, the concept of straight release without charges only to await indefinitely for an indictment is a concept unheard of and without advocates anywhere in law enforcement. None of the concepts are part of a community policing strategy or theory. They are the by-products of city administrations and court bureaucracies that lost sight of the overall picture.

[55]Ranking officials in the police department explained that more and more new police academy graduates were understandably being sent to serve in programs that were being paid for with federal funding such as community policing, bike patrols, neighborhood mini-stations, and Operation "Fresh Start." Unfortunately, as the specialty detective units were depleted in the natural process of attrition, the detectives were not replaced.

[56]If there ever was a problem with SIU being able to rapidly test the drugs submitted to them, it does not exist now. The SIU lab completes all drug tests within one day. When this writer made an unannounced visit to the SIU lab, the books indicated that every drug sample submitted that day and every day the week of March 23, 2000, was tested and the results posted by the end of the day. The drugs submitted over the weekend are completed on a Monday before the lab is allowed to close. A review of several months of lab logs showed a similar prompt testing pattern.

They are on a five-day, one-shift week which could cause some difficulties with a 24-hour charge or release rule on weekends and holidays. If a 24-hour charge or release rule is helping perpetuate the "straight release" custom, it should be given serious reconsideration. The case law actually allows police 48 hours to make a decision to charge or release. (*See infra* discussion on *Riverside v. California* decision.) If there is good reason to believe the prisoner is giving a false identification, police may hold an individual as long as it reasonably takes to verify his or her identification. If the prisoner knows he or she going to sit in jail until the identification he or she claims is authenticated, there is a positive and effective incentive to be truthful, at least as far as the prisoner's true name.

The straight release policy allows police to present cases to the Grand Jury en masse, the theory being that presenting ten at a time was a more efficient use of police time.[57] Theoretically, this allows the detectives to use the time during their regular shifts to prepare the written reports and to pick up the necessary lab identification reports for cases. In reality, as it turned out, it took months to actually get the straight releases into the Grand Jury for charges. Cleveland police officers interviewed wholeheartedly support the goals of eliminating the straight release practice, release before identification, and the 24 hour rule. Regardless of rank, all officers see this practice as a serious problem that threatens the safety of the public and front-line police. No police officer has yet to step forward in support of the straight release practice.[58]

A significant school of academic thought has concluded that to promote obedience, the community should adopt the most cost-effective policies for raising the price of crime. Individuals do not make the decision to commit crimes in isolation; rather, their decisions interact with and reinforce each other in various ways. Individuals are far more likely to commit crimes when they believe that criminal activity is widespread because the chances of being caught are low.[59]

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[57]One reason CPD Narcotics Unit has over a thousand cases awaiting presentation to the Grand Jury on low-level felony charges is that, as of March, 2000, it only has two detectives assigned to do the presentation. The most two persons have been able to handle is 40 presentations per day of Grand Jury hearings. Unfortunately, more cases are coming in than are going out and the backlog increases. If additional detectives were assigned to present the cases in order to eliminate the backup, the Grand Juries could at least handle the increased number of presentations.

[58]Cleveland General Police Orders (GPOs) regarding straight releases offer no practical guidance for the police officers. These GPOs are routinely ignored. A unit supervisor noted, "They are C.Y.A.'s for the brass." The GPOs' state police investigations are to be completed within 24 hours. Everyone knows this is not possible. It would be unusual in a normal felony to have an investigation *begin* within 24 hours. The districts' detective bureaus are so understaffed that only the most serious of cases can receive complete investigations. The GPOs' requirement that the arrested felon is not to be released until an AFIS (automatic fingerprint identification system) check has been completed and his or her identity verified has been knowingly and purposely disregarded by all ranks.

The GPOs regarding the "straight release of warrantless felony suspects" also require the detective who wants to hold a prisoner beyond 24 hours for investigation to obtain a police supervisor's written approval. The detective must fill out paperwork detailing why an additional 24 hours is necessary and deliver copies of the approval to the jail supervisor and others. In addition, the detective bureau and district commanders must be given copies to review and they, too, must approve the continued confinement. Then, these higher ranking officers must forward the copies to their deputy chief.

These extremely cumbersome requirements strongly encourage the continuation of CPD's straight release program. Few detectives have the desire to jump through all these hoops when they have more cases than they can possibly handle now in a system that strongly discourages overtime by a similar set of burdensome GPO requirements.

[59]Also, according to University of Chicago Law School Professor Dan Kahan, *Social Influence, Social Meaning, and Deterrence*, VA L. REV. (March, 1997) "Individuals commit crimes when the expected utility of law-breaking exceeds the expected disutility of punishment. This economic conception of deterrence assumes that people behave rationally to maximize their utility."

If the experts are correct in their conclusions that individuals are more likely to commit crimes based on a belief that there is a low probability of apprehension, it is also logical that the knowledgeable street offenders in Cleveland are more likely to commit crimes if they know there is a high probability that they will be released within 24 hours if they happen to be caught and arrested for a felony. Add to this equation the widespread knowledge that if an offender provides a false name, his or her true identity will not be checked or known before the individual is released from Cleveland jail and the fact that he or she probably will not have to go to felony court for half a year, and such a slow-moving justice train creates incentives to commit crime when the offender does a cost-benefit analysis.[60]

There is an abundance of evidence that social influence affects decisions to engage in crime. People's propensities to engage in crime interact with and reinforce each other. Concern that one's own peer group will or will not approve has a significant influence that is at least as important as criminal sanctions.[61] Further consider that individuals' decisions to commit crimes are responsive to the decisions of other individuals in the neighborhood and not just the price of crime. Studies have thus confirmed this as a partial explanation why certain neighborhoods have substantially higher crime rates than the norm.[62]

For example, when one considers the extremely high crime rate and number of felony drug arrests that take place in the CMHA public housing projects in the City of Cleveland, it is recognized that the risk-takers are aware of the unlikelihood of any serious sanctions being imposed upon them by police or courts in the near future. These factors influence CMHA's revolving-door problem. If social influence does indeed shape values, the lack of condemnation of the offenders in most instances after they return to their corners to resume their illegal sales would encourage individuals to adapt their moral convictions to those of their peers.[63]

Expert studies have concluded that people's decisions to commit crimes reinforce each other. If they see their friends, former schoolmates and neighbors regularly dealing drugs without major interference or police/court sanctions, they are more likely to join them as dealers. Crime is a bargain at its current price in Cleveland. The authors of these studies point out that when large numbers of people are breaking the law, the offenders can assume it is less likely that they will be caught. This is an important dynamic in forms of mob criminality, including looting and lynching.[64]

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[60]This rational behavior line of thought, however, has application to planned crimes or careers but has less application in crimes of passion, or violent, drug-induced, or addiction-driven crimes.

[61]Kahan, *supra* note 59, at 350-56. *See also*, JOHN BRAITHWAITE, CRIME, SHAME AND REINTEGRATION 69-70 (1989).

[62]Kahan, *supra* note 59, at 350-56. *See also* Edward Glaeser, *Crime and Social Interactions*, 111 Q.J. ECON. 507 (1996).

[63]Kahan, *supra* note 59, at 360-61. *See also* LEON FESTINGER, A THEORY OF COGNITIVE DISSONANCE (1957).

[64]Raaj Sah, *Social Osmosis and Partners of Crime,* 99 J. POL. ECON. (1991); Leonard Berkowitz, *The Study of Urban Violence,* AM. BEHAV. SCI. (March 1968).

These same principles have application in CMHA's endless problem with drug-dealing and related crimes. The trafficking is going on all day and night at the hot spots, despite high police activity and presence. Buyers come from all over Cuyahoga and other counties to purchase their crack, powder cocaine, marijuana, or heroin. When a seller is apprehended, another often immediately takes his or her place. The slight void an arrested buyer creates is soon filled with another patron. If the illicit seller returns to his or her corner the next night despite the arrest, that individual has sent powerful messages to the remaining operators in the drug area. First, being arrested is not a big deal. It can not be or the dealer would not be right back out there reclaiming his or her business. Also, it has a positive status-enhancing effect within the individual's peer group. This dealer is so tough and cool that he or she is not going to let the police or even an arrest stop him or her.[65]

The level of criminal activity is a function of the price of crime. Economists look at criminal law as a mechanism for pricing misconduct.[66] Actions become invested with social meaning. Actions signify our priorities. If the Cleveland police and courts think so little of a felony crime that they arrest, immediately release without charges under real or false names, and only charge via indictment-by-mail from three to six months later, these officials are sending a message to the criminals and would-be criminals that the officials do not place as high a value on felonies in Cleveland or high-crime areas as they do for crimes in the suburbs. The arrest and release act would never be tolerated in the suburbs, where they can more easily afford and have allocated the proper resources to see that elementary things like positive identification, prompt follow-up investigation, and timely charges take place.

IX. CMHA POLICE "STRAIGHT RELEASE" PRACTICE

The Cuyahoga Metropolitan Housing Authority (CMHA) Police Department has jurisdiction over the 25 major public housing estates located throughout Cleveland and four inner-ring suburbs. The "legitimate" population in the CMHA housing is approximately 12,000, with an equal number of unauthorized residents.[67] Drug trafficking has been a major problem in the Cleveland housing estates for decades. The constant drug activity has made it difficult, if not dangerous, for the law-abiding residents and their children, and according to CMHA records, 80% of all narcotic arrests were of non-residents.

In 1992, CMHA applied to participate in a federal Department of Housing and Urban Development program called "Public Housing Drug Enforcement Program" (PHDEP). This program has since 1992 funded the creation of a CMHA Narcotics Unit with six detectives who concentrate on stopping drug sales in the projects. The

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[65]Eric Rasmusen, *Stigma and Self-Fulfilling Expectations of Criminality*, 39 J.L. & ECON. 519 (1996); JAMES WILSON, CRIME AND HUMAN NATURE, 304 (1985); FRANKLIN ZIMRING, DETERRENCE: THE LEGAL THREAT IN CRIME CONTROL (1973).

[66]Kahan, *supra* note 59, at 362-64. *See also* Lawrence Lessy, *Social Meaning and Social Norms*, U. OF PA. L. REV. 144 (1996); Randall Kennedy, *McClesky v. Kemp, Capital Punishment and the Supreme Court*, 101 HARV. L. REV. 1388 (1988).

[67]Information supplied by CMHA Police Captain Sharon Barto showed that the people listed on the CMHA leases alone exceed the total population of rural counties in Ohio, such as Wayne and Vinton. Officials also estimated that the actual number of people living in the CMHA apartments is double the number listed on the leases.

unit started out with 60 felony arrests in 1993, and progressed to 808 felony narcotic arrests in 1999.

The majority of the narcotic arrests are for low-level street sales or possession of crack cocaine. The CMHA Narcotics Unit procedure is to use the CPD straight release method in all their cases. Detectives take a digital photo and a thumbprint before turning the suspect over to the CPD jail, because the detectives are fully aware of the possibility that the arrested person will supply them with a false name and address. The individuals are normally straight released from Cleveland City Jail without charges.

Detective Sargent Mike Shank of CMHA Police does not enjoy the straight release program in which they are forced to participate. "It's absurd. We arrest these guys for felony drug possession and they laugh at us. They have no fear of arrest. The experienced criminals know we have to release everyone the next morning."

"It's gotten so bad that if we want to get information from them regarding the source of the drugs, we have to threaten to charge them with a misdemeanor instead of a felony. Then they sit up and listen because they are afraid of the misdemeanor court, where they know they will be charged and sent to jail right away. The situation here is insane."

The majority of the CMHA Narcotics Unit's 808 narcotics arrests in 1999 had yet to be disposed of as of March 1, 2000. The fact that CMHA police can do little about it is frustrating and morally damaging to them and the honest residents who have to endure the steady flow of any dealers and the customers coming into their housing estates.

X. THE EXCEPTION IS NOW THE RULE: THE MAJORITY OF INDICTMENTS IN CUYAHOGA COUNTY ARE NOW ORIGINAL PRESENTATIONS TO THE GRAND JURY FOLLOWING CPD STRAIGHT RELEASES

Over the last five years there has been a steady increase in the number of straight release cases as compared to bindover cases handled in the Court of Common Pleas. In 1995 there were 6,483 bindovers (normal processed cases) and 7,725 original/straight release indictments. To date there is a widening disparity between bindovers and originals. An analysis of a normal day in the Arraignment Room best illustrates the effects of the straight release process on the efficiencies of the Cuyahoga County adjudication process.

Although records are not available to reveal the exact numbers, clerks, police, and prosecutors all appear to agree that prior to 1990, the vast majority of indictments were bindovers from municipal courts.[68] Since 1995, the opposite situation has developed. The original indictment represents a clear majority of the cases.

In 1995 there were 7,725 original indictments vs. 6,483 bindovers.

In 1996 there were 8,742 original indictments vs. 6,809 bindovers.

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[68]Before 1990, an estimated 1% of the cases were original indictments, but no one was straight released. The suspect was indicted more quickly than the normal process would have it, and he never left jail. The whole idea of using the original indictment process was to speed up the litigation, not to delay it as it is used now.

In 1997 there were 7,436 original indictments vs. 5,136 bindovers.

In 1998 there were 7,860 original indictments vs. 5,609 bindovers.

Up to September 1, 1999 there were 7,257 original indictments vs. 4,299 bindovers.

In 1995 only 913 of the 7,725 original indictments were jail cases (*i.e.,* where the indicted individual was in the County Jail awaiting trial). This number of 913 indicates priority dealing with rape, murder and significant narcotics cases that were put through the Grand Jury relatively quickly. If the police and the court keep the arrested felon in jail from the date of arrest, Ohio's speedy trial laws require the State to bring him or her to trial within 90 days or the defendant is released.[69]

In 1996 only 879 of a greater number of originals, 8,742, were jail cases. In 1997 it was 838 jail cases out of 7,436 original indictments and in 1998, 1,008 out of 7,860. The non-jail majorities in these represent those persons "straight released" from jail without any formal charge. These are for the most part cases that are taken directly to the Grand Jury by police bypassing the normal Ohio statutory procedure.

XI. EFFECT OF POLICE FAILURE TO CONFIRM IDENTITY OF ARRESTED SUSPECT PRIOR TO STRAIGHT RELEASE

Even under CPD's straight release formal policy, police are in theory only required to verify an individual's identity, criminal record, and address. Detectives are also supposed to question the suspect and obtain information related to the crime. Before being released from custody without a charge, the suspect should be told that the police have decided to take his or her case directly to the Grand Jury and he or she will receive the notice of indictment and charges in the mail at the reported address. This notice will tell the individual when to appear at arraignment.

Unfortunately, as a practice none of these things happen. Many of Cleveland's straight release cases fail to appear at arraignment. There are multiple reasons for this failure.

In hurrying to straight release a person within a 24-hour rule time limit, police can not, or do not, wait to verify by fingerprint analysis the suspect's true identity. Many experienced offenders know this, and often use false names and provide fraudulent identification. Seasoned criminals (the ones the police should want in jail the most) bank on the police releasing them before fingerprint verification has been completed by the CPD Scientific Identification Unit and its automatic fingerprint identification classification system computer (AFIS). As a result, offenders who are already wanted for other crimes are able to escape jail, elude accountability, and go out to commit other crimes before the criminal justice bureaucracy[70] catches up with them. By the time the judge receives the individual in court, the now correctly identified criminal may have several separate indictments and sets of victims, much

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[69]O.R.C. § 2945.71 and .73 (speedy trial statutes). There is a split in case law regarding when speedy trial starts in non-jail cases. Some courts have decided that time starts to run when the person is arrested. Straight releasing the offender after a day or two in jail does not "un-arrest" him, does not stop the clock and could place the case in danger of being lost later on appeal.

[70]"The bureaucracy is what we all suffer from," Prince Otto VonBismark, 12-12-1891.

like Victor Washington did. Yet each separate indictment is titled after the false name the defendant used before being straight released.[71]

This could be stopped altogether if police simply took the time to verify the identification of suspects before they released anyone they intended to charge with a crime. Police then would know, before releasing a prisoner, if that person was wanted or had a serious prior record, and whose arrest could remove the dangerous criminal from the streets.[72]

Presently, the Cleveland Police Department has a chaotic and inefficient booking process, with police jails or lock-ups in each of the five districts. The Justice Center Police Headquarters' in downtown Cleveland jail has a capacity of approximately 50 prisoners, and the other five districts can hold approximately 30 prisoners each, for a

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[71]This is often cause for the ludicrous first step before trial. The Court must reach an agreement with all counsel and the defendant as to which of his or her names is the real one and which one to use to title the trial or plea. Making these hearings all the more preposterous is the fact that the defendant is usually assigned a separate attorney for each docket with a different name in the Arraignment Room. So the criminal who has manipulated CPD's straight release system is further rewarded for his or her duplicity with an attorney for each crime on which the offender was straight released. One has to wonder who is running the asylum when a lone drug- addicted thief stands before the Court with four or five attorneys. These "dream teams" are formed with taxpayers' dollars. Indigent legal defense cost the county over $6 million a year at Common Pleas Court alone.

[72]An example for a common problem occurred in this writer's Court on April 3, 2000. Defendant Marcellas Johnson appeared in front of this particular Court for a plea. He was indicted in a total of seven dockets for seven arrests that took place between May, 1999 and October 26, 1999. He was arrested and straight released twice in May, 1999 for Preparation of Drugs (crack cocaine) for Sale, and once in June and July for the same type of drug-dealing. In all the cases he used a false name and address. On September 10, 1999, he was arrested for Possession for Sale and straight released again.

On October 13, 1999 he was arrested with a loaded pistol in a stolen car in a nearby drug area. Police found a bag of rock cocaine on his passenger. He was straight released even after police discovered his real name. The police records had not caught up with the prior arrests yet. On October 26, 1999, he was arrested again with cocaine.

Mr. Johnson was not indicted for the October CCW until February and arraigned in March, 2000. One other case from fall of 1999 was still in set-up and yet to be indicted six months later. At his sentencing on April 3, 2000, the 21 year old ex-con defendant with convictions in eleven felony dockets admitted in open court he was a drug dealer who did not use cocaine himself. He used his profits to afford a high lifestyle that included new clothes and a Cadillac. This high school drop-out fully admitted that he was able to decipher the weaknesses in CPD's booking process and take advantage of its vulnerability. Mr. Johnson stated it was common knowledge amongst those jailed that if they gave false identification, they would be released before their true names were known. Mr. Johnson was thus arrested and released over and over again because he kept providing a new name with each arrest. Mr. Johnson explained to the Court at sentencing that each time he is arrested, he knows to "use a different name you think they won't recognize. And chances are that name ain't got no cases, and they let you go free. If he [the a.k.a.] ain't got no cases, they let him go straight release." He explained that CPD did not realize the last a.k.a. was actually him until after he had been released. Unless he runs into a police officer with the time and determination, this scam could theoretically go on eternally since manpower in the CPD Detective Bureau is so low and no one is likely to go looking for him. (See State v. Johnson and his felony cases: CR-385892, 388930, 388923, 384010, 381986B, 380594, 380471, 371553, 366366, 357411B, 356275, 355548, and 349947).

total police jail capacity of 200. All felony booking takes place at the Central Jail on the sixth floor of the Justice Center. Here, a single SIU detective who feeds prints to the AFIS machine does one prisoner fingerprint identification at a time. (The police district stations do not have their own AFIS computers, as CPD says it takes a trained SIU detective to correctly use the technology.) Fingerprinting, taking mug shots, and other processing take approximately ten minutes per *cooperative* prisoner. In 1999, 14,553 prisoners were processed in this manner.

Approximately 50 prisoners a day are transported to the Police Headquarters for this processing. For example, SIU records reveal that on March 9, 2000, 18 prisoners were processed on the first platoon (shift), 18 on the second, and 13 on the night watch. These numbers are typical of other days that month. Detectives working this duty note that there are long waits for the prisoners to arrive at the Justice Center. Efficient transportation from the districts to the Justice Center is a serious problem.[73] Once arrived, there is also commonly another long wait until the single SIU booking detective per shift, who takes the prints, can get to the prisoners. This detective has only minutes to process each person and is mainly concerned about obtaining good prints for the AFIS machine. The detective normally has no time to interrogate or do checks regarding identification. After the AFIS prints are taken on the sixth floor Processing Unit, they are electronically transferred to the SIU fingerprint examiners at the seventh floor SIU lab, where the AFIS computer is located. Prints can be immediately processed if there is an examiner to receive them. Presently, there are only six civilians trained to be fingerprint examiners.[74] This and CPD's 24 hour rule mean that most prisoners are released before their fingerprints are compared to all other prints in CPD files. If a person has been arrested before by CPD under any name, that individual's identification will be discovered by AFIS. In other cities with more police manpower, detectives would check and verify identification by means other than prints before releasing a person, but Cleveland does not have enough detectives to do such thorough work.

A surprising number of felons are arrested, straight released by CPD, indicted under the name they supplied CPD, and never located again. They remain wanted forever as John Does or under the false names they provided police because the

[73]As this process was being viewed on Thursday, March 23, 2000, at 4:00 p.m. by this writer, a prisoner, in response to being asked when he was arrested, stated "Tuesday, March 21, 2000." He was finally brought to the Justice Center Thursday morning at 12:30 a.m., and his prints were to be run through the AFIS machine on Friday. In all likelihood, the detective said, he will be gone by then. No effort is made to verify the accuracy of the identification. There is not the time or manpower available. The fact that many, if not most, are not brought downtown to the Justice Center in time to be processed within 24 hours puts more pressure on the jail unit and the detectives to release the suspect after they have had their picture taken, their fingerprints fed into AFIS by a SIU detective, and have been briefly questioned by a civilian CPD employee as to name and biographical information. There is also a belief amongst police that civilians are not as proficient as detectives in ferreting out the frauds via minimal interrogation.

[74]It takes approximately one year to fully train these college-educated civilians to handle this job. Funds have been made available by the City to add five more and SIU is in the process of hiring them now. CPD is fully aware of this choke-point in the flow of justice.

CPD's AFIS machine is never able to match their prints to a prior Cleveland arrest.[75] Some detectives blame the City Prosecutor's Office for the rampant use of false identification. "The City Prosecutors are reluctant to prosecute crimes for giving false information," says Detective Keith Haver from the Auto Theft Unit. "They will only consider prosecuting if the guy did it [gave the false statement] in writing. They just do not want the cases. Word gets out on the street, and criminals know about it." A change in policy by the Prosecutor's Office, combined with enforcement by the Municipal Court, say detectives, would bring a quick end to the prevailing and now accepted practice of misinforming police regarding a criminal's identification.[76]

SIU Superintendent Victor Kovacic[77] is an advocate of a restructured, centrally located processing unit for effectively handling prisoner intake. Positive identification must be established before anyone is released. "We don't want to be in the jail business," he said. "We are in the crime-detecting business." Superintendent Kovacic wants to have all felony prisoners taken to a central location in downtown Cleveland instead of the six police districts to be identified and processed.

Robert Pace, Director of Corrections for the Cuyahoga County Corrections Center, is also a supporter of the creation of a central intake facility. He has designed, proposed, and obtained county and state funding to plan to build a central intake facility that would consolidate all six CPD lock-ups and the Cleveland House of Corrections ("City Workhouse"). All prisoners in Cleveland would be taken to the same central location and processed, and their identifications would be verified 24 hours a day. At the same location, the prisoners would be given their required original court appearance (via closed-circuit TV) and receive bond. The County has made overtures to fund the operation and also pay the costs of running what would in effect be the new City Workhouse. The savings to the City by knocking down the dilapidated Cleveland House of Corrections, estimates Pace, would be at least $6 million per year. The savings with a central intake are conservatively estimated to be at least $5.5 million per year. Another advantage of a central facility would be to allow the Cleveland police officers and detectives who are acting as jailers the capacity to return to standard police work.

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[75]AFIS currently only contains the fingerprints of persons arrested and fingerprinted by Cleveland Police. A first-time arrestee in Cleveland who is straight released using an alias will not have prints to match for future identification purposes. The police do not know whom they released. A warrant stays on file for an unknown person. It is basically worthless unless that same person is arrested again by CPD. The AFIS machine can then match the first arrest with the second fingerprint. However, if the criminal uses a false name again and is straight released again, the fingerprint match is of no value. Now the police have two warrants for the same unknown person. The comedy does not end here. The Prosecutor's Office will then indict the person under his false names. The County Bond Commissioner's Office has boxes full of such indictments. The County has no idea who these criminals are or where to send them.

[76]Of course, if for some reason the City Prosecutor needs the accused to provide a false name in writing, all that needs to be done is to have the individual sign in and out at the police station.

[77]In Superintendent Kovacic's 38 years with CPD, he has been a highly respected police officer who personally solved many of Cleveland's most vicious crimes. His Scientific Investigations Unit is regarded as one of the best of its kind in the nation.

XII. CHAOS IN CLEVELAND MUNICIPAL COURT

The effectiveness of Cleveland's misdemeanor court system has also been seriously undermined by the CPD's practice of failing to identify those they arrest or ticket and the straight release policy. Presently, there are over 100,000 capiases outstanding by Cleveland Municipal Court. The volume of capiases issued by the Court is up to 40,000 per year.[78]

On one sample day, records reveal a significant non-appearance rate at the Municipal Court despite the fact that the court appearance is scheduled only two weeks after the citation or traffic ticket is issued by the Cleveland police. On May 21, 1999, 156 of the 495 people scheduled for a traffic appearance failed to appear at court and capiases were issued. For February 13 and 14, 2000, 123 of 496 tickets were discovered by the Cleveland Municipal Clerk's Office to have warrants already outstanding. These 123 had those old cases added to their dockets, but the number of people who used new bogus names and were never caught is unknown.

On May 21, 1999, 113 failure-to-attend capiases were issued out of 368 misdemeanor cases scheduled that day for first court appearance.[79]

CLEVELAND MUNICIPAL COURT , SAMPLE DATE OF MAY 21, 1999

Courtroom	Total Cases on Docket	Failure to Appear (FTA) Capiases
3-B (Traffic)	495	156
3-C (Misdemeanor)	368	113
3-D (Felony)	66	15

Table 12-A

Cleveland Municipal Court administrators believe that the Cleveland Police Department's concept of community policing appears at times to be to arrest and release, over and over again, so the people in the community think everything is okay and crime is being conquered. But the Police Department is failing in its job on the back end, say those administrators. The police may be doing more harm than good. The emphasis on their concept of community policing is evident in the large increase in misdemeanor arrests from 1993 to 1998, during which felony appearances in the Cleveland Municipal Court fell more than 25%.

Cleveland Municipal Court officials further point out that the City Jail is so overcrowded that the Municipal judges have to be very selective in whom they send to jail. The Cleveland House of Corrections has been cited by the State for overcrowding. Its capacity is 132 prisoners, and yet its average population is 250-300. The City has thus far resisted any efforts to build additional jail space.

[78]These figures include all types of criminal misdemeanor cases, as well as traffic cases.

[79]This is a far better show-up rate than the County's felony Arraignment Room where no-shows comprise approximately half the cases.

CLEVELAND MUNICIPAL COURT , NEW CASE FILINGS BY YEAR												
Year	Felonies	Misdemeanors	DUIs			Other Traffic			Total			
1993	6,691	20,038	4	1,89		38	111,5		1	140,16		
1994	6,950	23,818	1	1,80		0	82,04		09	114,6-		
1995	6,723	24,439	2	2,49		6	77,08		40	110,7		
1996	5,667	24,334	4	2,24		4	89,73		79	121,9		
1997	4,905	32,085	1	2,66		25	112,8-		76	152,4		
1998	5,115	38,243	4	2,46		05	114,0-		27	159,8		
1999	5,187	37,279	2,278			110,173			154,917			
TO DATE THROUGH THE FIRST QUARTER OF 2000 (MARCH 31, 2000)												
2000	1,421	9,262	621			5	31,55		42,859			

Table 12-B

The Municipal Court statistics confirm that the City's emphasis on community policing and misdemeanor arrests has increased significantly the past eight years. While crime has declined nationally and locally, Cleveland has almost doubled the number of misdemeanor arrests. At the same time, felony arrests declined over 20%, but overall misdemeanor arrests and traffics went up 100%.

Cleveland Municipal Court has publicly projected 160,000 traffic citations for the year 2000. Of these, 25,000 or more are expected to be No Driver's License or Driving Under Suspension tickets, which is almost double the number issued in 1990. The Municipal Court administration has credited the change in police tactics to emphasis on community policing for these increases in traffic enforcement. Cleveland Municipal Court Judge Sean C. Gallagher noted, "There are now far more police and cars on the street looking to enforce misdemeanor traffic laws while less and less follow-up work is being done in felony cases."

XIII. THE BACKLOGS CAUSED BY CPD'S STRAIGHT RELEASE POLICY

The second, and far more important, cause of the huge amount of failures to appear at court on Cleveland's straight release cases is the tremendous backlog that has developed in processing these straight release cases in the Cleveland Police Department Detective Bureaus, the County Prosecutor's Office, and the Grand Jury.

Over the past decade, administrators of CPD recognized some short-term bureaucratic advantages of the straight release route[80] (*i.e.,* reduced overtime cost and jail space).[81] Once a subject is straight released, the arresting Cleveland police

[80]Unfortunately, when temporary solutions to a crisis become permanent policy without study or consideration of the big picture, an even larger crisis can develop.

[81]A number of high-ranking officers and persons in command positions credit City Hall for this and other alleged costs savings tactics. These officers note with considerable irritation that persons making major police decisions have no experience, training, or real knowledge of law enforcement work. They also admit some blame belongs with them for their failure to stand up to the erroneous orders of City Hall. The Mayor has the ability to appoint all of the higher-ranking officers in the Cleveland Police Department. They allege dissenting opinions are not welcome or tolerated, and those who do are considered disloyal. Citing examples to bolster their position, police claim disloyalty is dealt with harshly by firing, demotion in rank, or banishment. The widely-held theory within the Police Department further claims the Mayor only promotes to command positions those who will and can afford to remain loyal

officers are no longer under time restrictions to promptly produce the necessary police reports and make the decisions as to what charges to pursue against the suspect.[82] Without the time pressures imposed by law (48 hours)[83] or City policy on arrest investigations (24 hours to arrest or cut loose), Cleveland police can then take their time preparing their paperwork and concentrate on the business of arresting more offenders.[84] Straight releasing a suspect and later going directly to the Grand Jury for an original indictment eliminates the trips to Municipal Court for bond hearings and preliminary bindover hearings. Police can report to City Hall,

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only to him. They cite numerous examples of patrolmen and sergeants being promoted all the way above the other ranks, such as commander. A demotion to former rank would constitute an enormous cut in pay and prestige. They further believe that the Mayor often chooses officers to promote who are many years away from retirement so as to ensure the Mayor's idea of loyalty. These people, they state, are not in a position where they can resign in protest as was the tradition before when professional police couldn't tolerate political decisions. In the long-run, if this is correct, such a systematic politicalization of the Police Department can stand as one partial explanation as to how such a misguided policy such straight release and failure to identify before those releases could come into existence and survive for such a length of time.

[82]CPD cannot provide information regarding what percentage of straight release cases are eventually presented to the Grand Jury seeking an indictment. Each individual detective has wide discretion with limited review by superiors. Some cases are never presented to the Grand Jury. There is no tracking system or other real means to watch, control, or evaluate for consistency.

[83]U.S. Supreme Court case *McLaughlin v. Riverside,* 500 U.S. 44 (1991), requires a probable cause hearing within 48 hours (with longer periods allowed if seeking to verify identification or other legitimate reasons).

Cleveland changed its own position to a 24 hour charge or release, which is twice as fast as the courts require police to make a decision under the Constitution's Due Process Clause. The Cleveland Police implemented this 24 hour policy in an attempt to alleviate the police jail overcrowding. However, this encouragement of the "straight release" policy has exacerbated the identification process.

In August, 1999 the Cleveland police implemented a policy to take someone quickly to the Grand Jury if he or she has been arrested for a previous crime within 30 days. This creates a "catch-22" dilemma since the police will not know about the prior pending case if the defendant provides a false name and is straight released before that is determined. This new "immediate charge" policy could become effective when and if an "identify before release" policy is created by CPD administration.

It should also be noted that police are not required to release or charge someone within even 48 hours if that suspect is providing them with a false identification. Police can keep such persons in jail until their identification and prior record are established.

Twenty-four hour processing is a wonderful goal, but should not be the rule. It can be achieved by smaller specialty units such as Vice and Warrant, but it is impracticable in many other situations.

[84]Detectives frankly admit that procrastination is a secondary factor in the delays. When there is no deadline, combined with an overwhelming workload, overtime work strongly discouraged, and a general feeling of hopelessness with the situation, police acknowledge that they are in no particular hurry. One detective compared it to the IRS canceling the April 15th tax deadline and saying "send in your taxes whenever you have the time and money." If that were the case, the midnight crowd at the mailbox on tax day would certainly diminish. One supervisor noted that, "Straight release is an easy way out when you are all backed up."

complaining Councilmen, and the press that a number of arrests took place at the local crack corner, or whatever the focus point may have been.[85]

At first look, the straight release/original route appeared easier on the overworked district detectives and the grossly understaffed Narcotics Unit. But in reality, in the majority of cases in bindover indictment, the arresting officer never did appear at the Municipal Court bond hearing. Available day shift office detectives would appear to handle the numerous cases of the night shift. Preliminary hearings were routinely waived, although occasionally when the preliminary hearing was not waived and the officer or a witness had not shown up for a first or second time, the Municipal Court judge would dismiss the case. The police officer who still wished to prosecute the felony would then simply take it directly to the Grand Jury and have the suspect re-arrested after the indictment. If the police officer was in a hurry and had enough time, overtime authorization and the ambition to promptly get the police reports in order and make the necessary arrangements with the County Grand Jury Prosecutor, the detective could have the suspect indicted before he was released from jail by the Municipal Court judge's order.[86] This was not that unusual. If the detective perceived the offender to be dangerous or likely to flee, it was considered the detective's duty to get the job done, obstacles be damned. The detective would be chastised by his or her supervisor if extra effort and overtime were not put into the case.

That was before the Grand Jury was overwhelmed with "straight release"/original cases in the early 1990s. Before, there appeared to be more of a sense of responsibility for the outcome of the prosecution with the police and detectives than exists presently. The determination and ability by individual police officers to overcome bureaucratic roadblocks to justice appears to have diminished.[87]

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[85]The police probably will not, however, note anywhere in the press release that all those arrested were released without charges or bond. Nevertheless, the neighbors do notice when the same dealers and drug fiends reappear the next day on the very same corner. The District Commander noted how "ridiculous" the situation is, how powerless he is to change it, and how disheartening this immediate return of the criminal is to the law-abiding neighborhood residents who have provided incriminating evidence to police at some risk to their own safety.

[86]Grand Jury and meetings with County Prosecutors have to occur during the normal limited Common Pleas Court hours. The Court hours do not match the hours of regular duty shifts of the majority of detectives in Vice and Street Crimes making drug arrests. Their shifts naturally match the peak periods of drug street sales and other illicit activities which are not within the 35 hours of business per week at the Court. Drug dealers, burglars, and other criminals are often living the lifestyles of nocturnal animals. They work by night at their outlawed trades and sleep or lounge about by day.

[87]Many of those interviewed within the Cleveland Police Department believe that the culture of the department has undergone considerable change during this same period as direction and control of the department increasingly shifted to City Hall. An extremely hostile atmosphere exists between the Police Department and the Mayor that is unhealthy for the City and the effective administration of justice. There is a constant stream of degrading, insulting remarks openly exchanged between the police union representatives and the City's chief executive. The Mayor's 1999 accusation to the newspaper that the Police Department was riddled with racist factions, although investigated and disproved, has only served to increase already high tensions. In turn, the individual police officers appear more willing than they would in the past to follow erroneous procedures without significant protest. For instance, it is unlikely that responsible officers and supervisors would have allowed their felony arrests to be

XIV. THE ROLES OF THE CITY OF CLEVELAND AND CUYAHOGA COUNTY PROSECUTOR'S OFFICES IN FELONY CASES

Since the Cleveland police in straight release cases bypass their City Prosecutor's Office (whose traditional and statutory duty is to review the police investigations and bring charges), the Cuyahoga County Prosecutor's Office must do the City Prosecutor's job of reviewing the facts, reports, and statements, and deciding what original charges to bring against the suspect, if any.[88] Unfortunately, the County Prosecutor's Office cannot do it as quickly and efficiently as the City Prosecutor's Office is able to.

The Cleveland City Prosecutor's Offices are open seven days a week and are at least theoretically always available to all police shifts. When the normal charging procedure is used, the City Prosecutor is also under the time restraints imposed by law to make quick decisions regarding charging, so the system moves along rapidly to the point where the case is transferred to the County Prosecutor's jurisdiction by bindover or waiver. The police officer, normally a detective, takes the reports of the arresting officers and any other police reports to the City Prosecutor's Office in the same building complex as the Police Department Headquarters. There the Assistant City Prosecutor simply reviews the reports and discusses the proper charges to file against the suspect based on the evidence the police have accumulated. Detectives acknowledge that in over 90% of the cases it is a clear-cut decision, obvious to both the detective and the City Prosecutor, and papers can be immediately issued. In some cases, the City Prosecutor will advise the police that there is a lack of sufficient evidence to proceed in the discussed felony charges. The detectives then can seek more witnesses or evidence, release the individual, or proceed on a lesser misdemeanor charge in Cleveland Municipal Court.

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released without knowing who they really were before City Hall began exercising direct control. Now it is commonplace behavior that is rationalized in interviews by blaming the Mayor and his policies. City Hall can also serve as a convenient scapegoat for all debacles. The citizens are the ultimate victims of an ongoing feud.

[88]Straight release cases were supposed to be reviewed by the City Prosecutor. However, this usually does not occur due to lack of staffing at the City Prosecutor's Office and the Police Department, overtime concerns, elimination of units and reductions of others in the Police Department, and decline of quality of reports and investigations.

NORMAL TERMINATION POSSIBILITIES		NORMAL FELONY ARREST-INDICT-DISPOSE PROCEDURE		CLEVELAND POLICE DEPT. "STRAIGHT RELEASE" PROGRAM
Release on Waiver Within 48 Hours Police review and decide evidence insufficient, or Δ cooperates against co-Δ's, or Δ becomes police informant	←	Arrest ↓	→	Released in morning ↓
		Police take reports to City Prosecutor ↓		
Released on Prosecutor's Order Insufficient evidence, or Victim refuses to prosecute, or Police instructed to further investigate	←	Prosecutor issues charges ↓		
Plea-bargain to misdemeanor, or Diversion program, or Drug Court	←	Municipal Court bond hearing ↓		
Plea-bargain to misdemeanor, or Victim/witness fails to appear, or Judge rules insufficient evidence for felony bindover	←	Municipal Court probable cause hearing ↓		
Indictment by information and plea, or Plea-bargain to misdemeanor or lower felony, or Dismiss for want of evidence/witness/victim, or Due to Prosecutor's discretion	←	Bound over to County Prosecutor who sets up Grand Jury date ↓		
No bill, or Victim/witness declines to go forward	←	Grand Jury ↓	←	Suspect indicted directly (averages 4 months later)
Plea-bargain	←	Indictments signed and sent to Common Pleas Court Clerk's Office ↓		
Plea-bargain	←	Clerk issues summons to arraignment ↓		

NORMAL TERMINATION POSSIBILITIES		NORMAL FELONY ARREST-INDICT-DISPOSE PROCEDURE		CLEVELAND POLICE DEPT. "STRAIGHT RELEASE" PROGRAM
Plea-bargain, or Pled guilty at arraignment	←	Arraignment judge and indigent counsel assigned ↓	→	In computerized county systems, the judge and counsel are pre-assigned randomly, pretrial dates and trial dates already set, and Δ and counsel notified.
		Assigned judge, bailiff attempts to contact assigned counsel to instruct Δ of pretrial date and time ↓		
		Assigned counsel attempts to call or write Δ of pretrial date and time ↓		
Capias issued; Δ failed to appear, or Plea-bargained to misdemeanor or lower felony, or Δ pled guilty to indictment	←	First pretrial at Court of Common Pleas ↓		Capias issued; Δ failed to appear – bad address/no phone, or misdemeanor, or lower felony, or indictment
Δ pled guilty, or Trial date set	←	Second pretrial ↓		
Pleads guilty/dismissed (DWOP) not guilty Crim. Rule 29 dismissal Victim/witness failed to appear and case dismissed	←	Trial ↓	→	Pleads guilty/dismissed (DWOP) not guilty Crim. Rule 29 dismissal Victim/witness failed to appear and case dismissed
		Sentencing immediately or 3 – 4 weeks after PSI ↓		
		Prison, County Jail I.S.S. – Probation Treatment, Fine Restitution		

Table 14-A

Important aspects of the natural selection and reduction of the number of cases are lost when the City Prosecutor's Office and the Municipal Court system are bypassed by the Cleveland police.[89] When the City Prosecutor reviews a case, he or

[89]Even in the Cleveland Foundation's 1922 report, directed by Roscoe Pound and Felix Frankfurter, "*Criminal Justice in Cleveland*" (pgs. 233-50), the research of 1,000 felony arrests demonstrated the advantages of using the normal charging procedures as compared to an arrest, release, and charge later at the Grand Jury policy... Of the 1,000 felony arrests, the police did not charge 127 people, 85 were nolled by the police (City) Prosecutor, and 143 were

she may decide not to charge at all or to prosecute under a misdemeanor. For example, in the crack residue cases where a suspect is patted down in a high-crime area or a drug corner and found to have a crack pipe on his or her person, the prosecutor may decide not to charge if there is a serious question about the sufficiency of the police officer's probable cause to stop and search instead of stop and frisk.

If the case does go through the normal process at Cleveland Municipal Court, the defendant will be assigned temporary indigent counsel, usually from the Legal Aid staff, who will (a) attack the constitutionality of the search, (b) attempt to plead the defendant out to a misdemeanor, or (c) have the defendant diverted to the first offender's program or to the Cleveland Municipal Court Drug Court program. These types of petty crack residue cases account for a significant amount of the annual Cleveland straight release indictments and a like percentage resulting in capiases issued when they fail to appear in felony court six months later.

The legal system's natural selection process and reduction is also lost in the routine drug cases or crack house group arrests. Before, not everyone arrested was charged. For instance, if a dozen people were arrested from a crack house search warrant raid, only half to two-thirds would eventually be formally charged with a felony. The suspects who made the sale to the confidential reliable informant (CRI) and had the drug stash or cash or leased the house would be the prime targets of the raid. Those are the most culpable and dangerous offenders in the group arrested, and the persons that the detectives coordinating the investigation set their sights on for long-term incapacitation by incarceration. The police are far less concerned about the "crackheads" visiting to purchase or consume their dope and caught at the crack house. So the detectives will attempt to turn some of these lesser players into prosecution witnesses and take statements from them implicating the chief trafficker. The detectives will then recommend that the potential witnesses be released altogether or charged with a more tolerable misdemeanor offense if they join the prosecution team by providing a statement. Once the police have obtained such corroborating evidence, they need not worry about having to expose at trial their undercover officer or CRI who made the drug purchase. Having chosen the persons most vulnerable and deserving of prosecution and conviction, the police often released the weaker cases and less important players[90] within the 48 hours without

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dismissed or found guilty of a misdemeanor in Municipal Court. So slightly over a third of the normally processed cases never even made it to the Grand Jury.

The reason for this study was the great public concern in Cleveland following an infamous 1920 judicial scandal. Cleveland Municipal Court Chief Justice William H. McGannon was, after some cover-up attempts failed, charged with a murder that occurred outside a tavern. He was acquitted, then charged with perjury regarding his alibi, and ultimately convicted and imprisoned. The ineptitude of the police and prosecutors resulted in the city leaders' demand for a reexamination of Cleveland's criminal justice system.

[90]The existence of discretion is an essential factor in the criminal justice system. However, "a complete and unfettered discretion can rarely be justified. Discretion which is exercised in such a haphazard manner as results in inequitable differentiation undermines the authority of the criminal law. Boundaries must be set, and within the boundaries some structuring must take place." LORD JUSTICE JAMES, A JUDICIAL NOTE ON THE CONTROL OF DISCRETION IN THE ADMINISTRATION OF CRIMINAL JUSTICE. *See also* ROBERT HOOD, CRIME, CRIMINOLOGY AND PUBLIC POLICY (Free Press, 1974).

any plans for future charges.[91] Thus, it is the police themselves who perform the first screening, based on their own evaluations of which arrestees are most culpable and worthy of prosecution.

Police may also simply eliminate several of the minor players arrested in a raid by transferring them to the jurisdiction where they are presently wanted on other charges or warrants, or hold them if the subjects gave or had good ID with them. Under the present straight release practice, some of the cases that would have not been pursued in the past instead are now prosecuted on a much-delayed basis.[92] Generally, the Court of Common Pleas does not receive felony bindovers for drug residue or other technical narcotics charges from any of the suburban municipal courts unless the suspect has a considerable record or there are other strong motivators. The municipal police, prosecutors, and courts handle the petty cases right in the suburban courts. For the most part, they do a better job handling these cases, as they do it promptly and are better suited to do so than the felony court. But this natural selection and reduction process no longer happens in the City of Cleveland.[93]

One reason first or second offenders for petty cocaine or crack possession charges do not make it to the county court from all the suburban municipal courts is because the prosecutors and the police know that the case and the offender will be taken more seriously and handled more expeditiously in their own municipal court. They are fully aware of the fact that if it is bound over and taken to the Grand Jury, the Assistant County Prosecutors will often routinely plead it out to a misdemeanor. The Common Pleas judge often sentences immediately upon these misdemeanor pleas to a fine or a very brief probation. Overcrowding at the County Jail and the minimal allotment of jail spaces for the Common Pleas judges (four each) rules out

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[91]A strong argument could be made that the "straight release" practice actually harms the chances of police for conviction when the drug suspects are finally brought to court. The release-and-charge-much-later policy encourages police to delay their preparation for trial. When that trial arrives half a year or so later, the potential witnesses who were never interviewed formally have scattered. Those who are found have little recall or incentive to testify when their case has already been pled out. They do not need the help of the police any longer. The police detectives in charge of the case often have a diminished level of interest in the outcome of the low-level case a half a year later. Their memory is not as sharp and is far more vulnerable to cross-examination by capable defense attorneys. Police reports are notoriously brief and inadequate in these simple cases. The detectives have an endless cycle of additional cases, which is more than they can keep up with. The detectives learn to adapt to a bad situation and concentrate their limited time and resources on the habitual or large-scale drug dealers who pose the greatest danger to society. They lose the personal drive necessary to motivate the Prosecutor's Office to obtain convictions in less serious cases that usually comprise straight release cases.

[92]A review of the outcome and sentences received in the low-level felony case will reveal that the punishment and effect is minimal when received after inordinate delay. The suburban cases bound over from the Municipal Courts far more quickly appear to be handled with greater attention and consequence.

[93]Although Cleveland Municipal Court has been recently given a grant enabling it to open a Drug Court, Cleveland now does handle on a misdemeanor basis cases that would have otherwise gone to the Grand Jury after straight release. This Drug Court has already shown considerable success, but it deals in only small numbers of defendants and mainly first offenders.

jail as a serious option. So to delay the prosecution of a case for half a year rather than take it to the misdemeanor court, only to have it reduced to a misdemeanor in the end, is senseless. It makes more sense to the suburban police officers, city prosecutors and judges to keep it in their own jurisdiction where they have better control and outcome. If the suburbs believe the offender needs/deserves jail, they are far more likely to have bed space in their own city jail.

The phenomenon of arrests without conviction has been studied since the 1920s. "In 1932, the Wickersham Commission, the nation's first great crime commission, studied" jurisdictions and found that the rate of felony cases ending in non-convictions went from a low of 36% in Milwaukee to a high of 88% in four major Pennsylvania cities.[94]

In the misdemeanor municipal courts (including Cleveland's), narcotic cases are considered among the most serious cases and are given the attention commensurate to their high ranking. The offender is more seriously and promptly punished while the offense is fresh and the offender may still feel remorseful.

The minor drug or residue charge is still the felony court's least significant type of case on the docket of the Court of Common Pleas. It is dealt with accordingly. Many are pled down to misdemeanors. From the felony court's viewpoint, anything that is pled to a misdemeanor is treated as a minor offense, compared to murder, kidnapping, rape, aggravated robbery, arson, and other serious crimes. A review of the fines and costs assigned to these misdemeanor offenders in Common Pleas Court show there is a serious shortfall in the payments of such fines. The sentences for these minor crimes are generally less serious in the felony court than they are in the municipal courts.

The first serious challenge to assuming the City Prosecutors' role in these straight release narcotic cases is that Cuyahoga County Prosecutors must then assume the City Prosecutors' roles and responsibilities to do it properly. Presently, the County Prosecutor's Office is incapable of timely doing so unless it makes significant and costly fundamental changes in the organization and manpower assigned to its own Grand Jury division.[95]

The second and more important issue is whether the County Prosecutor's Office should or even wants to usurp the statutory duties of the City Prosecutor's Office. One important consideration to keep in mind is that the former system used, the method dictated by statute and tradition, worked here and is still effective in other jurisdictions all over the State. The City Prosecutors' reduced workload has resulted in some initial savings by the City of Cleveland in manpower needs and costs, of the Assistant City Prosecutors who previously did the work. This short-term benefit

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[94]A 1970 American Bar Association study also found similar levels of attrition. Much of this is simply various screening mechanisms employed at different levels of the criminal justice system. Floyd Feeney, et al, ARRESTS WITHOUT CONVICTION: HOW OFTEN THEY OCCUR AND WHY, xvii-xxi (1983).

[95]The County Prosecutor's Office would have to become a 7-day-a-week, 24-hour-a-day operation. Prosecutors would have to be in the office every day of the week to be available for all those police shifts to review cases. There would have to be enough Prosecutors and Grand Juries to indict persons as fast as Municipal Courts bind persons over to the Grand Jury. This would require a significant increase in manpower without any corresponding benefit to the community. Without proper identification and knowledge of the true criminal history of the subject, neither the City nor County Prosecutor can do a reliable evaluation of the case.

must be considered with the long-term costs, the cost to the public safety and the value of public confidence in the effectiveness of their police department.

XV. CUYAHOGA COUNTY GRAND JURY

Across the United States, the majority of felony arrests are disposed of before they reach the felony court.[96]

Currently there are four Grand Juries slated at Cuyahoga County Common Pleas Court. They usually meet four days per week. Two Assistant County Prosecutors (one in the morning and one in the afternoon) present evidence via witnesses, often police, for about four hours a day. Each Grand Jury produces approximately forty true bill indictments per day of session.[97]

In 1999, these four Grand Juries produced 12,940 true bill indictments where charges were filed. There were 516 cases which resulted in "no bill" votes by the Grand Jury where no charges were filed. Each Grand Jury averaged 3,235 indictments per year. Since there were eight Assistant Prosecutors assigned to present cases to the Grand Juries, each Prosecutor handled an average of 1,617.5 indictments per year.

Approximately 95% of the cases were scheduled well in advance, with the remainder being "add-ons." "Add-ons" are cases added to the Grand Jury docket on short notice. In some of these cases, the police detectives simply walk into a Grand Jury waiting area and inform the bailiff they would like to be added onto the docket. If any good cause exists and time permits, Prosecutors use the time made available by the non-appearance of other witnesses and continuances of cases that occur in approximately a quarter of all scheduled cases at the Grand Jury, the Prosecutors will add the case onto that day's schedule. If it is a straightforward case, such as murder with witnesses or a confession, this add-on can be accomplished in a matter of minutes.

The Cuyahoga County Grand Jury and the Cuyahoga County Prosecutor's Office could not keep up with the vast increase in numbers of direct indictments that resulted from straight releases in the 1990s. The Grand Jury process was relatively slow even before straight release came into vogue, and staffing was not sufficiently increased to handle all of the new business afterward. The County Prosecutors were, in effect, called upon to do the job that had always been done by the City Prosecutors. In addition, the lack of a computerized tracking and assignment system has resulted in delays and inconsistent presentations.

Not only did and do the police detectives have a considerable wait to meet with the County Prosecutors to discuss and schedule the cases for Grand Jury presentation, reduced manpower forces the detectives left in the districts and the Narcotics Unit to handle a far greater caseload. It takes them longer to prepare their cases and present them for indictment. Although the County Prosecutor's Office has taken on much of the function of the Police/City Prosecutor, the County does not

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[96] *The Prosecution of Felony Arrests,* 1988; FEDERAL BUREAU OF INVESTIGATION, U.S. DEPT. OF JUSTICE, Washington, D.C.: USGPO, CRIME IN THE U.S. (1989); BUREAU OF JUSTICE STATISTICS, U.S. DEPT. OF JUSTICE, Washington, D.C.: USGPO, CORRECTIONAL POPULATION IN THE U.S. (1988).

[97] There are, however, many off days, such as holidays, half days, and a learning period at the start of each session's Grand Jury, where little volume is produced.

work multiple shifts every day of the week as the City Prosecutor did to review the cases. The County Prosecutor's Office has always only been open one shift, available during the weekdays in the brief court day-hours, excluding holidays and vacations. Consequently, there is approximately a four-month delay between the time of arrest and release of the narcotics suspect and the issuance of an indictment.

An increase in production of the present Grand Juries is a feasible option; or the temporary addition of one more Grand Jury, and staff to support it, would help alleviate the tremendous backlog of cases. If the new Grand Jury were able to equal the 3,235 average annual indictment filing for the present Grand Juries, the narcotics backlog could be slowly eliminated. Faster appearance schedules could then be instituted. All of this, combined with other reforms, would make it possible to revert back to the more effective charge-now-and-indict-soon policy that works well in the other 87 counties of Ohio.[98]

In Summit County, immediately south of Cuyahoga County and with the city of Akron as its seat, the Prosecutor's Office took strong steps to halt its unnecessary delay between arrest and arraignment. Recognizing it was his agency which could most effectively halt the wasted time between arrest and indictment, the Summit County Prosecutor's Office began a successful direct indictment program. The Assistant County Prosecutors, assigned the responsibility to eliminate the squandered time, meet daily with the Akron Municipal Court Prosecutors (which produces 80% of the county's indictments) and the other municipal court prosecutors to decide which arrests will proceed to felony court and which will be allowed to plead out at the misdemeanor level. They indict the felonies before the preliminary hearings take place. It is estimated by Assistant County Prosecutor Bob Incorvati that normal arrest-to-arraignment ranges from 11-14 days in jail cases, and bail cases are done "inside 20 days." The program has also saved money and helped alleviate the County Jail overcrowding problem, as on average the persons spend less time in jail awaiting disposition of their case.

At one point Summit County dropped its average arrest-to-disposition rate from a troublesome upper-90 day range to the mid-60s. It now averages 70 days, with one municipal court and prosecutor not participating in the program. In the only suburban municipal court not involved in the program, Cuyahoga Falls, the "*dead time"* between arrest and indictment is a higher 30-35 days. They consider that slow, but all things are relative. In Cuyahoga County, that would look like a "rocket docket."

XVI. SHERIFF'S OFFICE

As of September 1, 1999, there were 12,172 active felony capiases and warrants being sought by the Cuyahoga County Sheriff's Office. The Sheriff has a Warrant Unit with approximately eight detectives at any given time seeking to make these arrests. In August 1999, the Sheriff's Warrant Unit made 173 arrests. If every single defendant showed up every day in court in the future and no further capiases were issued, it would still take over five years for the Warrant Unit to arrest the number of felons wanted by Common Pleas Court.

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[98]There is a newly renovated area of the Justice Center on the second floor abandoned by the Clerk of Courts that could easily and quickly accommodate an additional Grand Jury.

In August 1999, the Court of Common Pleas sent the Sheriff's Office 1,488 capiases. The total number of warrants cleared by all law enforcement agencies, bonding company agents, attorneys or individuals who turned themselves in was 1,293, leaving a deficit of 195 capiases to add to the total capiases on file. Most of these are from original indictments resulting from CPD straight releases.

Even a massive increase in detective manpower at the Sheriff's Warrant Unit would not solve the problem. By the time the Sheriff's Office is sent the capiases that have been issued by the Court of Common Pleas and subsequently by the Clerk's Office, more than four months have passed since the crime took place and the suspect was released.[99] His or her trail is often cold. It would not be high priority anyway since the straight release cases are not usually major drug players (unless they stepped in and out of the police officers' grasp by using a false name and were released before positive identification was verified).

According to Sheriff's Office Chief Deputy Dan Pukach, who oversees their Warrant Unit, most individuals who provide CPD with false identification also provide false addresses. By the time the Sheriff's Office or CPD's Scientific Identification Unit has established the real identification by fingerprints long after their straight release from jail, the Sheriff's Office must start from scratch to locate the individuals. Naturally, the Sheriff's Warrant Unit detectives prioritize the people they seek by going after those wanted for the most serious crimes first, and most straight release original indictment cases do not fit a high priority category. That leaves thousands of people wanted for drug-related felonies floating around without fear of anyone looking for them on their felony charges.

Those straight release suspects who did provide CPD with real addresses have often moved in the intervening months. It is commonplace to use the address of a relative, grandparent, or girlfriend/boyfriend, as addicted narcotics arrestees frequently do not have stable homes or employment. During this time, they may also have changed girlfriends/boyfriends or relocated, hardly ever leaving a forwarding address for the police. These individuals are usually not found until their arrest for a new crime.

The solution to the high rate of failure to appear at arraignment does not lie in increasing staffing in the Sheriff's Office's Warrant Unit. That conclusion would be relatively unproductive, considering the costs associated with hiring additional sheriffs or depleting other agencies to enlarge the Warrant Unit.[100] Rather, reform

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[99]The Sheriff's Office already has plans in place to assist the City of Cleveland and thereby the Court with the identification problem. The Sheriff's Office is in the process of obtaining its own automatic fingerprint identification machine (AFIS) compatible with a statewide fingerprint program operated by the State of Ohio Attorney General's Office. The County is also arranging the purchase of equipment that will make the County's computer compatible and able to communicate with CPD's AFIS machine. The Sheriff's Office states it is looking forward to assisting CPD in promptly and properly identifying suspects in whatever way it can.

[100]The creation of a FTA division in the Sheriff's Office's Warrant Unit has been suggested to put meaning into an Arraignment Room capias. Right now it is common knowledge amongst the lawyers and criminals that nothing will be done in Cuyahoga County to enforce these arrest warrants. The only way to get arrested now when an offender fails to show up for court on low-level felonies is by "accident" (*i.e.,* a person happens to be stopped for a traffic or other minor offense and gives the police checking him the same name he used in court).

efforts should be focused on the underlying cause of the alarming rates of non-appearing indicted felons, *i.e.,* straight release suspects. The Sheriff's Office's Warrant Unit detectives simply try to sweep up the mess made elsewhere in the justice system.

In Cuyahoga County, the Sheriff's Office is not used to serving a summons to the individuals indicted, informing them of the date and time of their arraignment. The Clerk of Courts simply mails out registered mail to the address provided by police. If the arrested felon provides police with a false name and address, the summons is sent to that non-existent person.

In other Ohio counties, the Sheriff's Office has the responsibility of *personally serving* the indicted individuals with their arraignment summons and a copy of their indictment. These counties enjoy a far greater rate of success in Arraignment Room attendance. For example, in Lake County there were 245 summonses issued in the first eight months of 2000, with only one person who was actually served by the Sheriff failing to appear and a capias was then issued. There were 28 persons the Lake County Sheriff was unable to locate and serve timely. According to Lake County officials, actual no-shows at the Arraignment Room are infrequent and the percentage of capiases issued for all indictments is under 10%. The Sheriff's Department then actively seeks out those individuals for whom capiases are issued.

The record-keeping systems of the Cuyahoga County Court of Common Pleas and the Cleveland Police Department offered the expected challenges. Both the Court and Police Department are notorious for publishing records in a fashion designed to create a favorable impression on the reader and the voting public. The Court does not as a rule compile and issue information for public or professional scrutiny that questions its capabilities, policies, or work performance. Figures of success are published and those that reflect failure, ineptitude or incompetence are not disclosed.[101]

XVII. TWO STUDIES OF FAILURE-TO-APPEAR RATES AT ARRAIGNMENT

Criminal justice researchers Eisenstein and Jacob noted, "In confronting the complex reality of criminal proceedings one must compromise textbook methods . . . Each city's record-keeping system was unique and reflected the structure of the courts,"[102] as well as the culture and political requirements of the courts. They viewed each studied city's criminal justice system as a maze where numerous obstacles could be expected to stand between the investigator and any information that could potentially reflect mismanagement by the court. For instance, they described a Chicago court's record-keeping topics as relevant reform-minded

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[101]The culture of the Cuyahoga County Court of Common Pleas discourages introspection or providing assistance to professionals who might be critical of the agency. Court officials are constantly operating in a protective mode. They see their first duty as guardians of the political reputation of their superiors or judges who can hire, fire or demote them. This environment strongly discourages meaningful examinations and reforms, offering a possible partial explanation as to how these types of counterproductive, questionable policies and substandard police practices could be permitted to go on for such a long period of time without notice or action to stop them. Not collecting information or hiding damaging performance statistics may be rationalized from a short-term political viewpoint, but defy the public's interest in an effective court in the long-run.

[102]EISENSTEIN, *supra* note 19, at 195-96.

research ranging from nil to minimal; "Consequently we relied on a variety of sampling methods."[103]

A. Study of 459 Randomly Selected 1995 Cases

The Cuyahoga County Corrections Planning Board's random sampling study (see Table 17-A infra) of 459 cases from 1995 demonstrates some interesting findings for this evaluation even though it is widely believed by police and prosecutors that the percentage and number of original indictments has significantly increased for the worse in the past four years.[104]

Possession of narcotic indictments, under Ohio Revised Code (ORC) § 2925.11, alone accounted for 117 of the 459 sampled cases: approximately 25%. Of these 117 possession cases, approximately 70 were original indictments, products of straight releases. And 65.7% of those were marked "failed-to-appear" (FTA), compared to only 38.3% of the bindovers that were released on bond or waiting indictment in jail. Recall also that this sampling includes not just Cleveland Police felony cases but cases from all law enforcement agencies and cities in Cuyahoga County. The 65.7% represented the highest no-show rate outside the forgery category (which validly may be questioned due to the relatively small numbers involved, five for the originals and only two cases for the bindovers). The trafficking indictment FTA rate was also greater for the original indictments (45%) than for the bindover cases (28.2%).

The overall results of this study show an alarming 56.2% of the 163 original indictments failed to appear for arraignment, compared to the 23.7% FTA rate for the 177 bindovers. A 23% rate is considered quite high.

In every one of the nine crime categories selected in the list below, except the previously discussed forgery, the FTA rate in the originals exceeded the FTA rate of the bindovers.

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[103] *Id.* at 177.

[104] Jail Project Director Dan Peterca, Deputy Chief Probation Officer Bill Kroman, and Correction Planning Board Administrator Ute Vilfroy conducted this research to evaluate the need for increased local jail space. These samplings also happened to show that the Arraignment Room failure-to-appear defendants were as often original indictments as bindovers in 1995.

FAILURE TO APPEAR AT ARRAIGNMENT FOR NINE OFFENSES

Based on random sample of cases disposed during 1995 (n=459)

ORC	OFFENSE DESCRIPTION*	ORIGINALS		BINDOVERS		OVERALL	
		FTA	N	FTA	N	FTA	N
2903.11	Felonious Assault	33.3%	6	20.0%	5	33.3%	12
2903.12	Agg. Assault	57.1%	7	0.0%	9	25.0%	16
2911.02	Robbery	50.0%	6	16.7%	12	27.8%	18
2913.02	Theft	71.0%	31	15.4%	39	39.4%	71
2913.31	Forgery	60.0%	5	100.0%	2	71.4%	7
2913.51	RSP	53.8%	13	0.0%	13	26.9%	26
2923.12	CCW	20.0%	5	18.2%	11	18.8%	16
2925.03	Trafficking	45.0%	20	28.2%	39	35.0%	60
2925.11	Poss. of Drugs	65.7%	70	38.3%	47	54.6%	119
	All listed offenses	56.2%	163	23.7%	177	40.1%	345

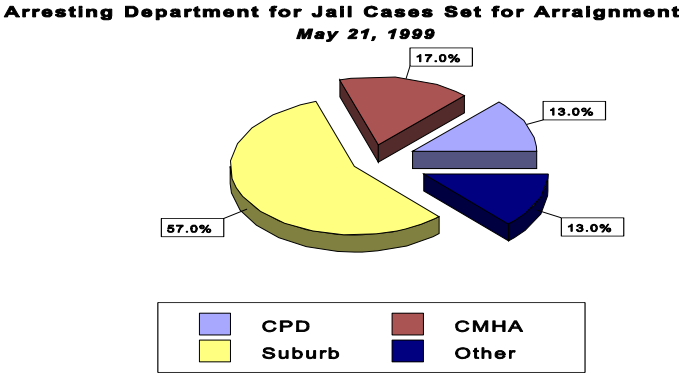
* These nine offenses represent 75% of all offenses in the sample.

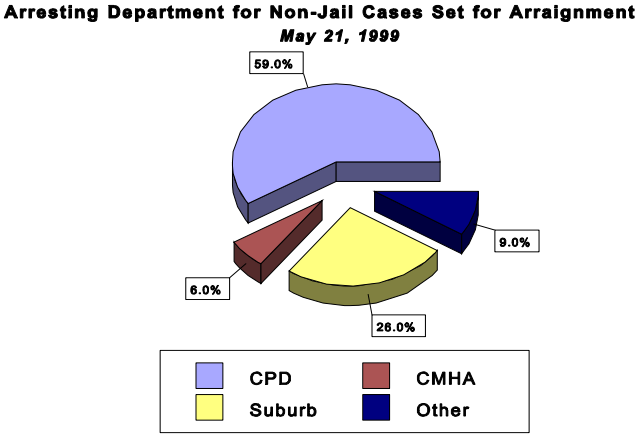
NOTE: Number of original cases and number of bindover cases do not total overall cases due to inaccurate information on five cases.

Table 17-A

B. Analysis of May 21, 1999 Arraignment Room Cases

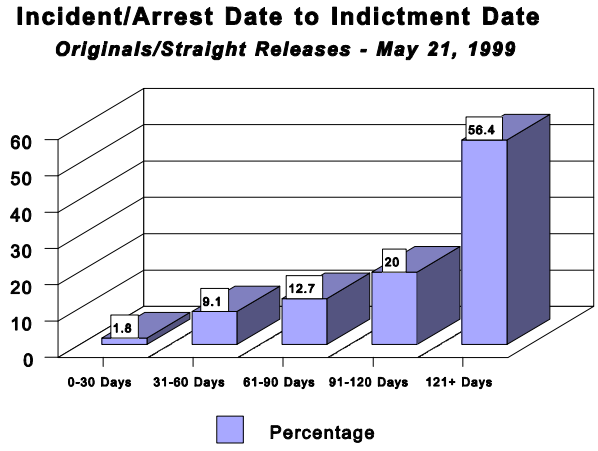
For this analysis, a typical day at the Common Pleas Court Arraignment Room was chosen at random to examine the rate and origin of FTA's, and to gain insight as to the delays in disposition caused by the straight release system. Bond Commissioner Robert Kosub randomly chose May 21, 1999, to be reflective of a normal day in the Arraignment Room. The statistics presented here have been gleaned from the Arraignment Room records and follow-up court records of that day. The primary focus of this study is on the straight release/original case as compared to the bindover bail case.



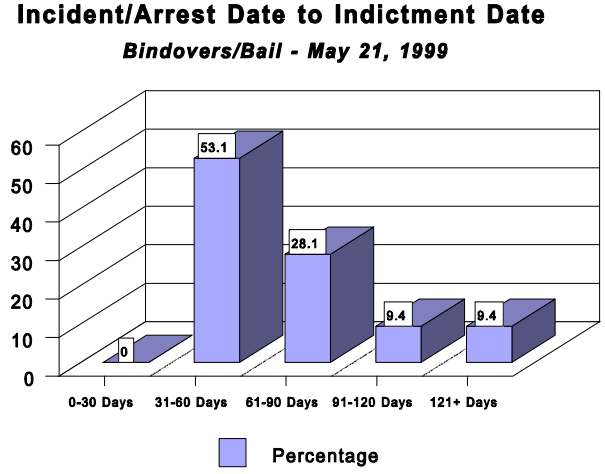


On May 21, 1999, 129 arraignments were scheduled. Of that total, 61% of the indictments were original presentations to the Grand Jury after straight releases. The largest percentage of straight release/original cases came from the Cleveland Police Department (at 58.6% of the cases). Judges continue to consistently set surety bonds for 90% of the straight release cases as compared to 10% for personal bonds. In breaking down each segment of the adjudication process from this sample day, beginning with date of incident/arrest and following through to sentencing, the analysis further illustrates the impact and burden the straight release process has on the Court of Common Pleas.

A review of each individual docket revealed that the average length of time from date of incident/arrest until indictment for straight release/original was 147 days. That is almost five months. And 56% of these cases took more than 121 days to reach indictment. Only 9.1% of the cases were indicted between 31 and 60 days. These are often higher-level felonies and are deemed to be the more important cases in the eyes of the detectives or prosecutors who press for a relatively prompt indictment. Yet the average length of time from incident/arrest date until indictment for cases bound over from Municipal Court was only 66 days. It took approximately twice as long to bring a straight release case to the Grand Jury as it does a traditional, bindover-processed case.



The average length of time from indictment to plea for both originals and bindovers was between 61 and 90 days; straight release/originals took an average of 84 days, while bindovers took 73 days. The significant difference in this category was the high percentage of "no plea" cases. The straight release/original bail "no plea" cases were as high as 48.1%. Capiases (*i.e.,* failure to appear at court) are the primary contributing factor in this "no plea" group.



The plea-to-sentencing phase presents similar findings for both original indictments and bindovers at 18-30 days to sentence. The capias rate did not decline significantly in either the indictment-to-plea or plea-to-sentence phase. There were a total of 19 capiases from straight release/original and eight bindover bail capiases at arraignment. Of the 19 capiases, 12 are drug cases, which is 63.2% of the capias number. As of October 1, 1999, 34% of those May 21, 1999 warrants remained outstanding.

Of the 129 cases to be arraigned on May 21, 1999, the largest percentage comprised straight release/original cases. Most of those cases came from old CPD arrests. The rate of disposition for these cases took up to eight and one-half months from date of incident/arrest to sentencing for straight release/original cases, but only five and one-half months for bindovers. The capias rate was 53% for straight release/originals for the May 21, 1999 Arraignment Room.

The Cuyahoga County Common Pleas Court's Arraignment Room in 1999 averaged 650 capiases per month, and the year finished with a total of 7,850. The projected scheduled arraignments will be one of the lowest volumes in the last eight years due to the reduction in crime. However, the projected capias rate will be one of the highest capias rates in the last eight years. It is fair to conclude that the situation is not improving. Unfortunately, this disparity between the straight release/original indictments and bindover indictments is a daily reality in the Arraignment Room.

On any given arraignment day there will be a number of defendants who have multiple dockets.[105] This means that one individual has been indicted for separate

[105]Arraignment Room officials estimate there are an average of at least three every day, often more.

crimes that occurred on different dates. Each case has a different victim and set of witnesses. Records reveal that most of these multiple docket defendants were straight released and free to go and commit new crimes while their first offenses crawled their way toward the Grand Jury. The new victim may legitimately complain that had the police and the courts promptly charged and brought the offender to justice, the new crime probably would not have happened.

1. Case Study: William Bennett

William M. Bennett is one example at the May 21, 1999 arraignments of someone who made a joke of the straight-release-and-delay-the-indictment-system. The Court records indicate that he was scheduled to be arraigned on five separate dockets that day, for felonies that occurred on six separate dates between May and December of 1998.

Bennett Arrest #1: CR-371550

On May 6, 1998, at 3:05 a.m., CPD responded to a complaint of a man harassing and panhandling employees of the Cleveland Clinic. The defendant was intoxicated and refused to answer police questions, had no identification, and fought police when they attempted to pat him down. He had a crack pipe with cocaine residue which broke during the struggle with police. Bennett was arrested and refused to make any statement to police, but did supply police with his correct name and date of birth. He said he was homeless and had no address. The police report indicates his dirty and ragged appearance were consistent with his homeless status and listed him as having no address.[106]

Police did a record check and found that in the 1990s Bennett had been arrested twice for robbery, twice for drug law violations, and once for resisting arrest. Nevertheless, he was straight released on this new drug charge. Almost nine months later, on February 4, 1999, he was indicted for possession of cocaine, a felony of the fifth degree. His arraignment was set for February 22, 1999. He failed to appear. Because it is legally sufficient to mail notice of indictment to a person without any reported address, a capias was issued.[107]

Bennett Arrest #2: CR-375682

On November 4, 1998, CPD responded to a reported robbery at the Shanghai Chinese restaurant downtown. While en-route, a patrol car observed Bennett, who matched the description of the robber, running away from the area of the restaurant. They followed him behind a downtown building. The police offices found three

[106]It is absurd to straight release a drug-addicted vagrant without an address so he could be notified of his felony indictment by mail later. This was not the only time this was done on Bennett's cases. Later that year he was straight released on a potential aggravated robbery case. There is no way to notify a homeless person who is straight released from jail of his indictment/charges. There is not even a false address to which to send the certified mail.

[107]His attorney would legitimately take advantage of the situation if the defendant is later arrested. Counsel could point out that he truthfully told the police he was homeless and thus there was no address to which to mail notice. Since he could not possibly be notified, the capias was issued for him improperly and should be withdrawn. The speedy trial time clock started. His attorney could argue that he was not brought to trial timely through no fault of his own. Therefore, the case against him should be dismissed.

plastic bags of crack cocaine in Bennett's hands. He was taken to the restaurant where witnesses positively identified the defendant as the robber. After being advised of his Miranda rights, he admitted to police that he had taken $40 to buy crack cocaine. The defendant provided his true name, date of birth, and Social Security number to police. He was listed as homeless with no address.

Again Bennett was straight released, and he was not indicted until six months later on May 7, 1999 (but only, for some reason, for the drug offense and not for the aggravated robbery). He failed to appear at his arraignment on May 21, 1999, and a capias was issued.

Bennett Arrest #3: CR-373009

On November 27, 1998, at 10:38 p.m., Bennett, seeking crack cocaine, approached CMHA undercover narcotics detectives in front of a housing project. In return for the promise of a piece of the crack cocaine, Bennett took an undercover detective to a man who had sold cocaine. Police arrested both men as they ran. Bennett had a crack pipe with residue in his coat pocket. He was taken to Cleveland Police jail, was listed as homeless, and was later straight released to the streets again without charges and without the releasing police knowing about the crimes above for which he was wanted.

CMHA police turned in a criminal information form (CIF) dated February 23, 1998, and Bennett was indicted on March 8 with a capias issued for his arrest on March 17 when he failed to appear at his arraignment.

Bennett Arrests #4 and #5: CR-372406

Two days after that straight release, on November 30, 1998, Cleveland State University Police in downtown Cleveland responded to a complaint of a homeless man disrupting a class and aggressively panhandling. CSU police checked their own records via radio and discovered that the defendant had been warned twice within a month by campus police not to trespass in college buildings. Police searched the male and found a crack pipe with residue on him, arrested him and took him to Cleveland Police Second District jail. The defendant supplied police with his correct name, date of birth, and Social Security number. He was listed as homeless and later released once again.

Ten days later, on December 9, CSU police observed a homeless man in a parking lot attempting to gain entry into the Science Building. They ran a check on him using his correct name and learned by radio of his three other recent stops by CSU police. Police searched him and found another crack pipe with residue. He was arrested and taken by CSU police to Cleveland's Fourth District police station. On December 11, he was charged and released on personal bond in Cleveland Municipal Court after being bound over to the Grand Jury. He was indicted on March 3, 1999 for the two possession of cocaine offenses in CR-372406. A capias was issued when he failed to appear at his arraignment on March 17, 1999.

Bennett Arrest #6: CR-373100

On December 28, 1998, CMHA police responded to a citizen's complaint of drug activity in the housing projects at 2904 Cedar Avenue. Police approached two males and one threw down a crack pipe. Police found another crack pipe with residue on Bennett. He was released after being photographed and fingerprinted. He was

indicted on March 9, 1999, and a capias was issued on March 17, 1999, when he failed to appear at arraignment.

Bennett was straight released after five of his six arrests. In most of his cases, the arresting police were not aware of the previous arrests. The information they needed was probably sitting in a completed file in one of the sixteen full file cabinet drawers at the Cleveland Police Narcotics Unit awaiting presentation to the Grand Jury. In one case, Mr. Bennett was being released from jail the same day he was supposed to be indicted on an earlier case. Warrants for Mr. Bennett in all five dockets remained outstanding as of March 1, 2000.[108]

Interestingly, CPD records reveal Mr. Bennett was arrested and taken to jail for two additional crimes in 1999. He was arrested on January 1, 1999 for assault (arrest #7) and on May 17 for intoxication (arrest #8). In neither case was he held for any of the six outstanding 1998 felony warrants.[109] Police have higher priorities than searching for fugitives. Their system relies on Bennett's committing another crime and being arrested and charged. "Charged" is the key word, because if he is arrested and is straight released again before a second check is done, he will be freed once more.

2. Case Study: David Dylan

Another example of a defendant with multiple indictments set for arraignment on May 21, 1999 is David Dylan.

Dylan was arrested in Cleveland for felony drug possession on December 5, 1998, and released the same day. He was indicted six months later on May 7, 1999, and a capias was issued for his arrest on May 21, 1999, after he failed to appear at his arraignment.

Between that arrest and felony indictment, Dylan was also arrested on March 6, 1999 by CPD for aggravated robbery, aggravated assault, and failure to comply with the order or signal of a police officer. A Cleveland Police zone car had observed Dylan driving a car without his headlights at a dangerously high speed. Police chased him with lights and sirens before he struck two telephone poles, including one that fell onto his car and injured him. Nevertheless, Dylan attempted to drive away. Police trapped him, struggled with him, and arrested him. He was taken to St. Michael's Hospital, where he was very combative and aggressive with the medical staff and alarmed other patients. This time Mr. Dylan was *not* straight released. His obnoxious behavior to police and others motivated the police to treat his case according to the traditional Ohio statutory scheme of bindover indictments. They all are aware justice is achieved much faster that way than the straight release route.

Dylan's case was assigned to Detective Dale Moran, who promptly began an investigation. Detective Moran submitted a criminal information form (CIF) on the defendant on the day after the crime of March 7, 1999. On March 8, Detective

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[108]Inexplicably, Mr. Bennett has yet to have the case against him for the November 4, 1998 robbery of the Shanghai restaurant presented to a Grand Jury despite the strong evidence, the availability of witnesses, the incriminating capture, and the defendant's confession. It appears the case was simply overlooked by the understaffed Third District.

[109]This too defies logical explanation because the five capiases should have been in the computer by then. The only plausible answer is that CPD did not do a record check before they straight released him on his misdemeanor cases.

Moran saw to it that the suspect was not straight released[110] and took the completed reports to the City of Cleveland's Prosecutor's Office in the Justice Center. There the Assistant City Prosecutor reviewed the reports of the case and issued felony charges for failure to comply to the order or signal of a police officer as well as misdemeanor traffic and resisting arrest charges.

Detective Moran's investigation did not stop there; Moran was able to connect Dylan with an unsolved felony that took place March 3, 1999, in which a patron of the Rebound Lounge was beaten with a pool stick and robbed of jewelry. When the victim was released from the hospital, Detective Moran had him view photos at the Detective Bureau. After Dylan's identity was verified, Detective Moran also had him charged with aggravated robbery and assault.

These March 1999 cases were handled much more expeditiously than a straight release/original case would be. Dylan was still in jail when a bindover hearing took place in Cleveland Municipal Court on March 18. Transcripts show a typical bindover hearing that took approximately five minutes. The Assistant City Prosecutor in the Municipal Court Bindover Room called one witness, the beating victim, who identified the defendant as one of the men who jumped him, beat him with fists and pool cues, and robbed him of $1,400 worth of jewelry. Dylan's Legal Aid lawyer also conducted a very brief cross-examination. The Municipal judge then stated the customary short ruling: "Probable cause found. Bound over to the Grand Jury."

Dylan was indicted in CR-375436 on April 27, 1999 and arraigned on May 21. Pretrial hearings were held on June 15, July 6, and July 29, and the trial was set for August 2. Instead, on July 30, Dylan pled guilty to felonies of aggravated assault and failure to comply. On August 27, he was sentenced to prison.

Once the police got stopped using the straight release program, the justice system began to work.

3. Case Study: Victor Washington

Washington, as related in the beginning of this study, was also a recipient of unwarranted freedom by the Cleveland Police Department. Unfortunately, he used it to kill.

The necessary follow-up work to obtain a warrant for his arrest was never done even after Washington was identified by a Cleveland police officer in March, 1999 as the thief that had burglarized St. Vincent Charity Hospital. The parole officer was never notified.[111] The Cleveland detective assigned only issued a "named suspect"

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[110]In order to hold a suspect in jail longer than 24 hours, the detectives must fill out a form requesting an extension of another 24 hours. This form must list the reasons why and receive the permission of the detective's supervisor. Then it must be delivered or faxed to Central Processing before the person is released. This cumbersome process discourages detectives, who are already chronically shorthanded, from using the bindover process. No such requirement is known to exist in any of the suburbs in Cuyahoga County, but then again, none but Cleveland has the so-called "24 hour" rule.

[111]Parole Officer Charlene Taylor states she would have arrested the defendant herself and terminated his parole if she had been informed. A tough parole officer, Ms. Taylor had already charged Mr. Washington once with being a parole violator, for acting disrespectfully at a halfway house in 1998, and returned him to prison for a relatively minor infraction. She knew nothing of the March 1999 St. Vincent Charity crimes or the April 1999 Cleveland drug

bulletin for Washington.[112] The detective explained he had too many cases and a total lack of time to do the job right on them all. According to the police policy, he said he had to spend the limited time he did have available on cases with violence against people.[113]

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arrest until interviewed by this writer. "He would not have gotten away with it. This happens a lot with Cleveland. By the time we find out about it [the arrest], the guy is already straight released." The parole officer stated that had she known of any felony arrest, she would have placed a hold on him in jail and caused his parole to be revoked.

[112]When police designate someone a "named suspect" and merely feed it to the computer without making any attempt to arrest the offender, they are in effect betting he or she will commit more crimes. Police hope the next set of arresting police will do a record check on him or her, see the "named suspect," and call Cleveland to come and pick up the individual.

There are two serious challenges to this type of calculating. First, the police are in effect saying that they are confident that the suspect will continue to lead a life of crime. Based on Victor Washington's long record and recent release from the penitentiary combined with the knowledge that he had the nerve to pull off two covert burglaries within a week at the same heavily secured institution, his eventual re-entry into the world of crime is a safe assumption. Unfortunately, that concedes there will be at least one more victim, a needless casualty. (Believing he will be caught on his very next crime is also problematic or outright naive.)

The second flaw in the "someone-else-will-arrest-him-soon" theory is that it will only work if his next crime is outside the City of Cleveland. It is true that no suburb or other city in Ohio would likely release him after a felony arrest without first confirming his identity. This is considered substandard police work. The normal police department would one way or another investigate and discover who they really had before he would be released on bond. (Of course no city in Ohio other than Cleveland is known to straight release someone on a felony).

The reality is that Victor Washington was not likely to travel outside Cleveland. This is not the Napoleon of crime. In fact, he committed known felonies on five separate dates in 1999 on the same street, all within a couple golf shots of his home. Most crime in Cuyahoga County is committed in Cleveland. Better than two-thirds of the indictments originate from Cleveland crimes.

This is where the "he-will-be-arrested-again-soon" approach unravels. Since he will in all likelihood commit his crimes in Cleveland, when he is eventually caught committing one he will continue to give false identities. He has been rewarded with release in the past which will encourage repetition of this easily-committed identity fraud on the police in the future. There is no penalty for it. Due to the cataclysmic combination of CPD's 24 hour rule and the straight release practice, it should have been anticipated by CPD that the "named suspect" would be released again from the clutches of the law before it was known he should be held for the Charity Hospital burglaries.

[113]The entire Third District Detective Bureau consists of only eight detectives, a sergeant and a lieutenant. There were three times the number of detectives twenty years ago. In 1970, CPD had 292 detectives (331 of the unit then known as the Women's Bureau is included) in Cleveland's six districts. (Suburbs like Lakewood, with far more funding and less people than any CPD district but only a fraction of the felony crime, have more detectives). According to the detectives, the quality of the work and the Bureau's performance has diminished consistently with the decline in manpower. The eight detectives are now reduced further to three cars. Although some of these detectives have very limited Detective Bureau experience, they all work alone instead of with seasoned partners. According to every detective and supervisor interviewed, the cases are coming in faster than they can possibly properly handle them. To make matters worse, there is a no-overtime-policy that often stands in the way of decent standard police investigation. With only eight detectives in the unit, vacation, illness, court times, special assignments, and other reasons can cause there to be only one or two

When the detective assigned to the follow-up work on the St. Vincent Charity Hospital cases realized the perpetrator went unchecked until he committed a murder during one of his burglaries, he expressed his regrets: "I didn't have time to follow up on it. I found out who he was but I didn't have time to do anything. There are too many cases going on. I had to work the cases with violence against persons. These are the priorities. With no help or overtime I just can't do more."

On April 2, 1999, Washington was arrested for criminal trespass. Cleveland police found a crack pipe in his hand. He offered to help police make crack buys. He gave Cleveland police the false name of Michael Jones and a false address. The report was done under the Jones name but his prints were taken when he was freed. Washington was straight released from jail under the Michael Jones name. On May 17, Narcotics Unit Detective Kane did a brief follow-up report that stated SIU had informed them that Michael Jones was in reality Victor Washington. No effort was made to arrest him or notify his parole officer. Despite this knowledge, Washington was not indicted until December 16, 1999, after he and his later murder victim, Susan Locke, were both dead.

On May 10, 1999, while being questioned by uniformed Cleveland Police Officer Daniel Lentz for loitering in a high-drug area, Washington claimed his name was John Alexander but refused to provide any identification. He then told Lentz that his date of birth was 05/05/65, yet earlier he had told police he was 30 years old. Since these ages did not correspond, the police questioned him further. At that point, frustrated Washington charged Patrolman Lentz when he was turned away, knocked him down and put the officer in a headlock. Washington punched and kicked the officer until another officer was able to help arrest him.

As Washington was placed into a zone car, he proceeded to repeatedly spit into Patrolman Lentz's cut face. He told other police he attacked Patrolman Lentz because he asked too many questions. Washington, though, was HIV positive and knew it. The on-scene sergeant titled the crime "felony assault on a peace officer." Since a police officer was assaulted and injured, Washington was not straight released from jail like he otherwise would have been.

This was now considered a high-priority case, since a police officer had been attacked and injured; therefore police were motivated to bypass the inefficient straight release process. The next day, May 11, 1999, having taken the time to determine Washington's real identity and long record,[114] detectives took the case,

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detectives available to handle all the cases coming from the entire district on some days. Faced with the 24 hour rule and the endless stack of incoming cases it is all they can do to release the prisoner under whatever name they choose to use. All detectives interviewed agreed that if these hospital burglaries had occurred in any city in Cuyahoga County other than Cleveland, Mr. Washington would have been promptly charged with burglaries, convicted on strong evidence (including a "film" of the crime), and sent back to prison. He most likely would not have been free to commit the June murder.

On March 31, 2000, the Third District Detective Bureau was over 60 G-1's behind. G-1's are reports that are ready for an arrest or charge. In a G-1, the suspect is usually named with an address or there is a solid lead. Little follow-up is required. These G-1's do not require any extensive detective work. They are sometimes referred to as "gimmies" or "no brainers" by police.

[114]Mr. Washington's prior arrests included seven burglaries, two assaults, aggravated robbery, domestic violence, ten thefts, and resisting arrest between 1982-1989. Defendant was in Ohio prisons from 1990 through August 1998 serving time for burglary convictions. He

which included Patrolman Lentz's detailed Form 1 complaint, to the City Prosecutor's Office for felony charges. The Assistant City Prosecutor refused to issue papers, stating insufficient evidence, since the report did not adequately describe the assault upon the policeman.

The following day, in a very unusual set of circumstances, Patrolman Lentz and the head of the Third District Detective Bureau, Lieutenant Lauerhass, personally went down to see the Assistant City Prosecutor about getting felony papers issued against Washington. Patrolman Lentz was upset with the failure to prosecute and personally described to the prosecutor how he was placed in a headlock, kicked, punched and repeatedly spat upon by the HIV-positive Washington. Nevertheless, the Assistant City Prosecutor again refused to issue papers because he said he knew by this time that Washington had already been straight released from jail.

On June 14, 1999, Detective Deborah Hall again took the case to the Assistant City Prosecutor with Patrolman Lentz's new and more detailed Form 1 report. Still, no papers were issued, and the prosecutor ordered the case be taken to the Grand Jury directly for an original indictment. Detective Hall was unable to get into the Grand Jury until September and a indictment was issued against Washington on September 28, 1999, for the May 10 felonious assault on a peace officer. Unfortunately, it was too late to have stopped him from murdering Susan Locke.[115]

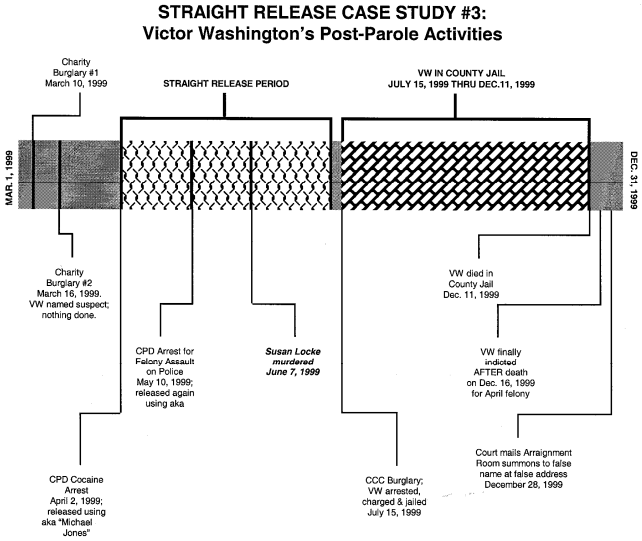


Table 17-F

XVIII. METHODOLOGY AND STATISTICS OF ARRAIGNED CASES IN CUYAHOGA COUNTY

Beginning in 1997, the Court of Common Pleas started keeping monthly statistics of arraigned cases. Unfortunately, the Court does not separate the original and the bindover cases. Nevertheless, these records do disclose facts that confirm to some

had a long history of drug addiction and crime since his youth when he had been institutionalized by Juvenile Court authorities.

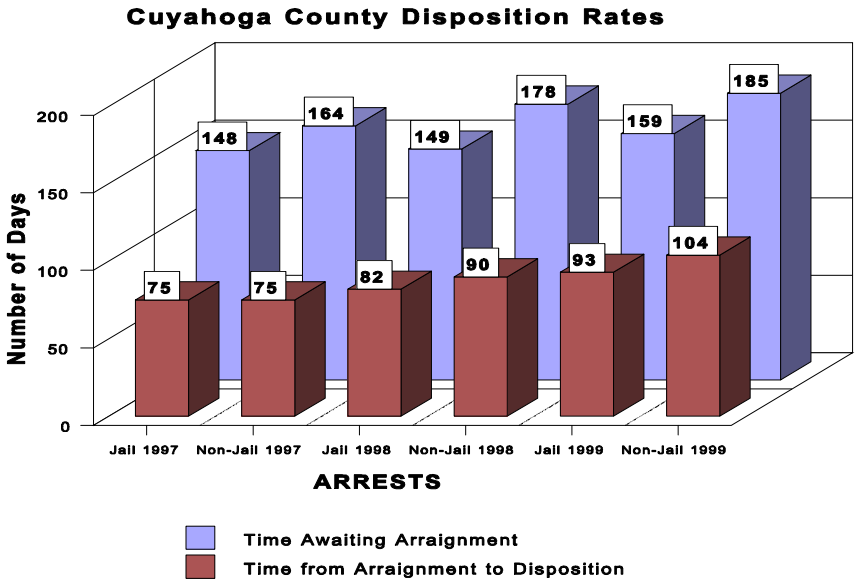
[115] *See supra* text at 1-4.

extent the sample studies discussed earlier regarding the general lengths of time cases take in the Cuyahoga County felony court. They also corroborate the conclusion that jail cases are arraigned and concluded more rapidly than non-jail cases.

For the first nine months of 1999, the average number of days it took in jail cases to go from arrest to arraignment was 93 days. Of the 5,755 jail cases that went to arraignment in the felony court, the average length of time it took from arraignment to plea or the start of the trial was 46 days. The average number of days it took these jail cases to go from arrest to sentencing was 159 days.

Over five months (or 22.6 weeks) on the average to dispose of jail cases is not by any standard a rapid disposition rate. This level of production keeps the County Jail full or overcrowded. A more efficient rate of handling cases would also alleviate the overcrowding problem that plagues the County Jail, provide desperately-needed space for local incarceration, and cause considerable savings in tax dollars.

There were 4,535 non-jail cases arraigned in the first nine months of 1999. The average number of days it took to arraign these cases was 104 days after the arrest. Then the average amount of time between the arraignment and plea or start of trial was 54 days. The average length of time it took from arraignment to sentencing was 81 days. The total time for non-jail to be disposed from the arrest to sentencing was 185 days.



In 1998 the jail cases took 82 days from arrest to indictment and another 67 days to reach sentencing, for a total average of 149 days to disposition. Non-jail cases took 90 days from arrest to arraignment and another 78 days to sentencing, for a total average of 178 days to disposition.[116]

[116]The Impact Cities "Master Plan B 1972" program data, published by the City of Cleveland, found an average delay of 9.1 days between Grand Jury indictment and arraignment at Common Pleas Court in the year 1969. This relatively short delay between

In 1997 the average length of time it took all the jail cases arraigned that year was 75 days to reach arraignment from the date of arrest. It took 73 days to go from arraignment to sentencing. The total average time in 1997 from arrest to sentencing was 148 days. Non-jail cases that made it to arraignment took 75 days from the date of arrest, and an additional 79 days on the average to reach sentencing. The total average time in 1997 from arrest to sentencing in non-jail cases was 164 days.

These disposition rate figures do not, of course, include any of the many indicted felons for whom capiases have been issued and who never appeared for their arraignment.

Since the number of original arraignments versus bindovers in these averages is not known, these averages have a limited application to the study of the effect of straight releases. Original indictments are represented in both the jail cases and the non-jail case arraignments. These averages do, however, demonstrate that the time necessary to bring a felony case to conclusion in Cuyahoga County is five to six months. These averages include the straight release cases in which the defendant was not indicted or notified of arraignment for several months or more after the arrest and those cases which are promptly charged. It can be safely concluded that elimination or improvement upon the straight release problem would have a positive effect on the overall speed of disposing of cases in the felony court.

XIX. TRACKING SYSTEM

A case tracking system for Cuyahoga County does not really exist. The branches of the criminal justice system have very little idea of what the other agencies are actually doing. Each simply rolls with the punches. Many of the agencies involved with the original indictment process are not themselves fully aware of what is going on with their respective units, much less aware of the process as a whole. Often only the individual detectives, Assistant Prosecutors and clerks know where they stand with their own caseload or docket. For example, the detective who prepared the file on a narcotics case and placed it in the file cabinet, only to sit for several months before the case is scheduled to be presented to the Grand Jury, is often the only person in the County who knows the defendant has a felony charge on the way. The next arresting officer certainly does not know anything about a defendant's pending charges before he straight releases the same person.

Since the Cleveland Police Department has not had a system of tracking its cases, it has been unable to determine the number, type and times necessary to complete the investigations. The police do not even complete and record a report of the straight release contemporaneously with the arrest and release. There is presently no means for anyone but the releasing detective to know who was arrested, released, and where, when, or if they will be charged later.[117] Police detectives have the ability to exercise significant discretion on who to release for good, and who to release and

these stages demonstrates that 30 years ago police had obtained reliable identifications and addresses of the people they arrested.

[117]This could be corrected simply by positively establishing an arrestee's identification before any decisions are made. The true identification will provide police with an accurate record that will include warrants. This is not asking too much. This is standard police procedure across America.

charge later.[118] They have a greatly reduced amount of control as to whether to immediately charge an arrestee due to 1) police policy and regulations discouraging the detectives holding prisoners long enough to investigate, 2) rules severely restricting overtime, and 3) under-staffing of detective bureaus with an overabundance of felonies to handle.[119]

The Cuyahoga County Prosecutor's Office creates some computer records once the felony case has been bound over to the Grand Jury by a municipal court, or the detective delivers the reports to the County Prosecutors for a Grand Jury appearance. Eventually, the defendant and his or her aliases are listed in the computer and available to the court and other police departments. Unfortunately, it takes a long time in the original straight release cases to get to the point where the defendant and his or her case are in "set-up" for the Grand Jury in the prosecutor's computer. The Cleveland Police Department should have its own computer tracking system to coordinate with the prosecutors and all other city police departments.

XX. TIME STANDARDS

Across America, states have been turning to the development of time standards to process felony cases. According to the National Center for State Courts, Institute for Court Management[120] 1995 national review of the time standards set by states, these devices created an effective method of reducing unnecessary delays with handling of cases. Thirty-four states have either advisory standards.[121]

In Connecticut courts, 100% of felonies are required to have a disposition rate of 90 days from arrest to plea. In Delaware and Minnesota, 90% of felonies are to be adjudicated within 120 days of arrest and 97% must be completed within 180 days. Iowa provides the courts with 180 days from arrest to trial. By Virginia standards, 90% of felonies are to be concluded within 120 days of arrest and 98% within 180 days.

Delaware also sets standards for other required steps in the felony adjudication process. Indictments are expected to be completed within 30 days of arrests.

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[118]Since police departments and courts operate as virtual monopolies, they do not have to be concerned with adjusting their output or services due to market demand. Public knowledge and potential political consequences are major production stimuli that stand in place of competition.

[119]Police discretion involves important decisions governed by personal judgment tempered by the pressures discussed. Overworked police are more likely to decide months later not to charge persons released in minor felonies. There is now no means of knowing how many straight released individuals were never charged.

Judge Roscoe Pound described discretion as the "authority conferred by law to act in certain conditions or situations in accordance with an official's or an official agency's own considered judgment and conscience. It is an idea of morals, belonging to the Twilight Zone between law and morals." Roscoe Pound, *Discretion, Dispensation and Mitigation: The Problem of the Individual Special Case,* 35 N.Y.U. L. REV. 925, 926 (1960).

[120]NCSC, 300 Newport Avenue, Williamsburg, Virginia 23187.

[121]"Every court manager worth his or her salt should be involved in performance evaluation . . . State and local administrators, however, must take the initiative for making evaluations a regular part of the management process." Floyd Feeney, EVALUATING TRIAL COURT PERFORMANCE, 12 JUST. SYS. J. 153 (1987).

Arraignments, pretrial, and discovery hearings are also to be scheduled within stated short time frames. Assignment of indigent counsel in criminal cases must take place within five days of arrest, and trial dates must be set within 70 days of indictment.

Ohio and a number of other states set the standard goal of 180 days from arraignment to termination. They have set goals so low that it is almost impossible not to achieve it on the average. Others, such as South Carolina and West Virginia, at least make it 180 days from *arrest* to final disposition or trial. Some local judicial districts in Nevada and North Carolina have also created time standards more stringent than their own state standards. Ohio should seriously reconsider its own position. Counties should also take their own steps to create incentives and accountability. The state would be far better off with a much lower number of days to disposition as its goal with time starting at the point of arrest. Starting to count at the point of arraignment, as Ohio does, only helps perpetuate this black hole period between arrest and arraignment that exists in Cuyahoga County.

In Ohio, even its easily-met compliance goals have very little in the way of sanctions to prompt change. Information for required monthly and annual reports of the cases that have been pending over six months since the time of arraignment is collected manually. Nothing of an official nature is done when a courtroom has an unusual number of these overdue trials, until the cases reach the statutory speedy trial deadlines: 90 days in jail cases and 270 in bail cases.

There is no sound reason why Cuyahoga County, even with its unique straight release quagmire, should not be able to meet Ohio deadlines for disposition. Cuyahoga County's major problem is the abnormally long delay from the date of the crime until a defendant is arraigned. A defendant cannot be arraigned until he or she is indicted, and cannot be indicted until the police can get into the Grand Jury which can take four months in a straight release/original indictment case or mere weeks in a case the prosecutors and the police wish to be brought to court promptly.

Right now in Cuyahoga County there are no real time expectations or standards to be met, and things are running amuck. If Cuyahoga County's justice system or the Ohio Supreme Court set meaningful time standards goals and monitored them, vast improvements in performance could be expected.[122] Other benefits would include significant cost savings to the County and City of Cleveland in reduced jail and police expenses. Arresting and taking a defendant to court once is far less expensive than arresting and releasing that individual. Savings from people and businesses not robbed, assaulted, or stolen from are impossible to precisely calculate, but they are important.

The other meaningful intangible benefits include restoring the confidence of the people in its police department and the morale of the police themselves. It wears on police officers to have to risk their lives to arrest people involved in the drug trade, take their abuse, and work hard to complete the required reports, only to see those criminals soon back on the street in the same spot engaging in the same nefarious activity. Not only are police officers discouraged, those officers have to wonder if they just are not wasting their time.

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[122]Other cities suffering from similar system backlog have formulated a plan and used available federal funds to revamp their entire court-processing system: "Using fundamental principles of court management, which are based on a tracking system, they implement a program that fits the uniqueness of their own court." Robert C. Davis, et al., *Court Strategies to Cope with a Rising Drug Caseload*, 7 JUST. SYS. J. (1994).

Cuyahoga County Court of Common Pleas Local Rule 23, "Criminal Case Management," which took effect in September 1992, called for the "expeditious administration of justice." The rule was applied "to eliminate delay, unnecessary expense and all other impediments to just determination in criminal cases," and it called for the County Prosecutor and the Court "to prioritize the presentation of matters to the Grand Jury." It required all cases to be presented to the Grand Jury within 30 days of bindover.[123] It also did not foresee the abuse of straight release by passing the bindover hearings, a problem not yet invented when the rule was created. If the Court were to amend its Local Rule to require felony cases be presented to the Grand Jury within 30 days of their arrest, the pace of criminal justice could improve immensely.[124]

By creating a 30 day time standard for the period between arrest and indictment, the Cuyahoga County Court of Common Pleas has the opportunity to engage in judicial policy-making that may, by itself, produce positive results. Just setting such a goal makes the police, prosecutors, and court accountable.[125] It forces constant consideration of the problem. It is a measure that has to be kept track of and not simply ignored. No one enjoys having to explain why a goal is not being met, so possible processing solutions are likely to be instituted.[126]

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[123]That is, if the police and the County Prosecutor's Office would follow this unenforceable deadline. Even if the Court's only sanction were to force them to answer why the deadline was not being met, a definite pressure would be exerted. The rule would present a goal for which to aim. Right now there is no standard nor even readily obtainable information for the court to measure how it is doing. If there had been a rule and statistics kept, the problems discussed in this report never would have been allowed to go unnoticed for such a long period. The shortcomings of the criminal process could have been recognized and solutions sought years ago.

[124]The National Center for State Courts strongly recommends the creation of meaningful time standards to assist in case management because, "standards provide a means for identifying cases still in the system beyond a specified time that is considered appropriate for case dispositions. They help courts monitor their delay reduction efforts by providing a method by which to evaluate progress made. To the extent that reasonable goals are met, courts may say that they have eliminated, or reduced to a minimum, unnecessary delay in the handling of cases." NCSC, Institute for Court Management Memorandum, 94.3989 (1995), 300 Newport Ave., Williamsburg, Virginia.

[125]In Montgomery County, they have a sanction of dismissal of the case and their Local Rule 3.07 for failure of the police and county prosecutors to take timely action. "Criminal cases bound over to this court on which no final action is taken by the Grand Jury within twenty-eight (28) days shall be dismissed forthwith and without prejudice." Montgomery County court officials said there have been no problems complying with the rule. They have never heard of a straight release process such as that employed by the City of Cleveland.

[126]Although some conservative politicians have rallied in the past and claimed a sense of illegitimacy regarding judicial policy-making, this type of doctrinal creation by the judiciary is a normal reflection of the acceptance of judicial responsibility to see that the criminal justice system operates effectively. To simply accept substandard performance by the agencies handling the pretrial stages of felony litigation would be dereliction of duty by the court.

Professors Malcolm M. Feeley and Edward L. Rubin accept this reality in their book: "Judicial policy-making begins with the perception of a problem and identification of a goal. This is generally motivated by a moral imperative of some sort, an insistent belief that some observed condition violates a well-recognized, social norm." MALCOLM M. FEELY & EDWARD

XXI. COMMON PLEAS COURT PRACTICES THAT ALSO DELAY THE ULTIMATE CASE DISPOSITION RATE

The study of the cases of May 21, 1999, reflects an extremely slow disposition rate of 243.77 days, or 8.12 months, between the arrest and sentencing in original indictment cases. The cases bound over to Common Pleas Court by the normal arrest-and-immediately-charge process still take 154.72 days, or 3 months. Both disposition rates are perplexingly sluggish and serve to endanger the safety of the community. The Court can also strive to improve its performance between arraignment and sentencing.

The lion's share of the failure-to-appear crisis can be blamed on CPD's shortsighted policies and the County Prosecutor's Office's expanded use of original indictments, but the putrid pace of obtaining indictments in bindover cases shows that there are other serious deficiencies in the competency of the process. The Court of Common Pleas has its own duty to see that the criminal justice system operates with at least minimal efficiency. To this point it has not recognized the underlying problems, much less taken significant positive steps to correct them.[127]

L. RUBIN, JUDICIAL POLICYMAKING AND THE MODERN STATE: HOW THE COURTS REFORMED AMERICA'S PRISONS 351 (1998).

[127]Records in the Cuyahoga County Court of Common Pleas Clerk of Courts Office indicate that only a relatively small percentage of bond money is actually collected despite the great number of bond forfeiture capiases issued. Bondsmen continually avoid paying the default penalties by obtaining continuances from the courts until their wanted felons are re-arrested (approximately 90% of the time by police). Then, bondsmen commonly apply to the courts and receive a 90% reduction in penalty. (The Clerk's Office is unable to provide actual numbers of continuances or bond reductions, as they have no way of knowing without searching each entry individually on each docket. However, the fact that they only received in 1997 less than a half million dollars in forfeitures suggests that the courts are liberal in considering the bonding agents' requests for continuances and 90% reductions in penalties). As a result, there is a system where bonding agents have very little to lose and negligible economic incentive to actively attempt to recapture their clients for the courts. There is also the issue to be considered of how much the Court wants to depend on unlicenced and sometimes ruthless bounty hunters doing this unauthorized law enforcement type work. Some states, such as Kentucky and Massachusetts, have eliminated the use of bondsmen altogether by legislative act and have not appeared to have suffered as a result. One reason for the elimination of bondsmen was due to the large number of complaints lodged against the bonding agents.

Some improvements could be designed into the surety bonding accountability process that could result in a greater economic loss to the bondsmen and thus increase their incentive to more carefully choose clients or locate the ones who flee. If closer track were kept of the bond forfeitures and collections by the Court and the County Prosecutor's Office under a single administrator's responsibility, the abuse of the defendants in forfeiture and the 90% reductions in penalties could be reduced.

However, a review of the actual case studies and the Arraignment Room records demonstrates conclusively that the shortcomings of the bond/bail procedures and collection account for only a secondary and insignificant reason for the continuously high number of outstanding felony capiases pending before the Cuyahoga County Court of Common Pleas. When the number of capiases caused by "straight releases" are compared, the capiases resulting from bonded bindovers are significantly fewer in number. Therefore, the process in the justice system that must be given the first priority in terms of reform is the inefficiency and safety issues flowing from the abuse of the straight release/original indictment process.

Increasing manpower and allocating money to expand the Grand Jury capacity or to hire additional staff to process forms and improve scheduling can solve some aspects of this dilemma rather easily.

The Court's archaic practice of not assigning indigent counsel until after the arraignment also causes unnecessary delays in the handling and disposition of cases.[128] If counsel were assigned when the defendant was charged with a felony in Municipal Court, many of the cases would plead out there, be diverted, or entered into the Drug Court program. Now, when the attorney is assigned at or after the arraignment,[129] valuable time is lost, as the attorney has to write or contact the defendant to come to a pretrial. Frequently, it takes up to two weeks to get the defendant and assigned counsel together at a pretrial. In other jurisdictions, the attorney is assigned early and is with the defendant at arraignment when they are both handed a pretrial date and the schedule of the judge who also was randomly assigned. Common Pleas Court should at the very least consider assigning judge and counsel to indigent defendants before the arraignment.[130]

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[128]There is a widespread belief amongst the public and the bar in Cuyahoga County that patronage is the primary reason assignment of counsel does not take place until arraignment. Unlike other large Ohio urban counties where magistrates handle arraignment so the judges' valuable morning court time is not wasted, Cuyahoga County Common Pleas judges still handle arraignments. They take turns going down to the Arraignment Room to assign indigent counsel. Local rules were abolished so they are free to assign whomever they please. In 1999, a proposed rule, prohibiting judges from going to the Arraignment Room and assigning counsel to indigent cases during their reelections while their committees were soliciting donations, was defeated. The judges spend over six million dollars every year in the assignment of counsel. There are no real rules regarding the criteria, and the Court purposely does not keep track of who is assigning whom.

Unfortunately, there have always been those judges who will assign attorneys for political rather than professional reasons. Over the years, there have been periodic news stories demonstrating that attorneys who are generous campaign donors are also the attorneys who receive the highest number of assigned cases. These attorneys are often not regarded as high-caliber counsel. Nevertheless, these sometimes mediocre attorneys earn more than the governor's salary on their part-time jobs. Efforts to reform the patronage system have been met with fierce resistence by beneficiaries from both sides.

Attorneys who say they refuse to "pay to play" and are given few assignments complain that the attorney who depends on assigned counsel fees for his livelihood serves the judge first and the accused criminal second. Former Criminal Bar Association President Jay Milano noted, "Their real client is the judges who assign them." This, he maintains, undermines the adversarial system. It compromises the assigned counsel's judgment. It causes the courts to favor assigning attorneys who will obtain pleas, will not enthusiastically or publicly fight erroneous rulings, and will continue to make and organize political campaign contributions. All of this compromises the integrity of the court and permeates a foul odor that makes its way to the public.

[129]The Cuyahoga County Common Pleas Court, in most bindover cases, will assign a new and different attorney even though the Municipal Courts (Cleveland or suburb) assign an attorney for the defendant's preliminary hearing. The control and patronage issues not only add costs to the taxpayers, the delays slow down the rate of dispositions, endanger the community, and leave the accused with substantial periods of time unrepresented by counsel and his or her Fifth Amendment rights unprotected.

[130]Software programs have already been created and are in use in other jurisdictions that randomly assign both court and counsel without any security compromise. In Montgomery

XXII. SUMMARY

In Cuyahoga County, knowledgeable criminals have been thumbing their noses at the police, the courts, and the public. They do this because seasoned criminals are aware of Cleveland Police Department policies that undermine the process meant to hold offenders accountable for their crimes. Under a 24-hour limit, Cleveland Police and Cuyahoga Metropolitan Housing Authority Police routinely straight release suspects before they can be charged for their crimes, and often before detectives can verify the identity of an individual. Some of these same suspects are repeatedly arrested for new crimes even while the months-long delay in obtaining formal charges allows those suspects to be free. The perception developed in the communities most affected by crime is that these criminals are in charge, and as a corollary, that the police and courts are ineffective.

If the first arresting officer is not the same as on the second or third arrest, the defendant's previous history remains unknown. The suspect is then eventually arrested and presented to Common Pleas with two, three, or four new dockets against him or her. By the time the county judge receives the offender, rehabilitation may no longer be a viable option and another expensive prison bed is filled.

Ten years ago there were only occasional major cases bypassing the normal charging system. Now the majority of the Cleveland police arrests for narcotics and vice skip the preliminary statutory steps that the criminal code and custom created; instead, these cases go directly to the Grand Jury for an original indictment Recalling that Cleveland crime still accounts for the majority of the County's felonies to the Grand Jury, one can easily see why the straight release system has caused havoc with the efficiency of the criminal justice system.

The County Prosecutor's Office still operates with the same type of staffing and hours it did before it gradually and unwittingly took over much of the job of City Prosecutor by the new police tactic of straight release. The same number of Grand Juries meet and the Assistant Prosecutors can only present them with a limited number of cases per day. The Grand Juries are capable of reviewing and digesting only so much volume each session. Consequently, there is a serious backlog of cases waiting to be heard and acted upon by the Grand Jury.

The vast majority of common straight release cases are not even heard by the Grand Jury until several months or more after the crime occurred. The Cleveland Police Narcotics Unit has a backlog of over a thousand cases, mainly petty felony drug possessions, waiting to be presented to the Grand Jury. The Narcotics Unit has four file cabinets, with four drawers each, full of thin brown files, each file representing a completed case, that has yet to be presented to the Grand Jury. All these files represent individuals who have been on the streets for months since their arrest and release from jail. Some of these individuals could benefit from drug counseling or treatment.

The criminal justice system's apparent ineptitude resulting from straight releases has had a domino effect on the street. Citizens who live in a neighborhood or housing project where the drug trade flourishes are in a tough position. They are reluctant to call or cooperate with police, much less become witnesses, knowing the

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County, Dayton, Ohio, this program has proved very successful and is a major factor in their rapid disposition rate. It has also eliminated any possibility of "pay to play" patronage accusations that has always haunted the Cuyahoga County assignment system.

criminals will be placed right back on the street. With good reason, they fear retaliation for themselves or their family. They know they are on their own in Cleveland and there is no way the police could ever protect them from the many months it takes to go to trial. Thus, police receive very little help from the people most affected. These are the real victims of drug crime. They have to live in fear of their lives and property, knowing that it is unsafe for the elderly and children to travel unprotected, even in daylight, with desperate drug felons throughout the entire county attracted to the drug-selling corners of Cleveland.

The origin of the rule limiting Cleveland Police 24 hours to charge and of the straight release practice is not clear. The widespread belief of the ranking and command staff officers interviewed, past and present, is that this came about because of a combination of increasing expenses, City Jail overcrowding due to increased drug arrests, and the City's erroneous interpretation of a Supreme Court ruling that mandated police to release or charge within 24 hours.

Many officers stress that the cost savings were the overriding component in those decisions. Retired Cleveland Police Commander Greg Baeppler, a highly respected veteran, stated: "It's all financial. It was the city overriding sound police reasoning. We were missing the boat. We had the repeaters in custody. A small percentage of the criminals commit most of the crimes. We had them where the community needs them, in jail. But in order to save money and stop overtime, we let them go."

It is a common refrain among police that the depletion of detectives and of the necessary time to investigate eliminate their ability to properly perform the follow-up work necessary for a conviction. Instead of concentrating on fulfilling their most fundamental duties as a police department, they were forced to shift their efforts to the politically-expedient and revenue-generating activities pushed by the carefully-monitored Police Department statistics. Paid overtime is the first category studied after a major crime. Court time has its own separate category for review. Seatbelts, noise, curfew, and liquor citations are in the spot where the search warrants and felony warrants- served categories used to be. Their elimination from the performance measure sheet and statistics is believed by police of all ranks to be indicative of the City's significant change in priorities.

All the CPD unit supervisors and chiefs interviewed who are directly affected by CPD's straight release practice agreed that it was a serious problem and that steps should be taken to eliminate it. Several suggested a first small step toward returning to a minimal level of acceptable police work would be to a least issue a new General Police Order (GPO) requiring every arrestee be held until positive identification is established. This could be accomplished by driver's license or other verification that convinced the police officer,who would have to take some responsibility for the identity conclusion and the consequences of an erroneous release.[131] If the arrestee does not carry acceptable identification and is made to provide evidence of his or her identity, he or she would be held until AFIS or Ohio Bureau of Criminal Identification (BCI) computers established or confirmed an identity through fingerprint analysis. Repeatedly, these senior experienced officers stressed in separate interviews that the offenders will continue to "play games" with the system

[131]As it stands, no one at the CPD is held responsible when felons or misdemeanants are released under false names. Everyone involved in the process has what they believe to be a legitimate excuse (*i.e.,* civilians doing booking, no time in the shift for detective or patrol officers, no overtime, the 24 hour rule, etc.).

until they learn that they will have to sit in jail indefinitely until police are sure of whom they have. If persons who lie to police are charged, prosecuted, and jailed for it, the word will spread. Until the warning signs at the CPD booking window have teeth, they will be continued to be ignored.

The bureaucracies involved in the criminal justice system all mean well and work hard, but do not know what the other departments are doing or the problems their own actions are causing others. There is a failure to communicate that can be resolved with coordinated action.

XXIII. POSSIBILITY OF REFORM

In New Brunswick, New Jersey, the average time from charging to disposition for drug cases fell from 238 days to 81 days. In Philadelphia, Pennsylvania, the average time from indictment to disposition for all felony cases was reduced from 163 days to 120. The effect freed up approximately 420 beds per day in the County Jail.[132]

These cities successfully eliminated staggering backlogs by employing simple, common-sense strategies to reduce case processing time while increasing the jail capacity and saving costs. They designed programs to relieve their congested dockets by using their existing resources more efficiently. Those courts recognized that not all cases have to follow the same court-processing sequence. By early screening, classification, assignment of each case to a track, and the establishment of time frames for that track which are closely monitored, those Philadelphia and New Brunswick Courts achieved remarkable results.

What is obvious in these success stories is that the courts took a hard look at their performance rates and recognized they had a problem to be reckoned with. Without the acknowledgment of anything to be corrected, no positive steps are likely to take place. Jacoby concluded that if there is that admission and a careful planning-development process, similar "programs can be transferred" successfully to other jurisdictions and achieve analogous results."[133]

Jacoby's considered critical factors for success include a supportive criminal justice system after a crisis in the courts. Edward Ratledge of the University of Delaware noted, "If the court is not hanging by its fingertips, there is no impetus for change. There has to be a sense of urgency before a criminal justice system makes changes. Inertia places a powerful barrier on the road to reform."[134] Without a crisis, "the incentive for making profound changes may not be enough to justify and sustain those changes over time."[135]

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[132]According to Joan Jacoby, Director of the Jefferson Institute for Justice Studies, Washington, D.C., the strategies used in these cities "represent the most important court reform of case management since docketing became a science." Jean Jacoby, *Expedited Drug Case Management Programs: Some Lessons in Case Management Reform*, 17, JUST. SYS. J. (1994). Judge Legiome Davis of the Court of Common Pleas in Philadelphia stated, "The EDCM [Expedited Drug Case Management] Program has dramatically reduced case backlogs and case processing time and has improved the quality of the adjudication process. One judge now produces in one month the equivalent of what eight judges used to produce."

[133]Jacoby, *supra* note 132, at 29.

[134]*Id.*

[135]*Id.* at 30.

Jacoby also describes numerous additional benefits of creating an efficient disposition process beyond costs and docket strain relief. She also noted these same types of management reforms have been successfully implemented in over 50 jurisdictions.[136]

The Court of Common Pleas would be in a much better position to appraise its own performance if it commissioned outside professional evaluators to collect and review critical statistical categories on an annual basis. Presently, administrators not only do not disclose relevant statistics publicly, they purposely hide those which would embarrass the Court. Obviously, the administrators' view of their function as servants first to the judges removes any natural incentive to perform or face public scrutiny.[137]

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[136]Professor Malcolm Feeley, University of California, Berkley, warned in his book that without proper planning, development, implementation and institutionalization, any new system could become yet another solution that failed. MALCOLM FEELY, COURT REFORM ON TRIAL (1983).

[137]One example that reflects the first priority of administrators to shield the Court occurred in 1999. Newspaper articles revealed that some judges had tried just a few or no trials at all the previous year. The Court's published statistics were shown to be purposely misleading. When it was reported that the Court's administrators credited the trials conducted by visiting judges to the statistics of the judges who were not trying cases, the administrators responded with denials. They not only defended indefensible neglect, the administrators took further steps that revealed their "protect the elected judges at all costs" attitude. After that they simply stopped reporting the heretofore important trial statistics altogether.

They even ceased to state the statistics in the published Court's Annual Report as had traditionally been done. These figures are now not only kept from the public and the press, the administrators will not reveal them to the judges. The Annual Report is strictly a feel-good endeavor. The Court does not discuss its problems, only good news. If the Court were a public corporation and it issued such annual reports, the Securities Exchange Commission would be alarmed. The community would be the beneficiaries and the Court would be better able to analyze its own performance with more candid disclosures.

The Court's secretive culture and its "protect the Court and its officials at all costs" mentality have not served the public well. These policies serve to encourage ineptitude by removing the natural motive to work effectively, public accountability. The Court becomes the enabler of the idle or incompetent and thus assists in the perpetration of their continual political existence.

As Professor Lloyd Feeney of the Davis School of Law noted: "There is a need, however, for much more openness. Courts are public business and judges are public officials. If delay or inability to handle the public business are never to be a matter of concern to the public, judicial performance must be a matter of public record just as judicial hearings are a matter of public record. Lloyd Feeney, *Evaluating Trial Court Performance*, 12 JUST. SYS. J. 156-57 (1987).

Feeney's research indicated that this type of secretive local court culture offers an explanation for deficiencies in performance between courts. He concluded that courts which fall into the "advanced" and "backward" court categories . . . differ tremendously in the quality of their administration. Some are exceptionally good, some simply awful . . . an advanced court sector using the latest technology and management techniques and a less advanced sector that sometimes seems unable to do much about delay or anything else.

"In the advanced sector judges and court administrators know a lot about their own courts, are constantly looking for ways to make improvements . . . In the less advanced sector courts have relatively little self-knowledge and even less interest or knowledge about research. New ideas are generally viewed skeptically, particularly if they come from the outside. Often

XXIV. RECOMMENDATIONS

1. Every person arrested must be held until his or her *identification is verified* and criminal history known, whether police intend to charge them by normal process or later by direct presentation to a Grand Jury. The police departments in Cuyahoga County already have, or will have in the future, access to a computerized automatic fingerprint identification system. If the suspect has a prior local, state, or federal arrest, this fingerprint system will rapidly identify the individual's true name and any outstanding warrants and provide an accurate background upon which to decide a bond. This step is vital to the public safety and that of the police officers making the next arrest.

The Cleveland Police Department has had such an AFIS since 1989. Recently, the City of Cleveland has begun the hiring and training of examiners that will make it possible to operate the fingerprint computer on longer hours and weekends. This step has the potential to help eliminate any backups and weekend/holiday releases prior to verification of identity.

The County Sheriff's Office is in the process of setting up its own automatic fingerprint system that will be part of the network used by the Ohio Attorney General's Office's Bureau of Criminal Investigation (BCI). This system will be eventually compatible with the one used by CPD. If the CPD and Sheriff's Office interconnect as the Sheriff has offered to do, both agencies will benefit with a greatly enlarged pool of felons' prints for instant comparison. The Susan Locke case should remind everyone how vital good communication can be to the public safety. Anyone found to have given false information as to identity must be prosecuted for lying. Available statutory deterrents will have no effect if not used.

2. In all but the rare and exceptional cases, all worthy felons *must be charged* with a crime and *not straight released* to the streets. Informed decisions must be made according to protocol. All felony charges must eventually be brought through the normal bindover process except for serious drug trafficking charges, situations where an undercover officer or informant could be endangered, sex crimes where the victim would be further traumatized, and homicides, or cases where a secret investigation and indictment are a logical tactical choice for law enforcement. All original indictments must require approval of a ranking police officer and a supervisor of the County Prosecutor's Office.

3. A plan has to be conceived and implemented to *catch up with the present backlog* of cases awaiting presentation before the Grand Jury. A goal date ought to be set by the County Prosecutor's Office after which it will not accept more original felonies except with prior approval.

The Cuyahoga County Prosecutor and the Cleveland police must work together to devise a strategy to *return to the normal statutory process* of arrest and charging felons or begin a *fast direct indictment program* similar to those used successfully in Summit and Hamilton Counties. The over-reliance on original indictments these past nine years has damaged the effectiveness of the CPD, the County Prosecutor's Office, the Cleveland Municipal Court, the Cuyahoga County Common Pleas Court, and the overall criminal justice system. It has also harmed the morale and safety of the public and police. The straight release/original indictment process does not save

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internal or external factors reinforce this lack of interest in change because it threatens existing positions and makes system participants reluctant to become involved." *Id.* at 162-63.

the City of Cleveland any money in the long-run. It does, however, damage the public's confidence in all these law enforcement agencies and the courts. It will take time to accomplish this goal. And it will first take recognition of the problem by the agencies involved.

The County ought to consider the feasibility of temporarily *adding another Grand Jury* and staff to allow the backlog to be eliminated and the new cases heard more quickly.

4. The creation of a well planned *central intake facility* must be given prompt and serious consideration. There could be one stop for all felony arrests, and would allow for a much more efficient booking process.

5. *The Court of Common Pleas* needs to improve its own internal procedures and improve its tracking system in order to speed up the indictment process, as well as clarifying the clerk's duties, the setting of arraignments, the processing of the criminal cases, and a more efficient method of assigning judges and counsel to indigent offenders prior to arraignment.[138] A case flow manager should be hired to coordinate the processing amongst all criminal justice system agencies. The Court must also set its own time standards for the felony cases in its jurisdictions to 30 days to indict from the point of arrest. The Court should complete and publish accurate statistics that reflect on the true state of the disposition rate so the bottlenecks can be recognized by the Criminal justice system agencies.

6. *The City Prosecutor's Office* has to be given assistance, time and expenses to add staffing and training so that this office can return to its traditional role as prosecutors under the Ohio statutory scheme.

7. Provide *Cleveland Municipal Court* the opportunity to prepare for the return of the workload that Cleveland police have steered away from that court: bond hearings, pleas to misdemeanors, drug courts, and felony bindover hearings. This could include the creation of a bindover courtroom staffed with retired visiting judges and funded by the State and County until the backlog is eliminated.

8. An integrated *computerized tracking system* is needed within the CPD and County Prosecutor's Office with access available to the City Prosecutors, County Bond Investigators, Sheriff's Office, other officials who help manage the jail population and the entire criminal justice community.

9. *The Ohio Supreme Court should begin keeping better and more accurate statistics.* Incentives matter. That is a basic concept of economics. It has equal application to business and the courts. Presently, no Ohio county has any real idea of how it is doing in terms of its rate for disposing of felony cases. No such statistics are required to be turned in. No one is keeping track as they do in other, more productive states. Neither the courts nor the public are given any meaningful performance information. The consequences of the lack of knowledge and emphasis on the importance of prompt dispositions by Ohio courts can be tragic.

In about a year, it would be possible to implement a system designed to have a defendant arrested, charged within 48 hours in the Municipal Court, with a bindover hearing set within 10 days (during which some cases will resolve by plea or *nolle prosequi*), and indict within several weeks of the crime.[139] This should be followed

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[138]It would be advisable to first hire a qualified expert from an institution, such as the National Center for the State Courts, to study the facts and to make formal recommendation.

[139]Less than 10% of the felony arrests need any investigations of significance after the initial patrol work, detective statements, and other routine follow-up.

by a prompt arraignment. If Cleveland, the Prosecutor's Office, and the Court of Common Pleas become more cognizant of the value of efficient disposition of their cases, Cuyahoga County can also join the rest of the State of Ohio and meet at least the national average of disposing of cases. The size and crime rate in this County is not a legitimate or acceptable excuse. It is a matter of organization, manpower, funding, and the will to get the job done.

If all the agencies involved can agree on a cost-effective and efficient strategy, the citizens of Cuyahoga County (especially within the City of Cleveland, where the majority of crime takes place and people are victimized most often) will be the beneficiaries. If a higher level of respect for the effectiveness of the courts is reestablished, criminals will be deterred and fewer crimes will take place. The value of the public's confidence in its police and courts cannot be underestimated. Right now the best things the low-level career criminal/drug addict in Cleveland has going are the Cleveland Police straight release policy, CPD's failure to identify its arrestees, the snail's pace for producing felony indictments, and the resulting slow disposition rate in the criminal justice system.

If nothing else is accomplished by this study, the parties have been placed on notice. They are not effectively handling their responsibilities to protect the public safety. The agencies involved are fully aware of the potential consequences. Tragedy is no longer a mere possibility. It is a *reality.* There will always be Victor Washingtons out there, and it must be assumed more are on the way. If only to prevent a similar debacle, Susan Locke's homicide should provide the necessary incentive for Cuyahoga County to open its eyes and work itself out of last place in the State of Ohio for disposing of criminal cases.

POSTSCRIPT

Following the distribution of the early drafts of this thesis to the Cleveland Police Department and local public officials, the local newspapers published a series of articles that put the Cleveland Police Department's policies and performance in a poor light.

The Cleveland City Council Safety Committee began having hearings that questioned the wisdom of Cleveland's straight release policies. At those public hearings, the Police Chief, a Deputy Chief, and the acting Safety Director were cross-examined. The police reluctantly admitted they opposed straight release. The policy had no supporters. However, it became apparent that these officials had no authority to change the policy. The Mayor of the City of Cleveland was in complete control of the policies of the Cleveland Police Department.

Cleveland City Council voted unanimously to condemn straight release and urged the Mayor to end the program. Between City Council hearings, another horrendous murder took place that appeared even more negligent than the straight release-murder in the *Victor Washington* case discussed in the thesis.

Cleveland police had straight released a man for rape in December, 2000; theft and carrying a concealed weapon in February, 2001; and another rape in March, 2001. In April, 2001, this same crack addict with a history of violence burglarized a home, killed the homeowner, raped his teenage daughter, and set the house on fire. The rape victim was able to untie herself before she too was killed.

Now the police administration was forced to recognize that they had straight released a very dangerous criminal, and a manhunt ensued.

When the Cleveland City Council Safety Committee scheduled another hearing to investigate this latest straight release-murder, the Mayor of Cleveland suddenly decided to end straight release. The Cleveland Police Department was ordered to stop straight release felony arrests beginning June 18, 2001. The Criminal Justice System has had little trouble handling the increased work load.

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