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*MEMORANDUM*

DATE: December 6, 1977

To: James Vorenburg, Bancroft Littlefield, Ralph Gants

FROM: Mark H. Moore

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RE: A Preliminary Analysis of the Problem of Delays in the Disposition of Criminal Cases

## 1. Reasons to be Concerned About Delays in the Disposition of Criminal Offenses

We lack comprehensive data on how long it takes to dispose of criminal cases throughtout the United States. An intensive study of criminal courts in Baltimore, Chicago and Detroit found that the median times from arrest to disposition were 226,268 and 71 days respectively.[1] A recent report from New York City indicated that the median number of days to disposition was 210, and the mean number of days was 309.[2] These data suggest that most criminal defendants must wait substantially longer than several months to discover their fate.

Delays of this magnitude create three different kinds of problems for the criminal justice system. First, they weaken the specific and general deterrent effects of the criminal justice system. Offenders who discount the future heavily will simply fail to be impressed by a sanction that is not only uncertain, but far in the future. In fact, expectations that minimum mandatory sentences will increase the deterrant value of the criminal justice system may be unfulfilled if the imposition of minimum mandatories results in increased delays in reaching dispositions which push the harsher sanctions sufficiently far into the future to be heavily discounted by "present - oriented" offenders.

Second, delays increase the number of people who occupy an ambiguous status in the criminal justice system - those who have been charged with an offense, but not yet judged guilty or innocent. A genuine dilemma exists in knowing how to treat people in this status. Those who want no state control imposed until after guilt has been firmly established by a complete court proceeding urge that no state supervision be imposed. Those who note that a person is formally charged only after a judicial determination that probable cause exists to believe that the particular individual committed a specific offense urge closer state supervision. A reasonable decision on this issue requires more precision than most of us can claim in our sense of the difference between "probable cause" and "beyond" a reasonable doubt," and the rights that accrue to the state with each increment of increased likelihood of guilt. Hence, the issue remains a quandary.

By itself this quandary about how much control the state can properly exert over convincingly accused but not yet convicted people is bad enough. But when we try to establish reasonable procedures for handling this group, new equally vexing problems are raised. We worry that current bail decisions are capricious, or at a minimum, not reliably related to the mandated purpose of guaranteeing appearance at trial. But when we "rationalize" bail decisions by pegging them to characteristics of defendants which are statistically related to the probability of appearance at trial, we find that the new bail policy appears explicitly discriminatory - not only against the poor, but also against racial minorities. An explicit "preventive detention" policy lurks in the wings promising a tighter procedure and more reasonable criteria for establishing state supervision, but only at the price of enlarging the state's powers considerably.

Given this morass, of thorny problems, the best policy towards accused but not yet adjudicated individuals may be simply to reduce the number of people in this awkward status. One way to accomplish this purpose is to drastically shorten the time required to dispose of a criminal case. In short, if all criminal cases were disposed of in two weeks, much of our anxiety about the bail procedure would be dissipated.

Third, delays in court processing threaten to reduce the capacity of the courts to reliably assign guilt and innocence. Guilty people, benefiting from general delays in court processing or strategically manipulating the process to insure a long delay for their particular case, may go free as crucial evidence as the case weakens, or as judicial and prosecutorial interest wanes. Innocent people, facing long delays and a small probability of harsh treatment if they insist on a trial, may plead guilty to a minor offense they did not commit. Since the capacity to distinguish guilt from innocence is crucial to establishing the justness of our criminal procedures, and since delays reduce this capacity, the credibility of the entire system can be eroded by delays.

Of course, at this stage of our analysis, we are not absolutely sure that delays produce these effects, nor that the effects are of sufficient magnitude to warrant concern, nor that anything can be done to reduce delays to levels when we no longer have to worry about the problems listed above. In short, we do not have a firm sense of the potential benefits of trying to reduce "times to disposition" in criminal cases. Still, the problems outlined above seem sufficiently important and sufficiently connected to delays in disposition that it is worthwhile thinking of policies designed to reduce the time it takes to dispose of a criminal case.

2. Factors Determining "Time to Disposition" in Criminal Cases

To design policies that will succeed in reducing delays in our criminal courts, we need to know which factors currently account for the largest portion of observed delays in the criminal justice system. Unfortunately, locating the most important causes of delay turns out to exceedingly subtle at a conceptual level, and virtually impossible at an empirical level. Three basic problems exist.

First, in any given case, multiple, redundant causes of delay will operate to determine the "time to disposition." As a result, it may be difficult to determine how much the "time to disposition" would be reduced by stripping away any single cause of delay. The problem is somewhat analogous to predicting how much would be added to average life expectancy if we could eliminate some forms of cancer that tend to attack only very elderly and sick people.

Second, the relative importance of specific causes of delay need not be the same across all cases in the system. One case may be delayed dramatically by congestion. A second may be importantly delayed by the unwillingness of a defendant to trust his attorney and accept the plea that the judge and prosecutor have agreed to. A third may be delayed because the defendant and his attorney see a strategic opportunity in dragging the case out as long as possible, and find ample room in existing procedures to do so. In effect, in any given court at any given moment blame for long "times to disposition" might properly be allocated among a wide variety of factors. The single "most important factor" might fail to account for a large fraction of the delay.

Third, how some cases are handled can have important implications for the way that other cases are handled. The interdependency is created through two different mechanisms. One mechanism is the limited capacity of the court system. Since each case competes with all others for the time of the court, if one case consumes a substantial amount of court time, then many others may be delayed as a result of the ensuing congestion. A second mechanism is created by the precedent established in the dispostion of particular cases. Defendants, defense attorneys, prosecutors and judges may all look to the outcomes of previous cases to calibrate the "reasonableness" of specific plea bargains or the feasibility of a particular strategic ploy. Both mechanisms insure that the strategic decisions made by one set of defendants, defense attorneys and prosecutors will influence the strategic calculations of other sets of court participants.

These three problems (that any given case can be delayed by multiple, redundant factors; that the relative importance of these factors need not be the same for all cases in the court system; and that the processing of one case can affect the processing of others) make it difficult even to talk about the magnitude of the delays introduced by given features of the court process, much less make powerful empirical generalizations about this issue. "Time to disposition" is simply not a linear, additive function of specifiable factors operating within the court system. Instead, "time to disposition" is the result of several different factors that interact with one another in discontinuous ways. To make matters even worse, the important factors in a given court system may be idiosyncratic to that court at that time. In another court, or even in the same court at a different point in time, the most important factors may differ significantly.

Given these analytic problems, it is simply not possible at this stage to offer strong conclusions about what is causing delays in the disposition of criminal cases. What can be done is to present the array of factors that may influence "times to disposition" in particular cases, and present a logic that allows one to see the difficulty of calculating the relative importance of one factor in the aggregate system. The approach will be the following. First, we will identify six possible causes of delay that have been suggested by our reading and interviews. Second, we will discuss at a conceptual level how these different factors might combine to determine the time to disposition of a particular case. Third, we will discuss at a conceptual level how the handling of individual cases adds up to aggregate causes of delay in the court system. At each stage, we will be introducing greater complexity into our perception of how court processing works to determine our observed distribution of "times to disposition" for criminal cases.

Even with this limited approach, however, some interesting conclusions are suggested. For example, we will find that the problem of delays in the courts may be less reliably linked to the amount of resources available to the courts than we ordinarily assume. It may also turn out that speedy trial laws will have relatively little impact on the average time to disposition in criminal cases. In sum, simply by confronting the full complexity of the system, the adequacy of some simple minded approaches to reducing delays may be thrown into doubt.

a. Possible Causes of Delay in Processing Cases.

There are several explanations for the existing level of delay in dispositions. They are not mutually exclusive. Each mechanism may play some role in determining the "time to disposition" of each case.

1) The Claims of "Due Process"

One major factor affecting "time to dispostion" is the requirements of "due process." Constitutional guarantees and specific legislation establish procedural steps necessary for the disposition of criminal cases. Moreover, to insure that each step of the process is a real step and not simply a pro forma exercise, the courts will grant a certain amount of time for defense and prosecution to prepare their cases. Finally, the courts recognize that adjudication process is vulnerable to a variety of "accidental" delaying events: a defendant may lose confidence in his attorney and have to replace

him; a key witness may become ill or suddenly nervous; a new piece of evidence can appear and require major revisions in a defendant's strategy. Some of these delaying events must be accomodated because of some constitutional guarantee. Others may simply be tolerated by judges because of their own sense of what justice requires. In any event, the combination of procedural steps, case preparation, and accomodation of accidental delaying events that constitute due process requirements may establish a minimum amount of time that a defendant can demand in disposing of his case. Of course, the defendant can choose to waive some of his due process rights, and the case can be settled "early." But, if the defendant wants to exercise these rights, due process will establish a minimum claim on court resources, and minimum claim on "time to disposition." Even if the courts had infinite resources to deal with a single case, it could not be settled more quickly than due process allowed.

It is easy to assume that the legitimate claims of due process are relatively fixed and unalterable. Given a specific kind of case in a particular court system, there may be a minimum number of steps each with an associated time for preparation and a specific vulnerability to a random delaying event. The sum of these time requirements may establish a rigid minimum time to disposition. (Note: deciding the minimum due process requirements may be equivalent to deciding on minimum standards for defense competence.) In fact, the idea of due process may be much more elastic than this assumption suggests. Some procedural steps mandated by legislation or custom in a given court system might be considered much more than adequate to meet minimum due process requirements. Similarly, some kinds of motions and preparations in a given case while not specifically excluded could be considered more or less frivolous. Finally, some "accidental" causes of delay might be staged by one side or the other for strategic reasons. Thus, some feasible options in the processing of cases may look like due process <u>requirements</u>, are really only due process <u>niceties</u> that are tolerated by the courts. Besides, even if the judge decided to protect all the niceties of due process, he could insist on tight scheduling by asking that some steps be taken concurrently rather than consecutively. In short, what due process actually requires in a given case in a specific court system is a matter for debate and compromise - not a rigid requirement.

Before closing our discussion of due process claims, an important distinction is worth noting. All the due process requirements may push the disposition of a particular case into the future. However, only some of the due process steps consume appreciable amounts of <u>court</u> time. The steps that consume court time may create congestion in the courts and unnecessary delays for other cases. Those that do <u>not</u> consume court resources may affect the time to disposition of a particular case, but will not add to the general congestion of the courts. This distinction between; 1) factors that add time to the disposition of a particular case, but do not consume court resources which, given some congestion, would add to delays in the disposition of other cases; and 2) those factors that not only delay a particular case, but also contribute to delays of other cases by consuming scarce court resources will be crucial to our understanding of how each factor is affecting aggregate patterns of "time to disposition."

2) Congestion/Inadequate Court Resources:

Among the general population, the most commonly presented explanation for delays in criminal dispositions is congestion caused by insufficient resources devoted to courts. Indeed, people often assume that this is the only reason for delay, and that we could eliminate delay if we were willing to pay for enough court processing time. In fact, we have already seen that some of the delay results simply from the time required by due process. Congestion becomes a problem only if a court's calendar is so clogged that a case must be scheduled for its next step after the ordinary amount of time that would be allotted under due process rules. And then the effect of congestion on delay is only to add the small amount of time needed before some opening in the calendar is found. It is the number of cases in line after the time allotted by due process that is the delay caused by congestion.

3) Scheduling Problems for Participants

Among those who actually practice in the courts, the most common explanation for delays in criminal dispositions is the sheer difficulty of scheduling a time when all the parties necessary to the process can meet. In effect, cases are pushed into the future not because due process requires it, not because backlogs necessitate it, but simply because it is difficult to find a time when 4-6 busy people can agree to meet.

Note that the scheduling problem could be alleviated to some extent by allowing substitutability among specific representatives of the necessary functional groups (e.g. defense counsel, prosecutors, and judges). However, due process rights of defendants and the administrative organization of public defenders, prosecutors and courts may restrict the substitutability of individuals. To the extent that cases must stay with particular attorneys and judges, exceedingly troublesome scheduling problems are insured.

The magnitude of the delays introduced by scheduling problems will also be affected by how unequally the workload is distributed among individual defense lawyers, prosecutors and judges. If substitutability among individuals within these groups is restricted, and if cases turn out to be unequally assigned to individuals in the groups (as a result either of allowing defendants to choose one or more of the participants, or as a result of a faulty administrative assignment mechanism), then the scheduling problems can become very severe. In effect, a large number of cases may be delayed well beyond the due process time not because of a global congestion in the courts, but rather because of a local congestion with respect to a very lenient judge or a very able defense attorney.

4) Insufficient Opportunities to Develop a Capacity to Strike Satisfactory Plea Bargains

Plea bargains play an extremely important role in determining average times to disposition. They do so through two different mechanisms. First, they may drastically shorten times to disposition in a particular case by short cutting the delays that would otherwise result from due process claims, congestion, and scheduling problems. Second, by reducing the demands that a given case makes on court time and the time of other participants, an early

plea bargain may alleviate the congestion and scheduling problems confronted by other cases and facilitate their disposition as well. Both effects will alter the aggregate distribution of times to disposition for a given criminal court.

Note that our interest in plea bargains is not only in how often they occur in a court system, but also when they occur in the court proceeding. A plea negotiated just before a trial may save little elapsed time for the particular case, and little court time to facilitate the processing of other cases. A plea negotiated shortly after arrest will have a much different effect on average times to disposition. Thus, we should be interested in devices which affect not only the frequency of plea bargains, but also their timing.

The major factor influencing the probability and timing of a plea bargain may be nothing more than the "maturation" of a "contracting capacity" among the interested parties. Everyone must come to share a perception of the character of the case and its likely result if it goes to trial. Everyone must come to accept each other's judgments about what a reasonable compromise would be. And everyone must come to believe that the other parties can deliver on a negotiated settlement. Is is likely that the development of this contracting capacity takes time. But it could depend on different kinds of time. It could be a function of nothing more than elapsed time as the defendant gets used to his situation. It could be a function of court processing events which reveal the characteristics of the case. Or it could be a function of the frequency with which the participants meet and negotiate about the case.

Note that there is an inconsistency between procedures designed to facilitate the development of a contracting capacity and those designed to alleviate scheduling problems. Fostering a contracting capacity may require that participants in the processing of a given case remain the same. Reducing scheduling problems requires that individuals be substitutable. Thus, if it is really the lack of a contracting capacity that is delaying a case, a proposal to improve scheduling by allowing substitutability among individual participants may actually increase times to disposition!

5) Strategic Manipulations of the System by Defendants, Defense Attorneys and Prosecutors to Gain Advantages from Delay

So far, the analysis of court delays has proceeded as though reaching a disposition was nothing more than a mechanical process of executing a specific number of steps, or developing a consensus around the suitability of a specific plea. What this analyses ignores is the simple fact that participants in the process have substantive interests in the timing of the disposition. In fact, given the flexibility of the process, these interests may well be the factor, that most precisely determine the timing of dispositions.

Participants' interests in the timing of disposition vary both in direction and magnitude. Some will have a modest interest in an early disposition. Others will have a strong interest in delay. In general, their interests will depend partly on their current status, and partly on their expectatations about the outcome of their case. While participants' interests in the timing of the disposition can vary widely, for the most part, if the participants have any interests at all, they will have a strong interest in delay.

Defendants, for example, often stand to gain a great deal from delay. The case against them may gradually weaken as witnesses grow tired of appearing, police memories grow dim, records become lost or confused, and prosecutorial and judicial interest wanes. In effect, as time passes, chances of conviction lessen. This tendency of a case to erode may give all defendants an incentive to delay the disposition of their case. For defendants out on bail, (whose lives are disrupted by the delay only by the modest inconvenience of occasional appearances in court and the anxiety of not knowing the final disposition) the strategic advantages of delay may seem overwhelming. Indeed, since bail affords defendants an opportunity to reveal their good character or enjoy their freedom before a jail term, they may see advantages in delaying the process beyond the possibility of a weakened case against them. For defendants in jail, however, whose lives are dramatically disrupted throughout the period following arrest and prior to disposition, the strategic advantages of delay might be outweighed by the losses that accumulate while spending time in jail. This will clearly be true for defendants who have only weak cases against them. They will want to move the case as quickly as possible. But for defendants facing strong cases who expect to go to prison anyway, the strategic advantages of delay might well be worth taking. If the defendant expects to be convicted and sentenced to prison, if he expects his jail time prior to disposition to be counted in his sentence, and if being in jail is not much worse than being in prison, the defendant may feel that nothing is lost by delay even though he is in jail. Thus, a great many defendants in the system will have a strong interest in delay.

The stakes of prosecutors and defense attorneys are less systematically linked to the timing of dispositions but they, too, will occasionally have an interest in delay. Prosecutors may delay to conceal the weakness of their case, to gain the co-operation of defendants in future investigations, or to punish the defendant when no jail sentence is expected. Defense attorneys may delay to increase their fee or insure its collection. Situations creating these incentives may be rare, but they are not unheard of.

Unfortunately,for court delay, these strategic interests in delaying dispositions can find many opportunities for gratification in the tortuous of the courts. A variety of motions can be filed, and many continuances requested. Each dilatory move will not only delay the disposition of a specific case, but will also consume court resources that increase problems of congestion and scheduling for other cases. Thus, the strategic interests of participants in delay may have a very important effect on average times to disposition.

Note that the most common and strongest interests in delay are located in defendants, not prosecutors. It is the defendants who are most likely to want delay. To the extent this is true, "speedy trial" laws may do little to reduce delays. Of course they are valuable in that they insure that defendants who want a speedy disposition can get one. But my guess is that only a small fraction of the defendants will want an early disposition. Most will prefer to drag out the process. To the extent that these laws create no liability on the defense side for dilatory tactics, a substantial peice of the problem of court delays may remain.

6) Insufficient Judicial Incentives and Capabilities to Reduce Delays

Judges have positions in the courts which allow them to determine the speed with which a case moves to a disposition. They can accept or reject motions and requests for continuances. They can schedule a case compactly, or let it linger over several months. Whether they take advantage of this position to reduce delays in disposition depends on whether they have knowledge of the past history of a case and systematic incentives to decide the case quickly. Courts currently may be organized in a way that prevents judges from knowing or caring about delays for a given case. They may have responsibility not for ultimate dispositions, but simply for clearing their daily docket. If their objective is simply to clear their docket, they can quickly agree to requests for continuances or motions that become somebody else's problem. Thus, the organization of judicial responsibility may have an important effect on the magnitude of delays in dispositions.

b. How These Multiple Factors Combine to Determine "Times to Disposition" for Given Cases

As noted above, the factors that determine times to disposition may interact in a particular case to create multiple, redundant causes of delay. For example, we could look at the processing of a particular case and see that it had to be postponed beyond minimal due process requirements because of general congestion in the criminal courts. Based on this observation, we might allocate more resources to the courts and expect processing times to shrink to the minimum due process requirements. We might then be disappointed to discover that processing times remained about the same because lying right behind the problem of congestion was the problem of developing a "contracting capacity." In effect, there were several, more or less redundant causes of delay operating on the case. At one point in time, one of these factors may have appeared to be the "rate determining" factor which pushed the disposition of the case far into the future. But there were other factors operating whose effects on time to disposition were only a little less constraining than the currently visible factor.

There is a useful way to think about how this process works. To some extent one can think of the various structural factors (e.g. due process requirements; congestion; scheduling problems; and the emergence of a contracting capacity) as factors that create "windows" within which a disposition can occur. Due process requirements may establish both an upper

and a lower limit to "time to disposition." Congestion and scheduling problems will have the effect of stretching this window farther into the future. The emergence of a contracting capacity will establish a minimum processing time if the case is decided by a plea bargain. The "windows" can have different relationships to one another in time depending on the characteristics of the defendant, the case, and the aggregate features of the local court system. Figure 1 suggests some possible relationships.

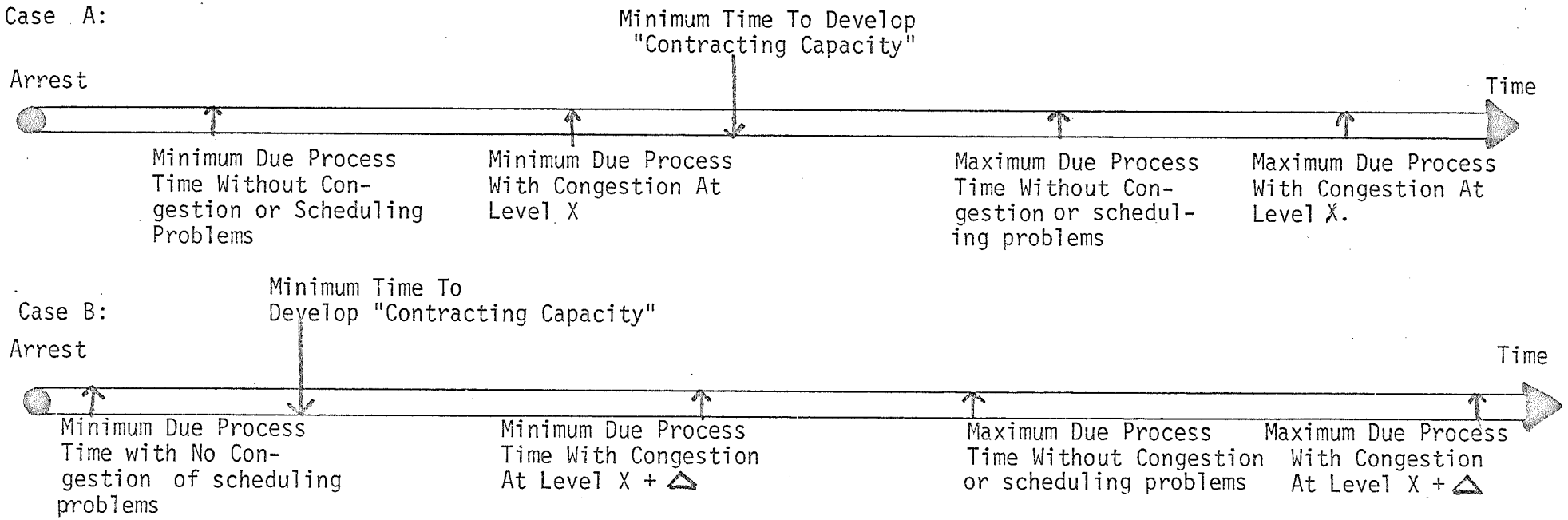
The structural features may make dispositions more or less likely within a given time interval, but they will not determine the precise timing. That will be largely determined by the interests of the various parties within the structure created by the process. If the defendant has a strong interest in delay, and faces a tolerant or badly organized judiciary, the time to disposition may approach the maximum due process time with whatever level of congestion currently prevails. If the judge has an interest in moving cases quickly, the time to disposition may approach the minimum due process time given whatever level of congestion prevails. If the defendant is not particularly interested in delay, the time to disposition may be close to the minimum time required to develop the contracting capacity. Thus, the play of strategic interests will determine where within these "windows" a case will finally be decided.

For a given case, it is possible to think of a "leading cause of delay." It will be that factor which tends to push the disposition of the case farthest into the future. But how far a given factor may push the case into the future depends on the levels of all the other factors. And the existence of absolute constraints may introduce unexpected discontinuities in functions which relate processing times to changes in the different factors influencing processing times. Both the interdependencies and the discontinuities make it difficult to describe how times to disposition will be affected by changing one factor operating in the particular situation. Thus, even when we look at a particular case, it is difficult to apportion the observed delay among the diverse factors that are operating. The marginal contribution of a particular factor to time to disposition will be a discontinuous function of all the other variables.

c. How the Factors Determine Aggregate Patterns of "Times to Disposition"

If it is difficult to see how the various factors are influencing times to disposition of particular cases, it is even more difficult to see which factors are determining the aggregate patterns of dispositons. There is no need for the different factors to operate in the same way across all cases in the system. Of course, congestion and scheduling problems may affect all cases in the same way. But due process times, contracting capacity and the interests of participants in the timing of disposition may all vary widely depending on the characteristics of the case and the defendants. Thus, factors which are adding months to the disposition of one case may be utterly irrelevant to the disposition of a second case. In this world, the problem of "adding up" causes of delay across all cases in the court is likely to be extremely difficult. Moreover, because the factors

Figure 1


Case A:
Minimum Time To Develop "Contracting Capacity"
Arrest
Time
Minimum Due Process Time Without Congestion or Scheduling Problems
Minimum Due Process With Congestion At Level X
Maximum Due Process Time Without Congestion or scheduling problems
Maximum Due Process With Congestion At Level X.
Case B:
Minimum Time To Develop "Contracting Capacity"
Arrest
Time
Minimum Due Process Time with No Congestion of scheduling problems
Minimum Due Process Time With Congestion At Level X + △
Maximum Due Process Time Without Congestion or scheduling problems
Maximum Due Process With Congestion At Level X + △

causing delays are highly variable, the factors that turn out to be important for a given court may change dramatically over time. Given this complexity, the best way to determine the causes of delay may be simply to experiment with a variety of different policy instruments designed to reduce delay caused by different factors. Priority among the instruments may be determined by a rough sense that one cause of delay is likely to be more important than others. But we should always be prepared to adjust depending on the observed performance of the system. In the next section we will briefly outline some policy instruments keyed to different causes of delay.

3. Policy Instruments to Reduce "Times to Disposition"

A variety of policy instruments are available to reduce "times to disposition." The complexity of the court processing system suggests that in designing policies to reduce times to dispositoin we should probably think in terms of portfolios of policy instruments rather than single instruments. Both the uncertainty about the relative importance of any single factor, and the conviction that the effects of any single factor are importantly affected by other factors argue the wisdom of relying on a portfolio designed to affect several different sources of delay simultaneously. A rough, preliminary list of policy instruments keyed to specific factors is arrayed below:

a. Instruments to Reduce Delays Associated With "Due Process" Requirements

1) Eliminate steps in the existing criminal justice system that neither protect individual rights, nor screen out cases from the criminal justice system. (Examples of such steps may include some grand jury indictments, and having two complete trials for felony cases).

2) Require omnibus hearings on pre-trial motions rather than schedule court time to hear each motion consecutively.

3) Reduce the number of continuances in criminal cases by allowing judges to see the full record of the case before them, and insisting that "excessive" continuances be justified by written explanation.

b. Instruments to Reduce Delays Associated With "Congestion"

1) Provide additional resources to those pieces of the court system that are currently bottlenecks to the disposition of cases.

2) Use administrative systems to extract productivity gains from pieces of the system that are currently bottlenecks.

c. Instruments to Reduce Delays Associated With "Scheduling" Problems

1) Allow substitutability among individual defense attorneys, prosecutors and judges. (Note: this may conflict with the rights of defendants to choose their own counsel, may reduce the speed with which a "contracting capacity" can be developed, and may increase incentives for strategic delay as defendants see benefits in judge or prosecutor "shopping").

2) Improve the quality of information centrally available about the existing commitments of defense attorneys, prosecutors and judges. (Note: these systems will be useful only if several demanding conditions are met: 1) all the commitments of the participants for the relevant times are entered into the system; 2) if it is possible to predict the amount of time required by a given commitment. If these break down, the whole system will break down.)

(Note: I am generally pessimistic about the potential of "improving scheduling" as a device for reducing delay. My hunch is that if they have had effects on court delays, they are likely to have resulted from productivity gains generated by closer monitoring rather than improved scheduling. But I would like to see them operate in some place where they have been successful.)

d. Instruments to Facilitate More and Earlier Plea Bargaining

1) Require full "discovery" of both prosecution and defense cases at an early stage of the proceeding to insure an efficient exchange of information.

2) "Sponsor" consultations among the interested parties outside the court proceedings.

3) Require that a case begin with one judge and prosecutor remain with that judge and prosecutor until the conclusion. (Note: this increases the scheduling problems, but reduces the opportunities for judge-shopping. It could also lead to horizontal inequities as given judge and prosecutor teams developed their own sense of what specific cases were worth without reference to other parts of the system.)

4) Forbid prosecutors from reducing pleas they offer as the case moves through the process. In effect, guarantee that the first offer will be the best offer and that there is no reason to delay hoping for a better deal. If the case deteriorates, it will have to go to trial. (Note: this procedure may increase congestion in the courts.)

e. Instruments to Reduce Strategic Advantages of Delay for Defendants, Defense Attorneys and Prosecutors

1) Reduce disparities among prosecutors and judges to eliminate incentives for court shopping.

2) Arrange for cases to be protected more adequately over time (i.e. arrange for affadavits to substitute for witness appearances; compensate witnesses; schedule times at the convenience of witnesses; etc.)

3) Prohibit prosecutors and judges from reducing changes to dispose of old cases.

4) Provide more public defenders who have no economic interests in prolonging the process.

5) Pass "speedy trial" laws which force the state to dispose of the case in a minimum period of time if the defendant insists on it.

f. Policy Instruments to Affect Judges' Incentives to Reduce Delay

1) Make sure that judges have access to records describing the full processing of a given case so that they are aware of all the motions and continuances that have been requested.

2) Organize the courts so that judges are responsible for disposing of cases that come to them (Note: this increases scheduling problems.)