INTRODUCTION

Next to the police, the lower criminal courts play the most important role in forming citizen impressions of the American system of criminal justice. Even excluding traffic offenses, each year several millions of people are drawn into contact with these courts as defendants, complainants, or witnesses. Moreover, an appearance in court may have reverberations that affect a person's spouse, family, friends, and employer.

In systems operating with a two-tiered criminal court system, roughly divided by misdemeanor and felony jurisdiction, about 90 to 95 percent of all cases are handled in these lower courts. Armed robbery, rape, and homicide are rare exceptions in comparison with the overwhelming number of petty offenses which swamp the lower courts. The pressures of coping with this large number of petty cases shape court practices and in turn affect the ways in which more serious cases are handled.

Different levels of courts have distinct pathologies. The seriousness of the offense (and consequently the possible severity of outcome) affects the ways court officials approach their work. When a suspect is likely to be sent to jail for several years, his case is handled with far greater care than is a case likely to result in a small fine. Unless they are carefully bounded by reference to seriousness of charges, generalizations about how criminal courts operate can be grossly misleading. Even within the same court, what is routine for one type of case may not be for another.

In this study, my observations focus primarily on the lower court in New Haven, Connecticut, the Court of Common Pleas

as it is now called. It has sentencing jurisdiction over misdemeanors and lesser felonies. The generalizations I hazard about the flow of criminal cases and the nature of court organization which stem from this examination of a single court are usually restricted to lower courts or to the handling of "little" cases. As I emphasize in this study, the pathologies of criminal courts vary widely, largely in accordance with the magnitude of the "stakes" involved. A recurring and continuous phenomenon in lower courts may not occur at all in higher courts that handle "bigger" cases.

Although this book focuses on a single court in a single city, it is by no means an analysis of a unique institution or an institution in a unique setting, nor does it focus on features of the institution and its setting that are unique or even particularly distinctive. Most students of the criminal process agree that the operations of the criminal courts are shaped by little-understood factors, and that decisions are made as a consequence of an uncharted, complex, and interdependent set of relationships. Both of these factors militate against a comparative approach which by definition must *impose* at the outset a developed framework on the research. While there have been a number of studies comparing outcomes in several court settings, by and large these have been superficial reports which did not convince even their authors that they adequately controlled for major relevant factors. In contrast, the best of the recent comparative analyses of criminal courts have examined the more structured felony courts and focused on only two and three jurisdictions. But even their authors took pains to point out the limitations of their comparisons. So far as I know, there are no published full-length comparative studies of *lower* criminal courts.

Comparative analysis implies a deductive research strategy, elaborating on a typology, testing hypotheses, or applying a theory. At a minimum, it requires *advance* knowledge of relevant factors, for it must impose requirements on the data collection so that the data will be truly comparable and the variables

operationalized in equivalent fashion. I am not convinced that current knowledge of criminal court processes is well developed, and unless or until there is a substantial body of carefully drawn descriptive and inductive research on which typologies can be drawn and until classifications are made, the benefits of an analysis of a single setting may be as great as, if not greater than, those of comparative studies.[1]

This is not to suggest that this study and case studies generally do not have any devices to focus inquiry or to guard against preoccupation with the idiosyncratic. The best of them do; they rely on a test of substance and theoretical interest. Does the analysis focus on a substantial problem? Is the inquiry cast in general, theoretically intriguing terms? Are generic problems central to the analysis? If the answers to these questions are affirmative, then it is likely that the resulting analysis will provide a *general* explanation, one that maintains an interest in and focus on the generic rather than on the particular. To the extent that this takes place—and I have made an effort to see that it has in this book—the researcher undertaking a study of a single setting or a single institution has no need to apologize for not adopting the hallmark of social science, comparative analysis, and in fact may be able to make the claim that, unfettered by the constraints of predetermined data collection requirements, he is freer to pursue general theory.

A concern with the substantively important and the theoretically generic has guided this study at every stage. The central question is, How is the criminal sanction administered? As it is explored, this question assumes various forms: How is the criminal sanction administered in a lower court in light of its low visibility and vast powers of discretion? How are rules used in this process? How does a concern with substantive justice shape the process? How does a legal system cope with a high volume of "low stakes" cases? How do transaction costs affect the process? Answers to these questions should illuminate not only criminal, but civil court issues as well, and address issues that

are of increasing concern to students of modern, complex societies.

The concerns that guide this study have not been plucked from thin air or "discovered" by random observation. They have their roots in the perennial theoretical issues of social science and other research on criminal justice administration.[2] The concern with the court organization and structure, and particularly the importance of environment and social context in shaping it, draws on a long tradition of research on criminal courts and other public institutions. Whereas the particular ways in which organization and social context shape the operations of the New Haven court will not be generalizable to all or even most American cities, the important lesson in this analysis is that the interdependencies of the separate components of the system and their collective relationship with the larger environment have important effects on how justice is perceived and administered. Indeed, substantial changes in the way courts operate may more likely be brought about by changes *outside* the courthouse than within it.[3]

Social scientists have long been interested in the development and application of rules and the tension between formal and substantive justice.[4] The law is only an approximation of some portion of a polity's values, and of necessity it must be stated in general and abstract form, for no set of rules can be detailed enough to anticipate or provide for all particular situations in which they are to be applied. Because of this, and because the law is overdetermined, allowing conduct to be defined variously by more than one rule, discretion is inevitable. Even under the best of circumstances, those who administer the law must mold abstractions, "fill in the gaps," and in the process work their own views of *substantive justice* into the administration of the law. Although the importance of values of individuals within the court is moderated by the collective nature of much decision making and by group pressures, the role of individual values in the evolution of a group consensus of substantive justice is im-

portant. Informed by the concerns of such writers as John Hogarth, Willard Gaylin, Martin Levin, William K. Muir, Philip Selznick, and Lon Fuller, this study focuses on the substantive nature of justice that court officials bring to their work.[5] Again, while it is impossible to know precisely how generalizable the particular constellation of values in New Haven is, this study shows how lower court processes are structured to invite and indeed necessitate the rise of substantive justice. Although these values will vary by individual and by community, this study shows they must be considered in any complete account of criminal case processing.

Finally, I examine decision-making and processing costs, which are important factors in accounting for the ways the court handles cases and defendants respond to the court. In a great many instances these processing costs turn the principles of criminal procedure on their head, reducing the presumed objects and end results of the process, adjudication and sentencing, to incidental actions. These costs of the pretrial process are not only important sanctions in their own rights, they in turn shape and are shaped by the nature of the court organization and the conceptions of substantive justice. Again, I do not claim that the particular ways in which these costs are felt in New Haven are characteristic of the ways pretrial costs affect criminal cases in all other cities. Clearly there are significant variations.[6] I do hope, however, that this discussion shows how important these processing costs are in shaping court procedures generally.

Even if one agrees with my argument for the benefits of an intensive analysis of a single setting, one final question remains: Why New Haven? The answer was obvious for me: location and access. I was at Yale during the period I conducted this research, and the courthouse was just a few blocks away from my office. This proximity allowed me to spend a great deal of time in the courthouse, maintain close connections over a long period, and as the reader of chapter five will find, to move back and forth between data collection and data analysis, a luxury

few field researchers have. Most researchers can spend only a few weeks or months at their research site, and then must return home to analyze and write up the data; those conducting comparative studies are confronted with the additional need to fit data into a precoded format not designed for that particular setting.

The importance of access cannot be overemphasized. Courts are parochial institutions; each possesses its own peculiar information system and shorthand language for maintaining it, and it is precisely for this reason that I am skeptical of many comparative and quantitative studies of criminal courts. The court in New Haven, as are courts elsewhere, is like a closed community, and it took me some considerable time before I could penetrate it. I had to gain the confidence of its members, learn their language, and become a familiar face to them. A brief excursion into the courthouse simply would not have sufficed.

One last set of questions about the research site remains. Is New Haven typical? Can what we learn here be generalized to other cities as well? So far I have dealt with this question in general terms, but a specific answer is called for. My response is similar to the response of other students of New Haven's institutions: This is not really the right question. No single city can be regarded as "typical." The correct test is not to show that New Haven is typical of all American cities or typical of middle-sized cities, but rather to show that it is *not* so atypical as to be unique. I marshal evidence on this point with respect to rates of crime and arrests in chapter three, and for an extended treatment of this concern, I refer the skeptical reader to the introductory chapters of Robert Dahl's *Who Governs?* and Raymond Wolfinger's *The Politics of Progress*, both of which argue that New Haven is *not particularly* distinctive.[7] I emphasize "not particularly," because in the final analysis all cities and locations are distinctive. As Raymond Wolfinger observed:

> Looking at other Connecticut cities, one notes that Bridgeport has a Socialist Party whose durable leader was mayor for 24 years;

Hartford has an economy in which the insurance industry plays an unusually important part; and so on. . . . A truly "typical American City" cannot be found and the best one can hope for is a research site that is typical of its type. New Haven meets this criterion; it is not a municipal freak.[8]

What Wolfinger argued for the city as a whole is true for the city's court as well. This was not an assumption I made at the outset, but rather a conclusion I drew after spending considerable time in court. Initially, I wondered whether or not the presence of one of the nation's leading law schools just a few blocks away might have a profound effect on the nature of justice administered in the courthouse. My conclusion was no; it does not have a profound effect, not even a major effect, and perhaps not even a measurable effect. Yale is noticeable in the courthouse, but less so than it is in many of the city's other public institutions, and there is no evidence to suggest that its effect is discernibly different from that of any other university in any other community. Occasionally a student is arrested and brought into court; at times classes make visits to the courthouse to observe the proceedings, or courthouse officials are invited to speak to student groups; from time to time a law school student interns in the court. On the whole, the educational credentials of the attorneys practicing in the New Haven criminal courts are fairly impressive, perhaps because of the presence of Yale. But as Anthony Platt and Randi Pollock conclude in their study of a public defender's office in a West Coast city, this phenomenon may be a general consequence of the times.[9] The activism of the 1960s coupled with the dramatic expansion of the rights of the criminally accused seemed to have attracted a distinctively well-credentialed group of young attorneys to courthouses everywhere, and a few years later many are still there.

Some readers of drafts of this book detected what they thought was an incongruity in style: I identified the city and court, but not the particular individuals whom I quoted or whose actions I described. But there are reasons for this: While

writing this book, I carefully examined and at times took strong issue with the approach and findings of other research reports based on observations of courts in New Haven and elsewhere, and hope that my findings will be subjected to the same scrutiny. That is why I have identified the city. In the final analysis I will leave it to others to judge how broadly or narrowly the findings I report can be generalized. But there are also several reasons for not identifying the particular individuals whom I quote or whose behavior I describe in my study; most often I avoided it to honor confidentiality, at times to save people embarrassment, and at others simply not to clutter up the book with a host of once- or twice-mentioned names. I would hope that the evidence and observations I present here will be tested against additional information on this city as well as against information on other cities. Only if such collective work takes place can social science proceed successfully.