THE ROLE OF THE COMPLAINING WITNESS IN AN URBAN CRIMINAL COURT

ROBERT C. DAVIS
VICTOR RUSSELL
FRANCES KUNREUTHER

1980

VERA INSTITUTE OF JUSTICE
377 BROADWAY
NEW YORK, N.Y. 10013

IN COOPERATION WITH

VICTIM SERVICES AGENCY
2 LAFAYETTE STREET
NEW YORK, N.Y. 10007

This research was conducted by the Vera Institute of Justice in cooperation with the New York Victim Services Agency. It was funded under grant #2456 from the intensive evaluation program of the New York State Division of Criminal Justice Services. The views herein are solely those of the authors and do not necessarily reflect the opinions of the Vera Institute, the Victim Services Agency, or the Division of Criminal Justice Services.

Table of Contents

FORWARD

The research reported here grew out of the experience of Vera's Victim/Witness Assistance Project in Brooklyn, New York. That project (later institutionalized as the Victim Services Agency) was begun with the intent of aiding crime victims and witnesses and, in so doing, increasing their willingness to cooperate with criminal justice officials and enhancing their attitutes toward the criminal justice system. In designing its activities, the Victim/Witness Assistance Project was guided by past research and common-sense ideas about the causes of victim/witness disaffection and non-cooperation. But these ideas, when put into practice, did little to change the attitudes and behavior of victim/witnesses.

The research reported here was part of a program of research and evaluation of new programmatic efforts at the Victim/Witness Assistance Project begun in an attempt to obtain a better understanding of the causes, effects, and cures of victim/witness disaffection and non-cooperation. Other research in this program, which was funded by the New York State Division of Criminal Justice Services, is described in Davis, Tichane, and Grayson (1980), Davis, Tichane, and Connick (1980), and Davis, Russell, and Tichane (1980). It is hoped that these research efforts will help to provide a basis for understanding of victim/witness disaffection and non-cooperation -- problems that remain widespread in urban criminal courts.

I

INTRODUCTION

During the late 1960's a series of victimization surveys was launched by the President's Commission on Law Enforcement and the Administration of Justice [1], and later by the Law Enforcement Assistance Administration [2]. The results of these studies were considered alarming because they showed that, as high as reported crime was, the actual crime rate was much higher; many persons were failing to report crimes to the police.

About the same time, an awareness began to grow that even when victims do report crimes and police do make arrests, victims frequently fail to cooperate in prosecuting the offenders. As a result, it was believed, many cases in lower criminal courts were eventually dismissed that might have resulted in conviction if the victims had cooperated more fully in prosecuting their cases. As early as 1967, the President's Commission on Law Enforcement and Criminal Justice noted that:

> "In recent years there has been growing concern that the average citizen identifies himself less and less with the criminal process and its officials. In particular, citizens have manifested reluctance to come forward with information, to participate as witnesses in judicial proceedings, and to serve as jurors. The cause of these negative attitudes are many and complex, but some aspects of the problem may be traced directly to the treatment afforded witnesses and jurors."

The reluctance of victim/witnesses to attend court, and the consequences of their failure to do so, were soon high-lighted in other studies. While noting the paucity of data on the subject, the Courts Task Force of the National Advisory Commission on Criminal Justice Goals and Standards (1967) reported that the failure of victim/witnesses to attend court proceedings was "throughout the country, the most prevalent reason for dismissal of cases for want of prosecution and a significant contributor to overall dismissal rates." The Task Force found that, in New York City's Criminal Court, for example, witness non-attendance was responsible for up to 60 percent of all dismissals.

According to Ash (1972), a survey of prosecutors' perceptions of court delay conducted by the Center for Prosecution Management found that all survey respondents thought victim/witness non-cooperation to be a problem, and to contribute significantly to court delay. At about the same time, a study in Washington, D.C. revealed that nearly half of felony arrests were being rejected for prosecution at the prosecutors' initial screening because victim/witnesses were uncooperative (Hamilton and Work, 1973) [3].

Once the problem had been identified and publicized, expert observers and researchers began the search for causes. A number

of studies blamed the failure of victim/witnesses to cooperate on disaffection caused by the hardships and inconveniences associated with court attendance and the frequently discourteous treatment victim/witnesses received from court officials when they did attend court (see Knudten, 1976, for a full discussion of the costs incurred by victim/witnesses as a result of their experiences in the court system). Victim/witnesses, it was argued, become "turned off" and withhold their cooperation from the criminal justice system. Reasons advanced for victim/witness disaffection included: repeated, often needless, court appearances (Banfield and Anderson, 1968: Chicago Crime Commission, 1974; Fitzpatrick, 1975); long waits in the courthouse for cases to be called (Ash, 1972); neglect by court officials and resulting confusion about court proceedings (New York State Supreme Court, 1973: Zeigenhagen, 1974): poor physical facilities (Sacramento Police Department, 1974); and loss of income and inadequate compensation (Fitzpatrick, 1975). Ash (1972) eloquently summed up the plight of the victim/witness:

> In the typical situation the witness will several times be ordered to appear at some designated place, usually a courtroom, but sometimes a prosecutor's office or grand jury room. Several times he will be made to wait tedious, unconscionable long intervals of time in dingy courthouse corridors or in other grim surroundings. Several times he will suffer the discomfort of being ignored by busy officials and the bewilderment and painful anxiety of not knowing what is going on around him or what is going to happen to him. On most of these occasions he will never be asked to testify or to give anyone any information, often because of a last-minute adjournment granted in a huddled conference at the judge's bench. He will miss many hours from work (or school) and consequently will lose many hours of wages. In most jurisdictions he

> will receive at best only token payment in the form of ridiculously low witness fees for his time and trouble. In many metropolitan areas he will, in fact receive no recompense at all because he will be told neither that he is entitled to fees nor how to get them. Through the long months of waiting for the end of a criminal case, he must remain ever on call, reminded of his continuing attachment to the court by sporadic subpoenas. For some, each subpoena and each appearance at court is accompanied by tension and terror prompted by fear of the lawyers, fear of the defendant or his friends, and fear of the unknown. In sum, the experience is dreary, time-wasting, depressing, exhausting, confusing, frustrating, numbing and seemingly endless (1972: 390).

Some studies emphasized poor communication between court officials and victim/witnesses as a major cause of non-cooperation. Fitzpatrick (1975) reported that many of the victim/witnesses he surveyed stated that they failed to attend court dates because they had never been notified to appear. In the most extensive research effort on victim/witness cooperation, Cannavale and Falcon (1976) found many of their survey respondents reported being willing to cooperate but nonetheless had been labelled "uncooperative" by prosecutors. A major reason for this misperception seemed to be poor communication between the police, the prosecutors, and these victim/witnesses: many respondents who had been labeled uncooperative reported that they did not recall being a victim of or witness to a crime, or that they had ever been asked to serve as a witness for the prosecution. Other victim/witnesses seemed to have been labelled uncooperative merely because prosecutors anticipated an uncooperative attitude on the basis of their past experience with victim/witnesses having similar characteristics.

Another theme that emerged from studies of victim/witness non-cooperation was that victim/witnesses who have existing ties of kinship, friendship, or another relationship to the defendant are less likely to cooperate with the prosecution than those who are strangers to the accused. A study by the Vera Institute of Justice (1977) found that, in roughly half of all felony arrests in New York City (excluding crimes without indentifiable victims, such as possession of narcotics or gambling), the complaining witness and defendant had a prior relationship. Surprisingly, many property crimes as well as crimes against the person involved prior relationships. Furthermore, cases involving a prior relationship were dismissed at a high rate and the dimissals were largely attributable to victim/witness non-cooperation. Other studies (e.g., Williams, 1976: Cincinnatti Police Division, 1975: Chicago Crime Commission, 1974) also reported that victim/witnesses who knew the defendant were more likely than other persons not to cooperate fully

p 1†

> It would appear that when the victim and defendant have a close social relationship, dispute resolution may be occurring outside the courtroom. At best, one can say that such family cases, and perhaps cases between close friends, are best settled out of the criminal setting. At worst, a pattern of violence between a husband and wife may continue with the beaten spouse unable or unwilling to leave the family setting, and hence, unwilling to continue to testify in a criminal case.(1976:204).

By 1974, enough evidence was available on the extent of victim/witness disaffection and non-cooperation, their consequences, and their apparent causes for the Law Enforcement Assistance Administration to intervene. In that year, LEAA launched the Citizens' Initiative Program in the belief that:

> It is only through the integration of citizens into the criminal justice process in a significant and positive way that crime prevention can occur. Conversely, the criminal justice system has a key role to play in requiring the citizen to abandon his apathy and to assume his obligations.

Although the first federally-funded victim/witness project had begun earlier, the launching of the Citizens' Initiative Program with its objective of funding 19 victim/witness projects during its first year marked the formal beginning of what Stein (1977) has referred to as the "victim movement."

By 1978, more than 90 of these victim/witness projects were funded by LEAA. Many were located within, or worked closely with, prosecutors' offices. Many programs set explicit goals of reducing victim/witness disaffection and non-cooperation, and designed their program efforts with the current thinking on causes of victim/witness non-cooperation in mind. Thus, one set of program activities were designed to reduce the "costs" to victim/witnesses of having to appear in court: projects created reception centers to

provide comfortable and secure places for victim/witnesses to wait while in court, and aided clients in collecting witness fees from prosecutors. A number of projects began or expanded the use of stand-by telephone "alerts" to keep victim/witnesses from having to appear in court except when it was determined on the day that a scheduled hearing was to take place that the victim/witness was actually needed.

Another set of activities, common to many of the victim/witness programs that were allied with prosecutors' offices aimed to provide clients with a clearer understanding of their obligations in their role as prosecution witnesses and of the court process. These activities included distributing witness brochures; explaining court procedures, notifying witnesses of upcoming court dates, and (in some projects) informing persons of the dispositions reached in their cases.

The largest of these projects was the Victim/Witness Assistance Project (V/WAP), established by the Vera Institute of Justice in Brooklyn Criminal Court [4]. V/WAP instituted a range of services for victims and witnesses designed to mitigate problems resulting from the crime itself and from problems associated with coming to court. V/WAP offered victim/witnesses a crime victim hotline; an emergency repair service for burglary damages; transportation to court; a secure a waiting area, and a child-care

center in the court; counseling; and other services. The major emphasis of the project, however, was on victim/witness management. V/WAP worked in conjunction with the Kings County District Attorney's Office and the New York City Police Department to coordinate the court appearances of police and civilian prosecution witnesses. The project attempted to reduce the number of unnecessary appearances required of victim/witnesses, and to increase the attendance rate of victim/witnesses whose presence in court was needed by the prosecutor. It hoped to achieve the latter objective by instituting more comprehensive victim/witness notification efforts and by reducing the costs incurred by victim/witnesses as a result of their involvement with the criminal justice system. The project's planners anticipated that these measures would reduce continuances and dismissals caused by victim/witnesses' absence from court or refusal to testify, and would "improve crime victim and civilian witness attitudes toward New York City's criminal justice system."

However, in spite of the project's efforts, the early evaluation findings were disappointing. In a series of impact reports produced by the project's research unit (Vera Institute of Justice 1975, 1976a, and 1976b), it was reported that:

(1) Although V/WAP had implemented a more comprehensive and efficient notification system, and although it kept many victim/witnesses from coming to court unnecessarily, the project had not succeeded in increasing the low attendance rate of victim/witnesses whose attendance was required by the prosecutor.

(2) Since it had not succeeded in increasing attendance of victim/witnesses, V/WAP had also been unable to lower the rate of dismissals for failure to prosecute.

(3) While the project's services succeeded in meeting the needs of victim/witnesses by offering specific assistance, and while the services themselves were highly rated by users, they did not seem to affect users' willingness to come to court or their opinions of the court system.

These findings were not unique to Brooklyn. A first-year evaluation of The Witness Project in Los Angeles (Swasy, 1976) found that project had not improved the low attendance rate of victim/witnesses, nor had it reduced continuances or dismissals due to victim/witness absence. And in an examination of all published evaluation literature on victim/witness programs the American Institutes for Research (1980) found little consistent evidence that victim/witness programs increased witness attendance in court or that they decreased dismissals due to victim/witness problems.

In other words, the remedies for victim/witness disaffection and non-cooperation suggested by researchers and expert observers did not seem to work when put into practice. Reducing the trauma and inconvenience associated with coming to court or improving communication with victim/witnesses was not enough; non-cooperation remained a major problem, at least in urban lower criminal courts where the problem had been first identified. The causes of victim/witness disaffection and non-cooperation were apparently more complex than had previously been supposed.

In retrospect, the failure of these programs to reduce disaffection and noncooperation is not surprising. For one thing, conclusions drawn in studies of victim/witness non-cooperation were not always justified by the data collected. For example, the unverified self-reports of victim/witnesses may have been given too much credence. In some cases, victim/witnesses were simply asked why they had been uncooperative, and, in the Cannavale and Falcon (1976) study, the self-reports of victim/witnesses were even used to determine whether they had been cooperative; because people often do not understand themselves the motives for their actions and because people tend to want to place their actions in the best possible light, it seems inadvisable to draw conclusions from self-reports alone [5]. In other studies, authors examined problems and costs incurred by victim/witnesses in coming to court (either through their own observation or based on interviews with victim/witnesses) and merely assumed that the removal of these problems and costs would improve attitudes towards courts and induce more people to cooperate.

Further, the literature on victim/witness non-cooperation leaves unaddressed the question of why most victim/witnesses do cooperate despite suffering similar hardships and inconveniences. It shows, in other words, that people frequently incur unreasonable costs in coming to court; it does not convincingly demonstrate, however, that this is the cause of their failure to cooperate.

The present study is an effort to try to better understand the reasons why many victim/witnesses in Brooklyn Criminal court still failed to cooperate -- in spite of the fact that the Victim/Witness Assistance Project had ensured regular notification of court dates and had provided services to reduce the inconvenience of coming to court. Guided by previous research, the study initially pursued several lines of inquiry to try to pin down the causes of victim/witness non-cooperation. First, victim/witnesses who had failed to attend court were asked directly the reasons for their actions. Second, in order to determine whether certain victim/witnesses were predisposed not to cooperate (for example, those with a prior acquaintance with the defendant), characteristics of cases and personal characteristics of victim/witnesses were correlated with victim/witness cooperation. Third, in order to determine whether victim/witnesses were "worn down" as cases dragged out, correlations were examined between cooperation and number of continuances, number of trips to court, and problems encountered in coming to court.

But it was soon discovered that these approaches did not shed much light on the causes of victim/witness non-cooperation. When asked directly whether they had been able to attend court on the days which they had been asked to, the overwhelming majority of victim/witnesses responded that they had attended court whenever asked or that they had never been asked. At this point,

non-attendance appeared to be - as Cannavale and Falcon had suggested - a result of poor communication between the court and victim/witnesses. Yet the prosecutor's attendance records and notification records of the Victim/Witness Assistance Project indicated that many of those victim/witnesses who said they had come to court or had never been asked in fact had been notified of the court date yet had not come to court. Thus, the self-reports of victim/witnesses proved highly unreliable, either because of poor memories or reluctance to admit their failure to attend court. Moreover, little success was achieved in examining statistical associations between case and victim/witness characteristics and the likelihood of victim/witness cooperation. These analyses yielded some provocative findings about the willingness to cooperate of victim/witnesses who had ties to the defendant. But on the whole, case and personal characteristics of victim/witnesses were not found to have strong associations with the behavior of victim/witnesses in the court process. Finally, little evidence could be found to suggest that "wearing down" of victim/witnesses was a major cause of their failure to cooperate. The results of these analyses are contained in Appendix A.

As a result of the difficulty in explaining why individual victim/witness did or did not cooperate the study gradually began to take quite a different turn. If non-cooperation was pervasive across all types of cases and all types of

victim/witnesses, it was reasoned that it must be the result of something in the common experience of being a victim/witness. And that "something" must be deeper than just inconvenience or poor communication by the court because the Victim/Witness Assistance Project had done much to improve both of these situations without any demonstrable effect on the rate of victim/witness cooperation. This line of thinking led to a belief that a better understanding of the causes of disaffection and non-cooperation could only be achieved by undertaking a broader examination of the role of the victim/witness in the lower criminal court adjudication process.

That examination involved, on one hand finding out what victim/witnesses sought from their involvement with the court, what part they played in the court process, and what victim/witnesses could hope to gain by lending their cooperation to court officials. And it involved, on the other hand, trying to understand the goals of prosecutors (and how they differ from those of victim/witnesses), how prosecutors go about attaining their goals, and the nature of their need for the cooperation of victim/witnesses in that effort.

These questions, then, came to form the basis of the present suudy, which attempts to understand the behavior of victim/witnesses -- their willingness or refusal to cooperate -- within the context of exchanges that occur between the victim/witnesses and criminal court officials. In the process of the

investigation, it became apparent that interactions between court officials and victim/witnesses were qualitatively different in cases in which victim/witness and defendants were strangers versus cases in which they had a prior acquaintance. Therefore, one of the major themes which emerges in this report is an elaboration and extension of the discussion in the Vera (1977) report concerning the part that victim/offender relationship plays in shaping the goals of victim/witnesses and the response of criminal court officials.

The study design consisted of two parts; one draws data from an interview sample and the other draws data from an observation sample.

The interview sample consisted of 295 complaining witnesses [7] whose cases entered Brooklyn Criminal Court in July and August of 1976. These complainants were interviewed twice -- once in the complaint room, as the case entered the system, and once again, at the conclusion of the case in the Criminal Court. In the entrance interviews, complainants were asked to state their objectives in pressing charges, their feelings about what ought to happen to the defendants, and their expectations about the extent to which their needs and goals would be met in the court process. The exit interviews queried complainants about their participation in the disposition process, their satisfaction with the case outcomes, their perceptions of court officials, and their reasons for failing to

cooperate (if applicable). In addition, information was gathered, from prosecution, court and V/WAP files, on the characteristics of the interview sample cases, the record of complainant attendance at court in these cases, and the court's actions.

In the second part of the research, a sample of 60 cases entering the court approximately a year and a half later, in the spring of 1978, was tracked by observers, from the complaint room through court appearances to their conclusion in Criminal Court or their departure for Supreme Court. Each time a hearing for one of these cases was scheduled, an observer was present in court. The observer recorded the discussions about the case between the members of the courtroom workgroup (judge, prosecutor, defense attorney, and arresting officer), discussions between prosecutors and complainants, and the action taken by the court. Upon disposition, informal efforts were made to query prosecutors and defense attorneys about the reasons for their actions over the course of the case. In addition, attempts were made to contact complainants, to probe their experiences with the court. The observation sample provided a look at the dispositional process that was more detailed than the picture emerging from data collected in the larger interview sample, and that served as a back-up source of information to explain some of the research findings.

The methods used in collecting data from the interview and observation samples are discussed in greater detail in Appendix B.

* * *

In Section II, the body of the report begins with a description of the motivations and expectations of complainants when their cases entered Brooklyn Criminal Court. It suggests that there is a good deal of diversity in complainants' needs and desires.

The third section begins with a description of case flow in the Brooklyn Criminal Court. The chapter continues with an analysis of how decisions are made by lower criminal courts and concludes with a discussion of the applicability of that analysis to decision-making in Brooklyn Criminal Court.

The fourth section examines the role of complainants in the criminal court dispositional process. A brief discussion of their legal role is followed by an analysis of the informal influence of complainants in the court process.

The fifth section of the report begins by examining complainants' reactions to their experiences in the court

process and to the dispositions of their cases. It continues by exploring the relationship between complainant participation in the decision process and their satisfaction with case outcomes. It concludes with a discussion of the link between court officials responsiveness to complainants' interests and willingness to cooperate.

In the sixth and concluding section, some implications of the research are discussed, and they are related to more recent program developments.

FOOTNOTES

1. These early surveys were conducted by the Bureau of Social Science Research (Biderman, et al, 1967), the University of Michigan's Survey Research Center's Institute for Social Research (Reiss, 1967), and the University of Chicago's National Opinion Research Center (Ennis, 1967).

2. E.g., Hindelang (1976); Kalish (1974).

3. Subsequently computerized management information systems installed in prosecutors' offices nationwide, with the aid of the Institute for Law and Social Research (INSLAW), have substantiated the fact that witness noncooperation is a major contributor to dismissals, at least in urban centers.

4. Now institutionalized within the New York City Victim Services Agency.

5. See B.F. Skinner (1974), About Behaviorism (New York:Vintage Press): "Questions of this kind are not always correctly answered, since we often do not know why we behave as we do ... When we do not know why we behave, we are likely to invent causes..." (p.34).

6. In fact, the sample originally included all civilian prosecution witnesses recorded by police officers on their arrest reports. However, because the number of non-complainant witnesses in the final sample was small (20 of 315 respondents; all 20 had been eyewitnesses to crimes), and because the complainant's role is so central to the dispositional process, it was decided to drop from the sample the witnesses who were not complainants.

II

COMPLAINANTS:

WHO THEY ARE AND WHAT THEY WANT FROM THE COURT

The literature on victim/witness disaffection and non-cooperation has largely ignored the importance of victim/witnesses' goals and expectations to understanding their responses to the criminal justice system (Zeigenhagen, 1976 is a notable exception). Authors have seemed to assume (as court officials seem to assume as well) that victim/witnesses - out of a sense of civic obligation or interests in common with the prosecutor - will simply conform to the demands of the court unless the costs they incur by doing so become too great. In large part, this assumption seems to grow out of the fact that victim/witnesses are usually thought of as simply "witnesses" -- a term that implies persons who have not themselves suffered losses as a result of crimes, and who, therefore, do not have personal stakes in the outcomes of their court cases.

The present study found that 94% of "witnesses" in Brooklyn Criminal Court were also victims of crime [1]. And these victims, who had felt first-hand the effects of injury, property loss, or emotional trauma, very often had strongly-felt personal goals which they hoped to realize through their involvement in the criminal justice system.

This chapter examines the varied circumstances that bring people to the Court, and how the circumstances shape complainants' reactions to the crime and their goals in the court process. Understanding these reactions and goals should, in turn, help to gain an understanding of complainants' behavior in and response to the dispositional process.

Complainants' Reactions to Crime

Complainants who enter the court system in Brooklyn are a diverse group. Although skewed toward the lower end of the socio-economic spectrum, there is considerable variation among them in terms of age, sex, education, employment status, and income (see Table 2.1). Just as complainants themselves are different, so are their reactions to being victimized, as the following examples illustrate.

In one case in the interview sample, involving robbery of a service station, the defendant had accosted the complainant (the station owner) and demanded his money. When the complainant refused, the defendant stabbed him with a broken vodka bottle and took off with $50 cash. The stolen cash, the cost of medical treatment, and time lost from work were substantial burdens that greatly angered the complainant; he felt strongly that the defendant should be jailed.

TABLE 2.1

COMPLAINANT DEMOGRAPHICS

Sex		
	Male	55%
	Female	45
	Total	100% (n=293)
Employment		
	Full-time	31%
	Part-time	6
	Self-employed	14
	Student	8
	None	41
	Total	100% (n=286)
Personal Income		
	Welfare-Unemployment	43%
	$0-4,999	11
	$5,000-7,499	10
	$7,500-9,999	8
	$10,000-14,999	15
	$15,000 & over	13
	Total	100% (n=197)
Age		
	Under 25	33%
	25-44	48
	45-64	15
	65+	3
	Total	100% (n=292)
Education*		
	8th grade or less	17%
	Some high school	38
	High school graduate or more	45
	Total	100% (n=284)

*Education history is recorded only for complainants over 25 years of age.

Some victims of violent crimes may be upset yet not want the defendant punished. In a different sampled case, a woman was severely beaten by her husband and required hospitalization. She refused to cooperate in her husband's prosecution. The incident had left her angry and afraid, knowing that she had to live with the possiblity that such an incident might very well occur again, but she did not want whatever she thought the court process had to offer.

Property crimes also can be devastating, especially to victims who are nearly destitute in the first place. In one sample case, a woman's food and rent money was stolen by her boyfriend, who apparently used it to drink and gamble. Meanwhile, the woman and her young daughter were threatened with eviction and their meager welfare payments, which they needed for groceries, were gone. She was very upset and wanted the case prosecuted, primarily to seek restitution from the defendant to help her resolve what was for her a financial crisis. But another complainant, whose purse (containing a large sum of money) was snatched, had her property returned after the defendant was arrested. She was reluctant to cooperate in prosecuting the defendant whom she recognized from the neighborhood.

As the examples suggest, victims' reactions to crime are attenuated or amplified by many factors including victims' economic means, whether or not property loss or medical expenses are

covered by insurance, victims' age or state of health, and by the extent of injuries that victims sustain. But perhaps the most important determinent of victims' responses to crime (and, as we shall see, of the court's response to victims as well) is the existence of a prior acquaintance between victim and offender. As the earlier Vera (1977) study had found, a large proportion of cases entering the court did not involve offenses committed against targets selected at random, but rather they involved offenses committed against persons known by the defendants. In the present sample, 24 percent of complainants had strong ties (including nuclear family members, lovers, and friends) to the defendants in their cases and an additional 19 percent were acquaintances of the defendant. Victimization can be a particularly distressing experience when it is at the hands of someone the victim knows, and perhaps trusts, and upon whom the victim may be emotionally or economically dependent. Victims who know the defendant are likely to realize that they will have continued contact with the defendant, perhaps even on a regular basis. Victimization for these complainants is not a discrete event bound in space and time. Rather, it is something that may influence their daily behavior patterns and thoughts as long as they remain in the same environment.

Even the characteristics of victims who knew the defendant differed from other victims in ways which suggest that they would be more vulnerable to the effects of crime (see Table 2.2).

TABLE 2.2
CHARACTERISTICS OF COMPLAINANTS IN CASES INVOLVING A PRIOR COMPLAINANT/DEFENDANT RELATIONSHIP

	Strangers	Relationships	
2.4(a) Type of Charge			
Assault	14%	50%	(χ^2=71.07, p<.01)
Robbery	26	5	
Burglary	27	20	
Larceny	21	4	
Weapons	2	9	
Other	11	11	
	100% (N = 161)	100% (N = 118)	
2.4(b) Complainants' Injuries			
None	70%	38%	(χ^2=34.88, p<.01)
Minor	16	20	
Medical Attention	12	32	
Hospitalized	2	10	
	100% (N = 160)	100% (N = 117)	
2.4(c) Prior Case In Court			
As Complainant	21%	25%	(χ^2=5.58, p<.10)
As Defendant	12	21	
None	67	54	
	100% (N = 160)	100% (N = 114)	
2.4(d) Complainants' Sex			
Male	68%	36%	(χ^2=28.31, p<.01)
Female	32	64	
	100% (N = 160)	100% (N = 117)	

TABLE 2.2 (continued)

	Strangers	Relationships	
2.4(e) Complainants' Age			
Under 25	32%	38%	(χ^2=9.29, p<.05)
25 - 44	45	53	
45 - 64	18	7	
65 +	4	2	
	100% (N = 159)	100% (N = 118)	
2.4(f) Complainants' Education			
High School Graduate	52%	35%	(χ^2=7.60, p<.05)
Some High School	34	43	
8th Grade or Less	14	22	
	100% (N = 154)	100% (N = 116)	
2.4(g) Complainants'Personal Income			
Welfare/Unemployment	24%	65%	(χ^2=32.12, p<.01)
Under $10,000	38	20	
$10,000 and over	38	15	
	100% (N = 95)	100% (N = 94)	
2.4(h) Proportion Employed			
Males	72%	47%	(χ^2=31.35, p<.01)
Females	50	17	
Overall	65	30	
	(N = 154)	(N = 115)	

The former victims were, for example, and more likely to be injured, and injured more seriously during commission of the crime (this is largely because prior relationship complainants were likely to have been the victims of assault while other complainants were more likely to be victims of burglary, robbery, or larceny). Prior relationship complainants were also less educated, more economically disadvantaged, more often female, younger and more often had been victims in previous court cases.

Data from the study confirmed the expectation that reactions to victimization vary between persons victimized at the hands of a stranger and those victimized at the hands of an acquaintance. In Table 2.3, emotional distress among complainants who did, and who did not, know the defendant is compared, controlling for differences between the two groups in type of crime (violent versus property). In both violent and property crimes, complainants who knew the defendant tended to be angrier at the defendant, angrier at themselves (for behavior contributing to their victimization), more afraid of the possibility that the defendant would take revenge on them for reporting the crime, and less safe in their home or neighborhood. This greater personal impact of crime on relationship complainants is also evident in Table 2.4, which displays problems reported by complainants as a result of victimization. Although complainants who knew the defendant were only somewhat more likely than other complainants to report problems, the problems they

TABLE 2.3

EMOTIONAL REACTIONS TO VICTIMIZATION ACCORDING TO TYPE OF CRIME AND COMPLAINANT/DEFENDANT RELATIONSHIP

	Violent Crimes			Property Crimes		
	Stranger	Prior Relationship		Stranger	Prior Relationship	
Proportion of Complainants Who:						
Were Very Angry at Defendant	38%	56%	(X^2=3.89)*	35%	39%	(X^2=0.12)
Were Very Angry at Themselves	11%	29%	(X^2=6.04)*	5%	16%	(X^2=1.92)
Were Very Afraid of Revenge by Defendant	27%	66%	(X^2=18.77)**	19%	55%	(X^2=12.79)**
Felt Very Unsafe in Their Homes or Neighborhoods	33%	47%	(X^2=2.36)	35%	50%	(X^2=1.87)

* $p<.05$
** $p<.01$

TABLE 2.4

TYPES OF PROBLEMS REPORTED BY VICTIMS, BY TYPE OF CRIME AND BY WHETHER OR NOT THERE WAS A PRIOR RELATIONSHIP WITH DEFENDANT

	Violent Crimes		Property Crimes	
	Stranger (n=57)	Prior Relationship (n=54)	Stranger (n=58)	Prior Relationship (n=28)
No Problems	25%	20%	26%	18%
Emotional Problems	30	48	9	39
Medical Problems (Injuries)	14	15	0	0
Financial Problems	32	17	66	43
	100%	100%	100%	100%
	(X^2=5.17, n.s.)		(X^2=11.93, $p<.01$)	

reported were far more likely to be emotional ones, regardless of whether the crime was against property or against the person. On the other hand, problems reported by complainants who did not know the defendant more often were financial in nature -- even when they were victims of violent crimes. In other words, these data suggest that complainants who know the defendant view their victimization in more personal and emotional terms while complainants who do not know the defendant are more likely to view the impact of the crime in economic terms.

Complainants' Desires of the Court

Data from the initial interview showed that, while complainants desires differ, most complainants upon entering the court had fairly specific ideas about what they wanted the court to do in their case (see Table 2.5). A surprisingly large minority of complainants (13%) said that they definitely were not interested in having their case prosecuted; there respondents often expressed the sentiment that the arrest itself had been sufficient to "teach the defendant a lesson." Among complainants who did want their case prosecuted, the result most frequently sought was punishment of the defendant (expressed as the primary goal of 28% of all respondents). Other complainants stated their primary concern as protection of themselves or their families (17%), restitution (15%), protection of society (5%), or rehabilitation of the defendant (5%).

TABLE 2.5

PRINCIPAL OUTCOME COMPLAINANTS SOUGHT FROM THE COURT

Result Sought	Frequency
Drop Charges	13%
Punish Defendant	28
Protection of Self or Family	17
Restitution	15
Protection of Society	5
Rehabilitate Defendant	5
No Clear Outcome Expressed	17
T O T A L	100%
	(N = 208)

Thus, most complainants (excluding 17 percent who were unable to articulate any clear desire) had their own ideas about what they wanted the court to do. Often these ideas were very specific. One woman who was assaulted by her husband, who was an alcoholic, said:

> He needs help. I want him to see a psychiatrist. I don't want him to be put in jail.

Some complainants expressed their desires in a very vehement manner. A woman who was raped at knifepoint stated:

> I want protection. They should send him to jail. Someone has to teach him a lesson so I know he won't get away with what he did to me. I'm determined to come back [to court] to see that something is done about all this.

But, on the whole the desires expressed by complainants were surprisingly moderate given (a) the serious nature of crimes committed against them (89% were arraigned as felonies) [2] and the losses complainants suffered as a result of the crime (52% reported property damaged or stolen; 42% reported being injured, 26% seriously enough to be taken to a hospital for treatment) [3], and (b) the short time which had elapsed between the crime and the interview (usually matter of hours). A number of complainants, in fact, expressed sympathy for the defendant and concern that the court not be too hard on him.

Given the different reactions to victimization among victims who knew the defendant versus those who did not, it

might be expected that the existence of a prior relationship would also affect the types of outcomes desired by complainants. And, indeed, this proved to be the case. As shown in Table 2.6, interests in securing protection for themselves or their families or simply dropping charges were far more prevalent among complainants who knew the defendant than among those who did not. Conversely, complainants who were strangers to the defendant more often expressed interest in restitution, punishment, and protection of society, or did not articulate any clear desire. The fact that many more complainants who knew the defendant named protection as their primary objective from the court further underscores the greater personal reaction to victimization of these complainants.

Conclusion

Complainants come from different walks of life, and react to the experience of victimization in a variety of ways. Some complainants - apparently feeling that their interests have already been satisfied by the arrest -- don't even want the defendant prosecuted. But one thing that complainants who did express interest in cooperating in the defendant's prosecution had in common was that they were not doing it solely out of a sense of civic responsibility. Complainants often have personal and often very specific goals they hope to realize through their involvement with the courts. Many feel strongly that the defendant ought to be incarcerated to pay for the

TABLE 2.6

PRINCIPAL OUTCOME COMPLAINANTS SOUGHT FROM THE COURT ACCORDING TO PRIOR COMPLAINANT/DEFENDANT RELATIONSHIP

Result Sought	Strangers	Acquaintances
Drop Charges	8%	18%
Punish Defendant	31	24
Protection of Self and Family	6	32
Restitution	19	9
Protection of Society	8	1
Rehabilitate Defendant	6	3
No Clear Outcome Expressed	21	12
T O T A L	100%	100%
	(n = 118)	(n = 90)

$X^2=36.77$, $p<.01$

injustice he perpetrated. Others seek restitution for lost property or injuries incurred during commission of the crime. Protection from continued violence or harrassment by the defendant was a strong motivating force among complainants who knew the defendant. For these complainants, emotional distress was high but their emotional or financial ties to the defendant precluded many from wanting the defendant sent to jail.

In effect, complainants form an exchange relationship (Blau, 1964) with court officials. They give to court their cooperation, which results in costs to complainants -- lost time and wages, the pain of reliving a traumatic experience, the risk of being the object of intimidation attempts by the defendant, and so forth. In return, complainants expect that court officials will take their case seriously and be responsive to their interests and concerns.

F O O T N O T E S

1. Originally, the population on which the survey sample was based was all civilian prosecution witnesses in Brooklyn Criminal Court. However, when it was discovered that only 6 percent of witnesses were not complainants, it was decided to exclude non-complainants from the final sample.

2. The proportion of felony cases in the sample is so high because many misdemeanors do not involve a civilian complaint, and because, in misdemeanor cases, the defendant is often released on his own recognizance by the police prior to arraignment. (This is by issuance of a Desk Appearance Ticket.) DAT cases were not included in the sample, but would not have been of major interest in this study (even when a civilian complainant was involved because the vast majority are disposed at arraignment and these complainants, therefore, have very limited exposure to the court, if any.

3. The latter category is probably under-represented in the sample due to the difficulty of obtaining entrance interviews with victims who were hospitalized.

III.

THE DISPOSITIONAL PROCESS

Brooklyn Criminal Court handles one of the largest caseloads in the nation, docketing over 50,000 new cases each year. It is responsible for the disposition of all misdemeanor complaints filed in Kings County. In addition, virtually all felony complaints begin in the Criminal Court. Those that are not dismissed or reduced to misdemeanors in the Criminal Court eventually are sent on to a grand jury for indictment and disposition in Brooklyn Supreme Court.

Although its caseload is unusually high, in most respects Brooklyn Criminal Court is not unlike other urban lower criminal courts. The economic deprivation of victims and defendants who make up the Court's clientele is reflected in the general state of disrepair of the physical plant. Paint and plaster are peeling, walls and floors are dirty, elevators and other fixtures often don't function properly. Rotundas and corridors which at one time may have been stately, are now devoid of seats or other amenities and appear cavernous and bare. Everything suggests that funds for maintenance are in short supply.

During the daytime hours, especially in the morning, the hallways are crowded and alive with a multitude of

conversations; police officers in and out of uniform stand around in groups passing the time until their cases are called; apprehensive complainants and defendants, often accompanied by their families or friends, cluster here or there or search for the proper courtrooom; defense attorneys discuss options with their clients; prosecutors interview witnesses or police officers; defense attorneys talk over cases with prosecutors. It is soon apparent that hallways are the places where much of the Court's business is conducted.

All cases enter Criminal Court through the district attorney's complaint room where prosecutors prepare felony or misdemeanor complaints which will be filed with the court at arraignment. The process of drawing up a felony complaint begins with an assessment of the seriousness and strength of a case by a seasoned prosecutor in the Early Case Assessment Bureau. Based on his assessment of "case worth", the screening attorney assigns a "track" which serves to inform prosecutors in court about the type of disposition their office feels is acceptable. The first step in the process is an important one, because the label it assigns to a case determines the way in which officials who handle the case later on in court will view it. Although information provided by the arresting officer or civilian complainant may influence screening prosecutors in their case assessments, prosecutors can and do make decisions that contradict the wishes

of either party. Based on considerations of office policy or practice, prosecutors may assign a low value to a case (or even decline to prosecute entirely) even though arresting officers or civilian complainants feel that the defendant deserves a lengthy prison sentence. Conversely, prosecutors may assign a high value to a case even when civilian complainants do not wish the defendant to be prosecuted.

Upon completion of ECAB's review, an accusatory instrument is drawn up by a junior assistant district attorney, and typed. Finally the complaint is signed by the arresting officer and/or civilian complainant. Officers and civilian complainants may spend between four and six hours here, mainly just waiting their turn for the next step in the process.

After a complaint is drawn up, cases enter the queue for arraignment, where formal charges against the accused are read. Depending on backlog, arraignment may occur anywhere from a few hours to more than a day after the complaint is drawn. The atmosphere in arraignment parts appears to be one of disorder and confusion. A constant stream of people wonders in and out of the courtroom. Family and friends of defendants, police officers, and other spectators frequently carry on conversation halted periodicaly by orders for silence from the bailiffs. In front of the judge's bench at the front of the courtroom, court officials

mill about, papers are shuffled and stamped, and conversations occur which are largely inaudible to the rest of the room. To the uninitiated, it may not seem as if court is in session, let alone that anything substantive is happening. Yet, much is happening. Important decisions are being made on cases, which are processed at the rate of one every few minutes. When circumstances permit, dispositions are quickly negotiated; in the remaining cases, bail is set by the court, and they are adjourned, felonies for a preliminary hearing and misdemeanors for trial.

Post-arraignment court parts appear somewhat more orderly than araignment parts. The semblence of formal legal proceedings -- witnesses' testimony, cross examination, motions -- are evident in misdemeanor trials and felony preliminary hearings. Yet even here, overtly formal proceedings are the exception rather than the rule. As at arraignment, most of the action takes place at the bench, where prosecutors and defense attorneys confer with judges out of earshot of the rest of the courtroom. In these "bench conferences", court officials discuss cases, decide whether a disposition is possible, and decide what that disposition will be. The emphasis remains on 'moving cases.' Most cases still receive only a small amount of the Court's time, and it is not uncommon to hear judges chastise prosecutors or defense attorneys whose actions slow up the process. Officials often appear either harried or bored.

Decision-Making in Lower Criminal Courts

To the lay person, lower criminal courts may appear, in the words of William James, to be a "bloomin', buzzin' confusion." Often their chaotic atmosphere has been attributed to the press of large caseloads. Yet Feeley (1979) argues that "it is not at all clear that the criminal courts are over burdened", but only that it is indisputable that "courts tend to organize their work so that they must operate at a frantic pace" (p. 12; emphasis is the author's). In other words, there may be a method to their madness. Recent work by Feeley and other sociologists and political scientists has helped to explicate how decisons are made in lower criminal courts and why they seem to operate in a manner so contrary to the American ideal of an adversarial and formal justice system.

The key to understanding the organization and operations of lower criminal courts is that they serve as screening units within the context of the larger court system (Nardulli, 1978). In general, district attorneys cannot (nor may they feel it necessary to) invest substantial resources in investigating and preparing all cases which they are charged with prosecuting. In cases in which defendants are deemed truly dangerous to the community and/or on which public attention is focused, a substantial investment of resources must be made. But in other

cases, district attorneys may not feel that such a major investment is warranted or possible. It is the function of the lower criminal court to sort the "serious" from the "non-serious" cases. The former cases it sends on to the upper court, where they will receive full application of prosecutorial resources. The latter cases are disposed by less experienced staff and with a minimum expenditure of resources in the lower court. As one prosecutor in Brooklyn succinctly put it, the job of the Criminal Court Bureau of the district attorney's office is to "keep the lid on the system."

The kinds of cases which are terminated in lower criminal courts tend to be cases which involve (a) less serious charges, (b) crimes against property rather than against persons, and (c) prior relationships between victims and offenders. Unpublished data collected by the Vera Institute show, for example, that cases with these characteristics in Brooklyn Criminal Court tend to receive lower assessments of case worth by the prosecutor's Early Case Assessment Bureau [1]. Conversely, major violent crimes perpetuated by one stranger upon another tended to be adjudicated in upper criminal courts.

In the less serious sorts of cases disposed at the lower court level, prosecutors do not feel obliged to try to win lengthy sentences for defendants, defense attorneys know that

their clients do not face major penalties if convicted, and often there is little question in the minds of court officials about a defendant's guilt or innocence. In such cases, Nardulli (1978) argues that "there is seldom any motivation derived from professional considerations to engage in formal adversarial proceedings .... Informal, truncated proceedings are more appropriate to resolve the types of problems routinely handled in criminal courts." Moreover, Nardulli continues, "no one desires extended courtroom proceedings because everyone has somewhere else to be" (p 69).

Thus, although prosecution and defense are organizational adversaries, in practice the strong incentive to process cases expeditiously encourages prosecutors, defense attorneys, and judges to cooperate with each other in arriving at dispositions through negotiation rather than through adversarial proceedings. Trials consume scarce resources in preparation and presentation of cases and are unpredicatable in their outcomes. In contrast, dispositions which are negotiated can be arrived at with a minimal expenditure of time and resources and permit each party to maintain direct control over the outcome. In most cases negotiated dispositions also satisfy the different organizational goals of prosecution, defense and the court. Negotiated settlements can guarantee the prosecutor's office a high likelihood of conviction, the defense a lighter sentence for its

client than he is likely to get if convicted after trial, and the court a reduction in its backlog of cases.

Negotiated dispositions are achieved quickly and with a minimum of disagreement between prosecutor and defense attorney by using an established set of "going rates" (Rosett and Cressey, 1976). These norms prescribe the dispositions that, over the course of time, have come to be accepted by court officials as appropriate for each type of offense (the term, 'offense', in this context connotes more than just the penal code charge. It may also include the defendant's motive in committing the crime, his record of previous convictions, prior acquaintance of victim and offender, extent of victims injuries and so forth). By making decisions in accordance with a prevailing set of going rates much of the conflict that might occur between prosecutor and defense attorney is avoided. To the extent that negotiation is necessary to resolve differences between prosecutor and defense attorney, it is likely to focus on reaching concensus about the "type" of offense a particular case constitutes, and this may come down to a discussion of what the facts of a case really "mean". As Feeley (1979) puts it:

> Much of what passes for plea bargaining is really negotiation over the meaning of facts, and the adversarial roles of prosecution and defense may [in this respect] be crucial. Facts are malleable. They must be mobilized; and often they are manufactured (p. 97).

The process of reaching consensus on the "facts" of a case in lower criminal courts tends to be a rapid one and one which is based on minimal investigation. Cases tend to be treated as "normal crimes" (Sudnow, 1965). In other words it is the similarities rather than the differences between cases that are stressed; idiosynchrasies of cases, defendants, and complainants tend to be minimized rather than emphasized.

Working together to process cases expeditiously ties together judges, prosecutors, and defense attorneys in what Eisenstein and Jacob (1977) refer to as courtroom "work groups". Work group members, according to these authors, recognize the need to maintain group cohesion, if the unit is to function effectively. Cohesion is insured through the process of cooperatively working towards a common understanding of the facts of a case and applying the appropriate going rate.

But the need to maintain cohesion tends to make workgroups closed to influence from victims, defendants, or police officers who are not sympathetic to the need to process cases expeditiously and who may make demands of work group members that could force them to take more extreme adversarial stances in a case (which could prevent successful arrival at the consensus needed for a negotiated disposition). As Eisenstein and Jacob put it, "work groups shun outsiders because of their potential threat to the group" (p 27).

Similarities and Differences in the Dispositional Process Between Brooklyn Criminal Court and Other Lower Criminal Courts

In some respects, the dispositional process in Brooklyn Criminal Court differs from the process in some other lower criminal courts. For example, the screening function of lower criminal courts described above begins in most major U.S. cities with the prosecutor exercising substantial discretion in deciding which cases brought in by the police will be filed with the court and prosecuted. But in Brooklyn, the vast majority of arrests are brought forward for prosecution, and usually without ammending the charges filed by the arresting officer (Meglio, 1969; Trammell, 1969). Rather, the responsibility for weeding out weak felony arrests is left to the court in preliminary hearings. Still, in terms of gross statistics, Brooklyn Criminal Court performs its screening function well. Only a fifth of the cases filed as felonies leave the Criminal Court and go on to the grand jury; the remainder are dismissed or plea-bargained before or after a preliminary hearing.

Brooklyn Criminal Court has also been described by Smith (1979) as having a more adversarial relationship between prosecutors and defense attorneys in case negotiations than is apparent in some other lower criminal courts. That is, each side is reluctant to share its information with the other or to accept

assertions of "fact" made by the other without verification. This is consistant with Eisenstein and Jacob's observation that in courts where workgroup members tend to have less experience working together (as is the case in Brooklyn Criminal Court because of (a) the large staffs of the agencies, (b) frequent rotation of workgroup members from one courtroom to another, and (c) high staff turnover), they tend to be less cohesive.

Nevertheless, the observations of social scientists discussed in the previous section by and large appear true of Brooklyn Criminal Court. There is the same interest of all agencies to process cases expeditiously, strengthened in Brooklyn by the practical consideration of keeping up with the unusually large influx of new cases; nearly half of all incoming cases, for example, are disposed at arraignment which, in many courts, consists of simply a formal reading of charges against the accused and setting of bail. Because Brooklyn Criminal Court officials recognize the need to keep up with the large volume of cases, one would suspect that they tend, if anything, to treat cases in a more "routine" fashion and to be more resistant to the influece of lay parties to a case than officials in lower volume courts.

FOOTNOTES

1. Based on all felony arrests (N=8749) filed in Brooklyn Criminal Court between September 1 and December 23, 1977 for a study by Davis, Tichane, and Grayson (1979).

IV.

THE ROLE OF COMPLAINANTS IN THE DISPOSITIONAL PROCESS

Modern American criminal law affords complainants little formal opportunity to participate in criminal proceedings. In earlier times victims, as the aggrieved parties, initiated and conducted criminal prosecutions. But the advent of public prosecutors was accompanied by a shift in perception of crimes from offenses against an individual to offenses against society. As public prosecutors have gained more authority to determine whether, and on what charge, defendants would be prosecuted, the role of complainants in criminal proceedings shrunk accordingly (see McDonald, 1976a for a full discussion of the evolution of the victim's role). Today victims usually cannot initiate criminal proceedings on their own; rather, the status of complainant is conferred upon victims by the prosecutor, but only if the prosecutor agrees that pressing charges against an offender is consistent with (his perception of) the interests of the community and with the prevailing norms of case worth shared by local criminal court officials. And once the prosecutor has agreed to press charges it is he - not the victim - who decides on what charge to prosecute, what amount of bail to request the court to impose on the defendant pending case disposition, and what sort of punishment to seek for convicted defendants.

In New York, as in most states, the prosecutor is not obliged even to consult victims in making these decisions. Complainants are insured participation under the law only in so far as giving testimony at preliminary hearings, grand jury presentations, or trial (and then only if the prosecutor requests it). Thus, the formal role of complainants is highly circumscribed; McDonald (1976b) and others have aptly referred to victims as the "forgotten parties" to criminal proceedings.

But what about the role that victims play informally in prosecution? Are not complainants a valuable source of information for prosecutors trying to ascertain the facts of a case in order to make intelligent decisions about how to proceed? Although prosecutors are not required to follow complainants' wishes, is it not just "good business practice" for prosecutors to keep themselves apprised of complainants' desires and to keep complainants informed of the status of their case? Finally, do complainants not at least have the power to delay or prevent the prosecutor from winning convictions when they withhold their cooperation, as previous literature has suggested?

The answers to these questions are not necessarily obvious in lower criminal courts where courtroom workgroups insulate themselves from outside influence and make decisions with little investigation, in accordance with established precedents. The

remainder of this chapter presents data from both the interview and observation samples that bear on the question of the extent of the informal influence of complainants in lower criminal courts.

Demands Made of Complainants to Appear in Court

Complainants may be required to come to Brooklyn Criminal Court several times before their case is disposed or is sent on to the prosecutor's Grand Jury Bureau for further action (complainants in the latter cases are also likely to be asked to appear several more times, before a grand jury and in Supreme Court). First, complainants are asked by the arresting officer to come to the complaint room. (Although at the time the survey sample was drawn, arresting officers were often lax about bringing complainants to the complaint room, a subsequent policy adopted by the District Attorney's Office insisted that, unless complainants accompany officers to the complaint room in felony cases, a complaint will not be filed with the court; exceptions are made in unusual circumstances, for instance if a complainant is in the hospital.) In the complaint room complainants relate their experience to an assistant district attorney and sign a complaint. Victims of property crimes, who did not witness the removal (or attempted removal) of their property, sign an affidavit stating that they did not give the accused permission or authority to remove their property; the signing of this affidavit permits them to be excused

from attending subsequent court proceedings (trials excepted).

Because arraignments often occur many hours after a complaint is drawn up and because the complainant has little role to play in this proceeding, most complainants are not required by the prosecutor to attend. There is, however, one major exception to this rule: complainants who express an unwillingness to press charges to the prosecutor in the complaint room are asked to attend arraignment to state their wish on the record in court (assuming, of course, that the prosecutor does not wish to proceed against the defendant in spite of the complainant's unwillingness to cooperate). In leaving it to the court to dismiss these cases rather than simply not filing a complaint, the prosecutor protects himself against action by complainants who might later regret their decision not to prosecute.

In cases that continue past arraignment, the norm is to ask complainants to appear. Some complainants are excused (because they have signed a permission and authority affidavit or because the purpose of the proceeding is solely to consider a pretrial motion or placement of the defendant in a diversion program), and some do not have to appear because they have been placed on telephone standby or "alert" status by victim services staff. But if prosecutors believe that there is any likelihood that complainants may be needed, they are likely to require complainants to attend court. In the survey

sample, complainants were asked to attend post-arraignment court proceedings an average of 2.2 times [1]. Smith (1979) presents comparative data which suggest that demands of complainants to appear in Brooklyn Criminal court are high, relative to at least one other nearby lower criminal court (Suffolk County District Court).

As Knudten (1976) has so well documented, complainants who attend court often incur costs -- especially since complainants typically have no say in choosing the dates on which their cases are heard. In the present survey sample 26 percent of respondents who come to court reported problems in getting time off from their jobs, 17 percent reported having difficulty arranging transportation to and from court, and 12 percent reported experiencing problems arranging for child care.

Moreover, once they arrive at court, complainants often face another sort of ordeal. It can be difficult just finding the right courtroom, or knowing what to do once inside. Complainants are expected to wait an unknown period until their case is called; those who try to approach a prosecutor or court official for information before their case is called are likely to be ordered back to their seat by the bailiff. In the meantime they may be subject to harrassment by the defendant, or his friends or family. When their case finally is called, complainants are usually asked to come forward, and may be interviewed briefly by a prosecutor. (But a few

complainants in both survey and observation samples were never asked to come forward - because defendants had failed to appear or because prosecutors made an error - and left without speaking to anyone.) Lengthier interviews may occur between prosecutors and complainants during a recess in the proceedings. Complainants must often repeat the same details each time they come to court to a different prosecutor -- one who (because of bi-weekly rotation of prosecutors from one courtroom to another) is unfamiliar with their case. By the time complainants leave court, they have usually been there at least several hours, often the entire day. Almost all of that time is spent just waiting.

Because of the hardships complainants incur both in coming to court and in the court itself, it has been the aim of many victim/witness programs to try to keep complainants from having to come to court except when the prosecutor truly needs their presence. But when complainants are not in court bail, disposition, or sentencing decisions may be made about which they might have wanted to express an opinion, or at least be aware of. Thus the benefits to complainants of keeping them out of court need to be carefully weighed against the benefits to complainants (and to court officials of having complainants come to court. To make such decisions intelligently requires a better knowledge of the informal role that complainants play in the court process.

Active Roles of Complainants: Providing Information About the Facts of Cases and Outcomes They Desire.

Hall (1975) and McDonald (1976b), based on personal observation and interviews with court officials, argue that complainants not only have little right under the law to make their views heard by criminal court officials but, informally as well, their influence is often nil. The present study lends empirical support to their arguments: when complainants came to court, their role in the dispositional process was limited indeed.

When complainants are in court, prosecutors do use them as an information resource. Most complainants in the observation sample who came to court were questioned by a prosecutor about the facts of the case: 94 percent of those who came to the complaint room were spoken to by the screening prosecutor, 80 percent of those who came to arraignment were spoken to by a trial assistant, and 96% of those who attended post-arraignment proceedings communicated with a trial assistant. In the complaint room, talking to the complainant enables the screening prosecutor both to verify the arresting officer's account of the case and to assess the strength of the testimonial evidence he can count on from the complainant. Information from the complainant is also useful to prosecutors in courtrooms who (because they rotate from one court part to another every two weeks while cases usually remain in the same court part

until they are disposed) are likely to be unfamiliar with cases, and who usually have little time to read through case folders. The utility of complainants as a resource of case information to prosecutors was underscored by the policy mentioned above that instructed prosecutors in the complaint room not to draw up a case unless the arresting officer brought the victim with him to the complaint room.

For many complainants, however, providing information to prosecutors is the sole part they play in the court process. Since in Brooklyn only a small proportion of cases go to trial or even to a preliminary hearing, the majority of complainants do not have the opportunity to relate their story to the judge on the witness stand. Further, few complainants have an opportunity to voice opinions about what they would like the court to do, even to the prosecutor. In only 29% of observations conducted in the complaint room, arraignment, and post-arraignment court parts were complainants who were present consulted by prosecutors about their wishes in the case; and in only 12% of bench conferences observed between prosecutors, defense attorneys, and judges in the courtroom were the desires of complainants discussed by these officials in the process of negotiating dispositions. In fact, the desires of complainants seemed to be considered by court officials with any frequency only in cases in which complainants and defendants were acquainted (see Table 4.1); in stranger-to-stranger cases, it was

TABLE 4.1

CONSIDERATION OF COMPLAINANT WISHES, BY WHETHER OR NOT THERE WAS A PRIOR RELATIONSHIP WITH THE DEFENDANT

	Stranger	Prior Relationships
Proportion of Complainants Present in Court Who Were Consulted About Their Wishes By a Prosecutor	4% (n=24)	52% (n=25)
	(X^2=13.73, p<.01)	
Proportion of Bench Conferences During Which Complainants' Wishes Were Discussed	3% (n=31)	21% (n=29)
	(X^2=2.90, p<.10)	

Source: Observation Sample.

extremely unlikely for prosecutors to solicit complainants' wishes or for their wishes to be considered in negotiations between court officials (an explanation of this difference is postponed to a later section of this chapter).

Not only do complainants have little influence in the dispositional process, but they frequently are not kept informed of the results of court proceedings. While cases are in progress, complainants are contacted only when the prosecutor needs their appearance in court; there are no systematic efforts made to keep complainants apprised of developments in their case (such as whether a defendant has been released on bail) on dates they are not asked, or are unable/unwilling to appear. Similarly, no systematic efforts are made to inform complainants of final dispositions either in person, if they are present in court, or by mail if they are absent. Among survey respondents, only 51% were able to state the outcome of their case to interviewers, and even one in four of respondents who were present in court on the date of disposition did not know what the outcome had been.

Passive Role of Complainants: What Happens When They Withhold Their Cooperation

Although the active role played by complainants in the dispositional process is highly circumscribed, conventional

wisdom holds that complainants and other prosecution witnesses can at least influence the process in a passive way by witholding their cooperation. The efforts of victim/witness programs to encourage victims and witnesses to cooperate have been based on the belief that their cooperation is essential if prosecutors are to win convictions. This belief, in turn, rests on a view of an adversarial adjudication process in which cases either go to trial, or are settled through hard bargaining between prosecution and defense. That is, defense attorneys, acting as advocates for their clients, would insist that prosecutors demonstrate that their witnesses were cooperative and ready to testify at a trial before agreeing to negotiate a plea; if witnesses could not be produced, defense attorneys would refuse to bargain and win a victory by getting cases dismissed.

Yet the recent literature on decision-making in lower criminal courts discussed in the previous chapter suggests that norms of cooperativeness overshadow adversarial norms; rather than a process of bargaining, the adjudication process is characterized as one of developing a common understanding about the "facts" of a case, and applying the appropriate disposition norm. Moreover, it is in the interests of prosecution, defense, and the court to minimize the time spent on the less serious (and less publically - visible cases) cases disposed in lower criminal courts.

Within this view of lower criminal court decision-making,

it is not clear that complainants' willingness to cooperate is necessarily a major determinant of case outcomes. If the defense insisted that complainants demonstrate their willingness to cooperate before agreeing to a negotiated disposition, and if the complainant did indeed prove reluctant to appear in court, defendants and their attorneys would be forced to come back to court several times (since a judge is likely to give complainants the benefit of the doubt if they fail to appear once or twice). Assuming prosecutors had no other evidence besides the complainant's testimony, the defense might win a dismissal of charges by following such a strategy; in the process, however, the defendant (and his attorney) might suffer greater inconvenience from the repeated trips to court than if he had simply pled guilty to begin with and had a nominal sentence imposed. Likewise, prosecutors may believe they can win heavier penalties against defendants when complainants are present and ready and willing to testify if need be. But prosecutors, too, want to expedite cases, and it may be sufficient to them to win any type of conviction; in the less serious cases disposed in lower courts, their office is likely to be more concerned with the rate of guilty pleas than on the severity of penalties imposed on convicted defendants.

In Brooklyn Criminal Court, complainants often do not respond to court officials' requests to appear. Eighty-one percent of complainants in the survey sample appeared in court (at the complaint room, arraignment, or a post-arraignment part) at least

once during their case. But on post-arraignment court dates, only 34% of complainants whose presence was requested by the prosecutor attended court. Moreover the 13 percent of complainants who initially did not want to prosecute had climbed to 25% by the time of case disposition.

Although, when in court, complainants seemed to serve as an information resource to prosecutors, their absence from court did not seem to have as pronounced an effect upon the disposition process as might be expected. Among all cases, complainant attendance in court affected the timing of dispositions, but only in cases in which complainants and defendants knew each other was there a substantial effect of complainant cooperation on the type of disposition.

When complainants whose presence was requested by the prosecutor were present in court, cases were more likely to be disposed on that date than cases in which complainants whose presence was requested were absent; only 49 percent of the former cases were continued to another date, compared to 71 percent of the latter cases (chi-square = 28.02, p .01)[2]. It had been anticipated that the effect of complainant attendance on the timing of dispositions would be primarily due to the willingness of defense attorneys to negotiate settlements. That is, if a complainant was absent, defense attorneys were expected to be less likely to initiate a plea offer and/or less

likely to agree to an offer initiated by prosecutors orjudges. Surprisingly, however, it was prosecutors rather than defense attorneys who were reluctant to discuss dispositions when complainants were absent.

Overall, prosecutors were the dominant figures in plea negotiations; they were the initiators of 60 percent of all offers recorded in the observation sample. However, Table 4.2 shows that prosecutors were less likely to initiate plea offers when complainants were absent (prosecutors made offers in 17 percent of such cases) than when complainants were present (prosecutors made offers in 43 percent of such cases). Prosecutors were also less likely to accept offers initiated by others when complainants were absent (seven of 16 offers were agreed to by the prosecutor) than when they were present (three of three offers agreed to by prosecutors). The proportion of cases in which defense attorneys made offers, on the other hand, varied little according to whether complainants were absent (defense attorneys made offers in seven percent of such cases) or present (defense attorneys initiated offers in 11 percent of such cases). Defense attorneys accepted most offers made by others regardless of whether complainants were absent (19 of 28 offers accepted by defense atttoneys) or present (10 of 12 offers accepted by defense attorneys). It is interesting to note that judges initiated plea offers only when complainants were absent.

TABLE 4.2

EFFECTS OF COMPLAINANT ATTENDANCE ON PLEA NEGOTIATIONS

	Complainant Present	Comolainant Absent
Prosecutor Initiates Offer	43%	17%
Defense Initiates Offer	11	7
Judge Initiates Offer	0	9
No Offer Made	46	66
	100% (n = 28)	100% (n = 109)

$X^2=10.63$, $p<.05$

Source: Observation Sample

It seems likely that prosecutors' reluctance to negotiate dispositions in the absence of complainants is related to the role that complainants play as an information resource about cases. Whenever possible, prosecutors may want to be sure they have complete information about cases before agreeing to a disposition. The initiative taken by judges in plea negotiations when complainants are absent suggests a concern for moving the calendar. By instigating discussion in these cases where initiatives by prosecutors are less frequent, judges may hope to dispose of cases that are likely otherwise to be continued to another date.

Complainant cooperation had only a limited effect on the type of disposition. For example, in the survey sample, 60 percent of substantive dispositions (i.e., outcomes other than dismissal) occurred in the absence of complainants (at arraignment - which complainants are normally not asked to attend - or at post-arraignment court dates on which complainants had been excused or had failed to respond to prosecutors' requests to appear).

Moreover, complainant cooperation was a much greater factor in determining the type of disposition in cases involving acquaintances than in cases involving strangers. Table 4.3 shows that among cases involving a prior relationship, 50 percent of cases in which complainants were uncooperative (defined as failure of the complainant to attend court on the disposition date in response to

TABLE 4.3

ASSOCIATION BETWEEN VICTIM/WITNESS COOPERATION AND CASE DISPOSITIONS,

BY PRIOR RELATIONSHIP BETWEEN VICTIM/WITNESS AND OFFENDER

		Dismissed	Adjourned in Contemplation of Dismissal	Pled Guilty	Transferred to Grand Jury	Total*
Strangers	Victim/Witness Cooperative	15%	8	56	21	100% (n=62)
	Victim/Witness Uncooperative**	28%	9	56	7	100% (n=86)
			(χ^2= 8.46, p<.05)			
Prior Relationship	Victim/Witness Cooperative	13%	10	64	13	100% (n=39)
	Victim/Witness Uncooperative**	50%	11	31	8	100% (n=64)
			(χ^2=15.95, p<.01)			

*Excludes 16 cases resulting in bench warrants, remands, transfers to other courts, and outcomes of misdemeanor trials.

**Victim/Witness were defined as uncooperative if (a) they were absent on the date of disposition after having been requested to appear by the prosecutor, or (b) if they came to court and expressed to court officials a desire to drop charges and/or refused to testify.

Source: Survey Sample

the prosecutor's request or expressing a desire that charges be dropped to an official in court) were dismissed compared to 13 percent of cases in which complainants did cooperate. While there was a difference in dismissal rates according to complainant cooperation in stranger-to-stranger cases as well, the effect was less pronounced; when complainants in stranger-to-stranger cases were uncooperative, 28 percent of cases were dismissed, compared to 15 percent when complainants did cooperate.

Looking at the effects of uncooperative complainants in another way, the number of cases dismissed <u>because of</u> complainant noncooperation may be taken as the increase in dismissals when complainants are not, relative to when they are, cooperative. In other words, even when complainants attend court and are willing to testify, some cases are dismissed for various reasons; it is the increment in dismissals when complainants are uncooperative that gives the best indication of the influence of cooperation on the type of disposition. By this measure, 23 percent of all relationship cases, but only 7 percent of all stranger-to-stranger cases in the survey sample were dismissed due to complainant noncooperation (in part, this difference reflects a higher cooperation rate among complainants in stranger-to-stranger cases, and in part it reflects a greater impact of complainant cooperation on case outcomes in cases involving prior relationships).

It might still be argued that, even though complainant cooperation does not exert a major impact on the type of disposition in stranger-to-stranger cases, it nonetheless is an important determinant of sentences for convicted defendants. That is, prosecutors still may be able to secure guilty pleas without the cooperation of complainants, but may have to settle for lesser sentences than they could win if complainants did cooperate. Table 4.4 tests this hypothesis. The table shows that, within both stranger-to-stranger and prior relationship categories, the proportion of convicted defendants sentenced to jail terms did not vary significantly according to whether or not complainants cooperated.

Among relationship cases, then, complainant noncooperation appears to have a major impact on the type of disposition reached. But one is tempted to believe that the reason so many of these cases are dismissed when complainants fail to cooperate is that prosecutors simply do not wish to proceed without a clear expression of interest from the complainant. Several authors (e.g., Parnas, 1973; Bannon, 1975; and Smith, 1979) have reported that court officials tend to view relationship cases as private disputes which the state - as protector of the community as a whole - does not necessarily have an overriding interest in pursuing unless that is clearly what the complainant wants; the complainant, in effect, is allowed to cast a vote as to whether a case is to be prosecuted by

TABLE 4.4

EFFECT OF COMPLAINANT COOPERATION UPON SENTENCES OF CONVICTED DEFENDANTS, ACCORDING TO THE EXISTENCE OF A PRIOR COMPLAINANT/DEFENDANT RELATIONSHIP

		Proportion of Defendants Sentenced to Jail Terms*	
Strangers	Victim/Witness Cooperative	50% (n=34)	$x^2 = 0.33$ (ns)
	Victim/Witness Uncooperative**	43% (n=46)	
Prior Relationships	Victim/Witness Cooperative	9% (n=22)	$x^2 = 0.14$ (ns)
	Victim/Witness Uncooperative**	11% (n=19)	

*Includes only defendants convicted of misdemeanor charges in Brooklyn Criminal Court.

**Victim/Witnesses were defined as uncooperative if (a) they were absent on the date of disposition after having been requested to appear by the prosecutor, or (b) if they came to court and expressed to court officials a desire to drop charges and/or refused to testify.

Source: Survey Sample

giving or withholding his cooperation [3]. That is likely the reason why, as we have seen, the interests of these complainants are solicited more often by prosecutors and figure more prominently in plea negotiations. The dismissal of cases between acquaintances when complainants fail to cooperate is not likely to be viewed by a prosecutor's office as a threat to its goal of protecting the community from persons it considers dangerous.

In stranger-to-stranger cases, on the other hand, the state's interest in protecting the community takes precedence over the desires of individual complainants. This priority is reflected in the fact that few complainants in stranger-to-stranger cases are consulted about their wishes. Failure of complainants to cooperate in these cases is likely to be viewed as a more serious problem by court officials. But the survey data suggest that only a small percentage of stranger-to-stranger cases were lost in the lower criminal court for this reason.

Moreover, in Brooklyn the District Attorney's Office has the option of presenting felony cases to a grand jury even <u>after</u> they have been dismissed in the lower court; it is an option which was exercised, and an indictment won, in 10 percent of the stranger-to-stranger cases (but none of the relationship cases) in the survey sample which had been dismissed in lower court. And in presenting cases to a grand jury, the District Attorney's Office can

take measures not normally taken in the lower court to secure testimony from needed complainants (these include: sending investigators to locate complainants whose whereabouts are unknown and to persuade reluctant complainants of the importance of their cooperation; having complainants picked up and escorted to testify; reminding complainants of legal penalties for refusing to cooperate; and granting immunity to persons implicated in crimes in return for their testimony against co-defendants). These measures act to mitigate the effects - which appear relatively small in any case - of complainant noncooperation in the lower criminal court on the disposition of cases in which the prosecutor's office has a clear stake in winning convictions.

Conclusions

The data presented in this chapter tend to confirm the expectations of observers of criminal courts concerning the limited active role that victim/witnesses play in criminal proceedings. Victim/witnesses do seem to serve a function supplying prosecutors with information, supplementing information about cases provided by arresting officers. But except in cases between persons who know each other, prosecutors do not solicit the opinions of the victim/witnesses about the outcomes they desire, apparently feeling that the community's interest (or prosecutors' interpretation of that interest) is the controlling factor in determining the state's

strategy.

It could be argued that the low rate of consultation of complainants by prosecutors in Brooklyn Criminal Court is atypical of other lower criminal courts because of the exceedingly high volume of cases the court handles. In other words, prosecutors simply may not have the time to solicit victims' views. But even in Suffolk County, New York District Court - a relatively quiet suburban lower court - Smith (1979) found that a large majority of victims in stranger-to-stranger cases were not consulted by prosecutors. Moreover, this sort of volume argument has been rejected as an explanation of the infrequency of trials by Feeley (1977), Heumann (1978), and others, and it likely would ultimately fail as an explanation of victim consultation rates as well.

Rather, it is likely that the low consultation rate of victims is a result of the similarities in the processes of adjudication across lower criminal courts. There is simply little that compels prosecutors to seek and consider the opinions of complainants. Under the law, and informally as well, complainants who are displeased with actions of prosecutors have little recourse. They have no legal right to control or appeal the decisions of prosecutors. Further, because they are single, unorganized individuals whose involvement with the court system is transitory, they do not have the political power to attract the attention of

prosecutors, who are protected within a large and powerful bureaucracy. Moreover, it is in the interests of court officials to discourage involvement of victims in the adjudication process. Complainants are not likely to understand or readily accept the cursory manner in which decisions are made in lower criminal courts or court officials' ideas of case worth that result in (what is often perceived as) leniency for convicted defendants. Vocal complainants who do not want their cases treated as "routine" matters and who question the apparent collusion of prosecutor, judge, and defense attorney, can upset the smooth flow of business; it is functional to distance them from the decision process.

Contrary to some of the assumptions that have guided victim/witness programs, the data in this chapter suggest that victims may not exert a great influence on the dispositional processes in lower criminal courts through giving or withholding their cooperation. While complainant non-cooperation was found to delay dispositions, it was not found to be a major contributor to the prosecutor's ability to convict defendants accused of victimizing strangers or of the sentences those defendants received.

Although it cannot be said with certainty, it is likely that the limited influence of victim/witness cooperation upon case outcomes - like the low rate of complainant consultation - found in this sample of cases from Brooklyn Criminal Court is not atypical

of other lower criminal courts. The decision process in Brooklyn Criminal Court is strikingly similar to the processes described in other urban lower criminal courts (e.g., Feeley, 1979; Rosett and Cressey, 1976; Nordulli, 1978). In fact, if anything, Smith (1979) argues that the process in Brooklyn Criminal Court is more adversarial, and that the prosecutor therefore has greater need for cooperation from victim/witnesses than elsewhere.

If the findings reported here prove not to be idiosynchratic, they may go a long way toward understanding why it is that victim/witnesses have been neglected and abused by court officials who ostensibly were dependent on their cooperation, and who should have been going out of their way to win it. The lack of incentive that court officials may have to cater to victim/witnesses could in turn help to explain why it is that victim/witness non-cooperation has proven to be such a widespread and resistant phenomenon in urban lower criminal courts.

FOOTNOTES

1. This statistic is somewhat misleading because some demands to appear are only made because complainants have failed to comply with a previous request.

2. Seventy-one percent of cases in which complainants had been excused or placed on telephone alert were continued.

3. Data on rearrests of defendants in cases in the survey sample lend some legitimacy to court officials' tendency to treat defendants in relationship cases as less of a threat to the community than defendants in stranger-to-stranger cases. In a one-year follow-up of defendants in the survey sample, there was an average of 0.85 rearrests per stranger-to-stranger defendant, compared to an average of 0.49 rearrests per relationship defendant (using a t-test for unequal variances, this difference was significant at the .01 level).

V.

COMPLAINANTS' REACTIONS TO THEIR EXPERIENCES IN COURT

To most complainants, victimization is a traumatic experience, and a major event in their lives. Often criminal courts offer the only legal remedy to complainants who want to pursue desires for retribution, protection, or restitution. Complainants give their cooperation to court officials, and in so doing, incur costs -- coming to court, often on multiple occasions and at inconvenient times; exposing themselves to threats by the defendant or his accomplices; and recounting an event they would rather put out of their minds. In return for their cooperation complainants want and expect court officials to take their case, and their interests, seriously.

Yet the situation complainants find themselves in court is likely to differ substantialy from their expectations. Their subordinate legal role in criminal cases places them in a position of unilateral dependence. That is, court officials control complainants' ability to get what they want, but complainants have no clear means of influence over court officials' actions. The only channel through which complainants can make their interests known to the court is the prosecutor, but he is the representative of the state's interest in the case, and decisions he makes in his performance of that role are often not consonant with the desires of

individual complainants. In deciding how to approach a case, the prosecutor must consider the community's interest in safety from future harm by the defendant, must be sensitive to norms shared by court officials of what cases "are worth", and must be aware of the need to dispose quickly of all but the most serious cases. As a result, the prosecutor may elect not to prosecute even though the complainant wants the defendant locked away, or may seek to imprison the defendant when the complainant just wants to drop charges and forget about the incident. Some complainants, not fully grasping the constitutional considerations involved in setting bail, may be surprised, fearful, and angry to see an arrested offender back out on the streets. Other complainants might reasonably expect stolen property to be returned, if it was recovered by the police; but the prosecutor may hold property for weeks or months because it is needed as evidence (or simply because he feels that, if he returns it, the complainant has less incentive to cooperate in the prosecution). In such instances, complainants have little recourse when they disagree with court officials' decisions.

Moreover complainants soon find that the day-to-day workings of a lower criminal court are a far cry from the vision of the justice system they may have had. The adversary relationship between prosecution and defense is obscurred when prosecutor, judge, and defense attorney seem to conspire together in bench conferences, which complainants can see but not hear. Court officials, too busy

or just too burned out by their jobs, often seem bored or disinterested and are often curt in their dealings with the public. Courtrooms appear chaotic. Expediency, rather than thoughtful deliberation seems to be the principle which governs decision-making; officials seem more interested in getting the case over with and off the calendar than in justice. No one seems to have the time or the interest to find out what the victim wants, nor to make an effort to let him know what is happening, or why. In short the message communicated to the victim from the general state of disrepair of the building to the behavior of the people who work in it is that the victim and his case are not special, but routine.

Respondents in the survey sample were often baffled, and ultimately frustrated over the unresponsiveness of the court process, and many complained:

> He [the judge] was like a clown in a circus -- it was sure comedy.

> The judge just mumbled something and that was it. Just in and out, in and out; all he wanted was to go home.

> Victims should be notified of how their case is standing. Right now I don't know what has happened in my case and I'll probably have to find out for myself.

Yet given the frequently negative reactions to their experiences in court, survey respondents were surprisingly uncritical in their assessments of court officials (see Table 5.1).

Table 5.1

COMPLAINANTS' EVALUATIONS OF CRIMINAL JUSTICE OFFICIALS

	Opinion of Arresting Officer	Opinion of Prosecutor	Opinion of Judge	Opinion of Defense Council
Favorable	86%	81%	72%	33%
Unfavorable	14	19	28	67
Total Expressing an Opinion	100% (n = 239)	100% (n = 145)	100% (n = 105)	100% (n = 61)
No Opinion	(n = 10)	(n = 48)	(n = 48)	(n = 90)

As Knudten (1976) has already observed, complainants tend to rate most favorably those officials with whom they have the greatest contact. Thus, police (who, as Dill, 1976, notes often play the role of "shepherd" for the complainants in the pre-hearing stages of cases) were viewed most favorably, followed by prosecutors, judges, and defense attorneys. Except for defense attorneys, however, a majority of all types of officials were considered to be at least "doing their jobs." Even in the case of judges, who seemed to symbolize the judicial system and whose conduct most often upset complainants, only 28% received clearly unfavorable ratings from survey respondents. It may be that complainants were lenient in their ratings because they tended to blame "the system" for lack of responsiveness rather than individual officials. As one survey respondent who said, "The caseload made it difficult for him (the prosecutor) to spend much time on my case."

Complainants' Reactions to Case Outcomes

Complainants also frequently failed to understand or approve of the nature of dispositions reached by the court. When asked if they were satisfied with the outcomes of their cases (and after those who did not know the outcome were told by the interviewer) 27% of survey respondents answered affirmatively, 30% reported having mixed feelings, and fully 43% were dissatisfied. To a large extent the high rate of victim dissatisfaction with case

outcomes is attributable to the fact that the prevailing "going rates" for offenses in Brooklyn Criminal Court prescribed less severe punishment for defendants than victims felt was appropriate; 53% of dissatisfied survey respondents felt that way because they believed that the court had been too lenient with the defendant. One assault victim, for example, said after the defendant in his case had been conditionally discharged after pleading guilty:

> It's ridiculous! They call that justice? Nobody asked me what I wanted. The man almost killed me and they let him go free.

But, while such sentiments were not uncommon, failure of the court to punish defendants severely enough was far from the only reason that complainants were dissatisfied with case outcomes. In fact, overall there was not a significant association between the severity of case dispositions (ranked in the following order: dismissals, pleas or convictions to misdemeanor charges, and transfers to the grand jury for indictment on felony charges) and complainants' satisfaction. It was only within that group of complainants who had expressed a wish for the defendant to be incarcerated that the severity of the disposition bore a significant relationship to their satisfaction with the disposition (see Table 5.2).

Other complainants were dissatisfied when the court failed to meet their desires for actions that often did seem to fall

TABLE 5.2

ASSOCIATION BETWEEN COMPLAINANT SATISFACTION WITH OUTCOME AND TYPE OF CASE OUTCOME, CONTROLLING FOR COMPLAINANTS' INITIAL DESIRES

	Proportion of Complainants Satisfied Whose Cases Resulted in:			
Outcomes Desired by Complainants	Dismissal	Guilty Plea	Transfer to Grand Jury	
Drug Charges	40%	53	0	(Tau C = 0.04,n.s.)
Prosecute: No Punishment	20	26	20	(Tau C = 0.00,n.s.)
Prosecute: Punishment	0	27	37	(Tau C = 0.26,p<.05)

within the scope of outcomes which courthouse norms defined as appropriate in their cases. For example, many complainants whose property had been stolen still had not gotten it back several weeks after their cases had been disposed; these complainants were relatively less satisfied with the outcomes of their cases than complainants who did get their property back (24% of complainants who did not get their property back were satisfied compared to 40% of those who did; Tau C = 0.20, p= .06). Eighteen percent of all complainants were dissatisfied because they did not get restitution for property losses or medical expenses. And 27% of complainants who had a prior relationship to the defendant were dissatisfied because they did not feel the court had responded to their concern for protection from the defendant or their concern that he enter a treatment program.

The dissatisfaction of many complainants who desired drug or psychiatric treatment for defendants, protection, restitution, or return of stolen property may have been avoidable. These victims, who wanted outcomes that were apparently consistent with the court's set of going rates, often did not get them and left dissatisfied simply because no one ever asked them what action they wanted the court to take. Among those victims who were consulted about their wishes by the prosecutor or judge only 33% were dissatisfied with their case outcome, compared to 46% of victims who were not consulted (Tau C= 0.14, p= .06).

The similar cases of two interviewed victims illustrate well the connection between consultation and satisfaction with case outcomes. Both of these cases involved auto thefts, the kind of cases considered most "routine" by court officials. The defendants pled guilty in the absence of the complainants, and were sentenced to pay fines to the court. But subsequent interviews with the victims revealed that even though the autos were returned, both had sustained unreimbursed losses (in one case damage to the car and in the other theft of tools from the trunk). Consequently, both victims were dissatisfied with the outcomes of their cases because they had not received compensation to cover their loss. Had the complainants been given a chance to communicate to the prosecutor or judge that they had incurred losses, the defendants might have been ordered to pay restitution to the victims and the victims might have left the court more satisfied.

Complainant Disaffection with the Court Process: Its Consequences and Remedies

This study made clear that victim/witness disaffection results from much more than just the inconvenience of involvement in the court process. It is rooted in the lower criminal court adjudication process itself and in its lack of responsiveness to the concerns of victim/witnesses.

It may well be that this deeper sort of disaffection is a major cause of the observed reluctance of so many victim/witnesses to cooperate with prosecutors in urban lower criminal courts. To understand why victim/witnesses fail to cooperate, it may not be sufficient to consider only the <u>costs</u> that victim/witnesses incur in cooperating, but also the <u>benefits</u> they can anticipate by doing so. Victim/witnesses often have little opportunity to make their desires and concerns known to criminal court decision-makers, and have little reason to expect that cooperating with the prosecutor will produce a result that satisfies their needs. No matter how easy it is made for them to respond to the court's demands, they may be disinclined to do so if they cannot reasonably expect their cooperation to change the outcome or to satisfy any need or interest of their own.

There was clear evidence from the present study that when complainants are not satisfied with case outcomes this dissatisfaction also colors their evaluation of their experience in court and their willingness to cooperate with court officials in the future. Table 5.3 shows that complainants who were dissatisfied with the outcomes of their cases held lower opinions of judges and prosecutors, less often felt it had been worthwhile coming to court, and were less willing to cooperate with court officials in the future, than complainants who were satisfied with case outcomes.

TABLE 5.3

ASSOCIATIONS BETWEEN COMPLAINANTS' SATISFACTION WITH CASE OUTCOME AND THEIR EVALUATION OF THEIR EXPERIENCE IN COURT

	Association with Outcome Satisfaction *
Evaluation of Judge	.22
Evaulation of Prosecutor	.27
Was Coming to Court Worthwhile?	.34
Willingness to Cooperate in Future	.15

* The measure of association used in this table, Kendall's Tau C, has a range of 0 to 1. The larger the value of Tau C, the greater the association between two variables. All Tau C's reported in this table are significant at least at the .01 level.

Recent innovative programs in Brooklyn Criminal Court have demonstrated that greater responsiveness to the desires of complainants can lessen disaffection and increase their cooperation with court officials. The Brooklyn Dispute Center in 1977 began diverting cases in which victim and defendant are acquainted from the courts, and settles them instead through mediation. In this program (jointly established by the Institute for Mediation and Conflict Resolution and the Vera Institute of Justice), victim and defendant retain control over the resolution of their case; they both present their arguements, discuss points, and fashion a mutually-acceptable agreement with the guidance of a lay mediator. An evaluation comparing the reactions of complainants whose cases were diverted to mediation to the reactions of victims whose cases were prosecuted in court showed greater satisfaction with the process and with case outcomes in mediation (see Davis, Tichane, and Grayson, 1980).

In 1978, the Vera Institute began another program in Brooklyn Criminal Court, this one designed to give complainants a greater voice in the court process and, through that voice, a better chance to obtain outcomes that reflect their concerns. The program, called the Victim Involvement Project, attempts to increase the influence of complainants by ascertaining their interests and communicating them to prosecutors. By asking complainants what <u>they</u> want from the court, project staff give complaiants reason to expect that the court will be responsive to their desires. And, as

permanent members of the court's professional community, project staff are better able to get the ear of prosecutors than are individual complainants whose involvement with the court is transitory and who are not knowledgeable in the workings of the court. While the project encountered numerous difficulties during its first year, an evaluation showed that, as a result of the project's efforts, complainants felt more positively about their treatment in court and they attended court more regularly (see Davis, Tichane and Connick, 1980). Thus, the goal of increasing victim/witness attendance, which had so long eluded the Victim/Witness Assistance Project, was finally realized.

VI.

CONCLUSIONS

With the high demands made of complainants in Brooklyn Criminal Court and the low returns, complainant disaffection is understandable, and non-cooperation perhaps the most rational response many can make. Individual complainants, lacking collective organization and without clear channels of recourse, may see little hope for influencing the behavior of large and powerful bureaucracies. To them, the choice may be perceived as passively cooperating with an unresponsive prosecutor or cutting their losses and foregoing the dubious benefits of the criminal justice system's "services".

Even if one wishes to argue that lower criminal courts are relatively efficient institutions or that their decisions generally are consistent with public sentiments, they still are failing in at least one respect if they alieniate citizens who come into contact with them and increase cynicism about the responsiveness of the criminal justice system. The worst impact of complainant disaffection in lower criminal courts may not lie in its immediate consequences, i.e., the reluctance of complainants to cooperate with lower court prosecutors. Rather, it may lie in the fact of disaffection itself: that many citizens who -- out of fear, anger, or sense of civic duty - turn to the criminal justice system do not

obtain the redress of grievances they seek, and are often badly mistreated in the process. Complainants believe that their cases should be taken seriously, and expect that court officials will respond accordingly. Yet, the message communicated in the routine fashion in which decisions are made in lower criminal courts, is that neither the complainant nor his case are special.

The relatively few complainants whose cases survive lower court screening in Brooklyn may find that their cases recieve greater attention in the Supreme Court. There, the physical environment and the attitudes of court officials convey a greater feeling that there are places where serious business is conducted. Most cases still reach disposition through negotiation, but investigations are more thorough and the adversarial relationship between prosecution and defense more evident. The cooperation of complainants is likely to be actively solicited by prosecutors. Noncooperation may still occur (and here its effects may pose a greater problem for the administration of justice), but there is little indication that it is as widespread as it is in the lower criminal court; when it does occur it may be more likely to be due to intimidation than to disaffection. Complainants' desires may not be given any greater consideration in decisions because societal interests (as represented by prosecutors) assume a paramount role; but there is at least greater likelihood of consonance between what complainants seek and what the state seeks. But for most

complainants lower criminal courts comprise their entire experience with the judicial system.

Dissatisfaction with the court process may run particularly high in Brooklyn Criminal Court, where many cases are disposed without substantial investigation and many defendants escape the imposition of serious penalties. But complainant dissatisfaction with the judicial system is likely to be common, even in lower criminal courts whose resources are more adequate to their workload than is the case in Brooklyn Criminal Court. There is ample evidence to suggest that handling of cases as "routine" matters and neglect of complainants' interests are characteristic of lower criminal courts.

It is not the intent to argue here that complainants, who have a narrow and often emotionally-charged perspective on their cases should always get all they seek from courts. Considerations of due process for defendants, the community's interest in cases, and the administrative needs of courts all make it unreasonable to make complainant satisfaction with the outcomes of their cases a primary criterion for judging the actions of criminal courts. But, there are strong pragmatic, as well as moral, reasons for giving complainants a larger voice in the decision process.

As McDonald (1977) has argued, giving the complainant a voice in court would yield more accurate information about

cases, and therefore lead to more informed decisions by court officials. This can only further the aims of justice.

Further, it would be surprising, indeed, if the dissatisfaction of citizens who as complainants come into contact with the judicial system is not communicated to family, friends, neighbors, and co-workers, and is not influential in the formation of public opinion. In this context, it is particularly worrisome that a recent study found that, while the general public was dissatisfied with the performance of courts, the greatest dissatisfaction and criticism was voiced by those who had direct experience with courts (Yankelovich, Skelly, and White, Inc.; 1978). In the long run, the effectiveness of the criminal justice system can be undercut by its failure to respond to the needs of those persons who turn to it for help. Allowing complainants to participate may help to generate beliefs that the courts are responsive and will treat their cases seriously -- beliefs that may induce more complainants to cooperate with court officials and that may later be communicated to others.

Ultimately, complainants are in the court system in order to seek justice for a wrong that has been done to them. Some will necessarily be dissatisfied with the court's action, and their participation in the process will not always change that. But, to exclude complainants from the process is to invite their

dissatisfaction and to lessen the likelihood that just dispositions will be reached.

The issues of what sort of participation victim/witnesses ought to have in criminal court decision-making and the extent to which criminal courts ought to be responsive to the interests and concerns of victim/witnesses are ones which will be debated for some time to come. In the long run, such debate should work to the mutual benefit of citizens who become involved with the courts as victim/witnesses and criminal justice officials and planners interested in increasing the effectiveness of the criminal justice system and in furthering the aims of justice.

APPENDIX A

INITIAL ATTEMPTS TO ISOLATE CAUSES OF VICTIM/WITNESS NON-COOPERATION

Initially, three approaches were taken in the study to try to determine the causes of victim/witness non-cooperation. First, victim/witnesses who failed to attend court were to be asked directly the reasons for their actions. Second, statistical associations between case and victim/witness characteristics and non-cooperation were examined to determine whether certain types of victim/witnesses appeared to be predisposed not to cooperate with court officials. Finally, efforts were made to ascertain whether victim/witnesses changed their initial decision to cooperate as a result of being "worn down" by the court process.

Self-Reports of Victim/Witnesses

Survey respondents were asked two questions to elicit their reasons for not coming to court. They were first asked whether they had been able to make it to court each time they were asked. If they responded that they had not, they were asked why not.

However, few respondents were ever asked why they hadn't come to court because fully 87% reported that they had been able to make it to court each time or they had never been asked to come to court. The reports of respondents are at odds with the prosecutor's

attendance records, which showed that in 66% of the instances in which survey respondents were supposed to appear in court, they did not. This discrepancy appears to corroborate the data of Cannavale and Falcon (1976) who suggest that a major cause of victim/witness "non-cooperation" is the fact that victim/witnesses often do not know that they are to appear in court.

Yet the victim/witnesses in the present sample clearly were notified of court dates by the Victim/Witness Assistance Project, as indicated by project records. It might be argued that not all received the notification letters that were sent or the phone mesages left with other persons in their households. But it seems unlikely that such instances were frequent and, moreover, many persons whose self-reports indicated that they had not been aware of court dates in fact had direct phone contact with notifications staff. Thus it appears that either memories were often faulty or respondents simply did not want to admit their reluctance to appear in court.

Predispositons Toward Non-Cooperation

Some of the studies dicussed in the introduction suggested that certain victim/witnesses, in particular those with a prior relationship to the defendant, are predisposed not to cooperate with court officials. It is also argued that victim/witnesses who have

ties of friendship, kinship, and so forth with defendants frequently prove unwilling to aid in their conviction and punishment. It is also argued that their reluctance to prosecute stems from concern for the defendants' welfare, from fear of reprisal, or from economic dependence upon the defendant.

It was thought that if a group of victim/witnesses could be isolated who were predisposed not to cooperate, the results could aid the Victim/Witness Assistance Project or the prosecutor's office in establishing policies. For example resources of notifications staff might be concentrated on cases with potentially reluctant victim/witnesses or prosecutors might be able to plan their strategy better knowing that cooperation from victim/witnesses was unlikely.

Two measures of victim/witness cooperation were used to test the hypothesis that certain victim/witnesses are predisposed not to cooperate. The first measure was whether respondents indicated on the initial research interview (conducted prior to arraignment of their case) that they wanted to press charges against the defendant. On the basis of their responses to this question, respondents were divided into three categories: those who wished to press charges; those who were not certain; and those who wanted charges dropped. The second measure was whether or not respondents <u>ever</u> attended court according to the prosecutor's

records[1]. Both of these indicators measure the predispositions of victim/witnesses, prior to their exposure to the court process.

In order to determine whether certain victim/witnesses are predisposed not to cooperate with court officials, statistical associations between each of these measures and three sets of factors were examined. The sets of factors included:

(a) Case characteristics

Factors in this category included seriousness of the charge, prosecutor's case priority rating (ECAB track), complainant/defendant relationship, extent of complainants' injuries, whether property had been stolen or damaged, whether the complainant (or someone else) had called the police, whether the complainant reported being threatened by the defendant, and number of witnesses listed in the prosecutor's file.

(b) Personal characteristics of complainants

Factors in this category included complainant's age, sex, educational level, marital status and income; whether the complainant was employed; whether the complainant had a telephone in his residence; and whether the complainant had been a complainant in a previous court case.

(c) Complainants' Reactions to Victimization

Factors in this category included emotional distress (anger with defendant, fear of revenge, guilt over reportng the crime, and feeling less safe in home or neighborhood), reports of problems resulting from the crime, and case outcome desired from the court.

Table A-1 displays the associations that were found to be statistically significant. Although the predictors tested explained a reasonable proportion of the variance (26%) in complainants' willingness to press charges, most of the variance explained was accounted for by the subjective reactions of complainants to victimization. Complainants who were most upset by victimization (that is, who feared reprisal, were angry with the defendant, felt less safe in their homes or neighborhoods, experienced emotional problems stemming from the crime, held a strong wish to put the defendant in jail, or felt no guilt over reporting the crime) were more willing to press charges than those who were less upset. (It is interesting to note that, contrary to what might have been expected, respondents who expressed fear of reprisal or felt less safe in their home or neighborhood were more likely to want their case prosecuted; apparently some fear is a motivating factor, rather than inhibiting one in the desire to prosecute). The other factors which bore a significant association with willingness to press charges also tended to support the idea that complainants who

TABLE A-1

FACTORS ASSOCIATED WITH COMPLAINANTS' PREDISPOSITIONS TO COOPERATE WITH COURT OFFICIALS

Factors Associated With Willingness to Press Charges	Correlation Coefficient*
I. Case Characteristics	
Charge severity	.132
Extent of injury	.123**
II. Personal Characteristics	
Educational level	.130
Previous Complainant	.145
III. Reactions to Victimization	
Fear of reprisal	.268***
Guilt about reporting crime	-.226***
Anger with defendant	.219***
Feel less safe in home/neighborhood	.185***
Importance of putting defendant in jail	.225***
Emotional problems resulting from crime	.176***

Proportion of variance explained (adjusted R^2) = .26

Factors Associated with Appearance in Court	Correlation Coefficient****
I. Case Characteristics	
Complainant/defendant relationship	.158
Who called police	.196
II. Personal Characteristics	
Income	-.245
Currently employed	-.161
Age	-.128***
Sex	.132***
III. Reactions to Victimization	
Fear of reprisal	.225
Feel less safe in home/neighborhood	.190

Proportion of variance explained (adjusted R^2) = .12

---

*Unless otherwise indicated correlations are significant at the .05 confidence level.

**Significant at the .10 confidence level

***Significant at the .01 confidence level

****These correlations are partial correlations controlling for the number of court dates in the case, since complainants whose cases had more court dates had more opportunities to attend court.

felt the impact of the crime the most (that is, who were injured, who were victims of more serious crimes, and who had been a complainant before) were more likely to want their case prosecuted.

The factors examined explained little of the variance (12%) in complainants' court attendance. Again, respondents' emotional distress (fear of reprisal and feeling less safe in home or neighborhood) were among the strongest predictors of cooperation. Complainants who had themselves called the police were also more likey to attend court. And surprisingly complainants in cases involving a prior victim/defendant relationship - i.e., those who were female, younger, not currently employed, and who had lower incomes - were also more likely to attend court [2].

Overall, the results of these analyses indicate that the task of trying to isolate groups of complainants who are predisposed not to attend court was largely unsuccessful. Little of the variance in victim/witness cooperation was explained, except by complainants' subjective reactions to victimization. But obviously, such subjective reactions cannot readily be used in constructing decision rules to aid prosecutors in coping with the problem of victim/witness non-cooperation.

The Inconvenience of Coming to Court; Do Victim/Witnesses Get Worn Out?

Several analyses were conducted to test the commonly-heard assumption that victim/witnesses become "turned off" by the inconvenience they frequently must put up with in coming to court. It was reasoned that if inconcenience was, indeed, a major factor in the decision calculus of victim/witnesses, then those victim/witnesses whose cases were continued the most times, who made repeated trips to court, and who reported experiencing problems in coming to court (such as taking time off work, arranging for childcare, or having difficulty finding transportation to court), would be most likely to have changed their minds about pressing charges between the time of the first interview prior to arraignment and the second interview upon case dispostion. None of these hypothesis, however, was confirmed.

Rather, the best prediction of complainants having a change of heart about pressing charges proved to be the existence of a prior relationship between complainant and defendant. Among complainants who initially expressed interest in prosecuting, 32% of complainants with strong ties to the defendant (defined as nuclear family members or paramours) changed their minds about prosecuting, compared to 23% of complainants with weak ties to the defendant, and only 10% of complainants who were strangers to the defendant (Tau C =

0.19, p .05).

This finding, coupled with findings reported earlier, that complainants who have ties to the defendant are more likely than other complainants to attend court, presents a complicated picture of the motivations of complainants in cases involving acquaintances. The greater impact of victimization upon these complainants and the greater personal stake they seem to feel in their cases (as reported in Chapter 2) seem to give them greater inducement to come to court. But they often seek simply an end to harrassment and do not view punishment of the defendant as a solution to their problems. It can be argued that complainants who have a prior relationship with the defendant are actually more willing to cooperate with the court (as evidenced by their higher rate of attendance) than other complainants, although less willing to cooperate with the prosecutor in seeking sanctions against the defendant.

FOOTNOTES

1. In a few instances, even though the prosecutors records indicated that complainants had not attended court, interviews with complainants convincingly indicated that they had been in court. These persons were therefore classified as having attended.

2. The finding that victim/witnesses in cases involving acquaintances attend court more reliably than complainants in stranger-to-stranger cases was corroborated in a study of victim/witnesses in a suburban court by Smith (1979).

APPENDIX B

RESEARCH DESIGN

The data reported in this study were gathered from two sources: a sample of 295 complainants who were interviewed once at the beginning of the court process and again after the case was disposed (only 235 complainants could be reached for the second interview); and a sample of 60 cases which were observed at various steps in court as they progressed through the criminal justice process.

Interview Sample

Sampling Method

The need to interview complainants while they were still naive to the court system (before the first post-arraignment proceeding) and the need to minimize disruption to normal complaint room processing precluded selecting a random sample of complainants. In lieu of a random sample, an effort was made to obtain a representative sample of Brooklyn Criminal Court Cases involving civilian complainants. The sample was drawn from cases entering the complaint room during the six-week period beginning June 29, and ending August 4, 1976. Cases were sampled four days per week, on a rotating basis; for example, one week cases were sampled from Tuesday to Friday, another week from Sunday to Wednesday. The hours were also rotated: half the sample was drawn from cases entering the complaint room between 9 AM and 2 PM, the other half, between 2 PM and 9 PM. The sampling was staggered to reduce

bias resulting from different types of crimes occurring at different times of the day or on different days of the week, (for example, one could expect more assaults to occur on Saturday night than on Tuesday morning).

At the time the research was begun, the conventional wisdom held that complaint room process was such an unpleasant experience for complainants that it would turn them off to the entire court process. This was believed to be the reason that the arresting officer rarely requested that the complainant accompany him to the complaint room. At that time, between 20 percent and 25 percent of the complainants appeared in the complaint room. However, since one goal of the research was to test this, the sample was stratified so that in approximately half the cases, the complainants had come to the Complaint Room. Therefore, the sampling method was to select all cases with complainants in the complaint room during the times indicated above, up to a maximum of 10 per day.

The other half of the sample consisted of cases in which the complainant was not present in the complaint room. These cases were randomly selected from the files of the Victim/ Witness Assistance Project, with the constraint that 5 cases be drawn from cases disposed at arraignment, and 5 cases not disposed. (Actually, some of these absent witnesses had appeared in the complaint room, but either they left before they could be interviewed, or appeared at a time when the research staff was not in the complaint room.)

Entrance Interviews

Complainants who were present in the complaint room received the entrance interview before they spoke with either the Assistant District Attorney or to V/WAP staff. The interview was conducted (in either English or Spanish) in a booth with a closed door, to achieve some degree of privacy. Although arresting officers were not excluded from the interviewing booth, they were told that they were not needed, and then were not encouraged to participate.

Absent witnesses whose cases survived arraignment were contacted for an entrance interview. Those complainants who could be reached by phone were called at least twice during the day and, if no contact was made, twice again after 6 PM. If time allowed, additional contact attempts were made. When no phone number was available, the interviewer visited the complainant at home in the evening (after 6 PM). If the complainant was not at home, the interviewer left a letter explaining the purpose of the visit, and asking the complainant to call the research office to be interviewed over the phone. In all cases, if no contact was made before the first post-arraignment adjourned date, the case was discontinued as a part of the study.

Complainants absent from the Complaint Room whose cases were disposed at arraignment were given an abbreviated entrance interview and the exit interview at the same time. The methods of contact was the same as the ones used for the exit interviews (see below).

Case Tracking

The files of the V/WAP notifications unit were used to keep track of the progress of the cases in the sample. These files draw upon information obtained from the prosecutors in Criminal Court and from the court calendar.

After each adjournment, the research staff gathered the following data for each complainant: 1) appearance status (e.g., on alert, must appear); 2) mode of contact (e.g., phone, letter); 3) whether the complainant was expected to appear; and 4) whether the complainant actually appeared. In addition, the staff noted the reason for adjournment, whether the case was marked "Final vs. the People," and the next court date and part.

If the defendant was not sentenced at the time of conviction, contact attempts for the exit interview were delayed until sentencing. If the sentencing was to occur more than a week later, contacts were attempted without it. When a bench warrant was issued for the defendant, the case was held for 30 days. If the defendant returned within that time, case tracking resumed. If not, then the contact attempts for the exit interview began after the 30 days. A similar 30-day waiting period was followed for drug and psychiatric remands, and for cases sent to Family Court or to the grand jury. For all other dispositions, contact attempts began immediately.

Exit Interviews

There were two versions of the exit interview, one for cases disposed at arraignment and the other for cases continuing past arraignment.

If the complainant's phone number was available, the interviewers attempted to reach the complainant at least five times (at least two of which were in the evening after 6 PM). If these attempts failed, at least one evening and one daytime home visit was made. When phone numbers were not available, at least two evening home visits were made, and at least one day visit. Efforts to reach the complainant ceased after these attempts were carried out.

Cases Excluded from the Study

There were 466 cases in the original sample of which 151 were not included in the study: 78 complainants could not be contacted for the entrance interview prior to the first post-arraignment adjournment; 627 complainants refused to be interviewed; and 11 were eliminated for miscellaneous reasons (e.g., case folders were lost, the complainant did not speak English or Spanish). Twenty complainants were eliminated because they were eyewitnesses to but not the victim of the crime. Of the final sample of 295 complainants, 60 could not be reached for the exit interview. (See Table B-1)

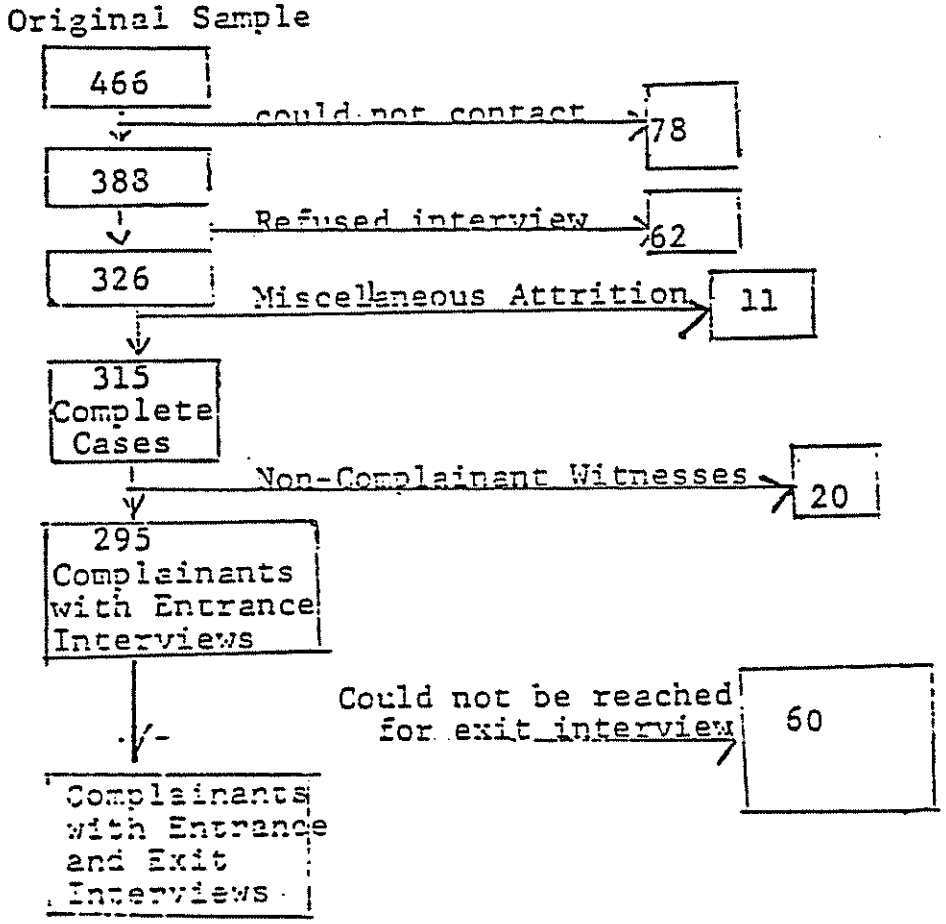
Observation Study

The purpose of the observation study was to conduct an in-depth investigation of 60 cases involving civilian complainants in four major crime categories: Burglary (15 cases), larceny (10), robbery (17) and assault (18).

Observations were conducted in three settings: in the office of the Early Case Assessment Bureau (ECAB), through

Table B-1

Attrition of Complainant Sample



which all felony cases must pass; in the arraignment parts; and after arraignment, in all purpose (AP) parts.

The sampling of the 60 cases took place in the ECAB office. Again an effort was made to obtain a representative sample of the four selected crimes but the constraints on a random sample were even greater in the observation sample than in the interview sample. The major criterion for selection was that a case which could be tracked, would be acted on in court at predictable times and research staff could be present in court at those times.

For instance, cases had to be dropped from the sample if they were arraigned at times when the observers were not present (i.e., when the court's schedule called for cases to be sent to all purpose parts other than the parts selected for study). In anticipation of this attrition, many more cases were sampled in ECAB than were actually needed for the study. Other loss of cases from the sample occurred in a few instances when the observers were not present in the AP parts when the case was called.

Court Data

In the ECAB office, the observers noted facts of the case (e.g., charges, ECAB track), and recorded what happened between the ECAB attorney and the arresting officer, and the ECAB attorney and the complainant.

Information collected in arraignment and in the AP parts was identical: conversations between prosecutor and complainant, and between prosecutor and arresting officer. The observers

noted which official mentioned the facts of the case and the desires of the complainant. A second focus of observation was informal, off-the-record discussions or "bench conferences" among prosecutor, defense counsel, and judge. The observer recorded any plea offers made (including who initiated the offer) and noted which facts about the case, defendant, and complainant were considered relevant to the plea negotiations. The observer also noted which of these facts were discussed for the record. Finally, the observers recorded any changes in defendant's bail status, and the outcome of the case.

Complainants in the cases of the observation sample were interviewed before the first post-arraignment court date and again after the case was disposed.

BIBLIOGRAPHY

Ash, Michael (1972), "On Witnesses: A Radical Critique of Criminal Court Procedures," Notre Dame Lawyer, 386.

Banfield, Laura and David C. Anderson (1968), "Continuances In The Cook County Criminal Courts," University of Chicago Law Review, 261.

Bannon, James. Law Enforcement with Intra-Family Violence. Paper presented at the American Bar Association Convention, August, 1975.

Biderman, Albert D., et al (1967), "Report on a Pilot Study in the District of Columbia on Victimization and Attitudes toward Law Enforcement" (Washington: President's Commmission on Law Enforcement and Administration of Justice).

Blau, Peter M. The Dynamics of Bureaucracy: A Study of Interpersonal Relations in Two Government Agencies. Chicago: The University of Chicago Press, 1955.

Cannavale, Frank J. and William D. Falcon (1976), Witness Cooperation (Lexington: D.C. Heath).

Chicago Crime Commission (1974), "Dismissed for Want of Prosecution," (Chicago: Author)

Cincinnati Police Division (1975), "Report on Why Victims Fail to Prosecute" (Cincinnati: Author).

Cronin, Roberta C. and Blair B. Bourque (1980) "National Evaluation Program Phase I Assessment of Victim/Witness Assistance Projects". Washington, D.C.: American Institutes for Research.

Davis, Robert C., Martha Tichane, and Deborah Grayson, "Mediation and Arbitration as Alternatives to Prosecution in Felony Arrest Cases." New York: Unpublished report of the Vera Institute of Justice. 1980.

Davis, Robert C., Martha Tichane, and Elizabeth Connick, "First-Year Evaluation of the Victim Involvement Project." New York: Unpublished report of the Victim Services Agency.

Dill, Forrest (1976), Four Months of Victim/Witness Assistance in the Borough of Brooklyn: Outside Evaluation, Interim Report".

Eisenstein, James and Herbert Jacob. Felony Justice: an Organizational Analysis Of Criminal Courts. Boston: Little, Brown & Company, 1977.

Ennis, Philip H. (1967), "Criminal Victimization in the United States: A Report of a National Survey" (Washington: President's Commission on Law Enforcement and Administration of Justice).

Feeley, Malcolm The Process is the Punishment: Handling Cases in a Lower Criminal Court. New York: Russell Sage Foundation, 1979.

Fitzpatrick, P. Emmett (1975), "No-Show Survey" (Philadelphia: Unit Report for the National District Attorneys Association's Commission on Victim Witness Assistance).

Hall, Donald D., "The role of the victim in the prosecution and disposition of a criminal case, " 28 Vanderbilt Law Review 931 (October, 1975).

Hamilton, William A., and Charles R. Work, "The prosecutor's role in the urban court system: the case for management consciousness," Journal of Criminal Law and Criminology (June 1973), pp. 183-89.

Heumann, Milton Plea Bargaining: The Experiences of Prosecutors, Judges, and Defense Attorneys. Chicago : University of Chicago Press. 1978.

Hindelang, M.J. (1976) Criminal Victimization in Eight American Cities (Cambridge: Ballinger).

Kalish, C. B. (1974) Crimes and Victims. Washington, D.C.: Law Enforcement Assistance Administration.

Knudten, Richard D. (1976), "Victims & Witnesses: The Impact of Crime and Their Experience with the Criminal Justice System." (Milwaukee: Marquette University Center for Criminal Justice & Social Policy.)

McDonald, William F. (1976a) "Towards a Bicentennial Revolution in Criminal Justice: The Return of the Victim." American Criminal Law Review, 13, 649.

McDonald, William F. (1976b) "Notes on the Victim's Role in the Prosecutorial and Dispositional Stages of the American Criminal Justice Process,"Paper delivered at the Second International Symposium on Victimology, Boston.

McDonald, William F. (1977) "Expanding The Victim's Role in the Disposition Decision: Reform in Search of a Rationale." Paper presented at the Second Restitution Symposium.

Meglio, John J. (1969) "Comparative Study of the District Attorneys' Offices in Los Angeles and Brooklyn." The Prosecutor, 5: 237.

Nardulli, Peter F. (1978) The Courtroom Elite: An Organizational Perspective on Criminal Justice (Cambridge: Ballinger)

National Advisory Commission on Criminal Justice Standards and Goals (1973), Courts (Washington: U.S. Government Printing Office).

New York State Supreme Court (1973), "The Plight of the Complaining Witness." (New York: Author.)

Parnas, Raymond I. (1973) "Prosecutorial and Judicial Handling of Family Violence" Criminal Law Bulletin, 9, 585.

Reiss, Albert (1967), "Studies in Crime and Law Enforcement in Major Metropolitan Areas", President's Commission on Law Enforcement and Adminstration of Justice (Washington: U.S. Government Printing Office).

Rossett, Arthur and Donald Cresey, Justice by Consent: Plea Bargains in the American Courthouse. (New York: J.B. Lippincott Co., 1977.)

Sacramento Police Department and the University of California at Davis' Center on the Administration of Criminal Justice of the School of Law, "Victim Survey" (Washington: Police Foundation).

Skinner, B.F. (1974), About Behaviorism. (New York: Vintage Press.

Smith, Barbara (1979) "The Prosecutor's Witness: An Urban/Suburban Comparison." Unpublished Ph.D. dissertation, State University of New York at Stony Brook.

Stein, John H. (1977) "Better Services for Crime Victims: A Prescriptive Package." Unpublished manuscript.

Sudnow, David. "Normal Crimes: Sociological Dactors of the Penal Code in a Public Defender's Office." Social Problems, Vol. 12:255, 1965.

Swasy, John (1976), "Review of Witness Project Activities, September 1974 Through September 1975." Los Angeles: Graduate School of Management, University of California at Los Angeles.

Trammell, George W. (1969) "Control of System Policy and Practice by the Office of District Attorney in Brooklyn and Los Angeles." The Prosecutor, 5:237

Vera Institute of Justice (1975), "An Impact Evaluation of the Victim/Witness Assistance Project's Appearance Management Activities: Interim Report" (New York: Author).

Vera Institute of Justice (1976a), "An Evaluation of the Victim/Witness Assistance Project's Court Based Services" (New York: Author).

Vera Institute of Justice (1976b), "An Impact Evauation of the Victim/Witness Assistance Project's Appearance Management Activities: Final Report" (New York: Author).

Vera Institute of Justice (1977), "Felony Arrests: Their Prosecution and Disposition in New York City's Courts" (New York: Author).

Williams, Kristen M. (1976), "The Effects of Victim Characteristics on the Disposition of Violent Crimes" In McDonald (ed.), Criminal Justice and the Victim (Beverly Hills: Sage Publications).

Yankelovich, Skelley, and White, Inc. (1978) "The Public Image of Courts." Report prepared for the National Center for State Courts, Denver, Colo.

Ziegenhagen, Eduard (1976), "Toward a Theory of Victim-Criminal Justice System Interactions," in McDonald (ed.), Criminal Justice and the Victim (Beverly Hills: Sage Publications).

Ziegenhagen, Eduard (1974), "Victims of Violent Crime in New York City: An Exploratory Survey of Perceived Needs" (New York: Crime Victims Consultation Project of the Criminal Justice Coordinating Council).