CONTINUITY AND CHANGE IN PATTERNS OF CASE HANDLING: A CASE STUDY OF TWO RURAL COUNTIES

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This article examines the patterns and changes in the way trial courts have handled both civil and criminal matters. It does so by looking for similarities between the civil and criminal dockets in all levels of trial courts in two rural counties in Illinois for a 90-year period (1870-1960). The data from these sites suggest that there may be an overall pattern in the way matters are handled, one that has fluctuations and changes within it but seems to have persisted over time. About 90 percent of the matters filed in the two counties did not involve a contested hearing or judgment. The pattern of handling matters was characterized, instead, by shifts between the routine processing of uncontested matters and matters that dropped out of the courts short of judgment. Contested matters were always the exception and not the rule. Contrary to some claims found in the literature, the shifts within the pattern seem to reflect changes in the mix of court business rather than some fundamental change driven by environmental factors and marking an overall demise of trials.

Amid the increasing charges of a "crisis" in the courts, there has been a renewed scholarly interest in the activities of trial courts. This interest has developed along two separate paths, one concerned with civil litigation and the other with the criminal side of the docket. Seldom do researchers on these two paths meet. Each path follows its own specific set of concerns and methods of inquiry. Both, however, share at least one important concern—how trial courts dispose of the matters brought to them. They also share a sometimes explicit but more often implicit baseline of an earlier time when trial courts handled matters differently, and perhaps better (see Galanter, 1983: 11). My interest is in the patterns of and changes in the way trial courts have handled matters, both civil and criminal. These patterns and changes are important because they go to the very heart of our notions of trial courts, of what they do,

* Research supported in part by the National Science Foundation, Law and Social Sciences Program, Grant Number SES-8010988. The author wishes to acknowledge the valuable suggestions and help of Robert Hayden, Richard Lempert, and Joanne Martin.

LAW & SOCIETY REVIEW, Volume 19, Number 3 (1985)

and how they have changed. The nature of such patterns and changes, consequently, has important implications for a series of lively scholarly debates that bear not only on theoretical concerns related to courts, their functions, and the changes they have undergone but also on such policy issues as plea bargaining on the criminal side and alternative means of dispute resolution on the civil. Underlying these debates is the assumption by some that, at least in the past since apparently not in the present, trial courts really were *trial* courts, and that trial courts have undergone a *fundamental* change marking the demise of the trial as a primary means of dispute processing (see Gambitta and May, 1982).

My purpose is to provide a context for such debates, not to join in them directly. I have chosen to do so by exploring some underlying assumptions in a different but simple way—by looking for similarities between the civil and criminal sides of the docket in all levels of trial courts in two rural counties for a 90-year period. The choice to look at both sides of the docket for different levels of courts and to concentrate on the similarities among them is a simple, if unusual, idea. It assumes that we can gain a better understanding of the patterns and changes in case handling by looking at trial courts generally than by looking separately at different dockets or levels of courts.[1] Indeed, the data from these two rural counties suggest that there may be an overall pattern in the way matters are handled, one that has fluctuations and changes within it but that seems to have persisted over time.[2] In these two counties about 90 percent of the matters *filed* in all levels of trial courts over a 90-year period did not involve a contested hearing or judgment. The pattern of handling matters was characterized, instead, by shifts between the routine processing of uncontested matters and those that dropped out of the courts short of judgment. Contested matters, those in which the record reflects the kind of adversary clash we normally associate with

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[1] The choice to be what the biologist G.G. Simpson (1961: 135-40) termed a "lumper"—emphasizing similarities—rather than a "splitter"—emphasizing differences—is largely a pragmatic one and depends on one's purpose. According to Michael Scriven:

> There is always a level of generality at which any two things can be said to be essentially the same, and always a level of particularity at which they can be distinguished . . . the important issue is . . . not which description is right? since all may be; but, which level of description is most enlightening (1970: 189).

[2] Galanter has suggested that underlying both civil and criminal dispositions there may be what he calls a "master pattern" in which the actual or threatened invocation of an authoritative decision-maker leads to a negotiated or mediated settlement (1983: 26-27).

trials, were always the exception and not the rule. The differences among the levels of courts and the fluctuations and changes over time only make sense when placed within this general pattern. Shifts within the pattern seem to reflect changes in the mix of court business, rather than some generalized, fundamental change driven by environmental factors and marking an overall demise of trials.

The choice to use two rural counties in exploring patterns and changes in the way matters were handled is a purposeful one. These counties have always been relatively simple, almost pristine, settings. They have never experienced the kinds of population pressures or economic development that many commentators associate with a presumed fundamental change away from contested trials. What is both interesting and important is that even in the absence of these supposed causal factors, contested trials are and have been the exception and not the rule in the counties I studied. The key to understanding the patterns and changes may be found in the mix of court business instead of presumed grand environmental trends.

I

Perhaps the most important attribute of the literature—longitudinal and contemporary—dealing with how trial courts handle matters is the separation of civil and criminal studies. With the exception of Francis Laurent's (1959) census of cases from one Wisconsin county for a century, I am aware of no longitudinal study that looks at both criminal and civil dockets for even one level of trial court. It is as if the two dockets developed separately and independently, are completely and radically different, and can be expected to exhibit different and unrelated patterns over time. But while the criminal and civil dockets differ within jurisdictions, they are not totally separate and independent. Indeed, the literature reveals five key points that studies of the two dockets share. These common points provide the groundwork for my study.

First is the idea, sometimes only implicit, that there has been movement away from the ideal of the typical case involving a contested trial. Numerous writers suggest that there has been a fundamental change in the way matters are handled, that this change has apparently affected both civil and criminal dockets and all levels of trial courts in essentially the same way, and that it needs to be described and explained. The past, it is assumed, was qualitatively different, and for some

even normatively superior (e.g., Alschuler, 1979). On the criminal side, discussion of how cases were handled is found largely in pieces debating the origins of plea bargaining. Opponents of the practice argue that plea bargaining developed in full force after the Civil War as a major change in the handling of criminal matters and was little evident before that (e.g., Alschuler, 1979; Haller, 1979; Langbein, 1980).[3] But the few systematic studies of criminal case processing over time argue that no major change occurred (e.g., Heumann, 1975; Feeley, 1979b). Without the stimulation of the obvious normative overtones and policy questions associated with plea bargaining, no comparable literature and debate has developed with regard to patterns and changes in civil dispositions, but some scholarly attention has focused on the issue of whether there has been movement over time from more to fewer trials. Underlying this type of work on civil dockets has been a debate—far more sedate than the one over plea bargaining—concerning whether or not the dispute resolution function of trial courts has diminished (e.g., Friedman, 1976; Friedman and Percival, 1976; Lempert, 1978; McIntosh, 1980-81).[4]

A second idea shared by most students of civil and criminal courts is the notion that, somehow, fundamental changes in patterns of handling cases are related to changes associated with socioeconomic development and modernization. This is quite explicit in the civil litigation literature, much of which has been built around a social development or modernization model, which I and others have discussed at length elsewhere (Daniels, 1984; also see Krislov, 1983). It is somewhat less obvious in the criminal literature, but evident nonetheless (e.g., Alschuler, 1979: 40-43). Speculation on the causes of change on the criminal side tend to be Weberian in character, emphasizing increased complexity, rationality, professionalization, and

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[3] Haller has claimed that "plea bargaining was probably nonexistent before 1800, began to appear during the early or mid-nineteenth century, and became institutionalized as a standard of American urban criminal courts in the last third of the nineteenth century" (1979: 273). And according to Langbein, "[i]n the two centuries from the mid-eighteenth to the mid-twentieth, a vast transformation overcame the Anglo-American institution of criminal jury trial, rendering it absolutely unworkable as an ordinary dispositive procedure and requiring the development of an alternative procedure, which we now recognize to be the plea-bargaining system" (1980: 48).

[4] Friedman and Percival, for instance, argued that there has been a "general movement from *dispute resolution* to *routine administration* over the past century. We believe this is a national phenomenon . . ." (1976: 301; also see Friedman, 1976: 35). Translated, this means movement from a higher percentage of trials to a lower.

bureaucratization—factors typically seen as functions of development (e.g., Feeley, 1982; Alschuler, 1979; Friedman, 1979). In contrast, the civil litigation literature tends to be more Durkheimian in character (Daniels, 1984; also see Krislov, 1983: 162-63), emphasizing the complexities of industrial development and modern society.

A third, and related, common feature of both literatures is a general focus on urban areas, more developed and complex settings where the presumed effects of modernization have had full play. As Hurst noted in commenting on the court literature generally, "published studies dealt with only small parts of this sprawling country—with a handful of metropolitan-area trial courts . . . [and] almost no courts in rural or small-town settings" (1980-81: 407). Like the studies of contemporary criminal courts (e.g., Eisenstein and Jacob, 1977; Mather, 1979; Zeisel, 1981; Lipetz, 1984; Schulhofer, 1984), those few concerned with the past talk almost exclusively of urban courts and phenomena we commonly associate with larger cities (e.g., Haller, 1979: 273). The lack of contested trials and the high percentage of guilty pleas are seen, consequently, as urban phenomena and urban problems. Studies of the civil side are much the same, although there is at least some attention to courts outside the larger cities (e.g., Friedman and Percival, 1976). Still, the lack of contested trials is seen, if not as an urban phenomenon *per se*, as a phenomenon of an urban, industrial society (Friedman and Percival, 1976: 301).

Fourth, both literatures share an almost exclusive concentration on trends in the highest levels of trial courts, perhaps reflecting a trial court version of the "upper court myth." For the criminal side this means looking largely at felony courts (see Alfini, 1981: 5), and for studies on the civil side this means looking at the highest level of general jurisdiction courts. What has happened in the lower reaches of the system, where the bulk of trial court business probably takes place, remains largely a mystery (but see Wunder, 1979). It has been suggested for both the civil (Lempert, 1978: 135) and criminal sides (Feeley, 1979a: xv) that the way courts handle the numerous petty matters in the lower levels of the system may tell us more about what is typical and may in turn influence the ways less numerous, more serious matters are handled. This fourth common trait, together with the urban foci, means that we have a somewhat truncated view of patterns and changes in the handling of matters by trial courts.

Finally, some contributors to both literatures are skeptical about whether the past was all that different from the present. The available data have been insufficient to rigorously test the hypothesis of no substantial difference, but what little evidence there is can be seen as giving credence to the doubts about a significantly different past. At least on the criminal side the skepticism is strong enough that a major, and sometimes heated, debate exists on the question of whether there ever was a fundamental change in the way cases have been handled. For both literatures this skepticism about the past and the existence of some supporting data raise the nagging possibility that there has not been a generalized, fundamental change. Instead we may be looking at patterns inherent in the system or at least at patterns that have persisted for long periods of time and so are not simply a recent capitulation to pressures rooted in crowded dockets and the bureaucratization of the courts.

Given this backdrop, I will address four questions about the way in which the trial courts I studied have handled matters brought to them. They are:

1) What proportion of matters filed with these courts involved a contested hearing or trial (and by implication what were the proportions of matters handled in other ways)?
2) Were the patterns of handling cases in different levels of trial courts essentially the same or substantially different?
3) Were the patterns for handling civil and criminal matters essentially the same or substantially different?
4) What were the patterns and changes over time in the handling of matters in these courts, both civil and criminal, and what may account for them?

II

The data I bring to bear on these questions come from a study of the trial courts in two rural counties in Illinois, Bond (in the southern part of the state) and Menard (in the central part of the state), for the period 1870 to 1960. These courts are not necessarily representative of trial courts in other Midwestern rural areas, but I know of nothing that suggests they are atypical. Bond and Menard are well suited to my purpose because in these two rural counties factors that are often mentioned as important in the alleged transformation of case handling at the trial level (those related to urban development) are absent or only marginally present, except in

the sense that the counties are part of the larger society and legal system, which have become increasingly complex. Thus, if urbanization and general development are crucial explanatory variables, one would expect very little change in the way cases have been handled in these counties over the years, and it would be reasonable to suppose that case handling practices in these counties are similar to the practices that existed in many once rural areas of the country that later developed into urban centers. While one might argue that these counties are part of larger entities that have become more complex (society and the legal system), and so substantial changes could be expected, it appears that such contextual properties do "not predict uniformly well to the properties of any given lower-level collectivity" (Leege and Francis, 1974: 102). The argument merely states a possibility with no strong empirical or well-grounded theoretical basis. Such speculation testifies to the fact that we do not know what causes changes in trial court procedures or whether there has been any fundamental change.

Both Bond and Menard are now and have been predominantly rural and agricultural counties of small to medium sized farms. They have no substantial industries, low population and population densities, and relatively few people living in urban areas. Although not the smallest counties in the state, both have had populations not much in excess of 17,000 people, and each reached its peak population earlier in this century. Both exhibited a pattern of rising population early in the time period covered here, followed by a relatively steady but slow decline.[5] As would be expected, their local legal systems have been relatively simple. It would not make sense, for instance, to talk of specialized segments of the bar. In neither county were more than eight to ten lawyers practicing at any one time. Older lawyers interviewed said that all were by necessity generalists.[6] Until the 1930s most of the lawyers

[5] Bond's population peaked at 17,075 in 1910; in 1960 it was 14,060. Menard's peaked at 14,226 in 1900 and was 9,248 in 1960. In 1910, Bond's population density was 44.6 people per square mile; in comparison, the state as a whole had a population density of 110.6. In 1900, Menard's population density was 45.6 and the state's 86.1. Neither county ever had more than a third of its population living in what the census considered urban areas, and this meant living in the county seat—a town, typically, of no more than 3,500 to 4,000 people.

[6] Between May 1982 and May 1983, 5 people in Bond and 6 in Menard were interviewed at length. All were interviewed at least twice, and some three times, with interviews averaging around two hours per session. Those chosen for interviews were members of families that have been involved in the local judicial system (lawyer, state's attorney, judge) for more than one

had read law with an established attorney or received their legal training through correspondence school. After the 1930s law school training increasingly became the norm.

It is also difficult to speak of any significant degree of professionalization and bureaucratization in the courts. Justices of the peace, the most numerous judicial officers, were lay judges and usually part-timers with only a rudimentary knowledge of the law. Each county had one county judge, who need not have been a lawyer, although all county judges in Bond and Menard, at least during this century, were lawyers. The state's attorney (the county prosecutor) was, of course, a lawyer, but interviews with older lawyers indicate that the state's attorneys as well as the county judges maintained active private practices during their tenures in office. In other words, they too were part-timers. Only the circuit judges for the multi-county circuits of which each county was a part were full-time judicial officers. Since they rode circuit over a number of counties, they held court only periodically in each one. Finally, interviews with former judges, state's attorneys, and older lawyers indicate, not surprisingly, that caseload pressures were never seen as a problem.

In the area of law enforcement, the story is much the same. Aside from the various vigilante and anti-horse theft groups that were active in both counties well into this century,[7]

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generation. In this way, it was hoped that the interviews would provide insight into the past by eliciting information about family histories as well as about the present. In each county such a "legal family" was located—one that went back to the turn of the century in Bond, and one that went back to the 1880s in Menard. Each had members who had been not only lawyers but judges and prosecutors as well. The interviews included older lawyers who like their forebears had themselves served as judges and/or state's attorneys, along with other members of their families.

[7] As was typical of many rural areas in the past, vigilante or anti-horse theft organizations were an accepted part of local life in Bond and Menard. According to Little and Sheffield, "It would be wrong to infer that vigilantism arose on the American frontier solely in response to a tidal wave of lawlessness. To the contrary, in many cases the *lack* of crime posed no need of a regular, full-time system of law enforcement which would be costly to maintain. The logical solution was to erect a temporary, voluntary (as opposed to official, paid professional) system of justice only as the occasion for it arose" (1983: 804 at n.18; emphasis in original). These groups were often led by prominent members of the community and were made up of the "yeomanry," not hooligans. As Little and Sheffield note, "Usually led by men of wealth, property and influence in their communities, vigilante movements tended to uphold the interests of those with the greatest stake in the social status quo" (1983: 804).

A local history of one of the Menard precincts, originally published in 1940 (Bradley and Ennis, 1940, 1975), mentions such a group. Called the Greenview Rangers, it was active in the county from 1859 until at least the 1930s. It began as an anti-horse theft organization but became the primary means of preserving law and order generally. At its largest, it had 175 members (Bradley and Ennis, 1940, 1975: 30). An interview with the last JP of

the county sheriff's office was (and remains) the primary law enforcement apparatus. Throughout most of the period covered by this case study, the sheriff had just one or two full-time deputies, and even today the respective sheriffs' offices have only five or six deputies. The only towns that had police forces were (and are) the county seats. In both counties, these towns were and remain the largest towns, but their police forces never contained more than a few officers, and even today they number only a half-dozen or so. The smaller towns have never had any police forces to speak of, usually only a night or weekend constable, if that. The only other law enforcement presence in these counties is the state police who, since the rise of the automobile, have patrolled the main roads in these counties. Finally, as with the county judges and state's attorneys, sheriffs typically pursued other business interests on the side, such as farming.

Thus, neither county has the characteristics that would lead us to expect, according to the literature, the extra-judicial settlement of most cases brought to court or a substantial decline in the proportion of contested cases over time.[8] For both counties have, and always have had, uncrowded courts, relatively unbureaucratized local law enforcement systems, and judges and attorneys who are part of the community and accessible to its people.

III

The data used in this case study come from the records available for all levels of trial courts, civil and criminal, that operated in Bond and Menard between the years 1870 and 1960.[9] This time period approximates the life of the court system laid out in the 1870 Illinois constitution and offers a longstanding, stable court structure for analysis.[10] Since my interest is in how trial courts handled the matters brought to

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Greenville in Bond County (the county seat) confirmed that Bond had a similar vigilante group, which still existed in the early 1950s, largely as a social group (interview with William Horsefall of Greenville, IL, October 20, 1982).

[8] If there has been a fundamental change (perhaps because even these simple settings are parts of a larger, urbanized and industrialized society with an increasingly complex, professionalized, and bureaucratized legal system), we would expect to find trials predominant early in the period but steadily displaced by uncontested civil judgments and guilty pleas by the end of the period.

[9] All source materials, record books, docket books, case files, and indices are kept by the circuit clerks in the respective county courthouses in Petersburg, IL (Menard) and Greenville, IL (Bond).

[10] The 1870 constitution was in effect until 1970, but in 1962 the judicial article, art. 6, was amended. The amendment, which went into effect on

them, I define a "case" as a formal entry in a court's docket. This definition includes as cases the full range of these courts' activities. Like the biological taxonomist who says that it is "[t]he *whole* organism [that] should be considered in all its parts and all its aspects" (Simpson, 1961: 71) and not just selected characteristics, I start with the premise that any understanding of trial courts and how they handle matters must be based on more than just selected aspects of their activities. For the taxonomist, "[t]he object of classification should be . . . the *holomorph*, all the characteristics of the individual . . ." (Simpson, 1961: 71). The same, in my view, holds for courts. Defining cases from this perspective, I collected data on a grand total of 9,262 filings.

Both counties had a three-tiered system of trial courts under the 1870 scheme: circuit, county, and justice of the peace/police magistrate. Each county was a part of a multi-county judicial circuit that had three circuit judges throughout most of the 90-year period, but only one circuit judge at a time sat when the respective circuit courts convened in each county. As the highest trial court, the circuit court was the court of general jurisdiction. On the civil side it had common law jurisdiction (which included, most importantly, divorce, foreclosure, and partition). On the criminal side only the circuit court had jurisdiction over matters punishable by imprisonment in the penitentiary or death. In effect, it was the felony court, although it heard less serious matters. Data on how cases were handled were collected for every circuit filing for every fifth year: 1870, 1875 . . . 1960.

The county court was the intermediate trial court. Every county had a single county judge who, in smaller counties such as Bond and Menard, doubled as the probate judge.[11] While this court's jurisdiction was limited by dollar ceilings and the penalties it could impose, it was still substantively quite broad. The court had common law jurisdiction, legislatively limited by dollar amount, which was concurrent with that of the JP courts. The legislature periodically raised the dollar limits and expanded the court's substantive jurisdiction, leading one

January 1, 1964, completely restructured the multi-level system of trial courts into a single-level, unified trial court system (see Underwood, 1971).

[11] The probate court worked on a separate docket and so is not included in this analysis. There were substantial numbers of probate matters in both counties, but there were virtually no contested matters on either probate docket. The probate docket in Menard showed a total of 1,467 matters (again sampling every fifth year and including all new filings per sample year); in Bond the probate docket showed a total of 1904 matters filed for the sample years. For each, the proportion of contested matters was less than .01%.

Illinois county judge to claim that this "resulted in the county court being a catch-all court with a tremendous and varied volume of business" (Thomas, 1958: 610). In addition, the court heard juvenile matters and civil commitments, along with a host of quasi-administrative matters such as the "Mothers' Pension" (the equivalent of county welfare) and naturalizations. On the criminal side it had jurisdiction over matters *not* punishable by imprisonment in the penitentiary or death. Though not exclusively so, the county court was in effect a misdemeanor court. Data were collected for every county court filing for every fifth year, excluding those in the probate court, except that data collection began with 1872, the first year of the court's existence under the 1870 constitution, and then went to 1875 and so on to 1960.

The justice of the peace courts were the lowest of the trial courts, and the most limited in jurisdiction. They were organized on the township or precinct level but had county-wide jurisdiction. Each township or precinct was allowed to elect two JPs, with larger population areas being allowed to elect up to five. Many of the allocated positions, however, went unfilled or were filled by JPs who conducted little or no judicial business (Allen, 1937; Giese, 1958).[12] Civil jurisdiction was common law only and legislatively limited by dollar amount to what we would now consider small claims. On the criminal side the JP courts (and the police magistrate courts, which were often the same in practice) had jurisdiction in all misdemeanors or local ordinance violations punishable by fine only. This limited business to the most minor, petty offenses; and after the Second World War the bulk of the JPs' business consisted of minor traffic matters. No sampling was done for these courts because a full set of records for the 90-year period was not found for either county.[13] Consequently, where materials were located, data were collected on *all* matters for every year. JP data were collected on civil matters (N=1,016)

[12] Interviews with two former Menard JPs who served during the middle and late 1950s confirmed this. At that time there were four JPs in the county. One of the four, Irving Hurwitz of Petersburg (the county seat), reports that he eventually handled over 90% of the JP caseload. Two of the remaining three handled, on average, less than 10 cases per year, he said. Hurwitz characterized his docket as at least two-thirds traffic (interview with Irving Hurwitz, July 14, 1982). The fourth JP had a docket almost exclusively made up of traffic cases. He resigned his position before the end of his term, in part because most cases were being taken to Hurwitz instead of to him (interview with Frank Bless of Greenview, IL, July 15, 1982).

[13] The experience of trying to find JP records in these and other counties convinced me that locating any substantial cache of records for such petty courts should be considered a stroke of good fortune.

in Menard for the years 1870 to 1949, and on civil (N=1,452) and some scattered criminal matters (N=801) for Bond for the years 1911 to 1945.

For simplicity of presentation, six categories of case handling are specified for civil and criminal filings. These categories reflect what was actually stated in the records, rather than an attempt to second guess what lay behind reported dispositions. For civil matters the categories are: contested matter (meaning that the record showed some actual contest, even if over a motion); uncontested judgment for plaintiff (including defaults and confessions of judgment); dismissed (when this was all the record stated); settled-out-of-court (when so stated in the record); voluntary dismissal by plaintiff (when so stated in the record); and a residual category of other and undetermined (the bulk of the other situations involve the variety of quasi-administrative matters filed in these courts). For criminal matters the categories are: contested matter; guilty plea; matters stricken from the docket by the court; drop/nolle (where the record explicitly states a drop or nolle by the state's attorney); matters certified down by the circuit court to the county court (while in practice a transfer from a higher to a lower court, this was effectively a way for the circuit to handle cases and get them off its docket); and other/undetermined (undetermined meaning that no final disposition could be found in the records). Each matter coded was traced from the initial filing to a judgment or other final appearance on the docket.

IV

The first question posed for this case study asks what proportion of matters filed with these courts involved a contested hearing or trial. Of the 9,262 matters coded, only 887, or less than 10 percent, resulted in a contest of some sort. The modal categories for handling cases were the uncontested judgment for plaintiff on the civil side and the guilty plea on the criminal docket. The combined civil and combined criminal dockets share relatively low overall percentages of contested matters—ranging from a low of 8 percent for Menard civil to a high of only 12 percent for Menard criminal. In addition and equally as important as the gross patterns of contested and uncontested matters, there were sizeable proportions of filings that dropped out without a judgment on the merits. Civil filings dismissed, settled, or voluntarily dismissed by plaintiff accounted for 15 percent of the sample in Menard and 25

percent in Bond. Criminal filings dropping out—stricken, drop/nolle, or certified down—accounted for 39 percent of all cases filed in Menard and 29 percent in Bond. In general, both civil and criminal matters in both counties typically either led to an uncontested judgment or dropped out. It was the exceptional matter that actually went to a contested trial or hearing, and only a minority took this route throughout the 90-year period.

These gross patterns are not, with one possible exception, very different from those found in the few longitudinal studies of civil or criminal courts.[14] The one exception may be Friedman and Percival's (1981: 73) finding that 40 percent of felony cases in urbanized Alameda County, California superior court (the highest trial court) went to trial between 1880 and 1910, while another 40 percent were guilty pleas and about 16 percent dropped out. They also found, however, that trials were rare events in the police court (a misdemeanor court), with most cases being processed by a guilty plea or being dropped (1981: 120-31). The comparable percentages for trials in Bond and Menard circuit courts during these years are below 15 percent. This last figure is similar to what I found in examining court records from a central Illinois urban site, Sangamon County (which includes the city of Springfield).[15]

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[14] For example, the criminal trial rates reported here are similar to Heumann's finding of an overall 8.7% trial rate in Connecticut trial courts from the 1880s to the 1970s (Heumann, 1975: 520). Laurent's (1959) census of cases in Chippewa County, Wisconsin, for the years 1885-1954 shows that about 26% of the criminal filings went to trial in the circuit (higher) court (1959: Table 56), and about 5% of the criminal filings went to trial in the county court (1959: Table 65), for an overall proportion of about 14%.

The low percentage of civil trials in Bond and Menard is similarly in line with the handful of other longitudinal studies of civil litigation. The McIntosh (1980-81) and Friedman and Percival (1976) studies of highest level trial courts (in St. Louis, Missouri, and Alameda and San Benito counties in California, respectively) show only slightly higher overall percentages of contested trials. McIntosh's data show that between 1820 and 1970 (sampling at 15-year intervals) about 20% of all filings went to a contested trial, with only one sample year (1880) reaching as high as 30% (1980-81: Table 3). Friedman and Percival's data show that 22% of civil filings went to trial between 1890 and 1970 in their two California counties (sampling every 20 years and sampling cases within years for the urban county). The percentages from Laurent's Wisconsin county (no sampling of years) are lower. The percentage of civil cases going to a contested trial—at least to a jury trial—was about 9% for the years between 1885 and 1954 in the circuit court (1959: Table 184) and less than 5% in the county court (1959: Table 192). The Civil Litigation Research Project, the most comprehensive study of contemporary civil litigation processes, found that fewer than 8% of the cases sampled went to a contested trial. Trubek *et al.* (1983: s-23) noted that "[t]here is a popular image that litigation involves extensive pretrial and protracted trials. Our data suggest the contrary. Trials are rare, pretrial activity modest, and most cases terminate through settlement negotiations."

[15] Data were collected on 2,726 criminal filings in the circuit and county courts of Sangamon County, Illinois, for the period 1870 to 1900 and sampled again at 5-year intervals. There were 307 contested matters in these two

The trial rate for Sangamon circuit court was 12 percent (and 10 percent for the county court).[16] The difference between Alameda in California and the three Illinois counties poses the interesting question of what can account for it; but attempting to answer this question would take us well beyond the scope of this article. It is sufficient for my purposes to put Friedman and Percival's 40 percent trial rate in a context that shows the trial rates for my two counties are not aberrational.

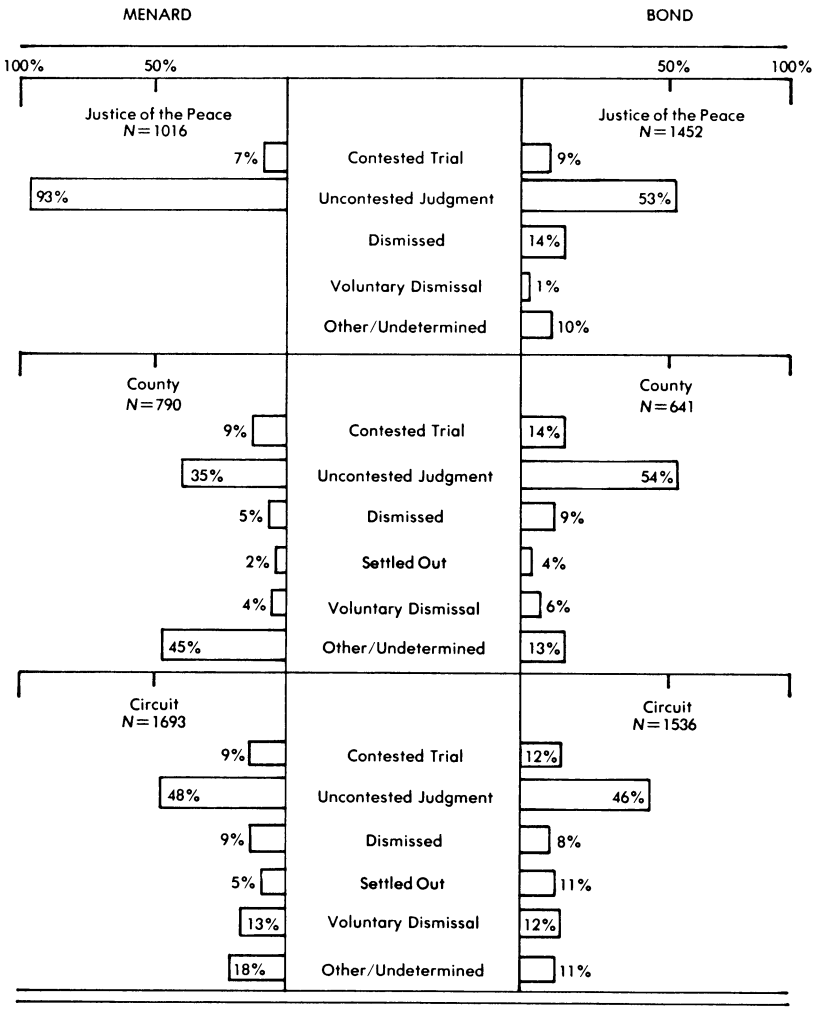
Gross figures such as those presented so far can, of course, hide a variety of distinctions between the civil and criminal dockets, among different levels of courts, and among different points in time. The interesting and important questions deal with these issues. As we shall see, despite differences among levels of courts, between the civil and criminal dockets, and over time, an underlying pattern of few trials and a sizeable proportion of uncontested judgments and drop-outs persists, however we break down the data. Moreover, the fluctuations and shifts over time do not, in my view, represent the kind of generalized, fundamental change suggested in the literature; that is, we see no evidence of changes affecting all types of cases—civil and criminal—and all levels of courts in essentially the same way.

Figures 1 and 2 present overall breakdowns between civil and criminal filings for the different levels of courts in each county. Starting with Figure 1, which reports the data for civil cases, we see both similarities and distinctions when we look at the different levels of courts. Most important among the similarities is the low proportion of contested matters at all levels. The percent of cases contested ranges from a low of 7 percent in the Menard JP courts to a high of 14 percent in Bond county court. In all but one court the modal category of

courts, or about 11% of the total filings, and 955 guilty pleas, or about 35% of all filings. Sufficient JP materials could not be located to allow inclusion of these courts.

16 To say that only about 10% of criminal filings are contested is not the same as saying that 90% of convictions are the result of guilty pleas because the percentages have different bases. For the 90% figure it is *total convictions*; for the 10% figure it is *total filings*. Rarely is this distinction clearly made (but see Alschuler, 1983: 928). I am talking here of *filed* cases and percentages of *filed* cases. Still, with a low percentage of *trials* we would normally expect a high percentage of *convictions* by guilty pleas. For instance, in Bond and Menard the respective percentages of *convictions* by guilty plea are 75% and 76% for the circuit court and 71% and 85% for the county court. (Interestingly, comparable figures on the civil side—uncontested judgment for plaintiff as percentage of plaintiff victory—are in the plus-80% range.) The percentages of *filings* ending as guilty pleas are 28% and 23% for Bond and Menard circuit courts, and 54% and 56% for the respective county courts.

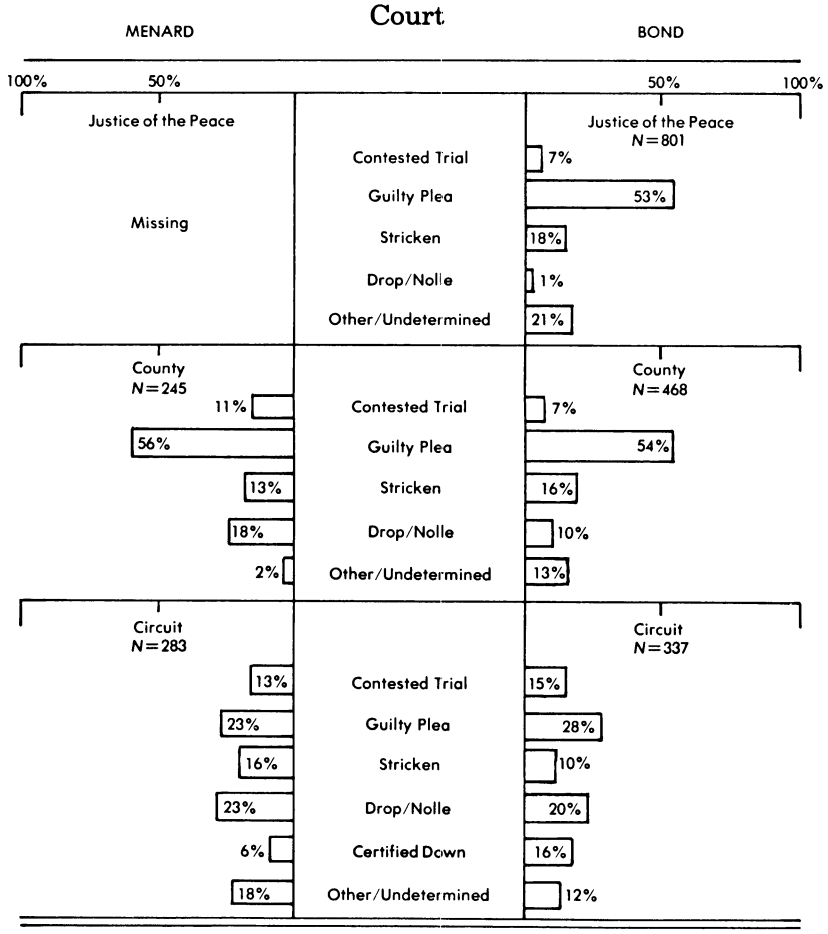
Figure 1. Civil Dispositions, 1870-1960: By County and Court



handling was the uncontested judgment for plaintiff.[17] The one exception to this pattern was the Menard county court, for which the modal category was the "Other" category. The bulk of these were the various quasi-administrative matters presented to the court, another non-adversarial form of case

[17] Laurent's data also show that uncontested judgments were the modal disposition in Chippewa County, with about half of the filings ending as some form of uncontested judgment in the circuit court (1959: Table 184) and about 70% in the county court (1959: Table 192). In Allen's analysis of JP courts in five Illinois counties during the middle 1930s, the modal disposition was also the uncontested judgment (Allen, 1937: 1050-52). Wunder's study of JPs in territorial Washington again shows uncontested judgments as the modal category (Wunder, 1979: Table 10), but he notes that many of the cases "were characterized by a spirit of accommodation—the search and discovery of reasonable alternatives acceptable to all parties of a dispute" (Wunder, 1979: 134).

Figure 2. Criminal Dispositions, 1870-1960: By County and Court



processing. The difference in modal category between this docket and its Bond counterpart reflects, apparently, a difference in mix of business.[18] Excluding the "Other" category leaves the uncontested judgment as modal.

There are other differences among the courts, but none disturbs the modality of uncontested judgment or the low percentages of trials. Perhaps the most striking of the differences is the unusually high percentage of uncontested judgments in Menard JP courts and the accompanying absence of matters that dropped out short of judgment. The other noteworthy difference occurs in the two circuit courts, where

[18] A large percentage of these were naturalizations processed by the county court between 1872 and 1900 (N=150). Naturalizations make up 82% of this "Other" category for the years 1872 to 1900 in Menard. The number of naturalizations in Bond county court was much lower, so there is no comparable swelling of the "Other" category.

relatively more matters are in the drop-out categories. The reason for the first of these differences is unclear. It may be an anomaly unique to the JP courts of this one county and their business. The business of Menard JP courts was extremely narrow, consisting exclusively of debt and assumpsit matters in which the plaintiff most often won by default (the defendant was three times solemnly called but failed to appear within one hour) or won by uncontested judgment when the defendant did appear and admitted the plaintiff's claim. These matters typically involved a merchant's account book or a claim for services performed. The Bond JP courts had a somewhat broader mix of business, as did the JP courts in six central Illinois counties reported on in a 1937 study (Allen, 1937).[19] Also, it may have been that Menard JPs were just quicker and more willing to give the plaintiff (who paid the fees from which the JP took a share) the judgment requested with little or no consideration of the issue, a claim found in much of the old reform literature that argued for the abolition of JP courts (i.e., Giese, 1958; Smith, 1927). The reason for the second difference may also be related to what the courts in question did. As the higher courts, the circuit courts handled matters in which much more was at stake. This means that the potential loss for both parties is greater, which may provide an incentive to seek an accommodation short of a formal judicial resolution on the merits. Thus, more cases may drop out short of judgment. The circuit courts also handled a broad mix of business in which, as compared to the other courts, there were proportionately more matters, such as torts and appeals, that were more likely to drop out short of judgment.[20]

Uncontested plaintiff judgments did not totally dominate the dockets (except for the Menard JP courts). Sizeable proportions of filings became neither contested nor uncontested matters, but rather dropped out short of judgment or never really demanded a judgment and so were rarely open to contest. As I have already noted, many matters of the latter type, which make up the bulk of the "Other" category, were quasi-administrative in nature. This was especially true in the

[19] The bulk of the dockets of the Illinois JP courts that Allen studied in detail in the mid-1930s were made up of debt/contract and property-related matters. He found that about 3% of the matters went to a contested trial, 65% ended as uncontested judgments, 18% dropped out, and the remaining 14% were apparently undetermined (Allen, 1937: 1049-50).

[20] For example, in Bond circuit civil 56% of all appeals dropped out short of judgment, as did 49% of all of torts. Together, these two areas made up 20% of the docket in Bond circuit court but were almost totally absent from the civil dockets of the two lower courts.

county courts, whose jurisdiction included many such matters.[21] Other kinds of business entered the courts as at least potentially contested and open to a trial but for one reason or another dropped out. Such matters—filings recorded as dismissed, settled-out-of-court, or voluntarily dismissed by plaintiffs—ranged from a combined 11 percent in Menard county court to 31 percent in Bond circuit court. If we ignore for the moment the quasi-administrative situations, the typical civil filing in all but the Menard JP courts was either routinely processed by an uncontested judgment or dropped out. Contested judgments were an exception to the general pattern.

Figure 2 presents the overall patterns for criminal matters. The most important of the similarities we see is again the low percentage of trials, ranging from a low of 7 percent in the Bond JP courts and the Bond county court to a high of 15 percent in Bond circuit, figures strikingly similar to those for the civil side. In the lower courts, JP and county, the guilty plea was the modal category of disposition, with just over half of the filings in these courts processed via guilty pleas.[22] As with the civil side, there were also sizeable proportions in the drop-out categories—for these courts, matters stricken or drop/nolled. The proportion of cases that dropped out for any reason ranges from 19 percent in Bond JP to 31 percent in Menard county court. Thus, in these lower courts the typical criminal or civil case either dropped out or was routinely processed via some form of uncontested judgment. Contested judgments were as unusual on the criminal side as on the civil.

The circuit courts, however, handled their criminal dockets differently both from the way the lower courts handled theirs and from the way they handled their own civil dockets. But the differences are not manifested in substantially higher percentages of contested trials. Instead, the combined ways of dropping out replace the uncontested judgment (here the guilty plea) as the modal way of disposing of cases. In Bond circuit court 46 percent of the criminal prosecutions commenced were dropped from the docket short of conviction for one reason or another. Only 28 percent of the filings eventuated in guilty

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[21] One former Menard county court judge remarked that most of the one hour or so a day, on average, he spent on his judicial duties was devoted to such quasi-administrative matters (interview with Samuel Blane of Petersburg, IL, July 11, 1982). According to a 1923 book on Illinois government, "[t]he county court is to a large extent a court to deal with local administrative problems . . ." (Dodd and Dodd, 1923: 199).

[22] This is somewhat lower than the percentage of guilty pleas in the Chippewa county court—just over two-thirds (Laurent, 1959: Table 65).

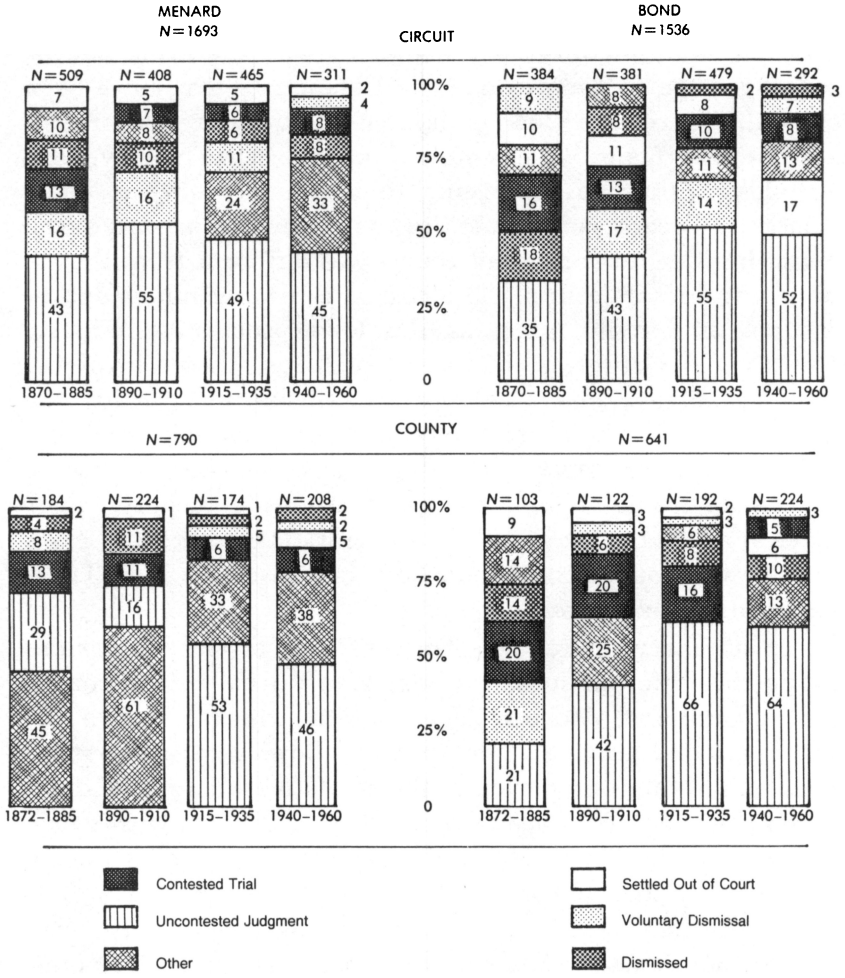
pleas. In Menard circuit court the comparable proportions are 45 percent and 23 percent. There are a number of possible reasons for these patterns. First, as with the civil side, the stakes in many matters were higher than in the lower courts, meaning there was more to lose. Defendants may have been less willing simply to plead guilty, making the state's attorney's task more difficult. The state's attorney, in turn, may have been less willing to risk going to trial and losing in some situations. Second, and related to the difference in stakes, the mix of business in the circuit courts was different from that in the county or JP courts. The circuit court's criminal docket was not as heavily laden as the lower courts' with petty offenses or victimless offenses, such as those involving gambling, liquor, and vice, nor was it burdened with the increasing numbers of traffic-related offenses that typically ended as guilty pleas. Finally, the circuit court had a mechanism available to it to get matters (especially minor matters) off its docket short of judgment. It could certify cases down to the county court, and both circuit courts did. Trials remained the exception.

In summary, there were both differences and similarities among the different levels of courts and between the courts' civil and criminal dockets. But the similarities outweigh the differences and provide a context that allows us to understand them. All of the courts, even in these relatively simple settings, shared the low percentage of trials often associated with urban and/or contemporary settings. They also shared as modal dispositions either uncontested judgments or drop-outs. The key trade-offs in the differences among the courts were between percentages of uncontested judgments and drop-outs. Other differences or shifts, especially those involving trials, must be seen in this general context. Our next task is to examine the data over time to see if we can identify any such shifts and pinpoint the reasons for them.

Figures 3 and 4 present bar graphs for the civil and criminal dockets, respectively, that portray patterns of handling matters over time in the Bond and Menard circuit and county courts.[23] For ease of presentation, the 90-year period is divided into four parts and the data for every fifth year aggregated. The total numbers of filings per period are at the top of each bar. The category with the greatest proportion of filings—the modal category—is at the bottom, with the next most common

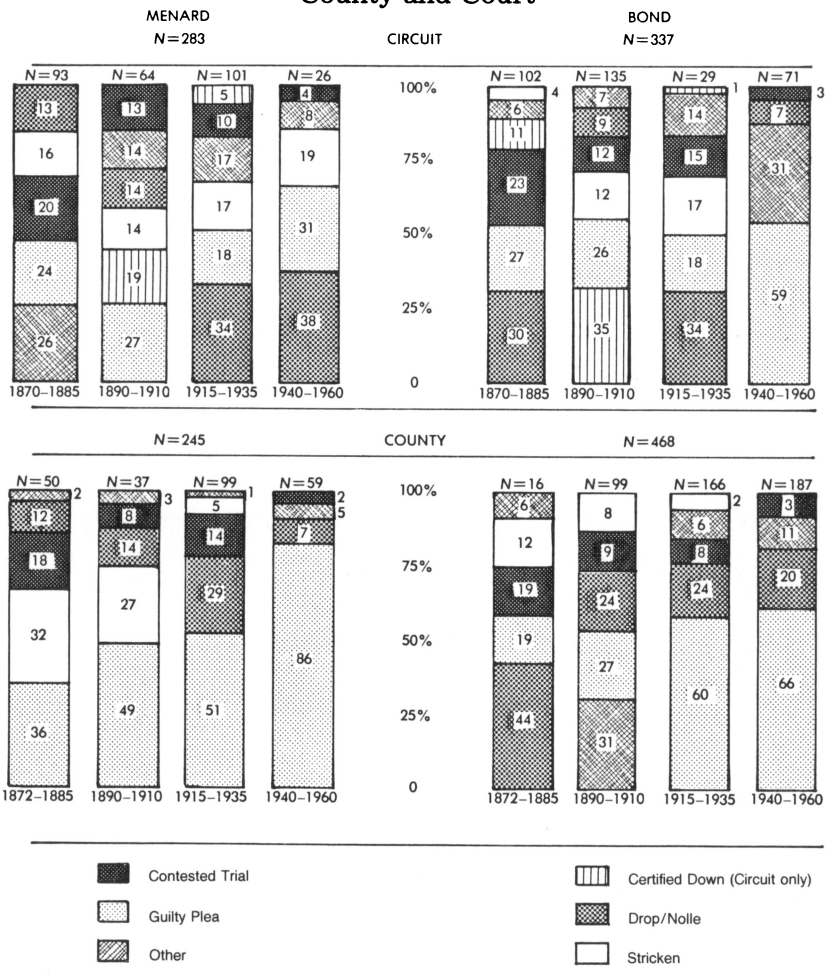
[23] The gaps in the JP data prevent me from extending this phase of my analysis to these courts.

Figure 3. Civil Dispositions over Time, 1870-1960: By County and Court



category of cases on top of it, and so on until all the filings in each period are included. Thus, these graphs show not only the pattern for each period in terms of percentages and relative importance but also movements and shifts over time. If, for example, there were over time a change in how cases were processed from, let us say, contested trials to uncontested judgments, contested trials would be the modal category (and a sizeable one at that) and so would be found at the bottom of the early bars with uncontested judgments at or near the top, reflecting a much smaller proportion of early actions. In the later time periods contested trials would become less important and migrate towards the top of the bar while uncontested judgments migrated to the bottom and displaced trials as the modal category.

Figure 4. Criminal Dispositions over Time, 1870-1960: By County and Court



Neither Figure 3 nor Figure 4 shows this kind of major trade-off between contested and uncontested ways of disposing of cases, but both show movements over time. Figure 3, which portrays the civil docket data, indicates that the changes that occurred over time did so within the context formed by uncontested judgments and drop-outs. During no time period were contested trials the modal category. Except for Menard county court in 1872-85 and 1890-1910 when the modal category was "Other," the modal category was "Uncontested Judgment for Plaintiff" and usually by a substantial margin. Trials generally appear high on the bars. At the most, contested matters accounted for 20 percent (the third most important category) of the cases disposed of in Bond county court for 1872-85 and 1890-1910, and at the least they accounted for 5

https://doi.org/10.2307/3053571 Published online by Cambridge University Press

percent in Bond county court in 1940-60. Moreover, only in Bond county court is there more than an 8 percent difference in the proportion of cases disposed of by trials in any two time periods, and in this court the difference is due almost entirely to a drop in trials between the 1915-35 and 1940-60 intervals, two periods in which the proportion of cases resolved by trial in all other courts remained almost perfectly stable.

In addition to the changes in the proportions of filings eventuating in trials, there were also increases in the percentage of uncontested matters. But these increases were in large measure not at the expense of trials. In Menard county court, for instance, the changes were a trade-off between "Uncontested Judgment" and "Other," with the latter dominant in the first half of the 90-year period and the former in the second. In Bond county court, with nowhere near the number of naturalizations (the bulk of the "Other" category in Menard), the pattern was quite similar to the general pattern found in the circuit courts. There, the increases in the "Uncontested Judgment" category appear more as a trade-off with "Other" and the drop-out categories rather than with trials. Generally speaking, the pattern characterizing the civil dockets in these courts throughout the period studied was largely one of matters either handled via uncontested judgment for plaintiff or dropping out.[24] The courts do show some tendency toward proportionately fewer trials over time, but the point at which this movement seems most pronounced is different for the different courts, even within counties, and there is nothing in these data to suggest that at some time

[24] The choice of time periods for aggregating the data necessarily involves some arbitrariness. But my choice of time periods was not simply an arbitrary process. My first concern, of course, was practical—trying to have enough cases in the various categories to be able to say something meaningful. I also wanted to choose cut-offs that did not lie in the middle of known major societal events. For instance, the 1890-1910 period captures the economic depression of the 1890s as well as the peak population years for each county (1900 in Menard and 1910 in Bond). The 1915-35 period takes in the World War I years, but more importantly it encompasses the depth of the Great Depression, which began in the 1920s in many agricultural areas. This period also represents all of the prohibition era. The 1940-60 period includes the World War II years as well as the economic recession of the 1950s. Altering the time periods—making them longer or shorter—does not substantially change the general patterns in Figures 3 and 4, though it makes slight differences. Going to three rather than four periods accentuates certain changes, such as the increasing proportion of guilty pleas in the county courts, making them appear more dramatic. Going to more time periods, every 10 or 15 years, for example, can help pinpoint changes better, especially short-lived ones such as the increases in both trials and drop-outs in circuit and county court criminal dockets during the prohibition years, but it is at the cost of making patterns and changes appear choppy or even unintelligible because of the numbers of categories with few or no instances for shorter periods.

during the period studied the process of handling civil cases fundamentally changed, marking the demise of trials.

The patterns in Figure 4 for the criminal dockets are not as clear as those on the civil side. There was no consistent modal category over time for the criminal dockets, except for Menard county court, in which disposal by guilty plea was consistently and increasingly the mode. Still, disposal at trial played a minor role in an overall pattern dominated by guilty pleas and drop-outs. For Menard circuit the mode was "Other" (mostly matters left continued on the docket)[25] for 1870-85, "Guilty Plea" for 1890-1910, and "Drop/Nolle" thereafter. For Bond county court the mode was "Drop/Nolle" for 1870-85, "Other" for 1890-1910 (again, mostly matters left continued on the docket), and "Guilty Plea" thereafter. For Bond circuit the modal category was one of the drop-out categories for the first three periods—"Drop/Nolle," then "Certified Down," and then "Drop/Nolle" again—and "Guilty Plea" for the last. Perhaps the most noticeable difference between the two levels of courts is that in the county courts guilty pleas tended to be the single most frequent disposition while in the circuit courts there were usually more drop-outs than guilty pleas. This, in turn, probably reflects differences in the business of the two levels of courts and in the stakes involved. Also notable is the fact that contested trials were never more than the third most common mode of disposition.

If we look only at convictions, there is at least a bit more clarity. In the county courts there is a marked movement to higher proportions of *convictions* by guilty plea rather than by contested trial, especially in the years after 1915. Bond county court went from 60 percent of convictions by guilty plea in 1872-85 to 81 percent in 1890-1910 to 91 percent in 1915-35 and to 97 percent in 1940-60. The proportion of convictions by guilty plea in Menard county court dropped from 75 percent in 1872-85 to 49 percent in 1890-1910 but increased to 91 percent in 1915-35 and to 98 percent in 1940-60. The pattern for the circuit courts of the two counties is not quite as clear, but by the last

[25] Some of the older lawyers I interviewed suggested that the reason for such a large proportion of cases left continued on the record might be that the accused was "run out of town." Leaving the case continued on the docket gave the accused an incentive not to return. Consistent with my informants' speculations, Little and Sheffield (1983: 803) note that expulsion from the community was one of the main sanctions used by vigilante organizations. Furthermore, agricultural historians note that this was a period of high mobility among the population, with a fair amount of through migration—people coming to this part of Illinois, staying for a number of years, and then moving further west (see Bogue, 1963: 8-46).

period the proportion of convictions by guilty plea was at or near 100 percent. The proportion of convictions by guilty plea in Bond circuit court went from 57 percent in 1870-85 to 76 percent in 1890-1910, down to 62 percent in 1915-35, and up to 94 percent in 1940-60. The pattern for Menard circuit court was roughly similar. It went from 77 percent in 1870-85 to 85 percent in 1890-1910, down to 62 percent in 1915-35, and up to 100 percent[26] in 1940-60.

In two obvious but important respects the criminal and civil dockets are similar. First, in no period was "Contested Trial" the modal category of case disposition, nor were the trade-offs involved in the shifts over time simply or clearly a matter of an ever-increasing percentage of guilty pleas or uncontested judgments replacing an ever-decreasing percentage of trials even though some small trade-offs of this sort may have occurred in some courts between some periods. Contested trials were always an exception to a general pattern in which the key trade-offs are between uncontested judgments of various kinds and drop-outs. Even if we look at convictions alone, only in one instance—the Menard county court criminal docket for 1890-1910—was "Contested Trial" the modal category of disposition, and then by only the slimmest of margins, 51 percent of convictions by contested trial and 49 percent by guilty plea. Second, for both dockets there was, nonetheless, some movement of contested matters up the bars. The criminal dockets reflect a somewhat greater diminution in the percentage of trials in the last part of the 90-year period. For 1940-60 in all four courts cases disposed of at trial are at the top of the bar, for they have become the least common way of disposing of criminal cases, ranging from 2 percent of the dispositions in Menard county court to 4 percent in Menard circuit court. The comparable range for the civil dockets in Figure 3 is not substantially different, running from 5 percent to 8 percent, with trials near but never at the top of the bars. It is also the case that the proportion of cases resolved by guilty pleas was highest for each court in the last period.

The remaining, and perhaps most important, question is what might account for the specific patterns for the different time periods and for the shifts over time. Patterns of case handling in Bond and Menard suggest that even in these simple rural settings where one might expect to find minimal pressures to avoid trial once the decision to file a case had been

[26] There was only one trial during this period, and it resulted in an acquittal.

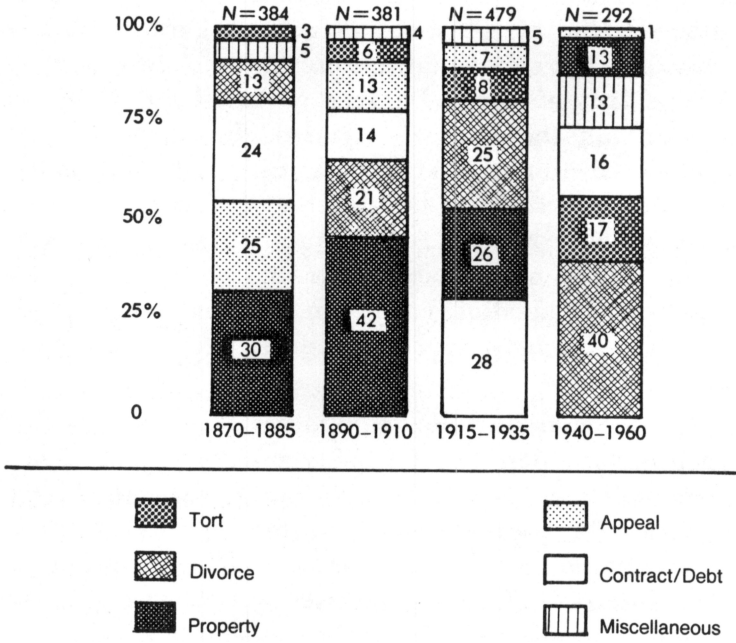
made, there never was a time when trials were the predominant mode of case disposition. At the same time, the data reveal shifts within the general pattern of handling matters by dropping them or through some form of uncontested judgment. Given the nature of these counties, the kinds of factors generally discussed in the literature—like caseload pressures, the bureaucratization of courts, urbanization, and industrialization—do not provide a useful key to understanding the shifts that did occur. It is clear that no global change that affected all types of cases and levels of courts in essentially the same way occurred during any one 10- or 20-year period, for shifts in patterns of case handling occurred at different times in the different courts and dockets studied, even within counties. A more promising explanation is that different types of matters—contract, tort, etc.—exhibit different patterns of handling at a given point in time and over time. If so, as a court's mix of business changes, so will patterns of handling.

Some of the civil litigation studies give credence to this idea. For instance, McIntosh (1980-81) says of his St. Louis data, "examining the dispositional patterns of the total case load produces a somewhat distorted picture. Each distinguishable area of civil law may represent a unique behavioral system. Not only are the issues different, but so too are the types of litigants involved, their resource capabilities, the relationships between them, and the array of dispute resolution strategy alternatives" (1980-81: 847; also see Friedman and Percival, 1976). Engel's (1983) ethnographic study of a single Illinois county makes a similar point with regard to contemporary patterns. He found that even though "the general tendency was to avoid formal adjudication, different types of cases tended to gravitate in distinctive patterns towards different modes of processing" (1983: 838).

My data lend further support to this position. For example, the civil docket data from Bond circuit court show a steady increase in uncontested judgments and an accompanying decrease over the years in the proportion of contested judgments, with a leveling-off at the end. The trade-off explanation is clearly inadequate, however, because over the entire period the proportion of filings that conclude in uncontested judgments increases by 17 percent while the proportion of cases tried diminishes by only 8 percent. (Had we looked at the first and third periods, the respective proportions would be 20 percent and 6 percent, an even greater disparity.)

Instead, the pattern can be shown to reflect the mix of court business at different points in time along with changes in the ways different matters were handled. Figure 5 shows the

Figure 5. Mix of Business: Bond Circuit Court Civil Docket



changes in the Bond circuit court's business over the 90-year period, using the same type of graph as in Figures 3 and 4. The most noticeable and important changes over time are: 1) the dominance of property-related matters in the first two periods and their decreasing importance in the last two; 2) the steady decrease in appeals throughout the 90-year period from a major proportion of the docket in 1870-85 to their virtual absence in 1940-60; and 3) the steady increase in the percentage of divorce-related matters from a minor percentage in 1870-85 to the point where it is the largest category in 1940-60. In addition, there was a continual increase in the proportion of tort matters, although not of the same magnitude as divorce, and there was a fluctuating pattern for debt/contract matters.

During the 1870-85 period there were 61 trials (16 percent of all filings; see Figure 3). Over half the trial cases (56 percent) involved appeals although appeals accounted for only 25 percent of the docketed cases. Debt/contract actions comprised the second largest proportion of trials (26 percent),

and a similar proportion of docketed cases (24 percent). Property-related matters, by contrast, accounted for 30 percent of the docket, the largest percentage, but only 8 percent of the trials; and divorce-related matters, which made up 13 percent of the docket, accounted for only 7 percent of the trials. On the other hand, property-related matters made up 53 percent of the uncontested judgments for plaintiff, and divorce 26 percent. Thus, we see that different matters were handled in very different ways. Viewing this another way, Table 1 shows that only 5 percent of property-related matters went to a contested trial, compared to 35 percent of the appeals, while 61 percent of property-related matters ended as uncontested judgments, compared to only 7 percent of appeals.

Figure 3 shows that the proportion of contested judgments decreased in the 1890-1910 period while the proportion of uncontested judgments increased. The decrease in trials followed the decrease in the number and percentage of appeals evident in Figure 5. The number of appeals dropped from 96 to 51, and the proportion of the docket devoted to appeals fell from 25 percent to 13 percent. The proportion of appeals going to trial remained, however, about the same (37 percent), as did the percentage ending as uncontested judgments (4 percent), and appeals still represented the largest proportion of trials during this period (38 percent). At the same time, the number and percentage of property-related matters increased from 116 to 161, or from 30 percent of the docket to 42 percent. But the proportions of these matters going to trial or ending as uncontested judgments also remained about the same—7 percent and 60 percent, respectively. The number and percentage of divorce matters also increased, from 50 to 80 and from 13 percent of the docket to 21 percent. But again, the proportions going to trial or ending as uncontested judgments remained about the same—4 percent and 70 percent in 1870-85 and 5 percent and 64 percent in 1890-1910. Although the fit is not exact, the shifts from the first period to the second in the way cases were handled, as revealed in Figure 3, appear attributable to changes in the court's mix of business. The kinds of cases most likely to go to trial became less prevalent while those most likely to end as uncontested judgments gained in prominence.

The same rough dynamic appears to be at work in the 1915-35 period. Again, Figure 3 shows that the proportion of trials decreased while the proportion of uncontested judgments increased. Figure 5 shows that the number and proportion of

Table 1. Disposition of Cases over Time by Case Type: Bond Circuit Court, Civil Cases

Disposition	*Time Period and Type of Case*				*Time Period and Type of Case*			
	1870-85	1890-1910	1915-35	1940-60	1870-85	1890-1910	1915-35	1940-60
	All Cases (N=1,536)				**Property (N=441)**			
	N=384	N=381	N=479	N=292	N=116	N=161	N=127	N=37
Contested trial	16%	13%	10%	8%	5%	7%	6%	5%
Uncontested judgment/plaintiff	35	43	55	52	61	60	67	57
Drop out	38	36	24	27	23	32	23	27
Other	11	8	11	13	11	1	4	10
	Tort (N=120)				**Appeal (N=186)**			
	N=10	N=21	N=40	N=49	N=96	N=51	N=37	N= 2
Contested trial	30%	19%	30%	18%	35%	37%	27%	0%
Uncontested judgment/plaintiff	20	81	15	6	7	4	5	50
Drop out	40	0	53	69	56	53	62	50
Other	10	0	3	6	1	6	6	0
	Miscellaneous (N=96)				**Contract/Debt (N=323)**			
	N=21	N=15	N=23	N=37	N=91	N=53	N=131	N=48
Contested trial	0%	13%	13%	5%	18%	13%	6%	4%
Uncontested judgment/plaintiff	14	20	17	22	32	45	71	65
Drop out	24	33	17	24	47	42	21	25
Other	62	33	52	49	3	0	2	6
	Divorce (N=370)							
	N=50	N=80	N=121	N=119				
Contested trial	4%	5%	9%	8%				
Uncontested judgment/plaintiff	70	64	77	78				
Drop out	16	24	10	9				
Other	10	7	4	4				

appeals decreased again, to 37 or 7 percent of the docket. Table 1 shows that the proportion of appeals ending as uncontested judgments remained about the same (5 percent), but the proportion going to trial decreased (to 27 percent). The bulk of the appeals dropped out short of judgment (62 percent). By this time, however, appeals had become a relatively minor part of the docket, and the types of cases appealed from may well have changed. Property-related matters also decreased, though they still represented a major part of the court's docket, 127 filings or 26 percent of the docket. The proportions of property-related matters going to trial or ending as uncontested judgments remained largely unchanged, 6 percent and 67 percent, respectively (see Table 1). The important increases in the docket for this period came in debt/contract actions and divorce. The number and proportion of divorce cases continued to increase, to 121 cases or 25 percent of the docket. The proportions going to trial or ending as uncontested judgments rose, to 9 percent and 77 percent, respectively, not enough to significantly alter the pattern found for divorce in the previous two periods (see Table 1). The most dramatic changes for the 1915-35 period came in the debt/contract area. The proportion of the docket devoted to such cases, which had fallen from 24 percent in 1870-85 to 14 percent in 1890-1910, climbed to 28 percent. At the same time, trends that had been established between the first two time periods continued as the percentage of debt/contract matters going to trial, which had decreased from 18 percent in 1870-85 to 13 percent in 1890-1910, fell to 6 percent in 1915-35, and the proportion ending as uncontested judgments, which had increased from 32 percent to 45 percent between the first two periods, rose further (see Table 1). Finally, the decline in the number of appeals by 1915-35 meant that these matters no longer accounted for the largest proportion of trials. They were replaced by torts, which accounted for 25 percent of the trials although they were only 8 percent of the docket. Of the 40 tort cases filed during the 1915-35 period 30 percent were tried, 53 percent dropped out, and 15 percent ended in uncontested judgments. Thus, it appears that the shifts from the second period to the third period are also largely attributable to changes in the court's mix of business.

In the final period, 1940-60, the percentage of all filings going to trial decreased again slightly, as did the percentage ending in uncontested judgments. With the exception of torts, there were declines in the numbers of cases in all categories as

a part of a general decline in the court's caseload. The most dramatic declines came in debt/contract and property-related matters, which were now much less important parts of the docket. Debt/contract filings declined from 131 to 48, or from 28 percent of the docket to 16 percent; and property-related matters declined from 127 to 37, or from 26 percent of the docket to 13 percent. The basic patterns of trials and uncontested judgments for these two categories, as Table 1 shows, did not change substantially, although the percentage of cases ending as uncontested judgments *decreased* somewhat in each category while the proportion dropping out increased slightly. Divorce and tort matters determined the overall handling pattern. Even with a slight decline in the number of divorce filings, from 121 to 119, these matters were now the largest proportion of the docket, accounting for 40 percent of all filings. As Table 1 shows, the proportion of divorce cases going to trial or ending as uncontested judgments remained, however, essentially unchanged from the preceding period, but divorce actions so dominated the docket that even with an 8 percent trial rate they accounted for the largest percentage of trials, 42 percent. Tort actions were now the second most frequently filed type of action, accounting for 49 cases and 17 percent of the docket. As reflected in Table 1, most tort actions dropped out short of judgment (69 percent), explaining the increase in settled cases during the 1940-60 period that we saw in Figure 3. Nevertheless, tort cases accounted for the second largest percentage of the trials, 38 percent (up from 25 percent in the previous period). Again, the shift from the third period to the fourth in the overall handling pattern appears attributable to the changes in court business and to changes within the categories of matters making up the mix of business.

The dynamic at work in Bond circuit court suggests that what on the surface may appear to be a simple matter of trials decreasing as uncontested judgments increased (thereby reflecting what might appear to be a fundamental change in case handling) is in reality a more complex pattern that involves changes in case handling within categories of cases, and more importantly, changes in the mix of court business. For example, Table 1 indicates that the proportions of divorce and property-related matters resulting in trials or uncontested judgments did not change much over time, but the proportion of the docket that these matters accounted for changed substantially, with divorce actions coming to dominate the court's business and property cases going from the most

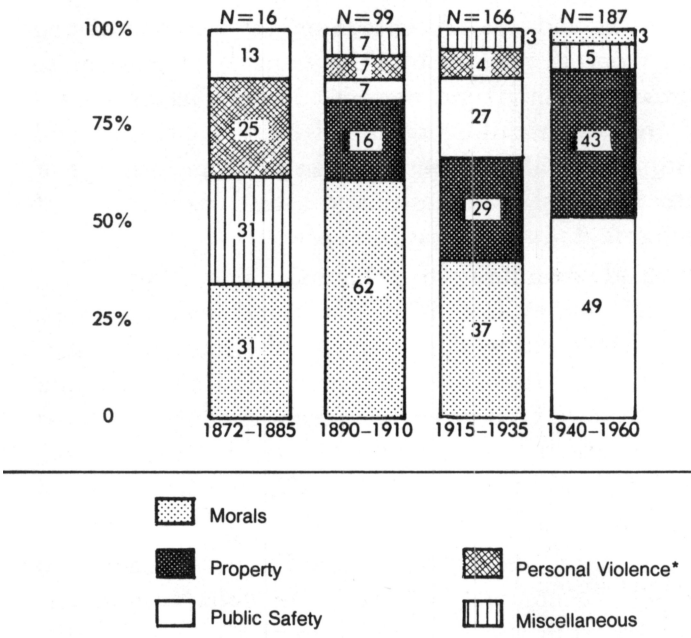
common cause of action to the second least common. Debt/contract matters, on the other hand, fluctuated over time as a proportion of the docket while the proportion of these cases going to trial diminished from 18 percent to 13 percent to 6 percent to 4 percent and the percentage ending as uncontested judgment went from 32 percent to 45 percent to 71 percent to 65 percent across the four time periods. In this latter area a major change in case handling occurred between the second (1890-1910) and third (1915-35) periods when the percentage of trials had its greatest decrease and the percentage of uncontested judgments its greatest increase.

Now we shall examine the criminal side. We must, however, confine our attention to the Bond county court. There were too few cases docketed in the circuit courts, particularly in the last time period, for detailed analysis, and the pattern for Menard county court, which exhibits the most dramatic increase in guilty pleas, especially in the final period, largely reflects a substantial increase in traffic matters, most of which end in guilty pleas.

Bond county court, as we see from Figure 4, seems to illustrate the kind of change from trials to guilty pleas that would be expected from the literature. In the earliest period contested trials and guilty pleas accounted for the same proportion of the docket. Over time disposition by guilty plea became increasingly prevalent and disposition by trial became increasingly rare. However, as with the civil docket in Bond circuit court, a simple trade-off hypothesis is inadequate because the percentage of cases pled is 47 percent higher in the fourth time period than it was in the first, while the percentage of cases tried had diminished by only 16 percent. Instead, as with the civil docket, the pattern can be shown to reflect changes in the mix of court business as well as changes in the ways different matters were handled.

The bar graphs in Figure 6 portray the changes in mix of criminal business in Bond county court. The figure reveals that over time the court's docket was characterized by: 1) an early domination by offenses against the prevailing morality (gambling, liquor, vice, etc.); 2) a decline in the proportion of these matters with time until they became largely unimportant by the last period; 3) a continual increase in the number and percentage of property offenses (theft, fraud, etc.); and 4) a continual increase in the number and proportion of public safety offenses (including serious traffic cases). The first period, 1872-85, saw a court with such a small criminal docket

Figure 6. Mix of Business: Bond County Court Criminal Docket



*This category consists mainly of assaults.

that we cannot make anything of the numbers, so the analysis will focus on the second through fourth periods. The second period shows a dramatic increase in the criminal caseload (from 16 to 99). The major increase in caseload is attributable to offenses against morality. These cases, which included such crimes as gambling, liquor violations, vice, and the like, increased from 5 offenses in the 1872-85 period to 61, or 62 percent of the docket, in 1890-1910. The second largest proportion of the docket was property offenses, which are missing from the docket in the first period.

As Table 2 indicates, few offenses against morality ended in a judgment—contested or not. Nearly half were dropped short of judgment (48 percent), and another 34 percent were either left continued on the docket or simply disappeared ("Other"). Thirteen percent (8) ended as guilty pleas, and only 5 percent (3) went to trial. Yet, because morals offenses dominated the docket, only property offenses account for more guilty pleas or for as many cases going to trial. Overall, 12 property cases, or 75 percent of these crimes, resulted in guilty pleas (44 percent of all guilty pleas), and 3 cases, or 19 percent,

Table 2. Disposition of Cases over Time by Case Type: Bond County Court, Criminal Cases

Disposition	*Time Period and Type of Case* 1872-85	1890-1910	1915-35	1940-60	*Time Period and Type of Case* 1872-85	1890-1910	1915-35	1940-60
	All Cases (N=468)				**Personal Violence (N=18)**			
	N=16	N=99	N=166	N=187	N=4	N=7	N=7	N=0
Contested trial	19%	9%	8%	3%	25%	28%	14%	0%
Guilty plea	19	27	60	66	0	28	28	0
Drop out	56	33	26	20	75	28	43	0
Other	6	31	6	11	0	14	14	0
	Property (N=145)				**Public Safety (N=144)**			
	N=0	N=16	N=48	N=81	N=2	N=7	N=44	N=91
Contested trial	0%	19%	6%	1%	50%	0%	2%	3%
Guilty plea	0	75	63	48	50	28	59	86
Drop out	0	0	29	32	0	0	36	8
Other	0	6	2	19	0	71	2	3
	Morals (N=133)				**Miscellaneous (N=28)**			
	N=5	N=61	N=62	N=5	N=5	N=8	N=5	N=10
Contested trial	0%	5%	10%	0%	20%	0%	60%	20%
Guilty plea	40	13	65	80	0	38	20	50
Drop out	60	48	21	0	60	25	20	20
Other	0	34	4	20	20	38	0	10

went to trial (see Table 2). Only one property case did not go to some form of judgment. The overall pattern of case disposal during the second period, as presented in Figure 4, is basically an amalgam of the way these two categories of cases were handled.

The third period, 1910-35, saw another increase in caseload (to 166), a slight decline in the percentage of trials, and a substantial increase in the percentage of guilty pleas. Not all types of matters, however, changed in the same way. The *number* of offenses against morality stayed about the same (62), but the increase in total caseload meant that morals offenses declined as a *percentage* of docket even though they remained the most prevalent. Both the proportion of these matters going to trial and the proportion ending as guilty pleas *increased*, but the former only increased from 5 percent to 10 percent while the latter increased from 13 percent to 65 percent. These changes reflect the fact that, unlike the earlier period, once morals charges were filed they tended to be pursued. With a large number of offenses against morality, the changed pattern of dealing with these offenses meant a substantial increase in the number of guilty pleas, pushing up the number and percentage of guilty pleas overall. Overall, offenses against morality accounted for the largest proportion of both guilty pleas, 40 percent, and trials, 55 percent. The new pattern of dealing with morals offenses also meant that the overall proportions of cases in the "Drop out" and "Other" categories during 1915-35 were less than in the preceding period.

The increase in total caseload reflects two types of crimes. The number of property offenses increased from 16 to 48, or from 16 percent to 29 percent of the docket, and the number of public safety offenses increased from 7 to 44, or from 7 percent to 27 percent of the docket. Table 2 indicates that the proportion of property offenses going to trial and the proportion ending in guilty pleas both decreased, from 19 percent to 6 percent and from 75 percent to 63 percent, respectively, but the number of guilty pleas increased considerably (from 12 to 30) while the number going to trial remained the same (3). Public safety matters usually involved the more serious traffic offenses (particularly drunk driving), which typically ended as bargained for guilty pleas. The increase in the number of public safety offenses is reflected in an increase in the overall number of guilty pleas. Only 1 of these cases went to trial while over half (59 percent) ended as guilty pleas. Thus, the shifts in the patterns of handling cases

from the second to the third period that we see in Figure 4 appear attributable both to changes in the mix of court business and to changes in the way those cases were handled that make up the three largest proportions of the docket. In the two most prevalent categories changes in the proportion of tried cases and in the proportion of pled cases moved in the same direction. Thus, the increase in the proportion of guilty pleas that occurred between these two periods does not seem attributable to a trade-off between trials and guilty pleas even though the proportion of convictions in Bond county court resulting from guilty pleas increased from 81 percent in 1890-1910 to 91 percent in 1915-35.

The last period, 1940-60, shows a further rise in caseload to 187, a slight increase in the proportion of guilty pleas—from 60 percent to 66 percent—and a decrease in the proportion of cases tried—from 8 percent to 3 percent—so that trials are now the least common disposition. As we see in Figure 6, the docket is now dominated by cases involving public safety violations (the bulk of these being traffic matters) and property offenses. Both increased substantially in total numbers and as a proportion of the docket. The number of property offenses went from 48 to 81, which translates into an increase of from 29 percent of the docket to 43 percent, and public safety violations rose from 44 to 91, or from 27 percent of the docket to 49 percent. Offenses against morality virtually disappeared, in part accounting for the proportionate increase in property and public safety offenses. The proportion of property offenses ending in guilty pleas again *decreased*—from 63 percent to 48 percent—as did the proportion ending in trials—from 6 percent to 1 percent. This is reflected in a slight increase in the proportion of property charges dropped (from 29 percent to 32 percent) and a larger increase in the proportion of cases in the "Other" category (from 2 percent to 19 percent).

As with the previous period, most of the increase in the number of public safety offenses reflects an increase in traffic offenses, most of which were resolved by guilty pleas. Overall, the proportion of public safety violations resolved by guilty pleas rose from 59 percent in the preceding period to 86 percent while the proportion going to trial remained stable, although they now accounted for most of the trials. The most marked change from the preceding period in the way public safety violations were handled came in the proportion of cases dropping out, which diminished from 36 percent of the charges filed in 1915-35 to 8 percent of the cases filed in 1940-60. These

patterns indicate that, as with the preceding period, the decrease in trials in the 1940-60 period and the concomitant increase in guilty pleas do not reflect the replacement of the former by the latter, but are instead attributable to changes in the court's business and in the case of public safety violations to a tendency to pursue cases to final resolution rather than letting them hang or drop. This may reflect an actual change in how similar cases were pursued or a change in the character of cases docketed. The increase in the proportion of public safety charges involving traffic offenses suggests that in this case the latter possibility explains more. The number of public safety matters increased from 44 in 1915-35 to 91 in 1940-60. The proportion of public safety offenses made up by traffic violations increased from 34 percent (15) to 79 percent (72) over the same period; and while one-third of those traffic matters ended in guilty pleas in 1915-35, 83 percent ended in guilty pleas in 1940-60.

As was the case with the Bond circuit court, the dynamic at work in Bond county criminal court suggests that what on the surface may appear to be simply a matter of trials being displaced by guilty pleas as a result of some fundamental change in case handling reflects a more complex pattern of changes in the handling of different types of matters and, more importantly, in the mix of judicial business. Offenses against morality, for instance, disappeared by the last period, thus increasing the impact of case handling practices in other areas on the court's docket. The number of property offenses increased continuously over time, but the proportion of these cases going to trial went from 19 percent to 6 percent to 1 percent, and the proportion ending as guilty pleas went from 75 percent to 63 percent to 48 percent (see Table 2). Plea and trial rates could simultaneously decrease because the proportion of matters dropped or left unresolved on the docket increased markedly. This might be attributable to changes in the kinds of property offenses charged, to the changes in charging policy such as a tendency over time to file charges on flimsier evidence, to changes in how similar cases were handled over time, or to some combination of such factors. My data are not fine-grained enough to sort out the competing explanations. However, in the public safety area, where traffic and non-traffic matters could be separated, the changes appear attributable to changes in the character of cases docketed.

V

In summary, in the trial courts of Bond and Menard counties only a small percentage of the matters filed led to a contested hearing or trial—about 10 percent. Most matters either resulted in some form of uncontested judgment or dropped out short of judgment, and this general pattern holds for the civil and criminal dockets of different levels of courts over time. Handling patterns in the different courts and dockets were not identical and there were changes over time, but the specific differences across courts and over time appear as variations within a general pattern. The data reveal no evidence of a fundamental change in case handling of the kind that has been suggested in the literature. In particular, once case categories are controlled, the hypothesis that pleas have over time displaced trials as the predominant mode of resolving filed matters receives scant support in these data. Instead, it appears that changes in the mix of court business and changes (or stabilities) within the different categories of matters comprising that mix are the key to understanding changes in trial and settlement rates.

However, as I noted at the outset, these data come from a case study of two counties which differ from the courts that have concerned most researchers in that docket pressure has never been substantial and no part of these communities has seen substantial urban growth over time. Thus, my findings are, perhaps, better stated as hypotheses for other researchers to substantiate, specify, or call into question. So stated, the basic findings of this study are:

1) that different kinds of cases are handled differently in the courts;
2) that different kinds of cases are differentially prevalent across courts and over time;
3) that shifts over time in the general pattern of handling cases are tied to the changing mix of court business;
4) that for at least a century the basic pattern of handling cases in state trial courts has been one in which most matters are either processed by some form of uncontested judgment or drop out short of judgment:
    a) that this general pattern characterizes all levels of state trial courts, although there are level-based variations;
    b) that this general pattern characterizes both the civil and criminal dockets of a given court, although there are docket-based variations;

c) that the key to understanding variations across court levels and dockets and the shifts over time lies in the first three hypotheses specified above.

If these propositions are correct, they raise the interesting question of what determines the different longitudinal trajectories that different kinds of cases take. Why, in other words, do some kinds of cases come to dominate dockets while other kinds of cases, like morals offenses in Bond county court, virtually disappear? Much of the court processing literature sees social and environmental factors as the most important causal determinants of how cases are handled. The findings in Bond and Menard counties suggest that if such factors are important determinants, their effects are indirect and mediated by their effects on the different longitudinal trajectories. The task, then, is to identify how social and environmental factors lead to changes in the kinds of matters that arise and in the likelihood that certain situations will eventuate in litigation. Crucial social and environmental factors include not just factors, such as the spread of the automobile, that affect the incidence of civil grievances or criminal violations but also changes internal to the legal system, such as new laws or changed jurisdictional amounts.

If we could understand how the mix of cases brought to courts changes over time, we would advance more than just our understanding of whether and how a court's case handling practices have changed over time. We would also better understand other aspects of trial court activity, like the changing nature of litigant configurations (McIntosh, 1982), and changes in the functions of trial courts, both in the sense of what courts do (Friedman and Percival, 1976) and in the sense of how they serve society (Lempert, 1978). Moreover, we might find that the case-mix perspective serves as the key to understanding patterns and changes in appellate court activities (Casper and Posner, 1976: 8). These questions, of course, have implications far beyond the immediate interests of this essay. In answering all of them, we are likely to find that the dynamic underlying patterns of and changes in court activities and caseloads at all levels is more complex than much of the literature has assumed.

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