Out of Sight, Out of Mind: A Case Study of Bail Efficiency in an Ontario Video Remand Court[†]

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Abstract

Video remand court was largely introduced as a strategy to increase bail court efficiency by reducing the time and costs associated with the transportation of prisoners from police stations/detention centres to courthouses in order to determine whether they should be released on bail or formally detained until trial. Ironically, this article presents findings from a large courthouse in Ontario, Canada which suggest that video remand actually contributes to lengthy case processing. Potentially by distancing the accused from the bail process, as well as encouraging the perception that video appearances are cost-free for the system, repeated adjournments are the norm in this court. Further, they are often requested without the presence of defence counsel (through duty counsel), and reasons given to justify them largely suggest the absence of any productive activity toward the resolution of the bail process. These practices are discussed in light of the principles of justice underlying bail as well as the practical ramifications of bail inefficiency on the wider criminal justice system.

Introduction

Court efficiency has increasingly captured the attention of scholars, practitioners and the general public over the last several decades. In fact, the most recent meetings of justice officials across Canada have consistently acknowledged – with concern – delays, backlogs and inefficiencies in the criminal justice system. Similar assessments can be found in the media (Colter 2007; Culbert 2007; Kleiss 2007) as well as in academic publications (Doob 2005; Webster 2006; Webster & Doob 2004, 2003; Koza & Doob 1975a). Beyond the obvious legal concerns surrounding unreasonably lengthy processing times (e.g., potential violations of s11(b) of the Canadian *Charter of Rights and Freedoms* which guarantees the right of a person charged with an offence to be tried within a reasonable time; unreliability of witnesses and evidence over time), court inefficiency also impacts on such correlated issues as limited state resources, public perceptions of 'fairness' and victims' rights (for a

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discussion of several of these issues, see, for example, Leverick & Duff 2002; Trotter 1999; Ashworth 1994; Ryan et al. 1981; Church 1982).

This widespread attention on overall case processing times has also extended to specific criminal procedures such as bail. In fact, concerns surrounding questions of efficiency in the bail process are no longer purely academic (Webster 2007) or administrative (e.g., see Justice on Target Website (Ontario Ministry of the Attorney General, Ontario, Canada www.attorneygeneral.jus.gov.on.ca/english/jot/). Rather, they have also become increasingly part of the public domain. As an illustrative example, one of the bail courts in Canada's largest city (Toronto, Ontario) was recently criticised in the media for being unable to process a number of the accused from a police raid on gang members within what was considered a reasonable time frame (Canadian Press 2007). However, the consequences of unnecessarily lengthy bail proceedings are considerably broader than simply 'bad press' and its potential collateral impact on public confidence in the criminal court system.

From an organisational or administrative perspective, the substantial increase in the number of accused in pre-trial custody over the last 15 to 20 years in some Western democratic countries has imposed non-trivial economic costs, further straining the limited capacity and resources of detention facilities. Additionally, difficulties surrounding the effective management of this 'prison' population have been augmented, particularly given their unique characteristics (e.g., unpredictability in terms of length of stay; need for separation from sentenced offenders; inaccessibility of activities/programming). In fact, this burgeoning population of remand offenders has frequently resulted in prison overcrowding and less than optimal living conditions (Deltenre & Maes 2004) as well as having been linked to prison disturbances (see, for example, a detailed discussion of this collateral effect in the Woolf Report (Woolf 1991)).

On a more individual or micro level, unreasonably long delays in resolving the question of bail for an accused can have devastating effects on a person's life (Trotter 1999). Beyond possible job loss and its collateral effects on family members relying on this income, the stigmatisation of the accused (and family) has also been noted in the literature (National Council for Welfare 2000; Manns 2005). More directly related to the criminal process, unnecessarily lengthy bail processes may negatively impact the ability of the accused to defend him or herself (e.g., rendering it more difficult to hire and communicate with a lawyer, find evidence/witnesses to support one's case or procure employment/engage in other activities which would demonstrate intent to 'mend one's ways') (Friedland 1965; Hill et al. 2004; Trotter 1999; Hagan & Morden 1981). Similarly, long delays in resolving the question of bail may lead to inferences of guilt (Koza & Doob 1975b). Finally, anecdotal evidence (Ritchie 2005; Kellough & Wortley 2002) suggests that pre-trial detention – even for short periods – is onerous for the accused who is often housed in overcrowded detention centres with no recreational, educational or rehabilitative programs.

Beyond these more pragmatic or practical concerns, unreasonably long processing times of bail cases also raise several more theoretical issues. On the one hand, unnecessary delays in completing the bail process (with corresponding lengthy detentions for the accused) risk distorting the central principle of the presumption of innocence. Specifically, an inversion occurs whereby the accused ends up serving time before he or she has been found guilty. While this reality is arguably an unavoidable and, as such, a legitimate consequence inherent in all bail cases, unreasonably long bail processes unnecessarily (and potentially unjustly) exacerbate this problem, particularly in cases in which the accused is ultimately found not guilty or the charges are withdrawn (Ashworth 1994). Further, substantial delay in completing the bail process could plausibly result in a greater number of people being held

in custody before rather than after trial – a reality considered by Friedland (1965) as a flagrant disregard for the principles of justice. In a similar vein, unnecessary bail processing delays also risk distorting sentencing. Specifically, 'time served' credits are frequently taken into account at sentencing, reducing the severity of the actual sentence handed down. Although arguably legitimate from a proportionality perspective, such practices encourage public perceptions of inappropriate leniency on the part of the court.

Within this broader context, it is not surprising that Ontario – Canada's most populous province with approximately 40% of the total national population – has focused considerable attention on the question of the operation of its bail courts. Illustratively, this province developed an efficiency initiative between 2005 and 2008 which focused almost exclusively on the bail process (defined as the processing of bail cases from a case's first appearance in bail court to the formal determination – in this same court – of whether the accused should be released on bail or formally detained until trial). Indeed, Ontario has not escaped many of the challenges found in other jurisdictions – both within and outside Canada – associated with delays in resolving the question of bail.

In recent years, Ontario experienced a substantial rise in the proportion of cases which began their (case processing) life in bail court, increasing from 39.2% of all cases starting their court lives in bail court in 2001 to 50.2% in 2007 (for a detailed definition of a 'case', see Webster 2007). In addition, these cases took increasingly longer to resolve and needed more court appearances to get through the bail process. While 25.8% of cases took three or more bail appearances to be resolved in 2001, this proportion rose to 34.3% by 2007.[1] Not surprisingly, more time was also spent in pre-trial detention before a formal determination of bail. In 2001, 28% of cases were in the bail process (prior to a detention or release decision) for four or more days. Six years later, about one third of bail cases (33.1%) took four or more days to complete this process (for a more detailed presentation and discussion of these trends, see Webster, Doob & Myers, this issue).

Not surprisingly, this increase in the number of bail cases, as well as the number of court appearances and the time required to complete the bail process, is reflected in Ontario's remand population. Specifically, the pre-trial detention population in Ontario, and in Canada more generally (see Webster, Doob & Myers, this issue), has increased steadily over the past 20 years. Most notably, there are currently a greater number of people being held in remand, awaiting bail determination or trial in Ontario's provincial prisons,[2] than there are offenders actually serving custodial sentences post-conviction in provincial institutions.

As one strategy for addressing potential inefficiencies in processing bail cases in Ontario, the Ontario Ministry of the Attorney General commissioned a number of empirical studies to examine the operations of individual bail courts in this jurisdiction. As part of this wider research program, the current study focused on a number of different bail courts operating within the same courthouse. This article presents data on one of these courts – video remand court. The primary purpose of this article is to provide a case study of the ways in which this court operates and impacts on bail court efficiency. Arguably, this court has the potential of

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1 These data reflect all cases in the bail process in 2001 and 2007 respectively. Specifically, they include not only those cases in which there was a formal decision to either release or detain the accused until trial but also the (non-trivial number of) cases in the bail process which were either withdrawn or sentenced/proceeded to other criminal processes (e.g., preliminary inquiry, trial) without a determination of bail.

2 Provincial prisons in Canada house remand prisoners and those serving sentences of less than two years. Federal penitentiaries house those serving sentences of two years or more. Generally speaking about 60% of all prisoners in Canada are housed in provincial institutions.

increasing bail court efficiency by reducing the time and costs associated with the transportation and movement of prisoners (not only to the courthouse from local police stations or detention centres but also within the courthouse itself). However, anecdotal evidence (see, for example, Macdougall et al. 2007) has raised questions about the overall impact of this type of court in contributing to the efficient processing of bail cases. This case study attempts to shed light on this debate.

Study Methodology

This study was conducted over a one-year period (August 2006 – August 2007) in one of the largest courthouses in Ontario. This courthouse has within it four distinct – albeit inter-related – courts which deal with bail cases. The focus of our study – video remand court – operates every weekday, usually for less than two hours. Although this court is not used exclusively for bail cases but also deals with post-bail (custodial) offenders, the vast majority of cases (82.3%) appearing in this court have not yet had a bail hearing to determine whether the accused should be released or held in custody pending trial.

The operation of the video remand court was, from the courtroom side, rather straightforward. At one end of the video hook-up – in one of the regular courtrooms – were the presiding justice of the peace, the crown attorney, duty counsel, and, very occasionally, the accused's lawyer. At the other end – at the city's remand centre – was the accused person. A two-way video system connected the two. Further, a sound-proof booth located in the courtroom allowed defence counsel the ability to speak privately with his or her client. Finally, the process by which accused people were brought to the video room in the remand centre was invisible to the court party, and, therefore, to the researchers. Essentially, it would appear that accused were more or less in a queue at the detention facility such that very little time was wasted between cases.

Notably, the way in which video remand court operates varies considerably across Canadian provinces/territories, as well as within individual jurisdictions. In fact, video remand is in its infancy in some courthouses, being only recently conceptualised or introduced for the first time. The commonality across existing video remand courts – it would appear – is that it was envisioned and developed largely as a means of avoiding the transportation of the accused to the courthouse from police stations and/or detention centres. Certainly in some remote areas of Canada, the distance between these two criminal justice agencies can be substantial. In contrast, the differences across video remand courts seem to be multiple in nature. In some courthouses, video remand is simply used for consent releases while in others, full adversarial hearings to determine whether an accused will be released on bail or formally detained until trial are run by video hook-up.

In the video remand court presently under study, it was our understanding that video remand – as a bail court – was used primarily for consent releases. Otherwise, cases appearing in this court would be traversed to (i.e. ordered to appear in) other courtrooms for further processing (e.g., one of the regular weekday bail courts (see below), or other more general ones – for instance, trial court, plea court or set date court – for non-bail related matters[3]). Indeed, with the exclusion of consent releases, any formal case processing with

[3] Our decision to consider video remand court as a 'bail court' (i.e. as part of the bail process) was not without some hesitation. The difficulty with this classification is rooted in the distinct characteristics of many of the 'bail' cases appearing in this court. Specifically, a non-trivial number of them will, in fact, never have a formal

the intention of moving a case toward the resolution of the bail process appeared to be carried out outside of video remand, with the actual (physical) presence of the accused in the courtroom.

As obvious comparators to this court, the other three bail courts operating in this courthouse were included to contextualise the findings from video remand court. The first of these courts (the 'Regular' bail court) constitutes a normal 'first appearance' bail court which operates for a full day every weekday. The second bail court (the 'Special' bail court) is reserved exclusively for scheduled full adversarial hearings to determine whether an accused person should be released on bail (typically referred to as 'show cause' hearings because, for most cases, the Crown is required to 'show cause' why the accused should be detained). Indeed, in all bail cases in this court, defence counsel had agreed and committed to conducting a contested show cause hearing on a pre-arranged date and time in this court. This 'Special' court operates simultaneous to the 'Regular' court. In addition, a 'Weekend' court operates on Saturdays, Sundays and holidays.

The research methodology for this project relied on a combination of direct observations in bail court to obtain detailed information on the day-to-day operations of the court and data collected from court case files which provided retrospective and prospective information about each observed case (i.e., the history of the case prior to our court observations as well as future bail court activity subsequent to our observations). These sources of data were subsequently used to create two independent datasets: a 'time' dataset (describing a 'typical' or 'average' *day* in bail court) and a 'case' dataset (describing a 'typical' or 'average' *case* in bail court).

With respect to the former, the unit of analysis was defined as the individual day. This construction permits a description of a typical day in bail court. Specifically, it focuses on the daily operations of the court (e.g., the number of cases (and respective charges) dealt with in a typical day; the length of time used to deal with each case; the number, length and justifications of recesses and hold-downs (i.e. rescheduling the case before the court later in the same day), and the frequency with which the court is required to wait for prisoners to be moved to the court (room)). In essence, this dataset provides a rich, detailed description of all daily activities as they transpire in bail court. Given this overall objective, all cases appearing in the four bail courts during the study period were included. As such, this dataset

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determination of bail. Rather, they are processed in other non-bail courts, remaining in custody until their case has been completed (i.e. receiving a final resolution) without ever holding a bail hearing to determine whether the accused should be released on bail or held in remand until trial. Clearly, it is debatable how cases such as these ones should be classified. Specifically, it is difficult to determine at which point in the criminal process one should no longer refer to these cases as 'bail' cases (that is, as cases which are still in the 'bail process'). Despite this controversy, we have opted to be conservative in our designation of 'bail' cases, preferring not to impose an arbitrary cut-off point when designating a case as still part of the bail process. This option is rooted in several considerations. First, the vast majority of cases in this court are legitimately 'bail' cases in the sense that they have not yet had a formal determination of their bail. More importantly, we see – in a number of cases – that even after multiple appearances without any apparent bail-related activity (either in video remand court or other non-bail courts), a full adversarial hearing to determine whether an accused person should be released on bail is ultimately conducted. For these cases, an arbitrary decision to exclude them at an earlier point in the court process would underestimate the bail cases processed in this courthouse. Further, even for those cases in which bail is never formally determined, it seemed to us to be relevant to capture this phenomenon. It is entirely possible that certain structural, administrative or cultural factors (potentially specific to video remand) are encouraging – or at least permitting – this possible 'distortion' of the bail process and should be the object of some discussion.

contains several youth cases as well as a number of post-bail cases (predominantly – but not exclusively – appearing in video remand court).

With respect to the latter dataset, the unit of analysis was defined as the individual case. This construction permits a systematic description of each case dealt with in bail court. Specifically, it collects such information as various demographic details of the accused (e.g., gender, age); legal factors related to the case before the court (e.g., number of charges, type of offence(s)); process variables (e.g., whether the case was adjourned, as well as the justification and the person requesting the adjournment) and outcome measures (e.g., outcome of the day in which the case was observed; final outcome of the bail process). In brief, this dataset captures the experience of the individual accused as his or her case moves through the bail process. Given this focus on the processing of actual (adult) bail cases, any post-bail or youth cases were excluded from this dataset. As well, it is important to note that a number of accused were observed on multiple occasions. That is, the same accused may have been seen on more than one day. In this situation, these individuals constituted a 'case' each day in which they were observed since they contributed – each day – to the overall caseload.

The initial data collection phase (i.e. direct court observations) took place over the course of an 11-week period, beginning on 28 July 2006 and running until 3 October 2006. In total, we randomly observed 11 full days in the Regular bail court, 12 full days in the Special bail court, 5 full days in the Video remand court and 11 full days in the Weekend court (for a detailed description of the sampling procedures, see Webster 2007). In total, data from court records were collected for 758 observed cases.

Findings of the Study

Paralleling the two types of datasets which were collected in the context of this study, our examination of bail efficiency in video remand court was two-pronged. On the one hand, we looked at the day-to-day functioning of this court. This approach gave us a sense of the daily activities as they transpired in open court and how these operations affected issues of efficiency. On the other hand, we also examined the actual processing of cases. This strategy captured the experience of individual cases as they navigated through the bail system, with a focus on the efficiency of the processes involved in the determination of bail.

Court Operations

When examining a 'typical or average day' in the processing of bail cases in this courthouse, video remand court immediately distinguishes itself in terms of its overall operation (Table 1).

Indeed, the video court is in session – on average – for only approximately 1½ hours per day. While the Weekend court operates for a shorter period of time (45 minutes), the other weekday courts (Regular and Special) are in session three to four times longer than video court on any given day. This finding becomes even more impressive when one considers the average volume of cases processed on a typical day in video court. Specifically, this court has the largest volume of cases as well as charges of the four bail courts. With a caseload which averages 36 cases per day and involves 310 charges, video court processes a significant volume of cases in a very short period of time.

Table 1: Time and Caseload Measures

	Court			
Task	Regular	Special	Weekend	Video
Total elapsed time in session	6:02 (4:50-6:58)	4:29 (2:22-6:18)	0:46 (0:20-1:31)	1:25 (1:05-1:43)
Total number of cases	29.8 (25-37)	8.4 (2-30)	12.7 (8-21)	36.4 (23-50)
'Waiting' time in court	0:32 (0:11-1:04)	0:36 (0:03-1:19)	<0:01 (0:00-0:02)	0:09 (0:05-0:17)
Proportion of cases 'held down' to later in the day at least once (# of cases observed in parentheses)	29.5% (308)	28.7% (87)	4.8% (125)	0.7% (145)
Total time used to remand cases	0:33 (0:09-0:56)	0:08 (0:00-0:43)	0:18 (0:08-0:25)	1:04 (0:35-1:29)

Note Entries represent means, with ranges in parentheses. As well, they reflect 'daily data' (i.e. the unit of analysis is the individual 'day' observed). Finally, post-bail and youth cases are included as part of the daily activities carried out in these courts except with cases which are 'held down' (which only include adult bail cases).

Clearly part of this 'speed' in processing bail cases is rooted in the daily operations of this court. Most obviously, the amount of 'waiting time' is substantially shorter in video court than in the other two weekday courts. 'Waiting' time is largely the result of the absence of any accused in court. This problem is most often rooted in the time waiting for the accused to be moved from the courthouse holding cells to the courtroom. As shown in Table 1, the problem of 'waiting' time does not appear to be a central feature of video court (with less than 10 minutes of 'waiting' time per day). This short amount of time in which video remand court is required to wait (as compared with that of the other weekday courts) would suggest that the detention centre is organised in a way which ensures that most accused are punctually brought to the video room. Indeed, it would seem that one of the advantages of video court is that it reduces the amount of 'waiting' time associated with the logistics surrounding the movement of accused. This reduction occurs in at least two different ways. First, the issue of the transportation of prisoners to and from the detention centre is completely eliminated. Second, the amount of time in which the court is required to wait for prisoners to be (physically or electronically) brought before it is significantly reduced.

Similarly, video court distinguishes itself from the other courts in terms of the number of times that cases are 'held down' to be dealt with later in the day. In sharp contrast to the other weekday courts in which approximately 30% of the cases are held down at least once on an average day, virtually no cases (0.7%) are held down in video remand court. Hold-

downs are initiated because of issues which need to be dealt with before the cases can proceed. While they can be requested by any of the principal players in bail court, hold-downs were used almost exclusively by defence counsel to gain additional time to prepare their cases (e.g., speak with accused, talk with the Crown about possible bail release plans, contact sureties). While this practice may, in fact, facilitate the ultimate timely resolution of a bail case, it has a number of detrimental effects for the efficient functioning of the court. Specifically, it means an additional court appearance as well as additional time spent moving prisoners within the courthouse or the remand facility (in the case of the video court).

Case Processing

Looking exclusively at court operations, video remand court appears to hold several advantages in terms of bail court efficiency. Indeed, the substantial reduction in waiting time and recourse to hold-downs (and, consequently, the need for recesses) suggests that cases can be processed without interruption or delay. In fact, these characteristics of video court would appear to suggest that this court (particularly in contrast with the other two weekday courts) has somehow ensured that all key players in the bail process are ready to proceed at the opening of court.

Arguably though, the ability to immediately proceed with a case and process it without interruption or delay is a necessary – but not sufficient – condition for bail court efficiency. Specifically, this efficiency in court operations doesn't necessarily guarantee the effective resolution of the case. We begin to get a glimpse of this problem when we look at the amount of court time used, on average, to deal with a bail case in each court (Table 2).

Table 2: Amount of Time that Case Took in Court

Time to process the case	Court			
	Regular	Special	Weekend	Video
1 minute or less	32%	17%	32%	48%
>1 minute – 3 minutes	27%	23%	38%	36%
>3 minutes – 5 minutes	21%	14%	22%	13%
> 5 minutes – 20 minutes	14%	23%	7%	3%
> 20 minutes	7%	23%	1%	0%
Total	100% (n=306)	100% (n=87)	100% (n=125)	100% (n=145)

Note: Numbers of cases vary from table to table because of missing data on some measures.

Certainly in contrast with the other two weekday courts, the processing of cases in video remand court appears to be very different. Specifically, cases in this latter court are more likely to be resolved – on any given day – in a shorter amount of time, with 84% of its cases using only three minutes or less. It would begin to appear that video court does not process cases in a manner typical of other bail courts.

This hypothesis finds additional empirical support when one examines the number of the court appearance in which the case was observed. The Canadian Criminal Code clearly implies that bail decisions are to be made quickly. Normally an accused who is arrested is required to be brought before a justice for a 'bail hearing' within 24 hours. Within this context, one might expect that bail – a summary matter – would be dealt with quickly and with few appearances. Specifically, one would expect that the majority of cases on an average day in 'bail court' would be on their first or possibly second appearance, with accused being released or detained within the time frame of a small number of appearances.

As previously noted, an increasing number of cases in the province are taking three or more appearances to complete the bail process. This reality also finds translation in this courthouse. As shown in Table 3, it is clear that a substantial portion of cases on an average day have had many prior appearances.

Table 3: Number of the Appearance in which Case was Observed

Appearance in court observed on an average day	Court			
	Regular	Special	Weekend	Video
1st	54%	29%	97%	--
2nd/ 3rd	32%	36%	3%	52%
4th/ 5th	10%	24%	--	20%
6th through 18th	4%	12%	--	28%
Total	100% (n=302)	100% (n=84)	100% (n=118)	100% (n=140)

The distinguishing factor of video court (in comparison with the other three bail courts) is that its caseload seems to be split between cases which are in an early phase of case processing and those in later phases. For instance, 52% of the video remand caseload – on any given day – is on its second or third court appearance. Simultaneously, another 28% of this caseload is on at least its sixth appearance. This finding appears to suggest that this court serves two separate and distinctive roles in the bail process.

This hypothesis is further examined in Table 4 which presents the outcome of each case on the particular day in which it was observed. As such, these 'appearance' outcomes should not be confused with the final outcome of the case. Further, it is important to recall that the same case may have been observed on multiple days with a different outcome occurring on each day. In these situations, each outcome was recorded. In fact, it is notable that most of

the cases that were observed on any given day in any of the four courts were not new. On the contrary, only 47% were on their first court appearance.

Most obviously, a substantial proportion of cases is simply adjourned in every bail court. In fact, adjournments constitute the most common or frequent outcome on a typical day in any of the four bail courts. While the proportion of the caseloads in the two principal weekday courts which are adjourned on any given day (47% and 35%) is clearly lower than in either video court (82%) or Weekend court (72%), they are clearly not without their own concerns.

For the purposes of this article, though, the most notable finding is rooted in the particular outcomes on any given day in video court. In contrast with the other two weekday bail courts, the outcome of a case on a typical day in this court is almost exclusively limited to one of two possibilities. On the one hand, approximately one in every six cases is sent to another court (i.e. traversed), with no cases being detained and only a very small proportion of cases being released (2.0%). While the purpose of a traversal is varied (e.g., traversed for a possible plea; to set a date for a trial, preliminary inquiry or (judicial or Crown) pre-trial), this finding suggests that, for at least a minority of cases in video remand court, some movement toward final resolution is occurring.

Table 4: Outcome of Cases on Day Seen

Outcome	Court			
	Regular	Special	Weekend	Video
Adjourn to another day	47%	35%	72%	82%
Release	31%	32%	22%	2%
Detain	3%	10%	0%	0%
Traverse to another court for some other process (e.g., guilty plea) or other outcome	20%	24%	6%	16%
Total	100% (n=318)	100% (n=89)	100% (n=123)	100% (n=147)

On the other hand, by far the largest proportion of cases in this court is adjourned on any given day. Indeed, video remand court would seem to be primarily in the ‘adjournment’ business. With the vast majority of cases (i.e., more than four in every five cases) in this court resulting in an adjournment on the day in which they were observed, it becomes obvious how it is that this court can process the highest number of cases (when compared to the other three bail courts) in a very short period of time (with this court operating – on average – for only about 1½ hours a day and with 84% of cases being dealt with in three

minutes or less of court time). Further, it sheds important light on the 'efficiency' of its court operations. While the lack of hold-downs and recesses may reflect – at least in part – the ability of this court to process cases without delay, it is likely that this readiness to proceed is predominantly a reflection of the frequent recourse of this court to adjournments. Specifically, there may be no need to request additional time for processing issues if, in fact, the case is simply going to be adjourned. Said differently, there appears to be very little court activity occurring in this court which advances the majority of its cases – at least in any obvious manner – through the bail process.

This hypothesis is further corroborated when one examines the total amount of time used for remanding cases (bottom row of Table 1). Considering that video court only runs an average of one hour and 25 minutes per day, three quarters of this court time is used for remanding cases. Indeed, there appears to be an (implicit) expectation or understanding in this court that a substantial number of its cases will simply be adjourned on any given day.

Arguably, though, adjournments are not necessarily the antithesis of efficiency. In the short term, adjournments are generally considered (immediately) unproductive in the sense that an additional court appearance is necessarily added to the bail process (with the collateral administrative and organisational complications rooted in the re-scheduling of cases and the need for additional court time as well as the continuing strain on correctional facilities as prisoners are required to spend a greater amount of time in remand awaiting a determination of bail). However, they may arguably be beneficial – in the longer term – by providing the key players in the bail process the necessary preparation time to ensure that the subsequent appearance moves the case forward.

Table 5 examines this hypothesis by presenting the outcome of a case (on the day in which it was observed) according to its number of appearance (i.e. whether the case was on its first, second, third, etc. bail appearance).

Table 5: Outcome of Case on Day Seen by Number of Appearance

Appearance in court that was observed	Outcome on the day the case was observed				Total
	Detain	Release	Adjourn	Traverse for plea, or other processing	
1st	<1%	28%	64%	8%	100% (298)
2nd	4%	25%	51%	20%	100% (122)
3rd	2%	18%	51%	28%	100% (82)
4th	7%	26%	41%	26%	100% (46)
5th	10%	13%	58%	19%	100% (31)
6th through 18th	2%	12%	63%	23%	100% (60)

Clearly, it would appear that the outcome of a case (on the day in which it was observed in any of the four courts) does not seem to be associated – in any consistent way – with the

number of court appearance of the case. Although there is some fluctuation in the proportion of adjournments as a function of the appearance seen (i.e. from 64% on first appearance, down to 41% on the fourth appearance and back up to 63% on the 6th-18th appearance), the likelihood of a case simply being remanded to another day is much the same whether it is the first, second, third, fourth, fifth or sixth bail appearance. Identical patterns in the data (not presented) are found when one examines only cases in video court.

In other words, the recourse to adjournments does not appear to be used for the purpose of ensuring a different (i.e. more productive) outcome on the next appearance. In fact, it would seem that each day is being viewed or treated in relative isolation (Myers 2006) without consideration of what transpired in the previous appearances, nor what is expected or desired to occur in subsequent appearances. As a result, a 'culture of adjournments' may be being created or propagated such that bail court largely becomes simply a 'remand' court (Macdougall et al. 2007). This characterisation would appear to be especially true of video remand court.

This 'culture of adjournment' hypothesis would seem to gain additional empirical support when one examines the process by which adjournments are requested. While there were no significant differences across the four courts with respect to the person requesting the adjournment on any given day – with adjournments being made in the vast majority of observed cases (over 80% in each court) by defence counsel – video remand court distinguishes itself in terms of the way in which the request is made. As Table 6 shows, more than half of the adjournment requests in video remand court are made through duty counsel (rather than in person) by a defence lawyer. In fact, a greater proportion of adjournment requests are sent by defence through duty counsel in video court (57.6%) than in either of the regular weekday courts (23.6% and 34.2%). Indeed, there appears to be less of an expectation that defence actually be present and speak with his or her client in video court, corroborating the notion that this court is being used differently than the others in terms of the bail process. It would seem that for many cases, 'atypical' practices or strategies are being adopted which do not follow the procedures generally associated with the active resolution of bail (e.g., defence meeting with his or her client; defence appearing in court; defence carrying out some sort of (visible) productive activity leading to a determination of bail).

Table 6: Message from Defence Counsel (through Duty Counsel) to Remand

Was a message received from counsel to adjourn the case to another date	Court			
	Regular	Special	Weekend	Video
Yes	24%	34%	44%	58%
No	76%	66%	56%	42%
Total	100% (n=165)	100% (n=38)	100% (n=86)	100% (n=139)

Note: The 'total' constitutes all cases which were not dealt with in the observed court session but were, instead, adjourned to another date for bail or some other process.

Consistent with this hypothesis, Table 7 presents the reasons given for adjournment requests.

Table 7: Reasons for Adjournments

Reason for adjournment	Court			
	Regular	Special	Weekend	Video
Counsel related	1%	3%	5%	19%
Surety or 'bail supervision'	14%	10%	19%	4%
Plea / Special court	18%	30%	11%	34%
Not ready, other charges, information needed, no time	44%	33%	22%	28%
No reason given	22%	25%	43%	15%
Total	100% (n=166)	100% (n=40)	100% (n=88)	100% (n=141)

Note The 'total' constitutes all cases which were not dealt with in the observed court session but were, instead, adjourned to another date for bail or some other process.

Video court continues to differ from the other bail courts in terms of the reasons given for a request of adjournment. Most obviously, only a very small proportion of the cases seen in video remand court (as compared to the other courts) are being adjourned for reasons directly related to bail resolution. For instance, only 4% of cases in video court on an average day are remanded to speak with the bail supervision program or because they do not have surety available. In contrast, a strikingly higher percentage of cases in video court (19%) are remanded for 'counsel-related' reasons (e.g., counsel not present; no message from counsel) than in the other courts. Many of the cases in this court, it would appear, are simply 'waiting' for something to happen.

Indeed, these findings would seem to suggest that many of the cases observed in video court on an average day may not be thought of by defence counsel as 'bail' cases in the sense that defence has no (immediate) intention of pursuing a contested bail hearing. If anything, it would appear that while roughly ⅓ of these cases are being directed toward either a special court or a plea, a substantial portion of the others are simply 'in limbo'. This dichotomous set of case outcomes may also explain – at least in part – the dual nature of the caseload in the video remand court. Specifically, the cases which we observed seemed to be either in an early phase of case processing (i.e. the considerable proportion of cases on their second or third appearance) or in a much later phase (i.e. the equally significant portion of cases on their sixth or greater appearance).

For the former group, it may be that video court is being used as a kind of 'holding tank' while defence either prepares a release plan for bail, attempts to divert the case to another court which may be more appropriate given the 'special needs' of the accused or simply moves toward truncating the bail process and going directly to plea. For the latter group,

video court may still be used as a sort of 'holding tank'. However, the difference may reside in the motives or intended uses of this 'tank'. For instance, it may simply be in the interest of the accused to continue to be held in custody without actively seeking a determination of bail. Particularly for those accused who are likely – upon release – to violate their bail conditions or commit subsequent offences, detention ensures that their cases are not 'complicated' with additional charges. Similarly, the accused may benefit from some time to 'dry out', 'calm down' or 'de-tox' or may simply have no place to go (homeless) or get help (mental health issues). Finally, pre-trial detention may also be perceived as advantageous in terms of permitting the accumulation of 'dead time' which might be used – strategically – by defence at sentencing to request an apparently lighter sanction.[4]

This unusual nature of video court is further corroborated by an examination of a representative sample of bail cases (rather than a 'typical day' in bail court). For this snapshot of a 'typical or average bail case', the total number of appearances that a case takes to complete the bail process is adopted as the most common measure of case processing. While the Canadian Criminal Code does not set out the maximum number of court appearances that a case can take in the determination of bail, the prominence of the fundamental principles of justice (e.g., the presumption of innocence, the right to personal liberty, court efficiency – particularly that unnecessary delays should be avoided) would certainly dictate that the bail process be as short as reasonably possible. As such, we have conservatively considered cases which take five or more bail appearances to be problematic in the sense of being incompatible with the underlying intentions of the law. Having said this, it could equally be argued that two appearances should be sufficient in that whatever information is needed for a determination of bail could, presumably, be collected between the first and second court appearances.

For our representative sample of cases, it is notable that the determination of the total number of court appearances to resolve the question of bail does not appear to reside – to any great extent – in the nature of the offence(s). Specifically, the total number of court appearances to complete the bail process is not related to whether or not the case has at least one 'administration of justice' offence (e.g., failure to appear, failure to comply with a bail condition, breach of probation). Similarly, it is not affected by the inclusion of at least one charge involving violence. While the number of charges in the case does appear to have some impact on the total number of court appearances required to resolve the bail process,

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[4] To understand why pre-trial detention is tolerated – some would say 'encouraged' – by defence counsel and/or by accused persons, it is important to keep in mind one fact of sentence calculation in Canada. Judges in Canada generally take into account time spent in pre-trial detention. Because almost all offenders serve – at most – ⅔ of their sentences in prison, and many prisoners serve between ⅓ and ⅔ of their sentences in custody, it makes sense that a person would be 'credited' with more than a one-day reduction of his or her sentence for each day spent in pre-trial detention. Illustratively, if an offender who gets a 90 day sentence would only serve (a maximum of) 60 days in custody, it would make sense that an accused who served 60 days in pre-trial custody should be credited for the equivalent of 1.5 days for every day in pre-trial detention (1.5 times 60 = 90). Many prisoners with longer sentences are paroled at some point during the middle third of their sentences. In this case (in which one anticipated an earlier release than the 2/3 point of the sentence), a greater credit would be justified. The result of this penal arithmetic is that most of those who serve time in pre-trial detention in Canada are credited on a 'two for one' basis. However, accused people as well as many others in the criminal justice system appear to believe that 1.5 or 2 to 1 credit is a huge carceral saving. Hence they, and possibly also their lawyers, seem – mistakenly – to think that getting 2 for 1 credit in pre-trial detention means that they serve only half as long in prison as they would if they had served their time after sentence. This misunderstanding, we would suggest, helps support repeated adjournments since 'building up dead time' is mistakenly seen as a way of dramatically reducing the length of time that people spend in custody.

the strongest factor in our dataset affecting the efficient processing of bail cases is whether or not a case ever appears in video court (for the statistical analysis of the comparative strengths of the various relationships under examination, see Webster 2007). Table 8 explores this effect.

Table 8: Total Number of Appearances as a Function of Whether the Case was Ever in Video Remand Court

Total number of appearances until the end of the bail process for representative sample of cases	Did the case ever go to video court?	
	No	Yes
1 or 2	83%	5%
3 or 4	16%	43%
5 or more	1%	52%
Total	100% (n=178)	100% (n=120)

The difference between cases with at least one appearance in video remand court and those without any such appearances is dramatic in terms of the total number of court appearances required to complete the bail process. For instance, while 83% of cases without any appearances in video remand court resolve bail in one or two court appearances, only 5% of those with at least one video remand appearance complete the bail process in the same number of appearances. Even more dramatic is the finding that 52% of the cases with at least one video appearance take at least five appearances to complete the bail process. In contrast, only 1% of cases that were never in video court require the same number of appearances to resolve the question of bail.

This difference between cases with and without at least one appearance in video remand court is even more dramatic when one examines the *average* number of appearances required to complete the bail process. While cases with no appearances in this court take only 1.7 court appearances – on average – before a determination of bail, those with one or more appearances in video remand require an average of 5.6 court appearances to complete the bail process. Particularly given the substantial number of bail cases which visit video remand court at least once before resolving the question of bail (i.e. approximately 40% of our representative sample), this court clearly contributes significantly to the total number of court appearances being used in the bail process. Indeed, at least in terms of factors affecting the total number of court appearances in the bail process, video remand court would appear to be – in many respects – the 'kiss of death' for the efficient resolution of cases.

Clearly, video remand court would appear to be a special case in the bail process in this courthouse. This hypothesis is further supported when one examines the types of cases with at least one court appearance in video remand court. While it would seem that video appearances are related to the number of charges in the case, the type of offence (as measured by charges involving violence or an 'administration of justice' offence) appears to have no significant impact. While certainly not conclusive, the absence of this latter effect continues to suggest that video remand cases may be of a special nature whose

characteristics fall – to a large extent – outside the 'common' factors expected to affect bail cases (on the impact of these factors as related to bail, see, for example, Myers 2006 or Doob 2007).

Further, the relationship between the complexity of the case (as measured by the number of charges per case) and the likelihood that a case will have at least one video remand appearance may be more likely to explain those cases which are held temporarily in video remand court while a release plan is being put together. However, particularly given that a full 40% of cases in our sample have at least one video appearance, coupled with the unusually high proportion of video remand cases which take five or more court appearances, it may be that this type of case (i.e. those being 'held' while defence prepares for a bail hearing) is not the only group of cases appearing in this court. On the contrary, it would seem – once again – that the cases in video remand are not homogeneous in nature. Specifically, while some of the cases in video remand court appear to be 'bail cases' in the traditional sense (i.e. defence is actively working toward a bail hearing), it would also appear that many others are not behaving in ways typically associated with the bail process.

This hypothesis of 'unusual cases' in video remand court receives some empirical support in Table 9. These data describe the final outcome of the bail process for the cases in our representative sample in terms of whether they had – at some point before a determination of bail – at least one appearance in video remand court. Notably, the bail process can be resolved in three different ways: 1) the accused is released on bail; 2) the accused is formally detained until trial; 3) the case completes the entire criminal court process (i.e. accused is found/pleads guilty and is sentenced or case is withdrawn) without ever having a determination of bail (i.e. a decision of whether the accused should be released or detained pending trial).

Table 9: Final Outcome of Case by Video Remand Court

Ultimate outcome of bail (for a representative sample of cases)	Did the case ever go to video court?	
	No	Yes
Released	77%	28%
Detained	7%	13%
Charges withdrawn	3%	15%
Sentenced	13%	44%
Total	100% (n=178)	100% (n=122)

Clearly, the final outcome of a 'bail' case is related to whether it had video appearances. More importantly for our current purposes, these findings underline – once again – some of the complexities or anomalies associated with video remand court. Indeed, it would seem that for many cases in this court, traditional outcomes associated with bail do not seem to be occurring.

Within the context of 'typical' or traditional bail cases, 41% of cases with at least one appearance in video remand still have a formal determination of bail. Notably though, the proportions are far from 'normal'. Illustratively, cases which never go to video remand court are more than twice as likely to be released (77%) as those with at least one video remand appearance (28%). In fact, fewer than one in three accused persons with at least one video appearance is ever released. In contrast, video case accused (13%) are roughly twice as likely as non-video case accused (7%) to be detained.

Certainly these differences would suggest that even 'traditional' bail cases (i.e. ultimately having a determination of bail) which appear in video remand court are different from those with no appearances in this court. This distinction might suggest that the video remand cases constitute more complex or problematic ones which are likely to require a full adversarial bail hearing to determine whether or not the accused should be released on bail or held pending trial. Indeed, we know that hearings in which the Crown must show cause as to why the accused should be detained take a greater number of court appearances (with 46% of observed 'show cause hearings' occurring on the fourth or subsequent bail appearance). However, it is equally notable that while cases with no video remand appearances which were formally detained (most likely following a full bail hearing) took – on average – 2.1 appearances to complete the bail process, cases with at least one appearance in video remand court took an average of 7.0 appearances. From an efficiency perspective, this difference is clearly disconcerting.

Even more intriguing is the 'special' or unusual nature of video remand cases as they relate to other case outcomes not generally associated with the bail process. On the one hand, cases with at least one video appearance (15%) are considerably more likely than cases with no video appearances (3%) to be ultimately withdrawn. An explanation for this finding may be found – at least in part – in the number of cases which receive this final outcome. Specifically, as only a very small number of cases (i.e., 24 cases or 8.0% of our sample) are ultimately withdrawn, it is possible that this outcome is associated with a specific type of offence (e.g., domestic assaults) which may be more likely to have its charges withdrawn at some point during the bail process as well as spend some time in video remand.

Certainly from a theoretical or principled perspective, these cases would inherently seem problematic in the sense that accused persons – whose charges are ultimately withdrawn – are held in custody for a certain period of time. While clearly an unavoidable occurrence in the bail process, it is nonetheless disconcerting to note in the current study that these cases (i.e. with at least one video remand appearance whose final outcome is a withdrawal of all charges) took – on average – 5.3 appearances before completing the criminal court process. Potentially even more problematic from an efficiency perspective is the fact that cases with no video remand appearances but whose final outcome was also a withdrawal of all charges only took an average of 2.0 court appearances.[5]

On the other hand, a full 44% of cases with at least one video appearance do not have a formal determination of bail (instead, pleading/being found guilty and going directly to sentencing). This proportion is substantially higher than the 13% of cases with no video appearances which receive the same final outcome. This finding would appear to reinforce the notion that a certain group of cases in video remand court may be being held

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[5] It is important to note though that this latter value describes a very small sample (i.e. only 6 cases) while the number of cases of withdrawals which had at least one appearance in video remand court was 18.

intentionally in some sort of 'limbo' state without ever having a bail hearing. Indeed, these cases do not appear to even be in the 'bail process' in the sense of actively seeking a decision regarding liberty before trial.

In fact, it is not entirely clear what these cases are doing. Notably, cases with the same outcome but which never 'visited' video remand court took an average of 1.8 court appearances to reach the sentencing phase of the criminal court process. This low number of court appearances would seem to suggest that many of these cases are pleading guilty at the beginning of the court process. In contrast, cases with at least one appearance in video remand took – on average – 5.4 appearances before reaching final disposition. Clearly in this latter case, one would suspect that the accused was either found guilty after a trial or plead guilty at a later point in the process. However, particularly in light of the high number of adjournments in video remand court, coupled with the low number of traversals to other courts (for instance, for a trial or a preliminary inquiry) and the frequent absence of defence counsel in the court on any given day, it is tempting to conclude that at least some portion of these cases are simply being held 'in limbo' for a number of appearances without any (obvious) productive activity.

Beyond the more theoretical problems inherent in the potential use of video remand as some sort of holding tank for reasons for which bail court was not intended (e.g., accumulation of 'dead time', guarantee that the accused does not re-offend while on bail, social service concerns), one must also consider those related to court efficiency. Specifically, it is impossible to know whether these cases would have been given – had they actually had a determination of bail – a formal detention order. Indeed, this hypothesis has not been tested. Given the small number of all bail cases in this courthouse which were, in fact, detained until trial (following a bail hearing) – a mere 9.2% of all cases in our representative sample of bail cases (Webster 2007) – it is plausible that at least some number of these 'sentenced' cases might have been released on bail pending trial. Certainly given the large proportion of all bail cases which have at least one appearance in video remand court, even the release on bail of a relatively small number of these 'sentenced' cases (particularly if they were held in custody for any length of time) would likely have a measurable impact on the remand population.

Discussion

Clearly, video remand court – at least in terms of the way in which it operates in this large courthouse in Ontario – appears to hold a number of benefits in terms of bail court efficiency. Most obviously, this court seems to be very proficient at reducing 'waiting time' which is frequently associated with the logistics of moving prisoners within the courthouse. Indeed, not only is the issue of the transportation of prisoners to/from the detention centre completely eliminated, but the amount of time in which the court is required to wait for prisoners to be (physically or electronically) brought before it is significantly reduced. Further, video remand court appears to be useful in temporarily 'holding' many accused while defence prepares their cases. Indeed, at least for some of the cases, it would seem that they are being actively moved toward some form of resolution (either a determination of bail or the completion of the entire criminal court process).

From an efficiency perspective, it would seem that the risk associated with video remand court resides in its use – for other cases – as a kind of long-term 'holding tank'. Specifically, the empirical data seem to suggest that there are a number of cases appearing in video

remand court which do not constitute – in any real sense – bail cases. That is, this court does not seem to be being used to prepare these cases for either a bail hearing or some other form of immediate resolution (e.g., a guilty plea). Rather, they appear to be being held 'in limbo' for at least a certain amount of time or number of appearances without any real evidence – particularly from defence – of active engagement in their resolution. Most obviously, defence counsel will frequently not even attend video remand court, simply sending a message thorough duty counsel to adjourn the case. Further, adjournments seem to be the typical outcome in this court for the vast majority of cases. Moreover, even when reasons for adjournment requests are noted, they suggest – more often than not – the absence of any productive activity. Certainly given that cases with at least one appearance in video remand court take a significantly greater number of appearances to complete the bail process, significant inefficiencies – we would argue – are built into the use of this bail court.

Indeed, video remand court appears to permit, if not actually encourage, the inversion – or, perhaps more accurately, the subversion – of the bail process as a procedure envisioned as a summary or relatively speedy process. While cases can be – and are – adjourned repeatedly in the other bail courts as well, this practice is particularly salient in video court. It would seem that this practice is rendered easier or, at least, less obvious when the accused is not physically present in the courtroom. As the old dictum suggests, it may simply be that when the accused is 'out of sight', he/she is also 'out of mind'. Certainly when none of the principal players in the bail process have to factor into the equation the (institutional as well as personal) time, cost and effort associated with transporting an accused to and from the courthouse, there may also be less pressure or expectation – in video remand court – of a productive outcome. Indeed, it would appear that for those directly involved in the bail process, any delays in video remand court may be perceived as a cost-free practice. In fact, one might even suggest that for many cases, video remand court is not even perceived as part of the bail process.

The irony of this reality is not lost on those concerned with bail court efficiency. Indeed, the use of video technology (in this case, the video link from the remand facility to the court) was designed – in large part – to address the inefficiencies involved in the transportation of accused to the courthouse from the detention centres and police detachments. Precisely by being 'efficient' in minimising the effort required to 'put off until tomorrow what might have been done today', video remand court appears to allow lengthy bail processes to occur without this reality being particularly salient to anyone. Indeed, by effectively ensuring that accused people can have a court appearance without any obvious opportunity to consult with a lawyer and that the movement of a case toward resolution (or at least the determination of bail) constitutes the exceptional outcome rather than the norm, it would appear that technology is being implicitly used to subvert – rather than support – the bail process. Indeed, its current use in this courthouse to largely hold – some would say hide – a portion of accused for at least some amount of time and some number of court appearances may well hinder – rather than help – the efficient processing of bail cases.

Clearly, technology is not value neutral, despite what we are often told. Indeed, it would appear that it can subvert – in subtle ways – the very value of efficiency. Of equal concern, findings from this study would also seem to suggest that video remand court may invert – if not subvert – the legislated purposes of bail as a legal process to determine the liberty of an accused until trial. Particularly for those cases appearing in video remand which have a substantial number of court appearances without any (at least obvious) productive activity, the question of the use of this court for extra-legal purposes is raised. Indeed, it is tempting to explain the significantly higher average number of appearances for cases appearing in

video remand court (versus the other bail courts in this courthouse) as – at least in part - a defence strategy of ensuring a better bargaining position with the Crown (by guaranteeing that the accused is unable to violate bail conditions or commit additional offences while on bail or by demonstrating that the accused has already served a number of days in remand). In this way, the likelihood of defence being able to negotiate the withdrawal of all charges or a lighter sentence for his or her client (under the assumption that pre-trial detention time will count as the 'punishment' which the accused receives in exchange for having all charges withdrawn or as a reduction in sentence severity) may, in fact, be perceived to be in the best interest of the accused. Similarly, it may also be in the client's best interest to delay the determination of bail (and, as such, remain in custody) for such reasons rooted in the forum of social services (e.g., issues of (mental) health, homelessness, or (alcohol/drug/domestic violence) abuse).

While arguably a benefit to the accused, this use of the bail process as a means of delaying or avoiding the potential release of one's client would seem to us to constitute a potential abuse of process. Specifically, bail was clearly not designed as an alternative means of dealing with other social problems or as an opportunity for defence to ensure a more favourable outcome for his or her client. Even with the (tacit or explicit) consent of the accused, the fundamental principles of justice would prohibit the (voluntary) detention of a person when it is not necessary (as defined in s515(10) of the Criminal Code of Canada).

Conclusion

Within this context, perhaps the only real optimism that this article offers for those who continue to see video remand court as a potential 'quick fix' to concerns of bail efficiency may reside in the limitations of the current study. Indeed, the findings are based simply on a single case study. It is likely that other courthouses operate their video remand courts in different ways (e.g., a large courthouse in southern Ontario permits the use of video remand court to conduct full contested bail hearings – a practice which is not, as far as we understood, permitted in the courthouse currently under study). Obviously other approaches to the administration and organisation of video remand court could, arguably, increase the contribution of this court to bail court efficiency by minimising the potential risks identified in this study.

While tempting as a new avenue to explore in attempts to increase bail court efficiency, a broader view of the entire bail system would suggest considerable caution in adopting such a perspective. Indeed, it would seem unlikely that the problems of video remand court can be solved with simply 'tinkering' with the ways in which this court operates. On the contrary, the findings from this study suggest that many of the underlying problems associated with video remand are not, in fact, specific to this type of bail court. In fact, comparisons with the other three bail courts frequently showed that video remand court was simply another arena in which broader, more systemic problems in the bail system play out. While it is possible that these wider concerns are exacerbated in video remand court, they appear to us to be embedded in the very culture of bail court.

In particular, one of the dominant leitmotifs running through all four courts was the current adoption – or at least passive tolerance – of a culture of adjournments. Indeed, generalised expectations that adjournments are somehow inevitable, acceptable or perhaps even desirable seemed to permeate the daily practices of all four courts and all of its key players. Illustratively, the frequent recourse to adjournments in any bail court, the inability

of one adjournment to ensure a more productive outcome on the next appearance and the expectation that defence counsel need not even be present but can simply send a message through duty counsel to repeatedly adjourn cases without encountering opposition or even comment – in most cases – from the Crown or the Justice of the Peace, underline the generalised nature of the problem.

In fact, the current mentality or culture is arguably the negotiated product of the vested interests of each of the principal stakeholders. From the perspective of the Justice of the Peace and the Crown, the high number of adjournments on the part of defence counsel in any bail court and the significant proportion of cases which remain in custody until sentence reduce the degree of institutional risk associated with releasing accused into the community. Particularly when only the 'lowest' risk individuals are released, with the more complex cases remaining 'in limbo', there is a reduced likelihood of 'bad press' or public discord often associated with offences committed by those on bail. Further, given that it is defence who is requesting the adjournments, there is no risk of any constitutional challenges rooted in unreasonable delay in processing cases.

From the perspective of defence counsel, the current system may also be perceived as entirely adequate. With several weekday bail courts, as well as one functioning on weekends and holidays, opportunities to defend the accused's right to *habeas corpus* are multiple in nature. In addition, the use of the bail process as a sort of 'holding tank' in which the accused can accumulate 'dead time' while also ensuring that he or she does not re-offend while on bail may arguably be seen by defence as being in the best interest of many of the accused in terms of acquiring the 'best deal' or, at a minimum, the best *perceived* outcome.

Indeed, many of the principal problems with the current culture in the bail system may not, in fact, be 'local' and, as such, less directly impact on the day-to-day functioning of the court. Rather, they would appear to be broader in nature. Most notably, it is the provincial correctional service ministry which bears the (immediate) brunt of a less efficient bail process in the form of a large (and growing) group of prisoners who are increasingly more difficult to manage. On the one hand, there is absolutely no predictability – administratively, organisationally or structurally – with accused who have yet to have a bail hearing. On the other hand, the costs of ensuring that accused are moved from their cells to the video room for a video remand appearance in a timely and safe fashion are non-trivial. More broadly, it is governments (and, ultimately, taxpayers) who are forced to invest additional (limited) resources in housing this growing population as well as finance an increasing number of bail appearances.

Arguably, the judiciary (in the broad sense) is also negatively impacted by current inefficiencies in the bail process. Most obviously, lengthy stays in remand have a distorting effect on sentencing as a result of the two-for-one time served credit (see footnote 4 for more details) which is easily misunderstood by the general public (and – we suspect – by the accused) who perceive these sentences to be too lenient. It should not go unnoticed that judges are – for all practical purposes – absent from the bail process in many Ontario courthouses.

Further, many of the problems associated with the present bail court culture may not only be broader in nature, but also relatively invisible or theoretical. On the one hand, the current 'fear-of-crime' / 'tough-on-crime' mentality would suggest that few citizens would be opposed to an accused spending longer in the bail process (and, as such, in custody) than is reasonable or necessary. Indeed, few people realise that while lengthy remands may arguably contribute marginally to public safety in the short term as accused persons remain

in custody before trial, this practice may – in the long term – negatively impact on the safety of the community. Particularly for accused who are ultimately handed down a custodial sentence but who are released immediately with time served, there is no possibility of conditional release and any accompanying community supervision or conditions. Further, there is no opportunity for offenders to benefit from correctional programming targeting criminogenic factors which is generally reserved for sentenced offenders.

On the other hand, notions of the presumption of innocence, the right to personal liberty and the determination of bail without unreasonable or unnecessary delay may be easily lost in the practicalities of day-to-day operations. Specifically, the immediate need to get through the day's docket arguably becomes the central focus of the court. This short-term perspective makes it easy to lose sight of the fact that it is not in the interest of the criminal justice system or the public – nor, theoretically, of the accused – for anyone to be in remand rather than as a sentenced prisoner. Obviously, lengthy bail processes in which the accused is being held 'in limbo' only further violates these central principles of the legal doctrine governing the loss of liberty.

Within the framework thus described, change will not be easy. For most of the principal professionals in bail court (e.g., the justice of the peace, the defence counsel, and the prosecutor), the system would appear to serve many of their immediate interests. As such, it is likely that the initial impetus for change will have to come from above. More importantly, it will undoubtedly have to be introduced on a number of broad fronts. Indeed, isolated change (e.g., tinkering with the ways in which video court operates) will likely prove ineffective.

Rather, cultural transformations – particularly through the promotion of certain guiding principles – are likely to be essential in bringing about change in the current mentality displayed by the key players in the bail system (on the impact of court culture on the efficient processing of criminal cases, see, for instance, Leverick & Duff 2002). Indeed, a culture of efficiency (rather than adjournments) would create new expectations and, in this way, naturally encourage the development of built-in resistances against attempts to subvert or resist this new mentality. Within this context, video remand court will arguably still have a role to play. The difference, we would argue, is that it would be one which promotes – rather than impedes – the value of efficiency in the bail process.

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