

Strengthening the Rule of Law by Measuring Local Practice, One Rule at a Time

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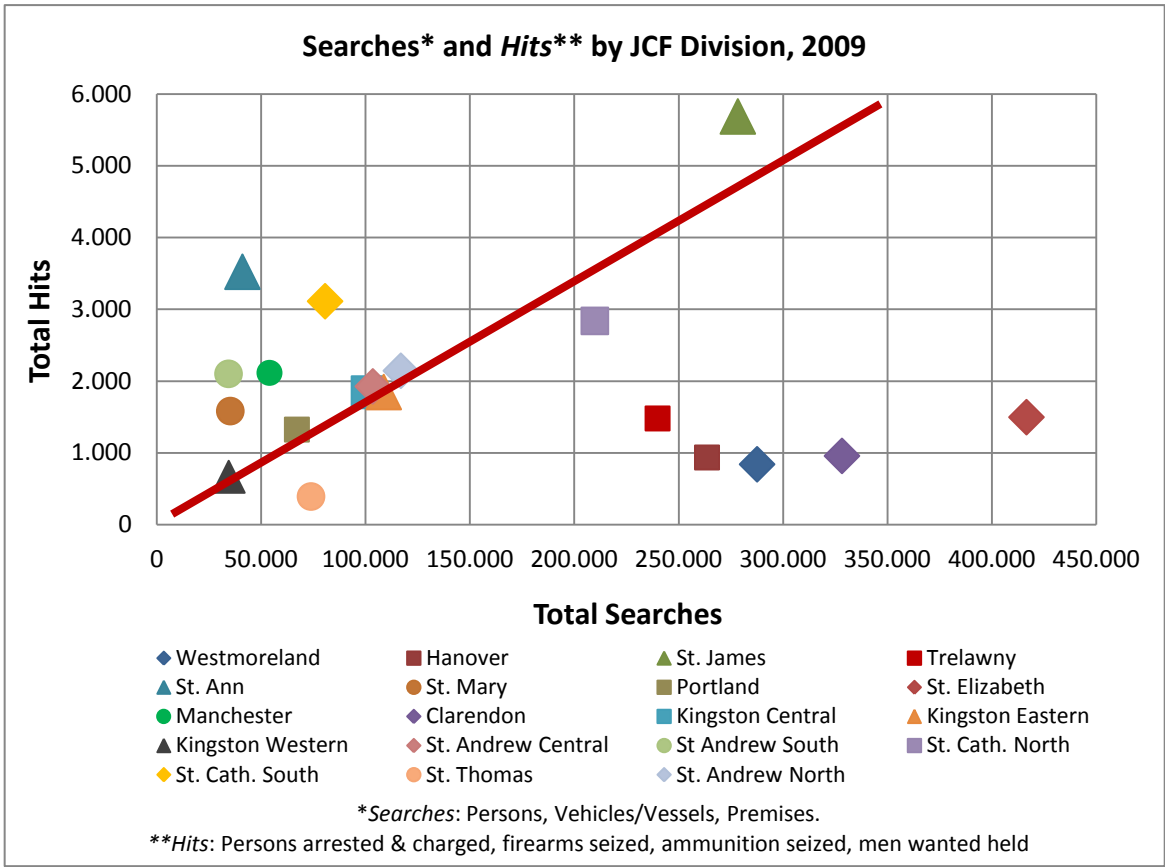
The quality of justice, many insist, cannot be measured by an index or an indicator. True enough, at least of justice in the aggregate, or justice with a capital J, but not necessarily of its component parts; and it is on those component parts of justice that reformers must work. In each individual country, province, and city, reformers must strengthen the rule of law one part at a time. Measurement and indicators are essential tools in this work, and fortunately it is well within the capacity of most skilled and creative practitioners to fashion indicators for their local purposes.

Consider the plight of the Commissioner of the Jamaican Constabulary Force, a police service long the object of domestic and international reform efforts, and yet still struggling in 2009 to reduce frightening rates of homicide and armed violence in much of the country, reduce the use of lethal force by members of the JCF itself, improve the quality of evidence for use in court, improve its treatment of crime victims, and reduce internal corruption, all while improving the full range of basic police services. Years of reform projects, countless training programmes, and legions of consultants had, by that year, left the JCF with lots of new forms, record books, monthly tallies, annual statistics, but few people in or out of the JCF believed the numbers, and with good reason. In the compilation of statistics, even basic terms (such as a “raid” or a “search”) had multiple meanings not only in different police districts but on different shifts in the same district. Meetings of the command staff at a district police station would typically move from anecdote to anecdote, with commanders instructed to respond to the latest incidents, but with no reliable sense of trends or discussion of indicators. These were largely data-free meetings in a district headquarters littered with unread volumes of meaningless numbers and toppling stacks of useless records. It is a sorry picture recognisable around the world.

What options are available to such a police chief, determined to strengthen the rule of law but wary of adding to the legacy of failed reform? In fact, what the Commissioner did in 2009 was to scavenge his department for usable data. With the help of the Program in Criminal Justice Policy & Management at the Harvard Kennedy School, his staff assembled a set of crude statistics about the searches each division was conducting, the guns each was seizing and the offenders each was arresting. These were data had long been collected and long been ignored; but by plotting them on a single scatter-chart, the Commissioner had an easily visualised indicator of the relationship between each district’s intrusiveness and its success at gathering evidence (see Figure 1). Most police districts fell along a trend line that represented a straightforward trade-off: the more searches, the more “hits” (that is, the more guns seized, wanted suspects apprehended, etc.). But there was a group of districts - the “low yield districts” - conducting many more searches than the others, yet recording no more hits than districts intruding much less frequently onto the liberties of Jamaican citizens. And there was a second group, the “high yield districts” - conducting relatively few searches but obtaining lots of guns and arresting many wanted suspects.

The Commissioner realised he could use such an indicator in a command meeting to highlight effective practices of some district commanders and *shame the low-yield districts into improving their performance.*

Figure 1. Searches and “Hits” in Law Enforcement Activity, Jamaica, 2009



Source: Research Planning and Legal Services Branch, Jamaican Constabulary Force

Over the next eighteen months, station clerks and police officials worked together to harmonise definitions, improve data quality, and standardise reporting, while simultaneously working with station commanders in a pilot district to shift attention from the traditional measurement of quantity of enforcement actions (the more raids and arrests, the better) to this more sophisticated indicator of the balance between enforcement activity and enforcement success.

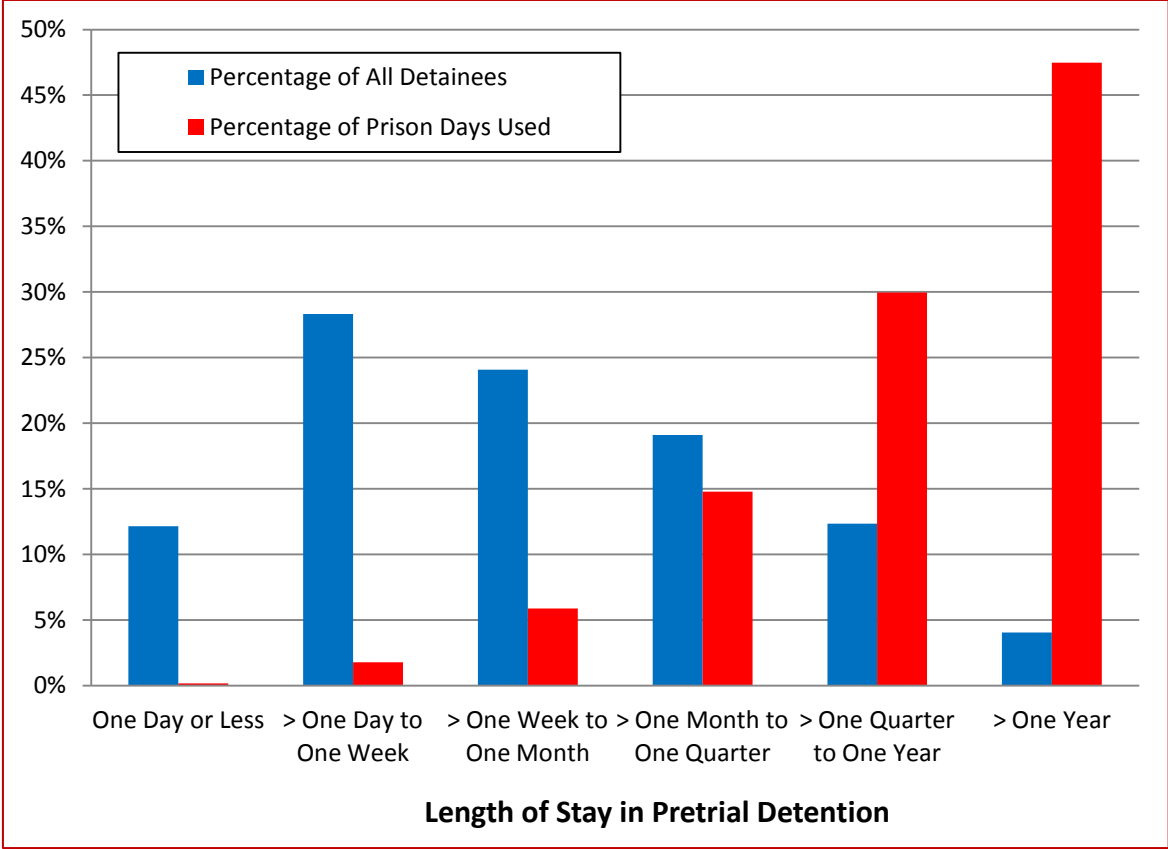
At the same time, in Nigeria’s Lagos State, the Attorney General faced a similar cacophony of complaints about law enforcement: high crime, ineffective investigation, interminable court proceedings, corruption, and perversion of the law. Yet he, like the Commissioner in Jamaica and countless officials in such circumstances around the world, was determined to improve things, to establish something recognisable as the rule of law. Where to begin?

The Attorney General chose pretrial detention, an unlikely choice as he exercised no control over the prisons, nor over the police prosecutors who handled the vast majority of prosecutions. To make any progress reducing the unbearable overcrowding among remand prisoners in Lagos State, he needed a tool to galvanise the efforts of multiple government departments only some of which reported to him. An indicator, he knew, would help.

No useful, standard measure of detention exists. The most commonly used measure of the extent of pretrial detention (the percentage of prisoners on any given day who are un-convicted) is sometimes useful to advocates highlighting the problem of pretrial detention, but not helpful at all for those trying managing its reduction. What the Attorney General needed was a measure of the duration of pretrial detention, disaggregated to reveal the specific courts and prosecutors responsible for the greatest share of the problem.

As in Jamaica, a scavenger hunt for data in the largest prison in Lagos States unearthed a useful set of previously ignored data: in this case the data came from the daily log books in which prison officers recorded the movement of prisoners back and forth from the courts. These data allowed a local NGO working with the Attorney General’s office and the Harvard programme to calculate the length-of-stay for a representative sample of those completing a period of pretrial detention. The results shows that a very small percentage of remand prisoners received by the prison remained in detention for a year or more, but this group accounted for almost half of the prison spaces occupied by pretrial detainees. The vast majority of remand prisoners remained for less than a month - a fact quite different from the impression held by the public and indeed by prison officials themselves (See Figure 2). Once he could see this bi-modal distribution (a common pattern for pretrial detention around the world), the Attorney General could use these measurements to focus the courts on the actions that would make the most difference. Those courts responsible for the hundreds of short-term remand prisoners should reduce the numbers detained in the first place, while those responsible for the small number of remand prisoners still in detention after a year should focus on completing those cases within the next few months.

Figure 2. Detainees and Prison Space Used by Length of Stay in Detention, Ikoyi Prison, Lagos Nigeria



Source: CLEEN Foundation and Harvard Kennedy School of Government, prison exit samples

By themselves, these individual efforts in Jamaica and Lagos State do not establish the rule of law, but they help. Efforts like these rarely even solve the specific problem on which they are focused (there are still too many ineffective raids in Jamaica and pretrial detention remains a problem in Lagos), but they do produce improvements and they do so by advancing elements of the rule of law itself. And they begin to create a culture of measurement in the service of justice.

It is precisely because the pursuit of justice is so gradual, indeed perpetual, that indicators like these are so valuable. If we are never to see justice fully realised or the rule of law permanently established, at least we should be able to see the police solving more crimes with less intrusion on our liberties, and courts able to reduce the time that un-convicted suspects spend in detention. The multiplication of such indicators in a single justice system should gradually provide an approximate measure of the rule of law, but the goal is not so much an accumulation of individual measurements as a professional culture that values measurement as an essential part of the preservation and extension of justice. The goal of those who would promote the rule of law in justice systems around the world should be the establishment of such a professional culture and the promotion of officials and citizens adept at the invention of new measures suited to their own needs, drawing on the data they have at hand. Fundamentally, strengthening the rule of law is not a technical, but a cultural achievement.