STATE OF NEW YORK

THE ADMINISTRATIVE BOARD

OF

THE JUDICIAL CONFERENCE

THE JUDICIAL CONFERENCE

AND

OFFICE OF COURT ADMINISTRATION

TWENTY-THIRD ANNUAL REPORT

1978

STATE OF NEW YORK

ADMINISTRATIVE BOARD
OF THE COURTS

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PATRICK J. BERRIGAN

I am pleased to send you the 23rd Annual Report of the Administrative Board of the Judicial Conference, the Judicial Conference, and the Office of Court Administration for the year 1977.

Richard J. Bartlett

Chief Administrative Judge
of the Courts

Legislative Document (1978) No. 90

STATE OF NEW YORK

REPORT
OF
THE ADMINISTRATIVE BOARD
OF
THE JUDICIAL CONFERENCE

THE JUDICIAL CONFERENCE
AND
THE OFFICE OF COURT ADMINISTRATION

FOR THE CALENDAR YEAR
JANUARY 1, 1977 THROUGH DECEMBER 31, 1977

Letter of Transmittal

To:

THE HONORABLE HUGH L. CAREY, *The Governor of the State of New York*, and
The Legislature of the State of New York:

Pursuant to Chapter 684 of the Laws of 1962, as amended by Chapter 615 of the Laws of 1974, this Annual Report is submitted on behalf of the Administrative Board of the Judicial Conference of the State of New York, the Judicial Conference of the State of New York, and the Office of Court Administration.

March 15, 1978

Richard J. Bartlett
State Administrative Judge

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Please Do not Destroy or Discard This Report.

When this report is of no further value to the holder, please return it to the Office of Court Administration, 270 Broadway, New York, N.Y. 10007, so that copies will be available for replacement in our sets and for distribution to those who may request them in the future.

Preface

This is the 23rd Annual Report of the Administrative Board of the Judicial Conference of the State of New York, of the Judicial Conference, and of the Office of Court Administration. It is submitted pursuant to Chapter 684 of the Laws of 1962, as amended by Chapter 615 of the Laws of the 1974, and covers the period from January 1, 1977 through December 31, 1977.

The report consists of seven chapters and an appendix. Chapter 1 describes the objectives, the structure, the administration, and the financing of the courts in New York State. Chapter 2 discusses the progress of the courts in complying with the standards and goals for the timely disposition of cases adopted by the Administrative Board on July 3, 1975 (see Chapter 2 of the 21st Annual Report). Chapter 3 presents statistics on court operations in 1977.

Chapter 4 discusses five special programs: (a) the Mental Health Information Service, (b) the central index for post-conviction applications, (c) retainer and closing statements, (d) compulsory arbitration pilot programs and (e) statements of appointment and of fees or commissions under section 35-a of the Judiciary Law.

Chapter 5 reports on education and training programs conducted, coordinated or assisted by the Office of Court Administration in 1977. Chapter 6 summarizes the legislation sponsored at the 1977 session of the Legislature by the Judicial Conference and the Office of Court Administration and includes the *Report of the Judicial Conference to the 1978 Legislature in Relation to the Civil Practice Law and Rules*, the *Seventh Annual Report to the Judicial Conference by the Advisory Committee on Criminal Law and Procedure*, and a report of the Family Court Advisory and Rules Committee.

Chapter 7 consists of a special study, entitled *Ending the Right of Trial by Jury of the Issues Preliminary to Arbitration in New York*, which was prepared at the request of the Committee to Advise and Consult with the Judicial Conference on the Civil Practice Law and Rules.

The Appendix is a report on an evaluation of compulsory arbitration in Rochester, Binghamton, Schenectady, and the Bronx.

All numbered statistical tables appear at the end of the chapter in which they are cited.

Acknowledgment

The Administrative Board of the Judicial Conference gratefully acknowledges the assistance and cooperation extended to it, to the Judicial Conference, and to the Office of Court Administration during the past year by the Governor and his staff, members of the Legislature, members of the Judiciary, court personnel, bar associations, and individual lawyers and laymen.

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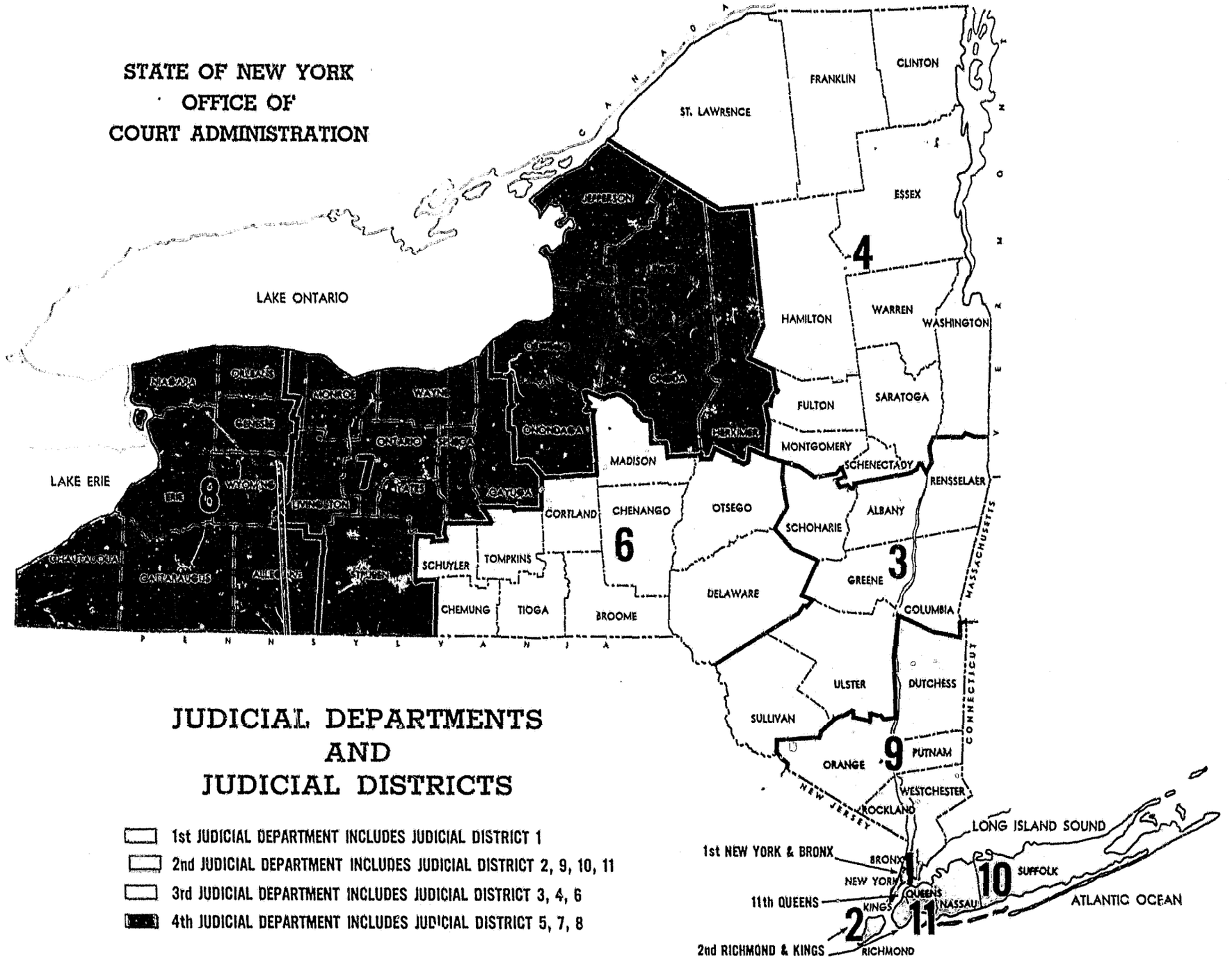
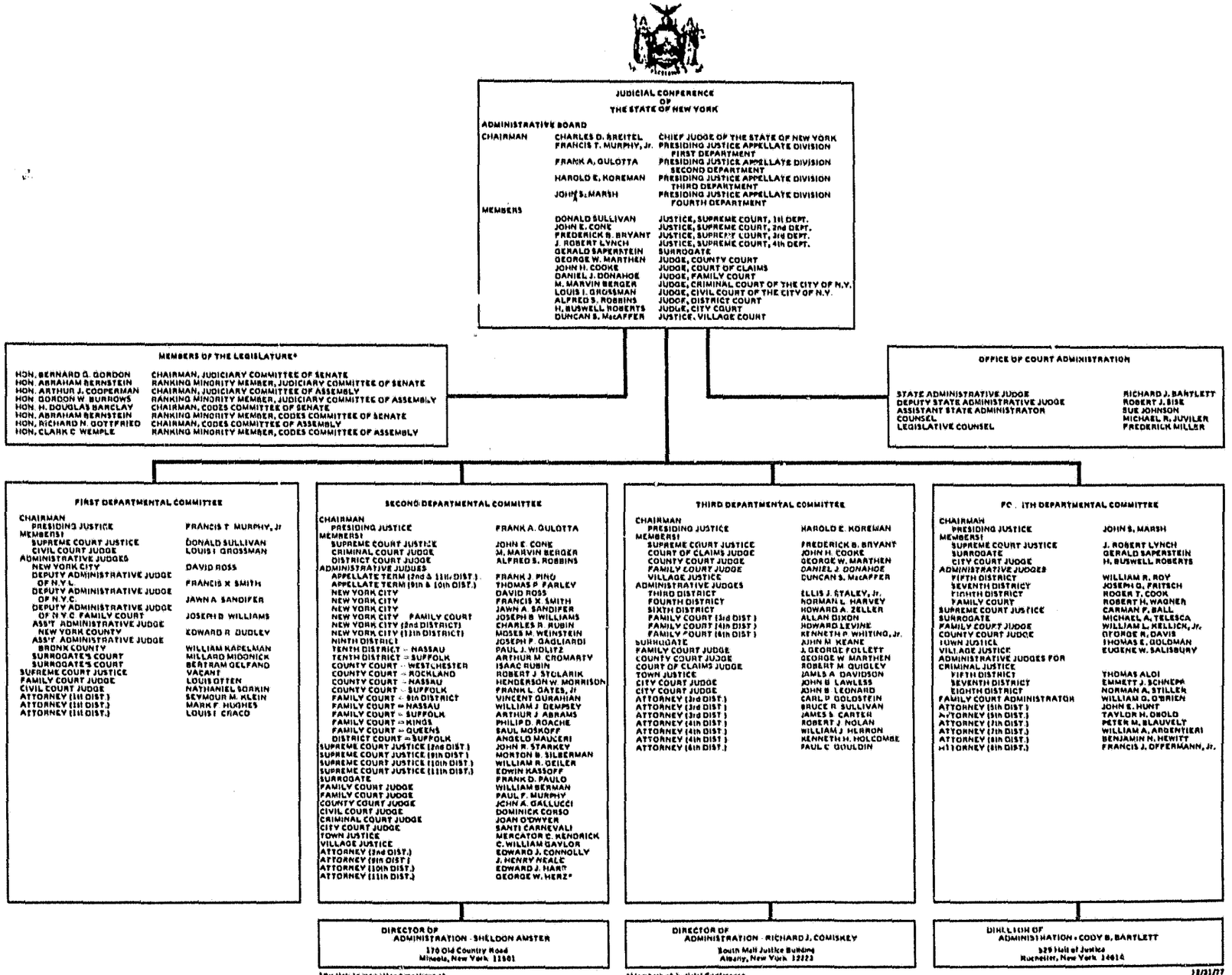
STATE OF NEW YORK
OFFICE OF
COURT ADMINISTRATION



JUDICIAL DEPARTMENTS AND JUDICIAL DISTRICTS

- 1st JUDICIAL DEPARTMENT INCLUDES JUDICIAL DISTRICT 1
- 2nd JUDICIAL DEPARTMENT INCLUDES JUDICIAL DISTRICT 2, 9, 10, 11
- 3rd JUDICIAL DEPARTMENT INCLUDES JUDICIAL DISTRICT 3, 4, 6
- 4th JUDICIAL DEPARTMENT INCLUDES JUDICIAL DISTRICT 5, 7, 8


JUDICIAL CONFERENCE OF THE STATE OF NEW YORK
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SURROGATE'S COURT — BERTRAM GELFAND
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TENTH DISTRICT – SUFFOLK — ARTHUR M. CROMARTY
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COUNTY COURT – ROCKLAND — ROBERT J. STOLARIK
COUNTY COURT – NASSAU — HENDERSON W. MORRISON
COUNTY COURT – SUFFOLK — FRANK L. GATES, Jr.
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FAMILY COURT – SUFFOLK — ARTHUR J. ABRAMS
FAMILY COURT – KINGS — PHILIP D. ROACHE
FAMILY COURT – QUEENS — SAUL MOSKOFF
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FAMILY COURT JUDGE — PAUL F. MURPHY
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THIRD DISTRICT — ELLIS J. STALEY, Jr.
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SIXTH DISTRICT — HOWARD A. ZELLER
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FAMILY COURT (4th DIST.) — HOWARD LEVINE
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COURT OF CLAIMS JUDGE — ROBERT M. QUIGLEY
TOWN JUSTICE — JAMES A. DAVIDSON
CITY COURT JUDGE — JOHN B. LAWLESS
CITY COURT JUDGE — JOHN B. LEONARD
ATTORNEY (3rd DIST.) — CARL P. GOLDSTEIN
ATTORNEY (3rd DIST.) — BRUCE R. SULLIVAN
ATTORNEY (3rd DIST.) — JAMES B. CARTER
ATTORNEY (4th DIST.) — ROBERT J. NOLAN
ATTORNEY (4th DIST.) — WILLIAM J. HERRON
ATTORNEY (4th DIST.) — KENNETH H. HOLCOMBE
ATTORNEY (6th DIST.) — PAUL C. GOULDIN
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CITY COURT JUDGE — H. BUSWELL ROBERTS
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FIFTH DISTRICT — WILLIAM R. ROY
SEVENTH DISTRICT — JOSEPH O. FRITSCH
EIGHTH DISTRICT — ROGER T. COOK
FAMILY COURT — ROBERT H. WAGNER
SUPREME COURT JUSTICE — CARMAN F. BALL
SURROGATE — MICHAEL A. TELESCA
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COUNTY COURT JUDGE — GEORGE R. DAVIS
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VILLAGE JUSTICE — EUGENE W. SALISBURY
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SEVENTH DISTRICT — EMMETT J. SCHNEPP
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ATTORNEY (5th DIST.) — TAYLOR H. OROLD
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DIRECTION OF ADMINISTRATION - CODY B. BARTLETT
329 Hall of Justice
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*By statute may attend meetings of Conference and make recommendations
†Members of Judicial Conference serving on Committee
12/31/77

Chapter 1

Introduction

The *Judiciary* is one of the three branches of New York State Government. The powers and the structure of the New York State Judiciary are embodied in Article VI of the State Constitution. Article VI was approved by the voters in the 1961 election and became operative September 1, 1962, effecting the first court reorganization in New York since 1894. Article VI provides for a "unified court system for the state" and specifies the organization and the jurisdiction of the courts in the state. It also establishes the method of selection and removal of judges and justices and the responsibilities for administrative supervision of the courts.

The objectives of the Judiciary are to (1) provide a forum for the peaceful, fair and prompt resolution of (a) civil claims and family disputes, (b) criminal charges and charges of juvenile delinquency and (c) disputes between citizens and their government and challenges to governmental actions; (2) determine the legality of wills, adoptions, uncontested divorces and other undisputed matters submitted to the courts for review and approval; (3) provide legal protection for children, mentally ill persons and others entitled by law to the special protection of the court; (4) regulate the admission of lawyers to the Bar and their conduct and discipline, and (5) conduct proceedings to suspend, admonish, censure, remove or retire judges and justices.

1.1 Court Structure

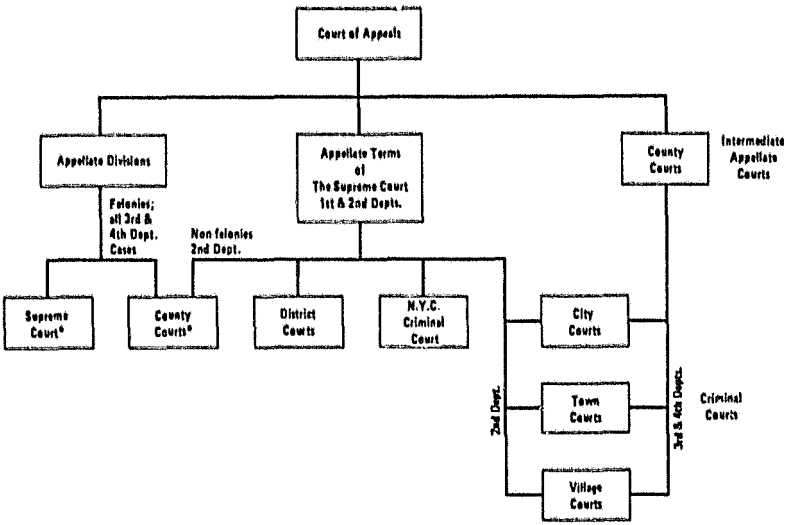
In New York State the courts of original jurisdiction, or trial courts, hear a case in the first instance, and the appellate courts hear appeals from the decisions of other tribunals.

The *appellate courts* are the Court of Appeals, the Appellate Divisions and the Appellate Terms of the Supreme Court, and the County Courts acting as appellate courts. The *trial courts* of superior jurisdiction are the Supreme Court, the Court of Claims, the Family Court, the Surrogates' Courts and, outside New York City, the County Courts. The trial courts of lesser jurisdiction are the Criminal Court and the Civil Court of the City of New York and, outside New York City, City Courts, District Courts and Town and Village Justice Courts.

The appellate structure of these courts is shown in Figures 1-a and 1-b.

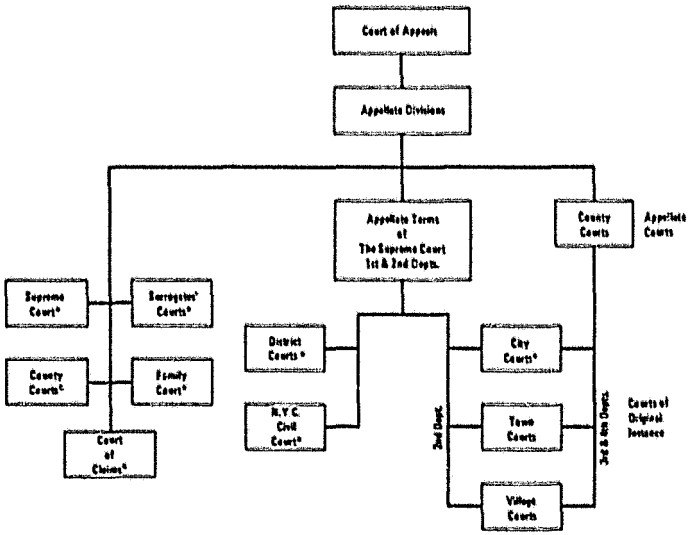
The *Court of Appeals* is the highest court of the state. It consists of the Chief Judge and six Associate Judges. Until April 1, 1978, Court of Appeals judges were elected statewide for 14-year terms. After that date, as a result of approval of Amendment 1 at the general election of November 8, 1977, they will be appointed by the Governor, with the advice and consent

Figure 1-a
NEW YORK STATE JUDICIAL SYSTEM
CRIMINAL APPEALS STRUCTURE



*Appeals involving death sentences must be taken directly to the Court of Appeals.

Figure 1-b
NEW YORK STATE JUDICIAL SYSTEM
CIVIL APPEALS STRUCTURE



*Appeals from judgments of courts of record of original instance which finally determine actions where the only question involved is the validity of a statutory provision under the New York State or United States Constitution may be taken directly to the Court of Appeals. Only some City Courts are courts of record.

of the Senate, from among persons found to be well-qualified by a commission on judicial nomination. Five members of the Court constitute a quorum, and the concurrence of four members is required for a decision.

The jurisdiction of the Court is limited by Section 3 of Article VI of the Constitution to the review of questions of law, except in a criminal case in which the judgment is of death or a case in which the Appellate Division, in reversing or modifying a final or interlocutory judgment or order, finds new facts and a final judgment or order is entered pursuant to that finding. An appeal may be taken directly from the court of original jurisdiction to the Court of Appeals from a final judgment or order in an action or proceeding in which the only question is the constitutionality of a state or federal statute. In other matters, the Constitution provides that certain types of cases can be taken to the Court of Appeals as a matter of right, while in still other cases an appeal to the Court of Appeals may be taken only with the leave of a justice of the Appellate Division or a judge of the Court of Appeals or upon the certification of the Appellate Division or the Court of Appeals.

The Appellate Divisions of the Supreme Court are established in each of the state's four judicial departments (see the map at the beginning of this chapter). Their responsibilities include:

- Resolving appeals from judgments or orders of the courts of original jurisdiction in civil and criminal cases and reviewing civil appeals taken from the Appellate Terms.
- Conducting proceedings to admit, suspend, or disbar lawyers.

Each Appellate Division has jurisdiction over appeals from judgments and from final and some intermediate orders rendered in county-level courts and original jurisdiction over selected proceedings. Where established by the Appellate Division, *Appellate Terms* exercise jurisdiction over civil and criminal appeals from various local courts and certain appeals from the County Courts.

As prescribed by Section 4, Article VI of the Constitution, justices of the Supreme Court are designated to the Appellate Divisions by the Governor. The Governor designates the Presiding Justice of each Appellate Division, who serves for the length of his or her term of office as a justice of the Supreme Court. Associate justices are appointed for five-year terms or for the remainder of their terms of office, whichever period is shorter.

The *Supreme Court* has unlimited, original jurisdiction, but it generally hears cases outside the jurisdiction of other courts, such as:

- Civil matters beyond the financial limits of the lower courts' jurisdiction;
- Divorce, separation, and annulment proceedings;
- Equity suits, such as mortgage foreclosures and injunctions; and
- Criminal prosecutions of felonies and indictable misdemeanors in New York City.

Supreme Court justices are elected by judicial district for 14-year terms.

The *County Court* is established in each county outside New York City. It is authorized to handle criminal prosecution of offenses committed within the county, although in practice, most minor offenses are handled by lower courts. The County Court also has limited jurisdiction in civil cases generally involving amounts up to $10,000.

County Court judges are elected in each county for terms of 10 years.

The *Surrogate's Court* is established in every county and hears cases involving the affairs of decedents, including the probate of wills, the administration of estates, and adoptions.

Surrogates are elected for terms of 10 years in each county outside New York City and for terms of 14 years in each county in New York City.

The *Family Court* is established in each county and the City of New York to hear matters involving children and families. The principal types of cases that it hears include:

— Juvenile delinquency;
— Child protection;
— Persons in need of supervision;
— Review and approval of foster-care placements;
— Paternity determinations;
— Family offenses;
— Adoptions (concurrent jurisdiction with Surrogate's Court); and
— Support of dependent relatives.

Family Court judges are elected for 10-year terms in each county outside New York City and are appointed by the Mayor for 10-year terms in New York City.

The *New York City Civil Court* tries civil cases involving amounts up to $10,000. It includes a Small Claims Part for informal disposition of matters not exceeding $1,000 and a Housing Part for housing-code violations. New York City Civil Court judges are elected for 10-year terms.

The *New York City Criminal Court* conducts trials of misdemeanors and violations. Criminal Court judges also act as arraigning magistrates for all criminal offenses. New York City Criminal Court judges are appointed by the Mayor for 10-year terms.

There are four kinds of courts of lesser jurisdiction outside New York City: *District, City, Town* and *Village Courts*. These four courts handle minor civil and criminal matters. The methods of selection and the terms of office of judges of these courts vary throughout the state.

The *Court of Claims* is a special trial court that hears and determines claims against the State of New York. Court of Claims judges are appointed by the Governor with the consent of the Senate for nine-year terms.

The *Court on the Judiciary* was a special court convened by the Chief Judge to try charges that might result in the censure,

suspension, removal or retirement of any judge or justice of any court in the unified court system.

The Court on the Judiciary consisted of five justices of the Appellate Division from judicial departments other than the department in which the judge or justice who was before the court had been elected, appointed or designated to sit.

Effective April 1, 1978, owing to approval of Amendment 3 at the general election of November 8, 1977, the Court on the Judiciary was abolished, and disciplinary authority over judges and justices was vested in a reconstituted State Commission on Judicial Conduct and the State Court of Appeals.

Table 1 shows the authorized number of judges in the New York State judicial system.

1.2 Court Administration

Until April 1, 1978, the constitutional authority for the administrative supervision of the unified court system was vested in the Administrative Board of the Judicial Conference, consisting of the Chief Judge of the Court of Appeals as chairman and the Presiding Justices of the four Appellate Divisions. The same constitutional provision that granted the Administrative Board the power "to establish standards and administrative policies for general application throughout the state" also provided that the four Appellate Divisions shall "supervise the administration and operation of the courts in their respective departments" in accordance with these standards and policies. This responsibility could be exercised through the designation of administrative judges.

The Chairman of the Administrative Board, with the approval of the Board, could appoint either a State Administrator or a State Administrative Judge, who was empowered to establish an Office of Court Administration to assist him and the Administrative Board in exercising their administrative functions. The State Administrative Judge exercised the powers and the responsibilities of the State Administrator as head of the Office of Court Administration and Secretary to the Administrative Board. He was also responsible, in consultation with the Appellate Divisions, for overseeing and coordinating the operations of the various administrative judges designated by the Appellate Divisions including the New York City Administrative Judge, who had been designated to supervise all trial-level courts in the City of New York except the Surrogates' Courts. (See Figures 2 and 3.)

Since April 1, 1978, as a result of approval of Amendment 2 at the general election of November 8, 1977, the authority for administrative supervision of the court system has been vested in the Chief Judge of the Court of Appeals, who appoints a Chief Administrator of the Courts with the advice and consent of the Administrative Board of the Courts. The Chief Administrator, on behalf of the Chief Judge, is responsible for the administration and operation of the trial courts and for the direction of the Office of Court Administration. The Chief Judge establishes

Figure 2
NEW YORK STATE JUDICIAL SYSTEM ADMINISTRATIVE STRUCTURE
(Before Apr. 1, 1978)

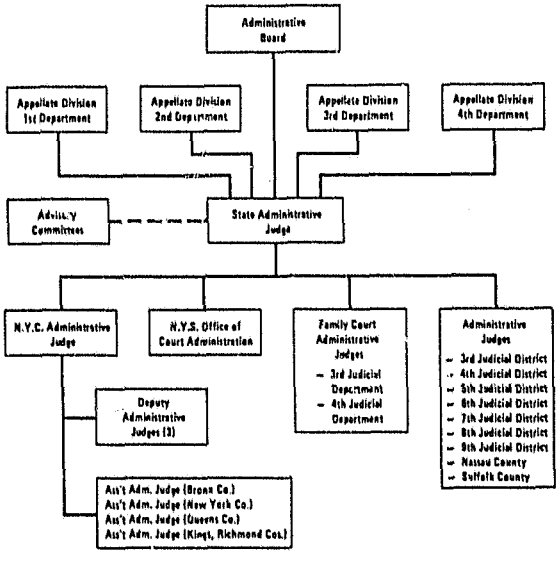
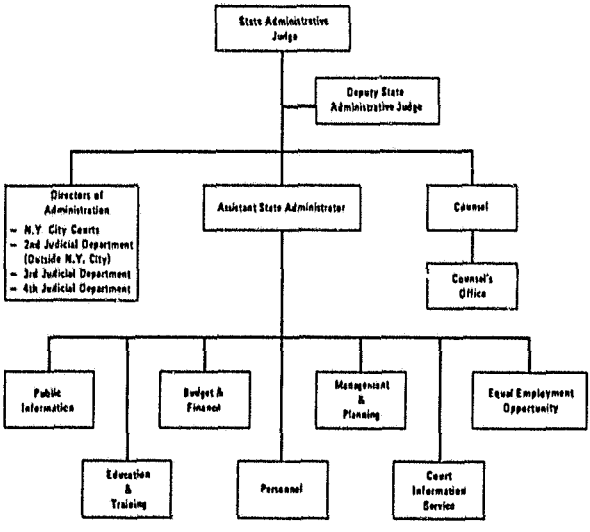


Figure 3
ORGANIZATION CHART OFFICE OF COURT ADMINISTRATION
(Before Apr. 1, 1978)



statewide administrative standards and policies after consultation with the Administrative Board and after approval by the Court of Appeals.

The principal actions of the Administrative Board in 1977 were the following:

- the supervision of the major personnel classification study of all nonjudicial positions mandated by Chapter 966 of the Laws of 1976 (section 220, Judiciary Law), a task that continued into 1978.
- the adoption of a rule (22 NYCRR 25.44) severely restricting the private practice of law by lawyers employed full-time in the unified court system. Under the rule, such a lawyer may not maintain a law office, hold himself out to be a private lawyer, or engage in private practice except as to specific engagements in uncontested matters and only with the prior approval of the Presiding Justice of the Appellate Division. The rule also restricts, although less severely, the practice of law by part-time employees of the courts.
- the amendment of the rule (22 NYCRR 33.5(e)) relating to judges acting as arbitrators or mediators. The amended rule provides that no judge other than a part-time judge may act as an arbitrator or mediator and that even a part-time judge may so act only without compensation.
- the amendment of the rule (22 NYCRR 20.3) regulating the requirements for the appointment of personal assistants to justices and judges to provide that each Supreme Court justice may appoint one law secretary and one secretary whose qualifications must be as prescribed by the Administrative Board in the rule and that no Supreme Court justice may appoint or continue to employ any other personal assistant unless approved by the Administrative Board.
- the adoption of purchasing guidelines for the Judiciary, developed in cooperation with the State Department of Audit and Control.
- the adoption of an employee's travel guide for the Judicial Branch of government regulating the reimbursement of travel expenses.

The principal accomplishments of the operating units of the Office of Court Administration in 1977 were the following:

The Office of Budget and Finance developed fiscal policies and procedures to ensure the orderly operation of all courts and court-related agencies, including those previously funded by the state and those transferred to the state on April 1, 1977, by the Unified Court Budgeting Act. Subject areas included purchasing and contracting, cash and revenue control guidelines, processing of federal grants, and continuation of locally funded health insurance programs for previously locally funded positions.

Initial efforts to apply the concepts of program budgeting to the Judiciary were made in the budget for the 1978-79 fiscal year. This activity included stating resource needs in terms of

meeting the Standards and Goals promulgated by the Administrative Board and preliminary efforts to develop staffing guidelines for the courts. In support of these efforts, work continued on automating the supporting schedules for the Judiciary, including expenditure reports that will provide meaningful and timely data to the courts.

The office continued to serve as the liaison between the Judiciary and the Legislative and Executive Branches on fiscal policies and procedures and on the fiscal implications of program proposals.

The Management and Planning Office undertook a number of projects related to the implementation of the unified court budget legislation. The office assumed responsibility for placing all affected local court employees on the state payroll. It developed procedures to ensure that the terms and the conditions of all local collective bargaining agreements were maintained until altered by successor contracts or state law. In conjunction with this effort, the office organized and participated in a series of statewide meetings to answer employees' questions about their transfer to the state payroll. In addition, office staff participated in a statewide position-classification project by assisting the Personnel Office in designing new title series for selected groups of court employees and recommending project-management techniques to support the classification project.

The office provided research data and salary analyses to help the Director of Employee Relations participate in negotiations with more than 20 collective bargaining units. It conducted special studies of case-processing problems in local courts, completed a statewide survey of court security, and continued work on a statewide facilities project. Office staff also undertook the revision of statistical reporting systems for various courts, redesigned Family Court forms, and evaluated the compulsory arbitration program (see the Appendix at the end of this report).

In meeting its responsibility for monitoring the Standards and Goals (see Chapter 2), the office conducted the third annual summer inventory of all pending cases in the County, Family and Supreme courts. The inventory provided an accurate up-to-date count of all proceedings that were subject to the Standards and Goals. It also identified problems and corrected inconsistencies in the case-monitoring procedures of each court. The office continued to prepare detailed analyses of pending caseloads and monthly reports describing the courts' progress in meeting the Standards and Goals. With this information as a basis, the staff worked on a judicial allocation project to determine the number of judges required in each county to meet the Standards and Goals.

The Court Information Service continued its efforts to develop improved systems for reporting criminal dispositions as part of the statewide Offender Based Transaction Statistics (OBTS) program. Early in the second quarter of 1977, on-line computerized reporting of criminal dispositions to the Division of Criminal Justice Services in Albany became fully operational in

the Criminal Courts in all five counties of New York City as part of an automated Criminal Court information system, which also produces calendars and maintains case histories by computer. By early August, computerized docket books were being produced citywide. The ability to report dispositions by means of on-line computer was extended to the Supreme Courts of New York and Queens counties. Additionally, the New York City Criminal Court information system seals records by disallowing inquiries and produces automated notifications to the appropriate agencies, thus complying with the provisions of section 160.50 of the Criminal Procedure Law.

Late in the year, the Court Information Service signed a contract with the Burroughs Corporation for the leasing of a large-scale, duplexed communications-oriented computer system. This equipment will make possible the consolidation of two other computer systems now serving the courts and will expand the total capacity. The new system will also allow the initiatives started in the automation of court operational information and criminal disposition reporting to be extended to large courts statewide.

The Personnel Office assumed primary responsibility for maintaining the civil service system for all county and city court employees transferred to the state payroll on April 1, 1977, in accordance with the Unified Court Budget Act of 1976. The functions involved included payroll certification, employee relations and collective bargaining, position classification, recruitment and examinations.

The Unified Court Budget Act mandated a survey of positions, titles, and salaries to ensure equitable standards for all court employees. The survey, which involved the review of over 11,000 positions, absorbed most of the resources of the office for most of 1977 in addition to supplemental efforts of other personnel in the Office of Court Administration. The survey results will be retroactively effective to April 1, 1977.

The Equal Employment Opportunity Office took a number of affirmative action steps to expand work opportunities for minority group members and women in the court system. It designed and began to implement a system for the internal resolution of EEO complaints of court employees. The system resulted in fewer complaints being filed with independent regulatory agencies, thus satisfying aggrieved employees expeditiously. The office also succeeded in identifying and recruiting large numbers of minority group members and women for provisional appointments as uniformed court officers in New York City, strengthened and expanded contacts with community groups, continued to participate in job analyses to ensure that job-relatedness factors are emphasized in examination practices, and redesigned the data-collection system to improve EEO evaluation procedures.

The contributions of the Education and Training Office and of the Counsel's Office to the work of the Office of Court Administration in 1977 are described in Chapters 5 and 6, respectively.

1.3 Court Finances

For the New York State fiscal year ending March 31, 1978, the estimated cost of operating all the courts in the state, except town and village justice courts, was $303.66 million. Of this total, the state paid $95.36 million (31 percent); local units of government, $164.0 million (54 percent), and user fees, $44.30 million (15 percent), as shown below:

— State Support:	
Balance of appropriation after receipt of local support and fees	$ 95.36 million
— Local Support:	
Chargeback	132.70 million
Security Costs	4.00 million
Pensions (for formerly locally funded positions)	27.30 million
Local support total	$164.00 million
— User Fees:	$ 44.30 million
Grand total	$303.66 million

Section 220 of the Judiciary Law provides for the funding of the Judiciary by:

- Establishing state funding of all state, county-level, district, and city courts in the first instance commencing April 1, 1977.
- Relieving local governments of funding responsibilities for state, county-level, district, and city courts, including courtroom security costs, over a four-year period, commencing with a 12.5-percent reduction in the state's 1977-78 fiscal year, with full state assumption of such costs in fiscal 1980-81.
- Transferring court fee revenues to the state treasury beginning April 1, 1977.
- Establishing affected court personnel as state employees beginning April 1, 1977.

For fiscal year 1977-78, the amount of local support for each city and county was 87.5 percent of the net 1976-77 cost as determined by section 220 of the Judiciary Law, plus contributions to the pension system for liabilities incurred on behalf of local court employees in 1975 and 1976. The amount for pension payments was $27.3 million statewide. Fiscal responsibility for courtroom space and related utility costs remains with the localities.

In addition to appropriations made directly to the courts, the state is assuming the costs of local court security services that were not directly appropriated in court budgets. The total amounts to $4.6 million, and the Unified Court Budget Act provides that affected localities may bill the state for actual costs up to 12.5 percent of the amount in fiscal year 1977-78, or $600,000.

Table 1
NEW YORK STATE JUDICIAL SYSTEM
AUTHORIZED NUMBER OF JUDGES
Dec. 31, 1977

Number of Judges	*Court*
7	Court of Appeals
24[a]	Supreme Court, Appellate Division
257[abc]	Supreme Court, Trial Parts
36[a]	Certificated Retired Justices of the Supreme Court
17	Court of Claims
33	Court of Claims (Judges appointed pursuant to Chapter 603, Laws of 1973, Emergency Dangerous Drug Control Program)
35	Surrogates, including 6 in New York City
56[c]	County Judges outside the City of New York in counties that have separate Surrogates and Family Court Judges
9	County Judges who are also Surrogates
8	County Judges who are also Family Court Judges
27	County Judges who are also Surrogates and Family Court Judges
104[cd]	Family Court Judges, including 39 in New York City
98	Criminal Court of the City of New York
120	Civil Court of the City of New York
49	District Courts (Nassau and Suffolk Counties)
151	Judges of Courts of various names and jurisdictions in the 61 cities outside the City of New York (includes acting and part-time Judges)
1,031 Total	
2,455	Justices of Town and Village Courts

[a] In addition to the 24 Supreme Court Justices permanently authorized, 11 Justices and 8 Certificated Retired Justices were temporarily designated to the Appellate Division.

[b] In addition to the authorized Justices of the Supreme Court, judges of other courts are frequently temporarily assigned as Acting Justices of the Supreme Court. For example, on one day (December 1, 1977), 72 judges from the Criminal and Civil Courts of New York City sat in the Supreme Court in New York City.

[c] Does not include the following new judges authorized by Chapter 489 of the 1977 session laws effective January 1, 1978: 2 Supreme Court Trial Justices in the Tenth Judicial District; 2 County Judges in Suffolk County; and 2 Family Court Judges in Suffolk County.

[d] Includes one new Family Court Judge in Rensselaer County authorized by Chapter 490 of the 1977 session laws effective August 1, 1977.

Chapter 2

Standards and Goals

On July 3, 1975, the Administrative Board of the Judicial Conference adopted standards and goals for the timely disposition of felony indictments in Supreme Court and County Court and of civil actions in Supreme Court and for the timely completion of fact finding in Family Court proceedings. The goals are designed to be achieved in stages between October 1, 1975, and January 1, 1979, under the supervision of the administrative judges. (See Chapter 2 of the 21st Annual Report.)

In a foreword to the standards and goals, Chief Administrative Judge Richard J. Bartlett said:

"There is intolerable delay in the disposition of cases in the unified court system, the degree of delay varying from court to court and county to county. Our goal is to reduce delay where it exists by requiring that all courts comply with these standards...

"We recognize that timeliness of disposition is not the only, or indeed the primary, goal of the unified court system. The more important goal is improving the fairness of the judicial process. But delay erodes fairness so deeply that our first effort must be directed to its elimination. When court calendars are up to date, we will have done a great deal to improve the fairness of the process. We are, of course, addressing other measures which will further improve the quality of justice in the unified court system."

What follows is a description of the progress made by the courts in 1977 in complying with the standards and goals.

2.1 Family Court

The standards and goals provide that by January 1, 1979, fact finding will be completed within 60 days of the commencement of a new proceeding or a proceeding involving a modification or a violation of a previous order.

That standard is to be achieved in two stages. The first stage provides that by January 1, 1977, a fact-finding hearing will be completed within 90 days of the commencement of a proceeding.

As of December 31, 1977, the intermediate standard had been complied with in more than 90 percent of the proceedings that had been filed since October 1976 in 51 of 63 reporting units. The units are 62 county Family Courts and a special New York City Family Court part engaged in reviewing foster-care proceedings.

In 40 counties, more than 95 percent of the proceedings had met the standard. Only in Bronx County and Queens County were fewer than 82 percent of the proceedings in compliance. (See Table 2.)

As of October 1, 1976, 9 counties and the New York Foster

Care Review unit had compliance rates which were less than 85 percent. But by December 31, 1977, only 4 counties had compliance rates below this level. Moreover, between October 1976 and December 1977, nine of the 11 judicial districts showed increases in their compliance rates. New York City, which includes the First, Second and Eleventh Judicial Districts, increased from 72.7 percent compliance as of October 1976 to 85.5 percent compliance as of December 1977. Only the Ninth and Tenth Judicial Districts showed slight decreases in the percentage of Family Court proceedings completing fact finding within 90 days of the date of filing. (See Table 2.)

In the summer of 1975, before adoption of the standards and goals, 52 percent (27,401) of all Family Court proceedings had been awaiting completion of fact finding for more than 90 days. By August 1, 1977, that figure had decreased to 25 percent (10,874).

2.2 Criminal Actions

The standards and goals provide that by January 1, 1979, no felony case will have been pending for more than six months from the filing of an indictment. The standard is to be achieved in four stages. The second stage provides that by October 1, 1977, no defendant-indictment alleging a felony charge will have been pending for more than one year from the filing of an indictment.

Statewide, 4,668 defendant-indictments alleging felony charges were pending for more than one year in the summer of 1975. This figure decreased to 3,736 in the summer of 1976 and to 1,144 as of December 31, 1977, for an overall reduction of 75 percent since the summer of 1975.

Every judicial district has achieved reductions over the past three years in the number of defendant-indictments pending for more than one year. Particularly significant progress has been made in New York City. As of December 1977, there were only 750 defendant-indictments pending for more than one year in New York City. This represents a reduction of 79 percent since the summer of 1975, when the figure was 3,596. (See Table 3.)

Continued progress was also made in reducing the number of felony defendant-indictments jailed for more than one year while awaiting commencement of trial or disposition. Statewide, this figure was reduced from 349 as of October 1, 1975, to 41 as of December 31, 1977, or a reduction of 88 percent. These 41 defendant-indictments represented 38 defendants. (The number of defendants is shown in parentheses in Table 4.) Only in three counties outside of New York City—Nassau County (1 defendant), Erie County (7 defendants) and Sullivan County (1 defendant)—were any defendants in jail for more than one year as of December 31, 1977. (See Table 4.)

Within New York City, the number of felony defendant-indictments jailed for more than one year decreased from 321 as of October 1975 to 62 as of October 1976, then to 32 as of

December 31, 1977, for an overall reduction of 90 percent since October 1, 1975. In New York County, the number was reduced from 100 defendant-indictments to 10, or a reduction of 90 percent; in Bronx County, from 68 to 2, or a reduction of 97 percent; in Queens County, from 18 to 13, or a reduction of 28 percent; and in Kings County, from 135 to 6, or a reduction of 96 percent. Richmond County had no defendant-indictments in jail for more than one year as of October 1975 and as of October 1976; however, it had 1 defendant-indictment in this category as of December 31, 1977.

2.3 Civil Actions

The standards and goals for the disposition of civil actions in Supreme Court provide that by January 1, 1979, no civil action will have been pending for more than six months from the filing of a note of issue. That standard is to be achieved in three stages. The first is that by April 1, 1977, no civil action will have been pending for more than 18 months from the filing of a note of issue.

Between the summer of 1975 (before adoption of the standards and goals) and the summer of 1977, some progress was made in disposing of older civil cases, despite an overall increase in pending civil actions. The number of actions pending in the Supreme Court statewide has increased moderately over the past three years. In the summer of 1975, there were 52,942 pending civil actions statewide; in the summer of 1976, this number was 53,518; and in the summer of 1977, it was 58,855, for an overall increase of 11 percent since the summer of 1975.[1] However, while the total number of pending civil actions has increased moderately, the number and the percentage of older civil actions have generally decreased since the standards and goals took effect. For example, the number of civil actions pending for more than 18 months decreased from 11,883 in the summer of 1975 to 10,522 in the summer of 1977, or a reduction of 11 percent. Moreover, while these older cases made up 22.4 percent of all pending civil actions in the summer of 1975, they made up only 17.9 percent in the summer of 1977. (See Tables 5 and 6.)

In addition, the percentage of civil actions pending for more than one year has shown some improvement. At the time of the 1975 inventory, the percentage of civil actions pending for more than one year was 37.8 percent. By the summer of 1977, this figure was 33.4 percent, demonstrating that, relative to the large caseload of pending civil actions statewide, progress has been made in disposing of the older cases first.

[1]All figures on pending civil actions exclude uncontested matrimonials.

STATISTICAL TABLES

Table 2 (Partial)
STANDARDS AND GOALS
Percentage of Family Court Proceedings Completing Fact Finding in 90 Days or Less by County and Judicial District
Oct. 1, 1976 and Dec. 31, 1977

County	Percentage of Fact-Finding Completions Within 90 Days of Filing	
	Oct. 1, 1976[1]	Dec. 31, 1977[2]
Albany	99.8	99.9
Allegany	84.9	92.8
Bronx	75.7	77.4
Broome	98.8	99.9
Cattaraugus	90.0	94.1
Cayuga	97.0	99.2
Chautauqua	95.3	97.5
Chemung	94.1	97.0
Chenango	97.9	98.1
Clinton	99.8	99.7
Columbia	92.4	98.9
Cortland	98.4	96.9
Delaware	96.9	99.5
Dutchess	81.8	90.4
Erie	92.7	89.3
Essex	83.9	97.0
Franklin	95.6	89.5
Fulton	97.8	97.9
Genesee	96.1	94.7
Greene	97.3	97.0
Hamilton	95.5	98.8
Herkimer	96.6	97.2
Jefferson	97.6	99.1
Kings	77.6	92.6
Lewis	95.8	98.3
Livingston	80.4	96.8
Madison	99.3	99.9
Monroe	78.3	85.2
Montgomery	97.5	99.2
Nassau	95.4	90.2
New York	72.0	84.0
New York Foster Care	62.8	87.1
Niagara	85.3	97.6
Oneida	94.3	96.5
Onondaga	91.9	92.8
Ontario	87.8	93.2
Orange	97.5	98.6

Table 2 (Concluded)

County	Percentage of Fact-Finding Completions Within 90 Days of Filing	
	Oct. 1, 1976[1]	Dec. 31, 1977[2]
Orleans	88.0	85.7
Oswego	97.9	95.8
Otsego	97.8	99.4
Putnam	98.7	96.5
Queens	77.5	79.8
Rensselaer	97.2	99.5
Richmond	99.1	94.6
Rockland	95.6	96.5
St. Lawrence	96.7	95.9
Saratoga	97.1	98.8
Schenectady	99.1	99.0
Schoharie	99.5	100.0
Schuyler	99.1	100.0
Seneca	89.5	91.4
Steuben	93.8	95.3
Suffolk	84.0	84.5
Sullivan	96.9	97.7
Tioga	97.0	99.5
Tompkins	85.8	82.9
Ulster	93.2	89.9
Warren	91.4	98.8
Washington	97.5	99.3
Wayne	91.7	95.2
Westchester	92.9	88.9
Wyoming	90.9	92.5
Yates	93.9	96.9
Judicial District		
New York City (1, 2, 11)	72.7	85.5
District 3	96.9	97.8
District 4	97.0	97.5
District 5	94.0	94.7
District 6	97.4	97.5
District 7	84.5	89.6
District 8	91.9	92.0
District 9	92.4	91.0
District 10	89.5	86.7

[1]Family Court Administrative Judge Term Reports: December 1975 through October 1976. Do not include Family Court proceedings which were granted mandatory exceptions.

[2]Family Court Administrative Judge Term Reports: January 1977 through December 1977. Do not include Family Court proceedings which were granted mandatory *or* clerical exceptions.

Table 3 (Partial)
STANDARDS AND GOALS
Defendant-Indictments Alleging Felony Charges Pending for More Than One Year by County and Judicial District
Summer 1975, Summer 1976, and Dec. 31, 1977

County	Defendant-Indictments Pending More Than One Year		
	Summer 1975	Summer 1976	Dec. 31, 1977
New York	1,301	858	138
Bronx	685	635	329
Kings	1,336	941	206
Queens	251	148	69
Richmond	23	20	8
Albany	36	33	20
Allegany	8	4	0
Broome	3	1	0
Cattaraugus	6	0	0
Cayuga	3	6	0
Chautauqua	14	3	0
Chemung	9	9	2
Chenango	0	0	0
Clinton	21	25	2
Columbia	1	5	2
Cortland	0	0	1
Delaware	1	2	0
Dutchess	9	31	0
Erie	48	70	57
Essex	11	4	2
Franklin	6	0	0
Fulton	0	5	0
Genesee	0	0	0
Greene	54	18	30
Hamilton	0	0	0
Herkimer	0	2	2
Jefferson	1	5	0
Lewis	0	2	1
Livingston	10	1	0
Madison	4	0	0
Monroe	76	105	76
Montgomery	3	1	0
Nassau	212	212	59
Niagara	5	2	0
Oneida	24	5	2
Onondaga	8	7	9
Ontario	2	2	0
Orange	11	20	0

Table 3 (Concluded)

County	Defendant-Indictments Pending More Than One Year		
	Summer 1975	Summer 1976	Dec. 31, 1977
Orleans	0	1	0
Oswego	2	10	0
Otsego	3	0	0
Putnam	1	16	0
Rensselaer	5	15	4
Rockland	8	2	0
St. Lawrence	2	2	0
Saratoga	1	1	0
Schenectady	0	7	21
Schoharie	0	0	0
Schuyler	0	0	0
Seneca	3	4	0
Steuben	6	12	0
Suffolk	199	278	65
Sullivan	23	16	6
Tioga	12	10	1
Tompkins	12	2	1
Ulster	40	24	20
Warren	0	1	0
Washington	6	2	0
Wayne	2	3	0
Westchester	161	147	9
Wyoming	0	1	2
Yates	0	0	0
Judicial District			
New York City (1, 2, 11)	3,596	2,602	750
District 3	159	111	82
District 4	50	48	25
District 5	35	31	14
District 6	44	24	5
District 7	102	133	76
District 8	81	81	59
District 9	190	216	9
District 10	411	490	124
Total State	4,668	3,736	1,144

Source: 1975 and 1976 Summer Inventory data on pending defendant-indictments. Assistants for Administration reported data for outside New York City as of Dec. 31, 1977. New York City data for 1977 are as of Dec. 23, 1977.

Table 4
STANDARDS AND GOALS
Number of Defendant-Indictments Where Defendants Have Been Jailed for More Than One Year by County
Oct. 1, 1975, Oct. 1, 1976 and Dec. 31, 1977

County	Jailed Defendant-Indictments		
	Oct. 1, 1975	Oct. 1, 1976	Dec. 31, 1977
New York	100	24	10 (8)[1]
Bronx	68	21	2 (2)
Queens	18	11	13 (11)
Kings	135	6	6 (5)
Richmond	0	0	1 (1)
Suffolk	9	4	0
Nassau	3	3	1 (1)
Onondaga	0	1	0
Orange	3	0	0
Tompkins	3	0	0
Westchester	2	0	0
Steuben	2	0	0
Erie	1	0	7 (7)
Genesee	1	0	0
Sullivan	1	0	1 (1)
Ulster	1	0	0
Washington	1	0	0
Oneida	1	0	0
Total State	349	70	41 (36)

[1]The number of defendants is shown in parentheses. Data are not available on the number of defendants jailed for more than one year prior to Dec. 31, 1977.

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Table 5
STANDARDS AND GOALS
Summary of Pending Civil Actions in Supreme Court
by County and Judicial District
Summers of 1975, 1976 & 1977

	Total Pending			Pending Longer Than 18 Months			Pending Longer Than 12 Months		
	Summer 1975	Summer 1976	Summer 1977	Summer 1975	Summer 1976	Summer 1977	Summer 1975	Summer 1976	Summer 1977
Albany	1,511	1,654	1,581	153	81	133	383	370	466
Allegany	48	64	45	1	3	1	4	8	6
Broome	318	245	205	46	3	0	91	15	1
Bronx	3,627	2,101	2,258	1,200	328	338	1,830	531	669
Cattaraugus	74	90	85	1	6	11	10	17	20
Cayuga	80	106	59	5	0	0	18	0	0
Chautauqua	224	234	154	42	18	12	76	54	32
Chemung	393	303	190	63	35	8	127	124	23
Chenango	17	19	24	1	0	0	2	1	0
Clinton	110	130	107	12	8	2	18	19	3
Columbia	61	74	107	5	6	6	8	17	12
Cortland	42	28	17	3	0	0	6	0	0
Delaware	77	89	75	2	13	1	20	20	7
Dutchess	551	479	496	15	18	19	110	69	66
Erie	7,033	5,012	5,745	2,139	1,424	1,957	3,637	2,440	3,028
Essex	76	83	34	11	10	1	23	24	10
Franklin	90	91	90	15	13	9	27	24	26
Fulton	222	253	214	19	28	12	36	74	37
Genesee	61	60	50	2	0	2	8	2	30
Greene	101	116	95	10	19	12	26	44	28
Herkimer	167	151	173	7	1	1	20	13	11
Jefferson	162	255	132	45	31	4	76	55	16
Kings	4,050	5,348	6,304	299	289	1,023	693	1,098	2,376
Lewis	29	2[illegible]	15	1	0	0	1	1	0
Livingston	55	56	76	1	0	0	4	3	2
Madison	53	27	34	0	0	0	2	0	0
Monroe	3,563	2,162	2,172	333	204	244	1,049	618	735
Montgomery	177	197	213	34	33	22	67	54	64
Nassau	6,304	6,519	7,118	1 699	1,169	1,810	2,744	2,590	3,063
New York	5,300	5,631	8,289	1,408	703	962	1,961	1,164	1,925

Niagara	681	601	390	146	75	10	258	141	52
Oneida	751	660	569	8	8	10	49	35	22
Onondaga	2,711	2,704	2,578	891	810	722	1,460	1,345	1,263
Ontario	92	59	60	0	0	0	2	3	2
Orange	800	822	900	123	70	155	301	247	313
Orleans	10	22	16	0	0	0	0	0	1
Oswego	225	130	161	21	2	10	39	11	16
Otsego	46	51	47	4	0	10	12	3	2
Putnam	136	168	173	38	17	4	72	21	31
Queens	1,278	3,437	4,144	87	70	29	136	127	579
Rensselaer	398	393	350	65	35	13	111	51	66
Richmond	294	396	400	48	50	41	59	71	78
Rockland	704	834	824	85	45	55	227	156	154
St. Lawrence	106	118	82	7	7	0	12	14	11
Saratoga	468	465	332	48	43	6	153	145	70
Schenectady	1,374	1,616	1,420	256	422	421	549	746	729
Schoharie	38	22	41	4	0	3	7	0	9
Schuyler	6	5	8	2	0	0	2	0	0
Seneca	19	13	26	0	0	0	0	2	0
Steuben	73	56	33	9	5	2	9	6	2
Suffolk	4,549	5,086	6,312	1,754	1,625	2,111	2,231	2,353	2,830
Sullivan	232	296	225	42	29	13	63	50	27
Tioga	60	52	39	15	4	0	23	4	1
Tompkins	121	120	110	14	3	3	27	6	4
Ulster	461	409	376	25	3	5	74	19	24
Warren	148	140	79	21	24	6	34	43	13
Washington	50	48	59	5	0	1	13	0	10
Wayne	64	59	63	0	0	1	0	1	1
Westchester	2,512	3,087	2,537	695	437	278	996	808	713
Wyoming	17	21	29	0	2	3	1	3	7
Yates	12	16	25	0	1	0	0	1	0
Judicial District									
New York City (1,2,11)	14,549	16,933	21,395	3,042	1,140	2,393	4,679	2,991	5,627
District 3	2,792	2,964	2,775	304	173	185	672	561	632
District 4	2,771	3,141	2,630	428	588	510	932	1,143	973
District 5	4,045	3,915	3,628	973	852	747	1,645	1,460	1,527
District 6	1,133	939	749	150	58	12	312	173	38
District 7	3,988	2,527	2,514	348	210	247	1,082	634	742
District 8	8,138	6,104	6,514	2,331	1,528	1,996	3,994	2,665	3,176
District 9	4,703	5,390	5,230	954	587	511	1,706	1,301	1,277
District 10	10,853	11,605	13,430	3,363	2,794	3,921	4,975	4,943	6,893
Total State	52,942	53,518	58,865	11,883	8,230	10,522	19,997	15,861	19,685

Source: Standards and Goals Summer Inventory of Pending Civil Actions in Supreme Court -- 1975, 1976 and 1977 (excludes uncontested matrimonials)

Table 6
STANDARDS AND GOALS
Percentage of Civil Actions in Supreme Court Pending Longer Than Eighteen Months and Longer Than Twelve Months by County & Judicial District
Summers of 1975, 1976 & 1977

County	Percentage Pending Longer Than 18 Months			Percentage Pending Longer Than 12 Months		
	Summer 1975	Summer 1976	Summer 1977	Summer 1975	Summer 1976	Summer 1977
Albany	10.1	4.9	8.4	25.3	22.3	29.5
Allegany	2.1	4.7	2.2	8.3	12.5	13.3
Broome	14.4	1.2	0.0	28.6	6.1	0.5
Bronx	33.1	15.6	15.0	50.5	25.3	29.6
Cattaraugus	1.4	6.7	12.9	13.5	18.9	23.5
Cayuga	6.3	0.0	0.0	22.5	0.0	0.0
Chautauqua	18.6	7.7	7.8	33.9	23.1	20.8
Chemung	16.0	11.6	4.2	32.3	40.9	12.1
Chenango	5.9	0.0	0.0	11.8	5.3	0.0
Clinton	10.9	6.2	1.9	16.4	14.6	2.8
Columbia	8.2	8.1	5.6	13.1	23.0	11.2
Cortland	7.1	0.0	0.0	14.3	0.0	0.0
Delaware	2.6	14.6	1.3	26.0	22.5	9.3
Dutchess	2.7	3.8	3.8	20.0	14.4	13.3
Erie	30.4	28.4	34.1	52.7	48.7	52.7
Essex	14.5	12.0	2.9	30.3	28.9	29.4
Franklin	16.7	14.3	10.0	30.0	26.4	28.9
Fulton	8.6	11.1	5.6	16.2	29.2	17.3
Genesee	3.9	0.0	4.0	15.7	3.3	60.0
Greene	9.9	16.4	12.6	25.7	37.9	29.5
Herkimer	4.2	0.7	0.6	12.0	8.6	6.4
Jefferson	27.8	12.2	3.3	46.9	21.6	13.1
Kings	7.4	5.4	16.2	17.1	20.5	37.7
Lewis	3.4	0.0	0.0	3.4	4.0	0.0
Livingston	1.8	0.0	0.0	7.3	5.4	2.6
Madison	0.0	0.0	0.0	3.8	0.0	0.0
Monroe	9.3	9.4	11.2	29.4	28.6	33.8
Montgomery	19.2	16.8	10.3	37.9	27.4	30.0
Nassau	25.4	17.9	25.4	43.5	39.7	43.0
New York	26.6	12.5	11.6	37.0	20.7	23.2

Niagara	21.4	12.5	2.6	37.9	23.5	13.3
Oneida	1.1	1.2	1.8	6.5	5.4	3.9
Onondaga	32.9	30.0	28.0	53.9	49.7	49.0
Ontario	0.0	0.0	0.0	2.2	5.1	3.3
Orange	15.4	8.5	17.2	37.6	30.0	34.8
Orleans	0.0	0.0	0.0	0.0	0.0	6.3
Oswego	9.3	1.5	6.2	17.3	8.5	9.3
Otsego	8.7	0.0	0.0	26.1	5.9	4.3
Putnam	26.5	10.1	2.3	52.9	12.5	17.9
Queens	6.8	2.0	0.7	10.6	3.7	14.0
Rensselaer	16.3	8.9	3.7	27.9	13.0	18.9
Richmond	16.3	12.6	10.3	20.1	17.9	19.5
Rockland	12.1	5.4	6.7	32.2	18.7	18.7
St. Lawrence	6.6	5.9	0.0	11.3	11.9	13.4
Saratoga	10.3	9.2	1.8	32.7	31.2	21.1
Schenectady	19.3	26.1	31.8	41.5	46.2	51.3
Schoharie	10.5	0.0	7.3	18.4	0.0	22.0
Schuyler	33.3	0.0	0.0	33.3	0.0	0.0
Seneca	0.0	0.0	0.0	0.0	15.4	0.0
Steuben	12.3	8.9	6.1	12.3	10.7	6.1
Suffolk	38.6	32.0	33.4	49.0	46.3	44.8
Sullivan	18.9	9.8	5.8	28.4	16.9	12.0
Tioga	25.0	7.7	0.0	38.3	7.7	2.6
Tompkins	11.6	2.5	2.7	22.3	5.0	3.6
Ulster	5.4	0.7	1.3	16.1	4.6	6.4
Warren	14.2	17.1	7.6	23.0	30.7	16.5
Washington	10.0	0.0	1.7	26.0	0.0	10.9
Wayne	0.0	0.0	1.6	0.0	1.7	1.6
Westchester	27.7	14.2	9.8	39.6	26.2	25.1
Wyoming	0.0	9.5	10.3	5.9	14.3	24.1
Yates	0.0	6.3	0.0	0.0	6.3	0.0
Judicial District						
New York City (1, 2, 11)	20.9	8.5	11.2	32.2	17.7	26.3
District 3	10.9	5.8	6.7	24.1	18.6	22.8
District 4	15.4	18.7	19.4	33.6	36.4	37.0
District 5	24.1	21.8	20.6	40.7	37.3	36.7
District 6	13.2	6.2	1.6	27.5	18.4	5.1
District 7	8.8	8.3	9.8	21.3	25.1	20.5
District 8	28.6	25.0	30.6	49.1	43.7	48.8
District 9	20.3	10.9	9.8	36.3	24.1	24.4
District 10	30.9	24.1	29.2	45.8	42.6	43.9
Total State	22.4	15.4	17.9	37.8	29.6	33.4

Source: Standards and Goals Summer Inventory of Pending Civil Actions in Supreme Court: 1975, 1976, and 1977 (excludes uncontested matrimonials)

Chapter 3

Court Operations

The operations of each of the 10 categories of courts described in Chapter 1 are discussed statistically in this chapter. Operating information for the Appellate Courts, the Court of Claims, and the Surrogates' Courts for 1977 is presented on a courtwide basis. Court operation with respect to criminal proceedings, civil actions, and proceedings in the Family Court are discussed as separate topics.

3.1 The Court of Appeals

As noted in Chapter 1, the Court of Appeals is the highest court of the State. In 1977, a total of 588 records on appeal were filed in the Court of Appeals, as shown in Table 7. During this period, 641 appeals and 1,221 motions were decided. The Court also heard oral arguments in 639 cases and decided 1,445 applications for leave to appeal.

Of the 641 appeals decided, 495 involved civil matters and 146 were criminal cases, as shown in Table 8. The basis of jurisdiction in the Court of Appeals in 315 (64%) of the civil appeals disposed of was a reversal, modification, or dissent in the Appellate Divisions. 130 (26%) of the civil appeals were heard by permission of either the Appellate Divisions or the Court of Appeals.

In the 495 civil appeals disposed of, 340 (69%) judgments or orders were affirmed, 110 (22%) reversed, 36 (7%) modified, and 8 (2%) dismissed. Among the 146 criminal appeals disposed of, 89 (61%) judgments were affirmed, 50 (34%) reversed, and 5 (3%) modified, as shown in Table 8.

In deciding the 641 appeals, judges of the Court of Appeals wrote 508 opinions, as shown in Table 9. These consisted of 416 opinions of the Court, 18 concurring opinions, and 74 dissenting opinions.

3.2 Appellate Divisions of the Supreme Court

The Appellate Divisions provide the first level of appeal from superior trial courts in addition to performing the other functions mentioned in Chapter 1. In 1977, records on appeal were filed in the four Appellate Divisions, as shown in Table 10. There were 7,744 dispositions of judgments or orders appealed from, and the Appellate Divisions heard 4,004 oral arguments.

Of the 7,744 dispositions, 4,924 (64%) were affirmances, 796 (10%) were modifications, 1,136 (15%) were reversals without a new trial, and 184 (2%) were orders of new trials, as shown in Table 11.

In disposing of the 7,744 judgments or orders appealed from,

the four Appellate Divisions wrote 449 full opinions, 18 *per curiam* opinions and 4,933 memorandum opinions, as shown in Table 12.

3.3 Appellate Terms of the Supreme Court

The Appellate Terms of the Supreme Court received 2,430 appeals and disposed of 1,858 in 1977, as shown in Table 13. The First and Second Departments together rendered 1,376 decisions, filed 1,299 *per curiam* opinions and wrote 74 memoranda (not filed). 3,267 motions were heard or submitted.

3.4 Criminal Proceedings

Trial jurisdiction in criminal proceedings is vested in different categories of courts, depending on the type of proceeding. The volume and the nature of the criminal proceedings in each category is discussed below.

3.4.1 The Supreme Court Within the City of New York

Table 14 presents a summary of the 1977 activities of the Supreme Court in New York City. The entries (except for items 1 and 9 through 12) are in terms of defendant-indictments. As such, each defendant is considered separately for each indictment with which he or she is charged. For example, if two indictments apply to the same defendant, each is counted separately, and two dispositions are recorded; if one indictment applies to two defendants, the action concerning each defendant is counted, and two dispositions are recorded. In 1977, a total of 16,286 defendant-indictments were filed in Supreme Court in New York City. During the previous 12-month period, 16,499 defendant-indictments were filed.

Dispositions in 1977 totaled 17,706. Table 15 shows the number and percent of defendant-indictments disposed of by nature of disposition for each county in New York City. The proportion of dispositions by trial increased from 10.3 percent in calendar year 1976 to 11.5 percent in 1977.

A total of 8,909 felony defendants were awaiting disposition of their cases in Supreme Court in New York City at the end of 1977. This compares with 9,720 pending at the end of 1976. A breakdown of these defendants by county is presented in Table 16.

The New York City Department of Correction reports that, at the end of December 1977, a total of 2,698 defendants were being detained while awaiting disposition or sentencing in Supreme Court in New York City. Of these, 91 had been detained for over one year. This is a decrease from 160 defendants reported as detained more than one year on December 31, 1976. Table 17 shows the number and percent detained by county.

3.4.2 The Supreme Court and County Courts Outside the City of New York

Although the Supreme Court and County Courts outside the City of New York possess civil and criminal jurisdiction, the caseload of the Supreme Court is largely civil and that of the County Courts is largely criminal. The defendant-indictments reported here were returned mainly by grand juries of the Supreme Court. All other criminal proceedings occurred principally in the County Courts.

There were 15,109 defendant-indictments filed outside of New York City in 1977. Table 18 presents a summary of defendant-indictments, arraignments, dispositions and sentences for this period by county, district and judicial department.

Table 19 shows the number and percent of defendants disposed of by nature of disposition and comparable 1976 figures. There were 17,549 dispositions in 1977. The table shows that 18.0 percent of dispositions were by dismissal, 74.6 percent by plea, and 7.4 percent by trial.

As reported by local detention facilities, 860* detainees were awaiting action in Supreme Court and County Courts outside the City of New York at the end of December 1977. Of these, 21 had been detained over one year. This compares with 1,111 detainees awaiting action in the same courts at the end of 1976—19 for over one year. Table 20 shows the number of defendants detained by judicial district.

3.4.3 The Criminal Court of the City of New York

With an authorized strength of 98 judges, the Criminal Court of the City of New York has jurisdiction over misdemeanors and lesser criminal offenses. It is also the arraignment court for felonies.

Table 21 presents a breakdown of the actual number of arrest cases filed for 1976, which is the last full year of available data.

Table 22 presents the breakdown of the estimated number of arrest cases filed for the period January 3, 1977 through January 1, 1978.

Table 23 shows the breakdown of the 505,203 summons cases filed in 1977 and lists them with the 1976 figures.

Table 24 lists the fines collected in 1976 and 1977.

Table 25 summarizes the court's activities in arrest cases for 1977. The total number of filings during 1977 was 235,761, compared with 226,160 filings in 1976.

There were 231,500 cases disposed of in 1977, compared with 220,734 dispositions in 1976. Table 26 presents a listing of dispositions by number and percent by county for these two years.

According to the New York City Department of Correction, 1,076 defendants were detained while awaiting action in Criminal Court of the City of New York at the end of 1977. This included 287 defendants detained over 30 days. The comparable figure for the end of 1976 was 454 defendants. Table 27 lists

*See footnote to Table 20.

the number of detainees at the end of 1976 and 1977 by stage of processing.

3.4.4 The District Courts and the Courts in Cities Outside the City of New York

There were 1,073,351 dispositions, including traffic cases, in the District Courts and the courts in cities outside the City of New York in 1977, as shown in Table 28. This is an increase of 35,521 dispositions from 1976.

3.4.5 Town Courts and Village Courts

Town Courts and Village Courts disposed of 1,767,156 criminal and traffic cases in 1976*, compared with 1,756,341 cases disposed of in 1975. These two years are shown in Table 29.

3.5 Civil Actions and Procedures

3.5.1 Supreme Court

The method of measuring incoming civil actions in the Supreme Court was modified in 1975, resulting in slightly higher intake figures than otherwise would have been reported. Previously, an action was counted as incoming during the month for which it was noticed for trial. As of April 1975, an action was counted as incoming during the month in which the note of issue was filed. Consequently, some actions which under the previous system would have been counted as 1976 intake were counted as 1975 intake, resulting in slightly higher incoming and ending pending figures than would otherwise have been reported.

3.5.1.1 Trends

The volume of actions received and actions disposed of in the civil terms of the Supreme Court increased in 1977, as shown in Figure 4.

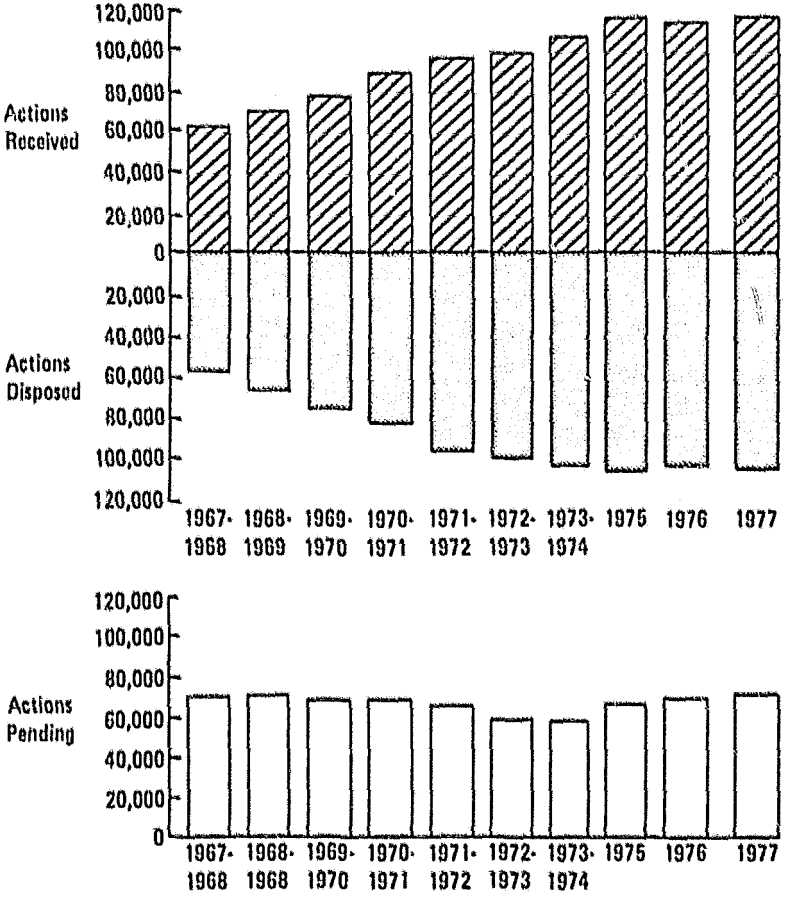
The measured rate of inflow in 1977 exceeded the rate of dispositions for the second time since the 1967-68 judicial year, resulting in an increase in the number of civil actions pending in the Supreme Court at the end of 1977.

3.5.1.2 Actions Received

In 1977, 112,992 civil actions were received in the Supreme Court, as shown in Table 30. This represented an increase of 1,974, or about 2 percent, compared with 1976. The slight percentage decrease (3%) outside New York City was offset by the increase (9%) in New York City. In 1977, the largest category of increase in incoming actions was in medical malpractice, 17 percent, while motor vehicle intake decreased by 836, or 4 percent. The reported increase in matrimonial actions was almost 5 percent, while incoming non-matrimonial actions decreased by almost 2 percent.

*Latest available figures.

Figure 4
THE SUPREME COURT-CIVIL TERMS
Actions Received, Actions Disposed, Actions Pending
*Last Ten Years**



*The bars for 1975, 1976 and 1977 are based on the calendar year; the bars for the earlier years are based on judicial years, beginning on July 1 of one year and ending on June 30 of the following yea·

3.5.1.3 Actions Disposed of

Reversing the trend of the past nine years, the Supreme Court disposed of fewer actions than in the year before. The 109,767 actions disposed of in 1977, as shown in Table 31, represent a decrease of .5 percent under the total for 1976. Dispositions of matrimonial actions accounted for 55 percent of total dispositions statewide.

Table 32 breaks down the actions disposed of by stage and nature.

3.5.1.4 Projected Average Age of Action at Disposition

Beginning with the Twentieth Annual Report, which covered judicial year 1973-74, the Office of Court Administration departed from previous practice of measuring delay in disposing of civil cases prospectively in terms of the projected average age. This age is the statistical calculation of the average number of months that an action for which a note of issue is filed on December 31, 1977, can be expected to be pending before disposition.*

Table 33 shows that the projected average age at disposition of a nonmatrimonial action filed in the Supreme Court on December 31, 1977, is 14 months. It is 14 months in New York City and 15 months in counties outside New York City, with a range of 2 to 32 months for individual counties, as shown in the table.

3.5.1.5 Pending Caseload

Table 33 shows statistics for the beginning and ending civil caseloads in the Supreme Court in 1977. Statewide, the pending caseload increased in 1977 by 3,499 cases over 1976.

An increase in pending caseload was recorded in the First and Second Judicial Departments, while the Third and Fourth Departments showed decreases. The beginning pending figures in 1977 differ from the ending pending figures on December 31, 1976, as reported in the Twenty-Second Annual Report. These differences are due to amended reporting.

3.5.2 The County Courts

3.5.2.1 Trends

The volume of civil actions received continued to decline, and actions disposed of also decreased in the County Courts in 1977, as shown in Figure 5.

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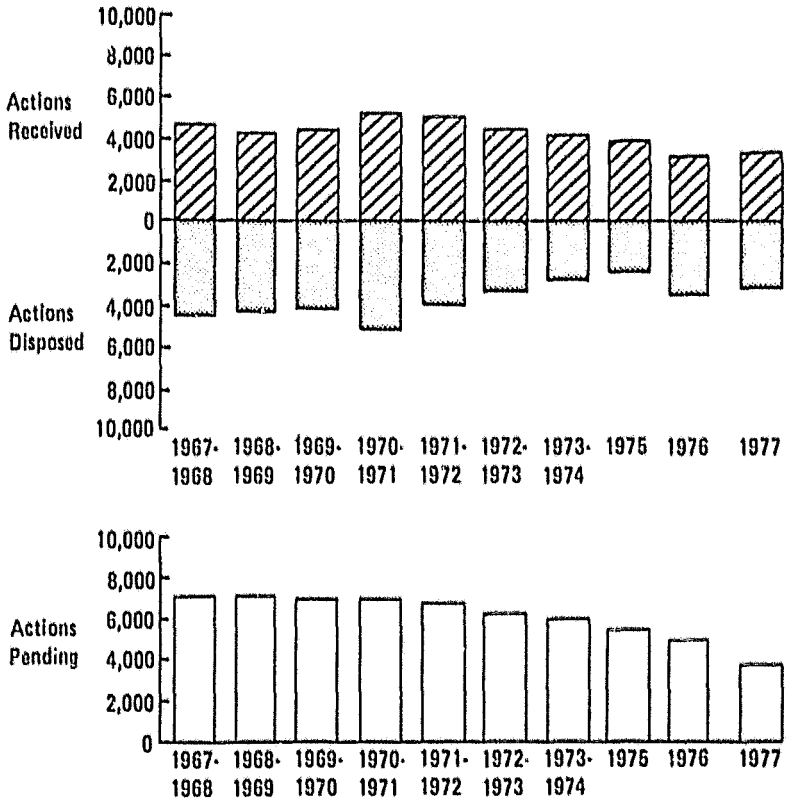
*Measuring delay from the filing of a note of issue ignores many proceedings which take place before filing, such as the issuance of summonses and complaints, pleadings, discovery proceedings, pretrial conferences and negotiations. However, the present reporting system begins with the filing of the note because it is the first milestone at which a civil case can be said to be pending before the court.

Figure 5
THE COUNTY COURTS
OUTSIDE THE CITY OF NEW YORK-CIVIL TERMS
Actions Received, Actions Disposed, Actions Pending
*Last Ten Years**



*The bars for 1975, 1976 and 1977 are based on the calendar year; the bars for the earlier years are based on judicial years, beginning on July 1 of one year and ending on June 30 of the following year.

3.5.2.2 Actions Received

In 1977, the number of actions received in the County Courts decreased by 42. The Third Department reported an increase of 146 actions in 1977. The Second and Fourth Departments reflected decreases. The 3,039 actions received in the County Courts statewide in 1977, as shown in Table 34, represented a decrease of 1 percent under 1976.

3.5.2.3 Actions Disposed of

All Departments registered a decrease in the number of cases disposed in 1977 as compared with 1976. The 4,025 dispositions recorded statewide represented a decrease of 5 percent under 1976, as shown in Table 35.

Table 36 shows the actions disposed of by stage and nature.

3.5.2.4 Projected Average Age of Action at Disposition

Table 37 shows that the projected average age of a case at disposition of an action filed on December 31, 1977, in the County Courts is 10 months. The projected average age is particularly high in the Third District (21 months) and the Fourth and Tenth Districts (12 months), and notably low in the Seventh District (6 months), Sixth District (8 months), and Eighth District (8 months). Among individual counties, the projected average age varies greatly, but it should be noted that, to some degree, this wide variation is due to the small number of cases involved in the calculations for a particular county.

3.5.2.5 Pending Caseload

As shown in Table 37, the pending caseload in the County Courts statewide as of the end of 1977 was 2,868 cases—a decrease of 1,042, or 27 percent, from the end of 1976. Most of this reduction occurred in the Ninth District, although the greatest percentage reduction occurred in the Fifth District (51%).

3.5.3 The Civil Court of the City of New York

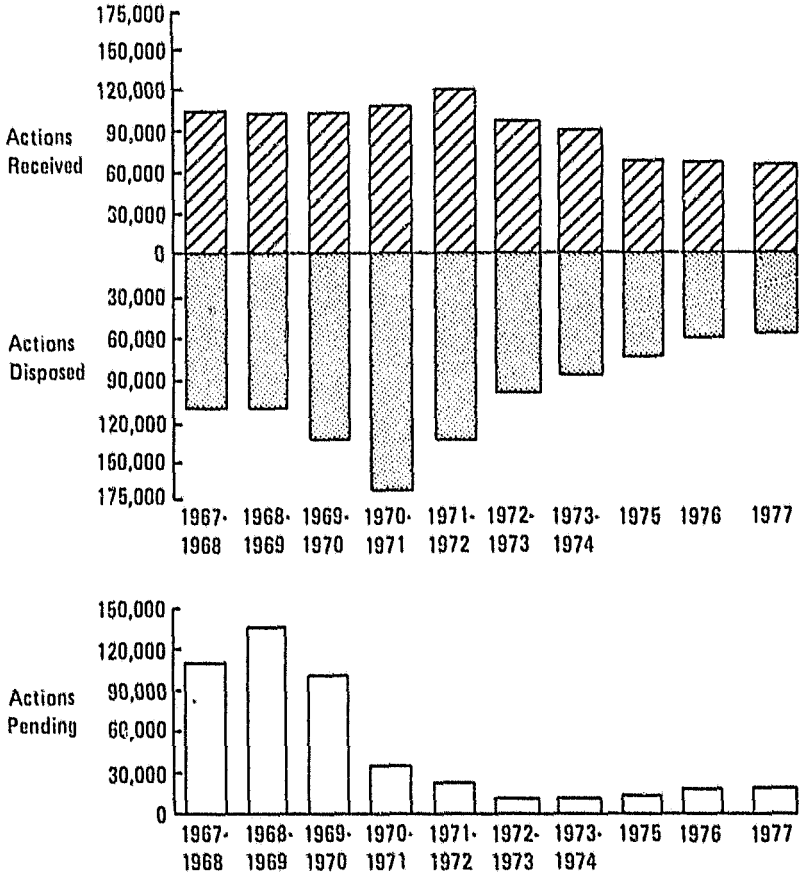
3.5.3.1 Trends

The volumes of actions received and actions disposed of in the Civil Court of the City of New York continued to decrease in 1977, while the number of pending actions increased by 1 percent as shown in Figure 6.

The number of summary proceedings received and disposed of decreased for the first time in the past nine years, as shown in Figure 7.

Although the number of summary proceedings pending appears to have increased (Fig. 7), it should be noted that through the judicial year 1973-74, the pending figure was measured as of June 30, while for 1975 through 1977, the measuring date was December 31. Court caseloads of all types are usually at their lowest in June, just before the summer vacation period. During 1975, the pending caseload of summary proceedings actually decreased from 4,042 on January 1 to 3,125 on December 31. Since then, however, the number of pending cases has increased, so that the 5,160 cases on December 31, 1977, represented an increase of 1,030 cases, or 25 percent.

Figure 6
THE CIVIL COURT OF THE CITY OF NEW YORK
Actions Received, Actions Disposed, Actions Pending[1]
*Last Ten Years**



[1]Excludes Bronx compulsory arbitration cases discussed in Chapter 4.

*The bars for 1975, 1976 and 1977 are based on the calendar year; the bars for the earlier years are based on judicial years, beginning on July 1 of one year and ending on June 30 of the following year.

3.5.3.2 Actions

3.5.3.2.1 Actions Received

In 1977, the number of actions received was 68,425, a decrease of 3,334, or almost 5 percent, from 1976. A decrease occurred in

all counties except Queens, which showed an increase of 723 cases, or almost 5 percent.

About 2.3 percent of these actions were received in the Housing Part, as shown in Tables 38 and 41.

3.5.3.2.2 Actions Disposed of

There were 68,566 actions disposed of in 1977, down from 71,534 in 1976. This is a decrease of 4 percent, or 2,968 dispositions, from 1976. The Bronx, New York and Queens registered decreases of 6 percent, 5 percent and 11 percent, respectively; Kings and Richmond showed increases of 3 percent and 13 percent, respectively. The figures for cases disposed are set forth in Tables 39, 40 and 41.

3.5.3.2.3 Projected Average Age of Action at Disposition

Table 41 reflects a projected average age of 3.2 months citywide, an increase of .2 months over 1976.

3.5.3.2.4 Pending Caseload

As shown in Table 41, the pending caseload increased by 220 actions in 1977. Decreases in pending caseloads in Kings, New York and Richmond, ranging from 11 percent to 30 percent, were more than offset by increases in the Bronx of 11 percent and Queens of 51 percent, resulting in a net increase of 1 percent.

3.5.3.3 Summary Proceedings

Figure 7 depicts a reversal of the upward trend of the previous nine years in summary proceedings received and disposed.

3.5.3.3.1 Summary Proceedings Received

Most or all of these proceedings are landlord and tenant proceedings for nonpayment of rent. The Office of Court Administration, for statistical purposes, counts a summary proceeding as received only if an answer is filed, since it is placed on a calendar only after such a filing.

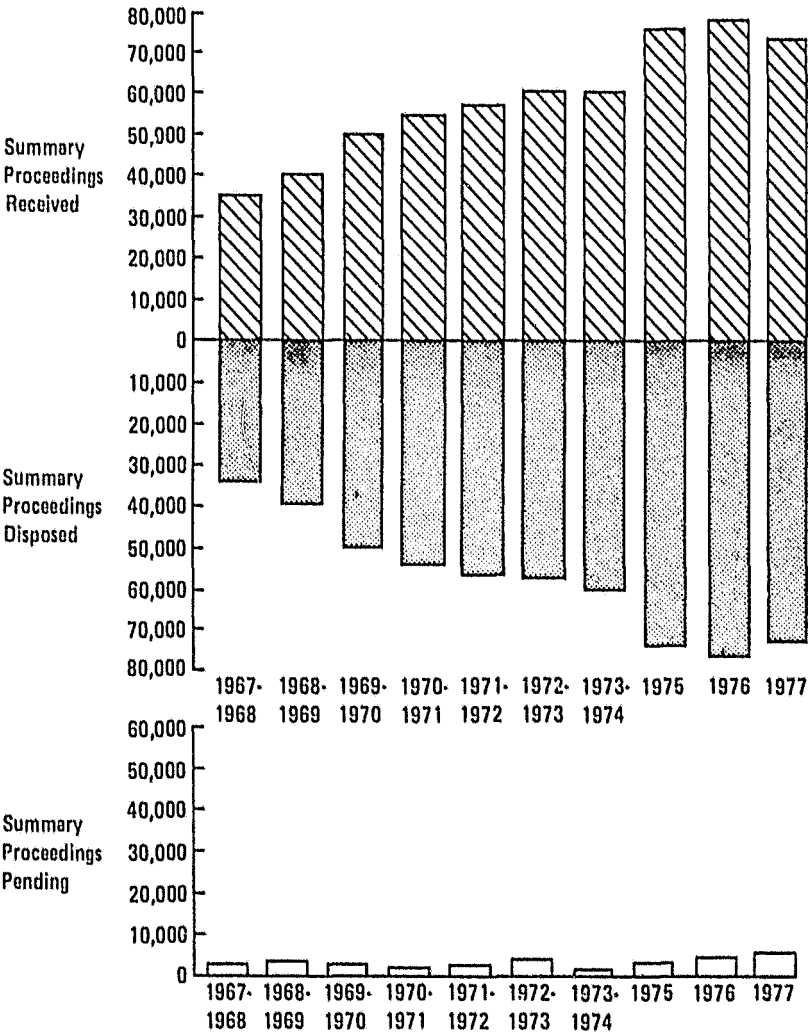
In 1977, there were 425,196 petitions filed. Of these, in about one-third where no answers were filed, 38 percent resulted in a default judgment being entered and a warrant being issued later.

The number shown in Tables 42 and 45 refer only to those petitions which were placed on a calendar. 74,138 summary proceedings were received in 1977. This is a decrease of 5,591, or 7 percent, over the comparable figure for 1976.

3.5.3.3.2 Summary Proceedings Disposed of

As shown in Table 43, a total of 73,108 summary proceedings were disposed of in 1977, down 5,233, or 7 percent, from 1976.

Figure 7
THE CIVIL COURT OF THE CITY OF NEW YORK
Summary Proceedings—Received, Disposed and Pending
*Last Ten Years**



*The bars for 1975, 1976 and 1977 are based on the calendar year; the bars for the earlier years are based on judicial years, beginning on July 1 of one year and ending on June 30 of the following year.

Table 44 shows dispositions by stage and nature, while Table 45 shows the breakdown of filings and dispositions by Jury and Non-Jury.

3.5.3.3.3 Pending Caseload

During 1977, the pending caseload of summary proceedings increased by 1,030 proceedings, or 25 percent. This is reflected in Table 45.

3.5.3.4 Special Terms

3.5.3.4.1 Special Term Part I

Special Term Part I of the Civil Court of the City of New York deals with contested motions. In 1977, these motions decreased by 125 as compared with 1976. Adjournments increased by 1,637, and motions withdrawn or marked off the calendar decreased by 548. As shown in Table 46, a total of 25,367 contested motions were granted, a decrease of 578 from 1976. A total of 6,676 motions were denied, a decrease of 636.

3.5.3.4.2 Special Term Part II

Special Term Part II of the Civil Court of the City of New York deals with *ex parte* orders, as shown in Table 47. The 144,531 *ex parte* orders in 1977 were a decrease of 609 under 1976.

3.5.4 The District Courts and the Courts in Cities Outside the City of New York

There were 113,361 civil cases reported as received in the District and City Courts, as shown in Table 48, as well as 111,922 cases disposed of. About 49 percent of all incoming cases and dispositions occurred in the Tenth District, which contains the State's two District Courts. Table 49 shows the geographical distribution of intake and dispositions in these courts.

3.5.5 Town Courts and Village Courts

There were 54,516 civil cases involving private litigants and penalty actions disposed of by Town and Village Justices in 1976*. This was an increase of 7,994 dispositions as compared with 1975.

3.6 The Court of Claims

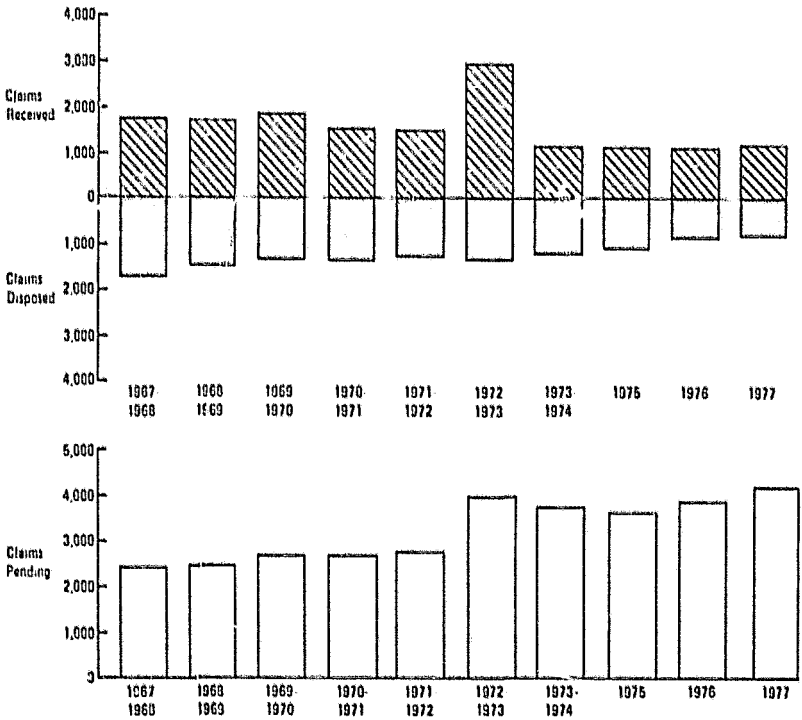
In 1977, the Court of Claims had 17 authorized judges and held 1,096 sessions. 1,245 claims were filed, and 815 were disposed of. 600 of the dispositions were by dismissal, and 215 resulted in awards. In addition to the 815 claims disposed of, 1,129 motions were decided by the court. The pending caseload

*Latest available figures

at the end of 1977 was 4,162, an increase of 430, or approximately 11.5 percent, from the 3,732 cases pending at the end of 1976.

Figure 8 shows the volumes of cases received, cases disposed of, and cases pending in the Court of Claims for the last 10 years.

Figure 8
THE COURT OF CLAIMS
Claims Received, Claims Disposed, Claims Pending[1]
*Last Ten Years**



[1]Includes newly filed claims; claims held on calendar in which judgments have been entered after order of severance; and claims restored by order of the Court of Appeals, or by order of the Appellate Divisions or by order of the Court of Claims.

*The bars for 1975, 1976 and 1977 are based on calendar years; the bars for the earlier years are based on judicial years, beginning on July 1 of one year and ending on June 30 of the following year.

3.7 The Surrogates' Courts

Figure 9 indicates that there has been little increase or decrease in the business of the Surrogates' Courts during the last five years. There were 40,633 petitions to probate wills in 1977, a decrease of 1,325 from 1976; 13,798 letters of administration were granted, a decrease of 889 from 1976; orders of adoption decreased by 280, with 3,332 granted in 1977; and there were 10,400 voluntary accountings, a decrease of 400 under 1976. Additional details of the operations of the Surrogates' Courts are given in Table 50.

3.8 Family Court

3.8.1 Overview of the Work of the Court

Family Courts in New York State have jurisdiction over matters involving children and families. These include primarily cases of juvenile delinquency, child protection, foster care, minors in need of supervision, adoptions, support of dependent relatives, paternity matters, and family offenses.

The statistical system for measuring caseload activity in the Family Court, dating from the Court's establishment on September 1, 1962, remained in effect through the end of 1974, at which time it was substantially revised. Although the revisions allow the measurement of activity more completely and realistically, the data cannot always be related to data collected prior to the revision in 1975. The data collected from the new statistical system is presented in Table 51. This table presents the activity of Family Court in terms of "additions" to and "deductions" from the actively pending caseload by type of proceeding. The column titled "Petitions Added During Period" includes petitions filed, transferred in and referred from other courts, as well as any warrants returned during the year. In like manner, the column titled "Petitions Deducted During Period" refers to all types of court dispositions, including petitions transferred out and proceedings in which warrants were issued.

The Child Protective, Juvenile Delinquency and PINS disposition statistics (Table 52 through 84) can be related to the material presented in all previous annual reports.

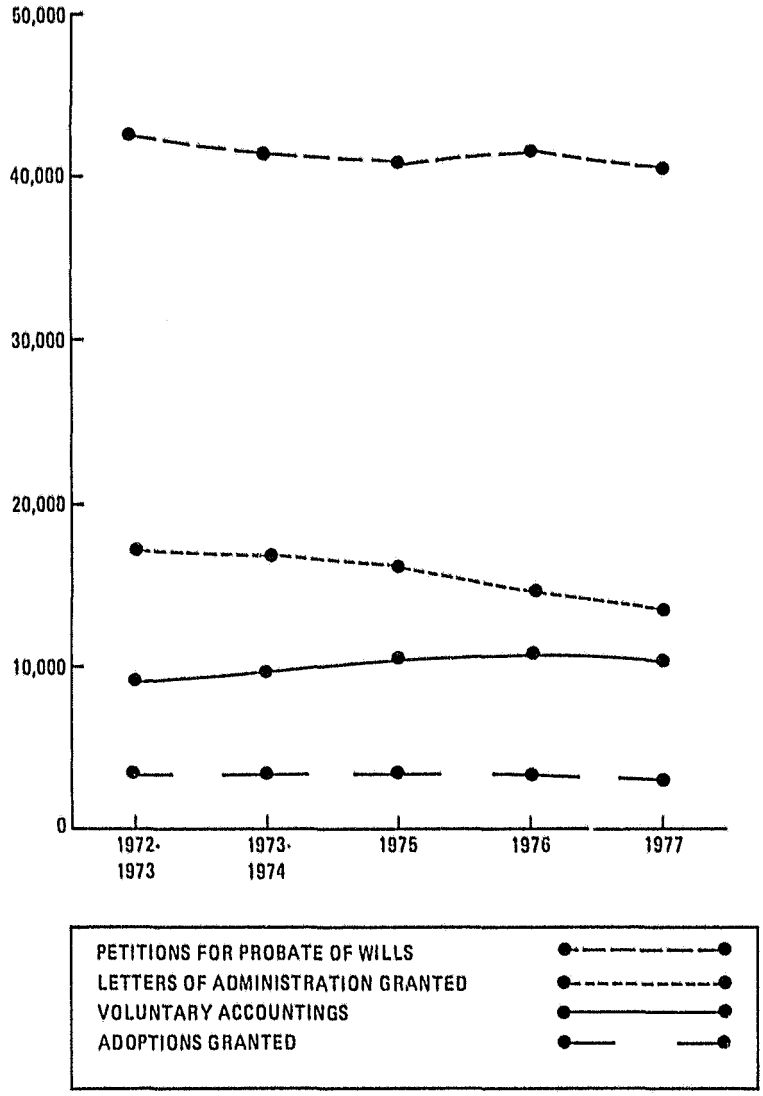
3.8.2 Child Protective Proceedings Involving Child Abuse

There were 4,916 original child protective petitions disposed of in New York State in 1977.

As shown in Table 52, in slightly more than 5% of the original child protective cases disposed of during 1977, the child was abused (but not neglected). In 50% of the cases, the child was neglected (but not abused). In 1% of the cases, the child was both abused and neglected. In 44% of the cases, the child was neither abused nor neglected.

Although the number of dispositions for child abuse was small, there is great interest in these most serious cases. Hence,

Figure 9
THE SURROGATES' COURTS
Selected Items
*Last Five Years**



*The diagrams for 1975, 1976 and 1977 are based on the calendar years; the diagrams for the earlier years are based on judicial years beginning on July 1 of one year and ending on June 30 of the following year.

the Legislature has directed the Judicial Conference to collect and publish the variety of information on child abuse discussed below.

3.8.2.1 Disposition of Child Abuse Cases

920 original child protective proceedings involving child abuse were disposed of during 1977. A total of 487, or 53 percent, of these petitions were disposed of in New York City; 433, or 47 percent of the petitions were disposed of in counties outside New York City.

3.8.2.2 Age of Child

As shown in Tables 53 and 54, statistics indicate that a higher percentage of young girls were the subject of original abuse cases disposed of during 1977 than young boys. This trend was also true in the past. 53 percent of the children in child abuse cases in 1977 were under eight years of age.

3.8.2.3 Reasons for Petitions

Physical abuse accounted for 76 percent of the reasons for child abuse petitions in New York City and 46 percent of the reasons for petitions in counties outside New York City, as shown in Tables 55 and 56. The second most common reason for child abuse petitions statewide was sex offense against child. However, this accounted for only 9 percent of the reasons for child abuse petitions in New York City, while in counties outside New York City, sex offense against child accounted for 50 percent of the reasons for petition.

3.8.2.4 Petitioners

As reported in previous years, the major sources of original petitions in child protective proceedings disposed of in 1977 were public social services agencies, which brought 86 percent of all petitions disposed of in this period. Public social services agencies were petitioners in a higher percentage of cases in counties outside New York City than in New York City (94% to 79%), as shown in Tables 57 and 58.

3.8.2.5 Temporary Removal

Of the 920 children who were subjects of original child protective petitions involving child abuse disposed of during 1977, a total of 414, or 45 percent were not removed from their homes, as shown in Tables 59 and 60, and 506 were. 31, or 3 percent, were removed (only) before the filing of a petition because of emergency circumstances. 375 children, or 41 percent, were removed from their homes (only) after the filing of a petition, and 100, or 11 percent, were removed both before and after.

Statewide, temporary removal of a child after petition was terminated within 30 days in 21 percent of such cases disposed of

in 1977. In 52 percent of the cases, temporary removal ended within 90 days. The duration of temporary removal was similar for boys and for girls.

As shown in Tables 59 and 60, there was some variation in the duration of temporary removal between New York City and the other counties of the State for original child protective proceedings involving child abuse disposed of in 1977. 26 percent of temporary removals after petition were terminated within 30 days in counties outside New York City, compared with 17 percent in New York City.

Some of the reasons for the durations of temporary removal may be found in the statistics on the times between the filing of a petition and the initial fact-finding hearing and between the initial fact-finding hearing and the dispositional hearing, as discussed below.

3.8.2.6 Length of Time Between Filing of Petition and Initial Fact-Finding Hearing

A fact-finding hearing occurred in about 82 percent of all child abuse cases disposed of in 1977, as shown in Tables 61 and 62. In New York City, 70 percent of the cases had such a hearing, compared with 94 percent of the cases in counties outside New York City.

The fact-finding hearing was held within 30 days of the filing of a petition in 47 percent of the child abuse cases with a hearing. However, in New York City, only about 24 percent of the cases had the fact-finding hearing within 30 days, as contrasted with 67 percent within 30 days in counties outside New York City.

In 2 percent of the cases with a hearing, the hearing was not held until more than one year after filing.

3.8.2.7 Number of Adjournments Between Filing of Petition and Initial Fact-Finding Hearing

One reason for the delay in reaching a fact-finding hearing in 1977 was that 70 percent of all child abuse cases with a fact-finding hearing had at least one adjournment before the hearing, as shown in Tables 63 and 64. Five percent had nine or more adjournments.

94 percent of all New York City cases had one or more adjournments, and 10 percent had nine or more adjournments. This contrasts with 50 percent of the cases in counties outside New York City with one or more adjournments and 1 percent with nine or more adjournments.

3.8.2.8 Length of Time Between Initial Fact-Finding Hearing and Dispositional Hearing

32 percent of the cases of child abuse disposed of in 1977 had a delay of 30 days or less between the initial fact-finding and the dispositional hearings, as shown in Tables 65 and 66. However,

only 24 percent of the child abuse cases in New York City experienced such a delay, as compared with 38 percent of the cases in counties outside New York City.

3.8.2.9 Number of Adjournments Between Initial Fact-Finding Hearing and Dispositional Hearing

Again, adjournments are one reason for delay in reaching a disposition after a fact-finding hearing has been held, as shown in Tables 67 and 68. Sixty percent of all child abuse cases disposed of in 1977 had one or more adjournments between the initial fact-finding and dispositional hearings.

3.8.2.10 Findings

Of the 920 original child protective proceedings involving child abuse disposed of in 1977, a total of 797 started with allegations of abuse only, as shown in Table 69. Of these petitions alleging abuse, 31 percent resulted in a finding of abuse, 28 percent in a finding of neglect, four percent in a finding of both abuse and neglect, and 37 percent in a finding of neither. 42 percent of these findings were based on the establishment of facts sufficient to sustain the petition, and 58 percent were based on the consent of all parties.

99 of the 920 original child protective petitions involving child abuse disposed of during 1977 started with allegations of both abuse and neglect, as shown in Table 70. In eight percent of these cases, the child was found to be both abused and neglected, and in eight percent the child was found to be abused. In 44 percent of these cases, the child was found to be neglected, and in 40 percent, the child was found to be neither abused nor neglected. 41 percent of the findings cited above were based on the establishment of facts sufficient to sustain the petition, and 59 percent were based on the consent of all parties.

4,020 petitions alleging neglect resulted in only 19 findings of child abuse and five findings of both abuse and neglect, as shown in Table 71.

3.8.2.11 Disposition

34 percent of the 920 child protective petitions involving child abuse were either withdrawn, dismissed, or suspended during 1977, as shown in Tables 72 and 73. Thirty percent resulted in placement during this time period. Only three abuse cases resulted in a disposition of probation. Eight percent resulted in an order of protection.

3.8.2.12 Age of Disposed of Cases

An indication of the age of child abuse cases disposed of in 1977 is given in Table 74. It will be noted that 40 percent were filed before 1977. In New York City, 45 percent were filed before 1977, compared with 35 percent in counties outside New York City.

3.8.2.13 Use of Child Abuse Part

Of the 896 cases in which child abuse was alleged in the original petition, 61 percent were tried in a special child abuse part in a Family Court, as shown in Table 75.

3.8.3 Persons-In-Need-Of-Supervision Proceedings

During 1977, a total of 9,060 original proceedings involving persons in need of supervision were disposed of in the Family Courts. Of those dispositions, 2,806 were made in New York City and 6,254 in other counties of the State.

3.8.3.1 Detention

As shown in Tables 76 and 77, 22 percent of the alleged persons in need of supervision were detained during Family Court original proceedings disposed of in 1977. Thirty respondents in supervision proceedings, or two percent, were detained (only) before the filing of a petition. About 21 percent (1,906) of all respondents were detained (only) after the filing of a supervision petition. 53 were detained both before and after the filing of the petition.

Statewide, post-petition detention in supervision cases was terminated within 30 days for 57 percent of those detained, as shown in Tables 76 and 77. It was terminated within 90 days for 89 percent of the detainees. However, the 71 percent of respondents from counties outside New York City whose detention was terminated in 30 days or less was 29 percentage points higher than the percentage of respondents from New York City (42%) whose detention was terminated in 30 days or less.

3.8.3.2 Adjudication and Disposition

In 4,955, or 55 percent of the 9,060 original supervision petitions disposed of during 1977, there was no adjudiciation that the person was in need of supervision, as shown in Tables 78 and 79. In 353, or four percent of the cases, an adjudication was made, but judgment was suspended or the respondent was discharged with a warning. 2,306, or 25 percent, of the supervision proceedings culminated in an order of probation. Proceedings that resulted in some form of placement occured in 1,446, or 16 percent, of the cases.

A slightly higher percentage of cases involving girls resulted in no adjudication that the person was in need of supervision than cases involving boys. A higher percentage of cases in which the judgment was suspended or the respondent discharged with a warning occurred in counties outside the City of New York (5%) than in New York City (1%). Probation also was used in a greater percentage of cases in counties outside the City of New York (32%) than in New York City (10%).

3.8.4 Juvenile Delinquency Proceedings

During 1977, a total of 18,447 original juvenile delinquency cases were disposed of in the Family Courts. As in previous years, a much higher percentage of the delinquency proceedings involved boys (89%) than girls (11%).

3.8.4.1 Reasons for Petition

The distribution of the reasons reported for delinquency petitions in 1977, shown in Table 80, was substantially the same as in previous years. Allegations of robbery were more frequent, however, in New York City than outside New York City, and allegations of burglary and larceny (not of an auto) were the basis of a greater percentage of delinquency petitions in counties outside New York City than in the City.

3.8.4.2 Detention

As shown in Tables 81 and 82, a total of 88 (or 1%) of the alleged delinquents were detained (only) before the filing of a petition in original cases disposed of in 1977.

3,387 (18%) of the children who were respondents in original delinquency proceedings disposed of in 1977 were detained (only) after the filing of a petition, while another 159 (1%) were detained both before and after.

In 74 percent of the post-petition detentions, the detention was terminated within 30 days, as shown in Tables 81 and 82. Detention was terminated within 90 days in 95 percent of the cases.

3.8.4.3 Adjudication and Disposition

In 12,193, or 66 percent, of the 18,447 original juvenile delinquency petitions disposed of during 1977, there was no adjudication of delinquency, as shown in Tables 83 and 84. In 760, or four percent, of the cases an adjudication was made, but judgment was suspended or the respondent was discharged with a warning. 3,415, or 19 percent, of the proceedings culminated in an order of probation. Proceedings that resulted in some form of placement occurred in 2,077, or 11 percent, of the cases. 656, or four percent, resulted in a discharge of the delinquency petition to another petition or in a discharge to a mental hygiene institution or school for defectives.

A higher percentage of cases involving girls (73%) than boys (65%) resulted in no adjudication of delinquency. A slightly higher percentage of cases in which the judgment was suspended or the respondent discharged with a warning occurred in counties outside of the City of New York (5%) than in New York City (3%). Probation also was used in a greater percentage of cases in counties outside the City of New York (22%) than in New York City (13%).

3.8.5 Law Guardian Program

Table 85 shows that 1,784 law guardians appeared in 18,335 proceedings in the fiscal year ended March 31, 1977. This was an increase over the previous fiscal year of 244 in the number of law guardians used and an increase of 1,439 in the number of proceedings in which law guardians appeared. The cost of providing this representation was about $65 per proceeding, a decrease of $5 under the previous fiscal year. (These figures exclude the costs of legal aid services used in some counties, as shown in Table 85.)

STATISTICAL TABLES

Table 7
THE COURT OF APPEALS
Matters Submitted and Decided
Jan. 1, 1977 through Dec. 31, 1977

Applications Decided (C.P.L. 460.20 (3-b))[1]	1 445
Records on Appeal Filed	588
Motions Decided	1,221
Oral Arguments[2]	639
Appeals Decided	641

[1]Applications for leave to appeal in criminal cases; 86 of the 1,445 were granted. The total number of criminal applications assigned during the year was 1,464.

[2]Total includes appeals submitted.

Table 8
THE COURT OF APPEALS
Appeals Decided by Nature and Jurisdiction
Jan. 1, 1977 through Dec. 31, 1977

Civil Cases

Basis of Jurisdiction	Nature of Decision					Total
	Dismissal	Affirmance	Modification	Reversal	Other	
Reversal, modification, dissent in Appellate Division	5	227	20	62	1	315
Constitutional question	1	20	0	5	0	26
Stipulation for judgment absolute	0	1	1	0	0	2
Permission of Appellate Division	2	49	7	12	0	70
Permission of Court of Appeals	0	30	6	24	0	60
Other	0	13	2	7	0	22
Total	8	340	36	110	1	495

Criminal Cases

Basis of Jurisdiction	Nature of Decision					Total
	Dismissal	Affirmance	Modification	Reversal	Other	
Permission of Justice of Appellate Division	0	46	2	19	0	67
Permission of Judge of Court of Appeals	2	43	1	31	0	77
Other	0	0	2	0	0	2
Total	2	89	5	50	0	146

All Cases

Basis of Jurisdiction	Nature of Decision					Total
	Dismissal	Affirmance	Modification	Reversal	Other	
Reversal, modification, dissent in Appellate Division	5	227	20	62	1	315
Constitutional question	1	20	0	5	0	26
Stipulation for judgment absolute	0	1	1	0	0	2
Permission of Appellate Division or Justice thereof	2	95	9	31	0	137
Permission of Court of Appeals or Judge thereof	2	73	7	55	0	137
Other	0	13	4	7	0	24
Total	10	429	41	160	1	641

Table 9
THE COURT OF APPEALS
Opinions by Type and by Author
Jan. 1, 1977 through Dec. 31, 1977

Author	Type of Opinions			
	Majority Opinions	Concurrences	Dissents	Total
Breitel	23	2	7	32
Jasen	29	3	12	44
Gabrielli	24	1	9	34
Jones	33	2	8	43
Wachtler	29	3	2	34
Fuchsberg	23	5	18	46
Cooke	27	2	18	47
Per Curiam	17	0	0	17
Memorandum . . .	211	0	0	211
Total	416	18	74	508

Table 10
APPELLATE DIVISIONS OF THE SUPREME COURT
Matters Submitted and Decided and General Information on Proceedings by Judicial Department
Jan. 1, 1977 through Dec. 31, 1977

Department	Records on Appeal Filed	Motions Decided	Oral Arguments	Dispositions of Judgments or Orders Appealed from[1]	Admissions to Bar		Attorney Disciplinary Proceedings					
					Men	Women	Charges Dismissed	Censures	Suspensions	Struck from Roll	Disbarments	Reinstatements
1st	2,461	4,281	911	2,366	962	416	0	0	8	9	7	13
2nd	2,764	7,331	1,396	2,790	1,308	288	2	12	8	16	12	3
3rd	1,504	2,018	829	1,499	259	61	0	7	7	1	1	0
4th	550	998	868	1,089	91	17	0	1	0	0	1	0
State Total . . .	7,279	14,628	4,004	7,744	2,620	782	2	20	23	26	21	16

[1] Includes Articles 78 and original proceedings; also includes appeals dismissed or withdrawn before argument or submission.

Table 11
APPELLATE DIVISIONS OF THE SUPREME COURT
Dispositions of Judgments or Orders by Nature and by Judicial Department
Jan. 1, 1977 through Dec. 31, 1977

Department	Nature of Disposition						Total Disposition of Judgments or Orders Appealed from*
	Dismissals	Affirmances	Modifications	New Trials	Reversals Not Including New Trials	Other	
1st	136	1,358	267	42	272	291	2,366
2nd	147	1,651	325	111	524	32	2,790
3rd	13	1,178	100	0	183	25	1,499
4th	44	737	104	31	157	16	1,089
Total State	340	4,924	796	184	1,136	364	7,744

*Includes Article 78 and original proceedings; also includes appeals dismissed or withdrawn before argument or submission.

Table 12
APPELLATE DIVISIONS OF THE SUPREME COURT
Opinions by Type and by Judicial Department
Jan. 1, 1977 through Dec. 31, 1977

	Type of Opinion[1]		
Department	Full	Per Curiam	Memorandum
1st	93	12	1,089
2nd	59	1	2,024
3rd	193	1	1,277
4th	104	4	543
Total	449	18	4,933

[1] Concurring and dissenting opinions not included.

Table 13

APPELLATE TERMS OF THE SUPREME COURT

Activity of the Court by Judicial Department

Jan. 1, 1977 through Dec. 31, 1977

Activity	First Department	Second Department	Total
1. Total appeals received[1]	350	2,080	2,430
a. County Courts	0	134	134
b. The Civil Court of the City of New York	295	593	888
c. The Criminal Court of the City of New York	55	191	246
d. The District Courts	0	761	761
e. Courts in cities outside New York City	0	152	152
f. Town Courts & Village Courts	0	249	249
2. Motions heard or submitted	1,289	1,978	3.267
3. Total appeals disposed of	348	1,510	1,858
a. Discontinued	15	48	63
b. Dismissed on calendar call under Rule 3 or 8 (civil)	8	318	326
c. Dismissed on calendar call under C.P.L. 460.70 (criminal)	3	88	91
d. Remitted	2	0	2
e. Decided after argument or submission	320	1,056	1,376
4. Total decisions rendered	320	1,056	1,376
a. Dismissed, discontinued, withdrawn or remanded	11	46	57
b. Affirmed	161	497	658
c. Modified	55	147	202
d. Reversed	93	366	459
5. Opinions filed	0	0	0
6. Per curiam opinions	289	1,010	1,299
7. Memoranda written, not filed	31	43	74

[1] Notices of appeal dismissed on calendar call C.P.L. 460.70 (Criminal): 190 in First Department and 521 in the Second Department.

Table 14

THE SUPREME COURT WITHIN THE CITY OF NEW YORK — CRIMINAL TERMS

Activity of the Court by County

*Jan. 3, 1977 through Jan. 1, 1978**

Activity	New York[3]	Bronx	Kings	Queens	Richmond	Total N.Y.C.
1. Days sat[1]	7,725	6,004	8,134	3,136	507	25,506
2. Indictments filed	5,643	2,805	4,192	3,241	405	16,286
3. Arraignments	5,035	2,771	4,269	3,185	428	15,688
4. Indictments dismissed by court[2]	1,164	928	942	690	159	3,883
5. Pleas of guilty to felony	3,474	2,306	2,906	1,401	290	10,377
6. Pleas of guilty to misdemeanor	365	169	313	482	88	1,417
7. Convictions	395	299	447	206	19	1,366
8. Acquittals	157	184	200	105	17	663
9. Disagreements	47	21	30	9	3	110
10. Trials (proof completed)	550	432	615	285	36	1,918
11. Defendants tried (proof completed)	613	515	716	323	40	2,207
12. Mistrials	51	40	96	19	3	209
13. Eligible youths adjudicated as youthful offenders	296	242	189	310	71	1,108
14. Sentences imposed	3,935	2,484	3,228	1,842	306	11,795

NOTE: The entries in this table are based on the number of defendant-indictments involved, except for items 1 and 9 through 12. This table includes youthful offender proceedings to conform to the revised Criminal Procedure Law, effective September 1, 1971.

*Criminal terms begin on the first Monday of the calendar year and end on the Sunday before the first Monday of the succeeding calendar year.

[1] Includes days sat by judges temporarily assigned to this Court.

[2] Includes, among others, indictments dismissed in cases initiated prior to the period covered by this table; those indictments dismissed against defendants sentenced on another indictment or disposed of by consolidation; those in which the defendants were civilly committed to the Commissioner of Mental Hygiene or to the Commissioner, Office of Drug Abuse Services; those indictments disposed of by trial order of dismissal; those indictments dismissed upon the filing of a superseding indictment; indictments adjourned in contemplation of dismissal; and those abated by the death of the defendant.

[3] Figures for the Centralized Special Narcotics Parts are included in data for New York County.

Table 15
THE SUPREME COURT WITHIN THE CITY OF NEW YORK
CRIMINAL TERMS
Dispositions, Expressed in Terms of Defendant-Indictments by Nature of Disposition
*1976 and 1977**

Activity	New York[1]		Bronx		Kings		Queens		Richmond		Total N.Y.C.	
	1976	1977	1976	1977	1976	1977	1976	1977	1976	1977	1976	1977
Type of disposition												
Dismissals	1,355	1,164	1,160	928	1,485	942	872	690	197	159	5,069	3,883
Pleas of guilty—felony	3,799	3,474	2,064	2,306	3,333	2,906	1,508	1,401	256	290	10,960	10,377
Pleas of guilty—misdemeanors	413	365	138	169	546	313	566	482	78	88	1,741	1,417
Convictions	435	395	300	299	422	447	178	206	19	19	1,354	1,366
Acquittals	173	157	157	184	222	200	121	105	15	17	688	663
Total dispositions	6,175	5,555	3,819	3,886	6,008	4,808	3,245	2,884	565	573	19,812	17,706
Days sat	7,951	7,725	5,638	6,004	7,826	8,134	3,422	3,136	603	507	25,440	25,506
Defendants tried through proof completed	644	613	488	515	721	716	318	323	35	40	2,206	2,207
Comparative measures												
Dismissals as % of dispositions	21.9	21.0	30.4	23.9	24.7	19.6	26.9	23.9	34.9	27.7	25.6	21.9
Pleas as % of dispositions	68.2	69.1	57.7	63.7	64.6	67.0	63.9	65.3	59.1	66.0	64.1	66.6
Verdicts as % of dispositions	9.8	9.9	12.0	12.4	10.7	13.5	9.2	10.8	6.0	6.3	10.3	11.5
Felony pleas as % of all pleas	90.5	90.5	92.1	93.2	93.7	90.3	85.9	74.4	72.7	76.7	86.3	86.0
Dispositions per day sat	.78	.72	.68	.65	.77	.59	.95	.92	.94	1.13	.78	.69

*Criminal terms begin on the first Monday of the calendar year and end on the Sunday before the first Monday of the succeeding calendar year.

[1] Figures for the Centralized Special Narcotics Parts are included in data for New York County.

Table 16
THE SUPREME COURT WITHIN THE CITY OF NEW YORK
Felony Defendants Pending Disposition
(Expressed in Terms of Defendant-Indictments)
Dec. 31, 1976 and 1977

County	Number of Cases Pending as of December 31	
	1976	1977
New York County*	2,772	2,797
Bronx County	2,714	1,894
Kings County	2,609	2,378
Queens County	1,394	1,700
Richmond County	231	140
Total New York City	9,720	8,909

*Figures for the Centralized Special Narcotics Parts are included in data for New York County.

Table 17
THE SUPREME COURT WITHIN THE CITY OF NEW YORK
Number of Detainees Awaiting Disposition or Sentencing
(Expressed in Terms of Individual Detainees)
End of Dec., 1977

County	Total Number[1]	Percent of City	Number Detained Over One Year[2]	Percent of City
New York County*	901	33.3	22	24.2
Bronx County	622	23.1	13	24.2
Kings County	705	26.1	22	24.2
Queens County	436	16.2	33	36.3
Richmond	34	1.3	1	1.1
Total New York City	2,698	100.0	91	100.0

*Figures for the Centralized Special Narcotics Parts are included in data for New York County.

[1] Totals from NYC Department of Correction.
[2] Figures from Statistics Unit, OCA/New York City Courts.

Table 18
THE SUPREME COURT AND COUNTY COURTS OUTSIDE THE CITY OF NEW YORK
CRIMINAL TERMS
Indictments Filed, Arraignments, Dispositions, Youthful Offenders and Sentences by County, District, and Judicial Department
(Expressed in Terms of Defendant-Indictments)
*Jan. 3, 1977 through Jan. 1, 1978**

Department District County	Total of All Defendant Indictments Found By Grand Jury	Total Arraignments	Dispositions[a]							Eligible Youths Adjudicated as Youthful Offenders	Sentences Imposed
			Indictments Dismissed by Court[b]	Pleas of Guilty	Acquittals	Convictions	Trials through Proof Completed	Mistrials	Disagreements		
SECOND DEPARTMENT											
9 Dutchess	235	233	42	102	12	11	31	0	0	54	173
Orange	364	336	58	203	10	16	32	0	0	71	210
Putnam	44	123	31	89	0	1	1	0	0	14	69
Rockland	235	242	8	264	3	3	8	0	0	70	184
Westchester	991	1,028	275	993	30	106	111	13	6	147	860
10 Nassau	1,337	1,419	650	1,816	49	121	175	13	11	353	1,621
Suffolk	2,083	2,022	216	1,701	40	106	130	11	7	361	1,106
Total Second Dept	5,309	5,107	1,290	5,390	144	367	503	35	37	1,078	1,507
THIRD DEPARTMENT											
3 Albany	368	352	14	274	23	54	75	1	4	34	240
Columbia	83	54	16	35	0	0	2	0	0	11	23
Greene	216	444	4	156	1	4	6	0	0	30	150
Rensselaer	117	115	12	102	4	9	14	0	1	16	109
Schoharie	60	60	3	63	1	0	1	0	0	12	35
Sullivan	98	97	9	85	0	3	3	0	0	15	93
Ulster	147	136	15	99	3	12	14	0	2	37	98
4 Clinton	123	127	60	107	2	4	6	1	0	13	96
Essex	147	109	33	76	1	3	4	0	0	8	70
Franklin	108	114	23	85	0	0	1	0	1	21	71
Fulton	99	99	11	76	5	6	11	0	0	23	61
Hamilton	6	4	3	9	0	0	2	0	0	2	10

Montgomery	149	123	51	82	6	2	4	0	0	11	72
St. Lawrence	203	191	58	118	5	9	15	1	0	58	123
Saratoga	131	126	29	110	1	0	2	0	0	20	89
Schenectady	300	232	89	184	2	7	13	4	1	67	201
Warren	37	39	4	41	1	0	1	0	0	6	25
Washington	46	52	3	43	0	1	1	0	0	4	51
6 Broome	360	311	32	409	1	10	21	1	0	112	280
Chemung	312	331	15	284	3	12	16	1	0	83	198
Chenango	85	68	33	93	3	1	5	0	0	21	62
Cortland	117	121	5	81	3	4	10	1	2	12	61
Delaware	53	59	18	14	2	5	7	0	0	9	52
Madison	131	76	2	107	0	3	3	0	0	28	76
Otsego	91	92	14	91	3	5	8	0	0	5	91
Schuyler	17	17	0	10	0	3	3	0	0	6	10
Tioga	49	48	1	52	0	1	1	0	0	20	42
Tompkins	115	110	36	77	1	7	16	0	3	23	103
Total Third Dept	3,836	3,900	607	2,980	71	171	262	10	13	717	2,602
FOURTH DEPARTMENT											
5 Herkimer	43	46	4	26	0	1	1	1	0	3	27
Jefferson	285	278	73	191	6	12	18	0	0	50	153
Lewis	55	46	6	22	0	0	0	0	0	9	21
Oneida	499	498	54	427	15	20	35	1	3	139	291
Onondaga	665	549	63	505	18	35	53	0	2	90	430
Oswego	109	107	11	110	1	3	3	1	0	47	78
7 Cayuga	51	43	1	45	0	4	3	0	0	11	29
Livingston	95	87	11	101	2	1	3	0	1	28	82
Monroe	1,212	1,609	517	1,036	41	111	150	6	6	208	960
Ontario	235	233	16	215	5	13	13	0	0	75	114
Seneca	56	40	1	21	0	0	0	0	0	10	20
Steuben	193	195	56	162	1	6	9	0	0	58	86
Wayne	126	70	1	105	3	5	8	0	0	37	80
Yates	24	23	6	13	0	1	1	0	0	2	12
8 Allegany	93	97	16	61	3	2	5	1	0	30	66
Cattaraugus	115	92	20	65	0	2	2	1	0	23	46
Chautauqua	215	223	37	131	6	6	12	0	0	87	109
Erie	1,016	1,301	179	700	61	81	142	20	2	98	692
Genesee	73	61	6	46	3	0	3	0	0	11	38
Niagara	601	620	118	363	16	37	53	1	1	89	236
Orleans	104	96	15	91	4	6	10	1	0	20	61
Wyoming	51	61	1	49	0	0	0	0	1	1	35
Total Fourth Dept	5,964	6,127	1,262	4,731	183	350	518	34	16	1,128	3,831
Total Outside N.Y.C.	15,109	15,710	3,159	13,101	401	888	1,283	79	66	2,923	10,915

[a]Criminal terms begin on the first Monday of the calendar year and end on the Sunday before the first Monday of the succeeding calendar year

[a]Includes indictments disposed of in cases initiated prior to the period covered by this table

[b]Includes, among others, those indictments dismissed against defendants sentenced on another indictment or disposed of by consolidation, those in which the defendants were finally committed to the Commissioner of Mental Hygiene or to the Office of Drug Abuse Services and those abated by the death of the defendant

Table 19

THE SUPREME COURT AND COUNTY COURTS OUTSIDE THE CITY OF NEW YORK-CRIMINAL TERMS

Dispositions by Type

(Expressed in Terms of Defendant-Indictments)

1976 and 1977

Nature of Disposition	Number		Percent	
	1976	1977	1976	1977
1. By dismissal of indictment by court	3,371	3,159	18.9	18.0
2. By plea of guilty	13,305	13,101	74.5	74.6
3. By acquittal after trial	353	401	2.0	2.3
4. By conviction after trial	821	888	4.6	5.1
Total defendant-indictments disposed of	17,850	17,549	100.0	100.0

Table 20
THE SUPREME AND COUNTY COURTS OUTSIDE THE CITY OF NEW YORK
Number of Detainees Awaiting Disposition and Sentencing
(Expressed in Terms of Individual Detainees)
End of Dec. 1976 and 1977

Jurisdiction	Number of Detainees		Number Detained Over One Year	
	1976	1977	1976	1977
Second Department				
Ninth District	192	181	4	4
Tenth District	299	261	7	1
Total Second Department	491	442	11	5
Third Department				
Third District	101	13*	3	0
Fourth District	55	23*	0	0
Sixth District	58	48	1	0
Total Third Department	214	84*	4	0
Fourth Department				
Fifth District	76	55*	3	2
Seventh District	146	118	0	0
Eighth District	184	161	1	7
Total Fourth Department	406	334*	4	9
Grand Total	1,111	860*	19	21

*Does not include Albany County in the 3rd District, Schenectady and Warren Counties in 4th District and Lewis in the 5th District. At the end of 1976, Albany reported 43 detainees, Schenectady, 22 and Warren, 4.

Table 21
THE CRIMINAL COURT OF THE CITY OF NEW YORK
Filings
Arrest Cases[1]
Jan. 5, 1976 through Jan. 2, 1977

Violations	33,130
Misdemeanors[2]	96,944
Felonies	86,855
Other[3]	9,190
Total arrest cases	226,119

[1] Preliminary data includes all cases in which an arrest has been made and those arrests in which an appearance ticket is subsequently issued in the stationhouse.
[2] Includes attempted E felonies.
[3] Includes fugitive, Family Court, Criminal Court and out-of-city warrants; material witness and contempt (750 JL).

Table 22
THE CRIMINAL COURT OF THE CITY OF NEW YORK
Filings (Estimate)
Arrest Cases[1]
Jan. 3, 1977 through Jan. 1, 1978

Violations	34,545
Misdemeanors[2]	101,081
Felonies	90,560
Other[3]	9,575
Total arrest cases	235,761

[1] Preliminary data includes all cases in which an arrest has been made and those arrests in which an appearance ticket is subsequently issued in the stationhouse.
[2] Includes attempted E felonies.
[3] Includes fugitive, Family Court, Criminal Court and out-of-city warrants; material witness and contempt (750 JL).

Table 23
THE CRIMINAL COURT OF THE CITY OF NEW YORK
Filings
Summons Cases[1]
1976 and 1977

Type of Summons	1976	1977
Traffic	58,106	63,548
Non traffic	435,472	441,655
Total summonses[2]	493,578	505,203

[1] Includes all nonarrest cases and arrest cases of peddling where a desk appearance ticket was issued.
[2] Includes universal and nonuniversal summonses.

Table 24
THE CRIMINAL COURT OF THE CITY OF NEW YORK
Fines Collected*
1976 and 1977

Type of Case	1976	1977
Arrest	$2,210,033.37	$2,848,011.06
Summons	1,358,288.00	1,897,212.17
Total fines collected	$3,568,321.37	$4,745,223.23

*City and State fines, excluding fees.

Table 25
THE CRIMINAL COURT OF THE CITY OF NEW YORK — CRIMINAL PROCEEDINGS
Arrest Cases
1977

Activity	New York	Bronx	Kings	Queens	Richmond	Total NYC
1. Judge days	3,600	2,762	3,577	2,336	298	12,573
2. Calendared cases	245,090	150,981	192,638	125,371	17,310	731,390
3. Filings	90,746	41,529	63,932	34,818	4,736	235,761
4. Warrants filed	32,948	14,910	19,583	10,252	1,411	79,104
5. Warrants executed	22,990	10,674	14,446	7,936	1,054	57,100
6. Hearings	2,502	2,544	4,773	2,808	570	13,197
7. Motions	51	111	126	173	76	537
8. Trials	150	203	184	218	72	827
9. Dismissals[1]	30,342	18,049	26,474	12,691	2,162	89,718
10. Pleas of guilty	49,193	16,633	28,493	16,216	1,684	112,218
11. Acquittals	83	135	124	146	46	534
12. Convictions	70	93	70	121	30	384
13. Referrals to grand jury	5,320	3,390	4,652	3,328	456	17,146
14. Other dispositions[2]	3,660	2,273	3,399	2,021	147	11,500
15. Sentences imposed	51,087	16,624	29,237	16,485	1,752	115,185
16. Pending disposition	3,070	4,355	3,360	2,627	579	13,991
17. Pending sentencing	1,122	573	627	435	48	2,805

[1] Includes, among others, abatements by death, commitments to Mental Hygiene and ACD's.
[2] Excludes transfers to family court, other jurisdictions, criminal court summons parts and arrest parts in other counties.

Table 26
THE CRIMINAL COURT OF THE CITY OF NEW YORK — CRIMINAL PROCEEDINGS
Cases Disposed of by Nature of Disposition
Arrest Cases
1976 and 1977

	New York		Bronx		Kings		Queens		Richmond		Total NYC	
Activity	1976	1977	1976	1977	1976	1977	1976	1977	1976	1977	1976	1977
Dismissals	31,497	30,342	19,085	18,049	23,838	26,474	18,191	12,691	2,039	2,162	91,650	89,718
Pleas of guilty	38,193	49,193	14,317	16,633	28,816	28,493	16,769	16,215	1,632	1,684	99,727	112,218
Acquittals	76	83	128	135	167	124	186	146	58	46	615	534
Convictions	55	70	87	93	115	70	112	121	38	30	407	384
Referrals to grand jury	4,861	5,320	3,609	3,390	4,195	4,652	4,122	3,328	529	456	17,316	17,146
Other dispositions	3,068	3,660	2,435	2,273	3,401	3,399	2,012	2,021	103	147	11,019	11,500
Total dispositions	77,750	88,668	39,661	40,573	60,532	63,212	38,392	34,522	4,399	4,525	220,734	231,500
Filings	81,170	90,746	41,516	41,529	60,364	63,932	38,755	34,818	4,356	4,736	226 60	235,761
Dispositions as % of filings	95.8	97.7	95.5	97.7	100.3	98.9	99.1	99.2	101.0	95.5	97.6	98.2
Dismissals as % of dispositions	40.5	34.2	48.1	44.4	39.4	41.9	39.6	36.8	46.4	47 8	41.5	38.7
Pleas as % of dispositions	49.1	55.5	36.1	41.0	47.6	45.1	43 7	47.0	37.1	37.2	45.2	48.5
Verdicts as % of dispositions	0.2	0.2	0.5	0.6	0.5	0.3	0.8	0.8	2.2	1.7	0.5	0.4
Referrals to grand jury as % of dispositions	6.2	6.0	9.1	8.4	6.9	7.3	10.7	9.6	12.0	10.1	7.8	7.4
Other dispositions as % of dispositions	4.0	4.1	6.2	5.6	5.6	5.4	5.2	5.8	2.3	3.2	5.0	5.0

Table 27
THE CRIMINAL COURT OF THE CITY OF NEW YORK
Number of Detainees Awaiting Action
1976 and 1977

Detainees	New York		Bronx		Kings		Queens		Richmond		Citywide	
	1976	1977	1976	1977	1976	1977	1976	1977	1976	1977	1976	1977
Awaiting Action in the Criminal Court												
Awaiting Examination	226	125	132	125	215	220	81	79	11	13	703	567
Awaiting Disposition	44	312	200	69	21	16	93	62	0	3	358	462
Awaiting Sentencing	7	15	5	10	2	15	2	6	0	1	16	47
Total Criminal Court	312	452	317	204	236	251	176	147	11	22	1,077	1,076
Number Detained Over 30 days	168	108	169	101	85	41	48	35	4	2	464	287

Table 28
THE DISTRICT COURTS
AND THE COURTS IN CITIES OUTSIDE THE CITY OF NEW YORK
Criminal Proceedings
Defendants Disposed of by Offense and Nature of Disposition
and by District and Judicial Department
Jan. 1, 1977 through Dec. 31, 1977

District and Department	Felonies			Misdemeanors (Except Motor Vehicle)			Ordinances			All Motor Vehicle Offenses			Quasi-Criminal Offenses	Total
	By Waiver	By Hearing	Dismissal or Withdrawal	By Dismissal	By Trial	By Plea	By Dismissal	By Trial	By Plea	By Dismissal	By Trial	By Plea		
District 3	13	51	26	489	41	427	32	6	110	517	43	2,333	192	4,280
District 4[a]	88	5	10	627	42	1,230	305	13	1,585	1,359	41	24,551	278	30,134
District 5	703	204	918	2,798	42	2,307	43	9	606	5,522	143	33,421	3,253	49,969
District 6	58	283	32	607	28	893	243	20	656	1,887	257	30,587	294	35,845
District 7	566	338	1,209	2,424	93	1,963	86	5	179	1,729	41	2,271	2,907	13,811
District 8[a]	287	1,226	1,703	5,561	284	4,034	784	74	1,452	2,845	348	17,710	4,082	40,390
District 9[a]	240	425	318	2,511	130	2,882	766	38	1,454	72,747	1,235	339,831	1,618	424,195
District 10	662	336	3,268	10,290	133	5,631	3,220	269	8,053	101,367	15,746	315,233	10,519	474,727
Department 2	902	761	3,586	12,801	263	8,513	3,986	307	9,507	174,114	16,981	655,064	12,137	898,922
Department 3	159	339	68	1,723	111	2,550	580	39	2,351	3,763	341	57,471	764	70,259
Department 4	1,556	1,768	3,830	10,783	419	8,304	913	88	2,237	10,096	532	53,406	10,242	104,170
Total outside NYC*	2,617	2,868	7,484	25,307	793	19,367	5,479	434	14,095	187,973	17,854	765,937	23,143	1,073,351

*Data incomplete from Hudson in the 3rd District, Glens Falls and Schenectady Police Court in the 4th District, Watertown in the 5th District, Cortland and Elmira in the 6th District, Auburn and Corning in the 7th District, Salamanca in the 8th District, and Yonkers City Court in the 9th District.

[a]No reporting received from Saratoga Springs in 4th District, Olean in the 8th District, and New Rochelle in the 9th District.

Table 29
TOWN COURTS AND VILLAGE COURTS
Number of Criminal Cases
by Type
1975 and 1976

Type of Cases	Number of Cases	
	1975	1976
Town and village ordinances and Vehicle and Traffic Law Title VII (except §§1180*, 1181, 1182, 1190 and 1192)	939,699	952,745
Vehicle and Traffic Law Titles I through VI (except Article 2-A) Titles VII (§§1180*, 1181, 1182, 1190, 1192 only), Titles VIII through X and miscellaneous laws	705,680	706,565
Penal Law and indictable offenses	97,031	93,415
Other	13,931	14,431
Total cases	1,756,341	1,767,156

*Except speed limits established under §§ 1643, 1644, 1662-a, 1663 and 1670.

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Table 30
THE SUPREME COURT-CIVIL TERMS
Actions Received by Type
and by County, District and Judicial Department
*Jan. 3, 1977 through Dec. 30, 1977**

County District Department	Dept	Dist	Tort			Contract	Matrimonial	Tax Certiorari	Condemnation	All Other	Total
			Motor Vehicle	Medical Malpractice	Other Tort						
Albany	III	1	325	16	236	327	1,314	327	0	110	2,575
Allegany	IV	8	14	1	9	12	132	0	0	3	171
Bronx	I	1	1,574	110	1,063	160	3,935	517	2	64	7,425
Broome	III	6	101	15	88	118	1,002	4	0	42	1,370
Cattaraugus	IV	8	28	2	15	18	306	1	0	12	382
Cayuga	IV	7	43	0	13	45	180	0	0	21	303
Chautauqua	IV	8	52	7	20	36	585	0	0	22	722
Chemung	III	6	88	7	45	26	501	0	0	33	700
Chenango	III	6	27	1	23	22	201	11	0	3	288
Clinton	III	4	44	7	15	28	375	0	0	15	484
Columbia	III	3	36	1	9	21	109	2	0	15	196
Cortland	III	6	14	0	11	16	109	1	0	7	218
Delaware	III	6	17	0	17	17	177	11	0	14	253
Dutchess	II	9	247	14	135	116	854	92	3	50	1,511
Erie	IV	8	1,018	59	502	333	3,594	2	12	143	5,693
Essex	III	4	18	0	14	16	42	1	0	5	96
Franklin	III	4	18	1	13	16	73	0	0	1	123
Fulton	III	4	55	5	36	38	199	2	0	0	335
Genesee	IV	8	31	3	1	19	176	2	0	21	256
Greene	III	3	35	2	27	15	26	1	0	7	113
Herkimer	IV	5	44	0	30	43	196	1	0	23	337
Jefferson	IV	5	30	2	33	31	352	10	0	16	467
Kings	II	2	3,014	310	2,251	374	8,037	107	6	177	14,305
Lewis	IV	5	11	0	0	4	8	0	0	12	35
Livingston	IV	7	24	0	9	19	145	0	0	14	211
Madison	III	6	52	3	22	32	312	2	0	14	467
Monroe	IV	7	495	26	143	305	3,535	6	10	240	4,763
Montgomery	III	4	61	4	31	28	203	0	0	24	351
Nassau	II	10	2,301	101	1,324	683	3,554	231	21	470	8,681
New York	I	1	2,437	326	2,179	2,428	6,627	1,277	2	289	15,565
Niagara	IV	8	183	11	100	71	934	1	3	28	1,331
Oneida	IV	5	186	8	137	148	951	42	0	61	1,533
Onondaga	IV	5	322	17	252	393	1,891	96	1	65	3,037

Ontario	IV	7	29	1	12	27	344	0	0	15	428
Orange	II	9	377	25	160	131	900	310	2	62	1,967
Orleans	IV	8	14	2	5	12	74	0	0	1	108
Oswego	IV	5	101	3	30	89	309	1	0	49	642
Otsego	III	6	37	0	24	40	215	5	0	14	333
Putnam	II	9	59	5	49	43	309	22	0	32	419
Queens	II	11	2,548	197	1,384	370	5,564	146	7	221	10,437
Rensselaer	III	3	106	5	20	54	60	12	0	89	346
Richmond	II	2	313	16	157	36	937	12	4	25	1,500
Rockland	II	9	347	25	234	133	746	453	2	85	2,025
St Lawrence	III	4	40	5	7	26	393	4	0	46	521
Saratoga	III	4	103	3	74	61	506	5	0	17	769
Schenectady	III	4	209	18	143	112	880	20	0	67	1,509
Schoharie	III	3	15	1	11	15	36	1	0	8	87
Schuyler	III	6	6	0	7	11	26	0	0	3	63
Seneca[1]	IV	7	.....	.....	.....	.....	.....	.....	.....	.....	.....
Steuben	IV	7	38	2	29	35	463	0	0	1	568
Suffolk	II	10	1,908	102	720	498	3,670	178	82	299	7,457
Sullivan	III	3	118	6	67	74	270	4	0	24	553
Tioga	III	6	18	3	15	17	63	0	0	14	128
Tompkins	III	6	34	2	23	44	374	0	0	12	489
Ulster	III	3	151	7	123	85	567	39	0	37	1,009
Warren	III	4	21	1	35	31	301	1	0	0	390
Washington	III	4	16	0	10	14	60	0	0	6	106
Wayne	IV	7	35	2	17	17	301	0	0	16	388
Westchester	II	9	937	56	672	464	2,605	1,202	0	107	6,083
Wyoming	IV	8	15	1	7	6	127	0	0	3	158
Yates	IV	7	9	1	9	4	74	1	0	3	101
Total District		1	4,011	436	3,242	2,588	10,502	1,704	4	353	22,990
Total District		2	3,327	396	2,408	410	8,074	203	9	202	15,805
Total District		3	780	38	503	494	2,382	386	0	300	4,870
Total District		4	646	14	378	370	3,032	33	0	181	4,653
Total District		5	694	30	472	711	3,767	150	1	226	6,051
Total District		6	391	20	275	343	3,099	32	0	156	4,320
Total District[1]		7	673	32	232	462	5,042	1	19	313	6,764
Total District		8	1,388	86	650	507	5,928	6	15	232	8,821
Total District		9	1,967	125	1,150	887	5,304	2,130	7	426	12,005
Total District		10	4,212	293	1,044	1,181	7,224	412	103	709	16,136
Total District		11	2,548	197	1,384	370	5,564	146	7	221	10,437
Total Department	I		4,011	436	3,242	2,588	10,502	1,704	4	353	22,990
Total Department	II		12,034	971	6,886	2,848	27,006	2,006	126	1,018	54,475
Total Department	III		1,825	112	1,156	1,207	8,513	461	0	627	13,891
Total Department[1]	IV		2,755	148	1,363	1,670	14,737	167	35	771	31,636
Total New York City			9,886	989	7,031	5,368	25,100	2,149	26	776	49,322
Total Outside NYC[1]			10,759	678	5,613	4,945	33,778	3,169	145	2,093	63,670
Total New York State[1]			20,645	1,667	12,644	8,313	60,878	5,308	165	3,369	112,992

*Weekly reporting period in 1977 began Monday, January 3 and ended Friday, December 30.

[1]No annual figures available for Seneca County.

Table 31

THE SUPREME COURT — CIVIL TERMS

Actions Disposed of by Type and by County, District and Judicial Department

*Jan. 3, 1977 through Dec. 30, 1977**

County District Department	Dept	Dist	Tort			Contract	Matrimonial	Tax Certiorari	Condemnation	All Other	Total
			Motor Vehicle	Medical Malpractice	Other Tort						
Albany	III	3	447	19	227	218	1,305	406	10	173	2,805
Allegany	IV	8	15	0	10	7	127	0	0	3	162
Bronx	I	1	1,698	93	897	158	3,700	198	2	63	6,806
Broome	III	6	116	8	103	108	1,005	5	0	41	1,386
Cattaraugus	IV	8	43	1	12	18	296	10	0	16	395
Cayuga	IV	7	50	0	15	74	187	0	0	23	309
Chautauqua	IV	8	75	8	20	30	611	0	0	28	776
Chemung	III	6	171	8	63	42	508	0	0	31	821
Chenango	III	6	39	3	11	37	204	11	0	2	282
Clinton	III	4	40	8	18	47	393	0	0	20	526
Columbia	III	3	25	0	16	23	112	27	0	8	211
Cortland	III	6	11	0	7	22	193	2	0	8	243
Delaware	III	6	27	0	16	37	190	15	0	13	288
Dutchess	II	9	226	12	130	117	847	106	3	51	1,492
Erie	IV	8	1,186	53	337	324	3,396	0	0	150	5,501
Essex	III	4	25	0	15	24	44	1	1	7	117
Franklin	III	4	23	4	5	13	68	0	0	0	122
Fulton	III	4	82	1	78	34	191	3	0	2	394
Genesee	IV	8	27	2	1	10	173	2	0	17	241
Greene	III	3	34	3	18	27	31	0	0	18	131
Herkimer	IV	5	53	2	31	62	189	3	0	30	370
Jefferson	IV	5	64	3	40	81	432	36	0	27	682
Kings	II	2	2,201	202	1,011	222	8,255	102	15	162	12,927
Lewis	IV	5	9	0	2	5	14	3	0	9	42
Livingston	IV	7	23	0	12	18	141	0	1	3	198
Madison	III	6	30	2	20	33	362	1	0	21	478
Monroe	IV	7	730	27	376	558	3,410	5	23	121	5,203
Montgomery	III	4	61	1	33	41	202	0	0	20	358
Nassau	II	10	2,578	114	1,094	661	3,532	48	27	423	8,477
New York	I	1	1,720	172	1,305	1,970	6,150	738	15	335	12,474
Niagara	IV	8	241	4	108	95	942	0	6	34	1,430
Oneida	IV	5	233	9	128	201	1,009	7	0	94	1,681

Onondaga	IV	5	608	16	354	502	1,060	41	3	93	3,080
Ontario	IV	7	35	0	10	23	35[a]	0	1	32	457
Orange	II	9	379	16	103	143	937	362	1	59	2,060
Orleans	IV	8	17	1	8	13	76	0	0	0	115
Oswego	IV	5	113	3	31	100	367	0	0	48	665
Otsego	III	6	22	1	24	40	214	1	0	10	330
Putnam	II	9	64	3	30	17	202	13	0	30	358
Queens	II	11	2,472	151	1,305	282	5,701	208	16	150	10,345
Rensselaer	III	3	204	5	26	74	66	41	0	76	492
Richmond	II	2	310	12	121	43	935	10	1	29	1,461
Rockland	II	9	200	24	237	180	731	385	2	77	1,924
St Lawrence	III	4	56	2	6	37	412	0	0	70	583
Saratoga	III	4	105	4	101	78	524	4	0	15	921
Schenectady	III	4	433	7	102	139	888	54	0	30	1,745
Schoharie	III	3	15	1	6	16	36	0	0	11	85
Schuyler	III	6	13	0	5	12	28	0	0	3	61
Seneca[b]	IV	7									
Steuben	IV	7	31	2	34	30	457	0	0	0	563
Suffolk	II	10	1,370	45	440	377	3,602	232	143	335	6,590
Sullivan	III	3	113	3	27	87	272	65	0	47	664
Tioga	III	6	24	5	18	15	68	0	0	26	156
Tompkins	III	6	47	2	18	61	365	1	0	13	507
Ulster	III	3	104	9	140	103	536	76	1	30	1,109
Warren	III	4	35	0	2	42	315	2	0	50	446
Washington	III	4	28	2	14	8	56	0	0	16	124
Wayne	IV	7	41	1	26	17	306	0	0	11	402
Westchester	II	9	810	57	463	804	2,607	1,184	4	213	6,011
Wyoming	IV	8	17	2	5	0	127	0	0	0	160
Yates	IV	7	13	1	8	9	75	1	1	3	111
Total District		1	3,477	264	2,202	2,128	9,940	936	17	398	19,362
Total District		2	2,520	279	1,732	272	9,210	202	16	187	14,418
Total District		3	1,032	40	510	548	2,378	705	11	303	5,587
Total District		4	980	20	464	453	3,096	74	1	239	5,330
Total District		5	1,080	33	598	951	3,970	90	3	301	7,026
Total District		6	490	37	285	306	2,137	30	0	172	4,057
Total District [b]		7	932	31	481	698	4,063	7	26	196	7,333
Total District		8	1,631	71	807	565	5,748	12	11	247	8,782
Total District		9	1,787	111	1,013	1,370	5,374	3,050	10	430	12,045
Total District		10	3,048	159	1,934	1,038	7,194	275	170	758	15,076
Total District		11	2,472	151	1,305	282	5,701	208	16	150	10,345
Total Department	I		3,477	264	2,202	2,128	9,940	936	17	398	19,362
Total Department	II		10,727	700	5,484	2,862	37,470	2,705	212	1,525	61,784
Total Department	III		2,511	96	1,259	1,397	8,011	815	12	779	15,480
Total Department [b]	IV		5,033	135	1,586	2,214	14,080	109	40	744	23,141
Total New York City			8,469	604	5,139	2,682	24,851	1,406	49	735	41,935
Total Outside NYC [b]			11,870	501	5,392	5,919	35,850	3,249	232	2,711	65,742
Total New York State [b]			20,348	1,105	10,531	8,601	60,710	4,655	281	3,446	109,707

[a]Weekly reporting period in 1977 began Monday, January 3 and ended Friday, December 30

[b]No annual figures available for Seneca County

Table 32
THE SUPREME COURT—CIVIL TERMS
Actions Disposed of by Stage and Nature
and by County, District, Judicial Department, and Region
*Jan. 3, 1977 through Dec. 30, 1977**

County District Department	Dept	Dist	Before Trial							During Trial				After Trial						Grand Total
			Settled or Discontinued	Default or Consent Judgment	Marked Off Calendar	Transferred, Consolidated or Referred to Referee or Arbitration	Dismissed	Other	Total	Settled or Discontinued	Default or Consent Judgment	Dismissed	Other	Total	Settled or Discontinued	Default or Consent Judgment	Dismissed	Decision of Court	Verdict of Jury	Other	Total	
Albany	III	3	1,216	1	151	39	41	1	1,479	92	0	6	0	98	26	0	26	1,219	46	1	1,318	2,895
Allegany	IV	8	25	4	6	2	0	0	36	3	0	0	0	3	0	0	0	120	3	0	123	162
Bronx	I	1	1,585	14	239	243	7	5	2,093	225	0	14	0	241	13	1	10	3,031	108	1	4,054	6,888
Broome	III	6	101	0	97	43	0	0	331	23	0	1	0	24	0	0	0	1,001	30	0	1,031	1,386
Cattaraugus	IV	8	66	1	55	4	0	0	116	6	0	1	0	7	0	0	0	260	3	0	272	395
Cayuga	IV	7	76	6	22	12	0	1	119	6	0	0	0	6	2	0	3	170	4	0	181	309
Chautauqua	IV	5	111	3	20	18	4	1	157	4	0	0	0	4	0	0	0	609	8	0	617	778
Chemung	III	6	222	1	66	19	1	1	310	19	0	0	0	19	3	0	0	466	20	1	492	821
Chenango	III	6	25	2	32	10	0	0	70	7	2	1	0	10	0	0	3	196	9	0	208	287
Clinton	III	4	71	1	42	12	0	4	130	14	0	2	0	16	0	0	4	330	2	0	336	482
Columbia	III	3	77	1	7	1	0	0	86	9	1	0	0	10	0	0	0	113	2	0	115	211
Cortland	III	6	36	0	9	4	1	0	46	6	0	0	0	6	0	0	0	167	2	0	169	221
Delaware	III	6	40	2	34	3	0	2	80	20	0	0	0	20	0	0	0	186	2	0	188	288
Dutchess	II	9	471	2	76	60	11	3	617	48	0	1	1	50	5	1	0	804	16	0	825	1,492
Erie	IV	8	1,296	1	537	393	9	7	2,043	139	1	10	3	153	66	0	5	3,166	77	1	3,305	5,501
Essex	III	4	68	5	4	4	1	1	73	2	4	0	0	6	1	3	0	89	6	0	98	177
Franklin	III	4	39	0	5	0	1	0	45	13	0	0	0	13	0	0	2	59	3	1	64	122
Fulton	III	4	100	5	30	22	0	2	159	31	0	1	1	33	2	0	2	181	19	0	202	394
Genesee	IV	8	51	1	2	1	1	0	56	7	1	0	0	8	0	0	0	174	3	0	177	241
Greene	III	3	60	0	14	6	0	0	80	10	0	0	0	10	4	0	0	28	9	0	41	131
Herkimer	IV	5	121	8	34	7	2	0	172	13	0	0	1	14	0	0	0	177	2	0	179	370
Jefferson	IV	5	197	6	65	3	1	3	275	1	0	2	0	3	1	0	15	379	9	0	404	682
Kings	II	2	2,660	42	916	676	238	18	4,493	326	2	10	2	390	61	1	155	7,703	141	3	8,114	12,997
Lewis	IV	5	2	2	7	0	0	0	11	15	0	0	0	15	1	0	0	15	0	0	16	42
Livingston	IV	7	39	0	9	0	0	0	53	5	0	0	0	5	1	0	0	131	8	0	140	198
Madison	III	6	41	2	52	2	1	0	104	8	2	1	0	11	2	0	3	351	4	0	363	478

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Monroe	IV	8	1,266	2	882	122	8	2	2,282	57	0	2	3	62	66	0	0	2,779	99	0	2,949	5,293
Montgomery	III	4	68	0	47	7	0	12	134	16	0	0	0	16	3	0	0	187	16	0	206	358
Nassau	II	10	3,085	2	338	674	18	0	4,117	297	0	20	0	317	37	0	27	3,781	195	0	4,043	8,477
New York	I	1	3,218	55	808	818	148	230	5,280	443	11	13	2	469	214	3	21	6,306	166	15	6,725	19,174
Niagara	IV	8	320	9	44	39	1	0	413	19	0	0	0	19	0	0	1	903	34	0	998	1,430
Oneida	IV	5	478	28	118	30	41	7	702	23	0	5	0	28	2	0	1	940	8	0	951	1,681
Onondaga	IV	5	975	120	530	5	1	0	1,640	32	0	1	1	34	7	0	2	1,842	61	0	1,912	3,586
Ontario	IV	7	72	2	21	9	4	0	108	11	0	0	0	11	3	0	0	326	9	0	338	457
Orange	II	9	704	10	89	117	10	60	989	81	0	3	3	87	2	0	0	939	42	1	981	2,060
Orleans	IV	8	26	3	1	1	0	0	31	0	0	2	0	2	0	0	0	81	1	0	82	115
Oswego	IV	5	207	8	42	5	3	0	264	25	0	0	0	25	4	1	10	356	5	0	370	665
Otsego	III	6	58	3	41	4	0	2	108	6	0	0	0	6	0	0	0	205	11	0	216	330
Putnam	II	9	57	0	8	8	4	0	77	28	0	0	0	28	13	0	2	233	5	0	253	358
Queens	II	11	2,596	9	385	906	34	14	3,944	363	9	9	1	382	96	1	16	5,053	149	4	5,919	10,215
Rensselaer	III	3	368	2	9	11	1	4	396	8	0	2	0	10	2	0	0	68	16	0	80	492
Richmond	II	2	361	1	40	55	12	0	469	54	0	2	0	56	2	0	1	949	14	0	966	1,491
Rockland	II	9	796	1	110	125	11	2	1,045	62	0	7	1	60	17	0	2	781	19	0	819	1,924
St. Lawrence	III	4	139	1	15	5	0	4	164	6	0	0	0	6	0	0	2	404	7	0	413	583
Saratoga	III	4	259	7	82	15	0		365	35	7	0	0	42	3	0	2	486	23	0	511	921
Schenectady	III	4	463	7	205	233	24	1	934	92	0	1	1	94	3	0	0	682	30	2	717	1,745
Schoharie	III	3	37	0	6	1	0	0	44	3	0	0	0	3	0	0	0	38	0	0	38	85
Schuyler	III	6	19	1	7	4	1	0	32	2	0	0	0	2	0	0	0	20	1	0	27	61
Seneca[1]	IV	7																				
Steuben	IV	7	59	6	30	7	1	2	105	6	0	0	0	6	0	0	0	1	447	4	452	563
Suffolk	II	10	2,201	5	339	87	18	11	2,631	107	2	4	5	118	9	0	6	3,425	80	1	3,830	6,569
Sullivan	III	3	336	6	25	1	1	0	369	23	0	1	0	24	0	0	0	201	10	0	271	664
Tioga	III	6	45	0	27	0	0	2	74	14	2	0	0	16	4	0	0	66	6	0	66	186
Tompkins	III	6	76	4	48	2	1	0	131	19	0	2	1	22	0	0	1	344	9	0	354	507
Ulster	III	3	382	0	111	2	2	0	497	8	0	2	0	10	73	1	20	466	33	0	502	1,109
Warren	III	4	105	0	21	4	1	0	131	5	0	0	0	5	1	1	0	300	2	0	310	551
Washington	III	4	41	3	3	2	0	1	50	6	0	0	0	6	2	0	0	61	5	0	66	124
Wayne	IV	7	51	0	48	9	2	0	110	4	0	0	0	4	0	0	0	282	6	0	288	402
Westchester	II	9	1,906	14	442	491	31	32	2,916	107	1	15	36	231	22	1	14	2,932	98	7	3,071	6,211
Wyoming	IV	8	16	1	6	4	0	0	26	6	0	0	0	6	0	0	0	127	1	0	128	160
Yates	IV	7	22	1	6	8	1	0	38	3	0	0	0	3	0	0	0	68	3	0	71	111
Total District		1	4,803	69	1,045	1,561	165	240	7,873	668	13	27	2	710	227	4	31	10,227	274	16	10,519	19,362
Total District		2	2,921	43	936	734	220	18	4,892	430	2	12	2	446	63	1	186	8,702	155	3	9,080	14,118
Total District		3	2,006	10	323	61	45	6	2,951	163	1	11	0	165	105	1	55	2,193	110	1	2,471	5,587
Total District		4	1,313	29	454	304	27	26	2,185	225	11	4	2	242	15	7	47	2,721	113	3	2,909	5,336
Total District		5	1,980	181	795	60	48	15	3,009	109	0	8	2	119	15	1	28	3,709	85	0	3,836	7,026
Total District		6	755	10	412	95	5	7	1,284	124	6	5	1	136	9	3	6	3,020	91	1	3,133	4,557
Total District[1]		7	1,387	17	1,017	172	16	5	2,614	92	0	2	3	97	76	0	10	4,203	133	0	4,426	7,333
Total District		8	1,901	23	409	462	15	8	2,878	184	1	14	3	202	66	0	6	5,499	130	1	5,702	8,782
Total District		9	3,934	27	719	801	76	87	5,644	326	1	26	43	446	69	2	19	5,088	180	8	5,955	12,045
Total District		10	5,286	7	607	701	36	11	6,268	404	2	21	6	435	46	0	33	7,512	281	1	7,873	15,076
Total District		11	2,596	9	385	906	34	14	3,944	363	9	9	1	382	96	1	16	5,053	149	4	5,919	10,215
Total Department	I		4,803	69	1,045	1,561	165	240	7,873	668	13	27	2	710	227	4	31	10,227	274	16	10,519	19,362
Total Department	II		14,737	86	2,727	3,202	406	130	21,218	1,573	14	71	61	1,709	261	4	223	27,555	765	16	28,827	51,784
Total Department	III		4,602	55	1,159	409	72	41	6,424	502	18	20	3	543	129	11	108	7,037	323	5	8,513	15,480
Total Department[1]	IV		5,408	221	2,281	884	79	28	8,761	385	1	24	5	415	167	1	14	13,411	348	1	13,962	23,141
Total New York City			10,320	121	2,346	3,201	409	272	16,709	1,401	21	48	5	1,535	386	6	203	21,582	678	23	25,778	44,025
Total Outside NYC			19,290	310	4,866	2,706	268	167	27,597	1,067	22	91	59	1,842	391	14	203	34,519	1,152	16	36,303	65,742
Total New York State[1]			29,610	431	7,212	5,907	677	439	44,306	2,128	43	142	64	3,380	777	20	406	56,130	1,710	36	62,081	109,767

[1] Weekly reporting period in 1977 began Monday, January 3 and ended Friday, December 30

[1] No annual figures available for Seneca County

Table 33
THE SUPREME COURT-CIVIL TERMS
Actions Received, Disposed and Change in Pending and Projected Average Age by County, District, Judicial Department and Region
*Jan. 3, 1977 through Dec. 30, 1977**

County District Department	Dept	Dist	Beginning Pending			Received[1]			Disposed			Adjustments by Courts			Ending Pending			Change in Pending: Actions			Change in Pending: Percent			Projected Avg. Age (mos.)
			Non Matrimonial	Matrimonial	Total	Non Matrimonial	Matrimonial	Total	Non Matrimonial	Matrimonial	Total	Non Matrimonial	Matrimonial	Total	Non Matrimonial	Matrimonial	Total	Non Matrimonial	Matrimonial	Total	Non Matrimonial	Matrimonial	Total	
Albany	III	3	1,912	147	1,959	1,201	1,314	2,515	1,590	1,305	2,895	-79	-86	-165	1,404	70	1,474	-408	-77	-485	-22	-52	-24	12
Allegany	IV	8	34	9	43	39	132	171	35	127	162	0	0	0	38	14	52	+4	+5	+9	+11	+55	+20	12
Bronx	I	1	2,367	392	2,759	3,490	3,935	7,425	3,098	3,790	6,888	+21	-69	-48	2,780	468	3,248	+413	+76	+489	+17	+19	+17	10
Broome	III	6	206	37	243	368	1,002	1,370	381	1,005	1,386	-2	+2	0	191	36	227	-15	-1	-16	-7	-2	-6	6
Cattaraugus	IV	8	80	9	89	76	306	382	99	296	395	+10	10	0	67	9	76	-13	0	-13	-16	0	-14	9
Cayuga	IV	7	47	4	51	125	180	305	122	187	309	-1	+5	+4	29	2	31	+2	-2	0	+7	-50	0	3
Chautauqua	IV	8	101	46	207	137	585	722	107	611	778	+4	+4	+8	135	24	159	-26	-22	-48	-16	-47	-23	11
Chemung	III	6	240	20	275	199	601	700	313	508	821	-6	+8	+2	120	30	150	-120	+1	-119	-48	+8	-43	7
Chenango	III	4	18	6	24	87	201	288	83	204	287	0	+2	+2	22	5	27	+4	-1	+3	+22	-16	+12	3
Clinton	III	4	122	34	156	109	376	484	133	393	526	-10	+10	0	88	26	114	-34	-8	-42	-27	-23	-26	9
Columbia	III	3	89	7	96	87	109	196	99	112	211	-3	+1	-2	74	5	79	-15	-2	-17	-16	-28	-17	10
Cortland	III	6	22	12	34	40	199	248	50	203	243	+5	-8	-3	26	10	36	+4	-2	+2	+18	-16	+5	6
Delaware	III	6	90	18	108	76	177	253	98	190	288	-5	+1	-6	61	6	67	-29	-12	-41	-32	-66	-37	9
Dutchess	II	9	503	111	614	657	854	1,511	645	847	1,492	+2	-8	-6	517	110	627	+14	-1	+13	+2	0	+2	9
Erie	IV	8	5,638	397	6,035	2,099	3,594	5,693	2,105	3,396	5,501	-51	-70	-121	5,581	525	6,106	-57	+126	+71	-1	+32	+1	32
Essex	III	4	54	6	60	54	42	96	73	44	117	1	1	-2	34	3	37	-20	-3	-23	-37	-50	-38	7
Franklin	III	4	79	13	92	49	73	122	64	58	122	+6	-4	+2	80	14	94	+1	+1	+2	+1	+7	+2	18
Fulton	III	4	207	36	243	136	199	335	200	194	394	+8	0	+8	151	41	192	-56	+5	-51	-27	+13	-20	11
Genesee	IV	8	30	5	35	80	176	256	68	173	241	+2	0	+2	44	8	52	+14	+3	+17	+46	+60	+48	8
Greene	III	3	75	7	82	87	26	113	100	31	131	-4	0	-4	58	2	60	-17	-5	-22	-22	-71	-26	8
Herkimer	IV	5	160	36	196	141	196	337	181	189	370	-1	0	-1	119	43	162	-41	+7	-34	-25	+19	-17	9
Jefferson	IV	5	216	87	303	115	352	467	260	422	682	-14	+1	-13	57	18	75	-159	-69	-228	-73	-79	-75	6
Kings	II	2	5,684	558	6,242	6,358	8,037	14,395	4,672	8,255	12,927	-89	+20	-69	7,281	360	7,641	+1,597	-198	+1,399	+28	-35	+22	17
Lewis	IV	5	15	2	17	27	8	35	28	14	42	-2	+7	+5	12	3	15	-3	+1	-2	-20	+50	-11	6
Livingston	IV	7	33	8	41	66	145	211	57	141	198	-10	+6	-4	32	18	50	-1	+10	+9	-3	+125	+21	7
Madison	III	6	32	27	59	125	342	467	116	362	478	-4	0	-4	37	7	44	+5	-20	-15	+16	-74	-25	4
Monroe	IV	7	2,564	281	2,845	1,228	3,535	4,763	1,853	3,440	5,293	44	53	97	1,893	323	2,218	-669	+42	-627	-26	+14	-22	14
Montgomery	III	4	168	23	191	148	203	351	156	202	358	+2	-1	+1	162	23	185	-6	0	-6	-3	0	-3	13
Nassau	II	10	7,169	687	7,856	5,127	3,554	8,681	4,945	3,532	8,477	+3	+1	+4	7,354	710	8,064	+185	+23	+208	+2	+3	+2	18
New York	I	1	6,900	780	7,680	8,938	6,627	15,565	6,324	6,150	12,474	+2	-3	-1	9,516	1,254	10,770	+2,616	+474	+3,090	+37	+60	+40	16

Niagara	IV	8	740	69	699	807	934	1,331	488	942	1,430	−24	+7	−17	425	58	483	−115	−1	−116	−21	−1	−10	12
Oneida	IV	5	681	118	699	582	951	1,533	672	1,009	1,681	−9	+13	+4	482	73	555	−99	−46	−144	−17	−38	−20	9
Onondaga	IV	6	2,296	309	2,605	1,146	1,991	3,037	1,617	1,069	3,686	+108	+7	+115	1,933	238	2,171	−363	−71	−434	−15	−22	−16	10
Ontario	IV	7	53	20	73	84	344	428	101	356	457	+2	+1	+3	38	9	47	−16	−11	−26	−28	−55	−35	5
Orange	II	9	919	86	1,005	1,067	900	1,967	1,123	937	2,060	−2	0	−2	801	49	910	−58	−37	−95	−6	−43	+9	9
Orleans	IV	8	24	11	35	34	74	108	39	76	115	+1	−1	0	20	5	25	−4	−6	−10	−16	−54	−28	7
Oswego	IV	5	140	39	179	273	369	642	298	367	665	−2	+1	−1	113	42	155	−27	+3	−24	−19	+7	−13	5
Otsego	III	6	60	6	66	118	215	333	116	214	330	+2	+2	0	60	9	69	0	+3	+3	0	+60	+4	6
Putnam	II	9	121	0	121	210	209	419	156	202	358	0	0	0	175	7	182	+54	+7	+61	+44	0	+60	11
Queens	II	11	3,970	561	4,531	4,873	5,564	10,437	4,544	5,701	10,245	−234	+9	−225	4,005	433	4,438	−95	−128	−33	+2	22	0	11
Rensselaer	III	3	381	28	409	286	60	346	420	66	492	+81	+18	+99	322	40	362	−59	+12	−47	−15	+42	−11	10
Richmond	II	2	455	97	552	563	937	1,500	836	955	1,491	+3	+6	−3	485	73	558	+30	−24	+6	−24	−1	−1	10
Rockland	II	0	842	64	906	1,279	746	2,025	1,203	721	1,924	+2	+5	+3	916	94	1,010	+74	+30	+104	+8	+46	+11	9
St Lawrence	III	4	84	44	128	128	393	521	171	412	583	+10	+4	+6	51	21	72	−33	−23	−56	+32	−52	−43	5
Saratoga	III	4	426	54	480	263	606	769	307	624	931	+4	+4	0	288	40	328	−128	−14	−152	−32	−25	−31	11
Schenectady	III	4	1,394	153	1,547	629	880	1,509	857	888	1,745	+15	+11	+26	1,181	156	1,337	−213	+3	−210	+16	+1	+13	18
Schoharie	III	3	41	5	46	51	36	87	49	36	85	0	0	0	43	6	48	+2	0	+2	+4	0	+4	10
Schuyler	III	6	9	2	11	27	26	53	33	28	61	+1	+1	0	2	1	3	−7	+1	−8	−77	+60	+72	2
Seneca[1]	IV	7																						
Steuben	IV	7	47	27	74	105	463	568	106	457	563	+2	+5	−7	44	28	72	−3	+1	−2	+6	+3	−2	5
Suffolk	II	10	5,419	683	6,102	3,787	3,670	7,457	2,037	3,602	5,639	+101	+5	+93	6,370	683	7,053	+951	0	+951	+17	0	+15	24
Sullivan	III	3	348	21	369	263	270	533	392	272	664	+6	+12	−6	246	7	253	−103	−14	−117	−29	−56	−31	9
Tioga	III	6	56	14	70	66	62	128	88	68	156	0	0	0	34	8	42	−22	−6	−28	−30	−42	−40	6
Tompkins	III	6	91	11	102	116	374	489	142	365	507	+7	+10	−3	71	10	81	−20	−1	−21	−9	−20	−20	7
Ulster	III	3	462	19	481	442	567	1,009	553	566	1,109	+1	+12	+13	352	42	394	−110	+23	−87	−33	+121	−18	9
Warren	III	4	107	10	117	69	301	390	131	315	446	−10	+8	−2	85	4	89	−52	+6	−58	−48	−60	−49	7
Washington	III	4	51	6	57	46	60	106	68	56	124	+2	−2	0	31	8	39	−20	+2	−18	−39	+33	−31	7
Wayne	IV	7	48	17	65	87	301	388	96	306	402	−15	−6	−21	24	6	30	−24	+11	−35	−50	−54	−53	4
Westchester	II	9	3,111	400	3,511	3,488	2,095	5,583	3,544	2,667	6,211	+7	−21	−14	3,002	307	3,309	−49	−93	−142	−1	−23	−4	10
Wyoming	IV	6	29	3	32	31	127	158	33	127	160	+4	−1	+3	28	2	30	+2	−1	+7	+7	−33	+3	10
Yates	IV	7	13	4	16	27	74	101	36	75	111	0	0	0	3	3	6	−5	−1	−10	−76	−25	−62	2
Total District		1	9,207	1,172	10,439	12,428	10,662	22,990	9,422	9,940	19,362	+23	−72	−49	12,296	1,722	14,018	+3,029	+550	+3,579	+32	+46	+34	14
Total District		2	6,139	655	6,794	6,931	8,974	15,905	5,208	9,210	14,418	−86	+14	−72	7,766	433	8,199	+1,027	−222	+1,405	+26	−33	+20	16
Total District		3	3,208	234	3,442	2,407	2,382	4,879	3,309	2,378	5,687	+2	−67	−65	2,498	171	2,669	−710	−63	−773	−22	−26	−22	11
Total District		4	2,692	379	3,071	1,651	3,032	4,683	2,240	3,096	5,336	+18	+21	+39	2,121	336	2,457	−671	−43	−614	−21	−11	−19	13
Total District		5	3,408	591	3,999	2,284	3,767	6,051	3,056	3,970	7,026	+80	+29	+109	3,716	417	4,133	−692	−174	−866	−20	−20	−21	12
Total District		6	830	162	992	1,230	3,090	4,320	1,429	3,137	4,567	−10	−2	−12	630	122	752	−200	−40	−240	−24	−24	−24	6
Total District[1]		7	2,784	361	3,145	1,722	5,042	6,764	2,371	4,062	7,333	−70	−52	−122	2,003	389	2,464	−719	+28	−691	−25	+7	−21	12
Total District		8	6,553	539	7,092	3,803	5,928	9,821	3,034	5,748	8,782	−54	+14	−128	6,398	648	7,003	−195	+106	−89	+2	+19	−1	25
Total District		9	5,496	661	6,157	6,701	5,304	12,005	6,671	5,374	12,045	+5	+24	−19	5,531	567	6,098	+35	−94	−59	0	+14	0	10
Total District		10	12,588	1,370	13,958	8,014	7,224	15,238	7,882	7,194	15,076	+104	−7	+97	13,724	1,393	15,117	+1,136	+23	+1,159	+9	+1	+8	20
Total District		11	3,970	561	4,531	4,873	5,564	10,437	4,544	5,701	10,245	−234	+9	−225	4,065	433	4,498	−95	−128	−33	+2	−22	0	11
Total Department	I		9,207	1,172	10,439	12,428	10,662	22,990	9,422	9,940	19,362	+23	−72	−49	12,296	1,722	14,018	+3,029	+550	+3,579	+32	+46	+34	14
Total Department	II		28,193	3,247	31,440	27,109	27,066	54,175	24,305	27,479	51,784	−211	−5	−216	31,060	2,826	33,912	+2,893	−421	+2,472	+10	12	+7	15
Total Department	III		6,730	775	7,505	5,378	8,513	13,891	6,869	8,611	15,480	+10	+48	−38	5,249	629	5,878	−1,481	−146	−1,627	−22	−16	−21	10
Total Department[1]	IV		12,745	1,491	14,236	6,899	14,737	21,636	8,461	14,680	23,141	−44	−97	−141	11,139	1,461	12,599	−1,606	−40	−1,646	−12	−2	−11	17
Total New York City			19,376	2,366	21,764	24,222	25,100	49,322	19,174	24,851	44,025	−297	−49	−346	24,127	3,288	26,715	+1,751	+200	+1,951	+24	+8	+22	14
Total outside NYC[1]			37,859	4,297	41,856	27,892	35,778	63,670	29,683	35,859	65,742	+75	−176	−101	35,043	1,040	39,083	−1,916	−257	−2,173	−5	−5	−5	15
Total New York State[1]			56,035	6,663	63,620	52,114	60,878	112,992	48,857	60,710	109,767	−222	−225	−447	59,770	6,628	66,398	+2,835	−57	+2,778	+4	0	+4	14

*Weekly reporting period in 1977 began Monday, January 3 and ended Friday, December 30.
[1] No annual figures available for Seneca County

Table 34
THE COUNTY COURTS — CIVIL TERMS
Actions Received by Type
and by County, District and Judicial Department
*Jan. 3, 1977 through Dec. 30, 1977**

County District Department	Dept.	Dist.	Tort			Contract	Tax Certerorari	Condemnation	All Other	Total
			Motor Vehicle	Medical Malpractice	Other Tort					
Albany	III	3	14	.....	5	30	.....	.....	7	56
Allegany	IV	8	.....	.....	.....	9	.....	.....	1	10
Broome	III	6	.....	.....	.....	.....	.....	.....	.....	.....
Cattaraugus	IV	8	.....	.....	4	3	.....	.....	5	12
Cayuga	IV	7	2	.....	6	35	.....	.....	7	49
Chautauqua	IV	8	.....	.....	.....	8	.....	.....	1	9
Chemung	III	6	2	.....	.....	4	.....	.....	.....	6
Chenango	III	6	3	.....	3	12	.....	.....	1	19
Clinton	III	4	2	.....	2	11	.....	.....	1	16
Columbia	III	3	2	.....	2	12	.....	.....	3	19
Cortland	III	6	.....	.....	1	.....	.....	.....	1	2
Delaware	III	6	1	.....	3	1	.....	.....	4	9
Dutchess	II	9	55	.....	25	82	.....	.....	8	170
Erie	IV	8	2	.....	.....	2	.....	.....	6	10
Essex	III	4	2	.....	4	2	.....	.....	2	10
Franklin	III	4	2	.....	.....	3	.....	.....	.....	5
Fulton	III	4	20	.....	16	16	1	.....	2	55
Genesee	IV	8	1	.....	.....	15	.....	.....	8	24
Greene	III	3	4	.....	2	9	.....	.....	4	19
Hamilton	III	4	1	.....	.....	.....	.....	.....	1	2
Herkimer	IV	5	2	.....	.....	8	.....	.....	1	11
Jefferson	IV	5	.....	.....	5	13	.....	.....	1	19
Lewis	IV	5	1	.....	.....	1	.....	.....	1	3
Livingston	IV	7	5	.....	1	19	.....	.....	4	29
Madison	III	6	5	.....	1	9	.....	.....	1	16
Monroe	IV	7	.....	.....	.....	.....	.....	.....	.....	.....
Montgomery	III	4	3	.....	1	8	.....	.....	2	14
Nassau	II	10	257	1	132	.....	.....	.....	.....	390
Niagara	IV	8	.....	.....	.....	.....	.....	.....	.....	.....

Oneida	IV	5	...	...	...	1	...	...	...	1
Onondaga	IV	5	1	...	....	3	...	...	1	5
Ontario	IV	7	4	...	....	7	...	...	2	13
Orange	II	9	110	1	32	93	...	...	4	240
Orleans	IV	8	...	...	....	.....	...	...	...	...
Oswego	IV	5	...	...	...	.....	...	...	...	...
Otsego	III	6	2	...	....	8	...	...	4	14
Putnam	II	9	9	...	13	25	....	...	6	52
Rensselaer	III	3	6	...	4	15	...	...	1	26
Rockland	II	9	102	2	68	109	...	...	4	275
St. Lawrence	III	4	2	...	2	13	...	...	20	37
Saratoga	III	4	18	...	8	47	...	...	6	79
Schenectady	III	4	101	1	52	39	...	...	13	206
Schoharie	III	3	2	...	1	4	...	...	...	7
Schuyler	III	6	2	...	1	3	...	...	...	6
Seneca[1]	IV	?	...	...	....	.....	...	...	...	...
Steuben	IV	7	2	...	9	44	...	...	...	55
Suffolk	II	10	15	...	26	27	...	...	...	68
Sullivan	III	3	2	...	2	6	...	...	...	10
Tioga	III	6	...	...	....	2	...	...	3	5
Tompkins	III	6	1	...	....	3	...	..	...	4
Ulster	III	3	2	...	...	14	...	...	2	18
Warren	III	4	4	...	6	31	...	...	...	40
Washington	III	4	3	...	1	13	...	...	1	18
Wayne	IV	7	5	...	3	15	...	...	9	32
Westchester	II	9	311	9	158	341	...	...	8	827
Wyoming	IV	8	...	...	1	5	...	...	...	6
Yates	IV	7	1	...	3	7	...	...	...	11
Total District		3	32	...	10	90	...	...	17	155
Total District		4	158	1	91	183	1	...	48	482
Total District		5	4	...	5	26	...	...	4	39
Total District		6	10	...	9	42	...	...	14	81
Total District[1]		7	19	...	21	127	...	...	22	189
Total District		8	3	...	5	42	...	...	21	71
Total District		9	587	12	286	550	...	...	20	1,564
Total District		10	272	1	158	27	...	...	...	458
Total Department	II		859	13	444	677	...	...	29	2,022
Total Department	III		206	1	116	315	1	...	79	718
Total Department[1]	IV		26	...	31	195	...	...	47	259
Total Outside NYC[1]			1,091	14	591	1,187	1	...	155	3,039

NOTE. There are no County Courts in New York City.
•Weekly reporting period in 1977 began Monday, January 3 and ended Friday, December 30
[1] No annual figures available for Seneca County.

Table 35
THE COUNTY COURTS — CIVIL TERMS
Actions Disposed of by Type
and by County, District and Judicial Department
*Jan. 3, 1977 through Dec. 30, 1977**

County District Department	Dept	Dist	Tort			Contract	Tax Certiorari	Condemnation	All Other	Total
			Motor Vehicle	Medical Mal practice	Other Tort					
Albany	III	3	26		4	69			9	108
Allegany	IV	8				10				10
Broome	III	6								
Cattaraugus	IV	8	1			8			4	13
Cayuga	IV	7	1		2	11			4	18
Chautauqua	IV	8			1	14			2	17
Chemung	III	6	2		1	6			4	13
Chenango	III	6	2		1	11				14
Clinton	III	4	3		1	7			3	14
Columbia	III	3	1		1	8			3	12
Cortland	III	6								
Delaware	III	6			3	5			4	12
Dutchess	II	9	154		61	297			7	519
Erie	IV	8	3			7			5	15
Essex	III	4	1		3	4			2	10
Franklin	III	4			1	4				5
Fulton	III	4	16		12	19			1	48
Genesee	IV	8	1			10			6	17
Greene	III	3	6		1	16	1		5	29
Hamilton	III	4	1						3	4
Herkimer	IV	5	3		1	5				9
Jefferson	IV	5	2		3	24			4	33
Lewis	IV	5	2			2			5	9
Livingston	IV	7			1	4			6	11
Madison	III	6	2		1	7				10
Monroe	IV	7								
Montgomery	III	4	5		4	13			4	26
Nassau	II	10	65		41	1				106
Niagara	IV	8								
Oneida	IV	5				1				1

Onondaga	IV	5	. . .	. . . .	. . . .	. . . .	. . . .	. . . .	. . .	. . .
Ontario	IV	7	6	. . . .	. . . .	13	. . . .	. . . .	1	20
Orange	II	9	270	. . . .	77	102	. . . .	. . . .	1	450
Orleans	IV	8	. . . .	. . . .	1	. . . .	. . . .	. . . .	. . .	1
Oswego	IV	5	8	. . . .	1	30	. . . .	. . . .	3	42
Otsego	III	6	5	. . . .	3	12	. . . .	. . . .	6	26
Putnam	II	9	21	. . . .	17	27	. . . .	. . . .	10	75
Rensselaer	III	3	15	. . . .	8	49	. . . .	. . . .	. . .	72
Rockland	II	9	303	2	135	184	. . . .	1	4	629
St. Lawrence	III	4	2	. . . .	2	19	. . . .	. . . .	29	52
Saratoga	III	4	18	. . . .	20	41	. . . .	. . . .	4	83
Schenectady	III	4	92	4	42	81	. . . .	. . . .	12	231
Schoharie	III	3	4	. . . .	1	4	. . . .	. . . .	4	13
Schuyler	III	6	. . . .	. . . .	2	4	. . . .	. . . .	1	7
Seneca[1]	IV	7	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .	. . .	. .
Steuben	IV	7	1	. . . .	9	41	. . . .	. . . .	. . .	51
Suffolk	II	10	39	. . . .	20	45	. . . .	. . . .	. . .	104
Sullivan	III	3	6	. . . .	3	12	. . . .	. . . .	2	23
Tioga	III	6	. . . .	. . . .	. . .	2	. . . .	. . . .	1	3
Tompkins	III	6	3	. . . .	3	6	. . . .	. . . .	. . .	12
Ulster	III	3	. . . .	. . . .	2	. . . .	. . . .	. . . .	. . .	2
Warren	III	4	2	. . . .	. . .	20	. . . .	. . . .	7	29
Washington	III	4	1	. . . .	4	5	. . . .	. . . .	. . .	10
Wayne	IV	7	3	. . . .	3	18	. . . .	. . . .	9	33
Westchester	II	9	466	4	185	290	. . . .	. . . .	10	955
Wyoming	IV	8	1	. . . .	2	5	. . . .	. . . .	1	9
Yates	IV	7	. . . .	. . . .	1	8	. . . .	. . . .	1	10
Total District		3	58	. . . .	20	168	1	. . . .	22	259
Total District		4	141	4	80	213	. . . .	. . . .	65	512
Total District		5	15	. . . .	5	62	. . . .	. . . .	12	94
Total District		6	14	. . . .	14	53	. . . .	. . . .	16	97
Total District[1]		7	11	. . . .	13	95	. . . .	. . . .	21	143
Total District		8	6	. . . .	4	54	. . . .	. . . .	18	82
Total District		9	1,214	6	475	900	. . . .	1	32	2,628
Total District		10	104	. . . .	61	45	. . . .	. . . .	. . .	210
Total Department	II		1,318	6	536	945	. . .	1	32	2,838
Total Department	III		213	4	123	424	1	. . . .	103	868
Total Department[1]	IV		32	. . .	25	211	. . .	. . .	51	319
Total Outside NYC[1]			1,563	10	684	1,580	1	1	186	4,025

NOTE: There are no County Courts in New York City.
*Weekly reporting period in 1977 began Monday, January 3 and ended Friday, December 30.
[1] No annual figures available for Seneca County.

Table 36
THE COUNTY COURTS—CIVIL TERMS
Actions Disposed of by Stage and Nature
and by County, District, and Judicial Department
*Jan. 3, 1977 through Dec. 30, 1977**

County District Department	Dept	Dist	Before Trial							During Trial					After Trial							Grand Total
			Settled or Discontinued	Default or Consent Judgment	Marked off Calendar	Transferred, Consolidated or Referred to Referee or Arbitration	Dismissed	Other	Total	Settled or Discontinued	Default or Consent Judgment	Dismissed	Other	Total	Settled or Discontinued	Default or Consent Judgment	Dismissed	Decision of Court	Verdict of Jury	Other	Total	
Albany	III	3	91	1	11	2	.	.	105	.	.	.	.	.	3	.	.	.	.	.	3	108
Allegany	IV	8	1	7	.	.	.	.	8	1	.	.	.	1	.	.	.	1	.	.	1	10
Broome[1]	III	6	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.
Cattaraugus	IV	8	7	.	3	1	.	.	11	.	.	.	.	.	.	.	1	.	1	.	2	13
Cayuga	IV	7	8	3	.	.	.	.	11	1	.	.	.	1	3	.	.	2	1	.	6	18
Chautauqua	IV	8	8	1	1	2	.	.	12	.	.	.	.	.	.	.	.	5	.	.	5	17
Chemung	III	6	10	.	1	2	.	.	13	.	.	.	.	.	.	.	.	.	.	.	.	13
Chenango	III	6	10	.	1	.	.	.	11	.	.	.	.	.	.	.	.	2	1	.	3	14
Clinton	III	4	6	.	2	6	.	.	14	.	.	.	.	.	.	.	.	.	.	.	.	14
Columbia	III	3	6	2	.	.	.	.	8	2	.	.	.	2	.	.	1	1	.	.	2	12
Cortland	III	6	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.
Delaware	III	6	4	.	1	.	.	.	5	.	.	.	.	.	.	.	.	6	1	.	7	12
Dutchess	II	9	329	21	14	109	2	.	476	14	.	.	.	14	.	.	.	14	15	.	29	519
Erie	IV	8	2	.	10	3	.	.	15	.	.	.	.	.	.	.	.	.	.	.	.	15
Essex	III	4	6	.	1	.	1	.	8	1	.	.	.	1	.	.	.	.	1	.	1	10
Franklin	III	4	4	.	.	.	.	.	4	1	.	.	.	1	.	.	.	.	.	.	.	5
Fulton	III	4	26	1	4	.	.	.	31	5	.	1	.	5	.	.	.	9	3	.	12	48
Genesee	IV	8	9	.	3	.	.	.	12	1	.	.	.	2	.	.	.	1	2	.	3	17
Greene	III	3	19	1	3	.	.	.	23	2	.	.	.	2	1	.	1	.	2	.	4	29
Hamilton	III	4	3	.	.	.	.	.	4	.	.	.	.	.	.	.	.	.	.	.	.	4
Herkimer	IV	5	6	3	.	.	.	1	8	.	.	.	.	.	.	.	.	1	.	.	1	9
Jefferson	IV	5	16	3	4	4	.	.	28	.	.	.	.	.	.	.	.	4	1	.	5	33
Lewis	IV	6	1	2	.	.	.	.	3	1	.	.	.	1	4	.	.	1	.	.	5	9
Livingston	IV	7	7	1	1	.	.	.	9	.	.	.	.	.	.	.	.	2	.	.	2	11
Madison	III	6	4	.	2	.	.	.	8	.	.	.	.	.	.	.	.	1	1	.	2	10
Monroe[1]	IV	7	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.

Montgomery	III	4	11	.	4	1	.	.	16	2	.	.	.	2	.	.	.	3	5	.	8	26
Nassau	II	10	82	.	.	24	.	.	106	.	.	.	.	.	.	.	.	.	.	.	.	106
Niagara[1]	IV	8	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.
Oneida	IV	5	.	.	.	1	.	.	1	.	.	.	.	.	.	.	.	.	.	.	.	1
Onondaga[1]	IV	0	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.
Ontario	IV	7	13	2	2	.	1	.	18	.	.	.	.	.	.	.	.	.	2	.	2	20
Orange	II	9	298	13	12	89	5	3	420	14	.	.	.	14	.	.	.	4	11	1	16	450
Orleans	IV	8	1	.	.	.	.	.	1	.	.	.	.	.	.	.	.	.	.	.	.	1
Oswego	IV	5	3	.	1	38	.	.	42	.	.	.	.	.	.	.	.	.	.	.	.	42
Otsego	III	6	14	2	3	.	1	.	20	.	.	.	.	.	.	.	.	4	2	.	6	26
Putnam	II	9	24	.	1	19	.	.	44	10	.	.	.	10	6	.	.	15	.	.	21	75
Rensselaer	III	5	41	4	1	.	2	3	51	3	.	1	.	4	9	.	.	1	7	.	17	72
Rockland	II	9	488	15	20	24	5	4	556	27	1	2	.	30	8	.	1	19	15	.	43	629
St. Lawrence	III	4	19	4	2	7	1	2	35	4	.	1	.	5	.	.	.	9	3	.	12	52
Saratoga	III	4	47	1	10	2	3	.	63	1	.	2	.	3	.	.	.	7	10	.	17	83
Schenectady	III	4	74	.	18	98	4	.	194	17	.	.	.	17	1	.	.	7	12	.	20	231
Schoharie	III	3	8	.	1	.	.	.	9	1	.	.	.	1	.	.	.	1	2	.	3	13
Schuyler	III	0	4	.	.	.	.	.	4	.	.	.	.	.	.	.	.	2	1	.	3	7
Seneca[2]	IV	7	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.
Steuben	IV	7	17	20	3	1	.	2	40	1	.	.	.	1	.	.	.	1	.	.	1	51
Suffolk	II	10	64	11	12	8	.	.	95	3	.	2	.	5	.	.	1	1	2	.	4	104
Sullivan	III	3	14	3	5	.	.	.	22	.	.	.	.	.	.	.	.	.	1	.	1	23
Tioga	III	6	.	.	.	.	.	.	.	1	.	.	.	1	.	.	.	1	.	.	2	3
Tompkins	III	6	10	.	.	.	.	.	10	.	.	.	.	.	.	.	.	1	1	.	2	12
Ulster	III	3	1	.	1	.	.	.	2	.	.	.	.	.	.	.	.	.	.	.	.	2
Warren	III	4	10	.	.	.	.	.	10	0	.	1	.	10	.	.	.	1	2	.	3	20
Washington	III	4	5	.	.	.	.	.	5	5	.	.	.	5	.	.	.	.	.	.	.	10
Wayne	IV	7	22	2	4	.	.	.	28	.	.	.	.	.	.	.	.	4	1	.	5	33
Westchester	II	9	820	1	85	292	1	1	900	.	.	.	.	.	.	.	.	35	12	8	55	955
Wyoming	IV	8	6	.	.	2	.	.	8	.	.	.	.	.	.	.	.	1	.	.	1	9
Yates	IV	7	4	.	1	.	.	.	5	.	.	.	.	.	.	.	.	4	1	.	5	10
Total District		3	180	11	22	2	2	3	220	8	.	1	.	9	13	.	2	3	12	.	30	250
Total District		4	217	6	41	114	8	4	390	45	.	4	.	49	1	.	.	30	36	.	73	512
Total District		5	25	8	5	43	1	.	82	1	.	.	.	1	4	.	.	6	1	.	11	94
Total District		6	56	2	10	2	1	.	71	1	.	.	.	1	.	.	1	17	7	.	25	97
Total District[3]		7	71	34	11	1	1	2	120	2	.	.	.	2	3	.	.	13	8	.	21	143
Total District		8	34	8	17	8	.	.	67	2	.	1	.	3	.	.	1	8	3	.	12	82
Total District		9	1,000	50	132	533	13	8	2,396	65	1	2	.	68	14	.	1	87	53	9	164	2,628
Total District		10	146	11	12	32	.	.	201	3	.	2	.	5	.	.	1	1	2	.	4	210
Total Department	II		1,806	61	144	565	13	8	2,597	68	1	4	.	73	14	.	2	88	55	9	168	2,838
Total Department	III		453	19	73	118	11	7	681	54	.	5	.	59	14	.	3	56	65	.	128	868
Total Department[3]	IV		130	50	33	52	2	2	269	5	.	1	.	6	?	.	1	27	9	.	44	319
Total Outside NYC[4]			2,389	130	250	735	26	17	3,547	127	1	10	.	138	35	.	6	171	119	9	340	4,035

NOTE There are no County Courts in New York City

[a]Weekly reporting period in 1977 began Monday, January 3 and ended Friday, December 30.

[1]No civil trial activity.

[2]No annual figures available for Seneca County.

Table 37

THE COUNTY COURTS—CIVIL TERMS

Actions Received, Disposed and Change in Pending and Projected Average Age by County, District and Judicial Department

*Jan. 3, 1977 through Dec. 30, 1977**

County District Department	Dept.	Dist.	Beginning Pending	Total Received[1]	Total Disposed	Adjustments By Courts	Ending Pending	Change in Pending		Projected Avg Age (mos.)
								Actions	Percent	
Albany	III	3	145	96	108	−5	88	−57	−39	13
Allegany	IV	8	3	10	10	. . .	3	. . .	. . .	4
Broome	III	6	. . .	. . .	. . .	. . .	. . .	. . .	. . .	. . .
Cattaraugus	IV	8	13	12	13	−2	10	−3	−23	11
Cayuga	IV	7	3	49	18	−12	22	+19	+633	8
Chautauqua	IV	8	5	9	17	+4	1	−4	−80	2
Chemung	III	6	22	6	13	. . .	15	−7	−32	17
Chenango	III	6	2	18	14	−1	6	+4	+200	3
Clinton	III	4	18	16	14	. . .	20	+2	+11	16
Columbia	III	3	30	19	12	−2	44	+5	+13	42
Cortland	III	6	. . .	2	. . .	. . .	2	+2	. . .	. . .
Delaware	III	6	7	9	12	+1	5	−2	−29	6
Dutchess	II	9	447	170	519	+8	106	−341	−76	6
Erie	IV	8	21	10	15	. . .	16	−5	−24	15
Essex	III	4	8	10	10	−1	7	−1	−13	9
Franklin	III	4	4	5	5	−1	3	−1	−25	8
Fulton	III	4	55	55	48	−12	50	−5	−9	13
Genesee	IV	8	7	24	17	+2	16	+9	+129	8
Greene	III	3	44	19	39	−1	33	−11	−25	16
Hamilton	III	4	3	2	4	. . .	1	−2	−67	6
Herkimer	IV	5	6	11	9	. . .	8	+2	+33	9
Jefferson	IV	5	31	19	33	. . .	17	−14	−45	9
Lewis	IV	5	6	3	9	. . .	. .	−6	−100	4
Livingston	IV	7	12	20	11	−16	15	+3	+25	15
Madison	III	6	7	16	10	−1	12	+5	+71	11
Monroe	IV	7	. . .	. . .	. . .	. . .	. . .	. . .	. . .	. . .
Montgomery	III	4	30	14	26	+3	21	−9	−30	12
Nassau	II	10	. . .	390	106	+2	286	+286	. . .	16
Niagara	IV	8	. . .	. . .	. . .	. . .	. . .	. . .	. . .	. . .
Oneida	IV	5	23	1	1	. . .	23	. . .	. . .	276

Onondaga	IV	5	.	5	.	. . .	5	+5	0	0
Ontario	IV	7	15	13	20	+2	10	-5	-33	8
Orange	II	9	563	240	450	. . .	353	-210	-37	12
Orleans	IV	8	1	. . .	1	. . .	. . .	-1	-100	0
Oswego	IV	5	42	. . .	42	. . .	. . .	-42	-100	6
Otsego	III	6	17	14	26	. . .	5	-12	-71	5
Putnam	II	9	72	52	75	-3	46	-26	-36	9
Rensselaer	III	3	85	26	72	+1	40	-45	-53	10
Rockland	II	9	538	275	629	-1	203	-335	-64	7
St. Lawrence	III	4	46	37	52	+1	32	-14	-30	9
Saratoga	III	4	80	70	83	-8	68	-12	-15	11
Schenectady	III	4	272	206	231	. . .	247	-26	-9	13
Schoharie	III	3	5	7	13	+2	1	-4	-80	3
Schuyler	III	6	3	6	7	+2	4	+1	+33	6
Seneca[1]	IV	7	. . .	. . .	. . .	. . .	. . .	. . .	. . .	. . .
Steuben	IV	7	17	55	61	-4	17	. . .	. . .	4
Suffolk	II	10	79	68	104	-1	42	-37	-47	7
Sullivan	III	3	30	10	23	+2	28	-11	-28	17
Tioga	III	6	2	6	3	. . .	4	+2	+100	12
Tompkins	III	6	12	4	12	. . .	4	-8	-67	8
Ulster	III	3	143	18	2	. . .	150	+16	+11	006
Warren	III	4	12	40	29	-1	22	+10	+83	7
Washington	III	4	16	18	10	-1	23	+7	+44	23
Wayne	IV	7	7	32	33	+6	12	+5	+71	3
Westchester	II	9	842	827	955	-12	702	-140	-17	10
Wyoming	IV	8	9	6	9	-1	5	-4	-44	9
Yates	IV	7	6	11	10	-1	6	. . .	. . .	7
Total District		3	500	105	259	-3	393	-107	-21	21
Total District		4	544	482	512	-20	494	-50	-9	12
Total District		5	108	30	94	0	53	-55	-51	10
Total District		6	72	81	97	+1	67	-15	-21	8
Total District[1]		7	60	180	143	-24	82	+22	+37	6
Total District		8	59	71	82	+3	51	-8	-14	8
Total District		9	2,482	1,504	2,628	-8	1,410	-1,072	-43	9
Total District		10	79	458	210	+1	328	+249	+315	12
Total Department	II		2,561	2,022	2,838	-7	1,738	-823	-32	9
Total Department	III		1,116	718	868	-22	944	-172	-15	14
Total Department	IV		227	200	319	-21	186	-41	-18	8
Total outside NYC[1]			3,004	3,039	4,025	-50	2,868	-1,036	-27	10

NOTE There are no County Courts in New York City.
*Weekly reporting period for 1977 began Monday, January 3 and ended Friday, December 30.
[1]No annual figures available for Seneca County.

Table 38
THE CIVIL COURT OF THE CITY OF NEW YORK
Actions and Special Proceedings Received[1]
by Type and by County
Jan. 1, 1977 through Dec. 31, 1977

County	Civil Action Parts				Housing Part										
	Actions				Actions and Special Proceedings to:										
	Tort	Commercial	Equity	Total	Impose Penalties	Recover Costs	Enforce Liens	Issue Injunctions	Appoint Receiver	Remove Violations of Record	Compel Compliance	Fuel Adjustment Pass Along	Article 7a Proceedings	Total	Grand Total
Bronx[2]	3,742	1,308	.....	5,050	77	4	.....	18	2	.....	295	23	1	419	5,469
Kings	12,140	5,964	.....	18,104	202	30	.....	.....	.....	.....	105	15	.....	361	18,465
New York	14,316	12,050	.....	26,366	36	72	2	125	2	.....	193	51	3	482	26,848
Queens	11,662	4,520	.....	16,182	56	7	.....	105	.....	9	86	8	1	274	16,456
Richmond	635	540	.....	1,175	.....	.....	.....	.....	.....	.....	12	.....	.....	12	1,187
Total New York City	42,495	24,382	.....	66,877	371	122	2	248	4	9	691	96	5	1,548	68,425
Bronx Arbitration	686	762	.....	1,448	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	1,448

[1] Total of new actions and special proceedings plus restorations plus transfers from other courts plus and/or minus transfers within court.
[2] Not including Compulsory Arbitration.

Table 39
THE CIVIL COURT OF THE CITY OF NEW YORK
Actions and Special Proceedings Disposed by Type and by County
Jan. 1, 1977 through Dec. 31, 1977

County	Civil Action Parts — Actions				Housing Part — Actions and Special Proceedings to										
	Tort	Commercial	Equity	Total	Impose Penalties	Recover Costs	Enforce Liens	Issue Injunctions	Appoint Receiver	Remove Violations of Record	Compel Compliance	Adjustment Pass Along	Article 7a Proceedings	Total	Grand Total
Bronx[1]	3,589	1,272	.....	4,861	123	5	.....	20	2	.....	263	15	1	434	5,295
Kings	12,174	6,692	.....	18,866	117	15	.....	.....	.....	.....	84	9	.....	225	19,091
New York	15,781	11,906	.....	27,687	41	68	.....	71	3	2	131	52	3	371	28,058
Queens	10,056	4,403	.....	14,459	61	10	2	109	.....	0	82	7	1	281	14,740
Richmond	709	661	.....	1,370	.....	.....	.....	.....	.....	.....	12	.....	.....	12	1,382
Total New York City	42,309	24,934	.....	67,243	347	98	2	200	5	11	572	83	5	1,323	68,566
Bronx Arbitration	733	795	.....	1,528	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	1,528

[1] Not including Compulsory Arbitration

Table 40
THE CIVIL COURT OF THE CITY OF NEW YORK
Actions and Special Proceedings Disposed of by Stage and Nature and by County
Jan. 1, 1977 through Dec. 31, 1977

A. CIVIL ACTION PARTS

County	Before Trial				During Trial		After Trial		Interim Dispositions	Adjustments by Court	Total
	Settled, Discontinued or Dismissed	Default Judgment (Inquest)	Marked off Calendar[1]	Consent Judgment	Settled or Discontinued	Dismissed	Decision of Court	Verdict of Jury	Disagreement or Mistrial		
Bronx[2]	3,946	520	127	...	91	6	82	85	4	.....	4,861
Kings	13,081	2,380	2,034	28	629	38	428	268	30	.....	18,866
New York	20,034	2,763	3,099	26	462	27	932	305	49	.....	27,087
Queens	9,717	1,371	2,684	4	169	21	324	143	26	.....	14,459
Richmond	969	152	106	...	43	1	62	23	10	.....	1,370
Total New York City	47,711	7,186	8,050	58	1,304	93	1,828	804	119	.....	67,243
Bronx Arbitration	...	.....	.....	.....	...	.....	...	.....	...	.....	.....	1,528

[1] Includes 4 cases that went to the military reserve calendar.
[2] Not including Compulsory Arbitration.

B. HOUSING PART

County	Before Trial			During Trial		After Trial		Interim Dispositions	Adjustments by Court	Total
	Settled, Discontinued or Dismissed	Default Judgment (Inquest)	Marked off Calendar	Settled or Discontinued	Dismissed	Decision of Court	Verdict of Jury	Disagreement or Mistrial		
Bronx	310	1	2	14	...	107	...	...	...	434
Kings	154	22	2	27	1	19	...	...	...	225
New York	338	20	1	...	...	12	...	...	...	371
Queens	186	33	24	31	...	7	...	...	...	281
Richmond	12	...	...	...	...	.....	...	...	...	12
Total New York City	1,000	76	29	72	1	145	...	...	...	1,323

Table 41

THE CIVIL COURT OF THE CITY OF NEW YORK

Actions and Special Proceedings Received, Disposed and Change in Pending and Projected Average Age by Part and by County

Jan. 1, 1977 through Dec. 31, 1977

County	Beginning Pending			Received[1]			Disposed			Adjustments by Court			Ending Pending[2]			Change in Pending						Projected Avg. Age (mos.)
																Number			Percent			
	Civil Action Parts	Housing Part	Total	Civil Action Parts	Housing Part	Total	Civil Action Parts	Housing Part	Total	Civil Action Parts	Housing Part	Total	Civil Action Parts	Housing Part	Total	Civil Action Parts	Housing Part	Total	Civil Action Parts	Housing Part	Total	
Bronx*	1,503	119	1,622	5,050	419	5,469	4,861	434	5,295	...	...	...	1,692	104	1,796	+189	−15	+174	+12.6	−12.6	+10.7	3.9
Kings	5,111	94	5,205	18,104	361	18,465	18,866	225	19,091	...	...	...	4,349	230	4,579	−762	+136	−626	−14.9	+111.7	−12.0	3.9
New York	7,521	84	7,605	26,366	482	26,848	27,687	371	28,058	+361	...	+361	6,561	195	6,756	−960	+111	−849	−12.8	+132.1	−11.2	3.1
Queens	3,367	12	3,379	16,182	274	16,456	14,459	281	14,740	...	...	...	5,090	5	5,095	+1,723	−7	+1,716	+51.2	−58.3	+50.8	5.5
Richmond	646	2	648	1,175	12	1,187	1,370	12	1,382	...	...	...	451	2	453	−195	0	−195	−30.2	0	−30.1	1.8
Total New York City	18,148	311	18,459	66,877	1,548	68,425	67,243	1,323	68,566	+361	...	+361	18,143	536	18,679	−5	+225	+220	0	+72.3	+1.2	3.2
Bronx Arbitration	294	...	294	1,448	...	1,448	1,528	...	1,528	...	...	...	214	...	214	−80	...	−80	−27.2	...	−27.2	2.0

*Not including Compulsory Arbitration.

[1]Total of new actions and special proceedings plus restorations plus transfers from other courts plus and/or minus transfers within court.

[2]The ending pending actions of the Civil Action Parts consisted of 7,486 jury and 10,657 non-jury, the ending pending actions and special proceedings of the Housing Part were (all non-jury.)

Table 42
THE CIVIL COURT OF THE CITY OF NEW YORK
Summary Proceedings Received[1]
by Type
Jan. 1, 1977 through Dec. 31, 1977

County	Housing Part			Non-Housing Part			Grand Total		
	Jury	Non-Jury	Total	Jury	Non-Jury	Total	Jury	Non-Jury	Total
Bronx	-2	21,362	21,360	...	491	491	-2	21,853	21,851
Kings	60	19,910	19,970	11	796	807	71	20,706	20,777
New York	254	18,223	18,477	110	3,555	3,665	364	21,778	22,142
Queens	14	8,138	8,152	3	421	424	17	8,559	8,576
Richmond	1	754	755	...	37	37	1	791	792
Total New York City	327	68,387	68,714	124	5,300	5,424	451	73,687	74,138

[1] Total of new summary proceedings plus restorations plus and/or minus transfers within court. There were additional 351,058 petitions filed in which no answer was filed. Of these about 38 percent resulted in the clerk entering default judgments for which warrants were issued.

Table 43

THE CIVIL COURT OF THE CITY OF NEW YORK

Summary Proceedings Disposed by Type

Jan. 1, 1977 through Dec. 31, 1977

County	Housing Part			Non-Housing Part			Grand Total		
	Jury	Non-Jury	Total	Jury	Non-Jury	Total	Jury	Non-Jury	Total
Bronx	2	21,087	21,089	...	509	509	2	21,596	21,598
Kings	107	20,240	20,347	10	823	833	117	21,063	21,180
New York	38	18,007	18,045	96	2,819	2,915	134	20,826	20,960
Queens	11	8,137	8,148	1	430	431	12	8,567	8,579
Richmond	1	755	756	...	35	35	1	790	791
Total New York City	159	68,226	68,385	107	4,616	4,723	266	72,842	73,108

Table 44

THE CIVIL COURT OF THE CITY OF NEW YORK

Summary Proceedings Disposed of

By Stage and Nature and by County

Jan. 1, 1977 through Dec. 31, 1977

County	Before Trial					During Trial		After Trial		Interim Disposi-tions	Adjust-ments by Court	Total
	Settled, Discon-tinued or Dis-missed	Default-No Inquest	Inquest by Court	Marked off Calen-dar	Referred to Referee	Settled or Discon-tinued	Dis-missed	Deci-sion of Court	Verdict of Jury	Disagree-ment or Mistrial		
Bronx	13,719	5,246	181	69	.....	9	8	2,365	...	1	.....	21,598
Kings	11,291	5,479	426	17	.....	1,014	214	2,723	10	4	.....	21,180
New York	15,049	4,069	653	105	2	66	50	926	20	22	.....	20,960
Queens	5,070	1,435	447	6	.....	1,358	6	255	1	1	.....	8,579
Richmond	322	81	37	5	.....	2	...	344	...	...	.....	791
Total New York City	45,451	16,310	1,744	202	2	2,449	278	6,613	31	28	.....	73,108

Table 45

THE CIVIL COURT OF THE CITY OF NEW YORK

Summary Proceedings Received, Disposed and Change in Pending by Calendar and by County

Jan. 1, 1977 through Dec. 31, 1977

County	Beginning Pending			Received[1]			Disposed			Adjustments by Court			Ending Pending[2]			Change in Pending					
																Number			Percent		
	Jury	Non-Jury	Total	Jury	Non-Jury	Total	Jury	Non-Jury	Total	Jury	Non-Jury	Total	Jury	Non-Jury	Total	Jury	Non-Jury	Total	Jury	Non-Jury	Total
Bronx[3]	8	2,109	2,117	−2	21,853	21,851	2	21,696	21,698	...	...	...	4	2,366	2,370	−4	+257	+253	−50.0	+12.2	+12.0
Kings	110	911	1,030	71	20,706	20,777	117	21,063	21,180	...	...	...	73	554	627	−46	−357	−403	−38.7	−39.2	−39.1
New York	134	741	875	364	21,778	22,142	134	20,826	20,960	...	...	...	364	1,693	2,057	+230	+952	+1,182	+171.6	+128.5	+135.1
Queens	1	73	74	17	8,559	8,576	12	8,567	8,579	...	...	...	6	65	71	+5	−8	−3	+500.0	−11.0	−4.1
Richmond	...	34	34	1	701	702	1	700	701	...	...	...	..	35	35	. .	+1	+1	. . .	+2.9	+2.9
Total New York City	262	3,868	4,130	451	73,687	74,138	266	72,842	73,108	...	...	...	447	4,713	5,160	+185	+845	+1,030	+70.6	+21.4	+24.9

[1] Total of new summary proceedings plus restorations plus and/or minus transfers within court. There were an additional 351,058 petitions filed in which no answer was filed. Of these about 38 percent resulted in the clerk entering default judgments for which warrants were issued.

[2] Not including Compulsory Arbitration.

[3] The ending pending jury proceedings consisted of 398 Housing Part and 49 Non-Housing; the ending pending non-jury summary proceedings were 3,662 Housing Part and 1,051 Non-Housing

Table 46
THE CIVIL COURT OF THE CITY OF NEW YORK
SPECIAL TERM PART I
Dispositions of Contested Motions by Nature and by Type
Jan. 1, 1977 through Dec. 31, 1977

Type of Motion	Total on Calendar	Ad-journed	With-drawn or Marked off Calendar	Granted	Denied
1. Summary judgement	6,096	2,161	570	2,374	991
2 Judgement on pleadings	1,243	367	103	532	241
3. Bring in additional parties	610	209	88	223	90
4. Examination before trial	5,438	1,805	352	2,478	803
5. Bills of particulars	12,706	3,503	1,495	6,767	941
6. Security for costs	264	87	41	104	32
7. Dismiss for lack of prosecution	2,857	1,125	265	1,126	341
8. Preference	27	7	4	3	13
9. Change of venue	469	226	47	133	63
10. Interpleader	108	29	19	41	19
11. Discontinue	238	69	39	108	22
12. Stay	343	77	46	127	93
13. Consolidate	1,711	433	107	942	229
14. Re-argue	494	126	53	244	71
15. Restore	5,182	1,417	170	2,866	729
16. Open default	3,482	997	237	1,975	273
17. Vacate notice of examination before trial	572	116	76	273	107
18. Vacate subpoena or order in enforcement proceedings	66	22	15	21	8
19. Appoint receiver	69	26	6	22	15
20. Direct payments out of income	187	32	44	80	31
21. Direct garnishee to turn over funds	470	105	57	239	69
22. Miscellaneous	11,566	4,468	914	4,689	1,495
Total New York City	54,198	17,407	4,748	25,367	6,676

Table 47
THE CIVIL COURT OF THE CITY OF NEW YORK
SPECIAL TERM PART II
Ex Parte Orders by County and by Type
Jan. 1, 1977 through Dec. 31, 1977

Type of Order	Bronx	Kings	New York	Queens	Richmond	Total N.Y.C.
1. Orders to show cause signed	2,427	3,799	8,220	2,716	463	17,625
2. Action for recovery of a chattel	10,825	13,508	18,016	81	4	42,434
3. Orders for leave to compromise	1,325	1,412	616	1,248	213	4,814
4. Enforcement proceedings	795	384	2,072	859	181	4,291
5. Bonds and undertakings	135	12,929	772	...	29	13,865
6. Contempt motions	239	198	518	388	9	1,352
7. Hearings on sufficiency of service	227	248	412	46	13	946
8. Change of name	160	330	395	234	26	1,145
9. Orders of attachment issued	29	3	680	32	3	747
10. Warrants of seizure issued	148	...	789	88	...	1,025
11. Orders of arrest issued	...	...	1	...	...	1
12. Receivers appointed	...	6	...	...	...	6
13. Miscellaneous orders	7,652	10,675	33,595	3,874	484	56,280
Total Ex Parte Orders	23,962	43,492	66,086	9,566	1,425	144,531

Table 48
THE DISTRICT COURTS AND THE COURTS IN CITIES OUTSIDE THE CITY OF NEW YORK
CIVIL TERMS
Actions and Summary Proceedings Received and Disposed by District and Judicial Department
Jan. 1, 1977 through Dec. 31, 1977

District and Department	Received[t]	Disposed
District 3	8,256	8,274
District 4[xa]	2,828	2,805
District 5[x]	6,918	6,711
District 6[xa]	4,784	4,508
District 7[x]	6,497	5,933
District 8[xa]	14,480	15,376
District 9[x]	12,915	13,421
District 10	55,683	54,894
Department II[x]	69,598	68,315
Department III[xa]	15,868	15,587
Department IV[xa]	27,895	28,020
Total outside of NYC[xa]	113,361	111,922

[t]Total of new actions, summary proceedings, restoration, and transfers from other court.

[x]Data incomplete from Glen Falls in the Fourth District, Watertown in the Fifth District, Cortland and Elmira in the Sixth District, Auburn and Corning in the Seventh District, Salamanca in the Eighth District, and Yonkers both City and Justice Courts in the Ninth District.

[a]No reporting received from Saratoga Springs in the Fourth District, Oneida J. P. in the Sixth district and Oleans in the Eighth District.

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Table 49
THE DISTRICT COURTS AND THE COURTS IN CITIES OUTSIDE THE CITY OF NEW YORK—CIVIL PROCEEDINGS
Intake and Dispositions
Jan. 1, 1977 through Dec. 31, 1977

Department	District	County	Court	Court In	Court Out	County Total In	County Total Out	District Total In	District Total Out
II	9	Dutchess	Beacon Municipal Ct	132	101				
			Poughkeepsie City Ct	1,031	433	1,163	534		
		Orange	Middletown City Ct.*	176	169				
			Newburgh City Ct	602	522				
			Port Jervis City Ct	67	62	745	753		
		Westchester	Mt. Vernon City Ct *	4,206	4,154				
			New Rochelle City Ct *	1,882	2,011				
			Peekskill City Ct *	272	202				
			Rye City Ct	77	81				
			White Plains City Ct *	167	131				
			Yonkers City Ct *	3,363	3,335				
			Yonkers Justice Ct [1]	2,010	2,130	12,007	12,134	13,915	13,421
	10	Nassau	Glen Cove City Ct	427	357				
			Long Beach City Ct *	831	856				
			Nassau County Dist. Ct *	26,661	26,257	27,919	27,470		
		Suffolk	Suffolk County Dist. Ct * [1]	27,764	27,424	27,764	27,424	55,683	54,894
III	3	Albany	Albany City Ct	3,956	3,956				
			Cohoes City Ct	113	102				
			Watervliet City Ct	67	84	4,136	4,142		
		Columbia	Hudson City Ct	619	619	619	619		
		Rensselaer	Rensselaer City Ct	47	47				
			Troy City Ct	3,202	3,219	3,249	3,266		
		Ulster	Kingston City Ct	252	217	252	217	8,356	8,374
	4	Clinton	Plattsburgh City Ct	168	161	168	161		
		Fulton	Gloversville City Ct	20	20				
			Johnstown City Ct			20	20		
		Montgomery	Amsterdam City Ct	135	124	135	124		
		St. Lawrence	Ogdensburg City Ct	290	293	290	293		
		Saratoga	Mechanicville City Ct	108	97				
			Saratoga Springs City Ct [2]			108	97		
		Schenectady	Schenectady City Ct	2,107	2,110	2,107	2,110		

		Warren	Glens Falls City Ct.[1]					2,828	2,805
	6	Broome	Binghamton City Ct	2,882	2,884	2,882	2,884		
		Chemung	Elmira City Ct.[1]	1,569	1,226	1,569	1,326		
		Chenango	Norwich City Ct	141	183	141	183		
		Cortland	Cortland City Ct.[1]	82	105	82	105		
		Madison	Oneida City Ct						
			Oneida Justice Ct.[1,4]						
		Otsego	Oneonta City Ct	24	24	24	24		
		Tompkins	Ithaca City Ct	86	86	86	86	4,784	4,508
IV.	5	Herkimer	Little Falls City Ct	20	19	20	19		
		Jefferson	Watertown City Ct.[1]	716	714	716	714		
		Oneida	Rome City Ct.*						
			Sherrill City Ct						
			Utica City Ct.*	1,607	1,355	1,607	1,355		
		Onondaga	Syracuse Municipal Ct.*	4,490	4,535	4,490	4,535		
		Oswego	Fulton City Ct	82	85				
			Oswego City Ct	3	3	85	88	6,918	6,711
	7	Cayuga	Auburn City Ct.[1]	540	472	540	472		
		Monroe	Rochester City Ct.*	5,769	5,275	5,769	5,275		
		Ontario	Canandaigua City Ct	155	155				
			Geneva City Ct	28	28	183	183		
		Steuben	Corning City Ct.[1]						
			Hornell City Ct	5	3	5	3	6,497	5,933
	8	Cattaraugus	Olean City Ct.[1]						
			Salamanca City Ct.[1]	41	41	41	41		
		Chautauqua	Dunkirk City Ct	433	521				
			Jamestown City Ct	1,803	1,851	2,236	2,372		
		Erie	Buffalo City Ct.*	9,571	10,425				
			Lackawanna City Ct	473	472				
			Tonawanda City Ct	126	98	10,170	10,995		
		Genesee	Batavia City Ct	228	230	228	230		
		Niagara	Lockport City Ct	128	170				
			Niagara Falls City Ct.*	1,270	1,243				
			North Tonawanda City Ct	417	325	1,815	1,738	14,480	15,376
			TOTAL OUTSIDE N.Y.C.	113,361	111,933	113,361	111,933	113,361	111,933

*These courts consider as incoming cases either those in which issue has been joined or those in which notice of trial or inquest has been filed, in addition to small claims and summary proceedings where such cases are handled by the court. All the other courts treat cases as before the court when a summons is issued.

[1] Data incomplete from Glens Falls in the Fourth District, Watertown in the Fifth District, Cortland and Elmira in the Sixth District, Auburn and Corning in the Seventh District, and Yonkers both City and Justice Courts in the Ninth District.

[2] No reporting received from Saratoga Springs in the Fourth District, Oneida J.P. in the Sixth District and Olean in the Eighth District.

[3] Includes cases disposed by the court in which notice of trial or inquest had not been filed. These cases were settled, discontinued or dismissed on call.

[4] The jurisdiction of the Oneida Justice Court is limited to civil matters; the Oneida City Court exercised only its criminal jurisdiction.

Table 50
THE SURROGATES' COURTS
Proceedings by Type and by County, District and Judicial Department
Jan. 1, 1977 through Dec. 31, 1977

Court	Probate Proceedings								Administration Proceedings		Accounting Proceedings			Guardianship Proceedings		Adoption Proceedings	Other Proceedings	
	Petitions for Probate of Wills	Wills Admitted to Probate Where No Objections Filed	Wills Rejected After Inquiry (1408 S.C.P.A.)	Wills Admitted Where Objections Filed: Objections Withdrawn, Settled or Dismissed Before Trial	Wills Admitted Where Objections Filed: Objections Withdrawn, Settled or Dismissed During Trial	Wills Admitted Where Objections Filed: After Trial of Objections	Wills Rejected After Trial of Objections	Letters Issued Upon Wills	Letters of Administration Granted	Affidavits Filed for Settlement of Small Estates	Voluntary Accountings Filed	Petitions for Compulsory Accounting	Decrees on Accountings[1]	Letters of Guardianship Granted[2]	Contested Guardianship Trials	Orders of Adoptions Granted[3]	Orders of Compromise in Death Actions	Other Contested Matters Tried
FIRST DEPT.																		
1 Bronx	1,292	1,191	0	21	2	1	4	1,322	819	593	626	30	253	301	8	181	76	106
New York	4,045	3,032	0	32	1	0	0	4,254	1,040	617	1,102	113	901	333	0	161	130	681
Total 1st Department	5,337	4,231	0	53	3	1	4	5,651	2,559	1,110	1,728	143	1,107	634	8	345	186	787
SECOND DEPT.																		
2 Kings	2,743	2,674	0	17	8	32	3	3,024	1,810	855	595	70	681	802	1	423	295	60
Richmond	494	487	1	3	0	3	0	524	179	120	49	4	59	78	0	109	26	63
9 Dutchess	566	558	1	5	2	0	0	630	177	103	160	7	120	82	0	7	18	20
Orange	697	671	1	9	0	0	0	757	190	77	117	6	65	68	0	7	23	0
Putnam	172	161	0	0	0	0	0	182	29	21	15	3	9	23	0	15	6	14
Rockland	366	370	0	5	0	0	0	412	116	96	31	4	18	113	0	50	11	0
Westchester	2,131	2,218	2	17	0	2	0	2,607	548	270	373	44	244	374	3	69	36	0
10 Nassau	3,201	2,941	0	27	0	1	0	3,188	788	318	387	52	233	215	0	448	120	51
Suffolk	2,039	2,039	2	13	0	1	0	2,295	704	268	175	27	159	352	0	321	45	38
11 Queens	3,691	3,459	2	17	5	12	3	4,041	1,428	748	507	61	220	391	3	225	172	0
Total 2nd Department	16,050	15,579	18	109	15	51	6	17,660	5,969	2,876	2,407	278	1,978	2,993	7	1,970	701	226
THIRD DEPT.																		
3 Albany	808	844	0	2	0	0	0	846	241	167	153	5	221	101	0	69	26	0
Columbia	198	177	0	1	0	0	0	192	80	37	44	3	43	3	0	3	9	9
Greene	131	132	0	0	0	0	0	146	56	41	22	1	36	3	0	0	1	0
Rensselaer	401	401	0	2	0	0	0	468	149	112	80	7	84	46	0	46	4	0
Schoharie	97	97	0	0	0	0	0	98	29	12	24	1	21	2	0	0	5	0
Sullivan	265	248	0	3	0	0	0	251	92	32	40	3	38	12	0	0	0	30
Ulster	451	465	0	0	0	0	0	467	105	83	101	6	92	41	0	56	5	0

4 Clinton	150	147	0	1	0	0	0	178	15	63	44	0	28	13	0	51	1	0
Essex	130	128	0	1	0	0	0	131	11	11	17	0	6	7	0	0	0	1
Franklin	133	128	0	0	1	1	0	133	51	21	35	1	30	6	0	41	0	1
Fulton	172	173	0	2	0	0	0	185	55	20	59	1	50	17	0	14	5	0
Hamilton	27	26	0	0	0	0	0	27	7	0	8	0	0	0	0	0	0	0
Montgomery	231	231	0	0	0	0	0	236	74	37	92	1	88	12	0	15	7	0
St Lawrence	281	218	0	0	0	1	0	282	83	51	83	1	71	35	0	73	5	181
Saratoga	201	200	0	3	0	0	0	334	95	55	137	3	110	26	3	78	15	1
Schenectady	155	418	0	11	0	0	0	162	173	67	112	2	99	55	0	0	11	17
Warren	195	201	0	0	0	0	0	233	37	21	108	2	152	13	0	4	1	1
Washington	196	172	0	1	0	0	0	182	51	10	30	1	15	8	0	6	0	0
6 Broome	520	545	0	1	0	0	0	591	110	101	207	0	172	51	0	0	10	0
Chemung	320	281	0	6	0	0	0	337	63	11	74	1	72	8	0	0	5	0
Chenango	205	197	0	1	0	0	0	191	44	26	50	0	51	8	0	0	6	1
Cortland	158	158	0	0	0	0	0	158	40	11	38	0	38	1	0	1	0	0
Delaware	198	180	0	1	0	0	0	200	51	32	14	3	92	10	0	0	2	10
Madison	208	198	0	0	0	0	0	201	51	19	40	1	31	23	0	0	5	0
Otsego	210	215	0	0	0	1	0	291	61	21	96	1	91	20	0	10	4	0
Schuyler	67	67	0	0	0	0	0	64	18	18	16	1	25	4	0	2	1	2
Tioga	115	115	0	0	0	0	0	122	38	11	1	0	21	12	0	0	1	0
Tompkins	210	210	0	0	0	0	0	228	17	25	102	0	43	3	0	0	1	0
Total 3rd Department	6,891	6,735	0	35	1	3	0	7,201	2,018	1,107	1,934	48	1,818	581	3	503	110	493
FOURTH DEPT																		
5 Herkimer	277	272	1	1	0	0	0	288	69	26	32	6	31	5	0	0	1	14
Jefferson	260	260	0	1	0	0	0	277	76	5	40	5	33	17	0	0	2	1
Lewis	73	73	0	0	0	0	0	84	24	9	32	4	17	7	0	0	5	0
Oneida	818	858	0	2	0	0	0	905	210	59	101	3	124	72	0	105	10	0
Onondaga	1,335	1,131	1	0	0	1	0	1,175	354	217	321	0	250	113	1	0	30	30
Oswego	201	219	0	0	0	0	0	269	98	15	109	1	97	14	0	2	9	15
7 Cayuga	270	273	0	1	3	0	0	280	58	70	113	4	101	26	2	51	6	12
Livingston	182	180	0	6	0	0	0	180	45	21	29	1	31	16	0	0	2	0
Monroe	2,499	2,508	0	28	0	1	0	2,591	385	381	598	1	219	371	13	141	21	24
Ontario	110	111	0	0	0	0	0	112	53	58	58	6	64	29	0	19	7	0
Seneca	111	117	0	0	0	0	0	111	20	7	31	2	28	10	0	9	1	0
Steuben	175	293	0	4	1	4	0	329	92	26	84	2	56	22	0	14	10	9
Wayne	102	291	0	0	0	0	0	301	61	27	36	0	64	10	0	80	5	0
Yates	140	140	0	0	0	0	0	139	21	1	35	1	15	0	0	0	1	0
8 Allegany	164	164	0	0	0	0	0	164	47	18	59	0	59	17	0	0	0	0
Cattaraugus	318	318	0	0	0	0	0	333	79	22	164	0	164	21	0	4	10	24
Chautauqua	628	637	0	1	1	0	0	633	131	74	104	4	93	25	0	81	16	12
Erie	2,523	1,265	15	12	17	3	1	3,135	1,010	938	1,816	30	775	602	5	312	70	328
Genesee	206	210	0	1	0	0	0	212	46	11	71	0	42	8	0	21	7	0
Niagara	818	780	0	0	0	0	0	780	215	84	131	1	282	19	0	29	8	0
Orleans	121	121	0	0	0	0	0	130	27	10	15	0	10	7	0	0	1	0
Wyoming	160	164	0	0	0	0	0	178	41	9	44	1	51	12	0	0	3	3
Total 4th Department	[illegible]	[illegible]	17	51	52	6	1	[illegible]	[illegible]	2,098	[illegible]	88	[illegible]	1,519	21	[illegible]	212	[illegible]
Total State	[illegible]	[illegible]	41	372	46	64	11	[illegible]	14,508	[illegible]	10,409	[illegible]	[illegible]	5,501	19	3,332	1,320	2,191

*Includes accountings filed in small estates

†There were [illegible] where objections were filed and 715 where objections were withdrawn, settled or dismissed — 340 before trial, 158 during trial and 217 after trial

²In addition, 13 [illegible] were denied

³In addition, 30 petitions for adoption were denied, dismissed or withdrawn

Table 51
Original and Petitions Added, Deducted Type of
Jan. 3, 1977 through

A. New York City

Original Case Prefix	Type of Proceeding	Petitions Added During Period	Petitions Deducted During Period: Withdrawn or Dismissed	Petitions Deducted During Period: Other Deductions	Petitions Deducted During Period: Total	Petitions Actively Pending at End of Period
B	Permanent Neglect	510	97	374	471	491
N	Child Protective – Neglect	3,388	1,150	4,750	5,906	1,450
N	Child Protective – Abuse	609	15	69	84	200
D	Juvenile Delinquency	12,880	6,478	10,317	16,795	3,216
S	Person in Need of Supervision	5,204	2,434	4,203	6,637	604
A	Adoption	797	19	481	500	307
G	Guardianship	750	141	719	860	190
R	Supreme Court Referral	154	97	160	257	27
V	Custody of Minors	3,738	1,907	1,488	3,395	578
K	Foster Care Review	2,228	161	1,524	1,685	766
L	Approval Foster Care Placement	4,075	88	3,081	3,169	942
H	Physically Handicapped	267	47	226	273	75
Q	Mental Defective	0	0	2	2	0
O	Family Offense	9,540	6,076	4,271	10,347	718
P	Paternity (Non ADC)	3,859	3,242	6,350	9,592	586
P	Paternity (ADC)	10,466	536	2,103	2,639	2,407
F	Support (Non ADC)	9,820	8,042	9,749	17,791	1,224
F	Support (ADC)	5,516	935	1,410	2,345	1,081
U	Uniform Support of Dependent's Law	6,221	2,639	5,565	8,204	1,193
M	Consent to Marry	239	23	137	160	0
	Supplementary (Viols./Mods. of Orders/Disps.)	14,675	3,772	14,627	18,399	2,672
C,W	Other Proceedings	77	5	100	105	0
	Other Inflow (Test Localities Only*)	258	–	–	–	–
	Total	99,273	37,910	71,706	109,616	18,696

B. Upstate New York

Original Case Prefix	Type of Proceeding	Petitions Added During Period	Petitions Deducted During Period: Withdrawn or Dismissed	Petitions Deducted During Period: Other Deductions	Petitions Deducted During Period: Total	Petitions Actively Pending at End of Period
B	Permanent Neglect	375	91	295	386	201
N	Child Protective – Neglect	3,377	820	3,414	4,234	1,238
N	Child Protective – Abuse	596	78	411	489	259
D	Juvenile Delinquency	13,070	4,223	10,241	14,464	3,186
S	Person in Need of Supervision	7,061	2,021	6,536	8,560	1,512
A	Adoptum	3,331	93	3,155	3,248	681
G	Guardianship	321	26	219	245	155
R	Supreme Court Referral	1,514	197	1,123	1,320	276
V	Custody of Minors	5,588	1,851	3,407	5,261	1,003
K	Foster Care Review	3,185	110	3,623	3,733	299
L	Approval Foster Care Placement	3,522	130	3,530	3,660	310
H	Physically Handicapped	3,586	153	2,800	2,953	190
Q	Mental Defective	2	6	9	15	0
O	Family Offense	15,112	7,228	8,499	15,727	1,066
P	Paternity (Non ADC)	2,838	717	2,101	2,818	639
P	Paternity (ADC)	12,000	3,186	10,197	13,383	2,201
F	Support (Non ADC)	15,383	6,976	10,181	17,160	2,049
F	Support (ADC)	11,930	6,101	9,912	16,016	1,691
U	Uniform Support of Dependent's Law	18,321	2,903	13,890	16,791	1,518
M	Consent to Marry	152	38	122	160	10
	Supplementary (Viols./Mods. of Orders/Disps.)	78,688	17,896	61,492	79,388	8,748
C,W	Other Proceedings	3,116	293	2,928	3,221	277
	Other Inflow (Test localities only*)	371	–	–	–	–
	Total	206,052	55,176	158,088	231,264	27,521

FAMILY COURT
Supplementary Petitions and Actively Pending, by Proceeding*
*Jan. 1, 1978***

C. New York State

Original Case Prefix	Type of Proceeding	Petitions Added During Period	Petitions Deducted During Period			Petitions Actively Pending at End of Period
			Withdrawn or Dismissed	Other Deductions	Total	
B	Permanent Neglect	885	188	669	857	608
N	Child Protective — Neglect	6,745	1,976	8,164	10,140	3,088
N	Child Protective — Abuse	1,203	93	480	573	459
D	Juvenile Delinquency	23,959	10,701	20,558	31,259	6,402
S	Person in Need of Supervision	12,265	4,458	10,739	15,197	2,176
A	Adoption	4,128	112	3,636	3,748	991
G	Guardianship	1,071	167	938	1,105	345
R	Supreme Court Referral	1,668	291	1,283	1,577	303
V	Custody of Minors	9,326	3,761	4,895	8,656	1,581
K	Foster Care Review	5,413	271	5,147	5,418	1,065
L	Approval Foster Care Placement	7,597	218	6,611	6,829	1,252
H	Physically Handicapped	5,853	200	3,026	3,226	263
Q	Mental Defective	2	6	11	17	0
O	Family Offense	24,932	13,304	12,770	26,074	1,784
P	Paternity (Non-ADC)	6,697	3,980	8,451	12,440	1,225
P	Paternity (ADC)	22,466	3,722	12,300	16,022	4,607
F	Support (Non-ADC)	25,203	15,018	19,933	34,951	3,273
F	Support (ADC)	19,446	7,939	11,322	18,361	2,775
U	Uniform Support of Dependent's Law	24,548	5,542	19,455	24,997	2,711
M	Consent to Marry	381	61	259	320	10
--	Supplementary (Viols./Mods. of Orders/Disps.)	97,363	21,663	76,119	97,787	11,430
C,W	Other Proceedings	3,523	298	3,028	3,326	277
	Other Inflow (Test Localities only*)	639	--	--	--	--
	Total	305,325	93,086	229,794	322,880	46,217

*During the last six months of 1977, a new statistical reporting procedure was tested in several localities throughout the state. While this procedure isolated a new item of information concerning petitions returned to the active calendar (see "Other Inflow"), it does not provide deduction and warrant inflow information by type of proceeding. The amounts shown for each type of proceeding for petitions withdrawn, dismissed and other deductions, as well as that portion of the additions represented by warrants returned or vacated, include for the test localities an estimate based on the activity within each of these courts during the first six months of 1977.

The test localities are:

Genesee County
Nassau County
New York County
New York Foster Care Review (citywide)
Onondago County
Rensselaer County
St. Lawrence County
Westchester County

**Weekly reporting periods began on the first Monday of one year and ended on the Sunday preceding the first Monday of the following year.

Table 52
FAMILY COURT
Court Findings in Child Protective Proceedings, by Sex
Jan. 1, 1977 through Dec. 31, 1977

Region County	Boys							Girls						
		Court Findings at Dispositional Hearing				Court Findings Based on			Court Findings at Dispositional Hearing				Court Findings Based on	
	Total	Child Is Abused	Child Is Neglected	Both	Neither	Establishment of Facts Sufficient to Sustain Petition	Consent of All Parties	Total	Child Is Abused	Child Is Neglected	Both	Neither	Establishment of Facts Sufficient to Sustain Petition	Consent of All Parties
Total New York State	2,420	112	1,219	14	1,075	929	1,491	2,496	161	1,237	28	1,070	1,020	1,476
Total New York City	1,109	83	669	11	346	461	648	1,006	70	613	15	308	418	588
New York	303	13	165	8	117	124	179	235	13	118	16	88	98	137
Kings	270	30	163	.....	77	116	154	235	17	146	.....	72	88	147
Queens	301	20	256	2	23	150	151	288	16	248	.....	24	136	152
Bronx	198	17	68	1	112	50	148	214	21	89	.....	104	77	137
Richmond	37	3	17	.....	17	21	16	34	3	12	.....	19	19	15
Total Upstate	1,311	29	550	3	729	468	843	1,490	91	624	13	762	602	888
Albany	11	4	7	.....	.....	10	1	15	7	8	.....	.....	15	.....
Allegany	12	.....	1	.....	11	2	10	16	2	1	.....	13	4	12
Broome	40	.....	9	.....	31	36	4	40	3	16	.....	21	37	3
Cattaraugus	30	.....	12	.....	18	23	7	26	.....	9	.....	17	16	10
Cayuga	2	.....	1	1	.....	1	1	4	1	1	1	1	2	2
Chautauqua	57	.....	9	.....	48	7	50	43	.....	8	.....	35	5	38
Chemung	27	2	16	.....	9	1	26	25	2	16	.....	7	5	20
Chenango	3	.....	2	.....	1	2	1	3	.....	3	.....	.....	1	2
Clinton	5	.....	2	.....	3	2	3	6	1	4	.....	1	2	4
Columbia	7	.....	2	.....	5	.....	7	16	.....	3	.....	13	.....	16
Cortland	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Delaware	23	.....	9	.....	14	6	17	19	.....	6	.....	13	3	16

Dutchess	29	.....	7	.....	22	2	27	43	.....	4	.....	39	2	41
Erie	108	2	63	.....	43	56	52	185	8	116	1	60	102	83
Essex	1	.....	.....	.....	1	.....	1	4	.....	.....	.....	4	.....	4
Franklin	25	.....	11	.....	14	3	22	30	1	19	.....	10	9	21
Fulton	11	.....	.....	.....	11	.....	11	13	.....	2	.....	11	2	11
Genesee	25	1	5	.....	19	2	23	19	.....	3	1	15	1	18
Greene	9	.....	1	.....	8	3	6	11	.....	1	.....	10	2	9
Hamilton	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Herkimer	5	.....	2	.....	3	3	2	8	2	2	.....	4	5	3
Jefferson	16	1	6	.....	9	4	12	26	2	8	.....	16	8	18
Lewis	7	1	1	.....	5	1	6	4	1	2	.....	1	2	2
Livingston	3	1	.....	.....	2	1	2	7	6	.....	.....	2	6	1
Madison	2	.....	1	.....	1	1	1	3	.....	3	.....	.....	3	.....
Monroe	54	6	30	.....	18	38	16	63	10	29	.....	24	38	25
Montgomery	8	.....	4	.....	4	4	4	5	.....	2	.....	3	2	3
Nassau	118	.....	70	1	47	60	58	105	.....	63	6	36	73	32
Niagara	30	.....	24	.....	6	12	18	18	.....	11	.....	7	7	11
Oneida	5	.....	4	.....	1	.....	5	20	3	12	.....	5	8	12
Onondaga	116	.....	46	.....	71	42	74	129	5	54	.....	70	57	72
Ontario	11	.....	3	.....	8	5	6	21	.....	13	.....	9	7	14
Orange	12	.....	4	.....	8	2	10	42	5	14	3	20	8	34
Orleans	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Oswego	7	.....	4	.....	3	3	4	15	.....	9	.....	6	7	8
Otsego	9	.....	6	.....	3	6	3	4	.....	4	.....	.....	4	.....
Putnam	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Rensselaer	5	.....	.....	.....	5	.....	5	3	.....	.....	.....	3	.....	3
Rockland	10	.....	5	.....	5	2	8	20	2	9	.....	9	2	18
St. Lawrence	22	1	15	.....	6	16	6	21	1	12	1	7	14	7
Saratoga	16	2	6	.....	8	2	14	17	3	6	.....	8	3	14
Schenectady	23	.....	13	.....	10	6	17	19	.....	10	.....	9	4	15
Schoharie	17	.....	8	.....	9	6	12	6	.....	2	.....	4	1	5
Schuyler	1	.....	1	.....	.....	1	.....	4	.....	4	.....	.....	4	.....
Seneca	21	.....	4	.....	17	3	18	15	1	4	.....	10	4	11
Steuben	17	.....	2	.....	15	2	15	28	.....	3	.....	25	6	22
Suffolk	173	4	61	.....	108	46	127	171	11	52	.....	108	56	115
Sullivan	10	.....	.....	.....	10	1	9	7	1	.....	.....	6	1	6
Tioga	7	.....	4	.....	3	1	6	13	3	5	.....	5	3	10
Tompkins	6	.....	3	.....	3	4	2	3	.....	.....	.....	3	3	.....
Ulster	16	.....	5	.....	11	3	13	24	1	4	.....	19	4	20
Warren	16	.....	13	.....	3	2	14	27	.....	20	.....	7	6	21
Washington	9	.....	3	.....	6	3	6	9	.....	2	.....	7	2	7
Wayne	17	.....	6	1	10	7	10	21	2	13	.....	6	16	5
Westchester	81	3	40	.....	38	23	68	73	6	33	.....	34	24	49
Wyoming	16	1	.....	.....	15	3	13	21	2	.....	.....	19	6	15
Yates	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....

Table 53

FAMILY COURT

The Age of Children in Child Protective Proceedings Involving Child Abuse (Boys Only)

Child's Age When Petition Filed (Last Birthday)

Jan. 1, 1977 through Dec. 31, 1977

Region County	Total	Under 1	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16 Or Over	Not Known
Total New York State	395	46	35	36	34	22	25	28	19	17	22	22	25	13	19	11	7	7	14
Total New York City	253	29	21	24	26	11	14	18	11	10	15	13	15	9	6	9	5	5	12
New York	64	7	10	12	7	2	4	4	..	2	4	3	3	1	1	2	..	2	.....
Kings	85	13	6	5	7	4	2	7	3	2	5	4	7	6	3	1	2	2	6
Queens	25	2	1	2	2	3	..	1	4	2	2	..	1	..	..	1	..	....	4
Bronx	74	7	4	5	10	2	8	6	4	4	3	6	3	1	2	4	2	1	2
Richmond	5	....	..	..	..	..	..	..	..	..	1	..	1	1	..	1	1	....	.....
Total Upstate	142	17	14	12	8	11	11	10	8	7	7	9	5	4	6	2	2	2	2
Albany	4	....	..	1	1	..	1	..	..	..	..	..	1	..	..	..	..	....	.....
Allegany	....	....	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	....	.....
Broome	1	....	..	..	..	1	..	..	..	..	..	..	..	..	..	..	..	....	.....
Cattaraugus	4	....	..	..	2	..	1	..	..	..	..	1	..	..	..	..	..	....	.....
Cayuga	2	....	..	..	..	..	..	1	..	1	..	..	..	..	..	..	..	....	.....
Chautauqua	....	....	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	....	.....
Chemung	4	2	..	..	1	1	..	..	..	..	..	..	..	..	..	..	..	....	.....
Chenango	....	....	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	....	.....
Clinton	2	....	..	1	..	1	..	..	..	..	..	..	..	..	..	..	..	....	.....
Columbia	....	....	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	....	.....
Cortland	....	....	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	....	.....
Delaware	1	....	..	..	..	..	1	..	..	..	..	..	..	..	..	..	..	....	.....
Dutchess	3	1	..	..	..	..	..	2	..	..	..	..	..	..	..	..	..	....	.....
Erie	19	5	4	2	..	2	1	..	1	..	..	..	2	..	..	..	1	1	.....
Essex	....	....	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	....	.....
Franklin	....	....	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	....	.....
Fulton	1	1	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	....	.....

Genesee	1	....	..	1	..	..	..	..	..	..	..	..	..	..	..	..	..	....	.....
Greene	....	....	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	....	.....
Hamilton	....	....	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	....	.....
Herkimer	1	....	..	..	..	1	..	..	..	..	..	..	..	..	..	..	..	....	.....
Jefferson	3	1	..	1	..	..	..	..	..	..	..	..	..	..	..	1	..	....	.....
Lewis	3	....	..	..	..	..	..	..	..	1	..	..	1	..	1	..	..	....	.....
Livingston	1	....	..	..	..	1	..	..	..	..	..	..	..	..	..	..	..	....	.....
Madison	....	....	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	....	.....
Monroe	7	1	..	..	..	1	1	..	..	1	1	1	1	..	..	..	..	....	.....
Montgomery	2	....	..	..	..	..	..	..	..	1	..	..	..	1	..	..	..	....	.....
Nassau	2	....	..	..	..	1	..	..	..	..	..	..	..	..	..	..	..	....	1
Niagara	2	1	1	..	..	..	..	..	..	..	..	..	..	..	..	..	..	....	.....
Oneida	2	....	..	..	..	1	..	1	..	..	..	..	..	..	..	..	..	....	.....
Onondaga	13	1	2	3	2	..	1	..	2	..	1	1	1	..	..	..	..	....	.....
Ontario	2	....	..	..	..	..	1	..	..	..	..	..	..	..	1	..	..	....	.....
Orange	3	....	..	1	..	..	..	..	..	1	..	..	..	..	..	..	..	1	.....
Orleans	....	....	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	....	.....
Oswego	1	....	..	..	..	..	..	..	..	..	..	..	1	..	..	..	..	....	.....
Otsego	....	....	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	....	.....
Putnam	....	....	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	....	.....
Rensselaer	4	....	..	..	..	1	2	..	..	..	..	..	..	..	..	1	..	....	.....
Rockland	....	....	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	....	.....
St. Lawrence	1	....	..	..	..	..	..	..	1	..	..	..	..	..	..	..	..	....	.....
Saratoga	2	1	1	..	..	..	..	..	..	..	..	..	..	..	..	..	..	....	.....
Schenectady	3	....	..	..	1	..	..	..	..	..	..	2	..	..	..	..	..	....	.....
Schoharie	....	....	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	....	.....
Schuyler	....	....	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	....	.....
Seneca	2	....	1	..	..	..	..	..	1	..	..	..	..	..	..	..	..	....	.....
Steuben	....	....	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	....	.....
Suffolk	12	1	1	1	..	..	1	1	1	..	1	2	..	1	1	1	..	....	.....
Sullivan	5	1	..	..	1	..	..	1	..	..	..	..	1	1	..	..	..	....	.....
Tioga	2	....	..	..	..	..	..	..	..	..	1	..	..	..	1	..	..	....	.....
Tompkins	3	....	2	..	..	..	..	1	..	..	..	..	..	..	..	..	..	....	.....
Ulster	4	....	..	..	..	..	..	1	..	..	..	1	..	1	1	..	..	....	.....
Warren	....	....	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	....	.....
Washington	1	....	..	..	..	..	..	..	..	..	..	..	..	..	1	..	..	....	.....
Wayne	5	1	..	1	..	..	..	1	..	1	..	..	1	..	..	..	..	....	.....
Westchester	9	....	1	1	..	..	1	1	2	1	1	..	..	..	..	..	..	....	1
Wyoming	5	....	1	..	..	..	..	..	..	..	2	1	1	..	..	..	..	....	.....
Yates	....	....	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	....	.....

Table 54
FAMILY COURT
The Age of Children in Child Protective Proceedings Involving Child Abuse (Girls Only)
Child's Age When Petition Filed (Last Birthday)
Jan. 1, 1977 through Dec. 31, 1977

Region County	Total	Under 1	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16 Or Over	Not Known
Total New York State	525	53	28	32	32	28	30	21	19	22	28	29	27	28	31	37	46	17	17
Total New York City	234	25	38	17	16	12	15	9	12	12	12	9	8	11	10	9	17	10	12
New York	73	11	8	8	3	5	6	3	2	3	3	4	2	3	1	2	5	3	1
Kings	69	2	4	2	4	3	4	2	4	2	6	3	1	6	5	4	8	5	4
Queens	18	....	1	1	2	1	..	2	1	2	1	..	..	1	1	1	1	....	3
Bronx	68	12	5	6	7	2	5	1	5	5	2	2	4	..	3	..	3	2	4
Richmond	6	....	..	.	..	1	..	1	..	..	..	..	1	1	..	2	..	....	.....
Total Upstate	291	28	10	15	16	16	15	12	7	10	16	20	19	17	21	28	29	7	5
Albany	7	....	..	..	..	..	..	..	..	1	1	..	2	2	1	..	..	....	.....
Allegany	2	....	..	..	..	..	..	..	..	..	..	..	..	..	..	..	2	....	.....
Broome	10	1	..	2	..	..	..	..	..	..	1	1	..	1	..	3	1	....	.....
Cattaraugus	7	1	..	..	1	1	..	..	..	..	1	1	1	1	..	..	..	....	.....
Cayuga	4	....	..	2	..	..	1	1	..	..	..	..	..	..	..	..	..	....	.....
Chautauqua	2	....	..	..	..	..	..	..	..	..	..	..	..	1	..	..	1	....	.....
Chemung	2	....	1	..	..	..	..	..	..	..	..	..	..	..	..	1	..	....	.....
Chenango	2	....	..	..	..	..	..	1	..	1	..	..	..	..	..	..	..	....	.....
Clinton	2	....	..	..	..	..	..	..	..	..	..	..	1	..	..	..	1	....	.....
Columbia	2	....	..	..	..	..	..	..	..	..	..	..	1	..	..	1	..	....	.....
Cortland	....	....	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	....	.....
Delaware	....	....	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	....	.....
Dutchess	11	2	1	..	..	2	2	..	..	..	..	..	..	..	2	2	..	....	.....
Erie	34	6	3	..	1	6	2	1	2	2	..	3	1	2	2	1	2	....	.....
Essex	....	....	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	....	.....
Franklin	1	....	..	..	..	..	..	..	..	..	..	..	..	..	..	..	1	....	.....
Fulton	....	....	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	....	.....

Genesee	6	1	..	..	1	..	..	..	..	..	2	1	..	..	..	..	..	....	.....
Greene	....	....	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	....	.....
Hamilton	....	....	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	....	.....
Herkimer	2	....	..	..	..	..	..	..	..	..	..	..	2	..	..	..	..	....	.....
Jefferson	7	1	..	1	1	..	..	..	..	..	..	..	..	..	..	1	3	....	.....
Lewis	1	....	..	..	..	..	1	..	..	..	..	..	..	..	..	..	..	....	.....
Livingston	5	....	..	1	..	..	..	..	1	..	..	..	..	..	1	..	1	....	1
Madison	...	....	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	...	.....
Monroe	12	....	1	..	..	..	1	1	1	..	..	..	..	1	3	2	1	1	.....
Montgomery	1	....	..	..	..	..	1	..	..	..	..	..	..	..	..	..	..	....	.....
Nassau	10	....	..	..	1	..	..	1	..	..	1	1	1	1	..	1	1	....	2
Niagara	....	....	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	....	.....
Oneida	9	....	..	..	2	..	1	..	..	1	..	1	..	..	1	2	1	....	.....
Onondaga	27	2	3	3	3	2	..	4	1	1	2	..	1	2	1	2	..	....	.....
Ontario	1	....	..	..	..	..	..	..	..	..	..	..	..	..	1	..	..	....	.....
Orange	20	2	..	..	..	1	1	1	..	1	1	3	3	1	1	1	2	2	.....
Orleans	....	....	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	....	.....
Oswego	1	....	..	..	..	..	1	..	..	..	..	..	..	..	..	..	..	....	.....
Otsego	....	....	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	....	.....
Putnam	....	....	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	....	.....
Rensselaer	1	....	..	..	..	..	..	..	1	..	..	..	..	..	..	..	..	....	.....
Rockland	5	....	..	..	..	..	..	..	..	1	..	..	1	1	..	1	1	....	.....
St. Lawrence	2	....	..	..	2	..	..	..	..	..	..	..	..	..	..	..	..	....	.....
Saratoga	3	....	..	1	..	..	..	..	..	..	..	..	..	..	..	1	1	....	.....
Schenectady	2	1	..	..	..	..	..	..	..	..	1	..	..	..	..	..	..	....	.....
Schoharie	....	....	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	....	.....
Schuyler	....	....	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	....	.....
Seneca	2	1	..	..	..	..	..	..	..	..	..	..	..	..	1	..	..	....	.....
Steuben	2	....	..	1	..	..	..	..	..	1	..	..	..	..	..	..	..	....	.....
Suffolk	30	2	1	2	1	3	1	..	1	..	1	4	3	1	3	4	3	....	.....
Sullivan	2	....	..	..	1	..	..	..	..	..	..	..	..	..	1	..	..	....	.....
Tioga	7	....	..	..	1	..	..	1	..	..	..	2	..	2	..	..	1	....	.....
Tompkins	2	....	..	..	..	..	1	..	..	..	..	..	..	..	..	..	..	....	1
Ulster	11	2	..	1	..	..	..	..	..	..	3	..	..	..	..	3	2	....	.....
Warren	4	....	..	..	..	..	..	..	..	..	1	1	..	..	..	..	..	2	.....
Washington	....	....	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	....	.....
Wayne	6	....	..	1	..	..	..	..	..	..	..	1	1	..	1	..	2	....	.....
Westchester	16	6	..	..	1	..	1	..	..	..	1	..	..	..	2	1	2	1	1
Wyoming	9	....	..	..	..	1	1	1	..	1	..	1	1	1	..	1	..	1	.....
Yates	....	....	..	..	..	..	..	..	..	..	..	..	..	..	..	..	..	....	.....

Table 55
FAMILY COURT
Reasons for Petitions in Child Protective Proceedings Involving Child Abuse (Boys Only)
Jan. 1, 1977 through Dec. 31, 1977

Region County	Total Reasons (Child Abuse Only)*	REASONS FOR PETITIONS													
		Child Abuse			Neglected Child										
		Physical Abuse	Risk of Physical Injury	Sex Offense Against Child	Impairment of Mental, Emotional or Physical Health (etc.)	Inadequate Food, Shelter or Clothing	Inadequate Educational Care	Inadequate Medical or Surgical Care	Abandonment or Desertion	Parental Use of Drugs	Parental Alcoholism	Parental Sexual Misconduct	Parental Mental Illness	Parental Fighting	Other
Total New York State	129	99	22	8	14	2	.....	1	.....	1	.....	.....	.....	.....	.....
Total New York City	99	76	20	3	7	1	.....	.....	.....	1	.....	.....	.....	.....	.....
New York	25	20	4	1	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Kings	33	22	9	2	5	1	.....	.....	.....	1	.....	.....	.....	.....	.....
Queens	21	10	2	.....	1	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Bronx	17	12	5	.....	1	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Richmond	3	3	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Total Upstate	30	23	2	5	7	1	.....	1	.....	.....	.....	.....	.....	.....	.....
Albany	4	4	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Allegany	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Broome	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Cattaraugus	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Cayuga	1	1	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Chautauqua	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Chemung	2	2	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Chenango	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Clinton	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Columbia	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Cortland	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Delaware	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....

Dutchess																	
Erie	2	2															
Essex																	
Franklin																	
Fulton																	
Genesee	2	1	1		1			1									
Greene																	
Hamilton																	
Herkimer																	
Jefferson					1	1											
Lewis	2	1		1													
Livingston	1	1															
Madison																	
Monroe	6	3	1	2	1												
Montgomery																	
Nassau	1			1	1												
Niagara																	
Oneida																	
Onondaga																	
Ontario																	
Orange																	
Orleans																	
Oswego																	
Otsego																	
Putnam																	
Rensselaer																	
Rockland																	
St Lawrence	1	1															
Saratoga	2	2															
Schenectady																	
Schoharie																	
Schuyler																	
Seneca																	
Steuben																	
Suffolk	3	2		1	1												
Sullivan																	
Tioga																	
Tompkins																	
Ulster																	
Warren																	
Washington																	
Wayne	1	1															
Westchester	1	1			2												
Wyoming	1	1															
Yates																	

*Due to the reporting of multiple reasons for petitions, the number of reasons exceeds the number of petitions reported as initially disposed

Table 56
FAMILY COURT
Reasons for Petitions in Child Protective Proceedings Involving Child Abuse (Girls Only)
Jan. 1, 1977 through Dec. 31, 1977

Region County	Total Reasons (Child Abuse Only)*	REASONS FOR PETITIONS: Child Abuse: Physical Abuse	Child Abuse: Risk of Physical Injury	Child Abuse: Sex Offense Against Child	Neglected Child: Impairment of Mental, Emotional or Physical Health (etc.)	Neglected Child: Inadequate Food, Shelter or Clothing	Neglected Child: Inadequate Educational Care	Neglected Child: Inadequate Medical or Surgical Care	Neglected Child: Abandonment or Desertion	Neglected Child: Parental Use of Drugs	Neglected Child: Parental Alcoholism	Neglected Child: Parental Sexual Misconduct	Neglected Child: Parental Mental Illness	Neglected Child: Parental Fighting	Other
Total New York State	186	101	14	71	21	2	1	1	.....	1	3	3	.....	.....	.....
Total New York City	89	66	10	13	2	.....	1	.....	.....	1	1	.....	.....	.....	.....
New York	30	25	3	2	2	.....	1	.....	.....	.....	.....	.....	.....	.....	.....
Kings	20	10	4	6	.....	.....	.....	.....	.....	.....	1	.....	.....	.....	.....
Queens	16	13	.....	3	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Bronx	20	16	3	1	.....	.....	.....	.....	.....	1	.....	.....	.....	.....	.....
Richmond	3	2	.....	1	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Total Upstate	97	35	4	58	19	2	.....	1	.....	.....	2	3	.....	.....	.....
Albany	7	1	.....	6	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Allegany	2	2	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Broome	3	1	.....	2	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Cattaraugus	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Cayuga	2	2	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Chautauqua	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Chemung	2	2	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Chenango	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Clinton	1	.....	.....	1	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Columbia	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Cortland	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....

Delaware																
Dutchess																
Erie	8	3		5	1							1				
Essex																
Franklin	1			1												
Fulton																
Genesee	2	1	1		1				1							
Greene																
Hamilton																
Herkimer	2			2												
Jefferson	2			2												
Lewis	2	1		1												
Livingston	5	3		2												
Madison																
Monroe	10	2	1	7	2								1			
Montgomery																
Nassau	5			5	6											
Niagara																
Oneida	3			3												
Onondaga	4	4										1	1			
Ontario																
Orange	9	4		5	2	2										
Orleans																
Oswego																
Otsego																
Putnam																
Rensselaer																
Rockland	2			2												
St. Lawrence					2											
Saratoga	3	1		2												
Schenectady																
Schoharie																
Schuyler																
Seneca	1			1												
Steuben																
Suffolk	8	1		7	2								1			
Sullivan	1	1														
Tioga	3	1		2												
Tompkins																
Ulster	1		1													
Warren																
Washington																
Wayne	2			2												
Westchester	4	3	1		3											
Wyoming	2	2														
Yates																

*Due to the reporting of multiple reasons for petitions, the number of reasons exceeds the number of petitions reported as initially disposed

Table 57
FAMILY COURT
Child Protective Proceedings Involving Child Abuse (Boys Only)
Types of Petitioners
Jan. 1, 1977 through Dec. 31, 1977

Region / County	Total	PETITION ORIGINATED BY													
		Respondent's Parent	Respondent's Child	Respondent's Spouse or Former Spouse	Other Members of Respondent's Family or Household	Corporation Counsel/County Attorney	Assistant District Attorney	Police or Peace Officer	Public Social Services Agency	Public Health Agency	Authorized Private Agency	School (On Court's Motion)	Hospital (On Court's Motion)	Private Medical Doctor (On Court's Motion)	Other
Total New York State	395			4	2	6		4	345	2	32				
Total New York City	253			2	2	5		1	210	2	31				
New York	64			1					61	1	1				
Kings	85							1	54		30				
Queens	25					2			23						
Bronx	74			1	2	3			67	1					
Richmond	5								5						
Total Upstate	142			2		1		3	135		1				
Albany	4								4						
Allegany															
Broome	1								1						
Cattaraugus	4								4						
Cayuga	2								2						
Chautauqua															
Chemung	4								4						
Chenango															
Clinton	2								2						
Columbia															
Cortland															
Delaware	1								1						
Dutchess	3								3						

Erie	10								1	18							
Essex																	
Franklin																	
Fulton	1									1							
Genesee	1									1							
Greene																	
Hamilton																	
Herkimer	1									1							
Jefferson	3									3							
Lewis	3									3							
Livingston	1									1							
Madison																	
Monroe	7			1						8		1					
Montgomery	2									2							
Nassau	2									2							
Niagara	2									2							
Oneida	3									3							
Onondaga	13									13							
Ontario	2									2							
Orange	3									3							
Orleans																	
Oswego	1									1							
Otsego																	
Putnam																	
Rensselaer	4									4							
Rockland																	
St. Lawrence	1									1							
Saratoga	2									2							
Schenectady	3									3							
Schoharie																	
Schuyler																	
Seneca	2									2							
Steuben																	
Suffolk	12								2	10							
Sullivan	5									5							
Tioga	2									2							
Tompkins	3									3							
Ulster	4									4							
Warren																	
Washington	1									1							
Wayne	5									5							
Westchester	9						1			8							
Wyoming	5			1						4							
Yates																	

Table 58
FAMILY COURT
Child Protective Proceedings Involving Child Abuse (Girls Only)
Types of Petitioners
Jan. 1, 1977 through Dec. 31, 1977

Region County	Total	PETITION ORIGINATED BY													
		Respondent's Parent	Respondent's Child	Respondent's Spouse or Former Spouse	Other Members of Respondent's Family or Household	Corporation Counsel/ County Attorney	Assistant District Attorney	Police or Peace Officer	Public Social Services Agency	Public Health Agency	Authorized Private Agency	School (On Court's Motion)	Hospital (On Court's Motion)	Private Medical Doctor (On Court's Motion)	Other
Total New York State	525		1	8	2	12		11	443	4	42				
Total New York City	234			3	2	12		1	173	3	40				
New York	73			1	1			1	67		3				
Kings	69			1					31		37				
Queens	18					5			13						
Bronx	68			1	1	7			56	3					
Richmond	6								6						
Total Upstate	291	1		5				10	272	1	2				
Albany	7								7						
Allegany	2								2						
Broome	10								10						
Cattaraugus	7								7						
Cayuga	4								4						
Chautauqua	2								2						
Chemung	2								2						
Chenango	2								2						
Clinton	2								2						
Columbia	2								2						
Cortland															
Delaware															
Dutchess	11								11						

Erie	34			1				1	32							
Essex																
Franklin	1								1							
Fulton																
Genesee	5							3	2							
Greene																
Hamilton																
Herkimer	2								2							
Jefferson	7								7							
Lewis	1								1							
Livingston	5								5							
Madison																
Monroe	12								10		2					
Montgomery	1								1							
Nassau	10								10							
Niagara																
Oneida	9							1	8							
Onondaga	27								27							
Ontario	1								1							
Orange	20								20							
Orleans																
Oswego	1								1							
Otsego																
Putnam																
Rensselaer	1								1							
Rockland	5								5							
St. Lawrence	2								2							
Saratoga	3								3							
Schenectady	2								2							
Schoharie																
Schuyler																
Seneca	2								2							
Steuben	2								2							
Suffolk	30	1						3	26							
Sullivan	2								2							
Tioga	4								4							
Tompkins	2								2							
Ulster	11								10	1						
Warren	4			4												
Washington																
Wayne	6								6							
Westchester	16								16							
Wyoming	9							2	7							
Yates																

Table 59
FAMILY COURT
Temporary Removal of Children in Child Protective Proceedings Involving Child Abuse (Boys Only)
Jan. 1, 1977 through Dec. 31, 1977

Region County	Total*	No Temporary Removal	Temporary Removal		Length of Removal Between Petition and Disposition								
			Before Petition	Between Petition and Disposition	1-7 Days	8-14 Days	15-21 Days	22-30 Days	31-90 Days	91-180 Days	181-365 Days	366-730 Days	731 Days Or More
Total New York State	395	177	55	205	21	8	4	7	67	46	46	5	1
Total New York City	253	115	5	138	14	6	2	....	41	33	37	4	1
New York	64	18	2	46	6	2	....	....	9	14	14	.....	1
Kings	85	51	.....	34	1	1	1	....	15	4	10	2	.....
Queens	25	5	.....	20	2	1	....	....	8	5	3	1	.....
Bronx	74	40	3	34	5	2	1	....	8	9	8	1	.....
Richmond	5	1	.....	4	...	...	....	....	1	1	2	.....	.....
Total Upstate	142	62	50	67	7	2	2	7	26	13	9	1	.....
Albany	4	3	.....	1	...	1	....	....	....	.....	.....	.....	.....
Allegany	.....	.....	.....	.....	...	...	....	....	....	.....	.....	.....	.....
Broome	1	1	.....	.....	...	...	....	....	....	.....	.....	.....	.....
Cattaraugus	4	2	2	2	...	...	....	....	1	.....	1	.....	.....
Cayuga	2	.....	2	2	...	...	....	....	....	2	.....	.....	.....
Chautauqua	.....	.....	.....	.....	...	...	....	....	....	.....	.....	.....	.....
Chemung	4	.....	4	3	...	...	....	1	....	2	.....	.....	.....
Chenango	.....	.....	.....	.....	...	...	....	....	....	.....	.....	.....	.....
Clinton	2	.....	.....	2	...	...	2	....	....	.....	.....	.....	.....
Columbia	.....	.....	.....	.....	...	...	....	....	....	.....	.....	.....	.....
Cortland	.....	.....	.....	.....	...	...	....	....	....	.....	.....	.....	.....
Delaware	1	1	.....	.....	...	...	....	....	....	.....	.....	.....	.....
Dutchess	3	.....	3	.....	...	...	....	....	....	.....	.....	.....	.....
Erie	19	12	.....	7	...	...	....	1	5	.....	1	.....	.....
Essex	.....	.....	.....	.....	...	...	....	....	....	.....	.....	.....	.....

Franklin													
Fulton	1		1										
Genesee	1		1										
Greene													
Hamilton													
Herkimer	1	1											
Jefferson	3	1	1	2				1	1				
Lewis	3	2	1	1					1				
Livingston	1		1	1					1				
Madison													
Monroe	7	6		1							1		
Montgomery	2			2				2					
Nassau	2	2											
Niagara	2		2	2		1			1				
Oneida	2		1	2					2				
Onondaga	13	6	4	7					2	4	1		
Ontario	2		2	1	1								
Orange	3	2		1					1				
Orleans													
Oswego	1			1							1		
Otsego													
Putnam													
Rensselaer	4	2	2	2					2				
Rockland													
St. Lawrence	1	1											
Saratoga	2		1	2					1	1			
Schenectady	3	2	1										
Schoharie													
Schuyler													
Seneca	2		2	2						1		1	
Steuben													
Suffolk	12	7	2	4	2			1	1				
Sullivan	5	2		3	1			1		1			
Tioga	2		2	2	2								
Tompkins	3		3	2	1				1				
Ulster	4	4											
Warren													
Washington	1			1					1				
Wayne	5		5	5						2	3		
Westchester	9	1	7	5					4		1		
Wyoming	5	4		1					1				
Yates													

*The sum of columns 2, 3 and 4 exceeds the total whenever there was temporary removal both before and after petition. There were 42 such instances statewide (boys).

Table 60
FAMILY COURT
Temporary Removal of Children in Child Protective Proceedings Involving Child Abuse (Girls Only)
Jan. 1, 1977 through Dec. 31, 1977

Region County	Total*	No Temporary Removal	Temporary Removal		Length of Removal Between Petition and Disposition								
			Before Petition	Between Petition and Disposition	1-7 Days	8-14 Days	15-21 Days	22-30 Days	31-90 Days	91-180 Days	181-365 Days	366-730 Days	731 Days Or More
Total New York State	525	237	76	270	26	13	6	16	80	73	43	12	2
Total New York City	234	98	6	134	11	7	1	6	30	43	26	9	1
New York	73	20	1	53	3	3	1	1	8	23	11	2	1
Kings	69	40	.....	29	...	2	....	2	7	9	6	3	.....
Queens	18	5	.....	13	...	2	....	1	5	2	3	.....	.....
Bronx	68	32	5	34	8	...	....	2	6	9	5	4	.....
Richmond	6	1	.....	5	...	...	....	....	4	.....	1	.....	.....
Total Upstate	291	139	70	136	15	6	4	10	50	30	17	3	1
Albany	7	4	.....	3	3	...	....	....	....	.....	.....	.....	.....
Allegany	2	2	.....	.....	...	...	....	....	....	.....	.....	.....	.....
Broome	10	10	.....	.....	...	...	....	....	....	.....	.....	.....	.....
Cattaraugus	7	6	1	1	...	...	....	....	....	1	.....	.....	.....
Cayuga	4	.....	4	4	...	...	....	....	1	3	.....	.....	.....
Chautauqua	2	.....	.....	2	...	...	....	....	2	.....	.....	.....	.....
Chemung	2	.....	2	2	1	...	....	....	1	.....	.....	.....	.....
Chenango	2	.....	2	2	2	...	....	....	....	.....	.....	.....	.....
Clinton	2	2	.....	.....	...	...	....	....	....	.....	.....	.....	.....
Columbia	2	.....	2	2	...	...	....	....	2	.....	.....	.....	.....
Cortland	.....	.....	.....	.....	...	...	....	....	....	.....	.....	.....	.....
Delaware	.....	.....	.....	.....	...	...	....	....	'	.....	.....	.....	.....
Dutchess	11	4	3	4	...	...	....	....	4	.....	.....	.....	.....
Erie	34	34	1	20	...	1	1	....	6	7	5	.....	.....
Essex	.....	.....	.....	.....	...	..	....	....	....	.....	.....	.....	.....

Franklin	1	1											
Fulton													
Genesee	5	4	1										
Greene													
Hamilton													
Herkimer	2	2											
Jefferson	7	5	2	2					1	1			
Lewis	1	1											
Livingston	5	3	2	2					2				
Madison													
Monroe	12	6	1	6					1	1	4		
Montgomery	1			1				1					
Nassau	10	9	1	1							1		
Niagara													
Oneida	9	1	2	8		2	1		5				
Onondaga	27	11	5	16			2	1	2	9	1	1	
Ontario	1		1	1	1								
Orange	20	4		16		2		3	7	4			
Orleans													
Oswego	1			1							1		
Otsego													
Putnam													
Rensselaer	1	1											
Rockland	5	4		1					1				
St. Lawrence	2		2	2					1	1			
Saratoga	3	1	1	2				1	1				
Schenectady	2	1	1	1					1				
Schoharie													
Schuyler													
Seneca	2		2	1							1		
Steuben	2	2											
Suffolk	30	14	13	14	3			3	3	1	2	2	
Sullivan	2	1		1						1			
Tioga	7	2	5	5	4			1					
Tompkins	2	2											
Ulster	11	6	2	4					4				
Warren	4	4											
Washington													
Wayne	6	3	2	3	1					1	1		
Westchester	16	4	12	4					2		1		1
Wyoming	9	5		4		1			3				
Yates													

*The sum of columns 2, 3 and 4 exceeds the total whenever there was temporary removal both before and after petition. There were 58 such instances statewide (girls).

Table 61
FAMILY COURT
Child Protective Proceedings Involving Child Abuse (Boys Only)
Length of Time Between Filing of Petition and Initial Fact-Finding Hearing
Jan. 1, 1977 through Dec. 31, 1977

Region County	Total	0-7 Days	8-14 Days	15-21 Days	22-30 Days	31-90 Days	91-180 Days	181-365 Days	366-730 Days	731 or More Days	Number of Cases Without IFH
Total New York State	395	84	19	16	15	75	69	25	4	.....	88
Total New York City	253	25	7	12	6	51	56	17	4	.....	75
New York	64	3	...	....	1	20	21	2	.....	.....	17
Kings	85	14	1	7	4	18	24	3	2	.....	12
Queens	25	4	3	1	....	9	4	2	.....	.....	2
Bronx	74	1	3	4	1	3	7	9	2	.....	44
Richmond	5	3	...	....	....	1	.....	1	.....	.....	.....
Total Upstate	142	59	12	4	9	24	13	8	.....	.....	13
Albany	4	2	...	....	....	2	.....	.....	.....	.....	.....
Allegany	....	...	...	....	....	....	.....	.....	.....	.....	.....
Broome	1	...	...	....	1	....	.....	.....	.....	.....	.....
Cattaraugus	4	...	1	1	1	....	.....	.....	.....	.....	1
Cayuga	2	...	...	....	....	1	1	.....	.....	.....	.....
Chautauqua	....	...	...	....	....	....	.....	.....	.....	.....	.....
Chemung	4	1	...	....	1	....	2	.....	.....	.....	.....
Chenango	....	...	...	....	....	....	.....	.....	.....	.....	.....
Clinton	2	2	...	....	....	....	.....	.....	.....	.....	.....
Columbia	....	...	...	....	....	....	.....	.....	.....	.....	.....
Cortland	....	...	...	....	....	....	.....	.....	.....	.....	.....
Delaware	1	...	...	....	....	....	.....	.....	.....	.....	1
Dutchess	3	3	...	....	....	....	.....	.....	.....	.....	.....
Erie	19	14	2	....	....	2	1	.....	.....	.....	.....
Essex	....	...	...	....	....	....	.....	.....	.....	.....	.....
Franklin	....	...	...	....	....	....	.....	.....	.....	.....	.....
Fulton	1	...	...	....	....	1	.....	.....	.....	.....	.....

Genesee	1					1					
Greene											
Hamilton											
Herkimer	1				1						
Jefferson	3				1						2
Lewis	3	1	1	1							
Livingston	1				1						
Madison											
Monroe	7					3		3			1
Montgomery	2	2									
Nassau	2	2									
Niagara	2	1	1								
Oneida	2	1				1					
Onondaga	13	9	4								
Ontario	2	1									1
Orange	3	2			1						
Orleans											
Oswego	1						1				
Otsego											
Putnam											
Rensselaer	4		1			3					
Rockland											
St. Lawrence	1	1									
Saratoga	2					2					
Schenectady	3										3
Schoharie											
Schuyler											
Seneca	2										2
Steuben											
Suffolk	12	3	1			2	2	4			
Sullivan	5	5									
Tioga	2	2									
Tompkins	3			1		1					1
Ulster	4				1	3					
Warren											
Washington	1					1					
Wayne	5						5				
Westchester	6	3	1	1	1		1	1			1
Wyoming	5	4				1					
Yates											

Table 62
FAMILY COURT
Child Protective Proceedings Involving Child Abuse (Girls Only)
Length of Time Between Filing of Petition and Initial Fact-Finding Hearing
Jan. 1, 1977 through Dec. 31, 1977

Region County	Total	0-7 Days	8-14 Days	15-21 Days	22-30 Days	31-90 Days	91-180 Days	181-365 Days	366-730 Days	731 or More Days	Number of Cases Without IFH
Total New York State	525	139	33	24	24	112	62	38	7	4	82
Total New York City	234	13	5	7	6	62	44	20	6	.....	71
New York	73	3	1	1	1	27	21	2	1	.....	16
Kings	69	3	3	4	3	26	12	4	.....	.....	14
Queens	18	2	...	....	....	8	1	4	.....	.....	3
Bronx	68	...	1	2	2	1	9	10	5	.....	38
Richmond	6	5	...	....	....	....	1	.....	.....	.....	.....
Total Upstate	291	126	28	17	18	50	18	18	1	4	11
Albany	7	5	...	....	....	....	.....	2	.....	.....	.....
Allegany	2	2	...	....	....	....	.....	.....	.....	.....	.....
Broome	10	4	2	2	1	1	.....	.....	.....	.....	.....
Cattaraugus	7	3	...	2	....	....	.....	.....	.....	.....	2
Cayuga	4	...	...	....	....	3	1	.....	.....	.....	.....
Chautauqua	2	2	...	....	....	....	.....	.....	.....	.....	.....
Chemung	2	2	...	....	....	....	.....	.....	.....	.....	.....
Chenango	2	2	...	....	....	....	.....	.....	.....	.....	.....
Clinton	2	...	...	....	1	1	.....	.....	.....	.....	.....
Columbia	2	...	...	....	....	2	.....	.....	.....	.....	.....
Cortland	....	...	...	....	....	....	.....	.....	.....	.....	.....
Delaware	....	...	...	....	....	....	.....	.....	.....	.....	.....
Dutchess	11	8	2	....	....	1	.....	.....	.....	.....	.....
Erie	34	23	2	3	2	2	1	1	.....	.....	.....
Essex	....	...	...	....	....	....	.....	.....	.....	.....	.....

Franklin	1	1									
Fulton											
Genesee	5				1	3					1
Greene											
Hamilton											
Herkimer	2	1				1					
Jefferson	7		2								5
Lewis	1		1								
Livingston	5	1			2	2					
Madison											
Monroe	12			1		6		4			1
Montgomery	1	1									
Nassau	10	5	2	3							
Niagara											
Oneida	9	5				4					
Onondaga	27	16	10	1							
Ontario	1	1									
Orange	20	12				5	3				
Orleans											
Oswego	1						1				
Otsego											
Putnam											
Rensselaer	1					1					
Rockland	5					3		2			
St. Lawrence	2						2				
Saratoga	3				1	1	1				
Schenectady	2					2					
Schoharie											
Schuyler											
Seneca	2										
Steuben	2	1				1					
Suffolk	30	5	2	1		5	6	6	1	4	
Sullivan	2	2									
Tioga	7	6	1								
Tompkins	2										2
Ulster	11	1		2	4	4					
Warren	4				4						
Washington											
Wayne	6	3				1	1	1			
Westchester	16	8	3	2		1		2			
Wyoming	9	6	1		2						
Yates											

Table 63
FAMILY COURT
Child Protective Proceedings Involving Child Abuse (Boys Only)
Number of Adjournments Between Filing of Petition and Initial Fact-Finding Hearing[1]
Jan. 1, 1977 through Dec. 31, 1977

Region County	Total	NUMBER OF ADJOURNMENTS										
		None	1	2	3	4	5	6	7	8	9	Over 9
Total New York State ...	307	80	57	44	34	35	20	12	7	5	3	10
Total New York City	178	13	33	22	25	31	20	10	6	5	3	10
New York	47	....	3	5	13	11	4	2	3	1	..	5
Kings	73	3	10	12	4	16	10	3	1	2	1	2
Queens	23	7	6	..	1	2	3	4	..	..	..	.....
Bronx	30	1	5	5	5	2	3	1	1	2	2	3
Richmond	5	2	..	..	2	..	..	..	1	..	..	.....
Total Upstate	129	67	24	22	9	4	..	2	1	..	..	.....
Albany	4	2	..	2	..	..	..	..	..	..	..	.....
Allegany	....	....	..	..	..	.	..	..	..	..	..	.....
Broome	1	1	..	..	..	..	..	..	..	..	..	.....
Cattaraugus	3	3		..	..	..	..	..	..	..	..	.....
Cayuga	2	....	1	1	..	..	..	..	..	..	..	.....
Chautauqua	....	....	..	..	..	..	..	..	..	..	..	.....
Chemung	4	....	1	3	..	..	..	..	..	..	..	.....
Chenango	....	....	..	..	..	..	..	..	..	..	..	.....
Clinton	2	2	..	..	..	..	..	..	..	..	..	.....
Columbia	....	....	..	..	..	..	..	..	..	..	..	.....
Cortland	....	....	..	..	..	..	..	..	..	..	..	.....
Delaware	....	....	..	..	..	..	..	..	..	..	..	.....
Dutchess	3	1	..	..	..	..	..	2	..	..	..	.....
Erie	19	17	2	..	..	..	..	..	..	..	..	.....
Essex	....	....	..	..	..	..	..	..	..	..	..	.....
Franklin	....	.. ..	..	..	..	..	..	..	..	..	..	.....

Fulton	1			1								
Genesee	1			1								
Greene												
Hamilton												
Herkimer	1	1										
Jefferson	1			1								
Lewis	3	2	1									
Livingston	1			1								
Madison												
Monroe	6	3			2	1						
Montgomery	2				2							
Nassau	2	1				1						
Niagara	2	2										
Oneida	2			1	1							
Onondaga	13	12	1									
Ontario	1	1										
Orange	3		2	1								
Orleans												
Oswego	1			1								
Otsego												
Putnam												
Rensselaer	4		4									
Rockland												
St. Lawrence	1	1										
Saratoga	2		1	1								
Schenectady												
Schoharie												
Schuyler												
Seneca												
Steuben												
Suffolk	12	4	3		3	2						
Sullivan	5	3	2									
Tioga	2		2									
Tompkins	2		1	1								
Ulster	4	4										
Warren												
Washington	1		1									
Wayne	5			5								
Westchester	8	4	1	2	1							
Wyoming	5	3	1						1			
Yates												

*This table includes only cases in which there was an initial fact-finding hearing.

Table 64
FAMILY COURT
Child Protective Proceedings Involving Child Abuse (Girls Only)
Number of Adjournments Between Filing of Petition and Initial Fact-Finding Hearing*
Jan. 1, 1977 through Dec. 31, 1977

Region / County	Total	NUMBER OF ADJOURNMENTS										
		None	1	2	3	4	5	6	7	8	9	Over 9
Total New York State	443	147	73	73	41	26	22	23	10	2	5	21
Total New York City	163	9	15	38	25	17	16	15	4	2	5	17
New York	57	..	..	17	9	5	6	3	3	2	3	9
Kings	55	2	13	17	6	6	4	7	..	..	..	..
Queens	15	4	1	1	2	2	..	4	1	..	..	..
Bronx	30	..	1	2	7	4	6	..	..	..	2	8
Richmond	6	3	..	1	1	..	..	1	..	..	..	..
Total Upstate	280	138	58	35	16	9	6	8	6	..	..	4
Albany	7	2	1	2	..	..	..	..	2	..	..	..
Allegany	2	2	..	..	..	..	..	..	..	..	..	..
Broome	10	9	1	..	..	..	..	..	..	..	..	..
Cattaraugus	5	2	..	3	..	..	..	..	..	..	..	..
Cayuga	4	..	2	2	..	..	..	..	..	..	..	..
Chautauqua	2	..	..	2	..	..	..	..	..	..	..	..
Chemung	2	2	..	..	..	..	..	..	..	..	..	..
Chenango	2	2	..	..	..	..	..	..	..	..	..	..
Clinton	2	2	..	..	..	..	..	..	..	..	..	..
Columbia	2	1	1	..	..	..	..	..	..	..	..	..
Cortland	..	..	..	..	..	..	..	..	..	..	..	..
Delaware	..	..	..	..	..	..	..	..	..	..	..	..
Dutchess	11	4	5	..	..	..	..	2	..	..	..	..
Erie	34	30	2	..	1	..	..	..	..	..	..	1
Essex	..	..	..	..	..	..	..	..	..	..	..	..
Franklin	1	1	..	..	..	..	..	..	..	..	..	..

Fulton													
Genesee	4		2	2									
Greene													
Hamilton													
Herkimer	3	1	1										
Jefferson	2	1	1										
Lewis	1		1										
Livingston	5		1	4									
Madison													
Monroe	11	3	1		4	2	1						
Montgomery	1				1								
Nassau	10	6		1	2		1						
Niagara													
Oneida	9	1	2	3	3								
Onondaga	27	25	1										1
Ontario	1	1											
Orange	20	5	12	3									
Orleans													
Oswego	1			1									
Otsego													
Putnam													
Rensselaer	1		1										
Rockland	5	1		3		1							
St. Lawrence	2			1	1								
Saratoga	3		1				1		1				
Schenectady	2	1	1										
Schoharie													
Schuyler													
Seneca	2	2								1			
Steuben	2	1	1										
Suffolk	30	6	2	4	4	5	2	2	3				2
Sullivan	2	1		1									
Tioga	7		7										
Tompkins													
Ulster	11	11											
Warren	4							4					
Washington													
Wayne	6	3		2			1						
Westchester	16	9	5	1		1							
Wyoming	9	3	6										
Yates													

*This table includes only cases in which there was an initial fact finding hearing

Table 65
FAMILY COURT
Child Protective Proceedings Involving Child Abuse (Boys Only)
Length of Time Between Initial Fact-Finding Hearing and Dispositional Hearing
Jan. 1, 1977 through Dec. 31, 1977

Region County	Total	0-7 Days	8-14 Days	15-21 Days	22-30 Days	31-90 Days	91-180 Days	181-365 Days	366-730 Days	731 or More Days	Number Of Cases Without IFH
Total New York State	395	69	5	6	12	96	62	43	10	4	88
Total New York City	253	37	2	4	3	53	47	27	4	1	75
New York	64	14	...	4	2	9	15	3	...	...	17
Kings	85	11	...	....	1	20	19	12	...	1	12
Queens	25	7	2	....	....	6	6	2	...	....	2
Bronx	74	5	...	....	....	6	6	9	4	....	44
Richmond	5	...	...	....	....	3	1	1	...	....	...
Total Upstate	142	32	3	2	9	43	15	16	6	3	13
Albany	4	1	...	....	....	1	....	2	...	....	...
Allegany	....	...	...	....	....	..	....	...	...	....	...
Broome	1	...	...	....	1	....	....	...	...	....	...
Cattaraugus	4	...	...	....	....	1	....	2	...	....	1
Cayuga	2	...	...	....	1	1	....	...	...	....	...
Chautauqua	....	...	...	....	....	....	....	...	...	....	...
Chemung	4	1	...	....	....	2	1	...	...	....	...
Chenango	....	...	...	....	....	....	....	...	...	....	...
Clinton	2	...	2	....	....	....	....	...	...	....	...
Columbia	....	...	...	....	....	....	....	...	...	....	...
Cortland	....	...	...	....	....	....	....	...	...	....	...
Delaware	1	...	...	....	....	....	....	...	...	....	1
Dutchess	3	...	...	....	....	3	....	...	...	....	...
Erie	19	6	...	....	1	6	1	5	...	....	...
Essex	....	...	...	....	....	....	....	...	...	....	...

Franklin	....	...	...	....	....	....	.....	.....	.....	.....	.....
Fulton	1	...	...	....	....	....	.....	1	.....	.....	.....
Genesee	1	1	...	....	....	....	.....	.....	.....	.....	.....
Greene	....	...	...	....	....	....	.....	.....	.....	.....	.....
Hamilton	....	...	...	....	....	....	.....	.....	.....	.....	.....
Herkimer	1	...	...	....	....	1	.....	.....	.....	.....	.....
Jefferson	3	1	...	....	....	....	.....	.....	.....	.....	2
Lewis	3	1	...	....	1	1	.....	.....	.....	.....	.....
Livingston	1	...	...	....	....	1	.....	.....	.....	.....	.....
Madison	....	...	...	....	....	....	.....	.....	.....	.....	.....
Monroe	7	4	1	....	....	....	.....	1	.....	.....	1
Montgomery	2	...	...	....	....	2	.....	.....	.....	.....	.....
Nassau	2	...	...	....	....	....	2	.....	.....	.....	.....
Niagara	2	1	...	....	1	....	.....	.....	.....	.....	.....
Oneida	2	1	...	....	....	1	.....	.....	.....	.....	.....
Onondaga	13	...	...	....	....	7	4	1	1	.....	.....
Ontario	2	...	...	....	1	....	.....	.....	.....	.....	1
Orange	3	...	...	1	....	2	.....	.....	.....	.....	.....
Orleans	....	...	...	....	....	....	.....	.....	.....	.....	.....
Oswego	1	...	...	....	....	....	1	.....	.....	.....	.....
Otsego	....	...	...	....	....	....	.....	.....	.....	.....	.....
Putnam	....	...	...	....	....	....	.....	.....	.....	.....	.....
Rensselaer	4	...	...	....	....	2	1	1	.....	.....	.....
Rockland	....	...	...	....	....	....	.....	.....	.....	.....	.....
St. Lawrence	1	...	...	....	....	1	.....	.....	.....	.....	.....
Saratoga	2	...	...	....	....	2	.....	.....	.....	.....	.....
Schenectady	3	...	...	....	....	....	.....	.....	.....	.....	3
Schoharie	....	...	...	....	....	....	.....	.....	.....	.....	.....
Schuyler	....	...	...	....	....	....	.....	.....	.....	.....	.....
Seneca	2	...	...	....	....	....	.....	.....	.....	.....	2
Steuben	....	...	...	....	....	....	.....	.....	.....	.....	.....
Suffolk	12	9	...	....	....	1	1	1	.....	.....	.....
Sullivan	5	1	...	1	....	....	.....	1	2	.....	.....
Tioga	2	2	...	....	....	....	.....	.....	.....	.....	.....
Tompkins	3	1	...	....	....	....	1	.....	.....	.....	1
Ulster	4	...	...	....	....	1	.....	.....	3	.....	.....
Warren	....	...	...	....	....	....	.....	.....	.....	.....	.....
Washington	1	1	...	....	....	....	.....	.....	.....	.....	.....
Wayne	5	...	...	....	....	2	3	.....	.....	.....	.....
Westchester	9	...	...	....	....	4	.....	1	.....	3	1
Wyoming	5	1	...	....	3	1	.....	.....	.....	.....	.....
Yates	....	...	...	....	....	....	.....	.....	.....	.....	.....

Table 66
FAMILY COURT
Child Protective Proceedings Involving Child Abuse (Girls Only)
Length of Time Between Initial Fact-Finding Hearing and Dispositional Hearing
Jan. 1, 1977 through Dec. 31, 1977

Region County	Total	0-7 Days	8-14 Days	15-21 Days	22-30 Days	31-90 Days	91-180 Days	181-365 Days	366-730 Days	731 or More Days	Number Of Cases Without IFH
Total New York State	525	99	17	12	19	108	94	72	16	6	82
Total New York City	234	26	3	3	4	39	51	34	3	.....	71
New York	73	9	...	2	....	16	18	12	.....	.....	16
Kings	69	7	...	1	4	12	23	5	3	.....	14
Queens	18	2	3	....	....	3	7	.....	.....	.....	3
Bronx	68	8	...	....	....	3	3	16	.....	.....	38
Richmond	6	...	...	....	....	5	.....	1	.....	.....	.....
Total Upstate	291	73	14	9	15	69	43	38	13	6	11
Albany	7	5	...	....	....	2	.....	...	.....	.....	.....
Allegany	2	...	...	....	1	.....	1	.....	.....	.....	.....
Broome	10	4	3	....	2	1	.....	.....	.....	.....	.....
Cattaraugus	7	...	...	....	....	.....	3	2	.....	.....	2
Cayuga	4	1	...	....	1	1	1	.....	.....	.....	...
Chautauqua	2	...	...	....	....	2	.....	.....	.....	.....	.....
Chemung	2	1	...	....	....	1	.....	.. ..	.....	.....	.....
Chenango	2	2	...	....	....	.....	.....	.....	.....	.....	.....
Clinton	2	1	...	....	1	.....	.....	.....	.....	.....	.....
Columbia	2	2	...	....	....	.....	.....	.....	.....	.....	.....
Cortland	....	...	...	....	....	.....	.....	.....	.....	... ..	.....
Delaware	....	...	...	....	....	.....	.....	.....	.....	.....	.....
Dutchess	11	2	...	....	....	7	2	.....	.....	.....	.....
Erie	34	10	1	1	....	8	6	7	.....	1	.....
Essex	....	...	...	....	....	.....	.....	.....	.....	.....	.....

Franklin	1						1				
Fulton											
Genesee	5	3				1					1
Greene											
Hamilton											
Herkimer	2					2					
Jefferson	7					1	1				5
Lewis	1					1					
Livingston	5		2	1		2					
Madison											
Monroe	12	5	1			2		3			1
Montgomery	1					1					
Nassau	10					1	7	2			
Niagara											
Oneida	9	3				5		1			
Onondaga	27		2		1	4	11	4	3	2	
Ontario	1				1						
Orange	20	5	4	4		4	2	1			
Orleans											
Oswego	1						1				
Otsego											
Putnam											
Rensselaer	1							1			
Rockland	5	3				2					
St. Lawrence	2				2						
Saratoga	3	2				1					
Schenectady	2	1						1			
Schoharie											
Schuyler											
Seneca	2	1							1		
Steuben	2	2									
Suffolk	30	13			1	5	2	7	2		
Sullivan	2					1	1				
Tioga	7	4		1	2						
Tompkins	2										2
Ulster	11					6		3	2		
Warren	4							4			
Washington											
Wayne	6	1		2		1	2				
Westchester	16	1				3	2	2	5	3	
Wyoming	9	1	1		3	4					
Yates											

Table 67
FAMILY COURT
Child Protective Proceedings Involving Child Abuse (Boys Only)
Number of Adjournments Between Initial Fact-Finding Hearing and Dispositional Hearing*
Jan. 1, 1977 through Dec. 31, 1977

Region County	Total	Number of Adjournments										
		None	1	2	3	4	5	6	7	8	9	Over 9
Total New York State	307	116	91	32	25	18	9	4	9	1	1	1
Total New York City	178	48	59	21	18	15	5	2	7	1	1	1
New York	47	15	9	7	7	1	3	...	3	1	1	.....
Kings	73	12	37	3	4	10	1	2	3	...	...	1
Queens	23	12	3	5	3	...	...	...	...	...	...	.....
Bronx	30	8	9	5	4	3	...	...	1	...	...	.....
Richmond	5	1	1	1	...	1	1	...	...	...	...	.....
Total Upstate	129	68	32	11	7	3	4	2	2	..	..	..
Albany	4	1	3	...	...	...	...	...	...	..	..	.....
Allegany	.....	.....	...	...	...	...	...	...	...	..	..	.....
Broome	1	1	...	...	...	...	...	...	...	..	..	.....
Cattaraugus	3	.....	...	1	...	1	1	...	...	..	..	.....
Cayuga	2	.....	2	...	...	...	...	...	...	..	..	.....
Chautauqua	.....	.....	...	...	...	...	...	...	...	..	..	.....
Chemung	4	4	...	...	...	...	...	...	...	..	.	.....
Chenango	.....	.....	...	...	...	...	...	...	...	..	.	.....
Clinton	2	2	...	...	...	...	...	...	...	..	..	.....
Columbia	.....	.....	...	...	...	...	...	...	...	..	..	.....
Cortland	.....	.....	...	...	...	...	...	...	...	..	..	.....
Delaware	.....	.....	...	...	...	...	...	...	...	..	..	.....
Dutchess	3	2	1	...	...	...	...	...	...	..	..	.....
Erie	19	6	4	6	1	1	1	...	...	.	..	.....
Essex	.....	.....	...	...	...	...	...	...	...	..	..	.....
Franklin	.....	.....	...	...	...	...	...	...	...	..	..	.....

Fulton	1	1										
Genesee	1	1										
Greene												
Hamilton												
Herkimer	1		1									
Jefferson	1	1										
Lewis	3	3										
Livingston	1		1									
Madison												
Monroe	6	4	1	1								
Montgomery	2	2										
Nassau	2					1		1				
Niagara	2	2										
Oneida	2	2										
Onondaga	13	13										
Ontario	1	1										
Orange	3	1	2									
Orleans												
Oswego	1			1								
Otsego												
Putnam												
Rensselaer	4		4									
Rockland												
St. Lawrence	1	1										
Saratoga	2		1	1								
Schenectady												
Schoharie												
Schuyler												
Seneca												
Steuben												
Suffolk	12	9			2				1			
Sullivan	5	1	3					1				
Tioga	2	2										
Tompkins	2	1	1									
Ulster	4	4										
Warren												
Washington	1	1										
Wayne	5		2		3							
Westchester	8	1	2	1	1		2		1			
Wyoming	5	1	4									
Yates												

*This table includes only cases in which there was an initial fact-finding hearing.

Table 68
FAMILY COURT
Child Protective Proceedings Involving Child Abuse (Girls Only)
Number of Adjournments Between Initial Fact-Finding Hearing and Dispositional Hearing*
Jan. 1, 1977 through Dec. 31, 1977

Region County	Total	NUMBER OF ADJOURNMENTS										
		None	1	2	3	4	5	6	7	8	9	Over 9
Total New York State	443	186	98	70	22	19	21	12	7	...	4	4
Total New York City	163	33	45	35	15	9	10	8	3	...	2	3
New York	57	9	10	14	8	2	6	5	2	...	...	1
Kings	55	7	26	12	3	1	4	1	1	...	...	.....
Queens	15	8	3	2	2	...	...	...	...	...	...	.....
Bronx	30	6	5	6	2	5	...	2	...	...	2	2
Richmond	6	3	1	1	...	1	...	...	...	...	...	.....
Total Upstate	280	153	53	35	7	10	11	4	4	...	2	1
Albany	7	6	2	...	...	...	...	...	...	...	...	.....
Allegany	2	.....	2	...	...	...	...	...	...	...	...	.....
Broome	10	7	1	1	1	...	...	...	...	...	...	.....
Cattaraugus	5	3	...	...	...	...	2	...	...	...	...	.....
Cayuga	4	1	3	...	...	...	...	...	...	...	...	.....
Chautauqua	2	2	...	...	...	...	...	...	...	...	...	.....
Chemung	2	1	1	...	...	...	...	...	...	...	...	.....
Chenango	2	2	...	...	...	...	...	...	...	...	...	.....
Clinton	2	1	1	...	...	...	...	...	...	...	...	.....
Columbia	2	2	...	...	...	...	...	...	...	...	...	.....
Cortland	.....	.....	...	...	...	...	...	...	...	...	...	.....
Delaware	.....	.....	...	...	...	...	...	...	...	...	...	.....
Dutchess	11	6	...	4	...	...	...	...	2	...	...	.....
Erie	34	9	8	6	1	3	7	...	...	...	...	.....
Essex	.....	.....	...	...	...	...	...	...	...	...	...	.....
Franklin	1	.....	1	...	...	...	...	...	...	...	...	.....

Fulton												
Genesee	4	3	1									
Greene												
Hamilton												
Herkimer	3	1	1									
Jefferson	2		2									
Lewis	1	1										
Livingston	5	1	4									
Madison												
Monroe	11	5	2	4								
Montgomery	1	1										
Nassau	10	1		1		4		4				
Niagara												
Oneida	9	7		2								
Onondaga	27	27										
Ontario	1	1										
Orange	20	14	3	3								
Orleans												
Oswego	1			1								
Otsego												
Putnam												
Rensselaer	1		1									
Rockland	5	4	1									
St. Lawrence	2	1	1									
Saratoga	3	3										
Schenectady	2	2										
Schoharie												
Schuyler												
Seneca	2	2										
Steuben	2	2										
Suffolk	30	10	3	8	2	2			2		2	1
Sullivan	3		2									
Tioga	7	4	3									
Tompkins												
Ulster	11	9		2								
Warren	4	4										
Washington												
Wayne	6	2	3	1								
Westchester	16	6	2	2	3	1	2					
Wyoming	9	4	5									
Yates												

*This table includes only cases in which there was an initial fact-finding hearing.

Table 69
FAMILY COURT
Court Findings in Child Protective Proceedings Involving Child Abuse, by Sex
Reason for Petition Abuse Only
Jan. 1, 1977 through Dec. 31, 1977

Region County	Boys							Girls						
		Court Findings at Dispositional Hearing				Court Findings Based On			Court Findings at Dispositional Hearing				Court Findings Based On	
	Total	Child Is Abused	Child Is Neglected	Both	Neither	Establishment of Facts Sufficient to Sustain Petition	Consent of All Parties	Total	Child Is Abused	Child Is Neglected	Both	Neither	Establishment of Facts Sufficient to Sustain Petition	Consent of All Parties
Total New York State	345	101	98	11	135	134	211	452	145	129	18	160	204	248
Total New York City	227	78	65	9	75	80	147	205	67	57	14	67	76	129
New York	57	13	18	8	18	20	37	63	12	21	14	16	29	34
Kings	71	25	31		15	40	31	52	16	24		12	25	27
Queens	24	20	2	1	1	1	23	18	16			2		18
Bronx	70	17	13		40	17	53	66	20	12		34	19	47
Richmond	5	3	1		1	2	3	6	3			3	3	3
Total Upstate	118	23	33	2	60	54	64	247	78	72	4	93	128	119
Albany	4	4				3	1	7	7				7	
Allegany								2	2				1	1
Broome	1				1	1		10	3	5		2	10	
Cattaraugus	1				1	1		3				3		3
Cayuga	2		1	1		1	1	4	1	1	1	1	2	2
Chautauqua								2		2			2	
Chemung	4	2	2				4	2	2					2
Chenango								2		2				2
Clinton	2				2	2		2	1			1	1	1
Columbia								2		1		1		2
Cortland														

Delaware	1				1		1								
Dutchess	3		2		1		3	11		3		8	1	10	
Erie	19	2	7		10	13	6	33	8	15		10	25	8	
Essex															
Franklin								1	1				1		
Fulton	1				1		1								
Genesee								4		1		3		4	
Greene															
Hamilton															
Herkimer								3	3				1	1	
Jefferson	2				2		2	7	2			5		7	
Lewis	3	1			2		3	1	1					1	
Livingston	1	1				1		6	5				4	1	
Madison															
Monroe	6	5			1	4	2	8	7			1	5	3	
Montgomery	1		1			1		1		1			1		
Nassau															
Niagara	2		1		1	1	1								
Oneida	2		2				2	9	3	4		2	4	6	
Onondaga	13		5		8	5	8	26	4	12		10	14	12	
Ontario	1				1		1	1				1	1		
Orange	1				1		1	16	3	4	3	6	5	11	
Orleans															
Oswego	1		1			1		1		1			1		
Otsego															
Putnam															
Rensselaer	4				4		4	1				1		1	
Rockland								5	2			3		5	
St. Lawrence	1	1				1									
Saratoga	2	2				1	1	3	3				1	2	
Schenectady	3				3	1	2	3				2	1	1	
Schoharie															
Schuyler															
Seneca	2				2		2	2	1	1			1	1	
Steuben								1		1			1		
Suffolk	1	3	2		6	6	5	22	8	9		12	18	9	
Sullivan	5				5	1	4	2	1			1	1	1	
Tioga	2		2				2	3	2	3		1	2	5	
Tompkins	1				1	1		2				2	2		
Ulster	1				1		1	7	1	2		4	2	6	
Warren															
Washington	1		1			1									
Wayne	5		4	1		5		5	2	2			5		
Westchester	4	1	2		1	2	2	12	3	4		3	3	9	
Wyoming	5	1			4	1	4	9	2			2	5	4	
Yates															

Table 70
FAMILY COURT
Court Findings in Child Protective Proceedings Involving Child Abuse, by Sex
Reason for Petition Both Abuse and Neglect
Jan. 1, 1977 through Dec. 31, 1977

Region County	Boys							Girls						
		Court Findings at Dispositional Hearing				Court Findings Based On			Court Findings at Dispositional Hearing				Court Findings Based On	
	Total	Child Is Abused	Child Is Neglected	Both	Neither	Establishment of Facts Sufficient to Sustain Petition	Consent of All Parties	Total	Child Is Abused	Child Is Neglected	Both	Neither	Establishment of Facts Sufficient to Sustain Petition	Consent of All Parties
Total New York State	40	3	18	1	18	17	23	59	5	30	7	21	24	35
Total New York City	20	1	12		7	7	13	27	1	17	1	8	10	17
New York	7		2		5	1	6	9		5	1	3	4	5
Kings	10	1	8		1	6	4	17	1	11		5	5	12
Queens														
Bronx	3		2		1		3	1		1			1	
Richmond														
Total Upstate	20	2	6	1	11	10	10	32	4	9	6	13	14	18
Albany														
Allegany														
Broome														
Cattaraugus	3				3	1	2	4				4	2	2
Cayuga														
Chautauqua														
Chemung														
Chenango														
Clinton														
Columbia														

Cortland															
Delaware															
Dutchess															
Erie															
Essex															
Franklin															
Fulton															
Genesee	1	1				1		1			1		1		
Greene															
Hamilton															
Herkimer	1				1		1								
Jefferson															
Lewis															
Livingston															
Madison															
Monroe	1	1				1		4	3			1	2	2	
Montgomery	1		1			1									
Nassau	2		1	1		2		9		4	6		7	2	
Niagara															
Oneida															
Onondaga															
Ontario	1				1	1									
Orange	2				2		2	2				2		2	
Orleans															
Oswego															
Otsego															
Putnam															
Rensselaer															
Rockland															
St. Lawrence															
Saratoga															
Schenectady															
Schoharie															
Schuyler															
Seneca															
Steuben								1				1		1	
Suffolk															
Sullivan															
Tioga															
Tompkins	2		2			2									
Ulster	3				3		3	4				4		4	
Warren								4		4				4	
Washington															
Wayne								1		1				1	
Westchester	3		2		1	1	2	2	1			1	2		
Wyoming															
Yates															

Table 71
FAMILY COURT
Court Findings in Child Protective Proceedings Involving Child Abuse, by Sex
Reason for Petition Neglect Only
Jan. 1, 1977 through Dec. 31, 1977

Region / County	Boys							Girls						
		Court Findings at Dispositional Hearing				Court Findings Based On			Court Findings at Dispositional Hearing				Court Findings Based On	
	Total	Child Is Abused	Child Is Neglected	Both	Neither	Establishment of Facts Sufficient to Sustain Petition	Consent of All Parties	Total	Child Is Abused	Child Is Neglected	Both	Neither	Establishment of Facts Sufficient to Sustain Petition	Consent of All Parties
Total New York State	2,035	8	1,103	2	922	778	1,257	1,985	11	1,082	3	889	792	1,193
Total New York City	802	4	592	2	204	374	488	774	2	539	...	233	332	442
New York	239	.....	145	...	94	103	136	163	1	92	...	70	65	98
Kings	189	4	124	...	61	70	119	166	.....	111	...	55	58	108
Queens	277	.....	254	1	22	149	128	270	.....	248	..	22	136	134
Bronx	125	.....	53	1	71	33	92	147	1	76	...	70	57	90
Richmond	32	.....	16	...	16	19	13	28	.....	12	...	16	16	12
Total Upstate	1,173	4	511	...	658	404	769	1,211	9	543	3	656	460	751
Albany	7	.....	7	...	.....	7	.....	8	.....	8	...	.....	8	.....
Allegany	12	.....	1	...	11	2	10	14	.....	1	...	13	3	11
Broome	39	.....	9	...	30	35	4	30	.....	11	...	19	27	3
Cattaraugus	26	.....	12	...	14	21	5	19	.....	9	...	10	14	5
Cayuga	.....	.....	.....	...	.....	.....	.....	.....	.....	.....	...	.....	.....	.....
Chautauqua	57	.....	9	...	48	7	50	41	.....	6	...	35	3	38
Chemung	23	.....	14	...	9	1	22	23	.....	16	...	7	5	18
Chenango	3	.....	2	...	1	2	1	1	.....	1	...	.....	1	.....
Clinton	3	.....	2	...	1	.....	3	4	.....	4	..	.....	1	3
Columbia	7	.....	2	...	5	.....	7	14	.....	2	...	12	.....	14

Cortland														
Delaware	22		9		13	6	16	19		6		13	3	16
Dutchess	26		5		21	2	24	32		1		31	1	31
Erie	89		56		33	43	46	152		101	1	50	77	75
Essex	1				1		1	4				4		4
Franklin	25		11		14	3	22	29		19		10	8	21
Fulton	10				10		10	13		2		11	2	11
Genesee	24		5		19	1	23	14		2		12		14
Greene	9		1		8	3	6	11		1		10	2	9
Hamilton														
Herkimer	4		2		2	3	1	6		2		4	4	2
Jefferson	14	1	6		7	4	10	19		8		11	8	11
Lewis	4		1		3	1	3	3		2		1	2	1
Livingston	2				2		2	2				2	2	
Madison	2		1		1	1	1	3		3			3	
Monroe	47		30		17	33	14	51		29		22	31	20
Montgomery	6		2		4	2	4	4		1		3	1	3
Nassau	116		60		47	58	58	96		50	1	36	66	30
Niagara	28		23		5	11	17	18		11		7	7	11
Oneida	3		2		1		3	11		8		3	4	7
Onondaga	103		40		63	37	66	103	1	42		60	43	60
Ontario	9		3		6	4	5	20		12		8	6	14
Orange	9		4		5	2	7	24	2	10		12	3	21
Orleans														
Oswego	6		3		3	2	4	14		8		6	6	8
Otsego	9		6		3	6	3	4		4			4	
Putnam														
Rensselaer	1				1		1	2				2		2
Rockland	10		6		5	2	8	15		9		6	2	13
St. Lawrence	21		15		6	15	6	21	1	12	1	7	14	7
Saratoga	14		6		8	1	13	14		6		8	2	12
Schenectady	20		13		7	5	15	17		10		7	3	14
Schoharie	17		8		9	5	12	6		2		4	1	5
Schuyler	1		1			1		4		4			4	
Seneca	10		4		15	3	16	13		3		10	3	10
Steuben	17		2		15	2	15	26		2		24	5	21
Suffolk	162	1	59		102	40	122	144	3	45		96	38	106
Sullivan	5				5		5	5				5		5
Tioga	5		2		3	1	4	6		2		4	1	5
Tompkins	3		1		2	1	2	1				1	1	
Ulster	12		5		7	3	9	13		2		11	2	11
Warren	16		13		3	2	14	23		16		7	6	17
Washington	8		2		6	2	6	9		2		7	2	7
Wayne	12		2		10	2	10	15		10		5	11	4
Westchester	74	2	36		36	20	54	59	2	29		23	19	40
Wyoming	11				11	2	9	12				12	1	11
Yates														

Table 72

FAMILY COURT

Dispositions of Child Protective Proceedings Involving Child Abuse (Boys Only)*

Jan. 1, 1977 through Dec. 31, 1977

Region County	Total	With-drawn	Dis-missed	Judg-ment Sus-pended	Re-leased to Parent or Other Person	Re-leased to Parent or Other Person Under Social Ser-vices Depart-ment Super-vision	Re-leased to Parent or Other Person Under Pri-vate Agency Super-vision	Pro-bation	Order of Pro-tec-tion	Trans-ferred to A Court With Crim-inal Juris-dic-tion	Trans-ferred to Family Court in Another County	Con-sol-idated With An-other Child Pro-tec-tive Pro-ceed-ing	Con-sol-idated With Family Of-fense Pro-ceed-ing	Con-sol-idated With Sup-port Pro-ceed-ing	Re-moval of Child From Home and Place-ment With Rel-ative	Re-moval of Child From Home and Place-ment With Non-Rel-ative	Re-moval of Child From Home and Place-ment With Public Social Ser-vices Depart-ment or Officer	Re-moval of Child From Home and Place-ment With Pri-vate Insti-tution	Re-moval of Child From Home and Place-ment With Other Author-ized Agency	Other
Total New York State	395	47	88	15	14	72	16	.....	19	2	1	3	.....	....	10	....	103	.....	.....	5
Total New York City	253	27	61	13	13	48	14	.....	6	.....	.....	3	.....	....	6	....	68	....	.....	4
New York	64	6	18	9	1	9	1	.....	.....	.....	.....	.....	.....	....	1	....	17	....	.....	3
Kings	85	2	12	.....	5	24	13	.....	6	.....	.....	.....	.....	....	.....	....	23	....	.....	.....
Queens	25	3	1	1	3	6	.....	.....	.....	.....	.....	3	.....	....	.....	....	7	.....	.....	1
Bronx	74	16	30	3	3	8	.....	.....	.....	.....	.....	.....	.....	....	5	....	9	....	.....	.....
Richmond	5	1	.....	.....	1	1	.....	.....	.....	.....	.....	.....	.....	....	.....	....	2	....	.....	.....
Total Upstate	142	20	27	2	1	24	2	.....	13	2	1	.....	.....	....	4	....	45	....	.....	1
Albany	4	.....	1	.....	.....	2	.....	.....	.....	.....	.....	.....	.....	....	.....	....	1	....	.....	.....
Allegany	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	....	.....	....	.....	....	.....	.....
Broome	1	.....	.....	1	.....	.....	.....	.....	.....	.....	.....	.....	.....	....	.....	....	.....	....	.....	.....
Cattaraugus	4	.....	2	.....	.....	2	.....	.....	.....	.....	.....	.....	.....	....	.....	....	.....	....	.....	.....
Cayuga	2	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	....	.....	....	.....	....	.....	.....
Chautauqua	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	....	.....	....	2	....	.....	.....
Chemung	4	1	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	....	.....	....	.....	....	.....	.....
Chenango	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	....	.....	....	3	....	.....	.....
Clinton	2	.....	.....	.....	.....	.....	.....	.....	.....	2	.....	.....	.....	....	.....	....	.....	....	.....	.....

Columbia																							
Cortland																							
Delaware	1		1																				
Dutchess	3					1														2			
Erie	19		7			4				4										3			1
Essex																							
Franklin																							
Fulton	1		1																				
Genesee	1																			1			
Greene																							
Hamilton																							
Herkimer	1	1																					
Jefferson	3									1										2			
Lewis	3									2										1			
Livingston	1																			1			
Madison																							
Monroe	7	1					1											1		1			
Montgomery	2																			2			
Nassau	2									2													
Niagara	2			1		1																	
Oneida	2																			2			
Onondaga	13	6	2															1		4			
Ontario	2	1								1													
Orange	3					3																	
Orleans																							
Oswego	1																			1			
Otsego																							
Putnam																							
Rensselaer	4	2	2																				
Rockland																							
St. Lawrence	1					1																	
Saratoga	2					1														1			
Schenectady	3		2									1											
Schoharie																							
Schuyler																							
Seneca	2					1														1			
Steuben																							
Suffolk	12	5	1			3	1											1		1			
Sullivan	5		3		1															1			
Tioga	2																			2			
Tompkins	3					2												1					
Ulster	4	1	3																				
Warren																							
Washington	1																			1			
Wayne	5																			5			
Westchester	9	1	1			2				1										4			
Wyoming	5	1	1			1				2													
Yates																							

*For the purpose of compiling this table, only one disposition per petition was considered. If more than one disposition was reported, the one deemed to be the most significant was used.

Table 73
FAMILY COURT
Dispositions of Child Protective Proceedings Involving Child Abuse (Girls Only)*
Jan. 1, 1977 through Dec. 31, 1977

Region County	Total	Withdrawn	Dismissed	Judgment Suspended	Released to Parent or Other Person	Released to Parent or Other Person Under Social Services Department Supervision	Released to Parent or Other Person Under Private Agency Supervision	Probation	Order of Protection	Transferred to a Court With Criminal Jurisdiction	Transferred to Family Court in Another County	Consolidated With Another Child Protective Proceeding	Consolidated With Family Offense Proceeding	Consolidated With Support Proceeding	Removal of Child From Home and Placement With Relative	Removal of Child From Home and Placement With Non-Relative	Removal of Child From Home and Placement With Public Social Services Department or Officer	Removal of Child From Home and Placement With Private Institution	Removal of Child From Home and Placement With Other Authorized Agency	Other
Total New York State	525	52	100	15	24	83	12	3	57	4	.....	4	.....	.....	9	2	155	.....	.....	5
Total New York City	234	27	52	13	22	32	10	.....	11	1	.....	2	.....	.....	3	1	57	.....	.....	3
New York	73	4	14	9	5	10	2	.....	.....	.....	.....	.....	.....	.....	1	.....	26	.....	.....	2
Kings	69	5	12	.....	1	14	8	.....	10	.....	.....	.....	.....	.....	1	1	17	.....	.....	.....
Queens	18	2	1	2	3	.....	.....	.....	1	.....	.....	2	.....	.....	.....	.....	6	.....	.....	1
Bronx	68	13	25	2	12	7	.....	.....	.....	1	.....	.....	.....	.....	.....	.....	8	.....	.....	.....
Richmond	6	3	.....	.....	1	1	.....	.....	.....	.....	.....	.....	.....	.....	1	.....	.....	.....	.....	.....
Total Upstate	291	25	48	3	2	51	2	3	46	3	.....	2	.....	.....	6	1	98	.....	.....	2
Albany	7	2	.....	.....	.....	4	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	1	.....	.....	.....
Allegany	2	.....	.....	.....	1	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	1	.....	.....	.....
Broome	10	.....	.....	1	.....	2	.....	.....	3	.....	.....	.....	.....	.....	.....	.....	4	.....	.....	.....
Cattaraugus	7	.....	2	.....	.....	5	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Cayuga	4	.....	1	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	3	.....	.....	.....
Chautauqua	2	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	2	.....	.....	.....
Chemung	2	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	2	.....	.....	.....
Chenango	2	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	2	.....	.....	.....
Clinton	2	.....	.....	.....	.....	.....	.....	.....	1	1	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Columbia	2	1	.....	.....	.....	1	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Cortland	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Delaware	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Dutchess	11	4	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	7	.....	.....	.....

Erie	34		9			5			11										9				
Essex																							
Franklin	1								1														
Fulton																							
Genesee	5	1	1							1									2				
Greene																							
Hamilton																							
Herkimer	2								2														
Jefferson	7	2	1			1	1		1										1				
Lewis	1																		1				
Livingston	5							2	1										2				
Madison																							
Monroe	12	1				2			2							4			3				
Montgomery	1																		1				
Nassau	10			1		2		1	6										1				
Niagara																							
Oneida	9		1							1									7				
Onondaga	27		10			1													16				
Ontario	1								1														
Orange	20					6			4							2			8				
Orleans																							
Oswego	1																		1				
Otsego																							
Putnam																							
Rensselaer	1		1																				
Rockland	5	1	1		1	1													1				
St. Lawrence	2																		2				
Saratoga	3					1			1										1				
Schenectady	2	1	1																				
Schoharie																							
Schuyler																							
Seneca	2					2																	
Steuben	2	1							1														
Suffolk	30	4	11			6	1		1										7				
Sullivan	2								1			1											
Tioga	7					2													5				
Tompkins	2	2																					
Ulster	11	2	4			2													2				1
Warren	4								4														
Washington																							
Wayne	6		1			1			3										1				
Westchester	16	2	3			5			1			1							4				
Wyoming	9	1	1			3			1								1		1				1
Yates																							

*For the purpose of compiling this table, only one disposition per petition was considered. If more than one disposition was reported, the one deemed to be the most significant was used.

Table 74
FAMILY COURT
Child Protective Petitions Involving Child Abuse, by Sex
Disposed of Between
Jan. 1, 1977 and Dec. 31, 1977

Region County	BOYS			GIRLS		
	Total	Petition Filed Prior to Jan. 1, 1977	Petition Filed on or After Jan. 1, 1977	Total	Petition Filed Prior to Jan. 1, 1977	Petition Filed on or After Jan. 1, 1977
Total New York State	395	160	235	525	208	317
Total New York City	253	109	144	234	109	125
New York	64	28	36	73	42	31
Kings	85	24	61	69	19	50
Queens	25	5	20	18	4	14
Bronx	74	49	25	68	41	27
Richmond	5	3	2	6	3	3
Total Upstate	142	51	91	291	99	192
Albany	4	1	3	7	2	5
Allegany	....	....	....	2	....	2
Broome	1	....	1	10	1	9
Cattaraugus	4	2	2	7	2	5
Cayuga	2	1	1	4	2	2
Chautauqua	....	....	....	2	....	2
Chemung	4	1	3	2	1	1
Chenango	....	....	....	2	....	2
Clinton	2	....	2	2	....	2
Columbia	....	....	....	2	1	1
Cortland	....	....	....	.....	....	.....
Delaware	1	....	1	.....	....	.....
Dutchess	3	....	3	11	2	9
Erie	19	5	14	34	9	25
Essex	....	....	....	.....	....	.....

Franklin	....	....	....	1	1	.....
Fulton	1	1	....	.....	....	.....
Genesee	1	....	1	5	....	5
Greene	....	....	....	.....	....	.....
Hamilton	....	....	....	.....	....	.....
Herkimer	1	....	1	2	....	2
Jefferson	3	1	2	7	1	6
Lewis	3	....	3	1	....	1
Livingston	1	....	1	5	1	4
Madison	....	....	....	.....	....	.....
Monroe	7	5	2	12	8	4
Montgomery	2	....	2	1	....	1
Nassau	2	1	1	10	5	5
Niagara	2	....	2	.....	....	.....
Oneida	2	1	1	9	4	5
Onondaga	13	4	9	27	15	12
Ontario	2	....	2	1	....	1
Orange	3	1	2	20	....	20
Orleans	....	....	....	.....	....	.....
Oswego	1	....	1	1	....	1
Otsego	....	....	....	.....	....	.....
Putnam	....	....	....	.....	....	.....
Rensselaer	4	2	2	1	1	.....
Rockland	....	....	....	5	3	2
St. Lawrence	1	....	1	2	....	2
Saratoga	2	....	2	3	....	3
Schenectady	3	....	3	2	....	2
Schoharie	....	....	....	.....	....	.....
Schuyler	....	....	....	.....	....	.....
Seneca	2	2	....	2	2	.....
Steuben	...	....	....	2	....	2
Suffolk	12	8	4	30	20	10
Sullivan	5	3	2	2	....	2
Tioga	2	....	2	7	....	7
Tompkins	3	....	3	2	....	2
Ulster	4	3	1	11	8	3
Warren	....	....	....	4	....	4
Washington	1	....	1	.....	....	.....
Wayne	5	3	4	6	1	5
Westchester	9	6	3	16	9	7
Wyoming	5	....	5	9	....	9
Yates	....	....	....	.....	....	.....

Table 75
FAMILY COURT
Child Abuse Part Statistics, by Sex*
Jan. 1, 1977 through Dec. 31, 1977

Region County	BOYS						GIRLS					
	Total	Dispositions Not Indicating Whether Court Has a Child Abuse Part	Courts Having Child Abuse Part			Courts Not Having Child Abuse Part	Total	Dispositions Not Indicating Whether Court Has a Child Abuse Part	Courts Having Child Abuse Part			Courts Not Having Child Abuse Part
			Dispositions in Child Abuse Part	Dispositions in Other Than Child Abuse Part	Dispositions Not Indicating Where Disposed	Dispositions			Dispositions in Child Abuse Part	Dispositions in Other Than Child Abuse Part	Dispositions Not Indicating Where Disposed	Dispositions
Total New York State	385	22	265	22	.....	76	511	36	281	20	.....	174
Total New York City	247	6	215	22	.....	4	232	8	196	20	.....	8
New York	64	.....	56	8	.....	.....	72	1	65	5	.....	1
Kings	81	1	78	2	.....	.....	69	3	61	4	.....	1
Queens	24	.....	24	.....	.....	.....	18	.....	18	.....	.....	.....
Bronx	73	5	56	12	.....	.....	67	3	51	11	.....	2
Richmond	5	.....	1	.....	.....	4	6	1	1	.....	.....	4
Total Upstate	138	16	50	.....	.....	72	279	28	85	.....	.....	166
Albany	4	.....	.....	.....	.....	4	7	.....	.....	.....	.....	7
Allegany	....	.....	.....	.....	.....	.....	2	.....	.....	.....	.....	2
Broome	1	.....	.....	.....	.....	1	10	6	1	.....	.....	3
Cattaraugus	4	1	.....	.....	.....	3	7	.....	.....	.....	.....	7
Cayuga	2	.....	.....	.....	.....	2	4	.....	.....	.....	.....	4
Chautauqua	....	.....	.....	.....	.....	.....	2	.....	.....	.....	.....	2
Chemung	4	.....	.....	.....	.....	4	2	.....	.....	.....	.....	2
Chenango	....	.....	.....	.....	.....	.....	2	.....	.....	.....	.....	2
Clinton	2	.....	.....	.....	.....	2	2	1	.....	.....	.....	1
Columbia	....	.....	.....	.....	.....	.....	2	.....	.....	.....	.....	2
Cortland	....	.....	.....	.....	.....	.....	....	.....	.....	.....	.....	.....
Delaware	1	.....	1	.....	.....	.....	....	.....	.....	.....	.....	.....

Dutchess	3					3	11					11
Erie	19		19				33		33			
Essex												
Franklin							1					1
Fulton	1					1						
Genesee	1					1	5					5
Greene												
Hamilton												
Herkimer	1					1	2					2
Jefferson	2					2	7					7
Lewis	3		3				1		1			
Livingston	1					1	6					5
Madison												
Monroe	7	3	1			3	12	2	2			8
Montgomery	2					2	1					1
Nassau	2	1				1	9	1				8
Niagara	2					2						
Oneida	2	1				1	9					9
Onondaga	13	1	12				26		25			1
Ontario	2	2					1					1
Orange	3					3	18	1				17
Orleans												
Oswego	1					1	1					1
Otsego												
Putnam												
Rensselaer	4	1				3	1					1
Rockland							5					5
St. Lawrence	1					1						
Saratoga	2					2	3	1				2
Schenectady	3		2			1	2	1				1
Schoharie												
Schuyler												
Seneca	2					2	2		1			1
Steuben							2	1				1
Suffolk	11	1	10				27	5	22			
Sullivan	5					5	2	1				1
Tioga	2					2	7					7
Tompkins	3		1			2	2					2
Ulster	4					4	11					11
Warren							4	4				
Washington	1					1						
Wayne	5	3				2	6	2				4
Westchester	7	2	1			4	14	2				12
Wyoming	5					5	9					9
Yates												

[a]This table includes only cases in which the reason for petition was abuse or both abuse and neglect regardless of court finding.

Table 76
FAMILY COURT
Original Petitions Initially Disposed
Persons in Need of Supervision Proceedings (Boys Only)*
Detention by Region and County
Jan. 1, 1977 through Dec. 31, 1977

Region County	Total**	Not Detained	Detained		Length of Detention Between Petition and Disposition							
			Before Petition	Between Petition and Disposition	1-7 Days	8-14 Days	15-21 Days	22-30 Days	31-90 Days	91-180 Days	181-365 Days	366 Days Or More
Total New York State	4,954	3,960	28	986	311	110	105	133	318	92	17	
Total New York City	1,540	1,059	11	470	64	33	41	58	187	78	10	
New York	220	160	11	61	16	7	3	3	27	6	2	
Kings	569	421		148	29	8	22	15	65	24	5	
Queens	407	266		141	10	7	8	21	66	26	3	
Bronx	339	173		86	8	7	8	14	25	19	5	
Richmond	56	39		17	1	3		5	4	3	1	
Total Upstate	3,414	2,901	17	516	147	78	64	75	131	14	1	
Albany	266	219		47	9	7	11	10	8	2		
Allegany	10	10										
Broome	91	91										
Cattaraugus	24	24										
Cayuga	18	18										
Chautauqua	37	37										
Chemung	61	60		1				1				
Chenango	7	7										
Clinton	19	15		4				4				
Columbia	14	11		3				2	1			
Cortland	26	26										
Delaware	4	4										
Dutchess	103	97		6	4	1			1			
Erie	385	330	1	56	30	4	2	3	5	3		
Essex	11	11										
Franklin	7	7										
Fulton	15	14		1					1			

Genesee	20	20										
Greene	17	17										
Hamilton												
Herkimer	30	30										
Jefferson	25	25										
Lewis												
Lexington	14	14										
Madison	22	22										
Monroe	245	204	4	41	3	6	3	6	19	4		
Montgomery	6	6										
Nassau	205	227	1	68	22	33	10	1	1	1		
Niagara	80	71	1	8	4	3	1					
Oneida	62	61		1		1						
Onondaga	187	118	2	69	22	14	0	10	17			
Ontario	20	16		4			2	2				
Orange	77	75		2	1				1			
Orleans	3	3										
Oswego	10	9		1		1						
Otsego	4	4										
Putnam	2	1		1	1							
Rensselaer	59	47		12			2	3	7			
Rockland	40	37		3				1	2			
St Lawrence	8	4		4				2				
Saratoga	21	18	1	2	2	1						
Schenectady	62	47		15	1		3	8	3			
Schoharie	11	10		1					1			
Schuyler	4	3		1	1							
Seneca	11	11										
Steuben	41	28		13	9		2	1	1			
Suffolk	684	582		102	12	5	10	13	53	3		
Sullivan	18	17		1		1						
Tioga	10	10										
Tompkins	10	8		2	1		1					
Ulster	23	23										
Warren	11	9		2	1	1						
Washington	39	35	2	4			1	2	1			
Wayne	19	17		2	2							
Westchester	219	180	5	31	11		3	6	9	1	1	
Wyoming	17	16		1			1					
Yates												

*This table is based on the following reported original petitions disposed of (boys only): 4,647 PINS petitions, plus 307 PINS petitions substituted for Juvenile Delinquency petitions (30 in New York City and 277 outside New York City), regardless of court finding.

**Figures in columns 2, 3, and 4 exceed total because some proceedings are included in both columns 3 and 4. There were 20 such proceedings statewide.

Table 77
FAMILY COURT
Original Petitions Initially Disposed
Persons in Need of Supervision Proceedings (Girls Only)*
Detention by Region and County
Jan. 1, 1977 through Dec. 31, 1977

Region County	Total**	Not Detained	Detained		Length of Detention Between Petition and Disposition							
			Before Petition	Between Petition and Disposition	1-7 Days	8-14 Days	15-21 Days	22-30 Days	31-90 Days	91-180 Days	181-365 Days	366 Days Or More
Total New York State	4,106	3,111	55	973	215	128	93	119	300	93	22	1
Total New York City	1,266	787	30	469	62	36	47	60	168	75	20	1
New York	259	150	28	101	26	7	5	12	26	20	5	
Kings	434	308		126	18	12	16	12	50	14	3	1
Queens	288	157	2	129	8	7	15	24	51	18	6	
Bronx	252	153		99	9	9	9	11	35	20	6	
Richmond	53	39		14	1	1	2	1	6	3		
Total Upstate	2,840	2,324	25	504	153	92	48	59	132	18	2	
Albany	223	183		40	3	6	9	11	8	3		
Allegany	11	10		1	1							
Broome	85	84	1									
Cattaraugus	16	16										
Cayuga	9	9										
Chautauqua	22	22										
Chemung	26	26										
Chenango	7	7										
Clinton	9	5		4				4				
Columbia	10	7	1	3	2					1		
Cortland	11	10	1	1				1				
Delaware	9	9										
Dutchess	78	75		3	2				1			
Erie	301	229	1	75	57	3	1	1	12	1		
Essex	6	5		1	1							
Franklin	6	6										
Fulton	14	12		2	1				1			

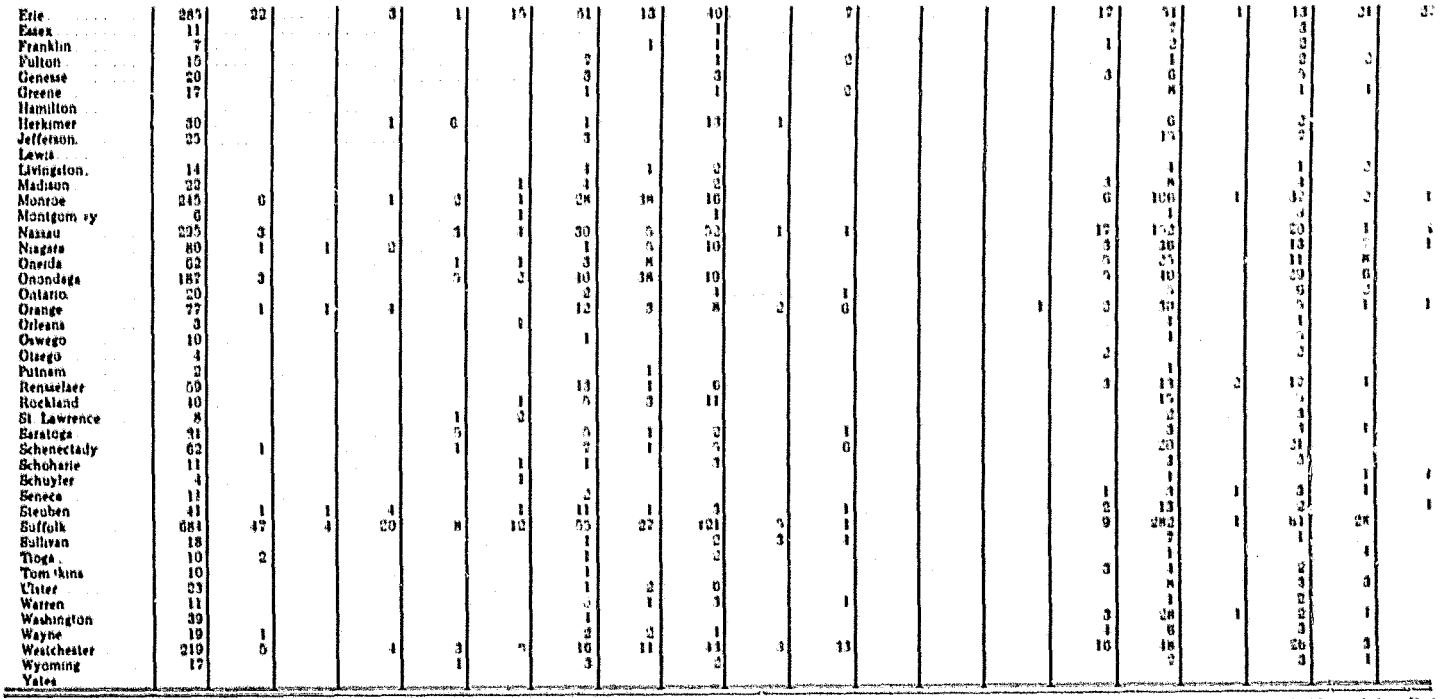
Genesee	10	9		1	1							
Greene	13	13										
Hamilton	1	1										
Herkimer	15	15										
Jefferson	32	32										
Lewis	3	3										
Livingston	2	2										
Madison	8	8										
Monroe	240	196	1	44	6	8	1	4	20	6	1	
Montgomery	13	12		1				1				
Nassau	270	187	5	81	12	49	9	6	5			
Niagara	48	40	1	7	4	2	1					
Oneida	60	59		1	1							
Onondaga	187	127		60	23	8	3	4	22			
Ontario	27	21	1	6	1	1	2	1	1			
Orange	58	57		1	1							
Orleans	4	3		1		1						
Oswego	17	16		1	1							
Otsego	1	1										
Putnam	5	5										
Rensselaer	49	35		14	1	1	1	2	9			
Rockland	27	21	1	6			1	1	4			
St. Lawrence	16	11		5			2	1	3			
Saratoga	15	7		8	3		2		1			
Schenectady	53	39		14	2	2	3	6	2			
Schoharie	1	1										
Schuyler												
Seneca	19	17	1	2	1	1						
Steuben	28	17	1	10	4	2		2	2			
Suffolk	435	370	1	65	18	3	6	10	25	3		
Sullivan	17	16		1		1						
Tioga	3	3										
Tompkins	10	7		3			2	1				
Ulster	34	34										
Warren	19	17		2			1		1			
Washington	14	10	2	4	2		2					
Wayne	28	25		3		1		1	1			
Westchester	211	170	9	31	5	3	3	2	15	5	1	
Wyoming	3	2		1	1							
Yates	1	1										

*This table is based on the following reported original petitions disposed of (girls only): 4,046 PINS petitions, plus 60 PINS petitions substituted for Juvenile Delinquency petitions (8 in New York City and 52 outside New York City), regardless of court finding.

**Figures in columns 2, 3, and 4 exceed total because some proceedings are included in both columns 3 and 4. There were 33 such proceedings statewide.

Table 78
FAMILY COURT
Original Petitions Initially Disposed
Persons in Need of Supervision Proceedings (Boys Only)*
Nature of Dispositions by Region and County
Jan. 1, 1977 through Dec. 31, 1977

Region County	Total	No Adjudication												Adjudication							
		Dismissed for Failure of Proof at Fact Finding Hearing	Other Dismissal at Fact Finding Hearing	Dismissed at Dispositional Hearing	Dismissed for Failure to Prosecute	Dismissed Without Prejudice	Dismissed in Furtherance of Justice (ACD)	Other Dismissal	Withdrawn	Transferred to Another County	Discharged to Another Petition	Discharged to Mental Hygiene Institution	Discharged to Mental Hygiene Institution	Discharged With Warning	Judgment Suspended	Probation With Out Placement	Placement: Own Home Relative or Suitable Private Person	Placement: Commissioner of Social Services	Placement: Division for Youth	Placement: Other Placement
Total New York State	4,954	270	11	135	241	191	523	313	810	20	116			19	190	1,327	11	752	103	41
Total New York City	1,540	109		68	105	137	102	123	380	7	4			2	18	165		149	26	3
New York	339	17		9	26	30	24	31	46	4	1				3	12		22	1	
Kings	680	16		17	140	64	33	60	95		2				4	93		67	7	1
Queens	407	88		31	7	24	9	12	142	2				1	7	35		43	15	1
Bronx	259	36		15	10	27	33	17	87	1				1		7		14	4	1
Richmond	60	2		0	0	2	3		10		1				4	18		3	1	
Total Upstate	3,414	112	11	67	46	54	421	190	429	13	112			17	172	1,162	11	103	135	38
Albany	266	17	2	24	5		65	4	20	2	39			0	5	49	4	17	17	
Allegany	10						2	2	2							3		1		
Broome	91	2		3		2		11	1						39	14		18	1	
Cattaraugus	24			1	1		12		2							4		1	3	
Cayuga	18	1												1	9	6		1		
Chautauqua	27	1			2		2	1	3					2	4	8		4		
Chemung	61						4	2	2		4				1	31		13	1	
Chenango	7						3							1		3				
Clinton	10															10		2	1	
Columbia	14						4		2	1						2		1	3	1
Cortland	26	2							2					2	1	17			2	
Delaware	4	1					1									3				
Dutchess	103		2		1		16	7	21	1				4	8	30		10	1	2



*This table is based on the following reported original petitions disposed of this year: 4,642 PINS petitions plus 102 PINS petitions substituted for Juvenile Delinquency petitions (30 in New York City and 272 outside New York City), regardless of court finding

Table 79
FAMILY COURT
Original Petitions Initially Disposed
Persons in Need of Supervision Proceedings (Girls Only)*
Nature of Dispositions by Region and County
Jan. 1, 1977 through Dec. 31, 1977

Region County	Total	No Adjudication											Adjudication							
		Dismissed for Failure of Proof at Fact-Finding Hearing	Other Dismissal at Fact-Finding Hearing	Dismissed at Dispositional Hearing	Dismissed for Failure to Prosecute	Dismissed Without Prejudice	Dismissed in Furtherance of Justice (ACD)	Other Dismissal	Withdrawn	Transferred to Another County	Discharged to Another Petition	Discharged to Mental Hygiene Institution	Discharged to Mental Hygiene Institution	Discharged With Warning	Judgment Suspended	Probation Without Placement	Placement			
																	Own Home Relative or Suitable Private Person	Comm. of Social Services	Division for Youth	Other Placement
Total New York State	4,106	222	7	167	187	164	426	302	778	16	45	.....	.....	30	114	979	26	475	144	34
Total New York City	1,266	140	1	78	131	86	105	126	324	3	.....	.....	.....	3	11	114	4	112	26	2
New York	259	16	.....	13	24	21	34	42	57	.....	.....	.....	.....	.....	2	12	1	33	4	.....
Kings	434	19	.....	15	88	30	44	48	93	1	.....	.....	.....	.....	1	49	2	39	3	.....
Queens	288	62	.....	22	5	12	4	13	86	3	.....	.....	.....	3	5	32	1	27	12	2
Bronx	232	37	.....	19	12	21	22	23	72	.....	.....	.....	.....	.....	.....	10	.....	12	4	.....
Richmond	53	6	1	9	2	2	1	.....	14	.....	.....	.....	.....	.....	3	11	.....	1	3	.....
Total Upstate	2,840	82	6	79	56	78	321	176	454	13	45	.....	.....	27	103	865	22	363	118	32
Albany	223	10	2	30	9	1	33	2	27	.....	17	.....	.....	9	3	53	4	14	9	.....
Allegany	11	.....	.....	2	.....	1	3	.....	1	.....	.....	.....	.....	.....	.....	2	1	1	.....	.....
Broome	85	.....	.....	2	.....	.....	.....	8	2	.....	.....	.....	.....	.....	22	18	.....	21	12	.....
Cattaraugus	16	.....	.....	.....	.....	.....	.....	.....	2	.....	.....	.....	.....	.....	.....	4	.....	3	.....	.....
Cayuga	9	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	1	5	.....	3	.....	.....
Chautauqua	22	.....	.....	.....	1	2	1	1	3	.....	.....	.....	.....	.....	.....	8	.....	5	1	.....
Chemung	26	.....	.....	.....	.....	.....	.....	1	.....	.....	2	.....	.....	.....	1	10	.....	11	1	.....
Chenango	7	.....	.....	.....	.....	.....	2	1	.....	.....	1	.....	.....	.....	.....	2	.....	1	.....	.....
Clinton	9	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	1	4	.....	4	.....	.....
Columbia	10	.....	.....	.....	.....	.....	1	.....	2	.....	.....	.....	.....	.....	.....	.....	.....	4	2	1
Cortland	11	.....	1	.....	.....	.....	.....	1	.....	.....	.....	.....	.....	.....	.....	1	.....	8	.....	.....
Delaware	9	1	.....	.....	.....	.....	1	1	.....	.....	1	.....	.....	.....	.....	4	.....	1	.....	.....
Dutchess	78	.....	.....	.....	1	1	9	7	22	.....	.....	.....	.....	5	1	20	.....	8	3	1

Erie	304	31	.....	7	3	15	35	8	54	.....	3	.....	.....	3	10	63	4	18	26	24
Essex	6	.....	.....	1	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	5	.....	.....
Franklin	6	.....	.....	.....	.....	.....	.....	.....	1	.....	.....	.....	.....	1	.....	3	.....	1	.....	.....
Fulton	14	.....	.....	.....	.....	.....	3	.....	4	.....	.....	.....	.....	.....	.....	4	.....	1	2	.....
Genesee	10	.....	.....	.....	.....	.....	.....	.....	2	.....	.....	.....	.....	.....	.....	2	.....	5	1	.....
Greene	13	.....	.....	.....	1	4	3	1	1	.....	.....	.....	.....	.....	.....	1	.....	1	1	.....
Hamilton	1	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	1	.....
Herkimer	15	.....	.....	.....	.....	1	.....	1	6	.....	.....	.....	.....	.....	.....	5	.....	2	.....	.....
Jefferson	32	.....	.....	1	.....	.....	4	.....	4	.....	.....	.....	.....	.....	2	13	.....	8	.....	.....
Lewis	2	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	2	.....	.....	.....	.....
Livingston	2	.....	.....	.....	.....	.....	1	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	1	.....	.....
Madison	8	.....	.....	.....	.....	.....	3	.....	1	.....	.....	.....	.....	.....	1	.....	.....	3	.....	.....
Monroe	240	6	.....	.....	4	1	29	52	30	2	.....	.....	.....	.....	10	82	2	21	2	.....
Montgomery	13	.....	.....	.....	.....	.....	2	.....	2	.....	.....	.....	.....	.....	.....	8	.....	1	.....	.....
Nassau	270	1	.....	4	7	5	11	1	53	5	2	.....	.....	1	5	136	.....	25	8	3
Niagara	48	.....	.....	.....	.....	.....	.....	4	3	.....	.....	.....	.....	4	.....	28	.....	4	5	.....
Oneida	60	1	.....	.....	2	.....	1	3	7	.....	1	.....	.....	1	.....	21	.....	12	11	.....
Onondaga	187	2	.....	1	3	6	35	35	29	.....	.....	.....	.....	.....	8	28	1	35	4	.....
Ontario	27	1	.....	.....	.....	.....	5	.....	1	.....	2	.....	.....	1	.....	12	.....	3	2	.....
Orange	58	.....	1	7	.....	2	7	5	12	.....	.....	.....	.....	.....	2	21	.....	1	.....	.....
Orleans	4	.....	.....	.....	.....	.....	1	.....	.....	.....	.....	.....	.....	.....	.....	2	.....	1	.....	.....
Oswego	17	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	2	10	.....	5	.....	.....
Otsego	1	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	1	.....	.....	.....	.....	.....
Putnam	5	.....	.....	.....	.....	.....	.....	.....	1	.....	.....	.....	.....	.....	.....	3	.....	1	.....	.....
Rensselaer	49	1	.....	.....	1	.....	12	3	7	.....	.....	.....	.....	1	.....	8	2	10	4	.....
Rockland	27	.....	.....	.....	.....	2	.....	3	2	.....	.....	.....	.....	.....	.....	13	1	6	.....	.....
St. Lawrence	16	.....	.....	.....	.....	8	.....	.....	.....	.....	.....	.....	.....	.....	.....	1	.....	7	.....	.....
Saratoga	13	.....	.....	.....	3	.....	2	.....	1	.....	.....	.....	.....	.....	.....	3	.....	3	1	.....
Schenectady	53	.....	.....	1	.....	3	2	.....	9	1	1	.....	.....	.....	.....	17	1	17	1	.....
Schoharie	1	.....	.....	.....	.....	.....	.....	.....	1	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Schuyler	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Seneca	19	.....	.....	.....	.....	.....	4	.....	3	.....	.....	.....	.....	.....	.....	2	4	6	.....	.....
Steuben	28	3	.....	1	1	2	9	4	.....	.....	.....	.....	.....	.....	.....	4	1	2	1	.....
Suffolk	435	19	1	17	17	7	50	26	98	1	.....	.....	.....	.....	6	153	.....	31	9	.....
Sullivan	17	.....	.....	.....	.....	.....	.....	1	2	.....	1	.....	.....	.....	3	7	1	1	.....	1
Tioga	3	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	2	.....	.....	1	.....	.....
Tompkins	10	1	.....	1	.....	.....	1	.....	1	1	.....	.....	.....	.....	.....	4	.....	1	.....	.....
Ulster	34	.....	.....	.....	.....	.....	12	4	6	.....	.....	.....	.....	.....	.....	8	.....	3	1	.....
Warren	19	.....	.....	2	.....	.....	1	.....	5	...	3	.....	.....	.....	.....	4	.....	4	.....	.....
Washington	14	1	.....	.....	.....	.....	1	.....	1	.....	.....	.....	.....	.....	.....	7	.....	....	4	.....
Wayne	28	3	1	.....	.....	.....	10	.....	1	.....	2	.....	.....	.....	2	2	.....	7	.....	.....
Westchester	211	2	.....	2	3	17	20	3	46	3	9	.....	.....	.....	16	60	.....	23	5	2
Wyoming	3	.....	.....	.....	.....	.....	.....	.....	1	.....	.....	.....	.....	.....	... ..	1	.....	.....	1	.....
Yates	1	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	1	.....	.....	.....	.....

*This table is based on the following reported original petitions disposed of (girls only): 4,046 PINS petitions, plus 60 PINS petitions substituted for Juvenile Delinquency petitions (8 in New York City and 52 outside New York City), regardless of court finding.

Table 80
FAMILY COURT
Original Petitions Initially Disposed
Reasons for Juvenile Delinquency Proceedings by Sex and by Region
Jan. 1, 1977 through Dec. 31, 1977

Reasons*	New York City			Counties Outside New York City			Statewide		
	Boys Percent	Girls Percent	Both Percent	Boys Percent	Girls Percent	Both Percent	Boys Percent	Girls Percent	Both Percent
Homicide	1	0 (4)	1	0 (12)	0 (0)	0 (12)	1	0 (4)	0 (113)
Kidnapping	1	1	1	0 (5)	0 (0)	0 (5)	0 (98)	0 (8)	0 (106)
Rape	1	0 (3)	1	1	0 (0)	0 (48)	1	0 (3)	1
Other Sex Offenses	1	0 (3)	1	1	0 (4)	1	1	0 (7)	1
Robbery	12	10	12	3	2	3	8	6	8
Assault or Related Offense	10	21	10	7	19	9	9	19	10
Criminal Sale Control Substance	0 (70)	0 (1)	0 (71)	0 (35)	1	0 (48)	0 (105)	1	1
Criminal Possession Control Subst.	2	1	2	2	3	3	2	2	2
Other Drug Offense	0 (14)	0 (2)	0 (16)	0 (10)	0 (0)	0 (10)	0 (24)	0 (2)	0 (26)
Criminal Possession of Weapon	7	7	7	2	1	1	4	3	4
Burglary or Related Offense	11	6	11	29	12	27	19	10	18
Criminal Trespass	6	3	6	4	4	4	5	4	5
Arson	0 (52)	0 (4)	0 (56)	1	0 (8)	1	1	1	1
Grand Larceny — Auto	3	2	3	1	0 (5)	1	2	1	2
Grand Larceny	11	10	11	5	4	5	8	6	8
Petit Larceny	6	11	6	16	28	18	11	20	12
Criminal Possession of Stolen Prop.	15	15	15	6	5	6	11	9	10
Other Theft	2	2	2	6	4	6	4	3	4
Criminal Mischief	8	5	8	10	6	9	9	6	8
Gambling	0 (7)	0 (0)	0 (7)	0 (0)	0 (1)	0 (1)	0 (7)	0 (1)	0 (8)
Prostitution	0 (2)	1 (7)	0 (9)	0 (0)	1	0 (15)	0 (2)	1	0 (24)
Other Crimes	3	5	3	6	10	6	4	8	5
Total	100 (14,368)	100 (1,092)	100 (15,460)	100 (11,858)	100 (1,543)	100 (13,401)	100 (26,226)	100 (2,635)	100 (28,861)

*Due to the reporting of multiple reasons for some petitions, the number of reasons exceeds the number of petitions.
Note: Figures in parentheses represent the number of reasons. They are given for totals and where the sum is less than 0.5%.

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Table 81
FAMILY COURT
Original Petitions Initially Disposed
Juvenile Delinquency Proceedings (Boys Only)*
Detention by Region and County
Jan. 1, 1977 through Dec. 31, 1977

Region County	Total**	Not Detained	Detained		Length of Detention Between Petition and Disposition							
			Before Petition	Between Petition and Disposition	1-7 Days	8-14 Days	15-21 Days	22-30 Days	31-90 Days	91-180 Days	181-365 Days	366 Days or More
Total New York State	16,466	13,145	217	3,243	1,216	525	337	312	699	141	13	.....
Total New York City	6,496	4,485	44	2,000	890	298	173	163	380	84	13	.....
New York	1,440	1,004	30	431	185	47	42	43	88	21	5	.....
Kings	1,553	1,057	9	495	176	73	44	50	126	23	3	.....
Queens	1,911	1,302	3	606	305	87	50	43	99	17	5	.....
Bronx	1,396	987	2	407	202	80	32	24	55	14	.....	.....
Richmond	196	135	.....	61	22	11	5	2	12	9	.....	.....
Total Upstate	9,969	8,660	173	1,243	326	227	164	150	319	57	.....	.....
Albany	448	380	.....	68	9	14	8	16	19	2	.....	.....
Allegany	25	22	.....	3	....	1	....	2	....	.....	.....	.....
Broome	201	195	4	4	3	...	1	....	....	.....	.....	.....
Cattaraugus	93	91	2	.....	....	...	....	....	....	.....	.....	.....
Cayuga	74	73	1	1	....	...	1	....	...	.....	.....	.....
Chautauqua	172	166	.....	6	2	1	1	2	....	.....	.....	.....
Chemung	95	94	.....	1	....	1	....	....	....	.....	.....	.....
Chenango	34	33	.....	1	....	...	....	1	....	.....	.....	.....
Clinton	33	19	.....	4	....	...	....	4	....	.....	.....	.....
Columbia	16	15	.....	1	1	...	....	....	....	.....	.....	.....
Cortland	20	20	.....	.....	....	...	....	....	....	.....	.....	.....
Delaware	28	22	1	6	1	1	3	1	....	.....	.....	.....
Dutchess	370	345	.....	25	7	10	6	....	2	.....	.....	.....
Erie	1,070	928	16	138	51	11	7	6	43	20	.....	.....
Essex	40	37	2	3	....	2	....	....	1	.....	.....	.....
Franklin	38	38	.....	.....	....	...	....	....	....	.....	.....	.....
Fulton	34	33	.....	1	1	...	....	....	....	.....	.....	.....

Genesee	31	29	.....	3	1	...	2	....	....	.....	.....	.....
Greene	15	15	.....	.....	....	...	....	....	....	.....	.....	.....
Hamilton	8	8	.....	.....	....	...	....	....	....	.....	.....	.....
Herkimer	67	67	.....	.....	....	...	....	....	....	.....	.....	.....
Jefferson	57	54	3	3	....	3	....	....	....	.....	.....	.....
Lewis	17	16	1	.....	...	...	....	....	....	.....	.....	.....
Livingston	34	34	.....	.....	....	...	....	....	....	.....	.....	.....
Madison	59	59	.....	.....	....	...	....	....	....	.....	.....	.....
Monroe	726	519	13	203	40	38	27	19	68	11	1	.....
Montgomery	34	31	.....	3	....	1	1	....	1	.....	.....	.....
Nassau	1,079	919	8	155	67	54	20	10	4	....	.....	.....
Niagara	104	92	4	12	9	1	....	1	1	....	.....	.....
Oneida	114	106	1	7	2	4	1	....	....	.....	.....	.....
Onondaga	375	257	21	113	18	30	10	18	36	1	.....	.....
Ontario	37	31	.....	6	2	...	2	....	2	.....	.....	.....
Orange	536	491	13	41	1	12	14	3	7	4	.....	.....
Orleans	16	15	.....	1	1	...	....	....	....	.....	.....	.....
Oswego	25	23	.....	2	2	...	....	....	....	.....	.....	.....
Otsego	32	32	.....	.....	....	...	....	....	....	.....	.....	.....
Putnam	13	13	.....	.....	....	...	....	....	....	.....	.....	.....
Rensselaer	137	115	.....	22	1	3	1	12	6	....	.....	.....
Rockland	226	196	1	30	5	2	2	2	14	5	.....	.....
St. Lawrence	55	50	2	4	2	...	1	....	1	.....	.....	.....
Saratoga	94	73	4	20	8	3	4	....	4	1	.....	.....
Schenectady	166	145	.....	21	2	3	1	14	1	....	.....	.....
Schoharie	15	15	.....	.....	....	...	....	....	....	.....	.....	.....
Schuyler	3	2	.....	1	..	...	1	....	....	.....	.....	.....
Seneca	31	24	.....	7	4	...	2	....	1	....	.....	.....
Steuben	73	60	1	13	6	...	7	....	....	.....	.....	.....
Suffolk	1,694	1,581	.....	113	13	8	21	18	46	7	.....	.....
Sullivan	92	79	4	9	....	1	3	3	2	.....	.....	.....
Tioga	36	32	.....	4	....	...	....	2	2	.....	.....	.....
Tompkins	39	28	1	14	2	...	1	1	10	.....	.....	.....
Ulster	74	70	1	3	....	...	....	1	2	.....	.....	.....
Warren	36	31	.....	5	1	...	....	2	1	1	.....	.....
Washington	30	27	.....	3	2	...	....	....	1	.....	.....	.....
Wayne	111	89	2	22	2	14	1	....	5	....	.....	.....
Westchester	878	707	67	140	59	9	15	12	40	6	.....	.....
Wyoming	16	15	.....	1	1	...	....	....	....	.....	.....	.....
Yates	2	2	.....	.....	....	...	....	....	....	.....	.....	.....

*This table is based on the following reported original petitions disposed of (boys only): 16,772 Juvenile Delinquency petitions, minus 307 Juvenile Delinquency petitions for which there were substituted PINS petitions (30 in New York City and 277 outside New York City), regardless of court finding.

**Figures in columns 2, 3, and 4 exceed total because some proceedings are included in both columns 3 and 4. There were 140 such proceedings statewide.

Table 82
FAMILY COURT
Original Petitions Initially Disposed
Juvenile Delinquency Proceedings (Girls Only)*
Detention by Region and County
Jan. 1, 1977 through Dec. 31, 1977

Region County	Total**	Not Detained	Detained		Length of Detension Between Petition and Disposition							
			Before Petition	Between Petition and Disposition	1-7 Days	8-14 Days	15-21 Days	22-30 Days	31-90 Days	91-180 Days	181-365 Days	366 Days or More
Total New York State	1,982	1,668	30	303	128	46	32	28	56	10	3	.....
Total New York City	584	448	7	132	72	6	9	15	24	5	1	.....
New York	162	112	5	47	26	2	4	3	10	2	1	.....
Kings	146	115	1	31	17	2	3	3	5	1	.....	.....
Queens	133	112	.....	21	9	....	2	6	2	2	.....	.....
Bronx	120	93	1	26	17	2	....	2	5	.....	.....	.....
Richmond	23	16	.....	7	3	....	....	1	2	.....	.....	.....
Total Upstate	1,398	1,220	23	171	56	40	23	13	32	5	2	.....
Albany	110	94	.....	10	3	7	2	2	1	1	.....	.....
Allegany	1	1	.....	.....	....	....	....	....	....	....	.....	.....
Broome	35	35	.....	.....	....	....	....	....	....	....	.....	.....
Cattaraugus	5	5	.....	.....	....	....	....	....	....	....	.....	.....
Cayuga	5	5	.....	.....	....	....	....	....	....	....	.....	.....
Chautauqua	10	10	.....	.....	....	....	....	....	....	....	.....	.....
Chemung	20	20	.....	.....	....	....	....	....	....	....	.....	.....
Chenango	3	2	1	1	....	1	....	....	....	....	.....	.....
Clinton	2	1	.....	1	....	....	....	1	....	....	.....	.....
Columbia	2	2	.....	.....	....	....	....	....	....	....	.....	.....
Cortland	.....	.....	.....	.....	....	....	....	....	....	....	.....	.....
Delaware	7	7	.....	.....	....	....	....	....	....	....	.....	.....
Dutchess	75	70	.....	5	2	1	....	....	2	....	.....	.....
Erie	111	95	1	16	10	3	....	3	1	.....	.....	.....
Essex	3	3	.....	.....	....	....	....	....	....	....	.....	.....
Franklin	5	5	.....	.....	....	....	....	....	....	....	.....	.....
Fulton	3	2	.....	1	....	....	1	....	....	....	.....	.....

Genesee	9	9										
Greene	2	2										
Hamilton												
Herkimer	10	10										
Jefferson	10	10										
Lewis	3	3										
Livingston	3	3										
Madison	9	9										
Monroe	76	53	3	23	5	1	4	2	8	1	2	
Montgomery												
Nassau	164	139	1	25	13	8	3		1			
Niagara	23	21		2	1	1						
Oneida	18	15	1	3	2	1						
Onondaga	56	33	2	23	2	4	5	3	9			
Ontario	12	11		1	1							
Orange	64	59		5					5			
Orleans	4	4										
Oswego	5	5										
Otsego	4	4										
Putnam	4	4										
Rensselaer	22	22										
Rockland	34	32		2		1			1			
St. Lawrence	4	4										
Saratoga	11	7	1	3	2		1					
Schenectady	20	19		1	1							
Schoharie												
Schuyler	1	1										
Seneca	3	3										
Steuben	22	13		9	1	7		1				
Suffolk	216	208		8	2		2		4			
Sullivan	4	4										
Tioga	6	6										
Tompkins	6	1	2	4		4						
Ulster	20	19		1	1							
Warren	3	3										
Washington	3	3										
Wayne	17	16		1			1					
Westchester	129	104	11	20	10	1	4	2		3		
Wyoming	3	3										
Yates	1	1										

* This table is based on the following reported original petitions disposed of (girls only): 2,042 Juvenile Delinquency petitions, minus 60 Juvenile Delinquency petitions for which there were substituted PINS petitions (8 in New York City and 52 outside New York City), regardless of court finding.

** Figures in columns 2, 3 and 4 exceed total because some proceedings are included in both columns 3 and 4. There were 19 such proceedings statewide.

Table 83
FAMILY COURT
Original Petitions Initially Disposed
Juvenile Delinquency Proceedings (Boys Only)*
Nature of Dispositions by Region and County
Jan. 1, 1977 through Dec. 31, 1977

Region County	Total	No Adjudication											Adjudication									
																Placement						
		Dismissed for Failure of Proof at Fact Finding Hearing	Other Dismissal at Fact-Finding Hearing	Dismissed at Dispositional Hearing	Dismissed for Failure to Prosecute	Dismissed Without Prejudice	Dismissed in Furtherance of Justice (ACD)	Other Dismissal	Withdrawn	Transferred to Another County	Discharged to Another Petition	Discharged to Mental Hygiene Institution	Discharged to Mental Hygiene Institution	Discharged With Warning	Judgment Suspended	Probation Without Placement	Own Home Relative or Suitable Private Person	Comm. of Social Services	Division for Youth Title 2	Division for Youth Title 3	Restrictive Placement (DFY) 5 Yrs.	Restrictive Placement (DFY) 3 Yrs.	Other Placement
Total New York State	16,466	1,416	48	330	877	801	3,639	1,214	1,370	426	610	.....	2	9	685	3,110	18	564	544	632	1	40	118
Total New York City	6,496	712	7	190	656	411	1,378	368	767	148	62	.....	.....	2	219	833	.....	115	309	262	.....	30	33
New York	1,440	80	1	45	104	117	318	150	166	65	7	.....	.....	.....	36	127	.....	42	73	36	.....	10	3
Kings	1,553	87	3	53	260	66	297	106	73	1	10	.....	.....	.....	34	321	.....	40	92	77	.....	16	2
Queens	1,911	326	3	45	54	69	533	33	274	65	13	.....	.....	2	68	212	.....	13	97	52	.....	.....	19
Bronx	1,390	194	.....	53	166	157	201	64	253	10	3	.....	.....	.....	53	120	.....	6	43	50	.....	4	4
Richmond	196	25	.....	3	12	2	20	2	1	7	20	.....	.....	.....	28	44	.....	8	4	11	.....	.....	.....
Total Upstate	9,960	704	41	140	221	390	2,261	856	609	278	548	.....	2	7	466	2,277	18	449	235	360	1	16	90
Albany	448	20	8	12	14	3	94	3	20	14	24	.....	.....	4	21	140	4	17	38	3	.....	.....	.....
Allegany	25	2	.....	.....	.....	.....	6	7	3	.....	.....	.....	.....	.....	.....	5	.....	1	1	.....	.....	1	.....
Broome	201	12	2	4	2	1	.....	32	.....	7	.....	.....	.....	.....	63	40	.....	7	24	4	.....	.....	3
Cattaraugus	93	3	.....	2	2	.....	42	4	.....	5	2	.....	.....	.....	.....	26	.....	6	2	.....	.....	.....	.....
Cayuga	74	10	.....	.....	.....	.....	4	4	1	1	.....	.....	.....	.....	16	30	.....	2	4	1	.....	1	.....
Chautauqua	172	8	.....	.....	1	11	36	6	1	4	.....	.....	.....	.....	11	75	.....	3	22	4	.....	.....	.....
Chemung	96	6	.....	.....	.....	3	4	2	4	1	22	.....	.....	.....	5	16	.....	15	1	15	.....	1	.....
Chenango	34	3	.....	.....	.....	.....	9	0	.....	.....	.....	.....	.....	.....	2	7	.....	4	1	.....	.....	.....	2
Clinton	23	2	.....	.....	.....	.....	.....	1	.....	.....	5	.....	.....	.....	1	9	.....	.....	4	.....	.....	1	.....

Columbia	16						6		4	1							2	1	1	1				
Cortland	20	3				2		2		1							12							
Delaware	28	5		1			2	3			2						6			5	1			1
Dutchess	370	14		1	7	10	66	53	10	2	6			3		2	56	103		8	3	14			6
Erie	1,070	188		8	23	142	276	45	34		26		2			48	165		12	*4	50		3	38
Essex	40						5	9	4							2	13			1	6			
Franklin	38	1						5	2							11	18			1				
Fulton	34				1		11		4		2						6		3		7			
Genesee	32	1					13	3	4								5		2	4				
Greene	15	4				3	1	1								1	3				2			
Hamilton	8						2									2	3		1					
Herkimer	67	6					10		5	3							37		3	2	1			
Jefferson	67					3	31	2	1	1						3	20		13	1	2			
Lewis	17						4										13							
Livingston	34	3					11	5								1	12		1		1			
Madison	59	10					23		2							4	14		2		4			
Monroe	726	12	1	5		37	166	200	52	1	1					19	160	1	38	5	37	1		
Montgomery	34	2					2		7	2	10						3		1	1	6			
Nassau	1,079	40	1		25	8	256	72	97	100	131					67	220		33	10	3			16
Niagara	104	13	1				2	11	0		1					7	36		8	6	7			3
Oneida	114	8			1	2	6	6	5	1	2					7	43		16	2	11			4
Onondaga	375	8			5	5	142	53	12	2						17	34		25	14	18			
Ontario	37	1	1	1			1		1	1	1					1	17		8	4				
Orange	530	20	0	18	6	5	120	51	10	13	39					23	127		10	5	70		2	8
Orleans	16																15		1					
Oswego	25	5				1				1						2	10	1	4		1			
Otsego	32						1									12	15		4					
Putnam	13						10										3							
Rensselaer	137	13			2	2	26	28	20		2					2	17		8	4	4			
Rockland	226	5	1		4	2	27	13	33	3	1					4	86	2	36	4	2			3
St. Lawrence	55	6				4	9	10			1					1	18	1	2	2	1			
Saratoga	94				10		25	0		6	14					3	22		2	4				
Schenectady	106	3		6			15	2	8	5	33						64		10	3	8			
Schoharie	15						2	1	3	1							3		3	2				
Schuyler	3							1									1				1			
Seneca	31	5					9		4		2					4	2		1	2	2			
Steuben	73	10	2	1	1	3	21	5			1					2	17	1	2	4	1			2
Suffolk	1,694	206	11	72	80	84	465	113	134	14						25	380	1	65	21	22			1
Sullivan	92	5				4	15	1	0	7	8					1	27		3	2	10			
Tioga	36	5					12	1	1	1	1						8		3	4				
Tompkins	39						10			6						1	8	1	8				5	
Ulster	74	1				1	21	12	10	1	1					3	16	1			7			
Warren	36	1	1	1	1	2	8	4	1		1						7		4	4	1			
Washington	30						9	1	2		2						8	2	2	1	3			
Wayne	111	7		5			42	8	6		12					1	17	1	6	4	2			
Westchester	878	17	3	3	36	52	222	21	68	73	105					16	105	1	33	8	20		2	3
Wyoming	16	1					3										6		4		2			
Yates	2																2							

*This table is based on the following reported original petitions disposed of (boys only): 10,772 Juvenile Delinquency petitions, minus 307 Juvenile Delinquency petitions for which there were substituted PINS petitions (30 in New York City and 277 outside New York City), regardless of court finding.

Table 84
FAMILY COURT
Original Petitions Initially Disposed
Juvenile Delinquency Proceedings (Girls Only)*
Nature of Dispositions by Region and County
Jan. 1, 1977 through Dec. 31, 1977

Region County	Total	No Adjudication											Adjudication									
																	Placement					
		Dismissed for Failure of Proof at Fact-Finding Hearing	Other Dismissal at Fact-Finding Hearing	Dismissed at Dispositional Hearing	Dismissed for Failure to Prosecute	Dismissed Without Prejudice	Dismissed in Furtherance of Justice (ACD)	Other Dismissal	Withdrawn	Transferred to Another County	Discharged to Another Petition	Discharged to Mental Hygiene Institution	Discharged to Mental Hygiene Institution	Discharged With Warning	Judgment Suspended	Probation Without Placement	Own Home Relative or Suitable Private Person	Comm. of Social Services	Division for Youth Title 2	Division for Youth Title 3	Restrictive Placement (DFY) 5 Yrs.	Restrictive Placement (DFY) 3 Yrs.	Other Placement
Total New York State	1,982	136	7	61	107	100	560	163	183	86	44	.....	.....	2	64	305	1	64	60	46	.....	.....	4
Total New York City	584	59	1	20	60	37	153	47	54	19	5	.....	.....	1	19	60	...	8	22	9	.....	.....	1
New York	162	9	...	4	20	13	36	20	14	8	....	.....	.....	...	4	13	...	6	8	1	.....	.....	...
Kings	140	7	1	9	22	11	33	11	9	1	5	.....	.....	...	4	23	...	1	7	2	.....	.....	...
Queens	133	27	...	7	4	4	46	1	13	6	.....	.....	.....	1	2	14	...	1	4	3	.....	.....	1
Bronx	120	12	...	7	13	9	36	9	18	1	.....	.....	.....	...	6	5	...	...	3	1	.....	.....	...
Richmond	23	4	...	2	1	...	2	...	...	4	.....	.....	.....	...	3	5	...	...	...	2	.....	.....	...
Total Upstate	1,398	77	6	32	47	63	407	116	129	67	39	.....	.....	1	45	245	1	56	28	36	.....	.....	3
Albany	110	5	3	5	10	4	28	...	5	1	3	.....	.....	...	4	23	...	4	3	2	.....	.....	...
Allegany	1	1	...	...	...	...	...	...	...	...	...	.....	.....	...	...	...	...	...	...	...	.....	.....	...
Broome	35	1	...	2	...	1	...	6	...	3	...	.....	.....	...	9	6	...	2	3	...	.....	.....	2
Cattaraugus	5	...	...	...	...	...	3	...	...	...	...	.....	.....	...	...	1	...	...	1	...	.....	.....	...
Cayuga	5	1	...	...	...	...	...	2	...	...	...	.....	.....	...	...	1	...	1	...	...	.....	.....	...
Chautauqua	10	...	...	...	2	...	4	...	1	...	...	.....	.....	...	...	2	...	...	1	...	.....	.....	...
Chemung	20	1	...	...	...	...	6	...	...	2	3	.....	.....	...	...	3	...	1	...	4	.....	.....	...
Chenango	3	...	...	...	...	...	...	2	...	...	...	.....	.....	...	...	...	...	...	...	...	.....	.....	...
Clinton	2	...	...	...	...	...	...	...	...	...	...	.....	.....	...	...	1	...	...	...	...	.....	.....	...

Columbia	2						1															1						
Cortland																													
Delaware	7	1					1	1			2							2											
Dutchess	76	4			7		23	12	9						1	6		9		4									
Erie	111	17		3	1	17	37	5	4	2						3		14	1			6							1
Essex	3						2														1								
Franklin	5								3									2											
Fulton	3						3																						
Genesee	9						7		1									1											
Greene	2	1				1																							
Hamilton																													
Herkimer	10	1					2		1									3		3									
Jefferson	10	1																7		2									
Lewis	3						1											2											
Livingston	3										2							1											
Madison	9						6											1		1	1								
Monroe	76					10	11	23	14							1		8		6	1	2							
Montgomery																													
Nassau	164	2		1	5	1	34	6	22	32	11					6		36		4	3	1							
Niagara	23	1						1	2							2		14			2	1							
Oneida	18	1					1	1										6		4	4	1							
Onondaga	50	2				2	21	13								6		4		3	1	4							
Ontario	12						6		1									1		1	2	1							
Orange	64	3		6	1	1	18	9	9	1						3		6			1	6							
Orleans	4								1									3											
Oswego	5							2										3											
Otsego	4						1									2				1									
Putnam	4						2											2											
Rensselaer	22	1					1	12	4		1							3											
Rockland	34	1		1	1		7	1	4	3						1		12		3									
St Lawrence	4				1			1			1							1											
Saratoga	11			1	3		3	2		1								1											
Schenectady	20				2		1	2	3	1	2							6			1	2							
Schoharie																													
Schuyler	1																			1									
Seneca	3						2											1											
Steuben	22	4	1				8	1										2		6									
Suffolk	210	25	2	7	13	14	77	6	22	6						2		37		4		2							
Sullivan	4						2		1									1											
Tioga	6						3											3											
Tompkins	6	1					1		2	2																			
Ulster	20			2			8	3	4									2			1								
Warren	3						3																						
Washington	3						3																						
Wayne	17	1		3			5	3	2									2			1								
Westchester	129	1		1	1	12	53	2	13	14	14							11		3		4							
Wyoming	3						2		1																				
Yates	1																	1											

*This table is based on the following reported original petitions disposed of (girls only): 2,042 Juvenile Delinquency petitions, minus 60 Juvenile Delinquency petitions for which they were substituted PINS petitions (8 in New York City and 52 outside New York City), regardless of court finding.

Table 85
FAMILY COURT
Law Guardian Program
For Last Two Completed Fiscal Years

	Number of Law Guardians		Number of Proceedings		Cost of Law Guardians	
	4/1/75 3/31/76	4/1/76 3/31/77	4/1/75 3/31/76	4/1/76 3/31/77	4/1/75 3/31/76	4/1/76 3/31/77
Grand Total					$3,845,015 20	$4,191,860 75
Region			Individual Law Guardians			
County						
Total New York State	1,040	1,784	10,890	18,335	$1,170,371 71	$1,190,304 03
Total New York City	469	477	8,240	8,416	430,085 02	427,080 41
New York	144	132	906	835	134,855 63	107,067 62
Kings	170	191	889	1,151	114,826 45	149,607 07
Queens	80	83	581	639	80,892 75	81,410 72
Bronx	63	68	647	665	82,011 54	86,033 80
Richmond	12	13	103	130	18,339 25	13,061 00
Total Upstate	1,071	1,307	13,650	14,919	736,060 09	702,323 02
Albany	16	14	619	643	23,019 00	27,776 92
Allegany	8	7	32	30	2,018 04	1,698 70
Broome	83	104	492	552	21,729 65	23,667 89
Cattaraugus	18	14	63	25	2,800 70	1,803 38
Cayuga	7	9	107	74	3,023 00	2,014 44
Chautauqua	17	12	32	47	2,025 32	1,597 19
Chemung	14	12	431	335	26,016 47	20,369 79
Chenango	13	11	161	153	8,074 32	6,074 58
Clinton	7	9	167	170	3,761 04	4,132 85
Columbia	2	9	130	148	4,820 00	7,235 00
Cortland	14	9	65	82	2,210 05	3,026 05
Delaware	6	8	27	26	1,107 82	1,819 65
Dutchess	67	63	318	293	19,095 84	17,077 08
Erie						
Essex	10	9	43	67	3,005 00	3,000 95
Franklin	8	5	124	170	6,927 93	11,340 05
Fulton	14	15	108	151	4,131 06	4,132 72
Genesee	10	16	136	193	8,230 42	8,140 56
Greene	15	10	64	64	3,024 67	3,061 35
Hamilton	2	2	2	0	98 00	203 14
Herkimer	16	10	60	92	3,726 71	1,545 07
Jefferson	13	10	100	126	6,021 53	6,493 84
Lewis	3	5	21	38	729 00	1,118 25
Livingston	10	13	65	63	2,091 13	2,773 25
Madison	0	7	20	20	1,024 92	760 78
Monroe	19	90	41	252	3,248 00	10,512 50
Montgomery	9	8	53	66	1,914 89	2,000 53
Nassau	30	103	2,025	2,196	110,398 00	130,176 10
Niagara	23	31	343	385	12,577 85	13,099 38
Oneida	36	38	468	596	16,210 23	17,308 04
Onondaga	70	83	1,016	1,060	63,612 05	70,167 13
Ontario	11	9	61	87	3,112 49	3,912 31
Orange	2		7		200 00	
Orleans	11	5	92	64	1,919 80	1,526 00
Oswego	20	22	113	117	4,019 01	4,357 01
Otsego	6	8	32	40	1,913 90	2,013 98
Putnam	5	8	139	81	4,272 49	3,271 25
Rensselaer	9	10	589	628	23,600 21	24,349 70
Rockland	26	58	401	416	23,773 84	23,036 24
St. Lawrence	30	27	481	497	23,843 69	23,377 05
Saratoga	13	16	100	195	5,852 89	8,414 13
Schenectady	29	43	334	357	16,631 38	22,027 10
Schoharie	8	8	42	68	1,620 17	2,993 06
Schuyler	3	4	7	10	324 07	467 77
Seneca	4	9	74	65	2,926 45	4,062 [illegible]
Steuben	30	58	129	134	7,922 92	10,215 [illegible]
Suffolk	17	21	49	64	3,142 95	4,919 18
Sullivan	20	23	201	245	8,406 18	11,648 87
Tioga	8	7	99	126	3,808 17	2,926 84
Tompkins	20	31	36	92	2,093 62	5,164 61
Ulster	28	29	171	186	12,806 85	12,912 40
Warren	24	24	195	242	9,328 12	9,903 03
Washington	6	9	199	172	11 100 37	9,216 63
Wayne	12	14	134	222	6,496 56	11,545 93
Westchester	115	139	2,530	2,494	109,343 46	128,932 24
Wyoming	6	5	126	123	2,819 07	3,237 55
Yates	5	7	26	15	1,526 00	744 60
			Legal Aid Services			
Total					$2,609,321 49	$3,001,056 72
New York City					$2,361,407 73	$2,671,820 00
Erie					88,045 12	101,829 04
Monroe					82,978 25	85,204 05
Orange					13,716 51	16,494 46
Suffolk					103,123 85	126,203 07

Note: Erie, Monroe, Orange (since 7/1/76) and Suffolk Counties and New York City contract for law guardian services with the legal aid societies in their respective geographical areas. In addition (since 1/1/77) if there is a conflict of interest in a case, an individual law guardian may be appointed to represent a child in these counties

CONTINUED

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Chapter 4

Special Programs

4.1 Mental Health Information Service

Section 29.09 of the Mental Hygiene Law establishes in each of the State's four judicial departments a Mental Health Information Service. The director in each department and his assistants and staff are appointed by the Presiding Justice of the appropriate Appellate Division. The statutory functions of the service include reviewing the admission and retention of mentally ill patients in mental health facilities; informing patients of their legal rights; providing courts with all relevant information concerning the patient's case in judicial proceedings; and providing similar services for the mentally disabled and their families.

Table 86 is a summary of the principal activities of the Mental Health Information Service in 1977 as tabulated from reports furnished to the Office of Court Administration.

4.2 Central Index for Post-Conviction Applications

A Central Index for Post-Conviction Applications was established in the office of the Administrative Board of the Judicial Conference on July 1, 1970. The system was devised after extensive discussion with a committee of both State and Federal judges which was chaired jointly by then Chief Judge Stanley H. Fuld and then Chief Judge Edward J. Lumbard. The main purpose of the Central Index is to permit a judge, whether State or Federal, who receives a post-conviction application to look to one place to determine if the petitioner has made similar application to another court or has another application presently pending.

The system operates relatively simply. When a judge receives a post-conviction application, he completes a card form and mails it to the Office of Court Administration. This form indicates the petitioner's name, his New York State Identification Information Number (NYSID), the date the application was received, the type of application, the judge's name, the court, and the docket number. The OCA then processes the information on its computer, and the computer generates a two-part form which is sent to the judge. The first part of the form indicates any previously reported application made by the petitioner since July 1, 1970. The second part of the form is completed by the judge when the application is disposed of, and it is sent to the Office of Court Administration for inclusion in the Central Index.

In 1977, a total of 671 applications were received by the Central Index; 475 from State courts, and 196 from Federal courts. Of the 394 dispositions received, 319 were from State courts, and 75 from Federal courts.

An analysis by computer of the applications received indicates that 121 post-conviction applications during the year had been filed previously in another court. This would indicate that those who bring post-conviction applications do not limit themselves to one application or one court. Thus, the main purpose in establishing the Index—to make available to the courts the information that other similar applications have been made or are pending in other courts—is being served.

Table 87 sets forth the type of applications received by both the State and Federal courts which were reported to the Administrative Board of the Judicial Conference during 1977.

4.3 Retainer and Closing Statements

Under 22 NYCRR Parts 603, 551 and 1022, every participant in a contingent fee in the First, Second and Fourth Judicial Departments* must file a Statement of Retainer with the Office of Court Administration in cases involving personal injury, property damage, wrongful death, or change of grade. This statement must be filed within 30 days of the lawyer's being retained (15 days in the case of "of counsel" lawyers). It sets forth the date of the agreement, the terms of compensation, the agreement as to work and fee division between the original lawyer and the "of counsel" lawyer, and data about the person referring the client to the lawyer.

Additionally, every such lawyer must file a Closing Statement with the Office of Court Administration within 15 days of the date the monies become available to him. This statement sets forth such information as the monetary amount of the settlement or award (if any). If an action was commenced, it contains the date, court, and county of commencement and the method and date of termination (by settlement or judgment), the gross amount of the recovery, the person paying the recovery, the distribution of the recovery to the client, and the lawyer's fees and other disbursements.

The purpose of these statements is to provide information for use by the three Appellate Divisions to prevent the charging of unconscionable fees in contingent fee cases and to discourage the solicitation of cases.

Table 88 shows that 103,478 retainer statements were filed with the Office of Court Administration in 1977. This was an increase of 1,671 retainers over the previous calendar year. The figures for each year were comparable because the full impact of the institution of no-fault insurance was felt in both years.

Table 89 gives the court in which actions were terminated and the monetary breakdown by settlement or judgment. For cases on the Supreme Court calendar, the largest single group of cases terminated involved recoveries between $3,000 and $4,000. The largest single group of cases terminated in the lower courts involved recoveries for $1,000 to $2,000. The great majority of claims settled resulted in at least some monetary recovery. Al-

*At present, there is no filing rule for the Third Judicial Department.

though there were some very large recoveries, they were proportionately few; there were 1,225 recoveries in the $50,000 to $100,000 category, and 952 recoveries over $100,000.

4.4 Compulsory Arbitration

The Compulsory Arbitration Statute was enacted by the Legislature in 1970, Judiciary Law Section 213 (8). The statute was extended by the Legislature at the 1975 session to August 31, 1977.

Section 213 (8) authorizes the Administrative Board to promulgate rules for the compulsory arbitration of claims for the recovery of a sum of money not exceeding $4,000, exclusive of interest, pending in any court or courts. The Administrative Board has adopted, and from time to time amended, rules governing compulsory arbitration (22 NYCRR 28).

The Arbitration Program has been established on a pilot basis in Monroe County (September 1, 1970), Bronx County (May 17, 1971), Broome County (March 1, 1972), and Schenectady County (June 18, 1973).

One major basis for evaluating the success of the arbitration program is the use made of it. In 1977, a total of 3,064 cases were referred to arbitration panels in Bronx, Broome, Monroe and Schenectady counties, as shown in Table 90. This is about 20 percent of the civil cases disposed of in the Supreme and County Courts in those counties during the year.

A second major basis for assessing the arbitration program concerns the acceptance of those dispositions by the litigants. Of the 3,064 arbitrated cases, 34 percent were disposed by settlement, 63 percent by trial award and 3 percent by other means. Tables 90 and 91 show that demands for trial de novo in arbitrated matters were 6.4 percent of cases arbitrated in Bronx County, 7.2 percent of cases arbitrated in Broome County, 6.5 percent of cases arbitrated in Monroe County, and 11.7 percent of cases arbitrated in Schenectady County. Thus, in 93.2 percent of the cases arbitrated, the arbitrator's award finally determined the matter and relieved the court of the burden of dealing with these cases. That is a high percentage, considering that only 33.5 percent of the awards were as demanded by the plaintiffs, as shown in Table 92 for all arbitration programs.

A favorable by-product of the arbitration system is the increase in the transfer down to city courts of cases pursuant to CPLR Section 325 (d). In the judicial year immediately preceding the institution of arbitration in Monroe County, the Supreme Court transferred 78 cases to city courts. In the 1977 calendar year, 213 cases were transferred to the Rochester City Court and 81 to the Binghamton City Court. It would appear that when the superior courts recognize there is a readily available method of speedily disposing of cases in the city courts, they will transfer cases in which they believe the award will be $4,000 or less. Furthermore, the Bar appears satisfied to have

such transfers made. Moreover, of those cases which were calendared in the Rochester City Court (those not settled before filing in City Court), 93 percent appeared on an arbitration calendar rather than on a trial calendar. Thus, despite the increase in transfers down to the City Court, the number of cases added to the City Court trial calendar each month is substantially less than the number added before the institution of arbitration.

Another favorable aspect of the arbitration program is its use in situations in which the damage claims exceed $4,000. Although arbitration is not compulsory in these cases, there were 41 such cases stipulated to arbitration in Monroe County in 1977. (Similar figures were not tabulated for the other counties.)

An additional desirable aspect of the arbitration program is that 92.1 percent of the cases disposed of by arbitration took less than two and one-half hours to try, while less than 2 percent took more than five hours before disposition. It is apparent that the savings in time for attorneys and litigants are substantial, especially when compared to the length of trials conducted by traditional methods, particularly jury trials, in which at least a full day would be required.

Finally, the large number of lawyers who have volunteered to serve as arbitrators is evidence of the enthusiasm with which lawyers have received the arbitration program. 95 percent of the active practicing Bar in Rochester is involved in the program.

For an evaluation of this program, see the Appendix.

4.5 Statements of Appointments and Statements of Fees or Commissions

Section 35-a of the Judiciary Law, as originally enacted by the Legislature in 1967, required the filing of a Statement of Appointment by each person appointed by the courts to perform services in actions and proceedings for a fee or an allowance. The statute called for these statements to be filed with the Judicial Conference within 30 days of an appointment.

The required information included the name and the address of the appointee; the nature of the appointment; the title of litigation; and the name of the court and the judge or justice making the appointment.

In addition, within 30 days of receiving a fee, the appointee was required to execute a statement of services rendered with other pertinent data related to the fee received. Under the statute, all statements filed were to be kept as matters of public record. The law also required that an annual summary of the information in the statements be furnished to the four Appellate Divisions of the Supreme Court for use in supervising court appointments in their Judicial Departments.

A total of 121,640 statements of appointment have been filed since July 1, 1967, under this system; 112 were filed in 1977. An extensive study of this system of two reports for each appointment revealed a number of inefficiencies. Not the least of these

was the failure of many appointees to file a statement of services rendered after payment of the fee. To deal with this problem, the Office of Court Administration sponsored legislation amending section 35-a which was enacted as Chapter 834, Laws of 1975, and which went into effect starting with appointments made after September 1, 1975.

Under the amended law, judges who approve fees are responsible for filing a single comprehensive statement, entitled Statement of Fees or Commissions, on appointments for which the fee is more than $100. The judges are required to send the statements to the Office of Court Administration each week for data processing and filing. Fees of $100 or less are not required to be reported, because they are believed to have little significance in the statistical study of appointments made in the court system.

In 1977, a total of 5,852 Statements of Fees or Commissions were filed with the Office of Court Administration. Such statements accounted for about 95 percent of the statistical data furnished in annual reports to the Appellate Divisions. The new system accomplished its intended purpose of getting more timely reports on court appointments without loss of required data provided by the older system.

STATISTICAL TABLES

Table 86
Mental Health Information Service Activity
by Judicial Department
Jan. 1, 1977 through Dec. 31, 1977

Judicial Department	Nonjudicial Proceedings		Applications for Release or Retention			Other Activity		
	Applications Reviewed	Contacts W/patients & other	Patients Released	Patients Retained	Hearings Demanded	Judicial Cases	Reports to Courts	Hearings Attended
First	20,261	46,281	741	221	519	1,444	994	448
Second	65,333	251,821	642	6,702	2,421	9,153	7,620	2,332
Third	5,132	13,836	28	788	302	979	850	134
Fourth	14,394	23,046	29	2,504	499	2,989	2,535	219
Statewide Total	105,120	334,984	1,440	10,215	3,741	14,565	11,999	3,133

Table 87
Central Index of Post-Conviction Applications
Jan. 1, 1977 through Dec. 31, 1977

Type of Application	N.Y. Courts	Federal Courts	Total	Percent
Habeus Corpus	224	108	332	49.4
Coram Nobis	12	0	12	1.8
Article 78	236	2	238	35.4
Civil rights	0	86	86	12.8
Motion for resentence	1	0	1	0.2
Certificate of relief from disability	1	0	1	0.2
Reargurnents — certificate of relief from disability	1	0	1	0.2
Total	475	196	671	100.0

Table 88
Retainer Statement Filings by Month
Jan. 1, 1977 through Dec. 31, 1977

Month	*Number of Statements of Retainer Filed*
January	8,450
February	7,923
March	9,381
April	8,512
May	8,596
June	8,571
July	7,891
August	10,291
September	7,814
October	9,706
November	8,196
December	8,147
Total	103,478

Table 89

Court and Monetary Breakdown of Closing Statements

Jan. 1, 1977 through Dec. 31, 1977

Amount of Recovery	Supreme Court		U S District Court		Court of Claims +		County Court		Civil Court		City Court		District Court		Justice Court		All Courts		No Action*
	Settled	Judgment	Settled	Judgment	Settled	Judgment	Settled	Judgment	Settled	Judgment	Settled	Judgment	Settled	Judgment	Settled	Judgment	Settled	Judgment	Settled
$1–499	421	19	18	0	1	1	46	0	1,356	14	64	3	202	2	7	2	2,115	41	708
500–999	1,047	20	46	0	1	0	92	0	3,344	43	146	8	377	9	12	0	5,004	80	1,187
1,000–1,999	2,600	82	101	3	1	3	154	1	5,667	56	176	15	446	14	1	0	9,145	174	1,842
2,000–2,999	3,018	58	61	3	7	0	92	3	3,233	48	102	10	193	3	0	0	6,706	125	1,900
3,000–3,999	3,328	45	67	1	4	4	54	4	1,601	28	53	1	90	4	0	0	5,208	87	1,577
4,000–4,999	2,612	44	67	1	0	2	24	0	632	13	10	1	31	2	0	0	3,385	63	1,036
5,000–5,999	2,399	45	50	5	2	1	10	1	278	16	8	2	12	4	0	0	2,759	74	711
6,000–6,999	1,865	36	59	1	0	0	4	0	156	12	4	0	3	0	0	0	2,091	49	527
7,000–7,999	2,206	34	55	0	2	0	6	0	87	7	2	0	6	0	0	0	2,364	41	543
8,000–8,999	1,220	53	36	1	0	0	4	0	45	2	0	0	0	0	0	0	1,305	35	291
9,000–9,999	1,537	22	40	1	1	0	2	0	32	2	0	0	0	0	0	0	1,612	25	470
10,000–14,999	3,462	97	110	2	5	2	3	0	47	6	0	0	0	0	0	0	3,627	107	756
15,000–19,999	1,750	63	114	6	0	1	0	0	20	0	0	0	0	0	0	0	1,884	70	230
20,000–24,999	1,087	40	65	6	0	0	0	0	6	1	0	0	0	0	0	0	1,158	56	106
25,000–29,999	731	51	59	2	3	0	0	0	6	1	0	0	0	0	0	0	799	4	68
30,000–34,999	372	35	40	2	1	2	0	0	1	0	0	0	0	0	0	0	414	30	31
35,000–49,999	808	70	64	1	1	2	0	0	1	0	0	0	0	0	0	0	874	73	60
50,000–99,999	896	121	191	6	1	0	0	0	11	0	0	0	0	0	0	0	1,099	126	54
100,000–UP	509	141	285	8	0	3	0	1	5	0	0	0	0	0	0	0	799	153	26
Total With Recovery	31,877	1,064	1,528	48	30	21	491	10	16,318	249	578	40	1,366	38	20	2	52,408	1,472	12,131
No Recovery	997		51		9		31		764		42		72		5		1,971		4,650

Note: Whenever individual closing statements were filed by attorneys acting jointly in a case, each statement received was included in these tabulations. Thus, the number of statements somewhat exceeds the total number of cases closed.

+Includes condemnation as well as tort matters.

*Item 3 of the closing statement requires that the court and date be indicated if an action was commenced. This category includes those statements in which this item is left blank.

Table 90
Disposition of Compulsory Arbitration Cases by County
Jan. 1, 1977 through Dec. 31, 1977

County	Settlement	Trial Awards	Other	Total
Bronx	517	996	41	1,554
Broome	59	79	0	138
Monroe	395	757	40	1,192
Schenectady	89	91	0	180
Total	1,060	1,923	81	3,064

Table 91
Demands for Trial De Novo in Arbitrated Cases by Month
Jan. 1, 1977 through Dec. 31, 1977

Month	Bronx County	Broome County	Monroe County	Schenectady County	Total
January	8	2	6	1	17
February	3	0	4	3	10
March	17	0	8	1	26
April	8	0	6	2	16
May	16	1	7	0	24
June	8	1	10	1	20
July	11	4	8	2	25
August	4	0	8	3	15
September	5	1	5	3	14
October	4	0	7	1	12
November	4	1	3	4	12
December	12	0	6	0	18
Total	100	10	78	21	209

Table 92
All Arbitration Services
Plaintiff Demand and Award
Jan. 1, 1977 through Dec. 31, 1977

Award	Demand												Total
	Up to $100	$101-$200	$201-$300	$301-$400	$401-$500	$501-$1,000	$1,001-$2,000	$2,001-$3,000	$3,001-$7,000	$7,001-$10,000	$10,000 and up	Not Reported	
None	3	24	21	23	35	145	170	82	38	6	10	0	557
Up to $100	12	12	6	4	4	8	6	5	0	0	0	0	57
$101 - $200	0	35	21	15	11	28	13	4	5	6	0	0	132
$201 - $300	0	1	47	17	17	32	24	3	3	1	0	0	146
$301 - $400	0	0	0	42	14	40	19	7	0	0	0	0	122
$401 - $500	0	0	0	1	39	42	19	5	3	0	1	0	110
$501 - $1,000	0	0	0	0	0	168	144	38	15	1	3	0	369
$1,001 - $2,000	0	0	0	0	0	1	198	78	18	2	6	0	303
$2,001 - $3,000	0	0	0	0	0	0	3	77	22	0	2	0	104
$3,001 - $7,000	0	0	0	0	0	0	0	0	29	2	2	0	33
$7,001 - $10,000	0	0	0	0	0	0	0	0	0	0	0	0	0
$10,001 and up	0	0	0	0	0	0	0	0	0	0	1	0	1
Not reported	0	0	0	0	0	0	0	0	0	0	0	0	0
Totals	15	72	95	102	120	464	596	299	133	12	25	0	1,933

Chapter 5

Education and Training Programs

Since 1962, the Office of Court Administration (OCA) has conducted education and training programs for over 17,000 judges and justices of New York State. In 1977, 821 judges and 822 town and village justices attended 17 OCA-sponsored programs. In addition, 42 judges attended national programs outside the state. Almost 400 persons attended nonjudicial training programs sponsored or financed by OCA.

The office of education and training also administers the tuition-reimbursement program for state-paid court personnel and provides assistance or advice and counsel to judicial and nonjudicial groups in the state.

This chapter consists of four sections: (1) judicial programs, the ongoing OCA-sponsored and coordinated seminars and workshops for judges; (2) town and village justice training programs, mandated by the Legislature and the Rules of the Administrative Board; (3) nonjudicial programs, including newly developed cooperative relationships with various nonjudicial court-personnel groups in the state; and (4) other programs, judicial and nonjudicial, outside New York State, coordinated or assisted by OCA for various groups.

5.1 Judicial Programs

Sentencing Institutes
January 20-22, 1977
February 3-5, 1977

Two sentencing institutes were held in Crotonville, N.Y., for 261 County Court judges and Supreme Court justices. Attendance was about equally divided, with New York City and upstate judges combined in both institutes as last year. Speeches, panels and workshops focused on parole and probation rules, disparity in sentencing, and emerging problems in the law of sentencing. Workshop groups discussed several presentence probation reports, providing the opportunity for an exchange of ideas.

At the first institute, State Administrative Judge Richard J. Bartlett welcomed the judges. After a brief introduction by Supreme Court Justice Lyman H. Smith, Dr. Edward DeFranco, chief of management analysis and information systems for the Division of Probation, spoke on sentencing trends. He was followed by Jack M. Kress, the project director for the Criminal Justice Research Center, who spoke on criteria in sentencing.

The judges were then divided into four groups to discuss several presentence probation reports.

The group discussions were followed by Marcus P. Salm, probation project director for the Division of Probation, and Anthony Czarnecki, Westchester County senior probation officer, who spoke on probation supervision.

Douglas A. Eldridge, counsel for the Office of Drug Abuse Services, and David L. Diamond, deputy counsel, Office of Drug Abuse Services, spoke on the role of ODAS in sentencing.

The judges again divided into groups to discuss more of the presentence reports. Gerald Hecht, director of probation for the New York City Probation Department, and Jack A. Kress summarized the group discussions.

After the group discussions and summaries, Edward Elwin, deputy commissioner of the Department of Correctional Services, spoke to the judges about correctional programs and practices, and Peter Preiser spoke on recent developments in the law of sentencing.

Guest speakers at the institutes were Stephen J. Chinlund, chairman of the New York State Commission of Correction, and Edward R. Hammock, chairman of the Board of Parole.

Seminar for City Court Judges
March 11-12, 1977

The third annual seminar for City Court Judges outside New York City was held in Syracuse on March 11 and 12, 1977. Seventy judges of the various City Courts outside New York City attended. On March 11, Professor David D. Siegel of Albany Law School spoke on recent developments in civil practice. He was followed by Judge Eugene F. Sullivan, Jr., of Oswego County, who spoke on sentencing, computing fines and indigents. Later, Judge Sullivan was joined by Judge Eugene W. Salisbury, Acting Village Justice of the Village of Blasdell, and the two judges led discussions of pretrial hearings, arrests without warrants and other recent criminal problems, and discovery in criminal actions.

On March 12, Dean Emeritus Jerome Prince of Brooklyn Law School spoke on evidence, hearsay and some exceptions. He was followed by Judge Salisbury, who spoke on summary proceedings—recent developments and new statutes. The Rules of the Administrative Board were discussed by Michael F. McEneney, then director of education and training, now director of management and planning for the Office of Court Administration. He emphasized those rules which govern judicial conduct. Judges Sullivan and Salisbury then led the final two discussions on topics of major importance to City Court judges: motor vehicle matters and adjournments in contemplation of dismissals, youthful offenders, Family Court and Article 8, and seal and return orders under CPL 160.50.

Seminar for County Judges
May 11-13, 1977

Seventy-four County Judges attended the 1977 seminar for County Judges in Saratoga Springs.

Judge John A. Gallucci of Rockland County, president of the County Judges' Association, welcomed the participants.

A discussion on the *Primer on Jury Instructions* was led by Acting Supreme Court Justice Peter J. McQuillan of the First Judicial Department, the author of the Primer. Following Judge McQuillan were two discussions. One, led by Judge John S. Lockman of Nassau County, centered on CPL 210.40, dismissals in the interest of justice; *People v. Huntley,* its requirements and recent developments; and *People v. Sandoval* and its present criteria. The second discussion was led by Judge Albert Rosenblatt of Dutchess County. It centered on searches and seizures, *People v. DeBour* and *People v. Ingle,* and their progeny.

Supreme Court Justice Lyman H. Smith of the Seventh Judicial District, chairman of the Criminal Jury Instructions Committee, completed the schedule with a report on the status of the publication of criminal jury instructions.

Joseph W. Bellacosa, the Clerk of the Court of Appeals, lectured on recent developments in the criminal law.

Supreme Court Justice Richard J. Bartlett, the State Administrative Judge, made the closing remarks.

The judges were given background materials for most of the topics discussed.

Seminar for Surrogates
May 23-26, 1977

The 11th annual seminar for Surrogates was held in Saratoga Springs.

Supreme Court Justice Richard J. Bartlett, the State Administrative Judge, welcomed the 50 attending Surrogates.

The program was divided into five seminar periods. The first discussed litigation in the Surrogates Court and was led by Professor Joseph T. Arenson, professor of law at New York Law School and counsel to the Public Administrator of New York County, Surrogates Evans V. Brewster (Westchester County), Bertram R. Gelfand (Bronx County), John L. Ostrander (Saratoga County), Gerald Saperstein (Cayuga County), and Professor Paul J. Powers, adjunct professor of law, St. John's University School of Law, and former chief law assistant, New York County Surrogate's Court. The second seminar period also concerned litigation in the Surrogate's Court; it was led by Professors Arenson and Powers and Surrogates Arthur A. Davis, Jr. (Ulster County), Irving Goldman (Clinton County), Edward M. Horey (Cattaraugus County), and John F. Skahon (Rockland County).

The third seminar period dealt with the Tax Reform Act of

1976 and was led by Ira H. Lustgarton, Joseph Kartiganer, and William D. Zabel, all of New York City.

In the fourth seminar period, Dean Ralph D. Semerad of Albany Law School spoke on the revision of EPTL 5-1.1 and Judge Louis D. Laurino, Surrogate of Queens County, spoke on pending legislation of interest in the 1977 Legislature.

The fifth seminar period was led by Judge John A. Keane, the president of the Surrogate's Association. This seminar informed the Surrogates of items of interest involved in the state takeover of the local courts and the unified court system.

Printed material was distributed to the Surrogates which also served as a handy reference to recent cases.

Conference of New York State Trial Judges
June 27-30, 1977

About 125 judges and justices attended this annual seminar held in Crotonville.

Chief Judge Charles D. Breitel welcomed the judges at dinner and introduced the guest speaker, Associate Judge Domenick L. Gabrielli of the Court of Appeals.

On the second night Associate Justice Theodore R. Kupferman of the Appellate Division, First Department, and Associate Justice John L. Larkin of the Appellate Division, Third Department, spoke on some of their experiences on the bench. The next evening Deputy State Administrative Judge Robert J. Sise reported to the judges on the progress that had been made to date in the Legislature and under Standards and Goals.

The program consisted of four seminars on topics vitally related to the role of the trial judge. The first, on recent developments in the CPLR, was chaired by Judge Kupferman, and Professor David D. Siegel of Albany Law School was reporter. Panelists for this seminar were Supreme Court Justices Harold J. Hughes and Edwin Kassoff and Professor Adolf Homburger, then of Buffalo Law School, now at Pace University Law School.

Another seminar, on evidence, was chaired by Dean Emeritus Jerome Prince of Brooklyn Law School. Reporter for this seminar was Professor Faust F. Rossi of Cornell University Law School. Panelists were Administrative Judge Joseph G. Fritsch and Supreme Court Justices Morton B. Silberman and Donald J. Sullivan.

The seminar on Criminal Law and Procedure was chaired by Supreme Court Justice Thomas M. Stark. Reporter for this seminar was Professor Robert A. Barker of Albany Law School. Panelists were Justice Leonard H. Sandler, Acting Justice Peter J. McQuillan and Peter Preiser.

The seminar on the role of the trial judge was chaired by Supreme Court Justice Lyman H. Smith, and Professor Joseph H. Koffler of New York Law School was the Reporter. Members of the panel were Appellate Division Justice John L. Larkin, Justice David O. Boehm and Dean Emeritus Ray Forrester of Cornell University Law School.

The last day of the conference featured a lecture by Professor Milton Gershenson of Brooklyn Law School on matrimonial actions and a consensus of panel discussions, with the four Reporters giving their summary reports.

Observers at the conference were Dean Joseph M. McLaughlin of Fordham University Law School, Dean John J. Murphy of St. John's University Law School, Professor Gershenson, and Edward P. Borrelli of the Office of Court Administration.

The program coordinators for the conference were Professor David R. Kochery of SUNY at Buffalo Law School and Michael F. McEneney, then director of education and training, now director of management and planning for the Office of Court Administration. The Reporters' summaries are printed in full at the end of this chapter.

Family Court Workshop
September 25-27, 1977

The ninth annual workshop for Family Court Judges was held in Lake Placid with about 97 judges in attendance. The first meeting, the general assembly, included introductory remarks by Judge J. George Follett, president of the Association of Judges of the Family Court of the State of New York. This was followed by a discussion on mental health services and the Family Court. The discussion was led by Judge Follett, Judge Charles F. Graney of Genesee County, and Dr. Michael Kalogerakis of the State Department of Mental Hygiene.

Three concurrent workshops were repeated to enable every judge to participate in each one. The three workshop topics and their discussion leaders were evidence, led by Dean Emeritus Jerome Prince of Brooklyn Law School and Family Court Judges Donald J. Corbett, Jr. and Richard M. Palmer; recent developments in the principles of criminal law as they affect Family Court, led by Family Court Judge Edward J. McLaughlin of Onondaga County and John J. Elliot, assistant district attorney of Oswego County; and a review of legislation and significant recent decisions, led by Dean I. Leo Glasser of Brooklyn Law School.

Senator Warren Anderson, Temporary President and Majority Leader of the New York State Senate, also appeared to address the judges.

Conference of Civil Court Judges
November 11-13, 1977

The fifth annual seminar for New York City Civil Court judges was held at Swan Lake with 77 judges attending. The purpose was to present current developments in the law and to provide for an exchange of ideas between recently elected and experienced judges and law school professors. Judge Shanley N. Egeth, president of the Civil Court Judges Association, welcomed the judges and introduced Judge Edward Thompson,

former Deputy New York City Administrative Judge, and Judge Francis X. Smith, Judge Thompson's then recently appointed successor.

There were two panel discussions: recent developments in the CPLR, led by Judges Salvatore T. DeMatteo, Benjamin F. Nolan, Seymour Schwartz, and Benjamin Glass and Professor David Siegel of Albany Law School; and evidence, led by Judges Herbert Shapiro, Charles H. Cohen, Dominick Corso, and David Stadtmauer and Professor Richard Farrell of Brooklyn Law School.

Professor Farrell also addressed the judges on new amendments and recent developments in the no-fault insurance law.

Teri R. Rosen, president of Word Wright, Inc., spoke to the judges on the implications of the recently enacted Plain English Law.

Newly Elected and Newly Appointed Judges Seminar
December 5-9, 1977

As soon as possible after election or appointment, new judges have the opportunity at this seminar to learn about a variety of important aspects of their new role as judges. Experienced judges, law school professors and other experts discuss substantive and procedural law and give helpful information about the duties and responsibilities of judges.

Classes at the 1977 seminar ran from 9:30 a.m. to 5:00 p.m. each day. After lunch every day a special guest speaker addressed the judges. State Administrative Judge Richard J. Bartlett spoke on the role of the Office of Court Administration. Supreme Court Justice David Ross, New York City Administrative Judge, gave the judges some helpful hints on conducting trials and dealing with the Bar. Supreme Court Justice Edwin Kassoff, chairman of the Publications Committee, which is responsible for the Bench Book for Trial Judges, explained how best to use the book. Leo Levy, County Clerk, Bronx County, spoke on the use of jurors and explained the problems the Commissioners of Jurors face in supplying adequate numbers of jurors to the trial parts; and Albert Court of the New York State Employees' Retirement System spoke to the judges about the system.

A discussion on the trial judge's role, conduct of trials, courtroom decorum and pitfalls was led by Supreme Court Justice James J. Leff, First Judicial District. A roundtable question-and-answer period on judicial conduct was conducted with Associate Justice Arthur Markewich of the Appellate Division, First Department, Michael R. Juviler, Counsel, Office of Court Administration, and Gerald Stern, Administrator of the Commission on Judicial Conduct, guiding the discussion and providing answers to questions.

Additional topics and discussion leaders were the role of the court reporter, Ms. Rosalie Labate, president, New York State Court Reporters' Association; topics of interest to the new judge,

Michael F. McEneney, director of management and planning, Office of Court Administration; criminal procedure, Supreme Court Justice Thomas M. Stark (10th District) and Acting Justice Harold J. Rothwax (1st District); the Office of Drug Abuse Services, Douglas Eldridge, counsel; evidence, Dean Emeritus Jerome Prince of Brooklyn Law School; pattern jury instructions in civil cases, Bernard S. Meyer, chairman, Pattern Jury Instructions Committee; intercourt relations, Deputy State Administrative Judge Robert J. Sise; substantive criminal law, Joseph W. Bellacosa, Clerk, Court of Appeals; and Civil Practice Law and Rules, Professor David D. Siegel of Albany Law School.

5.2 Town and Village Justice Training Programs

There are over 2,500 town and village justices in New York State. Most are not admitted to practice law in the state.

Newly elected or appointed justices are required by law and the rules of the Administrative Board to take a basic course in the fundamentals of the law that they need to know and in their duties and responsibilities. The basic course is given three times a year—in April, July and November—and must be taken as soon as possible after election or appointment. A passing mark on the final written examination and attendance at a minimum of 80 percent of the classes qualify the justice for certification.

Newly elected or appointed justices are also required to take the advanced course, which is scheduled at least five times a year and must be taken as soon as possible after completing the basic course. The successful completion of this course qualifies the justice for certification, which is valid for the current term of office and one year thereafter.

All justices are also required to successfully complete the advanced course within one year of beginning a new term of office to be recertified.

A summary of the basic and advanced programs held in 1977 follows:

Month and Location	*Number of Attendees* *Basic*	*Advanced*
February—New York City		114
March-April—Albany, Buffalo, Syracuse	58	
May—Olean		43
June—Rochester		41
July—St. Lawrence University	15	110
September—Ellenville		49
October—Lake George		54
November—Albany, Buffalo, Syracuse	338	
Total	411	411

5.3 Nonjudicial Programs

The education and training office continued to maintain successful liaison with many statewide groups of nonjudicial personnel and enlarged its staff to make possible the implementation of fully OCA—sponsored programs as well. These programs are planned to reach almost all nonjudicial personnel within the next several years and will be repeated at various locations in the state.

New York State Shorthand Reporters' Association Seminar for Court Reporters in the First and Second Judicial Departments

January 29, 1977

The education and training office, in cooperation with the New York State Shorthand Reporters' Association, sponsored this one day seminar in New York City. Two booklets were printed at OCA for workshop use: "Selected Words and Phrases Used in Criminal Actions," compiled by Acting Supreme Justice Peter J. McQuillan; and "Material for the English Workshop Seminar for Court Reporters," prepared by Irwin Weiss. About 200 court reporters attended the seminar.

Peter R. Gray, then Deputy State Administrator, opened the morning session with a talk on recent developments in court administration. Selected words and phrases used in criminal actions was the topic of the morning work session led by Judge McQuillan. The afternoon workshop dealt with punctuation and was led by Irwin Weiss, teacher of English at Rhodes School, New York. Several education and training staff members provided administrative support during the conference.

Conference for Family Court Clerks

May 31-June 3, 1977

The education and training office cosponsored the 25th annual New York State Family Court clerks' conference. Michael F. McEneney, then director of education and training, attended all the OCA-sponsored parts of the program.

Edward Gardner, OCA's director of budget and finance, and Ronald Stout, the deputy director, extended greetings from State Administrative Judge Richard J. Bartlett. There followed a detailed discussion of the unified state classification of nonjudicial positions. Mr. Gardner and Mr. Stout tailored the discussion to the specific questions and problems raised by the Family Court clerks.

Judge Vincent Gurahian, Deputy Administrative Judge, the Family Court, 9th Judicial District, and Shirley Mitgang, deputy counsel, OCA, led an open discussion on the revision of forms used in the Family Courts.

Sue Johnson, then Acting Deputy State Administrator and now Assistant Chief Administrator, informed the clerks of personnel changes in OCA. This was followed by a detailed explanation of the job classification survey procedures. James Lam-

bert, manager, OCA Family Court Statistics Unit, spoke on new rules relating to unexecuted warrants. Steve Joachim, OCA court planner, thanked the Family Court clerks for their cooperation in helping to meet Standards and Goals. Shirley Mitgang provided an update on OCA-introduced and other pending legislative bills affecting Family Courts. Michael F. McEneney, whose appointment to the position of director of management and planning had been announced by Sue Johnson earlier in the meeting, chaired an open discussion to determine how the Family Court clerks and OCA could be more supportive of each other.

Conference for Supreme and County Court Clerks
July 19-20, 1977

The education and training office, in cooperation with the Association of the Supreme and County Court Clerks of the State of New York, sponsored two of the conference's four days. The first and last days were reserved for association affairs.

Judge Robert C. Williams, resident Supreme Court Justice, Sullivan County, extended greetings on the county's behalf and best wishes for a successful conference. At the conclusion of committee reports, association president Mel Brewer introduced Michael F. McEneney, OCA's director of management and planning, who introduced speakers from OCA. Sue Johnson, Assistant State Administrator, spoke about the unified court budget. After a discussion, she met with the association's executive board. Other afternoon speakers were Knute Rondum, assistant associate administrative analyst in the civil and criminal activity reporting unit, on criminal and civil statistical reporting, and Frederick Miller, legislative counsel, OCA, on recent legislation.

Speakers and topics on the following day were Mr. Rondum and Mildred Floria, senior administrative analyst, civil activity reporting unit, on civil reporting; Don Fleming, director of OCA's Court Information Service, on offender-based transaction statistics; Donald Taylor, principal systems analyst, OCA management and planning office, on uniform civil recordkeeping throughout the state; George Bacolini, supervisor of OCA's criminal disposition reporting unit on proper procedures for criminal disposition reporting; Steve Joachim, OCA court planner, on standards and goals; and John Poklemba, then law secretary to Deputy State Administrative Judge Robert Sise, on recent cases of interest.

Judge Sise was guest speaker at the evening dinner. He gave a general summary of the progress made by the courts in New York from the summer of 1975 to date.

Conference for Chief Clerks of Surrogates' Courts
September 19-21, 1977

Problems facing the chief clerks of Surrogates' Courts and the

effect of the unified court budget on them were this conference's main topics. Sue Johnson, Assistant State Administrator; Edward Gardner, OCA's director of budget and finance; Frederick Miller, legislative counsel, OCA, and Michael F. McEneney, director of management and planning, spoke about changes resulting from the new budget and answered questions. Raymond Crapo, senior education and training assistant, attended all meetings as liaison from the education and training office. After a panel discussion on small estate administration, arrangements were made to improve liaison between education and training and the Association of Chief Clerks of Surrogate's Court so that the following year's cooperative efforts would once again provide timely and critical topics.

Conference for Commissioners of Jurors
September 19-21, 1977

Matters relating to the new unified court budget and its effect on the commissioners of jurors constituted the theme of this conference, cosponsored by the Association of Commissioners of Jurors and the Office of Court Administration. Michael F. McEneney, director of management and planning, covered many of the business aspects of the change from county to state funding. He further noted that New York was the first state in the nation to adopt a unified court budget and that the inevitable initial problems generated by such an undertaking would be solved in such a manner as to strengthen and improve the Judiciary and, at the same time, strengthen the relationship between the Office of Court Administration and groups such as the Association of Commissioners of Jurors.

Sue S. Johnson, Assistant State Administrator, explained the process by which job reclassification would occur throughout the courts on the unified court budget system. She informed the commissioners that meetings would be held throughout the state to answer all questions nonjudicial personnel had as state employees. She then answered questions on a variety of issues affecting the commissioners of jurors, such as vacancy freezes, time and leave problems, and the non appearance of jurors.

The liaison between the Association of Commissioners of Jurors and the Office of Court Administration, Frederick Miller, legislative counsel, spoke optimistically about the new jury bill. He thanked the commissioners for their support and requested their continued cooperation through the period of initial adjustment.

Supreme Court Justice Richard J. Bartlett, the State Administrative Judge, spoke of the unified court budget as the culmination of 12 years of work. He thanked the commissioners of jurors for their cooperation during the transition and noted that they would be involved with an amended jury law in January 1978. Judge Bartlett also spoke about the court reform amendments being offered to the voters in November.

Judge Robert J. Sise, Deputy State Administrative Judge, was

introduced to the commissioners.

Seminar for Town and Village Court Clerks of the Eighth Judicial District
October 22, 1977

In cooperation with the local Town and Village Court Clerks' Association, the education and training office presented a one-day program. The Office of Court Administration provided staff and speakers for the program in consultation with the association.

George Bacolini, supervisor of the criminal disposition reporting unit, outlined the procedures to be followed in using the improved reporting form. At a later session he spoke on family offense reporting.

Judge Eugene W. Salisbury, Acting Village Justice, Village of Blasdell, spoke on a number of topics: youthful offenders, adjournments in contemplation of dismissal and sealing orders; family offense proceedings; and small claims procedures. The Department of Audit and Control was represented by Frank Moore, who conducted a workshop on audit and control procedures. Neal Schoen, of the Department of Motor Vehicles, spoke about reports and regulations involving Motor Vehicles and town and village courts. Edward Borrelli, education and training aide of the Office of Court Administration, spoke on procedures upon appeal and civil cases. The entire seminar was administered and coordinated by Mr. Borrelli, and Mr. Crapo, senior education and training assistant for the Office of Court Administration.

5.4 Other Programs

The education and training office sponsors and coordinates selective attendance of judicial and nonjudicial personnel at nationally recognized educational programs.

5.4.1 Judicial Programs

National College of the State Judiciary

Twenty-one judges attended programs, varying in length from one to four weeks, at the National College facilities at the University of Nevada in Reno.

Six judges attended the two-week program entitled "New Trends in the Law, the Trial, and Public Understanding." This program focused on recent thinking on the judicial role with emphasis on new developments in torts and contracts, trial judge demeanor; judicial responsibility for jury management, protective orders, the judge as administrator; state court administrative systems, comparative negligence, judicial decision making, scientific evidence; supervision of state agencies by the federal judiciary, criminal law aspects of civil cases, pretrial and jury

workshops, declaratory judgments, invasion of privacy, changing law of obscenity, libel and slander, right to die and organ transplants, medical and legal malpractice and judicial immunities.

Seven judges attended the regular four-week sessions and one attended the regular three-week session. The objectives of these programs are (1) to increase the confidence of the relatively new judge by giving him a deeper understanding of his role as a judge and of the entire judicial process and to provide an opportunity to learn methods of judges from other jurisdictions; (2) to allow the experienced judge to reexamine his judicial philosophy and approaches to decision making, court administration and other court problems in an academic atmosphere with the assistance of fellow judges; and (3) to encourage the use of the latest techniques to increase the efficiency of trial courts and to decrease the number of reversals and new trials; to seek means of bringing about speedy trials; and to explore ways of explaining the judicial function to the general public.

Specific topics discussed in depth were court administration, civil proceedings before trial, judicial discretion, family law, evidence, judicial problems, jury, courts and the community, sentencing, corrections, criminal law, new developments in civil law, communications and inherent powers of the courts.

Two judges attended the two-week special court program devoted to meeting the judicial needs of the city court judge. Emphasis is on criminal law and procedure, sentencing of adult misdemeanants, search and seizure, evidence, and recent constitutional law developments. Additionally, the judge, his court and community are considered by examining the role and ethics of the judge, the management of his court, including administration, personnel, jurors, traffic and small claims.

Six judges attended one-week programs which specialized in intensive training in one of the following: criminal evidence, search and seizure, court admininstration or decision making.

National College of Juvenile Court Judges

Five Family Court judges attended the two-week fall college course. Topics included review and implementation of recent Supreme Court decisions, neglected and abused children, psychology of the violent youthful offender, trends in waiver/ transfer, dispositions, the learning-disabled child, substance abuse, institutions and their alternatives, behavioral science applications and the inherent powers of the juvenile court.

In addition, five Family Court judges attended the national annual conference of the National Council of Juvenile Court Judges. The conference plays an important role in the formation of national policy on juvenile law. Some areas of discussions included child abuse and neglect, delinquency, the violent and dangerous offender, and learning disabilities.

Appellate Judges' Seminar

Two Associate Justices and one Presiding Justice of the Appellate Divisions attended this four and one-half day seminar. Various appellate judges from throughout the country conducted sessions on recent impact decisions and other topics of importance to the appellate judge.

American Bar Association's Conference for State Trial Judges and Conference for Special Court Judges

Seven judges attended one of these six-day conferences. These are policy-formulating conferences drawing national participation. Topics included recent impact decisions, search and seizure, alcohol and drugs, state-federal relations, communications, state-judicial planning, administrative law, anatomy of a decision, and media and the law.

In addition, one judge attended the American Bar Association's Institute on Exclusionary Rules.

Institute for Trial Judges

The Office of Court Administration assumed sponsorship of this ongoing program in May. The education and training office provides administrative services, honorariums, and incidentals so that trial judges may have discussions with persons in the legal and social science fields. The usual format is a presentation by the speakers or panel followed by an exchange of questions and opinions between speakers and judges.

Lewis L. Douglas, executive deputy commissioner of the Department of Correctional Services, spoke on what happens after sentencing at the May institute, in conjunction with a presentation on problems in treatment and relationships with probationers by Alexander B. Smith, professor emeritus of sociology, John Jay College of Criminal Justice.

The fall series opened in September with Dr. Mavina W. Kremer, associate clinical professor of psychiatry, New York University School of Medicine, speaking on the causes of juvenile delinquency. Peter B. Edelman, director of the New York State Division for Youth, spoke on justice and juveniles. Professor Harriet Pollack, John Jay College of Criminal Justice, moderated.

The second fall meeting was moderated by Robert C. Weaver, professor of urban affairs at Hunter College. The principal speaker was Harry W. Jones, professor of jurisprudence, Columbia University Law School. He spoke on the role of trial judges in those instances where precedent and changing social views conflict.

Nathan Glazer, professor of education and sociology, Harvard University, spoke on social science testimony before the trial judge—dangers and possibilities at the November institute. This meeting was chaired by Dr. Blanche D. Blank, vice-president for academic studies, Yeshiva University.

The December institute featured Maurice Rosenberg, professor of procedural jurisprudence at Columbia University. Dr. Walter Weiss, professor of psychology at Hunter College, moderated the discussion following Professor Rosenberg's presentation on judges as the consumers of the products of social research.

Speakers, panelists, moderators, topics and programs for the institute are coordinated by Edward Goodell, former Judge of Civil Court, now the executive director of the institute. Judge Goodell hosts all of the meetings.

5.4.2 Nonjudicial Programs

Chapter 966 Information Meetings for Nonjudicial Employees October 21-November 22, 1977

2,119 employees attended one of 16 information meetings conducted by Sue Johnson, Assistant State Administrator. Chapter 966 of the laws of 1976 (section 220 Judiciary Law, as amended) provided for a uniform court budget for all courts in the state effective April 1, 1977. The effect of this law was to increase the number of nonjudicial employees on the state payroll from 1,100 to 9,600, working under 770 job titles and represented by more than 120 bargaining units.

More than one out of every five of the 8,500 formerly county- or city-paid employees newly added to the state payroll attended the meetings, which were devoted entirely to an open-ended, employee-generated question-and-answer format. Question forms were provided for those who were not able to stay long enough to have their questions personally answered or who chose not to ask them at an open meeting.

Inquiries generally covered wages and hours, pensions and benefits, job classification, rights, seniority, transfer privileges, health insurance, leaves, and some questions about the nature, policy and practices of the Office of Court Administration itself. Steve Joachim, court planner, and Francis Zarro, court planner, accompanied Mrs. Johnson as resource persons to provide ready data on the many plans, policies and contracts peculiar to each location.

The information meetings were held over the period of a month in Buffalo, Mineola, Syracuse, Binghamton, Staten Island, Hauppauge, Riverhead, Kingston, Albany, White Plains, Ballston Spa, Queens, Brooklyn, Rochester, Manhattan, and the Bronx. William J. Gallagher, director of administration, Office of Court Administration for the City of New York, chaired all of the meetings held in New York City. Sheldon Amster, director of administration, welcomed Mrs. Johnson and her staff at the meetings held in the Second Judicial Department; Richard J. Comiskey, director of administration, did so for meetings held in the Third Department; and Cody B. Bartlett, director of administration, in the Fourth Department. Raymond Crapo, senior education and training assistant, office of education and training, accompanied the panel to all the meetings.

Tuition Reimbursement

During the year, the education and training office administered the tuition reimbursement program for state-paid employees of the judicial system. A total of 82 applications for job-related courses and degree programs were processed. In terms of career objectives, the breakdown was as follows:

A.A. or A.S. degree	6
B.A. or B.S. degree	23
M.A., M.S., M.P.A. or M.B.A. degree	17
L.L.M. or J.D. degree	8
Doctoral level	4
Skill and management training	24
Total	82

Management Training

The education and training office is involved in a continuing effort to seek outstanding courses or seminars offered by private institutions or other governmental agencies. This has proven to be a valuable source of training for management personnel of the Office of Court Administration.

In 1977 Office of Court Administration personnel attended programs specializing in such topics as equal employment opportunity, affirmative action, management control, program budgeting, judicial education and judicial planning.

5.4.3 Other Activities

The education and training office staff also coordinates the work of several committees which update and prepare publications used by the Judiciary. The Civil Pattern Jury Instructions Committee is chaired by former Supreme Court Justice Bernard S. Meyer. The committee is charged with the responsibility of keeping this important work up to date. When necessary, contracts with law school professors to assist in drafting specific complex charges and comments are negotiated through the education and training office.

The Bench Book Committee, chaired by Supreme Court Justice Edwin Kassoff, prepared an annual supplement to this looseleaf work. The typing, reproduction and distribution of the book and supplements are coordinated by the staff of the education and training office.

The Criminal Jury Instructions Committee is chaired by Supreme Court Justice Lyman Smith. This committee, with the aid of a federal grant, is drafting pattern charges for use in criminal trials. The director of education and training serves as project director under this grant and attends all the meetings of the committee. Eventual publication will be coordinated by the education and training office.

The Committee on the Preparation of a Handbook of Appellate Advocacy is the newest of these committees. This joint undertaking with the State Bar Association is producing a guidebook for attorneys who practice before the Appellate Divisions.

5.5 Summaries of Discussions at the Crotonville Conference

CIVIL PRACTICE LAW AND RULES

Professor David D. Siegel

Reporter

The CPLR panel was chaired by Justice Theodore R. Kupferman of the First Department Appellate Division. The other judicial members were Harold J. Hughes of Albany and Edwin Kassoff of Queens. My fellow professor was Adolf Homburger, presently of the State University of New York at Buffalo, and shortly to be Visiting Professor of Law at Pace University Law School in White Plains.

The first topic on the agenda, as might be suspected, was the provisional remedies. The United States Supreme Court exacted a number of requirements in conjunction with these remedies—many of them constitutionally suspect because of the ex parte nature of their origins and their disposition to divest a person of property before a hearing—but ambivalence of the Court has necessitated periodic reassessment by the states. Justice Kassoff handled this topic, presenting the major Supreme Court cases in point in chronological order after first presenting the *Carey v. Sugar* case [425 U.S. 73, 96 S.Ct. 1208 (1976)]. There the Supreme Court reversed a three-judge district court, which had declared several parts of the New York attachment statutes unconstitutional, and directed the district court to stay its hand, thus enabling the parties to obtain from the New York courts a definitive construction of the New York statutes. The first car on the constitutional train was of course the *Sniadach* case in 1969 [Sniadach v. Family Finance Corp., 395 U.S. 337, 89 S.Ct. 1820 (1969)]. It struck down a Wisconsin attachment statute which authorized the ex parte seizure of 50 percent of the defendant's wages without prior hearing and upon application to only the clerk. The *Overmyer* case of 1972 [D. H. Overmyer Co. v. Frick Co., 405 U.S. 174, 92 S.Ct. 775 (1972)] involved a cognovit instrument, not precisely in point for the provisional remedies but relevant because of the ex parte procedure it authorizes for the taking of a confession of judgment. It defined a contract of adhesion, but held that the contract at bar was not such, and that the cognovit procedures for which it provided were not per se invalid. The major case of that year, 1972, was

the *Fuentes* decision [Fuentes v. Shevin, 407 U.S. 67, 92 S.Ct. 1983 (1972)], which involved the ex parte replevy of consumer goods upon a writ issued by the clerk without prior notice or hearing. The Court struck the procedure down as a violation of due process. It was *Fuentes*, more than any other case, which accelerated an introspection on the part of the states and a revision of not only replevin procedures, but analogous steps in the other provisional remedies. *Mitchell* [Mitchell v. W. T. Grant Co., 416 U.S. 600, 94 S.Ct. 1895 (1974)], another replevin case, decided in 1974, then seemed to backtrack from some of the demands of the *Fuentes* case, causing what turned out to be some temporary confusion, the Court going far to resolve matters, and to restore the basic demands of *Fuentes*, in the *North Georgia* case in 1975 [North Georgia Finishing, Inc. v. Di-Chem, Inc., 419 U.S. 601, 95 S.Ct. 719 (1975)].

The aspects of the *North Georgia* case which made its procedures obnoxious to due process, while those of *Mitchell* satisfied it, was permission by the clerk, rather than a judge, to initiate the seizure order, which in *North Georgia* was an attachment on a money claim rather than a chattel seizure on a replevin claim—an additional distinction, but whose influence is not yet clear. More important was the failure to provide for an early postseizure hearing in *North Georgia*, and the allowance of the attachment without judicial supervision on the conclusory statements of a person lacking firsthand knowledge.

The combination of these several cases has enabled the judges to work out due process requirements for the New York provisional remedies on a case by case basis, while they await uniform clarifying legislation, which is in the works for several of our remedies. Professor Homburger reviewed some of the new attachment proposals presently before the Legislature, which would codify steps designed to assure a prompt post-attachment hearing, and with the burden at that hearing on the plaintiff to justify the attachment and to substantiate a meritorious claim. This would enable the attachment to be applied for and granted ex parte, with the follow-up procedure of a prompt hearing supplying the demands of due process. Other parts of the proposals were reviewed, including recovery of damages and attorneys' fees from the plaintiff should the attachment fail, and a temporary restraining order where the plaintiff gives initial notice of the attachment.

Justice Kassoff reviewed the Second Department *Rentar* case [Carl A. Morse, Inc. v. Rentar Industrial Development Corp., 56 A.D.2d 30, 391 N.Y.S.2d 425 (1977)], in which a divided Appellate Division sustained the New York mechanic's lien statute. It was stressed that the filing of a notice of lien does not constitute a taking of property in the sense that there is a taking in a replevin, which actually denies use and possession of the goods to the defendant; it is rather the analogue of a *lis pendens*, which does encumber the property by impeding sale or mortgage or the like, but does not deprive the owner of use and possession.

Several other New York cases were reviewed, among them cases which invalidated the garagemen's [Sharrock v. Dell Buick-Cadillac, Inc., 56 A.D.2d 446, 393 N.Y.S.2d 166 (2d Dep't 1977)] and innkeeper's [Blye v. Globe-Wernicke Realty Co., 33 N.Y.2d 15, 347 N.Y.S.2d 170, 300 N.E.2d 710 (1973)] liens, for the very reason that they did not merely place a paper encumbrance against the property, but authorized its sale and permanent denial to the defendant, all without a plenary hearing.

A similar defect prompted the Second Circuit to invalidate the self-help provisions of the UCC's warehouseman's lien [Brooks v. Flagg Bros., Inc., F.2d (2d Cir. 1977)]

The second item on the agenda was the New York Court of Appeals *Abkco* case [ABKCO Industries, Inc. v. Apple Films, Inc., 39 N.Y.2d 670, 385 N.Y.S.2d 511 (1976)]. Just before presenting that case, we gave out copies of the Court's *Donawitz* opinion [Donawitz v. Danek, N.Y.2d, N.Y.S.2d, N.E.2d (1977)], in which the Court, though having little praise for the doctrine of *Seider v. Roth* [17 N.Y.2d 111, 269 N.Y.S.2d 99, 216 N.S.2d 312 (1966)]—which allows the attachment of insurance policies covering foreign accidents involving nondomiciliary tortfeasors—nonetheless votes to retain the doctrine on the ground that it would be "scandalous" to overrule it when it has been so heavily depended on.

But a few days before Crotonville began this year, the United States Supreme Court handed down the case of *Shaffer v. Heitner* [45 L.W. 4849 (June 24, 1977)], which appears to abrogate the use of *quasi in rem* jurisdiction almost totally, probably undoing *Seider* as well. It holds that rem, like personam, jurisdiction must be based on minimal contacts that the defendant and claim have to the forum. It overrules the old case of *Harris v. Balk* [198 U.S. 215, 25 S.Ct. 625 (1905)], which authorized the seizure of any property that a creditor might find belonging to his debtor within the creditor-chosen jurisdiction regardless of its irrelevance to the claim sued on, so as to use it as a *quasi in rem* basis for a money claim against the debtor. Since *Seider* depends for its existence heavily if not entirely on *Harris*, the undermining of *Harris* may well undo *Seider*. It is not a certainty, however, because there is language in *Shaffer* which purports to authorize the jurisdiction—*quasi in rem* though it be—when the claim or defendant has a relationship to the forum, and there are perhaps ways of finding these contacts present in *Seider*. Though the named defendant, the tortfeasor, lacks New York contacts, his insurance company in a *Seider*-based case is doing business in New York and is in fact the real party in interest on the defendant's side. It would take a narrow view of the *Shaffer* case to prevent it from destroying the *Seider* foundation, but *Seider* has been known to defy predictions.

In other respects, *quasi in rem* jurisdiction is undone by *Shaffer*, but this does not mean that interests previously held attachable as "property" under the CPLR now cease to be. Case law defining "property" and illustrating property interests subject to

attachment remain good law under the CPLR, both for prejudgment attachment as well as postjudgment levy of execution, with the proviso that the attachment is not being used for a *quasi in rem* jurisdictional purpose (but rather for mere security, except perhaps in a few instances where *quasi in rem* use of attachment may still be permitted under the *Shaffer* decision). This point about property-defining cases still standing good is an important one. The *Abkco* case is just such a one. And although it involved an attachment of property for the now taboo *rem* purpose, the case remains good law for the new approach it authorizes to enable a creditor to reach intangible property interests of the debtor.

The statute involved in *Abkco* was CPLR 5201, which determines what property of a debtor may be sought by his creditor. Subdivision (b) states the general rule, authorizing any property interest the defendant owns, tangible or not, which by law he may assign, to be pursued by his creditors. But subdivision (a) acts as an exception to that rule, and provides that whenever the pursued asset is a debt owned by someone—call him G for garnishee—to the defendant, it is subject to levy only if it is presently due or certain to become due. This excludes from levy any intangible asset which is so contingent that it may never come into existence. *Seider v. Roth* disregarded that statute by allowing the liability insurer's contingent obligation to indemnify—contingent on the plaintiff's getting a judgment and there is no guarantee that he ever will—to be levied.

The trouble with subdivision (a) is that, except for *Seider*—a *sui generis* case which the Court of Appeals will not allow beyond the points it has already reached—the interpretation of subdivision (a) has been unduly restrictive. It often precludes levy against an asset technically contingent, but which nonetheless has enormous economic potential. In *Abkco*, P brought suit against D, a foreign corporation which was in effect the Beatles. They were beyond personam jurisdiction and P wanted to attach their property. What was found in New York amenable to jurisdiction was a contract that D had made with G—G was in New York and amenable to jurisdiction—whereby G would distribute D's film and hand over a large percentage of the profits to D. P wanted to attach that percentage. D argued that it was contingent in that the film had not been shown and that nothing was due and might never be—there was no legal guarantee that the film would produce profits. The Court sustained the attachment. It did so by allowing the plaintiff to treat the debt as "property" under subdivision (b) of CPLR 5201—which has no restriction about contingencies—instead of as a "debt" under subdivision (a). It means that subdivision (a) will have little if anything to do in the future, but perhaps that is to the good. If the asset is worth pursuing, let the plaintiff chance whether it comes to anything. If it does not, plaintiff is the only loser.

The third item on the agenda was the *Klinger* case [Klinger v. Dudley, 41 N.Y.2d 362, 393 N.S.2d 323, 361 N.E.2d 974 (1977)].

Here the Court of Appeals held that a plaintiff with a judgment against the defendant cannot collect directly from someone against whom the defendant has a third-party judgment. Tortfeasors A, B, and C killed a young father in a car accident. The family lawyer sued only A and B. C was impleaded by A but plaintiff did not even then amend to assert a claim directly against C, as plaintiff could have done [CPLR 1009]. C thus stood in the litigation solely on A's impleader claim. Plaintiff also lost the claim against B when he was guilty of continued failure to serve a bill of particulars on B, resulting first in a preclusion order and finally in summary judgment for B. B now stood in the case solely on A's contribution claim. The jury brought in a verdict of some $300,000 and found A, B and C all at fault, in various percentages. But after A's insurer paid the whole $10,000 of A's policy, A could pay no more. P wanted to collect from B and C the proportions they would have had to pay to A if A had paid the whole judgment. The Court of Appeals in *Klinger* held that plaintiff could not; that B and C are liable only to A, and only for contribution. Nor was A allowed to compel B and C to pay because A had not satisfied the condition precedent of paying more than his own equitable share.

Discussion was had about whether A might borrow the money to pay plaintiff, and thus to set the stage for contribution by B and C. One judge asked whether A's promissory note to the plaintiff would constitute adequate payment; or whether A could pay more than his equitable share a dollar at a time making B or C fork over contribution at that rate in a kind of bucket brigade. The possibilities of collusion in this kind of situation were stressed, with the plaintiff having perhaps too much incentive to bribe someone like A to get up the extra money, just to set B and C up for contribution.

Justice Kupferman presented an update of the strict liability doctrine, building around the *Victorson* case [Victorson v. Bock Laundry Machine Co., 37 N.Y.2d 395, 373 N.Y.S.2d 39, 335 N.E.2d 275 (1975)], which finally clarified the separate existence of a strict liability theory when a product causes an injury—distinct, that is, from breach of warranty. The problem involves the statute of limitations. The old *Mendel* case [Mendel v. Pittsburgh Plate Glass Co., 25 N.Y.2d 340, 305 N.Y.S.2d 490, 253 N.E.2d 207 (1969)] had held that if warranty underlies the personal injury claim, plaintiff has four years for suit, measured from the time of the sale of the product; and that if plaintiff is not injured until after those four years, his warranty claim in effect expires before he has one. By reclassifying or "resurrecting" the strict products liability doctrine, which as far as damages are concerned does the same as warranty does—both allow recovery for pain and suffering and neither requires proof of negligence—the Court of Appeals in *Victorson* overruled *Mendel*. The strict liability doctrine sounds in tort, and thus gets three years from the injury rather than the UCC's four years from the sale [U.C.C. §2-725(1)]. The *Weinstein* case [Weinstein v. Gen-

eral Motors Corp., 51 A.D.2d 335, 381 N.Y.S.2d 283 (1st Dep't 1976)] was reviewed, in which the plaintiff lost out because, though given the advantage of both measures, the claim was alive under neither.

Professor Homburger reviewed the state of New York's law governing service of summons without complaint. First off, he suggested, that the defendant's obligations are confused, although it is long-standing practice in New York for the defendant served with a bare summons to serve a notice of appearance and demand for the complaint. The next step is for the plaintiff to serve the complaint, and when he does the show is off and rolling. But suppose the defendant demands no complaint. Plaintiff in that instance is precluded from taking a default judgment, because for that either a complaint or at least a little default notice [CPLR 305 (b)] has to be served. Some old case held [Gluckselig v. H. Michaelyan, Inc., 132 Misc. 783, 230 N.Y.Supp. 593, (Sup. Ct. N.Y.County), aff'd 225 A.D. 666, 231 N.Y.Supp. 757 (1st Dep't 1928)] and a recent case still suggests [see Ardila v. Roosevelt Hospital, 55 A.D.2d 557, 389 N.Y.S.2d 853 (1st Dep't 1976)] that until the defendant demands a complaint, the plaintiff cannot serve one, leaving the plaintiff totally stymied by the defendant's inaction. A Third Department case [Keyes v. McLaughlin, 49 A.D.2d 974, 373 N.Y.S.2d 891 (3d Dep't 1975)] held that the plaintiff can serve a complaint without awaiting a demand and, indeed, that he had better, because he must take a default judgment against the defendant within a year or risk having his own action dismissed. Professor Homburger used a hypothetical case to trace present difficulties in their areas to a CPLR omission (1) to specify when the demand for a complaint must be served and (2) to determine the consequences when the defendant takes no step at all, or demands a complaint long after defaulting. All of the panels went along with his suggestion that an amendment be adopted requiring that the summons be accompanied in all instances by the CPLR 305 default notice if not by the complaint itself.

Professor Homburger also reviewed section 50-e of the General Municipal Law, extensively amended last year and included in prior Crotonville materials, stressing the liberalization of the court's powers to permit a late filing of a notice of claim and pointing up several other of the amendment's changes. These are already available in Judicial Conference annals, having been the subject of an extensive and able study by Professor Paul S. Graziano, of St. John's University School of Law, conducted for the Conference's CPLR Committee.

Justice Hughes reviewed the United States Supreme Court's *Juidice* case [Juidice v. Vail, U.S.___, 97 S.Ct. 1211 (1977)] in which the Court reversed a three-judge district court which had struck down a number of New York's contempt statutes. The Court did not sustain the New York contempt statutes, but remanded the case with instructions that the lower courts "abstain"—which is federalese for letting the issues be deter-

mined in the New York courts. The opinion is filled with reflections on the New York statutory scheme, which imply that it could pass constitutional muster.

To forestall further attacks, there is a bill before the Legislature which would go yet further towards constitutional safeguard. It mandates a clear warning to the alleged contemnor, in the very papers which initiate the contempt proceeding, that he may be arrested and brought to court if he ignores them; and when ultimately the contemnor is arrested, it provides for his being brought promptly to court to be heard and advised of his right to counsel. By such devices, the contempt statutes could recognize the often underprivileged status of some contemnors, and could afford him a hearing without imposing on him the burden of moving for one.

Justice Hughes also discussed the problem of securing counsel for indigent individuals in connection not only with civil contempt, but in other civil contexts, such as matrimonial actions. The Court of Appeals *Smiley* case [Matter of Smiley, 36 N.Y.2d 433, 369 N.Y.S.2d 87, 330 N.E.2d 53 (1975)] was noted, which held that there is no authority to require a court in a civil case to provide a lawyer, nor any authority for it to direct that he be paid from public funds. The solution is obviously in legislative hands, but there is indication that the courts, whether they can require *pro bono* services or not, *expect* a reasonable amount of them from the bar. Here Justice Hughes cited the *Yearwood* case [Yearwood v. Yearwood, 54 A.D.2d 626, 387 N.Y.S.2d 433 (1st Dep't 1976)]

The final item on the agenda was Justice Kupferman's presentation of the Court of Appeals *DuPont* case [F. I. DuPont, Flore Forgan & Co. v. Chen, N.Y.2d___, N.Y.S.2d___, N.E.2d (1977)] involving the deliver-and-mail provision of the service of summons statute, CPLR 308(2). The court held that an apartment house doorman is an appropriate person to deliver the process to, at least where access to the defendant's apartment has been blocked, as had happened in *DuPont*.

EVIDENCE

Professor Faust F. Rossi

Reporter

The evidence panel was once again guided by Dean Emeritus Jerome Prince, who served as chairman. He was ably assisted by Justices Joseph G. Fritsch, Morton B. Silberman and Donald J. Sullivan.

This year's major evidentiary developments were surveyed with emphasis upon six topics. These significant items of discussion involved (1) the admissibility of habit evidence; (2) the use of lay or expert testimony to establish witness competency; (3) the admissibility of uncounselled incriminating statements by

an accused; (4) waiver of privileges occasioned by the insanity defense in criminal actions; (5) the "moral certainty" charge in circumstantial evidence cases; and (6) impeachment by use of prior convictions under the rule of *People v. Sandoval.*

Habit Evidence

Chairman Prince began each of the four seminar periods with a discussion of habit evidence in light of a recent modification of the New York rule.

Habit, a course of conduct regularly repeated in like circumstances, has been admissible to prove the likelihood that the person behaved the same way at the time of the litigated event. Thus, an attorney who drew and witnessed a will, but who could not recall the circumstances of its execution, was allowed to testify that he is in the habit of drawing wills and is careful always to have them executed according to statute. *Matter of Kellum,* 52 N.Y. 517 (1873). In a *coram nobis* proceeding where the issue was whether the judge on arraignment had advised defendant of his right to counsel, the judge was permitted to testify to his unvarying practice of always advising an accused of his right to counsel. *People v. Bean,* 284 App. Div. 922, 134 N.Y.S. 2d 483 (1954), cert. den. 348 U.S. 974 (1955). However, there has been a long-standing exception to the admissibility of habit evidence in New York. Our courts have always declined to admit habit in negligence and wrongful death actions on the issue of a party's carefulness or carelessness on the occasion in question. Thus, in *Eppendorf v. Brooklyn City & Newton R.R. Co.,* 69 N.Y. 196 (1877), where plaintiff sued to recover for injuries suffered while attempting to board defendant's street car, evidence that plaintiff was in the habit of jumping on defendant's car while it was in motion was held inadmissible. In *Zucker v. Whitridge,* 205 N.Y. 50, 98 N.E. 209 (1912), plaintiff's intestate was struck and fatally injured by defendant's street car as decedent attempted to cross defendant's railroad tracks. At trial, a witness for the plaintiff testified that he had known the decedent for eight years and during that period had walked over railroad tracks with decedent. The witness then testified that when they were about to cross railroad tracks the plaintiff "usually looked to the right and to the left and put a restraining hand on my arm before crossing, to make sure there were no vehicles of any kind coming." The Court of Appeals held that such evidence should not have been admitted.

Halloran v. Virginia Chemicals, Inc., 41 N.Y. 2d 386 (1977), decided just last February, represents a change. In this recent decision the Court of Appeals declared that the rule excluding habit evidence to establish negligence or carelessness was too broad. *Halloran* was a personal injury product liability case. Plaintiff was an experienced automobile mechanic. His injury resulted from the explosion of a can of freon while he was heating it in warm water for use in an air conditioning system. Defendant suggested that the explosion was caused by plaintiff's

misuse, by his overheating the water. Defendant offered a witness to show that plaintiff on prior occasions had used an immersion coil to heat the freon and that plaintiff had been warned of the danger involved in this method. Applying the traditional New York view that evidence of habit is not admissible to show lack of care in a personal injury case, the trial court and Appellate Division disallowed the testimony. The Court of Appeals reversed, declaring that this evidence, if it occurred enough times to amount to a habit, should have been admitted.

How did the Court distinguish this situation from prior cases? The Court said that here "we have proof of a deliberate repetitive practice by one in complete control of the circumstances." This kind of repetitive conduct is less likely to vary with the attendant circumstances. It is much more predictive than the ordinary intersection or railway crossing stop and like situations which involve not only the actor but other independently controlled instrumentalities.

Three questions were put to the judges in the wake of the *Halloran* discussion. First, can the "complete control of circumstances" distinction between *Halloran* and other more routine applications of the negligence issue be applied? Most said yes. Second, what methods are appropriate for proving habit? Should opinion evidence be permitted as well as evidence of specific prior repetitive acts? Most said no. Third, what about Federal Rule of Evidence 406? It freely allows evidence of habit to prove that the conduct of the person on the relevant occasion was in conformity with the habit. It would allow such habit evidence even in the routine negligence situations. Thus, the Advisory Committee Note to Federal Rule 406 specifically approves the admissibility of habitual conduct such as going down a particular stairway two stairs at a time or such as alighting from railway cars while they are moving. The New York judges were opposed by a margin of two to one to this liberal rule admitting habit in all cases.

Witness Competency

In *People v. Parks,* 41 N.Y. 2d 36 (1976), defendant, a bus driver, was convicted of the rape of a sixteen-year-old mentally defective girl who had the intellectual maturity of a twelve-year-old. At trial a serious question was presented concerning the competence of the rape victim to testify. The trial judge heard testimony from the child's school teacher regarding her mental capacity and found the rape victim's testimony admissible.

Questions regarding the competency of witnesses are not unusual. The issue is one to be decided by the judge. Section 60.20 of the New York Criminal Procedure Law now provides that any person may testify in a criminal case unless the court finds that the witness lacks sufficient intelligence or capacity. Clearly, the judge is entitled to hear any witness with knowledge or to

consider any expert testimony in deciding the competency question.

The difference in *Parks*—a matter of first impression, said the Court of Appeals—was that the retarded girl's school teacher was allowed to describe the victim's mental and educational background in the presence of the jury. Moreover, the evidence was allowed as part of the prosecution's case-in-chief and was presented even before the child herself had testified.

The Court of Appeals affirmed this procedure holding that a court may permit experts or others with personal knowledge to explain and describe the condition of the impaired witness to the jury. In this way the jury may better appreciate the nature of the infirmity and may determine its likely effect on the testimony. As the Court of Appeals stated at 41 N.Y. 2d 36:

> "Once it has been established to the satisfaction of the trial court that a witness who is about to testify or has testified suffers from a material physical or mental infirmity which affects his or her ability to communicate on the witness stand, the trial court, in a discretion to be exercised with reasonable restraint, may admit evidence which will assist the jury in evaluating the testimony of that witness from another person personally familiar with the infirmity or professionally qualified to testify with respect thereto."

The Court limited the scope of its decision in two respects. Such testimony explaining the nature of the impairment is admissible only if the ability of the witness to testify is clearly in issue. It must be a case of mental impairment. The issue must be one of competence not just credibility. Secondly, the explanatory testimony must be objective in nature and not in the form of subjective conclusions or characterizations. It would be error, for example, to permit one to express a view as to the credibility or believability of the impaired witness. The majority expressly warned that "we do not suggest, or even intimate, that an expert may ever pass judgment on a witness' credibility and impart that judgment to the jury."

Two Court of Appeals judges, in a separate concurring opinion, found error in allowing the jury to consider the testimony of the complainant's teacher. Judges Gabrielli and Wachtler viewed the evidence as allowing the prosecution to unfairly bolster the credibility of the complainant before her impeachment. Moreover, they questioned whether the teacher's testimony should have been admitted even under the majority's own formulation. The teacher testified in part that complainant child "sits quietly in class," was "very pliable," had "never been in any difficulty in school" and "never had any difficulties with other students physically." The concurring opinion argued that this testimony went far beyond an explanation of the witness' difficulty in communicating. It was subjective and conclusory, not objective in form. Noting that the issue of competency intersects that of credibility, the minority concluded that:

> "In the instant case, the complainant's teacher was permitted

to testify in the presence of the jury as to the witness' competency to testify, her mental capabilities and her nonagressive classroom behavior before the complainant herself even took the witness stand and thus, before her credibility or character ever became an issue in the case. Testimony of the complainant's classroom behavior amounted to testimony of good character which may not be introduced until the witness' character or reputation has been impeached . . . This testimony was neither restricted by the trial judge nor limited to objective matters." [41 N.Y. 2d 51-52].

The concurring judges would have permitted the jury to hear explanatory or expert opinions concerning the competency of a witness only "in the case of an individual with a physical or mental impediment such as spasticity, deafness, stroke or other mental causes which affect the ability of the witness to articulate and communicate." This exception for physiological impairment of the ability to communicate would not include the instant case. Here the impediment related to the "cognitive" ability of the witness to understand and comprehend the nature of the oath and to distinguish between truth and falsehood.

Discussion of witness competency concluded with a reference to the Federal Rules of Evidence. Under Rule 601 no mental qualifications for witness testimony are specified. Thus, the trial judge does not make a preliminary finding of witness competency. As long as the witness is sworn and testifying from personal knowledge, all other questions concerning the witness' mental capacity are left to jury evaluation as a matter of weight and credibility. The rationale is that standards of mental capacity have proved elusive in actual application and that, in practice, few witnesses have been disqualified by trial judge decision. The jury is deemed particularly well suited to assess the reliability of the testimony subject to judicial authority to review the overall sufficiency of the evidence. When polled concerning the desirability of the federal approach, the judges split almost evenly with a bare majority favoring the Rule 601 formulation.

Incriminating Uncounselled Statements by the Accused

The panel next turned to a discussion of the growing number of cases involving admissions made by the accused in the absence of counsel. Is suppression called for? This difficult area was described by Justices Fritsch, Sullivan and Silberman.

Defense attacks on confessions or admissions are typically based upon one of four theories. There are two fifth amendment grounds which include the common law rule against coerced or truly involuntary confessions and statements obtained in the absence of proper *Miranda* warnings. In addition, there are two sixth amendment based principles. These are the *Donovan-Arthur* rule which prevents interrogation once an attorney for the accused enters the picture and the post arraignment, post-

indictment rule which prohibits uncounselled statements after formal commencement of the prosecution. The panel's discussion centered upon the latter two right-to-counsel grounds.

The full scope of the *Donovan-Arthur* rule was dramatically revived by the Court of Appeals decision in *People v. Hobson*, 39 N.Y. 2d 479 (1976). Defendant was assigned counsel, placed in a lineup and indentified as the robber. After departure of the lawyer, defendant signed a "waiver" and agreed to speak to a detective who then gave defendant the standard *Miranda* pre-interrogation warnings. Defendant indicated he did not want a lawyer and thereafter confessed to the robbery. The Court of Appeals held that the confession should have been suppressed. The announced principle is simply this. A defendant in custody, represented by a lawyer in connection with the criminal charges under investigation, may not waive his right to counsel unless counsel is present at the waiver. Thus, the statement here given in the absence of counsel, even though given after the *Miranda* warnings, was inadmissible.

Of course, this principle had been promulgated years earlier in the *Donovan-Arthur* line of cases. But the proposition was sapped of some vitality by three decisions decided between 1970 and 1972. In *People v. Robles*, 27 N.Y. 2d 155 (1970), *People v. Lopez*, 28 N.Y. 2d 23, cert. den. 404 U.S. 840 (1971) and *People v. Wooden*, 31 N.Y. 2d 753 (1972), statements were admitted in seeming contradiction to the *Donovan-Arthur* rule. In *People v. Hobson* the Court of Appeals swept away the *Robles-Lopez-Wooden* trilogy calling these cases errant footprints which should not be followed. Thus, *Hobson* restores the efficacy of the *Donovan-Arthur* formula.

The post-arraignment, post-indictment rule was applied in *People v. Davis*, 55 App. Div. 2d 960 (1st Dept. 1977). Defendant, following proper *Miranda* warnings, made incriminating post-indictment statements. Defendant was not in custody at the time; nor was he represented by counsel. Nevertheless, the statements were suppressed since made after the commencement of proceedings and without benefit of counsel.

Putting the two right-to-counsel rules together, it is clear that in New York a defendant's confession is not admissible outside the presence of counsel if the confession is received either after initial attorney representation or after the criminal proceeding begins. There remain, however, two well established situations when an uncounselled statement is admissible even after appearance by an attorney or after arraignment or indictment. The first exception to the *Donovan-Arthur* and post-indictment, post-arraignment rules applies where the defendant spontaneously and genuinely volunteers an admission without interrogation. A second exception applies where the defendant's incriminating response results from a non- custodial interrogation unrelated to the charges for which defendant has been indicted or assigned counsel.

An example is *People v. Clark*, 41 N.Y. 2d 612 (1977). Defen-

dant was indicted for robbery. He was arraigned on this charge and counsel assigned. Freed on bail, defendant promptly sought out a fence to dispose of some of the stolen goods. As fate would have it, the fence he contacted turned out to be an undercover police officer with no knowledge of defendant's pending indictment. Defendant's incriminating statements were held admissible. The Court of Appeals noted that a voluntary, spontaneous statement is outside the purview of the *Donovan-Arthur* and post-indictment rules. More in point, the officers in *Clark* were engaged in good faith investigation unrelated to the existing robbery indictment for which counsel had been appointed.

Absent these exceptions, a waiver of counsel enabling defendant to speak is possible after attorney involvement or after the start of the prosecution only if counsel is present at the moment of waiver. This is the New York approach and it apparently contrasts with the current view of the United States Supreme Court. In *Brewer v. Williams*,_____ U.S._____ (1977), a bare majority of the Supreme Court suppressed a statement which was given after arraignment and after the involvement of not one but two lawyers for defendant. Since the statement was given without counsel, after indictment and during custodial interrogation, the suppression result would be required by New York courts. But the Supreme Court majority in *Brewer v. Williams* emphasized that it was not holding that defendant Williams could not, without notice to counsel, waive his Sixth Amendment rights. It only held that he did not waive on the facts of the instant case. Thus, unlike the reasoning of the New York decisions, the Supreme Court has declined to adopt the rule that waiver is never valid after indictment or after attorney involvement unless the lawyer is present at the time of the waiver.

The Insanity Defense and Privilege Waiver

The panel next took note of the recent Court of Appeals decision in *People v. Edney*, 39 N.Y. 2d 620 (1976). The defendant was convicted of kidnapping and manslaughter. His defense was insanity. At trial, an expert called by the defense testified that defendant was mentally ill and that he did not know the nature and quality of his act and did not know that his act was wrong. In rebuttal, the prosecution called a psychiatrist who had examined the defendant before trial at the request of defendant's own attorney. Objection was made on the ground that the attorney-client privilege and physician-patient privilege barred this testimony. The objection was overruled and the psychiatrist testified that defendant knew and appreciated the nature of his conduct and knew that his conduct was wrong. The Court of Appeals affirmed the conviction, dividing six to one. The majority held first that, where insanity is asserted as a defense, a complete waiver of the physician-patient privilege is effected. Introduction of evidence of insanity by defendant constitutes disclosure by the patient himself of the details of his case thus

creating the waiver. The Court then went on to discuss the non-applicability of the lawyer-client privilege, at 39 N.Y. 2d 625:

> A defendant who seeks to introduce psychiatric testimony in support of his insanity plea may be required to disclose prior to trial the underlying basis of his alleged affliction to a prosecution psychiatrist...Hence, where, as here, a defendant reveals to the prosecution the very facts which would be secreted by the exercise of the privilege, reason does not compel the exclusion of expert testimony based on such facts, or cross-examination concerning the grounds for opinions based thereon...In short, no reason appears why a criminal defendant who puts his sanity in issue should be permitted to thwart the introduction of testimony from a material witness who may be called at trial by invoking the attorney-client privilege anymore than he should be able to do so by invoking the physician-patient privilege.

Simply stated, *Edney* holds that the claim of insanity constitutes a defense waiver of both the physician-patient and the attorney-client privilege to this extent: it permits the prosecution to call the psychiatrist who examined the defendant even though the psychiatrist was retained before trial by defendant's own attorney. Waiver of the physician-patient privilege is not surprising. But abrogation of the lawyer-client privilege on these facts puts New York out of harmony with most other jurisdictions. Many judges at the conference shared Judge Fuchsberg's dissenting view that the psychiatrist acted as the attorney's interpretive agent and remained covered by the lawyer's privilege.

It was also pointed out that the precise scope of *Edney* is unclear. For the most part the opinion speaks of waiver of the attorney privilege by virtue of the insanity plea. Yet in a part of its opinion the majority suggests the privilege never attached to cover to the psychiatrist in the first place. Thus, the opinion concludes by stating that "it is readily apparent that the traditional and statutory requirements of an attorney-client relationship were simply not established." 39 N.Y. 2d 626.

The "Moral Certainty" Charge

The next topic for discussion was New York's mystifying "moral certainty" charge. The prosecution burden of proof in criminal cases requires proof of guilt "beyond a reasonable doubt." Of course, this burden may be met by relevant circumstantial evidence bearing on one or more elements of the crime charged. However, New York has a special requirement when proof of the entire case—of all the elements—depends upon circumstantial evidence. When the entire case is built upon circumstantial evidence the trial judge is required to charge in

part that "the facts proved must exclude to a moral certainty every reasonable hypothesis of innocence."

The question is what does this language mean? Does moral certainty language require more than proof beyond a reasonable doubt? A description of the moral certainty charge in three recent cases has added to the confusion. In *People v. Von Werne*, 41 N.Y. 2d 584 (1977), the Court referred to the moral certainty standard as being "even more stringent" than the requirement of proof beyond a reasonable doubt. In *People v. Ryan*, 41 N.Y. 2d 634 (1977), the Court describes the moral certainty requirement as a "high standard of proof" which must be wholly consistent with guilt and which must exclude to a moral certainty every hypothesis of innocence. But then, in *People v. Davis*, 42 N.Y. 2d_____ (1977), the Court suggests that the moral certainty charge is really nothing special. The *Davis* court first states the rule that "a conviction based exclusively upon circumstantial evidence may be sustained only if the hypothesis of guilt flows naturally from the facts proved, and is consistent with them, and the facts proved exclude to a moral certainty every reasonable hypothesis of innocence." The Court then downplays this language by saying that in the end it is simply a question of "whether common human experience would lead a reasonable man, putting his mind to it, to reject or accept the inferences asserted for the established facts."

It was generally agreed that a meaningful definition of the moral certainty charge is difficult if not impossible. Moreover, it was pointed out that the requirement to charge moral certainty language places special burdens on the trial judge. The judge must preliminarily decide whether the relevant evidence is direct or circumstantial, a distinction not always easy to make. Next, the court must decide whether the whole, as opposed to only part of the case, was based upon circumstantial evidence. Finally, assuming "moral certainty" is to be charged, the trial judge faces the potential problem of having to explain the charge to the jury if a request for explanation is made.

Discussion by the judges concluded with reference to an obvious inconsistency in this body of law. When all the elements of the crime are built upon circumstantial evidence, moral certainty is required for each element in order to find guilt. When only one element of a crime is proved by circumstantial evidence, there is no requirement to charge "moral certainty" as to that one element. Conference participants wondered why not.

Impeachment by Prior Convictions

The panel finished its deliberations by revisiting the New York Court of Appeals decision in *People v. Sandoval*, 34 N.Y. 2d 371 (1974).

In *Sandoval* the Court approved limitations upon the use of prior misconduct or prior convictions to impeach the defendant who takes the stand in a criminal case. The *Sandoval* rule

approves the exercise of trial court discretion to exclude convictions when their probative value on the credibility issue is outweighed by the risk of undue prejudice to the defendant. As the Court put it in *Sandoval,* the evidence should not be admitted unless "it will have material probative value on the issue of defendant's credibility, veracity or honesty on the witness stand." Moreover, it should not be admitted "even though it will have such probative worth, if to lay it before the jury or court would otherwise be so highly prejudicial as to call for its exclusion." Also to be considered is whether the receipt of such impeachment evidence will adversely affect the truth seeking function of the trial by discouraging the defendant from testifying in his own behalf.

Thus, in striking the balance required by *Sandoval,* two considerations are of particular importance. The first is the relationship of the prior crime to the issue of credibility. A prior crime involving dishonesty or false statement points toward admissibility; a crime of violence is less probative of truthfulness. The second is the extent of prejudice to defendant, meaning the likelihood of jury misuse of the evidence beyond its impeachment purpose. Some prejudice is inescapable. But if the prior conviction is for the same type of crime for which the accused is on trial, the prejudice is especially strong. The inevitable pressure on jurors to believe that "if he did it before, he probably did it again" will in turn discourage defendant from taking the stand.

So much for the theory. One recent decision considered by the panel shows little inclination to limit defendant impeachment in any significant way. In *People v. Watson,* 57 App. Div. 2d 143 (2nd Dept. 1977), the charges included rape in the first degree. Defendant's *Sandoval* application sought to exclude impeachment use of a prior conviction for attempted rape. The trial judge denied the motion and allowed prosecution cross-examination. The Second Department affirmed. It conceded that attempted rape was similar to the crime charged. Nevertheless, it was deemed probative of "credibility" because it is a "crime of calculated violence which demonstrated the defendant's deliberate determination to further his own self interest at the expense of society."

Some conference participants indicated disagreement with the decision. This question was raised: If attempted rape is sufficiently probative of credibility to outweigh the danger of prejudice to a defendant again charged with rape, what crime is not useable to impeach? The result in *Watson,* if followed, seemed to some to greatly weaken the rationale of *People v. Sandoval.*

CRIMINAL LAW

Professor Robert A. Barker

Reporter

The Criminal Law Panel, chaired by Justice Thomas Stark, reviewed a broad range of topics this year. Peter Preiser discussed youthful offenders, sentencing, co-defendant and informant witnesses, impeachment of witnesses by prior inconsistent statements, and grand jury immunity. Justice Sandler presented disclosure problems generally, and disclosure and production of informants. Justice McQuillan dealt with the problems of arrest, detention and pleas, and Justice Stark covered affirmative defenses and substantive crimes. Also reviewed was an aspect of search and seizure.

Youthful Offenders

In *People v. Drayton*(39 N.Y. 2d 580) discussed by Mr. Preiser, no unconstitutional disparity of treatment was found between a youth charged in a superior court for a felony and a youth charged in a local criminal court for a misdemeanor even though the misdemeanor defendant under CPL 720.20(1) is accorded automatic youthful offender treatment. Where the charge is a felony in superior court, youthful offender treatment is discretionary even though the defendant may plead to a misdemeanor and be then in the same position as his counterpart in local criminal court. Pointing out that YO treatment is not a constitutional right in the first place, the Court held that the Legislature could validly differentiate between the two situations on the basis of the crime charged, stating: "Viewing the distinction as one resting upon the gravity of the crime charged, we are of the opinion that there is a rational basis for distinguishing between a youth accused of a felony and one charged with a misdemeanor." (39 N.Y.2d at 585.) The Court left open the question whether the section could be validly applied to a youth who is both charged and convicted of a misdemeanor in a superior court.

In *People v. Drummond* (40 N.Y. 2d 991), decided some eight months later, the Court held CPL 720.10(2) unconstitutional. There, the youth was indicted for a class A felony and was convicted of a lesser felony. Under the statute defendant would not have been entitled to youthful offender treatment because of the A felony charge, regardless of the crime for which he was ultimately convicted. The Court stated: "Such limitations make the privileged penal sanction to be imposed depend solely upon an accusation, however formal, rather than an adjudication, however informal, in the adversarial criminal process."

It was not resolved in the sessions what effect *Drummond* has on *Drayton*. There are the distinctions that the latter dealt with 720.10, while the former construed 720.20, and that under 720.20 YO treatment remains discretionary while under 720.10

it is completely foreclosed. Nevertheless, the Court's emphasis in *Drummond* on the controlling aspect of the charge against the youth seems to undercut the *Drayton* rationale that the seriousness of the charge provided a rational basis for differentiation in treatment.

Mr. Preiser also discussed the possibility that now that 720.10 has been struck down a youth could be accorded YO treatment even where he is convicted of an A felony.

Also the question arose whether a youthful offender finding substituted for conviction of a Class B or selected C or D felony, for which a prison sentence is mandatory, nevertheless qualifies for probation. Section 60.05, Penal Law, the mandatory sentence provision, creates ambiguity on this point since it could be read to apply to YO's and require imprisonment. It was agreed, however, in all the sessions that the statutory language refers to "convictions," and that substituted YO treatment does not amount to a conviction. Hence, the judge would in all YO cases retain complete discretion as to sentencing under section 60.02. The same reasoning would appear to apply where the YO finding replaces a class A felony conviction. However, it was noted that the Second Departmert has held otherwise in the case of an A-III plea *People v. Donald Joseph P,* (55 A.D. 2d 661).

Sentencing

Mr. Preiser noted *People v. Eason* (40 N.Y. 2d 297) in which the Court held section 65.00(1)(b), Penal Law, constitutional as not being violative of due process, separation of powers or equal protection in allowing sentencing to depend on the prosecutor's recommendation based on the defendant's cooperation in a drug investigation. Two judges dissented on the ground that the statute unlawfully interferes with the constitutional distribution of powers and one judge concurred strictly on the constitutional grounds asserted, but was concerned with the prosecutor's unreviewable discretion. Because of this split, section 65.00 may well be open to attack again on different facts.

Affirmative Defenses

Justice Stark led the discussion on affirmative defense case law from *People v. Laietta* (30 N.Y. 2d 68, cert. den. 407 U.S. 923), proclaiming sound the new Penal Law provisions bearing on entrapment, to the ultimate holding of the United States Supreme Court in *Patterson v. New York,* (45 LW 4708, 6/17/77) that New York's scheme of affirmative defenses was valid. It was pointed out by Justice Stark that there are two sorts of affirmative defenses, first the lack of culpability type including duress, entrapment and renunciation. Second, the mitigating types such as emotional distrubance in homicide cases, the excuse of the non-killer co-defendant in a felony murder case that he had no idea his compatriot would shoot, and the excuse on a charge of robbery or burglary first degree that the gun was

unloaded or inoperable. Concern arose for New York's provisions when the Supreme Court's decision in *Mullaney v. Wilbur* (421 U.S. 684) was handed down. There it was decided that Maine's heat of passion statute was unconstitutional in that it shifted the burden to defendant to disprove an element of the People's case. In New York, after a flurry of lower court cases construing *Mullaney* in different ways, the Court of Appeals in *Patterson* distinguished *Mullaney* by pointing out that the prosecutor in all cases must prove all elements of the crime. Then the defendant may mitigate the charge by proving excuse by a preponderance of the evidence, either by showing complete lack of culpability, in which case there could be an acquittal, or by presenting proof that excuses the act to the extent conviction on a lesser count is warranted. The Supreme Court's affirmance in *Patterson* lays to rest any doubts concerning New York's affirmative defenses of either type. Justice Stark cautioned the judges that their charge in these cases should instruct that before the jury can even reach the affirmative defense they must find the prosecutor proved his case beyond a reasonable doubt.

Disclosure of Informants

Justice Sandler instructed the groups on problems surrounding the disclosure of the identity of informers and their production for questioning. With respect to suppression hearings, *People v. Darden* (34 N.Y. 2d 177) established that where there is insufficient evidence to test probable cause apart from the testimony of the arresting officer as to communications received from an informer, the judge should conduct an in camera inquiry and question the informer out of the presence of defendant, whose counsel, nevertheless, may submit questions in writing for the judge to ask. In *People v. Goggins* (34 N.Y. 2d 163) the Court held that at trial, where guilt or innocence is at stake, the confrontation right requires the production of the informant at trial. "Bare assertions or conclusory allegations by a defendant that a witness is needed to establish his innocence will not suffice. Instead he must show a basis in fact to establish that his demand does not have an improper motive and is not merely an angling in desperation for possible weaknesses in the prosecution's investigation [citation]." (34 N.Y. 2d at 169.)

The procedural aspects of trial production were met in *People v. Jenkins* (41 N.Y. 2d 307). There are two steps. The first inquiry is whether the informant could be produced if his presence was warranted. If the prosecutor hid the informer purposefully to prevent defendant's trial access to him, the inquiry need go no further and a dismissal would be in order. If, however, as in *Jenkins*, the informant was shipped away for her own safety and the prosecutor bent every effort to secure her return, then a second step to the process casts the burden on defendant to satisfy a high standard of materiality and relevance. He must show that the informer's testimony would exculpate him or at least produce a reasonable doubt as to the reliability of the

People's case. Only then would defendant be entitled to production of the informer.

Justice Sandler observed that neither step is entirely realistic. Rather than employing the bad faith test, the court ought simply to require the prosecutor to maintain contact with the informer and be able to produce him. As to the second step, the heavy burden placed on defendant to prove that the testimony of a person who he has never confronted would exculpate him is unrealistic. The burden here ought to be placed with the prosecutor who has the superior means of access to this information.

It was noted in passing that a companion case to *Jenkins, People v. Law* (Materials, p. 3064), dealt with the charge of the lesser included offense. Thus, defendant was entitled to a charge that possession of heroin is a lesser included offense of its sale, a situation leading to some speculation that the lesser included offense is chargeable if *any* view of the evidence would sustain it, rather than a *reasonable* view, the older standard.

Substantive Crimes

Where abduction is only an incidental means employed to effectuate another crime such as robbery or rape, the kidnapping merges into the principal crime. As Justice Stark explained, the merger doctrine survived under section 135.25, Penal Law, which requires an extended period of detention for the most serious degree of kidnapping. This, said the Court in *People v. Cassidy* (40 N.Y. 2d 763) cannot give rise to any conclusion that every shorter abduction was meant to constitute kidnapping in the second degree, thus abolishing the merger doctrine. Of course, if a person uses grave or horrendous means in the abduction to accomplish the other crime that would constitute a separately recognizable offense as an exception to the merger rule.

By way of *People v. Stewart* (40 N.Y. 2d 692) the groups examined a rare, but interesting aspect of homicide, that being the problem of the proximate cause of the victim's death. In *Stewart* a stab wound inflicted by defendant sent the victim to the hospital where surgeons later undertook the quite separate procedure of repairing a hernia. Although the stabbing put the victim in the hospital, the death was traceable solely to the hernia operation, an intervening cause. In *People v. Kibbe* (35 N.Y. 407) the defendants left their victim on a highway where he was later hit and killed. There, the death was directly due to the independent cause of the automobile, but that cause concurred with the depraved acts of defendants to cause the death. The hernia operation in *Stewart* was an intervening cause which broke the chain leading to the original stabbing. The tentative Criminal Jury Instruction draft on cause of death charges was distributed in all the groups.

In *People v. Dlugash* (41 N.Y. 2d 725) we learned that the validity of an attempt charge is tested in the eyes of the beholder. If defendant felt he was committing a homicide by shooting

the victim, although he could not have if the victim was already dead, then he could be convicted of an attempt. The impossibility of committing the crime is immaterial if defendant *believed* the crime could be accomplished. *People v. Bracey* (41 N.Y. 2d 296) instructs that the intent to commit a crime is necessary to make out an attempt and that such intent can be gleaned wholly by circumstantial evidence from observers who saw defendants casing a store and then entering with drawn gun.

Justice Stark also briefly discussed *People v. Easley* (N.Y. Court of Appeals, 6/77) which held in a case dealing with a mentally defective rape victim's capacity to consent to the act, that the "moral quality" of the act did not pertain to her own set of moral values, but to the way in which such conduct would be reflected in society, and was therefore a proper factor for the jury to consider. Also noted was *People v. France* (App. Div., First Dept., 6/2/77) which dealt with the definition of depravity in the homicide statute (Penal Law §125.25[2]). Defendant recklessly drove his car down New York City streets at 3 A.M. in a police chase and "fortuitously" collided with another car at an intersection causing the death. Mere recklessness was not enough to amount to depravity said the Court. "[I]t was not as if the defendant, in an effort to elude pursuers, drove his auto into congestion deliberately disregarding other vehicles or pedestrians who happened to block his way."

Arrest, Detention and *Miranda*

Justice McQuillan first reminded us of the close distinctions that must be made in custodial interrogation situations. If a crime has been committed and a suspect is detained at gunpoint some time thereafter at another location, he must be given warnings before the first question is asked (*People v. Shivers* 21 N.Y. 2d 118); but if the police arrive at the scene of an ongoing crime and the culprit is asked what he's doing in the bushes, even by an officer with a drawn gun, his inculpatory answer will be admissible in the absence of the warnings because the police are not yet certain what is going on and the question is asked for purposes of clarification. Most judges agreed that the first answer elicited in a situation like that was all that would be usable. Also with respect to *Miranda,* the question is left open because not properly raised in *People v. Tutt* (38 N.Y. 2d 1011) whether the warnings are valid if the police fail to advise the defendant has a right to counsel at the time of interrogation.

The unlawful detention question was explored by Justice McQuillan who detailed the 13-year history of *People v. Morales* (Court of Appeals, 6/77) where defendant had been taken to the police station for questioning even though there was no probable cause for arrest. The crime was particularly heinous and the defendant was the only person even remotely suspected. His rapid confession was ultimately ruled admissible the second time by the Court of Appeals (having once been sent back by the United States Supreme Court [396 U.S. 102]) because he was

found to have consented to the detention. Aside from the interesting questions this raises with respect to the nature of consent (here defendant was simply asked [told?] to come along to the station and he went), the Court in dictum seemed to indicate that detention even without consent is proper if the totality of the circumstances (broken down into 10 criteria by Judge McQuillan) show urgent and reasonable grounds for the questioning and that it was not oppressive or of long duration. In *People v. Anderson* (Court of Appeals, 6/77) none of these conditions existed. There was simply a roundup of all of the victim's friends until one of them confessed after many hours of detention and interrogation.

Witness Privilege as Block to Exculpatory Testimony

Mr. Preiser discussed two cases where a defendant was denied allegedly exculpatory testimony because a witness asserted the privilege against self-incrimination. Little help is derived from *People v. Tyler* (40 N.Y. 2d 1065), where defendant sought on appeal to raise the question whether the court should have ruled the witness's Fifth Amendment claim baseless, because the defendant had not preserved the alleged error for appellate review. In *People v. Sapia* (41 N.Y. 2d 160) the issue was not the legitimacy of the claim of privilege but rather the duty of the People to grant immunity to an informer so that his testimony would be available to the defendant. Here the Court, in rejecting the defendant's claim, distinguished between an informer who had been an active participant as an agent of law enforcement authoritites and one who as in the case at bar was at most a facilitator and an observer. The opinion is significant primarily in its dictum which extends an invitation to a due process claim that the People have an obligation to elect between a grant of immunity to an active participant informer witness and dismissal of the case against the defendant.

Mr. Preiser also discussed whether a defendant has a right to require that a witness claim his privilege in the presence of the jury and then comment upon same. He noted that the cases appear to support this course of action where the witness is an accomplice whose case has been severed (see *People v. Owens*, 22 N.Y. 2d 93) but, as in *Sapia*, do not support it where the witness was not an accomplice. The distinction does not, however, appear well founded. The rationale of the opinions that do not support the course of action is that no inference should be drawn from the mere fact that a witness chose to assert a right given him by the Constitution, and this seems as applicable to an accomplice as it does to any other witness.

Two wide open questions were noted: (1) the extent, if any, to which the trial judge may inquire into the validity of the claim of privilege; and (2) whether a witness who has pleaded guilty but has not been sentenced, or who may still appeal or collaterally attack the judgment, may validly claim the privilege.

Forgetful Witness's Prior Statement

Mr. Preiser also discussed briefly *People v. Fitzpatrick* (40 N.Y. 2d 44) which strictly construes CPL 60.35. That section forbids impeachment of one's own witness by a prior statement unless the witness's testimony tends to disprove the position of the party who called him, here the prosecutor. The testimony must affirmatively tend to disprove, and a simple failure to recall, although certainly not helpful to the prosecutor's case, will not suffice—at least where the prosecutor knew the witness would behave this way before he put him on.

Pleas, Contradictory Counts and Lesser Counts

In *People v. Friedman* (39 N.Y. 2d 463), discussed by Justice McQuillan, defendant pleaded guilty to manslaughter first degree at the end of the People's solid case for murder. At the taking of the plea the Court fully explained the circumstances of the crime and the defendant, without admitting his guilt, agreed that a plea was his most expeditious recourse. The Court of Appeals rules that the plea was taken in accord with the *Alford* rule (400 U.S. 25) since "...defendant intelligently concludes that his interests require entry of a guilty plea and the record before the judge contains strong evidence of actual guilt." Under such circumstances it is not necessary that defendant admit the perpetration of the crime.

In *People v. McGowen* (N.Y. Court of Appeals, 6/77) the principle was reaffirmed that it is not necessary that defendant precisely explain each and every element of the crime to which he is pleading so long as his remarks, as inarticulate as they may be, amount to a story from which the inferences are sufficient to make out the crime. In *People v. Walton* (41 N.Y. 2d 880) the Court upset a First and Second Department practice of requiring dismissal of all lesser counts of an indictment when the defendant pleads to a particular count. CPL 220.10 permits a guilty plea to the entire indictment and none of the lesser counts need be dismissed unless there is an internal inconsistency. As respects the inconsistency problem, Justice McQuillan noted *People v. Carbonell* (40 N.Y. 2d 948) where the jury acquitted defendant of the larceny counts and then found him guilty of the robbery count. This was improper since the robbery could not have occurred unless there had been a larceny.

Discovery

Justice Sandler discussed some inadequacies of the CPL discovery provisions (Art. 240). In *People v. White* (40 N.Y. 2d 797), for instance, the Court expanded the coverage of section 240.20 so as to allow defendant to perform his own scientific tests on dangerous drugs. As it is worded, the statute would permit only the inspection and photographing of the substance. The Court pointed out that New York's procedures ought to be commensurate with those in Federal court where Rule 16 of the Federal

Rules of Criminal Procedure would allow defendant's chemical tests.

In *People v. Prim* (40 N.Y. 2d 946), the question arose whether defendant is entitled to inspection of documents, not in the possession of the prosecutor, but with a third party. The question did not have to be answered, however, since there was no showing these papers would have helped defendant if produced. Justice Sandler noted that aside from the fact such documents would ordinarily be subject to subpoena, they should also be available under a properly written discovery statute.

In *People v. Testa* (40 N.Y. 2d 1018) defendant, in a state prosecution, wanted material gathered by the federal prosecutor for a federal prosecution which had been dropped. Solely on the District Attorney's assertion of immateriality, the trial court ruled defendant not entitled. The Appellate Division ruled that the judge should have made his own determination and based his materiality finding on that (48 A.D. 2d 691). The Court of Appeals affirmed without opinion, apparently finding that the federal prosecutor's material, in the hands of the state prosecutor, was not automatically exempt under the discovery statute.

Search and Seizure

In this area the groups looked at offshoots of the stop and frisk rule announced in *Terry v. Ohio* (392 U.S. 1). Much depends on the facts in each case and it is difficult to apply hard and fast rules. *People v. Singleton* (41 N.Y. 2d 402), although an automobile case, partakes of the aspects of stop and frisk in that there must be reasonable suspicion to stop a car. Defendant's car was stopped simply because the officers thought it was the same car they had seen earlier with different plates. This was not an uncommon model, and the officers had been observing a high traffic area. Reasonable suspicion justifying the stop was nevertheless found by the Court which applied the guidelines laid down in *People v. Ingle* (36 N.Y. 2d 413) where reasonable suspicion was absent in a case where the officer apparently stopped the car only because of a hunch based on no supportable reason. The Court in *Ingle* stated that equipment checks are proper where there is a systematic stopping of all cars, but random stops on less than reasonable suspicion, regardless of the "privilege" to use the highway, are out.

The "gun" cases taken up in *People v. Prochilo* (41 N.Y. 2d 759) are similar. A pedestrian may validly be stopped on not less than reasonable suspicion under the *Terry* rule, and then a further frisk is warranted only when the officer could have a reasonable apprehension of danger. But when an officer can see a bulge that looks like a weapon, or its outline against the suspect's clothes, then the stop and frisk is immediately warranted. Again, an almost imperceptible change in the facts can significantly alter the validity of the stop and frisk. Thus, in the *Prochilo* and *Goings* cases, where the officers saw suspicious

bulges in places where only a weapon would likely be kept, the searches and seizures were validated. However, as in the *Bernard* case, where, as defendant took his hands from deep pockets in his overcoat, the officer detected a heavy object slide to the bottom of the pocket, there could be no reasonable suspicion that the object was a weapon. Neither was there anything in the encounter which could have given the officer a reasonable apprehension of danger. For similar cases see *People v. Stewart* (41 N.Y. 2d 65); *People v. Costales* (39 N.Y. 2d 973); *People v. Sanchez* (38 N.Y. 2d 72); and *People v. Jeffries* (38 N.Y. 2d 722).

Even where police action in stopping a person is unjustified in the first instance, there could be a situation in which display of a gun could legitimize its seizure. In *People v. Cantor* (36 N.Y. 2d 106) defendant drew his gun before he knew that the men unjustifiably trying to detain him were police. The gun was properly suppressed. In *People v. Townes* (41 N.Y. 2d 97), however, defendant drew his gun after police asked him to stop and after identifying themselves as police. That action by defendant so attenuated the lawless police conduct as to dissipate any taint stemming therefrom.

Immunity

The final topic on the agenda, presented by Mr. Preiser, surveyed several new cases dealing with aspects of immunity. In the *Bar Association of Erie County* case the Court of Appeals held (April 5, 1977) that incriminating testimony given by an attorney granted grand jury immunity may be used against him in disbarment proceedings. Disciplinary action is not such penalty or forfeiture as is contemplated in CPL 50.10, the immunity statute, and the constitutional protection does not extend to the use of immunized testimony in other than criminal proceedings. Thus there is a difference between use of a civil sanction such as disbarment for refusal to give testimony that might later be used in a criminal proceeding and the use of immunized testimony to impose a civil sanction. In *Lefkowitz v. Cunningham* (45 LW 4634, 6/14/77), the established rule of *Gardner v. Broderick* (392 U.S. 273) was applied which held unconstitutional any statute which provided for automatic dismissal from public office of any public employee who refused to waive immunity. In this case defendant was State Democratic Chairman but the prohibition applied as much in his case as in any case involving a public servant and it was as coercive against him because it affected a powerful office the loss of which would diminish his general reputation and harm him professionally.

In *People v. McFarlan* decided June 16, 1977 the Court of Appeals reversed a unanimous First Department (52 A.D. 2d 112) decision in determining whether a witness's answer to a question in the grand jury was responsive and thereby earned her transactional immunity. The investigation concerned a homicide and, after informing the witness who was under indictment for a June drug sale that questions would relate to

events that transpired the following December, the prosecutor asked her occupation. She replied that she had never worked and when he asked how she had been supported, she said she sold drugs in the past. He repeated that he was asking about November and December, and she replied that she was arrested in June (the arrest for the June sale was in October). The Court of Appeals upheld trial term's grant of the motion to dismiss her drug sale indictment. Trial term had found that her answers were responsive and that there was a sufficient relationship between her answers and the "transaction, matter or thing" (CPL,§50.10 subd. 1) for which she had been indicted. Trial term noted that the witness was ill-educated and could easily have been confused by the line of questioning and thus rejected the contention that she intentially reached out to take an immunity bath.

ROLE OF THE TRIAL JUDGE

Professor Joseph H. Koffler

Reporter

The panel was chaired by Justice Lyman H. Smith, and included Justice John L. Larkin, Justice David O. Boehm and Dean Emeritus Ray Forrester of the Cornell University School of Law.

The panel, at the commencement of the proceedings, and at the initiative of Judge Smith, asked certain questions of each of the judges in attendance at each panel session. These questions were related to, or in the general areas of, the topics to be discussed. Each judge answered the questions in writing. The answers could indicate to each judge some frame of reference with which he or she approached some of the substantive matters discussed during the panel session. The questions are as follows:

What Would You Do:

1. If criminal defendant walks out during second day of trial?
2. If criminal defendant is *not* present when testimony is read back to the jury?
3. If criminal defendant walks out on witness just before in-court indentification?
4. If civil plaintiff walks out on the 4th day, yelling, "This ain't justice!"

   (a) If his lawyer is willing to continue?
   (b) If his lawyer is *not* willing to continue?

5. If criminal defendant seeks to change attorneys on opening day of trial?
6. If in mid criminal (or civil) trial you learn juror is taking notes?

After the judges had responded to these questions, Judge Smith continued the proceedings with a preliminary statement concerning the attributes of a trial lawyer which are of particular concern to trial judges. In this regard he referred to articles, "Professional Expectations," by Judge Shirley Hufstedler and Seth M. Hufstedler, Esq.

I. Dismissals in the Interest of Justice

Judge Boehm led the discussion of the topic, Dismissals in the Interest of Justice. Consideration was initially given to *People v. Clayton*, 41 AD 2d 204 (2d Dep't, 1973). In this case the court concluded that since CPL 210.40 and 210.45 require a hearing when either the prosecution or defendant move to dismiss an indictment in the furtherance of justice, when the court considers *sua sponte* a dismissal for the same reason, it should not do so until fair notice of its intention has been given to the parties and a hearing has been held. Furthermore, the court indicated that in deciding whether to dismiss in the interest of justice, several criteria should be considered. It stated that among the considerations which are applicable to the issue are (a) the nature of the crime, (b) the available evidence of guilt, (c) the prior record of the defendant, (d) the punishment already suffered by the defendant, (e) the purpose and effect of further punishment, (f) any prejudice resulting to the defendant by the passage of time and (g) the impact on the public interest of a dismissal of the indictment.

In referring to these criteria as a commendable effort by the Judiciary to fill an existing void, the Court of Appeals in *People v. Belge*, 41 N.Y. 2d 60 (1976) viewed the establishing of criteria as involving policy considerations that should more appropriately be resolved by legislation. The court stated, "We invite the attention of the Legislature to this predicament." *People v. Belge*, 41 N.Y. 2d 60, 62 (1976).

In an effort to engender a legislative response to the court's invitation, an amendment to subdivision one of section 170.40 of the Criminal Procedure Law, proposed by the Advisory Committee on the Criminal Procedure Law, is being introduced at the request of the Office of Court Administration. This proposed amendment provides that in deciding whether to dismiss in the interest of justice "the court *must*, to the extent applicable, examine and consider, individually and collectively" (emphasis added) ten criteria.

A poll was taken of the judges to determine whether they favor or oppose each of these criteria. Following are the criteria, together with the results of the poll. (Vote was taken in all four panel sessions on criteria (a) to (i) inclusive. Vote taken in two of the four panel sessions on criteria (j)):

(a) *the seriousness and circumstances of the offense;* unanimously favored in all 4 panels.

(b) *the extent of harm caused by the offense;* unanimously favored in all 4 panels.

(c) *the evidence of guilt, whether admissible or inadmissible at trial;*
47 favor; 40 against.

(d) *the history, character and condition of the defendant;*
unanimously favored in all 4 panels.

(e) *any exceptionally serious misconduct of law enforcement personnel in the investigation, arrest and prosecution of the defendant;*
56 favor; 30 against.

(f) *the purpose and effect of imposing upon the defendant a sentence authorized for the offense;*
57 favor; 23 against.

(g) *the impact of a dismissal on the safety or welfare of the community;*
unanimously favored in all 4 panels.

(h) *the impact of a dismissal upon the confidence of the public in the criminal justice system;*
43 favor; 43 against.

(i) *where the court deems it appropriate, the attitude of the complainant or victim with respect to the motion;*
74 favor; 12 against.

(j) *any other relevant fact indicating that a judgment of conviction would serve no useful purpose;*
unanimously favored in the two panel sessions in which vote taken.

The judges were then asked, in three of the four panel sessions, whether they would prefer to continue with the *present statute,* which does *not* spell out any criteria.

In response, 54 judges were in favor of continuing with the present statute, and 12 judges favored spelling out criteria.

Your reporter is of the opinion that these results lend themselves to the interpretation that a majority of the judges favor each of the criteria in the proposed amendment when considered individually—with the exception of (h), upon which they were evenly divided—*if* they are *required to be limited* by criteria, but that they would prefer *no* criteria.

Assuming that the criteria set out in the proposed amendment are generally of the nature which the Court of Appeals had in mind in *People v. Beige, supra,* it may be concluded that at least the trial judges in attendance at these panel sessions did not

believe that legislation of the kind envisaged by the Court of Appeals would be a preferable result.

II. Absent Defendant

The panel then turned its attention to the question of the Absent Defendant, with Judge Boehm again leading the discussion. It was observed that in *People v. LaBarbera*, 274 N.Y. 339 (1937), the court held that a defendant on trial for a felony, not punishable by death, may waive his right to object to the reading of testimony to the jury in his absence. The court distinguished *Maurer v. People*, 43 N.Y. 1 (1870), on the ground that the *Maurer* case involved a charge of murder, and neither defendant nor his counsel waived the defendant's right to be present at the trial.

But it was observed that in *People v. Winship*, 309 N.Y. 311 (1955), it was held that the People have the right to require defendant's presence for purpose of identification.

Where the *absence of defendant* from a hearing on a *motion to suppress* was *unexplained*, and the evidence sought to be suppressed was admitted at trial, the court in *People v. Anderson*, 16 N.Y. 2d 282 (1965), held that a reversal of defendant's conviction was required. The court indicated that there had been a denial of due process, and a violation of Section 356 of the Code of Criminal Procedure which "requires that at a trial for a felony 'the defendant must be personally present' ". The court added, "This statutory provision and the judicial application thereof entitle the defendant to be present at postindictment proceedings where there is a 'taking of evidence' (citations omitted)." *People v. Anderson*, 16 N.Y. 2d 282, 286.

In *People v. Huggler*, 50 AD 2d 471 (3rd Dep't. 1976), the court concluded that under the provision of CPL 260.20 that "a defendant must be personally present during the trial or an indictment," the defendant has the right to personally appear at a *Wade* hearing, as the definition of "trial" is broad enough to include such a hearing. But, the court went on to hold that a defendant may waive his right to personally appear at a *Wade* hearing, provided such right has been relinquished knowingly, voluntarily and intelligently.

People v. Hicks, 177 New York Law Journal, at 7, col. 6 (May 5, 1977), decided in Trial Term by Justice Myers, who was present at one of the panel sessions, held that a defendant who left during a *Wade* hearing and did not appear at the voir dire or thereafter had, under the circumstances of that case, waived his right to be present at the continuation of the trial. In that case, unsuccessful efforts had been made to determine the whereabouts of the defendant. Judge Myers pointed out that everyone had answered ready, that the defendant knew he was on trial and his presence was required in the courtroom, that he deliberately failed to return to court, and he had therefore *waived* his right to be present. Judge Boehm, at the panel sessions, queried whether the result should be the same in a case where the

defendant does not know the date of trial.

Judge Smith observed that in *People v. Rodriguez*, 56 AD 2d 613 (2d Dep't. 1977), an appeal was dismissed where the defendant disappeared during the pendency of the appeal, upon the ground that the defendant was not presently available to obey the mandate of the court.

III. Conduct of Trial Counsel

Judge Smith led the discussion of the topic, Conduct of Trial Counsel. He first alluded to the case of *People v. Lowrance*, 41 N.Y. 2d 303 (1977), *where the defendant was convicted, after a jury trial*, of attempted assault in the first degree, reckless endangerment, and possession of a weapon as a felony. *Subsequent to the rendition of the jury's verdict of guilty on these counts*, defendant pleaded guilty to attempted burglary in the third degree in satisfaction of an indictment charging burglary in the first degree and in further satisfaction of charges in two other indictments and a misdemeanor charge pending in Criminal Court. Upon appeal, the Appellate Division reversed the convictions based on the jury's verdict, and granted a new trial.

Defendant contended that his guilty plea should be vacated. He argued that his guilty plea was the tainted fruit of unconstitutionally obtained trial convictions, that it lacked factual basis, and that if he had not so pled he would have again been "subjected to the outrageous prosecutorial abuse" which had marked the just concluded trial. The Court of Appeals denied such relief. The court concluded: "Defendant's plea of guilt was entered after consulting with counsel, concerning whom he voices no complaint. Defendant on trial was represented by the same attorney and on sentence the court remarked, and defendant agreed, that his lawyer 'conducted a very aggressive defense on your behalf.' Defendant's rights were protected by a reversal of his convictions at trial and he should not now be permitted to take advantage, in this action terminated by plea, of the fact that there has been a subsequent reversal in the action involving trial, and thus renounce the understanding made at the time of plea. To permit such a carry-over on these facts would serve as a dangerous precedent." *People v. Lowrance*, 41 N.Y. 2d 303, 304, 305. Judge Fuchsberg, in a vigorous dissent, concluded that "an elementary sense of justice requires vacatur of the plea and remittal to the Supreme Court, Bronx County, for further proceedings." *People v. Lowrance*, 41 N.Y. 2d 303, 307. (dissenting opinion)

The panel considered *People v. Wright*, 41 N.Y. 2d 172 (1976), which involved an inflammatory and prejudicial summation by the prosecutor, and resulted in the Court of Appeals reversing a conviction. In the course of the panel discussions, Judge Smith suggested that judges might be well advised to act *sua sponte* as soon as a prejudicial remark is made. Judge Larkin was of the opinion that it would be preferable to wait until objection is made.

IV. Marshalling Evidence

Judge Smith introduced the topic, Marshalling Evidence. In the course of considering this topic, reference was made to *People v. Williamson*, 40 N.Y. 2d 1073 (1976), where, in summarizing all the direct testimony of all the witnesses, the trial court pointed out a single inconsistency in defendant's testimony, and neglected to mention numerous inconsistencies in testimony of witnesses for the prosecution. The court reversed the conviction, stating that this was error, and since the whole case turned on a very close question of credibility, this error could not be considered harmless.

V. Reading from Prior Cases

Judge Smith led the discussion of the topic, Reading from Prior Cases. Attention was directed to *People v. Hommel,* 41 N.Y. 2d 427 (1977), where the trial court had referred in its charge to headnotes from Appellate Division opinions. In reversing a conviction because of the misleading nature of the charge, the Court of Appeals stated: "In the instant case the potential impairment of the jury's freedom to evaluate the testimony before it free from outside influences cannot be denied. In its charge the trial court made reference to a set of facts strikingly similar to those before the jury in this case and clearly stated that the Appellate Division had held that they were 'sufficient to support a finding * * * that the defendant acted with criminal negligence.' It cannot be gainsaid that because of this charge the jury might very well have felt compelled to reach a result in harmony with the conclusion apparently reached by the higher court in a previous case and that they may very well have been deprived of their freedom of action (see *People v. Ohanian,* 245 N.Y. 227, 230)." *People v. Hommel,* 41 N.Y. 2d 427,430.

VI. Curative Charges

Judge Larkin led the panel discussion with respect to the topic, Curative Charges. In the process he considered a trilogy of 1977 Court of Appeals cases, *People v. Mullin,* 41 N.Y. 2d 475 (1977), *People v. Biondo,* 41 N.Y. 2d 483 (1977), and *People v. Miller,* 41 N.Y. 2d 857 (1977).

After discussing these cases, Judge Larkin expressed the following views: First, there is almost no such thing as a non-curative error if the Trial Judge acts quickly, clearly and decisively. Second, if there is no objection, matter is not preserved for review, so the court should not interject *sua sponte.*

VII. Trial Order of Dismissal, As Related to Double Jeopardy

Dean Emeritus Ray Forrester of the Cornell University School of Law, led the discussion of the topic, Trial Order of Dismissal, As Related to Double Jeopardy. Consideration was given to

People v. Brown, 40 N.Y. 2d 381 (1976), where, at the conclusion of the People's case-in-chief on an indictment charging the crime of bribery, the trial court granted defendant's motion to dismiss the indictment on the ground that a *prima facie* case had not been made out. The Court of Appeals, with Judge Jones writing the majority opinion, held that the People may not appeal from the trial order of dismissal, as this would place the defendant in double jeopardy.

Judge Jones stated that in this case there was presented for the trial court *a pure question of law,* namely, what constitutes the crime of bribery?

Referring to a trilogy of recent United States Supreme Court cases, *United States v. Wilson,* 420 U.S. 332 (1975), *United States v. Jenkins,* 420 U.S. 358 (1975) and *Serfass v. United States,* 420 U.S. 377 (1975), Judge Jones states: "On the basis of these three cases we conclude that the Supreme Court has formulated a double jeopardy rule—albeit what may be characterized as a mechanical rule—which precludes the People from taking an appeal from an adverse trial ruling whenever such appeal if resolved favorably for the People might require the defendant to stand retrial—or even if it would then be necessary for the trial court 'to make supplemental findings' *(United States v. Jenkins,* 420 U.S. 358, 370, *supra).* Double jeopardy principles will bar appeal unless there is available a determination of guilt which without more may be reinstated in the event of a reversal and remand. Application of such rule to the provisions of CPL 450.20 (subd 2) permitting the People to appeal from a trial order of dismissal renders that section unconstitutional except in the instance where disposition of the motion is reserved until after the jury verdict has been returned." *People v. Brown,* 40 N.Y. 2d 381, 391.

Judge Jones observes that the Trial Judge must now be aware that the consequence of granting such a motion prior to the return of the jury verdict will be to foreclose an appeal by the prosecution. He does not conclude that the granting of such a motion prior to verdict may not be fully warranted. He does caution, however, that the decision in the instant case *introduces another consideration* to be weighed in the disposition of an application for a trial order of dismissal.

Judge Breitel, dissenting, is in accord with Judge Jones in concluding that the indictment in this case was dismissed on *a pure question of law.*

However, Judge Breitel concludes that since *no question of fact* was determined by the jury, double jeopardy does not attach. Judge Breitel states: "Since the jury never received the issues of fact there was never any possibility that a determination by the jury in favor of defendant had been made by them. Had the trial court in dismissing the indictment as a matter of law weighed any one or more of the elements of fact in the case, then the double jeopardy clause applied and a retrial would be prohibited. Hence, the rule in the *Jenkins* case is inapplicable, because

neither Judge nor jury had passed on any issue of fact." *People v. Brown,* 40 N.Y. 2d 381, 396 (dissenting opinion).

It was observed in the panel sessions that we may look to subsequent United States Supreme Court cases for clarifications as to whether the interpretation presented in Judge Jones' opinion, or that presented in Judge Breitel's opinion, is the correct one.

United States v. Martin Linen Supply Co., 45 U.S. Law Week 4337 (1977), a subsequent case involving double jeopardy was considered, the panel discussion focusing on the question of whether this opinion lent support to either interpretation, but no definitive conclusion was reached. Additionally, an even more recent double jeopardy case, *Lee v. United States,* 45 U.S. Law Week 4661 (1977), was considered in this regard, and again no definitive conclusion was reached.

However, the court in a footnote in *Lee,* refers to the above opinion in *Martin Linen,* stating: "We recently made it clear that a trial court's ruling in favor of the defendant is an acquittal only if it 'actually represents a resolution, correct or not, of some or all of the factual elements of the offense charged.' *United States v. Martin Linen Supply Co.,*_____ U.S. ____ ____(1977)." *Lee v. United States,* 45 U.S. Law Week 4661, 4663.

The question may be asked as to whether this quotation may not at least point in the direction of Judge Breitel's interpretation.

Table 93

Education and Training Office Judicial Programs

Jan. 1, 1977 through Dec. 31, 1977

Dates - 1977	OCA Judicial Programs	Location	Duration (days)	Number Attended
January 20-22	Sentencing Institute	Ossining	2	111
February 3-5	Sentencing Institute	Ossining	2	150
February 21-23	Town and Village Justices Advanced Program	New York City	2½	114
March 11-12	Seminar for City Court Judges	Syracuse	2	70
March 25-26; April 1, 2, 15, 16	Town and Village Justices Basic Course	Albany, Buffalo, Syracuse	6	58
May 6-7	Town and Village Justices Advanced Program	Olean	2	43
May 11-13	Seminar for County Judges	Saratoga Springs	1½	74
May 22-26	Seminar for Surrogates	Saratoga Springs	2½	74
June 10-11	Town and Village Justices Advanced Program	Rochester	2	41
June 27-30	Conference of New York State Trial Judges	Crotonville	3	125
July 25-29	Town and Village Justices Basic Program	St. Lawrence University	5	15
July 26-29	Town and Village Justices Advanced Program	St. Lawrence University	4	110
September 25-27	Family Court Workshop	Lake Placid	2	97
October 14-15	Town and Village Justices Advanced Program	Lake George	2	54
November 11-13	Conference of Civil Court Judges	Swan Lake	1½	77
November 18, 19, 25, 26; December 2, 3	Town and Village Justices Basic Course	Albany, Buffalo, Syracuse	6	338
December 5-9	Newly Elected Judges	New York City	5	67
			Total	1,618

Chapter 6

Legislation and Rule Revision

The 1974 reorganization of the Office of Court Administration, including the establishment of an Albany office to serve as liaison with the executive and legislative agencies in the capitol, made possible a productive 1977 legislative program.

Counsel's office drafted 50 bills for legislative action at the 1977 session; 29 passed the Legislature and were approved by the Governor. In addition, three amendments to the rules of the Civil Practice Law and Rules promulgated by the Judicial Conference and submitted to the Legislature pursuant to section 229 of the Judiciary Law became law on September 1, 1977.

The Office of Court Administration filed legislative memoranda on 492 bills introduced at the 1977 session affecting the administrative processes of the unified court system. In response to requests from the Executive Chamber, counsel's office filed analyses and recommendations on 194 bills awaiting gubernatorial action.

By far the most significant legislative development affecting the courts in 1977 was the second passage of a measure to amend the Judiciary Article of the State Constitution.

1. Senate 5860-A (Senators Gordon, Anderson) Assembly 8124 (Assemblyman Cooperman)

This concurrent resolution proposed amendments to the Constitution which would: (1) change the method by which judges of the Court of Appeals are selected from partisan election on a statewide ballot to a system whereby the Governor appoints, with the advice and consent of the Senate, persons found to be well-qualified by a commission on judicial nomination, (2) abolish the Court on the Judiciary and vest disciplinary authority over judges in a judicial conduct commission and the Court of Appeals, and (3) unify the administrative structure of the court system through a chief administrator of the courts appointed by the Chief Judge of the Court of Appeals with the advice and consent of the Administrative Board of the Courts.

This concurrent resolution was given first passage by the Legislature at the 1976 Extraordinary Session; it was given second passage by the Legislature at the 1977 Session. The proposed amendments were approved by the People at the November 1977 election and became effective April 1, 1978.

Other measures, introduced at the regular session at the request of the Office of Court Administration, included the following:

Bills Recommended by the Judicial Conference

2. **Senate 1506 (Senator Barclay)**
Assembly 3346 (Assemblyman Lentol)

This bill amended section 311(8) of the CPLR to delete an obsolete reference to service of process on a school district; such service is already governed by subdivision 7 of that section.
This bill became Chapter 17 of the Laws of 1977.

3. **Senate 2573 (Senator Barclay)**
Assembly 4130 (Assemblyman Goldstein)

This bill amended section 5020(b) of the CPLR to permit the attorney for a judgment creditor to execute a satisfaction-piece or partial satisfaction-piece within ten years, rather than five, after the entry of judgment.
This bill became Chapter 41 of the Laws of 1977.

4. **Senate 2571-A (Senator Barclay)**
Assembly 4026-A (Assemblyman Cooperman)

This bill amended Article 62 of the CPLR, which governs the provisional remedy of attachment, to modernize New York's attachment procedures in conformity with recent holdings of the United States Supreme Court.
This bill became Chapter 860 of the Laws of 1977.

5. **Senate 2570 (Senator Barclay)**
Assembly 4029 (Assemblyman Schumer)

This bill amended section 5513 of the CPLR to provide additional time for a party to take a cross-appeal or to make a motion for permission to cross-appeal when the adverse party has taken an appeal or has moved for permission to appeal.
This bill became Chapter 30 of the Laws of 1977.

6. **Senate 2569 (Senator Barclay)**
Assembly 4028 (Assemblyman Goldstein)

This bill amended section 3011 of the CPLR to eliminate the requirement for an answer to a cross-claim unless the cross-claim contains a demand for an answer.
This bill became Chapter 26 of the Laws of 1977.

7. **Senate 2568 (Senator Barclay)**
Assembly 4027 (Assemblyman Friedman)

This bill amended section 2308(b) of the CPLR to authorize a party to an administrative proceeding, on whose behalf an administrative board has issued a subpoena, to move in the supreme court to compel compliance.
This bill became Chapter 25 of the Laws of 1977.

8. **Senate 3501-B (Senator Barclay)**
Assembly 6734-b (Assemblyman Siegel)

This bill amended section 460.70 of the Criminal Procedure Law to eliminate the need for unnecessary transcripts in criminal appeals where the appellant has been permitted to proceed as a poor person.

This bill became Chapter 695 of the Laws of 1977.

9. **Senate 3507 (Senator Barclay)**
Assembly 6893-A (Assemblyman Nadler)

This bill added a new section 110.20 to the Criminal Procedure Law to require notification to the district attorney when a criminal action, in which a crime is charged, is commenced in a local criminal court other than the Criminal Court of the City of New York.

This bill became Chapter 353 of the Laws of 1977.

10. **Senate 3506 (Senator Barclay)**
Assembly 7671 (Assemblyman Goldstein)

This bill amended section 80.00 of the Penal Law to permit a court to impose a fine, not exceeding $5,000, on a convicted felon without the requirement of a determination of gain from the crime.

This bill became Chapter 352 of the Laws of 1977.

11. **Senate 3509 (Senator Barclay)**
Assembly 6890 (Assemblyman Gottfried)

This bill amended sections 60.25 and 60.30 of the Criminal Procedure Law to clarify that a witness may testify to his prior in-person identification of a defendant regardless of whether that prior identification occurred before or after the formal commencement of criminal proceedings.

This bill became Chapter 479 of the Laws of 1977.

12. **Senate 2631 (Senator Barclay)**
Assembly 3988 (Assemblyman Nicolosi)

This bill would have amended section 3101(a) of the CPLR to permit a party to perpetuate the testimony of his own medical witness without a court order and without the necessity of laying a foundation by showing unavailability or special circumstances.

This bill passed the Senate and the Assembly, but was recalled from the Governor.

13. **Senate 3510 (Senator Barclay)**
Assembly 6889 (Assemblyman Friedman)

This bill would have amended section 310.10 of the Criminal Procedure Law to provide for the dismissal of a court in an indictment where the evidence before the grand jury is not

legally sufficient to establish that count.
This bill passed the Senate, but failed to pass the Assembly.

14. Senate 3443 (Senator Dunne)
Senate 2597 (Senator Bernstein)
Assembly 3674 (Assemblyman Goldstein)
Assembly 6292 (Assemblyman Velella)

This bill would have amended section 3130 of the CPLR to allow the use of written interrogatories in all actions, including negligence and wrongful death actions.
This bill passed the Assembly, but failed to pass the Senate.

15. Senate 2630 (Senator Barclay)
Assembly 3422 (Assemblyman Siegel)

This bill would have amended Article 61 of the CPLR to abolish the provisional remedy of civil arrest in actions at law and to strengthen the rights of defendants subject to civil arrest in equity actions.
This bill failed to pass the Senate or the Assembly.

16. Senate 2572 (Senator Gordon)
Assembly 3760 (Assemblyman Nadler)

This bill would have amended the Judiciary Law and the CPLR to provide that an otherwise qualified applicant for admission to the New York bar who intends to practice law in New York but who has not resided in the State for six continuous months may be admitted if he intends to have an office for the practice of law in New York upon his admission.
This bill failed to pass the Senate or the Assembly.

17. Senate 3519-B (Senator Barclay)
Assembly 6894-B (Assemblyman Siegel)

This bill would have amended sections 450.90 and 470.40 of the Criminal Procedure Law to permit the Court of Appeals to hear any appeal from an intermediate appellate court involving a question of law which may have resulted in an improper reversal or modification of a conviction.
This bill failed to pass the Senate or the Assembly.

18. Senate 3508 (Senator Marino)

This bill would have amended section 310.10 of the Criminal Procedure Law to permit a court to allow a deliberating jury to disperse temporarily upon consent of the parties.
This bill failed to pass the Senate or the Assembly.

19. Senate 3523 (Senator Marino)
Assembly 6891 (Assemblyman Gottfried)

This bill would have amended several sections of the Penal Law, covering bribery and related offenses, to give effect to the

original legislative intent to encompass, within the substantive offenses, unsuccessful attempts to bribe or solicit bribes.
This bill failed to pass the Senate or the Assembly.

20. Senate 3522 (Senator Marino)
Assembly 6888 (Assemblyman Culhane)

This bill would have amended section 460.20 of the Criminal Procedure Law to provide that permission to appeal to the Court of Appeals from an order of the appellate division may not be sought from a justice who did not participate in the determination sought to be appealed.
This bill failed to pass the Senate or the Assembly.

21. Senate 3521 (Senator Marino)
Assembly 6892 (Assemblyman Gottfried)

This bill would have repealed the present Article 240 of the Criminal Procedure Law and substituted a new Article 240, providing expanded discovery procedures for prosecution and defense.
This bill failed to pass the Senate or the Assembly.

22. Senate 3520 (Senator Marino)
Assembly 7211 (Assemblyman Lewis)

This bill would have amended section 170.75 of the Criminal Procedure Law to provide that a defendant is not entitled to a preliminary hearing where he is arraigned in the Criminal Court of the City of New York pursuant to a prosecutor's information filed at the direction of a grand jury.
This bill failed to pass the Senate or the Assembly.

23. Senate 6641 (Rules)
Assembly 7164 (Assemblyman Cooperman)

This bill would have added a new section 187 to the Judiciary Law providing for the payment of a *per diem* allowance to judges temporarily assigned to the supreme court.
This bill failed to pass the Senate or the Assembly, but its provisions were incorporated in Chapter 460 of the Laws of 1977.

Bills Recommended by the Office of Court Administration

24. Senate 1710 (Senator Padavan)
Assembly 3426 (Assemblyman Lewis)

This bill amended the Mental Hygiene Law, the Real Property Actions and Proceedings Law and the CPLR to improve the administrative procedures which insure proper management of estates of incompetent persons.
This bill became Chapter 286 of the Laws of 1977.

25. **Senate 2641 (Senator Gordon)**
Assembly 4126 (Assemblyman Cooperman)

This bill amended the New York City Civil Court Act to increase certain filing fees from $10 to $15, thereby curing inadvertent omissions in 1976 legislation which authorized a similar increase in related filing fees.

This bill became Chapter 33 of the Laws of 1977.

26. **Senate 2640-B (Senator Gordon)**
Assembly 4137-A (Assemblyman Lasher)

This bill amended the Family Court Act to authorize the appellate divisions to provide, by rule, for the use of hearing examiners to hear and report in proceedings under Articles 4, 5 and 5-A of the Family Court Act.

This bill became Chapter 388 of the Laws of 1977.

27. **Senate 4010-B (Senator Gordon)**
Assembly 5062-B (Assemblyman Cooperman)

This bill repealed Articles 16, 17, 18 and 18-a of the Judiciary Law and substituted a new Article 16 to provide the courts of New York with a uniform statewide system for the selection of jurors, which clearly satisfies all constitutional requirements that grand and petit juries be selected at random from a fair cross-section of the community.

This bill became Chapter 316 of the Laws of 1977.

28. **Senate 3123-A (Senator Gordon)**
Assembly 5059-A (Assemblyman Friedman)

This bill amended the Family Court Act and the Social Services Law to authorize the State Administrator, rather than the Administrative Board of the Judicial Conference, to prescribe official forms for Family Court practice.

This bill became Chapter 229 of the Laws of 1977.

29. **Senate 4507 (Senator Gordon)**
Assembly 7162 (Assemblyman Cooperman)

This bill amended section 213 of the Judiciary Law to extend until August 31, 1979 the authority of the administrative board to promulgate rules for the compulsory arbitration of civil claims. This bill also increased the monetary jurisdiction of compulsory arbitration proceedings from $4,000 to $6,000, exclusive of interest.

This bill became Chapter 165 of the Laws of 1977.

30. **Senate 4590-A (Senator Gordon)**
Assembly 7309-A (Rules)

This bill amended section 220 of the Judiciary Law to cure drafting errors and omissions that occurred during the expedited passage of this section at the Extraordinary Session of the Legis-

lature in August, 1976 and to facilitate the implementation of the Unified Court Budget Act consistent with the capabilities and responsibilities of the governmental entities involved.
This bill became Chapter 32 of the Laws of 1977.

31. Senate 5096 (Senator Bruno)
Assembly 6739 (Assemblyman D'Andrea)

This bill amended the city charter of the City of Saratoga Springs to increase the monetary jurisdiction of the City Court of Saratoga Springs from $3,000 to $6,000 and to change the term of office of the city court judge from four years to six years.
This bill became Chapter 420 of the Laws of 1977.

32. Senate 4782 (Senator Gordon)
Assembly 7163 (Assemblyman Cooperman)

This bill amended section 220(g) of the Judiciary Law to expressly authorize the comptroller to bill localities directly for their net court costs rather than withhold these costs from State aid.
This bill became Chapter 497 of the Laws of 1977.

33. Senate 5488 (Senator Barclay)
Assembly 7445 (Assemblyman Zagame)

This bill amended section 410.70(5) of the Criminal Procedure Law to correct an inaccurate cross-reference.
This bill became Chapter 355 of the Laws of 1977.

34. Senate 6238 (Senator Eckert)
Assembly 8509 (Rules)

This bill amended the Rochester City Court Act to increase the monetary jurisdiction of the Rochester City Court from $3,000 to $6,000.
This bill became Chapter 406 of the Laws of 1977.

35. Senate 5882 (Senator Gordon)
Assembly 8506 (Rules)

This bill amended the Judiciary Law and the County Law to extend the time for filing papers with the clerk of a court when the last day for filing the papers falls on a day when the clerk's office is closed, for whatever reason, for the transaction of business.
This bill became Chapter 686 of the Laws of 1977.

36. Senate 6360-B (Senator Farley)
Assembly 8711-B (Rules)

This bill amended the New York City Civil Court Act, the Uniform District Court Act, the Uniform City Court Act, the Judiciary Law and the CPLR to correct drafting errors in new fee schedules established by Chapter 33 of the Laws of 1977 and

to permit modest increases in certain fees collected by county clerks outside the City of New York in their capacity as recording officers.

This bill became Chapter 688 of the Laws of 1977.

37. Senate 6426 (Senator Barclay)
Assembly 8898 (Rules)

This bill amended the Criminal Procedure Law relative to the perfection of criminal appeals to the Court of Appeals: (1) to reduce necessary paperwork, (2) to extend the time for taking an appeal if an imprisoned defendant and his lawyer are unable to communicate, and (3) to provide for a stay of judgment pending determination of an application for leave to appeal to the Court of Appeals.

This bill became Chapter 699 of the Laws of 1977.

38. Senate 6443 (Senator Anderson)
Assembly 8755 (Rules)

This bill amended the Binghamton City Court Act to increase the monetary jurisdiction of the Binghamton City Court from $4,000 to $6,000.

This bill became Chapter 495 of the Laws of 1977.

39. Senate 6916 (Senator Schermerhorn)
Assembly 8887-A (Rules)

This bill amended sections 158(1) and 201(7) of the Civil Service Law to permit judges and justices to participate in state insurance plans now available to members of the Legislature.

This bill became Chapter 817 of the Laws of 1977.

40. Senate 6845 (Senator Barclay)
Assembly 8908 (Rules)

This bill amended section 330.20 of the Criminal Procedure Law to require that notice of any application for discharge or conditional release of a person who has been committed to the custody of the Commissioner of Mental Hygiene following an acquittal by reason of mental disease or defect be given to the Mental Health Information Service in the judicial department in which the committing court is located.

This bill became Chapter 780 of the Laws of 1977.

41. Senate 6759 (Senator Gordon)
Assembly 8896 (Rules)

This bill amended Chapter 33 of the Laws of 1977 to clarify the intended application of the new fee schedule set forth in section 2402(8) of the Surrogate's Court Procedure Act.

This bill became Chapter 689 of the Laws of 1977.

42. Senate 6862 (Rules)
Assembly 8992 (Rules)

This bill added a new section 219-a to the Judiciary Law to provide increased compensation for State-paid non-judicial employees of the uniform court system.

This bill became Chapter 681 of the Laws of 1977.

43. Senate 6352-A (Senator Gordon)
Assembly 8876 (Rules, at the request of Assemblyman Cooperman)

This bill would have amended sections 60 and 60-a of the Town Law to clarify ambiguities in Chapter 739 of the Laws of 1976, which prohibits town court justices elected after July1, 1977 from serving on town boards.

This bill passed the Senate, but failed to pass the Assembly.

44. Senate 1600-A (Senator Gordon)
Assembly 3415-A (Assemblyman Schumer)

This bill would have amended section 12-b of the Judiciary Law to establish guidelines for the temporary assignment of city court judges and town or village court justices consistent with the State Constitution.

This bill passed the Assembly, but failed to pass the Senate.

45. Senate 1601 (Senator Gordon)
Assembly 3296 (Assemblyman Cooperman)

This bill would have amended sections 22 and 23 of the Judiciary Law to require the retirement of town and village court justices at age 70.

This bill failed to pass the Senate or the Assembly.

46. Senate 5267 (Senator Barclay)

This bill would have amended section 720.10(2) of the Criminal Procedure Law to make a youth eligible for youthful offender treatment unless he has been convicted of a class A-I felony, rather than indicted for a class A-I or class A-II felony.

This bill failed to pass the Senate or the Assembly.

47. Senate 5788 (Senator Pisani)

This bill would have amended section 712 of the Family Court Act to clarify the definitions of "juvenile delinquent" and "person in need of supervision" and to establish age sixteen as the maximum age, regardless of sex, for persons who may be adjudicated PINS.

This bill failed to pass the Senate or the Assembly.

48. Senate 6714 (Rules)

This bill would have amended section 220(7) of the Judiciary Law to restore the authority of the Public Employment Rela-

tions Board to determine appropriate negotiating units for court employees in accordance with the standards established by the Civil Service Law.

This bill failed to pass the Senate or the Assembly.

49. **Senate 6353 (Senator Barclay)**
Assembly 8897 (Assemblyman Lewis)

This bill would have amended sections 170.40 and 210.40 of the Criminal Procedure Law to provide specific criteria to guide a trial judge in determining a motion to dismiss an accusatory instrument in the furtherance of justice.

This bill failed to pass the Senate or the Assembly.

50. **Senate 6573 (Rules)**
Assembly 8847 (Rules, at the request of Assemblyman Cooperman)
Assembly 8964 (Rules)
Senate 6825 (Rules)

This bill would have added a new Article 2-B to the Judiciary Law to: (1) establish salary schedules for all State-paid judges and justices, (2) provide a graduated pay increase for all judges and justices commensurate with that granted other State employees, (3) consolidate current law relating to judicial travel and transportation expenses, and (4) increase the *per diem* allowance paid to judges temporarily assigned to the supreme court.

This bill failed to pass the Senate or Assembly.

51. **Senate 5152-A (Rules)**
Assembly 8553 (Rules, at the request of Assemblyman Lewis)

This bill would have amended section 5601 and related sections of the CPLR to provide that an appeal in a civil case from a reversal, dissent or modification by an appellate division may only be taken by permission, rather than as of right.

This bill failed to pass the Senate or Assembly.

Proposals of the Judicial Conference To Amend the Rules of the CPLR

All three amendments in the form of Proposals to amend the Rules portion of the Civil Practice Law and Rules, promulgated by the Judicial Conference pursuant to section 229 of the Judiciary Law, became effective on September 1, 1977, none having been disapproved by the Legislature.

Proposed were:

Proposal Number 1

This Proposal amended Rule 3113(b) of the CPLR to expressly permit testimony to be perpetuated on videotape.

Proposal Number 2

This Proposal amended Rule 3117(a) of the CPLR to permit any party to use on trial the deposition of a medical witness without the necessity of showing unavailability or special circumstances.

Proposal Number 3

This Proposal amended Rule 5522 of the CPLR to eliminate a requirement that an appellate court state the grounds of its decision when it affirms a lower court judgment or order.

State of New York

The
Judicial Conference
of the
State of New York

Report to the 1978 Legislature in Relation to The Civil Practice Law and Rules

February 15, 1978

Letter of Transmittal

TO: The Legislature of the State of New York

Pursuant to section 229 of the Judiciary Law, enacted by Chapter 309 of the Laws of 1962, the Judicial Conference of the State of New York respectfully submits to the 1978 Legislature:

The Sixteenth Annual Report of the Judicial Conference to the Legislature, adopted January 19, 1978, which incorporates the Fifteenth Annual Report to the Judicial Conference by the Committee to Advise and Consult with the Judicial Conference on the Civil Practice Law and Rules, dated December 9, 1977, as such Report was modified by the Judicial Conference.

February 15, 1978

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Introduction

This is the Fifteenth Annual Report to the Judicial Conference by the Committee to Advise and Consult with the Judicial Conference on the Civil Practice Law and Rules.

The members of the Committee are: William D. Eggers, John T. Frizzell, Hyman W. Gamso, Robert T. Greig, Raymond W. Hackbarth, Edward J. Hart, Peter H. Kaminer, Richard B. Long, Harold A. Meriam, Jr., John A. Murray, Maurice N. Nessen, and Professor Herbert Peterfreund. Adolf Homburger, Professor Emeritus of the State University of New York Law School, now Professor at Pace University School of Law, serves as Chairman.

During the past year Richard B. Long replaced John M. Keeler, who after serving many years as a valuable member, resigned due to the press of professional responsibilities. G. Robert Witmer, Jr., another distinguished member who had devoted lengthy service to the Committee, also resigned because of professional obligations, and has been replaced by William D. Eggers.

The main accomplishment of 1977 resulting from the work of the Committee was the enactment of Chapter 860 of the Laws of 1977, which took effect September 1, 1977. The new law was designed to modernize the New York attachment procedure governed by Article 62 of the Civil Practice Law and Rules, the constitutionality of which had been placed in doubt by a line of United States Supreme Court decisions (*Sniadach v. Family Finance Corporation*, 395 U.S. 337(1969); *Fuentes v. Shevin*, 407 U.S. 67(1972); *Mitchell v. W.T. Grant Company*, 416 U.S. 600 (1974) and *North Georgia Finishing Company, Inc. v. Di-Chem Inc.*, 419 U.S. 601 (1975).) As an aftermath of these cases, a three-judge federal court in *Sugar v. Curtis Circulating Company*, 383 F. Supp. 643 (SDNY 1974) declared unconstitutional the New York statute, which permitted ex parte pre-judgment attachment of the property of a defendant, because it did not grant an immediate post-seizure hearing at which the creditor-plaintiff must prove the grounds upon which the attachment was issued and the merit of his claim. The court held further that a New York defendant had no meaningful opportunity to vacate an order of attachment granted ex parte, despite the availability of a motion to vacate under the New York procedure.

On appeal, the Supreme Court, in *Carey v. Sugar*, 425 U.S. 73, (1976), remanded the case to the three-judge court, directing that the court abstain from a decision on the federal constitutional issues until the parties had the opportunity to obtain a construction of the New York law from the New York court.

Rather than awaiting construction by the New York courts, as indicated in the *Sugar* case, the Judicial Conference, on the advice of the Advisory Committee, resolved to recommend legislation to clarify and improve attachment procedures consistent

with the constitutional standards established by the United States Supreme Court. Thanks to the expeditious adoption of these recommendations by the Legislature, the uncertainty prevailing in this area has now been removed.

The basic revisions effected by the new law are: (1) generally, the nature of the particular action is no longer, in and of itself, a sufficient ground for attachment (CPLR 6201). Except for actions on a judgment, attachment for security purposes under the revised statute is available only when the defendant's conduct reveals an intent to defraud creditors or to frustrate the enforcement of the judgment that plaintiff seeks to recover (CPLR 6201(3)(4)); (2) the utility of obtaining an order of attachment on notice is enhanced by authorizing, on motion of plaintiff, the issuance of an ex parte temporary restraining order (CPLR 6210 (new)); (3) where an ex parte application for attachment is used, procedural due process is secured by a new requirement that the levy be swiftly followed by a motion by the plaintiff to confirm the attachment (CPLR 6211(b) (new)); (4) at all stages of the proceeding, whether attachment is sought on notice or ex parte, including a hearing upon a motion to confirm, vacate or modify an attachment, the burden rests upon the plaintiff to show the grounds for the attachment, and the probability of the plaintiff's ultimate success on the merits (CPLR 6211(b) (new), 6212(a), and 6223(b) (new)).

The effective protection afforded the defendant under the revised statute takes into account the fact that in attachment the property subject to seizure belongs unquestionably to the defendant, is not the subject of the action and usually is unrelated to plaintiff's claim.

In addition to the foregoing major legislation, several other bills sponsored by the Judicial Conference on the advice of the Committee were enacted into law in 1977.

Chapter 25 of the Laws of 1977 amended CPLR 2308(b) to provide that a party to an administrative proceeding, on whose behalf the administrative board has issued a subpoena, may move in the Supreme Court to compel compliance.

Chapter 26 of the Laws of 1977 amended CPLR 3011 to eliminate the requirement for an answer to a cross-claim except where the cross-claim contains a demand for an answer.

Chapter 30 of the Laws of 1977 amended CPLR 5513 applicable to all appellate courts, to expressly provide for an extension of time to cross-appeal or, where applicable, to make a motion for permission to cross-appeal, where the adverse party has taken an appeal or moved for permission to appeal.

Chapter 41 of the Laws of 1977 amended CPLR 5020(b) to increase from five to ten years after entry of judgment the time within which the attorney of record or the attorney for the judgment creditor named on the docket may execute a satisfaction-piece or partial satisfaction-piece.

In addition to these statutory changes, the Judicial Conference promulgated three proposals pursuant to section 229 of the Judiciary Law, which became effective September 1, 1977.

Proposal Number 1 amended CPLR 3113(b) to permit testimony to be recorded by stenography or other means The amendment allows the preservation of testimony on videotape. At present, a special problem exists in the case of medical witnesses. Physicians are often unable to appear in court on the trial of personal injury cases. The amendment provides that the recording is subject to such rules as may be adopted by the Appellate Division in the Judicial Department where the action is pending. This provision allows court rules to vary, if desirable, according to the needs of the Department. While not mandated, it is envisioned that each Appellate Division will promulgate rules, so that the procedural requirements be clearly set forth.

Proposal Number 2 amended CPLR 3117(a) to provide, in new paragraph 4, that the deposition of a medical witness may be used by any party without the necessity of showing unavailability or special circumstances, subject to the right of any party to move pursuant to CPLR 3103 for a protective order to prevent abuse.

Proposal Number 3 amended CPLR 5522, to relieve an appellate court from the burden of stating the grounds of its decision when it affirms a judgment or order.

Part I

Recommendations for Revision of the Provisional Remedy of Arrest and the Remedy of Replevin

Article 61

A. Arrest—Abolition of Arrest in Action for Damages

It is proposed that the provisions of the CPLR governing civil arrest be amended as follows:

AN ACT To amend the civil practice law and rules, in relation to civil arrest

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section sixty-one hundred one of the civil practice law and rules, as amended by chapter one hundred twenty-nine of the laws of nineteen hundred seventy-six, is hereby amended to read as follows:

Editor's Note: In all the proposals made in this section, matter to be deleted is in [brackets]; matter in *italics* is new.

§6101. Grounds for arrest. An order of arrest as a provisional remedy may [only] be granted *only* [:

1. where there is a cause of action to recover damages for the conversion of personal property, or for fraud or deceit, and the person to be arrested is not a parent, guardian or other person who resides in the same household with a child or children under sixteen years of age or with a mentally or physically helpless person of any age requiring constant vigilance and care, and whose principal responsibility is to actually and personally engage in the daily care and supervision of such child, children or person; or

2.] *where the court finds it probable that the plaintiff will succeed on the merits, and* where the plaintiff has demanded and would be entitled to a judgment or order requiring the performance of an act, the neglect or refusal to perform which would be punishable by the court as a contempt, and where the defendant [is not a resident of the state or] is about to depart [therefrom,] *from the state* [by reason of which non-residence or departure there is a danger that such judgment or order will be rendered ineffectual] *with the intent to render the judgment or order ineffectual.*

§2. Section sixty-one hundred eleven of such law and rules, as amended by chapter four hundred five of the laws of nineteen hundred sixty-four, is hereby amended to read as follows:

§6111. Order of arrest. An order of arrest as a provisional remedy may be granted, in the discretion of the court, without notice, before or after service of summons and at any time before [judgment] or [, in a case specified in paragraph two of section 6101,] after judgment. It shall specify the amount of bail, be indorsed with the name and address of the plaintiff's attorney and be directed to the sheriff of any county in which the defendant may be located. The order shall command the sheriff to arrest the defendant forthwith, keep him in custody and, *without delay*, bring him before the court, in the county where the arrest is made, for a hearing [within a time specified in the order] *which must be had at the earliest practicable time*, not exceeding forty-eight hours, exclusive of Sundays and public holidays, from the time of the arrest. *A copy of the order shall be served upon the defendant at the time he is first taken into custody and shall contain a notice of his right to the aid of counsel, as well as his right to apply to the court for reduction of bail and to challenge the legality of the arrest. At the hearing following arrest the court shall determine whether to confirm the order of arrest.*

§3. Subdivision (a) of rule sixty-one hundred twelve of such law and rules is hereby amended to read as follows:

(a) Affidavit; other papers. On a motion for an order of arrest the plaintiff shall show, by affidavit and such other evidence as may be submitted, sufficient facts from which the amount of bail may be determined [and

1. the existence of a cause of action sufficient to establish the right to an arrest pursuant to paragraph one of section 6101; or

2.] , the existence of a *meritorious* cause of action, [and] *the probability that plaintiff will succeed on the merits*, that he has demanded and would be entitled thereon to a judgment or order requiring the performance of an act, the neglect or refusal to perform which would be punishable by the court as a contempt, and [either] that the defendant [is not a resident of the state or that he] is about to depart [therefrom, by reason of which non-residence or departure there is a danger that such judgment or order will be rendered ineffectual] *from the state with the intent to render the judgment or order ineffectual.*

§4. Section sixty-one hundred fifteen of such law and rules is hereby amended to read as follows:

§6115. Bail; release from custody; action against bail surety. (a) Bail; release from custody. A defendant who has been arrested shall be given reasonable opportunity to procure bail and shall be released upon giving to the sheriff an undertaking, in the amount specified as bail in the order of arrest, approved by the court, [that the defendant will at all times render himself amenable to any mandate which may be issued to enforce a final judgment against him in the action or, where the order of arrest was granted under paragraph two of section 6101,] that the defendant will perform the act required by a judgment or order which may be entered against him in the action or, in default of such performance, will at all times render himself amenable to proceedings to punish him for the default. The sheriff shall immediately release the defendant, give him a receipt for any money deposited and deposit the money with the clerk of the court or, within three days, serve a copy of the undertaking upon the plaintiff, whereupon the sheriff shall be exonerated from all liability. Where money has been deposited as an undertaking and the defendant subsequently offers a sufficient bail surety, the court shall order the deposited money refunded to the defendant. Except as provided in this article, the provisions of article twenty-five apply to the acceptance of bail and justification of bail surety. If the bail is not allowed, the court shall remand the defendant to the custody of the sheriff.

(b) Action against bail surety. [Where the order of arrest was granted under paragraph two of section 6101, an] *An* action against the bail surety may be commenced at any time after the bail surety has failed to comply with the undertaking. [Where the order of arrest was granted under paragraph one of section 6101, an action against the bail surety may not be commenced until an execution against the property of the defendant delivered to the sheriff of the county in which he was arrested has been returned by that sheriff, wholly or partly unsatisfied. The sheriff shall diligently endeavor to enforce an execution so delivered to him, notwithstanding any direction he may receive from the plaintiff or his attorney.] In an action against the bail surety, it is a defense, that an execution against the property of the defendant in the original action was not delivered as prescribed, or that it was not delivered in sufficient time to enable the sheriff to enforce it, or that a direction was given, or other fraudulent or collusive means were used, by the plaintiff or his attorney to prevent enforcement.

§5. This act shall take effect on the first day of January next succeeding the date on which it shall have become a law.

Discussion

The grounds for civil arrest under section 826 of the Civil Practice Act were considerably reduced in the CPLR. Arrest both before and after judgment now is available in cases where the plaintiff would be entitled by the judgment to a remedy in equity directing the defendant to perform an act. However, CPLR 6101(1) also allows arrest in some actions at law for damages although there are fewer instances than under the Civil Practice Act.

Civil arrest at law

The provisional remedy of civil arrest in an action at law for damages was originally designed to secure the presence of the defendant so that after judgment body execution could be issued against him. The device was condemned over seventy-five years ago by the distinguished jurist, Charles Evans Hughes, later Chief Justice of the Supreme Court of the United States, who called the provision "punitive and indefensible."

In 1964 the Judicial Council went on record as opposed to civil arrest in law actions, supporting its opinion with a trenchant study (*Twelfth Annual Report of the Judicial Council of the State of New York*, Leg. Doc. (1946) No. 17, p. 337-362). In the same vein, the Third Report of the Advisory Committee on Practice and Procedure of the Temporary Commission on the Courts severely criticised arrest at law and body execution "as an undesirable vestige of imprisonment for debt" (3 Advisory Committee Report. 320, 321(1959)). The CPLR abolished execution against the person. Although the revisers had also proposed the abolition of the provisional remedy of civil arrest in actions at law for damages, the new CPLR provision, diminished in scope, reappeared in the final draft of the statute without comment. CPLR 6101(1) reads as follows:

> An order of arrest as a provisional remedy may only be granted:
> 1. where there is a cause of action to recover damages for the conversion of personal property, or for fraud or deceit, and the person to be arrested is not a parent, guardian or other person who resides in the same household with a child or children under sixteen years of age or with a mentally or physically helpless person of any age requiring constant vigilance and care, and whose principal responsibility is to actually and personally engage in the daily care and supervision of such child, children or person.

Under pre-CPLR law, when the final remedy of body execution was available in certain law actions, the provisional remedy of civil arrest, reprehensible as it was, at least served a function and purpose. It assured the presence of the defendant who could be subjected to body execution after recovery of a judgment in plaintiff's favor. With the abolition of body execution, civil arrest in law actions lost the basis for its existence. Abolition of civil arrest in law actions, therefore, was recommended by this Advisory Committee as long ago as 1970. The Advisory Committee continues to strongly recommend the abolition of civil arrest in actions at law.

Civil arrest in equity

The reason for permitting arrest as a provisional remedy in certain actions in equity is to secure the presence of the defendant so that the court may punish him for contempt if he neglects or refuses to obey a judgment or order directing him to perform some act. Under CPLR 6101(2) three conditions must be met before the court may grant an order of arrest: (1) the plaintiff must be seeking a judgment or order requiring the performance of an act the neglect or refusal to perform which would be punishable by the court as a contempt; (2) the defendant must be either a non-resident of the state or about to depart from it; and

(3) the non-residency or imminent departure of the defendant must create a danger that the judgment or order will be rendered ineffective. One commentator states that "virtually the only equity actions" which survive these restrictions are:

> (1) actions for alimony (see Domestic Relations Law §245); (2) actions to compel the conveyance of property not located in New York (see CPLR 5104); (3) actions to compel a defendant to pay money into court in tort actions (see CPLR 5105); (4) actions to compel a fiduciary to pay damages for a wilful wrong (see CPLR 5105). See McLaughlin, Supplementary Practice Commentaries (1964), McKinney's Civil Practice Law and Rules.

The Advisory Committee is not unaware that strong arguments exist for the complete abolition of the provisional remedy of civil arrest in both law and equity actions. The Committee is favorably inclined to that concept and would support any legislative effort to accomplish complete abolition. However, the history of this provisional remedy impels the Committee to recommend that the Judicial Conference at this time continue its more limited efforts to secure the abolition of civil arrest in law actions only and to secure modification of civil arrest procedures in equity actions to ensure fairness and constitutionality.

Recommended Changes and Comments

Section 6101 Recommended Change

It is recommended that CPLR 6101 be amended as follows:

§6101. Grounds for arrest. An order of arrest as a provisional remedy may [only] be ganted *only*[:

1. where there is a cause of action to recover damages for the conversion of personal property, or for fraud or deceit, and the person to be arrested is not a parent, guardian or other person who resides in the same household with a child or children under sixteen years of age or with a mentally or physically helpless person of any age requiring constant vigilance and care, and whose principal responsibility is to actually and personally engage in the daily care and supervision of such child, children or person; or

2.] *where the court finds it probable that the plaintiff will succeed on the merits, and* where the plaintiff has demanded and would be entitled to a judgment or order requiring the performance of an act, the neglect or refusal to perform which would be punishable by the court as a contempt, and where the defendant [is not a resident of the state or] is about to depart [therefrom,] *from the state* [by reason of which non-residence or departure there is a danger that such judgment or order will be

rendered ineffectual] *with the intent to render the judgment or order ineffectual.*

Comment

The proposed change would eliminate from CPLR 6101 the first subdivision thereof, which contains the first of two enumerated instances where the provisional remedy of civil arrest may be granted, namely, in the law actions of conversion, fraud and deceit, subject to certain limitations specified in this statute. Cross-references to the deleted subdivision which appear in other sections would be eliminated.

As indicated in the introductory discussion it is entirely consistent with modern procedural reform and present-day practice that the provisional remedy of civil arrest no longer be permitted in law actions. In addition to its archaic character, the subdivision is also objectionable because any selection of law actions in which an order of civil arrest may issue is bound to be arbitrary. Thus it is difficult to justify arrest in an action for conversion but deny it in other wilful torts such as assault and battery.

Finally, the elimination of body execution as a final enforcement device in any action, including those in which civil arrest is available, destroys any rational foundation for this oppressive remedy. The possible post-judgment arrest of a judgment debtor under CPLR 5250, available under special circumstances in any action where the debtor attempts to evade the enforcement of a judgment, provides no justification for a pre-judgment arrest in selected actions.

The proposed change would leave as the sole instance where an order of civil arrest may be granted the situation where this remedy is employed to prevent a defendant from leaving the state with the intent to render ineffectual certain equity judgments or orders, because compliance therewith may require the presence of the defendant at contempt proceedings.

Recent decisions of the Supreme Court, although not considering arrest directly, emphasized strongly the rights of those whose property is subjected to seizure by the use of provisional remedies. The principle of the cases extends with even greater force to the person of the defendant. (See *Sniadach v. Family Finance Corp.*, 395 U.S. 337 (1969), *Fuentes v. Shevin*, 407 U.S. 67 (1972), *Mitchell v. W.T. Grant Co.*, 416 U.S. 600 (1974) and *North Georgia Finishing Company, Inc. v. DiChem, Inc.*, 419 U.S. 601 (1975) (Cf. *Vail v. Quinlan*, 406 F. Supp. 951 (S.D.N.Y. 1976), rev'd, *Juidice v. Vail*, 97 S. Ct. 1211 (1977)).) In order to implement this principle in respect to those equitable actions where civil arrest would be retained as a provisional remedy, present subdivision 2 of CPLR 6101 would be amended to conform to the standards of due process that were incorporated by

the Legislature in 1977 in Article 62 of the CPLR (attachment) by the enactment of Chapter 860 of the Laws of 1977.

As proposed to be amended, CPLR 6101 would continue to permit civil arrest in those equity actions where now permitted, but only where the court finds it probable that the plaintiff will succeed on the merits and only where the court finds that the defendant, by reason of imminent departure from the state, intends to render the judgment or order of the court ineffectual. The mere fact that the defendant is not a resident of the state will be insufficient to provide a foundation for civil arrest.

Several changes in grammar and punctuation, in no way affecting substance, are recommended to improve the readability of the provision.

Section 6111 Recommended Change

It is recommended that CPLR 6111 be amended to read as follows:

§6111. Order of arrest. An order of arrest as a provisional remedy may be granted, in the discretion of the court, without notice, before or after service of summons and at any time before [judgment] or[, in a case specified in paragraph two of section 6101,] after judgment. It shall specify the amount of bail, be indorsed with the name and address of the plaintiff's attorney and be directed to the sheriff of any county in which the defendant may be located. The order shall command the sheriff to arrest the defendant forthwith, keep him in custody and, *without delay,* bring him before the court, in the county where the arrest is made, for a hearing [within a time specified in the order] *which must be had at the earliest practicable time*, not exceeding forty-eight hours, exclusive of Sundays and public holidays, from the time of the arrest. *A copy of the order shall be served upon the defendant at the time he is first taken into custody and shall contain a notice of his right to the aid of counsel, as well as his right to apply to the court for reduction of bail and to challenge the legality of the arrest. At the hearing following arrest the court shall determine whether to confirm the order of arrest.*

Comment

Further strengthening the constitutionality of the provisional remedy, the bill would amend CPLR 6111 to provide that an order of civil arrest shall contain, in addition to the items specified at present, a notice to defendant that he is entitled to the aid of counsel, that he may apply to the court for reduction of bail and that he may challenge the legality of the arrest. This section would also require that the order containing the notice be served by the sheriff on the defendant at the time of arrest. Finally, the amended section would stress the urgency of an

early hearing to consider the propriety of the order of arrest by requiring the sheriff to bring the defendant before the court "without delay" and to schedule the hearing within the statutory 48-hour period at "the earliest practicable time" rather than "within a time specified in the order" as provided at present.

The cross-reference to paragraph 2 of CPLR 6101 would be stricken, as no longer applicable after subdivision one thereof has been eliminated, as proposed.

Rule 6112(a) Recommended Change

It is recommended that subdivision (a) of CPLR 6112 be amended to read as follows:

(a) Affidavit; other papers. On a motion for an order of arrest the plaintiff shall show, by affidavit and such other evidence as may be submitted, sufficient facts from which the amount of bail may be determined [and

1. the existence of a cause of action sufficient to establish the right to an arrest pursuant to paragraph one of section 6101; or

2.] the existence of a *meritorious* cause of action, [and] *the probability that plaintiff will succeed on the merits,* that he has demanded and would be entitled thereon to a judgment or order requiring the performance of an act, the neglect or refusal to perform which would be punishable by the court as a contempt, and [either] that defendant [is not a resident of the state or that he] is about to depart [therefrom, by reason of which non-residence or departure there is a danger that such judgment or order will be rendered ineffectual] *from the state with the intent to render the judgment or order ineffectual.*

Comment

The proposed amendment of CPLR 6112(a) corresponds to the proposed changes of the grounds for arrest in CPLR 6101.

To conform to the United States Supreme Court decisions, Rule 6112 would be amended to provide that to issue an arrest order the court must find the existence of a meritorious cause of action and the probability that plaintiff will succeed on the merits. It would further be provided that the court must find that the defendant, whether resident or non-resident, is about to depart from the state with the intent to render the judgment or order ineffectual. It would be inequitable to arrest a person leaving the state who does not intend to render a judgment or order ineffectual. This provision would apply whether the order of arrest is issued with or without notice.

Section 6115(a)(b) Recommended Change

It is recommended that subdivisions (a) and (b) of CPLR 6115 be amended to read as follows:

(a) Bail; release from custody. A defendant who has been arrested shall be given reasonable opportunity to procure bail and shall be released upon giving to the sheriff an undertaking, in the amount specified as bail in the order of arrest, approved by the court, [that the defendant will at all times render himself amenable to any mandate which may be issued to enforce a final judgment against him in the action or, where the order of arrest was granted under paragraph two of section 6101,] that the defendant will perform the act required by a judgment or order which may be entered against him in the action or, in default of such performance, will at all times render himself amenable to proceedings to punish him for the default. The sheriff shall immediately release the defendant, give him a receipt for any money deposited and deposit the money with the clerk of the court or, within three days, serve a copy of the undertaking upon the plaintiff, whereupon the sheriff shall be exonerated from all liability. Where money has been deposited as an undertaking and the defendant subsequently offers a sufficient bail surety, the court shall order the deposited money refunded to the defendant. Except as provided in this article, the provisions of article twenty-five apply to the acceptance of bail and justification of bail surety. If the bail is not allowed, the court shall remand the defendant to the custody of the sheriff.

(b) Action against bail surety. [Where the order of arrest was granted under paragraph two of section 6101, an] *An* action against the bail surety may be commenced at any time after the bail surety has failed to comply with the undertaking. [Where the order of arrest was granted under paragraph one of section 6101, an action against the bail surety may not be commenced until an execution against the property of the defendant delivered to the sheriff of the county in which he was arrested has been returned by that sheriff, wholly or partly unsatisfied. The sheriff shall diligently endeavor to enforce an execution so delivered to him, notwithstanding any direction he may receive from the plaintiff or his attorney.] In an action against the bail surety, it is a defense, that an execution against the property of the defendant in the original action was not delivered as prescribed, or that it was not delivered in sufficient time to enable the sheriff to enforce it, or that a direction was given, or other fraudulent or collusive means were used, by the plaintiff or his attorney to prevent enforcement.

Comment

The recommended deletions would conform section 6115 to section 6101 as proposed to be amended by the excision of para-

graph one thereof which at present provides for arrest in certain civil actions at law.

Article 71

B. Replevin (Recovery of Chattle)—Conforming to Constitutional Requirements

AN ACT to amend the civil practice law and rules, in relation to the recovery of a chattel

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section seventy-one hundred two of the civil practice law and rules, as amended by chapter ten hundred fifty-one of the laws of nineteen hundred seventy-one, is hereby amended to read as follows:

7102. Seizure of chattel on behalf of plaintiff. (a) Seizure of chattel. When the plaintiff delivers to a sheriff an [affidavit,] order of seizure, *the papers on which the order was granted,* and *the* undertaking and, if an action to recover a chattel has not been commenced, a summons and complaint, he shall seize the chattel in accordance with the provisions of the order and without delay.

(b) Service. The sheriff shall serve upon the person from whose possession the chattel is seized a copy of the [affidavit,] order of seizure, *the papers on which the order was granted,* and *the* undertaking delivered to him by the plaintiff. Unless the order of seizure provides otherwise, the papers delivered to him by the plaintiff shall be personally served by the sheriff on each defendant not in default in the same manner as a summons or as provided in section 314; if a defendant has appeared he shall be served in the manner provided for service of papers generally.

(c) Affidavit. The *application for an order of seizure shall be supported by an* affidavit *which* shall clearly identify the chattel to be seized and shall state:

1. that the plaintiff is entitled to possession by virtue of facts set forth;

2. that the chattel is wrongfully held by the defendant named;

3. whether an action to recover the chattel has been commenced, the defendants served, whether they are in default, and, if they have appeared, where papers may be served upon them;

4. the value of each chattel or class of chattels claimed, or the aggregate value of all chattels claimed; [and]

5. if the plaintiff seeks the inclusion in the order of seizure of a provision authorizing the sheriff to break open, enter and search for the chattel [in the place where the chattel may be, facts sufficient under the due process of law requirement of the fourteenth amendment to the constitution of the United States to authorize the inclusion in the order of such a provision.] , *the place where the chattel is located and facts sufficient to establish probable cause to believe that the chattel is located at that place;*

6. *that no defense to the claim is known to the plaintiff; and*

7. *if the plaintiff seeks an order of seizure without notice, facts sufficient to establish that unless such order is granted without notice, it is probable the chattel will become unavailable for seizure by reason of being transferred, concealed, disposed of, or removed from the state, or will become substantially impaired in value.*

(d) Order of seizure. 1. Upon presentation of the affidavit and undertaking and upon [such terms as may be required to conform to the due process of law requirements of the fourteenth amendment to the constitution of the United States] *finding that it is probable the plaintiff will succeed on the merits and the facts are as stated in the affidavit*, the court [shall] *may* grant an order directing the sheriff of any county where the chattel is found to seize the chattel described in the affidavit and including, if the court so directs, a provision that, if the chattel is not delivered to the sheriff, he may break open, enter and search for the chattel in the place [where the chattel may be] *specified in the affidavit. The plaintiff shall have the burden of establishing the grounds for the order.*

2. [If the order of seizure does not include the provision permitted by paragraph one of this subdivision, the court shall grant a restraining order] *Upon a motion for an order of seizure, the court, without notice to the defendant, may grant a temporary restraining order* that the chattel shall not be removed from the state if it is a vehicle, aircraft or vessel or, otherwise, from its location, transferred, sold, pledged, assigned or otherwise disposed of or permitted to become subject to a security interest or lien until further order of the court. Unless the court otherwise directs, the restraining order does not prohibit a disposition of the chattel to the plaintiff. Disobedience of the order may be punished as a contempt of court.

3. *An order as provided in paragraph one may be granted without notice only if, in addition to the other prerequisites for the granting of the order, the court finds that unless such order is granted without notice it is probable the chattel will become unavailable for seizure by reason of being transferred, concealed, disposed of, or removed from the state, or will become substantially impaired in value.*

4. *An order of seizure granted without notice shall provide that the plaintiff shall move for an order confirming the order of seizure on such notice to the defendant and sheriff and within such period, not to exceed five days after seizure, as the court shall direct. Unless the motion is made within such period, the order of seizure shall have no further effect and shall be vacated on motion and any chattel seized thereunder shall be returned forthwith to the defendant. Upon the motion to confirm, the plaintiff shall have the burden of establishing the grounds for confirmation.*

(e) Undertaking. The undertaking shall be executed by sufficient surety, acceptable to the court. The condition of the undertaking shall be that the surety is bound in a specified amount, not less than twice the value of the chattel stated in the plaintiff's affidavit, for the return of the chattel to any person to whom possession is awarded by the judgment, and for payment of any sum awarded by the judgment against the person giving the undertaking. A person claiming only a lien on or security interest in the chattel may except to the plaintiff's surety.

(f) Disposition of chattel by sheriff. Unless the court orders otherwise, the sheriff shall retain custody of a chattel for a period of ten days after seizure *where seizure is pursuant to an order granted on notice, and until served with an order of confirmation where seizure is pursuant to an order granted without notice.* At the expiration of such period, the sheriff shall deliver the chattel to the plaintiff if there has not been served upon him [either] a notice of exception to plaintiff's surety, a notice of motion for an impounding or returning order, or the necessary papers to reclaim the chattel. Upon failure of the surety on plaintiff's undertaking to justify, the sheriff shall deliver possession of the chattel to the person from whom it was seized.

§2. Section seventy-one hundred four or such law and rules, as amended by chapter ten hundred fifty-one of the laws of nineteen hundred seventy-one, is hereby amended to read as follows:

§ 7104. Seizing, reclaiming or returning less than all chattels. Where the seizure of two or more chattels is required by the order of seizure, the sheriff

shall seize those chattels which can be found. Less than all of the seized chattels may be impounded, reclaimed, or returned. The value of the chattels seized, as stated in the affidavit of the plaintiff, *or as determined by the court upon application of the defendant,* shall be the value for the purposes of subsequent undertakings in the action. Unless the court orders otherwise, the sheriff may, at any time before entry of judgment, seize those chattels not yet seized; the proceedings for reclaiming, impounding or returning a chattel subsequently seized are the same as on a former seizure.

§ 3. Subdivision (a) of section seventy-one hundred eight of such law and rules is hereby amended to read as follows:

(a) Generally. Damages for wrongful taking or detention or for injury to or depreciation of a chattel may be awarded to a party. *If an order of seizure granted without notice is not confirmed as required pursuant to paragraph four of subdivision (d) of section 7102, the plaintiff, unless the court orders otherwise upon good cause shown, shall be liable to the defendant for all costs and damage including reasonable attorney's fees, which may be sustained by reason of the granting of the order of seizure without notice, and the plaintiff's liability shall not be limited to the amount of the undertaking.* Except as provided in subdivision (b), judgment shall award possession of each chattel to the prevailing party or, if the action is discontinued or dismissed, to the person from whom it was seized; and where the person awarded possession is not in possession when judgment is entered, it shall in the alternative, award the value of each chattel at the time of trial or the sum for which it was sold under section 7105, decreased by the value of the interest of an unsuccessful party.

§ 4. Section seventy-one hundred twelve of such law and rules, as added by chapter three hundred fifty-five of the laws of nineteen hundred sixty-eight, is hereby amended to read as follows:

§ 7112. Testimony by deposition to ascertain location of chattel. A party to an action to recover a chattel may move [without notice], *upon such notice as the court may direct,* upon a showing that he lacks knowledge of the location of the chattel or a part thereof, for an order to examine any person for the purpose of obtaining information with reference to such location. The order may be granted before or after service of summons and complaint, or anytime before or after final judgment, and may also restrain the adverse party from acting in violation of whatever rights the moving party may have in the chattel, upon the execution of a reasonable undertaking, with sufficient sureties, to reimburse the adverse party for all damages wrongfully caused by such restraint.

§ 5. This act shall take effect on the first day of January next succeeding the date on which it shall have become a law.

Discussion

The purpose of this proposal to amend CPLR Article 71 is twofold: (1) to assure that New York's statutory replevin procedure is constitutional and (2) to replace the vague reference to due process in the present statute with specific statements of the requirements of due process, thus affording clear guidance to the bench and bar.

In 1970, a three-judge federal court held that the provision of Article 71

> "permitting the prejudgment seizure of chattels by the plaintiff in a replevin action without an order of a judge or of a court of competent jurisdiction..."

violated the Fourth Amendment of the United States Constitution as applied to the states by the Fourteenth Amendment and

the procedural due process requirements of the Fourteenth Amendment (*LaPrease v. Raymours Furniture Company*, 315 F. Supp. 716, 725 (N.D.N.Y. 1970)).

Article 71 was amended in 1971 (Chapter 1051 of the Laws of 1971) to comply with the requirements of constitutional due process suggested by the *LaPrease* decision. However, as amended, Article 71 simply authorizes the courts to grant the order of seizure and to direct the sheriff to break into the place where the chattel is located when it is constitutional to do so (see CPLR 7102(d)(1)).

In 1972, when the United States Supreme Court decided *Fuentes v. Shevin*, 407 U.S. 67 (1972), it appeared that constitutional due process required notice and a hearing aimed at establishing the probable validity of the underlying claim before the chattel may be seized, except in unusual circumstances (see *Fuentes*, 407 U.S. at 93,97). In *Fuentes* the Court held unconstitutional the Florida and Pennsylvania replevin statutes that allowed seizure of goods by a sheriff without notice, hearing, and judicial order.

Shortly after *Fuentes* was decided, the judges and clerks of the Civil Court of the City of New York were directed to deny all applications for the prejudgment seizure of chattels unless the defendant had been given notice and an opportunity to be heard (Edward Thompson, J.S.C., Administrative Judge, *Notice to Clerks of Special Term* (July 11, 1972)).

However, in 1974, the United States Supreme Court held constitutional the Louisiana replevin statute allowing ex parte pre-judgment seizure of property (*Mitchell. v. W.T. Grant Company*, 416 U.S. 600 (1974)). Furthermore, in *Mitchell* and in a 1975 opinion, *North Georgia Finishing Co., Inc. v. Di-Chem, Inc.* 419 U.S. 601, the Court clarified due process requirements and established a balancing test to determine the constitutionality of a replevin procedure.

Due process requires "notice and...opportunity for a hearing or other safeguard against mistaken repossession..." (*North Georgia Finishing Co. Inc. v. Di-Chem, Inc.*, 419 U.S. at 606, holding unconstitutional the impounding, in a commercial litigation, of respondent's bank account pursuant to a Georgia garnishment statute because of the absence of a prompt hearing at which the creditor would be required to demonstrate at least "probable cause" to justify the garnishment). The replevin procedure must accommodate the conflicting interests of the plaintiff and defendant and minimize the risk of mistaken repossession (*Mitchell v. W.T. Grant Co.*, 416 U.S. at 607, 618). Plaintiffs are concerned that property they are entitled to possess will deteriorate in the hands of the defendant or will become unavailable. Defendants are interested in enjoying the use and possession of property they are entitled to and in being compensated for all damages if the order of seizure is mistakenly granted.

The ex parte procedure in *Mitchell* constitutionally accommo-

dated the interests of both parties and minimized the risk of mistaken repossession. The main features of that procedure are: 1) the plaintiff must establish the probability of success; 2) the plaintiff must present the factual basis of his claim instead of conclusory allegations; 3) there is judicial supervision throughout; 4) the defendant is entitled to an early post-seizure hearing in which the plaintiff must prove his claim; 5) the plaintiff must put up a bond to guarantee the defendant against damages and expenses resulting from mistaken repossession.

Whether the Fourth Amendment applies to replevin procedures was not decided by the United States Supreme Court in *Fuentes, Mitchell,* or *North Georgia Finishing Co. Inc.* However, lower federal courts have held that the Fourth Amendment applies to orders of seizure authorizing the sheriff to forcibly enter and search the place where the chattel is located (*LaPrease,* 315 F. Supp. at 721-22; *Hamrick v. Ashland Finance Co. of W. Va.,* 423 F. Supp. 1033, 1036-37 (S.D.W. Va. 1976)).

Using the guidance provided by the United States Supreme Court in *Mitchell* and *North Georgia Finishing Co. Inc.* on the procedural due process problem and by lower federal courts on the Fourth Amendment problem, it is now possible to amend Article 71 to assure that it is constitutional and to rectify

> "the failure of the 1971 amendment to Art. 71 to establish clear and easily usuable standards to guide attorneys and the courts in taking action under the statute." Edward Thompson, J.S.C., Administrative Judge, *Notice to Judges and Clerks, No. 176* (March 17, 1972) (quoting Governor Rockefeller's statement on signing the measure amending Article 71 in 1971).

This proposal to amend Article 71 establishes procedures for granting the order of seizure on notice (revised section 7102(d)(1)) and the order of seizure without notice (new section 7102(d)(3)). A temporary restraining order is available in both proceedings (see revised section 7102(d)(2)). If a seizure is made pursuant to an order of seizure without notice, new section 7102(d)(4) provides for an early hearing to minimize the risk and harm of mistaken repossession, and a new provision of section 7108(a) makes the plaintiff liable to the defendant for all damages if the order of seizure without notice is not confirmed under new section 7102(d)(4).

Because of Fourth Amendment concerns, the revised section governing the order of seizure requires probable cause to believe that the chattel is located as specified before the court may authorize the sheriff to break in and search (see revised section 7102(d)(1)). In addition, if the order of seizure is without notice, the court must find exigent circumstances under new section 7102(d)(3).

The Committee has considered the replevin provisions in light of *Shaffer v. Heitner,* 45 U.S.L.W. 4849 (U.S. Supreme Court,

June 24, 1977) which held that when the property serving as the basis for the exercise of jurisdiction by a state court in a *quasi in rem* action is completely unrelated to the plaintiff's cause of action, the presence of the property alone is not sufficient to support the state's jurisdiction under due process. The Committee has concluded that no revision of the replevin article is necessary in light of *Shaffer* because in replevin the property to be seized is the very subject matter of the underlying claim.

The Advisory Committee wishes to highlight a major change made by the bill that could otherwise be overlooked. The substitution of "may" for "shall" in section 7102(d)(1) and (2) makes replevin a discretionary remedy. This is justified because, although not formally a provisional remedy, replevin is functionally a provisional remedy since it involves a prejudgment seizure of property. All the provisional remedies save *lis pendens* are discretionary and in view of the drastic nature of the remedy and the infinite variety of possible fact patterns, replevin should also be discretionary.

Section 7102(a) Recommended Change

It is recommended that subdivision (a) of CPLR 7102 be amended to read as follows:

(a) Seizure of chattel. When the plaintiff delivers to a sheriff an [affidavit,] order of seizure, *the papers on which the order was granted,* and *the* undertaking and, if an action to recover a chattel has not been commenced, a summons and complaint, he shall seize the chattel in accordance with the provisions of the order and without delay.

Comment

The amendment to section 7102(a) provides that the documents to be delivered by the plaintiff to the sheriff shall include, among other things, the papers on which the order was granted. This amendment is not intended to change the meaning of section 7102(a). Rather, the amendment simply makes it clear that the court examines the papers, and grants the order before the order, and the papers on which the order was granted are given to the sheriff and that the sheriff then acts pursuant to court order.

Section 7102(b) Recommended Change

It is recommended that subdivision (b) of CPLR 7102 be amended to read as follows:

(b) Service. The sheriff shall serve upon the person from whose possession the chattel is seized a copy of the [affidavit,] order of seizure, *the papers on which the order was granted,* and *the* undertaking delivered to him by the plaintiff. Unless the order of seizure provides otherwise, the papers delivered to him

by the plaintiff[,] shall be personally served by the sheriff on each defendant not in default in the same manner as a summons or as provided in section 314; if a defendant has appeared he shall be served in the manner provided for service of papers generally.

Comment

The amendment to section 7102(b) provides that the documents that the sheriff shall serve upon the person from whose possession the chattel is seized include, in addition to a copy of the order of seizure, copies of the papers on which the order was granted, and the undertaking delivered to the sheriff by the plaintiff. The purpose of this amendment is to conform section 7102(b) to section 7102(a) as amended.

Section 7102(c) Recommended Change

It is recommended that subdivision (c) of section 7102 be amended as follows:

(c) Affidavit. The *application for an order of seizure shall be supported by an* affidavit *which* shall clearly identify the chattel to be seized and shall state:

1. that the plaintiff is entitled to possession by virtue of facts set forth;
2. that the chattel is wrongfully held by the defendant named;
3. whether an action to recover the chattel has been commenced, the defendants served, whether they are in default, and, if they have appeared, where papers may be served upon them;
4. the value of each chattel or class of chattels claimed, or the aggregate value of all chattels claimed; [and]
5. if the plaintiff seeks the inclusion in the order of seizure of a provision authorizing the sheriff to break open, enter and search for the chattel [in the place where the chattel may be, facts sufficient under the due process of law requirements of the fourteenth amendment to the constitution of the United States to authorize inclusion in the order of such a provision.], *the place where the chattel is located and facts sufficient to establish probable cause to believe that the chattel is located at that place;*
6. *that no defense to the claim is known to the plaintiff; and*
7. *if the plaintiff seeks an order of seizure without notice, facts sufficient to establish that unless such order is granted without notice, it is probable the chattel will become unavailable for seizure by reason of being transferred, concealed, disposed of, or removed from the state, or will become substantially impaired in value.*

Comment

The purpose of the proposed amendments to section 7102(c) is to coordinate the affidavit requirements with the factual issues

that the court must focus on in deciding whether to issue an order of seizure under revised section 7102(d)(1) or new section 7102(d)(3).

The general reference in section 7102(c)(5) to due process has been deleted and replaced by a specific statement of the due process standard. Under revised paragraph (5) of section 7102(c), if the plaintiff seeks the inclusion in the order of seizure of a provision authorizing the sheriff to break open, enter and search for the chattel, the affidavit shall state where the chattel is located and facts sufficient to establish probable cause to believe that such chattel is located there.

The statement in revised paragraph (5) is necessary to enable the court to determine under revised section 7102 (d)(1) whether the order of seizure should authorize the sheriff to break in and search for the chattel. The plaintiff's factual statement must show that the information and the informant are reliable and credible (*see Aguilar v. Texas*, 378 U.S. 108 (1964)).

Under new paragraph (6), the plaintiff must state that he knows of no defense to his claim. The statement focuses attention on the possibility that defenses to the claim exist that would defeat plaintiff's right to possession of the chattel. If an order of seizure without notice is granted and, at the hearing on the plaintiff's motion for an order of confirmation under new paragraph (4) of section 7102(d), the defendant establishes that he has a defense to the claim and that the plaintiff knew about the defense at the time of plaintiff's motion for an order of seizure without notice, the court, in ruling on the motion for an order of confirmation and in assessing damages, may consider the fact that the plaintiff stated in his affidavit that he knew of no defense.

New paragraph (6) of section 7102(c) also is in aid of section 601 of the General Business Law which prohibits a principal creditor (as defined in section 600 of the General Business Law) or his agent from claiming or attempting or threatening to enforce a right with knowledge or reason to know that the right does not exist. N.Y. General Business Law § 601.

Under new paragraph (7) of section 7102(c), if the plaintiff seeks an order of seizure without notice, he shall state facts sufficient to establish that unless such order is granted without notice it is probable that chattel will become unavailable for seizure by reason of being transferred, concealed, disposed of, or removed from the state, or will become substantially impaired in value.

The statement in new paragraph (7) of section 7102(c) is necessary to enable the court to decide under new paragraph (3) of section 7102(d) whether to grant an order of seizure without notice.

Section 7102(d) Recommended Change

It is recommended that subdivision (d) of section 7102 be amended to read as follows:

(d) Order of seizure. 1. Upon presentation of the affidavit and undertaking and upon [such terms as may be required to conform to the due process of law requirements of the fourteenth amendment to the constitution of the United States] *finding that it is probable the plaintiff will succeed on the merits and the facts are as stated in the affidavit,* the court [shall] *may* grant an order directing the sheriff of any county where the chattel is found to seize the chattel described in the affidavit and including, if the court so directs, a provision that, if the chattel is not delivered to the sheriff, he may break open, enter and search for the chattel in the place [where the chattel may be] *specified in the affidavit. The plaintiff shall have the burden of establishing the grounds for the order.*

2. [If the order of seizure does not include the provision permitted by paragraph one of this subdivision, the court shall grant a restraining order] *Upon a motion for an order of seizure, the court, without notice to the defendant, may grant a temporary restraining order* that the chattel shall not be removed from the state if it is a vehicle, aircraft or vessel or, otherwise, from its location, transferred, sold, pledged, assigned or otherwise disposed of or permitted to become subject to a security interest or lien until further order of the court. Unless the court otherwise directs, the restraining order does not prohibit a disposition of the chattel to the plaintiff. Disobedience of the order may be punished as a contempt of court.

3. An order as provided in paragraph one may be granted without notice only if, in addition to the other prerequisites for the granting of the order, the court finds that unless such order is granted without notice it is probable the chattel will become unavailable for seizure by reason of being transferred, concealed, disposed of, or removed from the state, or will become substantially impaired in value.

4. An order of seizure granted without notice shall provide that the plaintiff shall move for an order confirming the order of seizure on such notice to the defendant and sheriff and within such period, not to exceed five days after seizure, as the court shall direct. Unless the motion is made within such period, the order of seizure shall have no further effect and shall be vacated on motion and any chattel seized thereunder shall be returned forthwith to the defendant. Upon the motion to confirm, the plaintiff shall have the burden of establishing the grounds for confirmation.

Comment

Section 7102 (d) has been divided into four paragraphs: (1), (2), (3), and (4). As amended, section 7102 (d) spells out the due process requirements for an order of seizure and for authorizing the sheriff to break in and search, permits the court to grant a temporary restraining order, and establishes the procedure for the new requirement that an order of seizure without notice must be confirmed.

Revised paragraph (1) of section 7102 (d) is the core provision governing orders of seizure. It governs the order of seizure on notice and, in conjunction with new paragraphs (3) and (4) of section 7102 (d), the order of seizure without notice.

Paragraph (1), as revised, permits the court to grant an order of seizure upon presentation of the affidavit and undertaking and upon finding that it is probable that the plaintiff will succeed on the merits and the facts are as stated in the affidavit. This proposed provision states that the court "may" grant an order of seizure, rather than "shall" grant an order of seizure as at present, to make it clear that the court has discretion "to prevent unfair and mistaken deprivations of property..." (*Fuentes*, 407 U.S. at 97), and to conform the replevin procedure, which is functionally a provisional remedy, to other provisional remedies which are discretionary. The court must find it "probable" that the plaintiff will succeed on the merits because due process requires that the plaintiff establish "the probability that his case will succeed" (*Mitchell*, 416 U.S. at 609. Accord, *Fuentes*, 407 U.S. at 97; *Long Is. Trust Co. v. Porta Aluminum*, 44 A.D. 2d 118, 124 (2nd Dept. 1974)).

Revised paragraph (1) of section 7102 (d) also provides that if the facts are as stated in the affidavit, the court may include in the order of seizure a provision that, if the chattel is not delivered to the sheriff, the sheriff may break open, enter and search for the chattel in the place specified in the affidavit. Thus, if the court finds probable cause to believe that the chattel is located at the place specified in the affidavit, the court may authorize the sheriff to break into and search that place if the chattel is not delivered to the sheriff. Under the Fourth Amendment, the location of the chattel must be specified and there must be probable cause to believe that the chattel is located at that place (*LaPrease v. Raymours Furniture Company*, 315 F. Supp. 716, 721 (N.D.N.Y. 1970); *Hamrick v. Ashland Finance Co. of W. Va.*, 423 F. Supp. 1033, 1036-37 (S.D. W. Va. 1976)). The court is given discretion to permit the sheriff to break in and search because the Fourth Amendment requires that breaking and entering be allowed only in the court's sound discretion. (*Hamrick*, 423 F. Supp. at 1036).

Finally, revised paragraph (1) of section 7102 (d) provides that the plaintiff shall have the burden of establishing the grounds for the order. The purpose of this provision is to clarify that the plaintiff has the burden to establish all the grounds for the granting of the order of seizure.

Revised paragraph (2) of section 7102 (d) provides that the court, without notice to the defendent, may grant a temporary restraining order upon any motion for an order of seizure, not, as at present, only when the order of seizure does not include a provision authorizing the sheriff to break in and search. As with the granting of an order of seizure and the inclusion of the breaking and search provision, the authority to grant a tempo-

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rary restraining order is discretionary, not, as at present, mandatory.

The temporary restraining order in new paragraph (2) of section 7102 (d) provides the plaintiff with the immediate protection of having the status quo preserved without significantly interfering with the defendent's use and possession of the chattel. The temporary restraining order is available even if the court decides that the order of seizure without notice is inappropriate.

By providing for the granting of a temporary restraining order upon a motion for an order of seizure, revised paragraph (2) of section 7102 (d) encourages plaintiffs to proceed on notice. When a plaintiff weighs the need to proceed without notice against the cost of proceeding without notice (*e.g.*, the greater proof requirements under new paragraph (3) of section 7102 (d) and the greater potential damages liability under revised section 7108 (a)), the fact that a temporary restraining order is available to protect his interest in the property if he moves for an order of seizure on notice may lead him to proceed on notice.

New paragraph (3) of section 7102 (d) has been added to govern the order of seizure without notice. Under new paragraph (3), an order as provided in section 7102 (d) (1) may be granted without notice only if, in addition to the other prerequisites for the granting of the order, the court finds that unless such order is granted without notice it is probable that the chattel will become unavailable for seizure by reason of being transferred, concealed, disposed of, or removed from the state, or will become substantially impaired in value.

After the decisions in *LaPrease* and *Fuentes*, which raised doubts about the constitutionality of the ex parte order of seizure, the Civil Court of the City of New York, since 1972, has granted orders of seizure only on notice to the defendant and has protected plaintiffs in special situations by granting "stays" enjoining defendants from disposing of or destroying the chattels in dispute (see Edward Thompson, J.S.C., Administrative Judge, *Notice to Clerks of Special Term* (July 11, 1972) and *Directive to Judges, Clerks and Special Term II Clerks No. 219* (December 5, 1972)).

It is now clear that an ex parte replevin procedure is constitutional if it accommodates the interests of the plaintiff and the defendant and minimizes the risk and harm of mistaken repossession (see *Mitchell*, 416 U.S. 600). Under new paragraph (3) of section 7102 (d), the court has discretion to grant an order of seizure without notice if the court finds it probable that the plaintiff will succeed on the merits and that the facts are as stated in the affidavit and the court finds that, unless such order of seizure is granted without notice, it is probable that the chattel will become unavailable for seizure by reason of being transferred, concealed, disposed of, or removed from the state or will become substantially impaired in value.

The harm to the defendant that would flow from mistaken repossession is minimized by the early post-seizure hearing provided for in new paragraph (4) of section 7102 (d).

New paragraph (3) of section 7102(d) also takes into account the concern that a number of judges have expressed about the constitutionality of including in an ex parte order of seizure permission for the sheriff to break in and search (see, *e.g.*, *La-Prease*, 315 F. Supp. at 721-22; Edward Thompson, J.S.C., Administrative Judge, *Notice to Judges and Clerks, No. 176* (March 17, 1972)). Because the danger of mistaken repossession is greater when the order is granted ex parte and because the interference with the defendant's expectation of privacy is greater when the sheriff is permitted to break in and search, new paragraph (3) requires not only probable cause to believe that the chattel is located as specified in the affidavit (as is required by revised section 7102(d) (1)), but also that the court be satisfied that, unless the order is granted without notice, the chattel will become unavailable for seizure by reason of being transferred, concealed, disposed of, or removed from the state, or will become substantially impaired in value. This exigency requirement comports with Judge Thompson's *Notice to Judges and Clerks, No. 176* (March 17, 1972).

New paragraph (4) of section 7102(d) provides that an order of seizure granted without notice shall provide that the plaintiff shall move for an order confirming the order of seizure on such notice to the defendant and sheriff and within such period, not to exceed five days after seizure, as the court shall direct. Unless the motion is made within such period, the order of seizure shall have no further effect and shall be vacated on motion and any chattel seized thereunder shall be returned forthwith to the defendant. Upon the motion to confirm, the plaintiff shall have the burden of establishing the grounds for confirmation.

Thus, where the order of seizure without notice is used, the defendant is protected by the requirement that the seizure be swiftly followed by a hearing and order of confirmation or else the order of seizure will be void and the chattel will be returned to the defendant. At the hearing on the motion for the order of confirmation, the court has discretion to confirm the order of seizure if the plaintiff establishes all the grounds for the granting of the order of seizure without notice under section 7102 (d) (3). Where the order of seizure is granted without notice, due process requires an early noticed hearing with the plaintiff having the burden of establishing the probability of success in establishing his claim.

Although a motion to vacate is not required to void the seizure, it is permitted. A defendant may, for example, wish to secure an order vacating the seizure in order to lay a procedural foundation for recovering damages on account of improper seizure.

Section 7102(f) Recommended Change

It is recommended that subdivision (f) of CPLR 7102 be amended to read as follows:

(f) Disposition of chattel by sheriff. Unless the court orders otherwise, the sheriff shall retain custody of a chattel for a period of ten days after seizure *where seizure is pursuant to an order granted on notice, and until served with an order of confirmation where seizure is pursuant to an order granted without notice.* At the expiration of such period, the sheriff shall deliver the chattel to the plaintiff if there has not been served upon him [either] a notice of exception to plaintiff's surety, a notice of motion for an impounding or returning order, or the necessary papers to reclaim the chattel. Upon failure of the surety on plaintiff's undertaking to justify, the sheriff shall deliver possession of the chattel to the person from whom it was seized.

Comment

This amendment provides that, where seizure is pursuant to an order granted on notice, unless the court orders otherwise, the sheriff shall retain custody of the chattel for a period of ten days after seizure, and, where seizure is pursuant to an order granted without notice, unless the court orders otherwise, the sheriff shall retain custody of the chattel for a period of ten days after seizure and until served with an order of confirmation.

The purpose of this revision is to coordinate section 7102(f) with new paragraph (4) of section 7102(d), which governs the confirmation of the order of seizure without notice.

The word "either" that appears in the second sentence of section 7102(f) has been deleted for grammatical reasons.

Section 7104 Recommended Change

It is recommended that CPLR 7104 be amended to read as follows:

§ 7104. Seizing, reclaiming or returning less than all chattels. Where the seizure of two or more chattels is required by the order of seizure, the sheriff shall seize those chattels which can be found. Less than all of the seized chattels may be impounded, reclaimed, or returned. The value of the chattels seized, as stated in the affidavit of the plaintiff, *or as determined by the court upon application of the defendant,* shall be the value for the purposes of subsequent undertakings in the action. Unless the court orders otherwise, the sheriff may, at any time before entry of judgment, seize those chattels not yet seized; the proceedings for reclaiming, impounding or returning a chattel subsequently seized are the same as on a former seizure.

Comment

Section 7104 has been amended to provide that the value of the chattels seized for the purposes of subsequent undertakings

in the action shall be as stated in the affidavit or as determined by the court upon application of the defendant.

The purpose of this amendment is to make it clear that in determining the value of the chattel, the court may take into consideration the value that the defendant asserts is the value of the chattel as well as the value that the plaintiff has alleged in his affidavit. This amendment is intended to obviate the danger that the plaintiff may have overvalued or undervalued the chattel because of mistake or for other reasons. For example, the plaintiff may have undervalued the chattel in order to be able to put up a smaller bond under section 7102(e); the plaintiff may have overvalued the chattel in order to show that it is urgent that an order of seizure be granted.

Section 7108(a) Recommended Change

It is recommended that subdivision (a) of CPLR 7108 be amended to read as follows:

(a) Generally. Damages for wrongful taking or detention or for injury to or depreciation of a chattel may be awarded to a party. *If an order of seizure granted without notice is not confirmed as required pursuant to paragraph 4 of subdivision (d) of section 7102, the plaintiff, unless the court orders otherwise upon good cause shown, shall be liable to the defendant for all costs and damages, including reasonable attorney's fees, which may be sustained by reason of the granting of the order of seizure without notice, and the plaintiff's liability shall not be limited to the amount of the undertaking.* Except as provided in subdivision (b), judgment shall award possession of each chattel to the prevailing party or, if the action is discontinued or dismissed, to the person from whom it was seized; and where the person awarded possession is not in possession when judgment is entered, it shall in the alternative, award the value of each chattel at the time of trial or the sum for which it was sold under section 7105, decreased by the value of the interest of an unsuccessful party.

Comment

A new sentence has been added to section 7108(a) to provide that if an order of seizure granted without notice is not confirmed as required pursuant to section 7102(d) (4), the plaintiff, unless the court orders otherwise upon good cause shown, shall be liable to the defendant for all costs and damages, including reasonable attorney's fees, which may be sustained by reason of the granting of the order of seizure without notice, and the plaintiff's liability shall not be limited to the amount of the undertaking.

This provision protects defendants and, by not limiting damages to the amount of the undertaking, provides an incentive to plaintiffs to move on notice for an order of seizure.

Section 7112 Recommended Change

It is recommended that CPLR 7112 be amended to read as follows:

§ 7112. Testimony by deposition to ascertain location of chattel. A party to an action to recover a chattel may move [without notice], *upon such notice as the court may direct,* upon a showing that he lacks knowledge of the location of the chattel or a part thereof, for an order to examine any person for the purpose of obtaining information with reference to such location. The order may be granted before or after service of summons and complaint, or anytime before or after final judgment, and may also restrain the adverse party from acting in violation of whatever rights the moving party may have in the chattel, upon the execution of a reasonable undertaking, with sufficient sureties, to reimburse the adverse party for all damages wrongfully caused by such restraint.

Comment

A new phrase has been added to provide that a motion to examine any person for the purpose of obtaining information with reference to the location of a chattel shall be "upon such notice as the court may direct." The addition of this phrase, and the deletion of the current phrase "without notice" brings this provision into conformity with the analogous provision of the attachment law, CPLR 6220.

Part II

Procedure Where Summons Is Served Without Complaint

It is proposed that the provisions of the CPLR and the Domestic Relations Law governing appearance in actions commenced by service of the summons without a complaint be amended as follows:

AN ACT

To amend the civil practice law and rules, and the domestic relations law, in relation to procedure where summons is served without complaint

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision (b) of rule three hundred five of the civil practice law and rules, as amended by chapter seven hundred forty-nine of the laws of nineteen hundred sixty-five, is hereby amended to read as follows:

(b) Summons and notice. If the complaint is not served with the summons, the summons [may] *shall* contain or have attached thereto a notice stating the [object] *nature* of the action and the relief sought, and, [in an action for a sum

certain or for a sum which can by computation be made certain] *except in an action for medical malpractice*, the sum of money for which judgment [will] *may* be taken in case of default.

§2. Subdivision (a) of rule three hundred sixteen of such law and rules, as amended by proposal number one of the proposals of the judicial conference of nineteen hundred and seventy, is hereby amended to read as follows:

(a) Contents of order; form of publication; filing. An order for service of a summons by publication shall direct that the summons be published together with the notice to the defendant, a brief statement of the [object] *nature* of the action *and the relief sought, and, except in an action for medical malpractice, the sum of money for which judgment may be taken in case of default* and, if the action is brought to recover a judgment affecting the title to, or the possession, use or enjoyment of, real property, a brief description of the property, in two newspapers, at least one in the English language, designated in the order as most likely to give notice to the person to be served, for a specified time, at least once in each of four successive weeks, except that in a matrimonial action publication in one newspaper in the English language, designated in the order as most likely to give notice to the person to be served, at least once in each of three successive weeks shall be sufficient. The summons, complaint, or summons and notice in an action for divorce or separation, order and papers on which the order was based shall be filed on or before the first day of publication.

§3. Subdivision (a) of rule three hundred twenty of such law and rules, as amended by chapter eight hundred fifty-two of the laws of nineteen hundred seventy, is hereby amended to read as follows:

(a) Requirement of appearance. The defendant appears by serving an answer or a notice of appearance, or by making a motion which has the effect of extending the time to answer. An appearance shall be made within twenty days after service of the summons, except that if the summons was served on the defendant by delivering it to an official of the state authorized to receive service in his behalf or if it was served pursuant to section 303, paragraphs two, three, four or five of section 308, or sections 313, 314 or 315, the appearance shall be made within thirty days after service is complete. *If the complaint is not served with the summons, the time to appear may be extended as provided in subdivision (b) of section 3012.*

§4. Subdivision (b) of section thirty hundred twelve of such law and rules, is hereby amended to read as follows:

(b) [Demand for complaint] *Service of complaint where summons served without complaint.* If the complaint is not served with the summons, the defendant may serve a written demand for the complaint *within the time provided in subdivision (a) of rule 320 for an appearance. Service of the complaint shall be made within twenty days after service of the demand. Service of the demand shall extend the time to appear until twenty days after service of the complaint. If no demand is made, the complaint shall be served within twenty days after service of the notice of appearance.* [If the complaint is not served within twenty days after service of the demand, the] *The* court upon motion may dismiss the action *if service of the complaint is not made as provided in this subdivision.* A demand or motion under this [section] *subdivision* does not of itself constitute an appearance in the action.

§5. Section two hundred eleven of the domestic relations law, as amended by chapter ten hundred thirty-four of the laws of nineteen hundred seventy-three, is hereby amended to read as follows:

§211. Pleadings, proof and motions. A matrimonial action [,] shall be commenced by the service of a summons *with the notice designated in section two hundred thirty-two*, or a summons and verified complaint. [In an action where the defendant has filed a notice of appearance and demand for a copy of the complaint, such complaint shall be served within twenty days.] In a matrimonial action, a final judgment shall not be entered by default for want of appearance or pleading, or by consent, or upon the trial of an issue, without satisfactory proof of the grounds therefor. Where a complaint or counterclaim in an action for divorce

or separation charges adultery, the answer or reply thereto may be made without verifying it, except that an answer containing a counterclaim must be verified as to that counterclaim. All other pleadings in a matrimonial action shall be verified.

§6. Subdivision (a) of section two hundred thirty-two of such law, as so designated by chapter seven hundred sixty-five of the laws of nineteen hundred seventy-four, is hereby amended to read as follows:

(a) In an action to annul a marriage or for divorce or for separation, if the complaint is not personally served with the summons, the summons shall have legibly written or printed upon the face thereof: "Action to annul a marriage", "Action to declare the nullity of a void marriage", "Action for a divorce", or "Action for a separation", as the case may be, *and shall specify the nature of any ancillary relief demanded.* A judgment shall not be rendered in favor of the plaintiff upon the defendant's default in appearing or pleading, unless either (1) the summons and a copy of the complaint were personally delivered to the defendant or (2) the copy of the summons (a) personally delivered to the defendant, or (b) served on the defendant pursuant to an order directing the method of service of the summons in accordance with the provisions of section three hundred eight or three hundred fifteen of the civil practice law and rules, shall contain such notice.

§7. This act shall take effect on the first day of January next succeeding the date on which it shall have become a law.

Discussion

The purpose of the proposed amendments may be summarized as follows:

1. The trap laid by CPLR 305(b) for lawyers who rely on the permissive language of the rule should be removed; despite its permissive language the inclusion of a 305(b) notice in the summons is of vital importance if the defendant defaults. Neither the clerk nor the court may enter judgment on proof of default unless a summons containing a 305(b) notice or a summons and complaint have been served on the defendant.

Under the proposed amendment, a 305(b) notice would be mandatory whenever the summons is served without a complaint. While the practice of permitting service of a summons without a complaint would be continued, the mandatory notice provision would yield the added advantage of giving to the defendant at least basic information concerning the nature of plaintiff's claim and the relief sought. Moreover, the puzzling question of how, under the present law, the plaintiff should proceed when the defendant defaults without making a demand for the complaint after service of a bare summons would become moot. In effect, the amended rule would require the inclusion of a short form of complaint in every summons that is not accompanied by the complaint. The proposed notice requirement would be a compromise between the original CPLR draft which abolished the practice of serving a summons without complaint and the present law which permits service of a bare summons without notice of the claim asserted by the plaintiff.

2. The pre-CPLR practice of placing a time limitation on the making of a demand for the complaint would be restored. If the defendant makes neither a timely appearance nor a timely de-

mand for the complaint, he would be in default of appearing. It would then be incumbent upon the plaintiff to take proceedings for entry of judgment within one year after the default in order to avoid a dismissal of the complaint under CPLR 3215(c).

3. The present uncertainty of the effect of a demand for the complaint upon the time to appear would be removed. It would be expressly provided that a timely demand extends the time to appear.

4. If the defendant appears timely after service of a summons without complaint, he would be relieved of the burden of making a demand for the complaint. A plaintiff who commences an action by serving a summons without complaint would automatically be required to serve the complaint if the defendant appears timely. Defendant's double risk of default under the pre-CPLR practice (for failure to appear and for failure to make a timely demand) would thus be avoided. If the plaintiff fails to serve the complaint within twenty days after the service of the notice of appearance, the complaint would be subject to dismissal upon motion of the defendant.

The genesis of the present law and its deficiencies are explored in detail in a law review article authored by Professors Adolf Homburger and Joseph Laufer (see Homburger and Laufer, *Appearance and Jurisdictional Motions in New York*, 14 Buffalo L. Rev. 374, 393-400 (1965)). The recommendations of the Advisory Committee are in part based on this article.

The question may be asked whether the results achieved by the proposed amendments could not have been effected more simply by adopting a practice requiring the service of a summons and complaint at the same time, as originally proposed by the revisers (1 N.Y. Adv. Comm. Rpt. 60 (1957)). The answer is that in emergencies the use of the summons without a complaint remains a useful device. An attorney may be away from his office when he learns of the defendant's temporary presence in the jurisdiction. The time consumed in preparing a complaint might make the difference between using or losing an opportunity to obtain personal jurisdiction of a nonresident. As long as we adhere for better or for worse to the doctrine of "transient jurisdiction," we might as well enable the lawyer to use it. To write out a summons in longhand takes only minutes even if it contains a 305(b) notice; not so to prepare even a simple emergency complaint. Moreover, articulating the grievances in a pleading often embitters the atmosphere and dims the hope for a settlement. The service of a summons without a complaint avoids these undesirable side effects; yet, it evidences the claimant's determination to press his claim (see Homburger and Laufer, *supra* at 394).

Rule 305(b) Recommended Change

It is recommended that subdivision (b) of CPLR 305 be amended to read as follows:

(b) Summons and notice. If the complaint is not served with the summons, the summons [may] *shall* contain or have attached thereto a notice stating the [object] *nature* of the action and relief sought, and, [in an action for a sum certain or for a sum which by computation can be made certain] *except in an action for medical malpractice,* the sum of money for which judgment [will] *may* be taken in case of default.

Comment

The permissive language now contained in CPLR 305(b) ("the summons may contain . . . .") constitutes a serious trap for the unwary practitioner who is not familiar with the provisions of CPLR 3215(c) governing proof of default. Under that provision, absent proof of service of the summons and complaint, a 305(b) notice is needed to preserve plaintiff's right to obtain a default judgment (*McDermott v. Hoening*, 32 A.D. 2d 838 (2nd Dept. 1969); see *Weinstein-Korn-Miller*, New York Practice § 305.12; Homburger and Laufer, *supra* at 397-398). It is not clear whether and how a plaintiff who has served an unaccompanied summons without notice may, on his own initiative, serve the complaint on the defendant who neither appeared nor made a demand for the complaint. Pre-CPLR law was to the effect that plaintiff could not serve a complaint unless the defendant had demanded it. *Gluckselig v. H. Michaelyan Inc.*, 132 Misc. 783 (Supreme, New York, 1928) aff'd mem. 225 A.D. 666 (lst Dept 1928). However, in a recent case, *Keyes v. McLaughlin*, 49 A.D. 2d 974 (3rd Dept 1975) the court pursuant to CPLR 3215(c) dismissed an action for failure to take proceedings for entry of a default judgment within one year after default on the theory that the plaintiff could have served a complaint without demand, thereby laying the foundation for entry of a default judgment. The court did not discuss pre-CPLR law the contrary nor did it concern itself with the question how the complaint might have been served (see Homburger and Laufer, *supra* at 398-399). It should also be noted that a later First Department case seemed to confirm the traditional view that a plaintiff who serves the summons without complaint is under no obligation, at least for the purpose of avoiding a dismissal under CPLR 3012(b), to serve the complaint unless the defendant demands it (*Ardila v. Roosevelt Hospital*, 55 A.D. 2d 557 (1st Dept 1976)).

Under the proposed amendment the uncertainty now surrounding default practice under CPLR 305(b) and 3215(c), (e) would be avoided by the mandatory notice provision. That provision would be in harmony with modern notions of notice pleading. It would assure the defendant at least basic information concerning the nature of the plaintiff's claim and the relief sought. In order to accomplish that aim the content of the mandatory notice would be clarified. The language of the rule which now requires a statement of "the object of the action and the relief sought" would be amended to provide instead for a brief

recital of "the nature of the action and the relief sought." The present verbiage could be misread as a redundancy denoting merely a requirement to specify the type of relief sought in terms of damages or other remedy. Such misreading led to the downfall of the plaintiff's action in a negligence case where the court voided a summons served without complaint on the ground that it failed to disclose the object of the action, even though it set forth the damages demanded (*Arden v. Loew's Hotels Inc.*, 40 A.D. 2d 894 (3rd Dept 1972)).

A different kind of technical defect that may render an unaccompanied summons jurisdictionally void for default purposes is typified by *A.J. Eckert Co. v. George A. Fuller Co., Inc.* (51 A.D. 2d 844, 3rd Dept 1976). In that case an application to the court for judgment by default was denied when the summons stated the object of the action ("claim for the balance due under a contract and damages for breach thereof") but failed to set forth the sum for which judgment would be taken in case of default as required by CPLR 3215(b). To avoid mishaps of that sort the present requirement that "in an action for a sum certain or for a sum which by computation can be made certain, the notice must state the sum of money for which judgment will be taken" would be expanded to include any kind of action seeking monetary relief, whether liquidated or unliquidated. The sole exception would be an action to recover damages for medical malpractice where CPLR 3017(c) bars the pleader from stating the amount of damages sought. To require a statement of the sum to which the pleader deems himself entitled in the summons would flout the purpose of that statute.

The proposed amplification of language with respect to the statement of money damages, liquidated or unliquidated, reiterates more compactly the present practice. The language in rule 305 (b) proposed to be deleted, which refers to actions for a sum certain,was derived from Rule 46 of the former rules of civil practice, which provided for a short form of complaint for enumerated categories of contract actions (*Weinstein-Korn-Miller*, New York Civil Practice, §305.12). Chapter 749 of the Laws of 1965 amended Rule 305(b) to permit service of a notice, contained in the summons or attached to it, stating the object of the action and the relief sought, as well as the original notice where the suit was for a sum certain. Thus, under the present law, a notice may be served in any action. If the action is one involving liquidated damages, the sum certain or able to be made certain by computation must be stated in the 305(b) notice, in order to allow entry of a default judgment by the clerk (CPLR 3215 (a)). If the damages are unliquidated, the sum must be stated in the 305(b) notice, under the rubric of "relief sought" in order to satisfy the requirement of CPLR 3215(b) that the judgment by default "not exceed in amount or differ in type from that demanded in the complaint or stated in the notice served pursuant to subdivision (b) of rule 305." The same applies in an equitable

proceeding, such as for specific performance or an injunction, where alternative or incidental money damages are demanded. In short, the proposed language serves as a reminder that a statement of the monetary relief sought in a summons served without complaint is always needed in order to protect plaintiff's rights on default.

Matrimonial actions would be governed by analogous amendments to Domestic Relations Law, sections 211 and 232. Proposed amendments of these sections, designed to alert litigants to the requirement of specifying the nature of any ancillary relief sought, are discussed *infra* at pages 279 and 280.

Finally, the question may be asked whether a deviation from the notice standards prescribed by rule 305(b), as proposed to be amended, would constitute a jurisdictional defect or a mere irregularity. The complete absence of any notice would certainly constitute a jurisdictional defect when the summons is not accompanied by the complaint (see *McDermott v. Hoenig*, 32 A.D. 2d 838 (2d Dept 1969)). In accordance with present practice, the court would have to determine whether a defective notice is correctible or, under the circumstances of a particular case, renders the summons jurisdictionally void for purposes of a default proceeding.

Rule 316(a) Recommended Change

It is recommended that subdivision (a) of CPLR 316 be amended to read as follows:

(a) Contents of order; form of publication; filing. An order for service of a summons by publication shall direct that the summons be published together with the notice to the defendant, a brief statement of the [object] *nature* of the action and *the relief sought, and, except in an action for medical malpractice, the sum of money for which judgment may be taken in a case of default* and, if the action is brought to recover a judgment affecting the title to, or the possession, use or enjoyment of, real property, a brief description of the property, in two newspapers, at least one in the English language, designated in the order as most likely to give notice to the person to be served, for a specified time, at least once in each of four successive weeks, except that in a matrimonial action publication in one newspaper in the English language, designated in the order as most likely to give notice to the person to be served, at least once in each of three successive weeks shall be sufficient. The summons, complaint, or summons and notice in an acton for divorce or separation, order and papers on which the order was based shall be filed on or before the first day of publication.

Comment

The proposed amendment would conform the notice provisions of CPLR 316(a) to analogous provisions in CPLR 305(b).

Rule 320(a) Recommended Change

It is recommended that subdivision (a) of CPLR 320 be amended as follows:

(a) Requirements of appearance. The defendant appears by serving an answer or a notice of appearance, or by making a motion which has the effect of extending the time to answer. An appearance shall be made within twenty days after service of the summons, except that if the summons was served on the defendant by delivering it to an official of the state authorized to receive service in his behalf or if it was served pursuant to section 303, paragraphs two, three, four or five of section 308, or sections 313, 314 or 315, the appearance shall be made within thirty days after service is complete. *If the complaint is not served with the summons, the time to appear may be extended as provided in subdivision (b) of section 3012.*

Comment

CPLR 320 (a), which governs appearance procedure, would be amended by adding a final sentence to make a cross-reference to subdivision (b) of CPLR 3012 which as proposed to be amended would grant an extension of the time to appear to a defendant who makes a timely demand for the complaint (see *infra*).

Section 3012(b) Recommended Change

It is recommended that subdivision (b) of CPLR 3012 be amended to read as follows:

(b) [Demand for complaint] *Service of complaint where summons served without complaint.* If the complaint is not served with the summons, the defendant may serve a written demand for the complaint *within the time provided in subdivision (a) of rule 320 for an appearance. Service of the complaint shall be made within twenty days after service of the demand. Service of the demand shall extend the time to appear until twenty days after service of the complaint. If no demand is made, the complaint shall be served within twenty days after service of the notice of appearance.* [If the complaint is not served within twenty days after service of the demand the] *The* court upon motion may dismiss the action *if service of the complaint is not made as provided in this subdivision.* A demand or motion under this [section] *subdivision* does not of itself constitute an appearance in the action.

Comment

Under former practice, in an action commenced by service of a summons without complaint, default was avoided by service of notice of appearance and demand for service of complaint, both steps time-limited to 20 days. In restoring the pre-CPLR practice of permitting commencement of an action by service of a summons without complaint, the CPLR eliminated the time limit for

the demand, as unnecessary (Sen. Fin. Comm. Rep. (Leg. Doc. No. 15) 418 (1961)). While this deviation from C.P.A. practice spared the defendant from exposure to a double risk of default, viz., failure to serve a notice of appearance and failure to serve a demand for a complaint, the solution produced undesirable side effects. It introduced uncertainty as to how to proceed where a summons is served without a complaint.

The basic problems created by the pertinent provision, CPLR 3012(b), are the uncertainty as to when a demand for a complaint shall be made if a summons is served without a complaint, the uncertainty as to whether and how the complaint may be served without a demand by the defendant, and the effect of the service of a demand for a complaint upon the time to appear (see Homburger and Laufer, *supra* at 395-398).

These questions would be resolved by providing time limits in CPLR 3012(b) which would cover all contingencies, and by requiring service of the complaint without a demand when defendant appears timely after service of an unaccompanied summons.

More specifically, the proposed amendment would provide that the demand be made within the time provided in CPLR 320(a) for an appearance, normally 20 days after service of summons.

It would further be provided that service of the complaint shall be made within 20 days after the service of the demand, or if no demand is made, within 20 days after service of the notice of appearance.

Regarding the problem of the effect of the service of the demand for a complaint upon the time to appear, the proposed amendment would provide that service of the demand would extend the time to appear until 20 days after service of the complaint.

It would also be provided that the court upon motion may dismiss the action if timely service of the complaint is not made.

Finally, if the defendant neither makes an appearance nor a demand for the complaint, he would be in default of appearing. It would then be incumbent upon the plaintiff to take proceedings for entry of judgment within one year after the default in order to avoid a dismissal of the complaint under CPLR 3215(c). The proposed mandatory 305(b) notice would assure that plaintiff could so proceed. On the other hand, if defendant appears timely it would be incumbent upon the plaintiff to serve the complaint within 20 days after service of the notice of appearance without imposing the burden of making a demand on the defendant (see Homburger and Laufer, *supra* at 396).

Domestic Relations Law §211 Recommended Change

It is recommended that Domestic Relations Law §211 be amended to read as follows:

§211. Pleadings, proof and motions. A matrimonial action [,] shall be commenced by the service of a summons *with the notice*

designated in section two hundred thirty-two, or a summons and verified complaint. [In an action where the defendant has filed a notice of appearance and demand for a copy of the complaint, such complaint shall be served within twenty days.] In a matrimonial action, a final judgment shall not be entered by default for want of appearance or pleading, or by consent, or upon the trial of an issue, without satisfactory proof of the grounds therefor. Where a complaint or counterclaim in an action for divorce or separation charges adultery, the answer or reply thereto may be made without verifying it, except that an answer containing a counterclaim must be verified as to that counterclaim. All other pleadings in a matrimonial action shall be verified.

Comment

Domestic Relations Law §211 would be amended in two respects.

The proposed amendment provides that when a matrimonial action is commenced by a summons without a complaint there shall be inscribed on the summons the notice required in Domestic Relations Law §232 in order to enter default judgment.

In addition, the sentence would be stricken which now requires that in an action where the defendant has filed a notice of appearance and demand for a copy of the complaint, service of the complaint shall be made within twenty days. That requirement is inconsistent with CPLR 3012(b), as proposed to be amended, and therefore should be excised.

As will be recalled, CPLR 3012(b) would be amended to provide, *inter alia,* that no demand for the complaint is required where the plaintiff serves a summons without a complaint and the defendant makes a timely appearance. The plaintiff, in that case, must serve a copy of the complaint within 20 days after service of the notice of appearance.

Domestic Relations Law §232(a) Recommended Change

It is recommended that subdivision (a) of section 232 of the Domestic Relations Law be amended to read as follows:

a. In an action to annul a marriage or for divorce or for separation, if the complaint is not personally served with the summons, the summons shall have legibly written or printed upon the face thereof: "Action to annul a marriage," "Action to declare the nullity of a void marriage," "Action for a separation," as the case may be, *and shall specify the nature of any ancillary relief demanded.* A judgment shall not be rendered in favor of the plaintiff upon the defendant's default in appearing or pleading, unless either (1) the summons and a copy of the complaint were personally delivered to the defendant; or (2) the copy of the summons (a) personally delivered to the defendant, or (b) served on the defendant pursuant to an order directing the method of service of the summons in accordance with the provisions of

section three hundred eight or three hundred fifteen of the civil practice law and rules, shall contain such notice.

Comment

In matrimonial actions commenced by service of a summons without a complaint, lawyers usually but not always specify ancillary relief sought, such as alimony, counsel fees, child support and child custody. Courts have frowned upon the use of a summons, bearing only the notice required by section 232 of the Domestic Relations Law, in default proceedings, when the defendant seeks ancillary relief. However, notwithstanding judicial criticism, such relief, not referred to in the summons, has been granted. For example, in *Reeves v. Reeves,* 57 A.D. 2d 661, 662 (3rd Dept. 1977), the court said:

> It is clear that when a matrimonial action is commenced by service of a summons without a complaint it is required only that the defendant be given notice of the nature of the action or the type of matrimonial action instituted against him by inscribing "Action for a divorce" etc., as the case may be, upon the face of the summons (Domestic Relations Law, § 232, subd. [a]). While the summons served upon the defendant refers only to the fact that it is an "Action for a divorce," it does not follow that the court's jurisdiction is thereby circumscribed and confined to the grant of that bare relief alone. Invariably, when it is sought to terminate the marital relationship, the court must necessarily give consideration to and dispose of questions relating to the support and maintenance of the wife. As an appropriate safeguard for the rights of the parties, it would unquestionably be desirable to require that the summons served on the defendant in a matrimonial action also alert him to the fact that the plaintiff is seeking collateral relief such as was granted here. However, it is for the Legislature, not the courts, to legislate.

See also *Goulet v. Goulet,* 67 Misc. 2d 1074, (Supreme, Monroe, 1971); *Giella v. Giella,* 55 Misc. 2d 727-729 (Supreme, Richmond, 1968).

Under the proposed amendment the practice of granting ancillary relief in matrimonial default proceedings without proper notice to the defendant would be abandoned as undesirable, constitutionally dubious and out of harmony with the general provisions of the CPLR, as proposed to be amended. However, under the amendment to Domestic Relations Law, section 232, while it would be required in a matrimonial action to state in the notice the nature of the ancillary relief sought, *e.g.*, "alimony" or "child support," it would not be required to specify the amount of money demanded.

Part III
Additional Recommended Changes

Rule 2216 (repeal) Recommended Change

It is proposed that Rule 2216 be repealed.

Comment

CPLR 2216, which governs defaults on motions, provides that a) in New York City, where a party demanding relief fails to appear, the relief demanded by him shall be denied; b) outside of New York City, where a party demanding relief fails to appear, but submits the moving papers to the court, the relief demanded by him may be granted.

The word "appear" as used in this rule is ambiguous. It may be construed to require personal attendance of counsel in court and oral argument on the return day (see 22 NYCRR 752.11(c)), or to allow submission of papers in court without personal appearance by counsel, upon a stipulation by counsel to submit (see 22 NYCRR 660.8(a) (8)), or even submission of papers by mail.

Rule 2216, which has been amended several times, has caused much confusion among practitioners. The subject matter of the provision is governed best by court rule which takes calendar conditions and prevailing practice into account. It is preferable to leave details such as this, which by their very nature vary from place to place, to local court rule. See Siegel, Practice Commentaries, c. 2216:2, McKinney's Civil Practice Law and Rules.

Section 3101(a) (3); Rule 3117(a) (4) Recommended Change

It is recommended that paragraph (3) of subdivision (a) of CPLR 3101 and paragraph 4 of subdivision (a) of CPLR 3117 be amended to read as follows:

§3101. Scope of disclosure. (a) Generally. There shall be full disclosure of all evidence material and necessary in the prosecution or defense of an action, regardless of the burden of proof, by:

(1) a party, or the officer, director, member, agent, or employee of a party;

(2) a person who possessed a cause of action or defense asserted in the action;

(3) a person about to depart from the state, or without the state, or residing at a greater distance from the place of trial than one hundred miles, or so sick or infirm as to afford reasonable grounds of belief that he will not be able to attend the trial, *or a person authorized to practice medicine who has provided medical care or diagnosis to the party demanding disclosure, or who has been retained by him as an expert witness;* and

(4) any person where the court on motion determines that there are adequate special circumstances.

Rule 3117. Use of depositions. (a) Impeachment of witnesses; parties; unavailable witnesses. At the trial or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition, so far as admissible under the rules of evidence, may be used in accordance with any of the following provisions:

4. the deposition of a [medical witness] *person authorized to practice medicine* may be used by any party without the necessity of showing unavailability or special circumstances, subject to the right of any party to move pursuant to section 3103 to prevent abuse.

Comment

This measure would amend CPLR 3101(a)(3) to permit a party to obtain full disclosure of all evidence material and necessary in the prosecution or defense of an action from a person authorized to practice medicine, who has provided medical care or diagnosis to the party demanding disclosure or who has been retained by him as an expert witness, without a showing of unavailability or special circumstances. The present requirement that the deposition of a non-party physician may be obtained only upon such a showing is retained in respect to physicians not covered by the terms of the proposed amendment.

There is a strong judicial trend toward liberalizing the "special circumstances" provision of CPLR 3101(a). In *Villano v. Conde Nast Publications, Inc.*, 46 A.D. 2d 118 (1st Dept 1973) the defendant moved to examine the plaintiff's treating physicians in an action for invasion of privacy, claiming "special circumstances." The Appellate Division reversed Special Term's denial of the motion, stating that a mere showing by the lawyer that he needs such witnesses' pretrial depositions to prepare fully for the trial should suffice as a "special circumstance."

A need remains for a statutory provision clearly permitting a party to take the deposition, without the necessity of showing special circumstances, of a person authorized to practice medicine who has provided medical care or diagnosis to that party, or who has been retained by him as an expert witness. By filling that need the proposed amendment would provide an additional and valuable tool for the trial lawyer. It would ease the burden on litigants, lawyers, courts and physicians, especially where shortages of physicians exist. Coupled with CPLR 3117(a) (4) it would reduce the expense of litigation occasioned by physicians personally testifying at trial.

CPLR 3117(a) (4), as amended in 1977, permits the use of a deposition of a "medical witness" at the trial without the laying of a foundation or showing of special circumstances. Since the term "medical witness" may be ambiguous, this bill would amend the provision to substitute the term "a person authorized to practice medicine." Under this provision, a deposition of a

person authorized to practice medicine which was properly taken under CPLR 3101(a), with or without a court order, could be used at trial without showing special circumstances.

Section 3130 Recommended Change

It is recommended that CPLR 3130 be amended to read as follows:

§3130. Use of interrogatories. After commencement of an action, [other than in an action to recover damages for an injury to property, or a personal injury, resulting from negligence, or wrongful death,] any party may serve upon any other party written interrogatories. A party may not serve written interrogatories on another party and also demand a bill of particulars pursuant to section 3041 without leave of court.

Comment

This bill would amend CPLR 3130 to allow the use of interrogatories in all actions, as provided in the Federal Rules of Civil Procedure (see Fed. Rules Civ. Proc. 33, 28 U.S.C.A.). At present, interrogatories may not be utilized in negligence actions and wrongful death actions. In *Allen v. Minskoff*, 38 N.Y. 2d 506 (1976), the Court, while reluctantly applying present statutory proscriptions in respect to interrogatories, expressed the hope that ". . . the Legislature may wish to reconsider the statute now limiting the use of interrogatories in certain actions . . ."

The 1961 proposals for the revision of civil practice included the use of interrogatories as a disclosure device (6 Sen. Fin. Comm. Rpt. 17-20, Leg. Doc. (1962) No. 8). After public hearings, it appeared that a large segment of the bar, particularly the negligence bar, was opposed to the use of interrogatories; hence, interrogatories were not included in the 1962 proposals (6 Sen. Fin. Comm. Rpt. 21, Leg. Doc. (1962) No. 8). In 1963, in a Judicial Conference bill enacted into law, interrogatories were approved (1963 N.Y. State Leg. Ann. 53, 82). However, the amendment provided that interrogatories could not be used in negligence and wrongful death actions, because the negligence bar apprehended harassment. The CPLR Advisory Committee is of the opinion that the fear of harassment is largely unfounded. There is no reason to think that the negligence bar would fare any differently than the rest of the bar (1963 N.Y. Leg. Ann. 82). In addition, much of the opposition in past years to proposals to extend interrogatories to negligence cases apparently was aimed not at those proposals, but at another proposal often linked to the extension of interrogatories, namely, abolition of the bill of particulars. A majority of the Advisory Committee, it should be noted, favors retention of the bill of particulars. Where interrogatories could be abused, appropriate safeguards are available: a protective order (CPLR 3103), a motion to strike out an interrogatory (CPLR 3133), and the provision that interrogatories

and bills of particulars may not be employed in the same case without leave of court (CPLR 3130).

Bills of particulars, valuable as they are, by no means constitute adequate substitutes for written interrogatories. Bills of particulars, but not written interrogatories, must be confined to issues on which the responding party has the burden of proof. Unlike written interrogatories, bills of particulars cannot properly be used to obtain facts from other parties relating to claims or defenses asserted in the proponent's own pleadings (*Meltsner v. Posmanick*, 197 Misc. 1056, 1057 (Mun. Ct. 1950); *Silberfield v. Swiss Bank Corp.*, 263 App. Div. 1017 (2d Dept 1942)). Interrogatories thus serve an important disclosure purpose, supplementary to and, at times, replacing depositions which are far more expensive. Litigants should not be deprived of the use of interrogatories in actions for negligence or wrongful death which still today constitute the greatest bulk of litigation.

CPLR Rule 3212 Recommended Change

It is recommended that CPLR 3212 be amended to read as follows:

Rule 3212. Motion for summary judgment. (a) Time; kind of action. [Except as provided in subdivision (d) with respect to a matrimonial action, any] *Any* party may move for summary judgment in any action, after issue has been joined.

(b) Supporting proof; grounds; relief to either party. A motion for summary judgment shall be supported by affidavit, by a copy of the pleadings and by other available proof, such as depositions and written admissions. The affidavit shall be by a person having knowledge of the facts; it shall recite all the material facts; and it shall show that there is no defense to the cause of action or that the cause of action or defense has no merit. The motion shall be granted if, upon all the papers and proof submitted, the cause of action or defense shall be established sufficiently to warrant the court as a matter of law in directing judgment in favor of any party. Except as provided in subdivision (c) of this rule the motion shall be denied if any party shall show facts sufficient to require a trial of any issue of fact. If it shall appear that any party other than the moving party is entitled to a summary judgment, the court may grant such judgment without the necessity of a cross-motion.

(c) Immediate trial. If it appears that the only triable issues of fact arising on a motion for summary judgment relate to the amount or extent of damages, or if the motion is based on any of the grounds enumerated in subdivision (a) or (b) of rule 3211, the court may, when appropriate for the expeditious disposition of the controversy, order an immediate trial of such issues of fact raised by the motion, before a referee, before the court, or before the court and a jury, whichever may be proper.

[(d) Matrimonial actions. In a matrimonial action, a motion for summary judgment may be made only on the basis of documen-

tary evidence or official records which establish a defense to the cause of action. The motion shall be granted if upon such evidence or records, the defense shall be established sufficiently to warrant the court as a matter of law in directing judgment.]

[(e)] *(d)* Partial summary judgment; severance. [Except as provided in subdivision (d) with respect to a matrimonial action, in] *In* any action summary judgment may be granted as to one or more causes of action, or part thereof, in favor of any one or more parties, to the extent warranted, on such terms as may be just. The court may also direct:

1. that the cause of action as to which summary judgment is granted shall be severed from any remaining cause of action; or

2. that the entry of the summary judgment shall be held in abeyance pending the determination of any remaining cause of action.

[(f)] *(e)* Facts unavailable to opposing party. Should it appear from affidavits submitted in opposition to the motion that facts essential to justify opposition may exist but cannot then be stated, the court may deny the motion or may order a continuance to permit affidavits to be obtained or disclosure to be had and may make such other order as may be just.

[(g)] *(f)* Limitation of issues of fact for trial. If a motion for summary judgment is denied or is granted in part, the court, by examining the papers before it and, in the discretion of the court, by interrogating counsel, shall, if practicable, ascertain what facts are not in dispute or are incontrovertible. It shall thereupon make an order specifying such facts and they shall be deemed established for all purposes in the action. The court may make any order as may aid in the disposition of the action.

Comment

It is recommended that the Civil Practice Law and Rules be amended to permit the entry of summary judgment for the plaintiff or the defendant in a matrimonial action as in any other action.

Under present law no summary judgment or partial summary judgment may be entered in the plaintiff's favor in a matrimonial action, and summary judgment in the defendant's favor is permissible only on the basis of documentary evidence or official records which establish a defense.

It is well settled in New York that a summary judgment may be granted only if it appears from the affidavits and other available proof that the issues tendered by the pleadings are not genuine, but mere paper issues devoid of any substance that merits a trial. Whenever there is any reasonable doubt about the facts underlying the controversy, the courts have denied summary relief. In view of this cautious approach, the limitations placed on the use of summary judgment in matrimonial actions appears unwarranted.

The proposed amendment would bring the provisions of CPLR 3212 into harmony with the proposed changes in section 211 of the Domestic Relations Law, discussed below. It is recommended that the amendments to CPLR 3212 and Domestic Relations Law section 211 be incorporated in a single bill.

Domestic Relations Law §211 Recommended Change

It is recommended that Domestic Relations Law §211 be amended to read as follows:

§211. Pleadings, proof and motions. A matrimonial action [,] shall be commenced by the service of a summons or a summons and verified complaint. In an action where the defendant has filed a notice of appearance and demand for a copy of the complaint, such complaint shall be served within twenty days. In a matrimonial action, a final judgment shall [not] be entered by default for want of appearance or pleadings, or by consent, [or upon the trial of an issue, without satisfactory proof of the grounds therefor] *only upon competent oral proof or upon written proof that may be considered on a motion for summary judgment.* Where a complaint or counterclaim in an action for divorce or separation charges adultery, the answer or reply thereto may be made without verifying it, except that an answer containing a counterclaim must be verified as to that counterclaim. All other pleadings in a matrimonial action shall be verified.

Comment

Domestic Relations Law §211 now provides that in matrimonial actions a final judgment shall not be entered by default for want of appearance or pleadings or by consent, or upon the trial of an issue, without satisfactory proof therefor. Under the practice prevailing in most parts of the state, oral testimony is the only "satisfactory proof" in such cases. However, oral testimony has become a mere formality in default and consent cases involving no questions of custody, alimony, or support for children. Rule 660.4(b)(3) of the Rules of the Supreme Court, New York and Bronx Counties (22 NYCRR 660.4(b) (3)), which has been in effect since June, 1976, permits the entry of default judgments in uncontested matrimonial actions in the First Department on the pleadings and affidavits. The experience under this rule has been very successful, and warrants the statewide adoption of the proposed procedure.

The amendment proposed to Domestic Relations Law §211 would provide that a default or consent judgment may be entered in matrimonial actions "only upon competent oral proof or upon written proof that may be considered on a motion for summary judgment." The proposed amendment would make it clear that, whenever appropriate, default judgment in matrimonial actions may be entered on affidavits, a copy of the pleadings and other available proof, such as depositions and written admissions.

Rule 5516 Recommended Change

It is recommended that CPLR 5516 be amended to read as follows:

Rule 5516. Motion for permission to appeal. A motion for permission to appeal shall be noticed to be heard at [the next motion day more than seven] *least eight* days *and not more than fifteen days* after notice of the motion is served.

Comment

CPLR 5516, which governs motions for permission to appeal, and which now provides that such motion shall be noticed to be heard "at the next motion day more than seven days" after the notice is served, would be amended to provide instead that such motions shall be noticed to be heard "at least eight days and not more than fifteen days" after the notice is served. The proposed amendment would clarify the rule so as to assure avoidance of potential problems.

The phrase "more than seven days" means the same as "at least eight days" and therefore a motion under CPLR 5516 served by mail must be made on 11 days' notice, pursuant to CPLR 2103 (b) (2) which provides, *inter alia*, that "where a period of time prescribed by law is measured from the service of a paper and service is by mail, three days shall be added to the prescribed period."

The wording of CPLR 5516, however, could easily be misread by the practitioner to result in the addition of 3 days to 7 days in the instance of service by mail. This would result in a jurisdictionally defective motion (see *Weinstein-Korn-Miller*, New York Civil Practice, §5516.01).

The difficulty is complicated by the fact that CPLR 5516 requires a motion for permission to appeal to be noticed to be heard "at the next motion day." This phrase could be literally construed to mean that there is only one day on which such motion can be made returnable, rather than on any of the days specified in the rules of the appellate courts.

The proposed change would allow the clerk to move the return date further ahead if necessary to prevent a jurisdictional defect, thus conforming the language to the intent of the draftsmen (see *Weinstein-Korn-Miller*, New York Civil Practice, §5516.01.)

CPLR Section 8001(a) Recommended Change

It is recommended that subdivision (a) of section 8001 be amended to read as follows:

(a) Persons subpoenaed. Any person whose attendance is compelled by a subpoena, whether or not actual testimony is taken, shall receive for each day's attendance [two] *twelve* dollars for attendance fees and [eight] *fifteen* cents as travel expenses for each mile to the place of attendance from the place where he was served, and return. There shall be no mileage fee for travel wholly within a city.

Comment

This amendment to CPLR 8001(a) would increase both attendance fees and travel expenses for persons subpoenaed. The attendance fee per day would be raised from $2.00 to $12.00, and the travel expenses for each mile from the place of service of the subpoena to the place of attendance and back, from 8¢ to 15¢. The provision in the last sentence of subdivision (a), that there shall be no mileage fee for travel wholly within a city, would remain unchanged.

As a result of inflation, the provisions for attendance and travel fees for private persons under subpoena are in need of revision.

Section 1539 of the Civil Practice Act provided for a daily fee of $1.00 for attendance pursuant to a subpoena *duces tecum*, and 8¢ mileage fees. The draftsmen of the CPLR did not increase the mileage fees, and although the attendance fee was originally proposed to be raised to $5.00 daily (1 N.Y. Adv. Comm. Rpt. p. 174(1957)), it was later reduced to $2.00 (Sen. Fin. Comm. Rpt. p. 680 (1962)). Thus, the mileage fee remains the same as in the former practice and the attendance fee has been raised only from $1.00 to $2.00 a day. This is despite the fact that the draftsmen stated that "New York's witness compensation fares poorly in comparison with that allowed in other states" (1 N.Y. Adv. Comm. Rpt. p. 174 (1957)). The meager raise effected in 1961 is now entirely out of proportion to the inflation of the past decade. This incompatibility has occasioned requests from practitioners that CPLR 8001 be amended to reflect present economic realities.

The Advisory Committee does not now recommend striking the provision that there shall be no mileage fee for travel wholly within the city. It is felt that because of the availability of public transit in the state's cities, there is no clear and present urgency to change that provision. However, the Advisory Committee, mindful of the possibility that urban transit rates may increase to the point which would justify a revision of the applicable law, intends to keep this matter under scrutiny, and to propose an appropriate amendment when and if needed.

General Municipal Law §50-e(7) Recommended Change

It is recommended that subdivision 7 of section 50-e of the General Municipal Law be amended to read as follows:

7. Applications under this section. All applications under this section shall be made to the supreme court or to the county court [in a county where the action may properly be brought for trial or, if an action to enforce the claim has been commenced, where the action is pending] *as provided in subdivision (a) of section 2212 and subdivision (b) of section 2213 of the civil practice law and rules.* Where the application is for leave to serve a late notice of claim, it shall be accompanied by a copy of the proposed notice of claim.

Comment

Subdivision 7 of section 50-e of the General Municipal Law is the venue provision governing all applications made to the court with respect to a notice of claim, including those for leave to file late notice, in tort cases against municipalities, public authorities and other political subdivisions.

Situations have arisen under this venue provision where the relief sought by the application was needed promptly, but application could not be made forthwith pursuant to the provision as presently worded. Under the present provision, applications are made to the Supreme Court or County Court in a county where the action may properly be brought for trial, which is generally the county in which the municipality, public authority or political subdivision is located (CPLR 504, 505), or if an action to enforce the claim has been commenced, in the county where the action is pending. Thus, if no motion term is being held in the designated county when the applicant wants prompt relief, or if no county judge is within the proper county, the applicant cannot proceed as provided by the flexible motion practice of the CPLR. Under CPLR provisions, in such circumstances, he could apply to the Supreme Court in the judicial district where the action is triable or in a county adjoining the county where the action is triable (CPLR 2212(a); CPLR 2213(b)).

Since the purpose of Chapter 745 of the Laws of 1976 was to liberalize the practice under §50-e of the General Municipal Law, it is entirely consistent with the purpose and intent of that chapter to make the venue provisions more flexible by conforming them to the CPLR provisions governing the venue of motions.

Part IV

Matters Under Consideration and Topics for Future Study and Review

1. Pursuant to a study which appeared in *The Twelfth Annual Report of the Judicial Conference*, p. 128 (1967), an Appendix of Official Forms of the Judicial Conference was promulgated and became effective September 1, 1968. Since then many suggestions have been received by the Advisory Committee for adding to and amending this illustrative Appendix. In addition, several of the forms require updating in light of intervening statutory developments.

In 1977, the Office of Court Administration, on recommendation of the Advisory Committee, commissioned Professor Sheila Birnbaum of the Fordham University School of Law to undertake the two-fold task of recommending revisions of the forms now contained in the Appendix of Official Forms, and formulating additional forms to be added to the Appendix. The Commit-

tee expects that the revision of present forms will be completed for inclusion in the Appendix of Official Forms during 1978.

2. Honorable William P. McCooe, Judge of the Civil Court of the City of New York and Supreme Court Justice-elect, who has previously studied, on behalf of the Advisory Committee, aspects of Article 31 (Disclosure) in respect to the videotaping of depositions and their use on trial (see *Twenty-first Annual Report of the Judicial Conference*, pp. 503-513 (1976)) has undertaken a more general study of Article 31, at the request of the Advisory Committee. This study will focus upon various problems in Article 31 and the feasibility of expanding the scope of disclosure in civil proceedings.

3. The Advisory Committee is continuing to explore a statutory revision of the system of costs in litigation, a complex and controversial area related to the more general problem of providing access to court. *A Study of the Adequacy of Costs in Litigation*, commissioned on recommendation of the Advisory Committee, and published in the *Sixteenth Annual Report of the Judicial Conference*, p. 246 (1971), concluded that the present provisions in Articles 81, 82 and 83 are inadequate and that the best way to make them adequate is to award reasonable attorney's fees to the prevailing party in civil litigation.

4. The Advisory Committee continues to explore ways of modernizing the archaic provisions of law governing exemptions of personal property from execution. The *Study on Exemptions from Execution*, commissioned on recommendation of the Advisory Committee, and published in the *Twelfth Annual Report of the Judicial Conference*, p. 205 (1967), raised the possibility of new approaches to the difficult problems in this area of law. Recently the National Conference of Commissioners on Uniform State Laws drafted a Uniform Exemption Act. The Advisory Committee has been reviewing this act to ascertain whether it might form the basis of a revision of the CPLR provisions on exemptions of personal property from execution.

5. The possible revision of service of process procedures to make service of process by mail, with proper safeguards, the preferred mode of service is a major area which the Advisory Committee intends to study carefully in the future.

6. The Advisory Committee is keenly aware of the far-reaching effect which the decision of the United States Supreme Court in *Schaffer v. Heitner*, 45 U.S.L.W. 4849, U.S. Supreme Court, June 24, 1977, may have on the New York law governing jurisdictional attachment and, more particularly, on the *Seider* doctrine as a means of obtaining limited *quasi in rem* jurisdiction in foreign tort cases. After careful consideration, the Committee concluded that it would be advisable to withhold action in this area pending further study.

Conclusion

The Advisory Committee will continue to perform its duty of assisting the Judicial Conference in its statutory mandate to

report its recommendations for amending the CPLR to the Legislature. The Committee will also continue to analyse and provide to the Office of Court Administration its appraisal of all bills introduced in the Legislature amending the CPLR. In its task of recommending improvements in the CPLR the Committee will continue to examine thoroughly every proposal it receives from judges, practitioners, professors and the general public, in relation to statutes, rules and the Appendix of Official Forms. In this connection, the Committee again solicits comments and suggestions from the bench, the legal profession and the public. All recommendations should be sent to:

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Chairman
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c/o Office of Court Administration
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New York, New York 10007

December 9, 1977

Respectfully submitted,

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Appendix of Bills

The following appendix includes the full text of the bills recommended by the CPLR Advisory Committee in the order in which they are discussed in the report.

AN ACT

To amend the civil practice law and rules, in relation to civil arrest

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section sixty-one hundred one of the civil practice law and rules, as amended by chapter one hundred twenty-nine of the laws of nineteen hundred seventy-six, is hereby amended to read as follows:

§6101. Grounds for arrest. An order of arrest as a provisional remedy may [only] be granted [:

1. where there is a cause of action to recover damages for the conversion of personal property, or for fraud or deceit, and the person to be arrested is not a parent, guardian or other person who resides in the same household with a child or children under sixteen years of age or with a mentally or physically helpless person of any age requiring constant vigilance and care, and whose principal responsibility is to actually and personally engage in the daily care and supervision of such child, children or person; or

2.] *only where the court finds it probable that the plaintiff will succeed on the merits, and* where the plaintiff has demanded and would be entitled to a judgment or order requiring the performance of an act, the neglect or refusal to perform which would be punishable by the court as contempt, and where the defendant [is not a resident of the state or] is about to depart [therefrom, by reason of which non-residence or departure there is a danger that such judgment or order will be rendered ineffectual] *from the state with the intent to render the judgment or order ineffectual.*

§2. Section sixty one hundred eleven of such law and rules, as amended by chapter four hundred five of the laws of nineteen hundred sixty-four, is hereby amended to read as follows:

§6111. Order of arrest. An order of arrest as a provisional remedy may be granted, in the discretion of the court, without notice, before or after service of summons and at any time before [judgment] or [, in a case specified in paragraph two of section 6101,] after judgment. It shall specify the amount of bail, be indorsed with the name and address of the plaintiff's attorney and be directed to the sheriff of any county in which the defendant may be located. The order shall command the sheriff to arrest the defendant forthwith, keep him in custody and, *without delay,* bring him before the court, in the county where the arrest is made, for a hearing [within a time specified in the order] *which must be had at the earliest practicable time,* not exceeding forty-eight hours, exclusive of Sundays and public holidays, from the time of the arrest. *A copy of the order shall be served upon the defendant at the time he is first taken into custody and shall contain a notice of his right to the aid of counsel, as well as his right to apply to the court for reduction of bail and to challenge the legality of the arrest. At the hearing following arrest the court shall determine whether to confirm the order of arrest.*

§3. Subdivision (a) of rule sixty-one hundred twelve of such law and rules is hereby amended to read as follows:

(a) Affidavit; other papers. On a motion for an order of arrest the plaintiff shall show, by affidavit and such other evidence as may be submitted, sufficient facts from which the amount of bail may be determined [and

1. the existence of a cause of action sufficient to establish the right to an arrest pursuant to paragraph one of section 6101; or

2.] , the existence of a *meritorious* cause of action, [and] *the probability that plaintiff will succeed on the merits,* that he has demanded and would be entitled thereon to a judgment or order requiring the performance of an act, the neglect or refusal to perform which would be punishable by the court as a contempt, and [either] that the defendant [is not a resident of the state or that he] is about to depart [therefrom, by reason of which non-residence or departure there is a danger that such judgment or order will be rendered ineffectual] *from the state with the intent to render the judgment or order ineffectual.*

§4. Section sixty-one hundred fifteen of such law and rules is hereby amended to read as follows:

§6115. Bail; release from custody; action against bail surety. (a) Bail; release from custody. A defendant who has been arrested shall be given reasonable opportunity to procure bail and shall be released upon giving to the sheriff an undertaking, in the amount specified as bail in the order of arrest, approved by the court, [that the defendant will at all times render himself amenable to any mandate which may be issued to enforce a final judgment against him in the action or, where the order of arrest was granted under paragraph two of section 6101,] that the defendant will perform the act required by a judgment or order which may be entered against him in the action or, in default of such performance, will at all times render himself amenable to proceedings to punish him for the default. The sheriff shall immediately release the defendant, give him a receipt for any money deposited and deposit the money with the clerk of the court or, within three days, serve a copy of the undertaking upon the plaintiff, whereupon the sheriff shall be exonerated from all liability. Where money has been deposited as an undertaking and the defendant subsequently offers a sufficient bail surety, the court shall order the deposited money refunded to the defendant. Except as provided in this article, the provisions of article twenty-five apply to the acceptance of bail and justification of bail surety. If the bail is not allowed, the court shall remand the defendant to the custody of the sheriff.

(b) Action against bail surety. [Where the order of arrest was granted under paragraph two of section 6101, an] *An* action against the bail surety may be commenced at any time after the bail surety has failed to comply with the undertaking. [Where the order of arrest was granted under paragraph one of section 6101, an action against the bail surety may not be commenced until an execution against the property of the defendant delivered to the sheriff of the county in which he was arrested has been returned by that sheriff, wholly or partly unsatisfied. The sheriff shall diligently endeavor to enforce an execution so delivered to him, notwithstanding any direction he may receive from the plaintiff or his attorney.] In an action against the bail surety, it is a defense, that an execution against the property of the defendant in the original action was not delivered as prescribed, or that it was not delivered in sufficient time to enable the sheriff to enforce it, or that a direction was given, or other fraudulent or collusive means were used, by the plaintiff or his attorney to prevent enforcement.

§5. This act shall take effect on the first day of January next succeeding the date on which it shall have become a law.

AN ACT

To amend the civil practice law and rules, in relation to the recovery of a chattel

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section seventy-one hundred two of the civil practice law and rules, as amended by chapter ten hundred fifty-one of the laws of nineteen hundred seventy-one, is hereby amended to read as follows:

§7102. Seizure of chattel on behalf of plaintiff. (a) Seizure of chattel. When the plaintiff delivers to a sheriff an [affidavit,] order of seizure, *the papers on which the order was granted,* and *the* undertaking and, if an action to recover a chattel has not been commenced, a summons and complaint, he shall seize the chattel in accordance with the provisions of the order and without delay.

(b) Service. The sheriff shall serve upon the person from whose possession the chattel is seized a copy of the [affidavit,] order of seizure, *the papers on which the order was granted,* and *the* undertaking delivered to him by the plaintiff. Unless the order of seizure provides otherwise, the papers delivered to him by the plaintiff shall be personally served by the sheriff on each defendant not in default in the same manner as a summons or as provided in section 314; if a defendant has appeared he shall be served in the manner provided for service of papers generally.

(c) Affidavit. The *application for an order of seizure shall be supported by an* affidavit *which* shall clearly identify the chattel to be seized and shall state:

1. that the plaintiff is entitled to possession by virtue of facts set forth;
2. that the chattel is wrongfully held by the defendant named;
3. whether an action to recover the chattel has been commenced, the defendants served, whether they are in default, and, if they have appeared, where papers may be served upon them;
4. the value of each chattel or class of chattels claimed, or the aggregate value of all chattels claimed; [and]
5. if the plaintiff seeks the inclusion in the order of seizure of a provision authorizing the sheriff to break open, enter and search for the chattel [in the place where the chattel may be, facts sufficient under the due process of law requirement of the fourteenth amendment to the constitution of the United States to authorize the inclusion in the order of such a provision.], *the place where the chattel is located and facts sufficient to establish probable cause to believe that the chattel is located at that place;*
6. *that no defense to the claim is known to the plaintiff; and*
7. *if the plaintiff seeks an order of seizure without notice, facts sufficient to establish that unless such order is granted without notice, it is probable the chattel will become unavailable for seizure by reason of being transferred, concealed, disposed of, or removed from the state, or will become substantially impaired in value.*

(d) Order of seizure. 1. Upon presentation of the affidavit and undertaking and upon [such terms as may be required to conform to the due process of law requirements of the fourteenth amendment to the constitution of the United States] *finding that it is probable the plaintiff will succeed on the merits and the facts are as stated in the affidavit,* the court [shall] *may* grant an order directing the sheriff of any county where the chattel is found to seize the chattel described in the affidavit and including, if the court so directs, a provision that, if the chattel is not delivered to the sheriff, he may break open, enter and search for the chattel in the place [where the chattel may be] *specified in the affidavit. The plaintiff shall have the burden of establishing the grounds for the order.*

2. [If the order of seizure does not include the provision permitted by paragraph one of this subdivision, the court shall grant a restraining order] *Upon a motion for an order of seizure, the court, without notice to the defendant, may grant a temporary restraining order* that the chattel shall not be removed from the state if it is a vehicle, aircraft or vessel or, otherwise, from its location, transferred, sold, pledged, assigned or otherwise disposed of or permitted to become subject to a security interest or lien until further order of the court. Unless the court otherwise directs, the restraining order does not prohibit a disposition of the chattel to the plaintiff. Disobedience of the order may be punished as a contempt of court.

3. An order as provided in paragraph one of this subdivision may be granted without notice only if, in addition to the other prerequisites for the granting of the order, the court finds that unless such order is granted without notice it is probable the chattel will become unavailable for seizure by reason of being transferred, concealed, disposed of, or removed from the state, or will become substantially impaired in value.

4. An order of seizure granted without notice shall provide that the plaintiff shall move for an order confirming the order of seizure on such notice to the defendant and sheriff and within such period, not to exceed five days after seizure, as the court shall direct. Unless the motion is made within such period, the order of seizure shall have no further effect and shall be vacated on motion and any chattel seized thereun-

der shall be returned forthwith to the defendant. Upon the motion to confirm, the plaintiff shall have the burden of establishing the grounds for confirmation.

(e) Undertaking. The undertaking shall be executed by sufficient surety, acceptable to the court. The condition of the undertaking shall be that the surety is bound in a specified amount, not less than twice the value of the chattel stated in the plaintiff's affidavit, for the return of the chattel to any person to whom possession is awarded by the judgment, and for payment of any sum awarded by the judgment against the person giving the undertaking. A person claiming only a lien on or security interest in the chattel may except to the plaintiff's surety.

(f) Disposition of chattel by sheriff. Unless the court orders otherwise, the sheriff shall retain custody of a chattel for a period of ten days after seizure *where seizure is pursuant to an order granted on notice, and until served with an order of confirmation where seizure is pursuant to an order granted without notice.* At the expiration of such period, the sheriff shall deliver the chattel to the plaintiff if there has not been served upon him [either] a notice of exception to plaintiff's surety, a notice of motion for an impounding or returning order, or the necessary papers to reclaim the chattel. Upon failure of the surety on plaintiff's undertaking to justify, the sheriff shall deliver possession of the chattel to the person from whom it was seized.

§2. Section seventy-one hundred four of such law and rules, as amended by chapter ten hundred fifty-one of the laws of nineteen hundred seventy-one, is hereby amended to read as follows:

§7104. Seizing, reclaiming or returning less than all chattels. Where the seizure of two or more chattels is required by the order of seizure, the sheriff shall seize those chattels which can be found. Less than all of the seized chattels may be impounded, reclaimed, or returned. The value of the chattels seized, as stated in the affidavit of the plaintiff, *or as determined by the court upon application of the defendant,* shall be the value for the purposes of subsequent undertakings in the action. Unless the court orders otherwise, the sheriff may, at any time before entry of judgment, seize those chattels not yet seized; the proceedings for reclaiming, impounding or returning a chattel subsequently seized are the same as on a former seizure.

§3. Subdivision (a) of section seventy-one hundred eight of such law and rules is hereby amended to read as follows:

(a) Generally. Damages for wrongful taking or detention or for injury to or depreciation of a chattel may be awarded to a party. *If an order of seizure granted without notice is not confirmed as required pursuant to paragraph four of subdivision (d) of section 7102, the plaintiff, unless the court orders otherwise upon good cause shown, shall be liable to the defendant for all costs and damages, including reasonable attorney's fees, which may be sustained by reason of the granting of the order of seizure without notice, and the plaintiff's liability shall not be limited to the amount of the undertaking.* Except as provided in subdivision (b), judgment shall award possession of each chattel to the prevailing party or, if the action is discontinued or dismissed, to the person from whom it was seized; and where the person awarded possession is not in possession when judgment is entered, it shall in the alternative, award the value of each chattel at the time of trial or the sum for which it was sold under section 7105, decreased by the value of the interest of an unsuccessful party.

§4. Section seventy-one hundred twelve of such law and rules, as added by chapter three hundred fifty-five of the laws of nineteen hundred sixty-eight, is hereby amended to read as follows:

§7112. Testimony by deposition to ascertain location of chattel. A party to an action to recover a chattel may move [without notice], *upon such notice as the court may direct,* upon a showing that he lacks knowledge of the location of the chattel or a part thereof, for an order to examine any person for the purpose of obtaining information with reference to such location. The order may be granted before or after service of summons and complaint, or anytime before or after final judgment, and may also restrain the adverse party from acting in violation of whatever rights the moving party may have in the chattel, upon the execution

of a reasonable undertaking, with sufficient sureties, to reimburse the adverse party for all damages wrongfully caused by such retraint.

§5. This act shall take effect on the first day of January next succeeding the date on which it shall have become a law.

AN ACT

To amend the civil practice law and rules and the domestic relations law, in relation to procedure where summons is served without complaint

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision (b) of rule three hundred five of the civil practice law and rules, as amended by chapter seven hundred forty-nine of the laws of nineteen hundred sixty-five, is hereby amended to read as follows:

(b) Summons and notice. If the complaint is not served with the summons, the summons [may] *shall* contain or have attached thereto a notice stating the [object] *nature* of the action and the relief sought, and, [in an action for a sum certain or for a sum which by computation can be made certain] *except in an action for medical malpractice,* the sum of money for which judgment [will] *may* be taken in case of default.

§2. Subdivision (a) of rule three hundred sixteen of such law and rules, as amended by judicial conference proposal number one for the year nineteen hundred seventy, is hereby amended to read as follows:

(a) Contents of order; form of publication; filing. An order for service of a summons by publication shall direct that the summons be published together with the notice to the defendant, a brief statement of the [object] *nature* of the action *and the relief sought, and, except in an action for medical malpractice, the sum of money for which judgment may be taken in case of default* and, if the action is brought to recover a judgment affecting the title to, or the possession, use or enjoyment of, real property, a brief description of the property, in two newspapers, at least one in the English language, designated in the order as most likely to give notice to the person to be served, for a specified time, at least once in each of four successive weeks, except that in a matrimonial action publication in one newspaper in the English language, designated in the order as most likely to give notice to the person to be served, at least once in each of three successive weeks shall be sufficient. The summons, complaint, or summons and notice in an action for divorce or spearation, order and papers on which the order was based shall be filed on or before the first day of publication.

§3. Subdivision (a) of rule three hundred twenty of such law and rules, as amended by chapter eight hundred fifty-two of the laws of nineteen hundred seventy, is hereby amended to read as follows:

(a) Requirement of appearance. The defendant appears by serving an answer or a notice of appearance, or by making a motion which has the effect of extending the time to answer. An appearance shall be made within twenty days after service of the summons, except that if the summons was served on the defendant by delivering it to an official of the state authorized to receive service in his behalf or if it was served pursuant to section 303, [paragraphs] *subdivision* two, three, four or five of section 308, or sections 313, 314 or 315, the appearance shall be made within thirty days after service is complete. *If the complaint is not served with the summons, the time to appear may be extended as provided in subdivision (b) of section 3012.*

§4. Subdivision (b) of section thrity hundred twelve of such law and rules is hereby amended to read as follows:

(b) [Demand for complaint] *Service of complaint where summons served without complaint.* If the complaint is not served with the summons, the defendant may serve a written demand for the complaint *within the time provided in subdivision (a) of rule 320 for an appearance. Service of the complaint shall be made within twenty days after service of the demand. Service of the demand shall extend the time to appear until twenty days after service of the complaint. If no*

demand is made, the complaint shall be served within twenty days after service of the notice of appearance. [If the complaint is not served within twenty days after service of the demand, the] *The* court upon motion may dismiss the action *if service of the complaint is not made as provided in this subdivision.* A demand or motion under this [section] *subdivision* does not of itself constitute an appearance in the action.

§5. Section two hundred eleven of the domestic relations law, as amended by chapter ten hundred thirty-four of the laws of nineteen hundred seventy-three, is hereby amended to read as follows:

§211. Pleadings, proof and motions. A matrimonial action [,] shall be commenced by the service of a summons *with the notice designated in section two hundred thirty-two of this chapter,* or a summons and verified complaint. [In an action where the defendant has filed a notice of appearance and demand for a copy of the complaint, such complaint shall be served within twenty days.] In a matrimonial action, a final judgment shall not be entered by default for want of appearance or pleading, or by consent, or upon the trial of an issue, without satisfactory proof of the grounds therefor. Where a complaint or counterclaim in an action for divorce or separation charges adultery, the answer or reply thereto may be made without verifying it, except that an answer containing a counterclaim must be verified as to that counterclaim. All other pleadings in a matrimonial action shall be verified.

§6. Subdivision (a) of section two hundred thirty-two of such law, as so designated by chapter seven hundred sixty-five of the laws of nineteen hundred seventy-four, is hereby amended to read as follows:

a. In an action to annul a marriage or for divorce or for separation, if the complaint is not personally served with the summons, the summons shall have legibly written or printed upon the face thereof: "Action to annul a marriage", "Action to declare the nullity of a void marriage", "Action for a divorce", or "Action for a separation", as the case may be, *and shall specify the nature of any ancillary relief demanded.* A judgment shall not be rendered in favor of the plaintiff upon the defendant's default in appearing or pleading, unless either (1) the summons and a copy of the complaint were personally delivered to the defendant; or (2) the copy of the summons (a) personally delivered to the defendant, or (b) served on the defendant pursuant to an order directing the method of service of the summons in accordance with the provisions of section three hundred eight or three hundred fifteen of the civil practice law and rules, shall contain such notice.

§7. This act shall take effect on the first day of January next succeeding the date on which it shall have become a law.

AN ACT

To repeal rule twenty-two hundred sixteen of the civil practice law and rules, in relation to default on motions

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Rule twenty-two hundred sixteen of the civil practice law and rules is hereby REPEALED.

§2. This act shall take effect the first day of January next succeeding the date on which it shall have become a law.

AN ACT

To amend the civil practice law and rules, in relation to the deposition of a person authorized to practice medicine

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Note: Rule 2216, hereby proposed to be repealed by this act, governs defaults on motions.

The people of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision (a) of section thirty-one hundred one of the civil practice law and rules is hereby amended to read as follows:

(a) Generally. There shall be full disclosure of all evidence material and necessary in the prosecution or defense of an action, regardless of the burden of proof, by:

(1) a party, or the officer, director, member, agent, or employee of a party;

(2) a person who possessed a cause of action or defense asserted in the action;

(3) a person about to depart from the state, or without the state, or residing at a greater distance from the place of trial than one hundred miles, or so sick or infirm as to afford reasonable grounds of belief that he will not be able to attend the trial, *or a person authorized to practice medicine who has provided medical care or diagnosis to the party demanding disclosure, or who has been retained by him as an expert witness;* and

(4) any person where the court on motion determines that there are adequate special circumstances.

§2. Paragraph four of subdivision (a) of rule thirty-one hundred seventeen of such law and rules, as amended by judicial conference proposal number two for the year nineteen hundred seventy-seven, is hereby amended to read as follows:

4. the deposition of a [medical witness] *person authorized to practice medicine* may be used by any party without the necessity of showing unavailability or special circumstances, subject to the right of any party to move pursuant to section 3103 to prevent abuse.

§3. This act shall take effect on the first day of January next succeeding the date on which it shall have become a law.

AN ACT

To amend the civil practice law and rules, in relation to interrogatories

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section thirty-one hundred thirty of the civil practice law and rules, as added by chapter four hundred twenty-two of the laws of nineteen hundred sixty-three, is hereby amended to read as follows:

§3130. Use of interrogatories. After commencement of an action, [other than in an action to recover damages for an injury to property, or a personal injury, resulting from negligence, or wrongful death,] any party may serve upon any other party written interrogatories. A party may not serve written interrogatories on another party and also demand a bill of particulars pursuant to section 3041 without leave of court.

§2. This act shall take effect on the first day of January next succeeding the date on which it shall have become a law.

AN ACT

To amend the civil practice law and rules and the domestic relations law, in relation to summary judgment and default judgment in matrimonial actions and repealing subdivision (d) of rule 3212 of the civil practice law and rules relating thereto

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision (a) of rule thirty-two hundred twelve of the civil practice law and rules is hereby amended to read as follows:

(a) Time; kind of action. [Except as provided in subdivision (d) with respect to a matrimonial action, any] *Any* party may move for summary judgment in any action, after issue has been joined.

Note: Subdivision (d) of CPLR 3212, proposed to be repealed by this act, relates to a motion for summary judgment in matrimonial actions.

§2. Subdivision (e) of rule thirty-two hundred twelve of such law and rules is hereby amended to read as follows:

(e) Partial summary judgment, severance. [Except as provided in subdivision (d) with respect to a matrimonial action, in] *In* any action summary judgment may be granted as to one or more causes of action, or part thereof, in favor of any one or more parties, to the extent warranted, on such terms as may be just. The court may also direct:

1. that the cause of action as to which summary judgment is granted shall be severed from any remaining cause of action; or

2. that the entry of the summary judgment shall be held in abeyance pending the determination of any remaining cause of action.

§3. Subdivision (d) of rule thirty-two hundred twelve of such law and rules is hereby REPEALED and subdivisions (e), (f) and (g) are relettered subdivisions (d), (e) and (f).

§4. Section two hundred eleven of the domestic relations law, as amended by chapter ten hundred thirty-four of the laws of nineteen hundred seventy-three, is hereby amended to read as follows:

§211. Pleadings, proof and motions. A matrimonial action [,] shall be commenced by the service of a summons or a summons and verified complaint. In an action where the defendant has filed a notice of appearance and demand for a copy of the complaint, such complaint shall be served within twenty days. [In a matrimonial action, a] *A* final judgment shall [not] be entered by default for want of appearance or pleadings, or by consent, [or upon the trial of an issue, without satisfactory proof of the grounds therefor] *only upon competent oral proof or upon written proof that may be considered on a motion for summary judgment.* Where a complaint or counterclaim in an action for divorce or separation charges adultery, the answer or reply thereto may be made without verifying it, except that an answer containing a counterclaim must be verified as to that counterclaim. All other pleadings in a matrimonial action shall be verified.

§5. This act shall take effect on the first day of January next succeeding the date on which it shall have become a law.

AN ACT

To amend the civil practice law and rules, in relation to motion for permission to appeal

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Rule fifty-five hundred sixteen of the civil practice law and rules, as amended by judicial conference proposal number three for the year nineteen hundred sixty-eight, is hereby amended to read as follows:

Rule 5516. Motion for permission to appeal. A motion for permission to appeal shall be noticed to be heard at [the next motion day more than seven] *least eight* days *and not more than fifteen days* after notice of the motion is served.

§2. This act shall take effect on the first day of January next succeeding the date on which it shall have become a law.

AN ACT

To amend the civil practice law and rules, in relation to fees for persons subpoenaed

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision (a) of section eighty hundred one of the civil practice law and rules is hereby amended to read as follows:

(a) Persons subpoenaed. Any person whose attendance is compelled by a subpoena, whether or not actual testimony is taken, shall receive for each days

attendance [two] *twelve* dollars for attendance fees and [eight] *fifteen* cents as travel expenses for each mile to the place of attendance from the place where he was served, and return. There shall be no mileage fee for travel wholly within a city.

§2. This act shall take effect on the first day of January next succeeding the date on which it shall have become a law.

AN ACT

To amend the general municipal law, in relation to applications with respect to notice of claim

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision seven of section fifty-e of the general municipal law, as amended by chapter seven hundred forty-five of the laws of nineteen hundred seventy-six, is hereby amended to read as follows:

7. Applications under this section. All applications under this section shall be made to the supreme court or to the county court [in a county where the action may properly be brought for trial or, if an action to enforce the claim has been commenced, where the action is pending] *as provided in subdivision (a) of section twenty-two hundred twelve and subdivision (b) of section twenty-two hundred thirteen of the civil practice law and rules.* Where the application is for leave to serve a late notice of claim, it shall be accompanied by a copy of the proposed notice of claim.

§2. This act shall take effect on the first day of January next succeeding the date on which it shall have become a law.

Seventh Annual Report

to the

Judicial Conference

of the

State of New York

By the Advisory Committee on Criminal Law and Procedure

January 1978

Contents

I. Introduction

This is the Seventh Annual Report of the Advisory Committee on Criminal Law and Procedure. We recommend that the Judicial Conference sponsor six new bills to amend the criminal procedure law. Five of these proposals are being submitted for the first time and one, although sponsored by the Judicial Conference previously, has been revised. Each of the bills is appended to the report in the order in which it is discussed.

The new proposals include an amendment requiring the disclosure at an early stage of the trial of prior statements of witnesses, the so-called *"Rosario"* material. Although the Committee continues to recommend that the Judicial Conference sponsor our comprehensive pre-trial discovery bill, we have submitted this separate proposal which would at least speed up disclosure at the trial stage. We are also proposing for the first time a measure which would permit a court to order recognizance or bail in a felony case even though the court was not supplied with a report of the defendant's criminal history, if for some reason that report is unavailable. Among the other new bills is an amendment designed to limit the number of judges who may grant a stay pending appeal and two proposals drafted in response to recent Court of Appeals decisions which declared the method of determining youthful offender eligibility unconstitutional, and suggested the establishment of standards to be applied in determining motions to dismiss in the "furtherance of justice." A previously sponsored bill to allow a deliberating jury to separate has undergone minor revision and, therefore, is being resubmitted.

We also recommend continued support for pending matters not passed at the 1977 session of the Legislature. With respect to criminal procedure, these are bills to mandate reciprocal discovery, to curtail preliminary misdemeanor hearings in the New York City Criminal Court, to deal with inflated indictments, to permit severance of misjoined counts, to allow appeals to the Court of Appeals from reversals improperly denominated "on the facts" and to prohibit the granting of permission to appeal to the Court of Appeals by the Appellate Division justice who did not participate in the determination. Also pending is a proposed amendment to the penal law clarifying the definition of bribery.

II. Proposed Amendments to the Criminal Procedure Law

A. Discovery at an Early Stage of Trial of Prior Statements of Witnesses ...§240.50

Although the Committee has not abandoned its preference for comprehensive reciprocal pre-trial discovery, it is carefully reexamining its pending proposal due to repeated objections to cer-

tain controversial provisions. We now recommend, however, a separate bill which would require both prosecution and defense to disclose to each other at an early stage of the trial statements of persons whom they intend to call as witnesses.

Statements of prosecution witnesses would be furnished to the defense after the jury has been sworn and before the prosecutor's opening address. At present, this discovery is required only at the close of a particular witness's direct testimony. *People v. Rosario,* 9 N.Y.2d 286 (1961). The defendant would be required to turn over statements of his witnesses before offering evidence in his defense.

Although there is no statutory or case law authority which mandates the disclosure of statements of defense witnesses, this procedure was upheld by the Court of Appeals in *People v. Damon,* 24 N.Y.2d 256 (1969). The proposed bill does not require a defendant to furnish a copy of his own statement and therefore does not violate defendant's privilege against self-incrimination. 24 N.Y.2d at 261.

The enactment of this proposal will alleviate a significant cause of delay during a trial. Prolonged interruptions frequently occur under the present system, while defense counsel or the prosecutor examines these statements in preparation for cross-examination. These statements should be provided at the earliest possible stage, thereby permitting examination by counsel without a suspension of the proceedings.

B. Order of Recognizance or Bail When Defendant's Criminal History Report Is Unavailable ... §530.20

The Committee recommends an amendment to section 530.20 of the criminal procedure law to allow a court to fix bail or order a defendant released on his own recognizance even though a report of the defendant's criminal history is unavailable.

The present statute provides that a court may not order recognizance or bail with respect to a defendant charged with a felony until it has been furnished with a report of the division of criminal justice services concerning the defendant's criminal record, if any, or with a police department report with respect to the defendant's prior arrest record.

On July 19, 1977, Governor Carey issued an executive order directing the New York State Crime Control Planning Board to "undertake an immediate review of the response of New York City's criminal justice system to the blackout emergency of July 13-14" and to recommend proposals to improve the system's response to future emergencies. A major recommendation of the Board was an amendment to the criminal procedure law which would permit judges to set bail in emergencies without the required criminal history report. The power failure terminated the service of the computer-activated printers which transmit these reports from Albany. In some instances this caused delays in arraignment of up to seven days.

While discussing this proposal, we were alerted to the problems incurred by certain upstate localities in effecting strict compliance with the requirement of section 530.20. It appears that this section is routinely violated in many local courts because it is virtually impossible to obtain a criminal history report immediately after arrest. Therefore, these courts must either proceed without the report or remand the defendant. One court recently held that a refusal to admit a defendant to bail because of the lack of a criminal history report would constitute deprivation of liberty without due process. *See, People v. Boop,* 91 Misc.2d 231 (Ontario Co.Ct., 1977).

Our proposal would resolve the difficulties encountered during emergency situations in New York City and would eliminate the dilemma confronting the local courts caused by the lack of adequate communications facilities upstate. By giving judges discretionary authority to order recognizance or bail when the defendant's criminal history report is unavailable, this bill would permit the courts to respond promptly even though one of the components of the criminal justice system has broken down.

In order to prevent abuses of discretion and to preserve the preference for obtaining a criminal history report before a judge fixes bail, our proposal mandates the consent of the district attorney before the report requirement may be waived.

C. Justices Who May Grant Stay Pending Appeal ... §460.50

A stay pending appeal to the appellate division from a judgment or sentence of a court of criminal jurisdiction in New York City may currently be granted by a justice of the appellate division or any justice of the supreme court in the judicial district embracing the county in which the judgment was entered. We recommend an amendment to section 460.50 of the criminal procedure law which would limit the judges who may issue orders granting stays to a justice of the appellate division and the sentencing justice.

The existing statute has permitted forum-shopping by attorneys attempting to locate a justice favorably disposed to their application. In many instances, orders granting a stay pending appeal have been issued by judges who are unfamiliar with the facts of the case or the defendant's background. This proposal would mandate that the application be determined by an appropriate judge who has full awareness of the implications of his order.

D. Separation of Jury During Deliberations ... §310.10

For the past two years the Committee has recommended an amendment to section 310.10 of the criminal procedure law to permit a deliberating jury to separate temporarily, including overnight and on weekends and holidays, with the consent of the

parties. Our proposal has failed of passage. We must now resubmit it with a minor revision requiring that the consent of the parties be obtained in the absence of the jury. This revision was added to ensure that consent will not be given or withheld based upon fear of the jury's reaction to an attorney's decision.

The rationale supporting this amendment, explained in last year's report, will once again be conveyed to the legislature. We also intend to include in our transmittal financial data indicating the cost of sequestering juries in specific non-controversial cases in which there was no threat of jury tampering, *i.e.*, those cases in which attorneys would normally consent to separation. Those costs include expenses for meals and lodging for jurors and overtime pay for court personnel.

E. Standards for Dismissal in Furtherance of Justice ... §§170.40, 210.40

The Committee recommends an amendment to sections 170.40 and 210.40 of the criminal procedure law to establish criteria to be considered by justices in determining motions to dismiss in the interest of justice. Present law merely requires that in dismissing an accusatory instrument on such grounds, the court set forth its reasons on the record. Our proposal would provide standards which a court must apply in making its determination.

The Court of Appeals, in *People v. Belge*, 41 N.Y.2d 60 (1976), expressed concern that the statute lacked standards, thus foreclosing appellate review of a dismissal in the interest of justice. The Court invited "the attention of the Legislature to this predicament." 41 N.Y.2d at 62. We therefore propose an amendment which would require a justice to examine and consider, individually and collectively, to the extent applicable, ten factors relating to the offense, the defendant, the complainant and the community. These factors are designed to maintain "the sensitive balance between the individual and the State . . . in applying the test of the interests of justice." *People v. Clayton*, 41 A.D.2d 204, 208 (2d Dept., 1973). The reasons for dismissal articulated by a court would then be reviewable on the basis of the statutory criteria.

Since *Belge* was not decided until after the preparation of last year's report to the Judicial Conference, our proposal was introduced at the 1977 session of the legislature at the request of the Office of Court Administration. The bill was not passed but remains pending for consideration at the 1978 legislative session.

F. Definition of Youth Eligible for Youthful Offender Treatment ... §720.10

The Committee recommends an amendment to section 720.10 of the criminal procedure law to make a youth eligible for youth-

ful offender treatment unless he has been "convicted of" a class A-I felony, rather than "indicted for" a class A-I or class A-II felony.

The existing statute, conditioning eligibility for youthful offender treatment on the class of felony for which a youth was "indicted," was held unconstitutional in *People v. Drummond*, 40 N.Y.2d 990 (1976). The Court of Appeals determined that "the limitations in CPL 720.10 conditioning eligibility for youthful offender treatment on the highest count of the indictment violate due process of law and to that extent are declared unconstitutional . . ." 40 N.Y.2d at 992. The Court reasoned that the "privileged penal sanction" of a youthful offender adjudication may not depend on a mere accusation, but rather upon "an adjudication, however informal."

Our proposal eliminates the test of indictment and substitutes that of conviction as a criterion for youthful offender consideration. Additionally, we propose to enlarge the definition of "eligible youth" to include one convicted of a class A-II felony. The Committee believes that a court should have discretion to grant youthful offender treatment to an otherwise eligible youth convicted of a class A-II felony.

The *Drummond* decision was announced subsequent to the preparation of last year's report and, therefore, this proposal was submitted to the 1977 session of the Legislature at the request of the Office of Court Administration. Since the bill was not passed we recommend that the Judicial Conference endorse this proposal which is pending before the 1978 session of the legislature.

III. Conclusion

The Committee will continue to meet regularly to study and discuss all significant proposals affecting criminal law and procedure. We are considering extensive revisions to the pending comprehensive discovery bill as well as new matters concerning other areas of criminal justice.

We express our gratitude to the Judicial Conference, the Administrative Board and the Office of Court Administration for their support and for the continuing opportunity to play a direct role in the development of the criminal law.

Respectfully submitted,

The Advisory Committee on
Criminal Law and Procedure

Patrick M. Wall, *Chairman*
Stanley S. Arkin, Esq.
Joseph W. Bellacosa, Esq.
Samuel Castellino, Esq.
Hon. Richard G. Denzer

Appendix of Acts

AN ACT to amend the criminal procedure law, in relation to discovery at trial of prior statements of witnesses.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The criminal procedure law is hereby amended by adding thereto a new section, to be section 240.50, to read as follows:

§ *240.50 Discovery at trial of prior statements of witnesses.*

1. After the jury has been sworn and before the prosecutor's opening address, the prosecutor shall make available to the defendant any written or recorded statement, or report of an oral statement, including any testimony before a grand jury, made by a person whom the prosecutor intends to call as a witness at the trial. If the trial is conducted by the court without a jury such disclosure shall be made by the prosecutor prior to the offering of evidence.

2. Prior to offering evidence in his defense, the defendant shall make available to the prosecutor any written or recorded statement, or report of an oral statement made by a person other than the defendant whom the defendant intends to call as a witness at the trial.

3. The court, upon motion of either party, may issue an order striking any irrelevant, privileged or confidential material from the statements produced pursuant to this section.

AN ACT to amend the criminal procedure law, in relation to an order of recognizance or bail.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subparagraph (ii) of paragraph (b) of subdivision two of section 530.20 of the criminal procedure law, as amended by chapter five hundred thirty-one of the laws of nineteen hundred seventy-five, is hereby amended to read as follows:

(ii) The court has been furnished with a report of the division of criminal justice services concerning the defendant's criminal record if any or with a police department report with respect to the defendant's prior arrest record. *If neither report is available, the court, with the consent of the district attorney, may dispense with this requirement.* When the court has been furnished with any such report or record, it shall furnish a copy thereof to counsel for the defendant, or, if defendant is not represented by counsel, to the defendant.

Editor's Note: In all the proposed legislation in this section, matter to be deleted is in [brackets]; matter in *italics* is new.

AN ACT to amend the criminal procedure law, in relation to a stay of judgment pending appeal to an intermediate appellate court.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Paragraphs (a) and (c) of subdivision two of section 460.50 of the criminal procedure law are hereby amended to read as follows:

(a) If the appeal is to the appellate division from a judgment or a sentence of [either] the supreme court [or the New York City criminal court], such order may be issued by (i) a justice of the appellate division of the department in which the judgment was entered, or (ii) [a justice of the supreme court of the judicial district embracing the county in which the judgment was entered] *the sentencing justice;*

(c) If the appeal is to *the appellate division or* to an appellate term of the supreme court from a judgment or sentence of the New York City criminal court, such order may be issued by a justice of the supreme court of the judicial district embracing the county in which the judgment was entered.

AN ACT to amend the criminal procedure law, in relation to authorizing the temporary separation of a deliberating jury.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 310.10 of the criminal procedure law, as amended by chapter two hundred fourteen of the laws of nineteen hundred seventy-four, is hereby amended to read as follows:

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§ 310.10 Jury deliberation; requirement of; where conducted.

1. Following the court's charge, the jury must retire to deliberate upon its verdict in a place outside the courtroom. It must be provided with suitable accommodations therefor and must, *except as otherwise provided in subdivision two,* be continuously kept together under the supervision of a court officer or court officers. In the event such court officer or court officers are not available, the jury shall be under the supervision of an appropriate public servant or public servants. Except when so authorized by the court or when performing administerial duties with respect to the jurors, such court officers or public servants as the case may be, may not speak to or communicate with them or permit any other person to do so.

2. At any time after the jury has commenced its deliberations the court, with consent of the parties obtained in the absence of the jury, may declare the deliberations to be in recess and may thereupon direct the jury to suspend its deliberations and to separate for a reasonable period of time to be specified by the court, including Saturdays, Sunays and holidays. Before each recess, the court must admonish the jury as provided in section 270.40 and direct it to resume its deliberations when all twelve jurors have reassembled in the designated place at the termination of the declared recess.

§ 2. This act shall take effect on the first day of January next succeeding the date on which it shall have become a law.

AN ACT to amend the criminal procedure law, in relation to standards for dismissing an accusatory instrument in furtherance of justice.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision one of section 170.40 of the criminal procedure law is hereby amended to read as follows:

1. An information, a simplified traffic information, a prosecutor's information or a misdemeanor complaint, or any count thereof, may be dismissed in the interest of justice, as provided in paragraph (g) of subdivision one of section 170.30 when, even though there may be no basis for dismissal as a matter of law upon any ground specified in paragraphs (a) through (f) of said subdivision one of section 170.30, such dismissal is required as a matter of judicial discretion by the existence of some compelling factor, consideration or circumstance clearly demonstrating that conviction or prosecution of the defendant upon such accusatory instrument or count would constitute or result in injustice. *In determining*

whether such compelling factor, consideration, or circumstance exists, the court must, to the extent applicable, examine and consider, individually and collectively, the following:

(a) the seriousness and circumstances of the offense;
(b) the extent of harm caused by the offense;
(c) the evidence of guilt, whether admissible or inadmissible at trial;
(d) the history, character and condition of the defendant;
(e) any exceptionally serious misconduct of law enforcement personnel in the investigation, arrest and prosecution of the defendant;
(f) the purpose and effect of imposing upon the defendant a sentence authorized for the offense;
(g) the impact of a dismissal on the safety or welfare of the community;
(h) the impact of a dismissal upon the confidence of the public in the criminal justice system;
(i) where the court deems it appropriate, the attitude of the complainant or victim with respect to the motion;
(j) any other relevant fact indicating that a judgment of conviction would serve no useful purpose.

§ 2. Subdivision one of section 210.40 of such law is hereby amended to read as follows:

1. An indictment or any count thereof may be dismissed in furtherance of justice, as provided in paragraph (i) of subdivision one of section 210.20, when, even though there may be no basis for dismissal as a matter of law upon any ground specified in paragraphs (a) through (h) of said subdivision one of section 210.20, such dismissal is required as a matter of judicial discretion by the existence of some compelling factor, consideration or circumstances clearly demonstrating that conviction or prosecution of the defendant upon such indictment or count would constitute or result in injustice. *In determining whether such compelling factor, consideration, or circumstance exists, the court must, to the extent applicable, examine and consider, individually and collectively, the following:*

(a) the seriousness and circumstances of the offense;
(b) the extent of harm caused by the offense;
(c) the evidence of guilt, whether admissible or inadmissible at trial;
(d) the history, character and condition of the defendant;
(e) any exceptionally serious misconduct of law enforcement personnel in the investigation, arrest and prosecution of the defendant;
(f) the purpose and effect of imposing upon the defendant a sentence authorized for the offense;
(g) the impact of a dismissal on the safety or welfare of the community;
(h) the impact of a dismissal upon the confidence of the public in the criminal justice system;
(i) where the court deems it appropriate, the attitude of the complainant or victim with respect to the motion;
(j) any other relevant fact indicating that a judgment of conviction would serve no useful purpose.

§ 3. This act shall take effect on the first day of September next succeeding the date on which it shall have become a law.

AN ACT to amend the criminal procedure law, in relation to the definition of eligible youth for youthful offender procedure.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision two of section 720.10 of the criminal procedure law, as amended by chapter eight hundred thirty-two of the laws of nineteen hundred seventy-five, is hereby amended to read as follows:

2. "Eligible youth" means a youth who is eligible to be found a youthful offender. Every youth is so eligible unless he (a) is [indicted for] *convicted of* a class A-I [or class A-II] felony, or (b) has previously been convicted and sentenced for a felony.

§ 2. This act shall take effect immediately.

Report of the Family Court Advisory and Rules Committee

In 1977, the Family Court Advisory and Rules Committee reviewed legislation affecting Family Court and related proceedings, continued to revise court forms, and drafted rules required by new legislation for consideration by the Administrative Board and, where appropriate, by the Appellate Divisions.

Family Court Judge Daniel J. Donahoe of Chemung County served as chairman until September 1977, when he was succeeded by Judge Donald J. Corbett, Jr. of Monroe County. The members of the Committee then were Family Court Judges Donald J. Corbett, Jr., Chairman, Arthur J. Abrams, William Berman, Gene L. Catena, Daniel J. Donahoe, Joseph A. Doran, Hugh Ross Elwyn, William L. Kellick, Jr., Shirley Wohl Kram, Howard A. Levine, Saul Moskoff, Paul F. Murphy, and Aileen Haas Schwartz; Supreme Court Justices Robert H. Wagner and Joseph B. Williams; and three nonvoting members: Nicholas P. Capra, Esq., Richard J. Comiskey, Esq., and William G. O'Brien, Esq. Consultants on forms revision were Leah Marks, Esq., Frank Boccio, Esq., and Robert G. Howard.

Rules implementing Chapter 388 of the Laws of 1977 were drafted by the Subcommittee on Rules, chaired by Judge Schwartz. This law added section 439 to the Family Court Act, authorizing the use of hearing examiners to hear and report in support proceedings. The Committee submitted rules for promulgation by the Administrative Board in accordance with the statute as well as rules for consideration and adoption by the Appellate Divisions. The Administrative Board rules were promulgated in January 1978, and the Appellate Divisions in the First, Second, and Fourth Departments adopted rules in the early part of 1978.

In addition, the Committee drafted and submitted proposed Appellate Division rules which would require the filing of affidavits of detailed disclosure by attorneys in all adoption proceedings to implement the restrictions of section 374 of the Social Services Law pertaining to placement practices. Amendments to 22 NYCRR 20.9, which deals with uniform adoption procedures, were prepared and submitted for consideration by the Administrative Board. Copies of these rules were circulated among Surrogates, District Attorneys, and Bar Grievance Committees for comment. It was expected that these rules would be ready for promulgation by the Chief Judge and the Appellate Divisions in the spring of 1978.

A subcommittee to review and revise official forms, which was chaired until September 1977 by Judge Schwartz and afterward by Judge Catena, completed forms implementing the Juvenile Justice Reform Act, section 384-b of the Social Services Law, and the newly created proceeding for adjudication of paternity under Chapter 229 of the Laws of 1977. The Chief Administrator of the

Courts was authorized to promulgate the new forms effective June 7, 1977; and they were circulated for use to all the Family Courts.

The Committee's legislative review and drafting of new legislation was conducted under the direction of Judge Levine, chairman of the Subcommittee on Legislation. In addition to assisting the Office of Court Administration in its drafting of bills amending section 214 of the Family Court Act and Social Services Law 358-c, which transferred to the Chief Administrator of the Courts authority to prescribe official forms for use in the Family Court, and adding section 439 of the Family Court Act, which authorized the use of hearing examiners in support proceedings in Family Court, the subcommittee continued its analysis of all bills affecting Family Court and family law introduced during the legislative session.

Chapter 7

Special Study

Ending the Right of Trial by Jury of the Issues Preliminary to Arbitration in New York

by

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Ending the Right of Trial by Jury of the Issues Preliminary to Arbitration in New York

When judges, legislators, and scholars consider relieving the congestion in the courts through broader use of private dispute-resolution mechanisms, they often think hopefully of arbitration. In New York, however, an infirmity in the provisions of the Civil Practice Law and Rules governing arbitration has crippled arbitration's effectiveness as a means of channeling disputes away from the courts. Before a New York judge can order parties to a controversy to proceed to arbitration in accordance with what he views as their agreement, one of the parties may raise—and demand a jury trial of—certain "preliminary issues"—namely, whether he entered into an agreement to arbitrate and whether, in fact, he violated it. Because the right generally to jury trial under the New York Constitution remains shrouded in historical mist, and because arbitration in New York has an involved ancestry, doubts obtain about the constitutional power of the Legislature to remove this jury-trial roadblock to more effective use of arbitration. In fact, as a statutory innovation of the 1920's, the right to jury trial of the issues preliminary to arbitration does not rest upon a constitutional foundation. The Legislature remains free to repeal the right by statute at any time—and that time is now.

I. The History of Arbitration Before 1920

Ever since they called each other "New Amsterdaamers," New Yorkers have valued and promoted non-judicial means for the resolution of their disputes. While still under Dutch law New York adopted its "action upon a long account," through which a court-appointed referee would untangle the claims and set-offs arising in a dispute between merchants.[1] English rule brought its common-law arbitration. Parties could agree to submit a dispute existing between them to arbitrators, and although either party could revoke the submission at any time before the arbitrators published their award, the victorious party could sue upon a final award as he could any other debt.[2] Early into statehood, New York adopted a statute designed to strengthen agreement to arbitrate by involving the courts.[3] At the time they agreed to submit their dispute to arbitration, the parties to an existing controversy could also expressly agree to make their submission a "rule of the court" of any court of record in the state. If a party later failed to participate in the arbitration or refused to honor the arbitrators' award, the court, on motion of the aggrieved party, could punish him for contempt. If it "appear[ed] on oath to such court that the arbitrators . . . misbehaved themselves, and that such award, arbitration, or umpirage was procured by corruption or other undue means," the court would stay its punishing hand and void the arbitration or award.[4] Except for providing a contractual mechanism to coerce

a party to arbitrate the dispute as he had agreed, the New York statute of 1791 left the common law of arbitration unchanged.

As New York matured as the nation's major commercial center, it became increasingly sensitive to the desire of its merchants to give more than the common law's force to their agreements to arbitrate. In 1828 the New York Legislature enacted what it hoped would prove a comprehensive procedure of statutory arbitration.[5] The new act did not displace common-law arbitration or remedy its disabilities; rather, it provided an alternative, statutory, form of arbitration. Under the new act parties could agree in writing to submit nearly any existing dispute to arbitration.[6] The principal innovation of the act lay in its more efficient means for enforcing arbitration awards. The framers of the new statute reported:

> [The arbitration act of 1791 is] essentially varied. Instead of enforcing an award by process of contempt, in cases where such process is not applicable, it is proposed to authorise a regular judgment to be entered, filed and docketted, and an execution to be issued against the property or person . . . By this means, the parties will be saved the necessity of an expensive and perplexing action on the bond or the award; and the object of the statute "to contribute much to the ease of the parties in determining their differences," as expressed in its preamble, will be more effectually obtained. The remedies for relief will be found to be as ample as by existing law, or as afforded by an action.[7]

After the arbitrators had decided the issue, a court could confirm the award and enter judgment upon it as it would in any civil case,[8] vacate or modify the award if required,[9] or send the case back to the arbitrators.[10] The statute did not allow the common-law right of a party to revoke a submission to arbitration before the arbitrators published their award,[11] and it made the party who revoked at any time prior to final submission to the arbitrators liable to his opponent for all "costs, expenses, and damages which he may have incurred in preparing for such arbitration."[12]

The New York statute of 1829 succeeded—within its limited objectives. Numerous other states modeled their arbitration statutes after it.[13] But although the Legislature cleaned up some of its technical and procedural problems before adding it to the Throop Code of 1880,[14] the New York arbitration statute failed to keep abreast of changes in commercial practices or expectations. The two principal weaknesses of common-law arbitration remained: courts would not grant specific enforcement of an agreement to arbitrate nor would they recognize the validity of a present agreement to arbitrate future disputes.

To make matters worse, courts, counsel, and commentators often confused a denial of specific performance of an arbitration agreement with the legal invalidity of a present agreement to arbitrate a future controversy. The first case involved "submissions"—present agreements to arbitrate an existing dispute. When a party sought specific enforcement of a submission,

he asked the court to compel his opponent to select an arbitrator, to attend the hearings, and to come forward with evidence. The underlying contract of submission which the aggrieved party asked the court specifically to enforce may, by its terms, also have spoken of future disputes, though more typically the contract dealt only with a controversy alive before the parties had entered into their agreement. But whatever the contract may have said, the aggrieved party sought specific enforcement only because a controversy then existed and he wanted to end it through arbitration. An effort to get specific enforcement of a contract to submit future disputes to arbitration, when one of those disputes still lay in the future, made no sense. Nonetheless, some counsel evidently assumed the ancient cases deal with a situation that, in fact, had never cropped up.[15]

The second situation involved a contract to arbitrate future disputes which one party attempted to call into play when a dispute arose. He may have demanded that his opponent arbitrate and have sued him for breach of contract when he refused. Or he may have gotten an *ex parte* arbitral award and attempted to enforce it. In either case, if "void" or a "nullity" when entered into, the contract could support neither an action for damages nor one for enforcement.[16] It quite literally went without saying that such a contract would never be specifically enforced.

The courts' refusal to grant specific enforcement of an agreement to arbitrate rested upon a deep-seated suspicion of the arbitrators' ability or willingness to deal fairly with the parties. The Court of Appeals opinion in *Greason v. Ketelas*[17] reflects that anxiety:

> It is well settled that courts of equity will never entertain a suit to compel parties specifically to perform an agreement to submit to arbitration. . . . To do so would bring such courts in conflict with that policy of the common law which permits parties in all cases to revoke a submission to arbitration already made. This policy is founded in the obvious importance of securing fairness and impartiality in every judicial tribunal. Arbitrators being selected, not by law, but by the parties themselves, there is danger of some secret interest, prejudice, or bias in favor of the party making the selection; and hence the opposite party is allowed, to the latest moment, to make inquiries on the subject.

The courts felt that so long as a party could revoke a submission to arbitration until the moment before award, he could protect himself against the corruption or bias of the arbitrators.

While the refusal of the common law to allow specific enforcement of agreements to arbitrate rested upon a solicitude for the procedural rights of parties, its stubbornness in recognizing the validity of present contracts to arbitrate future disputes lay in a deeper-seated hostility to the diversion of business from the courts. Whether they phrased their arguments in terms of a party's "inalienable" right to have a judge hear his case,[18] or in

language asserting the state's exclusive right to define the jurisdiction of its court,[19] common-law courts refused to allow a mere contract to "oust" them of jurisdiction. To be sure, an occasional court quarreled with the underlying policy assumptions of the common-law rule and urged that freedom of contract should also include the freedom to choose a procedure for the settlement of disputes arising out of the contract.[20] But despite substantial criticism of the common-law rule and creative—if unavailing—efforts of parties to get around it,[21] unflagging adherence to *stare decisis* and, perhaps, judicial jealousy preserved the rule long beyond its usefulness.[22]

The unwillingness of the New York courts to disarm the common law's hostility to specific performance of arbitration agreements and to contracts to arbitrate future disputes—as their English counterparts had done[23]—stemmed in part from the frequency with which the two situations had become confused. *Berkovitz v. Arbib & Houlberg, Inc.*[24] in 1921 gave Judge Cardozo a chance to play upon the confusion:

> We are told that the promise to arbitrate [a future dispute] when made was illegal and a nullity. Even before the statute this was not wholly true. Public policy was thought to forbid that the promise be specifically enforced. Public policy did not forbid an award of damages if it was broken.

In *Berkovitz* blurring the distinction served to sharpen Judge Cardozo's ultimate pedagogical point: the statute to which he referred had repealed it.

II. The Arbitration Law of 1920

The Arbitration Law of 1920[25] validated agreements to arbitrate present and future disputes[26] and provided a judicial means for securing compliance with such an agreement.[27] The statute reversed the common-law hostility to contracts providing for arbitration of disputes arising between the parties in the future and authorized the courts to order a party to such a contract to submit to arbitration.[28] The Arbitration Law did not authorize a court to issue an *ex parte* order compelling arbitration. Rather, section 3 of the law recognized that no court could force someone to participate in an arbitration who had not previously agreed by written contract to do so, or who, in fact, had not failed to live up to the contract. The act directed the judge to hold a hearing of the parties before issuing an order that the arbitration proceed. If the party alleged to have failed to arbitrate did not contest "the making of the contract or submission or the failure to comply therewith"—the issues preliminary to arbitration—the act instructed the judge to make an order directing the parties to proceed to arbitration in accordance with the terms of the contract or submission.[29] If, on the other hand, "the making of the contract or submission or the default [should] be in issue," the act required a summary trial. Either party

could "demand a jury trial of such issue, and if such demand [were] made, ... the judge ... [should] make an order referring the issue or issues to a jury in the manner provided by law for referring to a jury issues in an equity action." The act directed the judge's final order to accord with the jury's findings.[30]

The 1921 Act spurred the use of arbitration to settle disputes arising out of many kinds of contracts, though initial development arose mostly in contracts for the sale of goods between merchants.[31] The Act solved the big problem of validating agreements to settle future controversies by arbitration, but it did not address all the issues attending the problem of specific enforcement. Moreover, by injecting the use of a jury trial in some instances, it raised a host of new procedural problems. Suppose, for instance, a party chose to ignore the notice of demand for arbitration provided under the arbitration rules of some commercial organization which the contract had incorporated by reference,[32] the arbitration proceeded without him and produced an award against him, and his opponent sought to have judgment on the award entered by a court. Could he still raise the claim that he had never agreed to arbitration and have that issue tried to a jury? Because the 1920 Act did not provide an answer, the Legislature added a new section to the Arbitration Law in 1927 to do so.[33] It allowed the party in default to raise what had become known as the "preliminary issues"—whether the party had agreed by contract to arbitration and whether or not such agreement had been followed—at the time his opponent sought to enforce the arbitral award. Moreover, the new section allowed trial by jury on those issues.[34]

In 1930 Chief Judge Cardozo summarized the state of New York arbitration law under statute in *Finsilver, Still & Moss v. Goldberg, Maas & Co.*:[35]

> Arbitration presupposes the existence of a contract to arbitrate. If a party to a controversy denies the existence of the contract and with it the jurisdiction of the irregular tribunal [*i.e.*, the arbitration panel], the regular courts of justice must be open to him at some stage for the determination of the issue. The right to such a determination, either at the beginning or at the end of the arbitration or in resistance to an attempted enforcement of the award, is assured by the Constitution, as part of its assurance of due process of law.

In *Finsilver* the Court of Appeals concluded that a party might raise and have a jury trial on the "preliminary issues" to arbitration in any of three situations: when his opponent sought a court order to compel him to arbitrate, when his opponent asked the court to confirm an award resulting from a proceeding in which he did not participate, or when his opponent asked the court to confirm an arbitration award against him even though he had participated in the arbitration proceeding.[36]

In 1937 the Legislature repealed the old Arbitration Law of 1920 and re-enacted a more polished version of it as part of the

Civil Practice Act.[37] The new act eliminated a party's right to raise the preliminary issues in opposition to his opponent's motion to confirm an award when the party had actually participated in the arbitration proceeding.[38] But in addition to preserving a party's right to raise and have a jury trial on the preliminary issues on a motion to compel arbitration or a motion to confirm an award made without his participation in the arbitration proceedings,[39] the new article of the Civil Practice Act provided a new remedy—a motion to stay arbitration.[40] If the court had not already ordered him to proceed to arbitration upon his opponent's motion to compel arbitration, and if he had not already "participated" in the arbitral proceedings,[41] a party could move the court to stay any arbitration proceedings his opponent had formally demanded.[42] When a movant for a stay of arbitration raised the preliminary issues—namely, "the making of the contract or submission or the failure to comply therewith"[43]—the new act gave him the right to demand a jury trial on those issues.[44] In sum, the new sections of the Civil Practice Act provided a logical and orderly means for a party to raise the preliminary issues and have what the statute optimistically called an "immediate" jury trial thereon.[45]

The 1937 revisions left the issue of the role of time limitations under arbitration unaddressed. The Legislature remedied its default in 1959, and thereby raised to three the number of issues preliminary to arbitration.[46] New section 1458-a of the Civil Practice Act permitted a party to argue that "the claim sought to be arbitrated would be barred by an existing statute of limitations if such claim were asserted in an action in a court of this state" as a justification for staying arbitration or as a defense in an action to compel arbitration or enforce an award produced in proceedings in which the party had not participated.[47] Unlike the issues of whether the parties had actually entered into an arbitration agreement or whether they had abided by it, the courts have not given the issue of the bar of limitations to the jury, but have reserved it for themselves.[48]

III. Present Provisions Governing Trial of the Preliminary Issues.

Like most sections of the Civil Practice Act, the arbitration provisions underwent extensive revision before their enactment in 1962 as Article 75 of the current Civil Practice Law and Rules (CPLR).[49] The resolution of the three issues preliminary to arbitration remains the most significant aspect of judicial involvement in the arbitration procedure. Section 7503 (a) of CPLR governs applications to compel arbitration, and section 7503 (b) applications to stay.[50] Section 7511 (b) (2) sets out the issues a party who did not participate in the arbitration agreement must raise in order to justify vacating an award.[51] The new CPLR re-

tains the importance of raising the preliminary issues, but it does not solve the problem of how best to dispatch them.

Nowhere does the right to have a jury resolve the preliminary issues to arbitration appear in Article 75 of CPLR.[52] The framers of the CPLR did not intend to eliminate jury trial of those issues, however,[53] and courts[54] and commentators[55] have assumed the right remains.

Unfortunately, the continued existence of a right to jury trial of the issues preliminary to arbitration has severely burdened the dockets of New York's courts of general jurisdiction. The problem most typically[56] arises in a controversy between an accident victim and the Motor Vehicle Accident Indemnification Corporation (MVAIC)[57] over the applicability of the arbitration clause of the uninsured motorist indorsement on an automobile insurance policy.[58] The victim claims an uninsured vehicle struck him and demands arbitration of the issue of his recovery under the policy. The insurance company pleads ignorance of the uninsured status of the offending vehicle, moves to stay arbitration, and demands a jury trial on the issue of whether the vehicle was not insured such as to engage the arbitration provision.[59] The Court of Appeals in *Matter of Rosenbaum v. American Sur. Co. of N.Y.*[60] held, over a sharp dissent, that the arbitration article of the former Civil Practice Act entitled the insurer to a jury trial.

The dissenters in *Rosenbaum* predicted no good would come of the majority's decision. Judge Dye criticized his brethren of the majority for "adding a new type of cause to an already overburdened court calendar with its attendant delay, personal effort, and financial burden, which could be expeditiously and promptly disposed of in the manner upon which the parties have agreed [—namely, arbitration]."[61] The dissenters proved correct.

Several respected judges have noted the growth of the demand for jury trial of the issues preliminary to arbitration and have decried the burden such demands put upon litigants and the courts. Justice Samuel J. Silverman, for example, noted:

> In New York County such motions by insurance companies for a stay of arbitration have been so numerous that it has proved impracticable when issues of fact arise to order the immediate trial which the statute apparently contemplates with respect to preliminary issues (CPLR 7503(a)) and the practice apparently is to have such cases take their regular place on the trial calendar with a resultant delay of about eighteen months before it is decided whether there shall be an arbitration.[62]

The parties to such a delay do not bear the costs equally: often injured parties drop meritorious claims or settle for "unfairly small" amounts.[63] The judicial system as a whole also suffers greatly from such delays. Justice Gagliardi has written:

> Such applications [for jury trials in actions to stay arbitration] create difficult problems in calendar administration. The

> Administrative Judge of the Ninth Judicial District has determined that hearings on these applications have been delayed indefinitely because the carrier hires local counsel who have numerous other matters pending on the preferred tort calendar. . . . Necessarily, . . . other tort cases which should be heard in this county have been delayed due to counsel commitment to try these hearings preliminary to arbitration.[64]

The harm the right to demand jury trial of the issues preliminary to arbitration has inflicted upon the judicial system demands the Legislature's attention.[65] It should abolish the right immediately.

Right to jury trial, of course, constitutes one of our culture's cherished traditions. Prudent representatives of a prudent people necessarily pause before limiting the right: constitutional guarantee may adhere to its application or fairness may dictate its maintenance. But when the need to limit demands and the constitutional bar does not impede, the Legislature may rightly extinguish the statutory right of jury trial.[66] In the present instance, the need to eliminate the trial by jury of issues preliminary to arbitration makes any debate one-sided. The more hotly-contested issue lies in the constitutional right of the Legislature to do so. A close examination of the operation of the New York Constitution's guarantee of trial by jury[67] refutes any supposed constitutional barriers to repeal of the right to a jury trial of the issues preliminary to arbitration.

IV. The Constitutional Status of Jury Trial of the Preliminary Issues

For about 160 years New York's constitutional provision addressing the right to trial by jury read roughly the same: "The trial by jury, in all cases in which it has been heretofore used, shall remain inviolate forever."[68] In 1938 the people of New York adopted the present constitutional provision, one at variance with the then-obtaining 1777 model: "Trial by jury in all cases in which it has heretofore been *guaranteed by constitutional* provision shall remain inviolate forever."[69] The framers drafted a variance in the 1938 Constitution because they realized, as their predecessors had not, the peculiar effect of re-enacting a constitutional guarantee which referred to pre-existing usages.

Each time New York had adopted a new constitution—in 1821, 1846, and 1894—the constitutional declaration that "[the] trial by jury, in all cases in which it has been heretofore *used* shall remain inviolate forever" had raised to a constitutionally-guaranteed right every new usage of the jury trial developed between the previous constitution and the new one. If in 1850, for example, the Legislature had provided by statute that trial by jury should extend by right to competency hearings in the Surrogate's Court, the 1894 Constitution's reference to previous usage would have converted the statutory right into a constitu-

tional one.[70] As a consequence of the re-enactment of the 1777 version of the jury-trial provision in 1821, 1846, 1894, New Yorkers' constitutional rights became the offspring of the Legislature's experiments.

The "re-enactment phenomenon"[71] greatly complicates courts' efforts to discern the scope of the right to a jury trial. In *Steck v. Colorado Fuel & Iron Co.*,[72] for example, Judge Earl found it necessary to unpack nearly 150 years of statutory and case-law history to determine the extent of the jury trial right in actions upon a long account. He first considered whether the common law of 1777 provided trial by jury and then inquired whether the Legislature had, since then, extended the right by statute. Not all judges had—or have—Earl, J.'s, interest in the old books or the skill to interpret them. Consequently, the boundary of the jury trial right constituted one of the principal issues the New York Constitutional Convention faced when it convened in April, 1938.[73]

The 1938 convention did not come squarely to grip with the problem, either.[74] Rather, its solution lay in preserving the *status quo*. The present constitutional provision, assuring the right of "[t]rial by jury in all cases in which it has heretofore been guaranteed by constitutional provision."[75] makes judges historians. The inquiry becomes, what was the extent of the constitutional guarantee under the 1894 Constitution? As noted, the 1894 Constitution only "guaranteed" jury trial in two classes of cases: those to which the 1846 Constitution had guaranteed it, and those to which the Legislature had extended it between 1846 and 1894. In short, the present constitutional right to jury trial extends only to those cases guaranteed by the 1894 Constitution. Surrogate Sobel has correctly stated that "there are two classes of civil cases in which the right to trial by jury is guaranteed by the *Constitution*"[76]—one class including those to which the right applied under the common law of 1777, the other class to which the Legislature extended it between 1777 and 1894—"and a third group of cases where there exists a *statutory* right (enactments after 1894) to trial by jury." Exact determination of the scope of the jury-trial right, therefore, remains a confusing[77] and challenging enterprise.

The search for the constitutional underpinnings—if any—of the right to jury trial of the issues preliminary to arbitration begins with an examination of the common law of 1777. Such an analysis must bear in mind the procedural postures in which the present right to jury trial of the preliminary issues attaches: in application to compel or stay arbitration[78] or on motion of a nonparticipating party to vacate an award.[79] Although the labels affixed to the procedures do not govern, the "basic character" of the suit determines whether the common law afforded a jury trial.[80] The common law of 1777 recognized agreements to arbitrate existing disputes—"submissions"[81]—but it did not recognize present agreements to arbitrate future disputes at all.[82]

Even submissions came freighted with disabilities. Because the common law allowed either party to a submission to revoke at any time before the arbitrators published their award, courts of equity would not specifically enforce such a contract.[83] The issue of whether a contract of submission was made or complied with never arose in a proceeding akin to that to compel or to stay arbitration: the party who denied the existence of such an agreement simply "revoked" the submission. His opponent might sue him for damages and thereby raise the issue of the contract's existence and his failure to comply with it, but then the action was for breach of contract for which the common law had always provided jury trial.

Similarly, because the common law gave parties to a submission the right to revoke any time before award, a party's claim that he had not entered into a contract of submission or that he had complied with it seldom, if ever, arose. Unlike the present procedure by which a victorious party moves the court to "confirm"[84] an award and thereby enter judgment upon it,[85] the common law of 1777 only authorized the victor to sue in debt, and have a jury trial, upon his award.[86] The defendant's proper answer to such a suit was "no award," not "no submission." Before the merger of the courts of law and equity an answer of no submission was legally insufficient; the attack had to go to the face of the award and not its origins.[87] An action in debt authorized the jury to hear the evidence only about the existence or not of the award and nothing about the submission. But when a party sought to attack an award on the grounds he had never entered into a submission or that the contract of submission had not been complied with, his recourse lay in an independent action in equity to vacate the award.[88] Then, as now, no party had a constitutional right to jury trial in an equity action.[89]

In general, the common law of 1777 did not afford jury trial of the issues preliminary to arbitration because those issues arose in the procedural context termed "equitable." A motion to compel arbitration, for example, most closely resembles an action for specific performance of a contract. As Chief Judge Cardozo noted in *Finsilver*: "In suits for specific performance there is no constitutional right to the verdict of a jury, though the existence of a contract be the basis of the controversy."[90] A proceeding to stay arbitration seeks relief akin to an injunction,[91] to actions for which a jury trial never extended.[92] Similarly, a motion to vacate an award invokes the equitable powers of the court,[93] and though the distinction between law and equity seldom makes a practical difference these days, the nature of the relief a party seeks from the court[94] and its characterization as either "legal"[95] or "equitable"[96] determines the availability of a right to trial by jury.[97] Because the issues preliminary to arbitration arise in procedural postures classically termed "equitable,"[98] and the common law of 1777 never afforded jury trial of right in equitable proceedings, jury trial of the preliminary issues does not fall

within that set of cases constitutionally protected by virtue of common-law usage of 1777.

Although the common law of 1777 may not have afforded jury trial of the issues preliminary to arbitration, the Constitution of 1938 may guarantee such a right, nonetheless, if the Legislature had extended it to such cases by statute between 1777 and 1894.[99] As we have seen, the 1791 Arbitration Act provided for enforcing agreements to arbitrate disputes through the courts' civil contempt power—a power to which trial by jury does not traditionally extend.[100] Neither the 1829 Arbitration Law nor its revision in the 1880 Throop Code of Civil Procedure allowed jury trials of any issues.[101] In fact, the first mention of the right to demand a jury in connection with arbitration appears in the Arbitration Law of 1920.[102] The constitutional guarantee to right of jury trial extends, however, only to those cases to which the Legislature had granted it by statute between 1777 and *1894*.[103] The present, 1938, Constitution does not constitutionalize a statutory right the Legislature granted after 1894. The present right to a jury trial of the issues preliminary to arbitration stems from a legislative enactment of 1920, and could, consistently with the present Constitution, be terminated by a legislative enactment today.

V. A Proposed Legislative Change

Although the CPLR makes no mention of the right to jury trial of the issues preliminary to arbitration, the courts have found that such a right continues by implication from the former Civil Practice Act.[104] The Constitution does not bar the Legislature from terminating the right, and sound policy reasons demand it do so quickly. The only issue remaining becomes how best to do so. Whatever course the Legislature takes, it should clearly express its intent to eliminate the right of either party to demand a jury trial of the making of or compliance with an agreement to arbitrate.[105] The Legislature could simply add a new subdivision of CPLR § 7503, for example, providing:

> [7503] (d). Trial Only to the Court of Preliminary Issues. Whenever, under subdivisions (a) or (b) of this section or subdivision (b) (2) of section 7511, an issue arises as to the making of a valid agreement to arbitrate or the compliance therewith, such issue shall be tried summarily to the court, and neither party shall have the right to demand a jury trial thereof.

Those few words would reaffirm the commitment to the use of non-judicial means for the settlement of their disputes that New Yorkers have shared for over 200 years.

FOOTNOTES

[1]*See generally*, Steck v. Colorado Fuel & Iron Co., 142 N.Y. 236, 238 (1894).
[2]*See* discussion of common-law arbitration in Red Cross Line v. Atlantic Fruit

Co., 264 U.S. 109 (1924) (Brandies, J.) (holding New York Arbitration Act of 1920 not unconstitutional when applied to maritime contracts). *See also* Allen v. Watson, 16 Johns. 205 (N.Y. 1819).

[3]"An act for determining differences by arbitration," 1791 N.Y. Laws c. 20. New York patterned its legislation after an earlier English law, 9 & 10 Wm. 3 c. 31 (1698).

[4]1791 N.Y. Laws c. 20.

[5]2 N.Y. Rev. Stat. 1829, pt. 3, c. 8, tit. 14, §§ 1-25.

[6]*Id.*, § 1.

[7]New York Comm'rs to Revise the Statute Laws, Rep't No. 8, 156-157 (1828).

[8]2 N.Y. Rev. Stat. 1829, pt. 3, c. 8, tit. 14, §§ 9, 13-17.

[9]*Id.*, § 10 authorized the court to vacate an award when it found the award had been procured by corruption, fraud, or other undue means, that "there was evident partiality or corruption in the arbitrators," that the arbitrators "were guilty of misconduct" such as refusing reasonable continuances or to hear evidence, or "that the arbitrators exceeded their powers . . . or [so] imperfectly executed them, that a mutual, final, and definite award . . . was not made."

[10]*Id.*, § 11 allowed remand to the arbitrators when the time within which the contract of submission had required a decision had not elapsed.

[11]*Id.*, § 23; Bank of Monroe v. Widner, 11 Paige 529, 534 (N.Y. Ch. 1845).

[12]*Id.*, § 23; Haggard v. Morgan, 5 N.Y. 422, 427 (1851).

[13]Pirsig, *Some Comments on Arbitration Legislation and the Uniform Act*, 10 Vand. L. Rev. 685, 687 (1957).

[14]N.Y. Code Civ. Proc. 1880, c. 17, tit. 8, §§ 2365-2386.

[15]*See, e.g.*, Berkovitz v. Arbib & Houlberg, Inc., 230 N.Y. 261, 271 (1921).

[16]*See generally* New York, Delaware & Hudson Canal Co. v. Pennsylvania Coal Co., 50 N.Y. 250, 258 (1872) (contract a "nullity"); Insurance Co. v. Morse, 87 U.S. (20 Wall.) 445, 458 (1874) (contract "void").

[17]17 N.Y. 491, 496 (1858). *See also* Hurst v. Litchfield, 39 N.Y. 377, 379 (1868).

[18]Insurance Co. v. Morse, *supra* n. 16, at 451; Sanford v. Commercial Travelers' Mut. Acc. Ass'n of America, 147 N.Y. 326, 328 (1895) ("The dictates of sound public policy would seem to require that its [the company's] contracts of insurance, while providing every wise and reasonable restriction, should not compel the individual who seeks to insure his life, to submit, as a condition of obtaining that insurance, to conditions which are in violation of his constitutional rights.")

[19]*See, e.g.*, Cardozo, J., concurring, in Meacham v. Jamestown, F. & C. R.R. Co., 211 N.Y. 346, 354 (1914) ("The jurisdiction of our courts is established by law, and is not to be diminished, any more than it is to be increased, by the convention of the parties.")

[20]*Cf.* Allen, J., in New York, Delaware, & Hudson Canal Co. v. Pennsylvania Coal Co., *supra* n. 16, at 259 ("The better way, doubtless, is to give effect to contracts, when lawful in themselves, according to their terms and the intent of the parties; and any departure from this principle is an anomaly in the law, not to be extended or applied to new cases unless they come within the letter and spirit of the decisions already made.")

[21]*See, e.g.*, People *ex rel.* Unions Ins. Co. v. Nash, 111 N.Y. 310 (1888) (suit to mandamus arbitrators to proceed with arbitration according to the terms of the parties' contract to arbitrate future disputes).

[22]*See* Saratoga State Water Corp. v. Pratt, 227 N.Y. 429, 441 (1920) (legislative scheme for the control of the Saratoga springs upset on ground, *inter alia*, that provision to arbitrate future disputes an impermissible ouster of the courts' jurisdiction).

[23]The exceptions the English courts had created to the rule virtually swallowed it. *See, e.g.*, Liverpool Marine & Gen. Ins. Co. v. Bankers & Shippers Ins. Co., 24 Ll. L. Rep. 85 (H.L. 1926).

[24]230 N.Y. 261, 271 (1921).

[25]1920 N.Y. Laws c. 275. Each house of the Legislature passed the bill unanimously. N.Y. Assembly J. 1920, p. 2042. N.Y. Sen. J. 1920, p. 610.

[26]1920 N.Y. Laws c. 275, § 2: "Validity of arbitration agreements. A provision in a written contract to settle by arbitration a controversy thereafter arising between the parties to the contract, or a submission hereafter entered into of an existing controversy to arbitration pursuant to title eight of chapter seven-

teen of the code of civil procedure, shall be valid, enforcible and irrevocable, save upon such grounds as exist at law or in equity for the revocation of any contract."

[27]1920 N.Y. Laws c. 275, § 3: "Remedy in case of default. A party aggrieved by the failure, neglect, or refusal of another to perform under a contract or submission providing for arbitration, described in section two hereof, may petition the supreme court, or a judge thereof, for an order directing that such arbitration proceed in the manner provided for in such contract or submission. Eight day's notice in writing of such application shall be served upon the party in default. Service thereof shall be made in the manner provided by law for personal service of a summons. The court, or a judge thereof, shall hear the parties, and upon being satisfied that the making of the contract or submission or the failure to comply therewith is not in issue, the court, or the judge thereof, hearing such application, shall make an order directing the parties to proceed to arbitration in accordance with the terms of the contract or submission. If the making of the contract or submission or the default be in issue, the court, of the judge thereof, shall proceed summarily to the trial thereof. If no jury trial be demanded by either party, the court, or the judge thereof, shall hear and determine such issue. Where such an issue is raised, any party may, on or before the return day of the notice of application, demand a jury trial of such issue, and if such demand be made, the court, or the judge thereof, shall make an order referring the issue or issues to a jury in the manner provided by law for referring to a jury issues in an equity action. If the jury find that no written contract providing for arbitration was made or submission entered into, as the case may be, or that there is no default, the proceeding shall be dismissed. If the jury find that a written contract providing for arbitration was made or submission was entered into and there is a default in the performance thereof, the court, or the judge thereof, shall make an order summarily directing the parties to the contract or submission to proceed with the arbitration in accordance with the terms thereof."

[28]*See* Matter of Four Transportation, Inc., 295 N.Y. 87, 91 (1946); Stefano Berizzi Co., Inc. v. Krausz, 239 N.Y. 315, 318-319 (1925); Matter of Amalgamated Ass'n of Electric Ry. Employees, 196 App. Div. 206, 212 (1st Dep't 1921). *See also* Berkovitz v. Arbib & Houlberg, Inc., *supra* n. 15.

[29]Arbitration Law, § 3, *supra* n. 27.

[30]*Id.*; Matter of Four Transportation, *supra* n. 28; Stefano Berizzi Co., Inc. v. Krausz, *supra* n. 28.

[31]*See, e.g.*, Matter of Lipman v. Haeuser Shellac Co., Inc., 289 N.Y. 76 (1942); Matter of Bullard v. Morgan H. Grace Co., Inc., 240 N.Y. 388 (1925); Matter of S.A. Wenger & Co., Inc. v. Propper Silk Hosiery Mills, 239 N.Y. 199 (1924); Matter of Bernson Silk Mills v. M.S. Siegel & Co., Inc., 256 App. Div. 617 (1st Dep't 1939).

[32]The American Arbitration Association promulgates arbitration rules suitable for various industries, *e.g.*, its Construction Industry Arbitration Rules. Such rules provide for the manner of demanding arbitration. Section 7503 (c) of New York Civ. Pract. L. & R. [hereinafter cited as "CPLR"] authorizes this form of notice.

[33]1927 N.Y. Laws c. 352, § 1, adding § 4-a as follows: "Enforceability of award in certain cases. Where pursuant to a provision in a written contract to settle by arbitration a controversy thereafter arising between the parties to the contract, or a submission described in section two hereof, an award has been, or is hereafter rendered, without previous application to the supreme court, or a judge thereof, as required by section three hereof, such award shall notwithstanding anything contained in section three hereof be valid and enforceable according to its terms, subject, nevertheless to the provisions of this section. At any time before a final judgment shall have been given in proceedings to enforce any such award whether in the courts of the State of New York, or elsewhere, any party to the arbitration who has not participated therein may apply to the supreme court, or a judge thereof, to have all or any of the issues hereinafter mentioned determined, and if, upon any such application, the court, or a judge thereof, or a jury, if one be demanded, shall determine that no written contract providing for arbitration was made, or submission entered into, as the case may be, or, that such party was not in default by failing to

comply with the terms thereof, or that the arbitrator, arbitrators and, or umpire was, or were not appointed or did not act, pursuant to the written contract, then and in any such case, the award shall thereupon become invalid and unenforceable. Where any such application is made any party may demand a jury trial of all or any such issues, and if such a demand be made, the court or a judge thereof shall make an order referring the issue or issues to a jury in the manner provided by law for referring to a jury issues in an equity action."

[34]*Id.*

[35]253 N.Y. 383, 389 (1930).

[36]*Id.* at 392-393.

[37]1937 N.Y. Laws c. 341, *enacting* § § 1448-1469 of the Civil Practice Act.

[38]Civ. Prac. Act § 1458 (1).

[39]Civ. Prac. Act § § 1450, 1458 (2), 1462 (5).

[40]Civ. Prac. Act § 1458 (2).

[41] Civ. Prac. Act § 1451 (1) defined "participation" as selecting an arbitrator or appearing in any proceedings.

[42]Civ. Prac. Act § 1458 (2).

[43]*Id.*

[44]*Id.*

[45]*Id.*

[46]1959 N.Y. Laws c. 235, adding § 1458-a to the Civil Practice Act.

[47]Civ. Prac. Act § 1458-a.

[48]"In proceedings authorized by a prior agreement to arbitrate future disputes, it is for the court to determine whether the claim, and therefore the arbitration, is barred by the statute of limitations." Matter of Paver & Wildfoerster v. Catholic H.S. Ass'n of N.Y., 38 NY2d 669, 674 (1976).

For a short period a "fourth" preliminary issue obtained: whether the contract had been procured by fraud. In Matter of Wrap-Vertiser, 3 NY2d 17 (1958), the Court of Appeals had held the issue of fraud in the procurement a preliminary issue for the court, not the arbitrators. In 1973 the Court of Appeals overruled *Wrap-Vertiser* in Matter of Weinrott, 32 NY2d 190 (1973), and brought New York into accord with the federal rule that fraud in the procurement be resolved by the arbitrators. Prima Paint Corp. v. Flood & Conklin Mfg. Co., 388 U.S. 395 (1967).

[49]*See generally* 6th Preliminary Rep't of the Advisory Committee on Practice & Procedure, No. 13 (1962).

[50]CPLR § § 7503 (a) and 7503 (b) replaced § § 1450 and 1458 (2) of the Civil Practice Act. *See* 2d Preliminary Rep't of the Advisory Comm. on Prac. & Proc., No. 13, 135-136 (1958); 4th Preliminary Rep't of the Advisory Comm. on Prac. & Proc., No. 20, 79-80 (1960). Section 7503 of CPLR provides:

> Section 7503 (a). A party aggrieved by the failure of another to arbitrate may apply for an order compelling arbitration. Where there is no substantial question whether a valid agreement was made or complied with, and the claim sought to be arbitrated is not barred by limitation under subdivision (b) of section 7502, the court shall direct the parties to arbitrate. Where any such question is raised, it shall be tried forthwith in said court. If an issue claimed to be arbitrated is involved in an action pending in a court having jurisdiction to hear a motion to compel arbitration, the application shall be made by motion in that action. If the application is granted, the order shall operate to stay a pending or subsequent action, or so much of it as is referable to arbitration.
>
> (b). Subject to the provisions of subdivision (c), a party who has not participated in the arbitration and who has not made or been served with an application to compel arbitration, may apply to stay arbitration on the ground that a valid agreement was not made or has not been complied with or that the claim sought to be arbitrated is barred by limitation under subdivision (b) of section 7502.
>
> (c). A party may serve upon another party a demand for arbitration or notice of intention to arbitrate specifying the agreement pursuant to which arbitration is sought and the name and address of the party serving the notice . . . and stating that unless the party served applies to stay the arbitration within twenty days after such service he shall thereafter be

precluded from objecting that a valid agreement was not made or has not been complied with and from asserting in court the bar of a limitation of time. . . . An application to stay arbitration must be made by the party served within twenty days after service upon him of the notice or demand or he shall be so precluded. . . .

[51]CPLR § 7511 (b) (2) replaced elements of § § 1458 (2) 1458-a, and 1462 (5) of the Civil Practice Act.

6th Preliminary Rep't, *supra* n. 49, at 658. Section 7511 provides, in its pertinent parts:

§ 7511 (a). An application to vacate or modify an award may be made by a party within ninety days after its delivery to him.

(b) (1). . . .

(b) (2). The award shall be vacated on the application of a party who neither participated in the arbitration nor was served with a notice of intention to arbitrate if the court finds that:

(i). . .

(ii) a valid agreement to arbitrate was not made; or

(iii) the agreement to arbitrate had not been complied with; or

(iv) the arbitrated claim was barred by limitation under subdivision (b) of section 7502. . . .

Section 7511 (b) (2) varies from its Civil Practice Act predecessor, § 1458 (2) in one important respect. Under the older provision a party who had received the notice provided by the alleged contract could ignore it and still resist enforcement. Under CPLR § 7511 (b) (2) a party "served with a notice of intention to arbitrate" cannot stand back and attack the arbitral award later; his remedy lies in seeking a stay of arbitration under § 7503 (b).

[52]*See* CPLR § § 7502, 7503, 7511.

[53]2d Preliminary Rep't, supra n. 50, at 135-136: "[T]he proposed section [§ 7503], providing that the court shall try such an issue 'forthwith' is not intended to eliminate jury trial if it is desirable or constitutionally required."

[54]*See, e.g.*, Anthony Drugs of Bethpage, Inc. v. Local 1199 Drug & Hospital Union, AFL-CIO, 34 AD2d 788 (2d Dep't 1970) (Memo.); Motor Vehicle Accident Indemnification Corporation [hereinafter called "MVAIC"] v. Stein, 23 AD2d 526 (4th Dep't 1965) (Memo.); *but see* MVAIC v. Coccaro, 40 Misc2d 1038, 1042 (Sup. Ct. King's County 1963) (*contra*).

[55]22 Carmody-Wait 2d, Cyc. N.Y. Prac., § 141:74 at 829; 4 J. Weinstein, H. Korn, & A. Miller, N.Y. Civ. Prac., § 4101.28 at 41-38.

[56]*See, e.g.*, Aetna Ins. Co. v. Logue, 68 Misc2d 841, 843 (Sup. Ct. New York County 1972).

[57]MVAIC is a creature of statute: *see* N.Y. Ins. Law (MVAIC Law), § § 600-626, 1958 N.Y. Laws c. 759.

[58]The indorsement usually reads:

To pay all sums which the insured shall be legally entitled to recover as damages from the owner or operator of an uninsured automobile because of bodily injury, sickness, or disease, including death at anytime resulting therefrom sustained by the insured, caused by accident while this endorsement is in effect, and arising out of the ownership, maintenance or use of such uninsured automobile; provided, that for the purposes of this endorsement, determination as to whether the insured shall be legally entitled to recover damages, and if so entitled the amount thereof, shall be made by agreement between the insured and the company or, in the event of disagreement, by arbitration.

In the event the insured and the company do not agree that the insured is entitled to recover damages from the owner or operator of an uninsured automobile on account of bodily injury to, or sickness, disease, or death of the insured, or do not agree as to the amount of payment which may be owing under this endorsement, then upon written demand of either, the matter or matters upon which the insured and the company do not agree shall be settled by arbitration in accordance with the rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator(s) may be entered in any Court having jurisdiction thereof. The insured and the company each agree to consider itself bound and to be

bound by any award made by the arbitrator(s) pursuant to this endorsement.

Quoted in Matter of Rosenbaum v. American Sur. Co. of N.Y., 11 NY2d 310, 312-313 (1962).

[59]*See, e.g.*, MVAIC v. Stein, supra n. 54; Liberty Mut. Ins. Co. v. Gottlieb, 54 Misc2d 184 (Sup. Ct. Queen's County 1967).

[60]11 NY2d 310 (1962).

[61]*Id.*, at 316. *See also* Laufer, *Embattled Victims of the Uninsured*, 19 Buffalo L. Rev. 471 (1970).

[62]Aetna Ins. Co. v. Logue, *supra* n. 56, at 843.

[63]*Id.*

[64]Allstate Ins. Co. v. Winter, 75 Misc2d 795, 799 (Sup. Ct. Westchester County 1973).

[65]Though "uninsured motorist" cases comprise the bulk of the cases in which the demand for a jury trial of the issues preliminary to arbitration arises, they do not stand alone. *Cf.* Matter of Prinze, 38 NY2d 570 (1976) (entertainer's contract with his agent); Anthony Drugs of Bethpage, Inc. v. Local 1199 Drug & Hospital Union, AFL-CIO, *supra* n. 54 (labor contract); Matter of Elmco v. Deering Milliken & Co., 6 Misc2d 422 (Sup. Ct. New York County 1957) (contract for sale of goods). Nor have the courts—especially the trial courts—lacked creativity in restricting the right to demand a jury trial to the barest minimum of cases. *Cf.* Silverman, J., in Aetna Ins. Co. v. Logue, *supra* n. 56 (burden on party seeking stay to allege facts substantial enough to warrant plenary trial).

[66]*See, e.g.*, Prima Paint Corp. v. Flood & Conklin Mfg. Co., *supra* n. 48; Matter of Weinrott, *supra* n. 48 (no constitutional right to have issue of fraud in the inducement of a contract tried to court or jury, but for arbitrators).

[67]N.Y. Const. Art I, § 2 (1938).

[68]N.Y. Const. Art. VII, § 2 (1821). 1777 Constitution, New York's first, had provided: "[T]rial by jury, in all cases in which it hath heretofore been used in the Colony of New York, shall be established, and remain inviolate forever." N.Y. Const. Art. XLI (1777). The 1821 Constitution merely modernized the language. The 1846 Constitution added "a jury trial may be waived by the parties in all civil cases in the manner to be provided by law," N.Y. Const. Art. I, § 2 (1846), and the 1894 Constitution carried the 1846 version forward unchanged. N.Y. Const. Art. I, §2 (1894). The waiver provision also continues into the present version. N.Y. Const. Art. I, § 2 (1938).

The substantive right to a jury trial also appears in statute form in CPLR § 4101:

> In the following actions, the issues of fact shall be tried by a jury unless a jury trial is waived or a reference is directed under section 4317, except that equitable defenses and equitable counterclaims shall be tried by the court:
>
> 1. an action in which a party demands and sets forth facts which would permit a judgment for a sum of money only; 2. an action of ejectment; for dower; for waste; for abatement of and damages for a nuisance; to recover a chattel; or for determination of a claim to real property . . .; and
>
> 3. any other action in which a party is entitled by the constitution or by express provision of law to a trial by jury.

Section 4101— an analog of which has existed since the Field Code of 1848—neither expands nor contracts the right to a jury trial, but merely declares when it attaches either by constitutional or statutory right.

Sections 410 and 2218 of CPLR govern only the procedure for demanding a jury trial of an issue. The former section declares that "[i]f [during a trial] triable issues of fact are raised they shall be tried forthwith and the court shall make a final determination thereon. *If* issues are triable of right by a jury, the court shall give the parties an opportunity to demand a jury trial of such issues." CPLR § 410 (emphasis added). Section 2218 similarly deals with issues of fact raised on a motion, and like § 410, it speaks of jury trials only "*if* the issue is triable of right by jury . . . ." CPLR § 2218 (emphasis added). Both sections merely beg the question of the actual right to have a jury hear an issue.

Because the issues preliminary to arbitration do not fall within subsection (1) or (2) of CPLR § 4101, the question becomes whether such issues are triable to a jury by constitutional or statutory right under CPLR § 4103 (3). If constitutionally-guaranteed, only constitutional amendment can abolish the right. But if only statutorily-granted, the Legislature may terminate the right by altering the statute.

[69]N.Y. Const. Art I, § 2 (1938) (emphasis added).

[70]Matter of Gurland, 286 App. Div. 704, 706-707 (2d Dep't), *appeal dismissed*, 309 N.Y. 969 (1955).

[71]Recognized as such and criticized by Andrews, Ch. J., dissenting, in Steck v. Colorado Fuel & Iron Co., *supra* n. 1, at 258-259.

[72]142 N.Y. 236 (1894).

[73]*See* Mayers, *The Constitutional Guarantee of Jury Trial in New York*, 7 Brooklyn L. Rev. 180 (1937).

[74]*See* Matter of Luria, 68 Misc2d 675 (Surr. Ct. King's County) (discussion by Sobel, S.)

[75]N.Y. Const. Art I, § 2 (1938).

[76]Matter of Luria, *supra* n. 74, at 677 (emphasis added).

[77]Courts have not helped much in settling the confusion. In taking a quote from Moot v. Moot, 214 N.Y. 204, 207-208 (1915) for the proposition that "[t]he measure of the right of trial by jury preserved by the State Constitution . . . is the right to a jury trial as it existed at the time of the adoption of the Constitution of 1846," Chief Judge Lehman in Blum v. Fresh Grown Preserve Corp., 292 N.Y. 241, 244 (1944), adopted a standard only half-true for *Moot*, a 1915 case decided under the 1894 Constitution, and not at all true for a 1944 case decided under the 1938 Constitution. Of course, lower courts echoed his error. *See* Matter of Gurland, *supra* n. 70. Chief Judge Lehman is not alone in having erred.

[78]CPLR § § 7503 (a), 7503 (b). *See* pp. 320-21 *supra*.

[79]CPLR § 7511 (b) (2). *See* pp. 320-21 *supra*.

[80]Smiler v. Conner, 372 U.S. 221, 223 (1963).

[81]See pp. 316-17 *supra*.

[82]*See* pp. 316-19 *supra*.

[83]*See* Greason v. Ketelas, *supra* n. 17; p. 317 *supra*.

[84]CPLR § 7510 provides: "The court shall confirm an award upon application of a party made within one year after its delivery to him, unless the award is vacated or modified upon a ground specified in section 7511."

[85]CPLR § 7514 (a) provides: "A judgment shall be entered upon the confirmation of an award."

[86]*See generally*, Sandford Laundry, Inc. v. Simon, 285 N.Y. 488 (1941).

[87]Knowlton v. Mickles, 29 Barb. 465, 490 (Sub. Ct. King's County 1859); Owens v. Boerum, 23 Barb. 187, 196 (Sup. Ct. King's County 1856).

[88]*See, e.g.*, Van Cortlandt v. Underhill, 17 Johns. 405 (N.Y. 1819).

[89]*See, e.g.*, Lynch v. Metropolitan Elevated Ry. Co., 129 N.Y. 274, 278-279 (1891); Thompson v. Erie Ry. Co., 45 N.Y. 468, 473 (1871); Sheppard v. Steele, 43 N.Y. 52, 57 (1870).

[90]*Supra* n. 35, at 392. *See also* Hurst v. Litchfield, *supra* n. 17

[91]MVACI v. Coccaro, supra n. 54.

[92]O'Brien v. Fitzgerald, 143 N.Y. 377, 383 (1894).

[93]Van Cortlandt v. Underhill, *supra* n. 88.

[94]DiMenna v. Cooper & Evans Co., 220 N.Y. 391, 396 (1917).

[95]*Cf.* Smiler v. Conner, *supra* n. 80 (declaratory judgment of a debt "legal").

[96]Thompson v. Erie Ry. Co., *supra* n. 89.

[97]*Id. See also* CPLR § 4101 *supra* n. 68.

[98]When the Legislature first authorized jury trial of the preliminary issues, it too characterized the proceedings as "equitable." *Cf.* 1920 N.Y. Laws c. 275 § 3 ("jury trials in equitable actions").

[99]See pp. 322-23 *supra*.

[100]*See* pp. 315-16 *supra*. United States v. United Mine Workers, 330 U.S. 258 (1947).

[101]*See* pp. 316-17 *supra*.

[102]*Supra* n. 27. *See also* pp. 318-19 *supra*.

[103]*See* pp. 322-23 *supra*.

[104]*Supra* n. 54.

[105]*Cf.* 2d Preliminary Rep't, *supra* n. 53, in which the intention of the Legislature not to eliminate jury trial if "desirable or constitutionally required" led to the perpetuation of the use of the procedure on the issues preliminary to arbitration. *See also* p. 321 *supra; supra* n. 54.

Appendix

An Evaluation of Compulsory Arbitration in Rochester, the Bronx, Binghamton, and Schenectady

Note: This evaluation was conducted by the Management and Planning Office of the Office of Court Administration.

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FIGURE

TABLES

Introduction

A. Description of the Program

The compulsory arbitration program was established by Chapter 1004, Laws of 1970, on an experimental basis. The program was subsequently extended three times and will now be effective through August, 1979.

Although the statute has statewide application, the program has been installed on a county by county basis. It was first established in Monroe County as an extension of a voluntary program that the Rochester Bar Association had started due to a serious backlog in the Supreme, County and City Courts. The program has been established in four counties in accordance with the following schedule:

Monroe County	Rochester City Court	Effective September 1, 1970
Bronx County	New York City Civil Court	Effective May 17, 1971
Broome County	Binghamton City Court	Effective March 1, 1972
Schenectady County	Schenectady County Court Schenectady Supreme Court Schenectady City Court	Effective June 18, 1973 for all three courts

The program operates as follows:

1. Jurisdiction of program—In those counties in which the program has been established, all cases demanding money damages of $4,000 or less, exclusive of costs and interest, must be referred to arbitration. As of September 1, 1977, the maximum monetary limit was statutorily extended to $6,000. In the Bronx, cases assigned to the arbitration commissioner must first appear on the Civil Court calendar to attempt an immediate disposition. If the case is not immediately resolved, it then goes to arbitration. In Schenectady, if a jury trial is not demanded, the case goes to City Court rather than to arbitration.

In addition to those cases requesting money damages of $4,000 or less, any case involving any sum of money may be submitted to an arbitration panel upon stipulation of all parties or their counsel. The arbitration panel may in these cases award more than $4,000.

2. Administration—An arbitration commissioner is designated by the Chief Administrator of the Courts.

3. Program operation—Civil cases under the jurisdiction of the compulsory arbitration program are heard and determined by a three-member panel of arbitrators who are members of the

bar and are appointed by the commissioner. Cases involving $500 or less are heard and decided by a single arbitrator.

4. Trial de novo—Any party may demand a trial *de novo* if the settlement or award is not acceptable. However, the demandant shall reimburse the court clerk for the fees paid to the arbitrators. (See section 26.12 of the Rules of the Administrative Board.)

5. Motions to vacate awards—The rules governing arbitration stipulate that any party may file with the appropriate clerk a motion to vacate an award within 20 days after the award is served upon him. This remedy is available only if the arbitrators abuse their office in the conduct of the case or if the award is procured by unlawful means. (See section 28.13 (a) of the Rules of the Administrative Board.)

B. Scope of Study

The following studies were made in order to evaluate the four compulsory arbitration programs now in operation. The purpose of the evaluation was to consider whether the programs are successful and to determine whether similar programs should be instituted in other counties.

1. Analysis of time saved by arbitration (Section I): In order to determine whether arbitration promotes speedy dispositions, we compared time between filing a note of issue and the date of disposition in an arbitrated case to the filing of a note of issue and disposition date in court proceedings.

2. *Analyses of arbitration cases (Section II) by:*
   a. *Total caseload and dispositions*—Total cases added, disposed, assigned and trials *de novo* requested were examined for the four counties in order to obtain an overall picture of the program.
   b. *Transfers and stipulations*—Cases stipulated or transferred to arbitration in three counties were analyzed to examine the type of cases added and the effect of transfers on the superior courts.
   c. *Demands and awards*—Demand and award figures were analyzed for the four counties in order to determine the monetary range of cases and acceptance of awards compared to all demands.
   d. *Nature of actions*—Cases entering arbitration were divided into nine categories by the nature of the causes of actions to determine the general case mix and county trends.

3. Finality of decisions (Section III): The percentage of litigants who accept the arbitration decisions may indicate a well-functioning program. To determine the percentage of arbitration decisions which are final, we measured the number of trials *de novo* requested in each county.

4. Cost effectiveness (Section IV): Budgets for each jurisdiction before and after the institution of the program were collected in

order to determine whether the compulsory arbitration program is cost effective. After adjusting for inflationary effects and salary increments, we compared civil court disposition costs per case with arbitration costs. Unfortunately, it was difficult to prepare a complete comparison, because many other factors which affected court costs could not be attributed to arbitration.

5. Attitudes toward arbitration (Section V): A compulsory arbitration program cannot be successful without the cooperation of the local bar association and the Judiciary. In each county, we spoke with attorneys and judges to determine their attitude toward arbitration and to solicit suggestions for improvement. To better understand and describe the actual operation of the program in each county, we also spoke with commissioners of arbitration, their secretaries and court personnel.

I. Analysis of Time Saved by Arbitration

The time elapsed between the filing date and disposition date for arbitration was shorter in Bronx and Monroe Counties than in the other two counties. (See Table A.)* In Broome County, arbitration took an average of 7.9 months, and in Schenectady 11.7 months. In Schenectady, this delay can be primarily attributed to excessive adjournments. (See Section V(D) for comments from attorneys and judges.) In Binghamton, transfers of notes of issue from court to court and pre-trial conferences for cases outside Binghamton contributed to the delay.

In the Bronx, despite having the shortest time lapse between filing and disposition date of all counties, no time was saved by arbitration if the program was compared to the Civil Court. This was because a high percentage of non-arbitration civil cases in the Bronx was settled before trial. In 1977, there was a total of 6,707 out of 8,454 cases (79%) settled, discontinued or dismissed before trial in the Bronx Civil Court.

The average time it took to dispose of a case in arbitration has decreased over the years. It should be noted that Schenectady had the largest decrease in average disposition time from 11.35 months (in 1973) to 5.2 months (in 1976). Broome and the Bronx followed with 7.2 and 3.8 months to 5.2 and 3.3 months, respectively.

In all counties, time was saved due to shorter hearings. According to 1975 statistics and subjective estimates since the beginning of the program, approximately 90 percent of the arbitration hearings took 2 1/2 hours or less. Although it was difficult to obtain statistics on hearing time for comparable cases in civil court, the concensus was that a similar case could have lasted several days. Hence the savings in actual "in court" time for attorneys and litigants were substantial.

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*The tables referred to in this appendix appear at the end of the text.

II. Analyses of Arbitration Cases

A. Total Caseload and Dispositions

Total caseload and disposition figures since the arbitration program began were examined for each of the four counties. Figures for cases assigned were broken down into the percentage assigned to single arbitrators and percentage assigned to panels of three arbitrators. Figures for dispositions were categorized by settlements and trial awards. In Bronx and Monroe Counties, settlements were further categorized into settlements made before the commencement of an arbitration hearing and settlements made during an arbitration hearing. Significant changes and trends in the statistics were noted.

Statewide, 27,546 cases entered arbitration, and 27,020 dispositions were made. (See Table B-1.) Of these dispositions, 52.1 percent were by arbitration award, and 41.4 percent were by settlement.

According to statewide caseload and dispositions over time, the intake of cases has diminished. (See Figure A.) This trend can be related to a variety of factors, most notably inflation and no-fault insurance. That is, fewer cases now fall into the $4,000 or less range, and fewer personal injury cases are arbitrated.

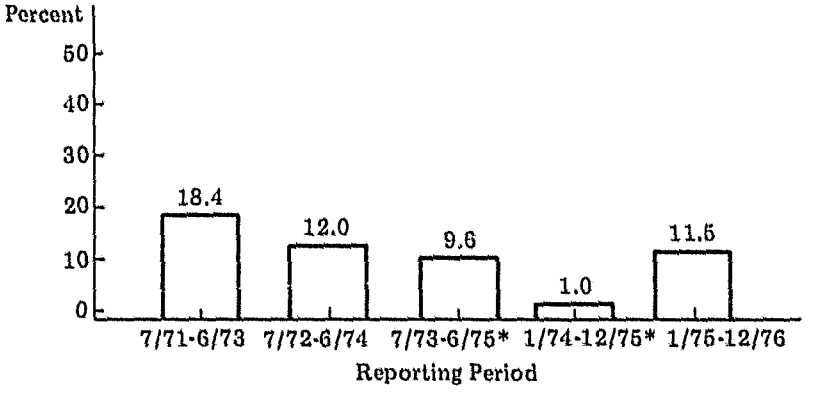
Bronx County had the highest total volume among the four counties in caseload and in dispositions. Total cases taken in exceeded Monroe County's, 13,589 to 12,102, as well as total disposition, 13,389 to 12,026.

Because arbitration in Bronx County is somewhat different procedurally due to the Compulsory Arbitration Appearance Part (CAAP) calendar, some preliminary statistics will clarify the caseload and disposition figures. In 1976, 2,875 cases, or 34 percent of the total 1976 intake in the Bronx Civil Court, appeared on the CAAP calendar. Of these cases, 1,212 (42.4%) were settled as a result of the CAAP calendar call and did not proceed to arbitration. Due to the CAAP calendar calls, therefore, little more than one-half of the potential $0—$4,000 arbitration cases actually made it to the arbitration program in Bronx County.

Nevertheless, the caseload in the Bronx's arbitration program has been heavy. During the 6 1/2 years of arbitration in the Bronx, 13,589 cases have been taken in, and 13,389 cases have been disposed. (See Table B-2.) This translates to an average monthly intake of 184 cases and an average monthly disposition rate of 181. Yearly averages were 2,204 cases added, and 2,171 cases disposed.

The disposition breakdown for Bronx County revealed that 44.6 percent of the disposed cases was by trial awards, and 46.4 percent was by settlements. Of these settlements, 47.3 percent was made prior to the hearing, while 52.7 percent occurred during the hearing. (See Table C.) There has been an interesting trend in the Bronx which has not appeared in Monroe. At the

Figure A
Arbitration Cases as Percentage of Total Civil Cases
Statewide by Reporting Period



*In 1975, the reporting period was changed to extend from January to December. Hence, a special six-month projection for the period July 1, 1974 through December 31, 1974 was used.

outset of the program, pre-hearing settlements outnumbered settlements during hearings nearly 1.6 to 1. In the last four years, however, there has been a complete reversal in this trend, and mid-hearing settlements have outnumbered pre-hearing settlements 1.6 to 1. A simple explanation may be that arbitrators do not recover any fees for cases settled prior to hearings; therefore, they find it in their interest to have the parties appear and settle at the hearing. (See section 24.10 (a) of the Rules of the Administrative Board.)

The breakdown for arbitration hearings indicated that 77 percent of the cases was heard by a panel, and 23 percent was presided over by a single arbitrator.

Broome and Schenectady had comparable total caseloads of 933 and 922, respectively. However, total dispositions in Broome exceeded that in Schenectady, 878 to 727.

Arbitration has existed in Broome County for just over five years, during which time 933 cases have entered the system, and 878 cases have been disposed. The average monthly intake has been 14.6 cases, with a range of 3 to 36 cases. Monthly disposition rates have averaged 13.7 cases, with a high monthly total of 22 cases and a low monthly total of 6 cases. Yearly averages have totalled 175 new cases and 166 dispositions with no significant trends across time.

Settlements prior to hearings have accounted for 44.2 percent of total disposition with the remaining 5.8 percent of the cases arbitrated. Of all arbitrated cases, 72.7 percent was heard by panels; the remaining was heard by single arbitrators.

In the 48-month period extending from the beginning of the arbitration program in July 1973 to June 1977, Schenectady has taken 907 cases into arbitration and has disposed of 703 cases. The average monthly intake has been 19.3 cases, ranging from a high of 58 cases to a low of 7 cases. Average monthly disposition rate has been 15.0 cases, including a high monthly total of 39 cases and a low of 2.

There have been no appreciable changes in yearly intake and disposition figures from their averages of 230 cases added and 100 dispositions. Settlements have accounted for 59.1 percent of total dispositions with the remaining 40.9 percent the result of arbitration awards. Schenectady had the highest percentage of dispositions by settlement in the four counties. The proportion of settlements to awards has ranged from a high of 2.1 to a low of 1.2 to 1.

Arbitration panels have heard 73.2 percent of the cases in Schenectady; the remaining 26.8 percent was heard by single arbitrators.

In the seven years that arbitration has operated in Rochester, a total of 12,102 cases has come into the program, and 12,026 dispositions have been made. The average monthly intake totalled 151 cases, and the monthly disposition rate amounted to 150 cases. This equaled an average yearly intake rate of 1,814 and a disposition rate of 1,803 cases. The caseload in Monroe

County has diminished moderately from its high in the 1973-74 period. This can be attributed to the nature of the Monroe County case mix along with the introduction of no-fault insurance. Until 1975, Monroe derived about 25 percent of its cases from personal injury litigation as opposed to 2.6 percent in the Bronx, 4.1 percent in Broome and 3.9 percent in Schenectady. The introduction of no-fault insurance has resulted in fewer personal injury cases (10% of all Monroe cases in 1976) entering the arbitration system and has caused a reduction in the total number of cases.

Monroe's breakdown of dispositions showed 34.6 percent settlements and 60.9 percent trial awards. This was the highest percentage of trial award dispositions in the four counties. In addition, settlement figures were broken down further to show that 80.8 percent of the settlements was made prior to the hearing, and 19.2 percent was made during the hearing but prior to an actual award. Of the 12,016 cases taken into arbitration to date, 80.2 percent has been assigned to arbitration panels, and 19.8 percent has been heard by a single arbitrator.

B. Transfers and Stipulations

Cases originating in superior courts may enter the arbitration system by stipulation or transfer. If a judge thinks a case will result in a judgment of $4,000 or less, he may transfer it to arbitration. In addition, a case may be transferred from a superior court. (See section 28.2 of the Rules of the Administrative Board.)

In 1975, a total of 585 cases were transferred or stipulated into arbitration across the four counties, representing 15.1 percent of all arbitration dispositions. There was a similar figure for 1976, when 562 cases, or 16.2 percent of statewide arbitration dispositions, were transferred into the program. (See Table D.) These figures indicate that arbitration is widely accepted by the Judiciary and the bar.

In 1976, 26 percent of the cases added to Broome's arbitration calendar originated in County Court, and 17 percent came from Supreme Court. These cases included judicial transfers and stipulations by both parties. The effect on Supreme Court was insignificant, amounting to 2 percent of judicial dispositions. However, cases entering arbitration from County Court amounted to 54 percent of the civil dispositions. Because County Court does not hear civil cases in Broome, in effect, arbitration reduced the Supreme Court caseload by 4 percent.

No cases were transferred from the Civil and Supreme Courts in the Bronx, and there were few stipulations.

In the past year, 13.7 percent of the Monroe County arbitration caseload came from transfers and stipulations from City Court and Supreme Court. Due to criminal case backlog, the County Court discontinued its civil calendar in April, 1975. Hence, City Court accounted for 23.6 percent of the transfers

and stipulations, while Supreme Court contributed 76.4 percent. The total amounted to 2.3 percent of the judicial dispositions in Supreme Court, and 28.6 percent of the civil dispositions in City Court.

In general, the effect of transfers on superior courts varied across counties. As shown in Table E, the impact of arbitration programs on Supreme Courts in 1976 was relatively negligible for cases above $4,000. However, there was a substantial impact in the respective County Courts. This was an important factor in freeing a judge's time for the increasing criminal caseload in the County Courts.

C. Demands and Awards

The demand-award analysis examined a total of 13,067 dispositions drawn from the four counties extending from October, 1970, the inception of the program, to January, 1977. (See Table F.)

Only 30.5 percent of the awards equalled the amounts demanded, and only 0.3 percent exceeded the demand. The average figure ranged from a high of 34.5 percent in the period October, 1970, to June 30, 1971, to a low of 27.2 percent in the period July 1, 1973, to June 30, 1974. On the one hand, statewide demands were fairly equally distributed, with 48.3 percent of the cases demanding $1,000 or less, and 51.7 percent demanding $1,000 or greater. On the other hand, statewide awards were concentrated in the lower monetary ranges, with 80.0 percent of the awards equalling $1,000 or less, and only 20.0 percent amounting to $1,000 or more. The number of cases settled with no award to the plaintiff averaged just under one-third of the total cases disposed. (See Table G for analysis of demand-award by reporting period.)

These figures, combined with the low overall incidence of trials *de novo*, reflect a high degree of acceptance by the litigants.

In the $0—$100 range, demand dropped from a peak of 2.8 percent (July 1, 1971 to June 30, 1972) to a low of 1.1 percent (January 1, 1975 to December 30, 1975). In 1976, it rebounded to 1.8 percent.

In the $101—$500, $501—$1,000 and $1,001—$3,000 ranges, it has remained fairly constant.

In the $3,000—$10,000 range, it has increased erratically but substantially. Lows of 4.8 percent and 5.8 percent (October, 1970 to June 30, 1972) were followed by a two-year period averaging 14.2 percent, and a three-year period averaging 10.3 percent. More specifically, within the $7,001—$10,000 range, demand maintained a steady share of about 2.1 percent for four years (October, 1970 to December 31, 1974) and then dropped to about 1.4 percent (January 1, 1975 to December 30, 1976). In general, the trend in the $3,001—$10,000 range probably indicated both increased judicial awareness of arbitration as a vehicle for settlements and increased acceptance of arbitration's ability to

handle cases involving larger amounts of money.

The percentage of cases demanding $10,000 and up has steadily declined from a high of 8.0 percent (October 1970 to June 30, 1971) to a low of 1.3 percent (January 1 to December 30, 1976). This was perhaps indicative of unwillingness to submit cases demanding damages greater than $10,000 to arbitration.

The award figures have changed little since the inception of the program; i.e., the "no award" figure has remained steady at approximately one-third of the total caseload. The percentage of awards in the $501—$1,000 range was inordinately high (24.6%) in the initial period but has remained steady since that period at about 18 percent. Only the percentage of cases with awards in the $3,001—$10,000 range has shown some increase over time, from 0.8 percent during the initial reporting period to 1.7 percent during the final period.

Variation across the counties can be found in the percentage of cases in which the award equalled demand, and cases in which the award was in favor of the defendant, i.e., no monetary award was made. Such county percentages are presented in Table H.

D. Nature of Actions

Cases entering the arbitration system can be divided into nine categories according to the nature of the litigation. They are: Motor Vehicle—personal injury, property damage, both; railroad; building and sidewalks; other negligence; other tort; contract; and other law.

A representative sample of 12,889 cases, or 47 percent of statewide total intake, has been divided by these categories in order to illustrate the general case mix as well as statewide and county trends. (See Tables I & J.) Large percentages of the cases were classified as contract (39.9%) and property damage (24.7%). Personal injury cases have declined substantially relative to the other categories. This can be attributed to the introduction of no-fault insurance. Since 1972-73, there has been a steady rise in the proportion of contract cases and an increase in the percentage of property damage cases.

The total case mix in Monroe County has been heavily weighted towards contract (38.0%) and personal injury cases (21.8%). However, with the introduction of no-fault insurance, personal injury cases have dropped to 9.9 percent as compared with a high of 27.6 percent in 1972-73. This percentage drop has been compensated by increases in property damage cases, 19.2 percent of the 1976 total, and contract cases, 48.7 percent of the 1976 total.

The Bronx County case mix showed a very low proportion of personal injury cases (2.1%) and a very high percentage in the property damage category (38.3%, nearly 14 percentage points higher than the statewide average). Contract cases amounted to 41.3 percent of the overall total.

Of the four counties, Broome maintained the highest percent-

age of cases in the contract category (54.5%). In the last 2 1/2 years, the yearly percentage of contract cases has risen from 48.9 percent to 67.3 percent. Property damage cases amounted to 14.8 percent of the overall total, with cases in the "other law" and "other negligence" categories contributing 9.6 percent and 8.5 percent, respectively.

Schenectady's case mix approximated the statewide case mix with property damage cases (29.2%) and contract cases (38.1%) contributing the bulk of the cases. Personal injury cases (2.7%) amounted to a very small percentage of Schenectady's overall caseload.

III. Finality of Decisions

Overall, the figures indicate widespread acceptance of the arbitrators' decisions. As shown in Table C, 91.2 percent of the dispositions in the arbitration program were final. This was especially impressive in light of the demand-award analysis, which showed no monetary award in 31.9 percent of the cases, and awards equal to demands in only 30.5 percent of the cases. (See Table F.)

It should also be noted that a fairly small proportion of the appeals actually appeared on the court calendars, and an even smaller percentage resulted in reversals of the arbitration decision.

Statistics on appeals were calculated as a percentage of all arbitration dispositions, and then were figured as a percentage of actual award judgments. (See Table K.) The results are as follows:

Demands for trial *de novo* in Monroe have amounted to 5.7 percent of all dispositions and 9.4 percent of all trial awards. The percentage peaked in the period between July, 1973, and December, 1973, and has diminished moderately since then. The total percentage compared favorably with the four county averages. It was important to make note of a recent study undertaken by the Office of Arbitration in Rochester dated May 1, 1977. The study examined 777 demands for trials *de novo* and found that only 30.9 percent of the demands actually appeared on the trial calendar, and only 10.4 percent of them resulted in reversal of the original arbitration awards. It has been our experience that the results of this study were generally indicative of patterns in other counties.

Bronx County maintained the lowest overall trial *de novo* rate of the four counties: 3.4 percent of all dispositions and 7.6 percent of all trial awards. These figures represented the lowest rates in both categories and compared extremely well with the overall percentage across the four counties. There has been some increase in the demand rates in the last 1 1/2 years with a high reached in the latest six month period (January 1 to June 30, 1977), when demand occurred in 6.6 percent of all dispositions and 10.4 percent of awards.

Demand for trials *de novo* in Schenectady occurred in 6.7 percent of all dispositions and in 16.3 percent of the awards. The figures represented the highest rates of the four counties in both categories. The rate as to awards was significantly above the four county average of 8.8 percent.

Demand in Broome County has occurred in 6 percent of the total dispositions and 10.8 percent of awards. This was slightly higher than the four county averages for dispositions, but sources in Binghamton City Court reported that very few demands actually appeared on the trial calendar. In the last two years, about only 3 out of 22 demands resulted in trials *de novo*.

IV. Cost Effectiveness

Measures of actual monetary savings accrued to the court system from arbitration may be misleading. Cost-effectiveness evaluations cannot account for the effect arbitration has had in relieving the court system of smaller civil cases, thus allowing judges to concentrate on more complex civil cases, as well as partially availing some judges from civil work to sit in criminal parts. However, a cost analysis can show that average cost per disposition for arbitration cases in 1976 fell below that for cases in the respective trial courts. That is, while arbitration probably has not effected a drop in average cost per disposition in the Supreme and/or County Courts, it may have done so when examined over the entire court system.

Furthermore, arbitration incurs no fixed overhead cost for the State. The largest single category of expense to compulsory arbitration is the fee paid to arbitrators for their services rendered, which varies with use. Thus it is both an economical and a flexible means of meeting the fewer litigation demands of some counties.

Statewide, the $220 average cost per Supreme Court disposition (see Table L) greatly exceeded the approximately $91 average cost per arbitration disposition (see Table M). Broome was the only county where average cost per arbitration disposition exceeded that per Supreme Court disposition; by about 35 percent.

V. Attitudes Toward Arbitration

A. Monroe County

The compulsory arbitration program was established in Monroe County in the fall of 1970.

In Rochester, cases with claims of $4,000 and under arising outside the City of Rochester must first appear on the Supreme or County Court calendar; then, they are transferred to City Court for arbitration. Cases filed in Supreme Court seeking damages in excess of $4,000 may be eligible for arbitration if the

court reduces the demand or if the parties stipulate to arbitration. In those cases, the amount of damages actually awarded may exceed the $4,000 limit.

When a case reaches the City Court, a note of issue is filed, and a duplicate copy is sent to the arbitration commissioner's office. All cases which go to arbitration come directly from City Court regardless of the court of original jurisdiction. Jean Cumming, Commissioner of Arbitration, checks all notes of issue for accuracy and assigns them an arbitration program case number. A case card is then prepared and filed under the name of the plaintiff. This file corresponds with the records kept in the City Court.

After a case card is prepared, the case is assigned to a panel of arbitrators. Approximately 930 attorneys, 95% of the actively practicing Rochester Bar, serve as arbitrators, and each is called upon every 8 to 10 months depending on the caseload. Panels that consist of a chairman and two members were originally chosen by a computer using limited data, e.g., number of years the attorney practiced, date last served on a panel. So many adjustments had to be made that Ms. Cumming found the manual system using chronologically filed index cards to be cheaper and more efficient. The chairman of the panel chooses a hearing date which is acceptable to the other panel members. Notice of this date is then sent to the parties. Failure to appear results in a default judgment. Pursuant to section 28.6 (b) of the Rules of the Administrative Board, notice must be given at least 15 days prior to the hearing. In practice, however, 20 to 30 days are allowed to guarantee that all parties will be available. No last minute changes are permitted.

Hearings are usually held in the chairperson's office. If more space is required, a hearing room can be reserved in the Hall of Justice.

The number of cases assigned to a panel is set by the Commissioner according to the pending caseload. Presently, five cases are assigned to each panel.

After the hearing, the Commissioner sends a copy of the disposition to the City Court to be recorded, and notice of this is sent to the parties. The judgment is not filed for 20 days in order to allow time to demand a trial *de novo*.

Jean Cumming and John Keigher, the first Arbitration Commissioner in Rochester, spoke enthusiastically about the success of the program. Ms. Cumming estimates that arbitration hearings average one and one half hours as opposed to two days for a similar case in court. They have heard very few criticisms of the program, and only two attorneys have stopped serving as arbitrators since its inception.

i) *Response of Attorneys*

Attorneys in Rochester thought that arbitration saves time for their clients and the courts. Arbitration hearings that last two hours would take as long as four days in court. Waiting time has been cut from an average of two years to a period of weeks. Time

is saved because there is no jury selection, and there is never a problem of waiting for a courtroom. The informality of the hearing, especially the informal rules of evidence, also saves time.

The use of arbitration panels avoids many time consuming trial procedures. Moreover, arbitrators are preferred to juries, because they often have had more experience with witnesses and litigants and, therefore, are more adept at determining the facts. However, there have been cases that have been tried where all three lawyers on the panel were inexperienced in a particular legal area. On such occasions, it was sometimes necessary to request a trial *de novo*. In general, requests for new trials are relatively infrequent, according to counsel from both Traveller's and Allstate. Lawyers representing insurance companies will often accept verdicts against them for small amounts, because it would be more costly to litigate further.

When asked if the arbitration panel should be expanded to include disputes up to $10,000, one lawyer felt that this would not be a good idea, because attorneys have more control in the larger jury cases. Three other attorneys, however, felt that it would be a good idea to raise the monetary limit, despite that this might result in more trials *de novo*.

All of the attorneys interviewed felt that raising the limit on one-man panels to $1,000 would be a good idea. One of the lawyers qualified this by stating that this should be by stipulation only. Another believed that single arbitrators should be carefully matched to the types of cases heard to ensure that cases are heard by lawyers who have knowledge about the problem before them.

The President of the Bar Association added that he felt the compulsory arbitration program should be extended to other matters, such as support and custody cases in Family Court.

ii) *Judicial Response*

The Administrative Judge for Civil Affairs was very enthusiastic about the program. He thought that it contributed to the reduction in court backlog in criminal and civil matters. By drawing cases from the civil calendar, arbitration allows judges to dispose of more criminal cases.

The Judge thought that the monetary limits of the program should be extended, and that compulsory arbitration could be extended to support and custody proceedings in Family Court.

B. Bronx County

Compulsory arbitration began in the Bronx in May, 1971. The program was modelled after compulsory arbitration in Rochester with two important exceptions. First, attorneys need not be members of the Bronx Bar Association to serve as arbitrators. Second, cases are calendared for an initial hearing before a judge in a compulsory arbitration assignment part (CAAP). The purpose of the CAAP conferences is to encourage settlements before cases enter the arbitration system. Two conferences are held

each week: one for parties appearing in person, and one for tort and commercial cases. Calendar call takes about one hour.

The judge sitting in this part the day we visited thought that these conferences were important in saving time and money. One-third of all cases were settled in the conference sessions. The Commissioner of Arbitration in the Bronx, Michael Capelli, however, suggested that *pro se* CAAP conferences be discontinued. He noted that persons are often not informed that they first appear only for calendar call and then must take an additional day from work for the actual arbitration. However, since more than half of the cases involving claims of $4,000 and under which are brought by *pro se* litigants are disposed of at the CAAP conferences, it seems more advisable to require notice stating that there will be a preliminary step involving only calendar call and not requiring a full-day attendance.

Mr. Capelli also suggested that no adjournments be permitted in *pro se* cases.

i) *Response of Attorneys*

Attorneys who had contact with compulsory arbitration thought that it is a valuable program. The lawyer who chaired the Bronx Bar Association Committee last year believed that the program was efficient and freed lower court judges for Criminal and Supreme Court parts. He favored increasing the monetary limit to $10,000, despite that this would probably increase the incidence of trials *de novo* and the number of personal injury cases.

We were informed that most panels were composed primarily of plaintiff lawyers. In his opinion, this did not bias insurance lawyers against compulsory arbitration, since the program saved them a substantial amount in defense costs.

ii) *Judicial and Nonjudicial Response*

The general response to arbitration in the Bronx was positive. One of the judges who sat for the CAAP conference maintained that it had an important effect on backlog. The Administrative Judge of the Civil Court in the Bronx felt that the program operated successfully. Both the Commissioner of Arbitration and a Civil Court clerk suggested that judges exert some control over the number of adjournments presently being granted at the CAAP conferences. A clerk said that several legal assistance organizations in New York oppose compulsory arbitration on the ground that the fee charged for new trials discriminates against poor persons.

Because the program is not widely known, few large cases are stipulated for arbitration. To remedy this, the Commissioner of Arbitration recommended that the rules be published in the New York Law Journal.

C. Broome County

The compulsory arbitration program began in Binghamton in March, 1972. Cases beginning in Supreme Court for amounts of

$4,000 and under usually go to arbitration. Cases not stipulated, however, are calendared, attorneys are notified, then the judge decides during calendar call or pre-trial hearing if the case goes to arbitration. If the case goes to arbitration, the note of issue is sent to City Court for arbitration. Since the Commissioner of Arbitration, Bud Lachman, has his office outside Binghamton, he comes to the City Court only once a week to pick up notes of issue.

Cases can also go from County Court to Supreme Court, since no civil cases are presently being heard in County Court in Binghamton. Notes of issue, when filed, are transferred automatically to Supreme Court, at which point the procedure described above is initiated.

i) *Response of Attorneys*

One Binghamton attorney who has served ten times and has represented several clients in the program mentioned that the program saved time for litigants and attorneys, because there is no jury selection, and waiting time is cut. He also reiterated the criticism that scheduling lawyers for hearings often presented a problem. On occasion, he had dealt with a panel which was unfamiliar with the kind of case under consideration. Both he and a second attorney agreed that the time between filing date and hearing date was too short to allow attorneys to properly prepare his case. One lawyer felt that it would be a good idea to raise the monetary limit to $10,000, as well as to raise the limit on single arbitrator cases to $1,000. The Commissioner of Arbitration agreed with him. However, another opposed both ideas, stating that raising the monetary limit would create too many trials *de novo*, and raising the limit of single arbitrator cases would give one individual too much decision-making power.

ii) *Judicial Response*

The judges with whom we spoke also felt that the program operated successfully. A City Court Judge stated that the program has helped reduce backlog in both the County and Supreme Courts. He suggested that certain cases presently heard in Small Claims Court, such as motor vehicle and property damage cases that demand witnesses, could go to arbitration. This judge would approve increasing the monetary limits of the program to $10,000 and of the arbitrator panels to $1,000. A County Court Judge mentioned that he had heard complaints about difficulties in scheduling panels. A Supreme Court Justice in Binghamton stated that arbitration aided in reducing backlog.

D. Schenectady County

Arbitration in Schenectady County began in June, 1973. Pursuant to section 28.2(a) of the Rules of the Administrative Board, cases under $4,000 noticed for trial in County Court and Supreme Court go automatically to arbitration. In the City Court, however, only actions where a jury trial is demanded go

to arbitration. Because of the latter stipulation, arbitration in Schenectady is not truly compulsory.

It has been estimated that approximately one-third of all cases under $4,000 were disposed in the City Court. Most cases that went to arbitration originated in the County or Supreme Court and did not have to be first transferred to City Court, as in Rochester.

The Commissioner of Arbitration in Schnectady, Mr. Cierva, noted that most civil cases under $4,000 were filed with the County Court rather than City Court. He suggested that many cases that go to City Court did not go to arbitration, because the judge in the City Court was able to settle them, thus encouraging lawyers to use the courts as a source of speedy disposition.

The major criticism of the program in Schenectady concerned the large number of adjournments. Mr. Ciervo believed that he had solved this problem by calling for a default after one adjournment; however, lawyers we spoke with suggested that this was not yet the case, since adjournment policy was determined by individual panels.

i) *Response of Attorneys*

We arranged a meeting with four attorneys who served as arbitrators in Schenectady. They were enthusiastic about the program, because it not only saved time and money but also provided good experience for young lawyers serving as attorneys and arbitrators.

The attorneys reiterated the problem of adjournments, stating the reason was that the arbitration program did not have the same recognition as the courts. They added that litigation lawyers created scheduling problems, and that providing sanctions that could be used either by the Commissioner of Arbitration or by arbitrators might resolve the problem.

Three of the four attorneys with whom we spoke favored raising the monetary limit to $10,000. One suggested that such a step would serve to raise the status of the arbitration program by giving it further legitimacy in the eyes of lawyers and the Judiciary. One lawyer recommended that the limit be raised, but that parties be allowed to request a trial instead of an arbitration hearing.

A fifth lawyer with whom we spoke repeated the criticism that we heard in Rochester; that is, his cases had been heard by panels that knew nothing about the issue at hand. He also mentioned that, as a defense lawyer, he did not want his case to be heard by a panel of plaintiff lawyers. In one such case, he had allowed a default judgment.

ii) *Judicial Response*

A Supreme Court Justice in the Fourth Judicial District characterized the arbitration program as "a phenomenal success." He felt that the problem of adjournments could be solved if the Commissioner of Arbitration imposed real sanctions after one adjournment. He attributed the problem to the arbitrators rather than the attorneys.

VI. Recommendations

Several lawyers in the four counties suggested that arbitration fees be raised, especially those paid to the chairperson. Other lawyers characterized the program as a "labor of love" and did not object to the fees remaining minimal. We do not recommend that fees be raised, because serving as arbitrators saves attorneys time. This is why such a large percentage of the bar association in each county serves on panels, and few have dropped out of the arbitration pools.

Most attorneys, judicial and non-judicial personnel, and commissioners of arbitration welcomed the raise in the monetary limit to $6,000.* They also felt that a $10,000 limit would be worthwhile. We suggest that an increase to $10,000 should be considered in two years.

A. Monroe County

The compulsory arbitration program runs extremely smoothly in Rochester. One improvement would be to have the notes of issue from transferred cases go directly to arbitration from the court of origin.

B. Bronx County

The program in the Bronx would operate more smoothly if fewer adjournments were permitted by judges at the arbitration calendar call. The Commissioner of Arbitration has already made this suggestion to the Administrative Judge. The Commissioner's recommendation that adjournments be eliminated for *pro se* cases would save time and money for those individuals who cannot afford an attorney.

C. Broome County

Delay in the Binghamton arbitration program can be reduced by sending cases for amounts under $4,000 automatically to arbitration, thus eliminating transfers after calendar calls when attorneys do not stipulate at time of filing. Arbitration would also then become truly compulsory.

D. Schenectady County

The rules for Schenectady County are different than those for other counties. Parties who do not demand a jury trial go to City Court rather than to arbitration. Therefore, the program is not truly compulsory. There appears no reason why such a distinction should continue.

Schenectady's program is also unusual in that the Commissioner of Arbitration and the secretary work out of two different

*As of December 1977, the Administrative Board had not amended the Rules increasing the monetary limit to $6,000.

offices. Under this arrangement, the Commissioner does not have access to any of the records. It would be helpful if these two offices were consolidated.

Lawyers, judges and the Commissioner of Arbitration all recognize adjournments as a serious problem. Several attorneys suggested that panel chairpersons be allowed to impose sanctions to control this problem, while others suggest that legislation be enacted, so that the Commissioner could impose such sanctions.

VII. Conclusion

From this study, we conclude that the arbitration program is operating successfully in all four counties. It has helped to reduce backlog, has met with approval from the Judiciary, local bar associations and litigants, and has saved the courts, attorneys and litigants a substantial amount of time. The percentage of trials *de novo* has been minimal, and the programs have been well integrated into the court system.

First, we recommend that the program be made permanent rather than extended every two years. Second, we recommend that it be extended to other counties based primarily on need.

Table A
Average and Median Time from Filing to Disposition Per Case in Months

Proceeding	Monroe County		Bronx County		Broome County		Schenectady County	
	Average	Median	Average	Median	Average	Median	Average	Median
Civil Trial	16.6	15.25	2.57	2.0	12.0	6.1	16.6	7.8
Arbitration	4.8	3.9	3.56	3.3	7.9	5.85	11.7	7.0
Time Saved	11.8	11.35	—.99*	—1.3*	4.1	0.25	4.9	0.8

*In the Bronx, cases are held by Compulsory Arbitration Appearance Part for 30 days before being sent to arbitration.

NOTE: Due to procedural system unique to each of the four counties, it was necessary to draw statistics from different sources. In an attempt to closely match the sample cases drawn from the court of civil jurisdiction and those selected from arbitration, the following steps were taken:

a. *Monroe County* — Arbitration cases were randomly selected from the 1973 caseload. 108 cases were analyzed representing 5% (2,088) of the 1973 caseload. Elapsed time was measured from the date the note of issue was filed to the date of the arbitration award.

A sample of 120 Supreme Court cases was utilized in Monroe County for comparative purposes. These cases represented approximately one-third the total number of Supreme Court cases filed and disposed of in 1973, which had demands of $4,000 — $10,000. Disposition dates for the sample extended from March, 1973 to April, 1975. Elapsed time in the court system was measured in the same manner as for the sample cases in arbitration.

b. *Bronx County* — The arbitration sample included 238 cases, 130 drawn from 1975, and 108 drawn from 1976.

The comparison group was drawn from civil cases requesting $4,000 to $10,000 filed in the Bronx Civil Court. The 1975 sample included 253 cases, and the 1976 sample included 238 cases.

c. *Broome County* — The arbitration sample in Binghamton was 105 cases. The sample was drawn over the entire time span of the program (1972—1977).

The comparison group of cases under $10,000 was selected from Supreme Court cases requesting under $10,000. The sample included 100 cases selected from notes of issue filed between September, 1974 and December, 1976.

d. *Schenectady County* — The sample of arbitration cases was 90, representing more than 10% of the total caseload from the beginning of the program to the end of 1976.

Pursuant to administrative guidelines unique to Schenectady County, cases under $4,000 not requesting a jury trial remain in City Court. Therefore, in order to closely match cases, a sample of 65 cases was drawn from the 95 cases which remained in the City Court in 1974. This year was chosen, because it provided an adequate sample of completed cases.

Table B-1
Percentages of Types of Assignments and Dispositions
October 1970 to December 1977

County	Assignments		Dispositions		
	Panel	Single	Settlements	Awards	Other[1]
Monroe	80.2	19.8	34.6	60.9	4.5
Bronx	77.0	23.0	46.4	44.6	9.0
Broome	72.7	27.3	44.2	55.8	0
Schenectady	73.3	26.7	59.1	40.9	0
Statewide Average	78.1	21.9	41.4	52.1	6.5

[1] Includes cases where no award was granted.

Table B-2
Arbitration Summary
by Participating County
October 1970 to December 1977

County	Cases Added	Assignments		Dispositions					de Novo Appeals
				Settlements			Awards	Other[2]	
		Panel	Single	Before Hearing	During Hearing	Unspecified[1]			
Monroe (as of 5/71)	12,102	9,606	2,379	2,905	691	561	7,320	549	687
Bronx (as of 5/71)	13,589	9,794	2,927	2,791	3,107	315	5,975	1,201	455
Broome (as of 3/72)	933	705	265	0	0	388	490	0	53
Schenectady (as of 7/73)	922	662	241	0	0	430	297	0	48
Total	27,546	20,767	5,812	5,696	3,798	1,694	14,082	1,750	1,243

[1] Due to incomplete records, a breakdown on whether settlements were made before or during the hearing is unavailable.

[2] Includes cases where no award was granted.

Table C
Arbitration Summary Statewide
by Reporting Period

Reporting Period	Cases Added	Assignments		Dispositions					Appeals de Novo
				Settlements			Trial Awards	Other[2]	
		Panel	Single	Before Hearing	During Hearing	Unspecified[1]			
Oct. 1970—June 30, 1971	1,795	1,369	8	0	0	342	486	85	32
July 1, 1971 — June 30, 1972	5,925	4,254	1,169	1,337	703	554	2,172	992	125
July 1, 1972 — June 30, 1973	4,832	3,497	1,185	1,332	811	104	2,542	198	213
July 1, 1973 — June 30, 1974	4,253	3,404	902	888	653	145	2,309	172	239
July 1, 1974 — Dec. 31, 1974	1,923	1,397	481	490	316	73	1,184	63	132
Jan. 1, 1975 — Dec. 31, 1975	3,807	2,949	857	726	601	199	2,211	124	191
Jan. 1, 1976 — Dec. 31, 1976	3,371	2,532	871	607	486	180	2,114	78	198
Jan. 1, 1977 — June 30, 1977	1,640	1,365	339	316	228	97	1,064	38	113
Total	27,546	20,767	5,812	5,696	3,798	1,694	14,082	1,750	1,243

[1] Due to incomplete records, a breakdown on whether settlements were made before or during the hearing is unavailable.
[2] Includes cases where no award was granted.

Table D
Cases Stipulated or Transferred to Compulsory Arbitration
1976 and 1975

County[1]	1976	1975
Monroe		
County Court	—[2]	6
City Court	43	16
Supreme Court	139	176
Subtotal	182	198
Broome		
County Court	41	45
City Court	88	104
Supreme Court	26	37
Subtotal	155	186
Schenectady		
County Court	98	61
City Court	25	37
Supreme Court	102	103
Subtotal	225	201
Grand Total	562	585

[1] The Bronx Arbitration Commissioner reported a negligible number of transfers.
[2] Civil calendar discontinued in April 1975.

Table E
Cases Transferred from Superior Courts to Arbitration
1976

County	Filings[1]	Cases Transferred to Arbitration	
		Number	Percent of Filings
Monroe			
Supreme Court	6,666	139	2.1%
County Court (Civil Term)	29	43	148.3
Broome			
Supreme Court	1,398	26	1.9
County Court (Civil Term)	89	41	46.1
Schenectady			
Supreme Court	1,898	102	5.4
County Court (Civil Term)	143	98	68.5

[1] Figures from 1976 OCA Annual Report

Table F

Statewide Demand—Award Analysis

October 1970 to January 1977

Award	Demand												Total
	Up To $100	$101 – $200	$201 – $300	$301 – $400	$401 – $500	$501 – $1,000	$1,001 – $2,000	$2,001 – $3,000	$3,001 – $7,000	$7,001 – $10,000	$10,000 And Up	Unspecified	
None	78	249	279	286	269	900	726	718	311	66	149	3	4,034
Up To $100	137	102	58	31	39	69	21	34	7	2	0	0	500
$101 – $200	4	363	121	81	69	132	56	54	18	2	4	0	904
$201 – $300	0	5	542	96	85	222	78	89	23	8	15	0	1,163
$301 – $400	0	1	4	291	73	216	79	59	24	8	8	0	763
$401 – $500	0	0	0	2	292	328	108	116	45	6	14	0	811
$501 – $1,000	0	0	0	0	9	1,085	493	443	197	39	60	1	2,327
$1,001 – $2,000	0	0	0	0	1	6	800	528	298	51	128	0	1,812
$2,001 – $3,000	0	0	0	0	0	1	3	389	128	29	50	0	600
$3,001 – $7,000	0	0	0	0	0	0	0	8	81	19	35	0	143
$7,001 – $10,000	0	0	0	0	0	0	0	0	0	2	4	0	6
$10,000 And Up	0	0	0	0	0	0	0	0	0	0	3	0	3
Unspecified	0	0	0	0	0	0	0	0	0	0	0	1	1
Total	219	720	1,004	787	837	2,859	2,364	2,438	1,132	232	470	5	13,067

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Table G
Statewide Demand-Award Analysis
by Reporting Period

A) Demand as percentage of total dispositions:

Reporting Period	0 – $100	$100 – $500	$500 – $1,000	$1,000 – $3,000	$3,000 – $7,000	$7,000 – $10,000	$10,000+
10/70 6/30/71	2.4%	27.0%	20.6%	35.8%	4.8%	2.4%	8.0%
7/1/71- 6/30/72	2.8	30.1	22.2	33.7	5.8	1.8	5.4
7/1/72- 6/30/73	1.9	26.1	20.8	34.3	12.6	2.0	4.3
7/1/73- 6/30/74	1.1	20.0	20.1	38.6	15.7	2.0	4.5
7/1/74- 12/31/74	1.4	22.4	21.0	40.0	11.5	2.5	3.7
1/75- 12/30/75	1.1	22.1	24.9	38.8	11.0	1.5	2.1
1/76- 12/30/76	1.8	24.7	24.0	39.8	8.4	1.3	1.3
Total	1.7%	24.4%	22.2%	37.3%	10.7%	1.9%	3.7%

CONTINUED

4 OF 5

B) Cases where demand equals award as percentage of total dispositions:

Reporting Period	*Percent*
10/70-6/30/71	34.5%
7/1/71-6/30/72	30.9
7/1/72-6/30/73	27.6
7/1/73-6/30/74	27.2
7/1/74-12/31/74	28.1
1/75-1/76	30.7
1/76-1/77	33.2
Total	30.5%

C) Award as percentage of total dispositions:

Reporting Period	0	0 — $100	$100 — $500	$500 — $1,000	$1,000 — $3,000	$3,000 — $10,000	$10,000+
10/70-6/30/71	27.3%	3.7%	24.9%	24.6%	18.4%	0.8%	0%
7/1/71-6/30/72	31.1	5.6	29.4	16.7	16.3	0.9	0
7/1/72-6/30/73	32.6	3.9	26.5	17.6	18.3	1.1	0
7/1/73-6/30/74	31.3	3.4	23.6	18.7	21.4	1.6	0
7/1/74-12/30/74	33.6	3.5	25.7	16.4	19.4	1.3	0.1
1/75-1/76	31.1	3.0	27.1	18.4	19.1	1.3	0
1/76-1/77	29.6	3.8	28.1	18.7	18.0	1.7	0.1
Total	31.3%	3.9%	26.7%	18.1%	18.7%	1.3%	0%

Table H
Demand-Award Analysis
by Participating County
Jan. 1, 1975 to Dec. 31, 1975

County	Percentage of Total Dispositions	
	Demand Equalled Award	No Award Granted
Monroe	31.5%	27.9%
Bronx	38.6	36.3
Broome	39.8	21.3
Schenectady	32.5	24.7

Table I
Nature of Actions
Statewide by Reporting Period

Action	10/70-6/30/71		7/1/71-6/30/72		7/1/72-6/30/73		7/1/73-6/30/74		7/1/74-12/31/74		1/1/75-12/31/75		1/1/76-12/31/76		Total Periods	
	No.	Percent	No.	Percent	No.	Percent	No.	Percent	No.	Percent	No.	Percent	No.	Percent	No.	Percent
Motor Vehicle: Personal Injury	69	18.4	290	14.2	434	16.8	404	17.8	175	14.4	240	10.7	96	4.4	1,708	13.3
Property Damage	84	22.4	538	26.3	648	25.1	471	20.8	276	22.8	579	25.8	584	27.0	3,180	24.7
Both	33	8.8	162	7.9	290	11.2	271	11.9	137	11.3	161	7.2	60	2.8	1,114	8.6
Railroad	0	0	2	0.1	5	0.2	2	0.1	0	0	1	*	2	0.1	12	0.1
Buildings and Sidewalks	7	1.9	42	2.1	48	1.9	60	2.6	20	1.6	31	1.4	27	1.2	235	1.8
Other Negligence	19	5.1	52	2.5	85	3.3	96	4.2	45	3.7	108	4.8	97	4.5	502	3.9
Other Tort	13	3.5	57	2.8	67	2.6	49	2.2	30	3.5	63	2.8	65	3.0	344	2.7
Contract	140	37.3	823	40.2	909	35.3	800	35.3	442	36.4	949	42.3	1,082	50.0	5,145	39.9
Other Law	7	1.9	79	3.9	88	3.4	115	5.1	86	7.1	111	5.0	152	7.0	638	4.9
Unspecified	3	0.8	1	*	5	0.2	0	0	2	0.2	0	0	0	0	11	0.1
All Categories	375	2.9	2,046	15.9	2,579	20.0	2,268	17.6	1,213	9.4	2,243	17.4	2,165	16.8	12,889	100.0

*Negligible

Table J (Partial)
Nature of Actions by Participating County and by Reporting Period

MONROE COUNTY

Action	10/70-6/30/71		7/1/71-6/30/72		7/1/72-6/30/73		7/1/73-6/30/74		7/1/74-12/31/74		1/1/75-12/31/75		1/1/76-12/31/76		Total Periods	
	No.	Percent	No.	Percent	No.	Percent	No.	Percent	No.	Percent	No.	Percent	No.	Percent	No.	Percent
Motor Vehicle: Personal Injury	69	18.4	268	24.4	396	27.6	376	27.5	161	25.5	213	19.3	85	9.9	1,568	21.8
Property Damage	84	22.4	172	15.7	176	12.3	170	12.5	74	11.7	156	14.2	165	19.2	997	15.4
Both	33	8.8	150	13.6	263	18.4	241	17.7	115	18.2	126	11.4	42	4.9	970	13.3
Railroad	0	0	1	*	3	0.2	2	*	0	0	1	*	0	0	7	0.1
Bldgs. & Sidewalks	7	1.9	19	1.7	21	1.5	39	2.9	15	2.4	22	2.1	13	1.5	136	2.0
Other Negligence	19	5.1	28	2.5	43	3.0	59	4.3	26	4.1	51	4.6	51	5.9	277	4.2
Other Tort	13	3.5	22	2.0	29	2.0	24	1.8	12	1.9	29	2.6	32	3.7	161	2.5
Contract	140	37.3	415	37.8	483	33.7	426	31.2	222	35.1	468	42.5	419	48.7	2,573	38.0
Other Law	7	1.9	24	2.3	19	1.3	28	2.1	7	1.1	36	3.3	53	6.2	174	2.6
Unspecified	3	0.7	0	0	0	0	0	0	0	0	0	0	0	0	3	0.1
All Categories	375	5.5	1,099	16.0	1,433	20.9	1,365	19.9	632	9.2	1,102	16.1	860	12.5	6,866	100.0

*Negligible

BRONX COUNTY

Action	7/1/71-6/30/72		7/1/72-6/30/73		7/1/73-6/30/74		7/1/74-12/31/74		1/1/75-12/31/75		1/1/76-12/31/76		Total Periods	
	No.	Percent	No.	Percent	No.	Percent	No.	Percent	No.	Percent	No.	Percent	No.	Percent
Motor Vehicle: Personal Injury	22	2.3	32	3.1	18	2.2	9	1.9	22	2.3	11	1.0	114	2.1
Property Damage	366	38.6	452	43.2	292	36.5	178	37.0	384	40.0	379	34.5	2,051	38.3
Both	12	1.3	25	2.4	24	3.0	16	3.3	26	2.7	11	1.0	114	2.3
Railroad	1	0.1	2	0.2	0	0	0	0	0	0	2	0.2	5	0.08
Bldgs. & Sidewalks	23	2.4	25	2.4	18	2.2	5	1.0	7	0.7	11	1.0	89	1.6
Other Negligence	24	2.5	32	3.1	27	3.4	11	2.3	41	4.3	33	3.0	168	3.1
Other Tort	35	3.7	30	2.9	22	2.7	15	3.1	25	2.6	22	2.0	149	2.8
Contract	408	43.2	378	36.1	324	40.5	180	37.5	397	41.3	543	49.4	2,230	41.3
Other Law	55	5.8	65	6.2	76	9.5	65	13.5	59	6.1	87	7.9	407	8.2
Unspecified	1	0.1	5	0.5	0	0	2	0.4	0	0	0	0	8	0.2
All Categories	947	17.8	1,046	19.6	801	15.0	481	9.0	961	18.0	1,099	20.6	5,335	100.0

Table J (Concluded)
Nature of Actions by Participating County and by Reporting Period

BROOME COUNTY

Action	7/1/72-6/30/73		7/1/73-6/30/74		7/1/74-12/31/74		1/1/75-12/31/75		1/1/76-12/31/76		Total Periods	
	No.	Percent	No.	Percent	No.	Percent	No.	Percent	No.	Percent	No.	Percent
Motor Vehicle: Personal Injury	6	6.0	10	9.8	2	4.3	2	1.9	0	0	20	4.4
Property Damage	20	20.0	9	8.8	9	19.1	13	12.6	15	13.6	66	14.8
Both	2	2.0	6	5.9	0	0	1	1.0	0	0	9	1.8
Railroad	0	0	0	0	0	0	0	0	0	0	0	0
Bldgs. & Sidewalks	2	2.0	3	2.9	0	0	2	1.9	2	1.8	9	1.7
Other Negligence	10	10.0	10	9.8	3	6.4	9	8.8	8	7.3	40	8.5
Other Tort	8	8.0	3	2.9	2	4.3	4	3.9	5	4.6	22	4.7
Contract	48	48.0	50	49.0	23	48.9	61	59.2	74	67.3	256	54.5
Other Law	4	4.0	11	10.9	8	17.0	11	10.7	6	5.4	40	9.6
All Categories	100	21.6	102	22.1	47	10.2	103	22.3	110	23.8	462	100.0

SCHENECTADY COUNTY

Action	6/1/74-12/31/74		1/1/75-12/31/75		1/1/76-12/31/75		Total Periods	
	No.	Percent	No.	Percent	No.	Percent	No.	Percent
Motor Vehicle: Personal Injury	3	5.7	3	3.9	0	0	6	2.7
Property Damage	15	28.3	26	33.8	25	26.0	66	29.2
Both	6	11.3	8	10.4	7	7.3	21	9.3
Railroad	0	0	0	0	0	0	0	0
Bldgs. & Sidewalks	0	0	0	0	1	1.0	1	0.4
Other Negligence	5	9.4	7	9.0	5	5.2	17	7.5
Other Tort	1	1.9	5	6.5	6	6.3	12	5.3
Contract	17	32.1	23	29.9	46	47.9	86	38.1
Other Law	6	11.3	5	6.5	6	6.3	17	7.5
All Categories	53	23.4	77	34.1	96	42.5	226	100.0

Table K

Trial De Novo Appeals as a Percentage of All Dispositions and of Trial Awards by Reporting Period and County

Reporting Period	Bronx		Broome		Monroe		Schenectady	
	All Dispositions (%)	Trial Awards (%)	All Dispositions (%)	Trial Awards (%)	All Dispositions (%)	Trial Awards (%)	All Dispositions (%)	Trial Awards (%)
Oct. 1970-June 30, 1971	...	...	...	....	3.6	6.6	...	....
July 1, 1971-June 30, 1972	1.3	4.6	...	....	3.9	6.9	...	....
July 1, 1972-June 30, 1973	3.5	8.0	6.1	12.9	4.8	8.4	...	....
July 1, 1973-June 30, 1974	4.6	9.6	9.0	15.6	6.4	10.3	5.9	12.9
July 1, 1974-Dec. 31, 1974	4.3	8.9	5.9	10.9	7.8	12.2	9.8	21.6
Jan. 1, 1975-Dec. 31, 1975	3.6	6.6	4.2	6.6	7.0	10.4	4.9	14.9
Jan. 1, 1976-Dec. 31, 1976	4.5	7.6	7.1	12.0	7.1	10.6	6.8	16.7
Jan. 1, 1977-June 30, 1977	6.6	10.4	4.2	8.3	6.3	10.3	8.2	19.0
Total	3.4	7.6	6.0	10.8	5.7	9.4	6.7	16.3

Statewide Averages

All Dispositions: 4.6%
Trial Awards: 8.8%

Table L

Supreme Court
Average Cost Per Disposition[1]
1975

Monroe County	$219
Bronx County	270
Broome County	90
Schenectady County	108
Statewide	$220

[1] Supreme Court average cost per disposition figures (except Bronx County) were drawn from a May 25, 1976 OCA memorandum. This memorandum was prefaced by the following paragraph: "The average cost per disposition can be a very misleading measure. It is highly dependent on the trial rate in each county and the types of proceedings filed in a court. In addition, the data available are very difficult to work with and require a series of assumptions to compute an average cost per disposition. This causes the data and the resultant analysis to be subject to question."

Table M
Compulsory Arbitration Program
Cost Per Case Based Upon
1975-76 and 1976-77 Expenditures[1]

County	1975-76 Dispositions	1975-76 Expenditures (4/1/75-3/31/76)	1975-76 Average Cost Per Disposition	1976-77 Dispositions (1976)	1976-77 Expenditures (4/1/76-3/31/77)	1976-77 Average Cost Per Disposition
Monroe	1,553	$124,801	$ 80.36	1,300	$ 94,985	$ 73.07
Bronx	1,936	193,526	99.96	1,804	181,946	100.86
Broome	167	22,478	134.60	155	21,783	140.54
Schenectady	205	14,158	69.06	203	10,887	53.63
Statewide	3,861	$354,963	$ 91.94	3,462	$309,601	$ 89.43

[1] Expenditures based upon total through 11/30/76 plus projection of November expenditures through 3/31/77. Expenditure data per Audit and Control reports.

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APPENDIX A
Arbitration Summaries
Monroe, Bronx, Broome, and Schenectady Counties
ARBITRATION SUMMARY — Monroe County (partial)

Year/Month	Beginning Pending	Cases Added	Assignments		Settlements		Trial Awards	Other	Ending Pending	Appeals
			Panel	Single	Before Hearing	During Hearing				
1970										
Oct	0	136	129	0	10*		5	3	118	0
Nov	118	80	80	0	28*		42	9	119	4
Dec	119	139	119	0	22*		44	6	186	2
Total		355	328	0	60*		91	18		6
1971										
Jan	186	122	99	0	29*		34	13	232	5
Feb	232	154	105	0	38*		57	13	278	3
Mar	278	151	167	0	40*		43	13	333	3
Apr	333	153	152	1	55*		63	11	357	2
May	357	147	147	0	58*		93	7	346	2
June	346	138	131	7	46*		104	9	325	11
July	325	163	161	2	43*		54	11	380	7
Aug	380	159	141	15	43*		49	12	435	7
Sept	435	94	94	0	45*		77	15	392	1
Oct	392	116	111	5	52*		78	12	366	7
Nov	366	132	130	2	52*		70	11	365	2
Dec	365	289	235	54	36	8	75	9	526	2
					501*					
Total		1,818	1,673	86	36	8	797	136		52

1972										
Jan	526	180	114	66	63	9	91	15	528	4
Feb	528	187	150	37	62	17	99	7	530	6
Mar	530	245	188	57	45	9	130	7	584	12
Apr	584	178	150	28	43	16	110	8	585	6
May	585	239	179	60	67	19	152	14	572	8
June	572	194	154	40	75	24	111	9	547	14
July	547	206	159	47	57	18	103	7	568	10
Aug	568	229	198	31	45	23	131	5	593	7
Sept	593	201	125	76	54	30	121	7	582	14
Oct	582	215	166	49	80	29	114	11	563	9
Nov	563	167	120	47	59	26	131	11	503	17
Dec	503	215	190	25	44	15	117	7	535	8
Total		2,456	1,893	563	694	235	1,410	108		115
1973										
Jan	535	294	230	64	86	14	140	30	559	11
Feb	559	168	144	24	52	18	92	9	556	10
Mar	556	226	161	65	75	27	125	3	552	12
Apr	552	170	145	25	51	18	104	5	554	4
May	554	200	172	28	64	13	135	8	524	12
June	524	173	124	49	46	15	160	4	472	9
July	472	205	165	40	28	11	112	8	518	12
Aug	518	199	161	38	55	10	111	6	535	14
Sept	535	185	164	21	54	13	75	8	570	6
Oct	570	141	123	18	66	12	140	10	493	14
Nov	493	150	122	28	45	7	123	4	464	11
Dec	464	134	117	17	60	9	88	4	437	12
Total		2,245	1,828	417	672	167	1,405	99		127

*Unspecified cases.

ARBITRATION SUMMARY — Monroe County (concluded)

Year/Month	Beginning Pending	Cases Added	Assignments		Settlements		Trial Awards	Other	Ending Pending	Appeals
			Panel	Single	Before Hearing	During Hearing				
1974										
Jan	437	183	131	52	71	8	103	11	427	15
Feb	427	166	133	33	48	8	81	8	448	13
Mar	448	169	142	27	60	10	95	13	439	7
Apr	439	195	160	35	47	12	115	6	454	10
May	454	157	136	21	42	12	124	11	422	10
June	422	158	123	35	25	3	143	7	402	11
July	402	100	78	22	54	5	100	4	338	12
Aug	338	126	90	36	42	16	129	8	269	17
Sept	269	105	83	22	29	3	74	5	263	11
Oct	263	128	94	34	74	5	137	7	168	14
Nov	168	149	125	24	46	3	105	7	156	16
Dec	156	134	104	30	43	10	101	9	127	9
Total		1,770	1,399	374	582	95	1,307	96		145
1975										
Jan	127	170	131	39	51	3	94	10	139	9
Feb	139	111	90	21	37	10	74	5	124	9
Mar	124	115	80	35	28	4	101	3	103	5
Apr	103	147	109	38	20	7	105	8	110	10
May	110	137	111	26	37	4	107	3	96	11
June	96	104	73	31	40	8	93	2	57	10
July	57	142	113	29	28	10	89	1	71	12
Aug	71	103	75	28	19	6	72	4	73	10
Sept	73	90	70	20	29	5	70	1	58	7
Oct	58	133	105	28	46	5	87	1	52	15
Nov	52	103	66	37	23	4	79	6	53	5
Dec	53	115	83	32	24	11	76	3	44	6
Total		1,470	1,106	336	382	77	1,047	47		109

1976										
Jan	44	118	55	63	25	8	76	2	51	10
Feb	51	103	72	31	19	2	52	4	77	2
Mar	77	112	83	29	46	7	92	1	43	11
Apr	43	148	109	39	31	3	82	8	67	3
May	67	98	76	22	32	4	71	3	55	8
June	55	97	78	19	31	6	73	0	42	10
July	42	91	54	37	21	7	65	0	40	7
Aug	40	115	76	39	22	5	76	0	52	15
Sept	52	126	95	31	31	2	71	1	73	9
Oct	73	113	90	23	33	6	71	3	73	5
Nov	73	104	64	40	23	10	58	3	83	4
Dec	83	103	78	25	34	3	77	0	72	8
Total		1,328	930	398	348	63	864	25		92
1977										
Jan	72	111	90	21	28	6	50	5	94	6
Feb	94	99	76	23	25	3	61	1	103	4
Mar	103	131	83	48	53	6	66	4	105	8
Apr	105	118	89	29	19	19	65	6	114	6
May	114	103	66	37	31	5	78	4	99	7
June	99	98	72	26	35	7	79	0	76	41
Total		660	476	184	191	46	399	20		72
					561*					
1970-77	0	12,102	9,633	2,358	2,905	691	7,320	549	76	718

*Unspecified cases

ARBITRATION SUMMARY — Bronx County (partial)

Year/Month	Beginning Pending	Cases Added	Assignments		Settlements		Trial Awards	Other	Ending Pending	Appeals
			Panel	Single	Before Hearing	During Hearing				
1971										
May	0	175	0	0	0*		0	0	175	0
June	175	400	240	0	16*		1	1	557	0
July	557	402	201	0	136*		30	8	785	0
Aug	785	476	386	0	163*		43	6	1,049	1
Sept	1,049	416	256	0	131	49	48	4	1,233	1
Oct	1,233	343	144	0	63	43	64	5	1,381	0
Nov	1,381	86	238	0	86	51	42	10	1,278	2
Dec	1,278	638	199	66	121	74	88	11	865**	2
					315*					
Total		2,936	1,664	66	421	214	316	45		6
1972										
Jan	865	186	260	231	87	34	68	10	852	6
Feb	852	152	139	73	118	95	129	8	654	4
Mar	654	244	91	186	68	83	160	15	572	7
Apr	572	229	179	61	83	51	137	8	522	5
May	522	283	165	95	82	57	123	8	535	10
June	535	206	131	67	87	64	126	12	452	11
July	452	310	110	96	83	46	94	11	528	4
Aug	528	248	178	73	91	50	92	14	529	4
Sept	529	213	171	84	90	57	98	13	484	4
Oct	484	237	137	54	72	54	100	8	487	8
Nov	487	112	139	53	49	27	80	4	439	7
Dec	439	169	64	35	36	64	92	6	410	6
Total		2,589	1,764	1,108	946	682	1,292	117		76

1973										
Jan	410	119	139	53	62	51	74	5	337	9
Feb	337	153	83	38	33	39	77	5	336	13
Mar	336	120	117	44	29	58	74	7	288	11
Apr	288	110	67	31	28	37	63	5	265	3
May	265	144	62	24	26	54	71	8	250	5
June	250	207	104	30	20	28	61	5	343	4
July	343	109	221	38	35	25	57	10	325	10
Aug	325	123	77	23	29	46	79	10	284	5
Sept	284	82	65	22	15	31	54	9	257	7
Oct	257	198	121	56	28	28	53	5	341	8
Nov	341	206	134	40	34	38	64	3	408	2
Dec	408	96	106	34	29	54	84	4	333	3
Total		1,667	1,296	433	368	489	811	76		80
1974										
Jan	333	178	129	44	23	50	61	5	372	9
Feb	372	128	45	13	30	53	98	10	309	7
Mar	309	155	140	34	16	36	61	4	347	8
Apr	347	155	112	47	19	40	70	4	369	7
May	369	219	184	48	18	60	65	5	440	9
June	440	154	128	17	21	77	95	7	394	6
July	394	133	131	37	34	57	87	3	346	14
Aug	346	162	117	38	29	60	87	5	327	4
Sept	327	133	77	21	37	43	64	5	311	5
Oct	311	232	166	57	22	26	67	0	428	8
Nov	428	184	117	42	31	42	57	3	479	6
Dec	479	142	95	61	48	46	99	7	421	5
Total		1,975	1,441	459	328	590	911	58		87

*Unspecified cases

**Includes 757 cases returned for disposition in civil court pursuant to administrative order.

ARBITRATION SUMMARY — Bronx County (concluded)

Year/Month	Beginning Pending	Cases Added	Assignments		Settlements		Trial Awards	Other	Ending Pending	Appeals
			Panel	Single	Before Hearing	During Hearing				
1975										
Jan	421	202	116	32	29	66	105	6	417	3
Feb	417	143	134	40	27	34	48	8	443	9
Mar	443	151	100	17	39	30	52	3	470	4
Apr	470	197	116	13	24	54	89	5	495	5
May	495	202	215	58	28	40	72	7	550	4
June	550	180	170	34	34	65	99	5	527	8
July	527	148	161	25	29	65	111	5	465	5
Aug	465	116	107	19	45	45	101	5	385	5
Sept	385	86	92	16	35	37	92	15	292	6
Oct	292	255	153	50	17	33	67	6	424	5
Nov	424	61	94	18	7	18	45	6	409	4
Dec	409	209	117	33	30	37	110	6	435	7
Total		1,950	1,575	360	344	524	991	77		65
1976										
Jan	435	92	96	40	16	13	94	5	399	8
Feb	399	104	66	18	45	58	92	8	300	4
Mar	300	104	118	23	25	44	88	4	243	7
Apr	243	192	137	38	15	32	72	5	311	6
May	311	153	114	43	19	37	76	2	330	7
June	330	166	121	35	13	48	111	6	318	10
July	318	166	118	44	30	38	101	2	313	13
Aug	313	77	74	18	25	30	95	4	236	5
Sept	236	162	129	26	13	21	71	6	287	5
Oct	287	223	165	40	27	42	96	4	341	5
Nov	341	116	103	31	15	46	85	4	307	6
Dec	307	109	78	15	16	14	88	3	294	5
Total		1,603	1,319	371	259	423	1,069	53		81

1977										
Jan	294	167	155	24	21	30	76	1	333	8
Feb	333	110	83	14	23	19	83	0	318	3
Mar	318	111	116	18	29	43	123	11	223	17
Apr	223	154	108	27	13	21	64	1	278	8
May	278	146	131	23	11	37	106	5	265	16
June	265	121	142	24	28	32	126	0	200	8
Total		809	735	130	125	182	578	18		60
					315*					
1971-77	0	13,589	9,794	2,927	2,791	3,107	5,975	444	200	455

*Unspecified cases

ARBITRATION SUMMARY — Broome County (partial)

Year/Month	Beginning Pending	Cases Added	Assignments		Settlements	Trial Awards	Ending Pending	Appeals	Mandatory Transfers	Stipulations
			Panel	Single						
1972										
Mar	0	16	9	6	1	0	15	0		
Apr	15	31	19	7	5	1	40	0		
May	40	14	11	4	7	6	41	0		
June	41	27	19	7	7	11	50	0		
July	50	11	12	0	8	3	50	0	n.a.	n.a.
Aug	50	13	8	1	4	12	47	0		
Sept	47	36	22	9	5	9	69	0		
Oct	69	26	17	6	15	7	73	1		
Nov	73	10	17	1	12	7	64	1		
Dec	64	16	15	1	10	6	64	0		
Total		200	149	42	74	62		2	153	47
1973										
Jan	64	29	29	24	3	9	82	0		
Feb	82	26	17	6	7	8	93	2		
Mar	93	12	11	3	6	13	86	4		
Apr	86	14	13	6	11	9	80	2		
May	80	17	14	1	7	8	82	0		
June	82	16	22	3	10	9	79	2	n.a.	n.a.
July	79	8	5	2	13	8	66	0		
Aug	66	10	5	3	6	6	64	2		
Sept	64	9	8	4	2	6	65	1		
Oct	65	15	12	3	4	10	66	1		
Nov	66	17	10	6	10	10	63	4		
Dec	63	4	3	0	3	4	60	1		
Total		177	149	61	82	100		19	120	57

1974										
Jan	60	22	14	6	7	11	64	2		
Feb	64	10	10	4	6	4	64	0		
Mar	64	4	6	4	3	11	54	3		
Apr	54	11	7	0	5	8	52	0		
May	52	16	9	7	8	8	52	0		
June	52	9	6	4	4	10	47	1	n.a.	n.a.
July	47	7	8	2	9	3	42	1		
Aug	42	11	7	3	4	6	43	1		
Sept	43	11	12	0	4	5	45	0		
Oct	45	30	13	12	6	7	62	0		
Nov	62	12	10	0	1	12	61	1		
Dec	61	3	6	0	4	7	53	1		
Total		146	108	44	61	92		10	0	0
1975										
Jan	53	13	3	9	6	9	51	0		
Feb	51	16	9	4	4	8	55	1		
Mar	55	15	6	3	6	9	55	0		
Apr	55	21	18	12	5	3	68	0	133	21
May	68	22	18	6	2	8	80	3		
June	80	16	9	3	3	8	85	0	n.a.	n.a.
July	85	17	21	6	3	9	90	0		
Aug	90	16	6	3	3	8	95	0		
Sept	95	15	15	12	11	8	91	1		
Oct	91	21	11	11	9	16	87	0		
Nov	87	6	3	3	4	6	83	2		
Dec	83	8	9	0	5	14	72	0		
Total		186	128	72	61	106		7	133	21

ARBITRATION SUMMARY — Broome County (concluded)

Year/Month	Beginning Pending	Cases Added	Assignments		Settlements	Trial Awards	Ending Pending	Appeals	Mandatory Transfers	Stipulations
			Panel	Single						
1976										
Jan	72	7	3	1	5	4	70	0	|	|
Feb	70	13	12	6	2	10	71	0	158	19
Mar	71	15	9	3	6	8	72	1	|	|
Apr	72	5	8	3	9	14	54	1	|	|
May	54	18	8	7	2	4	66	2	n.a.	n.a.
June	66	17	12	7	8	4	71	0	|	|
July	71	16	9	9	1	11	75	1	|	|
Aug	75	7	2	1	6	6	70	1	|	|
Sept	70	25	21	6	1	8	86	3	24	1
Oct	86	6	3	3	9	7	76	0	5	1
Nov	76	17	9	3	12	11	70	0	14	3
Dec	70	9	9	6	2	5	72	2	8	1
Total		155	105	55	63	92		11	209	25
1977										
Jan	72	9	9	3	7	10	64	2	8	1
Feb	64	12	16	0	3	3	70	0	12	0
Mar	70	16	15	7	17	8	61	0	15	1
Apr	61	8	6	0	2	5	62	0	8	0
May	62	12	9	4	6	10	58	1	11	1
June	58	12	12	0	6	9	55	1	n.a.	n.a.
Total		69	67	14	41	45		4	54	3
1972-77	0	933	706	288	382	497	55	53	669	153

ARBITRATION SUMMARY — Schenectady County (partial)

Year/Month	Beginning Pending	Cases Added	Assignments		Settlements	Trial Awards	Ending Pending	Appeals
			Panel	Single				
1973								
July	0	15	12	3	0	0	15	0
Aug	15	20	3	2	1	1	33	0
Sept	33	7	10	3	0	0	40	0
Oct	40	23	8	6	4	0	59	0
Nov	59	9	9	9	2	12	54	0
Dec	54	31	18	19	6	7	72	2
Total		105	60	42	13	20		2
1974								
Jan	72	58	24	10	8	3	119	1
Feb	119	20	23	3	5	12	122	2
Mar	122	35	23	13	13	3	141	0
Apr	141	15	1	0	10	5	141	1
May	141	17	27	3	10	15	133	2
June	133	23	12	7	15	4	137	0
July	137	27	30	3	4	3	157	1
Aug	157	9	4	5	12	4	150	1
Sept	150	12	0	12	7	5	150	1
Oct	150	46	36	10	8	6	182	3
Nov	182	12	8	4	12	8	174	0
Dec	174	15	9	6	2	11	176	2
Total		287	215	78	108	79		14

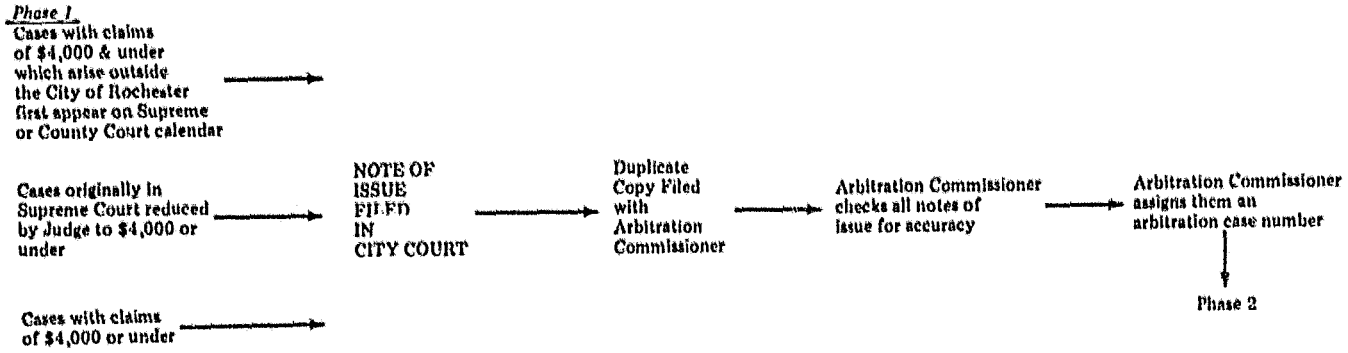
ARBITRATION SUMMARY — Schenectady County (concluded)

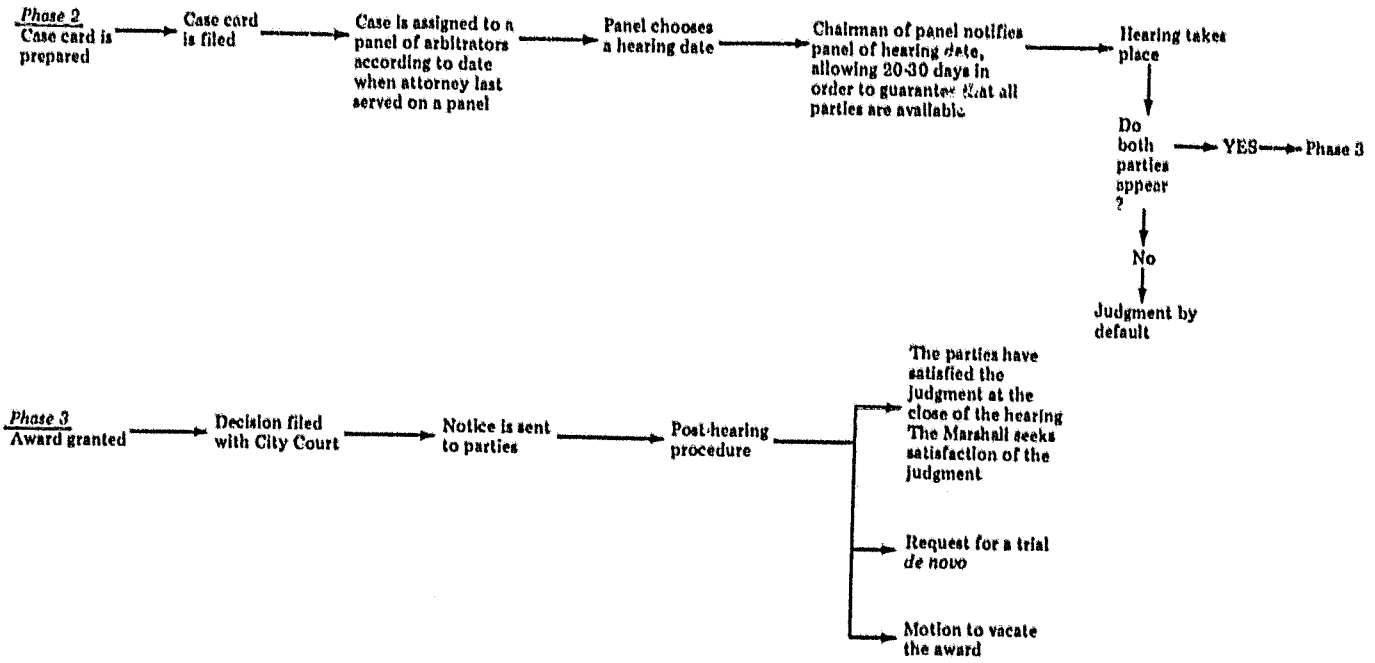
Year/Month	Beginning Pending	Cases Added	Assignments		Settlements	Trial Awards	Ending Pending	Appeals
			Panel	Single				
1975								
Jan	176	15	12	3	5	4	182	0
Feb	182	37	31	6	9	5	205	3
Mar	205	15	9	6	5	1	214	1
Apr	214	20	15	5	9	2	223	0
May	223	8	3	5	9	7	215	1
June	215	24	18	6	7	8	224	1
July	224	21	12	9	35	4	206	1
Aug	206	14	8	6	7	9	204	0
Sept	204	18	15	3	10	5	207	0
Oct	207	9	6	3	18	6	192	0
Nov	192	12	6	6	9	8	187	0
Dec	187	8	5	3	15	8	172	1
Total		201	140	61	138	97		10
1976								
Jan	172	30	24	6	9	6	187	0
Feb	187	18	15	3	5	7	193	0
Mar	193	26	25	1	11	3	205	2
Apr	205	12	9	3	8	7	202	0
May	202	27	21	6	5	4	220	2
June	220	18	12	6	13	20	205	1
July	205	10	8	2	20	7	188	2
Aug	188	17	11	6	11	4	190	1
Sept	190	21	21	0	8	7	196	0
Oct	196	20	14	6	7	11	198	3
Nov	198	14	12	2	6	7	199	2
Dec	199	12	6	6	14	6	191	1
Total		225	178	47	117	89		14

1977								
Jan	191	33	30	3	6	11	207	1
Feb	207	15	12	3	10	5	207	3
Mar	207	18	15	3	10	7	208	1
Apr	208	8	8	0	10	7	199	2
May	199	13	10	3	4	4	204	0
June	204	15	12	3	16	8	195	1
Total		102	87	15	56	42		8
1973-77	0	920	680	243	432	327	195	48

APPENDIX B

Flowchart of Arbitration Proceeding
Monroe County




Phase 2
Case card is prepared
Case card is filed
Case is assigned to a panel of arbitrators according to date when attorney last served on a panel
Panel chooses a hearing date
Chairman of panel notifies panel of hearing date, allowing 20-30 days in order to guarantee that all parties are available
Hearing takes place
Do both parties appear ?
YES
Phase 3
No
Judgment by default
Phase 3
Award granted
Decision filed with City Court
Notice is sent to parties
Post-hearing procedure
The parties have satisfied the judgment at the close of the hearing The Marshall seeks satisfaction of the judgment
Request for a trial de novo
Motion to vacate the award

APPENDIX C

Voluntary Arbitration in Buffalo

The voluntary arbitration program was established by the Erie County Trial Lawyers Association in March 1971. At that time, the criminal backlog in Buffalo City Court was so severe that no civil cases had been heard for several years.

Few statistics are available for the program, so any analysis of its success must be based primarily on subjective interviews. We do have figures on the number of cases that have gone to arbitration since the program's inception.

Any case appearing on the civil calendar of the Buffalo City Court may be placed on the arbitration calendar if all parties so stipulate by filing submission agreements. Blank submission agreements are sent to the litigants by the court with the notices of pretrial conference, or are distributed at the pretrial conference. Arbitration notices can be requested and submitted immediately, but this is usually not done. It takes approximately 60 days, depending on each judge's calendar, from the time that the note of issue is filed for the court to send out a pretrial notice. If only one party agrees to arbitration, a pretrial conference is held, where the judge may attempt to encourage arbitration.

Once the submission forms are complete, they are sent to the calendar clerk of the city court, who assigns panels weekly to hear cases. Panels are chosen on a rotating basis unless there is a conflict of interest. A notice is sent to the chairman of the panel, who schedules the hearing. On an average, these are scheduled to take place about 60 days after the chairman receives the notice. There are no real controls on this time period, although cases can be reassigned to a new panel if the calendar clerk is notified of excessive delay. On occasion, these delays have reached a period of a full year. Most hearings take place in the office of the chairman. Arbitration costs the plaintiff and the defendant $60 each, payable to the bar association. (This fee is being raised to $100.)

Once a decision is reached by the panel, the chairperson notifies the calendar clerk, who marks the City Court docket book "arbiters' decision." Judgments can be entered, although this is rare. In such a case, the procedure is the same as the entry of a judicial judgment.

Although arbitration is voluntary in Erie County, any insurance company that chooses to use arbitration must do so for all its cases. Two or three carriers have withdrawn from the program recently. One of the attorneys who established the program attributes this to dissatisfaction with verdicts. Insurance companies are now demanding the right to pick and choose cases that will go to arbitration.

Thirty-three 3-member panels chosen by the founder of the program and his co-chairman are in Buffalo. The panels are

composed of one attorney who specializes in plaintiff litigation, one who specializes in defendants' work, and one who does both. The most experienced of the three serves as the chair. The panels are permanent, although they have been juggled two or three times since the inception of the program. Arbitration decisions are binding.

According to the chief clerk, the general consensus of court personnel and attorneys seems to be that the program is successful. Forty percent of all cases $6,000 and under, including transfers from the Supreme Court, go to arbitration. The chief clerk, the calendar clerk, and Judge Roberts, Judge for Civil Affairs, all agree that the program has been very helpful in reducing backlog, although they add that the adoption of an individual calendar system was also an important factor. They estimate that, at present, it takes a small civil case five months to move through the court, while a similar case would take approximately six months from filing date to disposition date with arbitration.

The founder of voluntary arbitration, as well as a judge in Buffalo City Court, expressed an interest in the institution of a compulsory arbitration program in Buffalo. The founder of the program added that he would be interested in such a step only if the Trial Lawyers Association could retain control of the program.

APPENDIX D

Rules of the Administrative Board Governing Compulsory Arbitration

[Since April 1, 1978, these Rules have been entitled Standards and Administrative Policies of the Chief Judge.]

PART 28

RULES GOVERNING COMPULSORY ARBITRATION

(Statutory authority: N.Y. Const., art. VI, § 28; L. 1962, ch. 624; L. 1970, ch. 1004)

Historical Note

Part (§§ 28.1-28.14) added, filed Sept. 14, 1970 eff. Sept. 1, 1970.

Decisions

1. **Judgment held *res judicata***

Held in a negligence action brought by owner-driver of an automobile against truck owner and driver submitted to arbitration in Rochester City Court pursuant to the rules of the Administrative Board of the Judicial Conference (22 NYCRR Part 28), wherein the arbitrators awarded the automobile owner-driver $750 upon which judgment was entered, that such judgment was *res judicata* of a subsequent action brought by the truck owner against the automobile owner-driver. *Rochester Coca Cola Bottling Corp. v. Rios*, 68 Misc 2d 520 (1971).

Section 28.1 Definitions. (a) The words *panel of arbitrators* in this Part shall mean a group of three attorneys chosen to serve as arbitrators by the arbitration commissioner pursuant to section 28.4, or a single attorney assigned by the arbitration commissioner, should the parties so stipulate in writing, or should the recovery sought be for an amount of $500 or less.

(b) The term *chairman* shall mean the attorney so designated by the commissioner pursuant to section 28.4, or the single arbitrator assigned by the arbitration commissioner.

Historical Note

Sec. added, filed Sept. 4, 1970; amd. filed Nov. 18, 1971 eff. Nov. 15, 1971. Added ", or should * * * or less" in (a).

28.2 Submission of cases to arbitration. (a) All actions for a sum of money only, except those commenced in small claims part, noticed for trial or transferred to City or Civil Court, wherein the recovery sought is $4,000 or less, exclusive of costs and interest, shall be heard and decided by a panel of arbitrators. In Schenectady County, all actions for a sum of money only noticed for trial in the Supreme Court, or noticed for trial in or transferred to County Court, wherein the recovery sought is $4,000 or less, exclusive of costs and interest shall be heard and decided by a panel of arbitrators. In addition, all actions for a sum of money only wherein the recovery sought is $4,000 or less, exclusive of costs and interest, transferred to the City Court of Schenectady and all such actions noticed for trial in such court where a jury trial is demanded, shall be heard and decided by a panel of arbitrators. If the recovery sought is for $500 or less, exclusive of costs and interest, it shall be heard by a single arbitrator who shall have been admitted to practice in New York State as an attorney at law for at least five years.

(b) In addition other cases for a sum of money only transferred to City or Civil Court, and the Schenectady County Court, and cases pending on the trial calendar in the Supreme Court in Schenectady County, the Schenectady County Court or in City or Civil Court may be submitted to a panel of arbitrators by stipulation of the parties or their counsel. In a case transferred from another court to a City Court in the third or fourth judicial department, or the County Court of Schenectady, the panel may award the full sum demanded even if it exceeds the monetary jurisdiction of the City Court or County Court in Schenectady County. In a case

transferred from another court to the Civil Court the panel may award the full sum demanded even if it exceeds the monetary jurisdiction of the Civil Court. Any stipulation may set forth agreed facts, defenses waived or similar terms, and to that extent shall replace the pleadings.

(c) All cases subject to arbitration as above provided shall be placed on a list, separate from any other list or calendar, known as the arbitration list, in the order of filing or submission.

Historical Note

Sec. added, filed Sept. 14, 1970; amds. filed: May 17, 1971; Nov. 18, 1971; Feb. 29, 1972; June 22, 1975 eff. June 18, 1973. Amended (a)(1) and (b).

28.3 Arbitration commissioner. (a) An arbitration commissioner shall be designated in each county where compulsory arbitration is established pursuant to this Part. Such designation shall be made by the justices of the appropriate Appellate Division, or a majority of them.

(b) The commissioner shall maintain complete and current records of all cases subject to arbitration under this Part and a current list of attorneys consenting to act as arbitrators. He shall supervise the drawing of names for each panel, the assignment of cases to the panels drawn, and the filing and approval of claims for compensation by arbitrators.

Historical Note

Sec. added, filed Sept. 14, 1970; amds. filed: May 17, 1971; Feb. 29, 1972 eff. Mar. 1, 1972. New (a) substituted.

28.4 Selection of panels of arbitrators. (a) The members of each panel of arbitrators shall be appointed by the commissioner, from the list of attorneys at law admitted to practice in the State of New York. An attorney appointed for the Supreme Court in Schenectady County, the Schenectady County Court or a City Court must reside or have an office in the county in which the court is located, and an attorney appointed for the Civil Court of the City of New York must reside or have an office in the county or be a member of the County Bar Association in the county to which this section is applicable. No attorney may be appointed unless he shall have filed with the commissioner a consent so to act and an oath or affirmation equitably and justly to try matters coming before him.

(b) Names of attorneys shall be drawn at random from the list. The first name drawn for each three-man panel shall be the chairman thereof. The chairman of each panel shall have been admitted to practice in New York State as an attorney at law for at least five years; the second and the third members shall be selected at random insofar as date of admission is concerned. Not more than one member of a partnership or firm shall be appointed to any panel.

(c) No attorney who has served as an arbitrator shall be eligible to serve again until all other attorneys on the current list have had an opportunity to serve.

Historical Note

Sec. added, filed Sept. 14, 1970; amds. filed: May 17, 1971; Nov. 18, 1971; June 22, 1973 eff. June 18, 1973. Amended (a).

28.5 Assignment of cases to panel. (a) The commissioner shall assign the first three cases from the list of pending cases to each panel, subject to the requirements of subdivision (b) of this section. Unless otherwise ordered, no case shall be assigned until 20 days after it was placed on the list of cases. However, in the Civil Court of the City of New York no case shall be assigned by the arbitration commissioner until said case shall first have appeared on the calendar of a judge of said court for immediate disposition or forthwith assignment to arbitration.

(b) No case shall be heard by a panel on which there is an arbitrator related by blood, marriage or professional ties to a party to the case, or an attorney of record or trial counsel.

(c) If any member of a panel is disqualified from hearing any of the cases assigned, the commissioner shall immediately return such case to the top of the list and assign the next available case to the panel.

(d) Not more than five days after receipt of notice of hearing as provided by section 28.6(b), either by application of one of the parties or on his own application, an arbitrator may disqualify himself for cause. Should a party object to an arbitrator's refusal to disqualify himself for cause, that party may apply to the arbitration commissioner for a ruling on the disqualification. The determination of the arbitration commissioner shall be binding on all parties. If an arbitrator is disqualified, the case shall be returned to the top of the list and assigned to the next panel unless the attorneys for all parties stipulate that one of the qualified arbitrators may hear the case. If the case is assigned to another panel, the panel with the disqualified member shall receive another case.

(e) If a case is settled or discontinued prior to the start of the hearing, the chairman shall immediately notify the commissioner, who shall assign the next available case to the panel.

Historical Note

Sec. added, filed Sept. 14, 1970; amds. 15, 1971. Added last sentence in (a). filed: May 17, 1971; Nov. 18, 1971 eff. Nov.

28.6 Scheduling of arbitration hearings. (a) Hearings shall be held in a place provided by the court, by the commissioner, by the chairman of the panel, or, at the request of the chairman, by a member of the panel. Unless otherwise agreed by the arbitrators, parties and counsel, such place shall be within the county or in the City of New York within the county, as the case may be.

(b) The chairman shall fix a hearing date and time, not less than 15 nor more than 30 days after the case is assigned, and shall give written notice thereof to the members of the panel and the parties or their counsel at least 10 days before the date set. The commissioner may, on good cause shown, extend for a reasonable period the time during which the hearing shall be held. Such date and time shall not be a Saturday, Sunday, legal holiday or during evening hours except by agreement of the arbitrators, parties and counsel. An information form (JC-350) shall be completed in every case submitted to arbitration and each such form shall be filed with the administrative board of the Judicial Conference.

(c) If the chairman is unable to schedule a hearing within 30 days after the case is assigned, or within such further period as the commissioner may fix, he shall notify the commissioner in writing of the reasons for such inability. The commissioner shall mark the case "continued" and place it on the list of cases, and shall assign another case to the panel.

(d) Any case which is continued twice, after assignment to two panels, shall be referred by the commissioner to the court for a hearing on the cause of the inability to hold an arbitration hearing. The court, upon such hearing, may order a dismissal or an inquest before another panel.

Historical Note

Sec. added, filed Sept. 14, 1970; amd. tuted new (a)-(c). filed May 17, 1971 eff. May 17, 1971. Substi-

28.7 Defaults. (a) Where a party fails to appear before a panel of arbitrators before whom a case has been duly scheduled for hearing, the arbitrators shall nonetheless proceed with the hearing and shall make an award and decision as may be just and proper under the facts and circumstances of the case. The case may be restored to the arbitration calendar only upon order of the court upon good cause shown. Such order of restoration shall provide that the moving party reimburse the court clerk the fees paid the arbitrators.

(b) Should all parties fail to appear before a panel before whom an action has been duly scheduled for hearing, the arbitrators must file a report and award dismissing the action. The case may be restored to the arbitration calendar only upon order of the court upon good cause shown. Such order of restoration shall provide that the plaintiff reimburse the court clerk the fees paid the arbitrators.

Historical Note

Sec. added, filed Sept. 14, 1970; renum. 28.8, new added filed May 17, 1971; amd. filed June 22, 1973 eff. June 18, 1973. Added last two sentences in (a).

28.8 Conduct of hearings. (a) The panel of arbitrators shall conduct the hearing with due regard to the law and established rules of evidence, which shall be liberally construed to promote justice. In personal injury cases, medical proof may be established by the submission into evidence of medical reports of attending or examining physicians upon stipulation of all parties.

(b) The arbitrators shall have the general powers of a court, including but not limited to:

(1) subpoenaing witnesses to appear;

(2) subpoenaing books, papers, documents and other items of evidence;

(3) administering oaths or affirmations;

(4) determining the admissibility of evidence and the form in which it is to be offered;

(5) deciding questions of law and facts in the cases submitted to them.

Historical Note

Sec. added, filed Sept. 14, 1970; renum. 28.9, new added by renum. 28.7, filed May 17, 1971 eff. May 17, 1971.

28.9 Costs of hearing; stenographic record. (a) Witness fees shall be the same as in the court, and the costs shall be borne by the same parties as in court.

(b) The panel shall not be required to cause a stenographic record to be made, but if any party requests such record be kept and deposits $35 or such further sum as the panel may fix to secure payment therefor, the panel shall provide a reporter. Any surplus deposited shall be returned to the party depositing it. The cost of the reporter shall not be a taxable cost.

Historical Note

Sec. added, filed Sept. 14, 1970; renum. 28.10 new added by renum. 28.8, filed May 17, 1971 eff. May 17, 1971.

28.10 Compensation of arbitrators. (a) Each arbitrator who signs the award or files a minority report in a case or group of cases heard together, or who is present to hear a case which is settled or discontinued after the start of the hearing, shall receive $35, including expenses, except that the chairman shall receive $45. Claims for such compensation shall be made to the commissioner after entry of the award, on forms prescribed by the administrative board of the Judicial Conference. The commissioner shall forward all claims approved by him to the State Administrator.

(b) Any arbitrator may apply to the commissioner for reimbursement of extraordinary expenses necessarily incurred by him. Such application shall be made as provided in subdivision (a).

Historical Note

Sec. added, filed Sept. 14, 1970; renum. 28.11, new added by renum. 28.9, filed May 17, 1971 eff. May 17, 1971.

28.11 Award. (a) The arbitrators shall file a report and award, signed by the single arbitrator or at least two of the members of a three-man panel, with the commissioner within 20 days after the hearing, and mail or deliver copies thereof to the parties or their counsel. The award of a three-man panel may be made by

two members of that panel. The commissioner shall mark his files accordingly, file the original with the appropriate court clerk and notify the parties of such filing.

(b) Unless a demand is made for trial *de novo*, or the award vacated, the award shall be final and judgment may be entered thereon, and costs and disbursements may be taxed in accordance with the Civil Practice Law and Rules, the Uniform City Court Act or the New York City Civil Court Act, as the case may be.

Historical Note

Sec. added, filed Sept. 14, 1970; renum. 28.12, new added by renum. 28.10, filed May 17, 1971; amd. filed June 22, 1973 eff. June 18, 1973.

28.12 Trial *de novo*. (a) Demands may be made by any party for trial *de novo* in the Supreme Court in Schenectady County, Schenectady County Court, Civil Court or City Court as the case may be with or without jury. Any party within 20 days after the award is filed with the appropriate court clerk, may file with the court clerk and serve upon all adverse parties a demand for trial *de novo*.

(b) The demandant shall also, concurrently with the filing of the demand, reimburse the appropriate court clerk the fees paid the arbitrators pursuant to section 28.10(a) of this Part. Such sum shall not be recoverable by the demandant upon trial *de novo* or in any other proceeding.

(c) The arbitrators shall not be called as witnesses nor shall the report or award of the arbitrators be admitted in evidence at the trial *de novo*.

Historical Note

Sec. added, filed Sept. 14, 1970; renum. 28.13, new added by renum. 28.11, filed May 17, 1971; amd. filed June 22, 1973 eff. June 18, 1973. Amended (a) and (b).

Decisions

1. Effect of failure to receive notice of filing

Held that where respondent failed to file a demand for a trial *de novo* within the 20 day period after filing the arbitration award with the court clerk as required by section 28.12 (a) of the rules of the Administrative Board (22 NYCRR 28.12) allegations that neither respondent nor his counsel had received notice of filing of the award could not excuse such default. The rule requires only that a copy of the award be mailed or delivered to the parties or their counsel. *Ceramo v. Genesee Monroe Racing Assn.*, 72 Misc 2d 567 (1972).

28.13 Motion to vacate award. (a) Any party, within 20 days after the award is served upon him, may file with the appropriate court clerk a motion to vacate the award on only the following grounds:

(1) that the arbitrators abused their office in the conduct of the case; or

(2) that the award was procured by fraud, corruption or other unlawful means.

(b) Copies of the motion papers shall be served upon the commissioner and the members of the panel within two days after filing.

(c) If the motion to vacate is granted, the case shall be returned to the top of the list of cases for arbitration and submitted to a new panel.

Historical Note

Sec. added, filed Sept. 14, 1970; renum. 28.14, new added by renum. 28.12, filed May 17, 1971; amd. filed June 22, 1973 eff. June 18, 1973. Amended (a).

28.14 General power of court. The Supreme Court in Schenectady County, the Schenectady County Court, the City Court, or the Civil Court of the City of New York, as the case may be, shall hear and determine all collateral motions relating to arbitration proceedings.

Historical Note

Sec. added, filed Sept. 14, 1970; renum. 28.15, new added by renum. 28.13, filed May 17, 1971; amd. filed June 22, 1973 eff. June 18, 1973. New sec. substituted.

28.15 Applicability. This Part shall be applicable only to the Rochester City Court as to which they shall take effect September 1, 1970, and to the Civil Court of the City of New York in and for the County of Bronx, as to which they shall take effect on May 17, 1971, and to the City Court of Binghamton as to which they shall take effect on March 1, 1972, and to the Supreme Court in Schenectady County, the Schenectady County Court and the City Court of Schenectady as to which they shall take effect on June 18, 1973.

Historical Note

Sec. added by renum. 28.14, filed May 17, 1971 eff. May 17, 1971; amds. filed: Feb. 29, 1972; June 22, 1973 eff. June 18, 1973.

END