

Courts on Trial

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New York State Senate Minority
Task Force on Criminal Justice



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April 30, 1979

Senator Manfred Ohrenstein
Minority Leader
New York State Senate
Room 907, LOB
Albany, New York 12247

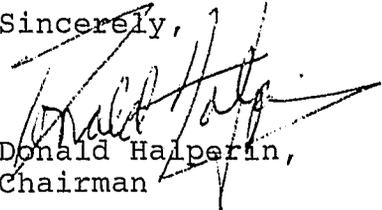
Dear Senator Ohrenstein:

The Senate Minority Task Force on Criminal Justice and I are pleased to present to you and to the members of the Democratic Conference "Courts on Trial", a report on the criminal processing crisis in New York State.

The report describes the significant steps taken by the Legislature and the Executive to anticipate and address the problem of criminal case processing delays and the resulting overcrowding of detention facilities. It further documents the lack of any significant or lasting impact on the delay problem. This is particularly disturbing in light of a substantial infusion of grant and appropriated funds, a declining workload, and other budget and legislative initiatives. The report identifies a number of procedural and policy measures that can and should be instituted. The pervasive and long standing nature of this problem suggests however, management shortcomings which can only be addressed with a more comprehensive examination of the administration of the courts of criminal jurisdiction.

This issue is admittedly a complex one and the paucity of accurate data makes the problem and the identification of alternatives difficult and speculative. However, we have attempted to provide the Conference with all the information and analysis necessary to make informed decisions regarding this problem.

Sincerely,



Donald Halperin,
Chairman

Members of Task Force

Senator Joseph Galiber

Senator Raymond Gallagher

Senator Franz Leichter

Senator Jeremy Weinstein

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SUMMARY OF OBSERVATIONS

1. Despite the investment of nearly a quarter billion dollars in federal and state monies since 1969 to speed case processing and eliminate the backlog of cases, the problems of case processing delay and court congestion remain substantially the same. As of August 1978, there were 1,891 felony cases pending disposition for more than one year; 2,949 cases pending for more than nine months and 4,684 cases pending for more than six months. Particularly disturbing is the increase between August 1977 and August 1978 in the number of cases pending for more than six months.

a. The courts have failed in every case to meet their own disposition standards for October 1, 1976, July 1, 1978 and January 1, 1979.

b. All class A felony cases pending for more than one year were to be disposed of by October 1, 1976. However, on that date there were 570 such cases still pending for more than one year. As of January 1, 1978, there were over 250 class A felony cases pending for more than one year in New York City.

c. The backlog continues despite a 23 percent drop in indictments in the transfer of more than thirty New York City Criminal Court judges to the Supreme Court to speed case processing.

d. The Supreme and County Courts outside New York City between August 1977 and August 1978 experienced a 33% increase in the number of defendant indictments pending one year or more, a 21% increase in the number of defendant indictments pending for nine months or more, and a 29% increase in the number of defendant indictments pending six months or more.

2. The cost per disposition when controlling for inflationary increases between 1971 and 1977 in the New York City Supreme Court increased 141 percent, from \$1,381 to \$3,341, despite the fact that the rate of dismissals more than doubled in this period, increasing from eleven percent of dispositions in 1971 to over twenty percent of dispositions in 1977.

3. Despite a dramatic 136 percent increase in active court parts in the New York City Supreme Court, from 50 in 1971 to 113 in 1977, total dispositions decreased and dispositions per court part fell almost 60 percent, from 362 to 150. During the same time period, trials per court part in New York City Supreme Court only increased 4%. This activity actually decreased from 18.9 in 1973 to 16.2 in 1977.

4. The dismissals in the Supreme and County Courts in New York State have more than doubled between 1971 and 1977--in spite of a ten year and \$213.7 million investment in expanded case screening, specialized prosecution staffs and additional court resources to hear cases and conduct trials. The purpose of these programs was to screen out before indictment weak cases which most likely would result in a dismissal.

5. Despite a reduced caseload and increased restrictions on plea bargaining, pleas accounted for nearly 71 percent of all dispositions in Supreme and County Courts in 1977, compared to 68 percent in 1975.

6. In 1977 it required an average of 231 days statewide and 275 days in New York City to process a felony case from indictment to disposition prior to sentencing.

7. The number of parts operating in the New York City Supreme Court decreased from 127.8 during the non-summer months to 70.5 during July and August of 1977, a decrease of 45 percent.

- a. In 1977, the average number of dispositions per month fell from 1,527 in the non-summer months to 947 in July and August, a decrease of 36 percent!
- b. Every day detainees are held in New York City jails because of the summer slow-down in the courts costs the city \$71.87 per detainee. To house the average daily 1977 detainee population, it cost \$317,665. If one month were reduced from the average time detainees spend in jail there would be a cost savings of approximately \$9.5 million.

8. As of August 1, 1978, there were 80 persons in jail across the state for over one year pending disposition or sentence. In New York City in 1977, 5,011 persons were detained for more than three months; 1,483 persons were detained for more than six months, and 207 persons were detained for more than nine months, pending disposition or sentence.

9. In 1972 and 1975 the Economic Development Council conducted studies, designed with the advice and consent of the Office of Court Administration (OCA) which raised serious questions about judicial productivity. OCA has to date, failed to evaluate these reports' findings as they had agreed to do in 1973. If these findings remain uncontested and are valid, when projected throughout New York City they provide some insight into the criminal case processing crisis.

SUMMARY OF RECOMMENDATIONS

The addition of new felony court parts to the New York State Court System must be accompanied by strong and comprehensive measures to insure the efficiency and productivity of the new court parts and all criminal court parts. The following recommendations are offered.

1. The State Comptroller should immediately conduct a management and financial audit of all Supreme, County, Criminal, City and District Courts that deal with criminal cases in line with management audits made of other government programs. The audit should particularly focus on the court components of the Special Narcotic Parts, Emergency Case Felony, Dangerous Drug Control and Special Detainee programs. After the initial audit, subsequent audits should be conducted at regular intervals and should be submitted no later than December 31 of each fiscal year.
2. The Office of Court Administration (OCA) should institute a time limit on plea bargaining so that pleas would only be accepted within 90 days of a Supreme Court arraignment. OCA has already made this an administrative rule that is contingent on the passage of pretrial discovery legislation. The passage of such legislation should be a top priority of this legislative session.

3. OCA should prepare and submit to the legislature a comprehensive manpower report which examines the workload, productivity, compensation and classification of all managerial/administrative and support staff positions within the Unified Court System and identifies how personnel may be reallocated for more even distribution of workload throughout various elements of the court system. The report should particularly clarify the authority and responsibility of the managerial/administrative and support staff to determine whether organizational and/or personnel changes are necessary.

4. OCA should evaluate the Economic Development Council's studies by establishing an internal management monitoring mechanism to regularly observe the performance of judges and to record such information for the State Administrative Judge and Chief Judge. Information suggesting consistent failure to meet minimum performance standards should be forwarded to the Commission on Judicial Conduct for review and action.

5. Supreme, County, Criminal, City and District Courts that deal with criminal cases should be operating at sufficient efficiency all the time, including July and August. The State Administrative Judge should be required to develop a uniform vacation policy which will insure consistent judicial productivity throughout the year. Such a policy should embrace requirements of prosecutorial, defense and private counsel regarding absences due to vacation.

6. The Division of Criminal Justice Services should report to the Legislature, as soon as possible, on its evaluation of appearance control, early case screening, major offense bureau, arbitration and mediation centers, detention diversion programs and all projects which, in its opinion, should have either a direct or indirect impact on improving case processing and/or relieving overcrowding in detention facilities. This evaluation should include a recommendation as to what programs should be expanded statewide and/or funded with state money when federal funding expires.

7. The Manhattan House of Detention (MHD) should be opened as a New York County pre-arraignment center, to house detainees between their arrest and first appearance in court, and a detention center for detainees awaiting trial. The Legislature approved a plan included in 1978 supplemental budget which allows the state to take over Rikers Island in four phases, all of which would be completed by 1984. In return, the City of New York will receive sufficient funds to renovate MHD and build new detention facilities. The implementation of this plan has been delayed for too long a time and, in absence of other viable options, it should be put into effect as soon as possible.

8. Present court parts and facilities must be better utilized to maximize the productivity of present resources. To reach this goal evening trial parts should be instituted without increasing the total number of court parts or court personnel. This would make it easier for witnesses to appear and would expand the use of currently available facilities.

I. INTRODUCTION

In recent years, the State of New York and the City of New York have experienced a severe fiscal crisis which threatened their very viability. Through the determination of the Governor and the Legislature, the collapse was averted and a turnaround begun. The state's criminal court system is facing a similar crisis in its ability to dispose of cases. The Plan for Development of Crime Control in the State of New York submitted for funding to the Law Enforcement Assistance Administration in Washington for federal fiscal year 1968 notes: "The most acute problems confronting the adjudicatory process in New York are court congestion and calendar delay." The plan continues:

"Undue delay in the courts generates overcrowded detention facilities. It results in substantial losses of police man-hours spent in the non-productive process of waiting in court rooms. Congestion also produces serious consequences for the prosecutor and the defense, e.g., it is not at all unusual for witnesses to become disheartened and uncooperative after repeated adjournments. Finally, procrastination in the adjudication process tends to undermine public confidence in the judicial system."

Over a span of the ten years since that time, there has been a tremendous infusion of resources to address the many dimensions of this complex problem. Indeed, the largest single program to deal with the situation was recently adopted by the Legislature.

It is clear that in order for new criminal laws to have a noticeable impact on the crime situation, an infusion of resources is necessary. Money alone however, has not in the past and will not in the future solve the problem. Management policies and administrative procedures must be carefully examined. Absent proper analysis and understanding, the infusion of new resources is likely to result only in the institutionalization of the present backlogs and an even lower regard for the justice system and government generally by an already cynical citizenry.

In this report, we have briefly reviewed the changing character of the criminal case processing delays in New York State during the past ten years and identified the more significant legislative, executive and judicial policies and programs which were aimed at resolving the problem.

In Chapter II, The Problem and the Response, the major legislative, executive and judicial, programs designed to deal with the improvement or expansion of criminal case processing capabilities of the courts, prosecutors and defense agencies are described within the historical framework of the last ten years. Only programs which had major funding associated with them are noted here. However, a greater number of programs not requiring substantial funding and directed at specific aspects of the problem were also reviewed in preparation for this report. The fiscal implications of this multi-year investment and its expected direct or indirect impact on the workload of the criminal courts can only be speculated.

In Chapter III, Dimensions of Case Processing, we note the nature and extent of the problem at the Criminal and County or Supreme Court levels across the state. Unfortunately, analysis statewide is not possible, as comparable data is not available. The focus is often on the New York City courts where the problem is most acute. This problem is further described in terms of the number, quality and timing of dispositions.

Finally, in Chapter IV, The Productivity Question, we attempt to define elements for analyzing the productivity of the courts and the use of productivity measures by court administrators. Our efforts in this regard are constrained by the limited data available. It is imperative that productivity criteria be refined, expanded and implemented if the courts are to be able to rationally allocate and efficiently use increasingly limited revenues.

It is apparent from this review of the criminal case backlog problem that the investment of significant funds for additional court parts is simply not an effective means for achieving significant reductions in backlogs, absent basic procedural and policy changes. The Office of Court Administration clearly must be the focal point for improved management of the courts, but the Executive and Legislature must insure that the Office is more accountable for substantial progress in handling criminal cases than it has been in the past.

II. THE PROBLEM AND THE RESPONSE

The criminal case processing problem has plagued New York State courts since 1968. The total backlog in the Supreme Courts statewide on June 30, 1968 had reached 71,835 cases, a 26% increase over the case backlog on June 30, 1965. This severe backlog caused the Legislative, Executive and Judiciary to take several major steps in 1969 to improve the criminal case processing capabilities of the courts, especially those in New York City. The Legislature did its part by creating fifty new Supreme Court judgeships across the state and removing most traffic cases from the jurisdiction of the New York City Criminal Courts.

In 1969 and 1970 the State Division of Criminal Justice Services used funds provided by the federal government to support these efforts to reduce case processing delays.

A. The Master All Purpose Part (MAP) agreement in New York County created Supreme Court parts to deal with all procedural matters. It was hoped that this project and its computerized data processing system would promote greater court efficiency and coordination by reducing the number of adjournments and wasted appearances.

B. The Manhattan Summons project involved the issuance of a summons following arrest in certain misdemeanor cases in lieu of the formal procedures of booking and prearraignment detention.

C. The Manhattan Court Employment Project was one of many diversionary programs in criminal courts across the state which utilized an Adjournment in Contemplation of Dismissal (ACD) disposition for qualified defendants, thus reducing delays and better using scarce resource

In 1970, the Legislature enacted a new Criminal Procedure Law to replace the outmoded Code of Criminal Procedure which should have provided long-term relief for the case backlog problem. In addition, it created the temporary State Commission on the New York State Court System which was to study the restructuring of the court system, and to report to the Legislature its findings and recommendations.

In 1971, the Special Narcotics Parts program (article 5-B of the Judiciary Law) was formed by the Legislature to concentrate on improving the processing of narcotic cases in New York City. These cases were believed to be the dominant cause of the city's criminal case backlog. By September 1972, fifteen additional court parts were added to the New York City Supreme Court and a special Assistant District Attorney was appointed to administer the program and provide for greater prosecutorial coordination. A total of \$48.5 million of state and federal funds was spent on this program from 1971 to 1977.

In the fall of 1971, the Bronx and Queens branches of the criminal court began operation of arraignment court parts on nights, weekends and holidays.

The Legislature adopted two additional measures to respond to the state's criminal case backlog and detention overcrowding problem. In May 1972, "speedy trial" amendments to the Criminal Procedure Law were passed and signed into law by the Governor. These amendments mandated dismissal of charges if the prosecution was not ready for trial within six months in all felony cases and ninety days in most misdemeanor cases. In order to implement the new "speedy trial" rules, the Legislature and Governor approved funds for an Emergency Case Processing Program. This program established seven new fully-staffed parts in New York City which have cost \$22.5 million in state and federal funds from 1972 to 1977.

In 1973, the Legislature and the Governor turned their attention to drug offenders. This time it was felt harsher penalties in the form of plea-bargaining restrictions and mandatory minimum prison sentences were necessary to deter drug offenders. In order to implement these changes, forty-nine judgeships, thirty-one in New York City and eighteen upstate, were created and given fully-staffed court parts to exclusively handle drug cases. Total court and non-court (e.g., space renovations) costs for this program, most of which were borne by the state, between September 1, 1973 and December 31, 1977, have totaled \$117.9 million.

In 1974 after six years of appropriations and innovative programs both within the court system and among related criminal

justice agencies, the pending case backlog and detainee problems remained. On June 30, 1974 there were 3,850 defendants being held awaiting disposition or sentencing in Supreme Court. Of these, 507 had been detained for over one year. This problem was compounded when in December 1974 all New York County detainees were moved to Rikers Island. This move caused several administrative and transportation problems which made it even more difficult to get detainee cases swiftly disposed of before the courts. Early in 1975, even more detainees were faced with this problem as one-half of those previously detained in the Bronx House of Detention were, because of budgetary constraints, relocated to Rikers Island.

To address this problem, the state approved \$11 million in federal funds for the City of New York to implement a comprehensive program which was designed to reduce the overcrowding of detention facilities on Rikers Island and facilitate the adjudication and disposition of felony cases for long-term detainees. This Special Detainee program encompassed the total staffing of ten court parts, renovations to existing detention facilities and expansion of pre-trial services.

The Administrative Board of the Judicial Conference also took the following actions in 1975:

- the adoption of standards and goals for the Unified Court System to eliminate by January 1, 1979 undue delay in civil, criminal and family court proceedings; and
- the adoption of a plan for reorganizing the administrative structure of the New York City courts to assist the State Administrative Judge in the administration of the city courts, including the supervision of non-judicial court personnel.

The Legislature and the Governor took further action in 1976 to improve the management of the court system. Based on the recommendations of the 1970 Temporary State Commission on the New York State Court System, they enacted a law which established a Unified Court System which would, in gradual stages between 1977 and 1980, be totally funded by the state.

The Crime Control Planning Board (CCPB) was established by the Legislature in 1969 to distribute federal funds to improve the courts and other criminal justice agencies. From 1969 thru 1977, the CCPB allocated \$63.5 million in block grants directly related to improving case processing and reducing overcrowding in detention facilities. Most of these funds were in addition to the resources previously noted.

The Division for Criminal Justice Services (DCJS) is responsible for administering these funds for the CCPB and preparing the annual Comprehensive Crime Control Plan for New York State. These plans delineate the state's crime problem, advise strategies to address these problems, establish program areas in which funds are distributed and establish funding priorities. Table II.1 denotes the program areas that have dealt with the case processing problem and the amount of money that has been allocated in those areas from fiscal year 1969 to fiscal year 1977. (see Table II.1)

Table II.1

Crime Control Planning Board Funding of Criminal Case Processing and Related Programs

Block Grant Funds

(1969 - 1977)

Program Title	FY1969	FY1970	FY1971	FY1972	FY1973	FY1974	FY1975	FY1976	FY1977	FY1969-1977
A. Improving the Adjudicatory Process										
Upgrading Planning and Management Capabilities of the Courts (includes Unified Court Study)	9,230	999,585	3,203,095 ^a	1,417,078	500,000	2,600,000	2,000,000	1,493,600	1,132,000	13,354,588
Early Case Assessment and Prosecutor/Defense Special Purpose Units		413,354	417,730	1,812,752 ^b	2,700,000	2,900,000	2,000,000	4,027,800	2,555,000	16,826,636
Early Diversion Program		68,705	41,989	1,025,935	2,696,000	500,000				4,332,629
Improved Sentencing and Dispositional Practices and Procedures		107,638		459,257	1,000,000	1,300,000	300,000	332,000		3,498,895
Training for Service in Courts, Prosecutorial Offices and Defense Organizations	1,800		257,031	272,413	800,000	700,000	400,000	284,300	427,000	3,142,544
Paraprofessional Programs							635,000	189,500		824,500
B. Pre-Trial Detention and Its Alternatives										
Expanding and Creating Alternatives to Secure Detention of Adults		1,699,797	1,382,639	983,762	4,000,000	3,450,000	3,329,000	2,139,100	995,000	17,978,298
Improvement of Adult Detention Facilities				944,644						944,644
C. System Support										
Information Systems Development, Implementation and Operation						493,609	2,021,460		90,000	2,605,168
TOTAL	11,030	3,289,079	5,302,484	6,915,841	11,696,000	11,943,609	10,685,460	8,465,300	5,199,000	63,511,902
Percent of TOTAL Funding	.5	22	16	23	29	25	19	18	15	

The funding figures for FY1969-1972 are actual dollar amounts while the funding figures for FY1973-1977 are allocated dollar amounts.

^aIncludes an unspecified amount for an ROR program in Kings, Bronx, and Richmond counties.

^bIncludes \$629,735 for the Night and Weekend Arraignment Court Project.

^cIncludes an additional \$8,142,000 of Parts C and E action funds for an additional three month period included in the FY1976 funding.

Source: 1973, 1974, 1975, 1976, and 1977 Comprehensive Crime Control Plans.

In sum, almost one-quarter billion dollars had been spent in state, federal and local funds to improve case processing from 1969 to 1977. In spite of this ten-year effort, New York found itself in 1978 unable to handle the existing criminal caseload and unprepared to implement the new violent felony offender laws. This crisis led to a program, proposed by the Governor and passed by the Legislature, which involved the state assumption of the ten court parts that were established under the Special Detainee Program in 1975 and the addition of twenty new parts, eleven within New York City. The priority cases for the new parts are those involving violent felonies, while the ten parts under the Special Detainee Program continue to handle long-term detainee cases.

The total cost for the 30 court parts, including administrative and non-court-related costs, was estimated to be \$18 million. An additional \$2.4 million was allocated in the Judiciary budget for other court-related costs incurred by the program. Overall, approximately \$20.5 in state monies was allocated in the regular budget for this program.

The wisdom of this type and size investment was questioned as early as 1971 by the Judicial Conference Committee on Court Delay in a report released in March 1972. The report notes in part:

"To some extent, delay can be attributed to a lack of resources. An infusion into the criminal justice system of more judges and clerks, more courtrooms, more assistant district attorneys, more defense attorneys and more probation officers might make it possible - at least in the short run - to process more cases and thus cut down on backlog and delay. Clearly, however, a massive investment in additional

resources cannot be justified in the absence of sound evidence that existing resources are being effectively utilized and that practical assessments have been made about what new resources are truly needed and how they might best be allocated."

This report begins to substantiate some of the fears noted in that comment and to suggest ways in which more fundamental procedural and policy changes may have greater impact on the criminal case processing in New York State.

CHAPTER III DIMENSIONS OF CASE PROCESSING

Introduction

Case processing refers to the handling of criminal cases in New York State, from arrest to disposition. The basic elements of a lower court screening arrest cases and disposing of misdemeanor cases, and a superior court handling felony cases, hold true, with slight variations, across the state. In New York City, with certain exceptions, the Criminal Court is responsible for arraignments and the disposition of misdemeanors while the Supreme Court is responsible for the disposition of felonies. Outside New York City, the District Courts, City Courts, and Town and Village Courts, are responsible for arraignments and the disposition of misdemeanor charges; the Supreme and County Courts are responsible for the disposition of felony charges.

In New York City, the process is initiated by the arresting officer bringing his complaint form to the Complaint Room where an Assistant District Attorney (ADA) reviews the charge or charges. The ADA has the discretion to raise, reduce or dismiss charges, or have the case transferred to Family Court in certain cases involving juveniles. The case then goes to the Criminal Court Arraignment Part where a defendant may plead guilty to a misdemeanor or have his case dismissed by the judge or the ADA.* If the case is not disposed of in the Arraignment Part, the judge sets conditions of release, bail or remands the defendant, and the case goes one of two routes.

*See page 53 for plea bargaining restrictions

If the charge is a misdemeanor the case will be disposed in Criminal Court through a trial or guilty plea. Defendants are entitled to a jury trial in any case where they could be sentenced to prison for six months or more.

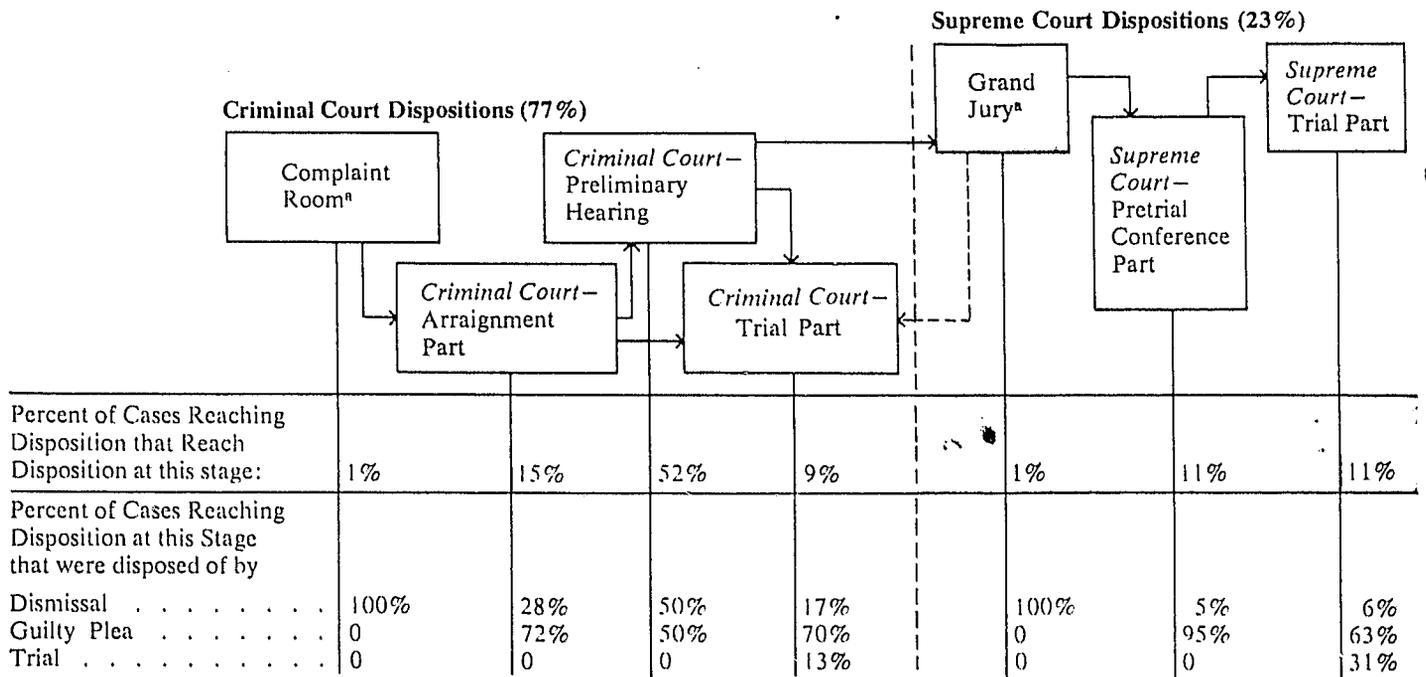
If the charge is a felony, most cases go to a preliminary hearing to determine whether there is sufficient evidence to forward the case to the Grand Jury for possible indictment. At the hearing stage, the case can be disposed of by dismissal, or plea to a misdemeanor or violation. In some cases defendants waive their rights to a preliminary hearing and the case is immediately forwarded to the Grand Jury. Defendants may execute a waiver of indictment, bypass Grand Jury Action, and transfer the case directly from Criminal Court to Supreme Court.

If the judge at the preliminary hearing determines that there is sufficient evidence, the case goes to the Grand Jury. After hearing evidence from the ADA, the Grand Jury will indict, dismiss, or have the charge(s) reduced to a misdemeanor and sent back to the Criminal Court. If the Grand Jury delivers an indictment, the case is sent to a Supreme Court arraignment part* and then to the pretrial conference. At the pretrial conference the defendant has another opportunity to plead guilty, to a felony or misdemeanor.** If no plea is negotiated in conference, the case goes to the Supreme Court Trial Part for final disposition. At the Trial Part, the case may be disposed of by plea, dismissal or trial.

*There is no significant dispositional activity in the Supreme Court arraignment part

**See page 53 for plea bargaining restrictions

Table III.1
New York City Supreme Court
Stages of Felony Dispositions



Sources:^a Wide Sample Data (1971), Vera Institute Felony Disposition Study; and Deep Sample Data (1973), Vera Institute Felony Disposition Study.

A Vera Institute study indicated that 90% of all incoming cases are disposed of in the Criminal Court. Most cases in the Criminal Court are disposed of by dismissal or plea. (Table III.11) Of all felony cases, 77% are handled at the Criminal Court with the remaining 23% disposed of at the Supreme Court, primarily through plea bargaining. (Table III.1)

RESOURCES

Between 1971 and 1977, court resources have increased substantially. The number of total authorized Supreme and County Court judges increased 22% from 343 in 1971 to 418 in 1977 (Table III.2). However, outside of New York City the Supreme Court Trial Part judges and Certified Retired Justices of the Supreme Court handle predominately civil matters. When these judges are subtracted from both years' total the real increase between 1971 and 1977 in Supreme and County Court judges who handle criminal matters is 20%. This increase does not include the number of New York City Criminal Court judges who are temporarily assigned to the criminal parts of the New York City Supreme Courts. In 1977 there was an average of 32 judges who served in this capacity which gives reason to believe the true increase in Supreme and County Court judges who handle criminal matters between 1971 and 1977 was greater than 20%. (See Table III.2)

The data on Table III.2 also raises serious questions about how judicial manpower is allocated. For example the number of authorized Supreme Court Trial Part judgeships between 1971 and 1977 increased by 30 judges. 26 of these new judges were assigned to the Supreme Court outside New York City which rarely handles Criminal matters. Only 4 of the new judges were assigned to the Supreme Court in New York City where the bulk of criminal case processing problem exists. The same pattern occurred with the distribution of Certified Justices of the Supreme Court.

Their total numbers decreased from 30 in 1971 to 28 in 1977 but, New York City Supreme Court lost 5 of these judges while the Supreme Court outside New York City gained 3 judges. The logic of appropriating more manpower to courts which handle primarily civil matters while large criminal case backlogs existed in New York City is not readily apparent. (See Table III.2)

It is difficult to determine the number of new court parts which were created between 1971 and 1977 as a result of these new judgeships. The data is only available for the courts within New York City. As discussed in Chapter IV the number of criminal term parts in New York City Supreme Court increased dramatically, from 30 in 1971 to 118 in 1977. (See Table IV.2)

As noted in Chapter II, court, prosecutorial and defense resources significantly increased through funds provided by the New York State Crime Control Planning Board and special programs funded by state and local appropriations. Since 1969, almost one quarter of a billion dollars has been allocated to improve case processing in New York State.

As the number of court parts, judges and federal, state and local monies were increasing, other judicial resources including support staff and the number of prosecutors also increased. For example in New York County, while the number of parts increased from 13 to 37 in the 1971-1976 period, the number of Assistant District Attorneys increased from 76 to 128* In other words, the number of court parts in New York County increased at a rate twice that of the number of ADAs.

*Division of Criminal Justice Services

TABLE III.2

Number Authorized Judges
New York State Supreme and County Courts/New York City Criminal Court

	<u>6/30/71</u>	<u>12/31/77</u>
A. Supreme		
1. Supreme Court Trial Parts	227	257
a. New York City	128	132
b. Outside New York City ¹	99	125
2. Certified Retired Justices of the Supreme Court (ex- cludes Apell. Div.)	30	28
a. New York City	19	14
b. Outside New York City ¹	11	14
3. Court of Claims ²	-	33
B. County Court ³	86	100
Total Authorized Supreme + County Court Judges ⁴	343	418
Total Authorized Felony Trial Court Resources ⁵	233	279
C. NYC Criminal Court ⁶	98	98

-
1. These judges primarily handle civil cases .
 2. Appointed pursuant to Chapter 603 of the Laws of 1973, under the Emergency Dangerous Drug Control Program and serve in the criminal term of the Supreme Court.
 3. Handle felony cases outside of New York City.
 4. TOTAL=A1+A2+A3+B
 5. TOTAL=1a+2a+3=B and does not include the temporary Supreme Court judges assigned from the New York City Criminal Court. There was an average of 32 judges serving in this capacity in 1977.
 6. Total includes Criminal Court judges assigned to the Supreme Court.

SOURCE: Office of Court Administration

A. Intake

Intake is measured by the number of arrests, filings (in the Criminal Court) and arraignments and indictments (in the Supreme and County Courts).

Total arrests in New York State decreased slightly between 1971 and 1977, from 572,340 in 1971 to 565,999 in 1977. Between 1971 and 1977, total felony arrests in the State increased 9%, from 127,471 in 1971 to 138,831 in 1977.

(Table III.3)

In New York City, total arrests fluctuated greatly between 1971 and 1977, with a net decrease of 30,000 in the period. However, while felony arrests fell 16% between 1971 and 1973, they jumped from 76,206 in 1973 to 98,933 in 1977, an increase of 30%. (Table III.3)

Arrests in New York City proceed initially to the Criminal Court. Between 1973 and 1977, filings in the Criminal Court increased 27%, from 185,853 in 1973, to 205,725 in 1975, to 235,761 in 1977.* (Table III.4)

Statewide, arraignments and indictments increased in the Supreme and County Courts between 1971 and 1973. (Table III.5) During this period, arraignments rose 26%, and indictments increased 8%. After 1973, the trend reverses; between 1973 and 1977, arraignments dropped 18%, from 37,982 to 31,158, and

*Filings represent the number of criminal cases docketed in New York City Criminal Court. It differs from the number of arraignments by the number of defendants docketed, but failing to appear for arraignment. In such cases, arrest warrants are issued.

Table III.3
New York State and New York City
Total and Felony Adult Arrests
1971, 1973, 1975, 1977

	<u>1971</u>	<u>1973</u>	<u>1975</u>	<u>1977</u>
Total New York State Adult Arrests	572,340	537,322	573,306	565,999*
Percent Increase From Previous Year	---	- 6	+ 6	-1
<hr/>				
New York State Felony Adult Arrests	127,471	117,218	127,095	138,831
Percent Increase From Previous Year	---	- 8	+ 8	+ 9
<hr/>				
New York City Total Adult Arrests	230,760	195,050	227,171	214,360
Percent Increase From Previous Year	---	-15	+16	- 5
<hr/>				
New York City Felony Adult Arrests	91,721	76,206	85,164	98,933
Percent Increase From Previous Year	---	-16	+11	+16

SOURCE: New York State Division of Criminal Justice Services

*In 1976, New York City included violation summonses in their arrest totals for the first time. In order to compare 1977 arrest data with all other years' arrest data the 171,500 violation summonses issued in New York City in 1977 was subtracted from the actual reported total arrests in New York State for 1977.

Table III.4
New York City Criminal Court Operations
1973, 1975, 1977

	<u>1973</u>	<u>1975</u>	<u>1977</u>
1. Filings	185,853	205,725	235,761
2. Warrants Filed	46,783	60,400	79,104
3. Warrants Executed	36,436	47,502	57,100
4. Hearings	23,668	18,232	13,197
5. Motions	640	559	537
6. Trials	2,662	1,493	827
7. Total Dispositions			
a. Dismissals**	74,990	92,600	89,718
b. Pleas of Guilty	73,443	83,997	112,218
c. Acquittals	1,787	1,029	534
d. Convictions	1,364	695	384
e. Referrals to Grand Jury	25,986	20,427	17,146
f. Other Dispositions*	7,736	10,010	11,500
TOTAL Dispositions	185,306	208,758	231,500

*Includes transfers to Family Court, other jurisdictions, Criminal Court summons parts and arrest parts in other counties.

**Includes, among others, abatements by death, commitments to Mental Hygiene and ACD's.

SOURCE: Office of Court Administration Annual Reports
New York City Criminal Courts

indictments dropped 22% from 39,904 to 31,261. The decreasing intake was most dramatic in New York City with smaller decreases in the suburban courts (Nassau and Suffolk) and small increases in the upstate courts. (Tables III.5.1, III.5.2, III.5.3)

B. Dispositions

Dispositions are comprised of pleas, dismissals and trials (acquittals and convictions) and are the principal types of output of the criminal courts.*

In the New York City Criminal Court, between 1973 and 1977, dispositions increased 25%, from 185,306 to 231,500, despite increasing dispositions (and filings), referrals to the Grand Jury fell almost 34% between 1973 and 1977. (Table III.4) In 1973, 25,986 cases were forwarded to the Grand Jury for possible indictment, compared to only 17,146 in 1977. During the same period, pleas increased 53% and dismissals jumped 20%. Meanwhile, trials plummeted 70% in this period, from 2,662 in 1973 to 827 in 1977.

In the Supreme and County Courts statewide, total dispositions increased from 28,894 in 1971 to 38,674 in 1975 and then, interestingly, decreased 9% to 35,226 in 1977. (Table III.5) The decreasing output occurs entirely in New York City, which made 21,938 dispositions in 1975 and only 17,706 in 1977, a drop of 19%. (Table III.5.1) Elsewhere, in the suburban and upstate courts, dispositions actually increased in this period.

The number of pleas accepted in the Supreme and County

*Mistrials and hung juries are excluded from dispositions in this report.

Table III.5
Supreme and County Courts Statewide
Caseload Processing
1971, 1973, 1975, 1977¹

	<u>Judicial</u> <u>Year 1971</u>	<u>Judicial</u> <u>Year 1973</u>	<u>Calendar</u> <u>Year 1975</u>	<u>Calendar</u> <u>Year 1977</u>
A. Arraignments	30,427	37,982	37,753	31,158
B. Indictments ²	37,099	39,904	35,754	31,261
C. Trials ³	1,575	2,462	3,310	3,202
D. Dispositions				
1. Pleas				
a. Plea of Guilty Felony	N/A	N/A	N/A	N/A
b. Plea of Guilty Misdemeanor	N/A	N/A	N/A	N/A
SUBTOTAL ⁴	24,069	27,817	26,309	24,868
2. Convictions	1,106	1,624	2,308	2,254
3. Acquittals	455	902	1,158	1,064
4. Dismissals	3,264	5,130	8,899	7,040
TOTAL Dispositions	28,894	35,473	38,674	35,226

-
1. Judicial Year 1971 covers the period July 1, 1970 through June 30, 1971.
Judicial Year 1973 covers the period July 1, 1972 through June 30, 1973.

The entries are in terms of defendant-indictments, except for item C.
If two indictments apply to one defendant or if one indictment applies
to two defendants, two dispositions are recorded.

2. Includes indictments of youthful offenders.
3. Includes pleas before and during trial and pleas after trial but before
verdict.
4. Excludes mistrials and disagreements (hung juries).

SOURCE: Office of Court Administration Annual Reports

Table III.5.1
New York City Supreme Court
Caseload Processing
1971, 1973, 1975, 1977¹

	<u>Judicial Year 1971</u>	<u>Judicial Year 1973</u>	<u>Calendar Year 1975</u>	<u>Calendar Year 1977</u>
A. Arraignments	19,103	25,469	19,420	15,688
B. Indictments ²	23,561	26,882	19,720	16,286
C. Trials ³	783	1,457	2,184	1,918
D. Dispositions				
1. Pleas				
a. Plea of Guilty Felony	9,051	13,109	11,245	10,377
b. Plea of Guilty Misdemeanor	6,103	4,987	2,548	1,417
SUBTOTAL ⁴	15,154	18,096	13,793	11,794
2. Convictions	583	977	1,508	1,366
3. Acquittals	242	622	844	663
4. Dismissals	2,130	3,719	5,793	3,883
TOTAL Dispositions	18,109	23,414	21,938	17,706

1. Judicial Year 1971 covers the period July 1, 1970 through June 30, 1971. Judicial Year 1973 covers the period July 1, 1972 through June 30, 1973. The entries are in terms of defendant-indictments, except for item C. If two indictments apply to one defendant or if one indictment applies to two defendants, two dispositions are recorded.

2. Includes indictments of youthful offenders.

3. Includes pleas before and during trial and pleas after trial but before verdict.

4. Excludes mistrials and disagreements (hung juries).

SOURCE: Office of Court Administration Annual Reports

Table III.5.2
Suburban New York* Supreme and County Courts
Caseload Processing
1971, 1973, 1975, 1977¹

	<u>Judicial</u> <u>Year 1971</u>	<u>Judicial</u> <u>Year 1973</u>	<u>Calendar</u> <u>Year 1975</u>	<u>Calendar</u> <u>Year 1977</u>
A. Arraignments	4,431	5,257	6,705	4,711
B. Indictments ²	5,880	5,695	6,047	4,666
C. Trials ³	170	315	375	461
D. Dispositions				
1. Pleas				
a. Plea of Guilty Felony	N/A	N/A	N/A	N/A
b. Plea of Guilty Misdemeanor	N/A	N/A	N/A	N/A
SUBTOTAL ⁴	4,245	4,255	4,621	4,806
2. Convictions	111	206	282	339
3. Acquittals	51	75	111	122
4. Dismissals	386	597	1,046	1,169
Total Dispositions	4,703	5,133	6,060	6,436

*Includes Westchester, Rockland, Nassau and Suffolk Counties

1. Judicial Year 1971 covers the period July 1, 1970 through June 30, 1971. Judicial Year 1973 covers the period July 1, 1972 through June 30, 1973. The entries are in terms of defendant-indictments, except for item C. If two indictments apply to one defendant or if one indictment applies to two defendants, two dispositions are recorded.

2. Includes indictments of youthful offenders.

3. Includes pleas before and during trial and pleas after trial, but before verdict.

4. Excludes mistrials and disagreements (hung juries).

SOURCE: Office of Court Administration Annual Reports

Table III.5.3
Upstate New York* Supreme and County Courts
Caseload Processing
1971, 1973, 1975, 1977¹

	<u>Judicial</u> <u>Year 1971</u>	<u>Judicial</u> <u>Year 1973</u>	<u>Calendar</u> <u>Year 1975</u>	<u>Calendar</u> <u>Year 1977</u>
A. Arraignments	6,983	7,256	11,268	11,029
B. Indictments ²	7,658	7,387	9,987	10,309
C. Trials ³	622	690	751	823
D. Dispositions				
1. Pleas				
a. Plea of Guilty Felony	N/A	N/A	N/A	N/A
b. Plea of Guilty Misdemeanor	N/A	N/A	N/A	N/A
SUBTOTAL ⁴	4,670	5,466	7,895	8,268
2. Convictions	412	441	518	549
3. Acquittals	162	205	203	279
4. Dismissals	748	814	2,060	1,988
	5,992	6,926	10,676	11,084

*Includes counties other than those in New York City and Suburban New York.

1. Judicial Year 1971 covers the period July 1, 1970 through June 30, 1971. Judicial Year 1973 covers the period July 1, 1972 through June 30, 1973. The entries are in terms of defendant-indictments, except for item C. If two indictments apply to one defendant or if one indictment applies to two defendants, two dispositions are recorded.

2. Includes indictments of youthful offenders.

3. Includes pleas before and during trial and pleas after trial, but before verdict.

4. Excludes mistrials and disagreements (hung juries).

SOURCE: Office of Court Administration Annual Reports.

courts remained relatively stable in the 1971-1977 period. (Table III.5) Pleas increased from 24,069 in 1971 to 27,817 in 1973 and then decreased to 26,309 in 1975 and to 24,868 in 1977.

Dismissals in the Supreme and County Courts statewide have more than doubled between 1971 and 1977, from 3264 in 1971 to 7040 in 1977. (Table III.5) This dramatic increase in the use of dismissals as well as increased budgetary allocations as a result of the Emergency Felony and Dangerous Drug programs should have freed court resources for other judicial activities, such as trials.

The number of trials conducted in the Supreme and County Courts across the state have increased slightly over 100% between 1971 and 1977. This increase was particularly significant in New York City and Suburban New York where court resources were greatly enhanced. However, across the state, the number of trials conducted in the Supreme and County Courts actually decreased from 3310 in 1975 to 3202 in 1977. In New York City, the number of trials also decreased, from 2184 in 1975 to 1918 in 1977. (Tables III.5 - III.5.3) While the number of trials decreased the rate of growth in the percentage of dispositions resulting from trial verdicts also decreased. In the Supreme and County Courts statewide between 1971 and 1973 there was a 31% increase in the percentage of dispositions resulting from trial verdicts, this decreased to a 27% increase between 1973 and 1975 and shrunk to a 4% increase between 1975 and 1977. A similar pattern occurred in the Supreme and County Courts within New York City and Suburban New York. In the Supreme and County Courts in Upstate New York the percentage of dispositions resulting from trial verdicts actually decreased 21%. These trends are disturbing and indicate, along

with other factors (eg trials per court part) discussed in the next chapter, that trials have not increased at a sufficient rate in light of the greatly increased reliance on dismissals and a substantial increase in resources.

Since the courts have not been overburdened with trials they should of been able to achieve a substained and substantial reduction in case processing time and pending case backlog. The following sections reveal that no such improvement has occurred.

C. Felony Processing Times

As Table III.6 indicates, statewide, it took an average of 231 to 257 days to process a felony disposition after indictment between 1974 and 1977. For the same period, dismissals required from 439 days to 450 days to process and acquittals required from 354 to 375 days. Convictions, including pleas and trials, required significantly less time, averaging between 196 and 203 days. Between 1974 and 1977 it required an average of seven to eight weeks to sentence a defendant after conviction. The numbers are significantly higher in New York City. For instance, it required between 275 and 313 days on the average to process a felony case from indictment to disposition and between 471 and 549 days to process a dismissal. In New York City, in 1977, defendants were required to wait an average of 75 days between conviction and sentence. (Table III.6.1)

Table III.6
Processing Times for Felony Defendants
Indictment to Disposition
(average statewide processing time in days)

	<u>1974</u>	<u>1975</u>	<u>1976</u>	<u>1977</u>
A. Dispositions				
1. All Dispositions	238	240	257	231
2. Dismissals	450	440	440	439
3. Acquittals	361	375	361	354
4. Other Court Actions*	284	284	297	267
5. Convictions**	203	204	203	196
B. Average Number Days Between Conviction and Sentence	46	53	55	56

*The category "other court actions" refers generally to the consolidation of indictments or a plea to another indictment; the standards vary according to county practices.

**Convictions include jury trials, non-jury trials, and guilty pleas.

SOURCE: Division of Criminal Justice Services
Annual Felony Processing Reports

Table III.6.1
New York City Processing Times for Felony Defendant
Indictment to Disposition
(average New York City processing time in days)

	<u>1974</u>	<u>1975</u>	<u>1976</u>	<u>1977</u>
A. Dispositions				
1. All Dispositions	289	292	313	275
2. Dismissals	549	509	501	471
3. Acquittals	420	420	425	394
4. Other Court Actions*	324	315	360	329
5. Convictions**	243	249	268	233
B. Average Number Days Between Conviction and Sentence	56	63	74	75

*The category "other court actions" refers generally to the consolidation of indictments or a plea to another indictment; the standards vary according to county practices.

**Convictions include jury trials, non-jury trials, and guilty pleas.

SOURCE: Division of Criminal Justice Services
Annual Felony Processing Reports

D. Pending Case and Detainee Backlog

As of August 1, 1978, there were 1,891 defendant indictments pending disposition for one year or longer.* (Table IV.7) In August 1978, there were 2,949 cases pending for more than nine months and 4,684 cases pending for more than six months. New York City consistently accounts for well over half of all pending cases for the one year, nine month and six month periods. (Table IV.7.1)

As of December 31, 1977, there were 112 detainees pending disposition or sentence for one year or longer. (Table III.8) of this number, 91 were pending for more than one year in New York City Supreme Court and 21 were pending in the Supreme and County Courts outside New York City.

The New York City Department of Correction reports that during the calendar year 1977, 5,011 defendants were jailed for more than three months; 1,483 were jailed for more than six months; and 207 were jailed for more than nine months. (Table III.9)

*Backlog entires, except where otherwise indicated, are in terms of defendant-indictments. If two indictments apply to one defendant, two dispositions are recorded.

Table III.7
Felony Defendant-Indictments*
Pending Disposition Statewide

	<u>1 yr.+</u>	<u>9 mos.+</u>	<u>6 mos.+</u>
August, 1975	4,668	7,212	8,689
August, 1976	3,736	5,847	6,904
August, 1977	2,307	3,130	4,572
August, 1978	1,891	2,949	4,684
Percent Decrease From August, 1975 to August, 1978	59.5	59.1	46

*The entries are in terms of defendant-indictments. If two indictments apply to one defendant or if one indictment applies to two defendants, two dispositions are recorded.

SOURCE: New York State Office of Court Administration

Table III.7.1
Felony Defendant-Indictments*
Pending Disposition
New York City Supreme Court

	<u>1 yr.+</u>	<u>9 mos.+</u>	<u>6 mos.+</u>
August, 1975	3,596	5,178	6,174
August, 1976	2,602	3,919	4,578
August, 1977	1,845	2,405	3,281
August, 1978	1,201	1,844	3,022
Percent Decrease From August, 1975 to August, 1978	66.6	64.4	51.0

*The entries are in terms of defendant-indictments. If two indictments apply to one defendant or if one indictment applies to two defendants, two dispositions are recorded.

SOURCE: New York State Office of Court Administration

Table III.7.2
Felony Defendant-Indictments* Pending Disposition
Supreme/County Courts Outside New York

	<u>1 yr.+</u>	<u>9 mos.+</u>	<u>6 mos.+</u>
August, 1975	1,072	2,034	2,515
August, 1976	1,134	1,929	2,326
August, 1977	462	914	1,291
August, 1978	690	1,105	1,662
Percent Decrease From August, 1975 to August, 1977	35.6	45.6	33.9

*The entries are in terms of defendant-indictments. If two indictments apply to one defendant or if one indictment applies to two defendants, two dispositions are recorded.

SOURCE: New York State Office of Court Administration

Table III.8
Detainees Pending Disposition or Sentence
1974, 1975, 1976, 1977
New York City Supreme Court, Supreme and
County Courts Outside New York City

	<u>New York City</u> <u>Supreme Court</u>		<u>Outside New York</u> <u>City Supreme and</u> <u>County Courts</u>		<u>Total</u> <u>New York State</u>	
	<u>Total</u> <u>Pending</u>	<u>One Year</u> <u>or Greater</u>	<u>Total</u> <u>Pending</u>	<u>One Year</u> <u>or Greater</u>	<u>Total</u> <u>Pending</u>	<u>One Year</u> <u>or Greater</u>
6/31/74	3,850	507	1,209	16	5,059	523
12/31/75	3,457	360	1,108	31	4,565	391
12/31/76	2,944	160	1,111	19	4,055	179
12/31/77	2,698	91	929 ¹	21	3,627	112
Percent Change						
6/31/74 - 12/31/77	- 29.9	- 82	- 23.2	+ 31.2	- 28.3	- 78.6

1. Includes estimates for Albany, Schenectady, Warren and Lewis Counties based on data at the end of 1976.

SOURCE: New York State Office of Court Administration

Table III.9
Detainees in New York City
Length of Stay
1976,1977

	<u>Three Months or Greater</u>	<u>Six Months or Greater</u>	<u>Nine Months or Greater</u>
January 1, 1976 - December 31, 1976	8,000	3,968	2,061
January 1, 1977 - December 31, 1977	5,011	1,483	207
Percent Change 1976 - 1977	- 37.4	- 62.6	- 90.2

SOURCE: New York City Department of Correction

In the following section, we will analyze whether the case processing times and backlog figures are justifiable considering the resources and workload of our court system.

ANALYSIS

Examining the foregoing data critically, we find that the case processing performance of the courts has declined substantially since 1971. We find that Supreme Court indictments decreased at a time when felony arrests increased, the use of dismissals greatly increased while the number of trials did not increase at expected rates, and, finally, the quality of dispositions and their processing times suffered. The system failed to meet minimum standards established by the Office of Court Administration, and appears not to have benefitted from a massive infusion of resources by the Legislature.

A. Intake/Disposition Disparity

Intake in the courts of criminal jurisdiction has not kept pace with increasing arrests. Between 1973 and 1977, felony adult arrests increased 19% while indictments decreased 22% statewide. In New York City, during the same period, felony arrests increased 30%, while arraignments dropped 38% and indictments dropped 40% in the New York City Supreme Court.

The decreased New York City Supreme Court intake is partially due to declining referrals to the Grand Jury from the Criminal Court. Between 1973 and 1977, while total arrests increased by 10% and felony arrests increased by 30%, referrals to the Grand

Jury decreased 34% At the same time that referrals decreased and felony arrests increased, the state was spending \$14.2 million on special case screening programs to improve the referral process. While this alone does not prove that there was poor screening, the increase in dismissals (see Table III.5.1) during the same time period raises serious questions about the efficiency of the "improved" case screening and referral process.

Another point to consider is that while the intake in the Criminal Court increased and the intake in the Supreme Court decreased, numbers of Criminal Court judges were transferred to the Supreme Court in New York City. Between 1973 and 1977, the number of Criminal Court parts decreased from 62 to 57 while the number of Supreme Court parts increased from 77 to 118.

(Table IV.2 - IV.3) Facing a staggering workload of over 235,000 filings in 1977, the Criminal Court was staffed by only 57 of 98 authorized judges, only 58% of full resource authorization.

The number of dispositions in the Criminal and Supreme/County Courts statewide fluctuates greatly between 1973 and 1977. Due to increased filings, dispositions in the New York City Criminal Court increased 25% between 1973 and 1977. During the same period, dispositions in the Supreme/County Courts statewide decreased, entirely attributable to a 24% decrease in the New York City Supreme Court's dispositions. Note the significant increase in dispositions in the New York City Criminal Court at the same time that dispositions in the New York City Supreme Court fell sharply. While dispositions decreased in the Supreme/County Courts, the number of resources in terms of court parts and federal, state and local funds escalated.

B. Means of Achieving Dispositions

In addition to decreased intake and disposition activity in the Supreme/County Courts across the state, there are serious questions as to the methods used by these courts to achieve dispositions. Particularly disturbing is the courts' increased reliance on plea bargaining and dismissals.

The New York State Legislature, concerned with a persistent drug abuse phenomenon, worsening pending case and detainee backlogs and abuses in the plea bargaining system, took a number of steps to strengthen the system between 1971 and 1973. The Special Narcotics Parts Program (1971) and Emergency Felony Case Processing Program (1972) added 24 new trial parts, and the Emergency Dangerous Drug Control Act added 31 more parts to the New York City Supreme Court and 18 parts upstate. The 1973 Drug Act elevated the status of drug offenses and provided the following plea bargaining restrictions:

1. limited plea bargaining by defendants indicted for class A drug felonies to other drug crimes within the A felony category, thereby assuring that a person indicted for a class A felony could not plead to a charge that would allow a non-prison sentence;*
2. restricted plea bargaining to the felony level for newly indicted defendants who had previously been convicted of a felony in the last ten years, and made a prison sentence mandatory upon conviction;
3. required that defendants convicted of any class B felony and certain class C and D felonies be sentenced to prison for an indeterminate period with a minimum of not less than one year.

*In 1976 the Legislature limited this provision as it applied to class A-III drug felonies. Defendants in this category are now permitted to plea to a class C felony.

The intent of the act was to alleviate the case backlog and provide for swift and sure justice through a decreased reliance on the plea bargaining process and the institution of more stringent sentences.

The Bar Association of the City of New York found that during the first two years after enactment, the new drug and sentencing laws did not increase the risk of punishment facing offenders and did not improve the speed with which cases were being processed, upstate or in New York City.

One would expect, in light of increased court and prosecutorial resources and stricter plea bargaining limitations that the court's reliance on both plea bargaining and dismissals would decrease. The data shows, however, a startling increase in dismissals. Between 1971 and 1977, while the percentage of dispositions resulting from pleas decreased 12.7%, the percentage of dispositions resulting from dismissals increased 8.7%. (Table III.10). In 1971, dismissals accounted for 11.3% of all dispositions; by 1977 dismissals represented 20% of all dispositions. It seems that all the increased resources accomplished was a shift in the courts' reliance on plea bargaining to dismissals.

It is important to note that these dismissal figures included dismissed defendant-indictments covered by other pleas. It is common practice for a District Attorney, when dealing with

a defendant charged with more than one indictment, to induce the defendant to plea guilty to the indictment for which the strongest case exists. In return the D.A. **asks** the court to dismiss the remaining indictments. In the New York City Supreme Court in 1978, 25.4% of the dismissals were "covered" in this way.

One may question whether this system of covering dismissals furthers the ends of justice. Certainly "covered" dismissals serve to protect the community more than outright dismissals since the defendant is convicted of at least one indictment. However, does this system insure that defendants are convicted of as many indictments as there is sufficient evidence to convict? Is the system of covering indictments a necessary tool of the D.A. or is it just a disguised method of plea-bargaining which is most convenient for the D.A.? The consequences of covering indictments are certainly undetermined.

The increased reliance on dismissals also had other more definable consequences. As Chapter II reveals, millions of dollars were spent between 1971 and 1977 to improve case screening and establish major offense bureaus in an effort to increase the conviction rate.*

However, the conviction rate in the Supreme and County Courts statewide dropped from 87% of all dispositions in 1971 to 77% in 1977. In the New York City Supreme Court the decrease was even more severe, from 87% of all dispositions in 1971 to 74% in 1977. (Tables III.5 - III.5.1) These decreases can not be attributed to:

*Conviction rate refers to guilty pleas and convictions through trial.

1. A reduced threat of a case going to trial since the number of trials more than doubled in the Supreme and County Courts statewide and increased 145% in the New York City Supreme Court between 1971 and 1977. The percentage of dispositions resulting from trial verdicts increased 74% in the Supreme and County Courts statewide and 155% in the New York City Supreme Court during the same time period. The available data strongly suggests that an increase in trials will not necessarily increase the conviction rate. (Tables III.10 - III.10.3)
2. The failure of case screening programs to screen out weak cases early. This variable can only be measured in New York City and only from 1973 - 1977. However, referrals to the Grand Jury from the New York City Criminal Court dropped 32% from 1973 (before case screening) to 1977. (Table III.11)

A major reason for the decreased conviction rates is the courts' increased reliance on dismissals as a dispositional tool. Other reasons include the increased complexity of cases caused the expansion of due process rights and an apparent policy of District Attorneys to devote most of their resources to cases which involved serious crimes which were likely to result in a prison sentence. (The percentage of convicted defendants sentenced to state institutions increased from 18% in 1971 to 39% in 1977).

Increasing plea restrictions after indictment has reduced the extent of plea bargaining at the Supreme Court level, but has caused a corresponding increase in plea bargaining in the Criminal Court.

Table III.10
Supreme and County Courts
(Criminal Term)
Analysis of Dispositions* Statewide

<u>Dispositions by Type</u>	<u>Judicial Year 1971¹</u>	<u>Judicial Year 1973¹</u>	<u>Calendar Year 1975</u>	<u>Calendar Year 1977</u>
Number Pleas	24,069	27,817	26,309	24,868
Percent of Dispositions	83.3	78.4	68	70.6
Number Dismissals	3,264	5,130	8,899	7,040
Percent of Dispositions	11.2	14.5	23	20.2
Number Convictions	1,106	1,624	2,308	2,254
Percent of Dispositions	3.8	4.6	6	6.4
Number Acquittals	455	902	1,158	1,064
Percent of Dispositions	1.6	2.5	3	2.8
TOTAL	28,894	35,473	38,674	35,226
Percent of Dispositions	100	100	100	100
<hr/>				
Trials Proof Completed**	1,575	2,462	3,310	3,202
Verdicts	1,561	2,526	3,466	3,318
Percent of Dispositions	5.4	7.1	9	9.4

1. Judicial Year 1971 covers the period July 1, 1970 through June 30, 1971.
 Judicial Year 1973 covers the period July 1, 1972 through June 30, 1973.

*The entries are in terms of defendant-indictments. If two indictments apply to one defendant or if one indictment applies to two defendants, two dispositions are recorded.

**In terms of actual cases, not defendant indictments

SOURCE: Office of Court Administration Annual Reports

Table III.10.1
New York City Supreme Court
(Criminal Term)
Analysis of Dispositions*

	<u>Judicial</u> <u>Year 1971¹</u>	<u>Judicial</u> <u>Year 1973¹</u>	<u>Calendar</u> <u>Year 1975</u>	<u>Calendar</u> <u>Year 1977</u>
A. Dispositions by Type ²				
1. Number Pleas	15,154	18,096	13,793	11,794
Percent of Dispositions	83.8	77.3	62.9	66.6
2. Number Dismissals	2,130	3,719	5,793	3,883
Percent of Dispositions	11.7	15.9	26.4	21.9
3. Number Convictions	583	977	1,508	1,366
Percent of Dispositions	3.2	4.1	6.9	7.7
4. Number Acquittals	242	622	844	663
Percent of Dispositions	1.3	2.7	3.8	3.7
TOTAL	18,109	23,414	21,938	17,706
B. Trials				
1. Trials Through Proofs Completed**	783	1,457	2,184	1,918
Verdicts	825	1,599	2,352	2,029
Percent of Dispositions	4.5	6.8	10.7	11.5

1. Judicial Year 1971 covers the period July 1, 1970 through June 30, 1971.
Judicial Year 1973 covers the period July 1, 1972 through June 30, 1973.

2. See Table 9 for explanation of terms.

*The entries are in terms of defendant-indictments. If two indictments apply to one defendant or if one indictment applies to two defendants, two dispositions are recorded.

**In terms of actual cases, not defendant-indictments

SOURCE: Office of Court Administration Annual Reports

Table III.10.2
Supreme and County Courts
Suburban New York*
(Criminal Term)
Analysis of Dispositions**

	<u>Judicial</u> <u>Year 1971¹</u>	<u>Judicial</u> <u>Year 1973¹</u>	<u>Calendar</u> <u>Year 1975</u>	<u>Calendar</u> <u>Year 1977</u>
A. Dispositions by Type ²				
1. Number Pleas	4,245	4,255	4,621	4,806
Percent of Dispositions	88.5	82.9	76.2	74.6
2. Number Dismissals	386	597	1,046	1,169
Percent of Dispositions	8	11.6	17.2	18.1
3. Number Convictions	111	206	282	339
Percent of Dispositions	2.3	4	4.7	5.3
4. Number Acquittals	51	75	111	122
Percent of Dispositions	1	1.5	1.8	1.9
TOTAL	4,793	5,133	6,060	6,436
B. Trials				
1. Number Through Proof Completed ***	170	315	375	461
Verdicts	162	281	393	461
Percent of all Dispositions	3.4	5.5	6.5	6.6

1. Judicial Year 1971 covers the period July 1, 1970 through June 30, 1971.
Judicial Year 1973 covers the period July 1, 1972 through June 30, 1973.

2. See Table 5 for explanation of terms.

*Includes Rockland, Westchester, Nassau and Suffolk Counties

**The entries are in terms of defendant-indictments. If two indictments apply to one defendant or if one indictment applies to two defendants, two dispositions are recorded.

*** In terms of actual cases, not defendant-indictments

SOURCE: Office of Court Administration Annual Reports

Supreme and County Courts
Upstate New York*
(Criminal Term)
Analysis of Dispositions*

	<u>Judicial</u> <u>Year 1971¹</u>	<u>Judicial</u> <u>Year 1973¹</u>	<u>Calendar</u> <u>Year 1975</u>	<u>Calendar</u> <u>Year 1977</u>
A. Dispositions by Type ²				
1. Number Pleas	4,670	5,466	7,895	8,268
Percent of Dispositions	77.9	78.9	73.9	74.6
2. Number Dismissals	748	814	2,060	1,988
Percent of Dispositions	12.4	11.7	19.2	17.9
3. Number Convictions	412	441	518	549
Percent of Dispositions	6.9	6.4	4.9	5.0
4. Number Acquittals	162	205	203	279
Percent of Dispositions	2.7	3	1.9	2.5
TOTAL	5,992	6,926	10,676	11,084
B. Trials				
1. Trials Through Proof Completed ***	662	690	751	823
Verdicts	574	646	721	828
Percent of all Dispositions	9.6	9.3	6.8	7.5

1. Judicial Year 1971 covers the period July 1, 1970 through June 30, 1971.
Judicial Year 1973 covers the period July 1, 1972 through June 30, 1973.

2. See Table 5 for explanation of terms.

* Includes counties other than those in New York City and Suburban New York.

** The entries are in terms of defendant-indictments. If two indictments apply to one defendany or if one indictment applies to two defendants, two dispositions are recorded.

*** In terms of actual cases, not defendant-indictments

SOURCE: Office of Court Administration Annual Reports

Table III.11
Analysis of Disposition Data
New York City Criminal Court
1973, 1975, 1977

	<u>1973</u>	<u>1975</u>	<u>1977</u>
A. Number Dismissals*	74,990	92,600	89,718
Percent of Dispositions	40	44.4	38.7
B. Number Pleas of Guilty	73,443	83,997	112,218
Percent of Dispositions	40	40.2	48.5
C. Number Acquittals	1,787	1,029	534
Percent of Dispositions	0.96	0.50	0.23
D. Number Convictions	1,364	695	384
Percent of Dispositions	0.74	0.33	0.16
E. Number Referrals to GJ	25,986	20,427	17,146
Percent of Dispositions	14	9.8	7.4
F. Number Other Dispositions**	7,736	10,010	11,500
Percent of Dispositions	4.2	4.8	5
TOTAL	185,306	208,758	231,500
Percent of Dispositions	100	100	100

*Includes, among others, abatements by death, commitments to Mental Hygiene and ACD's.

**Includes transfers to Family Court, other jurisdictions, Criminal Court summons parts and arrest parts in other counties.

SOURCE: Office of Court Administration Annual Reports

In the Criminal Court, the District Attorney may reduce charges from felonies to misdemeanors at will, thereby facilitating the plea bargaining process.* Although the intent of the 1973 legislation was to restrict this practice, judging from increasing felony arrests and decreasing indictments, it is clear that large numbers of felonies are still being reduced to misdemeanors at the Criminal Court. As Table III.11 indicates, in the New York City Criminal Court, between 1973 and 1977:

--the number of pleas skyrocketed from 73,443 to 112,218, a 53% increase;

--pleas as a percentage of dispositions increased from 40% to nearly 50%;

--dismissals increased 20%, from 74,990 to 89,718;

--trials decreased from 2662 to 827, a drop of nearly 70%. (One reason for this decrease was the Supreme Court ruling in Baldwin v New York which disallowed the substitution of bench trials for jury trials in A misdemeanor cases).

Consequently, fewer than one in 200 defendants in the Criminal Court were brought to trial in 1977, and less than 8% of defendants were brought to trial or referred to the Grand Jury. The data indicates that by remaining in the Criminal Court, a defendant is virtually assured of a reduced sentence through plea bargaining,** or having his case dismissed. In New York City, the District Attorneys complain that the plea bargaining system has become a farce because there is little chance that a defendant will be brought to trial and given a stiffer sentence than what the D.A. offers in plea bargaining negotiations. In short, plea bargaining in New York City is not a convenient and efficient tool, but a crutch that perpetuates inefficiency in the Criminal

*Defendants may only plead to, or be tried for misdemeanors; in the Criminal Court.

**The maximum prison sentence for a misdemeanor is one year.

Court, and circumvents the intent of 1973 drug laws mandating a more thorough review of felony cases in the Supreme and County Courts.

There are problems with plea bargaining on the Supreme Court level as well. The Vera Institute found in 1973, in the New York City Supreme Court, that over 92% of defendants pleading guilty received an explicit or implicit promise of a reduced sentence. (Table III.12) Sentence reduction is a natural part of the plea bargaining process. However, it is abused when lenient sentences are substituted in cases where clear and convincing evidence would warrant a trial or the maximum sentence permitted under law. The Vera data does not indicate the extent of leniency in Supreme Court pleas, except that 21% of the pleas were to misdemeanors, indicating a maximum sentence of 1 year in prison, and 72% were promised an upper limit or reduced sentence. Given that the evidence in a Supreme Court case must be strong enough to satisfy a Criminal court judge at a preliminary hearing and a Grand Jury; and considering the deluge of federal and state monies to increase judicial resources several questions arise. Why is only 9.4% of Supreme Court dispositions result from trial verdicts and why does the conviction rate decrease when the number of trials increase? Why have the number of dismissals since 1971 more than doubled in the Supreme Court statewide? A partial explanation is the deteriorating court productivity which is discussed in the next chapter.

Table III.12
1973 Sample of Types of Sentence Promise and
Participation of the Bench in Negotiated Pleas
New York City Supreme Court

<u>Type of Promise</u>	<u>Percentage of Cases</u> <u>Disposed of by Guilty Pleas</u>
A. Explicit Sentence Promise	72%
1. Defense counsel and prosecutor agree on sentence and judge accepts	16%
2. Judge participates in working out sentence agreement	56%
B. Implicit Sentence Promise	21%
Made by allowing a plea to:	
1. A misdemeanor - maximum one year	17%
2. B misdemeanor or less - maximum three months	4%
C. No Sentence Promise for Reduction of Charge to Misdemeanor	7%

SOURCE: Deep Sample Data (1973)
Vera Institute Felony Disposition Study

C. Case Processing Delay and Backlog

Considering the additional federal, state and local monies and court parts to speed court processing, one would expect that the length of time needed to process a defendant from indictment to disposition would decrease. However, as Table III.6 reveals, the length of time needed to process cases has barely decreased between 1974 and 1977. In fact, the average number of days between conviction and sentence actually increased from 46 days in 1974 to 56 days in 1977. In other words, in 1977 a defendant had to wait over eight months between indictment and the beginning of his sentence. While it takes over six months to process a conviction, it takes nearly 15 months to process a dismissal and 12 months to process an acquittal. It takes more than twice the amount of time to process a dismissal than a conviction.

The staggering processing times are evidence of deteriorating productivity in the face of increasing resources. These delays also have undesirable ramifications. The defendant who will ultimately be dismissed or acquitted faces a wait of 12 to 15 months, in detention if he cannot afford bail, or out on bail struggling to maintain family, job and community ties while the slow judicial process drags on. By any standard, one year is far too long for any person accused to wait for final disposition.

Additional evidence that processing times for felony cases have not improved is apparent in the continuing case and detainee backlog problem. On July 3, 1975, the Administrative Board of the Judicial Conference adopted standards and goals for the timely disposition of felony cases in Supreme and County Courts. Concerned with an extensive case backlog, the Conference declared, "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." The standards were designed to be achieved in stages between October 1, 1975 and January 1, 1979. The Conference adopted a strategy to meet the standards including a 90-day time limit on plea negotiations after arraignment in the Supreme or County Court; limitations on adjournments; and the more efficient calendaring of cases for trial.

The Supreme and County Courts have made important progress in disposing of pending case indictments for periods of six months, nine months and one year. (See Table III.7) Cases pending six months, nine months and one year or longer have decreased state-wide as much as 60% between 1975 and 1978. Nevertheless, the Supreme and County Courts have not met OCA's disposition standards due to be achieved by October 1, 1976, October 1, 1977, July 1, 1978 and January 1, 1979.

According to the Office of Court Administration (OCA), all class A felony cases pending for more than one year were to be disposed of by October 1, 1976. However, on that date, there were 570 such cases still pending for more than one year. As of January 1, 1978, there were over 250 class A felony cases pending in New York City for over one year.

Also, by October 1, 1976, all defendants detained for more than one year were due to have their cases disposed of, but there were 70 defendants awaiting disposition and 101 defendants awaiting sentence for more than one year when that deadline came. (Table III.8) As of August 1, 1978, 80 awaited disposition or sentence for more than one year. The New York City Department of Correction reports that in 1977, there were 5,011 detainees pending disposition for three months or longer and 1,483 pending for six months or longer. (Table III.9) Not only does justice suffer by detaining defendants for long periods of time, but the costs to the system are staggering.

According to the National Council on Crime and Delinquency, it costs at least \$26,000 a year to keep a prisoner in a New York City jail. Every day one detainee is held in a New York City jail costs the taxpayer \$71.87. This amounts to \$317,665 a day to house New York City's average daily 1977 detainee population of 4,420. In 1977, the total direct cost of housing New York City's detainee population was close to \$116 million.

Under OCA's disposition standards all felony indictments pending for more than one year should have been disposed of by October 1, 1977. As of August 1977, 2,307 felony indictments were pending for one year or longer. (Table III.7) Under

pressure to meet the standards, the courts made dramatic progress in the subsequent six months, but 1,144 indictments were pending for over one year as of December 31, 1977. This number actually increased to 1,891 indictments pending in the summer of 1978. This increase was totally caused by a 33% increase in the number of pending defendant-indictments of 1 year or more in the Supreme and County Courts outside of New York City between August 1977 and August 1978.

The final goals to be achieved concerned cases pending for nine and six months. By July 1, 1978, all felony indictments were to be disposed of within nine months of the indictment. The courts failed to meet this standard, as 2,949 cases were pending for nine months or more as of August 1, 1978. Even more disturbing was the 21% increase in the number of pending nine month indictments in the Supreme and County Courts outside New York City between August 1977 and August 1978. All felony indictments pending for six months or longer since indictment were to be disposed of by January 1, 1979. There is virtually no chance that this standard was achieved. As of August 1978, there were 4,684 felony indictments pending for more than six months, which is an increase of 112 cases from the number pending in August 1977. Again this increase is totally due to a 29% increase in the number of pending six month indictments in the Supreme and County Courts outside New York City.

In short, the disposition standards of the OCA have in every case not been achieved and in fact the Supreme and County Courts outside of New York City have regressed in meeting all standards between August 1977 and August 1978. This failure cannot be easily dismissed since the Supreme and County Courts across the state should

have experienced a decreased workload because of a 16% decrease in arraignment activity and a 12.6% decrease in indictments between 1975 and 1977. During the same time period, the percentage of dispositions resulting from plea bargains, which take less court time than trials, grew by almost 3%, while the percentage of dispositions resulting from trial verdicts increased by only .4%. It should be remembered that this decreased workload occurred at the same time court resources were increasing. All these factors indicate the courts should have been able to meet OCA disposition standards and make more substantial progress in reducing case and detainee backlogs.

There is no possible conclusion but that the case processing capabilities of the New York State Criminal Court system has deteriorated since 1971.

In the New York City Criminal Court, plea bargaining has become uncontrollable, with pleas accounting for 48 percent of all dispositions in 1977. Dismissals represent nearly forty percent of dispositions. There is no credible threat of going to trial in the Criminal Court and less than a one in ten chance that a case will be referred to the Grand Jury.

Despite the additional resources, the number of cases disposed of at the Supreme Court level in New York City are decreasing. The dismissal rate has doubled since 1971, while the conviction rate* has decreased by thirteen percent. Over 92 percent of the defendants who plea guilty are given some sort of promise of a lenient sentence.

*Conviction rate refers to guilty pleas and convictions through trial.

Across the state, felony processing times have not improved, despite the infusion of hundreds of millions in federal, state and local monies. It takes over twice as long to process a dismissal as a conviction, and the average disposition took over 230 days to process from indictment to disposition.

The pending case and detainee backlog remains despite strong attempts by the OCA to eliminate it. None of the OCA standards have been met and chances are that they will not be met in the future. Meanwhile, 80 defendants remain incarcerated awaiting disposition or sentence for over one year and over 4,600 defendants have their cases pending for six months or longer.

Despite comprehensive procedural and structural changes designed to streamline and simplify criminal case processing and a substantial infusion of resources, there is no perceptible change in the nature of the problem.

IV. THE PRODUCTIVITY QUESTION

The foregoing chapters have demonstrated that, despite a massive investment of funds, the case processing capabilities of the courts have not substantially improved. Cases require unduly long periods of time to process and the pending case backlog persists. Therefore, it is not surprising that measured by several standards, the productivity of the courts has fallen as well. The following chapter describes the declining productivity in terms of dispositions per part, utilization of judge time and seasonal part activity. The concept of productivity is considered anathema to jurists concerned with justice. There is good reason to be vigilant that fairness and justice prevail. However, criminal case processing is not unlike many other processes which can be organized and managed more effectively. The limited productivity analysis here suggests additional measures should be used to gauge how effectively and efficiently the courts manage their resources.

A. Dispositions Per Part

Court part productivity may be measured by the number of dispositions per part per year. Absent significant changes in the nature of dispositions, i.e., number or length of trials, we would expect the number of dispositions per part to increase with increasing judicial resources. What occurred between 1971 and 1977 is precisely the reverse.

Table IV.1
Dispositions Per Part And Cost
New York City Supreme Court
Criminal Term 1971, 1973, 1975, 1977

	<u>Judicial</u> <u>Year 1971*</u>	<u>Judicial</u> <u>Year 1973*</u>	<u>Calendar</u> <u>Year 1975</u>	<u>Calendar</u> <u>Year 1977</u>
A. Number Active Parts ¹	50	77	108.1	118.3
B. Number Dispositions	18,109	23,414	21,938	17,706
1. Dispositions per part	362.2	304.0	202.9	149.6
C. Operating Costs (\$500,000 per part ²)	\$25,000,000	\$38,500,000	\$54,050,000	\$59,150,000
1. Cost per Disposition	\$ 1,381	\$ 1,644	\$ 2,426	\$ 3,341

*Judicial Year 1971 covers the period July 1, 1970 through June 30, 1971.
Judicial Year 1973 covers the period July 1, 1972 through June 30, 1973.

1. Number of parts for Judicial Year 1971 estimated from number of parts operating at October, 1971. Other part figures are averages of the numbers of operating parts at the beginning and end points of the time periods.

2. The \$500,000 per part figure includes all related part costs--judicial, prosecution, defense, probation and corrections. It is a conservative estimate based on estimates from the New York State Judicial Conference (\$539,950 in January 1973), the Economic Development Council (\$602,400 for a GIC part in February 1976) and Division of Criminal Justice Services' Dangerous Drug Control Program Report (\$488,000 to 636,119 in November 1973). The \$500,000 estimate is held constant over the four review periods; thus, inflation and real increases in salaries and costs are excluded.

SOURCE: Office of Court Administration, Economic Development Council,
Division of Criminal Justice Services

Productivity has dropped off sharply in the New York City Supreme Court. Between 1971 and 1977, while the number of court parts increased from 50 to 118 and the number of prosecutors increased (in New York County, for example, they doubled) dispositions per part plummeted by nearly 60%. (Table IV.1) These apparent productivity losses have resulted in staggering costs. It has raised the cost per disposition from \$1,381 in 1971 to \$3,341 in 1977, (Table IV.1) excluding salary and inflationary increases. If judges in 1977 worked at the 1971 disposition rate (362 dispositions per part), the same number of dispositions could have been handled with 69 fewer parts.

Some judges and court officials have argued that the deteriorating productivity is due to an increasing number of trials. It is true that the number of trials increased from 1,457 in 1973 to 2,184 in 1975, but they decreased to 1,918 in 1977. During the same time period, the number of court parts increased by more than 50% (from 77 in 1973 to 118 in 1977). In fact, between 1973 and 1977, there were 41 additional parts which handled only 461 additional trials. If it is assumed that parts averaged 16 trials in 1977, these additional parts should have handled over 650 additional trials. Since the number of parts has more than kept pace with the increasing number of trials, dispositions per part should have increased. Instead, dispositions per part declined 51% between 1973 and 1977 while trials per part actually decreased 14%. Furthermore, dispositions fell almost 20% between 1975 and 1977, when the number of trials were actually decreasing. (Table IV.2)

Table IV.2
Judicial Productivity
New York City Supreme Court
Criminal Term

	<u>Judicial Year 1973*</u>	<u>Calendar Year 1975</u>	<u>Calendar Year 1977</u>
A. Active Parts**	77	108.1	118.3
B. Judge Days Sat	15,777	24,313	25,506
1. Days Sat per part	205	225	216
C. Dispositions	23,414	21,938	17,706
1. Dispositions per part	304	203	150
D. Trials (Proof Completed)	1,457	2,184	1,918
1. Trials per part	18.9	20.2	16.2
E. Days on Trial	N/A	11,934	12,463
1. Days on Trial as percent of Days Judges Sat	N/A	49.1	48.9

*Judicial Year 1973 is defined as July 1, 1972 through June 30, 1973.
All other entries are in terms of calendar year.

**Active parts are averages of number parts in operation at several points during the year.

SOURCE: Office of Court Administration

Another argument advanced to explain the decrease in dispositions per part is that trials required more time to conduct and occupy more of the judges' time. True, the duration of trials increased from 5.4 days in 1975 to 6.5 days in 1977. However, judges were actually spending less time on the bench conducting trials during that period.* In 1975, a judge spent 49.1% of his working day on trial compared to 48.9% in 1977, despite slightly longer trials. (Table IV.2)

In short, deteriorating productivity in New York City Supreme Courts cannot be explained by the increasing number of trials or lengthier trials. Judicial resources kept pace with the increasing number of trials. Despite longer trials, judges spent less time on the bench conducting them.

Productivity in the New York City Criminal Court has also declined. Between 1973 and 1977, the number of judge days sat per part decreased from 244 to 221. This fact is particularly disturbing as the number of judge days sat is one factor that is totally under the control of the Judiciary. (Table IV.3) Dispositions per part increased during this period, but apparently only because of a quantum leap in pleas and dismissals. Between 1973 and 1977, the number of pleas jumped from 73,443 to 112,218, over a 50% increase! The number of dismissals also increased, from 74,990 to 89,718, a 20% increase! The total number of dismissals and pleas, which consume less court time, actually increased 36% during this time period. At the same

*The duration of a trial is computed from the start of jury selection through proof completed. Data for trial duration is not available before 1975.

time, trials decreased almost 70% from 2,662 to 827. Increasing dispositions per part in the criminal court was apparently not due to better utilization of judges and parts but because of the surging number of pleas and dismissals.

Criminal Court productivity has also been affected by the transfer of approximately 30 judges to the Supreme Court. The transfer occurred despite the increasing workload at the Criminal Court level and the declining intake at the Supreme Court level. Although the authorized manpower for the Criminal Court is 98 judges, only about 60 are usually serving.

B. Utilization of Court Time

Beginning on November 17, 1975 and continuing into January 1976, during three selected weeks, the Economic Development Council (EDC*) made observations in each of the 60 courtrooms comprising the criminal term of the Supreme Court in New York and Kings Counties. The EDC sought to determine the extent and character of the utilization of judge time and compare their results with a similar study they conducted in 1972. OCA, which sanctioned the EDC studies, has not yet evaluated the findings of either report as they had promised to do in the 1973 Annual Report of the Judicial Conference. OCA should immediately reevaluate both EDC reports' findings to either confirm them and take appropriate action or refute them and remove the cloud that has remained over the Judiciary for too long a time.

*The Economic Development Council of New York City is an independent non-profit organization of leading businessmen and women.

Table IV.3
Judicial Productivity
New York City Criminal Court
(Arrest Cases)

	<u>1973</u>	<u>1975</u>	<u>1977</u>
A. Active Parts*	62	61	57
B. Days Sat	15,128	14,568	12,573
1. Days Sat per part	244	239	221
C. Dispositions	185,306	208,758	231,500
1. Disposition per part	2,989	3,422	4,061
D. Trials (Proof Completed)	2,662	1,493	827
1. Trials per part	42.9	24.5	14.5

*Active Parts are averages of number parts in operation at several points during the year.

SOURCE: Office of Court Administration

The most recent study, in the New York County Courts surveyed, determined that only three hours and twenty-three minutes, or 52 percent of the 6.5 hour court day, were spent on "bench activity". In Kings County, "bench activity" only took up two hours, thirty-seven minutes, or 42 percent of the court day (Table IV.4). "Bench activity" was liberally defined to include the gamut of court functions, including but not limited to, motions, hearings, conferences (not on trial), trials, arraignments, sentencing, charging jury and study in chambers.

The findings of the 1975 E.P.C. study compared to the findings of the 1972 study show a decrease in court activity**. While OCA increased the official court day by 30 minutes between 1972 and 1975, the study showed a decrease in average "bench activity" (in New York County) from three hours, forty-seven minutes in 1972 to three hours, twenty-three minutes in 1975, a drop of 10.6 percent. The EDC findings, therefore, would indicate that a time when court availability increased 27 minutes a day, "bench activity" encompassed 24 minutes a day less.

When the two studies were compared in terms of courtroom activity by type, an even more interesting finding surfaced. When four-day periods in March 1972, December 1972 and November 1975 in New York County were compared, the study found that all court activities decreased substantially in 1975, except convictions, dismissals, youthful offender findings and RORs (release on recognizance), all of which increased.

**EDC Court Utilization Study (1972).

Table IV.4
New York City Supreme Court
1975 Economic Development Council
Court Utilization Study

	<u>18 Parts¹</u> <u>100 Centre St.</u> <u>Manhattan</u>	<u>18 Parts²</u> <u>111 Centre St.</u> <u>Manhattan</u>	<u>23 Parts³</u> <u>360 Adams St.</u> <u>Brooklyn</u>
Bench Activity (including active chambers) Percent	3 hrs./23 min. 52%	3 hrs./23 min. 52%	2 hrs./37 min. 42%
Judges Waiting Cumulative Time (on and off bench) Percent	1 hr. /14 min. 19%	1 hr. / 1 min. 16%	1 hr. / 17 min. 21%
Judges Not Arrived in Court Percent	39 min. 10%	19 min. 5%	20 min. 5%
Judges in Chambers (reason unknown) Percent	7 min. 2%	11 min. 3%	9 min. 2%
Recess Percent	11 min. 3%	12 min. 3%	7 min. 2%
Courtroom Closed Percent	54 min. 14%	1 hr. /22 min. 21%	1 hr. /42 min. 28%
<hr/>			
Total Inactive Court Time Percent	3 hrs./ 5 min. 48%	3 hrs./ 5 min. 48%	3 hrs./35 min. 58%
<hr/>			
Lunch Time of*	1 hr. / 2 min.	1 hr. / 2 min.	1 hr. /18 min.
<hr/>			
TOTAL	7 hrs./30 min.	7 hrs./30 min.	7 hrs./30 min.

*Lunch period is not included in total inactive time.

1. Study period---11/15/75 - 11/21/75, 9:30 a.m. to 5:00 p.m.
2. Study period---12/8/75 - 12/12/75, 9:30 a.m. to 5:00 p.m.
3. Study period---1/12/76 - 1/15/76 and 1/23/76, 9:30 a.m. to 5:00 p.m.

SOURCE: Court Utilization Study, Supreme Court Criminal Branch, New York and Kings Counties
Economic Development Council, Supreme Court Task Force

A breakdown of the unproductive court time in New York County produced some disturbing findings about tardiness. The report alleged that judges arrived late an average of 39 minutes per day, a waste of 10 percent of the total working day (Table IV.4). Even more disturbing was the finding that judges spent from one hour (New York County) to one hour, seventeen minutes (Kings County) waiting for Assistant District Attorneys, defense attorneys and defendants to appear. A sub-sample of the study determined that defense attorneys were the principal offenders, followed by defendants, ADAs and the late delivery of prisoners. Waiting time in New York County dramatically increased from 23 minutes per day in March 1972 to 74 minutes per day in November 1975.

The studies raise questions regarding other general areas of inefficiency. They claim that adjournments were granted too frequently without good cause, judges were lax in enforcing OCA standards which provide judicial sanctions against parties that unnecessarily delay court proceedings, and calendars often did not list enough cases ready to proceed.

The EDC studies give no indication of the productivity of the criminal parts of the Supreme Courts in Queens, Bronx and Richmond Counties. However, if we assume the 1975, 100 Centre Street findings, the most efficient court of the three sites surveyed, are indicative of the performance of all the Supreme Court criminal parts in New York City in 1975 and project them citywide. The following findings result:

- 1) Since "bench activity" only encompassed three hours 23 minutes per day, New York City lost 333 judge hours per day, the equivalent of 51.2 court parts and 10,393 dispositions - relative to a full 6.5 hour day. The lost hours and parts represent a total cost of \$25.6 million, based on the conservative estimate of \$500,000 in annual operating costs per part;
- 2) If waiting time was eliminated completely, the savings would have been 20.5 court parts, the equivalent of 4,162 dispositions at a cost of \$10.25 million, or courts could have conducted at least 328 additional trials;
- 3) If unproductive court time was reduced from three hours to one hour per day in 1975, 6,700 additional dispositions could have been handled, totally eliminating the number of felony cases pending for more than six months.

(See Appendix B for an explanation of how these findings were determined)

These findings are speculative and limited to productivity losses in New York City in 1975. Since no agency however, has supplied any data to confirm, expand, or refute the EDC studies, these findings are the best estimates available. It is possible that wasted time has been reduced since 1975, but since New York City Supreme Court parts increased 9.4 percent and dispositions per part decreased 26 percent between 1975 and 1977, this is unlikely.

C. Summer Part Activity

In the summer months of 1977, activity in the court parts decreased substantially especially in New York City. As Table IV.6 indicates, the number of New York City Supreme Court parts which operated in the summer months of July and August decreased by almost 50 percent compared to the non-summer months. Operating at only 55 percent of capacity in the summer of 1977, the New York City Supreme Court averaged 36 percent fewer dispositions per month in July and August than in the non-summer months.

Court activity not only plummeted during July and August, but the quality of justice suffered as well. More pleas were accepted and less verdicts returned in the summer than at any other time during the year. In 1977, pleas as a percentage of dispositions increased from 66.1 percent during the non-summer months to 71.9 percent for July and August (Table IV.6.). At same time, verdicts as a percentage of dispositions decreased from 11.8 percent to 8.5 percent between the non-summer and summer periods. Judging from this data, an offender had a greater opportunity to plea bargain in the summer. However, individuals who demanded trials during the summer faced a wait through the summer months into the fall.

This long wait costs the taxpayers millions of dollars. Every day detainees are held in New York City jails because of the summer slow-down in the courts costs the city \$71.87 per detainee. To house the average daily 1977 detainee population it cost \$317,665. If the courts improved their allocation of

Table IV.6
New York City Supreme Court
(Criminal Term)
Summer (July, August) Versus Non-Summer Workload
1975 - 1977

	1975		1976		1977	
	<u>10 mos./July-Aug.</u>		<u>10 mos./July-Aug.</u>		<u>10 mos./July-Aug.</u>	
A. Average Number Parts Per Month	116.7	65	123.6	75	127.8	70.5
B. Number Dispositions	N/A	N/A	13,871	2,520	15,670	1,949
Average Number Dis- positions Per Month	N/A	N/A	1,387	1,260	1,527	974.5
1. Verdicts as Percent of Disposi- tions	11.1	8.0	10.9	6.7	11.8	8.5
2. Pleas as Percent of Dispositions	62.2	66.7	63.4	68.1	66.1	71.9
3. Dismissals as Percent of Disposi- tions	26.7	25.3	25.7	25.2	22.1	19.6

SOURCE: Office of Court Administration

judicial vacations and abated the summer slow-down, one month could be reduced from the average time detainees spend in jail at a cost savings of approximately \$9.5 million.

Conclusion

The deficiencies in the case processing capabilities of the courts described in Chapter III are partially explained by deteriorating court productivity. The various measures employed - dispositions per part, judge time and summer activity - all suggest inefficiency in the court system.

Since 1969, \$243.5 million has been spent on the court system, but apparently without much success in improving productivity. If court parts operated even near 100 percent efficiency and judges reduced their unproductive time, the backlog could be eliminated and case processing times could be reduced without the addition of more judicial resources. The evidence points to a need to improve productivity in the system, and not to rely solely on increasing valuable resources.

V. RECOMMENDATIONS AND CONCLUSION

The Division of Criminal Justice Services has conducted internal studies on court productivity, particularly in New York County, during the same time period examined by this report (1967 - 1977). These studies express many of the same concerns this report expresses and find particularly disturbing the unexplained reasons for the wide disparity between court resources and the major product of the court system - dispositions.

Between 1969 and 1977, the courts of criminal jurisdiction have received nearly a quarter billion dollars in state, local and federal monies to alleviate the backlog, reduce calendar delay and improve the detention facilities. Despite this massive infusion, problems of case processing delay, court congestion and detainee backlog remain substantially the same. The crisis is still with us, nearly a decade after the initiation of the response. The backlog of pending cases and incarcerated defendants persists. There has been little improvement in the processing times of felony cases. The system continues to rely on plea bargaining and dismissals to handle a very large percentage of its workload. The productivity of the courts has never been accurately assessed and what limited studies exist, e.g., the Economic Development Council study, suggest the court is failing to use its resources effectively.

At a time when we are again about to substantially increase judicial resources, it is of critical importance that we recognize this as a problem and develop and implement additional policies to insure that these resources are not without significant and lasting impact.

It is frankly difficult to identify additional steps that could be recommended to alleviate this problem, particularly in light of all that has been done over the past ten years. Noted below are several recommendations which should be considered in conjunction with the planned addition of

Recommendations

1. The State Comptroller should immediately conduct a management and financial audit of all Supreme, County, Criminal, City and District Courts that deal with criminal cases.

The audit should particularly focus on the court components of the Special Narcotics Parts, Emergency Case Felony, Dangerous Drug Control and Special Detainee program. These programs have received millions of dollars of federal, state and local monies and a determination must be made as to how these funds were used, exactly what they bought, and whether or not they were mismanaged. In order to assure future fiscal accountability of the Judiciary, subsequent audits should be conducted at regular intervals and should be submitted no later than December 31 of each fiscal year.

2. The first priority of the new Chief Judge should be an entire administrative and management overhaul of the court system.

3. The Legislature should more actively fulfill its oversight role in relation to the Judiciary by requiring the Office of Court Administration to report to them regularly. The initial reports should focus on:

- a. the policies and procedures utilized to enforce its rules, along with an explanation of the failure to expeditiously dispose of cases;
- b. establishment of new timetables for achieving new minimum criminal case processing standards;
- c. policies and procedures used to implement improved management controls, including the implementation and operation of information systems to aid criminal courts in calendaring, docketing, case inquiry and in developing reports; and
- d. the timing for implementation of the recently developed Weighted Caseload System, which assists in determining staffing needs by adjusting for the degree of difficulty in the disposition of cases.

4 The OCA should prepare and submit to the Legislature a comprehensive manpower report which examines the workload of all positions, (e.g., judge, clerk, stenographer) within the Unified Court System and determines whether any reallocation of personnel is necessary to equalize workload across the system.

The report should particularly clarify each position's authority and responsibility and determine whether organizational and/or personnel changes are necessary.

The report should also address itself to clarifying the reclassification problems OCA is encountering since it has assumed the entire administration of the courts, as well as necessary changes in all employee salaries.

The question of residency requirements for judges and all court personnel should also be addressed by OCA, in the context of its impact on the ability to fulfill a full day of work. Efforts should be made to determine the actual residences of all court part personnel, including judges, and whether a significant proportion of them live substantial distances from their jobs. Particular attention should be paid to whether this adversely affects court productivity because of late arrivals and early departures due to commuting problems.

5. When new court parts are deemed necessary, careful consideration should be given to the adequacy of support staff. OCA should submit a report to the Legislature on the number of support staff required, e.g., court clerks, stenographers, typists, computer terminal operators, interpreters and security officers, to keep these parts operating at maximum efficiency and for as long as possible, i.e., day and evening shifts. OCA should also submit an analysis describing precisely why the parts are needed, what work they will be responsible for and what standards of efficiency and productivity they will be expected to meet.

These steps must be taken before creating any further new court parts. Last session, the Governor and the Legislature faced a crisis situation in the processing of violent offenders through our justice system. They responded responsibly by adding new fully-staffed court parts. In the past, it seems that OCA and DCJS have given little thought to establishing specific management objectives for the new court parts to meet. These omissions of accepted management practice are partially to blame for the failure of past court parts to increase the productivity of the court system. Such omissions cannot be allowed to occur with the newly created or future court parts. The court system must be improved so that, in the future, when the Legislature considers substantial changes in the law, there will be an accurate and timely study of the impact of these changes.

6. OCA should establish an internal management monitoring mechanism to regularly observe performance of judges and to record such information for the State Administrative Judge and Chief Judge. Information suggesting consistent failure to meet minimum performance standards should be forwarded to the Commission on Judicial Conduct for review and action. The Commission should be empowered to investigate these judges and, if the evidence warrants, discipline them through censure, fine, reassignment or removal.

7. Supreme, County, Criminal, City and District Courts that deal with criminal cases should be operating at maximum efficiency all the time, and certainly during the summer months when the incidence of crime is greatest. The State Administrative Judge should be required to develop a vacation policy which will insure consistent judicial productivity throughout the year. Such a policy should embrace guidelines and penalties for prosecutorial, defense and private counsel regarding absences due to vacations.

8. Institute a time limit on plea bargaining so that pleas would only be accepted within 90 days of a Supreme Court arraignment. OCA has already made this an administrative rule that is contingent on the passage of legislation which provides incentives for early disclosure for most facts pertaining to a case and the positions likely to be taken by the prosecution and defense. The passage of such a pre-trial discovery bill should be a top priority of the next legislative session.

9. Allow judges to limit before trial the maximum jail term for a Class A misdemeanor to six months and authorize non-jury trials in the New York City Criminal Court in misdemeanor cases in which the maximum term has been so limited. This will give impetus to decreasing the backlog in the New York City Criminal Court while protecting the rights of defendants in misdemeanor cases, as defined in Baldwin v. New York (399 U.S.66, 1970). The Supreme Court ruled in that case all offenders charged with a Class A misdemeanor, which carries a maximum term of 1 year, are entitled to a jury trial unless they waive that right as provided in Section 320.10 of the Criminal Procedure Law.

Last session Assemblyman Gottfried introduced a bill at the request of the Governor that would accomplish these objectives (A.12520). Unfortunately the bill was not acted on in either the regular or special session. Its passage should be a top priority of the 1979 session.

Since the Baldwin ruling the backlog of misdemeanor cases in the New York City Criminal Court has reached intolerable proportions. In 1976 there were 95,000 misdemeanor arraignments in the New York City Criminal Court, but only 213 jury trials and 650 non-jury trials. The inability of the court to provide trials in a meaningful percentage of the cases pending, has created tremendous administrative pressures to plea bargain and greatly diminishes the court's ability to impose meaningful sanctions in the vast majority of cases.

The Governor's proposal would result in a great savings of court time, since the trial of a misdemeanor case before a jury often takes several days, while a trial before a judge can usually be completed in a few hours. Of course, all of the defendant's rights would be fully protected in a trial before a judge. If enacted into law it would greatly enhance the capacity of the New York City Criminal Court to try cases and would help reestablish that court as an effective part of the State court system.

10. The Division of Criminal Justice Services should report to the Legislature as soon as possible on its evaluation of appearance control, early case screening, major offense bureau, arbitration and mediation centers, detention diversion programs and all projects which in its opinion should have either a direct or

indirect impact on improving case processing and/or relieving overcrowding in detention facilities.

The report should include recommendations as to what programs should be expanded, statewide and/or funded with state money when federal funding expires.

11. The Manhattan House of Detention should be re-opened as a New York County pre-arraignment center, to house detainees between their arrest and first appearance in court and a detention center for detainees awaiting trial. Much case processing delay is caused by the late appearance or non-appearance of defendants detained on Rikers Island for their first court appearance. The use of the House of Detention, which adjoins the Criminal Court, would substantially reduce that problem. Speedier case processing at the arraignment stage would also alleviate the pressure on the detention facilities.

The Legislature has approved in the supplemental budget a four phase plan for state acquisition and alteration of the Rikers Island facilities, which should be completed by 1984.

The \$35,000,000 appropriated by the Legislature for the first phase of this plan must be used by New York City to build new detention facilities to service the city's courts, particularly those in Manhattan. During the planning for the location and design of these new facilities, every effort should be made to locate them close to, if not adjoining, the criminal courts where the detainees' cases will be heard, negotiated and tried.

12. Consideration should be given to converting existing all purpose parts in the New York City Criminal Court into combined parts handling Supreme Court felony cases as well as criminal court cases. Criminal Court judges sitting in such parts can be designated as acting Supreme Court judges. They can remain in their courtrooms serviced by the same experienced criminal court staff.

Combining parts would equalize workload and increase the productivity of each part. Combined parts that existed in 1972 not only disposed of Supreme Court cases at a rate almost three times the rate in other Supreme Court parts, but also disposed of a substantial percentage of cases on the Criminal Court calendar. Criminal Court judges have a proven record of better productivity than their Supreme Court counterparts and are experienced in handling large workloads. Finally, the costs are less than transferring Supreme Court civil part judges to the criminal term and substantially cheaper than creating new parts.

13. Present court parts and facilities must be better utilized to maximize the productivity of present resources. To reach this goal evening trial parts should be instituted without increasing the total number of court parts or court personnel. This would make it easier for witnesses to appear and would expand the use of currently available facilities.

APPENDIX A

STATE PRIORITY

CRIMINAL CASE PROCESSING

Standard

In cooperation with appropriate State agencies, each MPA should establish formal policies, criteria and procedures to facilitate the prompt and effective adjudication and disposition of major felony cases. These policies, criteria and procedures should include provision for case screening, case diversion and the establishment of mechanisms for the processing of major felony cases on a priority basis.

Discussion and Rationale

Prompt resolution of criminal charges is a prime social value imbedded in federal and State constitutional structures. Prompt adjudication is related to the quality of determinations since delay encourages the reluctance of witnesses and dims recollections of events. Many persons believe that prompt adjudication and punishment of the guilty enhances the deterrent effect of the criminal laws. Perhaps most important of all, delay and all the uncertainties which result from it, severely undermine the public's faith in the courts and the criminal justice system.

DCJS and the Board are placing primary emphasis on "major felony cases" because of practical as well as public policy considerations. In New York State's felony court-lower court structure, the capacity of the County Court and Supreme Court parts available in MPAs for the processing of felony defendants is limited, and their procedures are relatively more elaborate, formal and time-consuming than those in the lower courts. Therefore, as a practical matter, choices must be made as to cases which will be pursued in the felony court. Also, as a matter of public policy, a priority must be placed on the prompt trial of persons accused of serious crimes. For those accused of less serious felonies, many of the cases ought to be disposed of as quickly as possible in the lower court. Moreover, in disposing of such cases, the court ought to refrain from imposing the stigma of a criminal conviction wherever the defendant has successfully accommodated to a diversion program, and should refrain as well from imposing a short prison term when a criminal conviction has been imposed.

The standard presented here envisions the initiation or expansion of the following policies, procedures and programs in each MPA:

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and implementing desired changes in the decision-making criteria and procedures that currently govern case processing; designing new alternatives for case handling at various points in the process, such as, detention, intake adjustment, and disposition to community residential program; implementing these new alternatives for case handling; developing strategies to implement new types of services needed, and to expand the capacity of existing services to needed levels; implementing these service development strategies; developing a program information system which will enable the administering agency and the CJCC to assess the progress and results of efforts to achieve the program objective.

4) Establish a tentative sequence and schedule for implementing these major program activities and estimate their total cost and the proportion of that cost for which DCJS funds are likely to be requested.

Project Development Requirements and Constraints

1) Project applications seeking funds for the purposes of program planning under this priority will be required to demonstrate how the problem analysis requirements presented here will be met, and to demonstrate the involvement of all relevant agencies on both the local and State level.

2) Project applications seeking funds to create or expand a particular type of service must document the service need, show how the project contributes to the implementation of the total program plan set forth by the CJCC, and meet all other requirements of the DCJS standard project application.

1. Screening of all felony arrests at the earliest possible time against explicit, objective charging guidelines, and the identification of major felony cases for prompt processing in the felony court. This effort requires a close scrutiny of incoming cases by experienced prosecutors against explicit guidelines at the "complaint desk" stage, or even when feasible at a central booking point in or near the arraignment court building. Cases in which criminal proceedings are clearly not warranted for either legal or social policy reasons should be weeded out and the balance charged realistically after an assessment of all relevant factors. Where it is not possible to screen prior to lower court intake due to a fragmented local court system and physical distance between complaint or booking locations and the lower court, screening should take place as soon thereafter as possible and in any event prior to presentation of a case to the Grand Jury.

2. Further information gathering and case assessment by the prosecutor and experienced defense counsel. Felony charge cases surviving initial screening by the District Attorney ought to be addressed and evaluated by an experienced defense counsel as soon as possible. Follow-up by the prosecution and the defense to obtain important missing information or to clarify facts as initially obtained should take place promptly. Such follow-up requires close collaboration with local police organizations and bail agencies and may require the addition of investigators and/or para-legal assistants to work under the supervision of screening attorneys or defense counsel.

3. Prompt referral of major felonies to the Grand Jury (assuming the defendant does not waive indictment) and to the felony court. Available statistical data indicate that in many jurisdictions there is considerable delay in moving major cases to the felony court stage, even where there is no realistic possibility of a disposition in the lower court. The District Attorney should address scheduling and administration concerns with local court administrators and should work towards prompt presentation of such major cases. In addition, mechanisms should be established to assure the assignment and continuous involvement of experienced prosecutors and defense counsel in these cases.

4. Early disposition of non-major felony charge cases. The District Attorney, the defender organization and court administrators should work with local planning staffs to assure

the disposition of as many non-juror felony cases as possible prior to the Grand Jury and felony court stages. Under recent constitutional and statutory amendments, a defendant may now waive indictment, thus opening the possibility of felony-level pleas before a Supreme Court or County Court judge without the necessity of an indictment having been returned. A properly-conceived program which stresses open-file negotiations between experienced, informed counsel may well result in substantial increases in early pleas and a consequent reduction in felony court caseloads to the most serious (or major felony) cases.

5. Increased diversion of non-major felony cases. The screening and early disposition mechanisms discussed hereunder are consistent with programs intended to divert selected defendants from and after lower court arraignment into programs under which they are given an opportunity to make progress towards rehabilitation, often under procedures which result in a dismissal of the charges under applicable provisions of the Criminal Procedure Law. The use of such diversion procedures ought to be expanded considerably.

6. Total diversion of minor criminal matters from the lower court. Often, lower criminal courts are substantially occupied with processing, to no great effect, crimes involving such matters as public intoxication, prostitution, minor intra-family assaults and code violations. Similarly, the time of lower courts, outside New York City, is also occupied with traffic infractions and parking violations. Since crimes and administrative violations of the nature cited are of much lesser concern than felonious crimes, alternative methods ought to be developed which can handle such matters as effectively or more effectively than the lower criminal court. Examples of such alternatives include arbitration of minor criminal matters, the creation of administrative mechanisms for parking violations and traffic infractions, and the establishment of detoxification centers for alcoholics who are a public nuisance.

Problem Analysis Requirements

1. The problem analysis must establish a working definition of "major felony cases". The six priority crimes identified under the crime reduction goal should form the nucleus of this definition.

2. The analysis must describe the typical processing of a felony charge from arrest through disposition. Each critical decision-making point in the process should be described in terms of the decision-making criteria used, the decisional alternatives available at that point, the estimated average time required to move a case from one point in the process to

the next, and the major needs of the process at that point. The description should focus especially on the extent to which and the manner in which the principle policies, procedures and programs described in the "Discussion and Rationale" section of this priority are operating in the MPA.

3. The analysis should estimate the proportionate distribution of major felony cases handled during a specific time period, across the various decisional alternatives available at different points in the process including, complaint desk, arraignment, indictment, disposition, and sentence.

4. The analysis should identify and explain any desired changes in felony case processing criteria and procedures, and show how such changes might affect the distribution of major felony cases across the decisional alternatives, as presented in #3 above.

5. On the basis on the above information, the analysis should identify and explain the principal improvements which the CJCC wishes to see in the processing of major felony cases and the kinds of changes that would have to be affected, including the provision of new and expanded services to defendants and their families, in order to make these improvements.

Program Plan Requirements

The program plan developed under this priority must meet the following requirements:

1. Define the specific objective or objectives which the CJCC wishes to achieve with regard to the processing of major felony cases, and indicate the time period within which the objectives are to be achieved.

2. Identify the local agency that will be responsible for managing the overall program. This is the agency or agencies which will be responsible for general oversight of the program throughout its life cycle.

3. Generally describe the major activities that will have to be undertaken to achieve the program objective or objectives. These major activities are likely to include: refining and formalizing criteria for case processing; implementing strategies designed to make these criteria operative in all relevant agencies; developing new procedures and decisional alternatives for case processing; securing the resources needed to implement these procedures and alternatives; developing program information system which will enable the administering agency and the CJCC to assess the progress and results of

efforts to achieve their stated objectives; coordinating program activities with all relevant agencies on both the local and State levels.

4. Establish a tentative sequence and schedule for implementing major program activities, and estimate their total cost and the proportion of that cost for which DCJS funds are likely to be requested.

Project Development Requirements and Constraints

Applications submitted for project funding under this program plan must meet the following requirements:

1. Projects/applications seeking funds for the purpose of program planning under this priority will be required to demonstrate how the problem analysis requirements presented here will be met, and to demonstrate the involvement of all relevant agencies on both the local and State levels.

2. A project application seeking funds to create or expand a particular type of procedure or service must document the need for that procedure or service, show how the project contributes to the implementation of the total program plan set forth by the CJCC, and meet all other requirements of the DCJS standard project application.

APPENDIX B

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