# A CRIMINAL JUSTICE SYSTEM UNDER STRESS

## A Study of the
## Disposition of Felony Arrests in New York City

Vera Institute of Justice
New York, New York

15 August 1975

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# CHAPTER 1

## Origin and Goals

The study arose out of the controversy over the efficiency of the criminal justice system. The goal was twofold: 1) to track a randomly sampled, broad based number of felony cases from arrest to disposition and tabulate the results; and 2) to understand the reasons for these results.

There has been much public comment in the past few years on the effectiveness of our urban criminal courts. A great deal of it has been critical, focusing on rising crime rates and the way in which cases move through the courts.

It was such criticism by then New York City Police Commissioner Patrick Murphy which provided the impetus for this study. In a 1972 address before the Association of the Bar of the City of New York, Commissioner Murphy took the criminal courts to task. While acknowledging that crime was a complex social problem and that many institutions share in the failure to find solutions, he asked the courts to accept "the giant share of the blame for the criminal rise in crime." The courts, he explained, were so concerned with processing their heavy caseload that they were neglecting the job of convicting and punishing offenders.

The charges were not new. But the statistics Commissioner Murphy used to support them were striking. In 1970 the Police Department's Criminal Justice Liaison Division had begun to collect disposition data for selected major crimes. The Division had sampled, for example, 156 arrests for criminal possession of hand guns, 136 of which

involved felony charges. Not one of the 136 defendants arrested was convicted of the original felony charge. In the end, only 53 defendants were imprisoned, and for an average of one month each. "No wonder," the Commissioner concluded, "so many people of criminal intent carry hand guns in New York City." The Commissioner's speech generated interest but little agreement. While the Commissioner and other police officials pointed to the courts, many court officials, defense attorneys, and prosecutors attributed the disparity between charge and disposition to the quality of the police arrest, the lack of adequate evidence, the refusal of witnesses to cooperate, the innocence of defendants, and other factors.

To obtain a clearer view of what happens in the courts and why, the Vera Institute of Justice, with funds from the Division of Criminal Justice Services of New York State, undertook this study.

Our first goal was to generate a body of disposition data, similar to but broader and more detailed than the data developed by the Police Department. Accordingly, information on the defendant and dispositions for a randomly selected sample of 2000 felony arrests during the year 1971 were collected and tabulated.

Our second objective was to go beyond tracking and tabulating dispositions and attempt to understand the reasons behind them. Thus, for each of 400 disposed cases taken from a second sample from January to October 1973 interviews were conducted whenever possible with the judge, the arresting officer, the prosecutor, and the defense counsel who handled the case. By combining this qualitative examination of the 400 cases with the quantitative data from the 2000 cases we hoped to sketch a picture of the disposition process and the forces shaping it.

We also hoped to learn something more general about the law enforcement process. In a landmark book, the late Herbert L. Packer[1] delineated two spheres of our criminal law process. The sphere we are all familiar with is the trial, which carefully invests the defendant with the presumption of innocence until such time as the jury returns a verdict. We know a great deal about the criminal trial process, because of the law's meticulous concern for its integrity.

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1) Herbert L. Packer, The Limits of the Criminal Sanction, (Stanford, California: Stanford University Press, 1968), see especially Chapter 8, "The Two Models of the Criminal Process."

But only a small fraction of cases reach trial. The overwhelming majority is disposed of in Packer's other sphere, which precedes the trial. There, the presumption of innocence is not articulated and the expectation is, in fact, that the defendant will plead guilty. In that earlier stage, discretion reigns; informal negotiations most often result in a guilty plea or a dismissal and only occasionally in a decision to go to trial.

We hoped in this study to achieve a better understanding of that earlier stage--where the law provides only the broad boundaries.

The attempt to shed light on the discretionary character of the disposition process builds on a history of earlier work. Nearly a half century ago, during another period of alarming crime rates, two distinguished law professors, Felix Frankfurter and Roscoe Pound, published the first disposition statistics--they called it "morality statistics"--in a study entitled Criminal Justice in Cleveland.[2] In a monumental six volume study, the American Bar Foundation, under the directorship of Frank J. Remington,[3] studied

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2) Roscoe Pound and Felix Frankfurter, Criminal Justice in Cleveland, 1922.

3) Report of the American Bar Foundation's Survey of the Administration of Criminal Justice in the United States, (Boston: Frank Remington, Ed.).

the discretional pre-trial processes, particularly plea bargaining.[4] Remington's pioneering work and later essays catalogued the variety of motivations and decisions that are part of the disposition process. Our study attempted to add two elements to these earlier studies. First, by counting the relative frequency of the causes that shape the disposition process, we hoped to attach relative weights to these causes and motivations. Second, by relating new statistics to the disposition data we searched for a more complete understanding of how police, prosecutor, defense counsel, and judge seek justice.

We approached the disposition process descriptively. We did not predict beforehand which factors (such as bail status or a defendant's criminal history) would be most important in the disposition decision. This lack of a sharp focus inevitably resulted in the collection of data which in the end seemed unimportant for our analysis (such as in which police precinct the arrest took place and the years of criminal justice experience of each participant); on the other hand there was insufficient information in areas where more detail would have been desirable (such

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4) Op. cit., Bar Foundation Survey, Donald Newman, Conviction, (Boston:1966).

as impact of custody status on sentencing). Some data were not useful because in the process of collection or analysis we discovered they were unreliable (such as whether there was continuity of representation) or unobtainable in a majority of cases (such as employment status of victim).

The amount of information to process was extensive, and not all possible analyses were carried out. The parallel need to limit the scope of the analysis and to finish the study when the data were still timely, required leaving out more than was included. Some data (particularly from interviews) were not coded, some coded data were never analyzed; numerous cross-tabulations were not performed, and many analyses completed are not presented in this report. Secondary analyses which would provide additional support or test out alternative explanations for findings were not always performed.

This report should be read as a first attempt to understand the disposition process in New York City. We hope data developed will be used by other researchers and policy makers to test and examine further the analyses presented in this report.

# CHAPTER 2

## The Study Design

A probability sample of 1888 felony arrests was traced to final disposition. For a second sample of 369 felony arrests, interviews were conducted with the arresting officers, the prosecutor, the defense counsel and the judge involved in each case.

This study of dispositions of felony arrests is based on two sets of data. The first is a probability sample of 1888 felony arrests representing the approximately 100,000 felony arrests made in 1971 by the police in four of New York City's five boroughs--Manhattan, Brooklyn, Queens, and the Bronx. (We had planned a sample of about 2000 arrests: the sampling method yielded 1888 arrests. This sample will be referred to as the 2000 sample throughout the rest of the report.)

For each of the four boroughs approximately 500 felony arrests were randomly selected from the Arrest Register, a current record of arrests maintained by the Police Department.[1)] The Arrest Register provided the name of the defendant, the date of arrest, the precinct where the arrest occurred, essential demographic data, the criminal charges at arrest, and the borough of arrest.

The design allowed for a sufficient sample from each borough to make borough comparisons as well as, through

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1) Each arrest represents one defendant's case, which may consist of multiple complaints. For instance, if a defendant was initially charged with robbery and drugs were later found on his person, police would record the arrests as separate events. However, in this study all the complaints stemming from the same arrest are counted as one case.

weighting, to yield a city-wide sample.[2] For example, the weighting involved counting the cases from Brooklyn more heavily than those from Queens because the 439 cases from Brooklyn represented 31 percent of the 1971 felony arrests in New York City whereas the 502 cases from Queens represented 12 percent of New York City felony arrests in 1971.[3]

To trace the selected cases from arrest to disposition, the court papers, the Judicial Conference 500 forms which report disposition, and the criminal history record from the New York State Identification and Intelligence System (NYSIIS) were used.[4]

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2) The picture is not complete because Staten Island was not sampled. This was because that borough generates only 2 percent of the City's felony arrests.

3) In tables based on the 2000 sample both the weighted N (the number calculated to achieve the proper weight) as well as the approximate N (the number of cases which entered the table) are presented. For the 2000 sample tables the weighted N is divided by 50 to determine the approximate N.

4) The "J.C. 500" form is the Judicial Conference's source of disposition data. (The Judicial Conference is the state agency charged with the administration of the judiciary.) The form is filled out by court clerks and transmitted to NYSIIS which is responsible for collecting criminal history data for the courts and other law enforcement agencies.

Information was also collected on the defendant's age, ethnicity, sex, criminal history, bail status, type of counsel, the time elapsed between arrest and disposition, the type of crime for which the defendant was arrested, and the eventual disposition of the case.

The second source of data was a probability sample of 369 cases arraigned originally as felonies that were disposed of during the ten-month period from January through October 31, 1973.[5] These cases were randomly selected from the court calendars after disposition in the Criminal and Supreme Courts, approximately 90 from each of the four major boroughs.[6] Again, we had planned for a slightly larger sample with 400 cases. The 369 cases selected at disposition will thus be referred to as the 400 sample. The dates of arrest for these cases ranged from 1966 through 1973 but the great majority involved arrests made in 1972 and 1973. They too were weighted for a city-wide picture.[7]

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5) All but three cases stemmed from felony arrests; in these three cases an original misdemeanor arrest was elevated to a felony charge.

6) An additional 34 cases were sampled from the Central Narcotics Court and interviews were conducted on them. These cases have not been included in the report.

7) For the 400 sample the weighted N is the number calculated to achieve the proper weight. The approximate N was calculated by dividing the weighted N by 184.

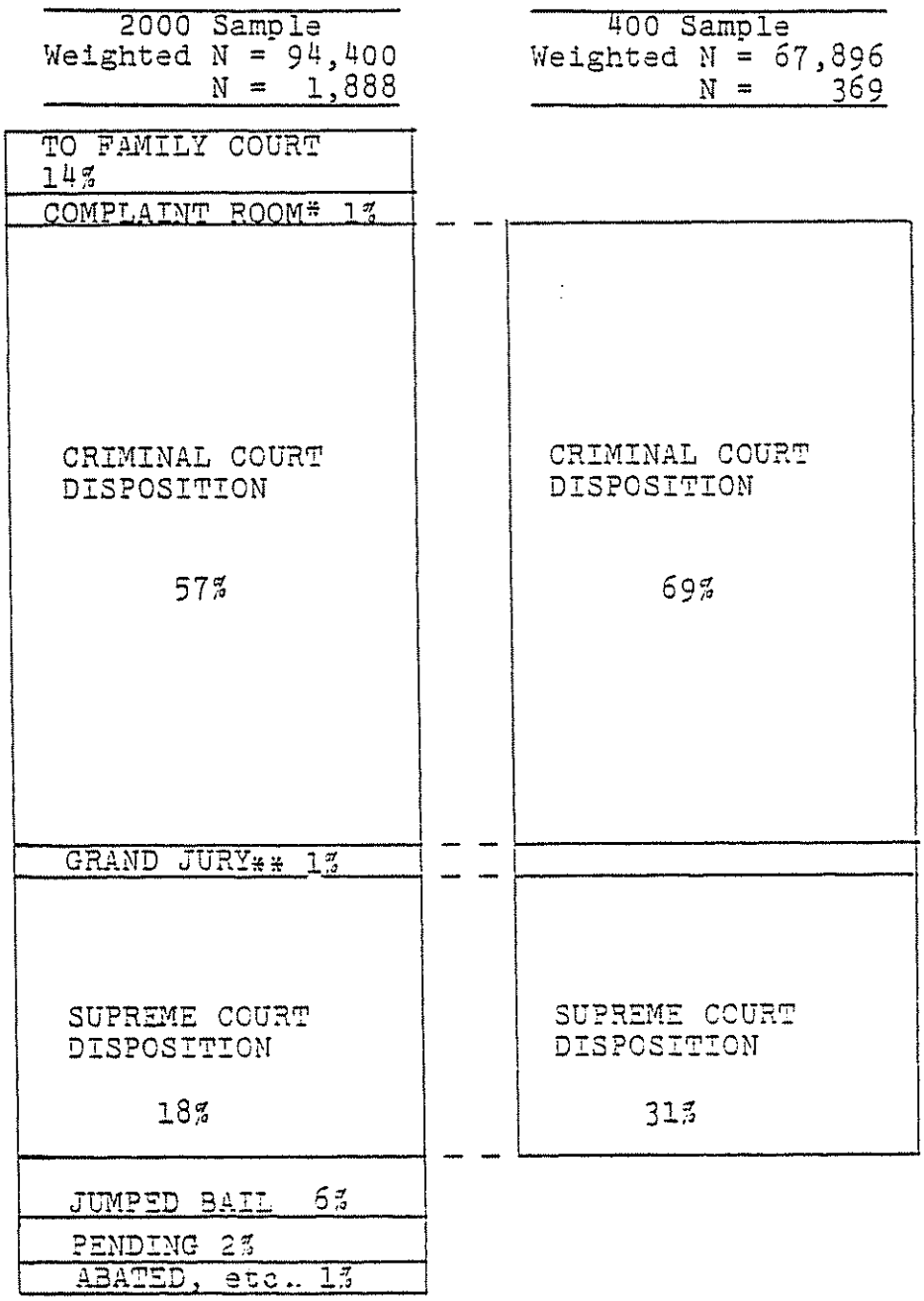
The information sought for these 369 cases went beyond the data record collected for the 2000 sample. Attempts were made to interview the major participants in the disposition of each case--the arresting officer, defense counsel, prosecutor, and judge. In this fashion we hoped to learn not only the decisions made by each participant but also the reasons for these decisions.

The 400 sample thus provides a close-up view of the decision process, the outlines of which emerged from the 2000 case sample.

There are differences, however, between the two samples: First, the 400 sample does not contain felony arrests routed out of the system to the Family Court; arrests not disposed because the defendant jumped bail; arrests dismissed or reduced to misdemeanors in the Complaint Room; and arrests that resulted in a case being dismissed by the Grand Jury. Table 2-1 sets out the relation between the two samples.

Table 2-1

Relationship of the Two Samples




* Dismissed in Complaint Room
** Dismissed by Grand Jury

The second difference between the two samples is that the 1971 arrest sample involves 1888 arrests made only in 1971 with 8 percent of the cases not resolved two years later, while the 1973 disposition sample has a range of arrest dates between 1966 and 1973 (with most occurring in 1972-73) with all cases having reached final disposition by 1973.

Third, in 1972 in order to handle the increased caseload of drug cases (before the so-called "Rockefeller Law") the state authorized the creation of a citywide Central Narcotics Court. This Court was administered as part of the felony court system and had a semi-independent prosecutor who was nominally responsible to the five borough District Attorneys. As our sampling revealed, the cases in this court (85 percent from Manhattan, 3 percent from the Bronx, 9 percent from Brooklyn, none from Queens, and 3 percent from the Central Narcotics Grand Jury) were handled differently from cases processed in the four boroughs and thus represented an independent sample. It was our decision to exclude these cases from the analysis of the 400 sample.

Fourth, there are discrepancies due to the time lag between the two samples. A new judicial administration was established in 1971 when Judge David Ross became the

Administrative Judge for the Criminal Court of the City of New York. Priority was given to procedures aimed at clearing up the court backlog, and these efforts are reflected in the reduced time required for the processing of the later 400 sample. Another difference which is difficult to measure is the impact of the Rockefeller Drug Law which went into effect in September 1973. While no defendant in the 400 sample was directly affected by the sanctions of this law, it is possible that the severity of the new law may have affected the types of plea offers that an Assistant District Attorney may have made, especially in our sampling months of September and October. Since a felony conviction could affect subsequent dispositions under the new law, there may have been an increased pressure on defendants to hold out in the bargaining process for a misdemeanor plea.

In addition to examining the 2000 and 400 samples, we also made informal observations of the Complaint Room, the Criminal Court Arraignment part, plea bargaining sessions, trials, and sentence hearings. Non-case related interviews were conducted with police officers, prosecutors, judges, defense counsel, and court clerks on policy issues affecting the criminal justice system.

The data collection, a process that extended over a

year and a half, encountered many difficulties. The main difficulty was that criminal justice records are not centralized. Each court and district attorney's office in each borough has its own record keeping systems. Other than the police arrest register, the only centralized data sources are the Office of Court Administration in New York City and NYSIIS in Albany.

This meant that we had to consult many sources to piece together information about each case. For instance, to obtain criminal history data, we needed a defendant's NYSIIS number, but to obtain the NYSIIS number, we had to go to the Police Department's Electronic Data Processing Division. Failing that, the Court Executive Offices or the court papers were used.

To obtain the remaining information, it was necessary to go to the Family Court, Criminal Court, Supreme Court, and the Youth Parts and Warrant Rooms in each of the four boroughs. Once there, we could not rely on one data source such as the Docket Books or Index Books, and court papers had to be pulled for most cases.

For the 2000 sample, criminal histories were obtained from NYSIIS. To maintain the confidentiality of the records NYSIIS required us to erase names of the defendants from the case records when they entered the crimi-

nal histories. This meant that later when coding errors were discovered, there was no way to identify the case and correct the error.

The second problem with the court records was their imperfection. Court papers, the basic data source, do not record all that transpires in a case; notations are at times illegible and sometimes contradictory, and occasionally court papers are missing--misfiled perhaps or needed at another court.

It would have been prohibitively expensive to supplement court papers with transcripts of court proceedings. But even transcripts do not contain all of what goes on in the court room. Informal plea negotiations, for example, are generally off the record.

The J.C. 500 form used for the 2000 sample was not always an adequate substitute for court papers. Occasionally arrest or disposition charges were reported ambiguously. For example, the form requires both the Penal Code section and the name of the crime, but the two did not always agree. These inaccuracies were reflected in NYSIIS data based on the J.C. 500 forms. NYSIIS records of the dispositions of arrest charges are not always up to date, so that a defendant's "rap-sheet" (his criminal record)

was at times incomplete.

We confronted a different set of problems in our interviews on the 369 cases. Difficulties arose from three sources: inability of the participants to recall events, bias, and reluctance to answer our questions.

Our interviews were guided in terms of topics framed around such areas as "What were the facts in this case?," "How strong did you consider the evidence?," "What factors influenced the sentence?." This type of interview requires that interviewees have fresh recollection of the facts, good powers of observation, self-awareness, and a fair amount of analytic ability.

Freshness of recollection was often a problem. We did not begin interviewing until the case was disposed of. (We had decided not to interview sooner because such interviewing might have affected the outcome of the cases.) Although we began interviewing within a few days of disposition, not all participants could easily recollect the case, which may have been one of 50 they handled that day. When the participants' memory was insufficient, they were asked to consult their file notes. If these were unavailable, we asked how they would ordinarily handle this type of case. In a few older cases, where there had been little continuity of representation, it was difficult to find anybody who knew

about the case. The practice of assigning prosecutors to court parts rather than to cases contributed to the difficulties of tracing the detailed history of a case.

A second interviewing problem was bias. It is in the nature of the adversary system that each participant sees the disposition process from a different perspective. Moreover, interviewees were tempted to justify their decisions. Police officers emphasized the strength of the evidence; prosecutors were inclined to blame reductions or dismissals on shortcomings of the evidence, allegedly beyond their control; defense counsel, depending on whether his client received a good deal from the prosecution or accepted a bad one, might emphasize the shakiness of the evidence, or the necessity of pleading because of the irrationality of juries and the near impossibility of acquittal; and judges, in explaining some of their dispositions and sentences, sometimes referred to the minor nature of the crime or the defendant's rehabilitative possibilities, rather than to court congestion.

In some instances, interviewees were reluctant to answer altogether, partly out of a bureaucratic reticence and partly out of suspicion of "researchers." "You don't stick your foot in your mouth if you don't open it," was the response of one judge who refused to be interviewed.

Such outright refusal, however, was rare.

Finally, there are general methodological limits to the use of such interviewing. Reason analysis, as the approach is called, asks the decision-maker why he acted the way he did, for his views of the facts, his values, the outside influences that played a part, and the eventual way these factors combined. This kind of inquiry is inevitably also shaped by personal philosophy and psychological factors which the interviewee has difficulty in articulating because he is often unaware of them.

In spite of shortcomings and limitations, we have been able in most cases to reconstruct the essential history of their dispositions and thereby give some vitality to the dry statistical categories.

# CHAPTER 3

## The Amount of Crime

In 1971, the year from which the sample of 2000 felonies was taken, New York had the third highest reported crime rate among the 10 largest United States cities. Approximately 500,000 felonies were reported to New York City police in that year. However, victimization surveys in New York City suggest that the number of felonies actually committed may be twice the number of those reported.

One difficulty in analyzing crime is that accurate techniques for measuring its incidence have not yet been developed. The most commonly used measure is the number of crimes reported to the police. Recently, a new technique has been developed called the victim survey.

During 1971, the approximately 8,000,000 inhabitants of New York City reported 510,048 crimes which the police classified as felonies.

Not all crimes classed as felonies are the serious crimes the label implies. Within the sample were a range of behaviors which were not seriously criminal but which ended in felony arrests. For example, the forging of the expiration date on a driver's license, or a fight between husband and wife was appropriately reported and charged as a felony.

Table 3-1

Frequency of Felonies Reported in New York City (1971)

| | Number | | Percent | | Rate per 100,000 Population | |
|---|---|---|---|---|---|---|
| Homicide* | 1,466 | | .3 | | 18 | |
| Rape | 2,415 | 113,335 | .5 | 22.2 | 30 | 1434 |
| Robbery | 88,994 | | 17.4 | | 1,127 | |
| Assault** | 20,460 | | 4.0 | | 259 | |
| Burglary | 181,331 | | 35.6 | | 2,297 | |
| Auto Larceny | 85,735 | | 16.8 | | 1,086 | |
| Other Larceny*** | 79,369 | | 15.6 | | 1,005 | |
| Narcotics | 25,703 | | 5.0 | | 326 | |
| Other/ | 24,575 | | 4.8 | | 311 | |
| TOTAL | 510,048 | | 100.0 | | 6,459 | |

Source: New York City Police Department, 1971.

* non-negligent
** aggravated
*** over $250
/ possession stolen property, criminal possession dangerous weapon, forgery, gambling, etc.

As in most cities, burglary was the most frequently reported crime; it accounted for over one-third of the cases. Auto theft and other larcenies accounted together for another third of the reported felonies, and robbery accounted for about one-sixth. The two most feared crimes--homicide and rape--together constituted less than one percent of the reported major crimes.

Perspective on these 1971 New York crime figures is gained by looking at them in the context of other large cities in the United States.

Table 3-2 gives the crime rates per 100,000 population for the ten largest cities in the United States. These figures come from the F.B.I.'s Uniform Crime Report which collects individual city reports.

Table 3-2

Rates of Major Crimes* per 100,000 Population in the Ten Largest Cities

| | N.Y.C. | (Rank)** | Chicago | Los Angeles | Philadelphia | Detroit | Houston | Baltimore | Dallas | Wash. D.C. | Cleveland |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Homicide | 18 | (9) | 24 | 15 | 22 | 38 | 24 | 36 | 24 | 36 | 36 |
| Rape | 30 | (9) | 46 | 73 | 28 | 46 | 43 | 59 | 69 | 81 | 57 |
| Robbery | 1127 | (3) | 713 | 502 | 474 | 1373 | 416 | 1047 | 339 | 1483 | 797 |
| Assault | 429 | (5) | 335 | 521 | 255 | 357 | 233 | 724 | 625 | 525 | 267 |
| Burglary | 2297 | (4) | 1140 | 2637 | 1073 | 3409 | 2127 | 2023 | 2170 | 2487 | 1569 |
| Auto Larceny | 1224 | (4) | 1046 | 1287 | 916 | 1506 | 1036 | 987 | 819 | 1154 | 2644 |
| Other Larceny | 1580 | (2) (3) | 463 | 1474 | 379 | 1678 | 892 | 1119 | 1448 | 1007 | 795 |
| Total Violent Crimes*** | 1604 | (4) | 1118 | 1111 | 779 | 1814 | 716 | 1866 | 1057 | 2125 | 1157 |
| Total Non-Violent) (Property) Crimes | 5101 | (3) | 2649 | 5398 | 2368 | 6593 | 4055 | 4129 | 4437 | 4648 | 5008 |
| TOTAL | 6705 | (3) | 3767 | 6509 | 3147 | 8407 | 4771 | 5995 | 5494 | 6773 | 6165 |

Source: FBI Uniform Crime Report, 1971, Table 67.

Note: Discrepancies between Table 3-1 and 3-2 are due to data collection from two different sources.

* This table does not include narcotics and "other" crimes because the FBI's Uniform Crime Report from which data were drawn, does not provide those statistics.

** Number in parentheses refers to rank of New York City among the 10 cities.

*** Homicide, rape, robbery and assault.

New York's homicide and rape rates were relatively low in 1971. In both categories, New York was 9th among the ten cities; on assaults it ranked 5th. In all other crimes it ranked 3rd or 4th. For all violent crimes it ranked 4th, and for all property crimes 3rd.

It has been suspected for a long time that victims do not report all committed crimes to the police and that police figures therefore do not reflect the real incidence of crime.

In the early 1970's, the Law Enforcement Assistance Administration, in cooperation with the U. S. Bureau of the Census, undertook a major research program which attempted to establish the real crime figures by interviewing a probability sample of potential victims about the incidence of crimes committed against them during the twelve-month period preceding the interview. One of these victim surveys was conducted in New York City from January through April, 1973.[1] Table 3-3 gives the

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1) "Crime in Eight American Cities" and "Crime in the Nation's Five Largest Cities" (Washington, D.C.: National Criminal Justice and Information Service, Law Enforcement Assistance Administration, 1974).

number of crimes found in that survey and the proportion of these crimes the victims say they had reported to the police.

Table 3-3

New York City Crime Committed and Reported to the Police According to Victim Survey

| | Crimes Committed | % Share Reported to the Police |
|---|---|---|
| Rape | 4,800 | 61 |
| Robbery* | 191,400 | 60 |
| Assault | 54,200 | 41 |
| Auto Larceny | 70,100 | 73 |
| Other Larceny** | 337,800 | 31 |
| Burglary*** | 400,800 | 64 |
| | 1,059,100 | 52 |

Source: Law Enforcement Assistance Administration, U.S. Bureau of the Census.

Note: The Victim Survey did not include all felonies: for obvious reasons, it excluded homicide and victimless crimes such as narcotics crimes and gambling.

* Personal and commercial combined.
** Personal and household combined.
*** Household and commercial combined.

Larceny was reported to the police in only 31 percent of the incidents. On the other hand, the proportion of auto larcenies reported to the police was 73 percent; a puzzlingly low percentage, since reporting such incidents is a prerequisite to insurance recovery. The proportion of assaults reported was only 41 percent, probably because this crime is often committed by family members and friends and the victim is reluctant to prosecute.

In a special study on reporting of crimes[2)] victims were questioned as to why they did not report some of the crimes committed against them. The victims offered a variety of reasons: 34 percent felt it was useless because nothing could be done or because there was not sufficient proof; 23 percent did not want to bother the police; 8 percent considered it inconvenient; 5 percent considered it a private affair; and 2 percent were afraid

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2) "Crimes and Victims: A Report on the Dayton-San Jose Pilot Survey of Victimization" (Washington, D.C.: Law Enforcement Assistance Administration, Department of Justice, 1974).

of reprisal.[3)]

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3) New York City's proportion of unreported crimes is not inconsistent with other major U.S. cities in which victim surveys were conducted.

Proportion of Committed Crimes Reported by the Victims to the Police in Selected U. S. Cities

| | by Individuals | by Businesses |
|---|---|---|
| Baltimore | 41 | 83 |
| Cleveland | 36 | 77 |
| Dallas | 31 | 76 |
| Chicago | 37 | 75 |
| Los Angeles | 33 | 73 |
| Detroit | 39 | 77 |
| Philadelphia | 36 | 78 |
| New York | 38* | 80* |

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Source: See page 26, footnote 1.

Note: There exist as yet no comparable figures for cities outside the United States, but there is agreement among experts that non-reporting of crimes is not peculiar to the United States.

* This weighted average of individual and business reporting rates is 52 percent, the proportion reported for New York City (Table 3-3).

Victim surveys would complement police statistics if the number of crimes reported to the police according to the victim survey were identical with the Police Department's account of the number of crimes reported to them. Unfortunately, as Table 3-4 shows, this is not the case.

Table 3-4

Proportion of Various Crimes Reported to the Police

| | According to Victim Survey | | Obtained by expressing the Police Department figures as a proportion of crimes committed according to Victim Survey | |
|---|---|---|---|---|
| | Percent | (Rank) | Percent | (Rank) |
| Rape | 61 | (3) | 41 | (4) |
| Robbery | 60 | (4) | 46 | (2) |
| Assault | 41 | (5) | 38 | (5) |
| Burglary | 67 | (2) | 45 | (3) |
| Auto Larceny | 73 | (1) | 122 | (1) |
| Other Larceny | 31 | (6) | 24 | (6) |
| TOTAL | 52 | | 42 | |

Note: These rates are based on the number of crimes reported to the New York Police Department during the 12-month period between March 1, 1972 and February 28, 1973. Since the Victim Survey was conducted from January through April 1973, the above 12 month period is the best approximation to the reporting period: the 12 months preceding the interview.

In all crime categories except auto larceny the Victim Survey yields a higher number of crimes that victims say they reported to the police than the police say were actually reported. On the average, for all crimes, the victim survey figure is $\left[\frac{52-42}{42}=\right]$ 24 percent larger than the Police Department figure.

In spite of all these discrepanices within the various crime categories, the rank-order of "reported crimes" is almost the same in both sources.

Several tentative explanations for these discrepancies have been offered. One possiblity is that victims are reporting non-criminal incidents as crimes and do this more often in some crime categories than in others. Another reason may be multiple reporting of the same crimes; for example, both the manager of a business and an employee or customer report the same incident. Despite ingenious precautions of the survey makers it is also possible that victims reported a crime as falling within a 12-month period when, in fact, it was committed earlier. The discrepancy in auto larcenies probably arises from the fact that the victim survey was limited to New York residents, whereas commuters and other non-residents would also report the theft of their car to the New York City

police.[4)]

Given the unsolved problems surrounding victim surveys, one cannot as yet accept as precise their count of committed crimes. The surveys do, however, suggest a basis for developing methods to estimate that number.

For purposes of an approximate estimate of the amount of crime two figures are assumed to be correct: first the number of crimes reported by (and to) the police,[5)] 458,304--these comprise all the crime types counted in the victim survey. Second, the victims' recollection of the

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4) Discrepancies such as these have raised a host of questions concerning the scope of the victim surveys. They are now being examined by a special commission of the National Science Council.

5) We assume that in New York these two figures are identical; they are not always and not everywhere identical. Experts have suspected at least one major American city does not report to the F.B.I. all the crimes reported to its police department.

proportion of reported crimes is more reliable than their count of crimes. By carrying out the appropriate multiplications and adding the homicides, for which a reporting ratio of 100 percent is assumed, an estimate of 847,767 committed crimes as against 459,770 reported to the police is obtained.[6)]

Table 3-5

Estimation of the Number of Committed Crimes

| | Reported to the Police | Reporting Ratio | | Estimate of Committed Crimes |
|---|---|---|---|---|
| Homicide | 1,466 | 100 | = | 1,466 |
| Rape | 2,415 | .61 | = | 3,959 |
| Robbery | 88,994 | .60 | = | 148,323 |
| Assault | 20,460 | .41 | = | 49,902 |
| Burglary | 181,331 | .67 | = | 270,643 |
| Auto Larceny | 85,735 | .73 | = | 117,445 |
| Other Larceny | 79,369 | .31 | = | 256,029 |
| TOTAL | 459,770 | | | 847,767 |

Source: New York City Police Department, 1971.

6) If the 25,703 narcotics crimes and 24,575 "other" crimes reported to the police are restored to this last number, the "Total Felonies" reported by the Police would be 510,048 (Table 3-1). One would then have to increase the estimated number of committed crimes by that amount. This correction is not made because in these two categories there is no viable estimate of the unreported crime incidents.

If the 25,703 narcotics crimes, the 1,466 homicides and the 24,575 "other" felonies[7] (see Table 3-1) are added to that estimate of 847,767, an overall estimate is derived of 900,000 felonies committed in New York City in 1971.

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7) Other felonies refer to the so-called victimless crimes. For the purposes of this study victimless crimes include drug sale, drug possession, criminal possession of a dangerous weapon, forgery, gambling and fraud.
The fact that a crime is victimless does not mean that it is harmless to others, only that there is no specific individual who is a victim at the time of arrest. For example, weapons possession is technically victimless but that is partially because it cannot be predicted whom the victim might be (or if there might be a victim) when the arrest is made.

# CHAPTER 4

## Reported Crime and Arrests

For the 500,000 felonies reported to the police there were roughly 100,000 arrests. Arrest rates varied by type of crime. The average arrest rate for felonies against property and persons was 12 percent.

It has been estimated that just slightly more than half of the committed felonies are reported to the police. Of the 510,048 felonies that were reported to the police in 1971, 102,138 resulted in an arrest. This is an arrest rate of 20 percent, or one arrest for every five reported felonies.

Table 4-1 indicates that the overall felony arrest rate of 20 percent varied from crime to crime.

Table 4-1

Reported Crimes, Arrests, and Arrest Rates

| | (1) Reported | (2) Arrests | (2/1) Arrest Rates* |
|---|---|---|---|
| Violent | | | |
| Homicide | 1,466 | 1,144 | 78 |
| Rape | 2,415 | 992 | 41 |
| Robbery | 88,994 | 17,417 | 20 |
| Assault | 20,460 | 9,668 | 47 |
| | 113,335 | 29,221 | 26 |
| Non Violent Property | | | |
| Burglary | 181,331 | 15,847 | 9 |
| Auto Larceny | 85,735 | 8,040 | 9 |
| Other Larceny | 79,369 | 4,589 | 6 |
| | 346,435 | 28,476 | 8 |
| Victimless | | | |
| Narcotics | 25,703 | 20,762 | 81 |
| Other** | 24,575 | 23,679 | 96 |
| | 50,278 | 44,441 | 88 |
| TOTAL | 510,048 | 102,138 | 20 |

Source: New York City Police Department, 1971

* Arrests per 100 Reported Crimes
** Forgery, Gambling, Weapon, etc.

The arrest rate for homicide was 78 percent. The police allocate comparatively more resources to the investigation of this crime; the victim's family and friends are intent on pursuing the action; and homicide is often easier to solve than other crimes because criminal and victim are likely to be related.

Similar factors accounted for the relatively high arrest rates for assault and rape. On the other hand the arrest rate for robbery was lower (20 percent), probably because the crime was most often committed by strangers.

The arrest rates for property crimes, to which there is usually no eyewitness, were all below 10 percent.

Narcotics and the crimes labeled "other" have the highest arrest rates. But these rates are misleading, since these were mostly victimless crimes, where there was no complainant to report to the police. This means that the reported crime rate for those crimes was nearly identical to the incidence of the crime as detected by the police.

Since the victimless[1)] crimes originate with the police arrest, it is appropriate to distinguish three types of arrest rates: those for violent crimes, for non-violent

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1) See Chapter 3, page 34, footnote 7.

property crimes, and for narcotics and other crimes. Table 4-2 is a summary of the data in Table 4-1:

Table 4-2

Arrest Rates for Major Crime Categories

| | Arrests per 100 Reported Felonies |
|---|---|
| Violent Crimes | 26 |
| Non-Violent (Property) Crimes | 8 |
| Combined Arrest Rate for Both Groups | 12 |
| Narcotics and "Other" (Victimless) Crimes | 88 |
| All Felonies | 20 |

Source: New York City Police Department, 1971

The average arrest rate for crimes against the person was 26 percent, for crimes against property 8 percent. The combined arrest rate for these crime categories was 12 percent. These generally low rates are in contrast to the high arrest rates for narcotics and "other" crimes. The explanation is simple: in the crimes that have individual victims, the crime is first reported to the police and then the police try to make an arrest--sometimes succeeding, sometimes failing. With respect to the narcotics and "other" crimes--primarily gambling and weapon charges--it is the arrest that causes the crime to be "reported to the police."

Because of different arrest rates, the distribution of reported crimes and of arrests were not the same:

Table 4-3

Distribution of Reported Crime and of Arrests

| | Reported Crime % | Arrested % |
|---|---|---|
| Homicide | * | 1 |
| Rape | * | 1 |
| Robbery | 17 | 15 |
| Assault | 4 | 10 |
| Burglary | 36 | 13 |
| Larceny | 33 | 12 |
| Narcotics | 5 | 22 |
| Other | 5 | 26 |
| | 100 | 100 |

Source: New York City Police Department, 1971

* Less than 0.5%.

Burglary arrests comprised a smaller proportion of arrests (13%) than reported burglary comprised of reported crimes (36%). The opposite was true for victimless crimes (narcotics and other)

which constituted only 10 percent of reported felonies, but 48 percent of felony arrests.

Since the average arrest rate for all crimes is sometimes used as a measure of police efficiency, it is worth noting, as our analyses show, that this arrest rate can be spuriously increased by increasing the number of arrests for victimless crimes.[2)]

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2) For their own purposes the police have refined this measure by establishing the Clearance Rate. This is the relationship between reported crime and arrests and other events which the police consider having "cleared" the crime:

> ". . . . police clear a crime when they have identified the offender, have sufficient evidence to charge him and actually take him into custody. Crime solutions are also recorded in exceptional instances when some element beyond police control precludes the placing of formal charges against the offender, such as the victim's refusal to prosecute after the offender is identified or local prosecution is declined because the subject is being prosecuted elsewhere for the crime committed in another jurisdiction. The arrest of one person can clear several crimes or several persons may be arrested in the process of clearing one crime."

The arrest is the main instrument of clearance and thus arrest and clearance rates were related: (cont'd)

The Penal Law of New York State designates three categories of offenses: felonies, misdemeanors, and violations. Felony arrests should be seen in this larger context of police and court activity:

2) cont'd

Arrest Rates and Clearance Rates

| | Arrest Rate | Clearance Rate | Differences |
|---|---|---|---|
| | (as percent of Reported Crimes) | | |
| Against Persons | | | |
| Homicide | 78 | 57 | +21 |
| Rape | 41 | 31 | +10 |
| Robbery | 20 | 25 | - 5 |
| Assault | 47 | 40 | + 7 |
| Against Property | | | |
| Burglary | 9 | 16 | - 7 |
| Auto Larceny | 9 | 13 | - 4 |
| Other Larceny | 6 | 13 | - 7 |
| Others | | | |
| Narcotics | 81 | 50 | +31 |
| Others | 96 | 70 | +26 |

Source: New York City Police Department, 1971

Note: For crimes against the person--homicide, assault, rape--the arrest rates are above the clearance rates, suggesting both that mistaken arrests are made and that one suspect rarely clears more than one crime. For property crimes, the arrest rate is below that of the clearance rates, indicating that on the average one arrest clears more than one crime. For narcotics and "other" crimes, the difference between arrest and clearance rate is greater than that for other crimes; this may be due in part to occasional group arrests, in which only some members are retained for criminal prosecution.

Table 4-4

Police Arrests and Summonses by Type of Charge (New York City 1971)

| | Arrests | | Summonses | | TOTAL | |
|---|---|---|---|---|---|---|
| | # | % | # | % | # | % |
| Felonies | 102,138 | 44 | - | - | 102,138 | 19 |
| Misdemeanors | 94,519 | 40 | 135,120 | 45 | 229,639 | 43 |
| Violations & Infractions | 36,866 | 16 | 167,213 | 55 | 204,079 | 38 |
| TOTAL | 233,523 | 100 | 302,333 | 100 | 535,856 | 100 |

Source: New York City Police Department, 1971

Felony arrests constituted 44 percent of the 233,523 arrests made by the police in 1971. The remainder were arrests for misdemeanors (40%) and for violations and infractions (16%). In addition, the courts obtained cases through police summonses issued to persons charged with a misdemeanor, violation, or infractions. These cases are processed in special parts of the court and are not part of the mainstream of criminal cases.

The New York Penal Law designates five subgroups of felonies: A through E, and two subgroups of misdemeanors, A and B, reflecting different grades of severity.

The Penal Law also designates the crime class for every crime it defines. After defining, for instance, the crime of murder in Section 125.25, the section concludes with "Murder is a Class A felony;" or "Manslaughter in the first degree (Section 125.20) is a Class B felony."

The primary function of these class designations is to define the range within which sentence may be imposed upon conviction.[3] Conviction of a class A felony brings a sentence from 15 years to life. The maximum sentences for the other four felony classes are 25, 15, 7, and 4 years; for A misdemeanors the maximum is one year, for B misdemeanors 90 days. Unless the defendant is convicted of an A felony, the judge usually has several non-prison alternatives: probation, fine, conditional discharge. A category by itself is temporary confinement in the State operated rehabilitation program for drug addicts (NACC).[4]

The following two tables show the relationship between the type of crime and the charges resulting from it in terms of their felony class:

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3) For details of the sentencing rules see Chapter 7, Table 7-1, p. 81.

4) In 1973 NACC (The Narcotics Addiction Control Commission) was changed to DACC (Drug Abuse Control Commission).

Table 4-5

Type of Crime by Severity of Arrest Charge
(Percent in each Crime Class)

| | A | B | C | D | E | Total | Percent Share of All Arrests |
|---|---|---|---|---|---|---|---|
| Homicide | 77 | 12 | 0 | 0 | 11* | 100 | ( 1.1) |
| Rape | 0 | 75 | 0 | 25 | 0 | 100 | ( 1.1) |
| Robbery | 1 | 60 | 23 | 16 | 0 | 100 | (14.4) |
| Assault | 4 | 1 | 28 | 66 | 1 | 100 | (10.3) |
| Burglary | 0 | 5 | 15 | 79 | 1 | 100 | (13.3) |
| Grand Larceny | 0 | 0 | 1** | 25 | 74 | 100 | (12.3) |
| Stolen Prop.+ | 0 | 0 | 0 | 28 | 72 | 100 | ( 5.7) |
| Poss. Weapon++ | 0 | 1*** | 1 | 98 | 0 | 100 | ( 6.3) |
| Drug Sale+++ | 0 | 11 | 79 | 9 | 1 | 100 | ( 7.7) |
| Drug Possn++++ | 2 | 3 | 20 | 67 | 3 | 100 | (14.5) |
| Gambling | 0 | 3 | 0 | 4 | 93 | 100 | ( 2.2) |
| Forgery | 0 | 0 | 10 | 55 | 35 | 100 | ( 7.3) |
| Other | 1 | 6 | 3 | 84 | 6 | 100 | ( 3.8) |
| Percent of Total | 2 | 12 | 19 | 47 | 20 | 100 | (100.0%) |
| | | 33 (A+B+C) | | 67 (D+E) | | | |

2000 sample
Weighted N = 81,266
Approximate N = 1,625

Source: New York City Police Department, 1971.

* criminally negligent homicide
** extortion
*** possession of explosives

\+ criminal possession of stolen property
++ criminal possession of a dangerous weapon (Class B felony)
criminal possession of a weapon (Class B and C felonies)
+++ criminal sale of a controlled substance
++++ criminal possession of a controlled substance

This first table (4-5) shows into which charge classes the crimes fall. Homicide arrests were primarily Class A charges; assault, the least severe of crimes against the person, was charged mainly as a D felony. Most burglaries also fell into the D class. Larceny was primarily charged with the lowest felony, Class E.

Narcotics charges ranged from A through E, possession was mostly charged as D; sale as C.

The last column of Table 4-5 repeats the distribution of arrests by type of crime. The bottom line shows the overall distribution of arrest charges among the five felony classes. Only 2 percent of felony arrests were Class A crimes, 12 percent were Class B, 19 percent Class C. Thus the three top classes accounted for about one third of felony arrests. Class D alone, with 47 percent, accounted for almost one half of felony arrests.

Table 4-6 analyzes the same data from a different perspective; it tells by running the percent figures in a different direction, what crimes compose the five felony classes:

Table 4-6

Class of Arrest Charge by Type of Crime

| | A | B | C | D | E |
|---|---|---|---|---|---|
| Homicide | 47 | 1 | 0 | 0 | 1 |
| Rape | 0 | 7 | 0 | 1 | 0 |
| Robbery | 8 | 67 | 17 | 5 | * |
| Assault | 22 | 1 | 16 | 15 | * |
| Burglary | 0 | 6 | 11 | 21 | 1 |
| Grand Larceny | 0 | 0 | 1 | 6 | 45 |
| Stolen Prop. | 0 | 0 | 0 | 3 | 21 |
| Poss. Weapon | 0 | 1 | 1 | 14 | 0 |
| Drug Sale | 0 | 7 | 32 | 2 | * |
| Drug Possn. | 18 | 4 | 16 | 20 | 6 |
| Gambling | 0 | 1 | 0 | * | 10 |
| Forgery | 0 | 0 | 4 | 9 | 13 |
| Other | 5 | 5 | 2 | 4 | 3 |
| TOTAL (%) | 100 | 100 | 100 | 100 | 100 |

2000 sample
Weighted N = 81,266
Approximate N = 1,625

Source: New York City Police Department, 1971.

* Less than 0.5%.

Homicides made up almost one-half of the A felonies, with drug possession and assault the bulk of the remainder. B felonies consisted primarily of robbery arrests. No other crime accounted for more than 7 percent. Drug possession and drug sale were responsible for one-half of C felonies; robberies for one-sixth, followed by assault and burglary.

About one-fifth of D felonies were burglaries, another fifth drug possession. Assault and criminal possession of a dangerous weapon made up a third, and a scattering of other crimes made up the remaining D felonies. About half of all E felonies were grand larcenies; another one-fifth were accounted for by possession of stolen property.

## CHAPTER 5

## Who was Arrested?

Eighty-nine percent of those arrested on felonies in 1971 were men. Thirty-one percent of those arrested for felonies and close to 50 percent of those arrested for burglary and robbery were under 20 years old. Half were black, one quarter were Hispanic and one quarter were white. Thirty-nine percent had never been arrested before; 20 percent had served time in prison. Half the defendants charged with victim crimes had a prior relation with the victim.

The data collected in the 2000 sample yielded the following picture of the population of defendants arrested on felony charges in New York City:

Table 5-1

Who is Arrested for Felonies?

| Sex: | Arrested % | |
|---|---|---|
| Men | 89 | 2000 Sample |
| Women | 11 | Weighted N = 85,675 |
| | 100 | Approximate N = 1713 |
| **Age:** | | |
| Under 16 years | 12 | |
| 16-19 | 19 | |
| 20-29 | 46 | |
| 30-39 | 16 | 2000 Sample |
| 40+ and older | 7 | Weighted N = 84,691 |
| | 100 | Approximate N = 1694 |
| **Ethnicity:** | | |
| White* | 24 | |
| Black | 53 | 2000 Sample |
| Hispanic (Latin surnamed) | 23 | Weighted N = 82,549 |
| | 100 | Approximate N = 1651 |
| **Criminal Record:** | | |
| No record | 39 | |
| Arrest(s) only** | 27 | |
| Convictions (no prison record) | 14 | 2000 Sample |
| Prison record | 20 | Weighted N = 56,257 |
| | 100 | Approximate N = 1125 |
| **Relationship to Victim:** | | |
| Close (family, lovers) | 18 | |
| Friends/Acquaintances*** | 35 | 400 Sample |
| Strangers | 47 | Weighted N = 41,057 |
| | 100 | Approximate N = 223 |

* Correctly "white and others than blacks or Hispanics." This "other" group constitutes less than one percent of arrested defendants.

** If dispositions were unknown for a defendant, the prior record then was classed as arrest only.

*** This group includes friends, neighbors, landlord-tenant, employer-employee, and customer-seller relations.

The vast majority of all persons arrested for felonies were male. Nearly one-third were under 19 years old; 12 percent were under the age of 16 and did not come under the authority of the criminal courts; and 19 percent were between 16 and 19 years. About one-half of all arrested persons fell in the age bracket between 20 and 29 years of age; less than one-tenth were over 40.

The distribution by ethnicity was approximately one-quarter Hispanic, one-quarter white, and one-half black.

Thirty-nine percent of the defendants had never been arrested before; 27 percent had been arrested but not convicted; 14 percent had been convicted without having served time in prison; and 20 percent had served time in prison. This means that approximately 60 percent of the people arrested for a felony had some "criminal record."[1)]

The demographic statistics for each of the major crime categories is presented below in Table 5-2 analyzed by sex:

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1) The term is put under quotation marks because of a serious semantic problem. In the United States, a person with an arrest on his record is usually considered to have a criminal record, even if the case was subsequently dismissed or the defendant acquitted after trial.

Table 5-2

Sex of Persons Arrested for Specific Crimes

| | Male % | Female % | Share of Total Defendants % |
|---|---|---|---|
| Homicide | 93 | 7 | (1) |
| Rape | 100 | -- | (1) |
| Robbery | 93 | 7 | (15) |
| Assault | 85 | 15 | (10) |
| Burglary | 95 | 5 | (13) |
| Grand Larceny | 91 | 9 | (12) |
| Stolen Prop. | 92 | 8 | (6) |
| Poss. Weapon | 94 | 6 | (7) |
| Drug Sale | 86 | 14 | (8) |
| Drug Possn. | 81 | 19 | (14) |
| Gambling | 81 | 19 | (2) |
| Forgery | 93 | 7 | (7) |
| Other | 91 | 9 | (4) |
| All Arrests | 89 | 11 | (100) |

2000 Sample
Weighted N = 85,675
Approximate N = 1713

Note: The N's throughout the report will vary because not all pieces of information required by the table heading are always available. For instance, cases for which either sex or type of crime could not be established are not included in this table.

The percentage of women was higher for drug crimes, gambling, and assault; it was lower for burglary, weapon

charges, and rape, although in one case in the 400 sample a woman was convicted of rape.[2)]

Table 5-3 gives the distribution by ethnic origin:

Table 5-3

Ethnic Origin of Persons Arrested for Specific Crimes
(percent)

| | Whites | Blacks | Hispanics | Share of Total Defendants |
|---|---|---|---|---|
| | % | % | % | % |
| Homicide | 3 | 67 | 30 | (1) |
| Rape | 42 | 44 | 14 | (1) |
| Robbery | 13 | 71 | 16 | (15) |
| Assault | 19 | 55 | 26 | (10) |
| Burglary | 22 | 53 | 25 | (13) |
| Grand Larceny | 25 | 50 | 25 | (12) |
| Stolen Prop. | 38 | 38 | 24 | (6) |
| Poss. Weapon | 18 | 65 | 17 | (7) |
| Drug Sale | 21 | 47 | 32 | (8) |
| Drug Possn. | 28 | 47 | 25 | (14) |
| Gambling | 15 | 69 | 16 | (2) |
| Forgery | 30 | 43 | 27 | (7) |
| Other | 27 | 57 | 16 | (4) |
| TOTAL | 24 | 53 | 23 | (100) |

2000 Sample
Weighted N = 82,549
Approximate N = 1651

2) See Chapter 11, p. 144.

White defendants accounted for 24 percent of all arrests, but 42 percent of rape arrests and 38 percent of arrests for possession of stolen goods. Blacks constituted about half of all arrests; their share of homicide, robbery, gambling, and dangerous weapons arrests was closer to two-thirds.

The table relating arrest to criminal record follows:

Table 5-4

Criminal History of Persons Arrested for Specific Crimes
(percent)

| | No Record | Arrested Only | Convicted (no Prison) | Prison Record | Total Convicted or Prison | Share of Total Defendants |
|---|---|---|---|---|---|---|
| | % | % | % | % | % | % |
| Homicide | 9 | 31 | 7 | 53 | (60) | (1) |
| Rape | 23 | 27 | 18 | 32 | (50) | (1) |
| Robbery | 23 | 29 | 13 | 35 | (48) | (15) |
| Assault | 56 | 26 | 11 | 7 | (18) | (10) |
| Burglary | 30 | 27 | 18 | 25 | (43) | (13) |
| Grand Larceny | 35 | 27 | 17 | 21 | (38) | (12) |
| Stolen Prop. | 38 | 27 | 26 | 9 | (35) | (6) |
| Poss. Weapon | 60 | 22 | 5 | 13 | (18) | (7) |
| Drug Sale | 31 | 37 | 10 | 22 | (21) | (8) |
| Drug Possn. | 44 | 20 | 17 | 19 | (36) | (14) |
| Gambling | 35 | 32 | 18 | 15 | (33) | (2) |
| Forgery | 55 | 23 | 12 | 10 | (22) | (7) |
| Other | 50 | 29 | 10 | 11 | (21) | (4) |
| TOTAL | 39 | 27 | 14 | 20 | (34) | (100) |

2000 Sample
Weighted N = 56,257
Approximate N = 1125

Thirty-four percent of defendants had a prison or conviction record. But in certain crime groups their share was considerably higher: homicide 60 percent; rape 50 percent; robbery 48 percent; and burglary 43 percent. In other crimes such as assault, drug sale, forgery, and dangerous weapon, their share was lower, and correspondingly, the share of defendants without record was greater.

The following table presents the ages of the defendants sampled:

Table 5-5

Age of Persons Arrested for Specific Crimes

| Type of Crime | under 16 yrs. | 16-19 | 20-29 | 30-39 | 40 & over | Share of Total Defendants |
|---|---|---|---|---|---|---|
| | % | % | % | % | % | % |
| Homicide | 14 | 14 | 35 | 23 | 14 | (1) |
| Rape | 20 | 16 | 53 | 6 | 5 | (1) |
| Robbery | 24 | 27 | 39 | 7 | 3 | (17) |
| Assault | 8 | 10 | 39 | 27 | 16 | (10) |
| Burglary | 22 | 26 | 41 | 8 | 2 | (15) |
| Grand Larceny | 15 | 25 | 43 | 13 | 4 | (13) |
| Stolen Prop. | 9 | 18 | 48 | 22 | 3 | (5) |
| Poss. Weapon | 1 | 8 | 50 | 22 | 19 | (6) |
| Drug Sale | 2 | 18 | 54 | 20 | 6 | (7) |
| Drug Possn. | * | 17 | 62 | 16 | 5 | (13) |
| Gambling | 0 | 1 | 20 | 34 | 45 | (2) |
| Forgery | * | 11 | 48 | 27 | 14 | (6) |
| Other | 21 | 8 | 42 | 19 | 10 | (4) |
| TOTAL | 12 | 19 | 46 | 16 | 7 | (100) |

2000 Sample
Weighted N = 82,500
Approximate N = 1650

* Less than 0.5%.

Defendants 19 years old or younger were the suspects for half of all burglaries and robberies and for 40 percent of grand larcenies.

They constituted, on the other hand, only a small share of gambling (1 percent), possession of a dangerous weapon (9 percent), forgery (11 percent), assault (18 percent), and possession of drugs (18 percent).

Older defendants, those 30 years and older, constituted 23 percent of all arrests, but 43 percent of assaults; 37 percent of homicides (the two crimes were often similar in intent, different only in result); 79 percent of gambling; 41 percent of forgery; but only approximately 10 percent of burglary, robbery and rape.

The following table compares the demographic picture of all those arrested in 1971 in New York City according to police statistics:

Table 5-6

Felony Arrest Rate per 100,000 Population by Sex and Age

| Age (yrs.) | Male | | | Female | | |
|---|---|---|---|---|---|---|
| | Population | Arrests | Arrests per 100,000 | Population | Arrests | Arrests per 100,000 |
| Under 16 | 824,000 | 7,515 | 912* | 929,000 | 1,198 | 129* |
| 16-20 | 216,000 | 16,911 | 7,829 | 244,000 | 1,879 | 770 |
| 21-29 | 565,000 | 40,951 | 7,248 | 637,000 | 4,548 | 714 |
| 30-39 | 418,000 | 14,308 | 3,423 | 471,000 | 1,507 | 320 |
| 40 & over | 1,479,000 | 6,611 | 447* | 1,667,000 | 733 | 44* |

Source: New York City Police Department, 1971

Note: The number of arrests and arrests per 100,000 are estimates based on the finding that 89 percent of arrests suspects were males.

* These crime rates are of little significance because the population figures on which they are based at the younger end include all children between the ages of 0 and 15, and at the other end, from 40 through old age. Meaningful arrest rates for these "open" age groups could be computed only if specific ages for the arrested persons in these groups were available.

The arrest rates for males between the ages of 16 and 29 are perhaps the most important demographic figures in this report. In 1971, for every 100 men between 16 and 29,

there were over seven felony arrests.[3)]

As clear as these data may seem, they have one major shortcoming: it cannot be assumed that the persons arrested for felonies are representative of the persons who commit felonies. Approximately 900,000 felonies were committed in New York City in 1971: some 500,000 were reported to the police; but only about 100,000 arrests were made for felonies.

In this regard, it could be argued that the sample covers only those felons who were the least successful or least competent felons--i.e., those who got caught. This immediately suggests a major problem with all that can be said in future chapters about the high proportion of "non-stranger" crimes in the sample. It will be found, for example, that in the 53 percent of the cases which involved victims (67% of felony arrests) the victim had a prior relationship with the defendant. The prior relationship of victim and arrested defendant for the victim crimes (excluding homicide) are presented in Table 5-7.

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3) Since a person can be arrested more than once during any one year, it does not mean that seven out of 100 young men were arrested on felony charges.

Table 5-7

Prior Relationship Between Victim and Arrested Defendant for Major Crimes

| | Close (family, lovers) % | | Friend/ Acquaintance % | Strangers % |
|---|---|---|---|---|
| Rape | 10 | | 54 | 36 |
| Robbery | 16 | | 39 | 45 |
| Assault | 25 | | 53 | 22 |
| Total Violent Crimes* | 20 | 67 | 47 | 33 |
| Burglary | 22 | | 21 | 57 |
| Larceny | 7 | | 13 | 80 |
| Total | 18 | 53 | 35 | 47 |

400 Sample
Weighted N = 36,352
Approximate N = 198

* If Homicide is included the proportions for violent crime are 65 percent non-stranger and 35 percent stranger relationships between victim and arrested defendant.

It is tempting to read significance into the high percentage of prior relationships indicated above. But it must be remembered that it is relatively easy for the police to arrest a "robber" whom the victim knows and can identify.

And thus non-stranger robbers and burglars, for example, will be arrested in numbers that exceed the percentage of all robbers and burglars they actually represent. The same is true for other victim crimes.

Although the pertinent data for New York City are not available, a victimization survey in San Jose, California found the following distribution of reporting rates for violent crimes:[4)]

Table 5-8

Proportion of Stranger and Non-Stranger Violent Crimes Committed and Reported

| Victim & Defendant | Committed Violent Crimes* % | Committed Crimes Reported to the Police** % |
|---|---|---|
| Strangers | 60 | 75 |
| Non-Strangers | 40 | 22 |
| | 100 | |

* U.S. Estimate
** Available only for San Jose, California.

If it is assumed that in New York City the percent of victims reporting stranger and non-stranger violent crimes to the police is similar to San Jose, arrest rates for vio-

4) Op. cit. p. 28, "Crimes and Victims...Dayton-San Jose Pilot Survey."

lent crimes against strangers and non-strangers can be estimated. Multiplying the distribution of violent crime among strangers and non-strangers by the proportion of crime reported to the police for strangers and non-strangers gives the proportion of violent crime reported to the police for stranger (84%) and non-stranger (16%) victims.*

In 1971 113,335 violent felonies were reported in New York City and there were 29,221 arrests for violent crimes.[5] The number of violent crimes reported to the police (A, Table 5-9) are estimated by applying the San Jose percentages to the violent crime figures reported in 1971 to the New York City Police.

In the 400 sample 33 percent of arrests were for violent crimes committed by strangers and 67 percent for non-strangers.[6] This proportion is applied to the Police Department figures of arrests (B). The resulting arrest rates (B/A) are the ratios of the number of arrests by the violent crimes reported to the police.

---

* From Table 5-8:

$$.60 \times .75 = .450 \qquad \frac{.450}{.538} = 84\%$$

$$.40 \times .22 = \frac{.088}{.538} \qquad \frac{.088}{.538} = 16\%$$

5) See Table 4-1, p. 36.
6) See Table 5-7, page 60.

Table 5-9

Arrest Rates for Violent Crimes for Defendants and Victims who were Strangers and Non-Strangers

| | Strangers | Non-Strangers | TOTAL |
|---|---|---|---|
| A. Violent Crimes Reported to the Police | 95,201 (84%) | 18,134 (16%) | 113,335 (100%) |
| B. Arrests | 9,643 (33%) | 19,578 (67%) | 29,221 (26%) |
| C. Arrest Rate (B/A = C) | 10% | 108%* | 26% |

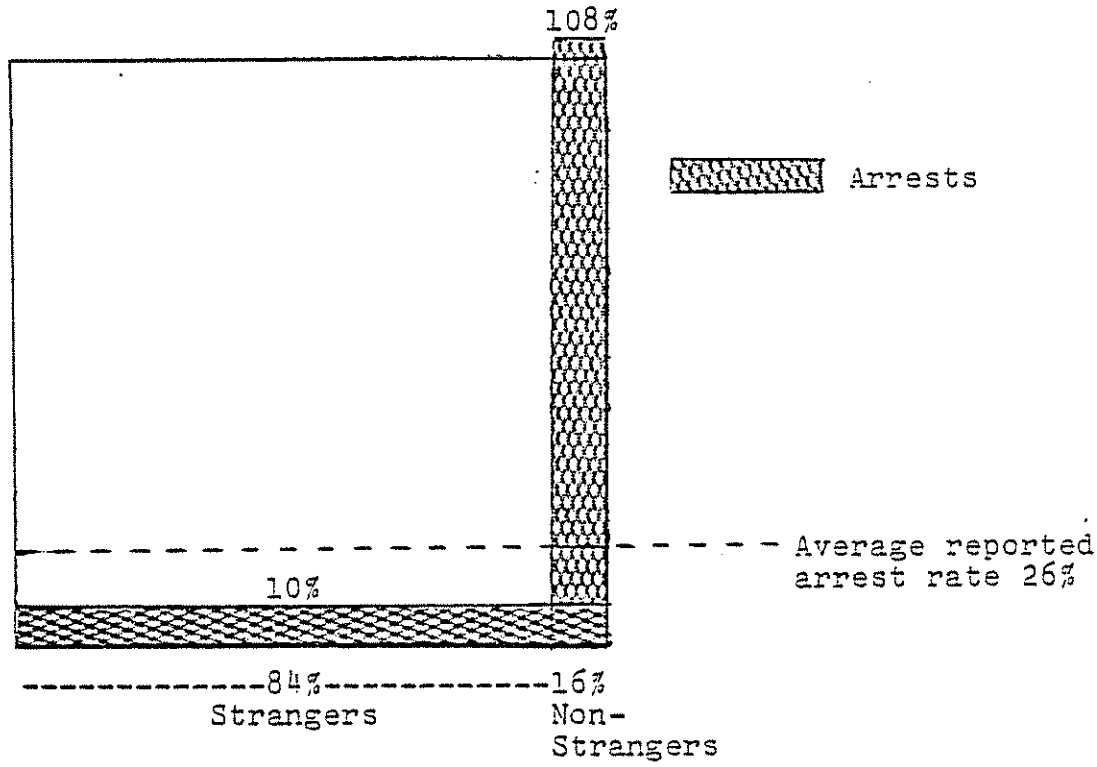
* The 108% results from using different sources to estimate the number of non-stranger violent crimes reported to the police and the number of non-stranger arrests for violent crimes made by the police.

Table 5-9 illustrates that the average arrest rate for violent crimes of 26 percent masked two different arrest rates: for crimes committed by spouses, lovers and friends, arrests equal reported crimes; but for violent crimes committed by strangers the arrest rate is 10 percent.

The overall result is graphically presented in Figure 5-1.

Figure 5-1

Arrests for Violent Crimes Reported
to the Police and for Strangers and Non-Strangers




Similarly, the sample will be biased in terms of categories of people, both innocent and guilty, whom the police are more likely to arrest than others. It may be argued, for example, that a tough looking, young Puerto Rican is more likely to be searched for a gun, or, if he is walking through a white neighborhood, more likely to be stopped as a burglary suspect than is a middle-aged white.

The point here is that this is a sample of people, both innocent and guilty, who get arrested. It is not an accurate sample of criminal offenders.

## CHAPTER 6

## The Disposition of Felony Arrests

Of every 100 felony arrests in the 1971 arrest sample, 14 percent were diverted into Family Court, 6 percent jumped bail, 2 percent were lost for other reasons, and the remaining 78 percent were disposed of in the criminal court system. Of these, 55 percent were convicted while the cases of the remaining 45 percent were dismissed or acquitted. Two percent of cases reached trial.

Of the 55 percent who were convicted, three-fourths were convicted of a misdemeanor; one-fourth (14 percent of defendants arrested on a felony charge whose cases were disposed in the criminal court system) were convicted of a felony.

The sentences of the 55 percent convicted persons were distributed as follows: 26 percent of them "walked" (they received no prison sentence); 29 percent received prison sentences with 5 percent serving more than one year.

This chapter gives an overview of the arrests disposed of in the criminal court system. This excludes the 14 percent of the cases that were routed into Family Court because the arrested person was under 16 years of age or because the crime involved a juvenile in a family setting; the 6 percent of the cases in which the defendant jumped bail; the 0.8 percent of the cases for which the file could not be located; and the 1 percent of the cases in which the case was abated by death or had not been disposed of for other reasons. Thus, only the 78 percent of felony arrests disposed of in the criminal court system are considered in this chapter.[1)]

---

1) By disregarding the missing files and the cases not yet disposed, the implicit assumption is made that their disposition pattern, if and when it came about, would not be different from that of the 78 percent of the cases for which the disposition is known. This is likely to be an error, because the not yet disposed of cases were less likely to end in dismissal and more likely to end in trial. But the error cannot be large, since the two groups amount to less than 2 percent of the total.

Table 6-1 shows the disposition of all adjudicated felony arrests:

Table 6-1

Disposition of Felony Arrests

| | % | | |
|---|---|---|---|
| Dismissal | 43.2 | | |
| Guilty Plea | 54.6 | | |
| Tried | | Total Convicted | 55.4% |
| Convicted | .8 | | |
| | | Total Tried | 2.2% |
| Acquitted | 1.4 | | |
| | 100.0 | | |

2000 sample
Weighted N = 71,266
Approximate N=1,425

43.2 percent of the cases ended in dismissal and another 1.4 percent in acquittal after trial. The percent of defendants pleading guilty was 54.6, and .8 percent were convicted after trial. Thus, the total acquittal rate was 44.6 percent and the total conviction rate was 55.4 percent. Only a small proportion of cases--2.2 percent--went to trial. Of these, 64 percent were acquitted.[2)]

The distribution by crime class at arrest and at conviction is shown in the following table.

Table 6-2

Arrest Charges and Conviction Charges

| Arrest Charge | % of Arrest Charges | % of Conviction Charges | |
|---|---|---|---|
| Felony A | 2 | 1 | 26% Fel. |
| B | 14 | 1 | |
| C | 18 | 2 | |
| D | 46 | 10 | |
| E | 20 | 12 | |
| Misdemeanor A | | 48 | 74% Misd. or less |
| B | | 15 | |
| Violations | | 10 | |
| Infractions | | 1 | |
| | 100 | 100 | |

2000 Sample
Weighted N = 69,723
Approximate N = 1,394

2) This is an unusually high acquittal rate caused probably by the small number of trial cases in the sample. There are no data available on the acquittal rate by felony arrests. For a discussion of conviction and acquittal at trial see Chapter 11.

The first column of Table 6-2 gives the distribution of arrest charges by class of crime, and the second column indicates the charges of those convicted of any crime. Twenty-six percent of convicted defendants were convicted of a felony while 74 percent were convicted of a misdemeanor or lesser offense.

However, since only 55 percent of those arrested for felonies were convicted, (.26 x .55) 14 percent of defendants arrested for a felony were ultimately convicted of one (Table 6-3). Three percent of defendants were convicted of the felony they had been charged with at arrest.

Table 6-3

Disposition of Felony Arrests in the Criminal Court System

| | | |
|---|---|---|
| Dismissed or Acquitted | | 45% |
| Convicted of Misdemeanor | | 41 |
| Convicted of Felony | | 14 |
| Convicted of the felony originally charged with | 3 | |
| Convicted of lesser felony | 11 | |
| | | 100% |

2000 Sample
Weighted N = 71,266
Approximate N = 1,425

From the convicted defendant's perspective, perhaps the most important part of the disposition process is the sentence. Table 6-4 gives the sentencing pattern of those convicted:

Table 6-4

Sentences of All Convicted Defendants

| | % | |
|---|---|---|
| Fine Only | 13 | |
| Probation | 19 | "Walk" 48% |
| Discharge | 16 | |
| NACC | 3 | |
| Prison | 49 | "Time" 52% |
| | 100% | |

2000 sample
Weighted N = 39,251
Approximate N =785

The proportion of those who "walked" and those sentenced to "time" was 48 vs. 52 percent. Since being sentenced to NACC involves a deprivation of liberty this disposition is classed with the prison sentences.[3] The following table shows length of the imposed prison sentences.

3) See p. 43 for discussion of NACC.

Table 6-5

Length of Prison Sentences
of Those Defendants Sentenced to Prison

| Months | Years | % | |
|---|---|---|---|
| 1-3 | | 38 | "Misdemeanor time" 83% |
| 4-6 | | 16 | |
| 7-12 | | 29 | |
| | 1-3 | 8 | "Felony time" 17% |
| | 4-7 | 7 | |
| | 8-15 | 1 | |
| | 16+ | 1 | |

2000 Sample
Weighted N = 16,703
Approximate N = 344

Eighty-three percent of prison sentences were for one year or less; 54 percent for 6 months or less; only 17 percent--roughly one-sixth--of all prison sentences exceeded one year. (Again, it must be remembered that this table considers the 52% of convicted defendants who received prison sentences.)

The complete disposition pattern can now be presented, concerning both disposition and sentence:

Table 6-6

Disposition and Sentences of Felony Arrests

| | % | |
|---|---|---|
| Dismissed or Acquitted | 45 | |
| Convicted (Non-prison) | 26 | |
| Discharge | 8 | |
| Probation | 11 | |
| Fine | 7 | |
| Convicted (Prison) | 29 | |
| Up to 1 year | 24 | |
| More than 1 year | 5 | |
| TOTAL | | 100 |

2000 Sample
Weighted N = 69,898
Approximate N = 1,397

Forty-five percent of all cases were dismissed or acquitted; 26 percent were convicted and "walked," receiving no prison sentence; 29 percent went to prison; 5 percent of all defendants arrested for a felony went to prison for more than one year.

Table 6-7 gives the disposition and sentencing pattern for each of the major crime categories:

Table 6-7

Disposition by Type of Crime Charged at Arrest

| | % Dismissed or Acquitted | Convicted & Sentenced | | | | Share of Total |
|---|---|---|---|---|---|---|
| | | % Non-Prison | % Prison | % Prison Less than 1 yr. | % Prison More than 1 yr. | |
| Homicide | 29 | 9 | 62 | -- | 62 | (1.5) |
| Rape | (75) | (4) | (21) | -- | 21 | (.4) |
| Robbery | 43 | 19 | 38 | 26 | 12 | (15.0) |
| Assault | 58 | 29 | 13 | 10 | 3 | (7.4) |
| Burglary | 36 | 20 | 44 | 42 | 2 | (15.6) |
| Grand Larceny | 44 | 23 | 33 | 31 | 2 | (12.0) |
| Stolen Prop. | 62 | 27 | 18 | 17 | 1 | (3.6) |
| Poss. Weapon | 40 | 45 | 15 | 15 | 0 | (6.8) |
| Drug Sale | 30 | 28 | 42 | 34 | 8 | (9.9) |
| Drug Possn. | 54 | 30 | 16 | 13 | 3 | (12.2) |
| Gambling | 40 | 60 | -- | -- | -- | (2.6) |
| Forgery | 35 | 51 | 14 | 11 | 3 | (8.6) |
| Other | 38 | 38 | 23 | 17 | 6 | (4.5) |
| TOTAL | 45 | 26 | 29 | 23 | 6 | 100.0 |

2000 sample
Weighted N = 69,898
Approximate N = 1,397

Note: A percentage in parentheses in the body of the table indicates that the approximate "real" N (non-weighted) represents less than 15 cases.

Homicide, rape, robbery, and sale of drugs were most likely to end in a felony prison sentence. The dismissal rates for rape, assault, and the "possession" crimes (stolen goods or drugs) had relatively high dismissal rates. These were crimes with peculiar evidentiary problems: rape required corroboration; assault often raises questions of self defense; and "possession" requires proof of knowledge or tying the object to the possessor and also required a constitutionally permissable search. Charges of possession of a dangerous weapon have disposition patterns not too different from the average, except that in no case in our sample was there a prison sentence of over one year for a weapons charge.

Having reported on the amount of committed and reported crime, on the number of arrests and dispositions, a composite picture can be presented. In Table 6-8 the first column presents the pertinent numbers as they have been developed in Chapters 3, 4, and 5. Columns II, III and IV clarify certain relationships between these numbers by putting them on a percent basis.

The figures in each column that are not in parentheses add up to 100 percent; they are exclusive categories. The numbers in parentheses are subtotals to which two or more of the other figures combine. Thus, the figure of those

"convicted" is a subtotal of those listed under "convicted-walk" and "convicted-prison."

The bottom three rows going across the table are the numbers indicating the fractions that end in prison. The very bottom row indicates those sentenced to a prison sentence of more than one year.

6-12

Table 6-8

Crimes, Arrests and Dispositions

| | I. 1971 Figures** | II. % of Committed Felonies | III. % of Felonies Reported to Police | IV. % of Criminal Prosecutions |
|---|---|---|---|---|
| Felonies Committed* | 847,800 | 100.0 | | |
| Reported to Police | 459,800 | 54.2 | 100.0 | |
| (Arrested)*** | (57,700) | 6.8 | 12.5 | |
| Removed to Family Court | 7,300 | .9 | 1.6 | |
| (Criminal Prosecution) | (50,400) | (5.9) | (11.0) | 100.0 |
| Jumped Bail | 3,100 | .3 | .7 | 6.2 |
| (Adjudicated) | (47,300) | (5.6) | (10.3) | (93.8) |
| Dismissed & Acquitted | 21,100 | 2.5 | 4.6 | 41.8 |
| Convicted | (26,200) | (3.1) | (5.7) | (52.0) |
| "Walk" | 13,400 | 1.6 | 2.9 | 26.6 |
| Prison | (12,800) | (1.5) | (2.8) | (25.4) |
| Prison up to 1 year | 10,200 | 1.2 | 2.2 | 20.2 |
| Prison over 1 year | 2,600 | 0.3 | 0.6 | 5.2 |

* Containing only the so-called Index crimes: homicide, rape, aggravated assault, robbery, burglary, grand larceny; not included are narcotics and "other" crimes.

** Rounded off to the nearest 100.

*** The number of arrests also pertains only to the index crimes.

Thus, 54 percent of committed felonies were reported to the police; for every 100 reported crimes there were 12 arrests, and of these 10 were prosecuted in the criminal court system.

At the other end of the table there were 3 convictions for every 100 committed felonies, 5.7 convictions for every 100 reported felonies, and 52 convictions for every 100 prosecutions.

Finally, 1.5 prison sentences were imposed for every 100 committed felonies with 0.3 prison sentences for a year or more.

It should be noted that in tracing the descending path from felonies committed to prison sentences (100 down to 1.5) the biggest drop-offs do not occur in court but rather in the decision to report a felony (100 down to 54.2) and the police effort to arrest a suspect (54.2 down to 6.8).

One way to understand the significance of these figures is to note, for example, that if the police made arrests for 50 percent of all reported felonies and the court's rate of dispensing prison sentences stayed the same, 6.9 defendants per 100 felonies would be sentenced to prison (instead of the 1.5); whereas if police efficiency stayed the same but the courts became "perfectly efficient" and sent 100 percent of all defendants to jail (assuming, just for this argument

that sending defendants to jail is a definition of court efficiency), only 5.9 defendants per 100 would go to prison. To put it simply, these data suggest that absent other improvements in law enforcement even the most improved court system imaginable would have a limited effect on the number of felonies that result in jail sentences.

# CHAPTER 7

## Sentencing

Sentencing is a complex procedure in which prosecutor, judge, defense counsel, and probation department take part in varying ways. More often than not, the defendant when pleading guilty knows approximately what sentence to expect. Differences in the severity of the sentence are largely explained by two factors: the defendant's prior criminal record and the nature of the crime.

The sentencing process in the courts is loosely defined, with the law providing only broad boundaries with judicial discretion:

Table 7-1

Sentencing Frames for the Crime Classes of the New York Penal Law

| | Maximum Prison Sentence | Minimum Prison Sentence | Minimum Non-Prison Sentence |
|---|---|---|---|
| **Felonies** | | | |
| A | life* | 15 years | None |
| B | 25 years | 1 year | Probation (no discharge or fine only) |
| C | 15 years | 1 year | Probation and discharge** (no fine only)**** |
| D | 7 years | 1 day | Probation, discharge**, fine**** |
| E | 4 years | 1 day | Probation, discharge**, fine**** |
| **Misdemeanors** | | | |
| A | 1 year | None | All alternatives permitted**** |
| B | 90 days | None | All alternatives permitted**** |
| Violations*** | 15 days | None | Conditional discharge, fine (no probation) |
| Infractions | determined by section of law | None | Conditional discharge, fine (no probation) |

Source: New York City Penal Law Code, 1967

* Indeterminate sentences are not allowed for A felonies: there is a minimum of 15 years. All other felonies permit indeterminate sentences, in which the courts can set minimums as well as maximums. If the court fails to set a minimum, the Parole Board may consider release after "1/3 the maximum" is served.

** Except for narcotics crimes.

*** Parking violations and the bulk of traffic violations are technically not criminal and are handled by the Parking Violation Bureau, an administrative agency, not a court.

**** NACC optional for certified addicts on felony convictions, mandatory for misdemeanor convictions.

Conviction of an A felony brings a minimum sentence of 15 years and can bring a maximum sentence of life. For any other conviction the law has practically no minimum sentence. The judge may always grant probation, for all except A and B felony convictions. He may even discharge the defendant unless the crime is a narcotics crime.[1)]

While minimum sentences are hardly graded, the maximum sentences are sharply related to the crime class for which a conviction was obtained; life for an A felony, 25 years for a B felony, 15 years for a C felony, down to 4 years for the lowest felony, E.

The maximum sentence for any conviction below the felony level is one year, hence, in the jargon of the court, any prison sentence longer than one year is "felony time."

Because many felony arrests end up as convictions for misdemeanors or less, the full range of crime classes should be noted. Of particular interest is the sentence that may send a convicted addict to the state operated rehabilitation program, the NACC (Narcotics Addiction Control

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1) These were the minimum sentence in force during the time of this study. On September 1, 1973 they were changed.

Commission). Prior to September 1973, addicted defendants convicted of a misdemeanor were automatically sentenced to NACC; for addicted felons, sentencing to NACC was in the discretion of the judge. By statute, NACC sentences were 36 months for misdemeanors and 60 months for felonies. However, the interviews suggested that during the time this study was conducted NACC often released inmates after they had served less than a year.

Sentences vary not only with the characteristics of the crime and the defendant, but also from judge to judge, and prosecutor to prosecutor.[2)]

This chapter sets out to discover some of the unwritten guidelines and principles that underlie the sentencing process in New York courts.

The task is twofold: to describe the outward process; that is the roles played by judge, probation, prosecutor, and defense counsel; and to discover the substantive principles that guide the process.

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2) Cf. for instance, one judge's comment about a defendant who pled guilty at arraignment: "The lawyer made a mistake. The case would have gone to Judge 'X' who is likely to give a lower sentence in a case like this."

The law gives little guidance as to where, within the wide frame, the sentence is to be fixed. The law is as silent about sentencing principles as judges are about their reasons for passing sentence or the basis for agreement to a sentence negotiated between prosecutor and defense counsel.

Since only 2 percent of all convictions came after trial, the great bulk of sentencing decisions were the aftermath of a negotiated guilty plea.

Table 7-2 sketches the role of the promised sentence in the negotiated guilty plea. It is based on interviews conducted with the judge, prosecutor and defense counsel in the 400 sample.[3)]

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3) This analysis was particularly affected by the 400 sample data discussed on p. 18. Bias was a particular problem. For example, a defense lawyer may want to claim that he negotiated a promise for a light sentence; a prosecutor may want to claim that he negotiated a promise for a heavy sentence; and a judge may deny he promised a sentence before a defendant pleaded guilty. This is because such a promise may be seen as vitiating the voluntariness of the guilty plea and is, in fact, a violation of Section 3.3(a) of the ABA's Standards for Criminal Justice, which says: "a trial judge should not participate in plea discussions."

Table 7-2

Sentence Promise as a Part of the Negotiated Plea

| Sentence Promise | Percent |
|---|---|
| Counsel and prosecutor agree on sentence and judge accepts | 15 |
| Sentence agreement is worked out with participation of judge | 57 |
| An implied sentence promise is made by allowing a plea to-- | |
| A misdemeanor | 17 |
| B misdemeanor or less | 5 |
| No promise and no misdemeanor plea reduction | 6 |
| | 100% |

400 Sample
Weighted N = 39,174
Approximate N = 213

In 72 percent of guilty pleas, it was reported that the defendant had assurance of what his sentence would be as part of the plea bargain. In 15 percent of the cases the judge accepted the plea negotiated between the parties; and in 57 percent of the cases the judge took an active hand in the negotiations and the agreement.

In the other 28 percent of the cases, the defendant did not have assurance of his sentence. But in the 22 percent of the cases in which he was allowed to plead

guilty to a misdemeanor or a lesser offense, he knew the upper limit of the sentence was one year imprisonment. In principle this was also true if he was allowed to plead guilty to a lesser felony than originally charged. However the figures indicate that the sentence virtually never reaches the upper limit of the felony range.

The sentence promises were reported to have been distributed as follows:

Table 7-3

The Substance of the Sentence Promise

| | Percent |
|---|---|
| Treatment program . . . . . | 4 |
| Probation . . . . . | 23 |
| Fine . . . . . | 10 |
| Upper limit for prison term: | |
| --expressly agreed upon . . . . . | 27 |
| --implied by abandoning of felony charge. . | 23 |
| Other . . . . . | 13 |
| | 100% |

400 Sample
Weighted N = 38,145
Approximate N = 207

Sometimes a presentencing report from the court's probation department aided in the formulation of the sentence:

Table 7-4

Availability of Pre-Sentencing Report

| | in Criminal Court % | in Supreme Court % | TOTAL % |
|---|---|---|---|
| No report available | 63 | 10 | 31 |
| Report available | | | |
| Without recommendation | 2 | 2 | 2 |
| With recommendation | 35 | 88 | 67 |
| | 100% | 100% | 100% |

400 Sample
Weighted N = 48,392
Approximate N = 263

In the Supreme Court a Presentencing Report was available in nine out of ten cases, in the Criminal Court only in one third of the cases. In almost all cases the report contained a sentence recommendation. The judges reported in almost all cases that when these reports recommended probation they followed the recommendation.

However, it is more difficult to ascertain the reasoning at work when there was a decision to sentence a defendant to prison. This is true despite the fact that there are some well known basic sentencing criteria. First, there is the sentencing frame set by the legislature for each type of crime. Second, there are the aggravating or

mitigating circumstances of the case. These can be divided into three elements: the particular circumstance of the crime such as the degree of premeditation, the motive, the degree of injury or damage inflicted; the characteristics of the defendant, such as his age, his criminal record, his family responsibilities; and, finally, the defendant's behavior after the commission of the crime, such as his pleading guilty, or his turning state's evidence.

These principles, however, are of little practical value because the law says nothing about the weight to be given to mitigating or aggravating circumstances. Judges, therefore, differ in their evaluations and hence in sentences imposed in comparable cases.

The remainder of this chapter is an attempt to discover what pattern, if any, there is to how these criteria are followed. This attempt will follow two different routes in the expectation that they will eventually meet. The analysis of the 2000 sample will search for the objective characteristics that distinguish the cases with severe sentences from the cases with low sentences. The second approach will be the subjective reasons--both mitigating and aggravating--reported by the judges in the 400 case sample as to why they fixed the sentence at a certain point.

The starting point for the 2000 case analysis is the overall distribution of sentences.[4)]

Table 7-5

Sentencing Pattern of All Convicted Defendants

| | | Percent |
|---|---|---|
| Fine only | | 13 |
| Discharge | | 16 |
| Probation | | 19 |
| Total Non-Prison | (48) | |
| NACC | | 3 |
| Prison 1 year or less | | 40 |
| Prison more than 1 year | | 9 |
| Total Prison | (52) | |
| | | 100% |

2000 sample
Weighted N = 39,251
Approximate N = 785

The defendants in this table will now be broken down into subgroups in the hope of finding patterns that help explain the sentencing process. Table 7-6 begins by recording the sentences for the various specific crimes charged at the time of arrest.

4) Cf. Table 6-4, p. 71.

Table 7-6

Sentence by Type of Crime

| | Homicide % | Rape % | Robbery % | Assault % | Burglary % | Grand Larceny % | Stolen Prop. % |
|---|---|---|---|---|---|---|---|
| Fine Only | 14+ | - | 1 | 12 | 3 | 6 | 23 |
| Discharge | - | - | 12 | 24 | 16 | 11 | 7 |
| Probation | - | 15 | 19 | 30 | 11 | 20 | 15 |
| Total Non-Prison | (14)++ | (15) | 32 | 66 | 30 | 37 | 45 |
| NACC | - | - | 4 | - | 3 | 7 | 1 |
| 1 yr. or less | - | - | 43 | 28 | 62 | 53 | 51 |
| More than 1 yr. | 86 | 85 | 21 | 6 | 5 | 3 | 3 |
| Total Prison | (86) | (85) | 68 | 34 | 70 | 63 | 55 |
| TOTAL | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| Share of TOTAL (%) | 2 | * | 15 | 7 | 15 | 12 | 4 |

2000 Sample
Weighted N = 39,161
Approximate N = 783

+ The surprising 14 percent defendants fined after an arrest charge of homicide represent one conviction subsequently reduced to assault.

++Number in parentheses refers to base of less than 15 cases.

* Less than 0.5%.

The table related the sentence of convicted defendants who had been arrested on (but not necessarily convicted of) the charges indicated in the column headings.

Homicide and rape arrest, if leading to convictions result almost always in long prison sentences (85 percent). Prison, for the most part less than one year, was the sentence for the majority of convicted defendants arrested for robbery, burglary, and grand larceny.

Table 7-7 shows the relationship between sentence and severity of arrest charge.

Table 7-7

Sentencing Pattern by Crime Class of Arrest

| | A % | B % | C % | D % | E % | TOTAL % |
|---|---|---|---|---|---|---|
| Fine Only | - | 1 | 3 | 17 | 28 | 13 |
| Discharge | 3 | 10 | 16 | 19 | 13 | 16 |
| Probation | 8 | 19 | 22 | 20 | 13 | 19 |
| Total Non-Prison | 11 | 30 | 41 | 56 | 54 | 48 |
| NACC | - | 3 | 2 | 2 | 5 | 3 |
| Prison-1 yr. or less | 7 | 40 | 45 | 40 | 39 | 40 |
| Prison-over 1 yr. | 82 | 27 | 12 | 2 | 2 | 9 |
| Total Prison | 89 | 70 | 59 | 44 | 46 | 52 |
| TOTAL | 100 | 100 | 100 | 100 | 100 | 100 |
| Share of all cases | ( 2) | (13) | (21) | (47) | (17) | (100) |

2000 sample
Weighted N = 38,991
Approximate N = 780

The proportion of defendants sentenced to prison time declined with the arrest class, from 89 percent in Class A to 44 and 46 percent in class D and E. Prison sentences of Class A arrests were almost always (82 percent) "felony time," over one year; the frequency of these long prison sentences declined sharply in the other classes. The fine, the least severe sentence, increased as the arrest class descended. The sentences which form the middle range--conditional discharge, probation, NACC, and prison up to one year--varied little between arrest classes, with the exception of the small A class which ended almost exclusively in long prison sentences.

Table 7-8 relates the sentence to that crime class of which the defendants were convicted.

Charged At Arrest

| Poss. Weapon % | Drug Sale % | Drug Poss. % | Gambling % | Forgery % | Other % | Total % |
|---|---|---|---|---|---|---|
| 29 | 1 | 12 | 81 | 49 | 22 | 13 |
| 17 | 10 | 28 | 19 | 16 | 15 | 16 |
| 29 | 28 | 21 | - | 7 | 29 | 19 |
| 75 | 39 | 61 | 100 | 72 | 66 | 48 |
| - | 1 | 2 | - | 2 | 2 | 3 |
| 25 | 48 | 30 | - | 21 | 28 | 40 |
| - | 12 | 7 | - | 5 | 4 | 9 |
| 25 | 61 | 39 | - | 28 | 34 | 52 |
| 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| 7 | 10 | 12 | 3 | 8 | 5 | 100 |

Table 7-3

Sentences by Crime Class

| | Felonies | | | | | Misdemeanors | |
|---|---|---|---|---|---|---|---|
| | A % | B % | C % | D % | E % | A % | B % |
| Fine Only | - | - | 6 | 4 | 9 | 8 | 15 |
| Discharge | - | - | 5 | 9 | 15 | 14 | 25 |
| Probation | - | 10 | 30 | 30 | 27 | 20 | 12 |
| Total Non-Prison | 0 | 10 | 41 | 43 | 51 | 42 | 52 |
| NACC | - | - | 6 | 2 | 1 | 4 | 1 |
| Prison-1 yr. or less | - | 36 | 14 | 25 | 25 | 54 | 47 |
| Prison-over 1 yr. | (100) | 54 | 39 | 30 | 23 | - | - |
| Total Prison | (100) | 90 | 59 | 57 | 49 | 58 | 48 |
| TOTAL | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| Share of all Convictions (%) | ( 1) | ( 2) | ( 3) | (11) | (13) | (44) | (15) |
| | | Total Felonies* 30% | | | | | Total |

2000 sample
Weighted N = 39,214
Approximate N = 784

* As explained on page 52 in table footnote the N's throughout the report vary; therefore there are discrepancies in cumulative data such as the felony misdemeanor ratio of 30:70 in this table which differs from the ratio of 26:74 in Table 6-2.

| Convicted of | | |
|---|---|---|
| Violations | Infractions | TOTAL |
| % | % | % |
| 39 | (100) | 13 |
| 33 | - | 16 |
| 1 | - | 19 |
| 73 | (100) | 48 |
| 3 | - | 3 |
| 24 | - | 40 |
| - | - | 9 |
| 27 | - | 52 |
| 100 | (100) | 100 |
| (10) | ( 1) | 100 |

Misdemeanors and Less
70%

The relationship between sentence and the class of crime convicted of was more pronounced than between sentence and arrest. Sentences of felony time (over one year) declined with every crime class, and so did misdemeanor time (up to one year). However, this sharper profile is partly the result of having nine different crime classes in Table 7-8 as against only five in Table 7-7. Then there is the second problem, namely that one cannot be certain that it was the crime class agreed upon in the plea negotiations which determined the sentence. In many cases, it could have been the agreed upon sentence that determined the conviction charge. As one judge explained: "The charge reduction is often a courtesy to the judge, so that the agreed upon sentence is not in sharp contrast to the convicted of charge."

Note, however, that the proportion of defendants sentenced to prison hardly varied for felonies C, D, E. And for misdemeanors A and B. The range of variation was only between 58 and 48 percent.

The second factor which determined the severity of sentence was the defendant's criminal record--the law, in fact, requires taking account of prior convictions.[5)]

---

5) Possession of a dangerous weapon and of an unloaded firearm were an A misdemeanor. If the defendant had a prior conviction the offense was a D felony.

First, here is the overall relationship between prior record and sentence:

Table 7-9

Sentence by Defendant's Record

| | None | Arrest | Conviction | Prison | TOTAL |
|---|---|---|---|---|---|
| Fine | 23 | 14 | 12 | 8 | 13 |
| Discharge | 25 | 20 | 15 | 6 | 16 |
| Probation | 30 | 27 | 15 | 2 | 19 |
| Total Non-Prison | 78 | 61 | 42 | 16 | 50 |
| Prison-1 yr. or less | 21 | 37 | 56 | 54 | 41 |
| Prison-more than 1 yr | 1 | 2 | 2 | 30 | 9 |
| Total Prison | 22 | 39 | 58 | 84 | 50 |
| TOTAL | 100 | 100 | 100 | 100 | 100 |

2000 sample
Weighted N = 30,997
Approximate N = 620

As might be expected, the severity of sentence was greatly affected by the defendant's prior record. The likelihood of a non-prison sentence was 78 percent if the defendant had no prior record, but only 16 percent if he had a prior record.

A prison sentence over one year was hardly ever given

to a defendant who did not already have a prison record. But 30 percent of defendants with a prior prison sentence went to prison for more than one year.

Since sentence was related to both the defendant's criminal record and the crime, it is necessary to see how sentence related to both categories. Tables 7-10(a) and (b) relate sentence to record and arrest crime class; Tables 7-11(a) and (b) to record and conviction crime class.

Table 7-10(a)

Proportion of Convicted Defendants Sentenced to Prison
(by Criminal History and Arrest Crime Class)

| Prior record | A+B % | C % | D % | E % | TOTAL % |
|---|---|---|---|---|---|
| Prison | 93 | 94 | 70 | 62 | 81 |
| Conviction | (59)* | 64 | 52 | 57 | 52 |
| Arrest | 32 | 39 | 42 | 33 | 32 |
| None | (39) | 27 | 19 | 23 | 20 |
| Total sentenced to Prison | 72 | 58 | 41 | 44 | 50 |

2000 sample
Weighted N = 30,900
Approximate N = 618

* A percentage in parentheses signifies that the base was less than 15 cases.

The table shows that distinctions in the prior criminal record of a defendant was a more important sentence determinant than crime class charged. In each crime class the proportion of defendants sentenced to prison was over twice as great for those with prison records compared with defendants with no criminal records. For example, of defendants charged with D felonies, 70 percent with a prison record were sentenced to prison compared to 19 percent with no record. The distinctions among crime class were not as sharp: for defendants with an arrest record, 33 percent of those charged with an E felony compared to 39 percent of those charged with a C felony were sentenced to prison. For those defendants with a prior prison record or no record, class of crime charged appeared to be more important in sentencing than for defendants with an arrest only or conviction only record.

In Table 7-10(b) the same table is presented but with the proportion of defendants sentenced to over a year in each cell.

Table 7-10(b)

Proportion of Convicted Defendants Sentenced to Prison Over One Year (by Criminal History and Arrest Crime Class)

| | A+B % | C % | D % | E % | TOTAL % |
|---|---|---|---|---|---|
| Prior record | | | | | |
| Prison | 50 | 40 | 5 | 5 | 28 |
| Conviction | (12) | - | 1 | - | 2 |
| Arrest | 15 | 1 | - | - | 2 |
| None | (10) | - | 1 | - | 1 |
| Total sentenced over 1 yr. | 35 | 13 | 1 | 1 | 9 |

2000 sample
Weighted N = 30,923
Approximate N = 618

This table suggests that unless a defendant is charged with an A or B class felony or has served time in prison on an earlier charge, the likelihood of being sentenced to over a year in prison is practically nil.

In Tables 7-11(a) and (b) the proportions of defendants sentenced to prison and sentenced to prison over a year by conviction class are presented.

Table 7-11(a)

Proportion of Convicted Defendants Sentenced to Prison
(by Criminal History and Crime Class Convicted of)

| | Felonies | | | | Misdemeanors or Less | | |
|---|---|---|---|---|---|---|---|
| | A+B % | C % | D % | E % | A % | B or less % | TOTAL % |
| Prior Record | | | | | | | |
| Prison | (100) | (100) | 94 | 90 | 83 | 63 | 81 |
| Conviction | - | (36) | 20 | (37) | 68 | 55 | 53 |
| Arrest | - | - | (16) | 27 | 48 | 31 | 33 |
| None | - | - | (13) | 31 | 39 | 18 | 23 |
| Total Sentenced | (100) | (68) | 55 | 52 | 51 | 32 | 47 |

2000 sample
Weighted N = 29,600
Approximate N = 592

This table suggests that in imposing prison sentences, judges were responding to a defendant's prior record but not to the conviction charge. For each charge level, a defendant with a prison record was more likely to be sentenced to prison than one with a prior conviction record, who in turn was more likely to be sentenced than one with a prior arrest record but no conviction record. For each class of crimes, with the exception of a minor reversal for E felonies, defendants with no prior record were least likely to be sentenced to prison. Surprisingly, there was no consistent pattern for class of convicted crime.

Table 7-11(b) presents the proportion of defendants sentenced to over a year in prison.

Table 7-11(b)

Proportion of Convicted Defendants Sentenced to Over One Year
(by Criminal History and Crime Class Convicted of)

| Prior record | A+B % | C % | D % | E % | TOTAL % |
|---|---|---|---|---|---|
| Prison | (85) | (100) | 67 | 63 | 70 |
| Conviction | - | (36) | - | (6) | 37 |
| Arrest | - | - | (16) | 7 | 10 |
| None | - | - | (9) | 9 | 10 |
| Total sentenced over 1 yr. | (85) | (68) | 37 | 27 | 43 |

2000 sample
Weighted N = 29,600
Approximate N = 592

The proportion sentenced over a year varied both with prior record and charge class convicted of.

Tables 7-10(a) and (b) and 7-11(a) and (b) suggest that judges in imposing sentence were more concerned with the characteristics of the defendant than with the crime committed. In Tables 7-12(a) and (b), the mitigating and aggravating reasons judges offered for sentences are presented. (A judge often gave more than one reason and thus in the following tables the number represents the percentage

of cases affected by the specific reason, e.g.; in 5 percent of convicted cases the youth of the defendant was considered a mitigating circumstance by the judge in imposing the sentence.)

Table 7-12(a)

Mitigating Sentence Considerations

| | Percent |
|---|---|
| **Defendant Characteristics** | |
| Non-serious or moderate criminal record | 43 |
| Employed | 21 |
| Family responsibilities | 15 |
| Old | 7 |
| Defendant in drug program | 7 |
| Drug problem | 6 |
| Young | 5 |
| Emotional problem | 3 |
| Small scale dealer | 3 |
| Alcohol problem | 2 |
| Family takes interest | 2 |
| Impoverished | 2 |
| No prior drug program | 2 |
| Non-addict | 1 |
| Minority group | 1 |
| Female | 1 |
| Veteran | 1 |
| Middle class | 1 |
| Working Class | * |
| **Crime Characteristics** | |
| Minor crime | 26 |
| Prior relationship | 15 |
| "Junk" case | 15 |
| No or minor injuries to complainant | 6 |
| Property crime | 4 |
| Minor role in crime | 2 |
| Weapon other than gun | 2 |
| No weapon | 2 |
| Victimless crime | 1 |

| | Percent |
|---|---|
| **Management Problems** | |
| Court congestion | 11 |
| Old case | 3 |
| Prison Congestion | 1 |
| **Sentence Factors** | |
| Time served | 7 |
| Outstanding parole sentence | 6 |
| Penal Law mandates NACC | 4 |
| Doesn't believe in prison | 4 |
| Probation Department overworked/ineffective | 1 |

400 Sample
Weighted N = 43,161
Approximate N = 234

Note: Since one case may have several reasons the percent does not total 100.

* Less than 0.5%

Table 7-12(b)

Aggravating Sentencing Considerations

| | Percent |
|---|---|
| **Defendant Characteristics** | |
| Serious criminal record | 18 |
| Bad employment record | 3 |
| "Flunked out" of drug program | 2 |
| Non-addict dealer | 2 |
| Middle class | 2 |
| Addict | 1 |
| Dealer | 1 |

| | Percent |
|---|---|
| Defendant's Subsequent Behavior | |
| Defendant's attitude | 6 |
| Jumped bail | 2 |
| Committed new crime | 1 |
| Crime Characteristics | |
| Violent crime | 10 |
| Presence of gun | 5 |
| Serious injury | 3 |
| Weapon other than gun | 2 |
| "White collar" crime | 1 |
| Charged originally as felony | 1 |

400 Sample
Weighted N = 43,161
Approximate N = 234

Characteristics of the defendant, especially his prior record, were most often cited as mitigating or aggravating sentence considerations. Secondly, the nature of the crime or a prior relation between victim and defendant were cited as reasons for sentence leniency. Conversely, the fact of a violent crime was considered an aggravating circumstance in a substantial portion of cases.

The data on sentencing suggest that although the percent of felony arrests which end in a prison sentence is less than a quarter the arrests (and perhaps only 1.5 percent of committed felonies), defendants sentenced to prison are those who have committed the more serious crimes and who have the more serious past records.

# CHAPTER 8

## The Processing of Arrests

A case may run the full route from the complaint room to arraignment, to preliminary hearing in the Criminal Court to indictment by the Grand Jury, and to arraignment and trial in the Supreme Court. But in fact, three fourths of felony arrests were disposed of without indictment in the Criminal Court, most at the preliminary hearing stage. Whether to indict a case and bring it to the Supreme Court is a decision that depends primarily on the gravity of the charge and the defendant's criminal record.

New York is made up of five counties: New York County (Manhattan), the Bronx, Kings County (Brooklyn), Queens, and Richmond (Staten Island). Each county has its own District Attorney (DA), elected by the people of the county: he is an autonomous official, answerable to the electorate. This independence results in differences in prosecutorial policy between the counties which in turn have an impact on the processing and disposition of cases.

New York City does not have a public defender system. Indigent defendants are, for the most part, represented by the Legal Aid Society, a private, non-profit corporation supported largely by public funds. In homicide cases and in cases of multiple defendants, where there may be a conflict of interest if Legal Aid represented more than one defendant, the court appoints a private attorney ("assigned counsel"). The remainder of the defendants are represented by retained counsel; the proportion varies from borough to borough.

Most felony arrests are made by New York City's Police Department, a centralized agency responsible to the mayor. There are also other police agencies in the city empowered to make felony arrests. These include the Housing Authority Police, the Transit Authority Police,

and the Port Authority Police.

There is one city-wide Criminal Court and one Supreme Court in each county. The Criminal Court, the lower court, arraigns felony arrests, conducts preliminary hearings to determine whether felony charges should be bound over to the Grand Jury, and has jurisdiction over all cases up to and including misdemeanors. The maximum sentence a Criminal Court judge may impose is imprisonment for one year.

The Supreme Court has sole jurisdiction over all felony indictments. There is no jurisdictional bar, however, to misdemeanor dispositions in the Supreme Court.

The route of a felony arrest may be extremely long if the case goes all the way to trial; it may, however, end at arraignment a few hours after the arrest, or anywhere between the two extremes.

The process begins with the policeman's report of the arrest to the precinct station house, or to a Central Booking Unit, where formal arrest charges are made. Under the law the police may drop the arrest charge at booking, but this rarely happens.

If the suspect is under the age of 16, the case is transferred to the Family Court. Cases of child neglect

or child abuse may also start in the Criminal Court and be transferred to Family Court. Charges originating in disputes among adult family members are also sent to Family Court. These consist of acts of assault (or attempted assault), disorderly conduct, harrassment, or reckless endangerment between spouses, parent and child, or members of a family or household. Such cases are transferred from Criminal to Family Court unless the complaint 1) is withdrawn within three days, 2) originated in Family Court and was transferred to Criminal Court, or 3) is dismissed for legal insufficiency.

On weekends, when Family Court is closed, family cases are arraigned in Criminal Court and later re-routed to Family Court. Family Court cases constituted 14 percent of the felony arrests made in 1971.

From the station house, the arresting policeman brings the case to the Complaint Room, a branch of the District Attorney's office, where an Assistant District Attorney (ADA) draws up the legal charges. The Complaint Room offers the District Attorney his first opportunity to review the charges, discuss the case with the arresting officer, and talk with the complainant and other witnesses. Based on his evaluation, a reviewing assistant writes up

the charges and may make suggestions for appropriate court action. Assistants are empowered at this stage to raise, reduce, or dismiss the charges drawn by the police, except in Queens, where this reviewing decision is left to the clerk of the court.

Table 8-1 shows that in most cases the ADA accepts the police charges unchanged:

Table 8-1

Changes in Arrest Charge in the Complaint Room

| | % |
|---|---|
| Initial legal charge | |
| corresponds to the arrest charge | 85 |
| differs from the arrest charge | 15 |
| reduced to lesser felony | 7 |
| reduced to misdemeanor | 5 |
| increased felony charge | 3 |
| | 100% |

400 Sample
Weighted N = 66,818
Approximate N = 363

After processing in the Complaint Room, the case is sent to Criminal Court Arraignment where the charges are read and bail set. It is possible for a case to be disposed here either through a dismissal or guilty plea. The judge usually has before him at this time the defendant's crimi-

8-6
7/29



nal record, transmitted from NYSSIS in Albany via teletypewriter, and the Release on Recognizance (ROR) report to help the judge evaluate the likelihood that the defendant will flee the jurisdiction unless he is kept in custody or made to provide adequate bail.

Here, as at any later stage, the case may be disposed of by dismissal or guilty plea. Table 8-2 below shows how often this happens. In the absence of disposition, the judge decides on bail. He may release the defendant on recognizance, usually his own (ROR), or he may set bail, at an amount he deems appropriate. In some cases the law requires that the defendant be held without bail.[1)]

The next stage is the preliminary hearing before a judge of the Criminal Court in which he determines whether there is "reasonable cause" to bind the defendant over for indictment before the Grand Jury.

The preliminary hearing must be held within 72 hours of arrest if a defendant is detained. If the defendant is not in custody, the hearing is likely to be held within a few weeks of arrest, depending on the calendar and availability of witnesses. The hearing is part of the many-tiered screening process designed to weed out

---

1) See Appendix C, Bail.

cases that do not justify felony conviction. It provides prosecutor, judge and defense counsel another opportunity to review and evaluate the case.

No preliminary hearing is held if the DA moves directly for indictment by the Grand Jury, or if the defendant waives his right to the hearing because he wants to speed matters up.

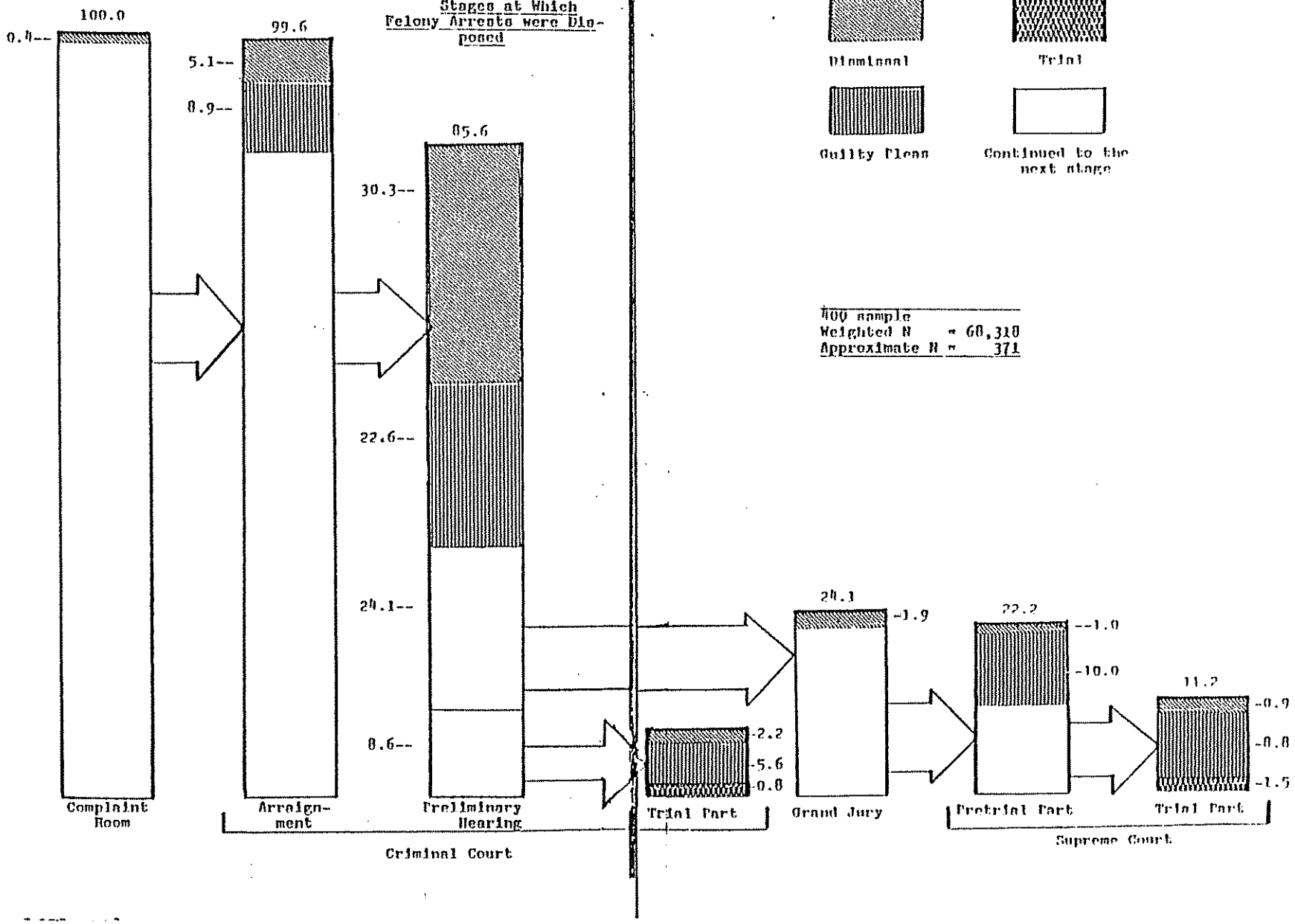
The Grand Jury (an arm of the Supreme Court) has the option of reducing a felony to a misdemeanor and returning the case to Criminal Court, dismissing the charges outright or indicting a defendant. If the Grand Jury indicts, the case is arraigned in the Supreme Court. A pretrial conference is then held, and from there the case moves to trial.

At any one of these stages the case may be disposed of without trial either by being dismissed or by the defendant pleading guilty.

The flow chart in Figure 8-1 gives a quantitative overview of the stages at which the felony arrests in the sample were disposed:

Figure 8-1

Stages at Which Felony Arrests were Disposed



8-10
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Table 8-2 reorders one dimension of Figure 8-1; it shows for each type of disposition, the stage at which it occurred:

Table 8-2

Stages at which Felony Arrests are Disposed
(by type of disposition)

| | Dismissals % | Guilty Pleas % | Trials % | All Dispositions % |
|---|---|---|---|---|
| Complaint Room | 1 | -- | -- | * |
| Criminal Court | 91 | 66 | 35 | 77 |
| Arraignment | 12 | 16 | -- | 15 |
| Preliminary Hearing Stage | 73 | 40 | -- | 54 |
| Trial Part | 5 | 10 | 35 | 8 |
| Grand Jury | 4 | | | 1 |
| Supreme Court | 4 | 34 | 65 | 22 |
| Pretrial Part | 2 | 18 | -- | 11 |
| Trial Part | 2 | 16 | 65 | 11 |
| TOTAL | 100 | 100 | 100 | 100 |
| (Share of all dispositions) | (43%) | (55%) | (2%) | (100%) |

400 Sample
Weighted N = 68,318
N = 371

2000 Sample
Weighted N = 68,270
Approximate N = 1365

* Less than .5%.

8-11
2/29



Ninety-one percent of all dismissals took place in the Criminal Court. Of the guilty pleas, two-thirds occurred in the Criminal Court, one-third in the Supreme Court. Two percent of all cases were decided by trial, one-third of them in the Criminal Court, two-thirds after indictment in the Supreme Court.

Table 8-3 summarizes the other dimension of Figure 8-1 by having its percent figures run in a different direction. The table shows the type of dispositions that occurred at each of the decision points. The figures in parentheses at the bottom of the table indicate the share of all dispositions that occurred at the particular stage:

8-12
7129



Table 8-3

Disposition at Different Stages of Case Processing

| | Criminal Court | | | | Supreme Court | | | | |
|---|---|---|---|---|---|---|---|---|---|
| | Arraign-ment | Hear-ing Part | Trial Part | Crim. Ct. Total | Grand Jury | Pre-trial Part | Trial Part | Sup. Ct. Total | Grand TOTAL |
| | % | % | % | % | % | % | % | % | % |
| Dis-missal | 36 | 58 | 28 | 47 | 100 | 6 | 8 | 7 | 43 |
| Guilty Plea | 64 | 42 | 64 | 45 | - | 94 | 78 | 86 | 55 |
| Trial | - | - | 8 | 8 | - | - | 14 | 7 | 2 |
| TOTAL | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| Share of TOTAL | (14%) | (53%) | (9%) | (76%) | (2%) | (11%) | (11%) | (24%) | |
| 400 Sample Weighted N = 68,318 Approximate N = 371 | | | | | 2000 Sample Weighted N = 68,270 Approximate N = 1365 | | | | |

* The 0.4 percent dismissals in the complaint room (Figure 8-1) fall victim to the rounding off process.

As long as the case remained in the Criminal Court, dismissals and guilty pleas were fairly evenly divided. Once a defendant was indicted and moved to the Supreme Court, the dismissal rate was reduced to 7 percent. Eighty-six percent of the defendants pleaded guilty, and 7 percent went to trial.

A case reaches the Supreme Court if the district attorney presents the case to the Grand Jury and if the Grand Jury indicts. The district attorney's decision depends largely on the severity of the charged crime.

Table 8-4

Indictment Rates* by Crime Charged at Arrest

| | |
|---|---|
| Homicide | 67 |
| Rape | 38 |
| Robbery | 22 |
| Assault | 22 |
| Burglary | 17 |
| Grand Larceny | 14 |
| Dang. Weapon | 23 |
| Drug Sale | 39 |
| Drug Possn. | 16 |
| Gambling | 16 |
| Forgery | 9 |
| Other | 20 |
| All Arrests | 22 |

2000 sample
Weighted N = 78,255
Approximate N = 1565

* Indictments per 100 arrests for that crime

The decision to indict also depends on the defendant's criminal record. Table 8-5 shows how both the severity of the crime and the defendant's record determine the likelihood of his case being indicted:

Table 8-5

Proportion of Cases Indicted
by Arrest Crime Class and Criminal Record
(Percent of all arrests in the particular cell)

| Defendant's Criminal Record | A | B | C | D | E | Total |
|---|---|---|---|---|---|---|
| Prison | (100)* | 65 | 45 | 16 | 8 | 35 |
| Conviction | (100) | 44 | 34 | 10 | 12 | 18 |
| Arrest | (30) | 34 | 35 | 14 | 7 | 20 |
| None | (60) | 41 | 21 | 12 | 9 | 16 |
| Indicted | 73 | 47 | 31 | 13 | 11 | 22 |

2000 sample
Weighted N = 66,529
Approximate N = 1331

* The number in parentheses refers to a base of less than 15 cases.

The average rate of indictment for all felony arrests is 22 percent, shown in the lower right corner of Table 8-5. As the bottom row shows, the highest indictment rate (73%) is for class A arrests; the lowest (11%) for class E arrests.

The impact of prior record was less extreme; as shown by the last column, the indictment rate varies from 35 percent for those with prison records to 16 percent for those with no prior record. If a person was charged with a class A felony and had a prison or conviction record the indictment rate was 100 percent, whereas for a defendant arrested on a class E felony with no prior record the indictment rate was 9 percent.

# CHAPTER 9

## Guilty Pleas

The majority of convictions were achieved through guilty pleas. Congestion pressures and problems of evidence were the most frequent reasons for guilty pleas. From the prosecutor's perspective, a guilty plea saves time and resources and eliminates the risk of an acquittal. From the defendant's perspective, a guilty plea usually means a lesser charge and an assurance of a specific sentence.

Ninety-eight percent of all convictions were the result of guilty pleas, only 2 percent resulted from convictions after trial. When the defendant pleads guilty, he gives up the chance of being acquitted after trial or having his case dismissed. The defendant also gives up the chance of being convicted of a lesser crime than the one to which he pleads guilty.

By pleading guilty, the defendant might gain: 1) a reduction of the charge; 2) assurance of a lenient sentence; 3) if in custody, a sentence of "time served," thus immediate release from jail; 4) avoidance of jail altogether if he pleads at arraignment; or 5) various combinations of the above.

Although from the defendant's perspective these benefits encourage plea bargaining, they are not the only reason for charge reductions. Charge reductions also come about as a result of evidential deficiencies, characteristics of the crime and the defendant. In Table 9-1 the major reason for the charge reduction to a misdemeanor and the frequency of its occurrence are presented. Although in most cases, more than one reason contributed to the charge reduction, an effort has been made to identify through interviews the major reason.

Table 9-1

Reasons for Charge Reduction to Misdemeanors

| | % |
|---|---|
| Complainant Problems | 5 |
| Evidence Problems | 29 |
| Overcharge | 9 |
| Other Evidence | 20 |
| Characteristics of Defendant | 12 |
| Nature of the Crime | 18 |
| Congestion and Management | 24 |
| Diversion | 2 |
| Consolidation with other Cases | 1 |
| Multiple Reasons | 9 |
| TOTAL | 100 |

400 sample
Weighted N = 33,559
Approximate N = 132

Problems of evidence, including overcharges (see Chapter 12) were the most prevalent reasons for dismissals. Characteristics of the crime and the nature of the crime were also important. The following two cases illustrate charge reductions to misdemeanors in response to evidentiary problems.

> The police said a passing motorcyclist had informed them that a fellow in a car had, in the course of an argument, pulled a gun on him. According to the police, they found the defendant in a car displaying a police shield. They arrested him and in searching the car found a gun, a knife, and some marijuana. He was arrested for impersonating a police officer, possession of a dangerous weapon and of an illicit drug.
>
> The desk sergeant dropped the impersonation charge and there was some doubt in the ADA's and the defense attorney's minds as to whether the "passing motorcyclist" ever existed--"he rode away" said the police; his information would have made the search legal. But there was suspicion that it was the police shield that led to arrest and search. But since the shield was not misused, it was a "bad search." The defendant had a minor record. He pleaded guilty to an A misdemeanor weapon charge with the assurance of a conditional discharge.

In another case, the defendant, arrested on a felony plea, pleaded to a violation because of the lack of evidence.

> In another case four day laborers were found inside the enclave of the open market at Hunt Point at night; they disclaimed any criminal intent and no goods had been taken. Although they worked at the market during the day, "it was questionable what they were doing" according to the prosecutor. The defendant sampled had not been able to raise the $50 cash bail and was in jail at the time of the plea. Since there was no damage, the complainant was not anxious to prosecute and there was no evidence of criminal intent. The four were all offered the opportunity to plea to a violation with a conditional discharge.

In 24 percent of felonies reduced to misdemeanors, court congestion was considered the major reason for the charge reduction. Congestion or management usually meant that the district attorney, defense counsel, or judge felt that the plea was taken to a lesser charge since every case could not be taken to trial. In this chapter the extent to which pleas resulted in lower charges and non-prison sentences is explored; later chapters (12, 13, 14, and 15) explore other reasons contributing to charge reduction and sentence leniency.

Charge reductions can be classified in two groups: those that result in reduction to a lower felony grade and those that result in reduction out of the felony classes altogether.

A reduction from a felony to a misdemeanor is especially significant. First, a felony conviction often has direct consequences such as the loss of voting rights or ineligibility for certain public sector jobs. Second, a felony conviction is a disadvantage if the defendant should again come into court. Often the law itself prescribes a more severe disposition to the current case if there has been a prior felony conviction. Third, reduction to a misdemeanor is a guarantee that the sentence cannot exceed one year in prison for an A misdemeanor, and three

months in prison for a B misdemeanor.

Even when considering a plea to a felony the defendant may be given assurances as to length of sentence. There are several routes by which such additional assurance might be obtained: the prosecutor might give it and the defendant may be assured by his counsel that the judge usually follows the prosecutor's recommendation--though he might warn the defendant that the judge is not bound by such assurances. Usually, however, the judge reported agreeing to the offered sentence or participating in the plea arrangement.

Often the defendant and his counsel weigh the offered or expected sentence after a guilty plea against the expected harsher sentence after trial. Hence the defendant weighs the likelihood of acquittal or conviction for a lesser offense against the expectation of a more severe sentence if he should be convicted. But in almost all cases there is no serious thought of a trial on either the prosecution side or the defense side.

Chapter 6 describes the extent to which the arrest charges deteriorated during the disposition process. Three percent of defendants charged with felonies were eventually convicted of the crime they had been charged with at arrest. If the 55 percent convicted offenders

are examined, 6 percent were convicted of the crime they had been charged with at arrest. Fourteen percent of the convicted defendants were convicted of a felony; 86 percent were convicted of a misdemeanor or a lesser offense.

If the guilty plea was obtained for defendants originally charged with a B, C, or D class felony, the charges were almost always reduced. However, for Class A and E charges, a guilty plea did not always mean a charge reduction. Class A was an exception because some of these crimes were considered too heinous to allow reduction. The higher percentage of E charges not reduced compared to B, C, and D charges was probably due to the fact that any reduction would drop the case out of the felony range, a concession the prosecutor sometimes refused to make.

The institutional function of these reductions is suggested by comparing the proportion of defendants who plead guilty and received a charge reduction against those who refused to plead and went to trial:

Table 9-2

Charge Reduction and Mode of Disposition for Convicted Defendants

| Arrest Charge | Conviction Charge: As Part of Guilty Plea (Percent of Defendants in each Cell) | Conviction Charge: At Trial (Percent of Defendants in each Cell) |
|---|---|---|
| A | 33 | 53 |
| B | 5 | 47 |
| C | 2 | 51 |
| D | 5 | 17 |
| E | 8 | 9 |
| TOTAL Average | 6 | 30 |

2000 Sample
Weighted N = 39,573
Approximate N = 791

Of the defendants arrested for a class A crime who pleaded guilty, 33 percent pleaded to a Class A crime; while of those arrested for a class B crime, 5 percent pleaded guilty to a class B crime. Of those who pleaded guilty, 6 percent pleaded guilty to a charge in the crime class for which they had been arrested. For the cases going to trial the situation was different: 30 percent who went to trial were convicted on the original charge.

The extent of reductions for those pleading guilty is shown in the following table:

Table 9-3

Degree of Charge Reduction for Those Who Pled Guilty According to Arrest Crime Class

| Disposition Class | A % | B % | C % | D % | E % |
|---|---|---|---|---|---|
| A | 33 | -- | -- | -- | -- |
| B | 15 | 5 | 2 | -- | -- |
| C | 8 | 9 | 2 | -- | 1 |
| D | 20 | 22 | 14 | 5 | 4 |
| E | 13 | 25 | 12 | 10 | 8 |
| Misdemeanors | 89 | 61 | 30 | 15 | 13 |
| A | 11 | 29 | 52 | 51 | 52 |
| B | -- | 7 | 11 | 19 | 20 |
| Violations | -- | 3 | 7 | 14 | 10 |
| Infractions | -- | -- | -- | 1 | 5 |
| Reduced to Misdemeanor or Less | 11 | 39 | 70 | 85 | 87 |
| TOTAL | 100 | 100 | 100 | 100 | 100 |

2000 Sample
Weighted N = 38,973
Approximate N = 779

Charge reduction, it would seem, is viewed by the district attorney as a minor concession for a guilty plea. For defense counsel a reduced charge presents a modest victory to his client. And the judge can more easily justify the imposition of an agreed upon low sentence if the crime class has been reduced.

The disparity between the sentence offered or expected after a guilty plea, and the sentence expected after trial, if it should end in conviction, was a factor in inducing pleas.

Repeatedly, defense counsel reported they advised clients to accept a plea because they predicted that if found guilty the sentence after trial would be more severe than the plea offer.

The sentencing differential was openly talked about by some judges and prosecutors:

> "I am inclined to sentence more harshly if the defendant is convicted after going to trial."

> "For jostling, you can get 90 days at arraignment. After trial you would get one year."

If a judge does not follow the pattern, the exception was noted:

> "This judge gives time when appropriate and does not penalize for going to trial."

For the defendant and his attorney the first consideration in deciding whether to accept the bargain of the supposedly lighter sentence seemed to be the probability of acquittal after trial: if slight, even a modest sentence reduction after guilty plea was accepted. If likelihood of acquittal was great, even a large disparity between the sentences was likely to have weight. For the many situations between the two extremes, defendants tended to favor the guilty plea.

This theorem could have been tested with precision if one had a sufficiently large sample of cases with the three variables of the equation: likelihood of conviction after trial; expected sentence if convicted after trial; and sentence offered or expected after guilty plea.

Some data are available but insufficient to develop all pertinent parameters of the equation. Nevertheless, the 400 sample data allow some tentative conclusions.

The law generally includes admission of guilt as a major mitigating circumstance in the determination of sentence. This is true even though a guilty plea is not the exact equivalent of an admission of guilt, because it is often only a negotiated bargain.

The interesting question is how great a reward is given, and should be given, to the defendant who pleads guilty. Or, by how much should the sentence be increased for a defendant who insists on trial? Clearly, the differential should not be so vast as to cause a chilling effect on a defendant who wishes to be tried by a jury. Indeed, one argument against the death penalty is that it allows the prosecutor, by promising a non-capital sentence, to obtain a guilty plea from an innocent man.

The most obvious gain from plea bargaining for the state is the saving of resources and time. Indeed, there are neither sufficient courtrooms, judges, prosecutors, or Legal Aid lawyers to allow for anything but a bargained guilty plea in most cases. Congestion is most often cited as the key factor encouraging plea bargaining, and the comments of judges, prosecutors, and Legal Aid lawyers seemed to bear this out. In 24 percent of the cases, congestion was explicity mentioned as a factor in encouraging the early disposition of the case.

Congestion is so much a part of the system that many interviewees may no longer have recognized its existence. Thus it was possible for one prosecutor, who for many weeks worked in an arraignment part handling one of the

heaviest calendars in the City's Criminal Courts, to insist that congestion never affected the way he handled a case. On the other hand, a colleague who had also worked in arraignment held an opposite view. He insisted that congestion affected everything.

> "Prosecutors may tell you that they took a plea because the crime was minor. But the real issue is time. They would never give that plea if the judges were not so hungry for dispositions."

However, this is not to say that congestion always or even normally yielded more lenient dispositions. To be sure it sometimes did, often in cases where a defendant was clearly guilty, and provably so, of a serious crime and bargained for a sentence less than the maximum.

But often the state bargained for more than a saving in resources. Indeed, in many cases in the 400 sample the state gained a conviction or sentence that would not have been possible had a trial gone forward. Defendants who pled to "time served" (see Appendix C) often did so because such a plea meant they could leave jail, even though they might not have been convicted at trial. In short, they bargained their chances for ultimate exoneration in return for an immediate avoidance of continued custody or a harsh sentence after a trial. But defendants

in pre-trial custody were not the only defendants who bargained away a good chance of being exonerated.

In a non-congested system, the following two cases may have gone to trial and the defendants acquitted.

> In connection with a gypsy cab dispute a minor street riot broke out, in which several Molotov cocktails were thrown. A plain clothes police officer charged the defendant with having thrown one at him; he had pursued him, lost him, and then found him again. It was dark at the time of arrest. The formal charge was assault, reckless endangerment, and possession of a dangerous weapon.
>
> The defendant denied the charge. He was 21 years old, had no record, was working, and lived with a common-law wife and two children. He pleaded guilty to reckless endangerment, an A misdemeanor, and a promise of probation.
>
> The ADA gave these reasons for the plea offer: "His age, lack of a record, the fact there were no injuries, that it was difficult to show that he intended to throw the Molotov cocktail at the police officer, or that he knew that they were police officers."
>
> The Legal Aid attorney commented: "I think the case could have been won. But the kid wanted to take the plea. He doesn't trust the court system and he doesn't give a damn about an A misdemeanor. All of his friends have records, and the case is over with probation.--If he had been in jail, they might have tried for 'time served,' because then, they knew, he's in a bind. The fact that he was out changed the plea to a misdemeanor with probation."

In another case:

> The defendant, aged 17, and his older brother were apprehended by the police in a public bathroom; in one of the stalls a hypodermic, some envelopes with heroin, and a gun were found. The charge was illicit possession of a gun and of drugs, both felonies, and loitering, a violation. It is not clear from the record how close the defendant was to the stall. To judge from the disposition, the evidence was insufficient to prove possession. At arraignment, the two major charges were dismissed, the defendant pleaded guilty to loitering and was sentenced to a conditional discharge. The evidence may have been insufficient, since the defendant's brother who was on probation was allowed to continue on it.
>
> Nevertheless, there is a curious likeness in the way the interviews with the ADA and the defense attorney ended. Said the ADA: "For the boy it was the first arrest. Loitering and a conditional discharge was better than dismissal. There is at least some hold on him; I was not happy with this case." And the defense counsel: "His brother is on probation, he had a record. Conditional discharge might keep him out of trouble and clean for a while."

A review of the 400 sample suggests that plea bargaining--usually thought of in terms of how it weakens the state's hold on criminals (i.e., "gives away the courthouse")--sometimes allowed sanctions to be imposed on defendants who might go free in a court system that prohibited plea bargaining and provided a trial in each case.

# CHAPTER 10

## Dismissals

Forty-three percent of the cases were dismissed. Dismissals rates were related to severity of crime charged and the criminal history of the defendant. However, in interviews the non-cooperation of the complaining witness and problems with the evidence were cited most often as the major reason for the dismissal.

Of the 2000 sample felony arrests adjudicated in the criminal courts, 43 percent ended in dismissals. The dismissal rate varied by type of crime. It ranged from 75 percent for rape to 30 percent for drug sales.

The primary reason cited for dismissing a case was lack of sufficient evidence. The standard for sufficient evidence to continue processing a case becomes more stringent as the criminal process proceeds. To sustain initial prosecution, "probable cause" is sufficient evidence; eventually proof of guilt "beyond a reasonable doubt" is needed. The decision to dismiss was likely to be based on both measures, but there was greater emphasis on "beyond reasonable doubt" as the process continued.

Evaluation of the evidence, however, was not the sole determinant of the decision to dismiss. The decision was tempered by non-evidential considerations that pervade the entire criminal justice process, from arrest through trial: considerations of individual equities, of the social interest, and of priorities in a pressured system.

Table 10-1 suggests specifically two non-evidential factors that played a role in the decision to dismiss--the severity of the crime and the defendant's criminal record:

Table 10-1

Dismissal Rates by Criminal Record and Arrest Charge

| Arrest Charge | Record: Prison | Conviction | Arrest | None | TOTAL |
|---|---|---|---|---|---|
| A + B | 17 | 43 | 61 | 41 | 37 |
| C | 21 | 16 | 37 | 50 | 36 |
| D | 40 | 35 | 41 | 52 | 45 |
| E | 34 | 51 | 52 | 62 | 52 |
| TOTAL | 29 | 37 | 46 | 53 | 43 |

2000 Sample
Weighted N = 57,795
Approximate N = 1,156

In the upper left-hand corner of the table where high crime classes are charged to defendants with serious prior records the dismissal rates are lowest; in the lower right corner of the table, where lesser felonies are charged to accused persons with no or minor records, the dismissal rates are highest.

The likelihood of dismissal was related both to the severity of the charge and to the criminal record of the defendant. If the defendant had no prior record the dismissal rate was 53 percent; if he had served time in prison, it was

29 percent. And if charged with an A or B felony, the dismissal rate was 37 percent, but if charged with an E felony it was 52 percent.

The importance of evidence, however, was according to the interviews more significant than whether a defendant had a prior record or the seriousness of the charge.

Although Table 10-1 indicates that severity of crime and prior record influenced the dismissal rate, they were rarely perceived by those interviewed as the major determinants of the dismissal.

In Table 10-2, the major reasons for dismissals are presented. The most commonly cited reason--accounting for one-third of the dismissals--was the failure of the complaining witness to cooperate. Complainant problems are discussed in Chapter 13.

Evidentiary problems (the majority of which involved problems of proof of criminal intent)[1] accounted for another quarter of the dismissals.

In 11 percent of dismissals, characteristics of the crime were cited as a reason for the dismissal but the majority of these related to the prior relation of victim and defendant

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1) Since it was difficult to distinguish among failure of evidence to support a charge, a mistake in the original arrest or misinterpretation of the act, these were all classed together as lack of criminal intent.

and not to the specific act. A minor record was perceived as responsible for the dismissal in less than one percent of the cases although again Table 10-1 suggests that defendants without prior records were less likely to be convicted than those with previous records.

Table 10-2

Major Reason for Dismissals

| | | |
|---|---|---|
| Problems with Complaining Witness | | 31% |
| Withdraws Complaint Formally | 6% | |
| Fails to Show | 25% | |
| Evidentiary Problems | | 25% |
| Lack of Criminal Intent | 14% | |
| Victim Partially Culpable | 3% | |
| Insufficient Corroboration | 3% | |
| Problems of Proof of Possession | 2% | |
| Others | 3% | |
| Characteristics of the Crime | | 11% |
| Minor Crime | 1% | |
| Minor Drug | 1% | |
| Minor Injury or Damage | 1% | |
| Prior Relationship | 8% | |
| Personal Characteristics of Defendant | | 5% |
| Community Ties | * | |
| Drug/Alcohol | 1% | |
| Minor Record | 1% | |
| Paid for Crime | 1% | |
| Mental Incompetence | 2% | |
| Adjournment in Contemplation of Dismissal** | | 19% |
| Complainant Problems | 4% | |
| Evidentiary Problems | 7% | |
| Characteristics of Crime | 3% | |
| Personal Characteristics of Defendant | 3% | |
| Other | 2% | |
| Other Reasons | | 9% |
| Court Congestion | 1% | |
| Cooperates with State | 1% | |
| Diversion | * | |
| Consolidation | 1% | |
| Co-Defendant takes Rap | 2% | |
| Procedural Problems | 2% | |
| Multiple Reasons | 1% | |
| Cross Complaint | 1% | |
| | | 100% |

400 sample
Weighted N = 21,160
Approximate N = 115

\# Less than 1 percent.
** ACD statute allows judge to adjourn misdemeanor cases for up to six months. If the defendant meets the conditions imposed by the judge (usually no subsequent arrests) the charges are dismissed.

Almost one-fifth of the dismissals were Adjournments in Contemplation of Dismissal (ACD). A breakdown of reasons cited for ACD's indicates that they generally follow the pattern for outright dismissals: problems with the complaining witness and evidence were the major factors encouraging the district attorney to accept an ACD.

Only one percent of dismissals were attributed to congestion in the courts; the remaining 8 percent were related to a miscellany of reasons such as the defendant cooperated with the state by providing information or the co-defendant accepted responsibility for the crime.

# CHAPTER 11

## Trial--Failure of the Plea Bargaining Process

Only 2 percent of felony arrests were disposed of by trial in 1971. Under these circumstances, trial may be seen as the failure to reach a guilty plea in those cases where dismissals were not appropriate.

Trials were rare in the disposition of felony arrests in New York City; in the 2000 sample only 2.2 percent of the cases were disposed of by trial.

The remoteness of the trial is documented in the following table which reveals its frequency by crime in the 2000 sample:

Table 11-1

Percent of Arrests Reaching Trial by Type of Crime

| | |
|---|---|
| Homicide | 12.5 |
| Rape | -- |
| Robbery | .8 |
| Assault | 7.3 |
| Burglary | 1.2 |
| Grand Larceny | 5.0 |
| Stolen Prop. | 1.1 |
| Poss. Weapon | 1.6 |
| Drug Sale | 1.4 |
| Drug Possn. | 1.1 |
| Gambling | 1.4 |
| Forgery | -- |
| Other | 2.8 |
| TOTAL | 2.2 |

2000 Sample
Weighted N = 74,000
Approximate N = 1480

Homicide was most likely to go to trial, followed by assault and grand larceny cases. In the remaining categories, trial did not reach 2 percent of all dispositions. Trial was the failure of the normal process, by which both sides negotiate a plea when a dismissal does not seem likely.

In an attempt to understand the genesis of these "failures," an analysis of the 20 trial cases[1] in the 400 sample was conducted.

20 Trial Cases from 400 Sample

Case #1

The defendant was an elderly insurance broker who allegedly filed ficticious claims for hospital and medical bills totaling over $30,000.

The offer was to plea to an E felony, but the defendant refused, his confidence probably bolstered by his recent acquittal on a similar charge in a neighboring county. Although it is the policy of the Fraud Bureau not to recommend probation, the ADA thought, "He would not have gone to jail if he had taken the plea." As it was he was tried, convicted and sentenced to 3 years in prison. The judge said: "I do not consider jail rehabilitating. I thought of the general deterrence. It is particularly important in white collar crimes."

---

1) Although the number of trial cases is 20 (5 percent of the 400 sample) the weighted proportion is only 6 percent. Two of the twenty cases were from the Central Narcotics Court and are included here to make a more complete sample because there were so few trials. The slightly higher proportion of trials in the 400 sample compared to the 2000 sample may reflect a trend toward more trials. In the first six months of 1975, 11 percent of felony cases ended in trial in the Supreme Court of New York City as reported by the Office of Court Administration.

Case #2

It seemed a simple and clear case of purse-snatching. The defendant was arrested after the police had heard "Stop the thief" cries and observed a "tug of war" between him and the victim.

The defendant was offered a reduction from robbery D (maximum sentence 7 years) to robbery E (4 years). He refused claiming he found the bag after some children had thrown it away. The judge told the defendant if he did not accept the plea and was found guilty after trial he would give him the maximum sentence. He refused to plead guilty against advice of his Legal Aid counsel. He was convicted and sentenced to the maximum of 7 years.

The only worry the ADA had before the trial was:

> "This was too simple a case. A jury will ask why did a man go to trial if it is such an open and shut case? Why would a guilty man go to trial?"

Case #3

The defendant was charged with 45 counts, of rape, sodomy, robbery and sexual misconduct against six women in four separate incidents. Since he also had a record, the DA's offer was to accept a plea to the major count, a B felony, and 25 years. The defendant refused; the maximum sentence (if concurrent sentences were imposed) was 30 years. An alibi defense failed: the movie he claimed to have seen was not on at the time. His identification was clear. He was convicted and sentenced to 30 years.

Case #4

Two women had come to the City to sightsee over the weekend. In the park they met a man and his girlfriend who became the defendants in this case. They persuaded the two women to come into an apartment where they were offered drugs. Then, they were forced to engage in lesbian intercourse after which time the man raped both women with the help of his girlfriend. Eventually the women escaped and went to the police.

The man claimed the women had been "high" when he met them in the park and that all their activities were voluntary.

The woman co-defendant (the case in the 400 sample) was offered a plea for a minor offense and probation if she would turn state witness against her co-defendant. She refused, and since he refused to plead, they both went on trial. The jury convicted on all counts: rape, assault, sodomy, and coercion.

The man was sentenced to 25 years in prison, the woman to 2 years.

Case #5

The charge in this case developed from a bedroom scene in the man's apartment. With a knife, he had ripped the woman's clothes off and slashed her buttock. Also a gunshot was fired but not aimed at her. The woman ran naked into the wintery street and was eventually sheltered and clothed. There were two versions as to how it had happened. His was that he told her their affair was at an end. Hers was that he demanded that he pimp for her. He was charged with attempted murder, assault, robbery and larceny. The judge called all but the assault "over-indictments." But there could be

no doubt about the assault since "she was bleeding profusely."

He was offered a D felony plea. But because he was a subway train operator and would lose his job after a felony conviction, he wanted to plead to a misdemeanor. Although the man had no prior record, the DA insisted on a felony charge. The jury convicted, and the judge gave probation. The DA explained: "This assault transcended those we sometimes accept when there is a prior relationship between defendant and complainant."

Case #6

The defendant, with two other men, had gained admittance to the residence of his victim, whom he had known from earlier business dealings. The two men, on instructions from the defendant, pulled knives and eventually the three left with cash and jewelry without hurting anybody. The defendant was an addict and in spite of his youth (he was only 19 years old) had several prior arrests, including a pending case for an earlier robbery.

Efforts to obtain a plea were thwarted by the defendant's mother, a "powerhouse of a woman," who insisted on a trial because she believed her son to be innocent. The ADA had offered a C felony. The defendant was convicted of the original B felony charge and sentenced to 2-7 years in prison.

Case #7

The defendant was found in a 3 year old car, stolen 24 hours prior to the arrest. He claimed a friend had asked him to park the car. The friend could not be located. The defendant had 11 prior arrests for auto larcenies and at least one conviction.

The grand larceny felony charge was reduced to the misdemeanor charge of simple larceny, against the stipulation as to the car owner's testimony regarding ownership and not having given permission to drive the car.*

After this reduction the defendant had no particular incentive to plead guilty because the maximum (misdemeanor) sentence he could receive after trial was 1 year. He went to trial, took the witness stand, his record was brought out, and he was duly convicted. The sentence was 10 months.

The judge explained: "I did not know what kind of guy he is, I did not conduct the trial. I just thought the maximum misdemeanor sentence--1 year--was not necessary. Besides, he has a similar case pending before the Supreme Court."

Case #8

The defendant, a man in his 50's, had lured a 9 year old girl into his apartment (he was the superintendent in the house) and demanded that she sodomize him. He also raped her. The medical report corroborated the charges and neighbors said they had seen the girl leaving the man's apartment dishevelled and crying. The first offer for a plea was an E felony with 4 years. This offer was made and rejected before the defendant's record was discovered which included child rape and rape. After that, a C felony with 10 years was offered. The defendant refused and kept saying "D with 4, D with 4." During the trial a last offer was made: C with 15 years. At this point the defendant

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* This, the ADA claimed, was desirable because it kept the case in the Criminal Court and reduced the congested Supreme Court's caseload. No determined effort was made to reach the (Westchester County) owner.

accepted, but the judge refused. The record did not come out in the trial, since the defendant did not take the witness stand but the judge had it before him at sentencing. The jury, after hours, found the defendant guilty of all charges: rape, sexual abuse, sexual misconduct and endangering the welfare of a child. The sentence: 25 years. "I am taking him out of society," the judge said.

Case #9

Three men, one the defendant in the 400 sample, were charged with having attempted to rob a store at gun point. A radio alarm had brought the police in time. This defendant had tied himself up, so as to look like a victim, but he was identified.

There were some shots fired, and one of the three men was killed by the police. The charge was originally "attempted murder of a police officer," as well as robbery.

The defendant was "articulate," and the DA was worried about "the impression" he could make on the jury and of the character witnesses he might produce.

A plea offer for 10 years was refused. The defendant, protesting innocence, would have accepted a plea for an E felony. In this, he seemed to have been backed by his attorney, who thought he had a chance of being acquitted. ("He disappointed me. He was one of the most articulate clients I ever had... Unfortunately, when he got on the stand, he froze. I could not understand it, he had practiced so much, he had told the story so many times. We had rehearsed the whole thing--how he was to say that... etc.") Apparently he had a number of outstanding similar robbery cases. There was

some talk about a Robin Hood crusade against store owners who fronted for the narcotics trade. The defendant belonged to a religious militant sect. His minister and wife attended the trial. The sentence was 15 years.

Case #10

The defendant was arrested with two others in a car that was slowly cruising in a high crime area. The policemen claimed they found a gun, between the feet of the respondent. (There is legal presumption, rebuttable by defense evidence that a gun found in a car is in the possession of the riders.) A motion to suppress because the search was illegal was denied. An offer to plead guilty to an E felony without promise of time was refused. After a trial, in which the defendant did not take the stand, the jury convicted of the possession charge (a C felony). He was sentenced to 3 years.

Case #11

The case developed from a visit of two friends to a prostitute's apartment in a housing development that had its own security guards. For some reason the lady wanted the two men to leave, which they refused. The guards came and removed them with handcuffs and nightsticks. In the process, the defendant, one of the two men, spit at the guard and threw a brick, but not at him. The original charge was aggravated assault, harrassment, and trespass. At the preliminary hearing the aggravated assault charge was reduced to simple assault. The defendant refused to plead guilty to assault and the case went to trial in the Criminal Court.

In the jury trial the defendant, insisting on his innocence, was acquitted of the assault charge, and the trespass charge was dropped because the lady-complainant failed to appear. Thus, the defendant was convicted only of harrassment. His sentence was 15 days, of which 8 had been served in pre-trial custody.

Case #12

The defendant worked in a building in which an office equipment company had been burglarized. A few days later, the defendant was arrested when he returned the keys to a rented truck which contained some of the missing merchandise. The trucking company recognized the defendant as the man who had rented the truck. The defendant said he was only returning the truck for another man, X. The rental contract was in the name of X, but the truck owner testified it was the defendant who signed the name. X was never produced but two witnesses said they knew him and that he resembled the defendant. An independent witness and the defendant's wife (who had an assault action pending against him) who had seen the defendant put the equipment into the truck, refused to testify. They said they were afraid of the man. It was on the witness's information that the policeman arrested the defendant when he returned the truck.

An early effort to obtain a plea failed: the defendant insisted on trial.

During the trial only the rental car owner testified for the prosecution. The defendant produced two alibi witnesses from out of town. The jury acquitted, and the judge commented: "On the evidence they did the right thing."

On the day before the trial, the DA, sensing the weakness of this case, asked the judge for a postponement so that a handwriting expert could examine the signature on the rental contract. The judge declined: "I refused to let him do it, he should have done it before. I did not want to delay the trial a week for the analysis. There is congestion in the courts and if I had allowed him, the defense would have called one also."

Case #13

The complainant was startled from his sleep by two youngsters rummaging on his porch. He testified that he saw them trying to get into his house "using a bar of some sort to pry open the window." The defendant was arrested by police a block away. He admitted trying to steal a chair from the porch but denied burglary. He had no prior record.

The case was indicted on a charge of attempted burglary and only a felony plea offered. The defendant, on advice of his counsel, refused the plea. The complainant's testimony did not suffice for the burglary charge and the Supreme Court jury convicted only of a B misdemeanor of attempted petit larceny.

Case #14

The testimony was that three men entered a store, one of them a defendant in the sample. He and one of the others allegedly pulled guns and took $150. A plainclothesman nearby heard the commotion and arrested two men on the run. They had no money and no guns. The third man got away. The two men were booked for attempted murder, robbery, and possession of a gun. The murder charge was dismissed at the preliminary hearing. When the Legal Aid attorney discovered there were two other armed robbery indictments against this defendant, he asked the court to assign counsel. In addition there were seven prior arrests, including robbery, burglary, and a weapons charge pending against the defendant.

The DA offered 10 years for this one case. The defendant declined. He was then offered 15 years for all his robbery cases. Again the defendant declined, although counsel advised him that the chances for acquittal were minimal. The other three cases, in counsel's opinion, offered some chance for acquittal because of identification problems.

The defendant refused to plead: it was his word against theirs. During the trial a defense developed that was unexpected by all. This is how the lawyer described it: "For some reason, the co-defendant told something I believed was a lie. He said he did not know my client. It was a man named Joe with two other men who proposed to rob the store. He did not know where Joe now was. But with the help of his testimony, and some contradictions in the other evidence, I suggested to the jury that my client was one of the junkies who happened to be in the store at the time of the robbery. It was enough reasonable doubt for the jury to acquit. So he turned out to be right after all..."

The prosecutor estimated that if convicted, the sentence would have been 7-20 years.

Case #15

W. was found in his car with a knife wound in his chest. The police arrested J. who, W. said, had been the assailant. J. filed a cross complaint, claiming he had stabbed in self-defense when W. had pulled a gun on him; a gun was found in W.'s car when it was routinely inspected for inventory purposes. As the judge reports it: "It was a very short trial; both sides withdrew their complaint. Nobody testified. There was nothing to do but acquit the defendant. There never was an offer to plead guilty."

Case #16

The defendant and a co-defendant, who subsequently jumped bail, were charged with robbing an elderly woman in the hallway of her apartment building. The prosecutor considered the evidence strong and offered the defendant a plea to an E felony with probation. The defendant, a Vietnam veteran, married with a child, had no criminal record. The defendant was prepared to plead to a misdemeanor but not to a felony, which would cost him his job. Because the ADA considered acquittal unlikely and conviction socially desirable, he went to trial.

At the trial, the defendant came up with the surprising defense that he was trying to persuade his co-defendant from committing the robbery. This defense was not at odds with the story told by the victim, and the jury acquitted. The judge commented: "The ADA did not expect this defense and was no match for it."

Case #17

A 1970 Buick, on which the serial number had been altered, was found registered in the name of the defendant. The car was stolen, but the defendant claimed he had bought it for cash from a third party. The charge was forgery and unauthorized possession of a stolen vehicle, a D felony. The ADA had offered a guilty plea for an A misdemeanor because of the defendant's good record and old age. (He was 60.) The offer was declined because no assurance was given that there would be no prison sentence.

The case came to trial, the defendant was convicted of the possession charge, a D felony. The sentence was probation.

Case #18 (Narcotics Court)

The police were informed that the defendant was a dealer in drugs and had a large amount of heroin in his possession. When the police arrived, they found 19 envelopes of heroin. The defendant, to protect his wife, said: "Don't take her, this is all my stuff." His sole defense was that the search warrant was not signed by the police. A judge granted the motion to suppress, but it was reversed. Meantime, the defendant, who had been out on bail, was arrested on another drug possession charge. The offer was a plea to a B felony to cover both indictments. The defendant refused and insisted on trial. He waived the jury, because he had received a break from a judge (who had granted the motion to sup-

press), and was also afraid that the large amount of heroin found would prejudice the jury. He was found guilty and sentenced to 15 years. It appears that on a B guilty plea, since he had a felony drug record, he would not have received less.

Case #19 (Narcotics Court)

The police testified that the defendant, a man with a 20 year long record of various crimes, was observed carrying a gun. He fled in a car. When he was arrested in the car, drugs were found, and a gun was recovered. There were three other people in the car, but they were not prosecuted. The defendant claimed the police had put drugs and gun on him a second time because in an earlier arrest he had convinced a judge that the police had tried to frame him. The ADA offered a D felony with a 4 year maximum. The defendant refused and was tried. He was acquitted on the gun charge and convicted on the D felony drug charge. The sentence was 4 years. The ADA remarked: "It is always difficult to convince a jury of possession of a gun."

Case #20

Alerted by a radio call, the police stopped a man driving an allegedly stolen car. The man driving it, subsequently the defendant, had a stab wound and was "rambling incoherently." The complaint was that the man had jumped into the open car while the owner was outside, and had driven it away trying to run over the owner. The charge was theft and assault, but was reduced to a misdemeanor in the Grand Jury. ("A 1969 car does not deserve Supreme Court treatment.") The defendant refused, nevertheless, to plead guilty insisting that the complainant had attacked him and to save his life he had jumped into the car and driven away.

At the trial, which lasted six days, both complainant and defendant testified. The judge had dismissed the assault charge; the jury acquitted on the theft charge. The defendant was 22 years old, had no criminal record, and was a Vietnam veteran with seven medals.

Table 11-2 summarizes the twenty trial cases:

Table 11-2

Sample of 20 Trial Cases

*Key: 0=None
+=Major
?=Unknown

| | Type of Crime | Criminal Record* | Plea Offer | Trial Outcome | Reasons for Refusing Plea |
|---|---|---|---|---|---|
| 1 | Insurance Fraud | 0 | Prob. | 3 yrs. | hoped to be acquitted because had been acquitted recently of similar charge |
| 2 | Street (purse) robbery | + | 4 yrs. | 7 yrs. | against advice of counsel; no apparent reason--evidence strong |
| 3 | 45 counts of rape, sodomy, & robbery | + | 25 yrs. | 30 yrs. | little to lose |
| 4 | Rape | + | Prob. (if she had turned state's evidence) | 2 yrs. | stuck with boyfriend; refused to turn state's evidence |
| 5 | Agg. Assault | + | D Fel. (Prob.?) | D Fel. Prob. | would lose job, if convicted for felony. Insisted on misd. plea or trial |
| 6 | Robbery | + | C Fel. | B Fel. 7 yrs. | Mother ("a powerhouse") insisted on trial against advice of counsel |
| 7 | Theft of 3 yr. old car | + | A Misd. 1 yr. | 10 mos. | no risk; plea offer was maximum sentence after re-reduction to misd. |

| | Type of Crime | Criminal Record | Plea Offer | Trial Outcome | Reasons for Refusing Plea |
|---|---|---|---|---|---|
| 8 | Rape of Child | + | 10 then 15 yrs. | 25 yrs. | no apparent reason, evidence strong |
| 9 | Armed Store Robbery | + | 10 yrs. | 15 yrs. | saw chance of acquittal (attorney agreed) |
| 10 | Possn. Weapon | ? | E Fel. w/o sentence prom. | C Fel. 3 yrs. | perhaps hope of acquittal; small sentence risk |
| 11 | Assault, Trespass (reduced to Misd.) | ? | simple assault (misd.) | 15 days | hoped for acquittal |
| 12 | Warehouse Burglary | ? | | acquitted | hoped for acquittal |
| 13 | Attempted Home Burglary | ? | Felony Plea | B misd. | hoped for acquittal |
| 14 | Armed Store Robbery | + | 10 yrs. | acquitted | no apparent reason--against advice of counsel |
| 15 | Agg. Assault in Cross Complaint | ? | None | acquitted | hoped for acquittal |

| | Type of Crime | Criminal Record | Plea Offer | Trial Outcome | Reasons for Refusing Plea |
|---|---|---|---|---|---|
| 16 | Robbery | 0 | E Fel. with Prob. | acquitted | small risk at trial since he had no crim. record plus chance of acquittal |
| 17 | Stolen Car | 0 | A Misd. | D Fel. Prob. | Because no assurance of non-prison sentence |
| 18 | Drug Sale | + | B Fel. | 15 yrs. (bench trial) | difference between plea offer and sentence |
| 19 | Drug Possn. | + | D Fel. 4 yrs. | 4 yrs. | hoped for acquittal, plus little risk |
| 20 | Car Theft Assault | 0 | Fel. ? | Acquitted | insisted he was acting in self-defense, refused to accept a plea |

In 8 cases, the defendant refused a plea because, as he saw it, according to his lawyer, he had little to lose by going to trial. In some cases the promised sentence at the plea was reported to be too close to the maximum he could expect after trial; in others he reportedly gambled on the unlikely event that the jury would not convict. In one case the defendant's only aim reportedly was to avoid a prison sentence, in which he succeeded: the plea offer for an A misdemeanor held no such assurance, but after the defendant was convicted of a felony in the trial, he received a probation sentence.

The higher proportion of serious charges that end in trial makes sense from the defendant's perspective. If a defendant is faced with a plea offer of a 10 year sentence and has the expectation of a 15 year sentence after trial, trial with the possibility of acquittal seems a reasonable gamble. However, if the choice is between a plea with a promise of probation and a trial with a possibility of a 4 year sentence, it is understandable that the defendant might opt for the plea.

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# CHAPTER 12

## Police Overcharging

Police are often blamed for overcharging the case at arrest. The data of this study yield some insights into that problem.

When a police officer observes a crime or responds to a citizen's call for help, he must sort out the facts and figure out what happened; decide whether to make an arrest--and then fit the facts into the technical structure of the Penal Law.

Often there is doubt as to exactly what happened, especially if the policeman was called in after the event. In these situations the policeman usually resolves the doubt in the direction of charging the maximum that is compatible with the available evidence or the evidence that may be expected to develop upon further investigation. This policy of charging the maximum is ingrained in police routine for at least two reasons: first, the police assume that it is easier to reduce a charge later than to raise it, and second, the police are aware of the plea negotiation process likely to follow the arrest, and they do not mind providing the prosecutor with the highest charge consistent with the evidence, so as to start to negotiate from the highest possible level.

The maximum-charge rule often results in a lack of sufficient evidence to provide proof of the full charge. Thus there often develops a discrepancy between the police charge and the charge for which there is clear proof.

Beyond the routine application of the "maximum-rule" overcharges in the sample could be categorized as follows:

- legally correct charges, called overcharges, because they are in conflict with established prosecution practices;
- those that did not appear to be supported by the evidence from the beginning; and
- overcharges that resulted from conflict situations at the time of arrest between police and suspect.

An example of the maximum-rule is illustrated below:

> A policeman said he observed a man trying to enter a car. After some questions he arrested the man who admitted that the car was not his. He charged him with grand larceny, criminal possession of stolen goods (both felonies), unauthorized use of a vehicle and possession of burglary tools (both misdemeanors). The car owner was notified of the event but never came to sign a complaint. At arraignment the defendant pleaded guilty to attempted petit larceny, a B misdemeanor.

The policeman charged the maximum possible offense, grand larceny and two lesser offenses, possession of stolen goods and unauthorized use, so that the prosecutor could have charged a variety of offenses.

In the following case, the facts including the defendant's interest were not clear, and the policeman charged the maximum.

> The defendant grabbed a young girl and kissed her. She hit him and he struck her with the bottle he had been drinking from. The policeman said she had required some medical attention "although I don't know how much." The following day she recognized him on the street and he was arrested. A family court warrant was on him, he also had a record. He was charged with Assault 2, which at arraignment was reduced to Assault 3, and he received a conditional discharge.

Below are examples of the second category of overcharges where the charge under the maximum-rule was technically correct, but somehow exceeded the prosecutor's notion of a felony; that is, the technically correct charge conflicted with prosecution policies. The best example is the case of a forged driver's license. The "forgery" is usually discovered during a routine traffic check. In such cases the police regularly charged possession of a forged instrument, consistent with Section 170.25 of the Penal Law, a D felony. Prosecutor and court allowed such defendants to plead guilty to a violation, according to Section 501.3, driving a car without a license.

The 170.25 charge requires knowledge that the license was forged. But the inference of this knowledge is fairly safe, if not for the purposes of a trial, certainly for purposes of plea bargaining. Nevertheless, the prosecutor does not regard this crime as a

felony. One ADA expressed the prevalent view in such a case:

> "This was a case of overcharging. There were alternatives in the law that could have been charged but weren't. It could have been charged from the beginning as violation of the motor vehicle traffic law. It is not equitable to charge /such a case/ with forgery, a D felony."

In the same case the judge said that the $50 fine on the violation is what the driver would get in traffic court, where the case belongs in the first place.

The forgery case below illustrates another technically correct charge which exceeds established prosecution policies.

> A 55 year old woman without a record, applied for renewal of her driver's license. At that point, it was discovered that her old license was forged. She was charged with using a forged instrument, a felony. However, that crime requires knowledge on the part of the defendant, and the ADA said: "That she gave the license to the Motor Vehicle Bureau showed that she did not know it was forged...Every possession of a forged instrument case I ever had was a possession of a forged license. All the cases I know of were sent back from the Grand Jury with the instruction to prosecute the case for 501-3, a violation 'possession of a forged license,' for which it is not necessary to prove that the defendant knew the license was forged." She was fined $50. Noted the arresting policeman: "The real difference was that because of the forgery she was in the can for a few hours. I am sure that it made a difference to her."

Below are two other kinds of cases in which the police charge was technically correct but did not fit the prosecutor's perception of a "felony."

> The defendant and complaining witness, a woman, lived in the same building. There was a prior relationship between them. After some drinking and a card game in his apartment the defendant became violent and allegedly took, with his knife, the $5 he claimed he had won. The police were called and the defendant charged with Assault and Robbery 1. He could not make bail, stayed ten months in pre-trial detention, attempted suicide during that time, and then pleaded guilty to criminal possession of stolen property. He was sentenced to "time served."

> The defendant and three other men were found at midnight in a building in the XX-market, fenced in territory. To enter it a pass is needed which none of these men had. Two of them were on parole. They were charged with burglary and criminal trespass, the lesser included offense which required no proof of intent to commit a crime. They pleaded guilty to the latter, a violation, and received a conditional discharge.

The following are examples of cases where the police appeared to go beyond the maximum-rule criteria. In these cases a felony was charged without appropriate evidence and without specific motive.

In conversations with the police officers a variety of institutional rewards were mentioned that might motivate the policeman to exceed the maximum-rule and over-

charge. Police officers themselves tended to measure their own productivity by the seriousness of their arrests. "A guy feels better if he comes in with a burglary rather than a petty larceny," explained a Police Lieutenant. "This is one factor--you might call it prestige--which contributes to inflation of charges." Also the structure of over-time pay encourages officers to make "convenience" arrests and to arrest for felonies rather than misdemeanors. Convenience arrests usually involve unsolicited interventions or easy "collars" in situations where the defendant's actions may only border on being criminal. The police charge a felony because the felony arrest requires the officer's presence through Arraignment unless the officer is excused at Central Booking. This often guarantees overtime. In contrast, a misdemeanor arrest can be processed through a summons which discharges the officer from further involvement.

The following case is presented as one example of an arrest that might fit this category. Obviously, it is impossible to be sure of the police officer's routine:

> The defendant had been living with his common-law wife and child. They fought, he left the apartment. She went to a friend's. When the defendant returned he discovered one of his wife's friends trying to open the apartment door. He demanded the key, an argument ensued, and the neighbors called the police. The defendant was arrested for robbery. There were some differences in the version told by defense counsel and by the arresting officer, but they agreed that the key to the apartment was the only object of the alleged robbery. The complainant did not want to prosecute but the arresting officer insisted on drawing up robbery charges against the defendant who had no prior record.

The defense counsel, an experienced member of the private bar, expressed dismay:

> "Years ago, the police would never have made an arrest of this kind. They would have tried to get the whole story before dragging someone into court on a felony charge. Nowadays, I think the cops are just out to make arrests."

In the following case, the long record of similar crimes coupled with the unmistakable evidence of the tools may have moved the policeman to stretch the notion of "attempt."

> The defendant, with a long record of burglary and forgery was arrested with two other men near the complainant's house. The defendant was in possession of a full bag of burglary tools. He was charged with attempted burglary and possession of burglary tools, and was allowed to plead guilty to the second charge, an A misdemeanor; sentence was a conditional discharge. The lawyer, a private attorney, was satisfied: "In a trial I could not let him take the stand, with the record he has, he could have gotten a year in jail. We got the best possible deal."

Here, finally, is an overcharge of a special kind:

> The defendant was a parking lot attendant working for a city-wide corporation. A woman had been charged $24 for the parking of her car and apparently received a ticket for that amount. In the ledger he had entered $20 and kept the difference. Both the company and the woman complained. The man had no record and had been fired. The policeman charged petit larceny, a misdemeanor, and falsifying a business record in the 1st degree "with the intent to commit another crime" (mainly the larceny) an E felony. He was allowed to plead guilty to "attempted petit larceny," (the lesser included offense of the crime he committed) and fined $100.

All concerned were convinced that this had not been the only fraudulent transaction of the defendant, which was why he was charged, prosecuted, and convicted. Said the defense attorney: "It was possible for the parking lot company to get other witnesses." The ADA: "I suppose we could have tried to get other people who had been swindled by asking the company to go through their records." But neither the ADA, nor the company, nor the defendant were anxious to follow up. The policeman perhaps anticipated the possibility of such a development, and felt that this crime had the potential dimensions of a felony.

The last and least frequent category of overcharges but potentially the most serious occurred when the arrest did not go smoothly or when the police allegedly used force. In such situations the police sometimes decided to "throw the book" at the defendant. Three cases serve as illustrations:

> Juan R. was charged with felonious assault and resisting arrest. The incident occurred in a bar, where according to defense counsel, the officer saw the defendant swallow a substance he thought to be cocaine, grabbed him, and tried to force him to cough up the substance. The defendant resisted. From this point on the version told by the policeman and by the defendant, as transmitted by his counsel, differ. The officer said he knew that the swallowed stuff was cocaine because the bar was a trade center for it. He knew the defendant who had been arrested previously on drug charges and was frustrated over the lost evidence. As he told the story, the defendant as he approached him and accused him of swallowing cocaine, retaliated by shouting obscenities and assailing the officer.
>
> As the defendant tells the events, the officer after their colloquy beat him up so that he was bruised and bandaged. The officer charged the man with resisting arrest and felonious assault, probably an overcharge since the policeman did not claim that he was injured. "I was endangered," he said.

Another example of this type of overcharge is illustrated below:

> When the defendant and his passenger drove by a police car, the officer flashed the warning light because the driver looked young. The driver, instead of pulling over, sped off: after 19 blocks of chase the defendant drove into a pole and then awaited the police officer. The car turned out to have been stolen an hour earlier from a nearby street. He was charged with grand larceny, reckless endangering of human life, Criminal Possession of Stolen Property 2, unauthorized use of a vehicle, and resisting arrest. (The endangering charge referred to the 19 block speeding.) The owner of the car, apparently failed to return to the court. In exchange for stipulating that the car was not his, the defendant's charges were reduced to petit larceny. The remaining felony (endangerment) was

> of dubious value. Remarked the ADA: "The police add charges because they think the more they charge at arrest, the stronger the case will be in Court. But sometimes it looks worse for that reason." The defendant had a prison record and was in fact on parole from a 5-year sentence, with two more years to serve. He pleaded guilty to the consolidated A misdemeanor, and obtained the maximum one year sentence to run concurrently if the parole was revoked.

Another possible overcharge which perhaps reflects lack of good faith on the part of the police was the following:

> The defendant, a young black man, employed as a sewer worker, living with his common-law wife and child, was arrested on two occasions. The first time, he was driving his wife to the hospital in an unregistered and uninsured car belonging to his brother. He was stopped by the police and given a summons for the vehicle infractions. When the police searched the car, they discovered a knife and manchuka sticks. Neither would be illegal unless the police could show intention to use the instruments for illegal purposes, but there was no evidence of this intent. Nevertheless, they charged the defendant with possession of a dangerous weapon as a felony. The defendant then allegedly offered the arresting officer $15 if he would let him take his girlfriend to the hospital before booking. Thereupon a felony bribery charge was added.
>
> The defendant's second offense occurred several days later when he was returning to court. He was stopped by a different officer on a traffic check and told to move his car to a service road. The officer reported that the defendant resisted and tried to drive away, justifying a charge of resisting arrest. At the station house, the arresting officer told him to ask his wife to bring down bail money. When she arrived they collected the money and charged the defendant with bribery. Neither prosecutor nor judge believed the officers. The prosecutor thought the defendant was the victim of a "bum rap." But since the bribery attempt was not controverted, the prosecutor insisted on a conviction.

What is the overall effect of police overcharging on the system? There is first the bookkeeping effect. The maximum-charge rule involved cases where the evidence eventually required a reduction of the charge. In some cases, however, the evidence probably could have been

improved and brought closer to the "overcharge," if police or prosecutor had found it worth their while to extend their investigation.

Two questions were involved in the reduction in charges by prosecutors in return for guilty pleas. One, whether the custom of charging the maximum has an effect on the plea bargaining process, as the prosecutors seem to think. The other is, whether if such an effect exists, it allows the prosecutor to bring the plea closer to what it ought to be according to his perception of justice.

What emerges is that most of the overcharges are what the word denotes, more serious charges than the complaint deserves. There were only a handful of cases where the police could have been suspected of fabricating charges.

The overall impression left is that the overcharges occasionally resulted in guilty pleas with minor sentences, pleas that might not have materialized had the cases been properly charged. This may have been particularly true of defendants who found themselves in pre-trial custody.

Perhaps the most serious consequences of police overcharges is that the defendant will have a permanent felony arrest on his record and no one will ever know whether or not there was at least probable cause to charge a felony.

## CHAPTER 13

## The Withdrawal of the Complaining Witness

Lack of cooperation by the complaining witness was the major cause of dismissals. The most frequent reason given for non-cooperation resulted from the complainant's "settling the problem" with the defendant; especially in those cases where the defendant and complainant were married, formerly married, lovers or friends. Other causes leading to dismissals were fear of retribution and frustration in dealing with the system. Cases in which there were cross-complainants often led to dismissals. In the majority of cases in which the complainant did not cooperate, the prosecutor acquiesced to the withdrawal of charges and the case was dismissed.

Ninety-eight percent of arrests for victim crimes were initiated by the victim who then became the key witness in the case. Yet before the case reached disposition, 37 percent of all complaining witnesses ceased cooperating, either by not appearing in court or by formally withdrawing the complaint.

Table 13-1

Frequency of Complaining Witness Withdrawal

| | Withdrawal of Complaints for Each Crime |
|---|---|
| | % |
| Rape | (54)* |
| Robbery | 40 |
| Assault | 63 |
| Burglary | 37 |
| Larceny | (22) |
| TOTAL | 37 |

400 sample
Weighted N = 28,887
Approximate N = 157

* Number in parentheses refers to base of less than 15.

Withdrawal of charges occurred more frequently in crimes against a person--rape and assault--than in property crimes.

Although the withdrawal of a complaining witness does not affect the legal duty of the state to prosecute, withdrawal usually affected the prosecution in two ways: it deprived the prosecutor of essential evidence, and when the

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victim ceased to care, the state also appeared to care less.

Complainant withdrawal not only frequently causes dismissal, but also major charge reductions. The following table compares in each crime category the disposition of the cases where the complainant withdrew with cases where he did not.

Table 13-2

Result of Complaining Witness Withdrawal

| | Dismissal | Reduction: Misd. or Less | All Other | TOTAL |
|---|---|---|---|---|
| Rape | | | | |
| Withdrawal | (100)* | -- | -- | 100 |
| All Other | (51) | (25) | (24) | 100 |
| Robbery | | | | |
| Withdrawal | 71 | (29) | -- | 100 |
| All Other | 23 | 43 | 34 | 100 |
| Assault | | | | |
| Withdrawal | 72 | (25) | (3) | 100 |
| All Other | 21 | 70 | 9 | 100 |
| Burglary | | | | |
| Withdrawal | 53 | (47) | -- | 100 |
| All Other | 18 | 77 | (5) | 100 |
| Larceny | | | | |
| Withdrawal | (68) | (32) | -- | 100 |
| All Other | 33 | 63 | (4) | 100 |
| TOTAL | | | | |
| Withdrawal | 69 | 30 | (1) | 100 |
| All Other | 24 | 63 | 13 | 100 |

400 Sample
Weighted N = 52,172
Approximate N = 284

* See footnote to Table, p. 174.

Since "making up" was the most common reason for withdrawal, its higher frequency in cases where there was a prior relationship between victim and defendant was not surprising. In the following table, the reasons for withdrawal are tabulated by charge.

In one quarter of the cases there was no recorded reason for the withdrawal: this high proportion of "unknowns" resulted because the study plan did not include systematic interviewing of victims. There was sufficient indirect information as to reasons, however, from interviews with policemen, defense counsel, prosecutor, and judge to outline the basic structure:

Table 13-3

Motive for Non-Cooperation by Complainant
by Major Crime Categories (victim crimes only)

| | Rape | Robbery | Assault | Burglary | Larceny | TOTAL |
|---|---|---|---|---|---|---|
| Victim & Defendant made up | (7)* | 31 | 33 | 60 | (49) | 38 |
| Fear of Self-Incrimination | -- | 17 | 15 | 10 | -- | 12 |
| Intimidation | (59) | 14 | 2 | 9 | -- | 8 |
| Frustration | -- | -- | 7 | 16 | (28) | 9 |
| Management | -- | 8 | 11 | 5 | (3) | 8 |
| No Reason Found | (34) | 32 | 32 | -- | (20) | 25 |
| TOTAL | 100 | 100 | 100 | 100 | 100 | 100 |
| Share of TOTAL (%) | 6 | 44 | 21 | 17 | 12 | 100 |

400 sample
Weighted N = 18,003
Approximate N = 98

* See footnote to Table, p.174.

The following cases illustrate the variety of motives and circumstances leading to withdrawal:

The first case is a typical family affair.

> The defendant and his common-law wife had lived together for ten years. They had their share of quarrels and sometimes these got rough. One night, the defendant had been drinking and he and his wife fought over money. When she refused to give him her pay check, he hit and injured her. She called the police; the defendant became frightened. Convinced he would go to jail, he offered the police $20. They charged him with robbery 1, assault 2 and bribery. The complainant was taken to the hospital where she received stitches for a cut on her head. In court, she requested that the charges be dismissed. The prosecutor insisted on a plea to bribery, a misdemeanor, and the defendant was sentenced to a conditional discharge. The judge explained, "They were standing arm in arm. She told me he was a good man and a good provider. They had been together ten years and they had every appearance of staying together another ten."
>
> Prosecutor and defense counsel considered the case routine; the only oddity was the Probation Department's recommendation to discharge the defendant on condition that he stay away from the complainant. "They don't understand what's going on," the Legal Aid lawyer said, "to recommend that they stay away when it would be impossible to separate them."

In another case, the defendant and complainant were common-law husband and wife. They had split up several years before the incident but the defendant continued to support his child.

> One night the complainant reported to the police that her ex-husband had torn apart her apartment, and when the police arrived they found the place in shambles. The defendant, waiting in the street, admitted his responsibility. "I took him inside, hoping he would offer to pay and then I wouldn't have to arrest him," explained the officer. "But he picked up another object and threw it against the wall. I had to arrest him. When I finally took him to the station, he offered to pay. The defendant seemed to want to be arrested. He wanted to prove something to the woman--that he was a man and that he would go to jail for her. He had done the same thing four months ago but the complainant felt sorry and hadn't pressed charges. This time, he did too much damage, so she called the police. He wanted her back but she wasn't willing." The case was dismissed a week after the arrest. The defendant promised to pay the complainant and the complainant told the ADA that she no longer wished to press charges. The prosecutor said: "This should have been a civil suit but these people could not afford lawyers. They don't know about civil suits. When they need justice, they call the police."

A "family" crime may be a "property" crime as in the following two cases:

> A grandfather returning home found his son and grandson ransacking his apartment; outraged, he called the police. Although the son had 25 arrests, the case was dismissed at the preliminary hearing when the complainant withdrew.

In a second case:

> Two young men were caught by a policeman appropriating several hundred pairs of stockings from a moving van; they were charged with grand larceny. The owner of the merchandise was the

> father of one of the defendants who refused to sign the complaint and never came to court leading to a dismissal. "He told me he was a very busy man," explained the officer, "that it was impossible for him to get away, but that he was ready to beat his kid over the head."

In 12 percent of the cases in which the complainant withdrew, the complainant himself was possibly involved in the commission of a crime and had second thoughts about going through with the complaint. One example occurred between neighbors:

> The defendant and her husband, homeowners, had fought with their neighbor for years. One summer evening the feud erupted into battle. The defendants charged into the neighbor's yard spraying mace and the complainant retaliated with a baseball bat. The police were called in, attempted to calm things down, but the irate complainant, in an "exhilarated state" stole one of the officer's guns intending to use it against the defendant. Everyone was arrested, the defendants were charged with assault, the complainant with robbery of the police officer. The complainant's case was sent to the Grand Jury and he was indicted. Meanwhile the case against the defendant was dismissed when the complainant refused to testify, claiming danger of self-incrimination. Reportedly there was a private settlement assuring dismissals for both parties.

A similar brawl had a similar outcome:

> The defendant was the superintendent of the building in which the complainant lived. He was Carribean, a recent immigrant to the city. The complainant had

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> thrown garbage out his window which led to a number of arguments. Eventually, they confronted each other. The complainant pulled a knife, the defendant, with a loaded gun, called the complainant a drug addict and trouble-maker. A neighbor notified the police who arrested the defendant for possession of a weapon and reckless endangerment. The complainant did not appear in court after arraignment. The defense attorney explained that he had spoken to both parties, both regretted the affair and had settled their differences out of court.

At times the involvement of victim and defendant was manifested in the filing of a cross-complaint. These cases often ended in withdrawal of both the original and cross-complaint.

> Two women were fighting apparently over a man. Both had to be hospitalized. The Legal Aid attorney reported, "The police officer made sure both women filed complaints, knowing that these complaints would then be dismissed."

> In another case, the defendant was a prostitute, her husband a pimp. The complainant, who lived in the same hotel as the defendant, dabbled in illegal activities. The defendant allegedly stole the complainant's money after a tryst. He attacked her with a board. The husband emerged and counter-attacked with a bottle. The defendant and her husband were picked up on the street by the police who noticed their bloody condition. They charged the complainant with assault and robbery. He filed a cross-complaint alleging the same. All three spent the night in jail where it was reported they decided it was in their mutual interest not to pursue the issue. The prosecutor said: "You should have seen them when they walked into court. They acted like the best of friends. We get a lot of cases like this; they sound more serious than they are."

In a cross-complaint in which both parties in an altercation assume the role of defendant, the case may be "settled out of court."

> A prostitute had allegedly stolen money from her customer after she had brought him to her room. The complainant, furious, located a police officer and had the prostitute arrested for robbery. He never showed up in court. The defendant pleaded guilty to a B misdemeanor and the ADA explained:
>
> > "You can understand what happens. The John runs to a cop immediately after the incident because he's indignant about being ripped off. When he cools down he realizes that he will have to come to court to testify. Naturally, he is embarrassed. End of case."

In another case, the defendant was a middle-aged Greek immigrant with a rudimentary grasp of English who worked in a gas station.

> The complainant had left her automobile to be repaired. When she came to collect it a dispute arose over how much she owed. Tempers flared, harsh words were exchanged, the defendant threatened the complainant with a hammer. The complainant's husband located a policeman who arrested the defendant and charged him with assault 2 and possession of a dangerous instrument. The complainant did not sign the complaint but stated at arraignment that she would not prosecute if the defendant would get psychiatric help and his employer would promise not to leave the attendant alone with customers. The case was dismissed after several hearings when the complainant failed to return.

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Although evidence of intimidation as a reason for withdrawal was indirect, there undoubtedly are such cases. Often the pressure might not have been more than an appeal for mercy, but in some cases it was suspected that the defendant had threatened the complainant.[1)]

The following case is an example of how a rather serious crime may evaporate perhaps because of intimidation.

> A man had kept his former girlfriend secluded for 12 hours against her will and beat her (fractured her nose and some of her teeth). When his apartment was searched, a gun was found and gambling slips. (A motion to suppress was denied.) He was charged with kidnapping (A felony), assault, possession of a dangerous weapon and possession of gambling records.
>
> The woman was so reluctant a witness that she was kept in civil jail as a material witness before appearing. She refused to testify; she said she was threatened.
>
> The man was allowed to plead guilty to an E felony with a promise of probation. The probation report, according to the judge, was very favorable, spoke of the defendant as "a very likeable person." When it was found out that he was on probation on a federal court sentence, the sentence was changed to conditional discharge.

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1) In the Queens Criminal Court robbery charges against two youths were dismissed when the restaurant's night manager and waitress failed to appear. Shortly after the two suspects were arrested, an unidentified teenager entered the restaurant and said to the manager: "I hear that you are supposed to go to court. I don't think it would be a good idea for you to show up." (New York Post, September 15, 1974.)

Another case which seemed an example of intimidation was the following:

> According to the complainant, four defendants had beaten him and taken his welfare check; two days later they were arrested. The complainant did not show up for subsequent appearances and notified the welfare department "not to tell the police when he registers." The police thought the complainant witness had been "reached."

Non-cooperation often resulted when a neighbor, a social agency or the police intervened unsolicited, without being asked by the victim. In one case:

> A mentally disturbed defendant had spent much of his youth in mental hospitals and at the time of the incident was living with his family. One night he went beserk and stabbed his brother. His mother called an ambulance; the ambulance driver notified the police who arrested the defendant over the protests of his mother and brother who said they would not prosecute. The defendant was arraigned. The felony assault charge was sent to Family Court, the possession of a dangerous instrument charge remained in Criminal Court. Both cases were eventually dismissed.

Property crimes were often forgiven if restitution was made. Car theft was a prime example. Several such cases involved auto rental companies. In one case the defendant had kept a rented car beyond the contract period and was charged with grand larceny, criminal possession of stolen

and court resources devoted to arresting and processing cases may be largely wasted. Secondly, perhaps better treatment of witnesses would encourage continued cooperation. The plight of the victim is receiving increasing attention. A recent article in the Wall Street Journal commented:

> After searching vainly for years for ways to conquer crime, some law enforcement authorities finally are beginning to focus attention on improving society's treatment of crime's victims.
>
> The problem is a tough one, whose solution will require a massive overhaul of procedures followed by police, prosecutors, courts and lawyers. Experts contend, however, that unless a way is found to end the shabby treatment of victims of crime there will be a further serious erosion of public support for the nation's judicial and law-enforcement systems.2)

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2) Mitchell C. Lynch, "Tough Luck if You're Ripped Off," The Wall Street Journal, August 7, 1975.

property, and unauthorized use of a vehicle. Once the car was returned and the rental fee paid, the complainant urged dismissal of the charges. This case elicited sarcastic comment from the prosecutor about the company using the court as a collection agency.

Another defendant apprehended with a stolen car was charged with grand larceny and the case was indicted. After the car had been returned and costs repaid, the complaining owner withdrew all charges and the case was dismissed.

For reasons of convenience, an out-of-town complainant is unlikely to return:

> According to the complaint, the defendant, unemployed and drunk, allegedly jostled a woman from out-of-town, emerging from Macy's, and tried to snatch her purse. The woman suffered minor injuries and called a detective who charged attempted robbery 3, assault 2, and public intoxication. The complainant agreed to sign a complaint at the station house but never showed up in court. She probably left town shortly after the incident. The case was reduced to public intoxication.

The frequency of withdrawal by the complaining witness (especially when there was a prior relation to the defendant) and its impact on dispositions suggests two conclusions. First, the criminal courts may not be the appropriate vehicle for resolving disputes and that police

# CHAPTER 14

## The Defendant

Throughout the criminal process--at arraignment, at the point thereafter when the prosecutor and/or judge might decide to dismiss the case, and at the time the defendant is sentenced--many personal characteristics of the defendant are important factors in determining how severely or how leniently he is treated. These characteristics include his prior criminal record, his family responsibilities, his employment status, and his age.

The personal characteristics of the defendant only formally enter the disposition process at sentencing.[1] In setting a sentence a judge considers the defendant's age, family responsibilities, employment status and prior record as well as the crime. However, the data from this study indicate that personal characteristics of the defendant are informally considered both at sentencing and earlier in the process. For example, defendants with no prior records were more likely to have their cases dismissed or have charges reduced than those with records.

Table 14-1 provides a summary of the reasons given by those interviewed for decisions to dismiss or reduce the charges that were tied to personal characteristics of the defendant.

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1) There are exceptions: a judge in setting bail is supposed to consider the probability that the defendant may flee which may involve his community ties, employment status, etc. In charging, a past felony conviction raises the charge of a criminal possession of a dangerous weapon from an A misdemeanor to an E felony. An exception which takes into account a defendant's age is Article 720 which allows a defendant between the ages of 16 and 19 years who had never been convicted of a felony and not under indictment for an A felony to be adjudged a Youthful Offender and have the case sealed. (Article 720 CPL)

Table 14-1

Defendant Characteristics Cited as Contributing Toward Dismissal or Reduction of Charges

| | Dismissals % | Charge Reductions % |
|---|---|---|
| **Criminal Record** | | |
| First offense | 35 | 28 |
| Minor record | 8 | 13 |
| Dissimilar record | - | 1 |
| Old record | 7 | 2 |
| | 50 | 44 |
| **Position in Life** | | |
| Employed | 13 | 10 |
| Family responsibilities | 11 | 7 |
| Veteran | - | * |
| Student | 4 | - |
| | 28 | 17 |
| **Demographics** | | |
| Young | 4 | 5 |
| Old | 5 | 5 |
| Female | - | 2 |
| | 9 | 12 |
| **Special Problems** | | |
| Drug problem | 2 | 6 |
| In a drug program | 2 | 2 |
| Mental condition | 1 | 3 |
| Alcohol problem | - | 1 |
| Other health disability | - | 1 |
| | 5 | 13 |
| **Other** (Restitution, himself injured, etc. | 8 | 14 |
| | 8 | 14 |
| TOTAL | 100% | 100% |
| | 400 sample Weighted N = 10,505 Approximate N = 57 | 400 sample Weighted N = 35,78 Approximate N = 1[illegible] |

* less than .5%

About one-half the reasons given for a dismissal or a charge reduction were related to the fact that the defendant had no or only a minor criminal record. For example in one case a C felony was reduced to an A misdemeanor.

> The defendant and an accomplice jumped an Anti-Crime Unit cop dressed as an old man. They knocked him down and took his wallet, but he was not injured. The defendant was a 21 year old drug addict. It was his first arrest. Because he had no prior record and the use of force was considered minor, the defendant was offered an A misdemeanor plea with no sentence promise. Several weeks later the defendant was sentenced to probation.

Next in importance, according to the prosecutor, defense counsel, and judge was the defendant's family and employment status.

> After a routine check, the defendant was found in a stolen car, with stolen license plates (from another car) and a forged license number on the engine. The defendant claimed he had bought the car from somebody (it had been stolen three years earlier). He had no prior record, had a wife and five children, and a job as a garage mechanic, was a war veteran with honorable discharge. He was allowed to plead guilty to criminal possession of stolen property, an A misdemeanor, and sentenced to 3 years probation.

When the specific characteristics of the defendants were examined in relation to the disposition of their cases, the criminal record appeared to be more strongly

related to conviction and sentencing than sex, ethnicity or age. As was seen in Chapters 7 and 10, a defendant's criminal record was related to his chances of dismissal and prison sentence. It might be thought that this resulted from the fact that defendants with a criminal record were more likely to commit the more serious crimes. Although there was a relation between prior record and type of crime, Tables 7-10, 7-11, and 10-1 (in which conviction and sentencing patterns for each crime class are compared) show severity does not account for the influence of record on dismissal and sentencing rates. Over half of those with no previous arrests had their cases dismissed compared to less than a third of defendants who had served a prior prison term. A defendant who had served a prior prison term was about three times as likely to be sentenced to prison as a defendant who had never been arrested before.

When conviction and prison rates were compared for each arrest crime class for defendants with dissimilar criminal histories, defendants with prior prison records consistently fared worse than those without a record. For all classes of crimes, they were approximately twice as likely to be convicted and twice as likely to be sentenced to time.

A similar pattern emerges when prior records for specific crime were compared as illustrated in Table 14-2.

Table 14-2

Criminal History by Disposition
by Four Major Crimes

| | Prison % | Conviction % | Arrest % | None % |
|---|---|---|---|---|
| **Robbery** | | | | |
| Dismissal | 28 | 30 | 51 | 44 |
| Non-Prison | 6 | 21 | 20 | 14 |
| Prison | 66 | 49 | 29 | 42 |
| | 100 | 100 | 100 | 100 |
| **Burglary** | | | | |
| Dismissal | 18 | 16 | 33 | 53 |
| Non-Prison | 8 | 12 | 19 | 15 |
| Prison | 74 | 72 | 48 | 32 |
| | 100 | 100 | 100 | 100 |
| **Assault** | | | | |
| Dismissal | 35 | 34 | 51 | 60 |
| Non-Prison | - | 20 | 16 | 23 |
| Prison | 65 | 46 | 33 | 17 |
| | 100 | 100 | 100 | 100 |
| **Drug Sale** | | | | |
| Dismissal | 10 | 10 | 32 | 33 |
| Non-Prison | - | 20 | 15 | 27 |
| Prison | 90 | 70 | 53 | 40 |
| | 100 | 100 | 100 | 100 |

2000 sample
Weighted N = 28,393
Approximate N = 568

Defendants with prior records of arrests or convictions of similar crimes were more likely to be convicted and more likely to be sentenced to time than defendants whose records did not include a crime similar to the current one.

In addition to the defendant's criminal history an important variable determining disposition was a defendant's employment status. The prosecutor and judge seemed to interpret employment as an index of stability. They were also sensitive to the precarious economic condition of many defendants and reluctant to force a defendant's family on welfare by sentencing the defendant to prison. Consequently, employment was often cited as a reason for allowing a defendant to "walk." Since employment status is associated with prior record, age and family ties, only the association, not a causal relation, between employment and sentencing can be noted.

Another factor associated with a defendant's personal characteristics was his addiction status. Addicted defendants were treated more harshly than non-addicts. The difference in conviction rates was small but an addict defendant was twice as likely to be sentenced to time as the non-addict. This resulted in part from the crimes for which addicts were arrested (robberies and burglaries, which had relatively high prison sentencing rates) and also from their perceived recidivist tendencies.

Table 14-3

Addiction Status by Disposition and Sentence

| | Dismissed % | Non-Prison % | Prison % | TOTAL % |
|---|---|---|---|---|
| Addicted | 15 | 24 | 40 | 52 |
| Not Addicted | 85 | 76 | 60 | 48 |
| TOTAL | 100 | 100 | 100 | 100 |

400 sample
Weighted N = 61,206
Approximate N = 333

On the other hand, addicts who were in treatment programs when arrested or who managed to get into treatment between the time of arrest and disposition, fared better than untreated addicts:

Table 14-4

Disposition and Sentence of Addicts According to Treatment Status

| | In Treatment % | Not In Treatment % |
|---|---|---|
| Conviction Rates | 63 | 87 |
| Of Those Convicted Percent Sentenced to: | | |
| NACC | (7)* | (25) |
| Prison | (26) | 45 |
| Non-Prison | 67 | 30 |
| | 100 | 100 |

400 sample
Weighted N = 11,481
Approximate N = 62

* Numbers in parentheses refer to base of less than 15 cases.

Addicted defendants in treatment were twice as likely to have their cases dismissed (usually with an Adjournment in Contemplation of Dismissal, the dismissal conditioned on good performance in the program) and twice as likely to "walk" if convicted. The importance of participation in a program in determining an addict's disposition was widely recognized among defense counsel. As one attorney explained:

> "If my client is a first offender, I try to get a dismissal, but if he has a prior record, that's out of the question. In that case, I try for a program--the program's the can opener."

Another factor cited by prosecutors and judges as a reason for dismissals and non-prison sentences was the age of the defendant. Defendants at opposite ends of the age spectrum--youths between the ages of 16 and 19 and defendants over the age of 40--were less likely to be convicted than the middle aged group. Youths were marginally more likely to have their cases dismissed and persons over 40 years were less likely to be sentenced.

Table 14-5

Conviction and Sentence
According to Age of Defendants

| Age | Conviction Rate % | If Convicted, Sentenced to Prison % |
|---|---|---|
| 16-19 years | 50 | 68 |
| 20-29 years | 57 | 72 |
| 30-39 years | 56 | 60 |
| 40 years and over | 55 | 42 |

2000 sample
Weighted N = 40,767
Approximate N = 815

Although ethnicity was not mentioned as a personal characteristic affecting dispositions (see Table 14-1), because there has been concern about the handling of minority defendants, dispositions of blacks, whites and Hispanics were compared. In Table 14-6, the disposition patterns are presented for each ethnic group for five major felonies.

Table 14-6

Disposition of Cases by Ethnicity of Defendants

| | White % | Black % | Hispanic % |
|---|---|---|---|
| Assault | | | |
| Dismissal | 59 | 55 | 55 |
| Non-Prison | 17 | 20 | 16 |
| Prison | 24 | 25 | 29 |
| | 100 | 100 | 100 |
| Robbery | | | |
| Dismissal | 40 | 44 | 32 |
| Non-Prison | 18 | 9 | 20 |
| Prison | 42 | 47 | 48 |
| | 100 | 100 | 100 |
| Burglary | | | |
| Dismissal | 37 | 35 | 30 |
| Non-Prison | 19 | 12 | 9 |
| Prison | 44 | 53 | 61 |
| | 100 | 100 | 100 |
| Drug Sale | | | |
| Dismissal | (28)* | 34 | (21) |
| Non-Prison | (30) | (10) | (11) |
| Prison | (42) | 56 | 68 |
| | 100 | 100 | 100 |
| Drug Possession | | | |
| Dismissal | 59 | 51 | 54 |
| Non-Prison | 26 | 22 | (16) |
| Prison | (15) | 27 | 30 |
| | 100 | 100 | 100 |

2000 sample
Weighted N = 44,648
Approximate N = 893

* See footnote p. 194.

The table suggests some differences: Hispanics were less likely to have their cases dismissed and were more likely to be sentenced to time than whites or blacks. The greater likelihood of a prison sentence was particularly evident in drug possession and drug sale charges. Since ethnicity is associated with many other factors such as employment, counsel, and bail status it may be these others (e.g., Hispanics have the lowest per capita income of the three groups and thus are least likely to make bail) which account for the differences.

In sum, a defendant's criminal history was the most important personal characteristic affecting both the disposition of the case as well as the sentence imposed.

5-1

# CHAPTER 15

## The Nature of the Crime

The criminal justice process reorders and redefines the classifications of the Penal Law. Certain minor commercial crimes, crimes between non-strangers, crimes which caused no damage, or where the damage was repaired were treated with less concern than others of equal gravity according to the Penal Law. This re-evaluation of the severity of the crime was tied to congestion pressure; but it is uncertain whether downgrading of the severity of crimes would not also occur in a non-congested system.

The prosecutor or judge sometimes referred to the particular facts of a crime as a reason for reducing charges or for allowing them to be dismissed. The frequency of this explanation (11 percent of dismissals and 18 percent of charge reductions) was somewhat surprising since the Penal Law provides a gradation and classification scheme for crimes. One function of the criminal justice system is to locate the category into which the particular crime falls, since the categories of the Penal Law are mutually exclusive.[1)]

The numerically most important group of arrests affected by devaluation of the crime were crimes in which victim and defendant were spouses, lovers, former lovers or spouses, relatives or close friends. Under these circumstances, the crime was often seen as an extension or excess of more or less normal conflicts. There was also a sense that individuals who committed crimes against loved ones or companions were unlikely to extend their violence to strangers. This was reflected in

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1) The so-called "lesser included offenses"--e.g., assault in robbery--are not exceptions since the law is specific about the precedence of the major offense, if the facts can be established, over the lesser one.

the observation, frequently voiced by people working in the courts, that individuals who commit crimes against their relatives are not "criminals." As one assistant put it: "Assault is for strangers." It is not a felony when a man beats his wife. It becomes one if he attacks a stranger on the street.

The devaluation is tied up with evidential problems.[2] If the victim was not a stranger, there was the possibility of provocation or involvement by the victim in the criminal act which may be forgiven by the time the case reaches disposition. Table 15-1 shows how disposition for three major crimes is affected by prior relationship between victim and defendant.

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2) See Chapter 13, The Complaining Witness

Table 15-1

Disposition and Prior Relationship for Three Major Crimes

| | Robbery | | Larceny | | Assault | |
|---|---|---|---|---|---|---|
| | Family or Friends % | Stranger % | Family or Friends % | Stranger % | Family or Friends % | Stranger % |
| Dismissed | 59 | 2 | (50)* | 26 | 55 | (14) |
| Convicted as Felony | 13 | 59 | - | 10 | 7 | (19) |
| Convicted as Misdemeanor | 28 | 39 | (50) | 64 | 38 | (67) |
| TOTAL | 100 | 100 | 100 | 100 | 100 | 100 |
| Share of total | (55%) | (45%) | (20%) | (80%) | (78%) | (22%) |
| | (100%) | | (100%) | | (100%) | |
| % Prison if Convicted | 18% | 27% | 28% | 44% | 24% | 53% |

400 Sample
Weighted N = 27,149
Approximate N = 148

* Number in parentheses refers to base of less than 15 cases.

In each crime category, if victim and defendant were not strangers, the proportion of dismissals was greater and the likelihood of being convicted of a felony and the likelihood of going to prison was smaller.

In some instances, the criminal justice process made

legal distinctions which the law does not make. The crime of burglary is illustrative. The layman's notion of burglary is that it is the act of breaking and entering to commit theft. The legal definition of burglary, however, is broader. Under the law of New York, burglary is breaking and entering for the purpose of committing any crime. The interesting point is that the criminal justice process distinguishes between two types of burglaries, adopting the layman's notion as to what a burglary is. The following cases illustrate burglaries that did not seem to involve theft or an attempt at theft:

> An elderly woman reprimanded a group of children for throwing rocks at her window; the next evening she received a visit from their mothers, who pushed her windows open and entered to confront her.
>
> Some forty youngsters entered a factory at night "on a prank." When the police arrived, they fled, leaving only one who was caught.
>
> Two men were observed trying to open various apartment doors. The police arrested them for attempted burglary, believing that they were junkies looking for a place to "shoot up."

If such a devalued burglary is also a family affair it becomes, as one judge explained, a "junk case," as in the following example:

> The defendant and complainant had been lovers and their relationship had been terminated by the woman against the wishes of the defendant. Sometime later, he broke into the woman's apartment, attacked and threatened her and her child, damaged the apartment, prevented her from calling the police and frightened the family. There were no serious injuries. The defendant was originally charged with burglary (breaking and entering) and eventually pleaded to attempted third degree assault--a drop from a D felony to a B misdemeanor--and fined $150. The disposition was explained by several factors. Technically, the defendant had committed a burglary but the parties knew each other and even though not married the court regarded the affair as a family dispute. The court's attitude was to dispose of the case as quickly as possible.

It was difficult to distinguish perceptions having to do with the gravity of a crime from evidential difficulties. For example:

> A policeman observed two men holding up a drunk and going through his pockets. The officer charged robbery C. This was not necessarily an overcharge since the requirement for robbery is forcible taking, and holding up a reluctant drunk could be considered force. However, the court usually treated such offenses as jostling, an A misdemeanor, because the degree of force was considered minimal.

Cases involving possession of small amounts of narcotics were also devalued. Despite the felony label, they were treated as misdemeanors and most convicted defendants were walked. This reflects a view expressed by some judges and prosecutors that self-inflicted injury is less important than injury inflicted on others, and that addict-users are victims themselves, needing treatment rather than punishment.

Another internal policy in two boroughs made the theft of a car older than three years a misdemeanor. This policy meant that it was assumed such a car had a value of less than $250, the border between petit larceny, an A misdemeanor, and grand larceny, an E felony.

Often, however, the issue is not one of proof but a genuine disagreement with the law as to how serious the crime is.

A frequent example was a forged driver's license discovered during a routine check when a car was stopped for a driving violation. Often only one element of the license was forged, such as the last digit of the year of expiration, or the driver's name. The Penal Law makes the possession of a forged document, a D felony, if there was intent to deceive about which there can be little doubt. The police in such a case correctly charged possession of a forged instrument. Yet prosecutors do not consider this a "real forgery" and the system is satisfied with a charge of violating the Vehicle Code "Driving without a valid license."

Occasionally, the DA used his own guidelines to decide difficult classification problems. Thus in two boroughs, purse snatching was classified not as robbery, but as larceny--i.e., a misdemeanor, instead of a felony. The following case illustrates the point:

> Two men, one the defendant in the sample, approached an old woman; the defendant, according to the woman held a pistol (later identified as a toy pistol) and said that she had been pushed. The woman's shouts were heard by the police who caught the defendants a block and a half away; the defendant held the purse. The defendant was charged with robbery and grand larceny; in the complaint room, the robbery charge was

> dropped. The complainant did not cooperate further. After the second hearing, the defendant was allowed to plead guilty to petit larceny and was paroled in contemplation of dismissal. He had no prior record.

What is being said is, "Only a purse snatch, nobody got hurt."

In a similar case the judge remarked:

> If a person snatches a purse and he pulls the woman a little it becomes robbery 1. This should be reduced to a petit larceny.

A "marginal" case of burglary is illustrated below:

> A two family building had been vacated earlier on the day of the arrest. After the family moved out the defendant was seen entering the building. He found the defendant putting a wrench to the plumbing pipes; also a mirror had been taken from the wall. The defendant claimed he had bought the rights to what was left from a man for $30. No evidence of this was produced. The defendant had no prior record. Since nobody thought the defendant was a house stripping burglar, he was allowed to plead to criminal trespass (A-misdemeanor) and fined $100.

The ADA remarked, "In a trial, he might well have been acquitted: no record, a nice guy, no damage, and no 'victim' since the house was to be demolished." The case below illustrates a similar devaluation:

> A man was caught in a night-time burglary with his tools; there was no damage. The crime was a D felony. However, the ADA remarked: "I did not think a Grand Jury would like this case because it was not a serious burglary; a commercial burglary, only

> a few cents were taken. So I put it into the 'no go' category. You have to put each case in the perspective of the other cases you have, rather than in terms of what each individual deserves."

It appears that the Grand Jury made reclassifications in terms of court management rather than from a strict interpretation of the law.

> Three youths had been robbed by threat of force by three men. Only one of the robbers had been caught. He cooperated with the police and gave descriptions of the others. The ADA remarked: "This is the type of case that if it had been held for the Grand Jury would have been returned because the scope in Criminal Court would be sufficient for this, since there was neither weapon nor injury. The Grand Jury would have returned it as petit larceny."

What is sometimes labeled minor property crimes includes a variety of offenses: commercial burglary, the passing of a bad check, the possession of a stolen credit card, welfare fraud, burglary, and various types of larceny.

> "It was only a commercial burglary and the defendant had not gotten any money out of it," said the DA,"the case should be kept downstairs /in the Criminal Court/."

Passing a bad check was usually charged as forgery and larceny, but these cases were generally disposed of as misdemeanors. As one assistant put it, "Relative to other offenses, bad checks are not serious. It's worse that shoplifting, but it is not as bad as most. The

same is true for welfare frauds and stolen credit cards." The following case is illustrative:

> The defendant had stolen three checks from three different people in the total amount of $415, forged the endorsement and bought some furniture. When the complaining witnesses in court confirmed that he had made complete restitution, the judge urged the prosecutor to dismiss the case. "This was not much of a crime," the judge explained; "the man had only what I call an old record . . . restitution," the judge continued, "was enough punishment; the man had to pay twice, not only for the furniture but also make restitution for the stolen checks."3)

Gambling is also rated low on the crime scale. A police officer remarked that he had never seen a policy writer sentenced to anything other than a fine; he never heard of anyone going to jail on a gambling arrest.

Sometimes the borderline between criminal cases and civil disputes was close:

> A creditor-friend broke down the debtor's door demanding to be paid his money back and threatening to shoot the debtor. The case progressed to the Grand Jury but was reduced to the misdemeanor of criminal trespass, and the defendant was given a conditional discharge.

The need to distinguish the handling of "minor" crimes from that of serious crimes was tied to the congestion

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3) The judge overlooked that he was then allowed to keep the furniture.

pressure. One assistant district attorney commented:

> "Since the courts cannot handle all the cases presented to them, only the most serious ones are accepted."

Yet one cannot be certain that the devaluation would not take place without congestion. But the cases do provide one certain conclusion: the distinctions the criminal justice system makes after arrest go beyond the distinctions found in the Penal Code. The system pays more attention to violent crimes among strangers than to victimless or minor crimes.

## SUMMARY

The goal of the study was twofold: 1) to track a randomly sampled broad-based number of felony cases from arrest to disposition and tabulate the results; and 2) to understand the reasons for these results.

A probability sample of 1888 felony arrests was traced to final disposition; and for a second sample of 369 felony arrests, interviews were conducted with the arresting officers, the prosecutor, the defense counsel, and the judge involved in the case.

Although the study focuses on what happens to people arrested for felonies, it is worth noting the small number of felonies that result in arrests. In 1971, the year for which the larger sample was taken, approximately 500,000 felonies were reported. However, victimization surveys suggest that in New York and other major cities the number of felonies actually committed may have been twice the number of those reported. This would mean 1,000,000 felonies were committed in New York in 1971.

There were 100,000 felony arrests in New York in 1971, or one-tenth the probable number of actual felonies and one-fifth the number of reported felonies.

In 1971 in New York 89 percent of those arrested for felonies were men. Thirty-one percent were under 20 years old, and close to 50 percent of those arrested for burglary and robbery were under 20 years of age. Half of those arrested were black, one-quarter were Hispanic, and one quarter were white. Thirty-nine percent had never been arrested before. Half of those charged with victim crimes had a prior relationship of some kind (friend, neighbor, relative, acquaintance) with the victim. It must be pointed out that this is a sample of defendants arrested for felonies. It is not a sample of those who commit felonies since it includes arrested defendants who were innocent and excludes felons not caught.

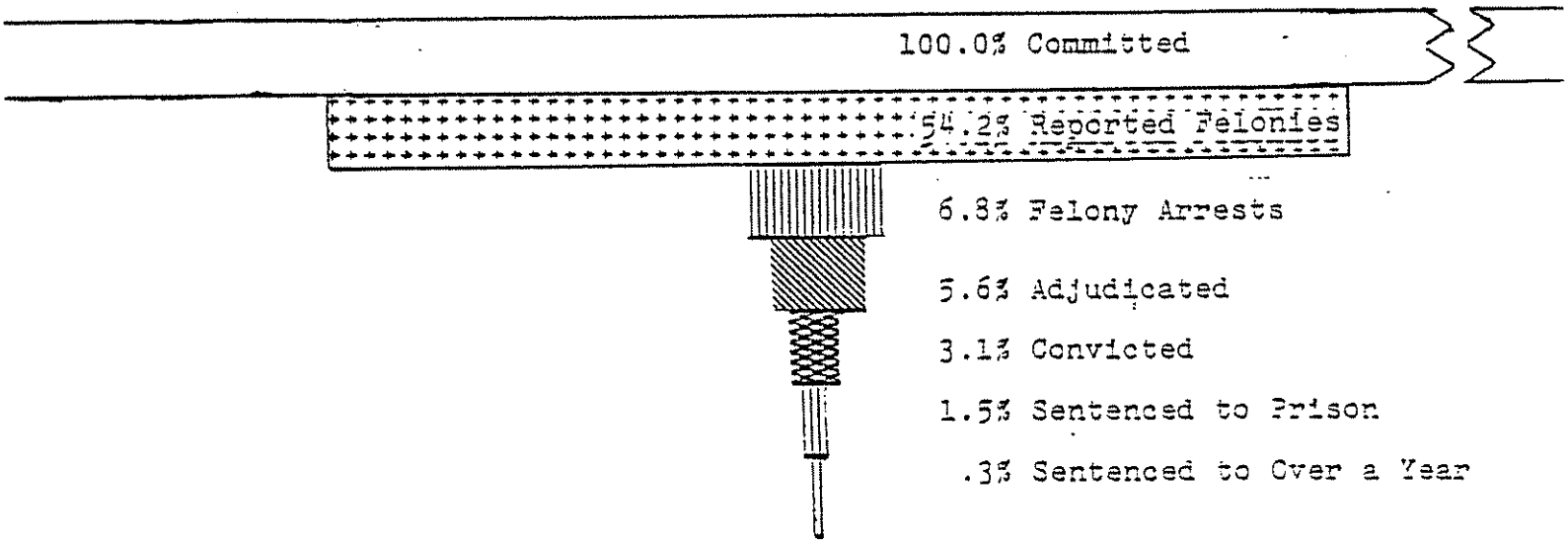
Of every 100 felony arrests in the 1971 arrest sample, 14 percent were diverted into Family Court, 6 percent jumped bail, and the remaining were disposed of in the criminal court system. Of these 55 percent were convicted while the cases of the remaining 45 percent were dismissed or acquitted. Only 2 percent of felony arrests reached trial.

Of the 55 percent convicted, three-fourths were convicted of a misdemeanor; one-fourth (14 percent of defendants arrested on a felony charge) were convicted of a felony. The sentences of the 55 percent convicted persons

were distributed as follows: 26 percent of them "walked" (they received no prison sentence); 29 percent were sentenced to prison, with 5 percent sentenced to more than one year.

Taking into account the gaps between felonies committed, felonies reported, and felony arrests, and data on dispositions, an "upside-down" pyramid can be constructed that describes how the criminal justice system dealt with felonies in 1971. If one believes lengthy prison sentences play a constructive role in coping with crime, it is not an encouraging picture:

Dispositions in Relation to Committed Crimes



There is a generally held notion that a congested court system forces judges and prosecutors to "bargain away" the courthouse. The belief that congestion is responsible for lenient treatment of felony offenders does not hold up when the cases are examined. In many cases the charge and sentence reduction or dismissal resulted not from congestion but from the nature of the case: there were problems with the evidence; the complaining witness decided to withdraw the complaint; the courts and prosecutors viewed the crime as minor (although perhaps technically a felony); or the defendant had no prior record. In fact, court congestion which leads to speedy plea bargaining--if not speedy trial--may often be the cause of harsh dispositions. This is because poor arrests, the absence of a complaining witness, lack of evidence, and other factors that would have freed a defendant at trial were often not factors in the plea bargaining process. Similarly, dismissed cases were often the result of an obviously poor case or a non-cooperative complaining witness.

Sentencing patterns indicate that an offender convicted of a violent crime against a stranger was more likely to serve longer time than an individual convicted of drug possession. Robberies that were the outgrowth of a lovers'

quarrel were dealt with less seriously than "real" robberies. A defendant with prior convictions was more likely to be sentenced to prison than a defendant with no criminal record. In fact, the 2000 sample suggests that unless a defendant was arrested for an A or B felony or had a previous criminal record, his chances of being sentenced to prison over one year were practically nil.

Overall the study suggests a logic to many of the charge reductions and dismissals. A substantial portion of crimes charged as felonies were cases that did not pose a serious threat to an individual or society. The study points to a need for new procedures to deal with non-serious felonies so that the courts can allocate their resources to serious offenses in which society has an important stake.

# APPENDIX A

## Borough Differences

New York City's five boroughs differ in composition of their population and in the amount and kind of crimes committed within their boundaries.

Table A-1

Reported Crime in the Five Boroughs (in 1971)

| | City-Wide | Manhattan | Bronx | Brooklyn | Queens | Stn. Is.* |
|---|---|---|---|---|---|---|
| 1) Population (in 1,000s) | 7895 | 1539 | 1471 | 2602 | 1987 | 296 |
| Percent | (100) | (19) | (19) | (33) | (25) | (4) |
| 2) Reported Felonies | 510,048 | 176,855 | 91,061 | 147,939 | 86,095 | 8,098 |
| Percent | (100) | (34) | (18) | (29) | (17) | (2) |
| 3) Fel. Rate (Reported Felonies per 100,000 population) | 6,469 | 11,492 | 6,186 | 5,685 | 4,335 | 2,483 |
| 4) Violent Felonies (Reported per 100,000 population) | 1,435 | 2,979 | 1,466 | 1,249 | 647 | == |
| 5) Property Felonies (Reported per 100,000 population) | 4,388 | 7,365 | 4,040 | 3,855 | 3,417 | == |
| 6) Ratio of Violent & Property Crimes | 1/3.1 | 1/2.5 | 1/2.8 | 1/3.1 | 1/5.3 | |

Source 1): New York City Police Department, 1970.
Source 2) through 6): New York City Police Department, 1971.

* Staten Island (Richmond County) is included for comparative purposes in this table.

As illustrated in Table A-1, Brooklyn is New York's largest borough with one-third of the city's population; Queens is the next largest with one-fourth; Manhattan and the Bronx each have about a fifth; while Staten Island has only 4 percent.

Although Manhattan accounts for only one-fifth of the city's population it accounted for over a third of the reported crimes (Table A-1, lines 1 and 2). Its rate of reported felonies per 100,000 population was twice as high as that of Brooklyn and the Bronx (line 3), and two and a half times that of Queens.

The ratio of violent felonies to property felonies (lines 5/4=6) indicated that Manhattan had not only more crime but also a higher proportion of violent crime. In Manhattan, for every 100 residents, 11 felonies were reported, of which 3 were violent crimes. In Queens there were fewer crimes and proportionately more property crimes: five property crimes for each violent one (lines 5/4=6). Queens had a lower rate per 100,000 population of reported violent felonies than any of the ten largest cities in the United States.[1)]

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1) See Table 3-2, p. 25.

In Table A-2, the types of reported crime in each borough per 100,000 population are presented. The most frequent crime, both city-wide and in each borough, was burglary. City-wide, robberies and auto larcenies made up the next largest groups of crimes. However, they were distributed differently among the boroughs. Robbery was more likely to be reported in Manhattan than in the other boroughs, and Queens had the highest rate of auto larcenies. In Queens, auto larcenies accounted for about one-third of victim felonies (1400 out of 4100) and in Manhattan for about one-tenth (1100 out of 10,400); the difference probably due to the lower rate of cars per capita in Manhattan. The distribution of reported crime in the Bronx and Brooklyn was similar and parallels the city-wide pattern.

Table A-2

Reported Crimes per 100,000 by Borough

| | City-Wide | Manhattan | Bronx | Brooklyn | Queens |
|---|---|---|---|---|---|
| Robbery | 1100 | 2400 | 1100 | 900 | 500 |
| Homicide Rape Assault | 300 | 600 | 300 | 300 | 100 |
| Burglary | 2300 | 4000 | 2300 | 2100 | 1400 |
| Auto Larceny | 1100 | 1100 | 1000 | 1000 | 1400 |
| Other Larceny | 1000 | 2300 | 700 | 800 | 700 |
| Total Victim Crimes | 5800 | 10400 | 5400 | 5100 | 4100 |

Source: New York City Police Department, 1971.

Because of the similarity of the arrest rates among the boroughs, the distribution of arrests among the boroughs follows the distribution of reported crimes. (Table A-3.) The arrest rate[2)] was 20 percent city-wide, and close to that in three of the four boroughs. Queens was the exception, with an arrest rate of 14 percent. This probably reflects the fact that Queens has a proportionately higher rate of property crimes and the arrest rate for property crimes is lower than that for crimes of violence. Manhattan accounted for the most arrests (34 percent), followed by Brooklyn (33 percent), and the Bronx (21 percent). Queens has the fewest arrests (11 percent.) (Table A-3.)

Table A-3

Felony Arrests in the Five Boroughs

| | City-wide | Manhattan | Bronx | Brooklyn | Queens |
|---|---|---|---|---|---|
| Felony Arrests per 100,000 Population | 20 | 20 | 24 | 27 | 14 |
| Felony Arrests (per 100,000) | 1290 | 2310 | 1500 | 1510 | 610 |
| Felony Arrests # City-Wide | 102,138 | 35,105 | 21,737 | 33,657 | 11,654 |
| Percent of Citywide Felony Arrests | (100) | (34) | (21) | (33) | (11) |
| Percent of Population | (100) | (20) | (20) | (34) | (26) |

Source: New York City Police Department, 1971.

2) See Table 4-1, p. 36.

Although there were some differences in the types of crimes reported in the boroughs (e.g. proportionally more auto larcenies in Queens and more robberies in Manhattan and the Bronx), the differences of the distribution of arrests by type of crime were not great.

Table A-4

Arrests by Type of Crime by Borough

| | City-wide % | Man-hattan % | Bronx % | Brook-lyn % | Queens % |
|---|---|---|---|---|---|
| Against Persons | | | | | |
| Homicide | 1 | 1 | 1 | 1 | 1 |
| Rape | 2 | 1 | 1 | 1 | 1 |
| Robbery | 17 | 18 | 18 | 16 | 15 |
| Assault | 9 | 9 | 10 | 11 | 9 |
| | 29 | 29 | 30 | 29 | 26 |
| Property | | | | | |
| Burglary | 16 | 12 | 18 | 18 | 14 |
| Larceny | 4 | 6 | 3 | 4 | 4 |
| Auto Larceny | 8 | 6 | 9 | 8 | 10 |
| | 28 | 24 | 30 | 30 | 28 |
| Others | | | | | |
| Narcotics | 20 | 25 | 20 | 16 | 18 |
| Dang. Weapon<br>Forgery<br>Gambling | 23 | 22 | 20 | 26 | 28 |
| | 43 | 47 | 40 | 42 | 46 |
| TOTAL | 100 | 100 | 100 | 100 | 100 |

Source: New York City Police Department Crime Comparison Report, 1971.

Since the distribution of type of arrest was roughly similar among the boroughs, it was not surprising that the gravity of the offenses does not vary substantially among the boroughs. (Table A-5.)

Table A-5

Arrest Class by Borough

| | City-wide % | Man-hattan % | Bronx % | Brook-lyn % | Queens % |
|---|---|---|---|---|---|
| A | 2 | 2 | 2 | 2 | 2 |
| B | 12 | 12 | 14 | 13 | 8 |
| C | 19 | 21 | 19 | 15 | 17 |
| D | 47 | 47 | 47 | 48 | 48 |
| E | 20 | 18 | 18 | 22 | 25 |
| TOTAL | 100 | 100 | 100 | 100 | 100 |
| %-Share of each Borough | (100) | (35) | (22) | (31) | (12) |

2000 Sample
Weighted N = 98,294
Approximate N = 1,966

In sum, the most significant difference among the boroughs was not the severity of the arrests brought in for processing by the courts, but the number of these arrests.

Manhattan had more defendants over 30 years of age (29 percent) and fewer defendants under 20 years old (24 percent) than the other boroughs. (Table A-6.)

Table A-6

Age of Arrested Persons by Borough

| | City-wide | Man-hattan | Bronx | Brook-lyn | Queens |
|---|---|---|---|---|---|
| | % | % | % | % | % |
| Under 16 yrs. | 12 | 9 | 12 | 16 | 15 |
| 16-19 | 19 | 15 | 22 | 19 | 22 |
| 20-29 | 46 | 47 | 46 | 45 | 43 |
| 30-39 | 16 | 20 | 15 | 13 | 14 |
| 40+ | 7 | 9 | 5 | 7 | 6 |
| TOTAL | 100 | 100 | 100 | 100 | 100 |
| Share | (100) | (35) | (22) | (31) | (12) |

2000 Sample
Weighted N = 99, 857
Approximate N = 1,997

The major difference in the demographic composition of the population was in the ethnic background of the arrested defendants. Bronx had the highest proportion of Hispanics. In contrast, Queens had almost no Hispanic defendants but had proportionally nearly twice as many white defendants (41 percent) as any of the other boroughs. (Table A-7.)

Table A-7

Ethnicity of Arrested Persons by Borough
(Percent)

| | City-wide | Man-hattan | Bronx | Brook-lyn | Queens |
|---|---|---|---|---|---|
| White | 22 | 20 | 17 | 21 | 41 |
| Black | 53 | 56 | 46 | 53 | 53 |
| Hispanic | 24 | 23 | 37 | 26 | 2 |
| Other | 1 | 1 | * | * | 4 |
| TOTAL | 100 | 100 | 100 | 100 | 100 |

2000 Sample
Weighted N = 97,239
Approximate N = 1,945

The criminal histories of defendants varied slightly from borough to borough as illustrated by Table A-8. Manhattan had proportionately more offenders who had served prison sentences, possibly reflecting the fact that Manhattan had more older defendants and older defendants are more likely to have a criminal record. Brooklyn had a slightly higher proportion of defendants never arrested before than the city-wide average and proportionally fewer defendants who had served prior prison terms.

Table A-8

Criminal History of Arrested Persons by Borough

| | City-wide | Man-hattan | Bronx | Brook-lyn | Queens |
|---|---|---|---|---|---|
| | % | % | % | % | % |
| Prison | 20 | 25 | 23 | 11 | 19 |
| Conviction | 14 | 16 | 13 | 15 | 12 |
| Arrest | 27 | 24 | 24 | 31 | 32 |
| No Record | 38 | 36 | 40 | 43 | 37 |
| TOTAL | 99 | 101 | 100 | 100 | 100 |

2000 Sample
Weighted N = 61,054
Approximate N = 1,221

The following tables present the disposition pattern for the four boroughs.

A defendant's likelihood of conviction varied depending on the borough in which he was arrested. (Table A-9 sets out the comparative conviction rates in 1971.) In the Bronx, nearly two-thirds (64%) of defendants were convicted and in Brooklyn a defendant had a 50/50 chance of having his case dismissed.

Table A-9

Conviction Rates in the Boroughs

| | Citywide % | Manhattan % | Bronx % | Brooklyn % | Queens % |
|---|---|---|---|---|---|
| Dismissed | 45 | 44 | 36 | 50 | 48 |
| Convicted | 55 | 56 | 64 | 50 | 52 |
| | 100 | 100 | 100 | 100 | 100 |

2000 sample
Weighted N = 67,174
Approximate N = 1,343

There were differences among the boroughs in the proportion of convicted defendants who pleaded or were found guilty of felonies. (See Table A-10.) The Bronx which had the highest overall conviction rate had the lowest felony conviction rate (22%). Brooklyn which had the lowest overall conviction rate, convicted the highest proportion of felonies (41%). Of those convicted in Queens, a third (33%) were convicted of felonies whereas a quarter of convicted defendants in Manhattan pleaded to felonies.

Table A-10

Interborough Comparison of Misdemeanor/Felony Convictions

| | Citywide % | Manhattan % | Bronx % | Brooklyn % | Queens % |
|---|---|---|---|---|---|
| Felony | 30 | 25 | 22 | 41 | 33 |
| Misdemeanor | 70 | 75 | 88 | 59 | 67 |
| | 100 | 100 | 100 | 100 | 100 |

2000 sample
Weighted N = 39,161
Approximate N = 783

Table A-11 presents the felony conviction rates as a proportion of felony arrests.

Table A-11

Total Disposition for Felony Arrests: Interborough Comparison

| | Citywide % | Manhattan % | Bronx % | Brooklyn % | Queens % |
|---|---|---|---|---|---|
| Dismissed | 45 | 44 | 36 | 50 | 48 |
| Misd. Conv. | 40 | 45 | 51 | 31 | 36 |
| Fel. Conv. | 15 | 11 | 13 | 19 | 16 |
| | 100 | 100 | 100 | 100 | 100 |

2000 sample
Weighted N = 67,174
Approximate N = 1,343

The boroughs sentenced convicted defendants differently. Table A-12 sets out the distribution for those convicted in each borough.

Table A-12

Distribution of Sentences of Those Convicted by Borough

| | City-wide % | Manhattan % | Bronx % | Brooklyn % | Queens % |
|---|---|---|---|---|---|
| Non-Prison | | | | | |
| Discharge | 17 | 15 | 18 | 19 | 17 |
| Probation | 20 | 15 | 17 | 28 | 25 |
| Fine | 15 | 14 | 13 | 17 | 16 |
| | 52 | 44 | 48 | 64 | 58 |
| Prison | | | | | |
| NACC | 1 | - | 2 | 1 | 1 |
| Prison-1 yr. or less | 38 | 49 | 41 | 24 | 28 |
| Prison-over 1 yr. | 9 | 7 | 9 | 11 | 13 |
| | 48 | 56 | 52 | 36 | 42 |
| | === | === | === | === | === |
| TOTAL | 100 | 100 | 100 | 100 | 100 |

2000 sample
Weighted N = 39,161
Approximate N = 783

Over half of convicted defendants in Manhattan and the Bronx were sentenced to prison. Queens' prison sentence rate was 42%. Brooklyn sentenced 36% of convicted defendants to prison.

Although Brooklyn and Queens sentenced proportionately fewer convicted defendants to prison, they sentenced proportionately more defendants to state prison. Table A-13 shows the distribution of misdemeanor and felony time for defendants convicted and sentenced to prison.

Table A-13

Distribution of Misdemeanor and Felony Time by Borough for Defendants Convicted and Sentenced to Prison

| | City-wide % | Manhattan % | Bronx % | Brooklyn % | Queens % |
|---|---|---|---|---|---|
| Misdemeanor Time | | | | | |
| 1-3 months | 35 | 45 | 28 | 28 | 34 |
| 4-6 months | 18 | 16 | 21 | 14 | 11 |
| 7-12 months | 27 | 25 | 32 | 26 | 21 |
| | 80 | 86 | 81 | 68 | 66 |
| Felony Time | | | | | |
| 1-3 years | 10 | 10 | 5 | 16 | 9 |
| 4-7 years | 9 | 3 | 11 | 14 | 20 |
| 8-15 years | 1 | 1 | 2 | - | 5 |
| 16 - Life | * | - | 1 | 2 | - |
| | 20 | 14 | 19 | 32 | 34 |
| TOTAL | 100 | 100 | 100 | 100 | 100 |

2000 sample
Weighted N = 19,000
Approximate N = 380

* Less than 1%.

In Table A-14 sentences are broken down by whether the defendant was convicted of a misdemeanor or a felony.

Table A-14

Sentence by Misdemeanor/Felony Conviction by Borough

| | Citywide | | Manhattan | | Bronx | | Brooklyn | | Queens | |
|---|---|---|---|---|---|---|---|---|---|---|
| | Mis. % | Fel. % | Mis. % | Fel. % | Mis. % | Fel. % | Mis. % | Fel. % | Mis. % | Fel. % |
| Non-Prison | | | | | | | | | | |
| Discharge | 20 | - | 16 | 7 | 21 | 6 | 23 | 14 | 27 | 10 |
| Probation | 16 | 33 | 13 | 24 | 14 | 24 | 21 | 41 | 28 | 33 |
| Fine | 17 | 4 | 15 | 5 | 16 | - | 23 | 2 | 25 | 8 |
| | 53 | 37 | 44 | 36 | 51 | 30 | 67 | 57 | 80 | 51 |
| Prison | | | | | | | | | | |
| NACC | 1 | 1 | - | - | 2 | - | 2 | - | 5 | - |
| Prison-1 yr. or less | 44 | 25 | 56 | 30 | 47 | 24 | 31 | 14 | 15 | 4 |
| Prison-over 1 yr. | - | 37 | - | 34 | - | 46 | - | 29 | - | 45 |
| | 47 | 63 | 56 | 64 | 49 | 70 | 33 | 43 | 20 | 49 |
| TOTAL | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| % Convicted | 70 | 30 | 75 | 25 | 78 | 22 | 59 | 41 | 66 | 34 |

2000 sample
Weighted N = 39,161
Approximate N = 783

In Table A-15 the conviction and sentencing data are rought together in one table which can be viewed as a eries of probabilities predicting the likelihood of conviction, the nature of the conviction (felony or misdeeanor) and the length of sentence for defendants sentenced o prison.

Table A-15

Probable Outcomes of Felony Arrests by Borough

| | Manhattan % | Bronx % | Brooklyn % | Queens % |
|---|---|---|---|---|
| Dismissed | 44 | 36 | 50 | 48 |
| Convicted | | | | |
| Misdemeanor | | | | |
| Non-Prison | 25 | 24 | 20 | 24 |
| Prison (1-6 mos.) | 14 | 17 | 6 | 8 |
| Prison (7-12 mos.) | 6 | 10 | 4 | 4 |
| | 45 | 51 | 30 | 36 |
| Felony | | | | |
| Non-Prison | 4 | 4 | 12 | 7 |
| Prison-(1 yr.or less) | 3 | 3 | 3 | 2 |
| Prison (1-3 yrs.) | 3 | 1 | 3 | 2 |
| Prison (4-7 yrs.) | 1 | 4 | 2 | 4 |
| Prison (8-Life) | * | 1 | * | 1 |
| | 11 | 13 | 20 | 16 |
| TOTAL | 100 | 100 | 100 | 100 |

2000 sample
Weighted N = 67,174
Approximate N = 1,343

* Less than 0.5%.

# APPENDIX B

## The Role of Counsel

Representation by counsel is a right guaranteed to all defendants. However, only relatively affluent defendants can retain private counsel while indigent defendants are represented by the Legal Aid Society, the public defense agency in New York City. If, however, an indigent defendant is charged with murder, or if a co-defendant is represented by the Legal Aid Society and a conflict of interest could arise, the court will assign counsel from the ranks of the private bar.

Table B-1 shows the distribution of these three types of counsel:

Table B-1

Type of Counsel for Defendants Charged with a Felony

| | |
|---|---|
| Retained | 24[a] |
| Assigned | 2 |
| Legal Aid | 74 |
| | 100 |

2000 sample
Weighted N = 67,387
Approximate N = 1,348

The number of assigned counsel was negligible while the overall ratio of Legal Aid to retained counsel was 74:21, or approximately 3 to 1. The following tables present only the proportion of "retained counsel."

Table B-2 indicates to what extent the overall 24 percent figure for the frequency of retained counsel varied for diverse groups of defendants. Generally speaking the ability to pay determined the frequency of retained counsel, and the great majority of those who make up the caseloads in the criminal courts are poor. Yet, there were variations:

Table B-2

Frequency of Retained Counsel for Various Subgroups of the Defendants Arrested for a Felony
(Percent Retained Counsel)

| | | | | | | |
|---|---|---|---|---|---|---|
| 1. Sex: | Male | Female | | | | |
| | 19 | 26 | | | | |
| 2. Ethnicity: | White | Black | Hispanic | | | |
| | 24 | 18 | 15 | | | |
| 3. Age: | 16-19 | 20-29 | 30-39 | 40+ | | |
| | 16 | 18 | 28 | 30 | | |
| 4. Borough: | Manhattan | Bronx | Brooklyn | Queens | | |
| | 17 | 16 | 28 | 35 | | |
| 5. Type of Crime: | Homicide | Rape | Robbery | Assault | Burglary | |
| | 84 | 21 | 23 | 33 | 13 | |
| | Larceny | Poss. Weapon | Drug Sale | Drug Poss. | Gambling | Forgery |
| | 40 | 43 | 19 | 22 | 62 | 18 |

Note: Sources for table are listed below:

2000 Sample

1. Weighted N = 71,123
   Approximate N = 1,422

2. Weighted N = 85,602
   Approximate N = 1,712

3. Weighted N = 71,191
   Approximate N = 1,424

4. Weighted N = 39,161
   Approximate N = 783

5. Weighted N = 76,675
   Approximate N = 1,533

APPENDIX C :

Bail

Normally within 24 hours after arrest, the defendant is arraigned in criminal court where the judge sets bail at the level he deems appropriate. The purpose of bail is to assure the defendant's appearance in court;[1] in theory, it is the judge's task to estimate the smallest amount which will assure the defendant's appearance.[2] It may be, however, that the judge also takes into account the chance that the defendant would commit another offense if released, tamper with the evidence, bother or harrass the complainants, or eventually be convicted and sentenced to prison.

The arraignment judge has before him the defendant's criminal record, the crime he is charged with, and information the assistant district attorney, the defense counsel, and the defendant bring forth.

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1) Criminal Procedure Law N.Y., Section 510 and Richard G. Denzer, McKinney's, Book IIA, Part 3 commenting to 510.30 at 15.

2) People ex rel. Lobell v. McDonnell, 296 N.Y. 109, 71 N.E. 2nd 423 (1947).

The distribution of bail decisions in 1971 was as follows:[3)]

3) The bail information in this study was incomplete since it was not recorded whether the amount was a cash alternative bail (when the defendant puts up a percentage of the bail in cash) or regular bail (when a third party may put up a bond guaranteeing the bail). In New York, the judge may set a cash alternative at any amount in any case in which bail may be set.

The failure to distinguish between cash alternative bail and bond was discovered only after criminal history information had been received, which made it impossible to go back to the files since defendants' identification (see Chapter 2) had been removed. The harm, though, is small, because according to corresponding data obtained from the Brooklyn Pre-trial Services Agency, the two types (cash alternative and bail bond) divided almost homogenously according to the bail amount set.

Bail & Bond Amounts in Brooklyn Criminal Court 1972-73

| $ Amount | % | Of these % were cash alternative bail |
|---|---|---|
| under 500 | 21 | 93 |
| 500 | 26 | 13 |
| 501 -1000 | 17 | 5 |
| 1001 -2500 | 17 | 2 |
| 2501 -5000 | 10 | 1 |
| 5001 + | 9 | -- |
| (N=1418) | 100% | |

Source: Brooklyn Pre-trial Services Agency.

Note: Bail amounts up to $250 were predominately cash alternative bail; all higher bail amounts contained only a small fraction of cash alternatives.

Table C-1

Bail for Defendants Arrested on a Felony Charge

| | | |
|---|---|---|
| Released without bail (ROR)* | | 38% |
| Bail set: | | 54 |
| below $250 | 6 | |
| $250 - $1000 | 27 | |
| over $1000 | 21 | |
| Held without bail | | 8 |
| TOTAL | | 100% |

2000 Sample
Weighted N = 85,184
Approximate N = 1704

* ROR="Released on Own Recognizance"

In 38 percent of the cases the judges released the defendant on his own recognizance; and in 54 percent the judge set bail. In 6 percent of all cases for which bail was set bail was below 250 dollars; in 27 percent bail was set between $250 - $1000; in the remaining 21 percent of the cases bail was above $1,000. Eight percent of the defendants were held in custody without bail.

Table C-2 relates the bail decision to the gravity of the charged offense:

Table C-2

Class of Crime and Size of Bail

| | A % | B % | C % | D % | E % |
|---|---|---|---|---|---|
| Released on Recognizance | -- | 6 | 15 | 52 | 27 |
| Bail | | | | | |
| up to $250 | -- | 2 | 13 | 6 | 9 |
| $250 - $1000 | (11)* | 26 | 35 | 29 | 50 |
| more than $1000 | (89) | 66 | 37 | 13 | 14 |
| TOTAL | 100 | 100 | 100 | 100 | 100 |

2000 Sample
Weighted N = 44,678
Approximate N = 894

* Numbers in parentheses refer to base of less than 15 cases.

As might be expected, the more serious the charge, the higher the bail. The proportion of defendants released on their own recognizance was greater as the severity of the charge decreased, with the exception of D felonies. Conversely, the proportion of defendants for whom bail was set at over $1000 decreased as the severity of the crime declined.[4)]

Table C-3 relates the bail decision and the defendant's criminal record:

4) The reversal in ROR and bail amounts for D felonies has not been replicated in data from the Pre-Trial Services Agency. There is no obvious explanation.

Table C-3

Defendant's Criminal Record and Level of Bail

| | None % | Arrest % | Conviction % | Prison % |
|---|---|---|---|---|
| Released w/o Bail | 54 | 33 | 28 | 21 |
| Bail | | | | |
| up to $250 | 7 | 6 | 6 | 5 |
| $251 - $1000 | 25 | 36 | 39 | 31 |
| more than $1000 | 14 | 25 | 27 | 43 |
| TOTAL | 100 | 100 | 100 | 100 |

2000 Sample
Weighted N = 54,323
Approximate N = 1086

The more serious the defendant's record, the less likely was his release on recognizance. And if bail was set, it increased with severity of the record; 14 percent of defendants without a criminal record were faced with a bail of over $1000 compared with 43 percent for the defendants with a prior prison record.

The bail decision thus appears to be related to the charge and to the defendant's criminal record. Since severity of crime and criminal record were interrelated, Table

C-4 shows the combined effect of both factors on the bail decision. To simplify its reading, only the proportion of defendants for whom the judge set bail of $250 or more is presented.

Table C-4

Severity of Charge, Criminal Record, and Bail Decision
(Proportion of Cases in which Bail was Set at $250 or More)

| Defendant's Criminal Record | Class of Arrest Charge(s) | | | |
|---|---|---|---|---|
| | A or B | C | D | E |
| Prison | 90 | 88 | 68 | 56 |
| Conviction | 93 | 82 | 53 | 67 |
| Arrest | 89 | 76 | 65 | 42 |
| None | 73 | 43 | 38 | 19 |

2000 Sample
Weighted N = 27,648
Approximate N = 553

Table C-4 indicates that:

(1) The proportion of defendants with high bail was determined both by the gravity of the arrest and whether or not the defendant had a criminal record.

(2) In setting bail, judges did not seem to distinguish among types of criminal record--that is, between prison, conviction, and arrest, but only between the defendant who had no record and any record at all.

The second step in the bail process is the making or not making of bail. In Table C-5 the distribution of bail setting is presented divided by those who could and could not make bail. It was not surprising that the amount of bail was pivotal. (Table C-5.)

Table C-5

Bail Made and Not Made by Size of Bail

| | BAIL | | | |
|---|---|---|---|---|
| | Less than $250 | $250-1000 | More than $1000 | TOTAL Bail Cases |
| Made | 89 | 62 | 35 | 54 |
| Not Made | 11 | 38 | 65 | 46 |
| TOTAL | 100 | 100 | 100 | 100 |
| Share of TOTAL (%) | 6 | 29 | 23 | 58 |

2000 Sample
Weighted N = 89,832
Approximate N = 1797

Of defendants for whom bail was set, 54 percent could make it, 46 percent could not. For defendants for whom bail was set below $250, 89 percent made it; for those with bail set above $1000, 35% made it.

In Table C-6, the distribution is presented by those defendants for whom bail was not set,[5] those released on their own recognizance, as well as those for whom bail was set.

Table C-6

Bail and Custody

| | | Percent | |
|---|---|---|---|
| Released w/o Bail (ROR) | | 38 | Released 67% |
| Bail Made | Bail set 54% | 29 | |
| Bail Not Made | | 25 | Custody 33% |
| Held w/o Bail | | 8 | |
| | TOTAL | 100% | |

2000 Sample
Weighted N = 85,530
Approximate N = 1711

One third of those arrested for a felony were kept in pre-trial custody, two-thirds were released. The more detailed records of the 400 sample indicate that over one third made bail at some later point; thus one of five defendants was in jail at time of disposition.

5) Bail may not be set (and the defendant must be held in custody) in certain cases such as a class A felony conviction on defendant's record.

The next step is to examine the impact of bail on disposition and sentencing. Earlier studies have shown the relation of bail status to dispositions and the data from this study confirm earlier findings.[6] The data, however, do not allow for a statement of cause and effect but do permit a comparison of conviction and sentencing rates for defendants who made bail and for those who did not.

The data used for this analysis have been limited to defendants for whom bail was set, excluding defendants released on their own recognizance and those for whom bail was not set.

Table C-7 shows the relation of bail status to disposition and sentencing.

Table C-7

Bail Status and Disposition

| | In Custody | Bail Made |
|---|---|---|
| Percent of defendants convicted | 68 | 47 |
| Percent of convicted defendants sentenced to prison | 75 | 39 |

2000 Sample
Weighted N = 45,515
Approximate N = 910

6) Ares, Rankin, and Sturz, "The Manhattan Bail Project: An Interim Report on the Use of Pre-Trial Parole," N.Y.U. Law Review, Jan. 1963, No. 1, pp. 67-95.

Roballo v. Judges, 74 Civ. 2113-MEL, (S.D.N.Y.) Plaintiffs' Memorandum on the Merits.

Bellamy v. Judges, 41 A.D. 2d 196 (1st Dep't, 1973).

Of the defendants who could not make bail, almost 50 percent more were convicted, and proportionally almost twice as many received a prison sentence as those who made bail. Table C-8 refines the data by making the comparison within each arrest class:

Table C-8

Bail Status and Disposition by Arrest Crime Class

| Arrest Crime Class | Convicted | | Sentenced to Prison if Convicted | |
|---|---|---|---|---|
| | In Custody % | Made Bail % | In Custody % | Made Bail % |
| A + B | 68 | 55 | 84 | 47 |
| C | 79 | 71 | 76 | 47 |
| D | 73 | 52 | 66 | 31 |
| E | 75 | 47 | 82 | 40 |

2000 Sample
Weighted N = 41,289
Approximate N = 826

* Although it has been reported in other tables that a more severe arrest class has been associated with higher conviction and prison sentence rates; this pattern does not obtain for this table. It may be because the ROR and bail not set categories (which are over-representative of the extremes) have been excluded from this table.

Next, defendants with similar criminal records are compared:

Table C-9

Bail Status and Disposition by Criminal Record

| Record | Percent Convicted | | Percent Sentenced to Prison If Convicted | |
|---|---|---|---|---|
| | In Custody | Made Bail | In Custody | Made Bail |
| | % | % | % | % |
| None | 65 | 38 | 49 | 21 |
| Arrest | 58 | 45 | 58 | 26 |
| Convicted | 70 | 50 | 87 | 44 |
| Prison | 77 | 65 | 92 | 77 |

2000 Sample
Weighted N = 30,347
Approximate N = 607

Again, in each group, the defendants who could not make bail were more likely to be convicted and more likely to be sentenced to prison.

The evidence so far suggests that remaining in custody increased the likelihood of conviction and prison sentence. It may be possible that the judge sets high bail for those defendants against whom the evidence is strong because he thinks the chance of conviction is great. If that happens, and the judge takes into account in setting bail the same factors that affect conviction and sentencing rates, it is not surprising that defendants for whom high bail is set and who thus have a smaller chance of making it are those who are eventually convicted and sentenced to prison.

One way of examining this is to look at conviction and sentencing by the size of bail set and custody status.

Table C-10

Bail Status and Disposition by Size of Bail

| | $250 | | $250-1000 | | Over $1000 | |
|---|---|---|---|---|---|---|
| | In Custody % | Made Bail % | In Custody % | Made Bail % | In Custody % | Made Bail % |
| % Convicted | 71 | 52 | 70 | 57 | 73 | 53 |
| % Sentenced to Prison | 62 | 22 | 62 | 24 | 68 | 35 |

For each level of bail, defendants in custody were more likely than those released to be convicted, and if convicted, to be sentenced to prison. Table C-10, however, does not prove that defendants who could not make bail were worse off just because they were in custody. It is possible that in setting bail the judge decides whether he wants the defendant in jail and makes an estimate of the defendant's chance of making it and sets bail accordingly. A judge may set higher bail for those defendants he wants to keep in jail because he thinks they will commit new crimes, will be sentenced to prison, or interfere with witnesses. Since this study focused on reason for dispositions, interviews were conducted at the end of the process with the sentencing judges and not with arraignment judges. Hence, judges were not asked why they set bail. Since

these data indicate the importance of the bail decision in the final disposition, such questioning would seem an important next step in understanding bail and hence dispositions.

While not accounting for the relation between bail status and conviction and sentencing rates, the defendant's perspective helps partially explain why defendants in custody have higher conviction and prison sentence rates.

Defendants in custody are sometimes offered a sentence called "time served" which is often part of the plea bargain offered by the prosecutor to a defendant in pre-trial detention. It means that after pleading guilty, the defendant will have already served his sentence and may leave jail. In the 2000 sample, 3 percent of defendants with felony convictions were sentenced to "time served."[7]

"Time served" is a motive for pleading guilty which defendants free on bail do not have. Defendants free on bail also have opportunities to improve their chance of dismissal and a non-prison sentence by obtaining or holding a job and establishing stable family relations. (It may also be that by intimidating or otherwise interfering with witnesses, released defendants improve their chance for dismissal or a non-prison sentence.) The data suggest that some of these defendants, had they not been in custody,

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7) The percentage for the 400 sample was 6 percent: This may be a more accurate measure because a "time served" may not have been systematically recorded or noted for the 2000 sample since it was based on records.

would not have pleaded guilty and would not have been convicted.

This incentive cannot be given to the defendant who made bail. The free defendant may refuse to plead guilty, where the defendant in custody accepts a guilty plea. And in some cases this refusal is rewarded by the prosecutor's subsequent decision to drop the charges and dismiss the case. And every so often, the defendant free on bail, while pleading guilty will be able to negotiate for a non-prison sentence, where under equal circumstances the defendant in custody will accept "time served."[8]

The following cases are illustrations of the "time served" offer:

> When a transit policeman entered an IRT subway train he saw two youths standing at the car door. They were the only passengers in the car. As he moved in the car, the policeman saw a brown paper bag with a handgun; he said he could see the contents from where he stood. On the opposite seat, under some newspapers, he discovered a starter's pistol. The two youths were charged with possession of a dangerous weapon.
>
> Bail was set which the defendant could not make; the co-defendant made bail and was eventually indicted on a different charge and separated from the case.
>
> The defendant had a long record. Therefore, as the ADA put it, "Common sense would say that the kids had the gun and dumped it

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8) It should be noted that once a defendant in custody is convicted, a "time served" sentence is the least severe sentence (along with an unconditional discharge) a judge can impose.

> when they saw the cop come. Yet it would have been difficult to persuade a jury beyond reasonable doubt, that the kids 'possessed the weapon.'" The defendant was nevertheless indicted by the Grand Jury, as the ADA noted on the file "against my recommendation." The case moved on and off the calendar. "Finally, after the defendant had been in jail for seven months," the ADA reported, "everyone was present and agreed that the case amounted to nothing. The ADA offered a guilty plea to an A misdemeanor with a promise of 'time served' so the defendant could be freed immediately. He accepted."

Another case involved a rape charge.

> The prosecutor thought it would prove a weak case at trial. The Legal Aid lawyer agreed. The defendant, unable to make bail, was in custody. He pleaded guilty and was sentenced to prison for the time he had spent in pretrial custody. Counsel remarked, "He would have had to wait six months for a trial--which he preferred not to."

In another case the defendant and three unapprehended accomplices were charged with robbery at knife point.

> A knife had been found at the scene of the crime but it could not be linked up with the defendant. No blood had been found on the weapon, nor property found on the defendant, who had been apprehended near the scene of the crime, though the ADA did not know how close. Defendant and complainant had known one another and probably had been lovers. The case was a year old when it was evaluated for disposition. During all that time, the defendant had been in jail. The prosecutor thought the case weak; he interviewed the complainant prior to disposition and found that he had changed his testimony.

> There were also contradictions between complaint and indictment. On the basis of these facts, the prosecutor offered a plea to a D felony and a sentence of time served, which the defendant accepted.

Remarks by the prosecutor to the effect that the case had been weak must not be taken as fact since they serve to explain and to excuse a reduction in charge and sentence, even if the case had been a strong one--just as defense counsel will be tempted to exaggerate the strength of the case, to justify his client's pleading guilty.

Although these data and case studies support the finding that detained defendants were more likely to plead guilty and more likely to accept a prison sentence, there remains the entirely different question as to where justice lies. Should the system treat the defendants in custody as it treats those on bail, or should it treat those on bail as it treats those in custody?