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REPORT ON THE
PLANNING PHASE
OF THE
FELONY DISPOSITION PROJECT

December, 1972

INTRODUCTION

The three-month planning phase was used to explore in detail the logistic and other technical problems of this somewhat unorthodox research project. Part I of this report gives an overview of these technical explorations. The results of these explorations are summarized in Part II of this report which outlines in detail the research operations we want to put into effect as of January 1, 1973.

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PART I

Search for Descriptive Court Statistics

During the pilot stage of the project, a search was made to locate statistics which would present a total picture of felony dispositions in New York City. The New York State Judicial Conference, court administrators, and the Police Department were contacted for the appropriate figures. None of these sources had the kind of information essential for our study. Two forms furnished by the Judicial Conference (JC 153 and JC 500) contain most of the relevant information, however, much of it is in raw form. There is a need to gather and assemble existing data into a comprehensible state. Our study will undertake that task.

In order to gather information about the three types of felonies and to determine the feasibility of sampling, a preliminary statistical study was completed in October, 1972. We selected a random sample of 204 felony arrests in the three crime categories (illegal possession of a handgun, armed robbery, sale of narcotics) in Manhattan. These cases were traced from the arrest register through arraignment charges in Manhattan Criminal Court. The purpose of the study was to determine what changes, if any, occurred between arrest and arraignment. We discovered that approximately ten percent of the cases sampled which began as felonies were reduced to misdemeanors before arraignment.

Search for a Sampling Frame

The selection of cases to be scrutinized is a critical step in the project. If the cases are chosen scientifically, the integrity of the study will be insured. We propose to draw a sample of dispositions of felonies over ten months, and then interview the persons who participated in their disposition.

In a study of felony dispositions the logical first step would be to obtain a police department list of felony arrests affected, and sample defendants from that list. For our purposes, however, this will not be possible. The only central listing of arrests in New York City is the Police Department's "Arrest Register," a computer printout compiled from "Arrest Reports" which are submitted for each arrest by the arresting officer. Since this register is produced monthly, many cases, particularly those disposed of in Criminal Court, would have been disposed of up to six weeks before we could sample them. This is unsatisfactory since it is imperative that the participants in a case be approached immediately after disposition. Furthermore, if we were to use the Arrest Register as a source of cases, many cases would still be pending at the conclusion of the study.

The alternative we have chosen is to sample cases from completed court calendars immediately after disposition. For every courtroom in Supreme and Criminal

Courts in all four boroughs, the completed court calendar constitutes a record of a full day's proceedings. Disposed cases are clearly indicated on these calendars.

However, what is not indicated is the charge on which the defendant was arrested. Criminal Court calendars list only the arraignment charge, and Supreme Court calendars may list only the final charges or none at all. To select a sample of defendants arrested on felony charges from these calendars would be a very time-consuming operation. For every Criminal Court disposition in which the arraignment charge was a misdemeanor, it would be necessary to ascertain, from the defendant's arrest record, whether the defendant was in fact arrested on felony charges. If there were a felony arrest which had been reduced to a misdemeanor in the complaint room, then the case would have to be sampled. If, however, the defendant was arrested on misdemeanor charges, it would mot.

It was thus apparent that it was important to know how often pre-arraignment charge reductions occurred. As the October survey (see p. 1) revealed, a significantly large number of cases (10% of the cases sampled) are reduced from felonies to misdemeanors before arraignment. Since we cannot completely ignore such an important aspect of the charge-reduction process, and since to determine the arrest charges for all misdemeanor arraignments would be so time-consuming,

we decided to consider the universe of all felony arraignments as the "sampling frame" for the cases to be interviewed.

For cases disposed of in Supreme Court, it may be assumed that the arraignment charges in Criminal Court were felonies. We can scan Criminal Court calendars for dispositions for which the arraignment charges were felonies.

The next question which arose during the planning period was what should be considered a disposition.

Completed court calendars indicate the following types of dispositions: dismissals, adjournments in contemplation of dismissal (or discharge on own recognizance in Supreme Court), acquittals, convictions after trial, guilty pleas, and bench warrants. All except bench warrants, it was decided, will be considered dispositions. Defendants who "jump bail" may, of course, return to court so "Bench Warrants" may not always mean a final disposition.

The following categories of felony arrests will not be noted on court calendars, and not included in the sample of cases to be interviewed: felonies dismissed or reduced in the complaint room prior to arraignment, felonies presented to the Grand Jury and returned as no true bills, and felonies which were abated because the defendant died or was transferred to another jurisdiction. Because these cases form such a small part of the total number of felony arrests, their exclusion from the sample of cases to be interviewed should in no way impair the soundness of our findings.

Finally, during the planning phase, it was necessary to discover how many cases would be disposed of in each borough by Criminal and Supreme Courts. Three days in 1972 were chosen randomly, and we counted the number of cases which were disposed of. The following table presents the results of this survey:

Average Number of Dispositions Per Day for Cases Arraigned as Felonies*

Manhattan

Supreme Court	25
Criminal Court	59
Total	84

Brooklyn

Supreme Court	25
Criminal Court	38
Total	63

Bronx

Supreme Court	14
Criminal Court	37
Total	51

Queens

Supreme Court	9
Criminal Court	9
Total	18

* Based on three days' dispositions recorded on court calendars.

Interviewing Logistics

Once the sample had been defined, it was necessary to obtain copies of the court files, including the probation report, to locate the participants, and to arrange for interviews. Before specific papers could be copied or individuals could be interviewed, we had to meet with and secure the assistance of officials who administer the criminal justice system. We contacted the administrative judges in Criminal and Supreme Courts and the respective personnel who work in each of these systems: district attorneys, legal aid lawyers, clerks, directors of administration, and their subordinates. Contact was also made with the Criminal Justice Liaison Division of the New York City Police Department in order to establish procedures for interviewing arresting officers. Although their full cooperation has been assured, we are still in the process of establishing a satisfactory system to reach the widely dispersed police officers. We also arranged to secure copies of arrest reports (see Attachment A).

The Office of Probation granted us permission to examine and retain, for the duration of the study, copies of pre-sentence reports for all Criminal Court cases (see Attachment B). The Department of Probation for the 1st, 2nd, and 11th Judicial Districts

handles investigation and supervision of Supreme Court cases. We have not yet received corresponding permission from the Supreme Court, but hope to obtain it in due course, since we are able to provide the court with all necessary guarantees for maintaining the confidentiality of the reports.

In addition, we are in the process of arranging with the court clerks and district attorneys' offices permission to Xerox the appropriate court papers and to secure working space. We also familiarized ourselves with the physical plant of all the court buildings. We have telephone and personnel lists for each borough, and have available complete listings of the assistant district attorneys, Legal Aid attorneys, and judges. We ascertained the number of attorneys working in the Legal Aid and District Attorneys Offices: work schedule, rotation system, average case load per part, and staff and budgetary difficulties, among other things.

In the course of our conversations with the court personnel, we gathered information on how the system operates. Attachment C contains a copy of a file memorandum summarizing our initial survey of the Queens County Courts. We also prepared charts diagramming the arrangement of parts in Criminal and Supreme Courts (see Attachment D). As we proceed with the study, we

will, of course, procure additional data on the operational aspects of the system.

Our initial survey also disclosed some practical difficulties in reaching the participants. It was discovered that the name of the prosecutor or defense attorney who handled a case did not always appear in the court papers. Furthermore, the same individual did not always handle a case for both the sentencing and the final plea. There may have been as many different defense attorneys or prosecutors as there were court appearances. Also, once the name of the participant had been ascertained, finding him presented another problem. Generally, we went to the attorney-in-charge at Legal Aid or the bureau chief in the district attorney's office to find out where an individual was assigned for the day.

Private attorneys, on the other hand, were relatively easy to reach and interview by phone. Judges were readily available since they were usually assigned to one courtroom for at least a month at a time. The arresting officer, however, was exceedingly difficult to reach because his tour of duty often varied. In addition policemen cannot easily be reached by telephone. In only two of the 17 cases were the arresting officers interviewed.

The Interviews

The most important tasks of the planning phase were to design interviewing guidelines and discover the problems associated with this kind of interview. During the trial interviews, it became clear that the original guidelines were not adequate to bring forth a clear outline of the cases studied. In addition, we learned that sometimes even with good questions, the responses of the participants were not complete because of memory problems.

We have revised and expanded the study's interview guidelines to achieve a more thorough understanding of the case and to help alleviate the memory problem. Our plan is to present the court papers prior to the interview to refresh the interviewee's memory and when possible to allow time for the participant to locate and review his own file and notes. It is now anticipated that each interview will last an hour rather than the initially planned 20 minutes. (See interview guidelines on page 23). The guides have been divided according to the role of the participant and then into sections depending on the specific function of the participant; e.g., the judge may have presided only over sentencing. For a sample of the interviews which have been conducted see the case summaries in Attachment E.

Our trial interviews showed great variance in memory according to the role and position of each participant.

First, there is a time lag between the proceedings of the sample case and the interview. This can be explained in terms of the sampling techniques and logistics of locating a participant. The prosecutors, Legal Aid lawyers and judges carry large case loads, often as many as 50 cases a day in Manhattan Criminal Court. Frequently, Criminal Court cases are considered "routine" and less than four minutes may have been spent preparing for the case, if it was not taken to trial.

The differences between Supreme and Criminal Court agendas seem to affect the extent of the participant's memory. The completed daily calendar of any one part of the Criminal Court may show over 50 felony, misdemeanor and violation cases that have been dealt with. Fewer cases are disposed of per day in Supreme Court and our experience has shown the Supreme Court lawyers and judges to have more fully prepared cases.

Aside from considerations of time and work-load, various interviewees have, due to their function in the process, a deeper involvement in a case. For example, a policeman may average only 30 felony arrests a year, and he is involved directly with the case for several hours and thus has more extensive recall for our purposes. A judge may have been present only for sentencing, and not be able to recall all the data required.

Reluctance to speak with interviewers poses another problem in studies of this nature. So far, few participants have refused to cooperate. While a few judges were not enthusiastic about participating and one refused outright to give details on a specific case, most judges responded favorably, answering questions frankly and completely. All of the prosecutors and Legal Aid attorneys who have been approached were cooperative. Private defense attorneys have been willing to discuss cases over the telephone.

Our experience conducting interviews, combined with a reading of the relevant literature, has increased our sophistication with regard to the motivations involved in plea bargaining. The next section summarizes the knowledge gained in this area.

The Network of Motivations in Plea Barraining

Here are some of the categories of reasons which, alone or in various combinations, impel a prosecutor to "bargain".

1. Flaws in the evidence that might make it difficult to prove in a trial the original higher charge, but would be sufficient to prove a lesser offence.
2. Special circumstances in the particular case: e.g. minimal or no damages. Special characteristics of the particular defendant: e.g. a minor record or none at all.
   In some respect, these two categories are also part of the evidence, because in a trial, often the jury and sometimes also in a bench trial the judge may be influenced in their verdict on guilt by such special circumstances that are not strictly "evidence".
3. Notions of the District Attorney (individually or as an institution) as to what the "proper" sentence in such a case ought to be. There is the possibility of a discrepancy between these notions and the letter of the penal code,

especially in view of some of the current doubts as to the remedial or even deterrent effects of prison sentences.

For the defense attorney, the motivations are likely to be of a simpler nature:

1. Given the bargaining limits of the district attorney, the defense attorney will try to obtain the best deal for his client -- under his own operational constraints.
2. These operational constraints may refer to the attorney's hesitation to go to trial with the case; for the legal aid attorney, because he simply could not try every case even if he wanted to; for the hired attorney, perhaps because he had only been hired for settling the case, etc.

PART II

The Research Program in Detail

During the pilot phase, our vision of what is needed to understand the felony disposition process more clearly has become more precise. As a result, not our research objective, but our research program leading to this objective, has somewhat changed. We propose to revise our original program in four respects:

1) Our original plan was directed exclusively at the why and wherefores of the disposition process, in the assumption that a comprehensive statistical picture of the disposition process would be available in one or the other of our agencies. It turned out that only bits and pieces of this picture are available, although such a comprehensive picture is absolutely essential for the understanding of the disposition process. We have therefore laid out plans to provide this picture ourselves as part of our research effort. We intend to draw, for each of the four major boroughs, a sample of all felony arrests made during 1971 and pursue their disposition aftermath in the system. (See below "The Felony Disposition Statistics for the Four Boroughs".)

2) Second, we believe we should expand our search for the whys and wherefores of the felony dispositions (as described in 1 above) to all felonies and not restrict it to the three originally selected types of arrests (guns, narcotics sales, armed robbery). Our major reason is the unforeseen and unprecedented campaign of the media to focus public attention, and thereby also the attention of the system, on these three crime categories. We would study an abnormal situation which for several reasons, to be detailed below, would be a mistake.

In at least two of the boroughs, the district attorneys'offices have adopted internal rules not to engage in plea bargaining with respect to certain crime categories presently in the public eye, among them possession of a loaded gun on the street, narcotics selling to an undercover agent, and possession of hard drugs. Since the system as a whole can accomplish only a measured amount of work, the increased attention to the crimes that are in the public eye is likely to result in <u>less</u> attention to crimes that are not in the public eye. And since we happen to operate in such an "under the public

eye" period, we should find out what happens to the total system, including these three felonies. What is at stake, after all, is how the total system operates, what it does and can do. In this way we would make sure that our investigation will present results that are independent of the present publicity flurry. Furthermore, if plea bargaining is seriously curtailed in the three crime categories -- as indeed it is -- and therefore these charges are not allowed to deteriorate, there is no point in asking why they did deteriorate.

Finally, the decision to extend our interviewing to all types of felonies, furthermore, would avoid a serious intrusion on the system. During our preliminary interviews, we found the law enforcement apparatus very sensitive to our research efforts. Assistant District Attorneys and judges cannot help being alerted, and if word would spread that we were concentrating on three specific crime categories, our study, instead of merely researching, could actively influence the disposition of cases. It is one thing for the public to exert pressure on the

system (this is part of the normal political process). It is quite a different thing if our research effort were to reinforce such pressure.

3) Our effort to provide a comprehensive statistical picture of the disposition process (1 above), allows us to restructure the function of the "why and wherefore interviews". Since the statistical details will now emerge from operation (1) above, we can concentrate on the complexity of the "whys" in even greater depth than we had originally planned. The revised interviewing guides give a good idea of this complexity. We suggest that we use our interviewing manpower on fewer cases -- 400 instead of 600 -- and extend the depth of our inquiry, as dictated by what we learned in the pilot operation. We will draw this sample from the completed court calendars, which list the cases disposed of on a prior court day. Each borough has two court systems: the Criminal Court and the Supreme Court, and correspondingly, two complete sets of court calendars. There is also a calendar for a central narcotics court, which draws some narcotics cases from each of

the boroughs. (See below "The Four Interviewing Guides".)

4) We believe it essential that we conduct, at some point towards the end of our study, meetings with the chiefs or at least the supervisory staffs of the police, the district attorneys' offices, and the Legal Aid so that we may complete our picture of the institutional rules and policies that guide the individual decisions.

* * *

The overall research strategy is simple and straightforward: a comprehensive statistical overview of the felony disposition process in the four boroughs: How frequently does charge reduction take place? How does this process differ by type of crimes and other factors? This overall view is complemented and elucidated by detailed interviews with the decision makers. They will provide the close-up view of the internal aspects of the disposition process, especially of the plea bargaining process in each of the four boroughs.

The Felony Disposition Statistics for the Four Boroughs

We shall collect a statistical sample of 2000 cases from the four major boroughs, 500 from each. The sample cases will be selected from the computer print-outs of the felony arrest records of the calendar year 1971. For the combined picture of all four boroughs, the statistics will be appropriately weighed.

The cases selected for the sample will then be pursued through the respective court files and the following data sheet completed for each case.

RECORDING SHEET FOR DISPOSITION STATISTICS

A. Arrest Register Data:

Crime Code_____ Boro_____ Pct._____ No._____

Name_____ Age____ Sex____ Ethnic_____

Companions: (1)_____ (2)_____

(3)_____ (4)_____

B. Charges At Arrest: (1)_____ (2)_____

(3)_____ (4)_____ (5)_____

Subsequent Changes (if any):

(1) occasion_____ date_____

changed to:_____

(2) occasion_____ date_____

changed to:_____

(3) occasion:_____ date_____

changed to:_____

C. Final Disposition:

— Dismissed*

— ACD (DOR)

D. Sentence:

— Unconditional Discharge

— Conditional Discharge _____ yr

This information will be transferred to punch cards and subsequently to computer tapes. This statistic will reveal the essential features of the law enforcement system in each of the four boroughs, concerning persons arrested on felony charges. It will allow us to see what percentage of the dispositions end in conviction of the original charge, of a reduced felony charge, a misdemeanor, or a violation, -- and what proportion of cases are dismissed or end in acquittals after trial. We shall furthermore learn the relative frequency of guilty pleas, and the stage at which they were obtained; we shall also see the sentences. We shall learn the time intervals elapsed between arrests and dispositions, and also the various intermediate stages.

If dismissals occur, we hope to learn in most cases why they have occurred.

We shall learn moreover something about the relative frequency of non-dispositions because of the defendant's non-appearance in court.

These statistics will be presented for the individual boroughs as well as for the different crime categories within each borough.*

*It is, incidentally, this type of statistics that would research the effects (if any) of procedural or policy changes within the system, either in the District Attorney's office or in the courts. Appropriate "before and after" samples would be required.

THE FOUR INTERVIEWING GUIDES

Police

Prosecutor

Defense Attorney

Judge

Guide for Interview with Police Officer

1. Does he know about the project? If not, explain and tell him of police department approval and authorization. If problems, ask him to telephone for verification. We want to find out what happens to the arrest charges when they get into the court and why. We are interviewing all concerned. Explain: random sample (this case was not picked because of anything specially wrong). Also explain confidentiality.

2. Identify the case. Please describe the arrest and what you saw or what others told you at the time; please refer to your notes if any.

3. If incriminating objects (gun, narcotics, etc.) were seized, exactly what were the circumstances of this seizure.

4. You charged the defendant with _____. At that time what did you consider the evidence for these charge (s)? Record details as to his own observation, complainant's report and other witnesses. Insist on factual details rather than on such general classifications as "I observed a sale". The general tone of questioning is: "Exactly what happened? Who observed what?"

5. Were there any changes made in the charges in the complaint room?
   a) Which charges? Why? Whose suggestion? What are the "rules"?
   b) Were the charges changed at any other point? Why? Was there discussion between you and the prosecutor?

6. On what occasions did you appear in court? Details on time spent, testimony given, etc.

7. a) Do you remember what the defense was, if any?
   b) Could you see any weaknesses or loopholes in the case as you charged it?
   c) As far as you could see, if this case had gone to trial how good was the evidence (ask for each charge)?

8. a) After the arrest, was it necessary or would it have been desirable to make further investigations: What kind?
   b) Did the District Attorney ask for such? What?

9. Did you follow this case? That is, do you know how it was disposed of? In any case:
   a) What would you expect the normal outcome of this case to be?
   b) Is this also your opinion as to what should have happened? If not, what do you believe should have happened?

10. a) As you know, the case was disposed of as follows: _____. What do you think the reasons were? Ask about prosecutor, defense attorney, defendant, judge, etc.
    b) Why do you say this?

11. a) If you are not sure what to charge a defendant with, what do you do?

    (i) What general rule do you follow in such a case? (Charge both? Charge more severe?)
    (ii) If there are such rules, who makes them?
    (iii) Are rule changes discussed with colleagues or supervisors? (Give example)

b) With respect to this arrest, were there any such problems as to how to charge?

12. a) What command do you belong to?

b) What is your normal assignment?

c) How long have you been on this type of duty?

d) How long have you been on the force?

e) Approximately how many felony arrests have you made during your career?

Guide for Interview with Defense Attorney

1. Explain mission; if necessary refer to authorization by attorney in charge.

2. How long have you been with Legal Aid? A criminal lawyer? What is your average caseload - number of cases handled on calendar; number of cases to prepare for trial?

3. Introduce case. Ask him to refer to his notes and files. At what point did you get into this case?

4. As you remember it, what was this case about? What was the evidence in detail? Compare and discuss discrepancies with reports of evidence given by police officer and prosecutor.

5. a) What were your sources of information about the case? What documents, interviews, court hearings?
   b) As to the specific charges, in your view how good was the evidence?
   c) What made it so? How credible were any witnesses? How likely was it that they would show up to testify? Was there any special reason to spare them this necessity? Was there an illegal search and seizure problem?

6. When you got this case and had informed yourself about the evidence, the record of your client, etc.
   a) What were your thoughts?

b) What were your plans?

c) What was the likely outcome of the case?

7. Did you at any point during the case consider the possibility of going to trial? If so, at what point; in what form? As a theoretical possibility not seriously considered or as a real possibility? Give details.

8. Prior to negotiations:

a) What was in your mind as to the ultimate goal?

b) Did you form an opinion as to what offer you would accept?

c) What did you think was in the prosecutor's mind as to the lowest plea he would offer/accept?

d) Is there any routine approach to cases such as this? At least as a first approach? Please describe.

e) Is there any official Legal Aid policy for the handling of such cases? Please describe.

9. What steps were in fact taken to dispose of this case?

a) Where did the discussion take place? Informally or in open court?

b) What was the role of the prosecutor in the bargaining process?

(i) Did he make an offer which you considered? Or did he ask you what you would accept?

(ii) Was it a matter of accepting or rejecting an offer, or was there discussion?

(iii) What did the prosecutor do or say that affected your position or negotiations?

(iv) What were your arguments in the bargaining?

c) Did the judge play any role in the bargaining process; the disposition of the case (other than sentencing)?

d) Was time a factor in the negotiations?

e) Was your client's custody status a factor? The speedy-trial rule?

f) Were your client's demands a factor? For instance, his protestations of innocence, refusal to go to trial?

10. Suppose for argument's sake, that the defendant had refused to plead guilty to anything. What would you have done? What would the likely outcome of such a trial have been?

11. If considerations of time and costs played no part, how do you think this case should have been handled? Would it have improved your bargain or your chances of winning in a trial?

12. If you had more time and help, what else might you have done to strengthen your case?

13. Suppose this case had come before you as a judge on the original charges. On the basis of the available evidence, would you have found the defendant guilty? Of what? If you found him guilty, what would you have imposed as sentence? (Refer to prior record and pre-sentencing report.)

14. Comparing the outcome after trial with the actual disposition, aside from considerations of workload and costs, which do you consider preferable from the law's point of view? Why?

If the Case Went to Trial

15. Since this is such a rare event, why in your view was no settlement reached? i.e.: why did you not go lower, or why did the prosecutor not raise his offer? (Considering the fact that in most other cases both sides eventually meet?)

16. What, if any, had been the final offers for a plea on either side? What was special about this case or its type?

17. If it were a bench trial (why was there no jury trial; why did you waive a jury trial)?

If the Case Was Dismissed

18. Why was it dismissed? (Details of evidence? Search and seizure problems? Complaining witness failed to testify?)

19. Did the judge play any part by ruling on a motion to suppress?

Guide for Interview with Prosecutor

1. Explain mission; if necessary refer to authorization by bureau chief.

2. How long have you been a district attorney? A criminal lawyer? What is your average caseload?

3. Introduce case. Ask district attorney to refer to his files and notes. At what point did he get into this case?

4. As you remember it, what was this case about? What was the evidence in detail? Compare and discuss discrepancies with reports of evidence given by police officer and defense attorney.

5. a) What were your sources of information about this case? What documents, what interviews, what court hearings?
   b) As to the specific charges, in your view how good was the evidence?
   c) What made it so? Topics to be discussed:
   How credible were witnesses? How likely was it that they would show up to testify? Was there any special reason to spare them this necessity? Was there an illegal search and seizure problem?

6. When you got the case and had informed yourself about the evidence, the record of the defendant etc.:

a) What were your thoughts?

b) What were your plans?

c) What was the likely outcome of the case?

7. Did you at any point in this case ever consider the possibility of going to trial? If so, at what point; in what form? As a theoretical possibility not seriously considered or as a real possibility? Give details.

8. Prior to the negotiations:

a) What was in your mind as to the ultimate goal? What alternatives if any did you consider?

b) Did you form an opinion as to what plea you would accept? Possibly plea A, and if hard-pressured plea B? Or how did you approach it?

c) What do you think was in the defense attorney's mind as to the best settlement he could get?

d) Is there any routine approach to cases such as this? At least as a first approach? Please describe.

9. What steps were in fact taken to dispose of this case?

a) Where did the discussion take place? Informally or in open court?

b) What was the role of the defense attorney in the bargaining process?

(i) Did he make an offer which you considered? Or did he ask you what you would accept?
(ii) Was it a matter of accepting or rejecting an offer or was there discussion?
(iii) What did the defense attorney do or say that affected your position or the negotiations?

c) Did the judge play any role in the bargaining process; the disposition of the case (aside from sentencing)?

d) Was time a factor in the negotiations?

e) Was the defendant's custody status a factor? The speedy-trial rule?

10. Suppose, for argument's sake, that the defendant had refused to plead guilty to anything. What would you have done? What would have been the likely outcome of such a trial?

11. If considerations of time and costs played no part, how do you think this case should have been handled?

12. If you had had more time and help what else might you have done to strengthen your case?

13. Suppose this case had come before you as a judge on the original charges. On the basis of the available evidence, would you have found the defendant guilty? Of what? If you found him guilty, what would you have imposed as sentence? (Refer to prior record and pre-sentencing report.)

14. Comparing the likely outcome after trial with the actual disposition (disregarding consideration of work load and costs) which do you consider preferable from the law's point of view? Why?

If the Case Went to Trial

15. Since this is such a rare event, why in your view was no settlement reached? i.e.: why did you not go lower, or why did the defense attorney not raise his offer? (Considering the fact that in most other cases both sides eventually meet?)

16. What, if any, had been the final offers for a plea on either side? What was special about this case or its type?

17. If it were a bench trial (why was there no jury trial; why, in your view, did the defendant waive a jury trial)?

If the Case Was Dismissed

18. Why was it dismissed? (Details of evidence? Search and seizure problems? Complaining witness failed to cooperate?)

19. Did the judge play any part by ruling on a motion to suppress?

Guide for Interview with Judge

1. Explain mission. If necessary refer to authorization by presiding justice. Introduce case. Establish for which appearances in this case he was the judge.

2. At what point or points did you get into this case?

On Guilty Plea:

3. Did this case reach you:
   a) Only after the district attorney and defendant had agreed on a plea?
   b) Or before?

4. If before, what role did you play in the agreement?
   a) Were you asked for your help or advice by the parties? Did you offer any aid?
      If yes: In what situation? How did you help or advise?
   b) Was there discussion or agreement about the likely sentence? What was said?
   c) Was there discussion about the evidence in the case in relation to the plea? To what extent? What was said?

5. Had you been in any way concerned with the evidence in the case?

if yes: As you remember it, what was it? (If discrepancies with police, etc., try to clear up.)

if not: From our interviews with the police officer, the district attorney and the defense attorney, it appears the evidence in this case was as follows: (Report it to judge).

6. If the defendant had refused to plead guilty, how do you think the case would have ended up? (Trial? Verdict? Likelihood of conviction? Sentence?)

7. Comparing this likely outcome after trial with the actual disposition (disregarding considerations of work load or costs), which do you consider preferable from the law's point of view? Why?

Judge Who Sentenced

8. The defendant was convicted of _____. You sentenced him to _____. Could you perhaps retrace what thoughts led you to this decision? (Ask for a detailed narrative.)

Probing questions re sentencing:

a) Was any arrangement regarding sentence made during discussions, in the form of a promise or recommendation? If so, what was agreed upon?

b) Was there anything about this particular crime that affected your sentence?

If there is a guilty plea on a reduced charge, an interesting problem arises: How far does your view of what the defendant actually did enter the sentencing decision? Did the limitations imposed by the plea-taking affect sentencing? How?

c) Was there anything about this particular defendant that affected your sentence?

d) Was the defendant's custody status a factor?

e) How do you go about fixing the sentence: Do you start with some kind of an average (par) for this kind of crime, and adjust them for aggravating and mitigating circumstances? Or do you look at all the factors and come to some kind of overall judgment?

f) How much a factor was the pre-sentence report? What aspects of the report?

g) How much a factor was any argument made by the prosecutor, defense attorney or defendant at sentencing?

If There Was a Trial

9. If the defendant had pleaded guilty to these same charges, would you have sentenced him differently? Why?

If there was a Dismissal

10. Why was the case dismissed? (Details of evidence? Search and secure problems? Motion to suppress?)

All judges

11. About how many years have you been a judge in a criminal court?

ATTACHMENT A

VERA INSTITUTE OF JUSTICE
30 EAST 39TH STREET
NEW YORK, N.Y. 10016
YU 6-5380

Date: _____ 19___

Central Records Division
Criminal Records Section
80 Lafayette Street
New York, New York 10013
Att: Lt. McCaffery

Dear Sir:

This is to request the release of copies of arrest reports to

M_____. The use of these documents for the purposes of our disposition process study has been approved by the Police Commissioner.

We would like the following reports at this time:

	Defendant's Name	Arrest Number	Precinct Number	Year
1.				
2.				
3.				
4.				
5.				
6.				
7.				
8.				
9.				
10.				

Thank you for your cooperation.

Sincerely yours,

Hans Zeisel
Research Director

_____
Vera Staff Signature

(If any space is left blank, it should be crossed out and initialed.)

ATTACHMENT B

VERA INSTITUTE OF JUSTICE
30 EAST 39TH STREET
NEW YORK, N.Y. 10016
YU 6-5380

ACKNOWLEDGEMENT FOR RECEIPT
of
PRE-SENTENCE REPORT

This is to acknowledge receipt of a copy of the pre-sentence report for _____, docket#_____, whose case was disposed of on _____19____.

The release of such copies for use in connection with the Vera Institute's "Disposition Study" has been approved by The Office of Probation.

The contents of the report will be kept confidential, and, at the conclusion of our study, all copies will be returned.

Date:_____19_____

_____
Vera Staff Member

ATTACHMENT C

VERA INSTITUTE OF JUSTICE
30 EAST 39TH STREET
NEW YORK, N.Y. 10016
YU 6-5380

Date:

TO: H. Zeisel, L. Friedman, A. Wolf, L. Pollock

FROM: I. Finel Honigman

SUBJECT: Information on Queens Courts

Criminal Court and Supreme Court: 125-01 Queens Boulevard (82nd Avenue)

Switch Board: 544-9200

Location:

Supreme Court District Attorney:	2nd Fl. Rm. 271
Supreme Court Clerks Office:	7th Fl., 705--General Clerk 710--Chief Clerk
Supreme Court Legal Aid:	1st Fl. Rm. 106
Grand Jury;	5th Fl.
Criminal Court District Attorney:	Ground Floor, G40
Criminal Court Clerks Office:	Ground Floor, G64
Arraignment Clerks Office:	" " G2
Criminal Court Legal Aid:	124-22 Queens Blvd. 1st Fl. BO 3-1777
Complaint Room: (343)	Ground Floor, G3C

Supreme Court

Staff:

Thomas Demakos
Supreme Court, Bureau Chief
Assistant District Attorney

George Byrer
Supreme Court Clerks Office
Bereau Chief

Potter
Supreme Court Legal Aid

Eugene Preis, Bureau Chief
Criminal Court, Assistant
District Attorney

Julius de la Rosa
Criminal Court: Clerks Office
Bureau Chief

Legal Aid: Zollo
Elliot Case

No Complaint Orders (343) Mr. Royal Riley

Supreme Court Information:

District Attorneys Office: Mr Thomas Demakos is will to allow us to interview his staff. He seemed interested in the study, although he did not have any suggestions or information to offer us. The way cases are treated in supreme Court depends on each individual case. Mr.Demakos mentioned as a primary factor the defendants record. 15% of the cases are borought to trial There are 6 trial parts, there are 5000 indictements/yr

Clerks Office: Mr. Begrer had only vaguely heard of the Vera Institute. He will show us the General Clerks Office and introduce us to his staff when we come to sample our first case. The calenders in supreme court do not have the charges. The trial calenders will have the charge and the plea. Mr. Begrer seemed surprised at our procedure of removing court papers from the clerks Office. He will allow this procedure as Mr. Norman has granted permission. However there are no Xerox machines in the Clerks Office. We will have to take the court papers to the D. A's Office (2nd fl. D.A's Section of the building) and get permission to use there machine.

Legal Aid: In Queens, Legal Aid in Supreme Court treats 50% of jail cases and 37% of other cases. The overall is only 40% (which is lower than in the other bouroughs). Mr Potter was far from enthusiastic, he seemed skeptical of our potential results and felt that our project was too limited in its scope. He will cooperate by not fying his staff once he checks again with Mr. Kasinoff. He felt that we should separate our sample into bail and jail cases. And furthermore into adult cases and youthful offenders (16---19 years) cases

Criminal Court Information

District Attorneys Office: Mr Eugene Preis showed great interest and will offer his fullest assistance. In Queens there will almost always be 2 or 3 D.A's on a case. Mr. Preis staff of about 15 D.A's. rotate about every 6 weeks in each part. Therefore a D.S. and a judge might remain for 6 weeks in one part which will simplify our search for D. A's. The case load is about 20/30 a day. However Mr. Preis felt that the D.A. will not remember very well, especially the details of the case which are not on the court papers. The D.A. Office is extremely limited in space, in one narrow Office the D.A's. work and keep all records. There are no D.A. files, all remarks are written on the court papers. There is a tremendous turnover of D.A's.(lack of money and lack of advancement possibilities) Queens has less muggings, but more burglaries (residential) and more Grand Larceny. There is a lesser volume than in the other boroughs. The D.A's. policy is not to take pleas on Felony gun charges, undercover sales and hard drugs possession, In Majuana cases Manhattan is more liberal than Queens. Queens Criminal Court only has final jurisdiction on misdeameanor cases or felony charges reduced to a misdemeanor). There are 9 criminal parts. 3,3a,are youth parts, however in Queens there is a separate Bureau Chief for these parts (which if necessary will be contacted) In Criminal Court one of the most common cases presented to a jury are intoxicated driving charges Mr. Preis felt that the police Officer is too often the determining factor (he decides whether to write up the charge as a felony or as a misdemeanor).

The important factors in a case can depend on the individual complainant. " A women feels she will be scarrec if she has to take the stand", thus a case is dropped . These factors will not appear on the court papers and the D.A. might have forgotten yet these elements might be essential to understanding the case. Mr. Preis will introduce us to his staff. He suggested that we should come to Queens with identification letters, as his men are directed not to speak of their cases to anyone.

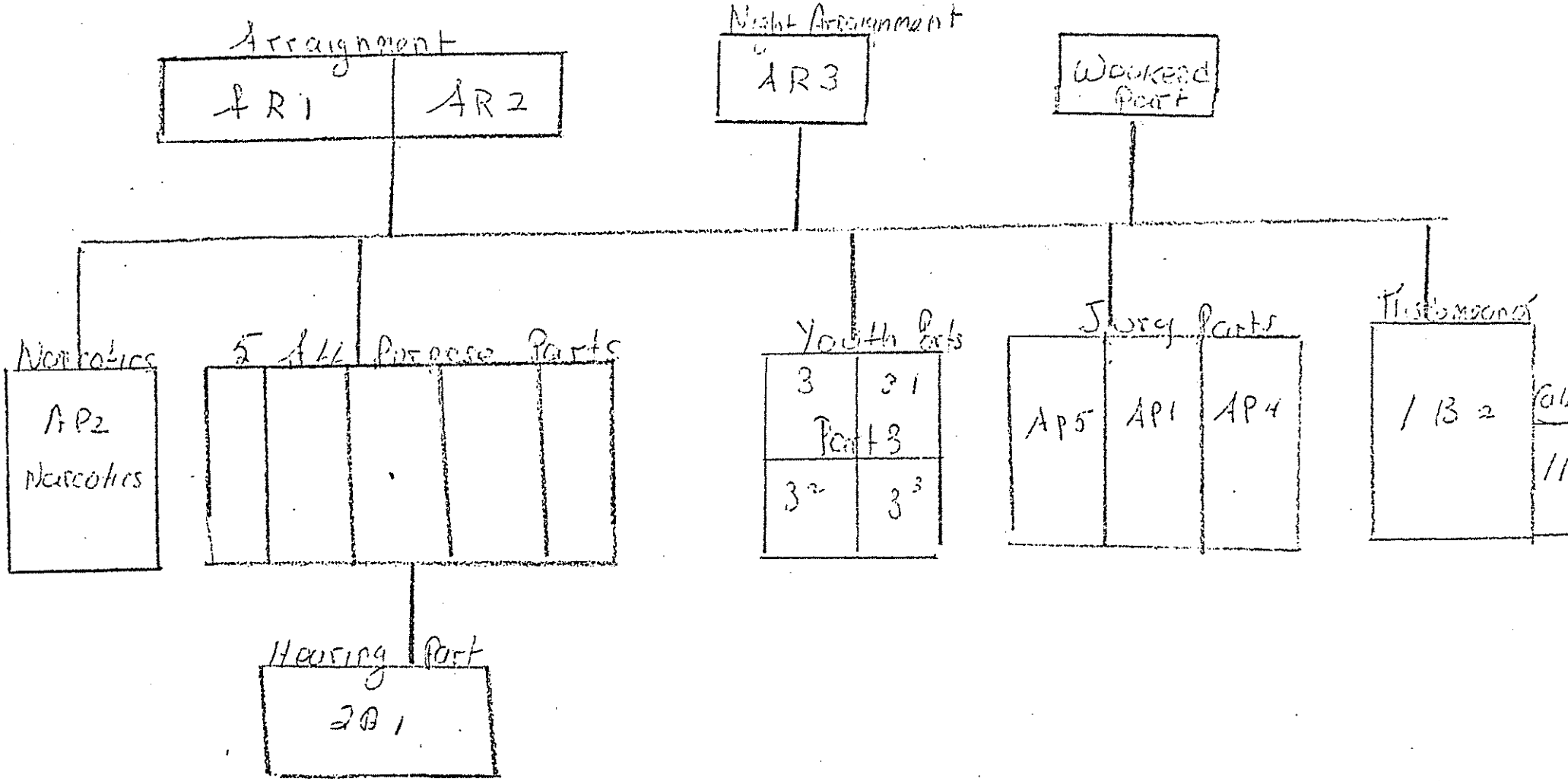
Court Clerks Office: Mr. Julius de la Rosa, after checking with Mr. Neuman will let us use the court calenders in his office (he has the complied calendars each day). We can use the Xerox machine in the Court Clerks Office(Near the door to G 64). The court papwes do not remain in separate trial parts. As in Manhattan, they are all filed the following day in the Clerks Office (by docket number and year). He will introduce us to his staff who will assist us if we cannot find the case. There are very few cases lost in Queens.

Complaint Room: The complaint Room No complaint Orders Uunder Royal Riley's supervision) are filed in the D.A's. Office (G40). We will be able to scan those files each time we sample. The form in the file includes the charge and the reason for dismissal.

Legal Aid: Mr. Zollo, Being on vacation, I spoke with Mr. Eliot and he proved to be most helpful. He was very interested in the project and he will check with Mr. Kasinoff, he will notify his staff. Mr. Case hopes that our study will benefit Legal Aid by proving how wssential the process of plea bargaining is to the system. Like Mr. Preis, Mr. Case mentioned that the Police Officers are responsible for the great number of felony arrest. Mr. Case will arrange a meeting for us (all interviewers), with his staff, so that they may know us and learn of our project. His staff is also instructed not to discuss cases with anyone.

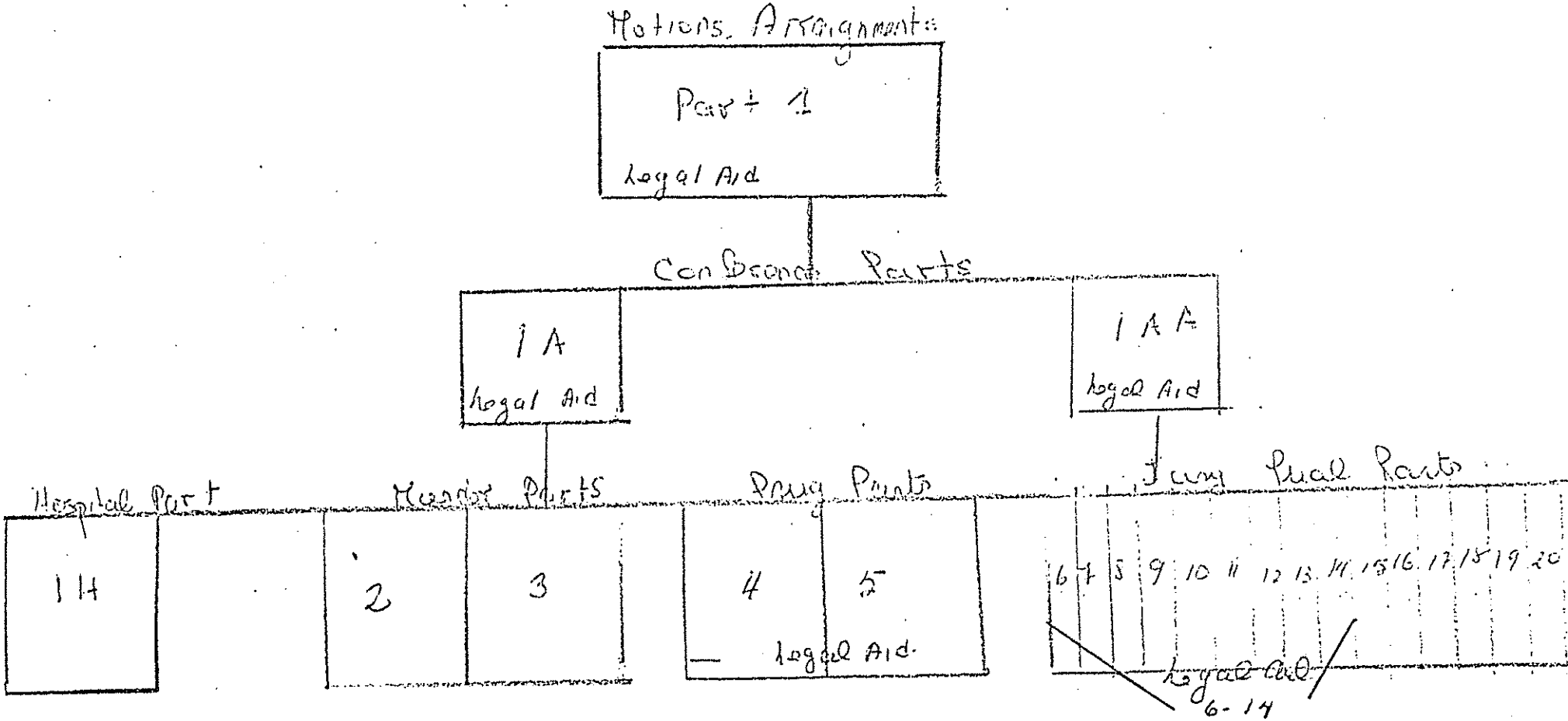
ATTACHMENT D

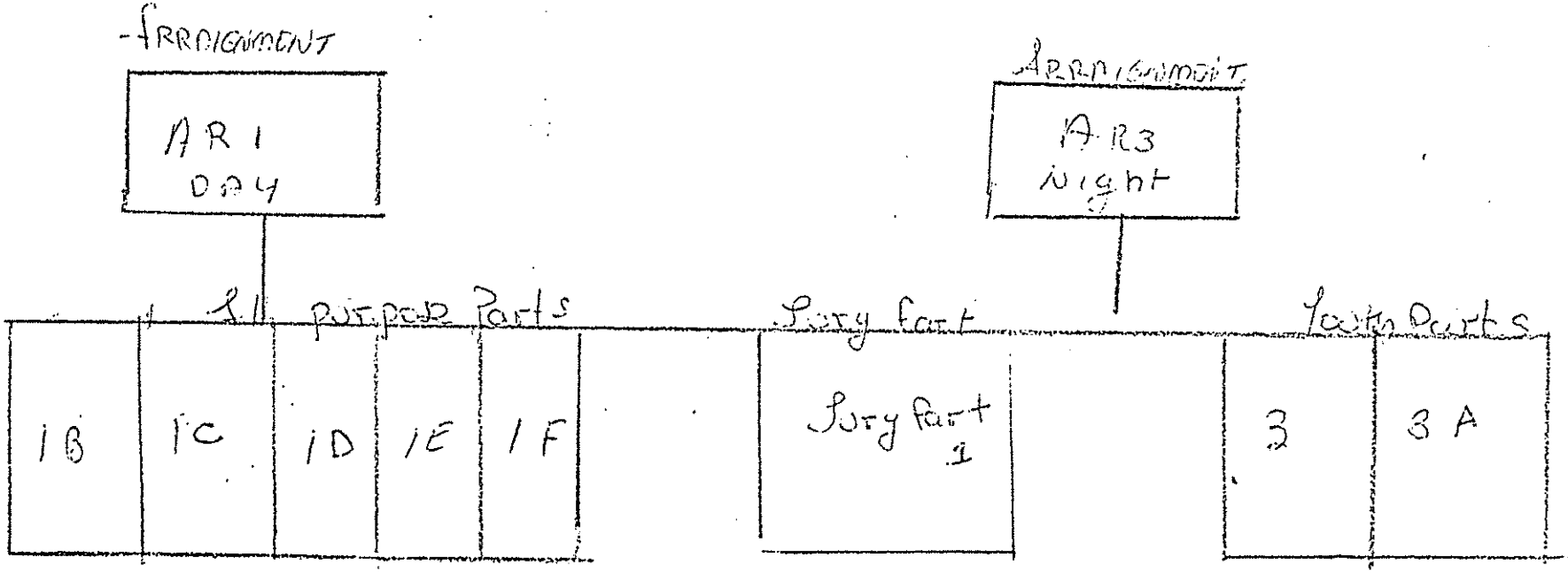
CRIMINAL COURT : KINGS COUNTY CLERK'S
+ NIGHT COURT



SUPREME COURT

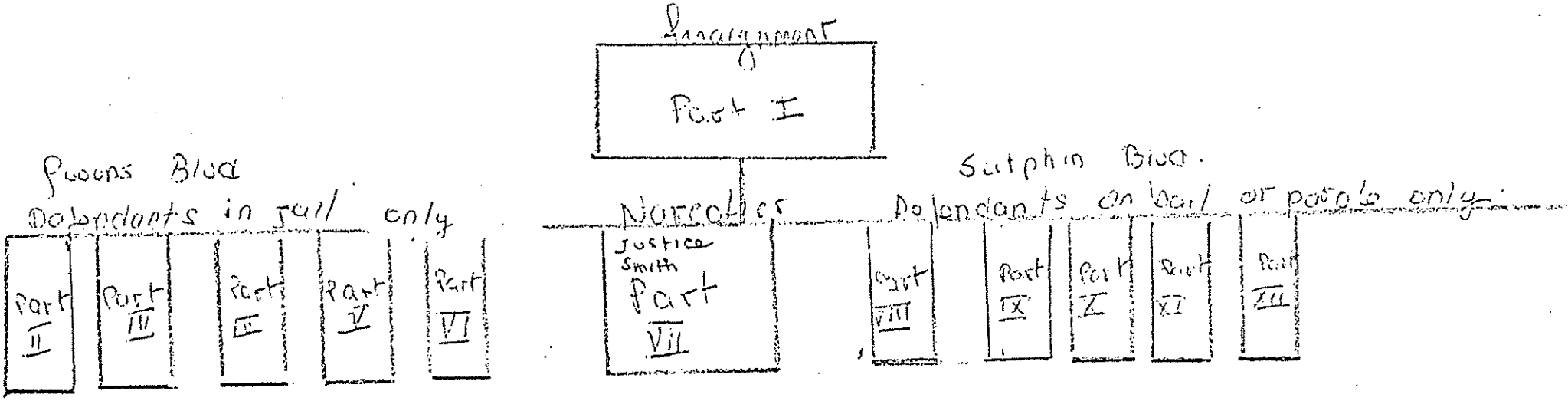
14 Legal Aid Parts




-ARRANGEMENT
AR 1
DAY
ARRANGEMENT
AR3
Night
All purpose Parts
Jury part
Youth Parts
1B
1C
1D
1E
1F
Jury part 1
3
3A

SUPREME COURT

Parts I-VII are located at 125-01 Queens Blvd
Parts VII - XII are located at Sutphin Blvd.



ATTACHMENT E

CASE A

Original charge: Robbery in the first degree; possession of a deadly weapon; and assault.

Final charge: Robbery in the third degree.

Sentence: 0-7 years

The defendant was apprehended in the act of robbing a bar and grill. He was accused of brandishing a shotgun; he and his companion had several weapons in their possession. One person in the bar was injured, although not in a shooting incident. The defendant was charged with robbery in the first degree, possession of a dangerous weapon, and assault. He was indicted and the case was adjudicated in the Supreme Court.

Interviews were conducted with the defense attorney (private), the assistant district attorney, and the judge. Both the defense attorney and the assistant district attorney recalled the case rather well and were able to discuss it extensively. The judge failed to remember the case or the D.A.'s arguments. He was able, however, to reconstruct his reasons for the sentence upon seeing the probation report.

The charge was eventually reduced from a B Felony, carrying a penalty of up to 25 years, to a D (a penalty of up to 7 years). The defense attorney claimed to have received an offer of an E sentence to a D felony, but could not take it as his client was not brought from the jail to agree to the bargain. This offer was later withdrawn. The D felony was pleaded to for

fear of the charge being raised to a C felony in view of the physical injury caused during the crime. There was no final agreement concerning sentencing, nor was the judge present or significant at any bargaining session. All parties involved agreed that the probability of conviction was extremely high if not 100%. The case load of the D. A. determined his willingness to take a plea in addition to his second thoughts on the arbitrariness of juries and the quality of his witnesses. (the bar was a known drug center, and its clientele had long records).

The defense attorney indicated that the sentence in this case was probably affected by articles in the New York Times on sentencing practices, which were published a few weeks before this disposition. He quoted the judge as saying from the bench that it "can't go unrecognized that prople criticize judges for being too lenient." The attorney had argued for a shorter sentence and felt that the publicity was detrimental to his case. The judge stated that he would not have accepted a lesser plea in this case as it would appear to outsiders that the sentence was not stringent enough. He added that judges bear the brunt of criticism for light sentences rather than the prosecutors who, in fact, accept the lesser pleas. Consequently, the judge gave the maximum allowable sentence here.

CASE B

Original Charge: Possession of a Dangerous Weapon - "D" Felony

Final Charge: Possession of a Dangerous Weapon - "A" Misdemeanor

Sentence: 30 days

The defendant was found by a police officer (A) sleeping in a parked car with two other persons. When the officer and his partner (B) attempted to check their identification, they noticed that there was a handgun in the front seat. Officer A maintained that after officer B shouted that there was a gun, the defendant moved his hand towards the gun. Officer A then warned him not to move and pointed his revolver at the defendant.

The three defendants were ordered out of the car and spread-eagled against it until additional police arrived. Identification in the name of another person was found on the defendant, and drug paraphernalia (glassine envelopes) was found in the trunk of the car. All three persons were booked and arraigned for possession of a dangerous weapon, possession of drug paraphernalia, possession of a hypodermic instrument, and possession of stolen property.

According to the prosecutor, the strength of the case depended upon the legality of the search by the arresting officer and weather any one defendant could be "connected" to the gun. In such cases in New York, there is a presumption that anyone in an automobile with a dangerous weapon possesses the weapon, unless he can prove otherwise. The prosecutor would not quantify the strength of the case, but the defense attorney estimated it at "50-50".

It was agreed that charges against the other two persons (defendant's brother and sister-in-law) would be dismissed when defendant pleaded quilty to possession of a dangerous weapon as an "A" misdemeanor. It was agreed that sentencing would depend upon the pre-sentence report prepared by the Office of Probation. The prosecutor agreed to this deal because it "was not a great Supreme Court case" and the defendant might have received a similar deal if he had been indicted by a Grand Jury. Also, the defendant had no record, and leniency seemed warranted.

Based upon the defendant's claim that he had "taken the weight" for his brother (who had a record) and upon the fact that he did not have a record, the pre-sentence report recommended probation.

However, in spite of the recommendation, the judge sentenced the defendant to thirty days in prison, citing his distrust of pre-sentence reports, his conviction that someone must pay for the crime, and his feeling that the defendant might prefer a month-long sentence to the three-year probationary period which he considered the alternative.

CASE C

Original Charge: Possession of a dangerous drug in the third degree (D Felony).

Final Charge: Attempted Possession of a drug (B Misdemeanor)

Sentence: Conditional Discharge.

The defendant, after having been arrested on another charge, was found with 11 manila envelopes of marijuana. He was arraigned on criminal possession of a dangerous drug in the third degree. Interviews were conducted with the Legal Aid lawyer, the assistant district attorney, and the judge. All participants were present at both the plea and the sentence and recalled the case.

The charge was reduced to a B misdemeanor (attempted possession of a dangerous drug). The Legal aid attorney was very pleased with the result: "The defendant got an excellent deal." He felt that he had a poor case and, if it went to trial, the defendant had a 100% chance of being convicted. In a jury trial, the defendant would have been found guilty because of his prior record and the evidence found on his person. In addition he had a case pending in Manhattan, about which the defense attorney knew nothing. With respect to sentencing after trial, the Legal Aid attorney stated the defendant would have gotten at least four years (a class D felony carries a maximum sentence of seven years). Legal Aid and the judge agreed on the plea. The judge promised a sentence of Conditional Discharge at the time of the plea.

The assistant district attorney felt that the chances of conviction were also 100%. However as the drug was marijuana, he

had to reduce the charge (in drug cases in Queens, the district Attorney's office accepts pleas only on marijuana charges. The judge suggested the plea.

The judge felt that because the defendant was not an addict and the drug was marijuana, in a bench trial the sentence would have been the same. A jury, however, would probably convict. The judge felt that a conditional discharge would give the defendant "a hold over himself". He usually gives out a fine in such cases, but "the defendant was in no position to pay and and I did not want him to steal." The judge felt this was a proper reduction because the original charge had been too great. He blamed the the police for "overcharging the drug cases."

The assistant district attorney and Legal aid lawyer agreed that the case load is heavy, but there are "no pressures to take pleas." The assistant observed: "I can take any case to trial if I want."