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THE NEW YORK CITY SPEEDY DISPOSITION PROGRAM:

Incentives and Prosecutorial Initiatives in Reducing Court Delay and Jail Overcrowding

December 1986

Vera Institute of Justice
377 Broadway
New York, New York 10013

The New York City Speedy Disposition Program: Incentives and Prosecutorial Initiatives in Reducing Court Delay and Jail Overcrowding. Technical Report.

Chapter I: Incentive and Criminal Justice Reform: Working Paper #1, Thomas W. Church and Milton Heumann

Chapter II: Analyses of Department of Correction Census Data, Paul Dynia

Chapter III: Research Methods for the Speedy Disposition Pending Measures, Laura Winterfield

Chapter IV: Description of the Supreme Court Pending Case Sample, Laura Winterfield

Chapter V: Composition of the Detainee Population during 1984, Paul Dynia

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Points of view or opinions stated in this document are those of the authors and do not necessarily represent the official position or policies of the above mentioned Offices and Departments of the City of New York or of other agencies supporting the study.

THE NEW YORK CITY SPEEDY DISPOSITION PROGRAM

Incentives and Prosecutorial Initiatives in Reducing Court Delay and Jail Overcrowding

Sally T. Hillsman
Vera Institute of Justice
Project Director

Dan Johnston
Vera Institute of Justice
Program Coordinator

Principal Researchers

Laura Winterfield
Vera Institute of Justice

Steven Belenko
Criminal Justice Agency

Jody Adams Weisbrod
Vera Institute of Justice

Project Staff

John Best, Vera Institute of Justice
Paul Dynia, Criminal Justice Agency
Anne Gravitch, Criminal Justice Agency

VERA INSTITUTE OF JUSTICE
377 Broadway
New York, New York 10013

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INTRODUCTION

In 1983, New York City faced a major crisis of jail overcrowding. City policymakers and budget managers sought ways to house the City's population of pretrial detainees, in conditions which met Constitutional mandates, but without spending millions of dollars on the construction of new jails.

Analysis of the causes of jail overcrowding in New York City at that time indicated that the rising detention population was directly attributable to an increase in the time spent in detention by defendants with felony cases pending disposition in the City's Supreme Court. Examination of the relatively new but growing research literature on court delay revealed that New York City's Supreme Court was exceptionally slow in processing many of its felony cases, including the cases of defendants held in pretrial detention. Yet the research literature also suggested that the problem of delay was not immutable -- urban courts around the country, despite high and serious caseloads, differ enormously in the time they take to dispose of cases.

Most delay reduction programs described in the research literature focus on strategies developed by courts. But New York City was not in a position to direct the Supreme Court (a state body and a different branch of government) to undertake procedural reforms successfully implemented in other jurisdictions. Moreover, previous efforts by the Supreme Court to speed up case processing and to reduce the size of felony backlogs in New York City had still left the New York City Supreme Court with large backlogs and slow times to disposition, compared to other American courts.

The City turned to its prosecutors for assistance in dealing with the problem, hoping that efforts from that quarter to reduce delay would reduce the size, or at least stem the growth, of the detention population. New York City has five District Attorneys, one for each county within the political boundaries of the City, and one Special Narcotics Prosecutor who has citywide jurisdiction. In this report, for the sake of simplicity, all six officials are sometimes referred to as "the District Attorneys."

Each of New York City's District Attorneys had previously undertaken some efforts to process felony cases more quickly and efficiently. As the jail overcrowding problem reached a crucial stage, the City sought a means to encourage them to focus their collective and individual attention once again on the delay problem and to make the achievement of speedier dispositions a priority objective in the management of their offices.

Because the District Attorneys are independently elected (except the Special Narcotics Prosecutor who is appointed by the other five), the City has no direct executive control over their policies. It decided, therefore, to use its role as the major source of the District Attorneys' budgets to establish affirmative incentives for the prosecutors to focus on reducing the number of older detention cases in their caseloads and to speed up felony processing times generally.

This two-year initiative -- the Speedy Disposition Program (SDP) -- was planned by the City with the cooperation of the prosecutors in late 1983, and it was implemented in January 1984. The SDP is one of the very few attempts that have been made in criminal justice systems around the country to accomplish organizational change by establishing budgetary incentives as the pri-

mary policy tool. In addition, it seems to be one of the few fully documented efforts by prosecutors, rather than courts, systematically to ameliorate court delay.

What follows is both a description and an evaluation of that effort. In the first section we discuss more fully the origins of New York City's Speedy Disposition Program, its rationale, and the details of its structure. We also briefly summarize the overall impact of the program on delay and overcrowding in the City. In the second section we describe, at some length, the strategies designed and implemented by each of the six District Attorneys in response to the City's initiative and discuss their individual impact. In the third section, we explore whether or not the City's incentive program had any unintended consequences on the manner in which cases are processed and disposed in the City's courts. Finally, we turn to an overall assessment of the SDP and the efforts of the District Attorneys. We explore some of the problems they faced in working to reduce delay in the context of the structure of New York City's Supreme Court, and suggest some ways in which they, and the court itself, might improve future delay-reduction efforts, particularly in light of recent changes in the court's calendaring system.

I. THE SPEEDY DISPOSITION PROGRAM: ORIGIN, RATIONALE, AND STRUCTURE

A. The Nature of the Problem: Jail Overcrowding, Court Delay, and Backlog

Jail overcrowding is usually assumed to be the direct result of high crime or arrest rates, or of tough sentencing policies which put more people into custody. But jail overcrowding often results at least in part from other forces. The surge in New York City's detention population between 1977 and 1982 -- just before the crisis that precipitated the City's Speedy Disposition Program in 1983 -- appears substantially, and perhaps entirely, attributable to an increase in the length of time spent in jail by detainees awaiting disposition and sentence. According to data from the City's Department of Correction, detainee admissions to the City's main jail facility on Rikers Island fell eight percent (from 61,984 to 56,932) between 1977 and 1982, while the average daily population of detained inmates rose 51 percent, from 4,486 to 6,792. This increase was the product of a 69 percent increase (from 26 days to 44 days) in the average length of detention before disposition.[1]

---

[1] This was not the first time New York City had faced a jail overcrowding crisis resulting from an increase in the length of stay among detainees. In 1968 the City's correctional facilities faced a "population explosion," which caused the Mayor, his Criminal Justice Coordinating Council and the Presiding Justice of the Appellate Division to join in a concentrated planning effort that aimed to find ways to increase the speed with which detained defendants were released and to expedite the disposition of cases. According to the Vera Institute's report to then Mayor Lindsay,

> The average length of pretrial detention has been increasing steadily from 18.5 days in 1965, to 26.5 days in 1967, to approximately 30.1 days at the present time. These figures understate the length of detention

In 1983, in response to the mounting crisis of overcrowding in its correctional facilities (which hold both detainees and defendants sentenced to terms less than a year), the City undertook a $117 million, four-year jail construction program. In addition, the City began to consider other strategies to reduce the average daily census of detainees. This agenda became more pressing toward the end of 1983 when, in November, some 600 detainees were released, by order of the United States District Court, to alleviate what the court found to be unconstitutionally overcrowded conditions on Rikers Island (the City's main correctional facility). The City, therefore, had a substantial interest in addressing the problem of overcrowding and the attendant costs (to defendants and to tax-payers) by attempting to shorten the pretrial period.

Although the City officials engaged in this effort did not wish to ignore case processing time for non-detention cases, they focused their attention primarily on the long-term detainees who consume a disproportionate share of the total number of detention-days used. Most of the long-term detainees face felony prosecution in the City's Supreme Court, its trial court of general jurisdiction.[2] Despite earlier efforts by both prosecutors

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for persons who do not obtain release at any time prior to trial, because within the average are substantial numbers of cases in which bail was posted shortly after admission to detention. While data are not available on the duration of custody of all defendants detained for the entire pretrial period, it is known that on August 1, 1968 the average detained defendant in the jurisdiction of the Supreme Court had already spent over 140 days in jail (Schaffer, 1969:59).

[2] The City's five elected District Attorneys and the Special Narcotics Prosecutor initiate most felony prosecutions in the

and court administrators to accelerate felony case processing and decrease the backlog of cases pending in the New York City Supreme Court (some of which we review below), New York City's Supreme Court remained among the slowest urban courts in the nation.

In 1978 the National Center for State Courts issued a report on case processing times for 21 civil and criminal courts of general jurisdiction in metropolitan areas around the country (Church et al., 1978a). In 1985, the National Center issued a second report on 18 courts, most of which had been part of the first study (Mahoney, Sipes and Ito, 1985). These studies measured criminal caseloads and other data relevant to an assessment of delay in 1976 and in 1983. The New York Supreme Court was among the slowest, when compared to the courts in both studies.

1983 data from the National Center's follow-up study are reproduced in Table 1 below. Also included are comparable 1983 data for all the New York City Supreme Courts, compiled by Vera

---

City's court of limited jurisdiction -- the New York City Criminal Court. They bring most of these felony cases before a Grand Jury for indictment and then arraign and prosecute them in the New York City Supreme Court which has separate physical, administrative and judicial operations in each county.

The Supreme Court is part of New York State's Unified Court System which is headed by the Chief Judge of the State's Court of Appeals. The Chief Judge, appointed by the Governor, is responsible for selecting the administrative staff of all the courts, including an Administrative Judge for the courts located in New York City. The New York City Supreme Court has administrative judges in each county who supervise the day-to-day operations of the court; the exception to this is the smallest county, Richmond, where the Supreme Court is part of the Kings County Supreme Court. The operating costs of New York City's Supreme Courts are borne by the State of New York.

TABLE 1
Criminal Case Processing Times and Court Size: Selected Urban General Jurisdiction Trial Courts, 1983

A. National Center for State Courts Data[a]	Median Upper Court Disposition Time, All Cases (in days)	Median Upper Court Times, Serious Cases[b] (in days)	Judges Available in Upper Court	1983 Indictments	Indictments per Available Judge	Population (in 1000s)
Oakland, CA	17	64	14	3,636	260	1,105
Detroit, MI	43	89	29	10,525	362	1,300
San Diego, CA	43	42	9	6,563	729	1,861
Phoenix, AZ	44	76	13	7,682	590	1,509
New Orleans, LA	49	112	17	5,698	336	557
Wayne County, MI	49	81	6	4,153	692	2,337
Portland, OR	52	75	14	5,370	383	562
Dayton, OH	64	72	na	2,246	na	571
Minneapolis, MN	84	90	6	6,134	1,022	941
Cleveland, OH	88	99	na	na	na	1,498
Pittsburgh, PA	90	166	21	12,373	589	1,450
Miami, FL	93	145	17	na	na	1,625
Wichita, KS	108	122	8	2,179	272	366
Jersey City, NJ	121	159	8	2,100	262	556
Newark, NJ	146	154	18	6,134	340	851
Providence, RI	182	253	na	2,997	na	571
Bronx, NY	230	251	37	5,048	136	1,168
Boston, MA	307	297	10	1,863	186	650

B. Vera Institute of Justice data for NYC Supreme Courts[c]	Median Arrest to Disposition Time (in days)[d]	-	Judges Available in Upper Court[e]	1983 Indictments	Indictments Per Available Judge	Population (in 1000s)
Citywide	185	-	168	28,046	167	7,165
Manhattan	135[f]	-	50	10,230	205	1,456
Richmond	147	-	2	402	201	371
Kings	215	-	44	7,501	170	1,254
Queens	215	-	31	4,865	157	1,911
Bronx	220	-	40	5,048	126	1,173

[a] Source: Mahoney, Sipes, and Ito, 1985:13 and 14.
[b] Homicide, Rape, and Robbery.
[c] Source: Speedy Disposition Program Evaluation, sample of all dispositions in the NYC Supreme Court during a baseline period (10/1-11/31/83).
[d] In NYC, the period between arrest and indictment in the upper (Supreme) court is short, less than two weeks.
[e] Calculated using the court's own method: the number of actual judge-days during 1983 divided by 205 (the average number of days judges are on the bench per year).
[f] Sample excludes felony drug cases handled by the Special Narcotics Prosecutor.

as part of the Speedy Disposition Program evaluation. (Data for 1983 were collected as a baseline for assessing the impact of the SDP during 1984 and 1985.)

What the first column of Table 1 shows clearly is that, in 1983, the median time to disposition in the New York City Supreme Court citywide exceeded that of all but two of the 17 metropolitan courts studied by the National Center. Only Boston and Bronx County Supreme Court (the one New York City court included in the National Center study) took longer to dispose of the average indictment case. Furthermore, although the Vera data for Bronx County in 1983 show that it had a longer median time to disposition than did any of the other New York counties, all the others had longer median times to disposition than did most of the courts studied by the National Center.

The exceptionally slow pace of New York City's Supreme Courts cannot be attributed either to their having a higher proportion of serious cases than other courts (which they may), or to their having higher ratios of indictments per judge (which they do not). The second column of Table 1 provides the National Center's 1983 data on median processing times for the most serious cases disposed in each jurisdiction studied. When compared to the Vera citywide median processing time for <u>all</u> felony cases disposed in New York City's Supreme Court (185 days), all but two of the courts had shorter median processing times for only their most serious cases. (Providence and Boston were longer for serious felonies and they were the two slowest courts in the National Center's study, except for the Bronx.) Furthermore, all the courts in the nationwide study had higher criminal filings per judge than did New York City; most were considerably higher

(see column 4 in Table 1).

Despite the New York City Supreme Court's extremely slow disposition process, its relatively modest number of filings per judge suggested to the City in 1983 that there was a capacity for improvement in the system, despite the backlog of pending cases.

The original 1978 National Center study had found a strong relationship between the size of a court's backlog and delay. To measure the relative size of case backlogs across different courts, National Center researchers constructed what they call a "backlog index." This index takes the number of cases pending at the beginning of a year and divides it by the number of dispositions reached by the court that year. The larger the resulting number, therefore, the higher the relative size of the backlog. In Table 2 below, we have compared the National Center's 1983 backlog data with our own calculation of that index for New York City's Supreme Court during 1983.

The comparison is generally favorable to New York. The backlog index for the seven fastest-paced courts on the National Center's 1983 list ranged from .10 to .37; the slowest courts ranged from .35 to 1.27. The indices for the Supreme Courts in all five New York City counties and for that court citywide range from .34 to .52; these are at the upper end of the national range for faster courts and at the lower end of the range for slower courts. These data suggest that the 1983 backlog in the Supreme Court, when compared with the backlog of slow and fast courts nationally, ought not to be viewed as an insurmountable obstacle to speedier dispositions in New York City.

TABLE 2
Criminal Case Backlog:
Selected Urban General Jurisdiction Trial Parts, 1983

A. National Center for State Courts Data[a]	Criminal Case Backlog Index[c]
Detroit Rec Ct, MI	.18
Phoenix, AZ	.35
New Orleans, LA	.10
Wayne County, MI	.18
Portland, OR	.37
Dayton, OH	.24
Minneapolis, MN	.18
Pittsburgh, PA	.70
Wichita, KS	.45
Jersey City, NJ	.35
Newark, NJ	1.27
Bronx, NY	.48
Boston, MA	1.04
B. Vera Institute of Justice data for NYC Supreme Court[b]	
Citywide	.45
Manhattan	.38
Richmond	.34
Kings	.49
Queens	.52
Bronx	.48

[a] Source: Mahoney, Sipes and Ito, 1985:19.
[b] Source: Speedy Disposition Program Evaluation, based upon official data from the New York State Unified Court System, Caseload Activity Reports for 1982-1983.
[c] Criminal indictments pending as of 1/1/83 divided by total 1983 dispositions.

B. Previous Court-Based Efforts to Attack the Problem of Delay

While it was reasonable for the City to perceive felony case processing times as too long and Supreme Court backlogs as too high and to identify them both as a primary cause of overcrowding and high detention costs in 1983, the City had no direct way to influence the judiciary's activities or priorities. Furthermore, as we discuss below, past efforts of the New York City Supreme Court had not been as successful as desired in bringing case processing times up to par with similar jurisdictions around the country.

The number of older felony cases in New York City has been the subject of attention by Supreme Court administrators at least as far back as 1953 (Mahoney, 1974:59). Caseflow and congestion problems in the City's lower court (which is the court of original jurisdiction for felony complaints) have also engendered considerable concern (Clarke, 1970). A Blue Ribbon Commission appointed by Governor Rockefeller in 1971 found that criminal case backlogs generally were too large (Mahoney, 1974:59). And as recently as 1981, the Chief Judge of the state's court system initiated a major backlog reduction program in the New York City Supreme Court (Williams, 1982).

In recent decades, efforts by state courts in the United States to speed up case processing times and to reduce the backlog of felony cases have taken two primary forms. The first is the commonly recognized strategy of imposing regulatory schemes (either by court rule or by statute) to obtain compliance with specific behavioral standards, and the second is administrative plans for operational changes in court procedures.

In 1970, the New York State Assembly enacted a series of

time-specific procedural standards (CPL 30.20) intended to secure defendants' constitutional entitlement to "speedy" trials, and giving priority to criminal matters in scheduling (among criminal cases, those in which the defendant is unable to secure pretrial release are given priority). Subsequent to the enactment of these requirements by the legislature, the Administrative Board of the Judicial Conference (which at that time had the rule-making authority for the state's courts) drafted more specific time requirements to interpret the statute. Within specified periods, most cases had to be either tried or dismissed and detained defendants had to be either tried or released from custody.[3] At this time, case law provided that delay did not deny defendants' rights under the speedy trial statute if a good cause existed for the delay, and that good cause could include factors beyond the control of the prosecutor, including court congestion (People v. Ganci, 1971).

The approach of the court's Administrative Board to interpreting the demands of the State's speedy trial legislation not only placed the burden on the prosecution to secure its own readiness for trial, but also required release of defendants and the dismissal of charges if trial deadlines were not met for reasons attributable to others, including the court and the defense. While other jurisdictions have held the state responsible for securing trials within specific time limits regardless of the

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3 Ninety days after arrest for any felony offense other than homicide, defendants whose cases had not come to trial would be released from custody, and six months after arrest felony cases of defendants not yet brought to trial would be dismissed (Denzer, McKinney's, 1980-81:64).

cause for delay, the approach has its difficulties. The City's District Attorneys opposed the proposed rules of the Administrative Board because, while the rules recognized the responsibility of the court to ensure the timely movement of cases, they believed the rules potentially placed that interest in conflict with another interest, namely the just disposition of cases on their merits.

The compromise was CPL 30.30 sponsored by the Governor and the New York District Attorneys and enacted by the State Assembly in 1972, three days before the court's administrative rules were to go into effect. Designed to supercede those rules, this speedy trial statute required only that the District Attorney be "ready" for trial within prescribed time periods. It was less strict than the court rules which invoked the remedies of release and dismissal when the actual trial was delayed beyond the time period specified even though the District Attorney was ready for trial (Bellacosa, 1981:148 et seq.).

Since 1972, most problems interpreting CPL 30.30 have involved questions about what constitutes the District Attorney's readiness for trial. Currently, prosecutor readiness requires only the communication to the court by the District Attorney of present trial readiness, rather than a promise to be ready in the future (Preiser, 1985:45). However, prosecutors may not stop the statutory time periods from running simply by announcing their readiness, without more.[4]

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[4] For example, in one recent appeals case, readiness announcement on the 85th day was vitiated by subsequent delays caused by the failure of the District Attorney to demonstrate readiness: twice the file was not in court when needed, and once the ADA on

As all too many recent attempts to introduce constructive change or innovation in criminal justice systems attest, imposing rules specifying standards of performance does not always induce compliance (Feeley, 1983). Several times during the 1970s the Administrative Board of the Courts adopted and amended Standards and Goals for the timely disposition of felony indictments in the Supreme Court and set deadlines for their implementation; each time "not all these goals were met" (Bartlett, 1979).[5]

One element of the 1970 speedy trial legislation appears, however, to be quite successful. CPL 180.80 as originally enacted in 1970 required a preliminary hearing or a grand jury indictment within seventy-two hours of criminal court arraignment

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the case was on vacation when the case was scheduled for trial (People v. Bowe, 1985). In contrast, the failure of the District Attorney to provide discovery material to the defense despite statements of trial readiness, thus causing a delay in trial, is not chargeable to the People in computing the times provided by the statute (People v. Jones, 1985).

[5] The 1979 amendments, which were to be met by January 1980, included having indictments filed within 30 days after arraignment in the local criminal court; having the prosecutor file notice of intention to offer evidence of a defendant's statement within 15 days after Superior Court arraignment; having a conference to arrange full discovery and discuss motions within 20 days; having all motions made within 15 days of the first conference or within 45 days of the arraignment; having a pretrial conference within 75 days of arraignment to discuss disposition or schedule a trial date; and having the trial begin or a disposition reached within six months of indictment.

In January 1983, official court data show that 36 percent of the cases pending in the New York City Supreme Court were beyond these Standards and Goals (i.e., more than six months past indictment). Vera research data show that 50 percent of all the cases disposed in the Supreme Court during October and November 1983 had taken more than 185 days (6.2 months) from arrest to disposition, 25 percent had taken over 319 days (10.6 months), and 10 percent had taken over 463 days (15.4 months).

for detained defendants. The sanction for failure to meet the deadline was release from custody. In 1982, the provision was amended to start the time at arrest, but extended the time from seventy-two hours to one hundred-twenty hours, or one hundred forty-four hours if a holiday or weekend intervenes (Bellacosa, 1982:174-176). Consequently, the 1983 median time from arrest to indictment in the New York Supreme Courts was seventeen days, while the medians of the jurisdictions included in the National Center for State Court's 1983 survey averaged thirty-six days (Mahoney et al., 1985:11). The New York City District Attorneys place special emphasis upon early case assessment and screening to secure compliance with CPL 180.80, thus limiting the period of detention without judicial review and substantially shortening overall detention periods.

Recognizing the insufficiency of rules alone to change behavior, courts periodically have initiated a second type of strategy to speed up case processing and reduce backlogs. This has taken primarily the form of administrative plans for operational changes that are designed specifically to improve the capacity of the courts to comply with the rules and statutes.

In March 1981, for example, with the New York City Supreme Court backlog still intact despite CPL 30.30, the Chief Judge announced a plan to attain the goal of disposing of felony cases within six months. The number of judges assigned to felony cases in New York City was increased from 124 to 161; detainee cases and cases pending longer than six months were to be immediately placed upon the calendar so that trial dates within 30 days could be set; in these older cases, no adjournments were to be allowed

without the consent of the Assistant Administrative Judge; new staff ("expediters") were to be hired to coordinate the transfer of cases from calendar to trial parts to keep unproductive time to a minimum; and 18-B panel attorneys (members of the private bar appointed and paid by the Appellate Division to provide defense counsel to indigents for whom Legal Aid Society representation is proscribed) were to be utilized more frequently and assigned earlier (Williams, 1982:6-7). The goal of this adminstrative plan was to process all felony cases in New York City within six months of indictment by February 1st, 1983, and within 135 days (4.5 months) by August 1st, 1983.

By October 1981, eight months into the effort, the backlog of cases over six months old had increased 23 percent (from 3,630 to 4,473, 40% of the total pending caseload). As a result of this early disappointment, the Chief Judge enlisted planning support from the National Center for State Courts' Northeastern Regional Office, and a new effort called the Felony Backlog Reduction Program (FBRP) was launched on January 25, 1982 (Williams, 1982:14).

A major element of the FBRP was an Administrative Rule forbidding adjournments in cases six months or older except by the Assistant Administrative Judge (who was also the Director of the FBRP). But in April, a different judge of the Supreme Court held this Administrative Rule to be an unlawful interference with judicial independence and ruled it void (People v. Little, 1982).

The FBRP was described as a "time-frame" method of case processing: specific dates were established for completion of all pretrial activity (Williams, 1982:14). Despite the inherent

logic of such an approach, many judges in the Supreme Court believed that the volume of cases was too high and the reasons for adjournment too varied, for case processing to adhere to established time-frames (Ibid. 11).[6]

At the end of January 1982, when the FBRP began, 10,620 cases were pending, 35 percent of which (3,370) were more than six months old. By the end of 1982, the caseload had increased to 13,998, 35 percent of which (4,850) were still over six months old.[7]

Whatever the reasons, the court's administrative efforts to secure compliance with felony case processing standards during 1981 and 1982 were less than a resounding success. This history gave City administrators little reason to expect relief from plans and initiatives in the courts when, in 1983, they faced a growing jail overcrowding crisis linked to lengthening periods of pretrial detention for felony defendants. So, the City looked to the prosecutors for help.[8]

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[6] We will discuss this contention further in the concluding sections of this report when we discuss the frequency of adjournments in the City's courts, the reasons for them, and their implication for programs to reduce delay. For the moment, we only note that the perception of many in the City's Supreme Court that the volume of cases is "too high," presumably in relation to judge resources, is not entirely borne out by comparative data such as that presented above from the National Center's 1985 study.

[7] Throughout this report, unless otherwise specified, official data on the size of the New York City Supreme Court caseload are taken from the Caseload Activity Reports (CARS) produced since January 1982 at the end of each term by the Unified Court System's Office of Management Support. Any reference to these data (pending case counts or other relevant information, such as numbers of dispositions or judge-days) will be referred to as CARS data.

C. Empirical Research on Delay: What Was Known about the Problem and its Solution

In 1983 when New York City officials began to explore more fully the implications for jail overcrowding of long felony case processing times, court delay was hardly an unknown problem elsewhere in the United States. Indeed, some writers have suggested that there has been delay as long as there have been courts. Only recently, however, has empirical research been brought to bear on the problem. Beginning in 1976, the U.S. Justice Department (through LEAA and the National Institute of Justice) has spent several million dollars on court delay research and experimentation.

Prior to this research, most authorities believed that the solution to the problem of delay could be found in adding resources to courts, usually more judges (Zeisel, Kalven and Buchholz, 1959). While potentially an answer for some courts, the comparative data on indictments per judge and the backlog data for 1983 reviewed above did not lead New York City officials to perceive insufficient resources as the most relevant problem for the City's Supreme Court. In any case, because the City does not fund the courts, more judicial resources were not a remedy at

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[8] We do not mean to imply that there is nothing court administrators can do about delay; the growing literature in this field contains many success stories, and we will discuss the lessons they offer at various points in the remainder of this report. In addition, we will show in our discussion of the Bronx District Attorney's response to the Speedy Disposition Program during its first year that the Administrative Judge of the Supreme Court in that county played a central role in reducing the number of old cases pending.

its disposal. Furthermore, when the Chief Judge increased the number of Supreme Court judges assigned to New York City in March 1981 from 124 to 161, the backlog continued to rise.

In deciding how to approach the problem of speeding up felony cases so as to reduce the population of long-term detainees in its detention facilities, City officials took seriously several key conclusions arising from this body of research and evaluation.[9]

First, courts across the United States vary greatly in the speed at which they process criminal cases. This variation is not a reflection of size of jurisdiction or relative seriousness of the criminal caseload. This was a major finding of the National Center research discussed above (Church et al., 1978), and it is supported by other studies.

Second, court delay is not primarily a resource problem. The conventional explanation of too many cases and too few judges is simplistic. Empirical studies across a large number of courts, of individual courts over time, and of specific delay-reduction efforts in particular jurisdictions, all suggest that there is no direct relationship between justice system resources and the pace of litigation: courts in which judges and district attorneys appear to be comparatively overworked, for example, show no particular tendency to be slow; courts with relatively light caseloads for judges and prosecutors show no special pro-

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9 See, for example: Church et al., 1978 (a) and (b); Friesen, 1979; Brosi, 1979; Sipes et al., 1980; Neubauer, et al., 1981; Church, 1982; Garner, 1986; among many others.

pensity toward a speedy pace of litigation. It would appear that other factors exert a much stronger influence on the speed of dispositions.

Third, a major influence on the pace of litigation appears to be the attitudes and informal practices of local court practitioners. A number of recent studies have suggested that delay (as well as other aspects of the operation of courts and the dispositional process) may be in large part a function of attitudes and norms for behavior.[10] Practitioners come to believe that the existing pace of litigation in their court is the only proper one; they build their daily professional activities around these expectations, and thus, they tend to resist efforts at changing this pace. This normative dimension to the problem of court delay has been termed "local legal culture" (Church, 1982). This concept emphasizes the overall lack of incentives any of the participants in criminal cases have to change the pace of disposition: despite generally subscribing to the norm that "justice delayed is justice denied," practitioners seldom have a continuing interest in altering the status quo.[11]

Finally, the existing pace of litigation is not immutable. One of the more promising findings of recent research is the suc-

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[10] See, for example, Heumann (1979), Sudnow (1965) and Mather (1979) with respect to sentencing and modes of disposition; and Church et al. (1978) and Neubauer et al. (1981) with respect to the pace of litigation.

[11] This idea fits well into the growing literature on the importance of informal practices among courtroom actors in determining the nature of the dispositional process, an idea first suggested by Abraham Blumberg in 1964. See also: Banfield

cess of a number of delay-reduction efforts in courts across the country. While these efforts typically involved some additional resources for the primary agencies in the court system (for example, to improve information systems or ancilliary services), they seldom included permanent additions to the existing complement of judges or prosecutors. The American Judicature Society recently evaluated successful delay-reduction efforts in four criminal courts (Neubauer et al., 1981). Their conclusions were consistent with a number of other studies: delay can be reduced when there is a strong commitment from the court, or the prosecuting attorney (or, ideally, both) to address the problem in a serious and sustained way.[12]

These insights, found consistently across a significant number of studies of delay and delay reduction, influenced the views of City officials in 1983 as they reviewed different strategies for reducing delay in New York's felony caseload. They came to see the principal objective to be to effect change in the attitudes and expectations of prosecution, defense counsel and judges, despite the inertia (if not outright resistance) associated with the existing "local legal culture."

By far the most frequent force motivating change in previous delay-reduction programs was outside pressure working through disincentives for lawyers and judges who fail to move cases ex-

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and Anderson, 1968; Church, 1975; Nimmer, 1976; Eisenstein and Jacob, 1977; and Heumann and Loftin, 1979.

12 The research literature contains evidence that in two successful delay reduction efforts, in Detroit and New Orleans, the prosecutors were key actors.

peditiously. In Detroit, for example, a substantial decrease in case-processing time and in the size of the pretrial jail population was achieved only after the state's Supreme Court put the trial court into a state of virtual receivership (Neubauer et al., 1981:346). In other courts, speedy-trial rules with "teeth" have forced courtroom actors to move their cases more speedily. But, as we have already seen in New York, regulatory strategies generally have not changed behavior by merely asserting the standards that were to be complied with, and court's administrative efforts to move forcefully to obtain compliance have lacked success.

However, by 1983 when New York City was designing a program to reduce delay, it appeared that no court system had yet tried to encourage the necessary change in "local legal culture" to speed up dispositions, by making the desired behavior attractive -- in Charles Schultze's terms -- through a strategy of "creating incentives so that public goals become private interests" (1977). Indeed, until recently, there have been virually no systematic analyses of the role incentives play in criminal justice systems, nor have there been any useful conceptualizations about what might influence their success or failure.[13]

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[13] Fortunately, this is changing. Largely stimulated by New York City's Speedy Disposition Program which, as we are about to describe, is a unique effort to use affirmative incentives to affect prosecutorial expectations about the pace of criminal cases, Thomas W. Church, Jr. of the State University of New York at Albany and Milton Heumann of Rutgers University have turned their attention to the issue of incentives. Under a grant from the National Institute of Justice, Church and Heumann have been exploring the literature on incentives as public policy tools generally

This lack of attention to incentive approaches is somewhat surprising because, as Malcolm Feeley has recently concluded in examining reform efforts in American criminal courts,

> The central obstacle to change in the courts is not the resistance to reform, but is, more fundamentally, the lack of interest in even thinking about change. This is not to suggest that there are no efforts at planned change...only that there is little incentive for those engaged in day-to-day administration of the criminal courts to think about system-wide changes or, when they do, to pursue them vigorously (1983:192).

Because New York City was not in a position to direct the Supreme Court to undertake procedural reforms to reduce delay or to otherwise influence judicial behavior, City administrators developed a plan to give the City's prosecutors incentives to reduce disposition times. Potentially at least, prosecutors could effect changes in the behavior of their own staffs and thereby help encourage judges' expectations of the time necessary for case processing to come into line with those reflected in a new set of prosecutorial expectations.

This was uncharted terrain, not just because there seemed to be no precedent for using positive incentives to change expecta-

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and particularly in the criminal justice system. Specifically, they have interviewed at length policymakers and practitioners involved in the design and implementation of the Speedy Disposition Program in New York. A report of their observations and analyses will be available in 1987.

Meanwhile, as a contribution to the current evaluation of this program, Church and Heumann have permitted us to include as a chapter in our technical reort their review of the relevant literature and their initial conceptual thoughts on how incentive systems operate. We wish to acknowledge our liberal use of their insights at several points in this document. We urge readers who are interested in the incentive dimension of the City's Speedy Disposition Program to turn to Church and Heumann's paper (Techical Report, Chapter I).

tions about case processing times, but also because most delay-reduction programs had centered on the powers and the actions of judges, who are able to place demands on both defense and prosecution, and to impose sanctions for delay. Given the interdependence of the criminal court system, the optimal situation would be to engage the court, prosecution, and the defense bar in a cooperative program to reduce disposition time. However, because of its limited influence, the City chose to focus on one key link in the chain -- the District Attorneys -- to see if they could influence others.

The City had several persuasive reasons for believing the District Attorneys would want to take significant actions to reduce pretrial delay, even if they had to do so unilaterally, and for believing that prosecutors' actions could be effective.

The first was that incentives to encourage the District Attorneys to focus greater attention to the delay problem, and to make it a priority among their various important agendas, are consistent with their professional interests and obligations to the public. Prosecutors often take the position that there is little they can do to keep cases from getting old. They tend to the view that cases age because of problems intrinsic to particular cases (e.g., multiple cases pending, very serious charges, etc.), or because judges allow defense attorneys too many continuances or adjournments. Nevertheless, District Attorneys sometimes concede that there are actions they could take to reduce delay if they had more resources.

Despite the District Attorneys' general position that most delay is beyond their control, the City thought it both logical and expedient to turn to the District Attorneys for help in reducing case processing time. It was thought logical because a prosecutor, like the plaintiff in a civil lawsuit, wants to alter the status quo by obtaining a judgment against the defendant; the longer it takes a case to reach judgment, the longer the status quo is maintained. Also, most defendants remain at liberty while their cases are pending, posing at least an embarrassment to the integrity of the process if that status is maintained for too long, and at worst, a potential threat to public safety. It was thought logical also because the prosecutor, carrying the burden of proving guilt, has most to lose if the passage of time erodes the credibility or the availability of witnesses.

Second, the idea of asking the District Attorneys to address the problem delay and felony case backlog was consistent with the trend of thought -- ascribed to by many of the City's District Attorneys -- which acknowledges and encourages the prosecutor's role as an executive manager and policy setter within the criminal justice system. Modern prosecutors do not simply receive cases from the police and process them through the court system. Prosecutors can and do work to improve the effectiveness and efficiency of the entire criminal justice system by using their influence to affect not only the prosecution function, but also the police, adjudicatory, and corrections functions. They are in a

strategic position to direct change with respect to matters within their own statutory authority, and also to negotiate change in areas outside it (Jacoby, 1980:xv).

Third, the research literature on the success of delay-reduction programs provides evidence that prosecutors can be effective in speeding case processing times. For example, of five courts examined in detail in the 1978 National Center study of court delay, the fastest median felony disposition time (50 days) was obtained in New Orleans (Church et al., 1978:14). The researchers credited the District Attorney with this achievement. They found that the Orleans Parish District Attorney stressed case management and delay reduction to a considerable degree and employed an extensive data collection system to further these efforts. His office policy advocated moving cases from arraignment to trial in 60 days, and that standard was met in 55 percent of the cases. The researchers also found that while the goal of reducing case processing time was shared by the judges, most of the attorneys and other court observers interviewed credited the District Attorney's management policies and practices with the particularly rapid pace of criminal litigation in New Orleans.

Finally, several of New York City's own District Attorneys -- as well as neighboring prosecutors -- have a history of undertaking efforts to reduce the time taken in processing cases and to reduce backlogs. As one example, delay reduction had been an issue for Bronx County District Attorney Mario Merola, at least since 1978, when his office developed what has come to be

called the "felony waiver" procedure for disposing of uncontested felony cases within a few days of arrest when defendants waive their rights to indictment by the Grand Jury and enter guilty pleas to a Superior Court Informations.

Similarly, Kings County District Attorney Elizabeth Holtzman had focused attention on delay reduction shortly after her election and before SDP. She also believed there were benefits from utilizing the felony waiver procedure and adapted it to the early case screening processes in her office.[14] She introduced this was well as other procedures, such as the introduction of vertical prosecution -- having the same assistant follow a case through from complaint to disposition -- to speed up case processing.

In sum, the literature on court delay, the structural constraints faced by the City which limited the parts of the system it could hope to influence directly, City administrators' perceptions that the District Attorneys had a policy interest in delay reduction, and the District Attorneys' own previous efforts to implement that interest, all encouraged City administrators to see the prosecutors as well-positioned to devise effective delay-reduction programs. The City decided it would provide incentives through its budgetary authority to encourage the District Attorneys to emphasize a policy of backlog reduction and shorter case processing times.

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14 While the Bronx District Attorney seems to have been the first to utilize the felony waiver process in New York City, other jurisdictions in the state were also using it. District

D. <u>The Design of the Speedy Disposition Program</u>

Several months of planning and negotiations involving the New York City Mayor's Office of Management and Budget (OMB), the Office of the Mayor's Criminal Justice Coordinator and the offices of the five District Attorneys and the Special Narcotics Prosecutor culminated in a letter sent to the prosecutors on November 22, 1983 by the OMB Director and the Acting Coordinator. It announced the addition of $1.5 million in supplemental funds to the District Attorneys' budgets for the current fiscal year "not to discourage jail usage but rather to encourage more efficient usage." It also asked the District Attorneys for formal notification that each would participate in this Speedy Disposition Program and requested plans describing the efforts they intended to undertake to reduce the size of the backlog of older detained cases and to speed up disposition times.

The City explicitly chose not to specify the course of action the District Attorneys should undertake. It sought instead to provide encouragement for them to turn their expertise to these problems by rewarding those offices that made progress over the next two years (via an incentive method detailed below). It also provided some initial funds for the offices to carry out the strategies they selected.

While the City has no executive authority over the activities of the independent District Attorneys, it does have respon-

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Attorney Holtzman hired as one of her top executives a person who had experience with the system in Nassau County.

sibility for their budgets. In 1986, for example, the combined budgets of all six prosecutors' offices was $100,979,000 of which the City provided 81 percent (the rest coming from a variety of state and federal programs). To provide the District Attorneys with an added measure of independence, the City may not reduce the number of Assistant District Attorneys; the executive branch is, however, responsible for assessing the District Attorneys' needs and increasing their budgets accordingly. The City may also, as it did with the SDP, supplement the prosecutors' budgets for specific purposes.

Until about 1980, the City's Office of Management and Budget had been in the business of cutting back the budgets of most city agencies because of the fiscal crisis that hit in the mid-1970s; thus, it had not always been as responsive to the District Attorneys' requests for additions to their basic budgets as the District Attorneys would have liked. In 1982, however, the fiscal position of the City was substantially improved. At that time, the District Attorneys all took the position that their budgets were not as rationally determined by OMB as they should be and that the City's overall funding formula should be overhauled. (Not surprisingly, each office offered data, often based upon precisely the same measures, to demonstrate that its budget was proportionately underallocated.)

The City's perspective at this time was that, relative to other criminal justice agencies in the City, the District Attorneys' offices were not underfunded. Although it was willing to

provide some additional resources, the City wanted to ensure it received measurable result or improvement from these dollars.

As its first response to these issues, OMB set aside a reserve of $1.25 million in FY 1983 which was to be used to address the District Attorneys' concern about the rationality of the overall allocations to their offices. In consultation with the District Attorneys, but not without considerable friction, OMB developed a workload measure for each office and apportioned the $1.25 million accordingly. In the absence of sufficient existing data upon which to base a sophisticated workload analysis, OMB used the best measure it could develop. It weighted the offices' caseloads by the number of court appearances each type of case required, assuming that more serious and difficult cases needing greater prosecutorial resources, would be identified by their higher frequency of appearances. Although during 1982 all the District Attorneys' offices received additional funds based on the workload analysis, none were satisfied with the exercise.

In 1983, therefore, when the City was faced with the jail overcrowding crisis and its link to the disposition time of more serious cases in the Supreme Court, OMB decided to use subsequent supplemental allocations, in essence, to purchase the specific services they needed from the prosecutors -- namely, a reduction in the number of long-term detainees and in the length of time to disposition for felony cases. The FY initial 1984 supplement, allocated under the SDP, was apportioned on the basis of each District Attorney's relative share of the City's total prosecu-

torial budget, which included the earlier workload analysis distribution.

The allocations were as follows:

Office	% Budget	Distribution
New York	32.4	$486,000
Bronx	18.2	273,000
Kings	26.9	403,500
Queens	14.6	219,000
Richmond	2.3	34,500
Special Narcotics	5.6	84,000
TOTAL	100.0%	$1,500,000

While this supplemental FY 1984 Speedy Disposition Program allocation was to assist the District Attorneys in developing their capacity to respond to the delay and overcrowding problem, subsequent supplemental allocations under the SDP ($1.25 million in each of the next two Fiscal Years) were to be based upon how successful each office was in achieving the specific goals of the program. They were, in short, incentives.[15]

What were the prosecutors asked by the City to do under the SDP?

The SDP initiative sought to have the District Attorneys reduce the absolute number of long-term detainees by expediting the disposition of currently pending old cases and by reducing

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[15] The total budget for the SDP program amounted to $8.25 million over FYs 1984, 1985, and 1986. While the yearly funding amounted to $4.0 million ($1.5 in 1984 and then $1.25 in each of the next two years), each of these supplemental allocations became part of the base budget of the District Attorneys' Offices. As a result, each year's funds cumulated over time, bringing the total value to over $8 million.

case processing times generally. However, the City did not want to put in place a program that would have the effect of discouraging prosecutorial attention to non-detention cases languishing on the calendar. Justice would not be served by such a consequence, and the City also did not want to exacerbate the problem of delay in non-detention cases or be in the position of inadvertently encouraging the deterioration of cases pending against non-detained defendants. Therefore, the SDP targeted not only long-term detention cases but also all older pending cases in the Supreme Court whether or not the defendant was in custody.

In its November 1983 memorandum to the District Attorneys on the SDP, the City defined two target groups of cases the prosecutors were to address; changes in the size of these target groups, relative to each office's own previous baseline, were to be the measure upon which the District Attorneys' efforts would be assessed.

The City's SDP performance measures focused upon all old cases pending in the Supreme Court (those over six months), but the very oldest detained cases were emphasized.[16] Therefore, in

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[16] The City's choice of six months for the SDP was not because of the judiciary's Standards and Goals requirement. Rather, this cut-off date was chosen by the City because roughly half the pending cases and half the Supreme Court detainee cases fell into the "over 6 months" category, according to the best statistics available when the SDP was in its design phase. The 9 and 11 month cut-offs were selected because they were the seventy-fifth percentile (i.e., 25% of the cases were above these ages).

Because the County of Richmond had a much smaller criminal caseload than any of the other counties, the cut-offs established by the City were somewhat different. The target group for the Richmond District Attorney was all Supreme Court cases pending

the formula for allocating the FY 1985 and 1986 incentive money among the District Attorneys' offices, all pending cases six to eleven months old were counted, but those over eleven months old were double-weighted; in addition, all cases of detainees in custody six to nine months were counted and those in custody over nine months were double-weighted. Thus a detained case over six months old was counted twice, once with all the pending cases and again with the detained pending cases.

The impact of each District Attorney's 1984 activities on the size of these target groups of older cases was measured by comparing the number of older cases in each target group in each District Attorney's caseload at the end of 1983, with the corresponding number in the caseload at the end of 1984. The impact of the District Attorney's 1985 SDP activities was measured by comparing the size of these target groups at the end of 1985 with their size at the end of 1984.[17]

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eight months or more, and all detainee cases pending two months or more. These cut-offs were established on the basis of the same type of statistical information as were the cut-offs for the other counties.

[17] To determine the allocation of the incentive pool to each prosecutors' office, the City developed a formula that was discussed with the prosecutors in the fall of 1983 and included as Attachment B in the City's final memorandum on the SDP to the District Attorneys in November. The funding formula was initially based upon the performance measures outlined above. Prior count was made for each office of the number of defendants in detention over nine months and the number over six but under nine months on two dates at the end of 1983 and on two comparable dates at the end of 1984. The counts for the two 1983 dates were averaged as were the counts for the 1984 dates, and the average number of detainees over nine months in each was double-weighted. Then the percentage change between 1983 and 1984 in the average weighted number of older detainees was determined, to see if there had been a percentage reduction in the size of each of-

To reduce the size of the SDP target groups, the City assumed that the prosecutors would have to direct themselves toward two objectives: first, they would have to attack the existing backlog by putting in place temporary mechanisms to dispose of the sizeable number of old cases already within the target groups. (There were 7383 defendants with cases pending over six months on December 4, 1983; 1418 were in detention.) Second, preferably at the same time, they would have to develop ways to reduce overall times to disposition in order to ensure that the younger cases did not age to the point of entering and swelling

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fice's caseload of older detainee cases.

The same procedure was used to determine the percentage change in the size of each office's overall Supreme Court pending caseload, again focusing on cases pending over six months and double-weighting those over eleven months.

Each of these two percentage change measures was then adjusted if, and only if, the median age of all cases (i.e., the median age of all detainees and the median age of all pending Supreme Court cases) had increased. If an increase had occurred, it was subtracted from the office's score on the measure.

The resulting figures for each of the two program performance measures were combined and averaged to create a final overall SDP score for each office that was used to distribute the incentive pool. A negative final score indicated than an office had succeeded in reducing the average weighted size of its SDP target groups between its own 1983 baseline and the end of the program's first year, or between the end of the first year and the end of the second year.

For each office achieving a successful result, its final SDP score was multiplied by its percentage share of the City's total budget to the prosecutors. These figures reflected the contribution of each successful office to overall citywide results for the SDP during that year. The combined contributions of the successful offices were made equal to 100 percent so that each office's proportionate contribution to the overall citywide result could be established. This was multiplied by the $1.25 million in the supplemental funding pool to determine each office's share.

the target groups. Without effort in the second area, early successes in reducing the size of the target groups would be defeated, at least to some degree, by the aging of newer, neglected cases.

Furthermore, because the SDP was to run for at least two years, if prosecutors did not attack the strategic problem of how to keep cases from aging, progress made in 1984 to reduce the pre-existing backlog would also be off-set in 1985 by an increase in the number of newer cases aging over six months. Hence, absent some strategic planning toward speedier dispositions generally, the backlogs could be the same during the SDP's second year as they had been at the beginning of year one.

1984 was the first year of the Speedy Disposition Program, with Vera providing ongoing technical assistance to the City in its role as program evaluator.[18] The City's distribution to the

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[18]The Vera Institute of Justice was asked by the City to provide the data to measure the size and age of the target groups for the SDP. With the assistance of the Research Department of the New York City Criminal Justice Agency, we developed the computerized data bases to do so systematically and uniformly across all the District Attorney's jurisdictions. A detailed discussion of this research process is contained in Appendix A.

It is important to note that systematic data on the size and age of the detention population by county are not routinely collected by any official agency. In addition, the official data issued by the court (in its Caseload Activity Reports or CARS) could not be used for the SDP all pending case measure for several reasons. First, they do not separate from all Manhattan Supreme Court cases those prosecuted by the Special Narcotics Prosecutor rather than the Manhattan District Attorney. In addition, CARS reports exclude cases pending sentence, and they calculate the age of cases from their initiation in Supreme Court rather than from their Criminal Court arraignment, re-setting the case age to zero whenever the case is returned on a warrant. These are all significant limitations when the data are viewed in

various prosecutors of the start-up $1.5 million for expenditure beginning January, 1984, was announced on November 22, 1983. By late spring of 1984, several of the District Attorneys' offices had yet to implement any plans aimed at achieving SDP goals. Some specific changes were not actually put in place until the fall, a delay that may reflect these offices' shortage of planning capacity.

But the delays in starting also may be no more than a reflection of a pattern of thinking that pervades the adjudicatory segment of the New York City criminal justice system: things that are planned, agreed, and even announced, frequently do not occur. In the day-to-day operation of the courts, this pattern often applies to trial, hearings and other events for which specific times are set, reset and set again.

In tracking the progress of the SDP as part of the evaluation, Vera researchers often came away from initial interviews with the prosecutors and their assistants in the Spring of 1984 with the impression that the interview itself may have played some role in precipitating the planning process: it made the SDP seem more real, and some of the prosecutors' offices appeared to focus more attention on implementing the SDP after the visits from researchers reminded them that, although this program began with an award of start-up money distributed proportionately to

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the context of the City's criteria for the SDP. Also CARS data count Supreme Court filings, rather than the number of felony-charged defendants, and therefore have no direct relationship to the detainee population, as one defendant may be the subject of several filings.

their budgets, the second distribution of money -- at the start of the second year (1985) -- was to be based on program performance in the first year.

While the City requested and received initial reports from each District Attorney's Office showing how the start-up funds were to be spent, no restrictions were placed upon how the SDP funds allocated to the six offices were to be used and the SDP start-up allocations were not necessarily directly applied to costs incurred in implementation of the District Attorneys' plans to reduce case processing time. Part of the City's thinking, embedded in this feature of the SDP, was that the District Attorneys were likely to know best how to pursue the SDP goals, and would be likely to accomplish more if they were free to experiment, as they went along, within their respective jurisdictions.

Predictably, in some offices, the plans changed over time. Thus, although the SDP incentive may have been important to them, many of the efforts actually undertaken in the first year did not generate additional costs to the prosecutors' budgets. As part of the Kings County program, for instance, special Supreme Court Parts were set up to process old cases. But ADAs transferred to the new parts were not replaced in their former positions because the District Attorney recognized that, when the old cases were removed from the regular Supreme Court parts, caseloads there would be reduced.

The prosecutors' offices took some time before they began to focus on the specific structure of the SDP incentives in the way the City intended. All the District Attorneys started out to reduce the number of old cases (i.e., those pending at least 6

months), but not all of them focused on the distinction between detained and bailed cases, or between the old and the very old cases.

The data collected by the evaluation permit only broad inferences to be drawn about the connection between any particular SDP efforts by a District Attorney's Office and the changes in caseloads reflected in the data. Cause and effect relationships cannot be proven. For example, some efforts by the District Attorneys to reduce case processing times that were already underway before the SDP started, continued to have an impact on caseloads in 1984.

Similarly, changes by other actors in the criminal justice system affected case processing times during 1984. For example, at the beginning of the year the Administrative Judge for the Bronx Supreme Court, Criminal Term, initiated a special effort, external to the SDP, to reduce a pending caseload that had increased substantially during 1983. Another external effect that may have increased case processing times arose when the Administrative Judge for Richmond County changed the assignment of two Supreme Court Justices, moving them from an exclusively criminal calendar to a combined criminal and civil calendar to help reduce a civil case backlog.

The SDP ran for two full years, from January 1984 through December 1985. All the District Attorneys' offices developed and implemented some response to the City's initiative, making more or less substantial changes in their procedures. Each District Attorney devoted special efforts to the SDP which are described in detail in Section II of this report. Their work fell into

several general categories:

- Efforts to introduce procedural changes, to shorten delay at specific points in the processing of cases, expediting paper and case flow.

- Efforts to identify cases that had been pending for a long time, and to expedite their disposition by setting up special court parts and, usually, special units of prosecutors. Some of these efforts were temporary, to reduce the pre-existing backlog of cases.

- Efforts to encourage the disposition of cases at an early stage in the adjudication process, usually by having a senior level ADA determine, within the first week or so after a case is filed in Criminal Court, the District Attorney's position with respect to an acceptable disposition, communicating that determination to the defense attorney, and obtaining the cooperation of the court in promptly processing a guilty plea when an agreement is reached.

- Efforts to identify the "fighting issues" in a case, and to have the State's evidence and other prerequisites prepared ahead of time to avoid delay when the issues actually come before the court.

- Efforts to expedite pretrial motions by consolidating them into one, rather than sequential, proceedings.

- Efforts to improve information systems, to better identify aging cases so that supervising Assistant District Attorneys could provide direct incentives to trial Assistant District Attorneys to move their cases, and to get both supervisors and trial prosecutors to accept the reduction of delay as a part of their professional responsibility.

Some of the District Attorneys' offices were relatively slow to start; others began planning more rapidly. Some undertook activities that extended for the full course of the program and made changes that will continue to effect case processing in their offices into the future; others made short-term efforts to address the size of the target groups but were not able to sustain them. Some attempted to involve the courts in their SDP plans; others moved forward alone. Some had a positive impact on the target groups; others fell further behind.

E. The Citywide Results of the SDP

Assessing the outcome of the SDP is complex because the processes the City wished to influence are complex and affected by factors other than the SDP. Furthermore, the program involved many assumptions that are hard to test about the influence of budgetary incentives; the extent to which prosecutors can affect backlog and disposition times; and the consequences of such effects, if any, for the magnitude of the City's jail overcrowding problem.

From an immediate policy perspective, the City was primarily interested in the SDP citywide impact, particularly on jail days saved over the two year period. However, from a broader policy perspective, City administrators were also interested in learning from the different ways the prosecutors' offices went about responding to the initiative, and their levels of success, how valid the assumptions underlying the SDP were. They wanted to explore whether prosecutors could effect disposition times by altering the local legal culture (at least in their own offices) without major changes in their relationships with the court or major infusions of additional resources; if that did occur, they were interested in how it was done. They wanted to know whether budgetary incentives could work to focus individual District Attorney's attention on an issue of citywide concern and, if so, whether reducing delay would influence the size of the detainee population.

This section looks primarily at citywide data to assess the overall impact of the SDP during its two year period, beginning

with the issue of detention because this was the City's most immediate concern. We then turn to citywide data on the program's impact on the size of the entire Supreme Court backlog (detention and non-detention cases) and on overall times to disposition for all cases in the Supreme Court.

In terms of the City's primary concern -- the impact of SDP overall on the size of the program's target groups -- the citywide effect was positive but very modest in the first year of the SDP and negligible in the second year (although even in the second year there were some small jail savings). The activities of the six prosecutors' offices contributed to these citywide outcomes very differently. Two of the offices that made gains, relative to their own baselines, by reducing the SDP target groups of old Supreme Court pending cases and old detainee cases in at least one of the program years (Richmond and the Special Narcotics Prosecutor) are also those offices handling the smallest proportion of the City's total volume of felony prosecutions. Hence, their contributions to the citywide jail overcrowding problem could not have been substantial even if their activities in relation to their own caseloads had been impressive. Two of the other offices which made gains relative to their baselines (Manhattan and the Bronx), handle a large enough proportion of the City's felonies for their efforts to have had citywide implications; however, only one of them (Manhattan) was able to sustain the effort for the full two year period and the other was never really able to crystallize its own efforts after the priorities of the Administrative Judge of the jurisdiction turned to other pressing issues. Finally, the two other large offices,

despite a systematic and well-organized effort in the first year by one (Kings) and a series of relevant procedural changes by the other (Queens), were not able to achieve any reductions.

1. The SDP's Impact on the Long-Term Detainee Target Group

Figure A shows the trends in the total city jail population, pretrial detainees and sentenced offenders between 1982 and 1985; it suggests that, despite the SDP, jail overcrowding remains a priority problem in New York City.

Did the SDP help contain the overcrowding problem even if it did not solve it? Table 3 presents the program performance data collected by researchers over the two year SDP period (1984 and 1985) to measure the absolute and relative changes in the size of the first group of pending cases targeted by the program -- the population of long-term detainees.[19]

The citywide data show that at the end of 1984, the first year of the SDP, the number of detainees in the oldest targeted group (those detained nine months or more) had declined 10.1 percent (68 detainees) compared to the baseline period at the end of 1983. This was the target group to be double-weighted in

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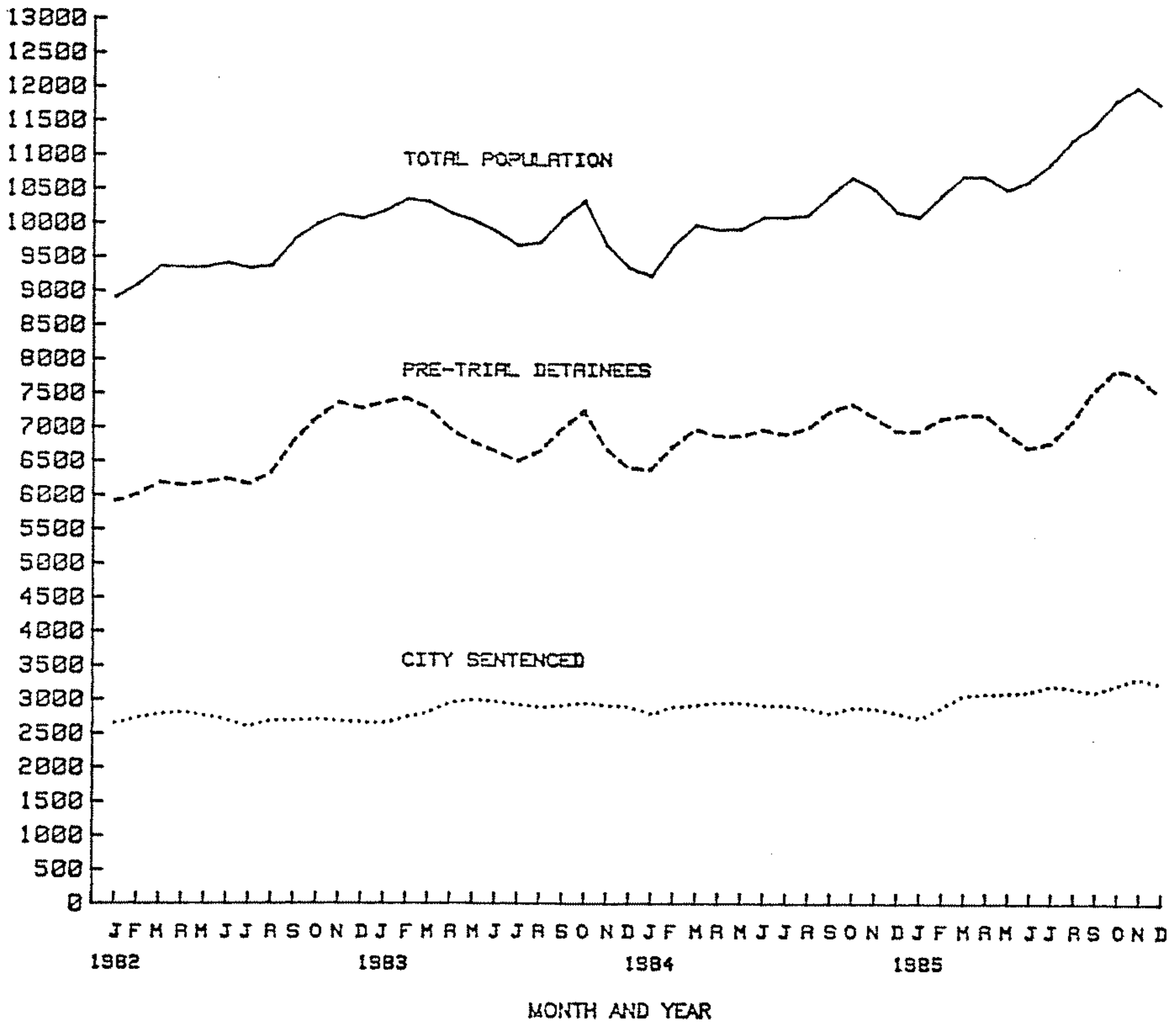
[19] For a full display of the performance data by year and by prosecutor's jurisdiction, see the tables in Appendix A. We will be referring to these data throughout the remainder of the report.

Also note that in this section of the report we imply that all changes in the size of the target groups were a result of the SDP; in the individual sections which follow on each District Attorney's SDP efforts, we will discuss other factors, in at least one jurisdiction, that contributed to the program's positive impact and explore factors that impeded program efforts in other jurisdictions.

Figure A

New York City Speedy Disposition Program Evaluation

MONTHLY CENSUS FOR TOTAL POPULATION, PRE-TRIAL DETAINEES, AND CITY SENTENCED POPULATION:
Citywide, 1982 – 1985



SOURCE: New York City Department of Correction Monthly Inmate Population Summary, 1982 – 1985

TABLE 3
Absolute and Percentage Changes Comparing SDP Baseline Year and First Year Outcome Data, First Year and Second Year Outcome Data, and Data Across the Two Years:[a]

Long-Term Detainee Cases -- Citywide

Older Detainee Cases	Change During First Year (T3 - T1)		Change During Second Year (T5 - T3)		Change Across Two Years (T5 - T1)	
≥ 6 < 9 months	+12	(+1.5%)	+64	(+8.0%)	+76	(+9.6%)
≥ 9 months	-68	(-10.1%)	+171	(+28.3%)	+103	(+15.3%)
Total ≥ 6 months	-56	(-3.8%)	+234	(+16.6%)	+178	(+12.2%)
Age Median Case	-1.5 days		+1 day		-0.5 days	

Source: SDP Evaluation

[a] T1 = Baseline year data: mean of the two sample dates in 1983 (10/30/83 and 12/04/83);
T3 = First year outcome data: mean of the two sample dates in 1984 (10/28/84 and 12/02/84);
T5 = Second year outcome data: mean of the two sample dates in 1985 (10/27/85 and 12/01/85).
Note: T2 and T4 = Interim data not presented here.

calculating each District Attorney's office's SDP score for distributing the incentive pool. However, a small citywide increase (1.5%) in the size of the other targeted group of detainees (those pending less than nine months but over six months) mitigated the effect of the decline in the older group; thus the net effect on the size of the detention population older than six months was a 3.8 percent decline (56 detainees) in the first year.

In contrast, during the second program year (column 2 of Table 3), all targeted categories of the older detainees increased citywide so that the number of detainees six months or older increased by 16.6 percent (234 detainees). Over the full two years, therefore, the detainee population six months or older increased by 12.2 percent (178). The age of the median detainee case (the fiftieth percentile), however, declined slightly citywide -- by half a day over the two year period, all of this occurring the first year.

The first year's detention results were mildly encouraging to the City because the program appeared to be having some impact and it was also cost-effective based upon OMB's estimates of the number of jail days saved by even a modest reduction in long-term detainees. The second year was disappointing, however, because the program had no effect on the citywide detainee measure. The county-by-county effects resulted in less than a quarter of the jail savings of the first year, as estimated by OMB, and did not offset the cost of the incentives.

Table 4 shows the City's estimates of jail-days savings by jurisdiction. While admittedly a rough method of estimation

TABLE 4

Estimated Jail Days Used by Long-Term Detainees (Those 6 Months and Older) by Jurisdiction: 1983, 1984, 1985

	1983	1984	Difference 1983-1984	1985	Difference 1984-1985
Manhattan	110,250	98,411	(11,839)	88,993	(9,418)
Bronx	120,887	84,416	(36,471)	114,329	29,913
SNP	12,138	10,962	(1,176)	16,268	5,306
Richmond	2,889	6,612	3,723	4,446	(2,166)
Kings	117,479	140,474	22,995	168,737	28,263
Queens	44,056	44,044	(12)	58,917	14,873
Jail Day Reductions:			(49,498)		(11,584)
@ $48 per jail day:			$2,375,904		$556,037

Source: NYC Office of Management and Budget.

(data for a more sophisticated approach are not available), the City took the number of six month or older detainees each year for each jurisdiction and multiplied it by the average length of stay for long-term detainees (using a conservative figure routinely used by the Department of Correction). In making these estimates, the City assumed that all reductions (those in parentheses in Table 4) reflected the impact of the District Attorneys' SDP efforts. Implicitly, therefore, this assumes that the reductions for any jurisdiction during 1984 and 1985 would not have occurred without the program incentives and that, absent SDP, these jurisdictions either would have experienced the same amount of jail usage as they had the previous year or, like the remaining jurisdictions, they would have experienced an increase in usage.

As indicated at the bottom of Table 4, these estimates suggest that the City's detention facilities used somewhat over 49,000 fewer jail days during 1984, at a saving of almost $2.4 million.[20] In 1985, however, in those counties where there were reductions, the number of jail days saved was less than 12,000 (a saving of only about half a million dollars).

We have explored this conclusion at some length in the Technical Report, Chapter II, which focuses particularly on an analy-

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20 The $48 per jail day figure used by the City is a conservative estimate of the cost of housing a detainee. While it includes the costs of food and guards, it does not include such things as debt service, pension contributions, capital expenditures, etc. The use of a fully-loaded cost figure (which would have been much higher than $48) seemed inappropriate because it would have assumed the SDP to be having a more permanent long-term effect than the performance data suggested.

sis of Department of Correction census data and the question of citywide increases in workload (arrests and arraignments). The data suggest the following which generally support the hypothesis that the SDP was successful, to some extent, in holding down larger increases in the detainee population during 1984 and 1985 that might have resulted from increases in the court's workload.

First, while the number of sentenced offenders rose between 1982 and 1985, the rise was fairly small and does not explain the steeper rise in the total jail population.

Second, new detainee admissions also rose across this period and the total jail population tended to vary directly on a month-to-month basis with the number of these new detainees. Moreover, this was less so during 1984 and 1985, the SDP years; in 1985, for example, the total population rose far more steeply than new detainee admissions (suggesting the average length of stay was again rising).

Third, during 1984 and 1985, arrests and Criminal Court arraignments rose but were not followed by a corresponding increase in the size of the detention population; the latter rose at a lower rate. This suggests either (a) that the composition of arrests contained fewer types of cases likely to result in pretrial detention (which NYPD-UCR data do not support); or (b) that the changes in arrests and arraignments do not affect detention population as directly as some maintain; or (c) that the District Attorneys' efforts to reduce long-term detainee cases were effective at least to the extent that, absent the SDP, the rate of

detainees population growth would have been more in line with the other increases.

Finally, there was a slight upward trend in citywide Supreme Court filings from 1982 to 1985, especially in 1984 (the first SDP year) when it was about five percent. While one would expect a more direct relationship between increases in felony filings and the size of the detention population than with arrests or Criminal Court arraignments, this does not appear clearly unless the data are lagged by about ten months. When this is done, the small increases in 1984 filings fluctuate as do the somewhat larger increase in 1985 detention figures. This may partially reflect the diminution of the prosecutors' efforts during 1985, but it also suggests, once again, the relationship between detention population and pending felony cases that grow old.

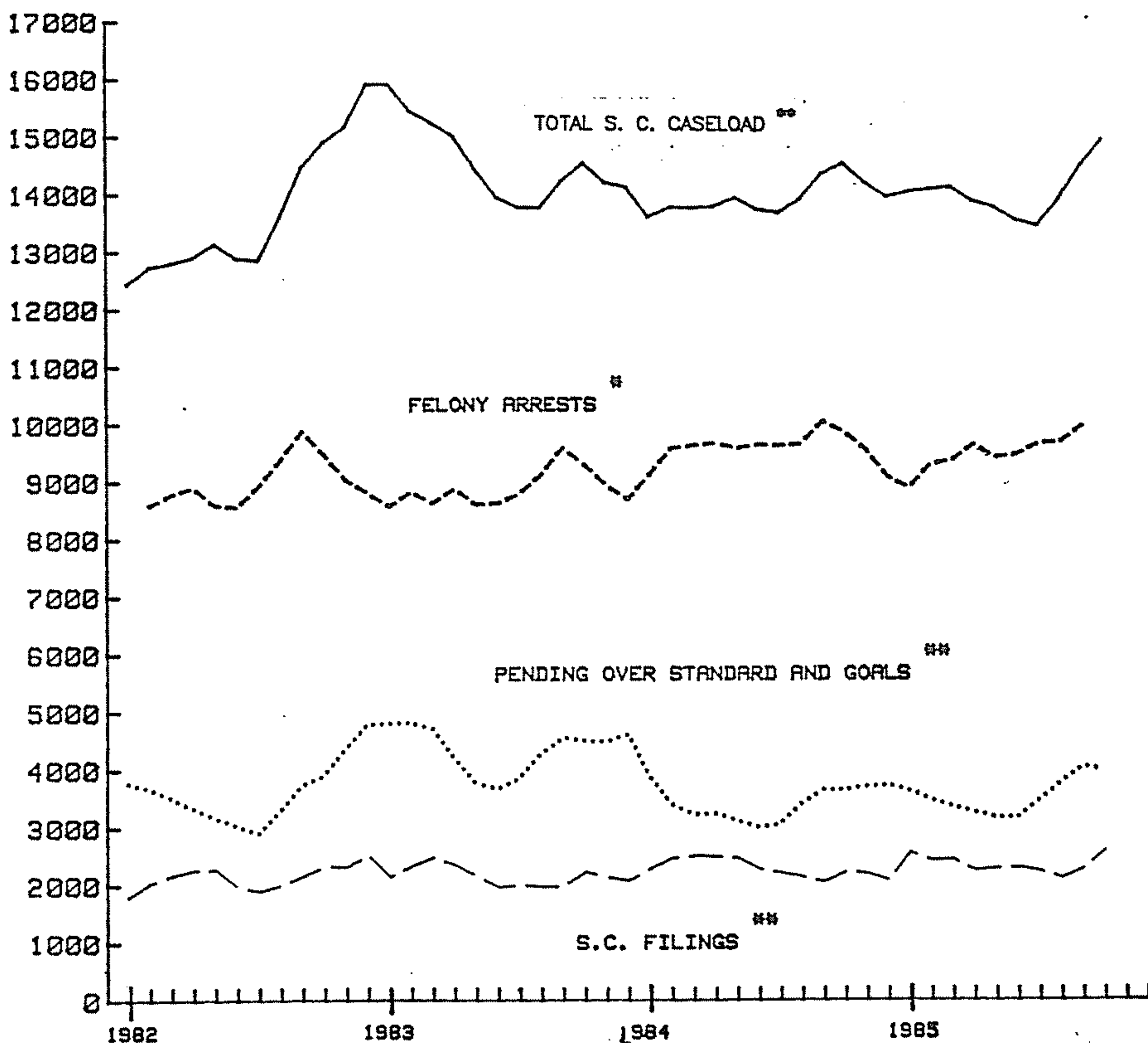
2. The SDP's Impact on Older Supreme Court Pending Cases

Figure B shows official data on felony arrests, filings in Supreme Court and the Supreme Court caseload (both total and those pending over Standards and Goals, i.e., over six months) for the period 1982 to 1985 -- the two years before the SDP and the two years during the program. The graph shows that there were small citywide increases across the four years in felony arrests and Supreme Court indictments (6.2% and 8.9%, respectively). Virtually all the felony arrest increases occurred in 1984, the first SDP year, and the small increase in filings occurred during both program years (5% in 1984 and 4% in 1985).

FIGURE B

New York City Speedy Disposition Program Evaluation

TOTAL S. C. PENDING CASES, FELONY ARRESTS, S. C. FILINGS, AND S. C. PENDING CASES OVER STANDARD AND GOALS BY MONTH: Citywide, 1982 – 1985



* Data have been smoothed using moving average for 3 terms with equal weights.

** Data have been adjusted using moving average for 2 terms; "Caseload" refers to all cases pending at the beginning of a term plus new filings during that term.

SOURCES: New York State Unified Court Systems, Caseload Activity Reports, Office of Management Support, 1982 – 1985

In contrast, the total Supreme Court workload of pending cases, and that part of it which was older than six months, increased over the four year period (16.6% and 17.4%, respectively).[21] All the court workload increases occurred either in 1982, before the SDP (27.8% and 31%), or in 1985, the program's second year (7.0% and 18.2%). While on the eve of the SDP in 1983, the overall Supreme Court workload went down by 11.4 percent, the number of older pending cases was more stable, declining by only 2.6 percent.

During 1984, the first year of the SDP, the over Standards and Goals backlog of the Supreme Court declined by 21.4 percent whereas the overall pending workload remained about the same (decreasing by 1.3 percent as shown in Figure B). Thus, although the overall workload of the court remained relatively stable across the two-year SDP period (it increased 2.3%), the increases in older cases during 1985, the program's second year, did not entirely off-set the gains made in the first year and the size of

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[21] Note that while the raw data for the graph of the total Supreme Court caseload in Figure B are taken from the court's CARS reports, the calculation of its size is somewhat different from that used by the court to count "pending" cases. The court's pending case counts are based upon the number of cases on the calendar on the last day of the term. In contrast, we present on this graph for each month the number of cases pending at the beginning of that month added to the number of indictments filed during that month. Our measure, therefore, reflects the size of the court's workload each month rather than what remains of it on the court calendar on the last day. While the trends in the graph over time are the same for both measures, the magnitude of our caseload measure (i.e., where it intersects with the left axis) is somewhat higher than for the court's pending case counts. During the period 1982-1985, the court's pending caseload data show an increase of 21.8 percent; our workload measure shows slightly less of an increase, 16.6 percent.

the over Standards and Goals backlog declined by 7.1 percent across the two-year SDP period.

The SDP performance data collected by Vera and CJA, presented in Table 5, suggest that this modest citywide decline in the over Standards and Goals cases was primarily a result of reductions in the number of very old cases, those pending eleven or more months that were especially targeted by the SDP to be double-weighted in the formula for distributing the incentive pool.[22]

The data in Table 5 show that, at the end of the first SDP year, the number of old Supreme Court cases pending over eleven months (regardless of detention status) decreased by 23.7 percent (747 cases). This was off-set somewhat by a 5.1 percent increase in the number of cases pending less than eleven but more than six months, with the net effect of a citywide decline in the over six month pending caseload of 7.0 percent (525 cases).

As with the long-term detainee target group, the second year performance data for the SDP were not as favorable for the target groups of all older pending cases. Although the cases over six

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[22] Note that the Court's CARS data for the number of cases over Standards and Goals (which are plotted on the third line down in Figure B) do not measure exactly the same set of cases as do the SDP performance data in Table 5. (For details see Appendix A.) In brief, the SDP data count a case as pending from arrest to sentence (or disposition if it is favorable); the CARS data do not include as pending disposed cases awaiting sentence. The CARS data also count each indictment as pending when the arrest of a defendant results in the filing of more than one indictment; the SDP performance data, however, count each defendant-arrest only once, regardless of the number of indictments filed and pending against the person in connection with that arrest.

TABLE 5
Absolute and Percentage Changes Comparing SDP Baseline Year and First Year Outcome Data, First Year and Second Year Outcome Data, and Data Across the Two Years:[a]

Older Supreme Court Pending Cases — Citywide

Older Pending Supreme Court Cases	Change During First Year (T3 - T1)		Change During Second Year (T5 - T3)		Change Across Two Years (T5 - T1)	
$\geq 6 < 11$ months	+222	(+5.1%)	-121	(-2.7%)	+101	(+2.3%)
≥ 11 months	-747	(-23.7%)	+310	(+12.9%)	-437	(-13.9%)
Total ≥ 6 months	-525	(-7.0%)	+189	(+2.7%)	-336	(-4.5%)
Age Median Case	-14 days		-7 days		-21 days	

Source: SDP Evaluation

[a] T1 = Baseline year data: mean of the two sample dates in 1983 (10/30/83 and 12/04/83);
T3 = First year outcome data: mean of the two sample dates in 1984 (10/28/84 and 12/02/84);
T5 = Second year outcome data: mean of the two sample dates in 1985 (10/27/85 and 12/01/85).
Note: T2 and T4 = Interim data not presented here.

but less than eleven months old decreased by 2.7 percent, the very oldest cases pending over eleven months increased by 12.9 percent, resulting in a net increase of 2.7 percent (189 cases) in the over-six month category. Across the two-year SDP period, therefore, the backlog of very old cases in the Supreme Court (those pending over eleven months) declined by 13.9 percent. While the total number of cases pending over six months decline by 4.5 percent, this was entirely due to the larger reduction in the number of very old cases specifically targeted by the SDP incentives. This decline in the number of very old cases is also reflected in a decrease of three weeks (21 days) in the age of the median case pending in the Supreme Court over the two-year SDP period.

Clearly, therefore, the activities of the District Attorneys' offices in response to the SDP during the two-year period (combined with the activities of the court in one of the larger jurisdictions) had their primary impact (modest though it was) on the size of the older Supreme Court pending caseload, and not specifically on those who were detained. Despite the structure of the City's incentive formula which, as we indicated above, favorably regarded the disposition of older Supreme Court cases that were also detention cases by recognizing them in both component measures (and doubly weighting each measure if the cases had been pending over eleven months), the District Attorneys' SDP activities failed to focus specifically on detainees. Some insights will be offered on why this was the case in later sections of this report.

Before turning to the program's impact on case processing times, it is also important to note that the decline in the Supreme Court's older pending caseload contributed to a decline in the size of the court's backlog citywide, as measured by the National Center for State Courts' backlog index discussed above. This is despite a small drop (3.9%) in the number of dispositions achieved by the New York City Supreme Court during 1984 and 1985. As Table 6 shows, the backlog index declined for the Supreme Court citywide during this period, especially for Manhattan and the Bronx, the counties in which the size of the over eleven month backlog, according to the SDP data, declined the most (29.7 percent and 34.6 percent, respectively).

3. The SDP's Impact on Case Processing Times in Supreme Court

The City's design for the SDP also sought to reduce overall times to disposition for felony cases. City officials wanted the District Attorneys to put in place permanent changes that might reduce the pressure of long-term detainees on the jails, in contrast to merely reducing temporarily the backlog of old cases which would simply grow again. This goal was also in recognition of the extraordinarily long case processing times in the Supreme Courts of New York in contrast to other urban general jurisdiction trial courts.

For methodological and practical reasons discussed in Appendix A, the SDP performance measures focused on changes in the

TABLE 6

Backlog Index[a] for New York City Supreme Court by Jurisdiction: 1983, 1984, 1985

	1983	1984	1985
SC Citywide	.45	.37	.38
Manhattan[b]	.38	.31	.29
Bronx	.48	.39	.34
Richmond	.34	.34	.34
Kings	.49	.42	.45
Queens	.52	.42	.48

a Pending caseload on first day of the year divided by the total number of dispositions during the year, according to CARS data.

b Includes cases in the jurisdiction of the Special Narcotics Prosecutor.

size of specific target groups within the prosecutors' overall caseloads, rather than on a direct assessment of changes in average times to disposition for felony cases. However, for several evaluative purposes -- one of them to measure changes in disposition times -- researchers drew four samples of all cases reaching disposition both in the Criminal Court and the Supreme Court during two-month periods. Beginning with the SDP baseline period in late 1983, disposition data were collected and analyzed for the following time periods: October-November 1983; May-June 1984 (mid-way through the first SDP year); October-November 1984 (the end of the first year); and May-June 1985 (mid-way through the program's second year).[23]

Based upon these samples of dispositions, the age of the median case reaching disposition in the New York City Supreme Court on the eve of the SDP (October-November 1983) was 185 days from arrest; the oldest 25 percent of the cases reaching disposition had taken 319 days or longer. The median convicted case had taken 27 days from disposition in Supreme Court to sentence (the oldest 25 percent had taken 48 days or longer), and it had had 13 court appearances (and 21 or more for the oldest 25 percent). As discussed above, the 1983 National Center for State Court's comparative data reveal how extraordinarily slow these felony case processing times are; furthermore, although the data are not yet published, the median number of court appearances for felony cases in New York City (13) is also substantially above those for

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23 For a detailed description of the rationale for these samples and the methods used in their analysis, see Appendix B.

any other court in the Center's study.[24]

Figures C and D display the case processing times to disposition and to sentence in New York City's Supreme Court across the four time periods.[25] They indicate that those times have declined since late 1983. By May-June 1985, midway through the second year of the SDP, the citywide arrest to Supreme Court disposition median time had declined from 185 to 153 days (a decrease of about one month or 32 days). The median time from arrest to sentence had declined from 227 in 1983 to 197 days in 1985, a difference of 30 days. The oldest 25 percent of the cases reaching disposition also showed some change -- a decline of 18 days to disposition and 13 days to sentence during the same period. Furthermore, the median number of court appearances decreased from 13 to 11.

Whether this somewhat swifter pace of litigation in the Criminal Terms of Supreme Court is the result of the SDP cannot be known definitively. Other factors could have influenced these changes in the times to disposition and sentence as they could have influenced changes in the size of the SDP target groups and

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24 Personal communication, Barry Mahoney, Institute for Court Management of the National Center for State Courts, April 7, 1986.

25 There are some small differences between the time to disposition data presented here and the data used for the performance measures. For technical reasons, we were unable to subtract time out on warrants from the analysis of time to disposition, whereas it is taken out in our count of the number of cases over a given age in the pending case measures.

FIGURE C
Box and Whisker Plot of Case Processing Time for Cases Disposed in the Supreme Court by Sample Period
Citywide: Arrest to Supreme Court Disposition

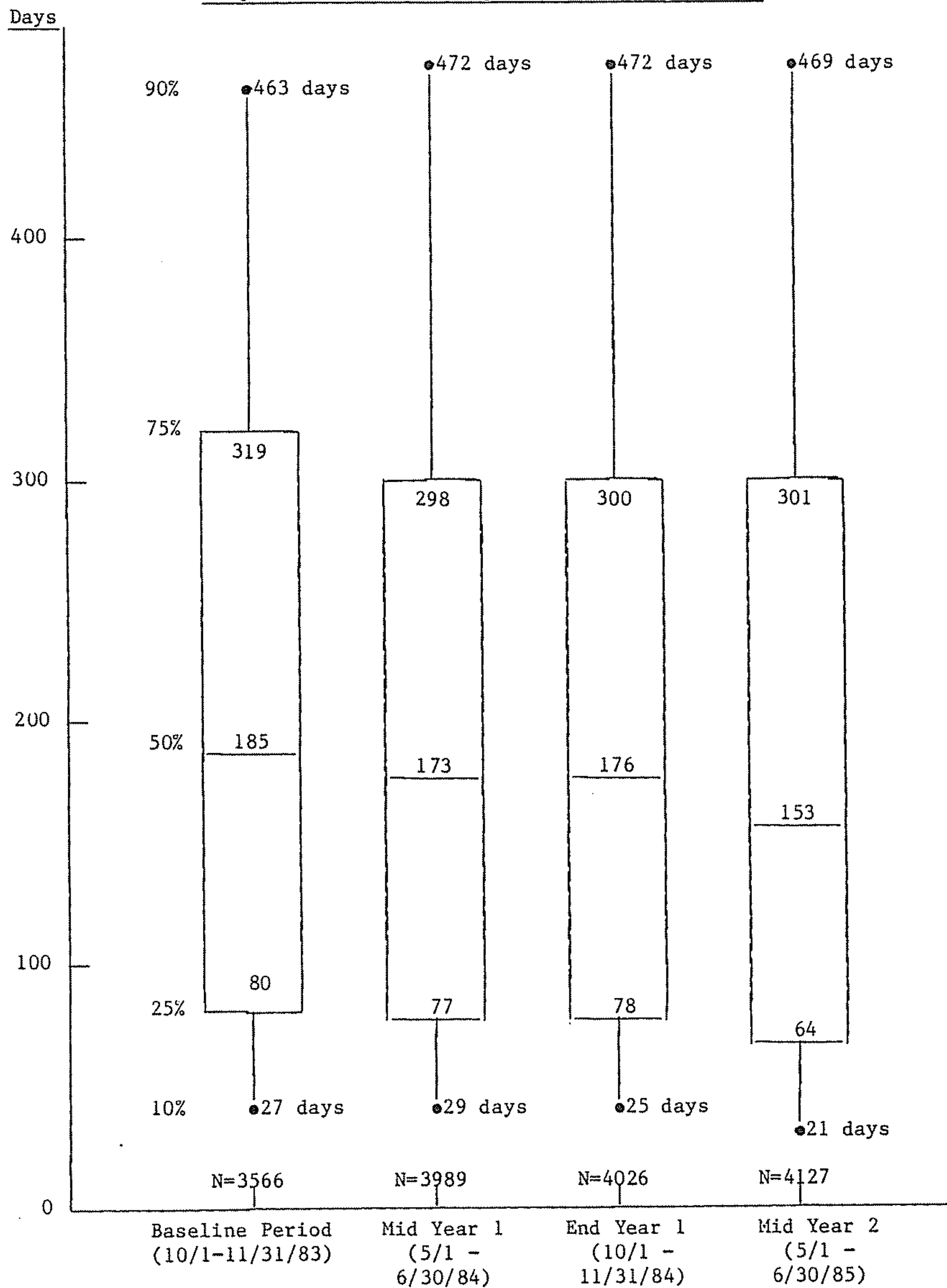
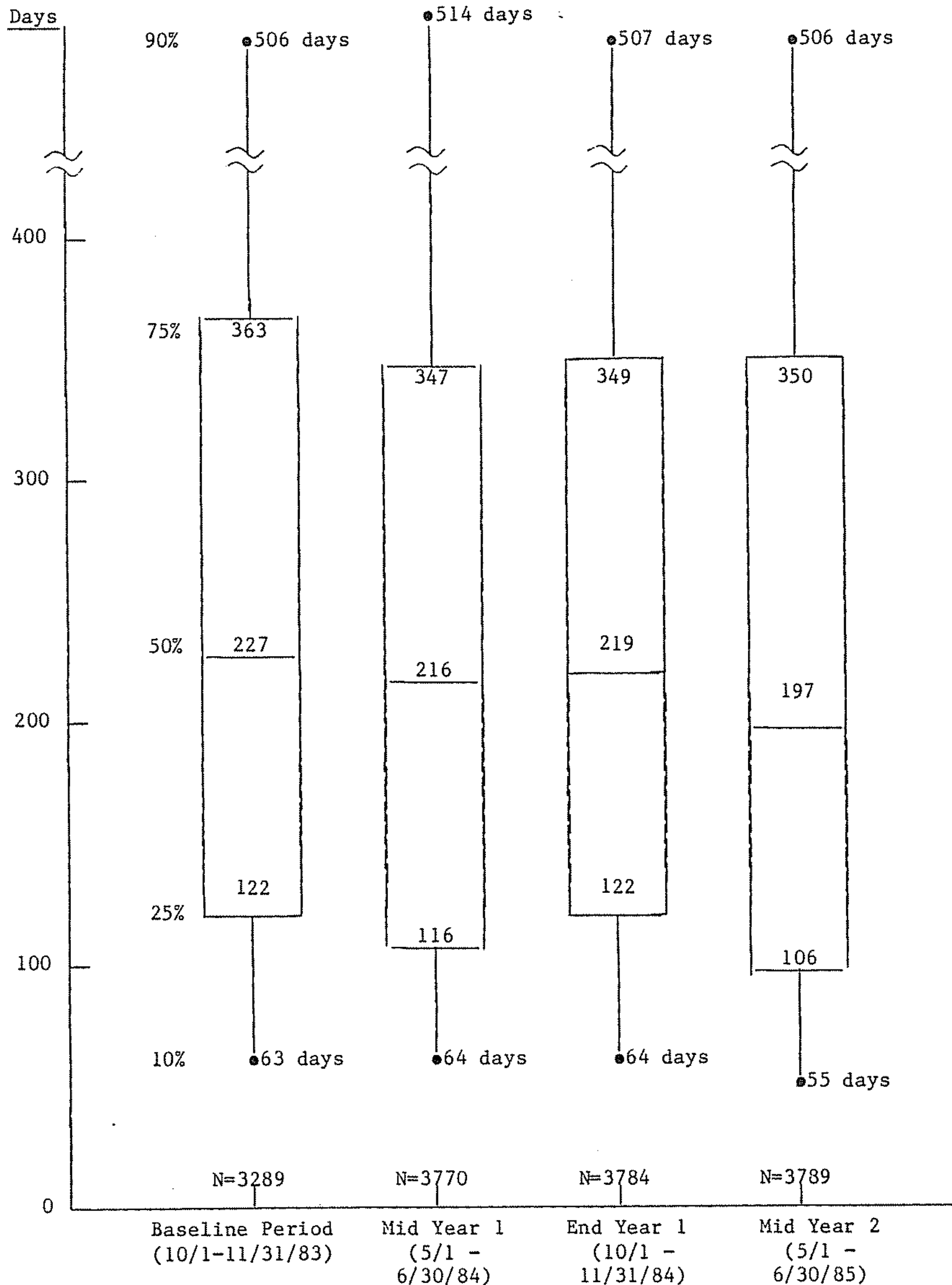


FIGURE D
Box and Whisker Plot of Case Processing Time for Cases Sentenced in the Supreme Court by Sample Period
Citywide: Arrest to Supreme Court Sentence



backlogs discussed above.[26] But the data on changes in target group size and disposition times are consistent with what we know descriptively about what the six District Attorneys' Offices did in response to the SDP and, as in the case of the Bronx, what the Administrative Judge did pursuing similar goals: jurisdictions where District Attorneys successfully implemented SDP plans of a strategic nature to keep cases from getting old as well as to reduce the backlog showed favorable changes in disposition times; where they did not, there were no significant changes.

Before describing these differences among the prosecutors' offices in their response to the SDP and in the success of their individual efforts (Section II below), let us summarize the formal results of the program for each District Attorney as they are reflected in the offices' scores on the SDP performance measures

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[26] There are also some inherent difficulties interpreting data on case processing times for disposition samples (in contrast to longitudinal samples which follow cohorts of cases from arrest to disposition). In this study, the primary issue is whether the composition of the disposition samples changed over time so that decreases in processing time might reflect different mixes of cases reaching disposition rather than changes in the speed with which cases were processed.

To explore this possibility, we examined the composition of these four samples to see if they differed with respect to factors that might affect the speed of their disposition: the type and seriousness of the initial charge; the proportion of defendants with prior convictions; the number of co-defendants and the proportion over eleven months old at disposition (the latter in recognition of the fact that, in attempting to dispose of old cases, the prosecutors might have altered the mix of cases reaching disposition so that they contained more very old cases thereby increasing the median age at disposition for the sample). We found no differences sizeable enough to account for the changes in the times to disposition across the four samples. (For the data upon which this assessment is made, see the tables in Appendix B.)

in 1984 and 1985 and the shares of the incentive pool they received each year. Recall that the year's SDP score for each District Attorney's office was a weighted average of the results of that office's efforts to reduce the size of the two target groups in their own caseloads. Thus, each office was compared with its own position the previous year. The $1.25 million incentive pool was distributed (proportionate to the office's share of the City's overall prosecutorial budget) only to those offices which showed a reduction in the composite performance measure. In Table 7, the figures in parentheses are reductions.

As the table shows, the Manhattan District Attorney's Office was the only office to show a reduction in its weighted SDP score both for 1984 and for 1985. As such, it was the only office to receive part of the incentive pool in both years. The Bronx District Attorney's Office's score showed a reduction in the program's first year, one that was larger than Manhattan's; but it did not show a reduction in the second year. The Office of the Special Narcotics Prosecutor also showed a reduction in year one but not in year two. In contrast, the Richmond District Attorney's Office showed a reduction in year two but not in the first year. Neither the Offices of the Kings County nor the Queens County District Attorneys showed reductions in either year so that neither shared in the incentive pool during the two-year period of the SDP.

TABLE 7

SDP Scores and Incentive Funding by DA's Office for 1984 and 1985

	1984		1985	
	SDP Score	Funding	SDP Score	Funding
Manhattan DA	(22.44)	$497,625	(11.67)	$1,010,750
Bronx DA	(48.08)	612,500	42.50	-0-
Special Narcotics Prosecutor	(27.11)	139,875	65.75	-0-
Richmond DA	59.79	-0-	(32.52)	87,500[a]
Kings DA	18.30	-0-	27.30	-0-
Queens DA	4.19	-0-	36.97	-0-

Source: NYC Office of Management and Budget

[a] On purely proportionate grounds, the Richmond DA's office would have received $239,250; however, because each office had a maximum award of 2.5 times its initial start-up, Richmond (the smallest county) was capped at $87,500.

II. THE PROSECUTORS' RESPONSES TO THE SPEEDY DISPOSITION PROGRAM: IMPLEMENTATION IN SIX JURISDICTIONS

A. The Kings County District Attorney's Office

In 1982, two years before the City's SDP, Elizabeth Holtzman initiated a drive to reduce felony case processing time and the backlog of cases in Kings County. The 1982 Annual Report of the Kings County District Attorney indicates that, in that year, 582 cases with arrest dates preceding January 1981 were targeted for special handling and dispositions were reached in 90 percent. Official data from the courts (CARS) also indicate that, by the end of 1982, 1547 indictments had been pending disposition for over six months from their indictment dates, and that during 1983 there was a 22 percent reduction in cases pending over six months old: from 1547 to 1204 cases.

The specific mechanisms used by the District Attorney to speed processing and effect backlog reductions during 1982 and 1983, according to senior staff, were several.

o By creating a Felony Indictment Waiver Unit in 1982, the District Attorney expanded the use of the felony waiver procedure which had been used occasionally by Ms. Holtzman's predecessor but had not become established procedure.[1]

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[1] Because the felony waiver mechanism is used in several boroughs, and it seems to recur as a key delay reduction management tool in New York City, it is useful to understand the procedure in some detail.

When a prosecutor's office decides to utilize the felony waiver procedures on a routine basis, it includes in its felony screening and charging process, procedures to identify those cases which are likely to be uncontested by the defendant, especially if the interests of the State can be satisfied by some disposition less than the arrest charge. The disposition accept-

o The District Attorney also introduced Vertical Prosecution in 1982. The separate Grand Jury Bureau was abolished and an ADA was assigned to each case as soon as complaint room processing was complete, and this ADA remained with that case for its duration.

o The District Attorney also reported initiating an agreement with the Legal Aid Society aimed at reducing the time from Grand Jury proceedings to Supreme Court arraignment. Delays of up to three weeks between the filing of an indictment and arraignment were becoming routine and, according to the District Attorney's office, this scheduling agreement reduced to one week the time required in most cases.

o The office's computerized management information system was improved to produce the following management reports:

1) Lists of indictments pending but not voted by the Grand Jury;

2) Lists of indictments voted but not filed;

3) Lists for each Bureau Chief of cases in which ADAs had requested two or more adjournments;

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able to the prosecution which is identified during the screening process is communicated to the defense while the case is still pending in the Criminal Court. If the disposition acceptable to both parties is a misdemeanor, the conviction can be entered in the Criminal Court. But, if a felony disposition is agreed upon, the defendant may also agree to waive the right to be prosecuted on a Grand Jury Indictment. A Superior Court Information, which requires only the approval of the District Attorney, and not the Grand Jury, is filed in the Supreme Court, and the defendant pleads guilty to the charge filed in the Information. Grand Jury proceedings are thus eliminated, and with the cooperation of the Supreme Court the guilty plea proceedings can be substantially expedited.

The felony waiver procedure was first introduced into the New York City Supreme Courts in Bronx County, with the support of District Attorney Merola. Procedures used vary among the counties.

4) Lists of defendants awaiting sentence;

5) Lists of unanswered motions; and,

6) Backlog reports for executive ADAs listing cases pending less than three months, and from three to six months, by Bureau.

o Finally, the office reports it began an analysis of the case backlog in the Homicide Bureau, in which one-third of the cases were over one year old from indictment.

These measures were in place on the eve of the introduction of the SDP, apparently having contributed to the smaller backlog that existed at the end of 1983.

From the outset of the SDP, the Kings County District Attorney dissented from its design. The seeds of later discord were apparent during preliminary planning meetings between OMB, the Criminal Justice Coordinator and the District Attorneys. Two main issues were raised by the office.

First, because a delay and backlog reduction program of its own design had begun to produce results, the office declared its concern that gains already made would prejudice its ability to accomplish more during the life of the SDP.[2] Second, the office

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2 There is no way to determine whether this was, in fact, the case during the program's first year but the logic of the SDP performance measures does not make this inevitable. The measures looked at the total number of cases in the target groups during the baseline period in 1983 and at the end of the first program year and calculated a percentage change. In order to achieve the same percentage decrease, a jurisdiction with fewer cases in the target groups, in relation to its total caseload, would have to dispose of a smaller number of pending cases than would a jurisdiction with more target cases pending. But it is not possible to answer other questions relevant to the District Attorney's concern in this regard, such as whether the remaining cases are for some reason more difficult to move ahead, whether the options available to reduce case processing time are limited and reduced by those already adopted; conversely, it is not possible to tell

also contended that the SDP performance measures did not control for "quality of dispositions" and that, consequently, targeted caseloads might be reduced if District Attorneys offered excessively lenient dispositions to defendants.[3] Another objection was no credit was to be given for speeding dispositions in cases pending under six months.

Despite these expressed misgivings, the Kings County District Attorney nevertheless agreed to participate in the SDP.

The office's approach to SDP was a blend of backlog reduction and case processing measures. On March 2, 1984, the office's Special Assistant District Attorney for Management Information and Administration described Brooklyn's new initiatives, planned in response to the SDP, in a letter to the Mayor's Criminal Justice Coordinator:

> First, we have programmed our computer system to identify by Bureau and, where appropriate, by unit and team, those felony cases which are more than six months old.
>
> Second, in cooperation with [Administrative] Justice Yoswein, our computer system has generated a list of the oldest cases ready for trial. We have received a commitment from the court that these cases will receive trial priority.

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whether the skills developed by the Kings County District Attorney's office in earlier efforts put that office in a better position to respond to the SDP incentives than offices that had not expressly addressed the problem of delay.

[3]The quality of disposition issue raised by Kings County was not disregarded by the City; it was simply not included in the performance measures and funding formula. Instead, measures to determine if the quality of dispositions declined as an unintended consequence of the program were included in the overall evaluation of the SDP. The conclusion drawn from those measures, and presented in Section III-A below, is that the SDP appears not to have had unintended consequences on the quality of dispositions.

Since the post-disposition pre-sentence delay also adds to the jail overcrowding problem, we have taken several steps to address this issue. First we now prepare all predicate felony notices prior to the arraignment of the defendant so that these notices can be served upon the defendant at the arraignment rather than post-disposition. Second, we have advised all felony trial assistants to expeditiously order all necessary court transcripts, should this predicate felony status be challenged. Third, we have requested all assistants to ask for sentencing dates within 21 days of the date of disposition. Finally, we have programmed our computer system to generate a list of all cases in which the defendant is incarcerated and the sentence is scheduled for more than 21 days after the disposition.[4]

The use of these various lists generated by our computer system targeting those cases which we should be moving for prompt trial and/or sentencing, is not beneficial unless we provide the available personnel to dispose of these matters or take these cases to trial. In order to assure an increase in speedy disposition of older cases, we have taken steps to increase the number of Assistant District Attorneys and support personnel available to try these cases. We have specifically added to our staff ten additional Assistant District Attorneys and eight additional personnel to aid in the preparation of these cases for trial.

In addition, to assure the proper coordination of the Speedy Disposition Project among the various Bureaus and Units, we will appoint a Coordinator for the Kings County Speedy Disposition Program.

Finally, we have retained the services of the Economic Development Council to conduct a "time to disposition" study to assist us in analyzing our current policies and providing information in the manner in which it can be improved. This analysis will serve as the basis for further efforts to speed up the disposition of cases. These additional funds in our budget are being utilized not only to increase personnel, but to assist us in the retention of experienced trial attorneys who are capable of prosecuting these older, more serious cases. It also enables us to maintain such programs as our Felony Waiver Unit, which causes the disposition of a large

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4 Note that, as determined by the City, the SDP target groups included cases pending after disposition but before sentence, something typical "pending case" statistics don't do (including CARS). This was done for precisely the reason noted in the Brooklyn letter -- cases in this status contribute to detention population pressures, sometimes for fairly long periods.

number of felony cases prior to Grand Jury presentation and is the most expeditious manner of reducing backlog. Finally, these funds wil greatly assist us in exploring methods in which our automated systems, both computers and word processors, may be utilized to more effectively manage older cases.

The City had alloted $403,500 in SDP start-up funds to Kings County in FY 1984. In a second letter to the Coordinator (March 21, 1984), the office set forth a "Speedy Trial Project" budget into which the initial allocation was folded:

SPEEDY TRIAL PROJECT

1	Unit Coordinator/Supervising Assistant District Attorney	$ 48,500
9	Assistant District Attorney @ $32,500	292,500
2	Investigators @ $20,250	40,500
3	Paralegal Aides @ $17,250	51,750
2	Office Associates @ $16,500	33,000
1	Office Aide/Typist @ $15,000	15,000
		$ 481,750
	OTPS - Computer Programming, Supplies, Telephone, etc.	56,750
	Annualized:	$ 538,000

Later that month, the office entered into a second, fundamentally different planning phase. This endeavor, unlike the first SDP delay reduction work, relied on an intimate involvement with the judicial administration in Kings County.

A joint backlog reduction plan was devised at a late March meeting between the District Attorney and the Deputy Chief Administrative Judge for New York City Courts. After an April 12th Criminal Justice meeting in Brooklyn, at which the plan was set forth in detail,[5] the City's Deputy Coordinator of Criminal Jus-

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5 Criminal Justice meetings are held monthly in each county,

tice described the Kings County plan in a memorandum to the Coordinator:

> At the monthly Criminal Justice meeting held this morning in Brooklyn, [Administrative] Judge Yoswein announced plans to institute a new format for the processing of the borough's oldest pending jail cases. This program which is to begin April 25, 1984 has been developed in conjunction with the City's special funding for Speedy Disposition Programs in the five District Attorneys' offices.
>
> The plan has been approved by [Deputy Chief Administrative Judge for New York City Courts] Judge Ellerin, [Kings County District Attorney] Elizabeth Holtzman, the Legal Aid Society and the private bar associations in Kings County. I am further informed that this new plan will be publicly announced early next week by Judge Ellerin as proof of the court Administration's commitment to improving the efficiency of the courts. For that reason, I suggest that the Mayor be apprised of this announcement so that he may be prepared to comment on this new initiative.
>
> This program calls for the creation of a special calendar comprised of approximately 275 defendant-indictments that have been pending one year or longer. At the present time this number includes 132 jailed defendants including 52 who face trials on homicide charges. An additional 44 are charged with major violent felony offenses.
>
> Judge Yoswein will personally preside over this calendar and will handle 10-15 cases a day to arrange possible dispositions or in the alternative to ensure that the parties are ready for trial as soon as possible. All cases moved to trial will be sent to four trial parts staffed by Judges noted for their efficiency and hard work. The District Attorney's office has agreed to staff each of these trial parts with three Assistant District Attorneys so that trials can continue unabated. It should be noted that these parts will open at 9:00 a.m. each day instead of the official time 9:30 a.m. and the more usual commencement time of 10:00 a.m. or later.
>
> All the parties participating in this new format in Brooklyn expressed enthusiasm with the plan. All were optimistic that it would succeed in disposing of a

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chaired by the county's Administrative Judge and attended, _inter alia_, by the District Attorney or a designee.

> large number of very old and very difficult cases. Both the Police Department through Tom Slade and the Corrections Department through Devora Conn pledged their special attention and cooperation in the conduct of this program. Our staff as well as OMB and the Vera Institute will closely monitor the progress and the results of the Brooklyn effort as a part of the evaluation of the Speedy Disposition Program.

The "Special Calendar" was to be handled in the Special 10-K Part of the Brooklyn Supreme Court. Special 10-K was not new. It had been in existence for some time, intended to handle problem cases referred by other judges. It had also been used specifically as a backlog reduction part in the past, handling special lists of old cases, prepared by the court clerk as ordered by the Administrative Judge.[6]

Although the court's response to SDP -- the mobilization of Special 10-K as a backlog reduction part -- was not new, the District Attorney's plan for its use was. For the first time, the District Attorney created "Trial Accommodation Program" (or TAP)

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[6] The New York City Supreme Court was organized on the basis of a Master Calendar System until January 1986 when it shifted to an Individual Calendar System. Under the Master Calendar, all cases after indictment were scheduled for arraignment in a calendar part (sometimes referred to as a complex part or, colloquially, as an "up-front" part). A case remained in a calendar part for all proceedings prior to trial, including disposition by a plea. Only when a plea was not forthcoming was a trial date set and the case referred for trial to an available trial part. In the offices of District Attorneys using a system of vertical prosecution, such as Kings County, ADAs are typically organized in Bureaus or complexes which correspond to the calendar part in which they hear their cases until trial.

The Master Calendar System was in place during the entire SDP; indeed, the Chief Judge of the state court system was an advocate of the Master Calendar System and disapproved of any form of individual calendar. After the Chief Judge's retirement in 1984, the new Chief Judge undertook a major planning effort to institute the Individual Assignment System (IAS), an individual calendar system begun in 1986 in New York City's Supreme Court.

Units to support Special 10-K; the ADAs began referring to Special 10-K as the "TAP Part". An executive level ADA was assigned to supervise TAP and TAP Units were set up in the Supreme Court, Homicide and Narcotics Bureaus.

In the Supreme Court Bureau, the TAP Unit was supervised by the ADA in charge of Supreme Court Bureau Complex "A" and staffed by six ADAs and two paralegals. Three of the ADAs came from the Major Offense Program (MOP) Unit and one each came from Supreme Court Complexes A, B and C; the TAP supervisor selected the six for their outstanding trial skills.

The six TAP ADAs were not replaced in their complexes because the TAP part removed cases from the Bureaus' regular caseloads. One paralegal was assigned to each of the three TAP ADAs to do trial preparation leg work -- check on witness' availability, get records necessary for trial, etc. (Some year old cases, for example, still did not have required medical records.)

TAP supervisors were also appointed in the Homicide and Narcotics Bureaus but, in those Bureaus, the trial ADA originally assigned to a case stayed with it if the case went to the TAP part, unless an intractable scheduling problem required a reassignment.[7]

In interviews with Vera researchers, the Administrative Judge said that he began with a list of 100 cases for the Special 10-K Part, selected by the court clerk. They were chosen as

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[7] In all boroughs, homicide cases pose a special problem for speedy disposition because over half are disposed by trial, while less than 10% of the aggregate caseload goes to trial. The Kings County District Attorney's Office reports that one reason for this high trial rate is its insistence upon sentences of 15 years to life in guilty pleas.

"problem" cases because of the length of their pendancy or because an ADA in the complex part had once answered "ready" but was currently answering "not ready" for trial.

According to the District Attorney, half the TAP cases came out of MOP, and the other half from the A, B, C and D Complexes. At first the Administrative Judge gave the District Attorney's office a list of approximately 40 of the 100 problem cases; he would then send these cases out to Special 10-K's two back-up Trial Parts A and B. The District Attorney's office was to be notified one week in advance which specific cases would be on the Special 10-K docket so that they could be prepared. If an ADA was scheduled for more than one of these cases, the TAP supervisor had authority to re-assign.

The joint Supreme Court/District Attorney TAP effort began on April 23, 1984 and continued, for a little over two months, until June 30. According to the District Attorney's office, 162 defendant indictments pending over a year were assigned to the program and 130 (82%) were disposed during the period. Seventy-three defendants (45%) pled guilty, 43 (27%) went to trial, and 14 (9%) of the defendants were dismissed or had warrants issued.

The Vera research data show that between December 4, 1983 and June 24, 1984, the period of time including the two months during which TAP was operating, the number of cases approximating those targeted by TAP which were pending disposition or sentence (those over 11 months old) decreased from 831 to 648 (22%). However, by October 28, four months after TAP was terminated, the number of such cases had increased to 811, nearly the same number

as had been pending the preceding December.

During the TAP period, cases pending disposition or sentence that were between 6 and 11 months old increased from 1,039 on December 4, 1983 to 1,264 on June 24, 1984, according to the research data. However, had TAP continued uninterrupted, this problem may well have been addressed, because the plan developed by the District Attorney's office was essentially a strategic one: once TAP reduced pending year-old cases, the pending 9-month cases, and then the pending 6-month cases would have been assigned to TAP.

The Brooklyn Administrative Judge and the District Attorney's Office provide somewhat different pictures of the circumstances surrounding the demise of TAP at the end of June. Both agree, however, that as the TAP effort progressed, cases were assigned by the Administrative Judge to judges other than the designated TAP Trial Judges. This required the District Attorney's Office to be ready for trial on more cases before more judges, taxed the prosecutor's resources, and produced scheduling problems.

Both the Administrative Judge and the District Attorney's staff agree also that more cases were sent to trial parts than could immediately be tried or disposed, and that this created what were, really, individual calendars for the judges in their trial parts -- a procedure opposed by the then Chief Judge of New York State.

Shortly after the TAP effort ended, the District Attorney's Office indicated that the Chief Judge's opposition to individual

calendaring may have directly caused the closing of the program. However, the view of the Kings County Administrative Judge is that the effort undertaken in May and June to reduce year-old cases was nothing more than a procedure previously invoked on many occasions in Kings County when the number of "problem cases" became too great. He reported that he terminated the effort when he viewed the problem to be solved. In interviews with Vera researchers, he stated that he knew of no commitment or intention on the part of the Kings County Supreme Court to make the effort a permanent part of the court's criminal procedures, as the District Attorney had planned.

In early November, at the request of the District Attorney, the Deputy Chief Administrative Judge for New York City Courts and the Kings County Administrative Judge met again with the District Attorney and some members of her staff to discuss re-opening TAP. In the view of the Kings County Administrative Judge, the re-activation of TAP would not be new, but part of a time-honored backlog reduction device in Kings County, predating the SDP, to mobilize a special part to dispose of a calendar of old cases (de-activating it when that calendar had been cleared).

As a result of the November meeting, TAP II was set up. Six Supreme Court calendar and trial parts were designated for old cases, initially defined as those pending more than a year since indictment; each part had its own calendar. It was agreed that after the 12-month cases were disposed, 11, 10, and then 9-month old cases in turn would be referred to these parts. Details of the program were to be worked out between the Administrative Judge and the District Attorney's staff.

TAP II consisted of three Homicide Parts (one combined calendar and trial part and two trial parts), two Supreme Court Parts, and one Narcotics Part. According to statistics compiled by the District Attorney's Office, these six parts received about 200 cases from the court clerk and disposed of 156 cases while TAP II was in operation. The office's data indicate that fifty-three trials resulted in 47 convictions, there were 89 guilty pleas, and 14 cases were dismissed.

Unlike TAP I, which was supported in the Supreme Court Bureau by a separate unit with experienced trial ADAs assigned only to TAP cases, TAP II cases remained with the ADAs assigned to them when they went into a TAP Part.

The major reason the District Attorney's Office made this program change was the high rate of guilty pleas in TAP I. When TAP I was planned, the District Attorney's Office had thought a principal reason for these cases aging was that they posed special problems making their trial or disposition difficult; thus, the Office felt it required experienced trial prosecutors to expedite their disposition. However, the District Attorney's Office came to the view that this assumption was not supported by experience in TAP I, which saw a high rate of guilty pleas. Therefore, TAP II cases were left with their originally assigned ADAs. However, if the assigned ADA was otherwise occupied when a TAP II case was set for trial, the case was re-assigned by the Bureau Chief to another experienced prosecutor to assure no further delay occurred because of ADA scheduling problems.

TAP II ended about December 28, 1984 when the Administrative Judge began reducing the number of cases sent into the TAP Parts.

As with the first TAP effort, the volume of cases in the caseload targeted by TAP II seems to have been reduced while it was operating; that is, the number of older cases disposed outpaced the number aging into the older target category. The Vera measures available for the period that TAP II was operating cover the period from October 28th through December 2nd. During that short time, the SDP category of cases which included the cases targeted by TAP II (those over a year old) declined from 811 to 783.

The Vera performance data suggest that TAP was an effective device for reducing the backlog of cases over eleven or twelve months old, but that the Kings County District Attorney's Office did not successfully address other categories of aging cases. During the first SDP year, therefore, the total number of cases pending disposition or sentence over 11 months fell by six percent: from 847 to 797 cases. But, in all other categories, the backlog rose: cases less than six months old increased by 13 percent and cases older than six months rose by nine per cent. The most substantial growth occurred in the backlog of felony cases older than six but less than 11 months old: that category increased 21 percent, from 1111 to 1344 cases.

It may be that the dramatic growth in that last category reflects the SDP strategy of the District Attorney -- to attack cases that fell into that backlog category only after the TAP part had disposed of its original, over one year old calendar.

The over six but under eleven month cases may effectively have been on hold in the District Attorney's office, pending the initiation of an anticipated second phase for TAP, which was apparently never contemplated by the court, and which was never to be.

The Kings County District Attorney's Office attributes its inability to reduce caseloads in the over six but under eleven month SDP target category during 1984 to a 12 percent increase in felony arrests and a six percent increase in indictments for the year, and a less than one percent (0.42%) decrease in Judge Days.[8] The available data, however, suggest a more complicated explanation, an issue to which we will return in the final section of this report. The level of filings varied considerably during the year (from a high of 716 in the 3rd Term to a low of 510 in the 9th Term, according to court data). In the first three terms of the year, the caseload over Standards and Goals (over six months) was reduced by 10 percent, even before TAP I was operating. The number of these older cases continued to decrease when TAP I was operating, but then increased steadily and substantially for the next four terms. The increase in older cases was 272, from 26 percent of the total caseload in the sixth term to 34 percent by the 10th Term.

One obvious relationship that exists is between increases in cases over six months old and seasonal decreases in judicial resources. As indicated above, even before TAP I started, the cases over six months old were decreasing; they decreased through the 4th Term in 1984 while Judge Days averaged 766 each month.

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8 Although Supreme Court filings were up 6% (7,501 to 7,970), cases handled to disposition were down 10% (8,472 to 7,661).

In the 6th Term, the court's CARS data show 769 Judge Days. In the 7th through 9th Terms, the summer months, Judge Days went down to 686, 428, and 456; during this period, cases over Standards and Goals increased from 898 to 1,138. Yet, although Judge Days increased at the end of the summer (798 in the 10th Term), cases over Standards and Goals remained above 1,100 for the rest of the year.[9]

Finally, while there were decreases in cases pending over six months reflected in the CARS data for the 11th Term and 12th Terms, when TAP II was operating, there was a slight increase in the 13th Term, when TAP was, once again, discontinued.

* * *

The TAP approach in its two forms eclipsed much of the Brooklyn District Attorney's original plan for the SDP as outlined in the office's March letter to the Coordinator, quoted above. Nevertheless, the office computer had been programmed to identify old cases, office policy had been established requiring that predicate felony notices be served upon the defense at arraignment on the indictment (clerical staff had been allocated to this process), and the other processing innovations set forth in the letter had been institutionalized.

Did these procedural changes have an impact on case processing times? It seems likely that they did, though other factors

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9 This decrease in judicial resources during the summer is a citywide phenomenon. In all counties, Judge Days during the three summer terms averaged 34% lower than in the previous term and the decrease in Judge Days for the summer terms averaged 32%, while cases over Standards and Goals increased 12%. The volume of pending cases is generally high by Labor Day, in part because fewer judges are available in summer months.

appear to have, at various times, diminished or enhanced their impact. During the early period of the Kings County District Attorney's SDP participation, the District Attorney's office had not inconsiderable success in reducing processing time, but that the momentum was not sustained. The available indices of case processing time follow the same pattern; rates fell during the first part of the first SDP year but rose again -- often to heights beyond the baseline period -- by the end of the first year.

As Figure E indicates, the median time from arrest to disposition was 215 days during the baseline period. By Mid Year I, the median had fallen substantially to 181 days (a month in the life of a case). But by the end of Year I the median had increased to 241 days, cancelling the initial one month gain and adding a month to the baseline median.

Similarly, Figure F shows that total criminal justice processing time, from arrest to sentence, fell then rose. The median at the baseline was 244 days. It fell to 227 at Mid Year I but rose to 280 days by the end of Year I.

* * *

Finally, despite the City's desire to reduce the city's detention population, which underlay the incentives built into the SDP, the Kings County District Attorney's SDP planning never focused specifically on the disposition of older detention cases; they were not distinguished for purposes of SDP handling from older cases in which defendants were on pre-trial release.

FIGURE E
Box and Whisker Plot of Case Processing Time for Cases Disposed in the Supreme Court by Sample Period
Kings: Arrest to Supreme Court Disposition

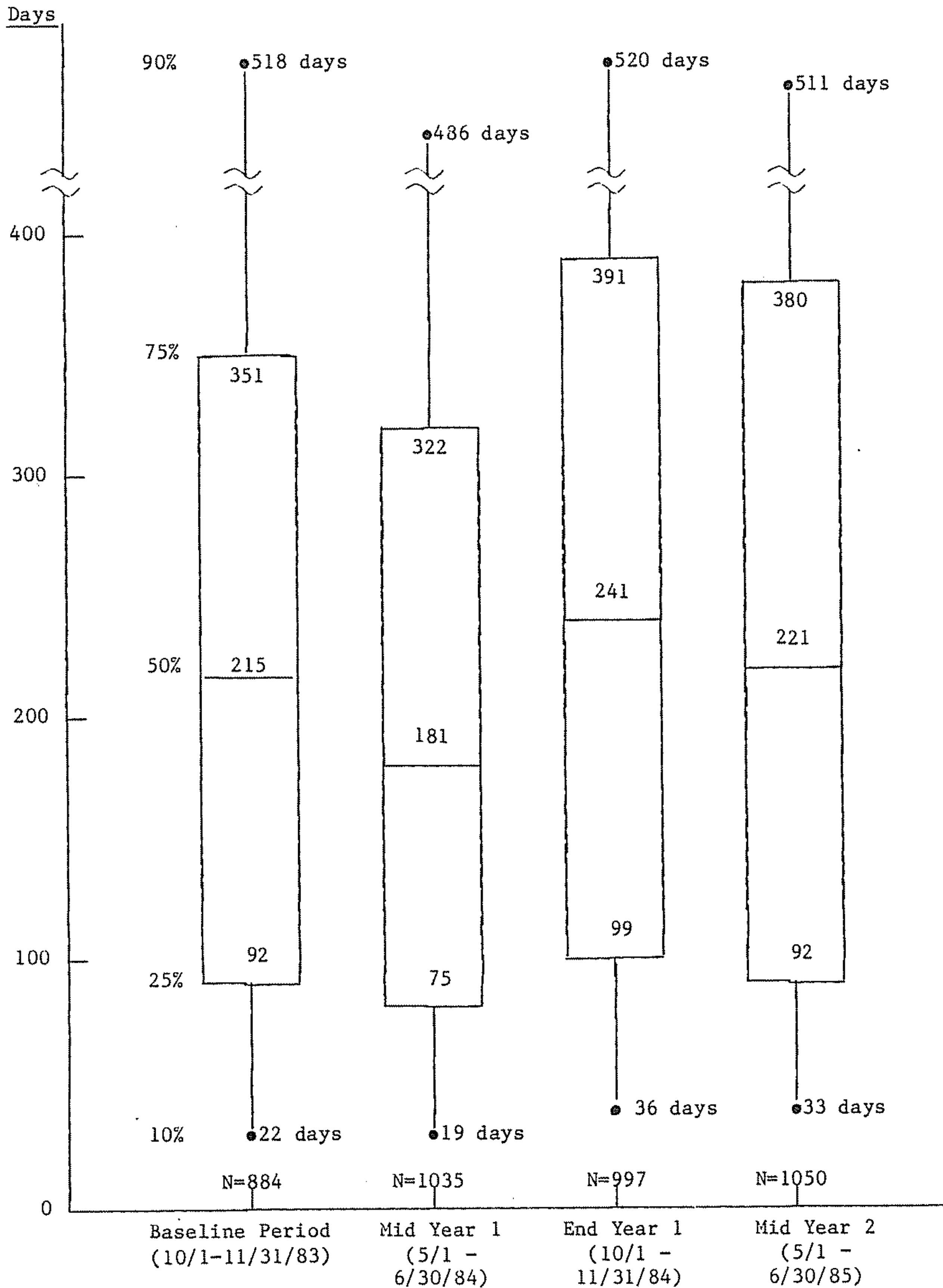
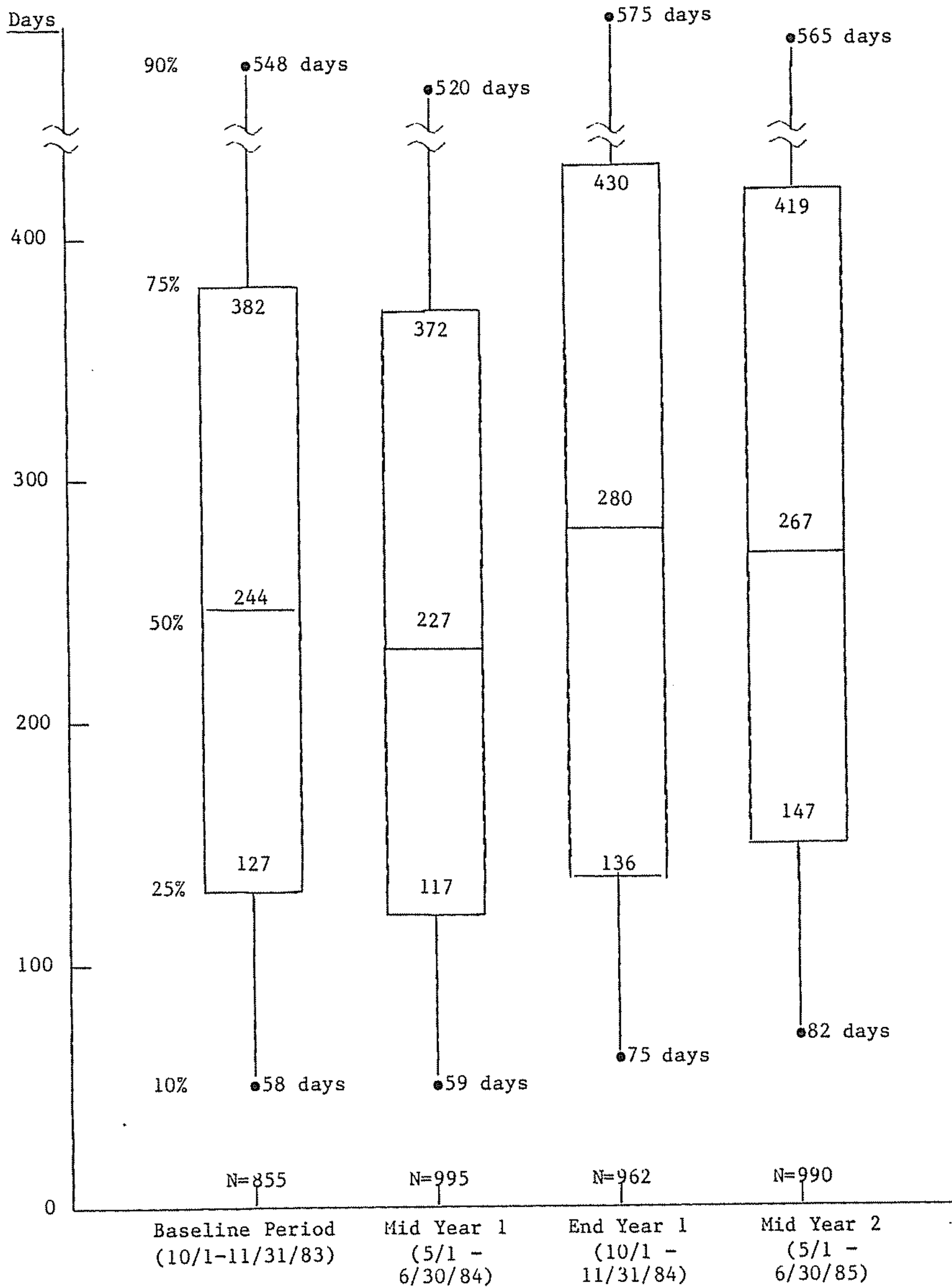


FIGURE F
Box and Whisker Plot of Case Processing Time for Cases Sentenced in the Supreme Court by Sample Period
Kings: Arrest to Supreme Court Sentence



Kings County District Attorney senior staff explained this decision in interviews with Vera researchers. It was the District Attorney's view that, as a policy matter, the potential risk of crime committed by defendants released before trial weighed equally with overcrowded detention facilities. In this view, therefore, the disposition of cases with released defendants required as much prosecutorial attention as the disposition of detention cases.

Although other factors may have been at work as well (we see the same phenomenon in all the District Attorneys' offices), the lack of emphasis upon detention status may in part explain the increase in the number of older detention cases as revealed by the performance measures. These data show that the Kings County detention population increased in all categories of case age during 1984. The largest percentage increase was in the older cases, those over nine months, which increased 21 percent from an average of 220 at the end of 1983 to 266 at the end of 1984. The backlog of detention cases over six months but not yet nine months old grew 17 percent from an average of 214 to 250 cases.

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Accelerating the pace of felony case processing, and reducing backlog (though not specifically detention case backlog), are clearly management priorities within the office of the Kings County District Attorney. The office made speeding dispositions a goal, and implemented specific policies to that end, even before the city's SDP. When SDP started, despite expressed reservations as to its design, the office under took program planning with seriousness and vigor.

The demise of its major SDP effort within the court -- the TAP program -- would seem to grow out of an apparently unresolved relationship between that office and the court administration in Kings County. The original TAP scheme, as proposed by the District Attorney, assumed that the two entities -- the District Attorney and the court -- would act as one. However, there were occasional, but important, breakdowns in communication. Their planning, their purposes and their assumptions about the program's future direction would have required a more unified approach if the program were to have functioned as designed.

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The Kings County District Attorney withdrew her office's participation with SDP in late 1985. She claimed that the program design improperly led District Attorneys to decline to seek felony indictments and to engage in excessive plea negotiations. She felt also that the program incentives failed to account for delays and backlogs resulting from increases in the number of felonies being filed. City administrators disagreed with this latter perspective on the basis of accumulated research evidence and data for Kings County, an issue we address briefly in Section III-B of this report. The City also did not believe the program would encourage the type of unintended consequences to which District Attorney Holtzman alluded, namely excessive plea negotiations and reduced indictment, but it had included an exploration of that possibility in the evaluation of the SDP. As indicated above, we discuss the research findings relevant to these concerns in Section III-A, finding general support for the City's position.

The backlog of cases continued to grow in the Kings County Supreme Court during 1985. Although the backlog of cases greater than six but less than eleven months old fell slightly, from an average of 1344 to 1309, there were increases in all other age categories and in all detention categories. Indeed, detention cases in the oldest category -- over nine months old -- grew by 18 percent.

However, it may be an ironic note that after the office withdrew from the SDP and efforts at working together with the court were foregone, some improvement in overall case processing times were evident (Figure E and F). The time from arrest to Supreme Court disposition discussed above which had increased from 215 to 241 during SDP's first year fell to 221 days by the middle of the SDP's second year. Similarly, the arrest to sentence measures show that processing time went from 244 to 280 days in the first project year, but decreased to 267 days by the middle of the second project year.

It may be that chances of success were greater once work with the court ended and all of the District Attorney's efforts to speed processing were internal and subject to her managerial control.

B. The Queens County District Attorney's Office

In interviews with Vera researchers, managerial staff of the Queens County District Attorney's Office described a comprehensive plan in response to the SDP; the plan was a mix of procedural changes aimed at speeding case processing and specific steps to reduce existing backlogs. Like the response of the Kings County District Attorney, the SDP plan of Queens District

Attorney John Santucci included specific actions to be taken by the court. Whether through the creation of new court parts or through the implementation of new procedures requiring the courts' cooperation, the Queens District Attorney conceptualized an SDP plan that relied on the Supreme Court for its execution.

In Fiscal Year 1984, the $219,000 SDP start-up money to the Queens County District Attorney appears to have been merged into the office's general operating budget rather than (as had been the case in Kings County) allocated to individual line items specifically linked to implementing SDP tasks.

The Queen's plan had four major components:

o The creation of a single Criminal Court part for all felony complaints to facilitate the felony waiver procedure.

The plan called for this part to be staffed by specially assigned ADAs. Felonies would be scheduled at Criminal Court arraignment for plea discussions and, if an agreement was reached, the case would be filed on a Superior Court Information and the guilty plea taken immediately. Previously, the felony waiver procedure could be used in Queens only if the ADA assigned to a case and the defense attorney were able to establish settlement negotiations in one of five Criminal Court All Purpose (AP) Parts. The District Attorney's Office believed that establishing a special felony waiver part in Criminal Court with its own prosecutors and judge would encourage successful plea negotiations by making the defense counsel and the ADA more accessible to each other and to the court, and would also make the procedure easier to supervise and administer.

o The use of pre-trial conferences in Supreme Court calendar (complex) parts instead of formal motions, in order to move cases

more quickly.

It is the view of the Queens County District Attorney that a larger portion of defendants are represented by private counsel in Queens than in the other boroughs. The office believes this contributes to a more formal and time consuming motion practice in Queens than exists in the rest of the City.[10] According to the District Attorney, pre-trial conferences could take the place of much of this motion practice, which would in turn expedite the disposition of cases by eliminating written motions and reducing the time taken referring hearings out to trial parts and then back to calendar parts.

o The reassignment of cases six months or older to a group of twenty experienced attorneys, working in teams of two, to reduce the backlog of older cases.

These attorneys would remain under the supervision of the Complex Bureau Chief to which they were originally assigned. In addition to these two, a third assistant would be in each trial part, whose function would be to aid those attorneys in any way possible.

o Each of the ten teams of two ADA's would be assigned to one of ten new Long Term Detainee Parts (LTD's) to be established by the Queens Supreme Court Administrative Judge, specifically for the SDP.

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10 The formal motion practice may also account for the fact that, during the SDP period, evidentiary hearings on motions in Queens were sent out to trial parts, but returned to their calendar parts after each motion was adjudicated. In other counties, motions requiring evidentiary hearings are delayed until they are the only remaining item of business before trial, and they are adjudicated in the trial part. The trial immediately follows the ruling on the motion in the same trial part. Of course, this practice may undergo change under the Individual Assignment System.

The new parts' name not withstanding, they would receive all cases -- regardless of detention status -- when they became six months old from date of arrest. The LTD parts would act as trial parts and accept guilty pleas, dismiss cases or hold trials.

o The creation by the Administrative Judge of another new Special Supreme Court part, "Special Complex Part K-84."

Part K-84 would receive cases over four months but not yet six months old (and therefore eligible for a LTD part). It would be staffed by the District Attorney's five existing Bureau Chiefs on a rotating basis.

Part K-84 grew out of the District Attorney's concern that without this preventive mechanism, the focus on cases older than six months in the LTD parts could lead younger ones to age.

* * *

The ten LTD parts began operations on May 21, 1984. A list of 1,065 eligible cases was prepared by the chief clerk, and 50 at a time were assigned to each LTD Part for conferencing (the new procedure initiated under the SDP). It was the view of the District Attorney that most of these cases involved some kind of problem from the prosecution's point of view -- generally, evidentiary weakness, witness unavailability, etc.. But the District Attorney's Office also believed that many lingered because of defense attorney scheduling problems and delay tactics.

By September 1984, according to the District Attorney's statistics, 71 percent of the 1,065 had been disposed in the LTD

Parts; the rest were returned to their original calendar parts because they created individual judge calendars in the trial parts. An internal District Attorney Office report on the effort claimed the following results: 560 guilty pleas; 120 trials; and 77 dismissals.

The conflict between the perceived need for special court parts to deal with old cases and the then Chief Judge's prohibition against individual calendars for judges (a conflict which seems also to have arisen in Kings County), might have been avoided by assigning cases to trial parts one at a time, only as the trial parts could dispose of them. However, when the problem posed by the Queens SDP plan appearing to create individual calendars was raised by the Court's Office of Court Administration, the Court merely sent the cases which the LTD Parts had been unable to dispose back to regular calendar parts, and then sent a new list of cases to the LTD Parts.

On September 24th, all cases which had aged to six months since the first list was prepared on May 21 were sent to the LTD Parts. The District Attorney reports that cases were sent to the LTD or Special Parts twice in 1985; on April 29th, 2,454 cases were sent, and on October 21st, 650 cases were sent to the Parts. On October 31, a report compiled by the District Attorney's staff for Mr. Santucci's review stated that "in excess of 3,300 defendant-indictments (had been referred to the LTD Parts) since the inception of the program," that 1503 had pled guilty, 443 had gone to trial, and that 230 had been dismissed. By October 31,

1985, ninety-one percent of those cases sent to the LTD Parts on May 21, 1984 were disposed as were eighty-six percent of those sent on September 24, 1984, and sixty-eight percent of those sent on April 29, 1985. The overall disposition rate was eighty-one percent according to the District Attorney's Office.[11]

The SDP-generated move towards conferencing, while apparently fairly smoothly incorporated into the work of the LTD Parts and a few special parts, met with resistence in most other already existing parts, and ultimately, the notion never really took hold in Queens.

Pretrial conferences to replace formal motions were established on an experimental basis in the Major Offense and Homicide Cluster Parts. But, even though the District Attorney thought they worked well, the conferences were never used in other calendar parts. Indeed, the District Attorney's staff indicated to Vera researchers that they never received any reply from the remaining calendar part judges when the judges were contacted to discuss the implementation of motion conferences in their parts.

Supervising ADAs told Vera researchers that, in their view, calendar judges were reluctant to introduce conferencing because the judges felt the high volume calendar parts had serious scheduling problems; in contrast, Major Offense and Homicide Cluster Parts have about half the number of cases of other calendar parts. But this insight into the cause of the judges' reluctance

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11 The Trial Bureau Chief's record-keeping is based upon slips filled out by ADAs showing Supreme Court actions. The slips come to the Trial Bureau Chief and provide the basis for entry into the office computer, and onto manual lists for each ADA, which the Bureau Chief keeps in his office.

did not produce suggested solutions, and the idea of motion conferences seems to have faded from the District Attorney's agenda.

Several months into 1984, two factors emerged that would shape the progress of the Queens SDP effort: first, the District Attorney, to provide stricter prosecution, changed the office charging policy to require felony filings in certain crime categories that had previously been charged as misdemeanors. Further, it became apparent that two of the planned new court parts -- the felony waiver part and the Special Part K-84 for cases four to six months old -- would not begin operations until well into September.

The District Attorney changed his charging policies in certain gambling, auto theft, commercial burglary and narcotics cases. In each of those four categories, certain cases that had been filed as misdemeanors in Criminal Court, or not filed at all, were to filed as felonies. District Attorney staff also indicated to Vera researchers that they expected felony filings to increase because a new police precinct had been established in Queens, which they thought would increase the number of arrests in the borough. (In fact, felony arrests in Queens rose only one per cent in 1984.)

Various factors impeded the swift establishment of the felony waiver part and Special Part K-84. The felony waiver procedure was not formalized until September 10, 1984, when the Supreme Court established Part AP 6 in Criminal Court to be presided over by the same judge who presided over Supreme Court Part W-50. According to the Deputy Chief Clerk for the Queens Supreme Court Criminal Division, the Court had suggested to the District Attorney's Office over a year before the start of the SDP that

more frequent use be made of Superior Court Informations and Grand Jury Waivers to expedite guilty pleas in felony prosecutions.

But, according to the Clerk, the proposal stalled on the question of how the procedure should be implemented. The District Attorney's Office had felt that the felony waiver procedure would require the establishment of a single Criminal Court part to which all felony complaints would be sent after arraignment and in which the District Attorney's plea offer would be communicated to the defendant. This would concentrate all felony case plea negotiations at an early stage, in a single courtroom managed by designated ADAs. This, in turn, was expected to help insure uniformity among cases and consistency with the plea negotiating policies of the office.[12]

It seems that the Court was reluctant at first to create an additional Criminal Court part. The District Attorney's office persisted, and took the issue up with the Deputy Chief Administration Judge for the New York City Courts. The process of negotiation went on until September, a loss of nine months in SDP time.

The procedure ultimately put in place appears to have demonstrated a certain durability; by the end of the SDP period, felony waivers seemed institutionalized in Queens. All felony complaints now arraigned in Criminal Court Part AP 6 are given an

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[12] It is not coincidental that the Queens procedure so closely resembles the felony waiver practice in Kings County. The Chief of the Trials Division in Queens had recently moved from the Kings County District Attorney's office; one of his early assignments in Queens was to establish the borough's felony waiver procedure.

adjourn date for plea discussions that is within the time set for compliance with CPL 180.80, when the defendant is detained, and within a week to ten days for non-detained defendants.

The District Attorney's plea offer in AP 6 is determined by a "Pre-Plea Panel" which consists of the Chief of Trials, a Special Assistant District Attorney, and the ADA in charge of the felony waiver program. They meet daily to review all felony complaints filed since their last meeting, and to determine a plea negotiating position for AP 6. There are no written guidelines for their decisions; rather a kind of common law consensus of the District Attorney's office prevails.

If the District Attorney offers to reduce the charge to a misdemeanor, and the defendant accepts the offer and wants to plead guilty, the plea can be taken by the AP 6 judge in Criminal Court. But a plea offer that remains at the felony level must be taken in Supreme Court. In such cases, the AP 6 judge becomes an Acting Supreme Court Justice, moves to Supreme Court part W-50 (another courtroom), and takes the plea of guilty on a Superior Court Information after waiver of the indictment.

Some criticism of the Special Felony Waiver Part has come from Legal Aid Lawyers who are said to feel it requires defendants to plead guilty, under penalty of losing a chance at the reduction offered, before there is an adequate chance for the defense to investigate the case. The Chief of the Trials Division in the Queens District Attorney's Office argues that, if a defendant has pled guilty and exculpatory evidence is found later, the District Attorney allows the plea to be withdrawn. Specific cases were cited, for example, in which a laboratory analysis, made available after a felony waiver guilty plea,

showed a substance not to have been contraband, or in which a firearm was shown not to have been operable, after the felony waiver guilty plea had been offered and accepted. Both guilty pleas were withdrawn.

The private bar was also reported to have been troubled by the introduction of a felony waiver part, protesting that felony waiver procedures would not allow defendants time to retain and consult private counsel, resulting in increasing reliance upon Legal Aid and 18B attorneys. The District Attorney's Office responded to this concern by delaying the AP 6 appearance somewhat.

The AP 6 calendar averaged about 100 cases a day in 1984. The Chief of the Trial Division says that, since the time it became operational, the felony waiver program has taken about 13 felony guilty pleas a week. According to data in the Queens Supreme Court Clerk's Office, in the last three terms of 1984 the Supreme Court felony waiver part averaged 64 case dispositions a term.

The Felony Waiver procedures and the court parts established to facilitate them continued through 1984 and 1985. Late in 1985 the District Attorney's Office records indicated the program had resulted in 770 felony pleas on Superior Court Informations, and 1,020 misdemeanor pleas.

But the District Attorney's Office feels that the program was not as productive in 1985 as it had been in 1984. The perceived reason for this is a difference in approaches by the judges presiding in AP 6 and W-50. According to senior prosecutors, in 1985 the judge presiding there began dismissing cases, even though negotiations were underway, after the case had been on the calendar three or more times. Once dismissed, the Dis-

trict Attorney had to present the case to the Grand Jury and issue a warrant for the defendant's arrest, a procedure more time-consuming than that required for processing felonies while the complaints are still pending. Thus, the felony waiver procedure may have become less productive of time savings.

The third new court part growing out of the SDP initiative was Special Part K-84. The creation of this part was a particularly interesting SDP approach; it may be seen as both a backlog reduction device <u>and</u> an innovation to speed case processing. No other borough focused in this way on cases that were about to become old.

Unfortunately, this unique strategy may not have been given a fair test during the first SDP year. Like the felony waiver part, Special Part K-84 fell victim to implementation obstacles. It was not until September 1984, nine months into the first SDP year, that Special K-84 began taking cases.

The design of Special K-84 called for the court clerk to prepare every Friday a list of cases which had reached four months of age. The list was sent to the judge sitting in Part K-84 and to the District Attorney's Office. Cases remained in that part until they were disposed, ready for trial, or reached six months old and went into an LTD part. According to the District Attorney, the Part took 10 to 12 guilty pleas a week. Data compiled by the Supreme Court Clerk's Office indicate that Part K-84 averaged 46 dispositions in each of the last three terms of 1984.

During the entire life of Part K-84 it took 384 felony pleas. However, late in 1985 cases began to back up in the part, becoming old enough to be transferred to the LTD or Special Parts, and the part was disbanded with the thought that the judge

could better be utilized in the general criminal assignment as the court moved to implement the Individual Assignment System.

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What do the SDP performance measures and changes in case processing times reveal about the effects of these Queens SDP efforts? It is difficult to measure the long term effects of the Queens plan to reduce the size of four month and six month old caseloads. In a March 1985 interview with Vera researchers the Queens District Attorney's Office termed the LTD Parts successful in reducing the size of the caseloads referral to them in May and September 1984. Records of the District Attorney indicated that 870 of the cases referred to the LTD parts in May had been disposed, and that 392 of the 581 cases referred to LTD Parts in September had been resolved.

But, as we have seen, cases are considered ripe for disposition when they reach six months old in the Supreme Court, and unfortunately, there are no existing data which would reveal whether the Special Parts were disposing of the six month and older cases sent to them at a more rapid rate than the regular calendar and trial parts. CARS data from the Office of Court Administration indicate a decrease in Queens County Supreme Court cases older than six months in the months after the first batch of cases was sent to the Special Parts in May 1984. The 4th Term caseload of cases six months and over was 693. In the 6th Term, the first full months of operation of the Special Parts, cases over six months old were reduced to 583. But they then increased each month and by September had reached 723, probably reflecting the summer reduced work schedules of the courts, but also re-

flecting an inability of the Special Parts to reduce the backlog. Even when the courts resumed their full schedules in the fall, the backlog continued to increase.

Part K-84, disposed of substantially more cases both in 1984 and in 1985 than the other trial parts, but not as many as the other calendar parts.[13] Again, without knowing the rate at which four-to-six month old cases are routinely disposed, it is not possible to evaluate the success of Part K-84 in preventing and reducing backlog. But, according to CARS data, cases over six months old continued to increase throughout 1984 and, throughout 1985, never returned to their September 1984 level. Consequently, the efforts of part K-84 to address four-month-old cases and prevent them from joining the six month and over backlog cannot, with confidence, be judged a success. The District Attorney's Office believes this was because cases were kept in Part K-84, and allowed to age there.

Indeed, the Vera SDP performance measures reveal that the Queens County District Attorney had little success in reducing the targeted cases in the felony case backlog over the two year life of the SDP; a substantial 33 percent increase during the second year in the oldest targeted cases (over eleven months old) set the pace.

According to the SDP measures, the total number of pending felony cases in Queens increased from 3008 to 3822 cases over the two program years. Cases more than six months old increased by 25 per cent from 1445 to 1804. Of the over-six-month group, the

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[13] 1984 and 1985 Cumulation Report First through Thirteenth Term, Queens Supreme Court Criminal Term, William J. Clark, Deputy Chief Clerk, page 4.

greatest growth was among the oldest cases, those over eleven months; across the two years the backlog of the oldest Queens cases grew by 31 percent, from 518 to 677 cases.

As Figure G and H display, the Vera measures of case processing times show that Queens followed a pattern similar to Kings; gains in case processing time achieved during the first SDP year were wiped out by the middle of the second. In Queens, as in Kings, certain case processing times at the end of the project actually exceeded their pre-SDP levels.

On the eve of the SDP the median felony case processing time from arrest to Supreme Court disposition in Queens was 215 days (Figure G). At the end of year one, the median time had gone down to 188 days. But by the middle of year two, the time had increased to 256 days. In mid-1985, the median case took over one month longer to reach disposition than it did before the project began.

Similarly, the median time from arrest to sentence went down only to rise again by the middle of year two (Figure H). The total case processing time (arrest to sentence) in Queens went from 265 days at the baseline period, to 232 days at the end of year one, and back up to 309 by the middle of year two.

The Vera data suggest that the Queens County District Attorney's felony waiver program may have yielded greater results than its other SDP efforts; the data show some quickening of the pace of disposition for the fastest cases in Queens. At the end of 1983, the fastest ten percent of cases disposed were concluded in 57 days or less. That figure stayed the same midway through

FIGURE G
Box and Whisker Plot of Case Processing Time for Cases Disposed in the Supreme Court by Sample Period
Queens: Arrest to Supreme Court Disposition

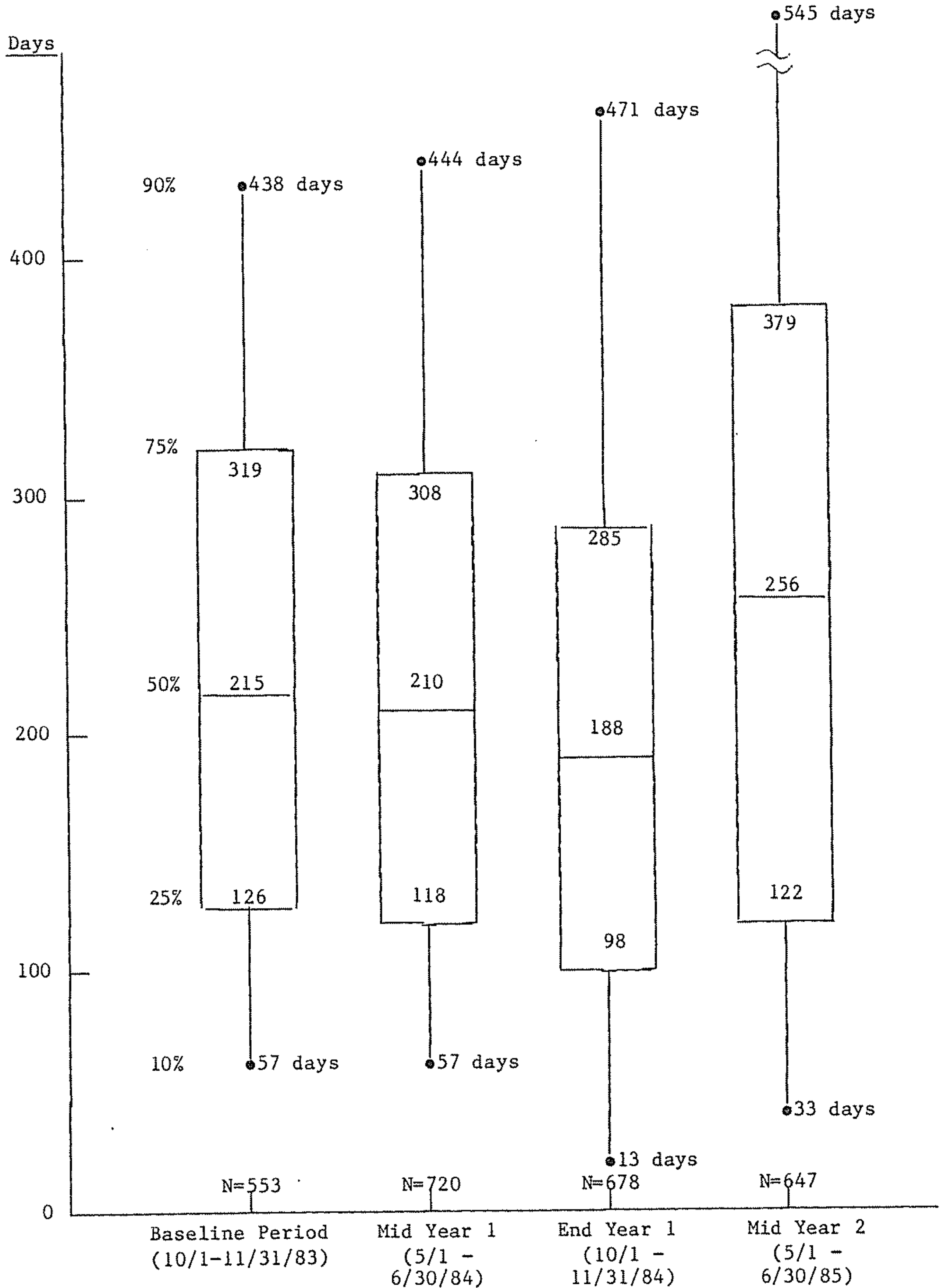
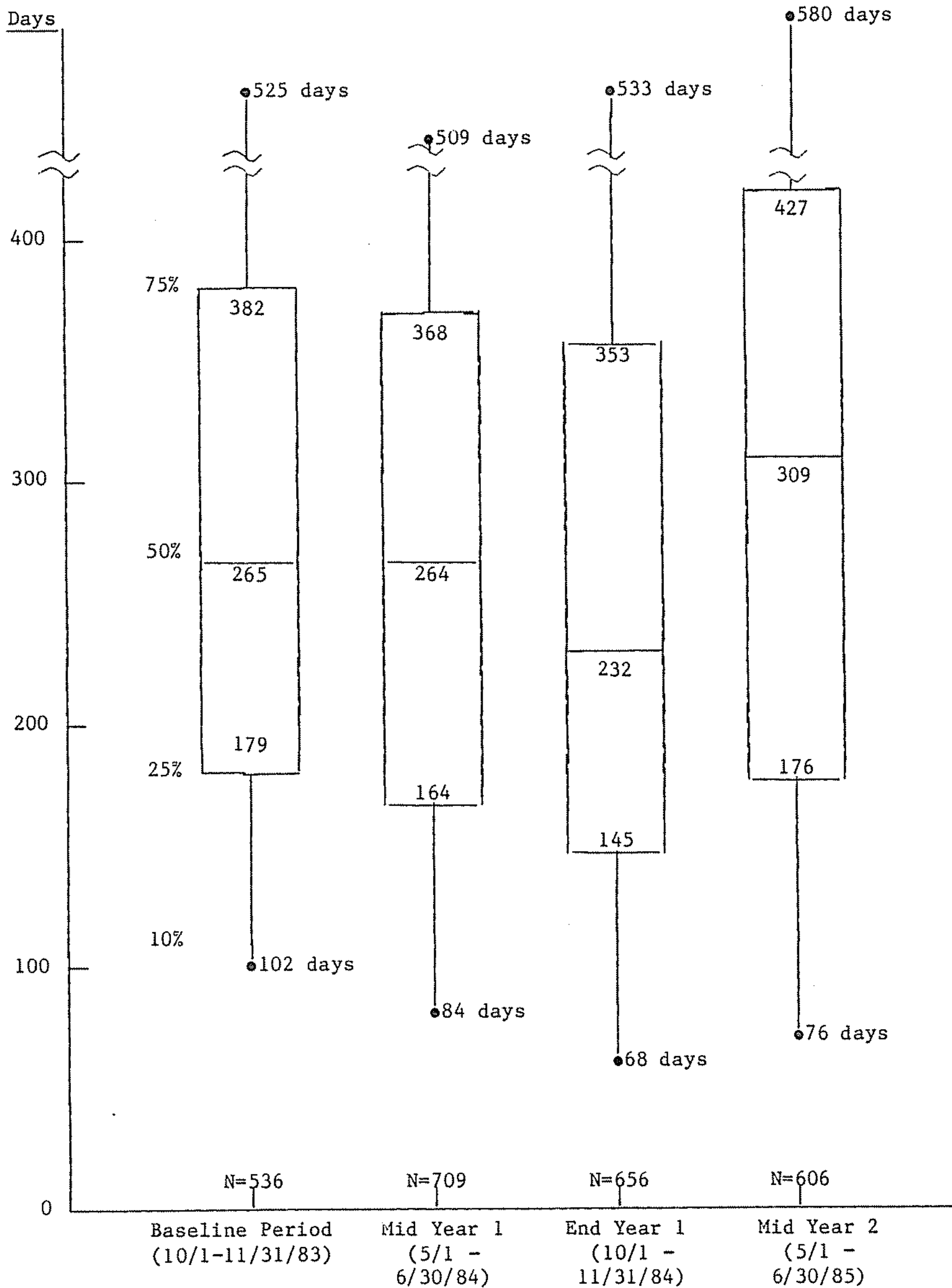


FIGURE H

Box and Whisker Plot of Case Processing Time for Cases Sentenced in the Supreme Court by Sample Period

Queens: Arrest to Supreme Court Sentence



1984, but by the end of that year, when the District Attorney's felony waiver procedures had been operating for about three and a half months, the fastest ten percent were disposed in 13 days or less.

In a repeat of the "down-in-year-one-up-in-year-two" pattern shown in the Kings and Queens median case processing times, the disposition time of the shortest cases began to inch up again in 1985, cutting into the 44 day drop recorded in 1984. Although the fastest cases were now disposed in 33 days or less (up 20 days from the end of year one) the 1985 gain did not rise to the pre-SDP level. Nevertheless, the trend, particularly when viewed together with the growth of the backlog, is not entirely encouraging.

Finally, it should be noted that, as in Kings County, the Queens County District Attorney's SDP planning put no special emphasis on detention cases, the design of the SDP incentives notwithstanding. Even though the ten special parts were called Long Term Detainee Parts, non-detention cases were sent to them as well, and no procedures were devised to treat the detention cases differently from others.

The detention population grew; by the end of the SDP period, 244 more defendents were in detention in Queens than had been at the start of the project from 1012 to 1256, according to the SDP performance measures. The most disheartening figure is the backlog of detention cases over nine months old. During the first year, reflecting perhaps the early functioning of the LTD parts, the backlog of oldest detention cases stayed relatively stable, dropping from 66 to 64. But during the second SDP year, the backlog in that category increased by 56 percent; over the life

of the SDP, the Queens backlog of oldest detention cases increased by 52 percent from 66 to 100.

The position of the Queens County District Attorney's Office is that its major difficulty in responding more successfully to the SDP was a shortage of trial judges in the county. The result of this, said one executive level ADA, was that cases were backed up waiting for trial, and defendants were not induced to plead guilty because they were not faced with the realistic probability of trial. But Office of Court Administration data (CARS) -- comparing relevant items for the Queens' County Supreme Court with the City as a whole -- do not support a conclusion that Queens is able to try fewer cases than the rest of the City. With about eighteen percent of the filings and dispositions in 1985, the Queens County Supreme Court had twenty-two percent of the verdicts, nineteen percent of the Judge Days, seventeen percent of Days on Trial, and twenty-one percent of the trials to verdict.

C. The Bronx County District Attorney's Office

Bronx County District Attorney, Mario Merola, has given attention to improving felony case processing througout his tenure as Bronx County District Attorney. In the 1970s, for example, the Bronx District Attorney's Office was the first to utilize the felony waiver procedure in New York City, substituting Superior Court Informations for Grand Jury indictments to more promptly dispose of uncontested felony cases.

The Bronx District Attorney's Office has also routinely prepared lists of old cases that were used, before the advent of SDP, to focus the Bureau Chiefs' attention on delay. The office has also provided these lists to the presiding judge, with the request to give the oldest cases priority when assignment to trial parts is made.[14]

The Bronx District Attorney's Office believes a major factor delaying Supreme Court cases in that borough to be an inadequate number of defense attorneys, which exacerbates case scheduling problems. The office reports that it periodically has prepared

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14 The Office's executive level ADAs also report that they have routinely monitored the status of cases in the backlog, and that the ADAs assigned to these cases are admonished to be ready when the case is called. The executive level ADAs indicate that they confer with court officials on the day preceding a court appearance for any cases on their old-case lists, to try and insure that the case will be ready or, if it is not, that the adjournment will be as short as possible. If a "ready" backlog case comes up on a calendar and cannot be immediately referred to a trial part, office procedures call for the ADA to seek only a two or three day adjournment. Mr. Merola also reports that he counsels his assistants that cases do not improve with age, that they get worse, and that he holds staff meetings at least twice a year to emphasize the importance of assistants working to dispose of their old cases.

lists of pending cases by defense attorney, based upon data from OCA; when a particular defense attorney appears to have an unusual number of cases in the backlog, they request that all these cases be assigned to a single judge so that calendar conflicts can be eliminated.[15]

The 1984 introduction of the SDP in the Bronx followed a period in which prosecutorial and judicial efforts had achieved reductions in the overall pending caseload of the Supreme Court, but the smaller number of cases pending over six months, which apparently did not lend themselves as well to the general administrative and communications strategies that had been pursued to that point, rose markedly. During 1982, the total pending caseload had increased from 1,860 to 2,844; cases pending over six months had also increased but less significantly, from 694 to 787. However, during 1983 the overall pending caseload situation

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[15] These and other efforts by the Bronx District Attorney's Office prior to the SDP, as well as activities initiated by the court and by other agencies, such as the Police Department, not discussed here, may have improved the pace of litigation in the Bronx during the late 1970s and early 1980s. The research conducted by the National Center for State Courts, and discussed in Section I of this report, shows that the median time to disposition was reduced in the Bronx Supreme Court between 1976 and 1983, from 328 days to 230 days. In 1976, 75 percent of the felonies filed in the Bronx were disposed within 499 days. By 1983, it took 420 days to dispose of 75 percent of the filings. In 1976, 75 percent of the caseload were over 150 days old; in 1983, 65 percent of the cases were over 150 days old.

The National Center researchers call these improvements "dramatic," but observe that, even in 1983, the Bronx Supreme Court remained relatively slow by comparison to most of the other courts in the study (Mahoney et al., 1985). Unfortunately, we do not have comparable data for the other counties in New York City for this same period, so we do not know to what extent the changes in the Bronx reflect citywide phenomena as well as activities restricted to Bronx County.

improved (down to 2,264), but the backlog of cases over six months old continued to increase, from 787 to 1,166, by the end of the year. In the beginning of 1984, therefore, the bulging caseload of cases pending over six months presented a highly visible target for new SDP initiatives, particularly because the general caseload had been brought down to more manageable levels.

Initial thinking about the SDP in the Bronx District Attorney's Office reflected an awareness that something different was called for to shift their primary focus from general caseload reduction and reduced median disposition times to more speedy disposition of the target cases pending over 6 months, and especially over 11 months. Thus, during the planning phase of the SDP, District Attorney Merola expressed the view that additional improvements in backlog reduction and speed of disposition would require some changes by the court as well as by his office.

The District Attorney's staff held the view that frequently, when giving increased priority to the disposition of older cases, an older case on the calendar would be ready for trial in a day or two, while a younger case was ready immediately. Under the circumstances, the District Attorney's office tended to want the court to leave a trial part open for the day or two necessary to make the older case ready; however, the office felt that the court preferred to send the immediately ready younger case to the trial part, to avoid having that part unoccupied. Nevertheless, the Administrative Judge in the Bronx Supreme Court reported that he had agreed with the District Attorney's office in this regard

so that, during the SDP, he accommodated their desire for short delays to prepare older cases.

Despite this, the District Attorney's staff feels that this scheduling issue continues to be a problem because they believe it is the court's general tendency to defer trial cases in the backlog when younger cases can be more immediately ready. To the District Attorney's Office, this difference in priorities between the bench and the prosecution, which they view as rooted in the structure of the system, helps explain both the 1983 increase in cases 6 months or older, when the total caseload went down, and the difficulties experienced in the Bronx in 1985, the second year of the SDP.

At the start of 1984, just as the SDP began, a new Administrative Judge was assigned to the Bronx Supreme Court, Criminal Term. Judge Burton Roberts, a former Bronx County District Attorney, offers a somewhat different view of why the backlog of older cases had increased in 1983 and the relevance of that increase to the SDP results in the Bronx. He suggests that a practice in the Supreme Court during 1983 of not sending any cases to trial parts until they were six months old, even if they had reached a trial-ready stage earlier, caused the backlog of older cases to increase. A senior member of the District Attorney's staff affirms that this was the court's general policy in 1983, but notes that exceptions were made if the defense attorney requested an earlier trial.

Against this background, $273,000 in FY 1984 start-up funds were allocated to the Bronx District Attorney's Office for the SDP. The funds were used at once to hire eleven new Assistant

District Attorneys and three support staff.[16] The SDP money made it possible for the new hirings to be done in January and February, rather than August and September as was the custom.

The eleven assistants were assigned to trial division lawyers specifically to help prepare old cases. The District Attorney also assigned ten Criminal Court ADAs to the Supreme Court Bureau to help in trial preparation. The ten were to be present when cases were tried, but only as support for the Supreme Court ADA assigned to try the case. The purpose of all these moves was to assure prosecutorial readiness on the cases in the categories targeted by the SDP, so that they could be sent on a priority basis to trial parts. No other borough relied to this degree on the power of added personnel.

The idea of re-assigning ADAs to help the Supreme Court Bureau had a checkered career during the SDP. The plan was abandoned in September 1984, when it became clear that a staff shortage had been created in Criminal Court. Furthermore, by that time, nine additional experienced ADAs had been permanently assigned to the Supreme Court Bureau (in order to reduce each assistant's caseload from 35 to 25), a policy decision made independently of SDP. The notion was revived, however, early in 1985, and Criminal Court ADAs were once again assigned to support trial preparation in the Supreme Court Bureau.

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16 The District Attorney's office prepared the following breakdown:

Budgetary Needs	
11 Assistant District Attorneys	$226,000
3 Support Staff	47,000
	$273,000

An additional factor affecting case processing in 1984 was that the District Attorney established a "Vertical Assignment" system for all felony cases in the office -- the ADA first assigned to prosecute a case remained with it until final disposition. Traditionally, prosecutors in large urban jurisdictions have assigned cases to different prosecutors at each procedural stage, as the cases pass through the court system. Prior to 1984, only selected categories of cases in the Bronx, those in the Homicide and Major Offense Bureaus, had been prosecuted from start to finish by a single ADA.

In 1984, this procedure was expanded to apply to the entire felony caseload. While this expansion was not expressly a response to the SDP, the District Attorney's Office believes that this method of case assignment improves the quality of prosecution in several ways, including promptness. The staff added with the 1984 SDP funds probably facilitated this expansion of vertical prosecution.

The response of the Bronx District Attorney's Office to the SDP was largely a re-emphasis, with some modifications, of earlier efforts to reduce backlogs and speed case processing. Executive staff prepared and distributed materials that set forth the following office policies:[17]

1. Each trial assistant will give priority to working on older cases and to making sure that these cases are "ready" for trial;

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[17] This description of the Bronx County District Attorney's response to SDP was provided to Vera researchers in June 1984 by an executive level Bronx ADA.

2. Trial assistants will inform the court of their ready status on newer cases with a request to the court that these cases be held "ready subject" to their oldest cases;

3. Old cases have been reassigned where possible so as to evenly divide the targeted caseload;

4. Old cases have recently been conferenced with the administrators in charge of the trial divisions to seek just dispositions and take into account any change in circumstances not known [to the District Attorney's Office] at the time of its initial evaluation immediately after indictment;

5. A recommendation to conference the old cases for a two week period will be made to the Administrative Judge. This conference will be held with the understanding of all parties that, if there is no disposition, the cases will be tried immediately following the two week period;

6. A group of eleven additional Assistant District Attorneys will be assigned to the trial division lawyers to help prepare the older cases.

The District Attorney's office also continued the practice of producing and monitoring old case lists. They report that four lists, identifying cases over a year old, were presented to the Administrative Judge in 1984, and twelve in 1985. It is worth noting that, in addition to the Bronx, Kings, Queens, and (we will see below) Manhattan all responded to the SDP by developing some type of new case listing procedure. The lists took different shapes in different offices but all had a common thread: they routinely listed pending cases in various age categories.[18]

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18 At first, the Bronx District Attorney's office intended to program office word processors, already owned by the office, to track cases automatically. However, the computerization effort does not appear to have taken hold during the SDP period, and by the end of 1985 the office had abandoned the effort, believing

During the SDP, the Bronx District Attorney's year-old case lists were presented to the Administrative Judge with a request for expedited dispositions. Judge Roberts reports giving considerable attention to these lists of old cases. For example, the District Attorney's list in September 1984 contained 157 indictments. Judge Roberts kept his own records of what happened as each of the cases appeared on his Part 40 calendar. He prepared his own calendar sheet to track the September-list cases after they left Part 40. And he sent memos to each judge receiving September-list cases, identifying them and requiring the judges to report back at the end of each month on what happened when the cases were called on their calendars.

The Administrative Judge's calendar notes on these 157 cases -- all of which were pending for over one year -- are illuminating; they provide a glimpse at the factors that cause delay. At one day's calendar call, for example, one case was still not ready for trial because the defense attorney had not met with a Nigerian language interpreter to listen to tape recordings of the victim's statement. In another case, the defense attorney had yet to file a motion which the District Attorney would have to answer.[19] In seven cases there were attorney scheduling conflicts. In one, counsel both for the people and for the defense

its manual lists and lists received from OCA to be adequate for its case management and tracking needs.

[19] Under court rules, defense motions are supposed to be filed within 45 days of indictment. However, the rule is seldom enforced. It is widely asserted, half-jokingly, that a defendant whose motion was denied for untimeliness, and who was convicted, would probably have a claim that his counsel was incompetent and the conviction might be overturned.

were on trial elsewhere. In four, the defense attorneys were on trial in other courts. And in two cases, the ADAs were on trial elsewhere.

When Judge Roberts took office in January 1984, at the same time the SDP began, 2,164 felony cases were pending in the Bronx Supreme Court according to the Court's official records. He announced that his goal was the reduction of the pending caseload to no more than 1,850 cases at the end of 1984. To that end, he involved himself directly in case processing by introducing a system that required all cases to be sent to his part (Part 40) when they were ready for assignment to a trial part or when they had been pending for nine months, whichever occurred first. Consequently, he personally had on his calendar the year-old cases on District Attorney Merola's lists.

Judge Roberts reports that he made a special effort to encourage the District Attorney and the defense to negotiate dispositions on the cases on his calendar, often offering his own opinion about an appropriate disposition. In keeping with the degree of personal control he exerted over the disposition process, he also kept his own records of what occurred as cases came up on his calendar.

Cases which could not be settled in Part 40 were to be sent to trial parts, generally within a week to ten days from their arrival in Part 40. Judge Roberts sent a memo to each trial judge requiring monthly reports on the disposition of each case as it came up on the trial part calendar.

Together, the District Attorney's focus on old cases and Judge Roberts' commitment to reducing backlog proved extremely effective during 1984; the backlog of oldest cases diminished substantially, according to both the Vera SDP performance measures and the court's CARS data. The number of cases pending over Standards and Goals went from 1,166 in the 13th term of 1983 (54 percent of the total caseload) to 721 in the 13th term of 1984 (35 percent of the total). The Court's Office of Court Administration took special note of this "startling reduction" in pending felony cases.[20]

The SDP performance measures also reflect the results of the 1984 work. The number of old cases pending in the target groups fell dramatically. At the end of 1983, 735 cases were over eleven months old; one year later there were 369, a drop of 46 percent. There was a drop of 19 percent in cases pending for six to eleven months (from 926 to 746 cases). However, there was a 15 percent increase in cases less than six months old which went from 1,468 in 1983 to 1,681 in 1984. The intensified judicial and prosecutorial focus on old cases may have led to a less active pursuit of new cases as they came in.

The 1984 performance measures earned the Bronx District Attorney's Office a first year SDP distribution of $612,500.

There was, however, a warning cloud on the horizon at the end of 1984: Despite the District Attorney's SDP initiatives, despite Judge Roberts' efforts, and despite the substantial drop

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20 Report of Richard Ross, Director of Programs and Planning, OCA, January 11, 1985.

in the oldest cases, the Judge's 1984 goal with respect to all pending cases -- reduction to 1,850 -- was not met. At the end of 1984, 2,062 felony cases were pending.

Judge Roberts attributed the inability to reduce the pending caseload to 1,850 during 1984 to two factors: an increase in filings by the District Attorney's office, and a decrease in judicial resources. However, the court's CARS data do not reveal a 1984 increase in filings, but there is evidence that there was some loss in "Judge Days" in the Bronx.[21] The CARS data indicate that Judge Days averaged 704 for the first six terms of 1984, but 524 for terms seven through thirteen; during the latter seven terms the pending caseload did in fact rise from 1,872 to 2,062. While Judge Days ordinarily decrease throughout the City in the second half of the year, partially because judges' attend educational seminars and many court personnel take vacations, the 1984 drop in the Bronx was somewhat greater than usual (the 1983 average for terms seven through thirteen was 564 Judge Days, compared to 524 in 1984). But it is not clear that this decrease was severe enough to fully explain the growing backlog.

The District Attorney's Office attributes the smaller than desired reduction in 1984 backlog to another factor. They suggest that their efforts to dispose of cases in 1983 had reduced the overall caseload substantially and that, consequently, it was possible to address the 1984 backlog of cases over six months old in a less congested court; but that as the overall caseload in-

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21 "Judge days" refers to an official attendance measure used in CARS reports. A judge day is a full working day spent by a judge in the courthouse, although not necessarily on the bench.

creased from its lowest point -- near Judge Roberts' stated goal -- at midyear, the court again became congested.

Whatever the reason, the trend that was to dominate the Bronx SDP results in 1985 was already visible at the end of 1984; in the second SDP year, the backlog in both target categories increased by 22 percent. The significant backlog reduction achieved in the first year was thus undercut in the second.

Examination of the full Supreme Court caseload in 1985 reveals the increase in the number of indictments the Bronx District Attorney's office filed. In 1984, the number of indictments exceeded five hundred only once; in November 530 were filed. In 1985, however, more than five hundred indictments were filed in each of seven months. The total number jumped from 5,014 in 1984 to 6,700 in 1985, described by the District Attorney's office as a record for the office.[22]

While an increased number of indictments certainly effects the number of younger cases pending, its impact on a court's backlog of older cases is by no means obvious, as we have indicated in our discussion of Kings County. There were, however, other differences in the Bronx between 1984 and 1985. Through the preparation of old case lists and the reassignment of ADAs to old case processing, the District Attorney had implemented his SDP effort and also helped provide the court with some of the

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22 Data obtained from the New York City Police Department indicate the increase in filings probably resulted from a policy shift by the District Attorney. Felony arrests in Bronx County increased only one and one-half percent from 22,172 to 22,509 from 1984 to 1985.

tools to facilitate its own 1984 backlog reduction plan. But the response of the court to the old case lists in 1984 was essential to success, and 1985 made different administrative demands on the court. Preparations for the Individual Assignment System were a priority for the Administrative Judge. And it seems to have followed that when the Administrative Judge no longer gave such sustained, exclusive attention to the disposition of old cases, the reduction slowed and, ultimately, stopped.

The Vera performance measures show steady accretions of cases in 1985. During the first SDP year, the total pending caseload in the Bronx had dropped from 3,129 to 2,823; in the second year the total climbed back up to 3,479 -- exceeding even pre-SDP levels. The portion of that caseload that was older than six months also fell in the first SDP year and rose in the second. At the end of 1983, 1,661 older-than-six-month cases were pending. After one year of SDP work, 1,142 were pending; but the number was back up to 1,398 by the end of the second year.

The first year improvements in reducing the size of the SDP target groups in the Bronx are also reflected in the Vera data which show improvement in felony case processing times for cases disposed in the Bronx Supreme Court during the first 18 months of the SDP (Figures I and J). The median time from felony arrest to Supreme Court disposition dropped steadily between the end of 1983 and mid-1985 (Figure I): for cases disposed at the end of 1983, the median time was 220 days; it was 167 days for cases disposed at the end of 1984 (the SDP's first year); and for cases disposed in the middle of 1985 (the program's second year), the

FIGURE I
Box and Whisker Plot of Case Processing Time for Cases Disposed in the Supreme Court by Sample Period
Bronx: Arrest to Supreme Court Disposition

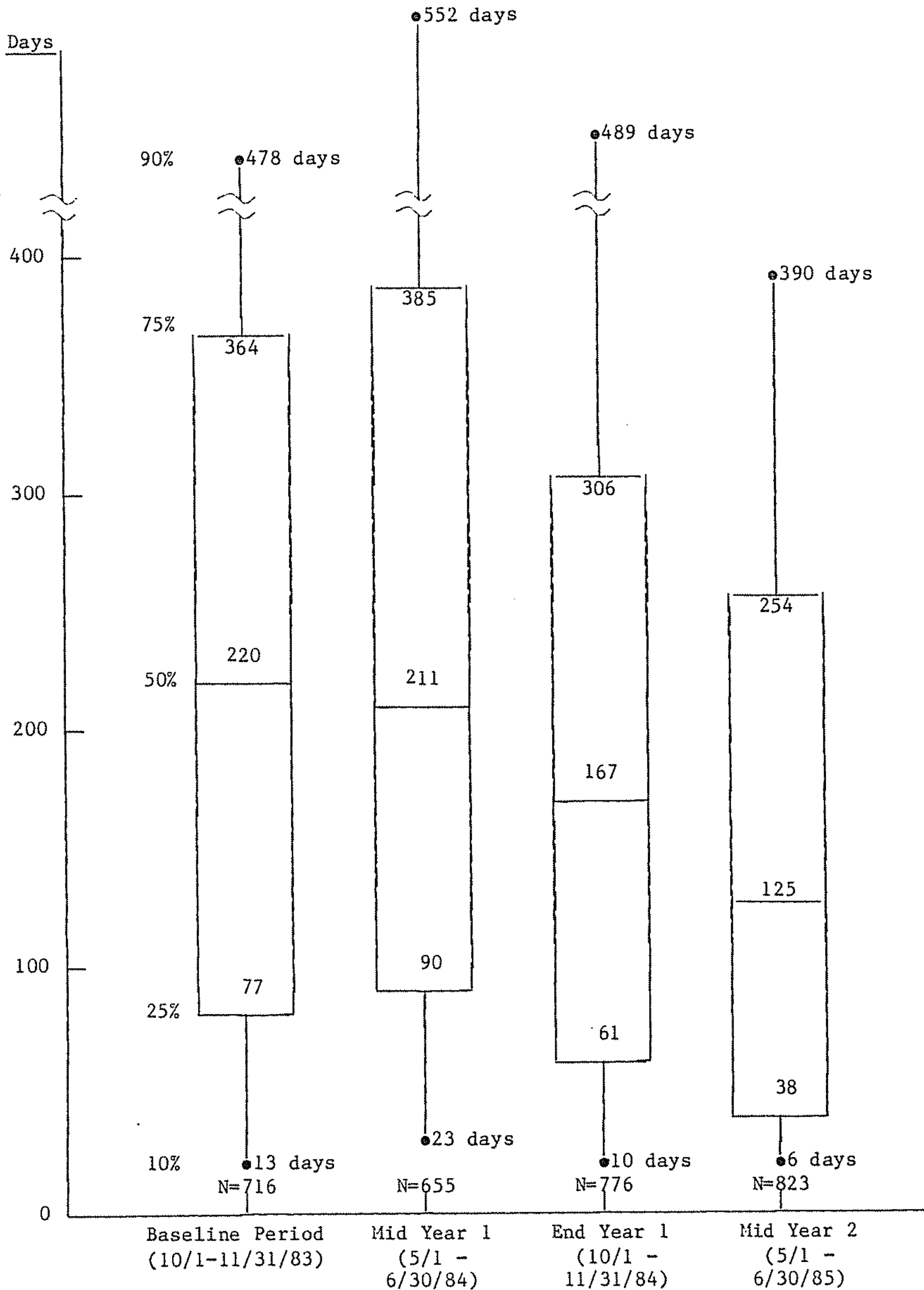
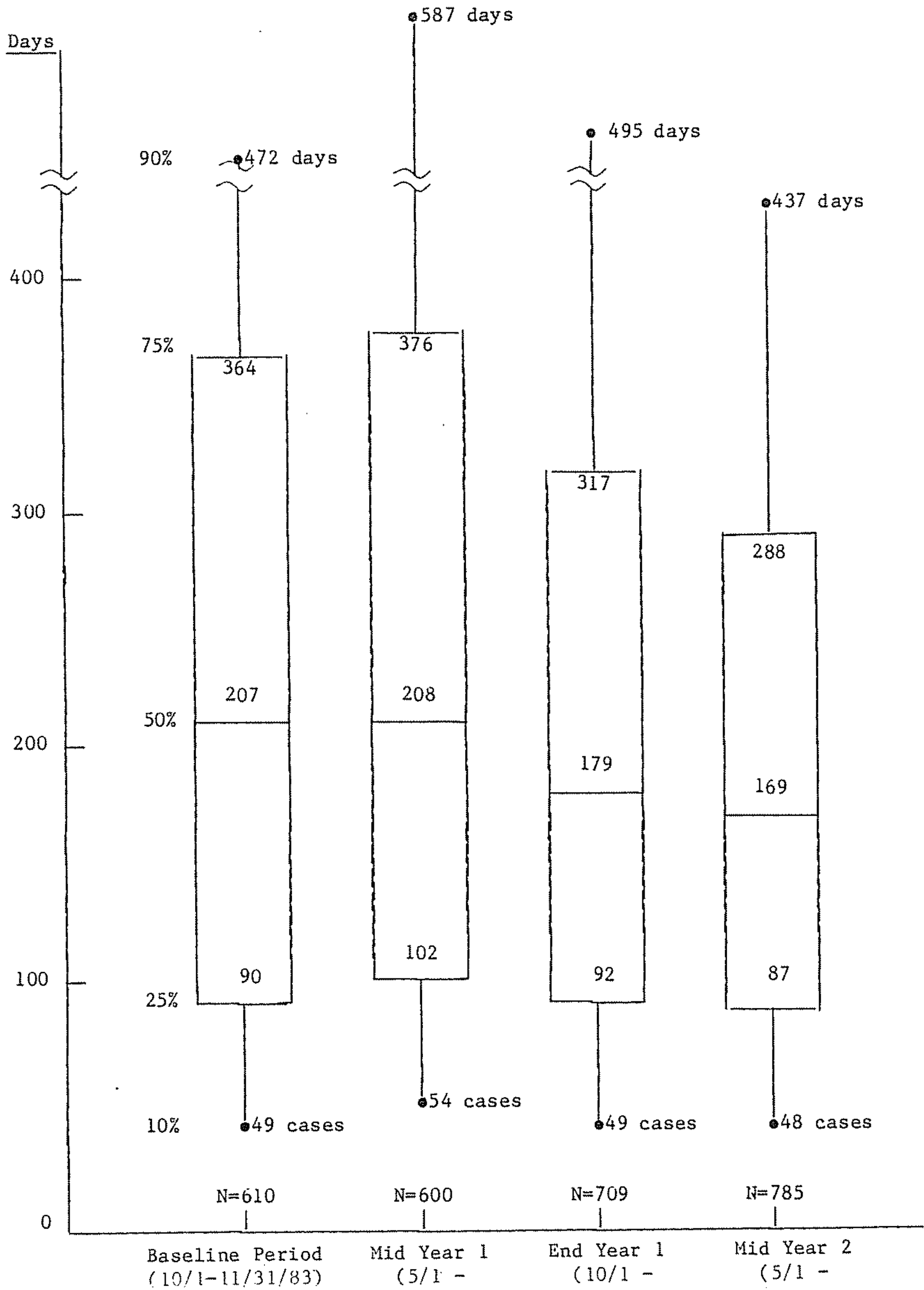


FIGURE J
Box and Whisker Plot of Case Processing Time for Cases
Sentenced in the Supreme Court by Sample Period
Bronx: Arrest to Supreme Court Sentence



median had fallen to 125 days. Thus, eighteen months into the SDP, the median felony case processing time in the Bronx was almost three months shorter than it had been when the project began. This is a substantial achievement, even if it did not translate directly into success on the SDP performance measures by the end of year two.

Similarly, as shown in Figure J, the median total criminal justice system processing time -- felony arrest to Supreme Court sentence -- dropped substantially during the first 18 months of the SDP, from 220 days at the beginning of the project to 169 days in the middle of 1985. At the start of the SDP, 75 percent of the felony cases disposed in the Bronx Supreme Court were disposed in 364 days or less and 90 percent in 472 days or less. In the first 18 months of SDP those times dropped considerably: by mid-1985, 75 percent were disposed in 288 days or less and 90 percent in 437 days or less.

And the average number of appearances required in each case also declined. At the start of the SDP the median felony case disposed had required 14 appearances; by mid-1985 the number had dropped to ten.

* * *

Neither the District Attorney nor the Administrative Judge placed any special emphasis on detention cases. The backlog of detention cases over six months old decreased by 25 percent in 1984, from 442 to 333. But the decrease did not come from administrative measures designed specifically to dispose of detention cases. The detention cases were simply swept into the large pool of old cases disposed <u>en masse</u> in 1984.

The second SDP year detention data are especially grim. The drop during 1984 of 109 over-six-month-old detention cases (those targeted by the SDP) was almost completely cancelled out in 1985 as the number of older detention cases in that backlog increased by 96 in 1985. The very oldest cases in the backlog, those over nine months old, declined by 39 percent in the program's first year, but increased by 50 percent in the second year, from 140 to 210 cases. Thus, during the course of the SDP, the total number of detained defendants awaiting disposition in the Bronx grew from 1,385 to 1,758, an increase of 27 percent.

The Bronx District Attorney's response to the SDP, re-emphasizing delay and backlog reduction efforts which had been successful in the past, appears to have been adequate in 1984 when the number of new indictments remained constant and when the Administrative Judge in the Supreme Court was also working to reduce the backlog.

In 1985, however, this approach fell short for several reasons. The sizeable increase in indictments may have distracted the office from further development of SDP management initiatives; but delay and increased backlogs were not inevitable results of the increased caseload. The ratio of 1985 indictments per Supreme Court ADA in the Bronx was about 47 new cases assigned during the year. The 1985 workload of new cases for each Criminal Term Supreme Court Judge in Bronx County was 176 cases per judge, still the lowest of any jurisdiction in the 1982 National Center for State Courts study.[23]

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23 A more complete discussion of caseload and workloads comes later in this report.

So, while it is likely that, without administrative and procedural adjustments, the increase in indictments might have increased backlogs, the caseload was not so high as to preclude those adjustments.

The 1984 SDP performance data and the decreases in median times to disposition, both before and during SDP, demonstrate success by the District Attorney and by the Court in reducing backlogs and improving case processing. With the Court and the District Attorney's Office having both demonstrated an ability to reduce delay and backlogs, it is unfortunate that there appears to have been no joint planning of new initiatives to address the problems in either 1984 or 1985. Together, they might have continued to create successful and permanent management and administrative innovations to reduce delay and backlog in Bronx County; such a result might, in turn, have been useful to further development of SDP strategies city-wide.

D. The Manhattan County District Attorney's Office

District Attorney Robert Morgenthau's response to the SDP provides the most direct test of the SDP's underlying hypothesis. That is, the project had been designed by the City, in large measure, to test the extent to which prosecutors could influence the pace of litigation, and in Manhattan the District Attorney's SDP effort depended entirely on the potential of new management initiatives within the office, and not on any reactive or collaborative effort by the court.

Several factors might explain the decision in Manhattan to proceed without either planning jointly with the court or

depending on court response. The political considerations which were necessarily part of all SDP planning seem to have led the other boroughs to see the project as an opportunity to improve or solidify their relations with the court administration; accordingly, their efforts assumed some structural reliance on the courts. But as the District Attorney's senior staff in Manhattan contemplated their office's SDP response, they determined that such reliance, which seems logical, should be viewed with caution. They were concerned that tying their efforts too closely to an administrative entity over which they had no control could dilute the SDP's effectiveness by adding administrative impediments which they would be powerless to resolve.

It may also be relevant that a relationship characterized by some distance and healthy skepticism seems to have evolved between the District Attorney's office and the courts in Manhattan. While certain key individual alliances exist (more on this below), an institutional sense of separateness, which has existed for some time, seems stronger in Manhattan than in the other boroughs; it may have obviated any possibility of joint planning.

For example, before the advent of the SDP, the Supreme Court in Manhattan had created several Long Term Detainee Parts (LTD) which were designed to dispose of backlogged cases over six months old.[24] However, senior staff in the District Attorney's

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[24] Throughout the City, criminal justice system policy makers demonstrate great faith in special court parts as backlog reduction mechanisms; they seem to be a well entrenched part of local legal culture. Staten Island is the only borough that did not have a special old case part, created either before or pursuant to the SDP.

office were skeptical about the likelihood of quick, productive case processing in these parts.[25] It was their sense that inefficiencies in the LTD system often impeded dispositions and that the District Attorney's efforts were not likely to change existing conditions. Thus, unlike most of the other boroughs, the Manhattan District Attorney's SDP plan made no use of the LTD parts.[26]

The project the Manhattan District Attorney put in place, and which continued without substantial modification over the two SDP years, had two major elements: 1) The office's Management and Planning Bureau (MPB) designed and carried out new methods to track and to monitor cases as they age; and 2) senior staff devised several new case processing procedures for implementation in the Trial Bureaus.

Case Tracking and Monitoring

Before the SDP, the six Trial Bureaus had no systematic way of tracking the current age of their total pending caseloads or of individual cases within it. The MPB provided the Trial Bureaus with retrospective data only: that is, they reported case processing times after cases had reached final disposition.

As part of the Office's response to the SDP, the MPB Planning Unit Supervisor devised a method of reporting individual

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25 Vera researchers' observations of LTD proceedings tended to confirm this view. For a description of case handling in one LTD part see Appendix D.

26 Indeed, the judge in one LTD part told Vera researchers in January 1985 that she had never heard of the SDP.

case age data that are approximately one week old and that identify targeted cases as they age. Bureau Chiefs can thus single out cases that are getting old for special handling. The new reports are colloquially referred to as "Star Reports."

The source of the MPB's information for the Star Reports is a manual data collection system in the Supreme Court Bureaus. The District Attorney's Office maintains a paralegal court specialist in each calendar part who records individual case activity information on a form transmitted to the MPB. When a case reaches four months old, the Supreme Court Bureau notifies the MPB of the arrest date, defendant's name, and assistant's name. The MPB feeds these data into a computer (which was already in the office and was not purchased with SDP funds) which generates the Star Reports. Only when the Supreme Court Bureau subsequently tells the Unit that the case has been finally disposed is the case removed from the Star Report system. Until final disposition information is received, the computer automatically moves the case into a "six month file," and then into older age sub-categories as time passes.

Using these data, the MPB provides each Trial Bureau with seven new reports each month, identifying the indictment number and assistant for each case in the following categories:

1. Jail cases pending over 9 months (called Four Star Cases);
2. Jail cases pending 6-9 months (called Three Star Cases);
3. Non-jail cases pending over 9 months (Two Star Cases);
4. Non-jail cases pending 6-9 months (One Star Cases);

5. Jail cases pending 4-6 months;
6. Non-jail cases pending 4-6 months; and
7. Defendants in jail, convicted and not sentenced within 21 days of conviction.

Each Bureau Chief is charged with verifying the accuracy of his Bureau's reports. He is then to discuss the reports with each ADA so that the reasons for delay in the progress of individual cases may be determined and strategies devised to address the problems identified. For example, more resources may be required in the prosecution of particular cases; certain ADAs may be overburdened with old cases and re-assignments of cases might be considered; or some ADAs may need more supervision than others in attending to their cases. Interviews with Bureau Chiefs and trial ADAs indicate that the extent to which this review occurs varies according to each Bureau Chief's individual management style.

What did not seem to vary was the assiduousness with which the Star Reports were used over time as a management tool by the Administrative Assistant District Attorney, who systematically discussed each report with each Bureau chief, and the Bureau Chiefs knew they would be regularly accountable for their results.

The MPB also produces monthly reports, sorted by individual ADA and by calendar part, that compare the performance of the six Bureaus.

Changes in Case Processing Procedures

The other half of the Manhattan SDP initiative was the in-

troduction of new ways to handle cases. The $486,000 FY 1984 start-up allocation for the SDP was spent primarily (although not exclusively) on the supports necessary for implementing these changes, as indicated by the following budget provided by the District Attorney's office:

Budget
Speedy Disposition Program [Manhattan]
FY 1983-84

Personnel Service

7	Paralegals[27] hired for Trial Bureaus at an annual salary of $15,000.	$105,000.
1	Word Processing Specialist at an annual salary of $14,030	14,030.
5	Court Part Specialists at an average annual salary of $12,371	61,855.
3	Complaint Room Staff at an average annual salary of $12,371	37,113.
2	Grand Jury Stenographers at an average annual salary of $17,376	34,752.
3	Assistant District Attorneys promoted to Senior Supervising Attorneys with raises of $1,000. each	3,000.
3	Assistant District Attorneys hired at an annual salary of $22,000	66,000.
	Sub-Total	$321,750.

continued.../

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27 Also called Trial Preparation Assistants.

OTPS at 10%	32,175.
Equipment	
11 Word Processing machines and associated equipment at $10,512. per machine	115,632.
1 NEC computer and associated equipment at $5,143.	5,143.
1 Xerox copying machine at $14,400.	14,400.
Sub-Total	$135,175.
Other	
Rush Minutes	10,000.
Total	$499,100.

Explanation of Budget Items
FY 1983-84

Paralegals - Hired to decrease the ratio of ADAs to paralegals.Cases can be processed more quickly when, for example, paperwork and telephone calls can be performed by paralegals with ADA supervision.

Word Processing Specialist - Hired to run word processing equipment and train other secretaries

Court Part Specialists - Hired to collect data for Planning Bureau for Star Reports.

Complaint Room Staff - Hired to compile arrest-to-arraignment computer statistics.

Grand Jury Staff - Hired to expedite case processing by producing minutes more quickly.

Promotion of ADAs - to supervise other staff and expedite case processing.

Assistant District Attorneys - Hired to replace promoted attorneys.

Word Processing and Photocopy Equipment[28] - Purchased to speed

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28 At the start of the SDP, each Trial Bureau had three or four secretary typists to serve 35-40 ADAs. Even with the new word processors, senior staff told Vera researchers throughout the SDP that the Trial Bureaus needed more clerical support staff.

paper flow.

NEC Computer - Purchased to compile arrest-to-arraignment statistics.

Rush Minutes - Estimate of additional rush minutes ordered as a result of Speedy Disposition Program.

Each of the new case processing techniques was set forth in a series of memoranda from administration staff to Trial Bureau Chiefs and ADAs; they included the following:

1) ADAs were instructed to file indictments as soon as they are voted, rather than wait until the end of a grand jury term (ordinarily four weeks).

Technically, CPL 180.80 is satisfied by the filing of a certificate of grand jury action in Criminal Court; an indictment filed in Supreme Court is not essential. But if assistants do not attend to the paperwork routinely, and thus "bunch" indictments for filing just before the Grand Jury is dissolved at the end of a term (as, it appears, had become customary), the processing by the Court Clerk can take three extra weeks or more, thereby delaying the Supreme Court arraignment.

2) ADAs were instructed to act more aggressively on case scheduling; they are to call defense attorneys the day before a scheduled hearing to confirm their appearances, and to notify defense attorneys as soon as possible if supplementary hearings are required.

3) ADAs were instructed to appear in person on their old SDP-targeted cases rather than letting the calendar "cover" assistant handle them.[29]

4) If an adjournment is requested, the ADA is to request the shortest possible date to accomplish the purpose of the adjournment.

5) ADAs were instructed to file notice of a defendant's predicate felon status with the voluntary disclosure form at the time of indictment.

Before the SDP, ADAs often waited until conviction to allege predicate felon status and defendants presented lengthy, time-consuming challenges at that late stage in the proceedings. However, if the notice is filed earlier by the ADA allocutions on predicate status can be made at the time of the defendant's plea.

This effort to reduce delay in litigating predicate felon issues was also a part of the Brooklyn SDP program. Some District Attorney's Offices had argued that the cost of ordering minutes (the transcribed proceedings of previous hearings necessary to prove predicate felony status) was prohibitive because court reporters charge substantially more per page for minutes ordered on a rush basis.

Consequently, in FY 1984 the Criminal Justice Coordinator's budget contained $200,000 for rush minutes needed by the District Attorneys. However, over the year, only $13,000 was expended.

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29 Several new York City District Attorney Offices are trying to assign cases to trial ADAs as soon as practical, and to avoid transferring a case from one ADA to another. However, cases are not scheduled for Calendar appearances for times certain. Consequently to avoid having trial ADAs waiting in Calendar courtrooms for their cases to be called, "cover" ADAs (usually less senior ADAs) are assigned to represent the District Attorney's position from written notes in the file, and may call the case's assigned trial ADA on a courtroom telephone if a question arises that can not be answered from the notes.

Of all the District Attorney's Offices, none except Manhattan utilized more than $130 of this fund in FY 1984, and even the Manhattan District Attorney used only the balance of the $13,000. It may be that efforts to identify predicate felon issues at the time of arraignment reduced the need for ordering minutes on a rush basis.

This early filing of predicate felon notices was intended to address the problem of conviction-to-sentence delay. The Manhattan District Attorney's office set a general policy that there be no more than 21 days between conviction and sentence. While they hope that the new, earlier notice will ameliorate the problem, the Office maintains that the prime cause of delay from conviction to sentence is attributable to defense attorneys' tactics and therefore beyond its direct control.

Senior Office personnel note also that the Court has little incentive for speedy processing between conviction and sentence. The comment was offered by one that, "The Court's statistic is the conviction not the sentence. If the judge's statistic were his sentencing date you'd see much less delay after conviction."[30]

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30 The Court's CARS reports consider a case pending only until a determination has been made (by plea or jury verdict) of the defendant's guilt or innocence, or until it has been dismissed. Cases still before the Supreme Court for post-verdict or post-guilty plea proceedings and for sentencing are not considered part of the caseload for the purpose of the CARS data. These cases were included, however, in the Vera research data for the SDP because they contribute to the detention population just as do cases pending a determination of guilt or innocence. The Vera data suggest that the group of cases awaiting sentence or other post-conviction proceedings is sizable and constitutes about 20% of the total pending caseload. The Vera sample of cases pending disposition or sentence on December 2, 1984 showed 15,740 cases

6) A predicate hearing itself, according to senior office personnel is often a "can of worms." Therefore, assistants were told to be forceful in bringing the requirements of People v. Harris to the attention of the judge and in insisting on adherence to the Harris criteria.[31]

7) ADAs were instructed to be more aggressive in ensuring that jailed defendants are produced for their court appearances. They were directed to contact the Department of Correction themselves, rather than always waiting for the clerk of the court to do so. ADA's are thus now required to take on an aspect of case handling with which they have never traditionally been involved.

8) ADAs were encouraged to coordinate their work with other ADAs if a defendant has multiple proceedings (the District Attorney's Office believes this is frequently the case).

9) The Office tried to use the SDP to create a new sense of the importance of dispatch in case processing. "How fast cases get out" was not an articulated office priority before the SDP, but during the program period the District Attorney personally -- through memoranda and through a series of meetings with Bureau Chiefs to discuss the SDP strategies -- told the Chiefs to emphasize "elbow grease."

According to senior office personnel, the lack of attention to speed before SDP may have been partially because speed was not

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in all five boroughs. The parallel CARS report for the end of the 11th Term (November) showed 11,977 cases pending disposition only, in the Supreme Court. The CARS data include each filing against a single defendant, while Vera data counts only defendants.

[31] Harris is New York State Court of Appeals case that limits the issues on which a defendant may challenge an asserted predicate status.

viewed as a natural priority for an individual ADA. Senior staff told Vera researchers that ADAs are concerned primarily with "keeping their cases together"; that is, their priority is to make sure witnesses are available, motions are answered, indictments are filed, etc.

Interviews in the Manhattan District Attorney's Office indicate that its response to the SDP has necessitated "pushing" ADAs in new directions. Senior Office staff, trying to create an ethos of speedy processing, are consciously fostering competition among the bureaus, and the Star Reports are used internally for this purpose.

The promise of financial reward to the District Attorney's Office is an important part of the "push." In some instances, senior staff reminded assistants directly that more money for the office would improve their professional lives. They were told it would mean more support staff for assistants, greater access to out-of-state witnesses and more resources devoted to the prosecution of their cases.

Finally, it should be noted that, in its search for streamlined procedures, Manhattan did not adopt the felony waiver mechanism that was so popular in the other boroughs. In interviews with Vera researchers, senior staff reported that felony waivers are used in Manhattan only in certain kinds of cases, such as cases involving multiple defendants with the possession of contraband, or complicated paper cases in which the defendant's guilt is "obvious".

Senior staff tend to avoid felony waivers because they feel they may encourage plea negotiations which could adversely affect the quality of dispositions. While there have been frequent, informal discussions between staff in the Manhattan and Bronx District Attorney's offices debating the utility of the procedure, it appears that the two offices have agreed to disagree.

Given this, it is interesting to note that the Vera disposition sample data suggest that 25 percent of the cases disposed in the Bronx are disposed in fewer days (38 or less) than any other county; Manhattan takes 44 days or less. But the other counties take substantially longer than these two, even though they use the felony waiver procedure.

* * *

The Manhattan District Attorney's office was the most successful of the boroughs in reducing the backlog of SDP-targeted cases and accelerating case processing. According to the Vera performance measures, on the eve of the SDP, 4275 felony cases in the jurisdiction of the Manhattan District Attorney were pending, 1810 of them for over six months. At the end of the first SDP year, the total pending caseload was 3906, the over-six-month old caseload was 1521. And, by the end of the project, the total caseload was 3540, and the over six month caseload, 1293. The decline in the total was steady, with the greatest reduction coming from an over-all 29 percent reduction in the over-six-month old caseload.

Within that 29 percent drop in the over-six-month-old caseload, the performance measures reveal some interesting patterns. In the first SDP year, the greatest reduction was in the oldest targeted cases in that backlog. Cases pending over eleven months fell by 31 percent in 1984 (from 762 to 528), while cases pending between six and eleven months decreased by only five percent (from 1048 to 993).

In the second year that pattern was reversed. The youngest old cases targeted by SDP, those pending from six to eleven months, fell by 24 percent (from 993 to 757). However, not only did the reduction in the number of oldest cases stop, there was a small addition (eight cases) to the over-eleven-month-old backlog, which grew from 528 to 536 cases during 1985.

This increase notwithstanding, the pattern over the two SDP years offers some ground for optimism to city policy makers. It seems to be the shared experience of most of the District Attorneys' offices that, with some degree of focus and application, a substantial number of old cases that have been suspended in states of inactivity can be disposed relatively quickly, as long as someone's attention is turned to the task. But after the first cut, there appears to be a layer of old cases underneath that resists such quick termination. In Manhattan, as in Brooklyn, Queens, the Bronx and the Office of the Special Narcotics Prosecutor, the pattern was the same; the over eleven month old backlog went down in year one and up in year two.

But what distinquishes Manhattan, and what may ultimately be its most significant SDP result, is the ability to sustain and in fact improve the reduction in the six to eleven month old backlog

of cases. Manhattan's information system and new emphasis on quicker case processing may have produced a technology that could keep substantial numbers of cases from ever entering the oldest-case category.

The Vera data show that Manhattan was similarly successful in reducing, and sustaining reductions, in case processing times.

As Figure K shows, the median total time from arrest to disposition stayed essentially stable in the first SDP year, from 135 to 137 days, but fell sharply to 105 days by the middle of the second project year; one month was lost from the median processing time. Similarly, as Figure L shows, the median time from arrest to sentence fell from 202 days at the beginning of the SDP, to 190 days at the end of the first year and 145 in the middle of the second. At the beginning of the SDP, 25 percent of all cases disposed were sentenced by 112 days after arrest; in the middle of the second year 25 percent were sentenced by 86 days after arrest.

Manhattan was alone among the boroughs in its ability to sustain improvements -- although not necessarily at the same rate -- over both SDP years. The office's first year results earned a SDP distribution of $497,625; the second year performance earned a distribution of $1,010,750. The office was able to maintain its success despite the fact that the second year saw no significant changes or additions to the District Attorney's SDP program.

Senior District Attorney staff saw the second year of the SDP in Manhattan as work to change "attitudes" rather than

FIGURE K
Box and Whisker Plot of Case Processing Time for Cases Disposed in the Supreme Court by Sample Period
Manhattan: Arrest to Supreme Court Disposition

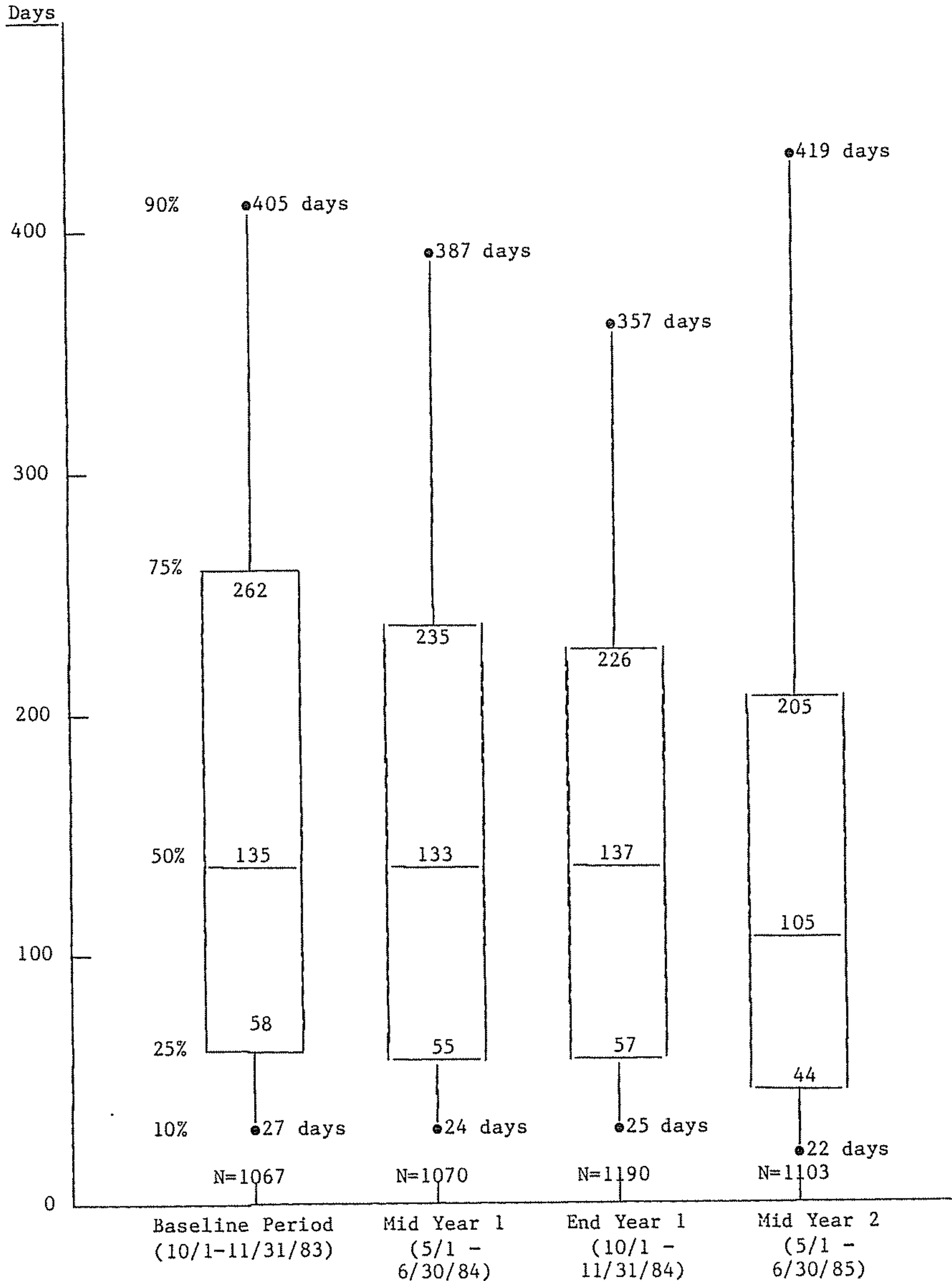
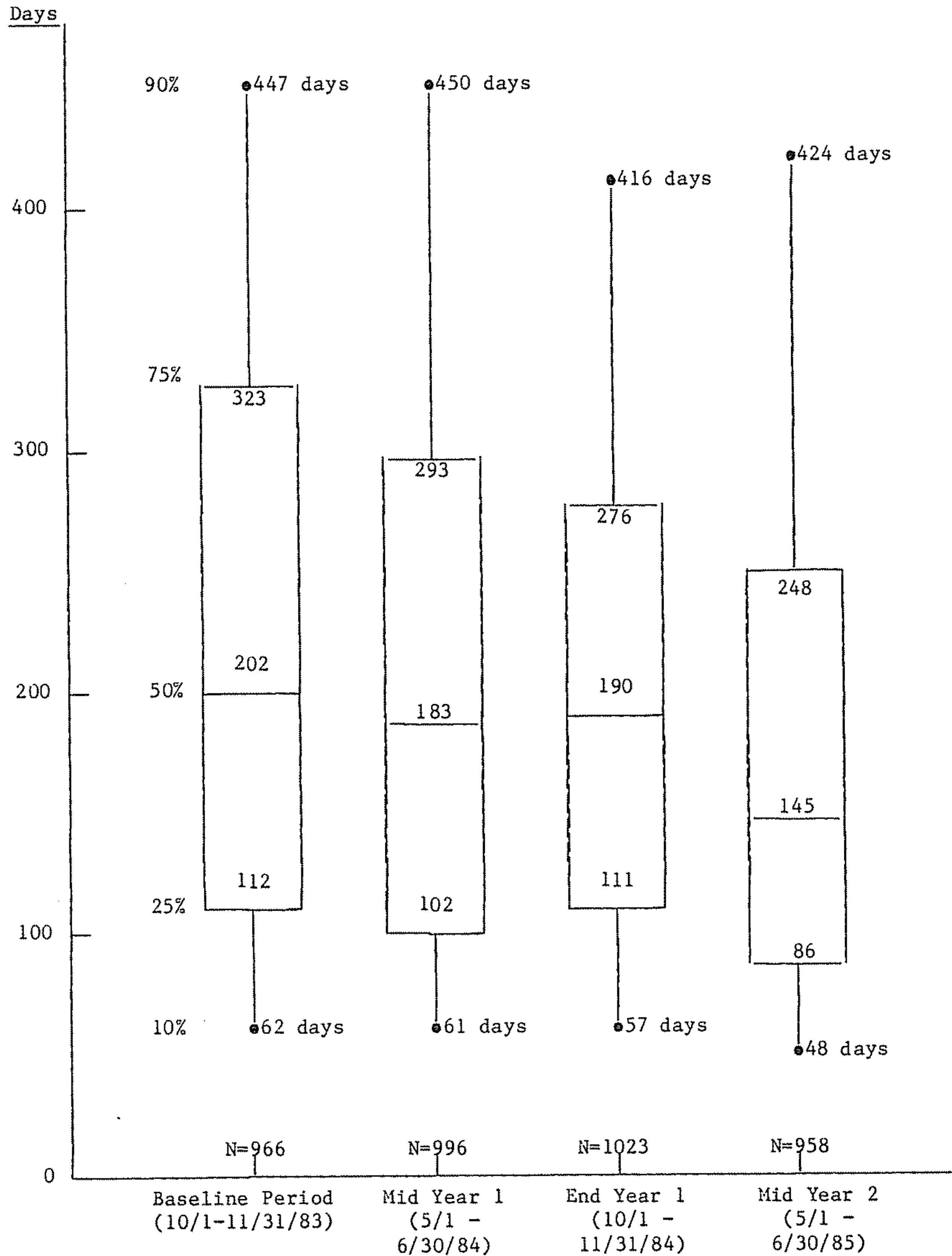


FIGURE L
Box and Whisker Plot of Case Processing Time for Cases Sentenced in the Supreme Court by Sample Period
Manhattan: Arrest to Supreme Court Sentence



"procedures." Managers said that in 1985, no personnel were expressly advanced as a result of SDP productivity; supervisors did not look at an ADA's SDP results in evaluating performance. Rather, an increased consciousness of speedy processing was diffused among other management goals. The pace of an ADA's dispositions was considered and evaluated as only one part of an ADA's overall performance.

Why then did Manhattan achieve such substantial results?

To begin, we once again caution against imputing too powerful a cause and effect relationship to the District Attorney's SDP activities and the changes in backlogs and processing times. Even the Manhattan District Attorney's office hesitates to link without question its SDP program and the changes in pending caseloads; senior staff candidly point out that no office is ever without luck -- good and bad -- in these sorts of endeavors.

But there clearly was, in Manhattan, the core of a successful approach to speeding case processing.

One important element seems to have been the emphasis on attitude (and facilitating information) rather than on organizational change or procedure. Indeed, the office's approach to the court reflects this distinction. Rather than setting out to join with the court in establishing new court parts, new case lists, or new procedures, the office devised an SDP plan that was completely self contained.

The key to the relations with the court seemed to lie at the personal, individual level. Certain important relationships between members of the judiciary and staff in the District Attorney's office have developed over time. These relationships were

essential to SDP productivity, although they did not rise to the level of joint planning or formal institutional alliance.

One of the most constructive of these relationships existed between the Trial Bureau Chief and the Calendar Part judge in part 50; they have worked together for many years. Over the two SDP years, Trial Bureau 50 was consistently effective in reducing backlogs and case processing times. The Bureau Chief, echoing again the importance of "attitude," said that he thought the "expectation of ripeness" of a case is shorter in this part than others.

In interviews with Vera researchers, this Bureau Chief said that his bureau had always had the highest number of indictments and the lowest pending caseload; their sentences have always been the same or higher than the other bureaus.

He said that this is so in large part because of the individual who is the Calendar Judge. He thinks that the expectation of ripeness is shorter, largely because of this judge's personality. The longer a case lingers, the more the judge is likely to "knock off discounts on pleas." Some Calendar Judges will accept excuses, the Bureau Chief says, but not this one.

Indeed, it may be that while other Bureau Chiefs used some of the same case management techniques, they were not as productive of SDP results because the corresponding Calendar Part judges were less committed to speedy processing. It may be that this establishment of personal alliances and development of mutual expectations of ripeness has been more effective in accelerating case processing than some attempts to change formal institutional arrangements; it is, after all, at this individual

level that the local legal culture exerts its force.

The Bureau Chief says that some Assistants answer "ready" only to satisfy statutory time limits and aren't really ready at all. "In 50," says the Bureau Chief, "ready means ready." He says that a defendant will never plead until he knows the people are in fact ready for trial, a stance which he believes speeds plea dispositions.

The Bureau Chief says that after an indictment is filed he evaluates it "substantively, not just for form." He tries to have all his evidence at the time of arraignment on the indictment. He says that evidentiary disputes and delay hurt the prosecution, that the people get better dispositions if "you hit hard and early."

In the view of this Bureau Chief the oldest cases, cases he referred to (largely because of the SDP Star Reports) as over-nine-month-old cases, fall into three categories:

1) Cases that the District Attorney does not want to move quickly, primarily cooperating co-defendant cases.

2) "730 cases" (cases involving Article 730 of the Criminal Procedure Law which sets forth procedures for determining whether a defendant "lacks capacity to understand the proceedings against him or to assist in his own defense"). These cases inevitably involve batteries of psychiatric tests which can be extraordinarily time consuming. They also involve the most troubled defendants whom the court is often at a loss to understand. It was the view of Vera researchers, based only on observation and not on systematic sampling, that a disproportionate number of the very oldest detention cases were 730 cases.[32] These are the

"monster" cases, says the Bureau Chief. While they tend ultimately to plead, it is "the District Attorney's nightmare" to try one of these cases "ten years after the arrest."

3) "Unusual cases," for example, an aide to the Bureau Chief cited a case in which a defendant was on dialysis and could only come to court on two days of the week. (As it happened, Vera researchers had seen that defendant in the LTD part the day before, and this defendant's name had become a term used generically in the Manhattan court for such difficult, special problems.)

The six to nine month old cases are often delayed by scheduling problems, according to the Bureau Chief. He specifically tried to address this as part of the SDP effort; the paralegal in charge of the Bureau's SDP now calls defense attorneys in certain cases to make sure they will appear for scheduled hearings.[33]

The speed of case processing has always been important to this Bureau Chief. He was with the Manhattan District Attorney's Office before vertical prosecution; he worked in the Major Felony Program which was the pilot for vertical prosecution. In his view, cases move much faster now than they did then. Five or six years ago, he told Vera researchers, over nine months to get to trial was typical. Vertical prosecution changed that, in his experience.

The interview with the Bureau Chief reveals also the commit-

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32 See Appendix D for some examples of 730 cases handled in one of the Manhattan LTD parts. Indeed, these cases seem so difficult that they might merit focused managerial attention.

33 With the first SDP funds the Bureau Chief chose one half of the time of a paralegal, rather than a full time secretary.

ment of the Manhattan District Attorney's Office, at the highest managerial levels, to the goals of the SDP. It may be that this results from the involvement of the District Attorney himself in early stages of the project's conceptualization.

It appears likely that the diligence with which the SDP was pursued, judged by such measures as the number and scope of internal memoranda and meetings devoted to the effort (including meetings with the District Attorney himself), and the regularity with which managerial staff monitored the office's success, may have been greater in Manhattan than in the other boroughs.

* * *

While the Star Reports did list detention cases separately and ADAs were urged to contact the Department of Correction themselves to ensure the appearance of jailed defendants, the Manhattan District Attorney's Office was similar to the other boroughs in failing to establish a strong, separate focus on detention cases.

There were some changes (increases as well as decreases) in the targeted detention case backlog during the SDP period, but they were slight. The total pending detention caseload at the start of the SDP was 2540. At the end of the first year the total was 2529; at the end of the second the total was 2411, a net reduction of five percent over two years.

The backlog of detention cases between six and nine months old grew from 256 to 266 in the first year, but dropped to 211 in

the second. The total number of detention cases over nine months old went down from 182 to 142 in the first year but rose again to 152 in the second.

Overall it cannot be said that the Manhattan District Attorney's SDP success produced a significant reduction in the number of jailed defendants awaiting trial in Manhattan.

F. The Richmond County District Attorney's Office

The FY 1984 SDP start-up allocation for Richmond County was $34,500. The District Attorney added other office funds and hired two new staff members for SDP work: one paralegal, charged with reducing delay in the transfer of case files from Criminal Court to Supreme Court (a particular problem in Richmond because of its unique reliance on preliminary hearings in felony case processing); and, one new ADA to help increase the number of cases disposed through use of the felony waiver procedure.

Richmond County District Attorney William Murphy described his plans to add these two staff positions in a March 5, 1984 letter to OMB, outlining his SDP program. In his letter, the District Attorney pointed out that the median case disposition time in the Richmond County Supreme Court was approximately 80 days, considerably shorter than the other boroughs in New York City. He indicated, nevertheless, that the two new positions could help reduce processing time further.

New York's Criminal Procedure Law 180.80 requires that, within five days of arrest, a defendant must be indicted by a Grand Jury, have received a preliminary hearing in Criminal

Court, or be released from custody. The other boroughs respond to this requirement by presenting cases to Grand Juries within the time set forth in the statute.

Richmond County alone routinely uses preliminary hearings to comply with the rule. Once the Criminal Court holds a preliminary hearing and finds sufficient evidence to warrant referring the case to the Grand Jury, the file generated in Criminal Court is sent to the District Attorney's Chief Assistant for a review of the charge before the case is presented to the Grand Jury.

According to the Chief Assistant, it had been common for ten days to lapse between the preliminary hearing and his receipt of the file, because no one had specific responsibility for getting the files from Criminal Court to the Chief Assistant. The new paralegal's primary duty was to see that the case files are brought to the Chief Assistant immediately after the hearing. In November, the Chief Assistant reported that the paralegal had, in fact, shortened the average time required to transfer the file to about two days.

One goal of the review of each felony complaint undertaken by the Chief Assistant, prior to presentation of cases to the Grand Jury, is to identify cases that might be disposed of through the felony waiver procedure. Once a case is classified as a candidate for this procedure, the ADA hired for SDP makes the contacts with the defense attorney and, if an agreement is reached that will result in a guilty plea, expedites scheduling the case for an appearance in the Supreme Court. According to the District Attorney's records, during the first SDP year, the number of dispositions by Superior Court Information went from 44

to 67.

In addition to creating the two new staff positions, the SDP led the Richmond County District Attorney to institute a system of monitoring felony cases pending for more than six months, and conferring with the case assistant and the judge to attempt to expedite the disposition of those cases. In November 1984, there were 20 cases on the six month or older list; the oldest case had been pending since September 1983.

According to the Court's CARS reports, almost 16 percent fewer felony cases were filed in Richmond County Supreme Court in 1984 than in 1983 (402 in 1983, and 339 in 1984); the number of dispositions also went down, from 445 in 1983 to 358 in 1984. The District Attorney's office attributes this decrease in dispositions to a procedural change instituted by the Supreme Court's Administrative Judge at the start of 1984 which affected the growing backlog of older cases in Richmond. In order to reduce a backlog of civil cases pending in the Supreme Court, the Supreme Court Justices who had been assigned exclusively to criminal cases in 1983 (one as a calendar judge, and the other as a trial judge), were assigned to handle civil cases as well. When the criminal and civil case dockets were merged, all appearances for criminal cases were scheduled for Fridays. Furthermore, criminal case trials were assigned among all the judges, and given no priority over civil cases.

The Court's CARS reports show that Judge Days on Trial in the Richmond Supreme Court went down 31%, from 204 in 1983 to 139 in 1984, and that the number of Trials Commenced went down 50%, from 54 to 28.

The Vera performance measures provide evidence for the District Attorney's contention that the decrease in judicial resources reduced his SDP hopes.

In the first SDP year, the total felony case backlog rose from 173 to 174 cases. Cases less than eight months old fell from 123 to 117, but the over eight month category grew from 50 to 57.[34]

But in 1985, the Court returned to the 1983 judge assignments and the total pending caseload came down to 110 cases; the number of cases less than eight months old fell to 80, those older than eight months to 30.

The Vera measures of case processing time offer further support for the District Attorney's position. (See Figures M and N.) The procedural modifications instituted during the SDP, apparently, were not able to offset the impact of the re-allocation of judicial resources. By the end of 1984, the median time from arrest to Supreme Court disposition had risen to 190 from 147. At the beginning of the SDP, 75 percent of the disposed cases reached disposition in 229 days; it took 336 days by the end of 1984.

Similarly, the median time from arrest to sentence went from 154 to 230 days in the first year. The time required for 75 percent of the disposed cases to be sentenced rose from 263 to 357 days.

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34 Different cut-offs in the SDP measures were established by the City for Richmond because of its considerably smaller caseload and historically shorter times to disposition. The logic behind their selection, however, paralleled that for the other counties. Recall also that each office was compared in 1984 against its own previous baseline as measured by its own cut-off points.

FIGURE M
Box and Whisker Plot of Case Processing Time for Cases Disposed in the Supreme Court by Sample Period
Richmond: Arrest to Supreme Court Disposition

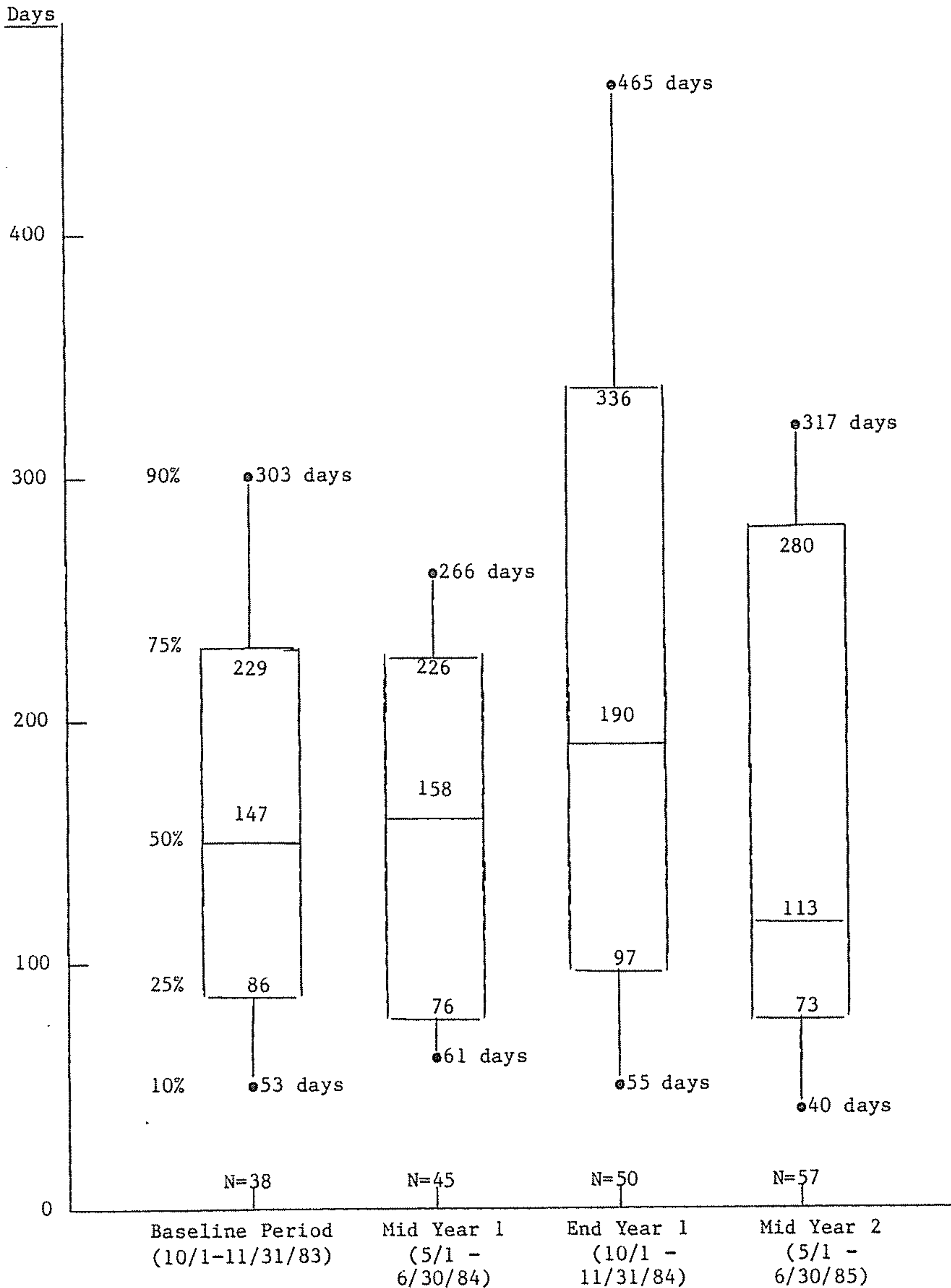
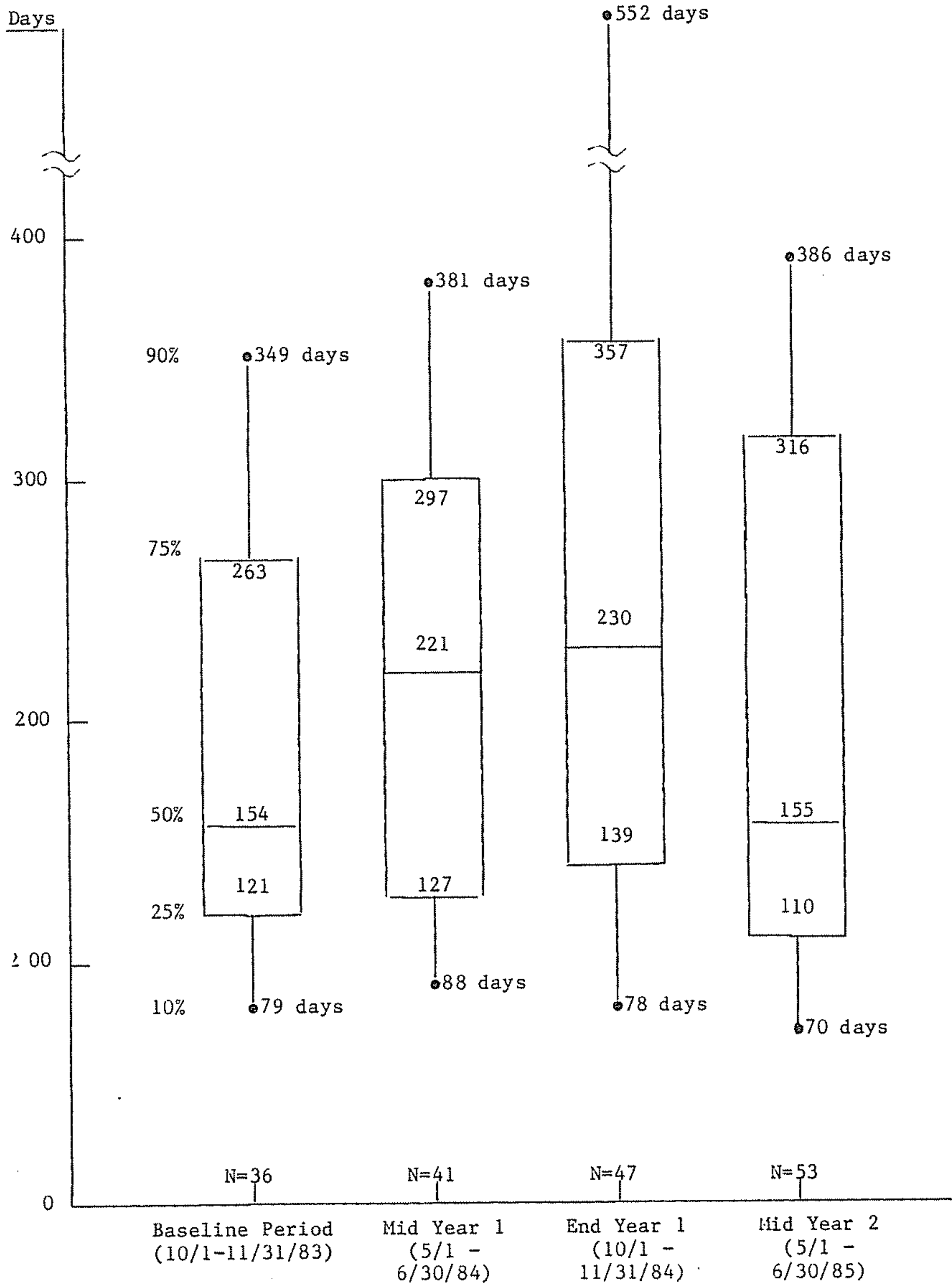


FIGURE N
Box and Whisker Plot of Case Processing Time for Cases Sentenced in the Supreme Court by Sample Period
Richmond: Arrest to Supreme Court Sentence



But these increases did not continue in the second SDP year. By mid-1985, the median time from arrest to disposition had fallen to 113 days, well under pre-SDP levels; 75 percent of the cases disposed reached disposition in 280 days, longer than the time required at the end of 1983, but well below the high of 336 days reached at the end of the first SDP year.

The median arrest to sentence processing time returned to the pre-SDP level: 154 days at the end of 1983, and 155 by the middle of 1985. The time required for 75 percent of the cases disposed to reach sentence fell to 316 in mid-1985, from 357 days at the end of the first year. Even though 316 days is still longer than the 263 days required on the eve of the SDP, the trend in processing times seems clearly towards an overall decrease during the project's second year.

The District Attorney second year SDP results earned the office a distribution of $87,500.

However, repeating the now familiar pattern, the Richmond District Attorney was not successful in reducing the pending caseload of detention cases. Even as the overall backlog fell considerably, the number of detention cases generally -- and old detention cases in particular -- actually rose. The total pending caseload of detention cases grew over the two SDP years from 75 to 86. Cases less than two months old went up from 48 to 50; cases older than two months rose 33 percent from 27 to 36.

F. The Office of the Special Narcotics Prosecutor

The New York City Office of the Special Prosecutor (SNP) was established by the State Assembly as part of a special anti-narcotics law enacted in 1973. The Special Narcotics Prosecutor is selected by the five elected New York City prosecutors and has citywide jurisdiction for narcotics prosecutions.

In practice, however, the Special Narcotics Prosecutor cases are almost exclusively Manhattan arrests. The only Special Narcotics Prosecutor complaint room is at 80 Centre Street in Manhattan, and only Manhattan police officers present cases for prosecution. A close administrative relationship has thus developed between the Manhattan District Attorney, the Special Narcotics Prosecutor, and their executive staffs.

The start-up SDP allocation for Special Narcotics Prosecutor Sterling Johnson, Jr. was $84,000 in 1984. These funds were to be used to hire three ADAs for $90,000, and two paralegals for $31,000.

SNP senior staff believe the nature of the office's caseload to be unique and this view shaped their SDP planning. Their discussions of SNP cases are full of anecdotes about how the oldest cases are "investigation" cases, involving numerous defendants, long-term investigations and, usually, wire-tap evidence. Senior staff believe, therefore, that it is in the nature of these cases that their processing cannot be meaningfully accelerated. They report that frequently wire-tap transcripts must be prepared and turned over to multiple defense attorneys; that plea offers (if, indeed, any are made) are high and negotiations are protracted; and that defense attorneys are frequently committed to fixed

trial dates in federal court.

Despite this view of the difficult context within which they work, the office nevertheless set out a comprehensive SDP plan which had several parts. First, each ADA would review his or her caseload and identify cases pending over six months. These cases would be listed according to: (1) those awaiting a verdict, guilty plea, or dismissal; (2) those awaiting sentence; and (3) those in which the defendant had failed to appear and arrest warrants had been issued. Office management would prepare lists of cases pending over four months, and distribute them to supervisors and trial ADAs every three weeks. Leaders of each Special Narcotics Prosecutor Module and of the Special Narcotics Prosecutor Task Force units would see that cases pending over six months were given priority to accelerate their disposition.[35]

Many of the specific objectives set for the SDP in the Special Narcotics Prosecutor's Office were similar to those in the Manhattan District Attorney's Office, reflecting the close administrative liaison of the two offices and the fact that they operate before the same court. Special Narcotics Prosecutor ADAs were encouraged to be aggressive about securing the presence of needed witnesses in order to avoid adjournments; they were to contact defense counsel to make sure they were ready for an impending trial; and they were to hasten disclosure and delivery to defense counsel of material from prosecution or police files.

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35 A Module is a group of ADAs regularly assigned to a specific Supreme Court Calendar Part. In contrast, Task Forces are composed of ADAs assigned to handle cases arising from special New York Police Department anti-drug efforts on the Lower East Side of Manhattan and in Harlem.

Also, Special Narcotics Prosecutor ADAs were to make court appearances personally on their old cases rather than leaving such appearances to the "cover" ADA assigned to handle all cases in a particular Calendar Part. Special Narcotics Prosecutor ADAs were also to be responsible for securing the presence of detained defendants in court as needed, and to seek the shortest possible adjournment when defendants were not produced.

As in the Manhattan District Attorney's Office, allegations of predicate felon status were to be made at Supreme Court arraignment or "at the earliest next opportunity." ADAs were to make a special effort to determine whether the defense intended to resist predicate felon status, and were instructed to seek to dispose of predicate felon issues as part of plea negotiations. Minutes necessary to prove predicate felon status were to be ordered on a "Rush" basis as soon as an ADA learned that a defendant would challenge the status.

Calendar Part ADAs were to take active roles in shortening adjourn dates and ADAs assigned to cases in which the defendant has cases pending in other counties were to work with the ADA in the other county to speed disposition.

A major component of the Special Narcotics Prosecutor's response to the SDP, not found in the Manhattan District Attorney's response, was the creation of a special Supreme Court Calendar Part, and back-up trial parts, to dispose of narcotics cases pending over six months. The part was agreed upon, in the Spring of 1984, in discussions involving the Deputy Chief Administrative Judge for the New York City Courts, the Administrative Judge for the Manhattan Supreme Court Criminal Term, the Special Narcotics

Prosecutor and his Chief Assistant, and the Manhattan District Attorney and the Chief of his Trial Division.

The judge for this special calendar part, designated Special Part 88, and the judges for Part 88's back-up trial parts were chosen by court administrators for their effectiveness in moving cases to disposition. Consistent with the prevailing belief that trial judges who give harsh sentences encourage guilty pleas in their calendar parts, one trial judge was assigned who had earned the nickname "Maximum."

In addition to giving special attention to older cases, the creation of Special Part 88 gave the Special Narcotics Prosecutor additional and exclusive court resources. Normally Special Narcotics Prosecutor cases are integrated into the general Manhattan Supreme Court criminal caseload, where some Special Narcotics Prosecutor ADAs believe judges give the narcotics cases lower priority than other categories of criminal prosecutions. The Clerk was to assign all narcotics indictments pending over six months to Special Part 88 and, according to the Manhattan District Attorney's Office, no other cases were to be assigned. It is an indication of the priority given the SDP that on many days the SNP Chief Assistant was present in Part 88 to supervise proceedings for the Special Narcotics Prosecutor.

Special Part 88 began receiving cases on May 1, 1984. This Calendar Part, with its Trial Parts, was to run for a month; in fact it was in operation for about six weeks. During this period, 380 cases involving 504 defendants were either disposed in Special Part 88, or sent out for trial, according to statistics from the Special Narcotics Prosecutor's Office. A large

portion of these cases, 138 cases for 179 defendants, was disposed in the first week.

One senior ADA involved in the planning for Special Part 88 said that although the part was effective, it was less effective than it might have been because the Manhattan Supreme Court Clerk's Office sent cases not meeting the program criteria to Part 88's Trial Parts. For example, he says, in the first week of the program a homicide trial was assigned to one of the trial parts, making it unavailable to try the targeted narcotics cases.

No CARS data are available that separately list the cases handled by the Special Narcotics Prosecutor; this is because the Court's data reflect activity in each county's Supreme Court and not the activity within a particular prosecutor's jurisdiction. Thus Special Narcotics Prosecutor cases and Manhattan District Attorney cases are reported together in the CARS New York County reports.

Vera's research data, however, do separate out pending cases in the Special Narcotics Prosecutor's jurisdiction. These data show that, of those cases targeted by Special Part 88 (cases pending over six months), there was a reduction of 51 cases (498 to 447) from December 4, 1983 to June 24, 1984, the period containing the six weeks in which Special Part 88 was operating. By the next Vera research sample date, September 23, the number of cases pending more than six months had risen to 529, in the absence of Special Part 88. Perhaps this rebounding reflected, as well, the general increase in pending caseloads during Summer Court Terms.

Spurred, perhaps, by the productivity of Special Part 88,

the Special Narcotics Prosecutor received a distribution of $139,875 in the first SDP year. While the overall pending caseload remained relatively stable, going from 1130 to 1133 in 1984, the Special Narcotics Prosecutor was able to effect a substantial reduction in the oldest cases in the backlog. The number of cases pending over eleven months dropped by 43 percent, from 257 to 146 during the first SDP year. However, cases pending from six to eleven months rose by 28 percent from 268 to 344.

The Special Narcotics Prosecutor's results in the second year were less promising. The total caseload grew by 12 cases to an end-of-project total of 1145. While the office was able to reduce its backlog of six to eleven month cases by 17 percent (from 344 to 286 in the second year), the initial success with the very oldest cases was not repeated in the second year. Six cases aged into the over eleven month category, for a final total of 152, although the Special Narcotics Prosecutor still achieved a net reduction of 41 percent (105 cases) in the oldest cases over the two year life of the SDP.

The success of the Special Narcotics Prosecutor in speeding case processing was not inconsiderable (Figures O and P). Over the life of the project, the median processing time from arrest to disposition for disposed cases fell from 171 to 132; the median time from arrest to sentence dropped substantially from 236 to 169. Twenty-five percent of the cases disposed went from arrest to Supreme Court disposition in 90 days at the beginning

FIGURE O
Box and Whisker Plot of Case Processing Time for Cases Disposed in the Supreme Court by Sample Period
Special Narcotics Prosecutor: Arrest to Supreme Court Disposition

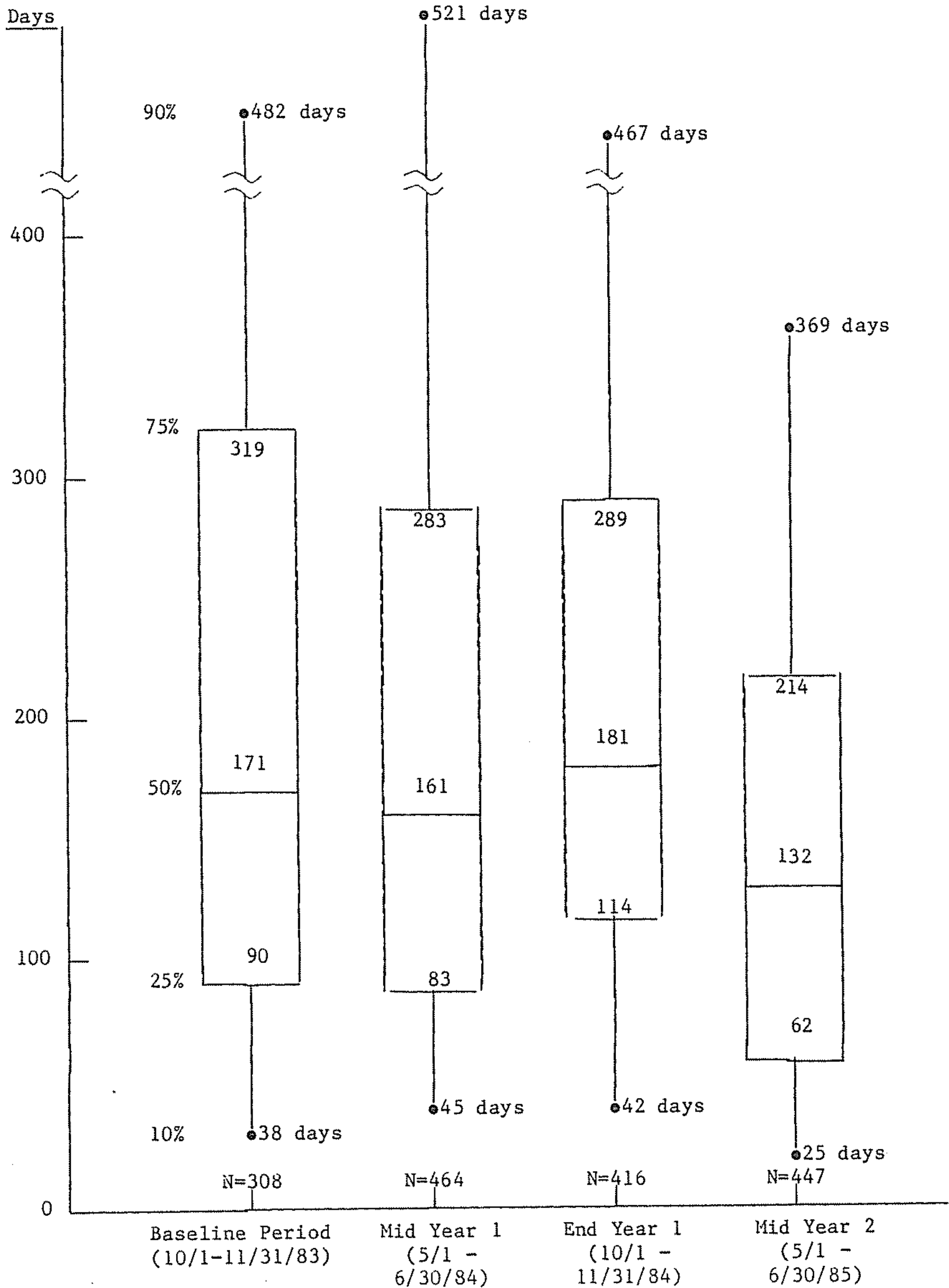
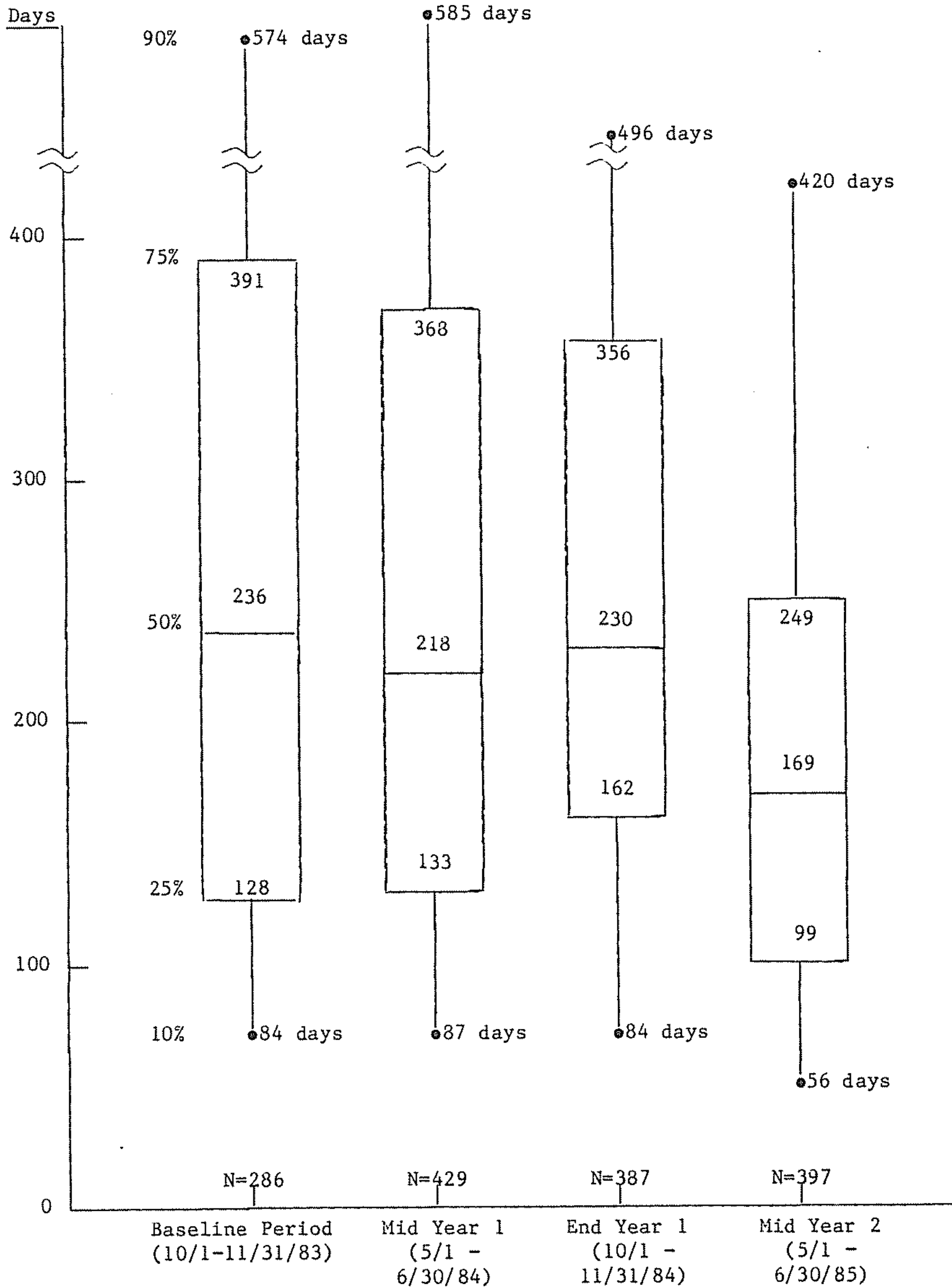


FIGURE P
Box and Whisker Plot of Case Processing Time for Cases Sentenced in the Supreme Court by Sample Period
Special Narcotics Prosecutor: Arrest to Supreme Court Sentence



of the SDP, but in 62 days by the end. Similarly, for all cases in which sentences were imposed, it took 128 days to close 25 percent of the cases disposed at the start of SDP, but 99 days by the project's end.

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The Special Narcotics Prosecutor's overall detention case backlog rose by 15 percent, from 281 to 324 cases over the two SDP years. The Special Narcotics Prosecutor was unable to stem the increase, and the totals in all age categories, showed a net increase at the end of the SDP, although there were some slight reductions in the first year. The backlog of detention cases between six and nine months old grew by 18 percent to a total of 39; the number of over nine month old cases went from 18 to 29, a net SDP increase of 61 percent.

III. AN ASSESSMENT OF THE SPEEDY DISPOSITION PROGRAM: INCENTIVES, LOCAL LEGAL CULTURE AND COURT DELAY

A. Incentive Systems and the Problem of Unintended Consequences

In initiating the SDP, city officials clearly assumed that the District Attorneys would allow no decrease in public safety or in the appropriateness of dispositions as a consequence of the program; nevertheless it sought confirmation that this had not happened inadvertently. As we have already noted, one District Attorney had expressed some concern during the SDP planning phase as well as later that, because the program's performance measures did not control directly for the "quality of dispositions," targeted caseloads might be reduced by District Attorneys' offices offering more lenient plea negotiations or decreasing the number of indictments. Although nothing in the preceding section describing what the District Attorneys did in response to the SDP suggests either of these outcomes, the research sought to explore further the issue of unintended consequences.

In their review of incentive systems as a public policy tool for inducing change, Church and Heumann call attention the importance of exploring unintended outcomes:

> Incentive-based policies are particularly useful in encouraging change in organizations with multiple or ambiguous goals. Most of government falls within this classification.... While this ambiguity may make such entities good candidates for use of incentives, it also raises in a serious light the problem of unintended consequences.... A major strength of incentives, namely that they allow policy-makers to focus on behavior at the margins and to single out for emphasis one goal among many, is precisely the element that raises the danger of unintended consequences (Technical Report, Chapter I).[1]

The authors note that because of the multiple and complex goals of most public organizations, incentive schemes must establish explicit performance measures in order to induce the behavioral changes they seek. The SDP did that, focusing the attention of the prosecutors' offices on reducing the size of specific target groups of pending cases. The question such narrow performance measures raises, however, is whether there are any unintended prices paid for the results evoked. Church and Heumann suggest, for example, that,

> The goal of the criminal justice system is presumably to protect the community from criminal acts while providing just treatment of defendants charged with criminal offenses. Efficiency and cost saving are not _necessarily_ in conflict with these largely unmeasurable (and frequently divergent) objectives. Yet at some level cost cutting will necessarily reduce quality, both in terms of crime control and due process. Similarly, an increase in the pace of disposition of criminal cases need not result in a decrease in either individual fairness or societal protection; indeed, delay reduction programs are often alleged to produce increases on both dimensions. But achievement of delay reduction through hurried "kangaroo court" proceedings, or by summary dismissals of charges against defendants in old cases, would obviously run contrary to important goals of the system (p. 29).

In developing SDP, New York City administrators were concerned about this issue. Because the primary goal sought by the

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[1] Church and Heumann note that many incentive systems are not able to assess such dangers. They describe, for example, the use of incentives in the Medicare system to reduce the length of stays in hospitals. They report that the literature on this experiment provides evidence that the length of stays declined in response to the incentives; however, some observers suggest, though no one can prove as yet, that patients are being released "quicker and sicker" (pp. 8-11).

City through its use of incentives was to reduce the number of long-term detainees, its first performance measure focused directly on detention cases. As indicated in our discussion of the program's structure in the first section of this report, the City recognized that this detention focus might inadvertently represent a disincentive to process non-detention cases expeditiously and thus exacerbate the already pressing problem of overall delay and backlogs in the Supreme Court. To avoid this, the City added a second performance measure (a reduction in the number of old Supreme Court cases regardless of their pretrial status). It also included a further check in the method for calculating each office's SDP score (used to distribute the incentive pool): it subtracted from the score any increase in the median age of the overall pending caseload.

However, these built-in checks on the operation of the incentives did not address a number of other issues with which the City was concerned and which are alluded to by Church and Heumann. Of particular interest were questions about charging, bail-setting, mode of disposition and type of sentence in the felony cases targeted by the program. Therefore, although the problems of assessing what unintended consequences might have taken place as a result of the City's attempt to influence a process as complex as felony case prosecution were rather daunting, researchers undertook to do so by building a series of disposition samples into the research design. These could be used for this evaluative purpose, as well as for measuring changes in times to disposition, a use to which we have already put the data.[2]

The disposition samples cover four time periods: October-November 1983 (the pre-SDP baseline period); May-June 1984 (the middle of the program's first year); October-November 1984 (the end of the first year); and May-June 1985 (the middle of the second year). In seeking to interpret the data from these samples, the major difficulty is that we cannot know with certainty when the cases received the bulk of their processing (i.e., before or during SDP).

The implication of this for the evaluation of SDP's impact on case processing is that some proportion of that activity occurred before the initiation of the SDP even for sample cases disposed after January 1984. New York City's long times to disposition exacerbate this problem. However, we know that approximately two-thirds of all cases are disposed within a year of ar-

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2 Researchers also considered the possibility of using prospective or longitudinal samples of cases -- selecting cases coming into the system before and during the SDP and then tracking their progress through to disposition and sentence. This strategy was discarded: First, it was impractical; researchers would have to wait far too long after the conclusion of the SDP's second year for cases to reach completion for any evaluation to be useful to City policymakers. Second, any "pre-SDP" sample of cases coming into the system would have to be drawn from a time period considerably in the past in order for the cases to be processed completely before the advent of the SDP; the case processing behavior reflected in those data, therefore, might be long out of date and thus an inappropriate basis for comparison.

Researchers decided, therefore, to rely upon disposition samples which could be collected in a more timely fashion and which can be, and often have been, used as substitutes for longitudinal samples. Recall, for example, that the data upon which the National Center has based much of its work on delay over the last decade are drawn from disposition samples (Church et al., 1978 and Mahoney et al., 1985). For a more detailed description of the methods used to construct and analyze the SDP disposition samples, see Appendix B.

rest; so, some estimates can be made. Of course, all the cases in the first sample (the baseline) were disposed before SDP, and the last sample (taken 18 months after SDP began) is primarily composed of cases processed during the program. The mix of cases in the middle two samples is less clear. Thus, over the four samples, we move from no cases handled during SDP to all the cases handled during the program.

Before turning to our discussion of these data, a comment is in order on the specific sub-samples of disposed cases we will be discussing and on the analyses undertaken to examine various dimensions of case processing.

Most felony arrests originate in the lower court in New York City; prosecutors actively screen cases shortly after arrest to determine what charges will be filed against defendants in Criminal Court. A felony arrest may be charged as a misdemeanor and disposed in Criminal Court, an indictment may be sought for a felony prosecution in the Supreme Court, or a decision may be made to file no case at all. Because we wanted to explore whether there were any relevant changes across the four sample periods in charging, indicting and bail setting patterns, we focus our analysis of these issues on a sub-sample composed of all cases disposed in the Criminal Court during each time period, including cases disposed by a transfer to the Supreme Court. For some analyses, however, we looked only at the cases transferred (for example, in examining charge reductions between arrest and indictment).

We also sought to examine whether over the course of the SDP there had been any unintended changes in the way felony cases were disposed in the Supreme Court, including the mode of dispo-

sition and sentencing outcomes. For these analyses we focus on a sub-sample composed of all cases that reached final disposition in the Supreme Court during each sample period.

What follows is a brief description of the analyses carried out on each sub-sample in order to explore changes, if any, in specific dimensions of case processing over which prosecutors exercise influence and thus which could have been effected by their SDP efforts: charging, indicting, bail setting, disposition and sentencing. In addition to looking at the caseload overall for each jurisdiction, we analyzed the major offense types (as determined by top charge at arrest and the volume of cases disposed). For the convenience of the reader, the full data describing these analyses by jurisdiction will be found in Appendix C, rather than in the text.[3]

Three sets of analyses were conducted:

(a) For cases disposed in Criminal Court, including those disposed by a transfer to Supreme Court for continued prosecution as a felony, we examined:

(i) The proportion for which the severity level of the Criminal Court arraignment charge as determined by the prosecutor was lower than that of the arrest charge;

(ii) The proportion indicted;

(b) For cases transferred to the Supreme Court (i.e., indicted), we examined:

(iii) The proportion for which the severity level of the indictment charge was lower than that of the arrest charge;

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[3] These analyses were not carried out for Richmond; the sample sizes for this small jurisdiction and the particularly large amount of missing data made any assessments unreliable.

(iv) The proportion released on recognizance, the proportion for whom a high bail was set at Criminal Court arraignment, and the proportion detained at arraignment (i.e., those remanded or who failed to make bail);

(c) For cases disposed in the Supreme Court, we examined:

(v) The proportion of guilty pleas;

(vi) The proportion going to trial;

(vii) The proportion receiving a sentence other than felony imprisonment.[4]

The results of these analyses are encouraging; few, if any, unintended consequences seem to have occurred even in those jurisdictions where changes in the SDP performance measures were most pronounced. This is especially evident when one looks at these data for a jurisdiction's overall caseload, but it is also true for the major offense categories examined.[5]

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[4] In order to assess any changes in the seriousness of sentencing practices, we also collected information on the minimum and maximum sentence ordered. However, there were substantial amounts of missing data in the minimum sentencing field. Because the length of time an offender must spend until parole is determined by both the minimum and the maximum, we decided not to report these data (although we examined them and found no changes that appeared relevant).

[5] In analyzing data for these four time periods, we looked for trends, rather than for sharp changes in the data for one sample period, and for patterns that could reasonably be associated with the SDP. Beyond the scope of this study are such things as shifts that appear in the pattern for a single offense category on a single dimension of case processing; because changes of this type could be interpreted in so many ways and do not appear relevant to assessing the impact of the SDP, we are not in a position to offer judgments about any other implications or significance they might have.

To judge whether there were substantive changes over time in a given jurisdiction that were relevant to the SDP, we used several criteria. First, if only one of the four sample periods was substantially different from the other three, in contrast to being part of a trend across all the time periods, we considered it to be aberrant, rather than a solid indicator of change. One

Manhattan. Over the two year period, as reflected in the SDP performance measures, Manhattan experienced the most substantial impact of the SDP. As we have described earlier, of all the District Attorneys' offices, Manhattan put in place the most systematic changes in response to the program and did so without any alteration of its relationship to the court. It is particularly significant, therefore, that in examining the four samples of cases disposed in the Criminal Court and transferred to the Supreme Court, we find no systematic or substantial changes over time in patterns of charging, indicting or bail setting. For the

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reason for taking this approach was uncertainty about when alterations in the court's data collection procedures or errors in data entry were responsible for a "deviant" figure. (We knew that some elements in our data base were affected in these ways, and where we were certain we excluded the data.)

Second, we decided that changes should be apparant in more than one major offense category for us to consider them reflective of a possible policy change on the part of a District Attorney's office. Accordingly, we reviewed the data not only for the entire caseload, but by major offense categories, focusing on those for which the sample sizes were large enough for meaningful interpretation. If there was no change in the caseload overall, and a change in only one major offense category, we did not define this as a meaningful shift in pattern, for the purposes of assessing the impact of the SDP.

Finally, we did not characterize changes as substantively meaningful if they were reflected by an increase or decrease of less than ten percentage points across the four time periods. Because the size of the offense-specific samples means that changes of ten percentage points represents relatively few cases, and because there are always errors in data taken from large-scale management information systems, we do not believe variations under ten percentage points should be regarded as substantively significant. Furthermore, some fluctuation in case processing behavior always occur in the criminal justice system; indeed, small amounts of variability are a constant in this type of data. Therefore, we looked for changes over time in the data that reflected patterns descriptive of possible policy changes. In an analogy drawn from sailing, we are concerned with identifying changes in the direction of the wind and not with measuring the ever-present variability of the wind conditions.

four arrest charge types examined in detail because they represented the bulk of the cases disposed (felony robbery, felony burglary, felony property and felony weapons), there were only small decreases across the four samples (all under five percentage points) in the proportion of cases in which the indictment charge was lower relative to the arrest charge. In addition, there were no systematic changes over time in the proportion ROR'd at arraignment or for whom high bail was set, or in the proportion detained at arraignment in Criminal Court. Thus, in terms of the front-end of the criminal justice process, no relevant change in behavior is evident from the disposition samples in Manhattan.

Similarly, there were no changes in the pattern of Supreme Court outcomes for Manhattan cases over time to suggest unintended consequences of the City's incentive program. For the same four offense categories indicated above, there were no differences over time in the proportion of cases going to trial. In examining charge changes between arrest and disposition in Supreme Court, two of the categories show no change, robbery showed a nine percentage point change reflecting <u>less</u> charge reduction over time, and property offenses showed small up and down fluctuations without a recognizable pattern. This mixed pattern also appears in the data on the proportion of cases sentenced in the Supreme Court to a penalty <u>other than</u> a term of imprisonment longer than a year. Neither burglary nor weapons offenses showed any changes, and there were very small increases of less than ten percentage points for robberies and property offenses over the four sample periods. In summary, these data suggest no systematic impact of SDP on the pattern of dispositions for cases in

the Manhattan Supreme Court.

Special Narcotics Prosecutor. Although this office showed positive impacts of the SDP on the performance measures in year one of the program (and very marginal effects in year two on the size of the six-to-eleven month Supreme Court caseload), few changes in case processing are reflected in the disposition samples.

There was a decrease of eleven percentage points over the four sample periods in the proportion of felony drug cases ROR'd at Criminal Court arraignment, accompanied by an increase of 12 percentage points in the proportion detained. This change in release conditions and detention probably reflects changes over the four samples in the composition of the defendant population -- the proportion of drug defendants who had a prior felony conviction increased from 26 percent to 34 percent -- rather than a change in prosecutorial (or court) behavior.

Felony drug dispositions in the Supreme Court also showed little change over time. There were minor but insignificant changes in the proportion of cases going to trial (an increase of four percentage points), and the proportion of cases in which the conviction charge was lower than the arrest charge (an increase from 68% to 75%). This latter small percentage point increase probably reflects an increased volume of drug arrests in Manhattan across the four time periods. Because there was no increase in the proportion of disposed cases receiving a sentence other than felony imprisonment (in fact, there was a small decrease from 45% to 42%), it is not likely that SDP had any unintended consequences for how drug cases were sentenced in the Special Narcotic Prosecutor's jurisdiction.

Bronx. Over all offense categories and for the four major arrest charge categories reviewed for the Bronx (felony robbery, felony burglary, felony drugs and felony weapons), there were somewhat fewer cases over time in which there was a charge reduction between arrest, arraignment in Criminal Court, and indictment. There was a decrease of two percentage points overall, with a range of four to eight percentage point decreases for specific charge categories, in the proportion of cases in which charges were reduced between arrest and affidavit; and there was a decrease of ten percentage points overall, and a range of eight to twenty percentage point decreases for specific offense groups, in the proportion of cases in which charges were reduced between arrest and indictment.

Parallel to this, however, there were some changes in the proportion of cases transferred to the Supreme Court in the Bronx. Although there was only an increase of eight percentage points overall, there was an increase of 22 percentage points in the proportion of both felony burglary and felony robbery cases transferred; and, for felony weapons cases, the increase was nine percentage points. As we discuss below with respect to Queens, there is no evidence that this change in the proportion indicted in the Bronx reflects response to the SDP. The concern with unintended consequences of the City's incentives was that indictments might decline, not rise.

There were no systematic differences in bail setting at Criminal Court arraignment across the four sample periods in the Bronx. Although there were some small decreases in the proportion of specific charge categories for whom high bail was set (one percent for cases overall) and a small increase in the pro-

portion ROR'd (eight percentage points overall), there were no clear patterns regarding the proportion detained at Criminal Court arraignment (a six percentage point decline over the four periods).

Similarly, changes were minimal in the pattern of Supreme Court dispositions overall and for specific offense categories. There were no changes in the mode of disposition and only small changes in the amount of charge reduction between arrest and Supreme Court conviction (one percentage point overall, and three to ten percentage points for individual offense groups). This lack of significant change in charge reduction patterns is mirrored by a lack of change in the proportions sentenced to <u>other than</u> felony imprisonment (an increase of from one to eight percentage points over time for specific offenses, and three percentage points overall).

Therefore, for the Bronx, a jurisdiction in which the court as well as the District Attorney was influential in achieving reductions in the SDP performance measures during the program's first year, there appear to be no significant implications for other dimensions in the way cases were processed or disposed.

<u>Kings</u>. As with Manhattan and the Bronx, felony robbery, felony burglary, felony drug and felony weapons charges were the largest arrest charge categories in the disposition samples for Kings County. While there were no changes over time in the degree of charge reduction between arrest, arraignment in Criminal Court and indictment, there were some changes across the four sample periods in the proportion of cases disposed in Criminal Court by a transfer to Supreme Court. Across all offense categories, the proportion transferred declined by eleven percentage

points over time. However, the proportions in the robbery and weapons charge categories declined by 18 and 16 percentage points, respectively; felony drugs declined by 26 percentage points (and burglary by four percentage points).

Although the proportion of particular arrest charge categories resulting in an indictment appears to have decreased over time, this probably reflects a larger base of arrests on which the percentages are calculated rather than a change in indictment procedures or a reaction to the SDP. Indeed, during this same period, there was an increase in felony arrests in Kings County, and an increase in the absolute number of indictments filed in the Supreme Court. In addition, there was no change in the proportion of cases ROR'd at Criminal Court arraignment, and although the proportion for whom high bail was set increased somewhat, there was no change in the proportion released at arraignment. In summary, as far as can be known from disposition samples, there appears to have been little or no change in the lower court processing of felony cases in Kings County across the four time periods.

In terms of Supreme Court outcomes, there was no systematic change in the proportions going to trial (an increase of from one to six percentage points for three of the four specific offenses and a three percentage point decrease for another, and two percentage points overall). Charge reduction at Supreme Court disposition showed no uniform pattern across the important charge types, with only one showing any significant shift over time (drugs indicated an increase in the proportion where charges were reduced, from 54 percent to 67 percent over the four time periods). However, this was not paralleled by any meaningful in-

crease in the proportion of drug or other offense groups that received <u>other than</u> felony imprisonment (overall, the increase was only six percentage points), suggesting no changes in case processing behavior over time in the Kings County Supreme Court.

<u>Queens</u>. As in Kings County, the major felony arrest charge categories examined in the disposition samples for Queens County were robbery, burglary, property and drugs. Overall, across all offense categories, there was no significant change in the proportion of cases in which charges were reduced between arrest and arraignment in Criminal Court (an increase of five percentage points over time), and only small increases for individual offense categories (from four percentage points to thirteen). There was no significant change in charge level between arrest and indictment for those transferred to the Supreme Court.

There were, however, increases in the proportion of cases disposed in Criminal Court by a transfer to the Queens Supreme Court, a ten percentage point increase for cases overall but a 32 percentage point increase for felony burglaries, a 25 percentage point increase for felony robberies, a 22 percentage point increase for felony drug cases, and a 10 percentage point increase for felony property offenses. The proportion for whom high bail was set declined somewhat (13 percentage points) and the proportion ROR'd increased slightly (all under ten percentage points); however, the proportion detained at Criminal Court arraignment declined only slightly (eight percentage points overall).

It is likely that these changes reflect the decision by the Queens District Attorney in 1984 (already discussed in Section II of this report) to begin indicting some categories of arrests that formerly had been charged as misdemeanors, namely some gam-

bling, narcotics, commercial burglary and auto theft cases. There is no evidence, however, that this policy change had any relation to the SDP; indeed, if increased indictments were to have any effect on the SDP performance measures (and we argue elsewhere that this is unlikely), the conventional wisdom at least suggests it would be a negative one.

This change in indictment policy by the Queens District Attorney coincided with that office's formalization of felony waiver procedures toward the end of the SDP's first year, a change that was to some extent a response to the City's SDP incentives. Combined with the altered indictment practices, this procedural change may have encouraged the transfer to Supreme Court (for the purpose of taking a felony plea) of at least some cases that might otherwise have been disposed as misdemeanors in the Criminal Court; it is not surprising, therefore, that the proportion of cases transferred would increase with a parallel decrease in the proportion on whom high bail was set as well as a very small decline in the proportion detained.[6]

This possibility -- that with the changed indictment policy and the introduction of more formal felony waiver procedures there was an increase in less serious felony cases coming into the Queens Supreme Court -- could also be related to our finding that somewhat larger proportion of cases over time had their

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[6] Other data from our Supreme Court disposition samples indicate that there was an increase over time in the proportion of cases arraigned and disposed in Supreme Court on the same day; this is what happens (at least ideally) with felony waiver procedures. However, such data do not permit us to know whether these quickly disposed cases are those that would have otherwise been disposed in the Criminal Court or whether they are cases that would normally be disposed in the Supreme Court but are now more expeditiously processed.

charges reduced between arrest and conviction in the Supreme Court (a 12 percentage point increase for the whole caseload, and from eight to twelve percentage points for individual offense categories). However, these changes are not reflected in an overall increase in the proportion of disposed Queens Supreme Court cases that received sentences of <u>other than</u> felony imprisonment (this declined by five percentage points overall), although in burglary cases it increased substantially (by 24 percentage points).

It is likely, therefore, that the changes in indictment practices and in the felony waiver procedures in Queens increased the number of less serious cases being disposed in the Supreme Court rather than in Criminal Court. An alternative, but less likely, interpretation of the data is that there may have been a small decline in the severity of dispositions in the Queens Supreme Court during this period, which might or might not have had any relation to SDP. However, because the impact of the Queens District Attorney's efforts on the size of the SDP target groups was extremely limited, and confined to the first year, it seems unlikely that the incentive program had any significant effect on patterns of case processing apart from its influence on the office's formalizing felony waiver procedures.

In conclusion, there is no evidence of any systematic unintended impacts of SDP on dimensions of felony case processing in New York City other than on the pace of litigation or the focus on older rather than younger cases. Regardless of the magnitude of their efforts in response to the SDP and the effects of these efforts on the SDP performance measures, none of the District Attorneys' offices seem to have put in place any procedures that

significantly influenced patterns of charging, indicting, bail setting, or disposing of major categories of felony cases. Even in the jurisdiction where prosecutorial initiatives in delay and backlog reduction were most in evidence (Manhattan), our analysis of the disposition samples suggests no unintended consequences. The same is true for the jurisdiction where the judicial delay and backlog reduction initiatives were most in evidence (the Bronx).

Thus, whether activities that result in a decrease in the number of old felony cases or in overall times to disposition in the Supreme Court came from prosecutorial or judicial efforts (or their combination), we find no evidence that fairness or public protection were sacrificed. This bodes well for public policies that encourage both prosecutors and courts to speed up the pace of disposition without sacrificing other important elements of the dispositional process.

B. Factors Affecting the Success of the SDP

As Church and Heumann suggest, incentive approaches to policy change appear particularly suited to circumstances in which (a) the policymaker desiring the change possesses insufficient legal or political authority to command compliance; (b) the technical means to accomplish the goal are uncertain, require professional expertise to develop, or are likely to vary for different places; or (c) organization goals are multiple, complex and ambiguous (Technical Report, Chapter I).

The budgetary incentives New York City offered the District Attorneys under the SDP were intended to produce a particular and needed outcome in a situation characterized by all three of these

conditions. Whereas the incentives appear to have been sufficient to encourage all the prosecutors' offices to turn their managerial resources to developing initial responses to the problem, they were not sufficient to encourage all the offices (and particularly several of the larger ones whose success was essential if SDP was to have a substantial citywide impact) to engage in a sustained two-year effort. Only in Manhattan did a sustained effort occur; elsewhere, first year SDP efforts were not carried over into the second year either when the office met some opposition from the court to their initial strategy (as in Kings), when other concerns commanded the attention of the District Attorney (as in the Bronx), or when the court's own administrative attention was turned to other major policy issues (as in all the counties with planning for the transition to individual calendaring).

Why were the incentives insufficient to sustain the District Attorneys' concentrated efforts over the full period of the program, despite a continuing need to reduce the pressure on the City's detention facilities? Although this is a complex question, we briefly offer four observations which appear important to understanding the limited impact of the SDP.

First, monetary incentives were offered to the District Attorneys in what was a relatively resource-rich environment; desire for budgetary increases per se, therefore, was not an effective motivator. Second, regardless of whether the prosecutors felt a need for the resources in the incentive pool, budgetary incentives might have been more effective if the offices' performance outcomes had been more publicly visible and thereby contributed more to their reputations; however, the program's visi-

bility was generally low, even within the criminal justice community, and this may have limited the relevance of potential nonmonetary incentives. Third, a program design issue raised by one of the six offices during the program's second year resulted in that office withdrawing from the program. Fourth, norms of the "local legal culture" are a primary determinant of how long felony cases will take to reach disposition in all the New York City jurisdictions, and they are powerfully and deeply embedded as well in the operating structure and assumptions of the court. Indeed, most of the District Attorneys' SDP efforts accepted these basic expectations rather than challenged them. The incentives were apparently not powerful enough to provoke a major effort by the prosecutors to change fundamentally the embedded expectations of their staffs and of the other parties to the disposition process, about how long felony cases should take.

1. <u>The magnitude of the incentives</u>

One of the main issues with the use of budgetary incentives is the meaningfulness of the rewards themselves. Indeed, at the end of the first SDP year, an executive assistant in one New York City District Attorney's office indicated that his office's failure to share in the SDP incentive pool was not a matter of concern because the office was already returning to the City unspent money from its budget.

Between 1980 and 1985, the citywide budget of the six prosecutors' offices doubled from $42,851,000 to $85,892,000 (with the City's direct contribution remaining stable at about 80%). During the same period, the number of Assistant District Attorneys increased by half, from 909 in 1980 to 1357 in 1985.[7] This in-

crease in professional personnel parallels the 57 percent increase in Supreme Court filings and the 50 percent increase in Criminal Court filings over the same period. Based upon caseload estimates for assistants handling Supreme Court cases, these figures suggest that, broadly speaking, personnel were keeping pace with caseload. On average, citywide, each ADA with a Supreme Court caseload would have had about 45 new indictments to handle in 1985 as compared to 43 in 1980.[8]

These data suggest that in 1985 the ADAs in the City's Supreme Courts were carrying about 62 cases during the year, which is the sum of the 45 new indictments per ADA and 17 cases from the felony backlog (the total number of Supreme Court cases pending at the beginning of 1985 divided by the estimated number of ADAs handling felonies). Using the same method of estimation, each ADA would have spent about 25 days on trial during 1985 (the 16,954 days on trial in Supreme Courts citywide recorded in the court's official statistics divided by the estimated number of ADAs with felony caseloads). Although we have no information comparable to the National Center's data on judicial caseloads with which to assess the New York City figures, this caseload

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7 Similarly, despite considerable constraints on the City's finances as a result of the budget crisis of the mid-1970s, the number of ADAs rose citywide between 1975 and 1980 by almost half (from 613 to 909).

8 The information on the number of ADAs and the District Attorneys' budget is from the Office of Management and Budget. The basis for the caseload estimates is a 1984 staffing chart of the Bronx District Attorney's office and discussions with executive ADAs in other offices, leading to the assumption that about half the ADAs citywide would be assigned to handle felony cases. Criminal filing data are from CARS reports.

does not appear excessively large on the face of it and discussions with District Attorneys in other jurisdictions reinforce this perception.[9]

In sum, while District Attorneys' needs for various types of resources is a complex question, it appears reasonable to say that budgetary incentives themselves were not the major factor motivating the various District Attorneys' responses to the SDP. Budgetary and caseload data suggest this as do conversations with executive personnel in all the offices.

Furthermore, it is striking that none of the District Attorneys used the extra resources provided by SDP to build financial incentives for their own staffs as a method of focusing individual ADA's attention on the SDP target cases. Policies made at the executive level of organizations may or may not be reflected in the actions of staff at other levels who implement policy. All the District Attorneys called their assistants' attention to the targeted cases (using somewhat different methods), and SDP dollars were used to hire new ADAs, to establish case-tracking systems, and to augment the overall budgets in a variety of ways directly and indirectly relevant to SDP. But in no office were the funds used as incentives to reward middle-level and trial ADAs who successfully reduced their caseloads of older cases.

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9 Interviews with District Attorneys in five major urban jurisdictions across the country, for example, indicate felony caseloads ranging from 94 felonies per ADA to 191--the latter in Detroit, a jurisdiction with one of the fastest times to disposition for felony cases of any of the 18 courts studied by the National Center in 1983.

2. <u>The observability of the SDP results</u>

It was important for the City to create performance criteria for the prosecutors' offices that were uniform across offices and over time. This was important not only to make the basis for distributing the incentive pool clear and fair but also, in the context of this discussion, to make the results of each office's SDP efforts visible: some received budgetary supplements and some did not. Incentives need not be, and perhaps often are not, monetary; but even when they are expressed in monetary terms they may be perceived by the relevant actors in terms of changes in status, reputation or even power and influence. (See Church and Heumann, Technical Report, Chapter I.)

All of the District Attorneys wanted to "win," to be successful at achieving the goals of the program; the evidence of success was the performance measures and the award of a share of the incentive pool. However, for only one office did the SDP incentive seem to be effectively manifested in this form. In 1983, the Manhattan District Attorney communicated to City officials that his office could speed up case processing and help relieve pressure on the City's detention facilities if additional resources were provided for such an effort. This communication arrived while the SDP was being planned by the City and was a factor in its decision to proceed. Thus, in addition to the prospect of "winning" additional funds through the SDP, the Manhattan District Attorney had a specific, visible commitment to achieving the program's goals and to demonstrating that his office could move toward the desired objective. It is likely that this higher level of incentive is part of the reason why Manhattan produced the most sustained SDP effort among the six offices and why it

was the only one to receive a share of the incentive pool in both program years. None of the other District Attorneys had this level of pre-existing investment in the SDP.

Furthermore, despite the participation of each prosecutor at an early news conference called by the Mayor to announce the SDP, there was very little awareness of the program within the criminal justice community and, therefore, little recognition of the "winners" and "losers" by that community. This lack of visibility of achievement may have limited the impact of the incentive scheme.[10]

Parallel to this lack of visibility in the larger community was a lack of visibility within individual District Attorney's offices; it was difficult for anyone -- line staff or administrators -- to know whether an individual ADA had done a particularly good or bad job at reducing his or her caseload of old cases. Because most of the offices did not explicitly recognize or reward this type of individual performance, the District Attorneys were not particularly successful at motivating changes in their staffs' behavior. Only in the Manhattan District Attorney's Office was the performance of individual ADAs on the specific SDP performance measures highly visible. The Star Reports, discussed in the preceding section, contained monthly lists of cases in each SDP target group by individual ADA; these lists were also organized by Trial Bureau. Therefore, executive assistants to

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10 There is substantial evidence of this from research interviews conducted over the course of the project. More often than not, judges, defense attorneys and even ADAs themselves had never heard of the SDP; sometimes even middle-level managers in the District Attorneys' own offices were not aware there was a specific program underway.

the District Attorney could easily see which trial bureaus were improving and which were not, and trial bureau chiefs could easily see which of their ADAs were contributing to the bureau's overall performance. However, even in Manhattan individual achievements relative to SDP were not linked to salary or promotional considerations.

Finally, there is another side to the visibility issue. The more observable performance results are, and the more attention paid to them, the greater the potential for productive competition to be transformed into conflict by exacerbating tensions that already exist. The City did not wish to generate direct competition among the offices; the incentives themselves were designed to compare each office with its own baseline (and not with other offices) and there was no limit on the number of "winners" who could share in the incentive pool each year. In designing the program, therefore, the City made an attempt to balance the potentially positive and negative implications of rewarding success. While some tensions did develop within the program, the City seems not to have maximized the positive side of performance visibility thereby motivating all the offices to sustained activity.

3. Issues about program design

Another factor in the limited citywide impact of the SDP was the withdrawal in the second year of the Kings County District Attorney's Office. Although this office had had an explicit and successful policy of attempting to reduce case backlogs prior to

the initiation of the SDP and although the office's SDP had some positive effects in 1984 (not enough, though, to receive a share of the incentive pool), the running start did not produce backlog reductions in 1985. At the end of 1982, according to official CARS data, Kings County had a backlog of 1,547 cases over six months old (37% of its total pending caseload). By the end of 1983, with considerable effort according to the District Attorney's staff, the six-month-or-older backlog was down to 1,204 (also 37% of the total). In 1984, the first SDP year, this number was again reduced, to 1,127 (34% of the total). However, by the end of 1985, the second SDP year, the six-month-or-older backlog was up to 1,445 (which was a higher proportion of the total pending caseload than it had been in 1982 -- 39%).

The reason for the withdrawal of the King's County District Attorney's Office from the SDP, according to a letter written to the City in November 1985, was that the office had been unable to persuade City officials to change the SDP funding formula to include a workload factor. Although the office had expressed concern during the original negotiations between the City and the prosecutors that the quality of dispositions was not being taken into account in the performance measures or funding formula, the concern about workload factors did not surface until the office came to believe that it would have shared in the first year incentive pool if workload had been taken into account.[11] City of-

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[11] The quality of disposition issue raised by Kings County was not disregarded by the City; it was simply not included in the performance measures and funding formula. Instead, measures to determine if the quality of dispositions declined as an unintended consequence of the program was included in the overall

ficials, after their own review of the Kings County data, did not agree with this conclusion.

Rather, the City believed in the solidity of the position it took originally in designing the SDP incentives: that workload factor should not be part of the incentive formula. As we have already discussed in Section I of this report, a conclusion of cross-jurisdictional research conducted by the National Center in 1976 and again in 1983 (which is confirmed by other studies) was that there is no relationship between the size of caseloads per judge and either backlog or case processing times; the performance measures used in the SDP, therefore, were not considered "demand-sensitive."[12] In addition, the City noted that, using the method of estimating ADA caseloads discussed above, the felony caseload of Kings County ADAs had actually decreased somewhat between 1983 and 1984, a period during which they had reduced the backlog, and it remained lower and stable between 1984 and 1985, a period during which the backlog soared.

Combining the caseload pending in the Kings County Supreme Court at the beginning of 1983 with the new Supreme Court filings that year (a total of 11,680 cases), each of the estimated 160 ADAs with felony caseloads (half the 320 ADAs in the office in 1984, an estimate based upon an interview with an executive ADA in the Kings County District Attorney's Office) would have had a caseload of approximately 73 cases. For 1984 and 1985, the esti-

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evaluation of the SDP. We have already reviewed our conclusions, drawn from those measures, in Section III-A above, and they are favorable: the SDP appears not to have had unintended consequences on the quality of dispositions.

12 In addition to Church et al., 1978 and Mahoney et al., 1985, see: Flanders, 1977 and Gillespie, 1977.

mates are 65 felony cases per ADA in each year. Therefore, during a year (1983) in which the office had been able to substantially reduce the backlog of over six month pending cases (by 22%) as well as the total number of pending cases (by 23%), ADAs' felony caseloads were high. During the next year, in which some additional progress was made (the backlog of old cases declining by 6% while the overall pending caseload rose only 4%), the ADA felony caseload was down somewhat; and it remained at this level throughout 1985, during which the number of felony cases pending overall rose by 12 percent and the over-six-month backlog rose by 28 percent. These data on prosecutorial caseloads support the conclusion reached by National Center researchers about judicial caseloads:

> Research on both federal and state courts has failed to uncover a link between the criminal caseloads of judges and the pace of litigation. Historical studies documenting the results of both a significant infusion of judicial resources in one court and a substantial decrease in criminal court filings in another reached analogous conclusions: criminal court caseload helps very little to explain differences in processing time either between courts or in the same court over time (Church et al., 1978).

4. Local Legal Culture and the costs of change

The City designed the SDP to leave decisions about the particular structure of the prosecutors' efforts up to the individual District Attorneys for two reasons. First, the District Attorneys are independently elected officials and second, they are

professionals who possess the relevant expertise.[13] But the other side of this coin is that the District Attorney's offices are also deeply embedded in the "local legal culture" with investments in the status quo and resistance to change that are implied in this concept. Indeed, prosecutors must be assumed among those referred to by Judge Joseph B. Williams when he observed that the court's 1982 Felony Backlog Reduction Program "met with bitter resistance from the local legal culture" (1982:14).

Many dimensions of the District Attorneys' programmatic responses to SDP themselves reflect how difficult it is to step outside the prevailing dogma of the New York City Supreme Court that contested felonies typically take about six months from filing to disposition, and that many cases justifiably take longer. Not only are those assumptions challenged by the experience of such places as the Detroit Recorder's Court, among many other jurisdictions that have been studied, but they are challenged by research data reporting on the amount of actual time it takes to prosecute and to defend felonies.

While no information about time actually spent on prosecuting felonies is available for New York City, there are data for three other medium-sized jurisdictions (Jacoby, 1983). Not atypical, prosecutors in a midwest jurisdiction with a population of 300,000 spent an average of 5.2 hours per felony case. Those

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[13] Church and Heumann note that such "bottom up" incentive plans rather than those imposed from above are particularly attractive in areas in which there are no obvious correlates to the problem (as in education where neither school expenditures nor classroom size are related to student performance) or in which substantial variability in organizational structure or climate make uniform approaches to a problem inappropriate. Both conditions apply to many areas of the criminal justice system.

cases resulting in trials took an average of 20.2 hours to prepare and present, guilty pleas took four hours and cases ending in dismissals took 4.7 hours. Cases requiring jury trials took an average of 22.6 hours of prosecutors' time while bench trials took 15.2 hours.

One can also get some idea of the time required to process a criminal case from the time expended by the defense. A recent analysis of indigent defense services in New York City reviewed 18,935 claims submitted by assigned counsel to the Appellate Division for payment. The mean claim for in-court services was $245.55 (9.8 hours); for out-of-court services the mean was $62.30 (4.2 hours) for a total of 14 hours (McConville and Mirsky, 1985 draft:226).

Both sets of data suggest that most of the time which expires in New York City between arrest and disposition in the Supreme Court -- a median of 185, 173, 176 and 153 days for the four citywide SDP disposition samples discussed earlier in this report -- is not spent on preparation or presentation of a case, but on waiting. None of the District Attorneys' SDP plans really addressed this waiting time in any systematic way. When their specific activities are examined in detail, as we did in Section II of this report, it appears that most incorporated the premises about delay that prevail in New York City and that are a cause of delay. With few exceptions -- such as Manhattan's effort to shorten the time from indictment to Supreme Court arraignment, Richmond's attempt to move cases to the Grand Jury more rapidly, and Queens' establishment of formalized felony waiver procedures

-- the District Attorneys' SDP efforts attacked the backlog of old cases without attacking its cause: an unnecessary amount of time between the events needed to process cases.

The growing body of literature on delay reduction and prevention focuses very explicitly on this issue. Despite their diversity, all successful programs around the country are characterized by several key elements, prominent among which is the shortening of times between case processing steps. Had the New York City District Attorneys been able to break through the constraints of the local legal culture they might have taken greater heed of observations such as the following which is based upon the Justice Institute's experience in nearly twenty jurisdictions: "Each locale must design and implement its own system but subject to several universal concepts [among which are that]... events should be scheduled within short time frames...[and that] events should occur when they are scheduled to occur" (Freisen, 1984:6-7).

Admittedly, much of this empirically-based advice is directed at court administrators because most delay reduction and prevention programs rely upon the court. (In recognition of this, we will shortly turn to a discussion of the problems prosecutors in New York City face with the court in their attempts to influence the scheduling of events and what happens at appearances.) Nevertheless, even if prosecutors avoided joint planning with the court or if they were unsuccessful at it (both of which occurred during the SDP), many of these principles are relevant to District Attorney's efforts to reduce delay.

Prosecutors can establish times by which their assistants are to have their case processing tasks accomplished, and times can also be established for ADAs to request the completion of defense tasks and the scheduling of hearings. Once these dates are established by office policy, office case tracking systems can monitor the progress of cases and report to supervising District Attorneys when time schedules are not met, and these supervisors can monitor the progress of each case at each step of the way. This should lessen delay caused when the prosecution does not promptly provide discovery material, respond to a motion, attend a hearing, or appears unprepared, all things that happen in New York City not infrequently (as we shall see below).

This type of rigorous and supervised time frame would give the ADAs better standing in court to urge compliance by the defense and would increase the pressure on the court to be firm with all parties in the case. However, when one ADA interviewed in the course of this research was asked why she was not more forceful in resisting adjournments caused by the defense, she responded that the next time it might well be her office which needed the court's indulgence. Such observations are not rare and demonstrate the local legal culture in action.

If willing to risk change, however, District Attorneys might take more seriously experimenting with incentive systems of their own to increase the likelihood that their assistants comply with shorter time frames and do not face -- at least not frequently -- the need for the court's indulgence. Nothing in this report suggests that incentives fail to work, only that they must be struc-

tured to maximize their effeectiveness. While we have suggested some of the problems with the City's SDP incentives, we are sure that the prosecutors could devise approaches for their own offices that operate even more effectively. Incentives, or more generally, the use of rewards in evaluating performance, are common among professionals and consistent with professional norms and values. The only issue is how goals are ranked and what behavior is rewarded. Speed of case disposition does not appear to be high on the list for New York City District Attorneys. In our interviews with personnel in their offices, we came across no examples in which this aspect of ADAs' jobs was explicitly brought into the formal evaluation process by their supervisors. Even in Manhattan where detailed information on individual ADA's performance relative to the SDP was compiled and computerized, we were told it was not merged with data on other dimensions of their performance which were used in annual performance reviews.

Thus, the resistance of the local legal culture to systematic, procedural change made it difficult to implement basic changes in the way cases are processed in the Supreme Court. None of the District Attorneys substantially challenged the assumption that many felony cases should take six months or more from filing to disposition, despite available data indicating that much of this time is spent in waiting, rather than in substantive work. Although the District Attorneys' efforts demonstrate that managerial changes can have an impact on the number of old pending cases, the District Attorneys generally did not attempt to implement permanent changes in the way cases are

processed by reducing the time between necessary events, although such changes could help prevent cases from getting old in the first place.

C. Case Processing in the NYC Supreme Court: The Court Context of the Speedy Disposition Program

In the course of many assessments of delay in the courts, a value judgment is made about when the passage of time constitutes "delay," and when a caseload becomes a "backlog." The time needed by parties and their lawyers to prepare cases may range from a few minutes in uncomplicated minor cases to several weeks for complex matters where the consequences of conviction are severe. In some instances the passage of time may be desirable in order to allow passions and prejudices to subside; in other instances, it allows memories to fade and participants to weary.

It is inappropriate to characterize every interval of time between the inception of a case and its conclusion as "delay." The word itself is pejorative, connoting an excessive or abnormal period of time. For this reason, care must be taken to draw a distinction between "waiting time" (i.e., the time taken between two points in the caseflow process) and "delay," which is excessive and/or unproductive waiting time (Mahoney, 1979). Much has been written that attempts to define a standard for waiting time, above which delay becomes a policy issue, but there is no consensus:

> [I]t is difficult to decide what should be "normal time" for a case disposition. The reform literature discusses normal time and delay in reference to an _ideal_ time frame (Nimmer, 1978). A time interval cannot be considered normal or abnormal until such judg-

> ments are made. There is no consensus, though about what this ideal time frame should be. The National Advisory Commission [on Criminal Justice, in 1973] recommended sixty days from arrest to the start of trial. The earlier President's Commission (1967) specified a maximum of eighty-one days for the same events. The Federal Speedy Trial Act mandated one hundred days. Other commissions, groups and state speedy trial laws have suggested time frames varying from six months to two years (Neubauer et al., 1981:17).

Even if such speedy trial standards are somewhat arbitrary, one would hope their existence would help contain the problem of delay; unfortunately, this is not necessarily so. As Church and Heumann point out (Technical Report, Chapter I), all such rules contain "exceptions" in the interests of justice or based upon defendant waiver, and exceptions tend to become the rule. Time frames established as a limit tend to become a standard, or even a minimum.

As suggested in the introduction to this report, this process can be seen in New York City's Supreme Court; the court's six month "Standards and Goals" has become the point at which the system begins to take cognizance of the fact that a case is aging rather than the point beyond which none but the extraordinary case is permitted to pass. This is illustrated by a felony median case age at disposition of 185 days during the SDP baseline period and 153 days midway through the program's second year. Furthermore, while the procedures required to process a felony charge through disposition and sentencing would seem to require no more than about six upper court appearances (a common median number for many general jurisdiction trial courts), in New York City's Supreme Court the figure is ten; only about one quarter of the cases take six or fewer appearances.[14]

How has this come to be? The powerful local legal culture shared by New York City's District Attorneys and courts explains this phenomenon by too many cases, too many serious cases, and too few judges; but we have already indicated that, compared to other jurisdictions, this image appears inappropriate. Even if the entire citywide caseload of 30,728 new indictments filed during 1985 had survived the early assessment and disposition process (such as felony waiver procedures) and were sent to trial parts, this would have been 192 cases per Supreme Court judge--the lowest caseload per judge of any jurisdiction except Boston in the 1983 National Center study (Mahoney et al., 1985).[15] The Detroit Recorders Court, which is in many respects the court in the survey most resembling New York City's four largest Supreme Courts, has a ratio of 362 indictments per judge and a median disposition time of 43 days (Ibid.:13).

Neither do these long times to disposition reflect comparatively high trial rates or long trials. Based upon the number of trials commenced in the Supreme Court in 1985 (3,362 according to

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14 Data from the SDP baseline disposition sample; the median upper court appearance figures for each jurisdiction are: Manhattan 9; SNP 8; Bronx 11; Kings 11; Queens 11; and Richmond 9. If all court appearances for felonies are counted (including lower court appearances), the citywide figure rises to 13, the shortest quarter taking eight or fewer.

15 Even if one adds the backlog pending at the beginning of 1985 (11,262) to the new indictments during the year (30,728), the ratio per Supreme Court judge is 264 cases (41,990 divided by the total number of Supreme Court judges which is estimated using the court's method of dividing judge days per year [32,622 for 1985] by 205, the estimated number of days a judge is in court each year).

the Court's CARS data), each judge would begin about 21 trials a year. Based upon the number of days spent on trial that year (16,954), each judge would be in trial about 106 days out of the year.

If the problem is not merely resources (or the seriousness of the caseload, which we have already discussed is no more a problem than in other urban jurisdictions), what is it?

Part of the problem may be what is referred to in New York as the "calendar call" system of scheduling court appearances. Until January 1986 when the Supreme Court shifted to an Individual Assignment System, it used a Master Calendar System in which most cases were assigned to judges in a few calendar parts in which all work preliminary to trial was carried out.[16] Each calendar part scheduled a very large number of cases every day for routine appearances, not because of the large size of its calendar but because appearances were scheduled even when there was nothing for the parties to decide and no evidence or arguments to be heard.

The reason cases are scheduled in this way is the belief that it is necessary for a case to appear before a judge in order for the court to keep track of it, and to facilitate communication between counsel, and between counsel and the court. Indeed

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16 If an evidentiary hearing on a motion was needed, it was not done in the calendar part but reserved until a trial date was set; prior to beginning the trial, the trial part judge would hear evidence on the motion. Queens was the only exception to this process; calendar part judges would send a case requiring such a hearing immediately to a trial part, after which it would be returned to the calendar part for continued hearings until it was ready for trial to begin or was disposed.

both interviews with judges and examination of case records reveals that most Supreme Court cases are calendared at two- or three-week intervals for these purposes.

The calendar call system of judicial supervision appears to have evolved in the early 1970s, in response to a problem of cases becoming "lost" and detained defendants languishing in jail for lack of attention to their cases by their attorneys and the prosecutor. The court recognized that leaving the duty of monitoring the progress of cases to prosecutors and defense attorneys was failing. So the court assigned judges considered particularly adept at moving cases to the calendar parts to conduct regular "calendar calls," thereby hoping to expedite dispositions and to move cases to trial parts more quickly. This resulted in each calendar part scheduling many cases each day, and in attorneys having to be in court on more than one case in more than one calendar part. But because nothing was likely to happen, when the case was called to be monitored, the incentive to appear, to be prepared, to expect some decision diminished. Systemically, what resulted is what one researcher has called "churning" (Mahoney, 1979).[17]

If the time needed to process cases in other jurisdictions is made up of working time and waiting time, in New York it is also made up of "churning time," which is particularly costly

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[17] Although the shift to an Individual Calendar System in 1986 changed the formal structure of the court, the calendar call system appears to continue despite questions about its utility. It is, after all, a long standing tradition in the New York City courts (both the upper and lower courts) and, as such, it is difficult to change without major reorganization of how cases are tracked and managed by judges and other parties to the case.

both in court and attorney resources and in the loss of motivation to accomplish something at an appearance rather than merely adjourn the case yet again. For this reason, the calendar call system itself appears to cause delay. A newspaper article on court administration in 1981 quoted a Queens County defense attorney as saying:

> The present system is extraordinarily wasteful of the time of everyone involved in the criminal justice system -- defense lawyers, judges, prosecutors, complainants and witnesses. Calendar calls in the complex [calendar] parts are interminable and there is no sense of movement on pending cases. Lawyers have learned that to appear on calendar calls is something to be avoided (New York Daily News, November 15, 1981, cited in National Center for State Courts, 1981).

The report goes on to describe just how successful the attorneys are at such avoidance: during one afternoon, seventeen of twenty cases scheduled for appearance in a Supreme Court calendar part were rescheduled without the scheduled event occurring; other spot checks in other calendar parts revealed similar proceedings (Ibid.:16-17).[18]

It is difficult to illustrate the full implications of this repeated scheduling on the number of appearances and the length

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18 It would be a mistake, however, to assume that this "churning" is only a product of the calendar call system: it appears to have been endemic in the New York City courts even before the advent of that particular strategy in the 1970s. Schaffer, writing in 1969 about the relationship between long times to disposition in felony cases and jail overcrowding, comments: "Adjournments are both a cause and a symptom of the delays and backlogs in the courts. Some adjournments are obviously necessary. A defendant may require time to obtain counsel or to prepare a defense, or the prosecution may request a medical examination of the defendants or require time to analyze evidence. But these adjournments constitute a small percentage of the total. Most adjournments are caused either by inef-

of time to disposition for felony cases. But it is clear that for District Attorneys or judges attempting to implement new delay reduction strategies, this system -- and their virtual acceptance of its inevitability -- is a crucial barrier to change. It is perhaps worth the time, therefore, to take the reader through a calendar as a way of observing the process. However, because one needs to see multiple appearances for individual cases, instead of reviewing a single day's calendar in one calendar part, we will review notations on one set of cases made on the bench by one Supreme Court judge over a two-to-three month period in 1984.

These bench notes were kept by Bronx Administrative Judge Burton Roberts while sitting in a part to which only cases pending over nine months were referred. These cases came before him to be expedited, not only because he is the Administrative Judge but because he is recognized as being skilled at such judicial action. Indeed, the description earlier in this report of the 1984 SDP in the Bronx indicated the amount of effort he had committed to backlog reduction. These cases were not chosen as representative of all the backlogged cases on Judge Roberts' calendar, but were selected to illustrate the kinds of common problems prevailing nine months or more after arraignment and which seem to persist and to delay disposition.[19]

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ficiency in the judicial system, tactical maneuvering, or unforeseen intervening factors" (1969:60).

[19] In order to provide a parallel view from another jurisdiction, another old case part, and another judge, we have included in Appendix D a similar set of notes on five cases from a Manhattan Supreme Court long-term detainee part during late 1984.

CASE #1: 10/2: Prosecutor not ready to respond to a speedy trial motion; 10/16: DA to answer motion; 10/26: Motion to be answered by prosecutor; 11/2: Sent to Part 63 with motion.

CASE #2: 10/2: Both counsel on trial; 10/16: Defense counsel on trial; 10/31: Both attorneys not present; 11/1: Discussion of a plea, both sides not ready; 11/15: Psychiatric report to be provided by DA on 11/27; 11/27: Psychiatric report from prosecution psychiatrist awaited; 12/20: Prosecutor to obtain psychiatric report.

CASE #3: 10/9: Police Officer broke hip; 10/24: DA not ready; Police Officer in traction; motion to be answered by prosecutor; answer due 10/12-10/29; 10/29: 11/2 for motion to be answered by ADA; Police Officer in traction; 11/2: Police Officer in traction; 11/7: Police Officer in traction; 11/9: ADA away until 11/23; 11/14: Sent to Part 73 for trial.

CASE #4: 10/4: Both counsel engaged, ready 10/12; 10/12: Both counsel on trial -- defense in New Jersey; 10/25: ADA on trial; Defendant ready 11/1; 11/1: Discussion of a plea, both sides not ready.

CASE #5: 10/4: ADA in Grand Jury; 10/18: Both counsel on trial; 10/22: ADA not ready, new assignment; 10/29: ADA on trial; 11/2: Both on trial; 11/16: Prosecutor not ready; 11/30: ADA on trial; 12/7: ADA on vacation; 12/21: Legal Aid Attorney and ADA on vacation.

CASE #6: 10/5: Prosecutor looking for witness; 10/18: ADA to be married, going on honeymoon; 11/13: Prosecutor has missing witness; 11/15: To trial, Part 81.

CASE #7: 10/9: One defense counsel on trial, one defense counsel sick; prosecutor ready; defense requests 10/19; 10/19: One defense counsel not in case; 10/23: Defense counsel on trial; 10/29: One defendant pleads guilty, one continued.

CASE #8: 10/9: Motion for 10/19; 10/19: Defendant sent to mental hospital; 11/9: Defendant in mental hospital; 11/23: Motion to be answered; 12/11: 12/14 check on papers, recommitted to hospital; 12/14: Indictment dismissed.

CASE #9: 10/10: Prosecutor awaiting psychiatric report; 10/30: ADA to get psychiatric report; 11/9: Defendant ill; 11/16: Defendant fails to appear, bench warrant issued; 11/20: Bail forfeited.

CASE #10: 10/11: Prosecutor and one defense counsel on trial; 10/16: Prosecutor and other defense counsel on trial; 10/30: All counsel on trial; 11/13: Complaining witness reluctant to proceed; 11/15: Complainant to be reinterviewed.

An examination of the reasons for delay in this set of cases, as well as more generally, demonstrates that a major adverse effect of the calendar call system is that, because most appearances in court are not intended to accomplish a specific act, the participants have no expectation they will be required to be prepared, or to be present, even when something could reasonably be expected to occur to move the case ahead. In other words, many court appearances have become meaningless, and are treated as such by attorneys.

Another major adverse affect is the amount of time lost by judges and attorneys (also witnesses and defendants) by the repeated scheduling of cases. This loss of time is increased substantially because the size of the calendar calls on any given day, at least under the Master Calendar System, was so large that judges did not feel they could set hearings for times certain. Consequently a case could not be brought up on the calendar until both counsel happened to be in the courtroom at the same time and no one could predict in advance when this might occur.

The calendar call system, or any other system that brings cases repeatedly before the court without progress, has other disadvantages as well:

o The Department of Correction must produce detained defendants in court when there is nothing to be adjudicated;

o Because most of the time nothing substantive is to occur, the high case volume criminal law practitioners (the ADAs and the Legal Aid Society) may be represented in calendar parts by attorneys assigned there for the day ("catch attorneys") rather than by the attorney assigned to a case. The absence of attorneys assigned to a case frequently prevents the case from progressing to the next step when it is ripe to do so. Frequently, privately retained counsel and 18B attorneys simply do not appear; there is no practice of notifying the court or opposing counsel when one counsel cannot attend an appearance. Thus, at an appearance when one side is unrepresented, a new "adjourn date" is set, usually for two weeks hence, but no one knows if the absent counsel can be present then or not.

o Calendar calls discourage attempts by counsel to resolve issues (substantive, procedural or scheduling) informally through out-of-court discussions. Rather, attorneys have come to rely upon the calendar call for an opportunity to meet with each other, and defense attorneys with their clients.

It is important to note that some experienced calendar part judges have attempted, sometimes successfully, to overcome the problems associated with the calendar call system, and indeed favor its continuation. The remarks of one calendar judge in Manhattan, acknowledged to speed cases rapidly through his part, reflects the views of some other Supreme Court judges in New York, and reveals how they have adapted to the calendar call system.

In discussing the pace of case processing, this judge cautioned against over-emphasizing the number of adjournments in a case. "It doesn't mean that much"; the number of adjournments, he said, is not a good measure of how fast a case is proceeding. He opposes a system in which a judge adjourns a case for three months, specifying that defense motions are due in one month, people's responses in two, and promising a decision at the three-month adjourn date. He says that this system cannot work because when the parties meet in three months, inevitably, one or both of

the first steps will not have been accomplished and everyone will begin again from the beginning, three months later.

This judge reports that he schedules an adjourn date for each necessary event so that he can monitor whether or not they are happening. Even though in the above illustration that would mean three scheduled appearances instead of one, he believes he would have more control of the case. He feels the parties must look to the judge for this monitoring and control function, and that court appearances are the only device he has to monitor case progress and insure periodic conferences of all parties.

He also, in the above case, prefers three appearances to one because it would keep the jailed defendant from "languishing at Riker's for three months without seeing his lawyer and knowing what was happening in his case." The final reason why the judge prefers three dates to one is to keep the lawyers informed about the developments in the case: "cases are dynamic not static; they change all the time." Legal Aid lawyers and ADAs are not always able to reach one another, the judge said, so the court appearance becomes the only reliable way for meeting and communicating.

The judge also believes in strong disciplinary action against attorneys when their actions add to delays (an issue we address further below). He reports he has jailed defense attorneys for being absent or unprepared, and that he has threatened to fine defense attorneys and has gone to Legal Aid supervisors with complaints. He indicates he has never jailed or fined an ADA, but he has spoken to supervisors.

Finally, this judge has attempted to improve the efficiency

of scheduling by requiring private attorneys to provide him with affidavits listing their outstanding cases and schedules. He will not allow attorneys to file notices of appearances without submitting the affidavit. He says he does not require them of Legal Aid, because they all work out of his Calendar Part and he knows their schedules, although he does think judges should be provided with more systematic information of this sort to aid them in scheduling.

D. Some Elements of a More Effective Case Management System

The major element of effective case management that is defeated by the present scheduling system in the Supreme Court, and the element that was also not present in any of the efforts undertaken by the District Attorneys in response to the SDP, is perhaps the one element all researchers and court administrators agree must exist for delay to be reduced: events required to process a case should be scheduled within short time limits, events should occur when they are scheduled and means to enforce the occurrence of those events should be put in place. The ten courts in the National Center's 1983 study that had felony disposition times of 90 days or less all have established regularized procedures for handling specific stages of the case, procedures that are geared to bring all cases to disposition within a short time period and with relatively few court appearances (Mahoney et al., 1985:27). They have done so largely by scheduling an appearance only when something specific is to occur and by building the mutual expectation that all parties are obligated to make that event occur.

In 1982 the New Jersey judiciary began an effort to reduce its trial court congestion. Between 1967 and 1971 indictments had doubled and a record high of 13,000 active indictments were pending, well over one-third more than a year old (Langdon, 1983:40). In 1984, the Administrative Director of the New Jersey Courts reported that the New Jersey Speedy Trial Program,

> Has cut almost in half the median time from complaint to disposition, from twelve months down to seven. By itself seven months is not an accomplishment to draw much attention, but it is a significant improvement. The program continues, and we expect to see further reductions in processing time (Lipscher, 1984:37).

In the New Jersey program the idea of a clear case progression through predictable steps became a rule requirement for scheduling orders and pretrial conferences (Langdon, 1983:163). In the first year of the program, new cases filed were to be indicted within 80 days of arrest, arraigned within 10 days of indictment, and disposed within 150 days of arraignment. Shorter times were provided for cases of defendants in detention and the time frames for both detention and non-detention cases were shortened for the project's second and third years. The third year goals for non-detention cases were 65 days to indictment, 10 days to arraignment and 80 days to disposition. In detention cases the third year goals were 30 days to indictment, 5 days to arraignment and 55 days from arraignment to disposition (Ibid: 109).

Similarly, when the Detroit Recorder's Court was reformed to eliminate backlog and congestion, it was the District Attorney, William Cahellan, who believed that the court needed to set specific time limits for events in the life of a case, and this con-

cept became central to the project as it developed (Neubauer et al., 1981:354).

In this approach to scheduling, the key is the establishment of a trial date on which all parties are expected to be ready for trial. Analyses of New York City Supreme Court calendars are rife with adjournments because attorneys are on trial in other courts and because, even months after a case has been filed, the defense attorney has still not filed motions for discovery or to suppress evidence and has not done other things necessary to prepare for trial that can be accomplished soon after a case begins. As one observer of the New Jersey program comments, "Nothing except the imminent prospect of execution itself is commonly supposed to concentrate the mind more wonderfully than the certainty of facing early trial" (Langdon, 1983:106-107).

The National Center researchers recommend that as a part of the process of court monitoring and controlling the pretrial movement of criminal cases, continuance practices should create a firm expectation that trial will commence on the date scheduled. Trial setting procedures should be designed to nurture this expectation even at the cost of some unoccupied judge time due to unexpected pretrial disposition of scheduled cases (Church et al., 1978:71).

When trial dates are set at arraignment or shortly after, more than one trial must be scheduled for any given trial date to include those cases which will reach a negotiated disposition without trial. But in the New York City Supreme Court, only slightly over one case in ten will go to trial (3,362 trials were commenced out of 30,004 dispositions in 1985). As cases proceed

through their steps to disposition, the number is reduced by attrition. Then as the trial date nears the process is as follows, as described by an experienced trial judge:

> During criminal jury term, I set a larger number of cases on Monday of each applicable week. If the case is not resolved on that day, it is tried immediately thereafter, with the older trial cases receiving priority.... Experience teaches...that [no backlog developed from this procedure]. Most cases will fall as long as the trial dates are perceived as credible. With few exceptions, those that aren't resolved prior to trial settle at the courthouse (Gage, 1984).

When such a system operates effectively it makes reasonable accomodations for attorneys' schedules (Friesen, 1984:6-7); but it also makes it easier for attorneys to plan ahead, and thus to accomodate their schedules to that of the Court. Prosecutors, knowing that defense motions will be filed on a certain date, can plan their time to allow a prompt answer, and court dates can be set to accomodate already existing court commitments of counsel, and vacation schedules. If a particular attorney is simply too occupied to meet reasonable scheduling requirements of the court, another counsel can be brought into the case at once, avoiding the lengthy delays that occur when counsel is changed just before trial.

In New York City, for counsel and judges alike, this type of system would save much time by eliminating the routine, unproductive calendar calls that now occupy so much time. For the District Attorneys and the Legal Aid Society, the "catch" attorneys who now spend the entire day in court simply to be present for their respective offices, can be reassigned to meaningful tasks.

This model of firm trial and intermediate scheduling dates

is not a new idea for the New York City Supreme Court. The Standards of the Administrative Board of the Judicial Conference enacted in 1975 established time periods for trials and also for preliminary proceedings. And the Felony Backlog Reduction Program (FBRP) which then Chief Judge Cooke started in 1982 was a "time-frame" method of case processing, with specific objectives tied to specific dates for the completion of all pre-trial activity (Williams 1982:14). But it failed for several apparent reasons:

- Bitter resistance from the local legal culture;
- Resistance by trial judges to the prohibition against adjournments;
- An unrelated strike by Legal Aid Society Attorneys which occurred during the effort;
- The Master Calendar System made difficult the establishment of trial dates because it was not possible to know the schedule of the judge who would be assigned the trial.

No doubt bitter resistance to change from the local legal culture persists. But the shift to an Individual Assignment System in January 1986 should make it possible at least to know the trial part of a case during the first three or four weeks after arraignment. There remains, however, the difficulty of securing the cooperation of all judges in the effort of setting specific dates for specific events and ensuring they occur. The FBRP tried to address this problem by removing from judges the authority to grant adjournments of certain cases--a device ruled an unlawful invasion of judicial independence. But there is another approach that seems to have more strength of authority, to which we now turn.

Basic to any docket control effort in a metropolitan court is an effective information system. Successful delay reduction efforts have the following critical elements in common:

o Case management procedures. While specific techniques vary, the most successful urban courts closely monitor the progress of cases from filing onward and take charge of scheduling specific events;

o Management information, used by the court to identify problems and monitor the caseload status;

o Calendaring practices and other mechanisms designed to provide accountability for the management of caseloads;

o Attention to detail, involving and utilizing the expertise of non-judicial staff in implementing court policies and programs (Mahoney et al, 1985:1-2).

As with other courts of similar size and complexity, for the New York City Supreme Court, this means ensuring that its computerized management information system performs the following tasks:

o Contains the schedules of judges and attorneys and generates dates for the scheduling of events to minimize conflicts;

o Monitors the progress of cases to determine when a scheduled event does not occur (a pleading not filed, a hearing not held) and why it did not (thus assigning responsibility for the failure), and reports that fact to the assigned trial judge and the Administrative Judge;

o Identifies impending conflicts (a judge or attorney has more than one trial set) so that events can be rescheduled in a timely fashion;

o Provides aggregate case processing reports by judge to trial judges and Administrative Judges.

In at least one court which adopted these procedures and in which an experienced court clerk was also designated as a "Listing Of-

ficer" and given specific responsibility for scheduling contested cases and maintaining contact with the parties, the combination contributed substantially to improved communications and to a reduction of many weeks in delay (Mahoney, 1979:32).

Provided with information about available dates for proceedings and trials, those judges wishing to establish scheduling practices in accordance with modern delay reduction techniques can do so. And the system's ability to compile aggregate reports and reports by judges can allow the productivity of such practices to be measured and compared with those judges who continue a calendar call or similar system.

To support a similar delay reduction effort, the Detroit Recorder's Court maintains a Docket Control Center which keeps track of which courtrooms are not in operation to allow trials to be scheduled, compiles information on numbers of active defendants on each judge's docket, and constructs diagrams which show the proportions of adjournments, dismissals, pleas, and trials for cases set for trial over two week periods. Collecting these measures of behavior not only provides information to the staff of the Docket Control Center, but also influences the behavior itself (Neubauer, 1981:360).

The periodic reports of a similar system to support delay reduction efforts in the New York City Supreme Court should provide information to trial judges, but also to Administrative Judges, of attorneys who fail to meet their obligations to the court to file motions when ordered, to appear in court when scheduled, and to be ready in court when required. Naturally, efforts to change the habits of inattention by attorneys to their

calendar responsibilities, which are apparent from observations of court proceedings, should be first by consultation and persuasion, both with the attorneys themselves, but also with their supervisors, the District Attorneys, the Director of the Legal Aid Society, and the manager of the 18B Panel within the Appellate Division.

But failing to get the cooperation of some attorneys in fulfilling their obligations to the court, either the trial judge or the Administrative Judge must be willing to take disciplinary action. Disciplinary action by the Administrative Judge, in addition to or instead of the trial judge is authorized by Section 31.12 of the Standards for Criminal Terms of the Supreme Court in the City of New York which provides that:

> (a) Whenever an attorney for a defendant or for the People violates any applicable provisions of this part or any direction of the court, without an acceptable excuse, the justice presiding in the part shall take appropriate action and may impose sanctions, and may refer the case to the administrative judge with respect to the violation.
>
> (b) The justice in the part shall prepare a monthly written report of all attorneys who have substantially or persistently violated any applicable provision of the Part. Such report shall be submitted to the administrative judge and the presiding justice of the appropriate Appellate Division. The report may contain the comments or recommendations of the justice presiding.

The computerized case management information system for the Supreme Court should be able to generate these reports for the trial judges and for the Administrative Judge. The Administrative Judge's report would allow a county-wide evaluation of each attorney's conduct. Placing ultimate responsibility for securing compliance by attorneys in the Administrative Judge would secure

uniformity of discipline throughout the court and place additional emphasis upon the needs of the entire court for proper administration. And, under such a system, attorney discipline would be less influenced by concerns about potential political pressure, an issue some observers believe discourages some trial judges from imposing discipline even in the face of clearly obstreperous and contemptuous conduct.

In addition, emphasizing attorney controls, rather than controls on adjournments, preserves the independence of the judges with respect to the cases before them. Indeed, it may often occur that a judge will grant a continuance when one or more of the attorneys fails to appear, or appears unprepared, because to refuse would injure the interests of the People or the defendant, neither of whom have much direct control over the conduct of their counsel.

As indicated above, the New York City Supreme Court moved from a Master Calendar to an Individual Calendar System (the Individual Assignment System) in January of this year. Individual calendaring has much to commend it as the vast literature on court management indicates. The conventional wisdom tends to suggest that master calendars encourage delay because none of the several judges involved in hearing a case are thought to feel personally responsible for it, and that individual calendars encourage such personal responsibility.[20]

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20 The shift from Master Calendars to Individual Assignments may have less impact on criminal dockets in the New York City Supreme Courts than elsewhere in the State. As the Master Calendar System was implemented in New York City, each calendar judge presided over all the proceedings in the cases assigned to

While this idea has not been tested directly, research evidence suggests that this view is overly simplistic; individual calendaring systems are no panacea for delay and they do not in and of themselves ensure change in the local legal culture. The National Center's 1983 research showed that while individual calendaring appeared to be linked to faster case processing in civil cases, this was not so for criminal cases. Instead, the data were inconclusive; while the four slowest criminal courts used master calendars (including the Bronx, Boston, Providence and Newark), the three fastest criminal courts -- Detroit, Oakland, California and San Diego -- also had master calendars.

Furthermore, Queens County, which moved quite substantially toward a system of individual assignment during 1985, did not show any evidence, at least by the end of that year, that backlogs were reduced or processing times improved.

If, however, the court seizes the opportunities the formal IAS system provides for monitoring specific cases and for testing out the effects of different strategies for speeding up cases that could be implemented in individual parts as a means to challenge the local legal culture of which it is a part and which it currently sustains, and if the District Attorneys were to grasp the same opportunities within their own offices for setting standards for times between specific events and for encouraging

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that part, until they were disposed of by plea or dismissal, or sent out to trial. Thus, in many of the nine out of ten cases disposed without trial, all proceedings from arraignment to sentence could well have been before the same judge. (The Queens County procedure of returning cases to calendar parts after trial parts disposed of preliminary evidentiary motions was an exception.)

adherence to them, a substantial change in New York's local legal culture might be made. As the initial National Center research observed, and the follow-up research reiterated,

> As a general rule, the fastest courts tend to be the courts in which the attitudes and concerns of the legal community support a speedy pace of litigation.... Many of the slower courts visited in the project simply do not regard the existing pace of litigation to be a problem; if they address it at all, the response is typically a short-term burst of energy followed by a return to business as usual (Church et al., 1978:83; cited in Mahoney et al., 1985:4).

The calendar call system, when it was established a decade and a half ago, was a useful device for establishing the court's authority to supervise the progress of cases. But more effective and less costly procedures are now available for the courts to perform this function.

Models exist in other courts which can be adapted to monitor the pace of felony prosecutions in the New York City Supreme Courts, and developments in computerized case tracking systems (some of which already exist in the District Attorneys' offices) make it possible to keep track of cases without calling each before the bench every two weeks.

For the purpose of further planning to reduce delay and backlogs in the New York City Supreme Courts, the Supreme Court felony caseload might best be divided into three major categories suggested by an analysis of the SDP quantitative and qualitative data: cases which are uncontested within the first month after indictment; cases which are contested but which proceed through

the system without major problems; and cases in which some problem arises which causes sufficient delay to eventually place them into the backlog category.

Much has been accomplished with respect to expediting the disposition of uncontested cases. The creation by the District Attorneys of procedures for assessing cases promptly as they enter the system, and communicating the assessment to the defense, allows ten percent of all felony cases disposed citywide to reach disposition within three weeks after arrest. The cooperation of the Supreme Court administration in creating special parts for the use of Supreme Court Informations frees Grand Juries for more contested cases, and removes many cases from the caseload.

The middle, and largest, category of cases are those which are contested but proceed without major problems. About half the cases disposed in the Supreme Courts in New York go through their first stages to Indictment within about 17 days, due to the provisions of CPL 180.80 requiring a Grand Jury Indictment or Preliminary Hearing for detained defendants within a few days after arrest. As a result of the successful implementation of this requirement, the New York Supreme Court may well have among the shortest times from the filing of a complaint to transfer by the Criminal Court to the Supreme Court of any metropolitan court system in the nation.

But these cases then tend to lag, compared with other jurisdictions. With a median time to disposition of one hundred and

fifty-three days, the Supreme Court still ranks fourteenth among the eighteen jurisdictions measured by the National Center for State Courts in 1983; only four take more time to dispose of half their felony caseloads. The decrease of median times to disposition which have occurred in conjunction with the SDP, and before SDP, show improvement in handling these cases, but the local legal culture still maintains that six months is a permissible time for processing to disposition. Research on the time needed to prosecute cases, as well as procedures implemented in other jurisdictions, indicate that much shorter times can be achieved through the use of better procedures for scheduling and monitoring.

Although the District Attorneys and Courts have succeeded in reducing the third category, cases in the backlog, over thirty-three percent of the felony caseload remains over six months old. Only four courts in the National Center Study had a higher portion of their caseload pending over six months.

The traditional approach of the Supreme Court to this category of cases which experience some problem and enter the backlog, has been to set up special court parts. Judges who are especially skilled in expediting dispositions, sometimes Administrative Judges, are often assigned to these parts. This is the approach during the period of the SDP, represented by the Long Term Detainee Parts in New York County, the Special Part 88 of the Special Narcotics Prosecutor, the Special or Long Term Detainee Parts in Queens County, the Special 10-K Part in Kings County, and Part 40 of the Administrative Judge in Bronx County.

Two problems seem to defeat this approach. First, the parts

are used intermittently. When a backlog comes to the attention of the Administrative Judge, or is called into attention by something like the SDP, a special part is put into operation until the backlog is reduced to permissible size. In New York County, the LTD Parts were permanent, but received only cases referred by the Calendar Judges, subject to their discretion.

The second problem is that specific difficulties which caused delays in the first place are not addressed until a case ages sufficiently to enter the backlog. Consider, for example, a case discussed earlier in the Bronx Supreme Court which was in the backlog at least in part because the defense attorney had yet to receive a translated copy of the victim's statement, which was in a Nigerian dialect. Obviously, the defense attorney must review the victim's statement before even the first steps can be taken in response to the indictment. But the problem was not addressed until months later when the case had aged sufficiently to enter Part 40.[21]

Any system for monitoring the progress of cases must have the capacity to call to the attention of judges and also court administrators, cases which are falling behind <u>at the point</u> they fail to proceed as required; and someone must be held accountable for rectifying the situation. Only then will the issue creating the delay be dealt with at an early point, rather than much later when the delay has caused them to enter a backlog which is defined by the court as a problem.

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21 Special parts to clean up existing backlogs have been helpful in implementing successful plans to ease congestion in other courts, but only when accompanied by contemporaneous and effec-

There is nothing so serious or so difficult about the overall felony caseload of the New York City Supreme Courts that they cannot adopt the lessons learned from other jurisdictions -- that short dates can be set for proceedings, that the proceedings can occur on the dates set, and that cases can proceed from start to finish in times comparable to those in other modern, conscientious, well-run state courts.

Indeed, the management and political skills, as well as the access to data, possessed by the six District Attorneys in New York City, and their demonstrated interest in speeding case processing times, place them in an ideal position to provide the leadership and administrative resources necessary to make these needed improvements.

The City invested in the Speedy Disposition Program to insure two goals -- the improvement of the quality of justice in the City, and the reduction of detention costs. Justice is improved by efforts which decrease the number of court appearances necessary to complete the processing of cases (victims and other witnesses are inconvenienced less often) and by efforts which shorten the median time to disposition (accused persons are held in detention without a finding of guilt for shorter times and the public does not have to wait so long for just verdicts). During 1984 and 1985, the number of court appearances and average times to disposition declined, at least in part as a result of the SDP.

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tive efforts to reduce delay and prevent cases from entering the backlog.

Thus something was accomplished despite the backlog of extremely old cases which remained about as it was when the SDP began.

With respect to the budgetary impact of the SDP, the amounts added to the District Attorney's budgets between 1984 and 1986 exceeded somewhat the City's estimated savings through reduced detention costs (see Part I, Section E-1). But the efforts undertaken by the District Attorneys in response to the SDP, and those introduced prior to it, will not end; the professional interests of the District Attorneys in reducing backlogs and case processing times remain. The District Attorneys who made case processing times and backlog reduction priorities before and during the SDP will continue to make them a priority. And, perhaps they can address these problems with a keener insight, in light of their SDP experience.

APPENDIX A

Research Methods for the Speedy Disposition Program Measures

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Research Methods for the Speedy Disposition Program Performance Measures

This appendix provides a brief overview of the research procedures used to develop the Speedy Disposition Program performance data. This description reflects Vera's work during 1984, in collaboration with the New York City Criminal Justice Agency, to implement the measurement and data collection strategies decided upon during the City's fall 1983 planning period for the program. It also documents our review of the research implementation process with representatives of the six prosecutors' offices during meetings at OMB in early 1985.

Introduction

As set forth in the City's initial description of the Speedy Disposition Program, two criteria were established to assess its impact on the size of specific target groups of cases in the jurisdiction of each prosecutor. The basic goal for the research in relation to these criteria was to develop systematic procedures for their measurement. These procedures needed to be standardized over time and across jurisdiction and, when possible, to be applicable retrospectively. To ensure that the information sources from which the basic data for the measures were obtained were the same across all jurisdictions and over time, we selected official records systems that were city-wide, computerized, and updated routinely. To ensure uniformity in the measurements themselves, we developed

decision rules for defining and counting the data from these record systems that were applied systematically by computer programs created specifically for this purpose.[1]

After reviewing briefly the rationale for the selection of the sample dates, the remainder of this memorandum discusses the information systems selected and the methods used to compile the data, beginning with the first program target group, the long-term detainees.

Sample Dates

The criteria set by the City for assessing the impact of the Speedy Disposition Program were reductions in the size of two target groups considered central in its decision to initiate this program: the old detainee caseload and the old

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1 Currently available statistical reports by official agencies were not well suited to these measurement tasks. For example, reports available on the number of detainees in New York City's correctional facilities do not typically identify the jurisdiction in which their cases are pending or for how long they have been detained; in addition, the "detainee" category in these figures includes inmates who do not have cases pending in the City's courts and, therefore, are not part of the Speedy Disposition Program's target group.

Similarly, existing Caseload Activity Reports issued by the court on the size and age of the Supreme Court pending caseloads in New York City do not separate out cases in the jurisdiction of the Special Narcotics Prosecutor. In addition, these reports exclude cases pending sentence, and they calculate the age of cases from their initiation in Supreme Court rather than from their Criminal Court arraignment, re-setting the age of cases to zero whenever they have been returned on a warrant. These are all significant limitations when the data are viewed in the context of the City's criteria for the Speedy Disposition Program. Furthermore, these reports are compiled by the court clerks in each jurisdiction in a somewhat different manner, making it difficult to assess the degree of the statistics comparability for the purposes of this research.

Supreme Court caseload pending in the jurisdiction of each of the City's six prosecutors, with special emphasis on reductions in the number of the very oldest cases.

As part of the City's planning for the Speedy Disposition Program, it was decided that the size of these target groups would be measured in each jurisdiction just prior to the start of the program initiative and compared with equivalent measures taken one year later as a means of assessing the impact of the program initiative.[2] The baseline measure was to consist of information on the size and age of the detainee population and the Supreme Court pending caseload compiled for two dates selected toward the end of 1983 (approximately November and/or early December). The dates selected were October 30th and December 5th, 1983; the average for these two dates was considered a reliable measure of the average size of the target groups during this five week period. The dates selected for the first year outcome measure were parallel to those for the baseline measure: October 28th and December 3rd, 1984.[3]

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2 In order to explore what was taking place in each jurisdiction during the first year of this effort that might have influenced changes, if any, in the size of these caseloads, the research also included in-depth interviews with system actors and court observations. While the major focus was the activities of each prosecutor's office in response to the program initiative, we also looked for other, non-program factors at work in the criminal justice system.

3 During planning for the Speedy Disposition Program in the fall of 1983, it became clear that the structure of existing information systems would not permit researchers to reconstruct the composition of the City's detainee population retrospectively, although this could be done with the Supreme Court

The Detainee Caseload Measure

Information System Used. The only existing official record system fitting the criteria noted above (Citywide, computerized, updated routinely) was the New York City Department of Correction's Inmate Information System (IIS). This is a jail management system used by DOC to keep track of defendant admissions and discharges to all DOC facilities, current inmate case status, scheduled court appearances information, and bail status. This system also includes sentenced inmates; it is updated daily and the data are adaptable to statistical analysis.

Specifications for the Sample Data from DOC. The IIS system labels each inmate S (for sentenced prisoners) or nine variations of D (for detainees).[4] Detainees may have multiple

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pending caseload. Therefore, in anticipation that the City's program initiative would move forward in early 1984, researchers sought to preserve the necessary detainee data by requesting that the Department of Correction (DOC) retain on tape essential operational data in their computer system for several dates during the proposed baseline period. The first date for which this process was feasible was October 30th.

A second date (December 4th) was selected five weeks later for which the tape-making process was repeated by DOC. That date was selected because it was closer to the January start-up of the proposed program but not far enough into the month of December to encounter the holiday season or to create a problem in compiling data for a parallel period in 1984. For reasons involving the City's budget cycle, it was necessary that the program performance data for both 1983 and 1984 be available to the City by mid-December 1984; an early December sample date, therefore, provided sufficient time for researchers to collect and analyze comparable data for 1984 in a timely fashion.

[4] For example, DP (parole violator), DC (State sentenced with Court order), DH (State sentenced with hold), etc.

cases with different statuses, and it was not clear how accurately DOC labeled the various statuses of its detainees. Therefore, although some inmates labeled as detainees by DOC have no pending New York City cases, it was decided to request initially from DOC all IIS records with any type of D code, from which the final pool of detainees with pre-sentence or pre-disposition New York City cases would be selected by researchers.

Further, because DOC writes over the data on this on-line system, and removes detainees after discharge, there was no accurate way of retrospectively selecting historical samples of the detainee population. For this reason, the researchers requested DOC "freeze" the detainee records on the morning after each sample date (thus reflecting the status of its inmate population as updated through the sample date), by writing on tape the records of all inmates flagged with any type of detainee code. Because these tapes were made the morning after each sample date, the sample would reflect only those cases that had been admitted on or before the sample date. The tapes prepared by DOC were transferred to the computer system of the New York City Criminal Justice Agency for further processing and analysis.

The data extracted from IIS for each detainee included the date of the most recent admission to a DOC facility, various defendant identifiers, detainee status, and information on up to six dockets or indictments (charge, bail amount, conviction date if any, sentence date if any, discharge code if any).

From these data, the researchers were able to determine the pending status and borough for each detainee, as described in the next section.

Specifications Used to Develop the Detainee Measure. As defined by the City, the target group for the Detainee Measure was detainees pending final disposition or sentence on at least one case in a New York City Court, for whom the number of days between the last DOC admission date and the sample date was greater than or equal to six months (180 days) and less than nine months (270 days), or greater than or equal to nine months (270 days). For Richmond, the single cut-off was greater than or equal to 60 days (2 months).[5]

Because of the program's emphasis on the number of persons in detention, the unit of analysis was the defendant rather than the case. That is, no matter how many indictments or dockets a detainee had pending in a given borough, that detainee was counted only once, even if the indictments/dockets arose from different arrests.

Based upon the city's definition of the detainee target group, researchers established a series of decision rules (or algorithms), which were then written as computer programs to systematically identify and exclude cases that did not fit. These programs were tested and refined using samples of data

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5 Because each jurisdiction was only compared with its own baseline data, the difference in cut-offs did not affect the performance measures.

from the dataset; these data were verified using independent databases maintained by the Unified Court System's OBTS/Meditech and the New York City Criminal Justice Agency's UDIIS systems.

These programs were then used to prepare the detainee database for calculating the performance measures by (1) eliminating defendants who had no cases pending final disposition or sentence in a New York City Court; (2) eliminating any individual indictments or dockets that on or before the sample date had been sentenced or for other reasons no longer had detainee status;[6] and by (3) calculating length of detention and assigning each detainee to one of the six prosecutor's offices.

(1) Defendants whose detainee status in IIS was DN (Coram Nobis), DV (Technical Parole Violator), or DR (State Sentenced with no other cases) were excluded from the analysis, because these types of detainees had no pending New York City cases. Then, defendants who had other detainee status codes, but for whom all their cases had been sentenced or discharged from DOC detention on or before the sample date, were also eliminated from the sample.

(2) The researchers then excluded any individual docket or indictment which had been sentenced on or before the sample date, or had one of the following DOC discharge codes, indicating that this docket or indictment no longer had detention status or never had detention status:

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[6] For example, the case had been dismissed or acquitted, bail was made on that case, or the defendant was released on recognizance on that case.

NS : Dismissed

NAD : ACD

NCD : Conditional, unconditional discharge

NE : Time served sentence

XE : Time expired on sentence

VOP : Violation of Probation

NR : Defendant ROR'd on this case

NP : Defendant Paroled on this case

NB : Bail paid on this case

NF : Fine paid

FW : Fugitive warrant

NPB : Sentenced to probation

CCW : Criminal Court warrant

MW : Material witness

MHC : Mental Health Commitment

CON : Consolidated, superseded indictment

ND : Discharge to other jurisdiction

NA : Acquitted

(3) The remaining detainees, all of whom had at least one docket or indictment pending final disposition or sentence in New York City, were then assigned to one of the six prosecutor's offices as follows: For the five borough District Attorneys, the borough of the docket number was used. When a detainee had pending cases in more than one borough, he was assigned to each of those boroughs. For the small number of cases where the borough code was missing from the docket number, the borough code in DOC's Book and Case Number was

used.[7] Detainees were assigned to the Office of the Special Narcotics Prosecutor when they had an indictment number, any felony drug charge from Article 220 of the Penal Law, and were New York County cases.

After all detainees were assigned to one or more borough District Attorney's office or the Office of the Special Narcotics Prosecutor, the length of their detention was calculated by counting the number of days between the last admission date to DOC up to and including each sample date. If the admission date was missing, as it was in a handful of cases, no length of detention was calculated and the defendant was excluded from the detainee target group for the performance measure.

The Supreme Court Pending Caseload Measure

Information System Used. The only record system available to researchers which met the necessary criteria and which was accessible to statistical analysis was the Offender Based Transaction System (OBTS) of the Unified Court System (UCS) as maintained on the Court's IBM computer in Albany. This summary information system is drawn from the UCS' main OBTS appearance history files in its Meditech system which are up-dated daily from on-line terminals located in each of the New York City courts.

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[7] The Book and Case Number is a unique identifier used for each new admission to DOC; it indicates the borough and court of admission, the year, and a numerical identifier.

Selection of the Initial Samples. Researchers first wrote computer specifications on the basis of which UCS programmers selected initial pools of cases from the over a million records in this cumulative information system. The UCS produced a series of data tapes containing all indictments in the OBTS/IBM system whose records indicated they had entered the New York City Supreme Court on or before each sample date and that they had not exited from the court by that sample date. The tapes also included all indictments in the system for which this status could not be readily established (e.g., the Grand Jury indictment date was missing). The tapes contained all the Criminal Court records and all the Supreme Court records linked to every indictment meeting these specifications. The UCS transferred the tapes to the Computer Center of the City University of New York, where the Vera Institute maintains its computerized research data. They were then processed to estimate the actual size and age of the Supreme Court pending caseloads in each jurisdiction on each sample date and to identify the size of the target groups according to the criteria established by the City for the Speedy Disposition Program.

General Procedures for Developing the Supreme Court Measure. To determine the size and age of the pending caseload on each sample date from the pool of records on the UCS tapes, the following strategy was used. Beginning with the definition of the target groups provided by the City, we established initial decision rules to classify each record in the raw data base along various dimensions. These rules were tested against

sample data in the tapes, and refined according to the completeness of the data found in the records and the validity of the rules in predicting the actual status of the case on the sample date. To verify this, original case records were examined for samples of cases on the tape. (Note: this is a similar strategy to that used in developing the Detainee Measure as described above.)

Specifications for the Supreme Court Pending Caseload Measure. The definition of the Supreme Court target group established by the City for this Speedy Disposition Program performance criterion was as follows: the number of defendants with one or more indictments stemming from the same arrest that were pending disposition or sentence in the Supreme Court on the sample date and that were equal to or greater than eleven months (330 days) old, or between six months (180 days) and eleven months old from the date of the Criminal Court arraignment. The exception to this definition was Richmond, for whose Supreme Court target group a single cut-off was established (eight months, or 240 days).

Thus, the unit of analysis used by the research to count the size of the pending case target group was a "defendant-arrest." Any defendant being processed by the Supreme Court on a sample date who had one or more pending indictments stemming from a single arrest was counted once; if there were co-defendants, each was counted separately.

To determine the number of defendant-arrests pending, each indictment record for each defendant-arrest in the initial pool was examined separately. First those indictments that should not be considered potentially pending were excluded, and then the actual pending status and age of each remaining indictment was established for every sample date. Once this was done, the number of defendants with at least one indictment from a single arrest that was pending over the specified length of time was counted for each date.

The initial set of exclusionary rules applied to all indictments in the data base was as follows:

(1) Indictments were excluded from the pool if the defendant was out on a warrant on the sample date;

(2) Indictments were excluded if the defendant was in the custody of the Department of Mental Hygiene pursuant to CPL 220.15 on the sample date;

(3) Indictments were excluded if the Supreme Court record showed no evidence of any court appearance activity during the sixty days preceeding the sample date. (This exclusionary rule was used primarily to exclude indictments for which the permanent appearance records were incomplete because of computer data entry errors.)

To determine the pending status on a sample date of each indictment remaining in the pool, a series of dates in the court record were examined to ascertain (a) whether the indictment had entered the Supreme Court on or before the sample date (in most cases, this meant whether the defendant had been ar-

raigned), and (b) whether it had exited the Supreme Court after the sample date. "Pending" meant that the indictment was active in the Supreme Court on the sample date and that, by that date, there had been either no final disposition (e.g., an acquittal or dismissal) or no sentence, if there had been a verdict or plea of guilty.

To determine the age of each indictment pending on a sample date, we calculated the number of calendar days between the date of the defendant's Criminal Court arraignment and the sample date, excluding the cumulative number of days the defendant was out on Criminal Court and Supreme Court warrants and on CPL 220.15 holds. For prosecutions initiated by Grand Jury Indictments rather than Criminal Court Complaints ("direct indictments"), the beginning date for calculating age was the date of the defendant's Supreme Court arraignment. If the appropriate arraignment date was missing, the arrest date was used.

Finally, to determine in which jurisdiction an indictment was pending, the county designation contained in the indictment number was used. To determine which indictments were in the jurisdiction of the Office of the Special Narcotics Prosecutor, each defendant-arrest pending in the New York County Supreme Court was examined to determine if any initial indictment associated with that arrest had a felony drug charge (PL 220s) as the top count.

SPEEDY DISPOSITION PROGRAM EVALUATION

PROGRAM IMPACT DATA: BASELINE MEANS (T1) COMPARED TO FIRST YEAR OUTCOME MEANS (T3) AND SECOND YEAR OUTCOME MEANS (T5) FOR SUPREME COURT PENDING CASELOADS AND DETAINEE CASES

CITYWIDE

A-1a. Supreme Court Pending Cases

	BASELINE (T1)*		FIRST YEAR OUTCOME (T3)**		SECOND YEAR OUTCOME (T5)***		T3 - T1 Change During First Year		T5 - T3 Change During Second Year		T5 - T1 Change Across Two Years	
TOTAL PENDING	15,609	100%	15,878	100%	16,791	100%	+269	+1.7%	+913	+5.8%	+1182	+7.6%
< 6 months	8136	52	8930	56	9654	57	+794	+9.8%	+724	+8.1%	+1518	+18.7%
≥ 6 months	7473	48	6948	44	7137	43	-525	-7.0%	+189	+2.7%	-336	-4.5%
(≥ 6 < 11)	(4325)	(28)	(4547)	(29)	(4426)	(26)	(+222)	(+5.1%)	(-121)	(-2.7%)	(+101)	(+2.3%)
(≥ 11)	(3148)	(20)	(2401)	(15)	(2711)	(16)	(-747)	(-23.7%)	(+310)	(+12.9%)	(-437)	(-13.9%)
Age Median Case	172 days		158 days		151 days		-14 days		-7 days		-21 days	

A-1b. Detainees

	BASELINE (T1)*		FIRST YEAR OUTCOME (T3)**		SECOND YEAR OUTCOME (T5)***		T3 - T1 Change During First Year		T5 - T3 Change During Second Year		T5 - T1 Change Across Two Years	
TOTAL PENDING	6673	100%	7048	100%	7681	100%	+375	+5.6%	+633	+9.0%	+1008	+15.1%
< 6 months	5210	78	5641	80	6040	79	+431	+8.3%	+399	+7.1%	+830	+15.9%
≥ 6 months	1463	22	1407	20	1641	21	-56	-3.8%	+234	+16.6%	+178	+12.2%
(≥ 6 < 9)	(791)	(12)	(803)	(11)	(867)	(11)	(+12)	(+1.5%)	(+64)	(+8.0%)	(+76)	(+9.6%)
(≥ 9)	(672)	(10)	(604)	(9)	(775)	(10)	(-68)	(-10.1%)	(+171)	(+28.3%)	(+103)	(+15.3%)
Age Median Case	69.5 days		68 days		69 days		-1.5 days*		+1 day		-0.5 days	

* T1 : mean of Baseline Sample dates (10/30/83 & 12/04/83)
** T3 : mean of First Year Outcome Sample dates (10/28/84 & 12/02/84)
*** T5 : mean of Second Year Outcome Sample dates (10/27/85 & 12/01/85)

SPEEDY DISPOSITION PROGRAM EVALUATION

PROGRAM IMPACT DATA: BASELINE MEANS (T1) COMPARED TO FIRST YEAR OUTCOME MEANS (T3) AND SECOND YEAR OUTCOME MEANS (T5) FOR SUPREME COURT PENDING CASELOADS AND DETAINEE CASES

MANHATTAN DISTRICT ATTORNEY

A-2a. Supreme Court Pending Cases

	BASELINE (T1)*		FIRST YEAR OUTCOME (T3)**		SECOND YEAR OUTCOME (T5)***		T3 - T1 Change During First Year		T5 - T3 Change During Second Year		T5 - T1 Change Across Two Years	
TOTAL PENDING	4275	100%	3906	100%	3540	100%	-369	-8.6%	-366	-9.4%	-735	-17.2%
< 6 months	2465	58	2385	61	2247	63	-80	-3.2%	-138	-5.8%	-218	-8.8%
≥ 6 months	1810	42	1521	39	1293	37	-289	-16.0%	-228	-15.0%	-517	-28.6%
(≥ 6 < 11)	(1048)	(25)	(993)	(25)	(757)	(21)	(-55)	(-5.2%)	(-236)	(-23.8%)	(-291)	(-27.8%)
(≥ 11)	(762)	(18)	(528)	(14)	(536)	(15)	(-234)	(-30.7%)	(+8)	(+1.5%)	(-226)	(-29.7%)
Age Median Case	149.5 days		141 days		133.5 days		-8.5 days		-7.5 days		-16 days	

A-2b. Detainees

	BASELINE (T1)*		FIRST YEAR OUTCOME (T3)**		SECOND YEAR OUTCOME (T5)***		T3 - T1 Change During First Year		T5 - T3 Change During Second Year		T5 - T1 Change Across Two Years	
TOTAL PENDING	2540	100%	2529	100%	2411	100%	-11	-0.4%	-118	-4.7%	-129	-5.1%
< 6 months	2103	83	2121	84	2049	85	+18	+0.9%	-72	-3.4%	-54	-2.6%
≥ 6 months	438	17	408	16	363	15	-30	-6.8%	-45	-11.0%	-75	-17.1%
(≥ 6 < 9)	(256)	(10)	(266)	(11)	(211)	(9)	(+10)	(+3.9%)	(-55)	(-20.7%)	(-45)	(-17.6%)
(≥ 9)	(182)	(7)	(142)	(6)	(152)	(6)	(-40)	(-22.0%)	(+10)	(+7.0%)	(-30)	(-16.5%)
Age Median Case	60.5 days		60.5 days		55 days		none		-5.5 days		-5.5 days	

* T1 : mean of Baseline Sample dates (10/30/83 & 12/04/83)
** T3 : mean of First Year Outcome Sample dates (10/28/84 & 12/02/84)
*** T5 : mean of Second Year Outcome Sample dates (10/27/85 & 12/01/85)

SPEEDY DISPOSITION PROGRAM EVALUATION
PROGRAM IMPACT DATA: BASELINE MEANS (T1) COMPARED TO FIRST YEAR OUTCOME MEANS (T3) AND SECOND YEAR OUTCOME MEANS (T5) FOR SUPREME COURT PENDING CASELOADS AND DETAINEE CASES
BRONX DISTRICT ATTORNEY

A-3a. Supreme Court Pending Cases

	BASELINE (T1)*		FIRST YEAR OUTCOME (T3)**		SECOND YEAR OUTCOME (T5)***		T3 - T1 Change During First Year		T5 - T3 Change During Second Year		T5 - T1 Change Across Two Years	
TOTAL PENDING	3129	100%	2823	100%	3479	100%	-306	-9.8%	+656	+23.2%	+350	+11.2%
< 6 months	1468	47	1681	60	2081	60	+213	+14.5%	+400	+23.8%	+613	+41.8%
≥ 6 months	1661	53	1142	40	1398	40	-519	-31.2%	+256	+22.4%	-263	-15.8%
(≥ 6 < 11)	(926)	(30)	(746)	(26)	(917)	(26)	(-180)	(-19.4%)	(+171)	(+22.9%)	(-9)	(-1.0%)
(≥ 11)	(735)	(23)	(396)	(14)	(481)	(14)	(-339)	(-46.1%)	(+85)	(+21.5%)	(-254)	(-34.6%)
Age Median Case	193.5 days		144.5 days		141 days		-49 days		-3.5 days		-52.5 days	

A-3b. Detainees

	BASELINE (T1)*		FIRST YEAR OUTCOME (T3)**		SECOND YEAR OUTCOME (T5)***		T3 - T1 Change During First Year		T5 - T3 Change During Second Year		T5 - T1 Change Across Two Years	
TOTAL PENDING	1385	100%	1461	100%	1758	100%	+76	+5.5%	+297	+20.3%	+373	+26.9%
< 6 months	943	68	1128	77	1329	76	+185	+19.6%	+201	+17.8%	+386	+40.9%
≥ 6 months	442	32	333	23	429	24	-109	-24.7%	+96	+28.8%	-13	-2.9%
(≥ 6 < 9)	(214)	(16)	(193)	(13)	(220)	(13)	(-21)	(-9.8%)	(+27)	(+14.0%)	(+6)	(+2.8%)
(≥ 9)	(228)	(16)	(140)	(10)	(210)	(12)	(-88)	(-38.6%)	(+70)	(+50.0%)	(-18)	(-7.9%)
Age Median Case	96 days		77.5 days		82 days		-18.5 days		+4.5 days		-14 days	

* T1 : mean of Baseline Sample dates (10/30/83 & 12/04/83)
** T3 : mean of First Year Outcome Sample dates (10/28/84 & 12/02/84)
*** T5 : mean of Second Year Outcome Sample dates (10/27/85 & 12/01/85)

SPEEDY DISPOSITION PROGRAM EVALUATION
PROGRAM IMPACT DATA: BASELINE MEANS (T1) COMPARED TO FIRST YEAR OUTCOME MEANS (T3) AND SECOND YEAR OUTCOME MEANS (T5) FOR SUPREME COURT PENDING CASELOADS AND DETAINEE CASES
SPECIAL NARCOTICS PROSECUTOR

A-4a. Supreme Court Pending Cases

	BASELINE (T1)*		FIRST YEAR OUTCOME (T3)**		SECOND YEAR OUTCOME (T5)***		T3 - T1 Change During First Year		T5 - T3 Change During Second Year		T5 - T1 Change Across Two Years	
TOTAL PENDING	1130	100%	1133	100%	1145	100%	+3	+2.7%	+12	+1.1%	+15	+1.3%
< 6 months	605	54	643	57	708	62	+38	+6.3%	+65	+10.1%	+103	+17.0%
≥ 6 months	525	46	490	43	437	38	-35	-6.7%	-53	-10.8%	-88	-16.8%
(≥ 6 < 11)	(268)	(24)	(344)	(30)	(286)	(25)	(+76)	(+28.4%)	(-58)	(-16.9%)	(+18)	(+6.7%)
(≥ 11)	(257)	(23)	(146)	(13)	(152)	(13)	(-111)	(-43.2%)	(+6)	(+4.1%)	(-105)	(-40.9%)
Age Median Case	163.75 days		161.5 days		134 days		-2.25 days		-27.5 days		-29.75 days	

A-4b. Detainees

	BASELINE (T1)*		FIRST YEAR OUTCOME (T3)**		SECOND YEAR OUTCOME (T5)***		T3 - T1 Change During First Year		T5 - T3 Change During Second Year		T5 - T1 Change Across Two Years	
TOTAL PENDING	281	100%	275	100%	324	100%	-6	-2.1%	+49	+17.8%	+43	+15.3%
< 6 months	230	82	236	86	257	79	+6	+2.6%	+21	+8.9%	+27	+11.7%
≥ 6 months	51	18	39	14	68	21	-12	-23.5%	+29	+74.4%	+17	+33.3%
(≥ 6 < 9)	(33)	(12)	(22)	(8)	(39)	(12)	(-11)	(-33.3%)	(+17)	(+77.3%)	(+6)	(+18.2%)
(≥ 9)	(18)	(6)	(17)	(6)	(29)	(9)	(-1)	(-5.6%)	(+12)	(+70.6%)	(+11)	(+61.1%)
Age Median Case	74.5 days		59.5 days		68.5 days		-15 days		+9 days		-6 days	

* T1 : mean of Baseline Sample dates (10/30/83 & 12/04/83)
** T3 : mean of First Year Outcome Sample dates (10/28/84 & 12/02/84)
*** T5 : mean of Second Year Outcome Sample dates (10/27/85 & 12/01/85)

SPEEDY DISPOSITION PROGRAM EVALUATION
PROGRAM IMPACT DATA: BASELINE MEANS (T1) COMPARED TO FIRST YEAR OUTCOME MEANS (T3) AND SECOND YEAR OUTCOME MEANS (T5) FOR SUPREME COURT PENDING CASELOADS AND DETAINEE CASES
BROOKLYN DISTRICT ATTORNEY

A-5a. Supreme Court Pending Cases

	BASELINE (T1)*		FIRST YEAR OUTCOME (T3)**		SECOND YEAR OUTCOME (T5)***		T3 - T1 Change During First Year		T5 - T3 Change During Second Year		T5 - T1 Change Across Two Years	
TOTAL PENDING	3896	100%	4321	100%	4696	100%	+425	+10.9%	+375	+8.7%	+800	+20.5%
< 6 months	1938	50	2180	50	2535	54	+242	+12.5%	+355	+16.3%	+597	+30.8%
≥ 6 months	1958	50	2141	50	2162	46	+183	+9.3%	+21	+1.0%	+204	+10.4%
(≥ 6 < 11)	(1111)	(29)	(1344)	(31)	(1309)	(28)	(+233)	(+21.0%)	(-35)	(-2.6%)	(+198)	(+17.8%)
(≥ 11)	(847)	(22)	(797)	(18)	(853)	(18)	(-50)	(-5.9%)	(+56)	(+7.0%)	(+6)	(+0.7%)
Age Median Case	181 days		177.5 days		165 days		-3.5 days		-12.5 days		-16 days	

A-5b. Detainees

	BASELINE (T1)*		FIRST YEAR OUTCOME (T3)**		SECOND YEAR OUTCOME (T5)***		T3 - T1 Change During First Year		T5 - T3 Change During Second Year		T5 - T1 Change Across Two Years	
TOTAL PENDING	1788	100%	2054	100%	2276	100%	+266	+14.9%	+222	+10.8%	+488	+27.3%
< 6 months	1354	76	1538	75	1655	73	+184	+13.6%	+117	+7.6%	+301	+22.2%
≥ 6 months	434	24	516	25	622	27	+82	+18.9%	+106	+20.5%	+188	+43.3%
(≥ 6 < 9)	(214)	(12)	(250)	(12)	(307)	(13)	(+36)	(+16.8%)	(+57)	(+22.8%)	(+93)	(+43.5%)
(≥ 9)	(220)	(12)	(266)	(13)	(315)	(14)	(+46)	(+20.9%)	(+49)	(+18.4%)	(+95)	(+43.2%)
Age Median Case	72.5 days		71.0 days		85 days		-1.5 days		+14 days		+12.5 days	

* T1 : mean of Baseline Sample dates (10/30/83 & 12/04/83)
** T3 : mean of First Year Outcome Sample dates (10/28/84 & 12/02/84)
*** T5 : mean of Second Year Outcome Sample dates (10/27/85 & 12/01/85)

SPEEDY DISPOSITION PROGRAM EVALUATION
PROGRAM IMPACT DATA: BASELINE MEANS (T1) COMPARED TO FIRST YEAR OUTCOME MEANS (T3) AND SECOND YEAR OUTCOME MEANS (T5) FOR SUPREME COURT PENDING CASELOADS AND DETAINEE CASES
QUEENS DISTRICT ATTORNEY

A-6a. Supreme Court Pending Cases

	BASELINE (T1)*		FIRST YEAR OUTCOME (T3)**		SECOND YEAR OUTCOME (T5)***		T3 - T1 Change During First Year		T5 - T3 Change During Second Year		T5 - T1 Change Across Two Years	
TOTAL PENDING	3008	100%	3523	100%	3822	100%	+515	+17.1%	+299	+8.5%	+814	+27.1%
< 6 months	1563	52	1949	55	2018	53	+386	+24.7%	+69	+3.5%	+455	+29.1%
≥ 6 months	1445	48	1574	45	1804	47	+129	+8.9%	+230	+14.6%	+359	+24.8%
(≥ 6 < 11)	(927)	(31)	(1065)	(30)	(1127)	(30)	(+138)	(+14.9%)	(+62)	(+5.8%)	(+200)	(+21.6%)
(≥ 11)	(518)	(17)	(509)	(14)	(677)	(18)	(-9)	(-1.7%)	(+168)	(+33.0%)	(+159)	(+30.7%)
Age Median Case	173.5 days		162 days		167 days		-11.5 days		+5 days		-6.5 days	

A-6b. Detainees

	BASELINE (T1)*		FIRST YEAR OUTCOME (T3)**		SECOND YEAR OUTCOME (T5)***		T3 - T1 Change During First Year		T5 - T3 Change During Second Year		T5 - T1 Change Across Two Years	
TOTAL PENDING	1012	100%	1103	100%	1256	100%	+91	+9.0%	+153	+13.9%	+244	+24.1%
< 6 months	826	82	921	83	1025	82	+95	+11.5%	+104	+11.3%	+199	+24.1%
≥ 6 months	186	18	182	17	232	18	-4	-2.2%	+50	+27.5%	+46	+24.7%
(≥ 6 < 9)	(120)	(12)	(118)	(11)	(132)	(11)	(-2)	(-1.7%)	(+14)	(+11.9%)	(+12)	(+10.0%)
(≥ 9)	(66)	(7)	(64)	(6)	(100)	(8)	(-2)	(-3.0%)	(+36)	(+56.3%)	(+34)	(+51.5%)
Age Median Case	61 days		64 days		64 days		+3 days		none		+3 days	

* T1 : mean of Baseline Sample dates (10/30/83 & 12/04/83)
** T3 : mean of First Year Outcome Sample dates (10/28/84 & 12/02/84)
*** T5 : mean of Second Year Outcome Sample dates (10/27/85 & 12/01/85)

SPEEDY DISPOSITION PROGRAM EVALUATION
PROGRAM IMPACT DATA: BASELINE MEANS (T1) COMPARED TO FIRST YEAR OUTCOME MEANS (T3) AND SECOND YEAR OUTCOME MEANS (T5) FOR SUPREME COURT PENDING CASELOADS AND DETAINEE CASES
RICHMOND DISTRICT ATTORNEY

A-7a. Supreme Court Pending Cases

	BASELINE (T1)*		FIRST YEAR OUTCOME (T3)**		SECOND YEAR OUTCOME (T5)***		T3 - T1 Change During First Year		T5 - T3 Change During Second Year		T5 - T1 Change Across Two Years	
TOTAL PENDING	173	100%	174	100%	110	100%	+1	+0.6%	-64	-36.8%	-63	-36.4%
< 8 months	123	71	117	67	80	73	-6	-4.9%	-37	-31.6%	-43	-35.0%
≥ 8 months	50	29	57	33	30	27	+7	+14.0%	-27	-47.4%	-20	-40.0%
Age Median Case	160.5 days		165 days		159 days		+4.5 days		-6 days		-1.5 days	

A-7b. Detainees

	BASELINE (T1)*		FIRST YEAR OUTCOME (T3)**		SECOND YEAR OUTCOME (T5)***		T3 - T1 Change During First Year		T5 - T3 Change During Second Year		T5 - T1 Change Across Two Years	
TOTAL PENDING	75	100%	89	100%	86	100%	+14	+18.7%	-3	-3.4%	+11	+14.7%
< 2 months	48	64	45	52	50	58	-3	-6.3%	+5	+11.1%	+2	+4.2%
≥ 2 months	27	36	44	49	36	42	+17	+63.0%	-8	-18.2%	+9	+33.3%
Age Median Case	35 days		51 days		43 days		+16 days		-8 days		+8 days	

* T1 : mean of Baseline Sample dates (10/30/83 & 12/04/83)
** T3 : mean of First Year Outcome Sample dates (10/28/84 & 12/02/84)
*** T5 : mean of Second Year Outcome Sample dates (10/27/85 & 12/01/85)

APPENDIX B

Research Methods for the Disposition Analysis

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Research Methods for the Disposition Analysis

Introduction

In order to generate reliable and timely data that go to the broader issues of the Speedy Dispositional Program's impact on the criminal justice system is a difficult research task, given the open-ended nature of the City's program. District Attorneys have introduced changes at a variety of points in the court process. The nature of their efforts has changed as the program period proceeded. In addition, initiation of many of the cases that have been processed through the courts during the program period does not coincide with the beginning of the Speedy Disposition Program, nor will the case dispositions necessarily coincide with the interim or final points of measuring program performance. For these reasons, the research has generated a series of statistical "snapshots" of key points in the court process taken at intervals throughout the program period.

Specifically, to provide a detailed picture of changes in the composition of cases being disposed in each borough over the course of the program, the Institute has drawn samples of cases filed either in the Criminal Court or directly in the Supreme Court, and disposed at four points in time: October and November, 1983 (the baseline period), May and June, 1984 (mid-year Year 1), October and November, 1984 (end of Year 1), and May and June, 1985 (mid-year Year 2). Focusing on samples of dispositions has distinct advantages in identifying the impact of the District Attorneys' initiatives that occur at the very beginning

of the program while at the same time permitting the research to track effects that may not show up for many months.

This approach, however, has the drawback of including, in each sample, cases that came into the court system at widely varying points in time. However, it is felt that, while certain cases in the Year 1 and Year 2 samples may have been filed pre-Speedy Disposition, when the time period of disposition is used as the sampling frame, the cases will have been processed by the court and disposed during time frames relevant to the program evaluation. Thus, while some caution is necessary for interpretation, the problem of different filing dates does not undermine the use of these samples to analyze the impact of the Speedy Disposition Program on dispositional outcomes.

Thus, these data provide a reasonably comprehensive picture of the changes that occurred at key points in the dispositional process in each jurisdiction during the course of this program. In conjunction with the more qualitative material gathered by the Institute from research interviews and observations and reported in Section II of the Final Report, these samples provide a rather detailed understanding of what the District Attorneys initiated and the impact of their efforts.

Purpose of the Analysis

Generally speaking, the purpose of the dispositional analysis is to determine whether, within each of the six jurisdictions studied, there are any changes in the outcomes of the disposition of cases over the time period when Speedy Disposition was in

effect. Strictly speaking, then, this type of analysis is termed an "impact" analysis. Specifically, the following general areas of interest are explored:

-- Criminal Court charging and indicting patterns;
-- Criminal Court bail setting patterns;
-- Supreme Court charging patterns;
-- Mode of Supreme Court dispositions;
-- General descriptions of Supreme Court sentences.

In order to carry out the first of the analyses listed above, we confine our study to those cases disposed in Criminal Court during the sample time periods; this will include cases with a final disposition in Criminal Court, as well as those whose lower court disposition was a transfer to the Surpeme Court for prosecution under an indictment. The remainder of the analyses listed confine themselves to two separate groups -- those cases transferred to Supreme Court during one sample period, or those cases with a final disposition in Supreme Court during the sample periods.

Rationale for Selecting the Sample Dates Used

In order to assess the impact, if any, that the Speedy Disposition Program had on the outcomes of cases, it is first necessary to have a pre-program period against which the program years could be measured. Additionally, this baseline time period should be as close to the time of program implementation as possible in order to control for other potentially confounding influences (such as number of judges, or numbers of cases filed in a given year). Thus, the closest two-month period before the

Speedy Disposition Program started, excluding the holidays (i.e., December), was used as the baseline period. These months were October and November, 1983.

For measuring the impact of the first year of the program, two points in time were used, one in the middle of the year (May and June, 1984), and one at the end of the year (October and November, 1984). These two periods were chosen so that we could observe any changes in the prosecutorial process which might occur during the first year, at six month intervals. It was assumed that it would take approximately six months to get the program operational (hence the first six month snapshot); additionally, it was important to get a measure at the end of the first year. To assure comparability to the baseline year, the same two-month period was used at the end of Year 1.

Finally, in an attempt to provide some information about the second year of the project, a mid-year 1985 sample was selected (May and June, 1985). Because the research had to complete data collection by the end of Year 2 to complete a final report in early 1986, it was not possible to include a disposition sample for the end of the second year. The program performance measures for the end of Year 2 must suffice for measuring impact in the second half of that time period.

Specific Analyses Undertaken

What follows is a brief description of the specific analyses we carried out on each of these sub-samples in order to explore changes, if any, over time in charging, indicting, bail setting,

disposition and sentencing. For each jurisdiction, the analysis was carried out by top charge at arrest. We selected the major charge types in each jurisdiction (as determined by the volume of cases disposed) for analysis.

a) For cases disposed in Criminal Court including by transfer to Supreme Court:

i) The proportion for which the severity level of the Criminal Court arraignment charge as determined by the prosecutor was lower than that of the arrest charge;

ii) The proportion indicted;

b) For cases transferred to the Supreme Court (i.e., indicted):

iii) The proportion for which the severity level of the indictment charge was lower than that of the arrest charge;

iv) The proportion released on recognizance and the proportion for whom a high bail was set at Criminal Court arraignment, and the proportion detained at arraignment (i.e., those remanded or who failed to make bail);

c) For cases disposed in the Supreme Court:

v) The proportion of guilty pleas;

vi) The proportion which went to trial;

vii) The proportion receiving a sentence other than felony imprisonment (i.e., over one year).[1]

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1 In order to assess the seriousness of sentencing practices, we also collected information on the minimum and maximum sentence ordered. However, there were substantial amounts of missing data in the minimum sentencing field. Because the length of time an offender must spend until parole is determined by both the minimum and the maximum, we decided not to report these data. Although we examined them and found no changes of relevance, we cannot be sure that conclusion is correct.

Information System Used

The only record system available to researchers which met the necessary criteria of uniformity across borough, automation of information, and accessibility to statistical analysis was the Offender Based Transaction System (OBTS) of the Unified Court System (UCS) as maintained on the Court's IBM computer in Albany. This summary information system is drawn from the UCS' main OBTS appearance history files in its Meditech system which are updated daily from on-line terminals located in each of the New York City courts.

Specification of Cases Included in the Disposition Sample Data Base

Within the OBTS system, all of the court records for a specific defendant, which stem from one specific arrest, are linked by a key number. The unit of analysis for this part of the study matches that used in the pending case analysis, and is a "defendant-arrest." All of the records in a given case, both Criminal Court and Supreme Court, where applicable, were used in this analysis. The specifications for including a case (i.e., the defendant-arrest and all of the associated records) were the following:

1. There was one record, either a docket or an indictment, with a disposition date within one of the four two-month time periods which specified the sample dates; or,

2. If the disposition date was blank, there was a sentence date within one of the same two-month periods.

For cases where one of these criteria were met, the data items for all of the records (dockets and indictments, excluding individual identifiers) were then placed on a data tape for analysis.

Decision Rules Used for Specifying the Unit of Analysis

Because most cases processed through the criminal justice system have more than one court record, it was important to specify a single measure characterizing a case in terms of its most important disposition. Thus, a disposition hierarchy was developed. For those dispositions occurring during the sample period, a disposition in Supreme Court was selected as more important than one occurring in Criminal Court. Further, cases where the disposition was a conviction were selected as more significant than those where the disposition was, for example, a dismissal. Given this order of importance, the following dispositional hierarchy was developed. The list is given in order of severity, with the most severe first.

1. Cases with a Supreme Court conviction disposition, _indicted_ by the Grand Jury, _without_ a lower court transfer during the sample period.

2. Cases with a Supreme Court conviction disposition, _indicted_ by the Grand Jury, _with_ a lower court transfer during the sample period.

3. Cases with a Supreme Court conviction disposition, transferred through a Superior Court Information (_SCI_), _without_ the transfer during the sample period.

4. Cases with a Supreme Court conviction disposition, transferred through an _SCI_, _with_ the transfer during the sample period.

5. Cases with a Supreme Court dismissal.
6. Cases with a Supreme Court disposition of a transfer to another court (e.g., to Family Court).
7. Cases with a Criminal Court disposition of Transfer to Supreme Court.
8. Cases with a Criminal Court conviction disposition.
9. Cases with a Criminal Court disposition of a transfer to another court (other than the Supreme Court).
10. Cases with a Criminal Court dismissal.

In order to select the most severe disposition, a computer program was written to read each of the records in a given case (i.e., defendant-arrest). The program checked each record sequentially, first to see whether there was a disposition on that record which occurred during the sample period. If there was a "valid" disposition (i.e., one which occurred in the time frame), the type of that disposition was recorded. The next record in the case was read, and the same check made (i.e., whether there was a valid disposition during the sample time frame). If there was a valid disposition on the subsequent record, the severity of the second disposition was checked against that of the first, and the most severe, according to the hierarchy given above, was retained. This checking and substitution continued, throughout all of the records in a given case. As each new record was read, only the most severe valid disposition was retained for classification purposes. Thus, after all of the case records were read, the docket or indictment record with the most severe disposition occurring during the sample time period remained for case classification.

Exclusions from Hierarchy

Once a disposition was determined to be "valid," additional factors were checked and could ultimately exclude that disposition. This was done because we wanted to make sure that we captured the most severe disposition of a case. First, if the most severe disposition found during the sample period was a dismissal in either Supreme or Criminal Court, and there was, within the case record, a prior conviction in either court, the case was excluded from our analysis. This was based on the logic that it was the preceding conviction, one outside our sample period, and not the dismissal falling in our time frame, that was the most important outcome of that case.[2] We also checked, for these dismissals, whether there were any dockets or indictments still not disposed. If there were, we also excluded the case from our analysis, because there was no way of determining whether the subsequent disposition (i.e., that occurring after our sampling frame) would be more severe than the dismissal.

Second, if all of the Supreme Court records contained in a case had no disposition (or sentence) during our sample period, this case was considered still "open" and dropped from the analysis, even though there may have been a prior conviction in Criminal Court.

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[2] It is known that prosecutors, after having obtained a conviction, may subsequently dismiss other charges remaining in the case. If that dismissal was the disposition which fell into our time frame, it would be incorrect to classify the "most severe disposition" of that case as a dismissal.

A third way a case was deleted from the analysis was if the sample period disposition was in the Criminal Court, but there had been a previous Supreme Court conviction. In this case, we felt that the Supreme Court disposition was, in fact, the most severe, and that the case should not be characterized by a subsequent disposition occurring in the lower court. Additionally, we checked to see whether, for these Criminal Court dispositions, there were any dockets or indictments still not disposed by the end of the sample period. Those cases with non-disposed records were also excluded because the ultimate disposition of these records might be more severe than our "valid" disposition.

Finally, those cases which had no disposition because of warrants or holds, were closed because the defendant died, or through a consolidation with another case, were also excluded.

After this process of reading and selecting dispositions, and checking for exclusions was completed, the result was a single case record (either a docket or an indictment) which contained the most severe disposition during the sample period, and associated case processing and defendant variables. For those cases where the dispositional record was an indictment, it was necessary to pick up some Criminal Court data from the transferred docket. Below is the list of variable categories used in the analysis.

Variable Specification

Dates. All of the pertinent criminal justice dates applicable to the case were recorded. These were, for Criminal Court

cases (or dockets which were subsequently transferred to Supreme Court): arrest; arraignment; preliminary hearing (if held); disposition; and, for cases sentenced in Criminal Court, sentence date. For Supreme Court dispositions, the additional Supreme Court dates picked up were: Grand Jury filing, arraignment, disposition, and sentence dates.

Charges. In the OBTS/IBM system, even if there are more than one charges, each record contains only one charge, given in Penal Law (PL) format, that reflects the most serious charge at each stage in the arrest and disposition process. We have, for our cases, arrest charge, Criminal Court arraignment charge, and Criminal Court disposition charge. For cases disposed in Supreme Court, we also have charge at Supreme Court arraignment and disposition.

We then performed a series of transformations on all of the PL charge numbers given. First, we recoded the PL number into two variables. These were type of charge (this had eighteen categories and ranged from the most severe of murder, sex offenses, and robbery to disorderly conduct and prostitution), and severity (this was simply the class of the offense, such as A felony or B misdemeanor). Then, for charge at arrest (which was our primary independent variable in much of the subsequent analyses), we created a single scale that combined both type and severity (for example, felony burglary, felony assault, felony theft, misdemeanor assault, or misdemeanor theft). This resulting scale had fourteen values, from felony murder to misdemeanor prostitution.

Charging Changes. One of the primary research concerns regarding the potential impact of the Speedy Disposition Project on case processing involved charge deterioration, or whether the prosecutors were more likely to accept pleas to lower charges in order to dispose of a case after the project was in place than before. In order to test whether this was, in fact, occurring, we used the arrest charge as the initial charge against which other charges later in the criminal justice process were measured. Then, because severity level can be assigned a numeric figure, creating a scale with discernable values (i.e., A1 felony = 1, A2 felony = 2, B felony = 3, A misdemeanor = 7, and so on), we used severity level to measure the amount of change by subtracting the value of a subsequent charge to that of the arrest charge. We did this to measure the change from the arrest charge to the Criminal Court arraignment charge (Change 1), that from arrest to Supreme Court arraignment (Change 2), and that from arrest to Supreme Court disposition (Change 3). The last two change variables were created only for cases disposed in Supreme Court. The actual resulting values were then collapsed. The increases, which ranged from the rare increase of three severity levels (e.g., an arrest charge of a E felony filed as a B felony) to the slightly more frequent increase of one level, was collapsed into a category called "raised." Those decreasing more than one severity level were collapsed into a group called "lowered more than 1" (for example, a B felony arrest indicted as a E felony would have a score of -3 for Change 2). The other categories for this computed variable were "same" and "lowered 1" severity level.

Initial Release Information. Another group of variables we created focused on the custody status of the defendant at the conclusion of Criminal Court arraignment, the amount of bail or bond set on the case, and the overall release type. For the first variable, if the defendant was detained on any Criminal Court record in his file, his custody status at Criminal Court arraignment was "detained." If he was not detained, and released either on an ROR or through the posting of bail or bond, his custody status was "released." We calculated the bail or bond set for the case (in contrast to that set for each record) by identifying the smallest non-zero value of either bail or bond set for each record in Criminal Court, and then summing these values across Criminal Court records. These total values were collapsed to establish categories of effective bail amounts; they ranged from 0 (or none set), low ($1 to $499), low/medium ($500 to $999), high/medium ($1000 to $2499), and high ($2500+). We then developed a composite variable "type of release status" at initial arraignment variable. The resulting values for this variable were:

ROR
Bail set: Low bail
Bail set: Low/medium bail
Bail set: High/medium bail
Bail set: High bail
Remand (not released, and no bail set)

Sentence Information. For this information, we categorized the type of sentence directly from the OBTS/IBM codes into imprisonment, probation, split sentence (some custody plus proba-

tion), and other. We then determined the type of imprisonment by the length of the maximum sentence (for cases with only one sentence length ordered, the OBTS/IBM system records this information in the maximum category). For those cases of imprisonment where the length ordered was less than 365 days, or the sentencing took place in Criminal Court for a misdemeanor conviction, this was categorized as "misdemeanor" imprisonment. Conversely, if the sentence length was one year or longer, or sentencing took place in Supreme Court for a felony conviction, the type of imprisonment was "felony" imprisonment. We also calculated the minimum and maximum number of days of imprisonment ordered, and collapsed these into the appropriate numbers of years (the range is from less than one year to 25+).[3]

Defendant Variables. Available to us from the OBTS/IBM file, and not recoded, were the defendant's age, whether he was charged under the Violent Felony Statute (VFO),[4] or the Youthful Offender Statute (YO). We also received, from the New York

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3 In order to assess the seriousness of sentencing practices, we also collected information on the minimum and maximum sentence ordered. However, there were substantial amounts of missing data in the minimum sentencing field. Because the length of time an offender must spend until parole is determined by both the minimum and maximum, we decided not to report these data. Although we examined them and found no changes of relevance, we cannot be sure that conclusion is correct.

4 When we analyzed these data, it was evident that there were inconsistencies. For example, some weapons offenses in our data base were not VOS; by statute, all weapons offenses are VFOs. We checked with OCA and were told that the VFO classification was dependent on the method of data entry used (there are several). Since the differences evident in the results were most likely due to different procedures rather than substantive differences, we dropped this variable from our analysis.

Criminal Justice Agency (CJA), information about the offender's prior record. This was recoded, with the following values:

- one or more prior felony convictions;
- prior misdemeanor convictions only;
- no prior convictions but prior arrests;
- this case is the first known arrest.

Case Age Calculation. Once a defendant-arrest was characterized by type of disposition, the age of the case was calculated. To determine the age, we calculated the number of calendar days between the date of the defendant's Criminal Court arraignment and the disposition date, excluding the cumulative number of days the defendant was out on Criminal Court and Supreme Court warrants and on CPL 220.15 holds. For prosecutions initiated by Grand Jury Indictments rather than Criminal Court Complaints ("direct indictments"), the beginning date for calculating age was the date of the defendant's Supreme Court arraignment. If the appropriate arraignment date was missing, the arrest date was used.[5]

Borough Designation. Finally, to determine in which jurisdiction a disposition had occurred, the county designation contained in the indictment number was used. To determine which

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[5] It should be noted that, because of the cumulative nature of the way the OBTS/IBM system records the number of days the defendant was out on a warrant, it was not possible to determine precisely when the days out on a warrant occurred in relation to specific case processing dates. Thus, the "Day Intervals" variables are not adjusted for any warrant time, although the overall case age is.

cases were in the jurisdiction of the Office of the Special Narcotics Prosecutor, each defendant-arrest disposed in the New York County Supreme Court was examined to determine if any initial indictment associated with that arrest had a felony drug charge (PL 220s) as the top count.

Overview of Case Characteristics of the Disposition Samples

Included in Tables B-1 and B-2 are general descriptions of the disposition samples. For each jurisdiction and for cases disposed in Supreme Court, B-1 gives, across the sample periods, the proportion of various charge categories, while B-2 gives, across the sample dates, the proportion of cases having prior felonies or being eleven months old or older. It can be seen by reviewing these data that there were generally no large compositional changes which might have an independent effect on disposition patterns. In Appendix C, these same data (given in B-2) are presented by the largest charge categories as part of the data analysis for the section regarding the impact evaluation of the Speedy Disposition Project (Section III, A). Where there are specific changes over time which might have an impact on disposition patterns, these are noted in the text.

TABLE B-1
Arrest Charge Type/Severity Classification of All Cases Disposed in the Supreme Court by Sample Period and by Jurisdiction

A. Citywide

Arrest Charge Type/Severity	Baseline (10/1-11/31/83)	Mid Year 1 (5/1-6/30/84)	End Year 1 (10/1-11/31/84)	Mid Year 2 (5/1-6/30/84)
F Murder	8%	7%	7%	7%
F Robbery	30	27	27	23
F Assault	4	4	4	4
F Burglary	13	13	12	12
F Property	8	9	10	11
F Drug	21	24	24	29
F Other	3	3	3	4
F Weapon	13	12	12	10
M Assault	*	*	1	*
M Property	*	*	*	*
M Drug	*	*	*	*
M Other	*	*	*	*
TOTAL (N)	100% (3349)	100% (3704)	100% (3763)	100% (3844)

*=<.5%

TABLE B-1
Arrest Charge Type/Severity Classification of All Cases Disposed in the Supreme Court by Sample Period and by Jurisdiction

B. Manhattan DA

Arrest Charge Type/Severity	Baseline (10/1-11/31/83)	Mid Year 1 (5/1-6/30/84)	End Year 1 (10/1-11/31/84)	Mid Year 2 (5/1-6/30/84)
F Murder	8%	8%	7%	7%
F Robbery	37	37	37	33
F Assault	5	6	5	7
F Burglary	12	12	14	16
F Property	14	18	18	21
F Drug	3	3	3	2
F Other	3	2	2	2
F Weapon	16	15	14	12
M Assault	*	*	*	*
M Property	1	1	1	1
M Drug	*	*	*	--
M Other	*	*	*	--
TOTAL (N)	100% (1013)	100% (980)	100% (1029)	100% (1019)

*=<.5%

TABLE B-1
Arrest Charge Type/Severity Classification of All Cases Disposed in the Supreme Court by Sample Period and by Jurisdiction

C. Bronx DA

Arrest Charge Type/Severity	Baseline (10/1-11/31/83)	Mid Year 1 (5/1-6/30/84)	End Year 1 (10/1-11/31/84)	Mid Year 2 (5/1-6/30/84)
F Murder	12%	10%	11%	9%
F Robbery	27	31	26	23
F Assault	3	3	4	4
F Burglary	10	8	10	10
F Property	4	5	7	8
F Drug	25	23	24	28
F Other	3	6	6	7
F Weapon	16	13	13	12
M Assault	--	--	--	--
M Property	*	--	1	1
M Drug	--	*	--	--
M Other	--	--	--	--
TOTAL (N)	100% (664)	100% (585)	100% (707)	100% (750)

*=<.5%

TABLE B-1
Arrest Charge Type/Severity Classification of All Cases Disposed in the Supreme Court by Sample Period and by Jurisdiction

D. Special Narcotics Prosecutor

Arrest Charge Type/Severity	Baseline (10/1-11/31/83)	Mid Year 1 (5/1-6/30/84)	End Year 1 (10/1-11/31/84)	Mid Year 2 (5/1-6/30/84)
F Murder	--	--	*	--
F Robbery	1%	*	--	--
F Assault	--	*	--	--
F Burglary	--	--	--	*
F Property	--	--	--	--
F Drug	99	99	99	99
F Other	--	--	--	*
F Weapon	*	--	--	--
M Assault	--	--	--	--
M Property	--	--	--	--
M Drug	--	*	1	--
M Other	--	--	--	--
TOTAL (N)	100% (291)	100% (446)	100% (404)	100% (423)

*=<.5%

TABLE B-1
Arrest Charge Type/Severity Classification of All Cases Disposed in the Supreme Court by Sample Period and by Jurisdiction

E. Brooklyn DA

Arrest Charge Type/Severity	Baseline (10/1-11/31/83)	Mid Year 1 (5/1-6/30/84)	End Year 1 (10/1-11/31/84)	Mid Year 2 (5/1-6/30/84)
F Murder	9%	8%	10%	8%
F Robbery	35	30	31	24
F Assault	3	4	4	2
F Burglary	16	15	13	12
F Property	6	6	5	6
F Drug	16	19	19	31
F Other	3	2	2	2
F Weapon	12	16	15	14
M Assault	--	*	--	*
M Property	*	*	*	*
M Drug	*	--	--	*
M Other	--	--	--	--
TOTAL (N)	100% (852)	100% (987)	100% (956)	100% (1011)

*=<.5%

TABLE B-1
Arrest Charge Type/Severity Classification of All Cases Disposed in the Supreme Court by Sample Period and by Jurisdiction

F. Queens DA

Arrest Charge Type/Severity	Baseline (10/1-11/31/83)	Mid Year 1 (5/1-6/30/84)	End Year 1 (10/1-11/31/84)	Mid Year 2 (5/1-6/30/84)
F Murder	6%	9%	5%	7%
F Robbery	28	24	21	18
F Assault	4	5	6	8
F Burglary	18	21	16	13
F Property	11	11	16	16
F Drug	18	15	19	22
F Other	3	6	6	8
F Weapon	12	8	11	8
M Assault	*	*	*	--
M Property	*	*	*	*
M Drug	*	*	--	*
M Other	--	*	*	*
TOTAL (N)	100% (501)	100% (667)	100% (623)	100% (592)

*=<.5%

TABLE B-1
Arrest Charge Type/Severity Classification of All Cases Disposed in the Supreme Court by Sample Period and by Jurisdiction

G. Richmond DA

Arrest Charge Type/Severity	Baseline (10/1-11/31/83)	Mid Year 1 (5/1-6/30/84)	End Year 1 (10/1-11/31/84)	Mid Year 2 (5/1-6/30/84)
F Murder	14%	3%	5%	--
F Robbery	18	26	18	16
F Assault	4	8	9	8
F Burglary	21	34	30	33
F Property	4	15	12	16
F Drug	32	8	9	12
F Other	4	3	5	4
F Weapon	4	3	14	10
M Assault	--	--	--	--
M Property	--	--	--	--
M Drug	--	--	--	--
M Other	--	--	--	--
TOTAL (N)	100% (28)	100% (39)	100% (44)	100% (49)

*=<.5%

TABLE B-2
Selected Case and Defendant Characteristics of All Cases Disposed in the Supreme Court by Sample Period and by Jurisdiction

A. Citywide

Characteristic	Baseline (10/1 - 11/31/83)	Mid Year 1 (5/1-6/30/84)	End Year 1 (10/1 - 11/31/84	Mid Year 2 (5/1-6/30/84)
% w/Prior Fel. Convict.	23	28	30	29
% Case Age ≥ 11 mo.	20	18	18	18

B. Manhattan DA

Characteristic	Baseline (10/1 - 11/31/83)	Mid Year 1 (5/1-6/30/84)	End Year 1 (10/1 - 11/31/84	Mid Year 2 (5/1-6/30/84)
% w/Prior Fel. Convict.	30	29	33	29
% Case Age ≥ 11 mo.	13	11	9	10

C. Bronx DA

Characteristic	Baseline (10/1 - 11/31/83)	Mid Year 1 (5/1-6/30/84)	End Year 1 (10/1 - 11/31/84	Mid Year 2 (5/1-6/30/84)
% w/Prior Fel. Convict.	26	27	27	29
% Case Age ≥ 11 mo.	28	26	21	15

D. Special Narcotics Prosecutor

Characteristic	Baseline (10/1 - 11/31/83)	Mid Year 1 (5/1-6/30/84)	End Year 1 (10/1 - 11/31/84	Mid Year 2 (5/1-6/30/84)
% w/Prior Fel. Convict.	26	33	41	34
% Case Age ≥ 11 mo.	16	13	12	5

E. Brooklyn DA

Characteristic	Baseline (10/1 - 11/31/83)	Mid Year 1 (5/1-6/30/84)	End Year 1 (10/1 - 11/31/84	Mid Year 2 (5/1-6/30/84)
% w/Prior Fel. Convict.	29	26	28	30
% Case Age ≥ 11 mo.	23	22	28	26

F. Queens DA

Characteristic	Baseline (10/1 - 11/31/83)	Mid Year 1 (5/1-6/30/84)	End Year 1 (10/1 - 11/31/84	Mid Year 2 (5/1-6/30/84)
% w/Prior Fel. Convict.	27	26	25	23
% Case Age ≥ 11 mo.	19	18	17	31

G. Richmond DA

Characteristic	Baseline (10/1 - 11/31/83)	Mid Year 1 (5/1-6/30/84)	End Year 1 (10/1 - 11/31/84	Mid Year 2 (5/1-6/30/84)
% w/Prior Fel. Convict.	22	27	41	33
% Case Age ≥ 8 mo.	25	18	43	31

*=<.5%

APPENDIX C

Data for Chapter III, Section A: Incentives and the Problem of Unintended Consequences

TABLE C-1a

Disposition Analysis: Sample Ns for the Disposition Subgroups by Time Period
Manhattan

Disposition Subgroup	Time Periods			
	1	2	3	4
A. All Criminal Court Dispositions during the Time Period Including Transfers to Supreme Court:				
Robbery	527	537	492	558
Burglary	278	275	263	274
Property	992	779	868	1105
Weapons	253	210	191	176
Total of all offenses*	7584	7183	7811	8414
B. Transfers to Supreme Court during the Time Period:				
Robbery	357	389	344	388
Burglary	116	135	131	128
Property	177	185	163	212
Weapons	168	120	124	93
Total of all offenses	1028	1062	953	1020
C. Dispositions in Supreme Court during the Time Period, Including Dismissals:**				
Robbery	379	363	383	335
Burglary	124	116	143	161
Property	146	175	182	212
Weapons	164	138	141	122
Total of all offenses	1005	969	1022	1011
D. Convictions in Supreme Court during the Time Period (Excluding Dismissals):				
Robbery	373	358	379	329
Burglary	123	116	142	157
Property	144	172	178	209
Weapons	149	132	139	115
Total of all offenses	970	946	1002	979

*In all of the tables, the "Total" category refers to the sum of all felony arrest charges, not just the largest categories listed separately above.
**In our presentation of the findings, we are not reporting the percentage of Supreme Court dispositions that are dismissals. The large amount of missing data, and the resultant extremely small percent (0-2%) of dismissals cannot be accurately assessed.

TABLE C-1b

Disposition Analysis: Background Characteristics
Manhattan

Background Characteristics*	Time Periods				Difference of 4-1
	1	2	3	4	
Robbery					
% Prior Felony	31%	24%	33%	28%	(3)
% > 11 Months	10	9	9	10	0
Burglary					
% Prior Felony	42	47	46	38	(4)
% > 11 Months	6	7	2	7	1
Property					
% Prior Felony	26	35	30	27	1
% > 11 Months	12	6	3	4	(8)
Weapons					
% Prior Felony	21	23	22	24	3
% > 11 Months	18	19	11	7	(11)

* The disposition subgroup used here was all cases disposed in Supreme Court during the sample periods.

TABLE C-1c

Disposition Analysis: Charging, Indicting, and Bail Setting
Manhattan

	Time Periods				Difference of 4-1
	1	2	3	4	
% with Affidavit Charge Lower Than Arrest:*					
Robbery	19%	19%	19%	15%	(4)
Burglary	40	34	32	33	(7)
Property	56	54	54	42	(14)
Weapon	7	7	9	8	1
TOTAL	18	15	15	13	(5)
% Transferred to S.C.:*					
Robbery	63	70	68	67	4
Burglary	40	48	48	46	6
Property	16	22	17	19	3
Weapon	63	57	64	51	(12)
TOTAL	12	14	12	12	0
% with Indictment Charge Lower Than Arrest:**					
Robbery	22	23	13	17	(5)
Burglary	9	7	13	7	(2)
Property	5	5	4	7	2
Weapon	2	0	2	0	(2)
TOTAL	14	15	16	13	(1)
% with High Bail Set at Criminal Court Arraign.:**					
Robbery	55	51	51	58	3
Burglary	44	42	41	41	(3)
Property	25	29	25	26	1
Weapon	27	21	29	23	(4)
TOTAL	39	39	39	42	3
% RORd at C.C. Arraign.:**					
Robbery	10	12	10	12	2
Burglary	5	12	19	21	16
Property	26	26	25	23	(3)
Weapon	35	41	33	34	(1)
TOTAL	18	19	19	19	1
% Detained at CC Arraign:**					
Robbery	90	87	89	87	(3)
Burglary	93	88	78	77	(11)
Property	73	70	74	74	1
Weapon	59	56	61	61	2
TOTAL	80	79	79	79	(1)

* The disposition subgroup used here was all cases disposed in Criminal Court (a transfer to Supreme Court is defined as a disposition).

** The disposition subgroup used for these four analyses was all cases transferred to Supreme Court during the sample periods.

TABLE C-1d

Disposition Analysis: Supreme Court Outcomes for Cases Disposed in Supreme Court*
Manhattan

	Time Periods				Difference of 4-1
	1	2	3	4	
% Guilty Pleas in S.C.:*					
Robbery	89%	88%	86%	85%	(4)
Burglary	91	90	91	91	0
Property	92	94	95	92	0
Weapon	86	88	92	89	3
Total	87	88	88	87	0
% Trials in S.C.:*					
Robbery	9	10	13	1	(8)
Burglary	8	10	8	7	(1)
Property	7	4	5	7	0
Weapon	5	9	6	6	1
Total	10	10	12	12	2
% with Conviction Charge Lower Than Arrest:**					
Robbery	47	42	47	38	(9)
Burglary	16	14	20	17	1
Property	16	20	15	24	8
Weapon	4	0	1	4	0
Total	26	31	32	30	4
% Other Than Felony Imprisonment:**					
Robbery	13	19	23	20	7
Burglary	32	24	29	28	(4)
Property	45	45	48	51	6
Weapon	53	49	53	53	0
Total	33	30	33	33	0

* The disposition subgroup used here was all cases disposed in Supreme Court including dismissals.

** The disposition subgroup used here was all convictions in Supreme Court.

TABLE C-2a

Disposition Analysis: Sample Ns for the Disposition Subgroups by Time Period
SNP

Disposition Subgroup	Time Periods 1	2	3	4
A. All Criminal Court Dispositions during the Time Period Including Transfers to Supreme Court:				
Drug	391	396	418	408
B. Transfers to Supreme Court during the Time Period:				
Drug	391	396	418	408
C. Dispositions in Supreme Court during the Time Period, Including Dismissals:*				
Drug	291	444	402	423
D. Convictions in Supreme Court during the Time Period (Excluding Dismissals):				
Drug	283	443	401	410

*In our presentation of the findings, we are not reporting the percentage of Supreme Court dispositions that are dismissals. The large amount of missing data, and the resultant extremely small percent (0-2%) of dismissals cannot be accurately assessed.

TABLE C-2b

Disposition Analysis: Background Characteristics
SNP

Background Characteristics*	Time Periods				Difference of 4-1
	1	2	3	4	
Drugs					
% Prior Felony	26%	33%	41%	34%	8
% > 11 Months	16	13	12	5	(11)

* The disposition subgroup used here was all cases disposed in Supreme Court during the sample periods.

TABLE C-2c

Disposition Analysis: Charging, Indicting, and Bail Setting
SNP

	Time Periods				Difference of 4-1
	1	2	3	4	
% with Affidavit Charge Lower Than Arrest:*					
Drug	6%	4%	8%	7%	1
% Transferred to S.C.:*					
Drug	100	99	100	99	(1)
% with Indictment Charge Lower Than Arrest:**					
Drug	12	10	14	11	(1)
% with High Bail Set at Criminal Court Arraign.:**					
Drug	17	21	30	23	6
% RORd at C.C. Arraign.:**					
Drug	50	46	37	39	(11)
% Detained at CC Arraign:**					
Drug	48	52	61	56	12

* The disposition subgroup used here was all cases disposed in Criminal Court (a transfer to Supreme Court is defined as a disposition).

** The disposition subgroup used for these four analyses was all cases transferred to Supreme Court during the sample periods.

TABLE C-2d

Disposition Analysis: Supreme Court Outcomes for Cases Disposed in Supreme Court*
SNP

	Time Periods				Difference of 4-1
	1	2	3	4	
% Guilty Pleas in S.C.:*					
Drug	95%	96%	97%	94%	(1)
% Trials in S.C.:*					
Drug	2	4	3	6	4
% with Conviction Charge Lower Than Arrest:**					
Drug	68	82	79	75	7
% Other Than Felony Imprisonment:**					
Drug	45	46	47	42	(3)

* The disposition subgroup used here was all cases disposed in Supreme Court including dismissals.

** The disposition subgroup used here was all convictions in Supreme Court.

TABLE C-3a

Disposition Analysis: Sample Ns for the Disposition Subgroups by Time Period
Bronx

Disposition Subgroup	Time Periods 1	2	3	4
A. All Criminal Court Dispositions during the Time Period Including Transfers to Supreme Court:				
Robbery	274	245	258	314
Burglary	307	252	247	252
Drug	358	336	540	635
Weapons	209	167	167	132
Total of all offenses*	3535	3080	3605	3729
B. Transfers to Supreme Court during the Time Period:				
Robbery	135	167	148	226
Drug	159	118	200	284
Weapons	93	89	94	73
Total of all offenses	589	641	703	957
C. Dispositions in Supreme Court during the Time Period, Including Dismissals:**				
Robbery	179	180	185	174
Drug	166	134	167	207
Weapons	104	78	89	87
Total of all offenses	663	584	702	745
D. Convictions in Supreme Court during the Time Period (Excluding Dismissals):				
Robbery	177	178	183	173
Drug	162	132	162	205
Weapons	104	78	84	85
Total of all offenses	651	576	676	734

*In all of the tables, the "Total" category refers to the sum of all felony arrest charges, not just the largest categories listed separately above.

**In our presentation of the findings, we are not reporting the percentage of Supreme Court dispositions that are dismissals. The large amount of missing data, and the resultant extremely small percent (0-2%) of dismissals cannot be accurately assessed.

TABLE C-3b

Disposition Analysis: Background Characteristics
Bronx

Background Characteristics*	Time Periods				Difference of 4-1
	1	2	3	4	
Robbery					
% Prior Felony	28%	30%	30%	33%	5
% > 11 Months	32	30	23	18	(14)
Drugs					
% Prior Felony	27	30	28	31	4
% > 11 Months	18	23	17	2	(16)
Weapons					
% Prior Felony	19	12	16	21	2
% > 11 Months	13	15	11	11	(2)

* The disposition subgroup used here was all cases disposed in Supreme Court during the sample periods.

TABLE C-3c

Disposition Analysis: Charging, Indicting, and Bail Setting
Bronx

	Time Periods				Difference of 4-1
	1	2	3	4	
% with Affidavit Charge Lower Than Arrest:*					
Robbery	21%	18%	14%	13%	(8)
Burglary	22	19	21	14	(8)
Drug	14	13	13	10	(4)
Weapon	7	9	11	12	5
TOTAL	11	9	9	9	(2)
% Transferred to S.C.:*					
Robbery	48	67	62	70	22
Burglary	18	28	29	40	22
Drug	43	34	42	43	0
Weapon	44	51	60	53	9
TOTAL	16	20	21	24	8
% with Indictment Charge Lower Than Arrest:**					
Robbery	27	19	21	19	(8)
Drug	45	43	33	25	(20)
Weapon	0	0	0	0	—
TOTAL	28	19	22	18	(10)
% with High Bail Set at Criminal Court Arraign.:**					
Robbery	65	52	63	60	(5)
Drug	31	25	15	29	(2)
Weapon	16	23	26	37	21
TOTAL	38	38	32	39	1
% RORd at C.C. Arraign.:**					
Robbery	6	10	7	11	5
Drug	12	26	32	24	12
Weapon	17	26	23	15	(2)
TOTAL	11	15	22	19	8
% Detained at CC Arraign:**					
Robbery	94	87	87	86	(8)
Drug	76	61	57	67	(9)
Weapon	62	58	59	73	11
TOTAL	81	78	70	75	(6)

* The disposition subgroup used here was all cases disposed in Criminal Court (a transfer to Supreme Court is defined as a disposition).

** The disposition subgroup used for these four analyses was all cases transferred to Supreme Court during the sample periods.

TABLE C-3d

Disposition Analysis: Supreme Court Outcomes for Cases Disposed in Supreme Court
Bronx

	Time Periods				Difference of 4-1
	1	2	3	4	
% Guilty Pleas in S.C.:*					
Robbery	84%	90%	89%	87%	3
Drug	95	95	91	97	2
Weapon	94	96	93	93	(1)
Total	88	91	90	91	3
% Trials in S.C.:*					
Robbery	15	9	10	12	(3)
Drug	3	4	7	2	(1)
Weapon	6	4	2	5	(1)
Total	11	9	8	8	(3)
% with Conviction Charge Lower Than Arrest:**					
Robbery	37	48	47	43	6
Drug	82	87	78	92	10
Weapon	1	3	2	4	3
Total	49	51	51	48	(1)
% Other Than Felony Imprisonment:**					
Robbery	19	19	24	18	1
Drug	51	54	54	50	1
Weapon	61	75	73	69	8
Total	37	40	41	40	3

* The disposition subgroup used here was all cases disposed in Supreme Court including dismissals.

** The disposition subgroup used here was all convictions in Supreme Court.

TABLE C-4a

Disposition Analysis: Sample Ns for the Disposition Subgroups by Time Period
Kings

Disposition Subgroup	Time Periods 1	2	3	4
A. All Criminal Court Dispositions during the Time Period Including Transfers to Supreme Court:				
Robbery	406	421	471	468
Burglary	290	282	316	331
Drug	251	121	413	420
Weapons	166	160	181	164
Total of all offenses	2501	2990	3504	3504
B. Transfers to Supreme Court during the Time Period:				
Robbery	293	279	258	257
Burglary	109	102	101	112
Drug	180	235	246	210
Weapons	107	101	116	84
Total of all offenses	906	897	897	891
C. Dispositions in Supreme Court during the Time Period, Including Dismissals:**				
Robbery	299	296	300	247
Burglary	138	148	121	122
Drug	136	189	183	310
Weapons	98	154	145	140
Total of all offenses	849	984	955	1006
D. Convictions in Supreme Court during the Time Period (Excluding Dismissals):				
Robbery	292	294	295	244
Burglary	138	148	121	120
Drug	135	187	183	308
Weapons	91	148	137	133
Total of all offenses	828	972	930	986

*In all of the tables, the "Total" category refers to the sum of all felony arrest charges, not just the largest categories listed separately above.
**In our presentation of the findings, we are not reporting the percentage of Supreme Court dispositions that are dismissals. The large amount of missing data, and the resultant extremely small percent (0-2%) of dismissals cannot be accurately assessed.

TABLE C-4b

Disposition Analysis: Background Characteristics
Kings

Background Characteristics*	Time Periods				Difference of 4-1
	1	2	3	4	
Robbery					
% Prior Felony	27%	26%	27%	37%	10
% > 11 Months	23	21	27	28	5
Burglary					
% Prior Felony	39	37	42	42	3
% > 11 Months	14	17	15	9	5
Drugs					
% Prior Felony	35	24	22	27	(8)
% > 11 Months	23	24	27	23	0
Weapons					
% Prior Felony	24	17	22	18	(6)
% > 11 Months	14	8	17	16	2

* The disposition subgroup used here was all cases disposed in Supreme Court during the sample periods.

TABLE C-4c

Disposition Analysis: Charging, Indicting, and Bail Setting
Kings

	Time Periods				Difference of 4-1
	1	2	3	4	
% with Affidavit Charge Lower Than Arrest:*					
Robbery	14%	15%	14%	15%	1
Burglary	9	15	17	10	1
Drug	6	6	9	12	6
Weapon	7	6	9	6	(1)
TOTAL	8	7	8	8	0
% Transferred to S.C.:*					
Robbery	66	61	50	48	(18)
Burglary	36	34	32	32	(4)
Drug	70	64	56	44	(26)
Weapon	61	58	59	45	(16)
TOTAL	34	27	24	23	(11)
% with Indictment Charge Lower Than Arrest:**					
Robbery	19	18	11	14	(5)
Burglary	8	10	7	7	(1)
Drug	8	10	8	9	1
Weapon	1	2	3	0	1
TOTAL	11	14	10	11	0
% with High Bail Set at Criminal Court Arraign.:**					
Robbery	49	46	50	55	6
Burglary	24	31	27	41	17
Drug	21	24	31	37	16
Weapon	13	26	15	28	15
TOTAL	32	35	34	39	7
% RORd at C.C. Arraign.:**					
Robbery	8	12	10	10	2
Burglary	15	6	14	14	(1)
Drug	25	26	20	24	(1)
Weapon	16	33	31	25	9
TOTAL	15	18	17	17	2
% Detained at CC Arraign:**					
Robbery	87	84	88	88	1
Burglary	83	90	84	82	(1)
Drug	64	64	73	66	2
Weapon	66	59	55	61	(5)
TOTAL	78	76	77	76	(2)

* The disposition subgroup used here was all cases disposed in Criminal Court (a transfer to Supreme Court is defined as a disposition).

** The disposition subgroup used for these four analyses was all cases transferred to Supreme Court during the sample periods.

TABLE C-4d

Disposition Analysis: Supreme Court Outcomes for Cases Disposed in Supreme Court
Kings

	Time Periods				Difference of 4-1
	1	2	3	4	
% Guilty Pleas in S.C.:*					
Robbery	89%	89%	91%	83%	(6)
Burglary	94	91	93	86	(8)
Drug	96	92	97	94	(2)
Weapon	88	94	89	90	2
Total	89	89	88	86	(3)
% Trials in S.C.:*					
Robbery	10	11	7	16	6
Burglary	9	9	7	6	(3)
Drug	3	7	3	5	2
Weapon	4	3	7	5	1
Total	10	10	10	12	2
% with Conviction Charge Lower Than Arrest:**					
Robbery	45	44	41	45	0
Burglary	29	26	23	26	(3)
Drug	54	60	60	67	13
Weapon	6	2	2	5	(1)
Total	40	38	38	43	3
% Other Than Felony Imprisonment:**					
Robbery	27	27	23	27	0
Burglary	35	43	31	42	7
Drug	52	54	49	50	(2)
Weapon	63	75	72	70	7
Total	37	42	39	43	6

* The disposition subgroup used here was all cases disposed in Supreme Court including dismissals.

** The disposition subgroup used here was all convictions in Supreme Court.

TABLE C-5a

Disposition Analysis: Sample Ns for the Disposition Subgroups by Time Period
Queens

Disposition Subgroup	Time Periods 1	2	3	4
A. <u>All Criminal Court Dispositions during the Time Period Including Transfers to Supreme Court:</u>				
Robbery	180	247	204	193
Burglary	194	211	203	145
Property	330	359	387	337
Drug	257	177	284	264
Total of all offenses*	2075	2217	2404	2161
B. <u>Transfers to Supreme Court during the Time Period:</u>				
Robbery	95	156	127	156
Burglary	76	126	98	104
Property	59	104	95	97
Drug	129	103	193	189
Total of all offenses	537	724	638	735
C. <u>Dispositions in Supreme Court during the Time Period, Including Dismissals:**</u>				
Robbery	141	157	130	105
Burglary	91	139	101	76
Drug	88	103	116	132
Total of all offenses	497	660	619	588
D. <u>Convictions in Supreme Court during the Time Period (Excluding Dismissals):</u>				
Robbery	141	156	129	100
Burglary	91	139	101	75
Drug	88	103	115	131
Total of all offenses	492	658	610	568

*In all of the tables, the "Total" category refers to the sum of all felony arrest charges, not just the largest categories listed separately above.

**In our presentation of the findings, we are not reporting the percentage of Supreme Court dispositions that are dismissals. The large amount of missing data, and the resultant extremely small percent (0-2%) of dismissals cannot be accurately assessed.

TABLE C-5b

Disposition Analysis: Background Characteristics
Queens

Background Characteristics*	Time Periods 1	2	3	4	Difference of 4-1
Robbery					
% Prior Felony	26%	28%	35%	31%	5
% > 11 Months	21	17	11	21	0
Burglary					
% Prior Felony	39	36	31	27	(12)
% > 11 Months	12	9	14	18	6
Property					
% Prior Felony	33	27	24	22	(11)
% > 11 Months	13	28	14	28	15
Drugs					
% Prior Felony	26	24	17	19	(7)
% > 11 Months	20	17	15	32	12

* The disposition subgroup used here was all cases disposed in Supreme Court during the sample periods.

TABLE C-5c

Disposition Analysis: Charging, Indicting, and Bail Setting
Queens

	Time Periods				Difference of 4-1
	1	2	3	4	
% with Affidavit Charge Lower Than Arrest:*					
Robbery	13%	21%	16%	17%	4
Burglary	17	26	25	24	7
Property	29	45	42	42	13
Drug	11	23	19	18	7
TOTAL	12	19	18	17	5
% Transferred to S.C.:*					
Robbery	53	62	61	78	25
Burglary	39	60	47	71	32
Property	18	28	24	28	10
Drug	50	58	68	72	22
TOTAL	26	32	30	36	10
% with Indictment Charge Lower Than Arrest:**					
Robbery	22	13	28	21	(1)
Burglary	7	15	19	20	13
Property	19	9	14	10	(9)
Drug	15	29	29	23	8
TOTAL	18	14	21	18	0
% with High Bail Set at Criminal Court Arraign.:**					
Robbery	68	59	47	38	(30)
Burglary	49	56	35	38	(11)
Drug	55	56	32	44	(10)
TOTAL	48	43	33	35	(13)
% RORd at C.C. Arraign.:**					
Robbery	8	8	5	15	7
Burglary	5	9	12	12	7
Drug	11	5	12	15	4
TOTAL	12	20	13	19	7
% Detained at CC Arraign:**					
Robbery	87	85	90	80	(7)
Burglary	89	87	86	83	(6)
Drug	83	87	67	77	(6)
TOTAL	81	71	74	73	(8)

* The disposition subgroup used here was all cases disposed in Criminal Court (a transfer to Supreme Court is defined as a disposition).
** The disposition subgroup used for these four analyses was all cases transferred to Supreme Court during the sample periods.

TABLE C-5d

Disposition Analysis: Supreme Court Outcomes for Cases Disposed in Supreme Court
Queens

	Time Periods				Difference of 4-1
	1	2	3	4	
% Guilty Pleas in S.C.:*					
Robbery	89%	88%	89%	82%	(7)
Burglary	95	91	91	86	(7)
Drug	93	96	96	88	(5)
Total	89	90	88	84	(5)
% Trials in S.C.:*					
Robbery	11	11	10	13	2
Burglary	5	9	9	13	8
Drug	7	4	3	11	4
Total	12	10	11	14	2
% with Conviction Charge Lower Than Arrest:**					
Robbery	48	39	44	56	8
Burglary	16	20	28	25	9
Drug	40	40	58	52	12
Total	37	39	42	49	12
% Other Than Felony Imprisonment:**					
Robbery	29	21	29	31	2
Burglary	29	31	41	53	24
Drug	48	54	59	48	0
Total	58	59	49	53	(5)

* The disposition subgroup used here was all cases disposed in Supreme Court including dismissals.

** The disposition subgroup used here was all convictions in Supreme Court.

APPENDIX D

Five Cases in a Manhattan Supreme Court Long-Term Detainee Part

APPENDIX D

FIVE CASES IN A MANHATTAN SUPREME COURT LONG-TERM DETAINEE PART

In order to get a closer look at the characteristics of old detention cases, and to understand more thoroughly the reasons for their slow processing, Vera researchers spent several days observing case processing in one of the long-term detainee parts in the Manhattan Supreme Court. The following notes describe the fate of five cases at scheduled hearings in part 91 on two dates in December 1984 and January 1985.

CASE #1

Defendant appeared on 10/21/83 and a bench warrant was issued on 10/28/83. After that the file showed no appearance at all until May 1984. He has been in Rikers since then. On November 29th, he pleaded guilty. A pre-sentence report was ordered and due today. The Judge says they take at least one month. The Judge sentenced him today to one year.

Judge said that the issue that kept this case in limbo was a question about the defendant's prior felony conviction. If he had had one it would have changed the minimum sentence. He did have a New Jersey felony conviction, but it turned out that the crime is not a felony in New York and, therefore, could not count to make him a predicate felon. Judge called this good 18B attorney defense work.

CASE #2

Defendant in detention since 5/26/83. Judge says defendant is "crazy" although he is "psychiatrically ambiguous; cases like this are the curse of the court; there is no place on God's green earth for these people; lots of long-term detainees are like this."

Defendant is being interviewed by defense psychiatrists in order to raise both the insanity and incompetency defenses. This process, says the judge, and the attorneys agree,

"takes forever." They generally require that the detained defendant go back and forth from Riker's to Bellevue.

In this case the defendant had originally been found incompetent to stand trial. The DA then challenged that finding. Since then he has been examined by six more psychiatrists. Of the seven doctors he has seen, the first two found him incompetent and the last five found him competent.

This is the defendant's first arrest (although the Judge says he instinctively questions the accuracy of the NYSIIS sheet on this point). Today the defense was to have produced a new (eighth) psychiatric report. It was not ready. The defense said that one reason he wasn't prepared was that he was having trouble reaching his client; the defendant's social worker would call from Riker's and never leave a return phone number. The ADA chafed at this and said that he had been ready to try the case in September.

The Judge adjourned the case to January 2nd. He noted that all of the tasks that were keeping the defendant in detention were being done at his own request.

CASE #3

Judge calls this defendant a "nut." The defendant tried to commit suicide by throwing himself onto the subway tracks. A police officer saw him and jumped down after him. The defendant grabbed the officer's night stick and hit him with it. Although he could not give a precise chronology, the Judge said that the defendant has been in and out of Creedmore, Bellevue, and Riker's Island since his indictment. He spent four months in Bellevue before his first 730 exam. The Judge says he is being maintained on "antipsychotic drugs"; he is constantly medicated.

Today the ADA was to have the results of a psychiatric exam. But the case ADA was not in the office today and the substitute ADA did not have his file so the case had to be adjourned.

The defense attorney was furious. He had waited in the courtroom for two and a half hours before the case was called. He said the ADAs are "always not ready. They can't get a piece of paper from the right to the left hand." The Judge was apologetic and said that this defense attorney had put up with many of these kinds of adjournments in this case.

CASE #4

The defendant was not present. He is currently incarcerated upstate on another charge. He is either in an upstate jail

or prison. No one (including his attorney) knew. The procedures for producing the defendant are different depending on whether he is locked up in a jail or a prison. The Judge decided that they couldn't do anything until that question was resolved so he adjourned the case for January 7th.

CASE #5

The defendant was not present. No one knew where he was. Nothing could have happened today anyway because one of the witnesses is a policewoman who was involved in an undercover assignment and could not possibly have been there. The Judge adjourned the case for tomorrow.

The court is plagued by mechanical difficulties (primarily scheduling problems) in its processing of cases. Vera researchers noted that the case files presented by the chief Clerk to the LTD Judge as each case was called were chaotic; folders bulged with bits and pieces of paper jammed in and sliding out. They were not uniform. The same information does not seem to appear in all case files. There is, most notably, no place to look for a case chronology. Vera researchers would frequently ask for an arrest or an arraignment date or for a length of detention and no one would be able to answer.

The malady to which the court has fallen prey affects the DA's office as well. The Assistant in the case above was unprepared in some part because of an expectation that no sanction would flow from unpreparedness of that sort. Cases are repeatedly and unproductively adjourned with no disciplinary measures being imposed on participating attorneys because parties are not present, have not performed required tasks, or do not have required documents. This seems to be another part of the local legal culture. The expectation that no consequence will flow from unpreparedness seems to affect every agency involved in

the case disposition process -- the Legal Aid Society, the DA's office, the 18B Panel, private attorneys, agency representatives, etc.

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