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THE NEW YORK CITY SPEEDY DISPOSITION PROGRAM

Incentives and Prosecutorial Initiatives in Reducing Court Delay and Jail Overcrowding

EXECUTIVE SUMMARY

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Origins of the Speedy Disposition Program (SDP)

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

Analysis of the causes of overcrowding in New York City indicated that rising detention populations were 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 further that New York City's Supreme Court was exceptionally slow in processing many of its felony cases, including those with defendants 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.

Although most delay reduction programs focus on strategies developed by courts, the SDP focused on efforts by the District Attorneys of the City to reduce delay. This focus resulted from the influence the City has upon the District Attorneys as their major source of funding, and upon the observation that court based efforts to reduce delay in the Supreme Court have not been particularly successful.

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

Beginning in 1976, the U.S. Justice Department (through the Law Enforcement Assistance Administration and the National Institute of Justice) has supported several research efforts, pertaining to court delay reduction including experimental efforts to reduce delay.

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 this to be 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 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.

One significant finding of the research and experimental program is that the major influence on the pace of litigation appears to be the attitudes and informal practices of local practitioners -- the lawyers and judges and their staffs. They 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; they thus tend to resist efforts at changing this pace. This attitudinal dimension to the problem of court delay has been termed "local legal culture," and emphasizes the need to provide incentive to induce the practitioners to cooperate in efforts to reduce delay.

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, its perception 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.

The Design of the Program

Several months of planning and negotiations involving the New York City Mayor's Office of Management and Budget, 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 supplement 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 add equipment or any other things that might improve their capacity to carry out the strategies they selected.

Each of the six prosecutors agreed to participate in the SDP and the $1.5 million was allocated among them on the basis of each office's share of the combined budget for all the District Attorneys during FY 1984. These 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.

To reduce the size of the SDP targeted caseloads, the prosecutors would have to address both aspects of the court congestion problem -- the time required to process all cases, and the existing backlogs created by cases which have already become old because of the slow pace of litigation.

The Results of the Program

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. Some were relatively slow to get going; 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.

The SDP had its smallest impact upon the category cases the City most wanted to affect: the populations of detained defendants. During 1984, the District Attorneys were successful in reducing the populations of detainees whose cases had been pending six months or more (the point at which the court considers a case to be part of a backlog) by 56 detainees, nearly 4 percent. But in the second year, 1985, cases of detainees pending six months or more went up to 234, over 16%.

Table 1 reflects the impact of the SDP activities in each county upon detention usage.

The SDP had somewhat more success in reducing case processing times and backlogs of the total caseload; prosecutions of defendants on pre-trial release as well as those in detention. During the first year, backlogs of these cases pending six months or more went down over 21 percent. However, this progress was somewhat offset in the second year, so that for the entire term of the SDP, the backlog was decreased by 7 percent, or 336 cases.

Also significant is that the age of the median case, reflecting the time required to process cases, went down in both years. When SDP started, the age of the median case reaching disposition was 185 days. In 1985, the citywide median time from arrest to disposition was reduced to 153 days.

TABLE 1

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.

The SDP scores for each year by District Attorney's office, and the funding allocations, are shown in Table 2.

Did the Incentives Cause Unintended Consequences?

In initiating the SDP, city officials assumed that the District Attorneys would allow no decrease in public safety or in the appropriateness of dispositions as a consequence of the program. To confirm this assumption, researchers at the Vera Institute of Justice and the New York City Criminal Justice Agency built into the research design of the overall program a series of disposition samples to determine if there were changes in charging severity, plea negotiations, trial rates, or sentencing patterns during the term of the SDP.

The results of these analyses were encouraging; few, if any, unintended consequences occurred even in those jurisdictions where changes in the SDP performance measures were most pronounced. Regardless of the magnitude of their efforts in response to the SDP and the effects of these efforts on these last two aspects of case processing, 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 the prosecutorial initiative in delay and backlog reduction was most visible (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 visible (the Bronx).

TABLE 2

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.

Factors Affecting the Success of the SDP

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 (Kings), when other concerns commanded the attention of the District Attorney (as in the Bronx, when the office faced a major child abuse investigation), or when the court's own administrative attention was turned to other major policy issues (as in all the counties with the planning for a transition from a master calendar to an individual calendar system).

The monetary incentives were insufficient to sustain the District Attorneys' concentrated efforts despite a continuing need to reduce pressure on the detention populations, because the budget increments were offered in a relatively resource-rich environment (the City has been generous to the District Attorneys' budget requests over the past several years), performance under the SDP were not particularly visible within the criminal justice system so as to contribute or detract from the District Attor-

neys' status or prestige, and an issue of program design (the proper role of workload) raised by the Kings County District Attorney contributed to that office's withdrawal from the SDP in its second year. In addition, no effort by the District Attorneys challenged the norm of the local legal culture with respect to critical procedures for disposing cases in the Supreme Court -- most significantly, the refusal to set and enforce strict time standards for each step in the process of disposing of cases.

None of the District Attorneys was either willing or able to substantially challenge the assumptions that many cases should take six months or more from filing to disposition, when available data indicate that much of this time is spent in non-prosecutorial waiting, rather than in substantive work on case preparation. Although the various efforts by the District Attorneys' offices demonstrated that managerial changes can have an impact on the number of old pending cases, for the most part the District Attorneys did not attempt to implement permanent changes in the way cases are processed by reducing the time between necessary events, changes that could have helped to prevent cases from getting old in the first place.

The powerful local legal culture made up of the City's prosecutors, defense attorneys and judges explains the difficulty the Supreme Court has experienced in reducing case processing times and backlogs by too many cases, too many serious cases, and too few judges, but compared to other jurisdictions, this image seems appropriate.

Even if the entire citywide caseload of 30,728 new indictments filed during 1985 survived the early assessment and disposition process (such as felony waiver procedures) and were sent to trial parts, this would be 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). 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 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.

Examination of the reasons for delay in the Supreme Court demonstrates that most appearances in court are not intended to accomplish anything required to move the case closer to disposition, but are utilized as a device for the court to maintain supervision over the case to facilitate communications among counsel and the court, and, perhaps, to encourage a disposition of the case without trial. Consequently, many court appearances have become meaningless, and are treated as such by attorneys who appear unprepared, or do not appear at all.

Another major adverse affect is the amount of time lost by judges and attorneys (but also witnesses and defendants) by the repeated calendaring of cases. This loss of time is increased substantially because the size of these 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 certain times. 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.

To overcome this problem, the court should establish a policy of setting firm dates for the completion of each step necessary to prepare a case for trial or other disposition, and set a firm trial date. To support this process, the court should establish a Docket Control Center to provide presiding and administrative judges with the information they need to monitor their dockets, schedule cases, identify problems and monitor the caseload, and provide accountability on the part of judges and lawyers.

Also in support of this process, the court should establish procedures for Administrative Judges to monitor the conduct of attorneys in fulfilling their responsibilities to the courts' dockets, in appearing as required and with proper preparation to allow the court to accomplish the task before it. This monitoring should carry with it the authority to discipline attorneys, after all other efforts to secure compliance with docket responsibilities have failed.

For the purpose of further planning to reduce delay and backlogs in the Supreme Courts of the City, the felony caseload might best be divided into three major categories: cases which are uncontested within the first month after indictment; cases which are contested but which proceed to disposition without major problems and in about 6 months; and cases in which some problem arises which causes sufficient delay to eventually place them in the backlog category.

Efforts to speed the disposition of the uncontested cases which both predated the SDP and were undertaken in response to SDP have been quite successful. Ten percent of all felony cases are disposed within three weeks after arrest, a figure that compares favorably with other U.S. jurisdictions.

Contested cases in the middle category progress from arrest to indictment quite rapidly, but then tend to lag, compared to other courts. The median times to disposition which have occurred during the SDP show improvement in handling these cases, but the local legal culture still prevails in maintaining six months as a permissible time for these cases to take for processing to disposition. Much shorter times can be achieved through the use of better scheduling and monitoring procedures.

SDP produced no successful reduction in the backlogs of older cases. Rather the traditional approach of the Supreme Court, the establishment of temporary special court parts to reduce the backlogs, was employed. This approach is adequate only when accompanied by a successful effort to reduce processing

times so that newly filed cses do not enter the backlogs as older cases are removed. The successes in reducing median times to disposition were not sufficient to reduce the backlogs.

There is nothing so heavy or difficult about the felony caseload of the New York City Supreme Courts that they cannot adapt 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 other resources necessary to make this needed improvement.