NEW YORK CITY
SPEEDY DISPOSITION PROJECT

An Interim Report to the
Office of Management and Budget
(1984 - FIRST YEAR)

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INTRODUCTION

The agreement under which Vera is evaluating the Speedy Disposition Project (SDP) for the Office of Management and Budget (OMB) calls for an analysis of efforts undertaken by the District Attorneys in response to the Project.

This is not intended to be a final evaluation of their SDP efforts; rather, it is an interim report describing the activities each District Attorney intended to undertake in 1984 in response to the SDP, and what each was able to implement. Then, drawing upon quantitative data collected by Vera specifically for this Project, as well as data routinely published by the Unified Court System's Office of Management Support, this report draws some preliminary inferences about what worked to reduce the size of the SDP target groups -- older pending caseloads and detention populations -- and what did not work.

THE PROJECT DESIGN

Prosecutors often take the position that there is little they can do to keep cases from getting old.[1] They tend to say 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.[2] Nevertheless, District Attorneys sometimes concede that there are actions they could take to reduce delay if they had more resources.

In designing the SDP, the City accepted the second proposition -- that District Attorneys could influence the process if they had more resources -- and it allocated an additional $1.5 million among the six[3] New York City District Attorneys for them to use to reduce the number of old cases pending in 1984. The

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1 Indeed, most previous attempts to reduce case processing time in NYS and elsewhere throughout the country have been directed at the courts including in New York State the establishment of Standards and Goals for the "timely" disposition of felony indictments, established by the Administrative Board of the Judicial Conference in 1975 and amended February 28, 1979. Among other Standards and Goals set by the Conference was this: By January 1, 1980, no felony case was to have been pending over 6 months from indictment. This goal, though unachieved, has become part of the culture of New York courts so that cases pending longer than 6 months are considered "problem" cases.

2 A subsequent report will contain observations on the factors related to the pace of criminal litigation in New York City.

3 There is an elected District Attorney for each of New York City's five counties (boroughs) and these five select a Special Narcotics Prosecutor (SNP) with citywide jurisdiction. The SNP is established by State law. For ease of expression, the Special Narcotics Prosecutor is included when the report refers to "The District Attorneys."

City is interested in case processing time for two reasons -- one of economy and one of justice. First, the City's costs for pre-trial detention have increased as the cases of defendants in detention have been taking longer each year to reach dismissal or sentence. Second, "justice delayed is justice denied."

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, first, 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 embarassment to the integrity of the process if that status is maintained for too long and, at worst, a potential threat to public safety. Second, it was thought logical 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.

It was thought expedient for the City to look to the prosecutors for help in reducing case processing times because the City is the major source of the District Attorneys' budgets; thus, through the budgeting process, it might exercise some measure of influence over the prosecutors' priorities.

The City's SDP also was consistent with the trend of thought 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.

Thus, the SDP offers an opportunity to examine: (1) the extent to which criminal case delay is within prosecutors' sphere of influence; and (2) how prosecutors go about the process of planning and executing attempts to intervene to cause improvements in the pace of the existing system.

What was it the prosecutors were asked by the City to do under the SDP? The focus of the City's interest was the growing size of the pre-trial detention population in City correctional facilities. Its assumption, based upon evidence that from 1977 to 1982 the average daily detention population rose while admissions declined, was that lengthening court process time for detention cases contributed heavily to the increased demand for cell space. Hence, the SDP initative sought the District Attorneys' help in reducing the absolute number of long-term detainees by expediting

the disposition of currently pending old cases and by reducing case processing times generally.

In addition, because the City did not want to put in place a program that would have the affect of discouraging prosecutors attention to non-detention cases languishing on the calendars, the SDP targeted all older pending cases, as well as those in which the defendant is detained.

The City used additional FY 1984 allocations to facilitate and stimulate efforts by the District Attorneys to reduce caseloads, and set aside FY 1985 and FY 1986 budgetary supplements to reward successful efforts in 1984 and 1985. The City set SDP program performance measures that focused upon all old cases (those over six months), but the very oldest detained cases were emphasized.[4] Therefore, in the formula for allocating the FY 1985 incentive money among the District Attorney'offices, all pending cases 6 to 11 months old were counted, but those over 11 months old were double-weighted; in addition, all cases of detainees in custody 6 to 9 months were counted and those in custody over 9 months were double-weighted. Thus a detained case over six months old is counted twice, once in with all pending cases, and again with detained pending cases. If a detained older case (over 11

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[4] The City's choice of 6 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).

months) was disposed, and a new case did not age into this category to take its place, both measures contained in the incentive funding formula would be doubly affected. If a non-detained older case (over 11 months) was disposed, and not replaced, one of the measures in the formula would be doubly affected (the all pending case measure) but the other measure (detainees only) would not be affected.

The impact of each District Attorney's 1984 activities on the size of the target groups of older cases was measured in the formula by comparing the number of older cases in each target group at the end of 1983, in each District Attorney's caseload, with the corresponding number in that caseload at the end of 1984. The impact of the District Attorney's 1985 SDP activities is to be measured by comparing the size of these target groups at the end of 1985 with their size at the end of 1984.[5]

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5 To determine the funding allocation for each prosecutor's office, the City developed a formula that compared each office with its own previous pending caseload, focusing on the target groups of older detainee cases, and, older pending cases in the Supreme Court regardless of their detention status. The basis for this formula 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 on November 22, 1983.

The funding formula was initially based upon a count 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 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 office's caseload of older detainee cases.

The same procedure was used to determine the percentage change

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, 1984; 1418 were in detention.) Second, preferably at the same time, they would have to develop ways to ensure that the newer (younger) cases did not age to the point of entering and swelling the target groups. Without effort in the second area, early successes in reducing the size of the target groups would be

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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 upon which it was based had increased (i.e., the median age of all detainees and the median age of all pending Supreme Court cases). 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 which was used to distribute the incentive pool. A negative final score indicated that an office had succeeded in reducing the average weighted size of its SDP target groups between its 1983 baseline and the end of the program's first year.

For each office achieving a successful result, its final SDP score was multipled 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 in 1984. 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 multipled by the $1.25 million in the supplemental funding pool to determine each office's share.

counter-balanced, 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 6 months. Hence, absent some strategic planning toward speedier dispositions generally, the District Attorneys' offices could be in the same situation during the SDP's second year as they had been at the beginning of year one -- without new mechanisms in place to prevent relatively young cases from becoming very old cases.

THE DISTRICT ATTORNEYS' RESPONSES

1984 was the first year of the Speedy Disposition Project. Distribution of the start-up $1.5 million for expenditure beginning January, 1984, was announced on November 22, 1983. By late spring several of the District Attorney's office 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 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 trials, hearings and other events for which specific times are set, re-set and set again.

In tracking the progress of the SDP, some Vera researchers came away from initial interviews with District Attorneys 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 the their budgets, the next distribution of money -- at the start of the second year -- would be based on program performance in the first year.

There is no evidence in our interviews that, as a response to the SDP, any District Attorneys' office altered basic policies with respect to charging, negotiating guilty pleas, or sentence recommendations[6]. Rather, the innovations that emerged in response to the SDP were for the most part procedural -- attempts to reach the same results in cases, consistent with each District Attorney's perception of the public's interest, in a shorter period of time.

While the City requested and received initial reports from each District Attorney's Office showing how the 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.

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6 Research staff are currently developing three samples of cases disposed in the New York City Criminal and Supreme Courts -- a late 1983 baseline sample, a mid-1984 sample and a late 1984 sample. Analysis of these "snapshots" of the dispositional process will help us assess more thoroughly the impact of the prosecutors' SDP activities on the broader criminal justice system.

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.[7] As part of 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. Some may not have done so yet. 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.

Only broad inferences can be drawn about the connection between any particular SDP effort 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

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7 The District Attorneys and their staffs were uniformly cooperative in discussing their plans and their operations in interviews with Vera researchers; this openness did not always extend to how the SDP funds were spent. Whereas most of the offices were forthcoming with this information, two did not respond to Vera's inquiries about how the SDP funds were actually spent in 1984.

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. An 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.

To help understand the impact of particular efforts upon caseloads and case processing times, this report attempts to connect specific efforts with caseload data drawn both from the program performance data reports developed by Vera researchers specifically for the SDP, and from Caseload Activity Reports (CARS) published monthly by the UCS' Office of Management Support. The SDP research data were generated to measure changes in target caseloads between the end of 1983 and the end of 1984; consequently they include information for two dates late in 1983 (the baseline) and for four dates during 1984 -- two in late 1984 (the first year outcome) and two at mid-year. Sometimes, therefore, the monthly CARS data more closely bracket a particular SDP effort

in a District Attorney's office and, consequently, are useful in drawing an inference about the impact of that effort.[8]

Each District Attorney devoted special efforts to the SDP. 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 work and case flow;
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> 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 earlier 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;
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> Efforts to identify the "fighting issue(s)" in a case, and to have the State's evidence and other prerequisites prepared ahead of time to avoid delay when the issue actually comes before the court;
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> Efforts to expedite pretrial motions by consolidating them into one, rather than sequential, proceedings;

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[8] CARS data issued by the Court on the size and age of the Supreme Court pending caseloads were not used for the Speedy Disposition Program impact measures for several reasons. First they do not separate from all Manhattan Supreme Court cases those being prosecuted by 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. 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.

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.

THE FIRST YEAR RESULTS

The data supplied to OMB by Vera's researchers at the end of December show that the total Supreme Court pending caseload increased 1.7 percent between the end of 1983 and the end of 1984, but that most of this increase resulted from a 9.8 percent increase in cases less than 6 months old. The volume of these younger cases, not specifically targeted for reduction by the SDP, tends to be subject to fluctuations in the number of arrests and indictments, both of which increased citywide during 1984 (8% and 5.29%, respectively). The size of the Supreme Court caseload pending over 6 months was reduced by 7 percent; although cases 6-9 months rose by 5.1 percent, the cases over 11 months, specially targeted by SDP, went down by 23.7 percent.

The citywide research data collected for detention cases also showed improvement, but only in the oldest case category targeted. While 6 to 9 month old cases increased 1.5 percent (12 cases), those over 9 months decreased 10.1 percent (68 cases).

The age of the median case in the citywide pending caseload decreased from 170.3 days to 158.6 days. For detainees the median age of all cases was reduced by 1.5 days. The median age of detainee cases pending 6 months or more was reduced by 5 days.

There are some common themes, or issues, that emerge from observation of the District Attorneys' responses to the SDP, themes returned to at the end of this report. One theme is the extent to which on-line management information and case tracking

systems, usually computerized to some extent, are an important resource for District Attorneys when they are planning and implementing efficiency efforts in case. Furthermore, it appears that the offices which have developed such systems typically also have a staff structure that lends itself to executive planning, and a history of innovation. So, for instance, while Kings County feared that its earlier, successful efforts to reduce the backlog of pending cases might have minimized its opportunities for further improvements during the SDP, its past experiences of successful program planning helped equip it to respond early and strategically to the SDP.

Another common theme involves whether the District Attorneys' responses to SDP were tactical or strategic. A tactical response, for instance, might be the temporary establishment of a separate unit of ADAs to address the current backlog. A strategic response would be to analyze why cases are getting old, to identify the points in the criminal justice process where cases tend to be delayed, and to develop new and permanent procedures to reduce delay and to keep cases from aging.

During the first year of the SDP, the District Attorneys undertook more tactical efforts than strategic ones. Thus, while a particular program might have been successful in disposing of targeted cases over a year old, it might leave the category of cases pending 6 months or more increasing because nothing systemic was done to keep cases from aging into that category. Tactical responses to the SDP may result in one-time decrease of pending

cases, and savings to the City, but they provide little assurance that such benefits would persist after SDP incentives expire.

The offices that seemed to perceive most clearly the need to mount a strategic response to the SDP were King's County, where the District Attorney sought first to address the backlog of oldest cases and then to set subsequent goals to reduce categories of successively younger cases, and New York County where the initial program included special attention to cases younger than the target group. But, as the year progressed, the Queens District Attorney worked to help create a special Supreme Court calendar part to expedite cases when they became 4 months old. And, as part of its original plan, the Richmond District Attorney's Office shortened the time scheduled for all felonies by expediting the transfer of cases from Criminal Court to Supreme Court.

A third theme is whether the SDP generated new and innovative approaches to the problem of delay, or merely stimulated the re-activation of past efforts.

A fourth theme is whether changes in pending caseloads in 1984 reflect responses by the District Attorneys to the SDP, or reflect actions of others in the criminal justice system that had an impact on the target groups measured by the SDP evaluation.

A fifth theme is whether the District Attorneys were able to work successfully with other components of the criminal justice system, usually courts, when their approach to the SDP required the cooperation of others. Although the District Attorneys often

maintain that there is little they can do to accelerate case processing times without the strong cooperation of the courts, some proceeded (successfully) without involving the courts in their planning. Other District Attorneys, who tried to involve the courts, met with varying degress of cooperation, and had varying degress of success.

BRONX COUNTY

Implementation of the Speedy Disposition Project by the District Attorney in the Bronx was concurrent with a special effort of the Bronx Supreme Court to decrease the pending caseload. According to the court's CARS reports, the number of pending cases that exceeded Standards and Goals set by the Administrative Board of the Judicial Conference in 1979 (6 months or more from Supreme Court indictment) had increased from 900 at the end of Term 1, 1983 to over 1150 at the end of Term 13, 1983.

When a new Administrative Judge was assigned to the Bronx Supreme Court, Criminal Term, at the end of 1983, 2,164 cases were pending in the Supreme Court. The new Administrative Judge set a goal for 1984 to reduce the total number of pending cases by 500 at year's end (to about 1,850 cases). Despite this special commitment of the Bronx Supreme Court to reduce delay in 1984, the Administrative Judge says there was no joint planning between the Court and the Bronx District Attorney's office with respect to the SDP.

$273,000 in FY 1984 start-up funds were allocated to the Bronx District Attorney's Office for the SDP. The District Attorney's initial plan for the Speedy Disposition Project, as stated in material from that office, was as follows:

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

2. Trial assistants will inform the court of their ready status on newer cases with a request to the court that

these newer cases be held "ready subject" to their oldest cases.[9]

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

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 DA'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 Assistant District Attorneys will be assigned to the trial division lawyers to help prepare the older cases.

BUDGETARY NEEDS

11 Assistant District Attorneys	$226,000
3 Support Staff	46,000
	$273,000

Between January and the end of June 1984, the $273,000 from SDP was allocated for the salaries of 11 new Assistant District Attorneys and 3 support staff who were hired in January and February. Hiring by the Bronx District Attorney's Office is normally done in late August and September, so the SDP funds allowed the office to accelerate its increase in staff.

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[9] Vera researchers have noted that the selection of cases for trial is sometimes an issue of contention between the judiciary and the prosecutors. Judges may prefer to assign for trial a newer case that is immediately ready in order to ensure all judges are occupied, while prosecutors may prefer that an older case that could be ready for trial in a day or two be sent out to the available trial court.

In response to the SDP initiative, ten Criminal Court ADAs were assigned to the District Attorney's Supreme Court Bureau to help in trial preparation. They were present when cases were tried, but only in support of the Supreme Court ADA assigned to try the case. However, by September this part of the plan was abandoned because of the staff shortage it created in Criminal Court, and because 8 or 9 more experienced ADAs had been permanently assigned to the Supreme Court Bureau in order to decrease the caseload for each attorney from 35 to 25.[10]

During 1984, word processors were being programmed to automatically track cases for the District Attorney's office. However, by the end of the year, Bureau Chiefs were still getting only daily information on cases already disposed, and some forms unrelated to case processing times. Therefore, apart from the staff increases and reassignments, the major observable effort of the Bronx District Attorney to reduce the backlog was the periodic manual production of lists of cases pending more than one year since indictment. These lists were presented to the Administrative Judge by the District Attorney's office with a request that their dispositions be expedited. Although this was already an occasional practice introduced by the Bronx District Attorney several years ago, four lists were provided during 1984.

Discussions with the Bronx Administrative Judge indicate that he gave considerable attention to the lists of old cases given to

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10 Early in 1985, Criminal Court ADAs were again assigned as support personnel in Supreme Court.

him by the District Attorney's office. For example, a list presented in September contained 157 indictments. The Judge kept his own record of what occurred when these cases came up on the Calendar in his Part 40. He also directed memos to the judges to whom the cases were sent, listing the cases and requiring the judges to report at the end of each month as to what had occurred when the cases on the District Attorney's list came up on their calendars.[11] However, as of September, the District Attorney's Supreme Court Bureau Chief had no parallel plans to monitor the progress of the cases on these lists until the word processors were programmed to do so.

The Administrative Judge also prepared his own calendar sheets to track the cases on the District Attorney's September list. A few illustrations show the kinds of problems that were causing delay in these cases, all of which had been pending over one year. 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

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[11] In the Bronx Supreme Court all cases go through the Administrative Judge's Part as they pass from their Calendar Parts to a Trial Part. The Administrative Judge selects the Trial Part for each case.

the District Attorney would have to answer.[12] In seven cases there were scheduling conflicts: In one, counsel both for the people and for the defense 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. The Admistrative Judge set trial dates for each of these seven cases within a week to a week and a half. The list contained one case in which the defendant had entered a guilty plea.

The Court's CARS Reports for the Bronx show that, in 1983 -- the year before SDP started -- the total number of pending cases decreased from 2,413 in July to 2,164 in December. However, the number of cases over Standards and Goals increased from 960 to 1,166 during the same period of 1983. The current Administrative Judge attributes this increase in old cases to his predecessor's practice of not sending cases from the Calendar Parts out for trial until they had been pending six months, even if they were ready for trial earlier. A senior Bronx ADA concurs that this was the previous practice, but says exceptions were made if the defense attorney pushed for an earlier trial.

The major procedural change introduced by the new Bronx Administrative Judge when he took over in January 1984, was to require that all cases be sent to him for assignment to a trial

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12 Under court rules, defense motions are supposed to be filed within 45 days of indictment. However, the rule is seldom enforced. It is widely thought 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.

part as soon as they were ready for trial, or when they had been pending 9 months, whichever occurred first.

As indicated above, his goal in 1984 was to reduce the overall pending caseload to between 1,800 and 1,850 cases by the end of the year. Although that goal was reached at the end of March 1984, the caseload increased again through the rest of the year and reached 2,062 cases by the 13th Term of 1984. However, the number of older cases (those over Standards and Goals) decreased substantially from 1,166 in the 13th Term of 1983 (54% of the total caseload) to 721 in the 13th Term of 1984 (35% of the total).[13]

The Bronx Administrative Judge attributes his inability to keep the overall pending caseload at 1,800-1,850 cases in 1984 to an increase in filings by the District Attorney's Office and a decrease in judicial resources. Although the CARS data do not indicate a 1984 increase in overall filings in the Bronx Supreme Court, those data do show that "Judge Days" averaged 704 for the first 6 Terms of 1984, but only 524 for Terms 7 through 13,[14] when pending cases increased from 1,872 to 2,062.

It is worth noting that while Judge days customarily decrease throughout the City in the second half of the year because of

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[13] In January 1985, the Programs and Planning Office of the UCS' Office of Management Support issued a special 1984 caseload activity report for the Bronx Supreme Court. The report cited "a startling reduction" of 38 percent in felony cases pending.

[14] "Judge Days" on these court reports are the total number of days judges were in court during the Term.

judges' summer vacations, the Bronx County drop in 1984 seems to have been somewhat greater than usual. In 1984, Judge Days for the first 6 terms were comparable to 1983 levels, but in five of the last six terms judge days were lower in 1984. The 1983 average for terms 7-13 was 564 days, compared to 524 in 1984.

The Vera research data on the detention population for cases pending in the Bronx show an increase of 76 cases from an average population of 1,385 on the sample dates late in 1983, to 1,461 on the sample dates late in 1984. However, the increase resulted principally from an increase in detention cases pending less than 6 months. On December 1983, there were 943 cases in detention which had been pending less than 6 months and in December 1984 there were 1,128. Detention cases pending at least 6 months but less than 9 months went down, from 214 to 193. Those pending for over 9 months decreased from 227 to 140.

The caseload reductions realized in Bronx County appear to be largely the result of the initiative of the Administrative Judge, although it may be that the addition of ADAs to the trial division brought cases to the Administrative Judge's Part as "ready" at earlier dates than would otherwise have occurred. It is instructive that the Administrative Judge required all cases to be sent to his Part 40 when they reached nine months from indictment, and that caseloads over nine months went down during the year: Vera researchers were told in several interviews that the Administrative Judge's success in moving cases to earlier disposition

was derived more from the force of his personality than from the administrative changes he initiated.

During Vera researchers' visits to the Bronx Supreme Court, the Administrative Judge's efforts to keep cases moving by influencing other judges, and prosecutors and defense attorneys as well, were apparent. If the added funds allocated to the Bronx District Attorney by the Speedy Disposition Program did nothing else during 1984, they may have made it possible for the District Attorney's office to respond more readily to the Administrative Judge's demand that cases move more promptly.

It is interesting to note, however, that the backlog reduction accomplished in 1984 appears, from inspection of the CARS reports, to represent a return to the general status of the Bronx Supreme Court's caseload prior to the substantial increase in older cases late in 1983. Therefore, now that the court has accomplished this goal, it remains to be seen see what measures can be introduced by the Bronx District Attorney in 1985 to achieve a net improvement over the status that has been regained.

KINGS COUNTY

According to the Kings County District Attorney, speeding case processing time has been a priority of the office since 1982. The office's 1982 Annual Report includes the development of programs to reduce delay in prosecution and to eliminate a backlog of old cases as one of the "Highlights of 1982". The report claims that 582 cases that started before January 1981 were identified and 90% of them were closed. At the beginning of 1983 there were 875 pending indictments older than one year from their arrest date.[15] By January 1984, just as the SDP was getting

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[15] According to CARS reports, in the last Term of 1983 an average of 42% of the pending Supreme Court caseload citywide exceeded Standards and Goals. In Kings County, 37% of the total exceeded Standards and Goals: in New York County, 45%; Bronx, 54%; Queens, 32%; Richmond, 19%.

The Kings County District Attorney dissented from the design of the Speedy Disposition Project during preliminary meetings between OMB, the Criminal Justice Coordinator and the District Attorneys. One of the concerns of the office was that its previous efforts to reduce delay would prejudice its ability to accomplish more during the project. There is no way to determine whether this was, in fact, the case during the program's first year but the logic of the 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 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.

underway, the District Attorney's Office data showed indictments pending more than one year from arrest were down by 18% to 503.

The specific efforts the District Attorney had undertaken prior to 1984 were as follows:

(1) Expanded use of "Felony Waiver" procedures;[16]

(2) Introduction, in 1982, of Vertical Prosecution, which abolished the separate Grand Jury Bureau and assigned an ADA to each case as soon as the case completed complaint room processing;

(3) Introduction of procedures to shorten time from Grand Jury proceedings to arraignment in the Supreme Court. According to the District Attorney's Office, Legal Aid Society scheduling problems had caused frequent delays

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Other objections of the Kings County District Attorney to the SDP were that the measures did not control for "quality of dispositions", and that, consequently, targeted caseloads could be reduced if District Attorneys offered excessively lenient dispositions to defendants, that the first year allocation of funds among the District Attorneys did not accurately reflect their respective workloads, and that no credit is given for speeding dispositions in cases pending under six months.

Despite disagreements about the design of the SDP, the Kings County District Attorney participated fully, was present at a press conference announcing the SDP, and accepted the Kings County share of the 1984 funding allocation.

[16] A procedure utilized by several District Attorneys to speed disposition is to communicate a felony plea offer to the defense while the complaint is still pending in Criminal Court. If the defense accepts the offer, a Superior Court Information is filed instead of a Grand Jury Indictment. Grand Jury proceedings, or at least protracted Supreme Court proceedings are eliminated. At the urging of the Kings County Supreme Court, the current District Attorney's predecessor had initiated a Felony Waiver procedure, but it was not extensively utilized until the current District Attorney took over and hired, as her Executive Assistant District Attorney for Operations, a Nassau County Assistant District Attorney who was familiar with the procedure used there. The Felony Indictment Waiver Unit was created in June 1982.

of as much as three weeks from the filing of an indictment to the Supreme Court arraignment, and the District Attorney obtained the cooperation of Legal Aid in reducing the time required to one week.

(4) Use of the office's Computerized Management Information System to produce a series of key management reports:

Lists of indictments pending but not voted by the Grand Jury, indictments voted but not filed;

A report to each Bureau Chief of cases where an ADA has asked for 2 or more adjournments.

Lists of defendants awaiting sentence;

List of unanswered motions; and

Backlog report to Executive ADAs showing cases pending less than 3 months and from 3 to 6 months, by Bureau.

(5) The office had also been analyzing the backlog of cases in the Homicide Bureau, where one-third of the cases were more than a year old from indictment.

On March 2, 1984, the 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.
>
> 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.[17]

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 number of felony cases prior to Grand Jury presentation and is the most expeditious manner of reducing backlog. Finally, these funds will 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.

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17 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 -- see note 8 above). 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.

In a second letter to the Coordinator, on March 21, the following budget was provided:

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[18]

According to members of the District Attorney's senior staff, a major aspect of the Speedy Disposition effort not developed fully in the plan presented to the City was set in motion at a meeting later in March between the Deputy Chief Administrative Judge for New York City Courts and the District Attorney. This plan was described in a memorandum sent on April 12, 1984 by the City's Deputy Coordinator of Criminal Justice to the Coordinator:

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18 The City's allocated $403,500 of SDP start-up money to Kings County for FY 1984.

At the monthly Criminal Justice meeting[19] 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 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

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19 Criminal Justice meetings are held monthly in each Borough, chaired by the Administrative Judge of the Borough. The District Attorney or a designee attends.

of the Brooklyn effort as a part of the evaluation of the Speedy Disposition Program.

A special Trial Accomodation Program (TAP) unit was established in the District Attorney's office to support the Kings County Supreme Court Special 10-K Part,[20] referred to as "the TAP Part" by the ADAs. An executive level ADA was assigned to supervise the TAP effort in the District Attorney's Office, and TAP units were established in the Supreme Court, Homicide, and Narcotics Bureaus.

TAP in the Supreme Court Bureau was staffed by 6 ADAs, 2 paralegals, and supervised by the ADA in charge of Supreme Court Bureau Complex "A".[21] The Supreme Court Bureau TAP ADAs came from all 5 Supreme Court Complexes, and were picked by the TAP supervisor based upon their trial abilities. Three came from the Major Offense Program (MOP); one each came from Supreme Court Complexes A, B, and C. However, these ADAs were not replaced in their Complexes, because TAP siphoned cases out of the Bureaus' regular caseloads. According to the District Attorney's Office, fifty percent of the TAP cases came out of MOP, and the rest came from A, B, C, or D Complex. A paralegal was assigned to each three

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20 The Special 10-K Part of the Brooklyn Supreme Court, presided over by the Administrative Judge, was not established especially for TAP. It has been in existence for some time, handling problem cases mostly referred to it by other judges. When it is devoted to a special effort to reduce backlog, however, the clerk prepares a list of cases as ordered by the Judge, and these cases are transferred to Special 10-K.

21 The District Attorney's Office has a unit of ADAs assigned to each Supreme Court Calendar, or Complex, Part.

TAP ADAs, to check on witness' availability, to do "leg work" and to get records necessary for trial. For example, some cases over a year old still did not have medical records needed for trial.

In the Homicide and Narcotics Bureaus there were also supervisors for TAP cases, but the trial ADA originally assigned to a case remained assigned if it reached TAP status, unless a scheduling conflict required a re-assignment.[22]

The Administrative Judge says he started with a list of 100 cases for his 10-K Part, chosen by the Clerk of the Kings County Supreme Court. These were considered "problem" cases because of the time they had been pending or because an ADA in the Complex Part had answered ready one time but was currently answering "not ready" for trial.

The Administrative Judge initially gave the District Attorney's office a list of about 40 cases to be assigned to 10-K's back-up Trial Parts A and B. The District Attorney's Office knew which cases would be on the 10-K docket one week in advance, and prepared those cases for trial. If an ADA was scheduled for more than one case, the TAP supervisor would re-assign one of the cases to another ADA.

The TAP effort started on April 23, 1984 and continued until June 30. According to the District Attorney's Office, 162

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22 Homicide cases pose a special problem for speedy disposition because over half of them are disposed by trial; less than 10% of the entire caseload goes to trial. The District Attorney's Office says that one reason for this high trial rate is its insistence upon sentences of 15 years to life in negotiated guilty pleas.

defendants 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 went to warrant.[23]

The Vera research data show that between December 4, 1983 and June 24, 1984, the period of time including that in which the 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. However, by October 28, four months after TAP was terminated, the number of such cases had rebounded, to 811. 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. Had it continued uninterrupted, the TAP plan probably would have addressed this problem. The District Attorney's office had a strategic plan: 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.

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23 CARS reports for Kings County show that the number of cases over Standards and Goals (pending disposition more than 6 months from indictment) decreased from 912 in April to 898 in June. It is quite likely that this improvement was in large part attributable to the operation of the TAP. However, in July the number increased to 928 and continued to increase to 944 in August, 1138 in September and 1170 in October. Both the reduced number Judge Days typical in all the courts during the Summer Terms and the end of TAP may have contributed to this. The Brooklyn District Attorney's office believes a 12% increase in felony arrests was a factor also.

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 seven designated TAP Trial Judges. This required the District Attorney's Office to be ready for trial on more cases before more judges and taxed the resources of the District Attorney's Office, but the TAP supervisors accomodated the shifting trial caseload by reassigning cases when ADAs had scheduling conflicts. Both the Administrative Judge and the District Attorney's staff also agree that more cases were sent to trial parts than could be immediately 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 believed the Chief Judge's opposition to individual calendaring may have directly caused the closing of the initial TAP program. However, the Kings County Administrative Judge's view 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, and that he terminated the effort when the problem was solved. He stated that he had no knowledge of the District Attorney's Trial Accomodation Program, and that he knew of no commitment or intention on the part of the Supreme Court to

make the effort a permanent part of the criminal procedure in the Supreme Court, as the District Attorney had planned for it to be.

TAP activity decreased steadily from June 30 until early November, when 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 resurrecting TAP.

TAP II, set up as a result of this meeting, designated six Supreme Court Parts for old cases, initially defined as those pending more than a year since indictment, each part having 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. The 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, while TAP II was operating, these six Parts received about 200 cases from the court clerk and disposed of 156 cases. 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, the ADAs assigned to TAP II cases remained with those

cases when they went into a TAP Part. The major reason for this change was the high rate of guilty pleas in TAP I. When TAP I was planned, the District Attorney's Office thought that a principal reason why these cases aged was that they posed special problems which made their trial or other favorable 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 enjoyed 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. Research data 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.[24]

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24 The Court's CARS data also show that at the end of the 10th Term, the approximate start of TAP II, there were 1170 pending cases over Standards and Goals, but that at the end of the TAP II period the number of such cases had been reduced to 1127.

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 letter of March 2 to the Coordinator, quoted above. Nevertheless, the office computer has been programmed to identify cases that may be languishing, office policy has been established that predicate felony notices are to be served upon the defense at arraignment on the indictment (clerical staff has been allocated to this process), and the New York City Partnership has completed a study of the Felony Waiver Program. The "time to disposition" study originally contemplated has also been completed.

Despite the SDP's emphasis on long-term detention cases, the management reports and other efforts undertaken by the Brooklyn District Attorney to reduce delay placed little emphasis upon detention cases, as opposed to cases where the defendants were on some form of pre-trial release. The explanation for this according to the District Attorney's Office is that, as a policy matter, the District Attorney believes that the risk of pre-trial crime by released defendants is as much a problem for the District Attorney as are over-crowded detention facilities.

Although other factors may have been at work as well, the lack of emphasis upon detention status may in part explain the increase in the number of older detention cases as measured by the research data. These data show that the Kings County detention population increased in all categories of case age during 1984. The largest percentage increase was in cases older than 9 months,

which increased 21% from an average of 219 at the end of 1983 to an average of 266 at the end of 1984. The detention population of cases over 6 months old, but not yet 9 months old increased 17% from an average of 214 to an average of 249. The detention population of cases under 6 months old increased 13%, from an average of 1354 to an average of 1538.

The Kings County District Attorney's Office attributes its 1984 inability to reduce caseloads in the SDP target categories to a 12% increase in felony arrests and a 6% increase in indictments for the year, and a 0.42% decrease in Judge Days.[25] The available data indicate a more complicated explanation. 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. In the first three terms of the year, the caseload over Standards and Goals was reduced by 10%, even before TAP I was operating. These cases continued to decrease in the 5th and 7th Terms, when TAP I was operating, but then increased steadily and substantially for the next 4 Terms. The total increase was 272 cases, from 26% of the total caseload to 34% by the 10th Term.

One obvious relationship that exists is between increases in cases over 6 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 5th Term in 1984; while Judge Days averaged 770 each month.

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25 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 entire rest of the year.[26]

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, but an increase in the 13th Term, when TAP II was, again, discontinued.

Whatever the factors were that caused Brooklyn target case-loads to increase, the TAP efforts seemed effectively to off-set the increases in the caseload categories that were TAP targets, for the periods the DA was able to keep TAP operating.

The Kings County Speedy Disposition plan changed somewhat as personnel changed and experience informed the evolving effort. TAP might be seen more as a tactical than as a strategic effort in that it addressed older cases rather than the reasons for cases getting old; but it must be said that the District Attorney's plan, to address serially, progressively younger cases coupled with the Office's already implemented policies to shorten

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26 This decrease in judicial resources during the summer is a citywide phenomenon. In all boroughs, Judge Days during the three summer Terms averaged 34% lower than in the previous Term and cases pending over Standards and Goals increased 9%. In Brooklyn the decrease in Judge Days for the summer terms averaged 32%, while cases over Standards and Goals increased 12%.

have had a long-range and permanent impact on case processing had it been sustained. But it was not.

The major implementation problem that confronted the Brooklyn District Attorney's Office was maintaining judicial support for its approach to the SDP; TAP was an approach that depended upon judicial cooperation despite evident friction between the District Attorney's Office and the Administrative Judge. If TAP I was indeed terminated because cases assigned out to trial judges were creating individual calendars in the trial parts, there was no reason why that practice could not have been discontinued without discontinuing TAP entirely. The TAP Calendar Judge could have simply returned to the original plan and sent cases out for trial one at a time. In the end, despite efforts by Executive level ADAs, it seems to have required a meeting, between the District Attorney and the Deputy Chief Administrative Judge for New York City, to get the plan back on track. More than 4 months elapsed between the demise of TAP I and that meeting. Even then, the resurrected TAP II functioned for only about a month.

The lack of consensus in Kings County between the District Attorney's Office and the Court about the District Attorney's response to the SDP was clearly a major reason that the caseload and detention data in Brooklyn went up during the year despite the incentives of the SDP and the considerable efforts undertaken -- and undertaken early -- by the District Attorney and her staff.

NEW YORK COUNTY

$486,000 in start-up money was allocated to the New York County District Attorney for the Speedy Disposition Project in FY 1984. The Project in this office had two major components: (1) the Management and Planning Bureau (MPB) designed and implemented new methods to track and monitor cases as they aged, and (2) senior administrative staff devised several new case processing procedures that are still being implemented within 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 caseload or cases within it. The MPB only provided the Trial Bureaus with retrospective data: that is, MPB 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 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 information collection system in the Supreme Court Bureaus. In each court calendar part, the District Attorney's Office maintains a paralegal court specialist who records case activity information on a form transmitted to the MPB. As soon as a case

is 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). If the Supreme Court Bureau subsequently tells the Unit that the case has been finally disposed the case is removed from the Star Report system. If no final disposition information is received, the computer automatically puts the case into a "six month file," and into other 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 assistant so that the reasons for delay in 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 assistants may be over-burdened 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 across the Bureaus according to each Bureau Chief's individual management style.

The MPB is also producing monthly reports sorted by individual ADA, and by calendar part, that compare the performance of the six Bureaus. Comparison among Bureaus allows the District Attorney's executive staff to monitor the progress of the SDP.

Procedural Changes for Processing of Cases.

As the second major dimension of the SDP, the District Attorney's senior administrative staff designed and are implementing certain new case processing procedures and strategies for the Trial Bureaus.[27] Each of the new office procedures and policies, summarized below, is set forth in 1984 in-house office

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[27] To support the Trial Bureaus in these efforts to expedite cases, Speedy Disposition Project funds have been spent as follows:

a. Each Bureau has hired one extra paralegal, called a Trial Preparation Assistant;

b. Each Bureau has purchased a word processor to speed paper preparation. Each Bureau now has 3-4 secretary/typists to serve 35-40 assistants. Even with the word processor, senior office staff still feel that the Trial Bureaus need more clerical support staff.

memorandam from administrative staff to Trial Bureau Chiefs and assistants.

> 1. Assistants have been instructed to file indictments as soon as they are voted, rather than waiting until the end of a grand jury term (ordinarily four weeks).

Technically, CPL 180.80 is satisfied by the filing in Criminal Court of a certificate of grand jury action; 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 two to three extra weeks, thereby delaying the Supreme Court arraignment.

> 2. Assistants have been 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. Assistants are to appear in person on their old SDP-targeted cases rather than letting the calendar "cover" assistant handle them.[28]
>
> 4. If an adjournment is requested, the assistant is to request the shortest possible

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28 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, 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 is not covered by the notes.

Senior Office personnel note also that the Court has little incentive for speedy processing at this point. The comment was offered by some 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]

> 6. A predicate hearing itself, according to senior office personnel is often a "can of worms." Therefore, assistants are also told to be forceful in bringing the requirements of People v. Harris to the attention of the judge and in insisting on adherance to the Harris criteria.[31]
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> 7. Assistants have been instructed to be more aggressive in ensuring that jailed defendants are produced for their court appearances. They are directed to contact the Department of Correction themselves, rather than always waiting for the clerk of the court to do so.

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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 these cases awaiting sentence or other post-conviction proceedings are sizable and constitute about 20% of the total pending caseload. The Vera sample of cases pending disposition or sentence on December 2, 1984 showed 15,740 cases 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, and the CARS data include each filing against a single defendant, which Vera data counts only defendants.

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

ADAs are here being asked to insert themselves into a procedural aspect of case processing in which they have not previously been involved.

> 8. Assistants have been encouraged to coordinate their work with other assistants if a defendant has multiple proceedings (the District Attorney's Office believes this is frequently the case).[32]
>
> 9. The Office has 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 now the District Attorney personally -- through memoranda and through a series of meetings with Bureau Chiefs to discuss the SDP strategies -- has told the Chiefs to emphasize "elbow grease."

According to senior Office officials, the lack of attention to speed before SDP may have been partially because speed is not a natural priority for an ADA. ADAs are concerned first with "keeping their cases together." That is, their priority is making 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 -- the Star Reports are used internally for this purpose, for example

The promise of financial reward to the District Attorney's Office is an important part of the "push." In at least some

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32 Vera researchers are analyzing data to estimate how frequently this occurs.

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.

Supreme Court cases filed in Manhattan remained at about the same number in 1984 as in 1983. But the Vera research data show caseload reductions in most pending categories, especially those targeted by the SDP. The average overall caseload from the two research sample dates taken in late 1983 was 4,275, and from the two sample dates late in 1984 was 3,906. (This reduction of 269 cases was somewhat less than the 400 indicated by the CARS reports for the Manhattan Supreme Court from the end of Term 1, 1984, to the end of Term 13. But the CARS statistics are not comparable; they count "filings" rather than individuals, they include cases in the jurisdiction of the Special Narcotics Prosecutor as well as the Manhattan District Attorney, and they do not include cases awaiting sentence.) Cases over 6 months old were reduced by 288, from 1,809 at the end of 1983 to 1521 at the end of 1984 according to the Vera research statistics.

Overall, the detention population attributable to cases pending in Manhattan was reduced by 12, from 2,540, the mean of the two dates Vera researchers measured in 1983, to 2,528 on the two dates measured in late 1984. Although the six- to nine-month-old detention cases increased by 10 (from 255 to 265), the detention cases older than 9 months, which were especially

targeted by the SDP, decreased by 40 (from 182 to 142).

The improvements in Manhattan pending caseloads were steady throughout 1984, except that the same increase during the summer months occurred here as in the other boroughs. At the end of the 7th Term (approximately the end of July), total cases pending in the Manhattan Supreme Court (according to the CARS data) were at 3,403, with 810 pending over Standards and Goals. By the end of the 10th Term (approximately the end of October), total cases pending were at 3,545, with 1,002 pending over Standards and Goals.

The Manhattan District Attorney's Office used its experience in developing executive information systems to provide its managers with the detailed information they needed to respond to the SDP. The key to this Office's conception of the SDP was greater internal management control over the pace of case dispositions.

It is interesting that in the Manhattan District Attorney's Office, other than the changes made in the time required to get indictments filed and in expediting predicate felony proceedings, no structural changes were made in the way cases are processed. And planning proceeded without Court involvement; indeed, no SDP-generated change in Manhattan assumed any modification of existing judicial arrangements.

The Manhattan District Attorney's Management and Planning Bureau will no doubt continue to distribute the Star Reports. A more difficult question is whether the Manhattan management

incentives will continue in the second year of the SDP, or would continue in the absence of SDP financial incentives when the SDP is over.

SPECIAL NARCOTICS PROSECUTOR

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

In practice, however, the SNP cases are almost exclusively Manhattan arrests. The only SNP complaint room is at 80 Centre Street in Manhattan, and only Manhattan police officers present cases for prosecution. One result of this is the existence of a close administrative relationship between the Manhattan District Attorney and his executive staff and the Special Narcotics Prosecutor and his executive staff.

On March 2, 1984 the SNP wrote the City outlining the office's initial response to SDP. During 1984, three ADAs would be hired at a cost of $90,000, and two paralegals would be hired at a cost of $31,000.[33]

There were several programmatic elements of the SNP's plans for the SDP. Each ADA would review his or her caseload and identify cases pending over 6 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

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33 The SNP share of SDP funds in 1984 was $84,000.

over 4 months, and distribute them to supervisors and trial ADAs every three weeks. Leaders of each SNP Module and of the SNP Task Force[34] units would see that cases pending over 6 months were given priority to accelerate their disposition.

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. SNP ADAs were encouraged to be aggressive about securing the presence of needed witnesses, 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. Also, SNP 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. SNP ADA's 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 Felony status were to be made at Supreme Court arraignment or "at the earliest next opportunity." ADAs were to

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34 A Module is a group of ADAs assigned to a specific Supreme Court Calendar Part. Task Forces are composed of ADAs assigned to handle cases arising from special NYPD anti-drug efforts on the Lower East Side of Manhattan and in Harlem.

make a special effort to determine whether the defense intended to resist Predicate Felon status, and were instructed to seek to dispose of predicate felony issues as part of plea negotiations. Minutes necessary to prove Predicate Felon status were to be ordered on a "Rush" basis as soon as a SNP 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 SNP'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 6 months. The part was agreed upon in discussions, in the Spring of 1984, that involved 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 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 SNP additional and exclusive court resources. Normally SNP cases are integrated into the general Manhattan Supreme Court criminal caseload, where some SNP ADAs believe judges give the narcotics cases relatively lower priority than other categories of criminal prosecutions. The Clerk was to assign all narcotics indictments pending over 6 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 by the SNP that on many days the SNP Chief Assistant was present in Part 88 to supervise proceedings for the SNP 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 6 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 SNP's office. Sixty-eight defendants pled guilty to felonies, 7 to misdemeanors, 12 cases were dismissed, and 26 were sent out for trial in the specially created trial parts. 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

SDP-targeted cases over 11 months old decreased from 256 to 146, a decrease of 43% (110 cases). The SNP's detention cases also decreased, from an average of 281 at the end of 1983 to 275 at the 1984. The decrease was primarily in the SDP-targeted category of detention cases pending more than 6 months but less than 9 months: This group of SNP cases dropped from an average of 33 detainees at the end of 1983 to 22 at the end of 1984. (Pending detention cases less than 6 months old increased by 6 and those older than 9 months, also targeted by the SDP, stayed the same.)

QUEENS COUNTY

In FY 1984, $219,000 of start-up money was provided to the Queens District Attorney's office for the Speedy Disposition Program. According to the Chief of the Queens District Attorney's Trial Division, there were three initial changes planned to speed the disposition of cases:

> (1) The creation of a single Criminal Court Part for all felony complaints to facilitate the "Felony Waiver Procedure," whereby a felony plea agreement is reached before indictment. The Part would 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 utilized 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.
>
> (2) Using pre-trial conferences in Supreme Court Complex (Calendar) Parts in lieu of formal motions to speed up case processing. The Queens District Attorney's Office believed that, when compared with other New York City counties, a larger portion of the Queens caseload is represented by privately retained counsel, and that this contributes to a more

formal and time consuming motion practice.[36] It was the feeling of the Queens District Attorney's Office that 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 back to Calendar Parts.

(3) 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.

In May, 1984, ten "Long Term Detainee Parts" (LTDs) were established in Queens by the Supreme Court Administrative Judge, with the support of the District Attorney. It was to these new Parts that the 10 teams of two ADAs each, established for the SDP, were assigned. These new court parts are basically Trial Parts and receive cases that are over 6 months old from arrest date. Despite the name given these parts, all cases over 6 months are referred to them, regardless of detention status. The LTD Parts may accept guilty pleas, dismissals, or hold trials of their cases.

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[36] The formal motion practice may also account for the fact that in Queens evidentiary hearings on motions are sent out to Trial Parts, but returned to their Calendar Parts after each motion is adjudicated. In other counties, motions requiring evidentiary hearings are delayed until they are the only remaining item of business before trial then and they are adjudicated in the Trial Part. The trial immediately follows the ruling on the motion in the same Trial Part. The District Attorney's Office believes the Queens motion practice is just part of the local "lore" and not associated with private practioners.

On May 21, 1984, a list of 1,065 eligible cases was prepared, and 50 at a time were assigned to each LTD Part for "conferencing." The District Attorney's Office believes most of these cases involve some kind of problem from the District Attorney's point of view -- generally, evidentiary weakness, witness unavailability, etc., -- but the District Attorney's Office also believes many lingered because of defense attorney scheduling problems and delay tactics. By September, 1984, according to the District Attorney's statistics, 71% of the 1,065 had been disposed in the LTD Parts; the rest were returned to their original Cluster 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 "Albany" 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. In Queens, when the problem posed by the SDP program appearing to create individual calendars was raised by the Court's Office of Management Support, 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 previous list was prepared on May 21, were sent to the LTD Parts. According to the District Attorney's Trial Bureau Chief, 140 of those cases had been disposed by November 11th.[37]

The Superior Court Information/Waiver of Indictment procedure was not implemented until September 10, 1984, when the Supreme Court established Part AP 6 in Criminal Court to be presided over by the same judge who presides 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, again 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 where all felony complaints would be sent after arraignment and where the District Attorney's plea offer would be communicated to the

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37 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.

defendant.[38] This would concentrate all felony case plea negotiations at this early stage, in a single court managed by designated ADAs, and this, in turn, was expected to help insure uniformity among cases and consistency with the plea negotiating policies of the Office.

Initially, the Court was reluctant to create the additional criminal court felony part, but the District Attorney's Office raised the issue with the Deputy Chief Administrative Judge for New York City Courts, and eventually a special Criminal Court Part (AP 6) for felonies was established. But, during the several months before the agreement on these matters was reached, the caseloads in Queens increased substantially.

All felony complaints are now arraigned in Criminal Court Part AP 6 and set for an adjourn date for plea negotiations 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

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[38] This is similar to the way the felony waiver procedure is institutionalized in Kings County. Indeed, the Chief of the Trials Division came to the Queens District Attorney's office from the Brooklyn District Attorney's Office, and one of his first assignments was to establish the "felony waiver" procedure.

responded to this concern by delaying the AP 6 appearance somewhat.

The AP 6 calendar now averages about 100 cases a day. 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 3 terms of 1984 the Supreme Court felony waiver part averaged 64 case dispositions a Term.

The pretrial conferences, in lieu of formal motions, were established on an experimental basis in the Major Offense and Homicide Cluster Part. By the end of 1984 the conferences had not been expanded to other calendar parts, even though the District Attorney's Office believes they have worked fairly well. The District Attorney's Office raised the issue of motion conferences with the remaining Calendar Judges, but received no reply. Executive ADAs in the office believe the judges are reluctant because of the difficulty in scheduling the conferences in the higher volume clusters and agree this presents a problem. The major offense and Homicide Cluster docket contains about 300 cases, which the other Clusters have about twice that number.

On September 13th, 1984, a special Supreme Court Part (designated "Special Complex Part K-84"), began operating; it was established for cases over four months old, but not yet six months old and eligible for a LTD Part. The District Attorney's Office feared that, without K-84, emphasis on the cases already pending six months and over in the LTD Parts could result in inattention

to the younger cases, and, consequently, more cases would approach or enter the six-month category.

Each Friday, the Court Clerk provides a list of cases which have reached 4 months of age for the Judge in Special Part K-84, and for the DA's office. Part K-84 is staffed by the District Attorney's five Bureau Chiefs on a daily rotating basis.

According to the District Attorney's office the Part takes 10-12 guilty pleas a week. Data compiled by the Supreme Court Clerk's office show that Part K-84 averaged 46 dispositions in each of the last 3 Terms of 1984.

Two prime factors shaped the results of the SDP in Queens in 1984: (1) The District Attorney's decision early in the year to file felony rather than misdemeanor charges in certain categories of cases, and (2) a delay until mid-September in implementing two major pieces of the SDP plan -- the felony waiver procedure and the Special K-84 Supreme Court Part.

The District Attorney's changes in charging policies are probably responsible for substantial increases in filings that occurred in the Supreme Court during 1984. According to the Court's CARS data, in 1983 there were 4,865 criminal cases filed in the Queens Supreme Court. In 1984, there were 5,817, an increase of over 19%. In only the 1st and 13th Terms of 1984 were Supreme Court filings below those of the same Terms in 1983.

The new charging policies involved gambling, auto theft, commercial burglary, and narcotics cases. In each of these crime categories, certain cases which had been filed as msidemeanors in

Criminal Court, or not filed at all, were to be filed as felonies. In addition, according to the District Attorney, a new Police Precinct established in Queens resulted in more arrests. (Felony arrests rose 1.0% in Queens in 1984.)

The LTD Parts set up in June appear to have been effective in reducing caseloads in the six month and older category they addressed, until the larger caseload resulting from increased filings reached six months of age. There was only one month from the time the LTD Parts were operating until the increased filings of February and March began to reach six months of age, but in that month the pending six-month and older cases went down by 110 cases. When the bulge of cases caused by the February increase reached the six month category, and summer vacations decreased the available judges, the efforts of LTD Parts alone were no longer adequate to keep dispositions ahead of caseload increases.

But, while the 1984 filings in Queens Supreme Court increased 19% and the percent of cases pending over six months stayed the same (32%), the total pending caseload at the end of 1984 had increased by only 14% over 1983.

A trend toward disposing of cases faster than they were being filed began in the October Term, the first full month of operation of both the felony waiver program and Special Part K-84, and just after the second batch of cases over six months old had been sent to the LTD Parts. According to CARS data, in October the total pending caseload (which had increased in six of the previous eight Terms) went down from 2,936 to 2,884. And it decreased each

succeeding Term to 2,650 at the end of the year. Comparing another way, in each of the first 1984 Terms except one, filings exceeded dispositions. In October and in the remaining three Terms of the year, after the felony waiver program and Part K-84 began operating, and the second batch of cases were sent to the LTD Parts, dispositions exceeded filings by 294 cases.

The Vera research caseload data also reflect the increases experienced as the new filings reached the respective caseload categories, and then show decreases as the felony waiver and K-84 efforts started up. For all cases pending less than 6 months, the greatest volume measured by Vera researchers in 1984 was on September 23, when the caseload reached 2,076. But it had decreased by the two subsequent dates, October 28 (2,018) and December 2 (1,879). For all cases between six and eleven months old, and all cases pending more than eleven months, the greatest volumes measured by Vera were on October 28, when these caseloads were 1,067 and 516 respectively. By December 12, those caseloads had been reduced slightly to 1,063 and 502.

The Queens District Attorney's response to the SDP placed no special emphasis upon cases in which the defendant was in detention. Nevertheless, there were slight reductions in the detention populations targeted by the SDP. Comparing the average size of the detention populations in late 1983 and in late 1984, inmates in custody for over nine months went down from 65 to 63; for those detained over six but under nine months the volume went down slightly from an average of 120 to an average of 118. The detention population not yet six months in custody increased,

however, from 826 to 920. But this increase of detention cases did not affect the SDP performance measures as designed by the City. And, the slight decreases in detention categories that were SDP targets, were more than off-set by the increases in the targeted non-detention categories in the performance measure formula.

These relatively level rates of detention despite the over-all caseload increases may add some support to the notion that the increase in SDP targeted pending caseloads was influenced by the increased filings. The crime categories selected by the District Attorney for felony, rather than misdemeanor prosecution (gambling cases, auto theft and commercial burglaries) are not apt to result in long-term pre-trial detention.

So, in both the CARS and the Vera data, there is strong evidence that the establishment of the felony waiver program, the Special Supreme Court Part for cases four months old, and the 10 Long Term Detainee Parts for cases over six months old were reducing caseloads in the targeted categories, once they began operating and that, as long as these efforts are maintained, the activities in Queens should be productive in 1985. Clearly, despite the substantial increases in filings, the Court was disposing of more cases than were being filed once these innovations were implemented in September.

RICHMOND COUNTY

The Richmond County District Attorney's plans for the SDP were outlined in a letter to OMB dated March 5th. In this, the Richmond District Attorney pointed out that the median case disposition time in Richmond County Supreme Court was about 80 days, considerably shorter than the rest of the City. Nevertheless, the District Attorney believed case processing time could be further reduced.[40] A paralegal was to be hired to reduce delay in the transfer of case files from Criminal Court to Supreme Court, a special problem in Richmond County because of its unique reliance upon preliminary hearings in felony case processing. In addition, a new Assistant District Attorney was to be hired to help increase the number of cases disposed by use of the Superior Court Information/Grand Jury Waiver procedure. The total cost of these two new staff positions would exceed the $34,500 start-up money received by the Richmond District Attorney's office for the SDP in 1984.

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.[41] The other boroughs respond to this requirement by presenting cases to Grand Juries within the time

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[40] No doubt, a point occurs beyond which processing time cannot realistically be reduced, at least without changes in the rules of criminal procedure. Court rules presently give defendants 45 days from arraignment in Supreme Court to file motions attacking the indictment, for discovery, or to suppress evidence.

[41] Seven days are allowed if a weekend or holiday intervenes.

required. Staten Island alone routinely utilizes 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 by ADAs 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. It had been common for ten days to lapse between the preliminary hearing and the receipt of the file by the Chief Assistant, because it was no one's specific responsibility to get the files from Criminal Court to the Chief Assistant. Hence, the new paralegal's primary duty is to see that the case files were 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 through the Superior Court Information/Grand Jury Waiver procedure described in earlier sections of this report. 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 Richmond District Attorney's records, there were 44 Superior Court Information dispositions in 1983; in 1984 the volume rose to 67. In addition to these efforts, at the start of 1984 the Chief Assistant District Attorney began monitoring felony cases pending more than six months, and conferring with the ADA assigned and with the judge to attempt to expedite disposition of these cases. In November 1984, there were 20 cases on the six month or older list; the oldest case had been pending since September 1983.

Vera research data show that the average number of younger cases pending in the Richmond County Supreme Court -- those less than eight months old -- decreased from the end of 1983 to the end of 1984 (from 122 to 117). But the number of older cases -- those over eight months old -- increased from 50 to 56, and detention cases older than two months increased from 27 to 43 (61%).[42]

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); but the number of dispositions also went down, from 445 in 1983 to 358 in 1984.

The DA'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

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42 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. However, each office was compared in 1984 against its own previous baseline, as measured by its own cut-off points.

cases pending in the Supreme Court, the two 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, appearances for criminal cases were all 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 28.44

The District Attorney has discussed the allocation of judicial resources to criminal cases with the Administrative Judge and his Office reports that it has received a commitment that two Justices will be again exclusively assigned to criminal cases in 1985.

Reflections on the Qualitative Data

At this interim stage of the Speedy Disposition Program, the research data suggest several points that seem worthy of note and further reflection:

1. The relationship between the court and the office of the District Attorney

The fate of each District Attorney's SDP efforts in the first year seemed to turn in large measure on the relationship between that District Attorney's office and the Court. Paradoxically, the SDP seems to have reduced targeted caseloads if the District Attorney's planning involved active, simultaneous efforts by the court either in cooperating with the District Attorney's plan or implementing its own plan, or if the District Attorney proceeded alone and devised a plan that did not require judicial cooperation. Boroughs were least likely to achieve reductions where the Court's participation was required in the SDP plan, but where the mechanisms for joint planning and implementation by the Court and the District Attorney's Office were insufficiently developed or their goals were not reasonably harmonious.

Thus, in the two boroughs with the greatest SDP reductions -- Bronx and Manhattan -- the reductions were tied to efforts that required no, or minimal cooperation between the District Attorney's Office and the Court. The successful attack on old cases in the Bronx was led by the Administrative Judge for the Supreme Court, Criminal Term, responding to a Court-defined and Court-originated goal of reducing the late 1983 increase in the number of pending cases. There is no evidence that the District

Attorney's Office played any part in the planning of this effort, or that the Court knew, initially, that the District Attorney's Office had been receiving extra funds in 1984 to reduce pending caseloads.

The most that can be said about the interaction of the Court's effort and the District Attorney's effort in the Bronx is that the Court was able to use the "old case" lists generated by the District Attorney's Office, and the District Attorney's Office was able to respond to the efforts of the Court to move cases faster because of the additional staff the SDP enabled the District Attorney to hire. The Administrative Judge made it a priority of his own to reduce the pending caseload. By supervising the calendar in his own Part 40, he was able to focus exclusively on the list of old cases presented to him by the District Attorney; he told Vera researchers that he gave "a good deal of attention" to these lists in managing the flow of old cases. But if the District Attorney's Office had not prepared the lists, there is little doubt that the Administrative Judge would have compiled his own.

What remains in question is whether either the Bronx District Attorney or the Bronx Administrative Judge will make additional improvements, toward SDP goals, now that the Bronx caseloads have been reduced to the level more characteristic of that borough just before the late 1983 increases. The Administrative Judge had specific goals for 1984, which were more or less achieved; the District Attorney's Office responded to his efforts with increased staff, but not with any comprehensive or strategic innovations.

Without more planning by the Bronx District Attorney's Office in 1985, or a renewed interest by the Administrative Judge, little is likely to be accomplished in 1985 beyond what was achieved in 1984.

Manhattan, like the Bronx, experienced substantial improvement on SDP measures; but in Manhattan, the efforts to reduce case processing times were devised and planned by the District Attorney's Office and included no change in pre-SDP court practices or procedures. It is particularly interesting that the existing Long Term Detainee Part in Manhattan was not made part of the District Attorney's SDP planning; indeed, it was only the presence of Vera researchers that made the judge of the Manhattan LTD Part aware of the SDP. And yet, it appears that through a series of internal management efforts (involving, primarily, the production of better information -- discussed below) and an executive policy emphasis upon accelerating case processing times, the Manhattan District Attorney's Office was able to achieve results. Although there was no affirmative court participation, neither was there any active court resistance to new policies.

What seemed to defeat SDP efforts requiring joint District Attorney's Office/Court participation were problems of implementation. Implementation of SDP plans in both Queens and Brooklyn seemed to suffer from a reliance on the judiciary's creation and maintenance of new court parts (or the giving of new tasks to old court parts), which were slow in getting started in Queens and did not always operate as planned in Brooklyn.

Assuming that the most effective and lasting reforms to affect case processing times would result from combined efforts of judges and prosecutors, the efforts of the Kings and Queens District Attorneys, which recognized this and attempted to work cooperatively with the courts, were the most promising in conception.[43] But, given existing suspicions and the less than complete development of administrative and planning capabilities in either the court or the prosecutors' offices, it is not surprising that these cooperative ventures were difficult to implement. At the end of 1984, the Queens problems seemed to have been resolved, and the felony waiver and four month-old case efforts were operating well. But in Kings County, the TAP program was terminated once again at the end of the calendar year.

Here lies the core of an issue that should direct further research: What is the institutional capacity of the prosecutor and the court to plan together? How do these parties manage to work together when they are successful? What problems (perhaps most apparent, in 1984, in Brooklyn and Queens) interfere with joint planning? Is it necessarily true that a District Attorney's Office that pursues program planning independently of the Court (as Manhattan's did), is more likely to achieve its purposes than an office that tries to incorporate the Court action into its plans but discovers it cannot reliably predict or exert influence over the Court's actions?

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[43] The Special Narcotics Prosecutor's program also relied upon court cooperation, but was seen as only a temporary measure to reduce the existing backlog. The District Attorneys in Queens and Kings sought court cooperation for permanent changes.

2. The force of personality

It would be disingenuous to ignore the power of individual personalities in affecting standards of case processing. It seems generally true that those actors -- prosecutors and judges -- who are widely perceived as forceful can and do move their caseloads to disposition more quickly than others.

The Administrative Judge in the Bronx Supreme Court, Criminal Term, is regarded as a forceful individual who demands a degree of accountability from both judges and lawyers beyond that required by some other judges. His success in reducing the pending caseload in the Bronx is owed more to his personality, Vera researchers were told repeatedly, than to his procedural innovations.

The same phenomenon was evident in Manhattan. Each of the District Attorney's six Trial Bureaus competed against each other in SDP activities. One Bureau seemed consistently to dominate the others: the calendar judge for that Bureau's cases is recognized for his administrative forcefulness, and the District Attorney's Bureau Chief is described by his supervisors and colleagues as the "best," "most forceful" and "toughest" of the Bureau Chiefs. He is invariably described as "an ex-marine."

Certain dominant personalities seem able to speed case processing; the finding provokes further thought. Given a policy goal in this area, are strong personalities more important to its achievement than structural or procedural change? And what is the element of personality that produces quicker dispositions? Is it the fear of sanction generated by strong actors? Parties

appearing before certain judges can count on being (at least) verbally challenged on the record if they are not present and prepared to move cases forward. Certain supervising ADAs manage their staffs with the same expectation of accountability. Conversely, in many courtrooms observed in this research effort, no consequence whatever seemed to flow from non-appearance or lack of preparation. Indeed, many judges claim to lack authority to discipline lawyers for inattention to their calendar responsibilities and seem to feel powerless in the face of indolent or even contemptuous counsel.

What tools and support, if any, could be given judges and supervising ADAs who lack unusually forceful personalities to help them achieve the same results?

3. The quality of information available to DA's Offices

The lack of reliable, systematic case information haunts the New York City criminal justice system in general; Vera researchers saw the problem in microcosm in District Attorneys' efforts to implement the SDP.

Manhattan appears to have taken most seriously the challenge of providing case-aging information. The center piece of its SDP is the Star Report System. All boroughs have developed some similar capacity, but not all have devised a way of documenting the aging of cases as it occurs. The managers within the Manhattan District Attorney's Office say that they found this a useful tool in supervising each assistant's handling of his or her caseload. It may be, and Vera researchers will continue to investigate this over time, that the sophistication of Manhattan's

SDP Star Reports information system accounts in large part for the apparent success of the Office's SDP effort.

The question of the scope and reliability of existing case processing information within each District Attorney's Office should be explored further. Each office's information capacity seems central to understanding case handling procedures, and it is possible that useful information will be generated through observations of the process of new systems development in each borough.

4. Why was there not a greater focus on detention cases.

Vera researchers were struck, as each office designed its response to the City's Speedy Disposition Program, by the lack of explicit attention paid to detention cases -- despite the emphasis SDP incentives placed upon them. At this point, it appears that the only office to institutionalize a focus on detention cases was Manhattan's. In its Star Reports, the office routinely lists detention cases by age. No other borough's SDP lists appear to have memorialized the distinction. No other office appears to have devised particular procedures for identifying or handling detention cases, or to have put a premium on disposing of detention cases first.[44]

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[44] The lack of conscious distinctions in the handling of jail and non-jail cases may also reflect the lack of accurate information about the detention status of pending cases; District Attorney's Offices have expressed difficulty in routinely and reliably determining defendants' detention status.

5. The design of the SDP: The City attempts to buy a new service from the District Attorneys.

One part of the design of the SDP is particularly intriguing and forms a sort of experiment in how City policy makers might pursue other goals.

In the SDP, the City's goals are the reduction of detention population and the reduction of the older pending caseloads. These goals are intended to serve both economy and justice. Because it can be assumed that the District Attorneys have some interest in and have partial control over the speed of case processing and because the City has some power to establish their budgets, the City decided to try to pursue its purpose by offering to pay for particular services from the District Attorneys' Offices: an accelerated pace of disposition for the existing pending caseload and institutionalization of new methods to speed case processing.

The notion of the City using market forces to obtain desired results from its own executive agencies (or, in this case, from quasi-independent agencies) presents an interesting model; the progress of the SDP will offer some lessons about how such a model might work and how well.

At this early stage, Vera researchers can offer only the preliminary observation that the purchase-of-service model did encourage each District Attorney's Office to make speed of disposition a management priority in 1984.

The design of the Project also encouraged some comparison among the six District Attorneys and may have generated a degree of competition among them. While each District Attorney's office

On the other hand, another bureau chief told us that getting cases disposed of quickly had always been of prime importance to him. He thought it bad policy for prosecutors' offices to "keep cases lying around."

From a general policy perspective, the prompt disposition of cases might be thought almost as important to a District Attorney as obtaining convictions of the guilty. As suggested at the outset of this report, the desire for a conviction, the need for sufficient evidence to sustain the burden of proof, and interest in preventing crimes by released defendants should make speed of disposition an important policy interest of any District Attorney's Office.

But these policy interests may not, in fact, filter down to become day-to-day priorities of the Assistant District Attorneys in the trial bureaus unless the District Attorney has mechanisms to effectively communicate policy and to over-ride the inertia created by institutional and individual pressures that work on the individuals in "the trenches." In this respect, the District Attorney at the top of a large bureaucracy may be analogous to a client in a civil case, demanding of the attorney that the case be moved more quickly, but having difficulty finding the tools to cause it be done.

7. Is the Speedy Disposition Project making permanent improvements in the time taken to process criminal cases in the Supreme Court?

Vera researchers have begun documenting the factors generally associated with delays and adjournments in the Supreme Court's criminal parts. Our observations so far are consistent with the