RESEARCH, PLANNING AND TECHNICAL ASSISTANCE ON, AND DEVELOPMENT OF METHODS TO REDUCE DELAY AND BACKLOG IN THE COURTS

Summary of the Final Report of the

NEW YORK CITY SPEEDY DISPOSITION PROJECT

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1986.

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October, 1987

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Introduction: **The Nature of the Problem: Jail Overcrowding, Court Delay, and Backlog**

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

In 1983, in response to the mounting crisis of overcrowding in its correctional facilities (which hold both detainees and defendants sentenced to terms less than a year, and are funded directly by the City), the City undertook a $117 million, four-year jail construction program. In addition, the City began to

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

> The average length of pretrial detention has been increasing steadily from 18.5 days in 1965, to 26.5 days in 1967, to approximately 30.1 days at the present time. These figures understate the length of detention for persons who do not obtain release at any time prior to trial, because within the average are substantial numbers of cases in which bail was posted shortly after admission to detention. While data are not available on the duration of custody of all defendants detained for the entire pretrial period, it is known that on August 1, 1968 the average detained defendant in the jurisdiction of the Supreme Court had already spent over 140 days in jail.

consider other strategies to reduce the average daily census of detainees, including the Speedy Disposition Program (SDP). This agenda became more pressing toward the end of 1983 when, in November, some 600 detainees were released by order of the United States District Court, to alleviate what the court found to be unconstitutionally overcrowded conditions on Rikers Island. The City, therefore, had a substantial interest in addressing the problem of overcrowding and the attendant costs (to defendants and tax-payers) by attempting to shorten the pretrial period. Although the City officials engaged in this effort did not wish to ignore non-detention cases, while searching for ways to reduce case-processing time, the City focused its attention primarily on long-term detainees because they consume a disproportionate share of the total number of detention-days used.

Most of the long-term detainees face felony prosecution in the City's Supreme Court, the trial court of general jurisdiction.[2] Despite earlier efforts by both prosecutors and court administrators to accelerate felony case processing and decrease the backlog of cases pending in the New York City Supreme Court, New York City's Supreme Court remained among the slowest urban courts in the nation according to a 1978 National Center for State Courts report on case processing times for 21 civil and criminal courts of general jurisdiction in metropolitan areas around the country during 1976. In 1985, the National Center issued a second report containing 1983 caseload data on 18 courts; several courts were part of both NCSC studies. The New York Supreme Court was still among the slowest, when compared to the courts in the second study.

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

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[2] The City's five elected District Attorneys and the Special Narcotics Prosecutor initiate most felony prosecutions in the City's court of limited jurisdiction -- the New York City Criminal Court. They bring most of these felony cases before a Grand Jury for indictment and then arraign and prosecute them in the New York City Supreme Court which has separate physical, administrative and judicial operations in each county.

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

as part of its evaluation of the City's Speedy Disposition Program (these data were collected as a baseline for assessing the impact of the SDP during 1984 and 1985).

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

The fact that New York City's Supreme Courts were so exceptionally slow could not be attributed either to their having a higher proportion of serious cases than other courts (which they may), or to their having higher ratios of indictments per judge (which they do not). The second column of Table 1 provides the National Center's 1983 data on median processing times for the most serious cases disposed in each jurisdiction studied. When compared to the Vera citywide median processing time for <u>all</u> felony cases disposed in New York City's Supreme Court (185 days), all but two of the courts had shorter median processing times for only their serious cases. (Providence and Boston were longer for serious felonies and they were the two generally slowest courts in the National Center's study, except for the Bronx.) Furthermore, all the courts in the nationwide study had higher criminal filings per judge than did New York City; most were considerably higher (see column 4 in Table 1).

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

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

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

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

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

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

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

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

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

The comparison is generally favorable to New York. The backlog index for the seven fastest-paced courts on the National Center's 1983 list ranged from .10 to.37; the slowest courts ranged from .35 to 1.27. The indices for the Supreme Courts in all five New York City counties and for that court citywide range from .34 to .52; these are at the upper end of the national range for faster courts and at the lower end of the range for slower courts.

These data suggested to City administrators that the 1983 backlog in the Supreme Court, when compared with the backlog of slow and fast courts nationally, ought not to be viewed as an insurmountable obstacle to speedier dispositions in New York City.

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

In recent decades, most efforts by state courts in the U.S. to speed case processing times and reduce the backlog of felony cases have been of two types. The first is the commonly recognized strategy of imposing regulatory schemes (either by court rule or by legislative statute) to obtain compliance with specific behavioral standards. In 1970, the New York State Assembly enacted a series of time-specific procedural standards reflecting the constitutional requirement that defendants are entitled to "speedy" trials, that criminal trials are to be given priority over civil matters in scheduling, and that among criminal cases those in which the defendant has been unable to secure pretrial release are to be given priority (New York State CPL 30.20).

Subsequent to the enactment of these requirements by the legislature, the Administrative Board of the Judicial Conference (which at that time had the rule-making authority for the state's courts) drafted more specific time requirements to interpret the statute. Within specified periods, most cases had to be either tried or dismissed, and detained defendants had to be either tried or released from custody.[3] At that time, case law provided

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[3] Ninety days after arrest for any felony offense other than homicide, defendants whose cases had not come to trial would be released from custody, and six months after arrest felony cases of defendants not yet brought to trial would be dismissed.

that delay did not deny defendants' rights under the speedy trial statute if a good cause existed for the delay, and that good cause could include factors beyond the control of the prosecutor, including court congestion (People v. Ganci, 1971).

The approach of the court's Administrative Board to interpreting the demands of speedy trial legislation, therefore, not only placed the burden on the prosecution to secure its own readiness for trial, but also required release of defendants and the dismissal of charges if trial deadlines were not met for reasons attributable to other parties, including the court and the defense. While other jurisdictions have held the state responsible for securing trials within specific time limits regardless of the cause for delay, the approach has its difficulties. The City's District Attorneys opposed the proposed rules of the Administrative Board because, while the rules recognized the responsibility of the court to ensure the timely movement of cases, the rules placed that interest into direct conflict with another, namely the just disposition of cases on their merits.

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

As all too many of the recent attempts to introduce constructive change or innovation in criminal justice systems attest, imposing rules specifying standards of performance does not always induce compliance. Several times during the 1970s, the Administrative Board of the Courts adopted and amended Standards and Goals for the timely disposition of felony indictments in the Supreme Court and set deadlines for their implementation; each time the goals were not all met.[4]

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

In January 1983, official court data show that 36 percent of the cases pending in the New York City Supreme Court were beyond these Standards and Goals (i.e., more than six months past

Recognizing the insufficiency of rule promulgation alone to change behavior, courts have periodically initiated a second strategy to speed up case processing and reduce backlogs. This has principally takes the form of operational changes intended to improve the courts' capacity to comply with the rules and statutes.

In March 1981, for example, with the New York City Supreme Court backlog intact, despite CPL 30.30, the Chief Judge announced a plan to attain the goal of disposing of felony cases within six months. The number of judges assigned to felony cases in New York City was increased from 124 to 161; detainee cases and cases pending longer than six months were to be immediately placed upon the calendar so that trial dates within 30 days could be set; in these older cases, no adjournments were to be allowed without the consent of the Assistant Administrative Judge; new staff ("expediters") were to be hired to coordinate the transfer of cases from calendar to trial parts to keep unproductive trial part time to a minimum; and 18-B panel attorneys (members of the private bar appointed and paid by the Appellate Division to provide defense counsel to indigents for whom Legal Aid Society representation is proscribed) were to be utilized more frequently and assigned earlier. The goal of this administrative plan was to process all felony cases in New York City within six months of indictment by February 1st, 1983 and within 135 days (4.5 months) by August 1st, 1983.

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

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

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indictment). Vera research data show that 50 percent of all the cases disposed in the Supreme Court during October and November 1983 had taken more than 185 days (6.2 months) from arrest to disposition, 25 percent had taken over 319 days (10.6 months), and 10 percent had taken over 463 days (15.4 months).

The FBRP was described as a "time-frame" method of case processing: specific dates were established for completion of all pretrial activity. Despite the inherent logic of such an approach, many judges in the Supreme Court believed that the volume of cases was too high and the reasons for adjournment too varied, for case processing to adhere to established time-frames.

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

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

A. The Speedy Disposition Program

Prosecutors have often taken the position that there is little they can do to keep cases from getting old. They tend to the view that cases age because of problems intrinsic to particular cases (e.g., multiple cases pending, very serious charges), or because judges allow defense attorneys too many continuances or adjournments. Nevertheless, District Attorneys sometimes concede that there are actions they could take to reduce delay if they had more resources.

In designing the Speedy Disposition Program (SDP) in the fall of 1983, with the assistance of Vera, the City accepted the second proposition -- that the six prosecutors could influence the process if they had more resources -- and it allocated an additional $1.5 million among the six[5] New York City District Attorneys for them to use to reduce the number of old cases pending in 1984 and 1985. The City was interested in case processing time for two reasons -- one of economy and one of justice. First, the City's costs for pretrial detention have increased as the cases of defendants in detention have been taking longer to reach dismissal or sentence. Second, "justice delayed is justice denied."

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[5] For ease of expression, the Special Narcotics Prosecutor is included when this discussion refers to "The District Attorneys."

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 embarrassment to the integrity of the process if that status is maintained for too long, and, at worst, a potential threat to public safety. It was thought logical, second, 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; through the budgeting process, it might exercise some measure of influence over the prosecutors' priorities.

The City's Speedy Disposition Program 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 provided a test of: (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 improve 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 pretrial 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 processing time for detention cases contributed heavily to the increased demand for cell space. Hence, the SDP initiative 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 effect 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 case-loads, and set aside FY 1985 and FY 1986 budgetary supplements to reward successful efforts during calendar years 1984 and 1985. The City set SDP program performance measures (developed for the City by Vera) which focused upon all old cases (those over six months), but emphasized the very oldest detained cases (those pending over nine months). Therefore, to measure the impact of the prosecutors' efforts and to allocate the FY 1985 and 1986 incentive funds among the District Attorneys' offices, all pending cases 6 to 11 months old were to be counted by Vera, but those over 11 months old were to be double-weighted in the funding formula; in addition, all cases of detainees in custody 6 to 9 months were to be counted again, with those in custody over 9 months double-weighted.[6] Thus a detainee whose case had been pending for over six months would be counted twice for the purposes of funding allocation, once in the measure of all pending cases and once again in the measure of detained pending cases. If a detained older case (a case pending over 9 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 (a case pending 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.

Vera measured the impact of each District Attorney's 1984 activities on the size of the target groups of older cases as defined 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. Vera measured the impact of the District Attorney's

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

1985 SDP activities similarly, by comparing the size of these target groups at the end of 1985 with their size at the end of 1984.[7]

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[7] 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 for the first year was 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 formula was the same for the program's second year, but compared the dates at the end of 1984 with two dates at the end of 1985.) 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 in the size of each office's overall Supreme Court pending caseload, again focusing on cases pending over six months and double-weighting for 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, or between the end of 1984 and the end of 1985, the program's second year.

For each office achieving a successful result, its final SDP score was multiplied by its percentage share of the City's total budget to the prosecutors. These figures reflected the contribution of each successful office to overall citywide results for the SDP in 1984, or in 1985. The combined contributions of the successful offices in each year were made equal to 100 percent so that each office's proportionate contribution to the overall citywide result that year would be established. This was multiplied by the $1.25 million in the supplemental funding pool to determine each office's share each year.

To reduce the size of 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 sizable number of old cases already within the target groups. (Vera counted 7,286 defendants with cases pending over six months on December 4, 1983; 1,418 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 SDP target groups. Without effort in the second area, early successes in reducing the size of the target groups would be 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 offset 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 would 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.

1984 was the first year of the Speedy Disposition Program, with Vera, in its role as program evaluator, providing on-going technical assistance to the City.[8] The City's distribution of the start-up $1.5 million to the various prosecutors for expenditure beginning January, 1984, was announced on November 22, 1983. By late spring of 1984, several of the District Attorneys' offices had yet to implement any plans aimed at achieving SDP goals. Some specific changes were not actually put in place until the fall, a delay that may reflect these offices' shortage of planning capacity.

But the delays in starting 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

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[8] The Office of the Coordinator of Criminal Justice and the Office of Management and Budget joined, on behalf of the City, in a contract with Vera to assemble the necessary data bases, merge them and analyze them; it was agreed at the time that Vera's basic planning, technical assistance and research contract with the City (by and through the Police Department) would be too heavily committed to other projects to bear more than a small portion of the costs of the massive data-collection and analysis work required for the SDP. Thus, the bulk of these costs have been separately covered by an SDP contract, with a small portion of supervisory costs borne by this contract.

planned and agreed -- 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, reset and set again.

In tracking the progress of the SDP as part of the evaluation, Vera researchers often came away from initial interviews with the prosecutors and their assistants in the Spring of 1984 with the impression that the interview itself may have played some role in precipitating the planning process: it made the SDP seem more real, and some of the prosecutors' offices appeared to focus more attention on implementing the SDP after the visits from researchers reminded them that, although this program began with an award of start-up money distributed proportionately to their budgets, the second distribution of money -- at the start of the second year (1985) -- was to be based on program performance in the first year.

While the City requested and received initial reports from each District Attorney's Office showing how the 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 applied directly 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, within their respective jurisdictions, as they went along.[9]

Predictably, in some offices, the plans changed over time. Thus, although the SDP budgetary incentive may have been important to the prosecutors' offices, many of the efforts actually undertaken in the first year did not generate additional

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[9] There is no evidence from research interviews or quantitative data compiled during the course of the evaluation that, as a response to the SDP, any District Attorney's office altered basic policies with respect to charging, negotiating guilty pleas, or sentence recommendations. 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. The quantitative data upon which this conclusion is based are drawn from three samples of cases disposed in the New York City Criminal and Supreme Courts and analyzed for the evaluation--a late 1983 baseline sample, a mid-1984 sample and a late 1984 sample. Analysis of these "snapshots" of the dispositional process helped the researchers assess more thoroughly the impact of the prosecutors' SDP activities on the broader criminal justice system.

costs to their budgets. As part of the Kings County program, for example, special Supreme Court Parts were set up to process old cases. But ADAs transferred to the new parts were not replaced in their former positions, because the District Attorney recognized that, when the old cases were removed from the regular Supreme Court parts, caseloads there would be reduced.

The prosecutors' offices took some time before they began to focus on the specific structure of the SDP incentives in the way the City intended. All the District Attorneys started out to reduce the number of old cases (i.e., those pending at least 6 months), but not all of them focused on the distinctions between detained and bailed cases or between the old and the very old cases.

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

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

The SDP ran for two full years, from January 1984 through December 1985. All the District Attorneys' offices developed and implemented some response to the City's initiative, making more or less substantial changes in their procedures. Each District Attorney devoted special efforts to the SDP. Their work fell into several general categories:

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

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

Efforts to encourage the disposition of cases at an early stage in the adjudication process, usually by having a senior level ADA determine within the first week or so, after a case is filed in Criminal Court, the District

Attorney's position with respect to an acceptable disposition, communicating that determination to the defense attorney, and obtaining the cooperation of the court in promptly processing a guilty plea when an agreement is reached.

Efforts to identify the "fighting 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.

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

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

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

B. The Citywide Results of the SDP

The Vera Institute of Justice provided the City with the data to measure the size and age of the SDP target groups. With the assistance of the Research Department of the New York City Criminal Justice Agency, Vera developed the computerized data bases to do so systematically and uniformly, across all the District Attorney's jurisdictions.[10]

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[10] It is important to note that systematic data on the size and age of the detention population by county are not routinely collected by any official agency. In addition, the official data issued by the court (in its Caseload Activity Reports or CARS) could not be used for the SDP all pending case measure for several reasons. First, they do not separate from all Manhattan Supreme Court cases those being prosecuted by the Special Narcotics Prosecutor. Second, these reports exclude cases pending sentence; third, they calculate the age of cases from their initiation in Supreme Court rather than from their Criminal

Examining the citywide data, developed by Vera and CJA researchers to assess the overall impact of the SDP during its two year period, analysis began with the issue of detention, because this was initially the City's most immediate concern and it remained so. The analysis then moved to data showing the program's impact on the size of the citywide Supreme Court backlog and on overall times to disposition for cases in the Supreme Court.[11]

From an immediate policy perspective, the City was primarily interested in the SDP citywide impact, particularly on jail days saved over the two year period. However, from a broader policy perspective, City administrators were also interested in learning, from comparing the results of the different ways the prosecutors' offices went about responding to the initiative, how valid the assumptions underlying the SDP were. The state of present knowledge, grounded in extensive research on the reasons for court delay, suggests that the "local legal culture" -- the expectations prevailing among a jurisdictions judges and lawyers, affects how fast cases proceed, and does so independently of caseloads, court rules, or other factors. Local legal culture refers to the phenomenon that "The attitudes and beliefs of judges, prosecutors, and defense attorneys...control much of what happens to criminal defendants in the felony courts...," and that their attitudes may, in fact, be more important in this regard than more conventionally cited factors such as the volume of cases and court rules.[12] The City wanted to explore whether New York City prosecutors could effect disposition times by altering the "local legal culture" (at least in their own offices) without major changes in their relationships with the court or major infusions of additional resources; if that did occur, they were interested in how it was done.

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 SDP. In addition, 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.

[11] A full discussion of the performance of each District Attorney's office and a description of their individual strategies for speeding up dispositions is found in the evaluation's Final Report.

[12] The role of "local legal culture" is best conceptualized and documented in a study of criminal case processing in four metropolitan courts, including the Bronx (Thomas W. Church, Jr., Examining Local Legal Culture, Washington, D.C.: National Institute of Justice, January, 1982).

Finally, City administrators wanted to know whether budgetary incentives could work to focus individual District Attorney's attention on an issue of citywide concern and, if so, whether reducing delay would influence the size of the detainee population.

In terms of the City's first concern -- the impact of SDP overall on the size of the program's target groups -- the citywide effect was positive but very modest in the first year of the SDP and negligible in the second year (although even in the second year there were some small jail savings). The activities of the six prosecutors' offices contributed to these citywide outcomes very differently. Two of the offices that made gains, relative to their own baselines, by reducing the SDP target groups of old Supreme Court and old detainee cases in at least one of the program years (Richmond and the Special Narcotics Prosecutor) are also the offices that handle the smallest proportion of the City's total volume of felony prosecutions. Hence, their contribution to the citywide jail overcrowding problem would not have been substantial even if their success in relation to their own caseloads had been impressive. Two of the other offices which made gains relative to their baselines (Manhattan and the Bronx) handle a large enough proportion of the City's felonies for their efforts to have had citywide implications; however, only one of them (Manhattan) was able to sustain the effort for the full two year period. Finally, the two other large offices, despite a systematic and well-organized effort in the first year by one (Kings) and a series of relevant procedural changes by the other (Queens), were not able to achieve any reductions.

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

Trends in the total city jail population -- pretrial detainees and sentenced offenders -- between 1982 and 1985 show that, despite the SDP, jail overcrowding remains a priority problem in New York City.

Did the SDP help contain the overcrowding problem even if it did not solve it? The citywide data show that at the end of 1984, the first year of the SDP, the number of detainees in the oldest targeted group (those detained nine months or more) had declined 10.1 percent (68 detainees) compared to the baseline period at the end of 1983. (This was the target group to be double-weighted in calculating each District Attorney's office's SDP score for distributing the incentive pool.) However, a small citywide increase (1.5%) in the size of the other targeted group of detainees (those pending less than nine months but over six months) mitigated somewhat the effect of the decline in the older group; thus the net effect on the size of the detention population older than six months was a 3.8 percent decline (56 detainees) in the first year.

In contrast, during the second program year, all targeted categories of the older detainees increased citywide, so that the number of detainees six months or older increased by 16.6 percent (234 detainees). Over the full two years, therefore, the detainee population whose cases had been pending for six months or longer increased by 12.2 percent (178). The age of the median detainee case (the fiftieth percentile) declined slightly citywide -- half a day over the two year period -- and all of this occurred during the first year.

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

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

These estimates suggest that the City's detention facilities used somewhat over 49,000 fewer jail days during 1984, at a saving of almost $2.4 million.[13] In 1985, however, in those counties where there were reductions, the number of jail days saved was less than 12,000 (a saving of only about half a million dollars).

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

Researchers' analyses of Department of Correction census data and of data showing a citywide increases in workload (arrests and arraignments) generally support the hypothesis that the SDP was to some extent successful in holding down what would have been even larger increases in the detainee population, an increase which could have been expected from the increases in the court's workload in 1984 and 1985.

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

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

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

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

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

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

In contrast, the total Supreme Court workload of pending cases, and the part of it that was older than six months, increased over the four year period (16.6% and 17.4%, respectively).[14] All the court workload increases occurred either in 1982, before the SDP (27.8% and 31%), or in 1985, the program's second year (7.0% and 18.2%). On the eve of the SDP, in 1983, the overall Supreme Court workload of pending cases went down by 11.4 percent, but the number of older pending cases was more stable, declining by only 2.6 percent.

During the first year of the SDP, the "over Standards and Goals" caseload of the Supreme Court declined by 21.4 percent whereas the overall pending workload remained about the same (decreasing by 1.3 percent). Thus, although the overall workload of the court remained relatively stable across the two-year SDP period (it increased 2.3%), the increases in older cases during the program's second year did not entirely off-set the gains made in the first year and the size of the older pending caseload declined somewhat, by 7.1 percent, across the two-year SDP period.

The SDP performance data suggest that this modest citywide decline in the "over Standards and Goals" caseload was primarily a result of reductions in the number of very old cases -- the ones pending eleven or more months that were especially targeted by the SDP and were double-weighted in the formula for distributing the incentive pool of funds to the prosecutors' offices.

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[14] The calculation of the total Supreme Court caseload used here is somewhat different from that used by the court to count "pending" cases. The court's pending case counts are based upon the number of cases on the calendar on the last day of the term. In contrast, the data used in this text are the number of cases pending at the beginning of the month added to the number of indictments filed during that month. This measure reflects the size of the court's workload each month rather than what remains of it on the court calendar on the last day.

At the end of 1984, the first year of the SDP, the number of old Supreme Court cases pending over eleven months (regardless of detention status) decreased by 23.7 percent (747 cases). This was off-set somewhat by a 5.1 percent increase in the number of cases pending less than eleven but more than six months, with the net effect of a citywide decline in the over six month pending caseload of seven percent (525 cases). As was the case with the long-term detainee target group, second year results were not as favorable. Although the cases over six but less than eleven months old decreased by 2.7 percent, the very oldest cases (pending over eleven months) increased by 12.9 percent, resulting in a net increase of 2.7 percent (189 cases) in the over-six-month category. Across the two-year SDP period, therefore, the backlog of very old cases in the Supreme Court (those pending over eleven months) declined by 13.9 percent. While the total number of cases pending over the court's Standards and Goals declined by 4.5 percent, this was entirely due to the larger reduction in the number of very old cases specifically targeted by the SDP incentives. This decline in the number of very old cases is also reflected in a decrease of three weeks (21 days) in the age of the median case pending in the Supreme Court over the two-year SDP period.

Clearly, activities of the District Attorneys' offices in response to the SDP during the two-year period (combined with activities undertaken at the initiative of the court in one of the larger jurisdictions -- the Bronx) had their primary impact (modest though it was) on the size of the older Supreme Court pending caseload, and not specifically on detention cases. Despite the structure of the City's incentive formula, which favorably regarded the disposition of older Supreme Court cases that were also detention cases (by recognizing them in both its measures, and doubly weighting both measures if the cases had been pending over eleven months), the District Attorneys' SDP activities failed to focus specifically on detainees.

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. It appears that the only prosecutor's office to institutionalize a focus on detention cases was Manhattan's. In no other borough did the lists of old, pending cases kept by the offices or prepared for their SDP activities memorialize the distinction. No other office appears to have devised particular procedures for identifying or specially handling detention cases, or to have put a premium on disposing of detention cases first. This lack of conscious distinctions in the handling of jail and non-jail cases may also reflect a lack of accurate information about the detention status of pending cases; District Attorneys' Offices have expressed difficulty in routinely and reliably determining defendants' detention status.

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

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

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

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

Data on processing times to disposition and to sentence in New York City's Supreme Court, across the four time periods described above, indicate that those times have declined since late 1983. By May-June 1985, mid-way through the second year of the SDP, the citywide arrest to Supreme Court disposition median time had declined from 185 to 153 days (a decrease of about one month). The median time from arrest to sentence had declined from 227 days in 1983 to 197 days in 1985, a difference of 30 days. The oldest 25 percent of the cases reaching disposition

also showed some change -- a decline of 18 days to disposition and 13 days to sentence during the same period. Furthermore, the median number of court appearances had decreased from 13 to 11.

Whether this somewhat swifter pace of litigation in the Criminal Terms of Supreme Court was the result of the SDP cannot be known definitively. Other factors could have influenced these changes in the times to disposition and to sentence, just as they could have influenced the changes seen in the size of the SDP target groups discussed above. But the data on changes in target group size and disposition times are consistent with what is known descriptively about what the six District Attorneys' Offices did in response to the SDP (and, as in the case of the Bronx, what the Administrative Judge did pursuing similar goals): Jurisdictions where District Attorneys implemented SDP plans of a strategic nature to keep cases from getting old as well as to reduce the backlog showed favorable changes in disposition times; where the prosecutors did not take the strategic approach, there were no significant changes.

The differences among the prosecutors' offices in their responses to the SDP and in the success of their efforts are reflected in the formal results of the program for each District Attorney's Office -- their scores on the SDP performance measures in 1984 and 1985 and the share of the budgetary incentive pool each office received (if any) for each program year. (The year's SDP score for each District Attorney's office was a weighted average of the results of that office's efforts to reduce the size of the two target groups in their own caseloads. Thus, each office was compared with its own position the previous year. The $1.25 million of incentive funds was distributed to offices, in proportion to their share of the City's overall prosecutorial budget, but only to those offices which showed a reduction in the performance measures.)

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

C. Factors Affecting the Success of the SDP

The City's notion of using market forces to obtain desired results from its own executive agencies (or, in this case, from quasi-independent agencies) presents an interesting model, and the outcome of the SDP offers some lessons about how such a model works and how well it works. Incentive approaches to policy change appear particularly suited to circumstances in which (a) the policymaker desiring the change possesses insufficient legal or political authority to command compliance; (b) the technical means to accomplish the goal are uncertain, require professional expertise to develop, or are likely to vary for different places; or (c) organization goals are multiple, complex and ambiguous.[15]

The budgetary incentives New York City offered the District Attorneys under the SDP were intended to produce a particular and needed outcome in a situation characterized by all three of these conditions. But, although the incentives appear to have been sufficient to encourage all the prosecutors' offices to turn their managerial resources to developing initial responses to the problem, they were not sufficient to encourage all the offices (and particularly several of the larger ones, whose success was essential if SDP was to have a substantial citywide impact) to engage in a sustained two-year effort. Only in Manhattan did this occur; elsewhere, first year SDP efforts were not carried over into the second year when the office met some opposition from the court to their initial strategy (Kings), or when other concerns commanded the attention of the District Attorney (as in the Bronx), or when the court's own administrative attention was turned to other major policy issues (as in all counties, with the planning for a transition from a master calendar to an individual calendar system).

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

First, monetary incentives were offered to the District Attorneys in what was a relatively resource-rich environment; thus, desire for budgetary increases was probably not a primary motivator of management. Between 1980 and 1985, the citywide budget for the six prosecutors' offices doubled, from $42,851,000 to $85,892,000 (with the City's direct contribution remaining stable at about 80%). During the same period, the number of

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[15] For an excellent discussion of the use of incentives as public policy tools, see Thomas W. Church and Milton Heumann, "Incentives and Criminal Justice Reform," Technical Report, Speedy Disposition Project Final Report, Chapter I.

Assistant District Attorneys increased by half, from 909 in 1980 to 1,357 in 1985.[16] This increase in professional personnel parallels the 57 percent increase in Supreme Court filings and the 50 percent increase in Criminal Court filings over the same period. Based upon caseload estimates for assistants handling Supreme Court cases, these figures suggest that, broadly speaking, personnel resources were keeping pace with caseload. On average, citywide, each ADA with a Supreme Court caseload would have had about 45 new indictments to handle in 1985 as compared to 43 in 1980.[17]

These data suggest that, in 1985, the ADAs in the City's Supreme Court were carrying about 62 cases during the year, which is the sum of 45 new indictments per ADA and 17 cases from the felony backlog (the total number of Supreme Court cases pending at the beginning of 1985 divided by the estimated number of ADAs handling felonies). Although systematic information from comparable jurisdictions across the country is absent, this caseload does not appear excessive on the face of it, and discussions with District Attorneys in other jurisdictions reinforce this perception.[18]

While the extent of the District Attorneys' needs for various types of resources is also a complex question, it appears reasonable to say that the SDP financial incentives themselves were not the major factor motivating the various District Attorneys' responses to the initiative. Budgetary and caseload data suggest this as do conversations with executive personnel in all the offices. Furthermore, it is striking that none of the District Attorneys used the extra resources provided by SDP to build financial incentives for their own staffs as a method of focusing individual ADAs' attention on the SDP target cases.

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

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

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

Executive policies made at the top of organizations may or may not be reflected in the actions of those at other staff levels who must implement policy. All the District Attorneys called their assistants' attention to the cases targeted by the SDP (using somewhat different methods), but none used the incentives themselves to address the problem of staff motivation. SDP dollars were used to hire new ADAs, to establish case-tracking systems, and to augment the overall budgets in a variety of ways directly and indirectly relevant to SDP. But in no office were the funds used even in part to create financial incentives to reward middle-level and trial ADAs who found effective ways to reduce their backlogs of older cases.

Second, regardless of whether the prosecutors had a felt need for the resources which were to be distributed from the SDP incentive pool, the incentives might have been more effective if the offices' performance outcomes had been more visible and if SDP performance had thereby contributed directly to professional status; however, the program's visibility was generally low, even within the criminal justice community, and this may have limited the relevance of potential non-monetary incentives.

For only one office did the non-monetary dimensions of the SDP incentives seem to operate. In 1983, the Manhattan District Attorney had communicated to City officials that his office could speed up case processing and help relieve pressure on the City's detention facilities if additional resources were provided for such an effort. This communication arrived while the SDP was being planned by the City, and it was a factor in the City's decision to proceed. Thus, in addition to the prospect of "winning" additional funds through the SDP, the Manhattan District Attorney had a specific, visible commitment to achieving the program's results and in demonstrating that his office could move toward the desired objective. This higher level of incentive is likely to be at least part of the reason why Manhattan produced the most sustained SDP effort and why it was the only office to receive a share of the incentive pool in both program years. In contrast, none of the other prosecutors had this level of pre-existing investment.

Parallel to the lack of visibility of the SDP in the larger community was SDP's lack of visibility within individual prosecutors' offices; it was difficult for anyone -- line staff or administrators -- to know whether an individual ADA had done a particularly good job or bad job at reducing his or her backlog of old cases. Because most of the offices did not explicitly recognize or reward individual performance along this dimension, the District Attorneys were not particularly successful at motivating changes in their staff's behavior. Only in the Manhattan District Attorney's Office was individual ADAs' performance on the specific SDP performance measures highly visible -- it was deliberately made visible through an information system which the Office designed for the SDP and which produced the "Star Reports".

There is another side of the visibility issue. The more observable performance results are and the more attention is paid to them, the greater is the potential for productive competition to be transformed into conflict through the exacerbation of existing tensions. The City did not wish to generate direct competition among the prosecutors' offices; the incentives themselves were designed to compare each office with its own baseline (not with other offices), and there was no limit on the number of "winners" who could share in the incentive pool each year. In designing the program, therefore, the City made an attempt to balance the potentially positive and negative implications of rewarding success.

Third, a program design issue raised by one of the six offices during the program's second year resulted in that office withdrawing from the program. The limited citywide impact of the SDP was partially a result of the withdrawal in the second year of the Kings County District Attorney's Office. Although this office had had an explicit and successful policy of attempting to reduce case backlogs prior to the initiation of the SDP and although the office's SDP had had some positive effects in 1984 (not enough to receive a share of the incentive pool), the running start did not produce backlog reductions in 1985.

The reason for the withdrawal of the King's County District Attorney's Office from the SDP, according to a letter delivered to City officials in November 1985, was that the office had been unable to encourage City officials to change the SDP funding formula to include a workload factor. Although the office had early on expressed concern, during the original negotiations between the City and the prosecutors, that the quality of dispositions was not being taken into account in the performance measures or funding formula, the concern about workload factors did not surface until the office came to believe that it would have shared in the first year incentive pool if workload had been taken into account.[19] City officials, after their own review of the Kings County data, did not agree with this conclusion.

Finally, norms of the "local legal culture" in all the jurisdictions are a primary determinant of how long felony cases will take to reach disposition in New York City; they are powerfully and deeply embedded in the operating structure and

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

assumptions of the court. This is reflected in the fact that most of the District Attorneys' SDP efforts accepted these normative expectations rather than challenged them.

Many dimensions of the District Attorneys' programmatic responses to SDP reflect these offices' considerable difficulty with stepping outside the prevailing dogma of the New York City Supreme Court -- that contested felonies usually take about six months from filing to disposition, and that many cases justifiably take more time. Not only are those assumptions challenged by the experience of such places as the Detroit Recorder's Court, among many other jurisdictions that have been studied, but also they are challenged by research data collected on how much time it actually takes to prosecute and to defend felonies.

These data suggest that most of the time which expires in New York City between arrest and disposition in the Supreme Court -- a median of 185, 173, 176 and 153 days for the four citywide SDP disposition samples discussed earlier in this report -- is not spent on preparation or presentation of a case, but on waiting. None of the District Attorneys' SDP plans addressed this waiting time in a systematic way. When their specific activities are examined in detail (as is done in the SDP evaluation final report), it appears that, with a few exceptions, most incorporated the premises about delay that prevail in New York City and that are, in turn, a cause of delay. The SDP incentives were apparently not powerful enough to provoke a major effort by the prosecutors to change fundamentally the embedded expectations of their staffs, or of the other parties to the disposition process, about how long felony cases should take.

Nothing in the evaluation suggests that incentives fail to work, only that they must be structured in ways that make them effective.

D. Case Processing in the New York City Supreme Court: The Context for the Speedy Disposition Program

How did the New York City Supreme Court come to be among the slowest felony courts in the country? In the powerful local legal culture shared by New York City's District Attorneys and courts, this phenomenon is usually explained by reference to too many cases, too many serious cases, and too few judges. But even if the entire citywide caseload of 30,728 new indictments filed during 1985 survived early assessment and disposition procedures (such as felony waiver) and were sent to trial parts, it would result in 192 cases per Supreme Court judge -- the lowest caseload per judge of any jurisdiction except Boston in the 1983 National Center Study.[20] The Detroit Recorder's Court, which is

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[20] Even if one adds the backlog pending at the beginning of 1985 (11,262) to the new indictments during the year (30,728), the ratio per Supreme Court judge is 264 cases (41,990 divided by

in many respects the court in the survey most resembling one of New York City's four largest Supreme Courts, has a ratio of 362 indictments per judge and a median disposition time of 43 days.

The major elements of effective case management are lacking in the present docketing system of New York City's Supreme Court and were not created through the efforts undertaken by the District Attorneys in response to the SDP. They are relatively simple -- at least as they are defined by virtually all researchers and court administrators who have expressed a view about what must exist for delay to be reduced: the events required to process a case should be scheduled within short time limits, the events should occur when they are scheduled, and means to enforce the occurrence of those events should be put in place. The ten courts in the National Center's 1983 study that had felony disposition times of 90 days or less all had established regularized procedures for handling specific stages of each case, procedures geared to bring all cases to disposition within a short time period and with relatively few court appearances. They did so largely by scheduling an appearance only when something specific is to occur and by building the mutual expectation that all parties are obligated to make that event occur. These scheduling and administrative techniques are not characteristic of New York City.

In 1982, the New Jersey judiciary began an effort to reduce its trial court congestion. Between 1967 and 1971, indictments had doubled and a record high 13,000 active indictments were pending, well over one-third of which were more than a year old.[21] In 1984, the Administrative Director of the New Jersey Courts reported that the New Jersey Speedy Trial Program

> "Has cut almost in half the median time from complaint to disposition, from twelve months down to seven. By itself seven months is not an accomplishment to draw much attention, but it is a significant improvement. The program continues, and we expect to see further reductions in processing time."[22]

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the total number of Supreme Court judges, which is estimated using the court's method of dividing judge days per year [32,622 for 1985] by 205, the estimated number of days a judge is in court each year).

[21] Anthony Langdon, The New Jersey Delay Reduction Program. Denver, Colorado: The Institute for Court Management, 1983, p. 40.

[22] Robert D. Lipscher. "Court Rules Have Limits (New Jersey's Speedy Trial Laws)," The Judges Journal, Vol. 23 (1984):37.

In the New Jersey program, the idea of a clear case progression through predictable steps became a rule requirement for scheduling orders and pretrial conferences. In the first year of the program, new cases filed were to be indicted within 80 days of arrest, arraigned within 10 days of indictment, and disposed within 150 days of arraignment. Shorter times were provided for cases of defendants in detention and the time frames for both detention and non-detention cases were shortened for the project's second and third years. The third year goals for non-detention cases were 65 days to indictment, 10 days to arraignment and 80 days to disposition. In detention cases the third year goals were 30 days to indictment, 5 days to arraignment and 55 days from arraignment to disposition.

Similarly, when the Detroit Recorder's Court was reformed to eliminate backlog and congestion, it was the Wayne County District Attorney who believed that the court needed to set specific time limits for events in the life of a case, and this concept became central to the project as it developed.[23]

In these approaches to docketing, the key is the establishment of a trial date on which all parties are expected to be ready for trial. New York City Supreme Court dockets are rife with adjournments because attorneys are on trial in other courts and because, even months after a case has been filed, the defense attorney has still not filed motions for discovery or to suppress evidence, and has not done the other things necessary to prepare for trial that can be done soon after a case begins. As one observer of the New Jersey program comments, "Nothing except the imminent prospect of execution itself is commonly supposed to concentrate the mind more wonderfully than the certainty of facing early trial."

The New York City Supreme Court moved from a Master Calendar to an Individual Calendar System (the Individual Assignment System -- IAS) in January of 1986. Individual calendaring has much to commend it, according to the literature on court management. The conventional wisdom suggests that master calendars encourage delay because none of the several judges involved in hearing a case are thought to feel personally responsible for it, and that individual calendars encourage such personal responsibility.[24]

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[23] David W. Neubauer et al., Managing the Pace of Justice: An Evaluation of LEAA's Court-Delay Reduction Programs. Washington, D.C.: National Institute of Justice, 1981, p. 354.

[24] The shift form Master Calendars to Individual Assignments may have less impact on criminal dockets in the New York City Supreme Courts than elsewhere in the State. As the Master Calendar System was implemented in New York City, each calendar judge presided over all the proceedings in the cases assigned to that part, until they were disposed of by plea or dismissal, or sent out to trial. Therefore, in the nine out of ten cases

However, while the idea has not been tested directly, research evidence suggests this view is overly simplistic; individual calendaring systems are no panacea for delay and they do not in and of themselves ensure change in the local legal culture. The National Center's 1983 research showed that, while individual calendaring appeared to be linked to faster case processing in civil cases, this was not so for criminal courts. Instead, the data were inconclusive; while the four slowest courts used master calendars (including the Bronx, Boston, Providence and Newark), the three fastest criminal courts -- Detroit, Oakland, California and San Diego -- also had master calendars.

If, however, the New York City Supreme Court seizes the opportunities the formal IAS system provides for monitoring specific cases and for testing out the effects of different strategies for speeding up cases that could be implemented in individual parts, as a means to challenge the local legal culture of which it is a part and which it currently sustains, and if the District Attorneys grasp the same opportunities within their own offices for setting standards for times between specific events and for encouraging adherence to them, a substantial change in New York's local legal culture might be made.

E. Post-SDP Performance: Detainees and Pending Cases

Although the City completed the incentive phase of the SDP at the end of 1985, the moneys distributed to the District Attorneys had become part of their budgets' permanent base. This was in part an expression of the City's goal in the SDP to encourage the prosecutors permanently to place speedier case disposition high on their list of priorities. As a result, the City asked the Vera Research Department to continue monitoring the performance measures developed for the incentive phase of the SDP, under a separate contract. This was done, again with the assistance of the Criminal Justice Agency's Research Department. As noted above, however, in early 1986, the New York City Supreme Court began to phase in the change to the IAS, or Individual Assignment System. While SDP data for 1986 are influenced by this transition to IAS, it would be erroneous to view them as capturing the effects of a fully implemented IAS. It should also be noted that, as a response to the spread of "crack" (a highly addictive and inexpensive form of cocaine), the New York City Police Department began a campaign of arrests directed at drug

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disposed without trial, all proceedings from arraignment to sentence were before the same judge, unless the judge rotated to another court or went on vacation, etc. (The Queens County procedure for returning cases to calendar parts after trial parts disposed of preliminary evidentiary motions was an exception.)

offenders which dramatically increased the number of new cases entering the New York City courts during 1986.

Cases pending disposition and sentence in the New York City Supreme Court increased 10.3 percent (1,723 cases) citywide between the end of 1985 and the end of 1986, according to the SDP performance measures. Most of this increase was in the category of cases pending less than six months, which increased 14.1 percent. However, older pending case categories increased as well: cases pending over 11 months rose 9.7 percent, while cases pending 6 to 11 months rose slightly by 2.2 percent.

The percentage increase in detainees' cases was even more evident during 1986, with younger cases also showing the most substantial increases. Overall, the number of detainees with cases pending citywide rose 28 percent between the end of 1985 and the end of 1986. The number of defendants detained under six months increased by 33.9 percent, while those detained over 6 months increased by much less -- 6.5 percent. It is likely that the effect of the sharply increased arrests is reflected in these under-six-month figures.

There were, however, significant differences among the jurisdictions of the City's six prosecutors. Not surprisingly, given the nature of the Police Department's arrest policies during 1986, the jurisdiction of the Special Narcotics Prosecutor (SNP) saw dramatic increases. Overall Supreme Court pending cases increased 60.2 percent during 1986, and cases in detention increased 84.3 percent (comparing the end of 1986 with the end of 1985). Much of this increase was in the under-six-month category. SNP cases pending in the Supreme Court less than six months rose 78.7 percent (compared to 30.2% for those pending over six months); detention cases pending less than six months increased 107.4 percent (compared to 8.8% for those detained over six months).

The office of the Manhattan District Attorney is at the other extreme. Continuing reductions in pending caseloads, as had occurred during both preceding SDP program years, brought the overall Supreme Court pending caseload of this office down 9 percent between the end of 1985 and the end of 1986, -7.6 percent for those cases pending less than six months and -11.4 percent for those pending over six months (-19.2% for those over 11 months). Although the total number of detainee cases in this jurisdiction increased by 17.6 percent, the increase was among cases detained less than six months; those over six months in detention declined 14.6 percent.

It is important to recall, when comparing the Manhattan District Attorney's jurisdiction with data from the other county district attorneys' jurisdictions which follow, that the increase in drug arrests -- which occurred in all counties -- is not reflected in the pending felony caseload figures for the Manhattan District Attorney, but is reflected in the felony

caseload figures for the other District Attorneys. (Manhattan felony drug arrests enter the jurisdiction of the Special Narcotics Prosecutor.) While the detainee figures for all the offices contain misdemeanor drug cases, the felony cases in detention and awaiting trial in the Supreme Court are not within the jurisdiction of the Manhattan District Attorney although most are within the jurisdiction of the other county district attorneys.

All the other District Attorneys' Offices saw overall increases in Supreme Court pending cases and detainee cases. The increases were largest for Richmond County (104.5% and 73.3%, respectively) and Queens County (17.2% and 58.4%, respectively), and less for Kings County (3.5% and 21.3%) and the Bronx (11.9% and 16.8%).

However, there were reductions in the number of older pending cases in Kings County. All the increases in pending Supreme Court cases for Kings were in the younger category (pending less than six months); the number of older pending cases declined, including a decrease of 6.9 percent for cases pending over 11 months. Similarly, although Kings County detained cases increased, this was all in cases detained less than six months (35%); detained cases pending over six months declined (-15.4%) and the decline was dramatic for those detained over 11 months (-24.8%).

In the other boroughs (Bronx, Queens, and Richmond), the number of cases pending over 11 months increased substantially between the end of 1985 and the end of 1986. The number of these very old pending Supreme Court cases increased 50.1 percent by the end of 1986. The number of cases detained over 9 months increased 23.8 percent in the Bronx, 99.0 percent in Queens, and 88.7 percent in Richmond.

The Vera Research Department is continuing to provide the City with the SDP performance measures -- the next batch will bring the series up to the end of 1987. It is hoped that, by the end of the current fiscal year (July, 1988), the existing management information systems tracking cases in New York City will have matured to a point where it will no longer be necessary for Vera to perform the special off-line data-collection tasks which, up until now, are required for standard measures of backlog and delay (such as those used in the SDP) to be made available to the City, the prosecutors, and the research community.