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FELONY DISPOSITION STUDY

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INTRODUCTION TO THE PRELIMINARY REPORT

The Felony Disposition Study is designed to inform an often emotional debate with some facts on the processing and disposition of felony charges in New York City.

On the one hand, courts have been charged variously with inefficiency, with disregard of defendants' rights, with excessive leniency to defendants, with lack of concern for victims, and with inequitable administration of the law.

On the other hand, police have been charged with responsibility for the "deterioration" of felony arrests by "over-charging," with failing to develop strong evidence, and with ignoring the necessity to individualize administration of the law.

The debate was fueled in January 1972 when former Police Commissioner Patrick Murphy attacked the courts in an address before the Association of the Bar of the City of New York that received wide coverage and comment. He alleged that courts were concerned only with clearing their back-logged calendars, were consequently too lenient with defendants, and thus demonstrated their failure to deal with the crime problem. As ammunition, the Commissioner offered statistics indicating, he said, that few defendants charged with felonies were receiving prison sentences.

Although Commissioner Murphy's statistics were open to interpretations, his attack raised important questions about the respective roles of police, prosecutor, judge and defense counsel in the adjudicatory process; about the assumption that arrest charges rather than sentences were the most accurate measure of criminal conduct; and about the causes of recidivism.

Clearly, an understanding of these issues has been circumscribed by a lack of longitudinal data on the arrest-to-sentencing process. The Felony Disposition Study was undertaken in October 1972 in an effort to help remedy this situation.

The main thrust of the Study was first, to develop a substantial body of data on the processing of felony arrests, and second, to determine and measure the factors shaping disposition of these arrests. The focus has inevitably been on the deviation between arrest charges and eventual disposition, or developing methods of measuring deviation, exploring its causes, and weighing its significance for the system.

Because of its broad scope, the Study also includes both quantitative and qualitative data on other aspects of the criminal justice system including: the comparative use of complaint room and Grand Jury in the four large boroughs; the comparative incidence of "over-charging" and "over-indicting," the relative impact on disposition of private, Legal Aid or assigned private counsel; the influence of pretrial status on disposition.

This presentation of the Study's findings is preliminary. It is largely an early-stage statistical analysis of a sample of 2,000 felony arrests made in 1971. The tables have been arranged topically and are accompanied by brief interpretive discussion. The first seven topics are descriptive; the remaining four are initial analyses of factors in the disposition process. The tables are followed by a synopsis and materials from one case and supplementary tables without accompanying narrative.

THE STUDY DESIGN

The Felony Disposition Study used three sources of data.

The broadest is a statistical sample of 2,000 felony arrests representing about 100,000 felony arrests made during 1971 in Manhattan, the Bronx, Queens and Brooklyn. For each of the four boroughs, 500 cases were randomly selected from the Police Department's Arrest Register, an individual listing of all arrests made in New York City. The 1971 arrest list was chosen to allow sufficient time for the disposition of the selected cases.

A second source of data was exposed to more extensive analysis. A sample of 440 disposed cases -- 100 from each of the four boroughs and 40 from the Central Narcotics Court -- was selected randomly from Criminal and Supreme Court calendars during the ten months between January and October, 1973. In addition to collecting recorded data on each case, interviews were conducted with the major figures involved: the arresting police officer; the attorney representing the defendant at disposition or sentencing; the prosecutor at disposition; the sentencing judge or the judge who took the plea, dismissed the case or presided over its trial. In some cases victims and defendant were also interviewed. Interviewing began immediately after disposition.

The 440 cases are, therefore, in a way, a subsample of the 2,000 cases and provide an in-depth view of the various decisions presented in outline by the larger sample.

A third source of information was obtained during a year of informal observations by the research staff at various points of

the disposition process -- complaint room, arraignment, plea bargaining sessions, and occasionally at trials. Many interviews not related to sample cases were conducted with court personnel -- police officers, judges, prosecutors, defense counsel and court clerks. These observations and personal contacts provided further insight into the data.

Information on the 2,000 cases was derived from four data sources: the Arrest Register, the "J.C. 500" (the Judicial Conference's source of disposition data), court papers, and the New York State Information and Investigation Service (NYSIIS)* run by the State Division of Criminal Justice Services. Data from these sources includes the defendant's age, race, sex, criminal history and addict status; arrest and disposition charges, type of disposition; bail status, type of counsel and so on.

Information on the 440 cases was gathered chiefly through interviews supplemented by court papers. In addition to the kinds of data obtained for the 2,000 cases, information on the 440 includes the defendants' length of residence in New York City, type of employment, if any, living situation, financial obligations, psychiatric and alcoholic problems.

Limited data on the complainant was also obtained: was the complainant an individual, a business, a private or public agency, or a police officer; if the complainant was an individual, what was

*The Judicial Conference is the State agency charged with the administration of the Judiciary. The "J.S. 500" form was designed to collect disposition data for management purposes. NYSIIS collects criminal history data for law enforcement purposes.

his/her age, race, sex, employment status and relationship to the defendant. The sample of 440 excludes the following: juvenile arrests or any other cases disposed of in the Family Court; arrests dismissed or reduced to misdemeanors in the complaint room; cases in which the defendant jumped bail; cases no-true billed by the Grand Jury and not returned to the Criminal Court or re-introduced at a later date with more complete evidence.

The 2000 data was randomly selected on the basis of approximately 500 cases from each borough. Since the number of felony arrests are not equally divided between the boroughs, a correction factor has been introduced to balance the original selection bias. This weighing factor was computed on the basis of dividing the number of total felony arrests in 1971 in a particular borough by the number of cases in the sample for that borough. The actual computation of the weighing factor was complicated by a problem with juveniles. In the final tabulation, the weighted total of respondents does not reflect juvenile cases or those persons adjudged to be youthful offenders. However, since comparable data for the actual number of adult felony arrests was not available, the end result was that the weighing factor reflects the total number of arrests divided by the number of cases in the sample for a particular borough less juveniles and youthful offenders.

While the tables appear to be accurate, it is possible that as data processing proceeds, inconsistencies and errors will be quoted.

TOPIC 1

NATURE AND NUMBER OF FELONY ARRESTS

Table 1

The number of felony arrests in New York City in 1971 was 98,629. Although Manhattan only constitutes 20% of the resident population, 36% of felony arrests are made there, almost twice the proportion of residents. In contrast, Queens accounts for 26% of the city population and for only 12% of the felony arrests. The felony arrest rate for Brooklyn and the Bronx are roughly comparable to the proportion in the population.

The 2000 data reveals the following breakdown of felony arrests in New York City (exclusive of Richmond):

Percent of Felony Arrests in 1971 by Borough (2000)

		<u>% of Felony Arrests/Population</u>	<u>% of Total Population</u>
Manhattan	36	2.25	20%
Bronx	21	1.39	19%
Brooklyn	31	1.17	35%
Queens	<u>12</u>	.59	<u>26%</u>
	100		

Table 2

More residents of other boroughs are crossing over to committ crimes in Manhattan than they are in other boroughs.

Borough of Residence	Borough of Arrest				
	Total 341	Manhattan 80	Bronx 93	Brooklyn 84	Queens 84
Manhattan	22	<u>83</u>	3	4	4
Bronx	28	7	<u>95</u>	2	1
Brooklyn	25	1	1	<u>92</u>	6
Queens	25	9	1	2	89
	<u>100</u>	<u>100</u>	<u>100</u>	<u>100</u>	<u>100</u>

Table 3

In 1971, robbery and burglary accounted for 32 per cent of all felony arrests, possession and sale of narcotics accounted for another 20%, and assault accounted for 10%. The pattern of crimes is fairly similar among the boroughs. However, burglary arrests appear more common in the Bronx and Brooklyn and narcotics possession more common in Manhattan.

Per cent of Specific Crimes by Borough (2000)

	<u>Total</u>	<u>Manhattan</u>	<u>The Bronx</u>	<u>Brooklyn</u>	<u>Queens</u>
Homicide	1	*	*	.1	.1
Robbery	17	19	17	16	16
Assault	10	10	9	10	9
Criminal Poss. of Dang. Weap.	6	5	5	6	4
Rape	1	1	2	*	1
Burglary	15	12	17	19	13
Larceny	5	6	9	7	9
Auto Larceny	7	6	9	7	9
Narc. Poss.	13	17	12	10	12
Narc. Sale	7	8	8	6	4
Gambling	2	3	2	1	2
Forgery	6	5	5	7	8
Other	10	<u>7</u> 100**	<u>5</u> 100**	<u>11</u> 100*	<u>15</u> 100**

Table 4

Arrest class distributions indicate that A felony arrests are rare (3% of all felony arrests) while D felonies account for almost half the total. Since there are few differences in type of change among boroughs, it is not surprising that class of crime also is similar.

*Less than 1%

**Due to rounding, sums may not equal 100.

<u>Arrest Class</u>	BOROUGH OF ARREST				
	<u>Total</u>	<u>Manhattan</u>	<u>Bronx</u>	<u>Brooklyn</u>	<u>Queens</u>
A Felony	3	2	2	4	1
B Felony	12	13	14	12	8
C Felony	20	22	21	18	19
D Felony	45	45	45	45	49
E Felony	<u>20</u>	<u>18</u>	<u>18</u>	<u>21</u>	<u>23</u>
	<u>100</u>	<u>100</u>	<u>100</u>	<u>100</u>	<u>100</u>

TOPIC 2

THE DEFENDANTS

The following tables describe demographic characteristics of persons arrested on felony charges for both samples, the 2000 case sample and the 440 case sample.

Data on sex, age, and race of the 440 duplicates the 2000 sample figures, indicating that the 440-case sample is a good representation of the larger body of data. Some data on the 440, such as residence, financial situation, and living situation was available through interviewing.

Table 1

The vast majority of defedants are male. The percentage of women arrested in Manhattan is slightly higher than in the other boroughs.

Sex of Arrested Persons by Borough

	<u>Total (440)</u>	<u>Total (2000)</u>	<u>Manhattan (2000)</u>	<u>Bronx (2000)</u>	<u>Brooklyn (2000)</u>	<u>Queens (2000)</u>
Male	88	89	87	91	91	90
Female	$\frac{12}{100}$	$\frac{11}{100}$	$\frac{13}{100}$	$\frac{9}{100}$	$\frac{9}{100}$	$\frac{10}{100}$

Table 2

Of all persons arrested for felonies, nearly one-third are under 20 years of age: 12% are younger than 16 years old and do not come under the authority of the criminal courts; almost one-fifth are between 16 and 19 years.

Arrested Persons by Age

	<u>Total (400)</u>	<u>Total (2000)</u>
Under 16 years		12
16-19 years	8*	19
20-29 years	53	45
30-39 years	20	16
40 and over	13	<u>8</u> 100

* Because of the different sampling techniques for the 440 (selected from the point of disposition in Criminal and Supreme Court) and the 2000 cases (from the police register) no juvenile cases were selected for the 400 sample. Thus, no person under 16 and not all between 16-19 were sampled, decreasing the proportion of defendants under 20 in the 400 sample.

Table 3

The age distribution by borough indicates that with the exception of Manhattan there are few differences. Defendants in Manhattan are older than they are in the other boroughs.

AGE BY BOROUGH

TOPIC 2
Table 3

	BOROUGH					NO ANSWER
	TOTAL	MAN- HATTAN	BRONX	BROOK- LYN	QUEENS	
TOTAL CASES	1923	476	444	487	516	
(NO ANSWER)	19	3	2	9	5	
TOTAL ANSWERING (UNWEIGHTED)	1904	473	442	478	511	
(WEIGHTED)	97829 100.0	34858 100.0	20831 100.0	30145 100.0	11996 100.0	
UNDER 16 YEARS	12.5	9.1	11.8	16.1	14.5	
16 - 19 YEARS	18.8	14.2	22.2	20.3	22.7	
20 - 29 YEARS	45.3	46.9	45.7	44.1	42.5	
30 - 39 YEARS	15.9	19.9	14.9	12.8	14.1	
40 - 49 YEARS	4.7	6.1	3.8	3.8	4.7	
50 - 59 YEARS	2.1	3.0	1.1	2.3	.8	
60 AND OVER	.7	.8	.5	.6	.8	

1
2
3

Table 4

The distribution by race is roughly as follows: about one-quarter white, one-quarter Spanish surnamed and one-half Black. In Queens, Spanish surnamed defendants represent only 2% and the white defendants over 40 per cent of the population.

Arrested Persons by Race and Borough

	Total (440)	Total (2000)	Manhattan (2000)	Bronx (2000)	Brooklyn (2000)	Queens (2000)
White	20	22	19	18	20	41
Black	51	53	57	45	54	53
Spanish Surname	26	24	23	26	26	2
Other	3	$\frac{1}{100}$	$\frac{1}{100}$	$\frac{1}{100}$	** $\frac{1}{100}$	$\frac{4}{100}$

** Less than .5%

Table 5

The great majority of defendants live in New York City. (The table is based on the 440 sample only).

Defendant's Residence

New York City	$\frac{4}{94}$
Outside NYC plus transients	$\frac{6}{100}$

Table 6

Of those who are New York City residents, three-fourths have lived here more than 10 years.

Defendant's Length of Residence in NYC

-1/2 year	1
1/2 - 1 year	3
2 - 5 years	7
6 - 10 years	11
Longer	<u>78</u>
	100

Table 7

Almost two-thirds of the defendants are self-supporting, some of them supported others. Of the one-third who did not support themselves, half are supported by others and half by public funds.

Defendant's Financial Situation

Self supporting	37
Supporting also others	29
Supported by others	19
Publicly supported	<u>18</u>
	100

Table 8

Over half the defendants live with family and only 16% live alone.

Defendant's Living Situation

Alone	16
With legal spouse	27
With common law spouse	11
With children only	3
With nuclear family	29
With extended family	4
With friend	6
Other	<u>4</u>
	100

Table 9

Data on the per cent of defendants with health disabilities indicates that alcoholism and psychiatric problems are relatively rare, but drug addiction is evident in almost one-third of the cases.

Per cent of Defendants with Health Disabilities (440)

Evidence of alcoholism	6%
Evidence of psychiatric condition	8%
Evidence of drug addiction	30%

TOPIC 3

PLACE OF DISPOSITION

Table 1

The court of disposition varies among the boroughs. The data show a higher rate (82%) of dispositions in Manhattan Criminal Court and fewer cases disposed in the Supreme Court (15%) than in the other boroughs. In Queens, on the other hand, only two-thirds of felony arrests are resolved in Criminal Court while Queens Supreme Court handles nearly double the per cent of cases disposed of in Manhattan Supreme Court. The Bronx and Brooklyn are similar to each other with about three-quarters of the cases being disposed of in Criminal Court.

DISPOSITION COURT BY BOROUGH

	BOROUGH					NO ANSWER
	TOTAL	MAN- HATTAN	BKONX	BRONX- LYN	QUEENS	
TOTAL ADULT CASES	1619	424	370	406	419	
(NO ANSWER)	69	16	17	26	10	
TOTAL ANSWERING (UNWEIGHTED)	1550	408	353	380	409	
(WEIGHTED)	80269 100.0	30068 100.0	16636 100.0	23964 100.0	9601 100.0	
CRIMINAL COURT	76.5	82.4	75.1	74.5	66.0	
SUPREME COURT	21.0	15.4	22.1	22.6	32.8	
FAMILY COURT	1.3	1.0	2.3	1.3	1.0	
NEVER REACHED CRIMINAL COURT	1.1	1.2	.6	1.6	.2	

TABLE 1

Table 2

The 440 data indicates at what stage of the process dispositions take place.

Stage at Which Felony Cases
Are Disposed of in Criminal Court (400)

<u>Stage</u>	<u>% Disposed at Each Stage</u>
Arraignment	16
Preliminary Hearing	43*
All Purpose Part	29
Pretrial Conference	1
Trial Part	10
After Trial	<u>1</u> 100

Table 2a

Stage at Which Felony Cases
Are Disposed of in Supreme Court (400)

<u>Stage</u>	<u>% Disposed at Each Stage</u>
Arraignment	2
All Purpose Part	7
Pretrial Conference	43
Trial Part	33
During Trial	1
After Trial	<u>14</u> 100

The percentage of Criminal Court cases recorded as settled in preliminary hearing includes both those cases which are in fact settled between arraignment and the preliminary hearing and those settled at the hearing.

Table 3

The court of disposition is one way of measuring how the court evaluates the seriousness of a crime. Those crimes which are consistently disposed of in Supreme Court are considered more serious than those disposed of in Criminal Court.

In general, crimes of violence or potential violence are sent to the Supreme Court more often than property crimes. For instance, 54% of homicides, 34% of robberies and 21% of assaults are disposed of in Supreme Court compared to 19% of larcenies, 15% of burglaries and 11% of auto larcenies.

COURT BY SPECIFIC CRIMES

	SELECTED CRIMES													
	TOTAL	HOMI- CID	ROB- BERY	AS- SAULT	POSS- DAN- GERIOUS WEAPON	RAPE	BUR- GLARY	LAR- CENV	AUTO LAR- CENV	POSS- NAR- COTICS	SALE NAR- COTICS	GAM- BLING	FUR- GERY	OTHER
TOTAL ADULT CASES	1589	15	219	160	98	18	208	72	121	234	115	35	124	170
(NO ANSWER)	88	1	12	24	4	2	11	1	4	10	2	1	6	10
TOTAL ANSWERING (UNWEIGHTED)	1501	14	207	136	94	16	197	71	117	224	113	34	118	160
(WEIGHTED)	77972	674	11209	7350	5044	761	10500	3736	5759	11931	6101	1865	5739	7302
	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
NEVER REACHED CRIMINAL COURT	1.1		1.1	.3	1.5				1.1	3.2			1.1	1.9
CRIMINAL COURT	71.2	33.1	59.3	67.3	70.1	65.6	78.1	74.2	79.6	79.3	58.2	82.9	79.7	67.9
TOTAL GRAND JURY AND REDUCED FRGM G.J.	6.3	12.9	6.2	11.6	5.0	9.3	6.8	7.0	8.6	1.8	3.6	1.2	8.0	7.7
GRAND JURY	5.5	9.3	4.7	10.2	5.0	9.3	6.8	7.0	7.8	1.1	3.6		5.0	7.7
REDUCED	.8	3.4	1.5	1.3					.8	.8		1.2	3.0	
SUPREME COURT	21.4	54.2	33.4	20.8	23.4	25.1	15.1	18.8	10.7	15.6	38.2	15.8	11.2	22.5

This data as well as the disposition data from the 2000 cases and the information collected from the 440 data reason analysis should allow the future analysis to include a broad range of probability tables predicting the stage and type of disposition for each of the boroughs for specific crimes. If the correlations between the 400 and the 2000 remain as strong in more developed testing as they have on initial screening, then the 400 data will also provide predictive probability factors on the effects of evidentiary and procedural deficiencies on type and place of disposition.

TOPIC 4.

DISPOSITION PATTERNS

Table 1

Of the felony arrests disposed of in the Criminal and Supreme Courts only 2% came to trial; half the defendants pleaded guilty; most of the remainder had their cases dismissed.

Overall Disposition

Dismissed	40
Pleaded guilty	51
Tried	2
Jumped Bail	<u>7</u>
	100

Table 2

If one excludes the "jumped bail" category, which are in fact cases not yet disposed of, the picture is simplified:

Overall Disposition Pattern

Dismissed	43
Pleaded guilty	55
Tried	<u>2</u>
	100

Table 3

The pattern across crime classes remains stable, with one exception: the relatively high proportion of A felonies that come to trial.

Arrest Class by Type of Disposition

	A	B	C	D	E
Dismissed	39	40	38	40	48
Plead Guilty	49	58	50	58	50
Tried	$\frac{12}{5}$	$\frac{2}{1}$	$\frac{2}{1}$	$\frac{2}{1}$	$\frac{2}{2}$
Acquitted					
Convicted	$\frac{7}{12}$	$\frac{1}{2}$	$\frac{1}{2}$	$\frac{1}{2}$	$\frac{--}{2}$

Table 4

The disposition pattern of the 440 cases is close to that of the 2,000 cases, with a slightly higher proportion of trials.

Type of Disposition (440)

Dismissal	31
Guilty Plea	64
Trials	5
Acquittal	1
Conviction	4

Table 5

In the table on dispositions by type of crime that follows, it should be noted that these figures are based on about 1600 cases (only adult offenders); therefore, 1 percentage point in the last column represents about 16 cases. For many crimes, therefore, the sample is small.

Dismissals

The dismissal rate varies widely with type of crime. Of all types of arrest, possession of stolen property is most likely to result in dismissal (54%) and forged drivers' licenses least likely (11%). Robberies tend to have a higher rate of dismissals than burglaries.

Guilty Pleas

The proportion of guilty pleas by type of crime category also varies widely and, predictably, conversely with dismissal rates. Guilty pleas account for 82% of forgery of drivers' licenses and only 28% of assaults.

Acquittals

-24-

Only a few types of crime are accounting for the over-all 1% acquittal rate: most notably 9% of arrests on assaulting a police officer end in acquittal. Auto larcenies (5%), unclassified assaults (3%) and residential night time burglaries (3%) are the other crimes with more than one per cent ending in acquittal.

Convictions

Convictions are also limited to certain crimes but not as narrowly as acquittals. Eight per cent of auto larcenies end in conviction after trial.

Disposition

Crimes According to Police Codes

	<u>Assault on a Police Officer</u>	<u>Assault Un- classified</u>	<u>Reck- less En- dangerment</u>	<u>Commercial Burglary Night</u>
Dismissal	28	49	21	30
Pleads Guilty	48	29	67	63
Acquittal	9	3	--	--
Conviction	3	1	5	2
Jumped Bail	4	7	--	--
Other	8	11	7	5
Total	100	100	100	100

Disposition

Crimes According to Police Codes

	<u>Burglary Res. day</u>	<u>Burglary Res. Night</u>	<u>Robbery Pocket- book</u>	<u>Robbery Residence</u>
Dismissal	34	28	47	41
Pleads Guilty	50	61	31	47
Acquittal	--	3	--	--
Conviction	--	--	--	--
Jumped Bail	9	7	9	3
Other	7	1	13	9
Total	100	100	100	100

Disposition

Crimes According to Police Codes

	<u>Robbery Dwelling</u>	<u>Robbery Open Area</u>	<u>Auto Larceny</u>	<u>Poss. of Stolen Property</u>
Dismissal	44	38	37	55
Pleads Guilty	50	56	46	31
Acquittal	--	--	5	--
Conviction	--	**	1	2
Jumped Bail	6	2	8	8
Other	--	4	3	4
Total	100	100	100	100

Disposition

Crimes According to Police Codes

	Drug Poss. 3°, 4°	Narcotic Sale 2°	Gambling- Promoting Policy Slips	Forgery of a Driver's License
Dismissal	47	19	33	11
Pleads Guilty	42	64	58	82
Acquittal	--	--	1	
Conviction	1	1	--	
Bail Jump	7	9	3	2
Other	3	7	5	5
Total	100	100	100	100

DispositionCrimes According to Police Codes

	<u>Forgery of Vehicle I.D.</u>	<u>Forgery Unclassified</u>	<u>Criminal Pos of Dangerous Weapon</u>
Dismissal	57	22	33
Pleads Guilty	35	63	51
Acquittal	--	--	2
Conviction	---	---	--
Bail Jump	7	4	13
Other	--	11	1
Total	100	100	100
% of all Arrests			

Table 6

Of those convicted after trial or guilty plea, the majority are not convicted on the charge for which they were arrested.

In fact, of those convicted, roughly a quarter were for the charge class on which they were arrested. For those arrested on A felonies, the per cent convicted of an A was somewhat less-- 16 per cent.

All figures in the upper right hand part of the table represent cases in which the charge at disposition was greater than at arrest: 4% of arrests for C felonies, 2% of arrests for D felonies, and 16% arrested on E felonies resulted in a higher class of dispositions than the class at arrest. The most common upward pattern was for defendants arrested on E felonies to be eventually disposed of on a D felony.

Half of convicted defendants arrested on felonies receive felony dispositions. Naturally, the proportion is higher for those arrested for A and B felonies (82% and 83% respectively) than for C, D, and E felonies (44%, 59%, and 50% respectively).

DISPOSITION CRIME CLASS BY ARREST CRIME CLASS - BOROUGH

CLASS OF CHARGES

40
 TOTAL CONVICTED
 (DISPOSITION)
 (NO ANSWER)

TOTAL ANSWERING	CLASS OF CHARGES				
	A TOTAL FELONY	B FELONY	C FELONY	D FELONY	E FELONY
37036	1363	4577	7594	17344	6157
100.0	100.0	100.0	100.0	100.0	100.0
A FELONY	1.1	16.0	1.0	.4	.4
B FELONY	5.3	28.5	21.5	3.3	1.3
C FELONY	8.7	18.6	17.9	25.4	.4
D FELONY	22.3	19.8	27.6	18.0	<u>27.0</u>
E FELONY	13.6		15.3	8.6	12.0
					<u>26.2</u>
A MISDEMEANOR	30.1	11.5	16.1	34.2	44.9
B MISDEMEANOR	5.8		1.6	5.0	8.0
VIO- INFRAC-	4.4	5.4		4.5	5.8
VIOLATION					3.0
INFRAC-	.8			.1	4.3

In the following four tables, the class of charge at arrest is compared to the charge at disposition by borough.

Manhattan

Compared to the city-wide data, Manhattan shows twice as high a rate of A arrests being convicted of A felonies. For B through D felonies, the proportion of disposition on arrest is similar to the city-wide data.

Bronx

Similar to the city-wide average, 17% of those arrested on A felonies in the Bronx are convicted of A felonies. However, for all other crime classes, a lower per cent are convicted of the crime charged than city-wide. Almost two-thirds of felony arrests end in conviction for misdemeanors or lower crime classes compared to half city-wide. Fewer dispositions are for more serious crime class than were the arrests.

Brooklyn

In Brooklyn, none of those arrested on A felonies are convicted of A felonies as compared to 16% city-wide. However, twice as many defendants arrested on A felonies are convicted of B felonies than city-wide. Only one third, compared to one half city-wide, of those arrested on felonies are convicted of misdemeanors.

Queens

In Queens, as in Manhattan, almost one-third of convicted defendants arrested on A felonies are convicted of A felonies, however none arrested on A felonies are convicted of B felonies.

DISPOSITION CRIME CLASS BY ARREST CRIME CLASS - BOROUGH

CLASS OF CHARGES

=====
 TOTAL FELONY FELONY FELONY FELONY FELONY FELONY FELONY
 A B C D E A B
 MISDE- MISDE-
 MEANOR MEANOR
 VIOLA-
 TION
 INFRACTION
 TION

4
 7

MANHATTAN CONVICTED
 (DISPOSITION)
 (NO ANSWER)

	202	6	27	43	96	30
TOTAL ANSWERING	14813	442	1990	3169	7001	2211
A FELONY	100.0	100.0	100.0	100.0	100.0	100.0
B FELONY	2.0	33.3		2.3	1.1	
C FELONY	4.5	16.7	22.2	2.3		3.3
D FELONY	7.5	16.7	3.7	27.9		3.3
E FELONY	24.9	16.7	33.3	13.9	30.5	16.6
A MISDEMEANOR	10.5		22.2	2.3	6.3	26.7
B MISDEMEANOR	35.8		14.0	34.9	44.2	36.7
C MISDEMEANOR	7.5		3.7	7.0	9.5	6.6
VIOLATION	7.0	16.7		9.3	8.4	3.3
INFRACTION	.5					3.3

1
 1

DISPOSITION CRIME CLASS BY ARREST CRIME CLASS - BOROUGH

TOPIC 4
TABLE 8

	CLASS OF CHARGES					
	A	B	C	D	E	
	MISDEMEANOR					
	MISDEMEANOR VIOLATION					
	INFRACTION					
	TOTAL FELONY FELONY FELONY FELONY FELONY					
	TOTAL ANSWERING					
BURGH CONVICTED (DISPOSITION)	184	6	23	39	90	26
(NO ANSWER)	1		1			
A FELONY	.5	16.6				
B FELONY	2.7		8.7		2.2	3.8
C FELONY	9.3	33.2	21.8	23.7	1.1	
D FELONY	11.5	16.6	17.4	5.2	14.5	3.8
E FELONY	10.9		21.8	7.9	11.1	7.7
A MISDEMEANOR	58.5	33.2	30.4	55.3	62.2	80.8
B MISDEMEANOR	4.4			5.2	5.6	3.8
VIOLATION	2.2			2.6	3.3	
INFRACTION						
TOTAL ANSWERING	8624	283	1084	1791	4242	1225
	100.0	100.0	100.0	100.0	100.0	100.0

DISPOSITION CRIME CLASS BY ARREST CRIME CLASS - BOROUGHS

CLASS OF CHARGES

TABLE 9

	TOTAL FELONY FELONY FELONY FELONY FELONY					MISDEMEANOR		VIOLATION		INFRACTION	
	A	B	C	D	E	A	B	A	B	A	B
BROOKLYN CONVICTED (DISPOSITION)	153	9	19	28	65	32					
(NO ANSWER)	4				1	3					
TOTAL ANSWERING	9397	568	1198	1766	4036	1829					
	100.0	100.0	100.0	100.0	100.0	100.0					
A FELONY											
B FELONY	10.1	55.5	31.6	7.1	3.1						
C FELONY	11.4	11.1	36.8	28.6		3.4					
D FELONY	24.8	22.2	26.3	28.6	29.7	10.3					
E FELONY	19.5			14.3	21.9	37.9					
A MISDEMEANOR	24.2	11.1	5.3	17.8	31.2	31.1					
B MISDEMEANOR	5.4			3.6	9.4	3.4					
VIOLATION	2.7				4.7	3.4					
INFRACTION	2.0					10.3					

DISPOSITION CRIME CLASS BY ARREST CRIME CLASS - BURROGH

TOPIC 4
TABLE 10

	CLASS OF CHARGES					
	A	B	C	D	E	
	TOTAL FELYNY FELONY FELONY FELONY FELONY					
	MEANOR MEANOR MEANOR MEANOR MEANOR					
	LATION LATION LATION LATION LATION					
	INFRACTION					
QUEENS CONVICTED (DISPOSITION)	180	3	13	37	89	38
(NO ANSWER)	1			1		
TOTAL ANSWERING	4202	70	305	869	2066	692
	100.0	100.0	100.0	100.0	100.0	100.0
A FELONY	1.1	32.9				2.6
B FELONY	2.8		23.0	5.4		
C FELONY	5.6	32.9	23.0	13.5	1.1	
D FELONY	29.6	32.9	30.8	37.9	35.2	7.8
E FELONY	17.3		7.5	21.6	13.6	26.3
A MISDEMEANOR	35.7		15.4	21.6	38.6	52.7
B MISDEMEANOR	3.9				5.7	5.3
VIOLATION	3.4				4.5	5.3
INFRACTION	.5				1.1	

Table 11

The pattern of disposition by borough indicates that more arrests end in conviction in the Bronx (59%) than in the other boroughs. Brooklyn has the lowest rate -- 47%. Conversely, dismissals and acquittals account for 46% of dispositions in Brooklyn and only 29% in the Bronx. In Manhattan and Queens, half the dispositions end in conviction.

Type of Disposition by Borough

	<u>Total</u>	<u>Manhattan</u>	<u>Bronx</u>	<u>Brooklyn</u>	<u>Queens</u>
Pleaded Guilty	51	52	57	46	49
Convicted	1	--	2	1	2
Dismissed	40	41	27	45	43
Acquittal	1	1	2	1	2
Bail Jump	4	3	6	4	1
Pending	1	2	1	2	1
Other	2	1	4	1	2
Total*	100	100	100	100	100

* totals may not equal 100 due to rounding.

TOPIC 5
SENTENCING
Table 1

The sentencing data indicate that only a small proportion of defendants are sentenced to prison. Table 1 sets out the total disposition pattern. This shows that out of every 100 felony arrests, 44 are dismissed and 29 are convicted by given non-prison sentences--either conditional discharges or probation. Of every 100 arrests, 27 defendants are sent to prison, but only 5 defendants are sentenced to prison for more than one year.

Total Disposition Pattern

Dismissed or Acquitted	44
Convicted (plead guilty and found guilty)	56
Discharged	20
Probation	9
Prison up to 1 year	22
Prison over 1 year	<u>5</u>

Table 2

Table 2 breaks down sentences for those convicted. City wide, the data indicate that over half of convicted defendants (52%) receive non-prison sentences. Of those sentenced to prison, 39% receive misdemeanor weight sentences (less than one year) and only 9% are sentenced to more than a year in prison.

The data, broken down by borough, indicates that defendants convicted in Brooklyn and Queens are less likely to receive a prison sentence and more likely to be conditionally discharged than those convicted in Manhattan and the Bronx.

Severity of Sentence by Borough of Those Convicted

	<u>Total</u>	<u>Man.</u>	<u>Bronx</u>	<u>Brooklyn</u>	<u>Queens</u>
Cond. Discharge		29	33	45	40
Probation		15	15	19	20
Prison less than 1 year		49	42	24	30
Prison more than 1 year		7	10	12	10
		<u>100</u>	<u>100</u>	<u>100</u>	<u>100</u>

Total % convicted

Table 3

Table 3 breaks down sentencing by arrest charge class. The proportion of prison sentences declines with the severity of the crime class: 68% of all convicted defendants originally arrested for A felonies are sentenced to prison in contrast with 43% of defendants originally charged with E felonies. Similarly, a much higher proportion of those originally arrested for A felonies (55 per cent) are sentenced to more than a year compared to only 2 per cent of those arrested for D and E felonies.

Sentence Received by Those Convicted
By Arrest Charge Class

	<u>A</u>	<u>B</u>	<u>C</u>	<u>D</u>	<u>E</u>
Discharge	26	32	38	39	24
Probation	6	1	4	20	33
Prison -- 1 year	13	41	45	38	41
More than 1 year	<u>55</u>	<u>25</u>	<u>12</u>	<u>2</u>	<u>2</u>
	<u>100</u>	<u>100</u>	<u>100</u>	<u>100</u>	<u>100</u>
Total % Sentence to Prison	68	66	57	40	43

Table 4

Table 4 analyzes, city-wide and by borough, the proportion of defendants sentenced to prison by the type of crime for which they were arrested. It is significant that for almost every crime category, Brooklyn sends fewer defendants to prison:

Proportion of all Convicted Defendants
Sentenced to Prison by Borough

	TOTAL	<u>Man.</u>	<u>Bronx</u>	<u>Brooklyn</u>	<u>Queens</u>
Homicide		<u>50</u> *	100	100	67
Robbery		64	63	<u>54</u>	71
Arson		37	44	25	<u>8</u>
Dang. Weapon		27	36	<u>23</u>	25
Rape	100		--	--	0
Burglary		87	71	<u>46</u>	58
Larceny		60	72	<u>50</u>	55
Auto Larceny		91	33	25	53
Narcotics Poss.		39	36	<u>32</u>	29
Narcotics Sale		61	67	<u>50</u>	57
Gambling		0	0	0	0
Forgery		29	15	<u>12</u>	15

* marks the borough sentencing the smallest proportion to prison.

TOPIC 6

THE GUILTY PLEA

Table 1

The overwhelming number of convictions are obtained by guilty plea.

Convictions (440)

After Plea 98

After Trial 2
 100

Table 2:

The negotiations do not include only the prosecutor, the defendant and his counsel: in over one-half the cases the judge is involved.

Judge's Role in Plea Negotiations(440)

Tripartite* Decision 52

Pushes for Disposition 10

No role; accepts plea 38
 100

Table 3

Of the defendants who are eventually convicted (60 per cent of those arrested), only a portion are convicted of the original charge. For A felonies this portion is only 16%. For B to E felonies, roughly 25 per cent of these eventually convicted plead guilty to the arrest charge.

* The judge, the prosecutor and the defense attorney.

Table 3

Crime Class At Disposition	Crime Class At Arrest				
	<u>A</u>	<u>B</u>	<u>C</u>	<u>D</u>	<u>E</u>
A	16	-	1		
B	29	<u>22</u>	3	1	2
C	19	<u>18</u>	<u>25</u>		2
D	20	27	<u>18</u>	<u>27</u>	1
E		15	9	<u>12</u>	<u>26</u>
Misdemeanor A	12	16	34	45	<u>46</u>
Misdemeanor B	-	2	5	8	5
Violation	5	-	5	6	3
Infraction	-	-	-	-	<u>4</u>
	<u>100</u>	<u>100</u>	<u>100</u>	<u>100</u>	<u>100</u>
Average Crime Reduction (# of classes down)	2.3	1.9	1.8	1.5	.8

Table 4

Analysis of the 440-case sample discloses more details on the stage at which reductions occur, showing that most change in charge activity occurs during the preliminary hearing and in the Supreme Court.

Change of Charges (440)

<u>Place</u>	<u>Direction</u>	<u>% of all cases</u>
Compalint Room	Felony or Mis- demeanor In- creased	7
"	Felony or Mis- demeanor Re- duced	9
Arraignment	Felony or Mis- demeanor In- creased	--
"	Felony or Mis- demeanor Re- duced	5
Prel. Hearing	Felony dropped or Reduced to Misde- meanor	22
Grand Jury	Felony Reduced	5
	Felony Increased	3
	No true bill	4
Supreme Court	Reduced plea :	26

(These percentages add up to more than 100 per cent because charges in a case can be changed more than once.)

Table 5

Charge reduction, however, is not the whole substance of negotiated pleas. The size of the sentence is also part of the negotiations. The following table, based on the 440 sample and derived from interviews with D.A.'s shows that the D.A. expressly agrees to sentence concessions in 42% of the cases. This figure, however, underestimates the per cent of negotiated pleas since a defendant may plead guilty anticipating sentence leniency.

D.A.'s Concessions for Guilty Plea (440)

None	5	
Reduced Charge	53	
Reduced Charge plus Sentence Leniency	38)) 42%
Sentence Leniency)	
Only	4)	
	<u>100</u>	

Table 6

The following table summarizes the reasons for guilty plea concessions. Again, these data are based on the 440 sample and represent interviewees' explanations for plea concessions.

Reasons for Concessions for Guilty Plea (440)
(All guilty pleas = 100%)

Characteristics of crime	65
Characteristics of defendant	51
Evidentiary deficiencies	48
Court Congestion	27
Uncooperative Witness	12
Old Case	10
Credibility Problem of Witness	8
Procedural difficulty	8
Other case against defendant pending	7
Undercover Agent	4
Disposition oriented judge	2

(on the average 2.4 reasons per case)

This table encompasses a variety of reasons which go beyond evidentiary problems. The D.A.'s considerations are similar to those of the jury. He looks at, among other things, the characteristics of the crime and the person of the defendant.

-45-

Table 7

The following table sets out those characteristics of a crime which cause it to be reduced. Dismissals and guilty plea cases are combined.

A crime characterized by an absence or a minimum injury and a prior relationship between victim and defendant most frequently moved the prosecutor to dismiss or make concessions. A few specific crimes were accorded minor weight: Possession or sale of marijuana or methadone as drugs; commercial (in contrast to residential) burglary, auto larceny and property crimes in general.

Characteristics of Crime that would cause Charge to be Reduced
or Dismissed (440)
(all cases = 100%, more than one reason can be given.)

Prior relationship between victim and defendant	25
No or minimal injuries	23
Minor crime	15
Technical borderline felony	14
Auto larceny	10
Small drug amount	8
Marijuana	7
Commercial burglary	7
Methadone	6
Weapon other than gun	3
Property crime	6

Table 8

The prosecutor also considers characteristics of the defendant in deciding on the concessions he is prepared to make for a guilty plea. For more than half the cases, the fact of a first offense moved the prosecutor toward leniency.

-40-

Mitigating Characteristics of the Defendant (400)
 (total cases = 100%, more than one reason can be given)

	<u>%</u>
First offense	53
Minor record	21
Employed	16
Family responsibilities	15
Drug Problem	14
Youth	10
Old Age	8
Mental condition	6
Makes restitution	5
In drug program	4
Woman	3
Health Disability	2
Alcohol problem	1
Veteran	1

(on the average 1.6 reasons per case)

The table must be read with care: the frequencies are the combined result of whether such a condition existed and whether it induced leniency. For instance, in five per cent of the cases "restitution" induced leniency. The data does not indicate how many defendants make restitution but rather indicates how many times restitution was a factor in the reduction or dismissal.

Table 9

Any decision to plead guilty, or for the prosecutor to accept a plea, involves the decision not to go to trial. For the prosecutor, the calculus is simple: going to trial, unless it is an "interesting" or notorious case, offers little incentive. For the prosecutor it involves the danger of acquittal coupled with significant public expense.

The main disincentives to trial for the defendant is the likelihood of a harsher sentence upon conviction. Other factors and the frequency with which they occur are set forth below.

Defense Counsel's Reason for not going to Trial (440)

Fear of harsher sentence	31
Defendant made decision	12
Offer is "time served" (def. in pretrial detention)	7
Result after trial would not be different	7
Defendant owes time elsewhere; offer in concurrent time	5
Fear of pretrial detention	5
Fear of indictment	4
Prosecutor offers consolidation of several cases	3
Expects prison sentence and the defendant, in pre-trial detention, wants to begin serving sentence	2

Table 10

The crucial point, of course, is the chance for acquittal. On the 27% "weak" and "either way" cases, defense counsel must weigh the chance of acquittal against the possibility of conviction and harsher sentence.

Defense Counsel's Estimate of Chances of Acquittal (440)

	$\frac{\%}{}$
Strong	46
Could go either way	14
Weak	13
No assessment made	$\frac{27}{100}$

Table 11

A combination of reasons is usually responsible for dismissal of a case, with problems of evidence or difficulty in producing a witness occurring in over 50% of the dismissals. Court congestion and the defendant's cooperation were rarely given as reason for dismissal. These data was gathered from the 440 case sample and represents reasons offered by the interviewees for dismissal.

Reasons for a Dismissal (440)

Characteristics of defendant	23
Evidentiary Problems	55
Uncooperative Witness	52
Personal Characteristics of Defendant	21
Procedural Problems	4
Credibility Problems with a Witness	6

*Total % is greater than 100.0 due to multiple answers

TOPIC 7

TRIALS

Table 1

The published statistics yield the following frequency of trials among dispositions.

	<u>Mean % of all Trials* to Verdict in the Supreme Court</u>	<u>Felony** Arrests</u>
Manhattan-100 Centre Street	7.6	31,098
111 Centre Street	9.1	---
Bronx	5.3	21,411
Brooklyn	6.5	24,907
Queens	6.6	11,929

* Based on 5 week average of 12 terms through November, 1973.
Management Planning Unit, Judicial Conference of New York.

** Police Figures

Table 2

The 2000 case sample reveals a similar picture for Supreme Court trials. The 2000 percentages are somewhat smaller because 4% of the 2000 cases were not yet disposed of when data collection was concluded.

Cases tried in The Supreme Court	3.7%
Cases otherwise disposed of	$\frac{96.3\%}{100.0\%}$

Table 3

In addition, some felony arrests are tried in the Criminal Courts after the charge has been reduced to a misdemeanor.

A comparison of the verdicts of the trials in the two courts suggests that there is something special about the Criminal Court trial of felony arrests reduced to misdemeanors. The conviction ratio of Supreme Court trials closely reflects the normal two-thirds conviction rate common to most jury trials.

Supreme Court Trials

	<u>2000 Sample</u>
Acquitted	33%
Convicted	$\frac{67\%}{100\%}$

Table 4

But in the admittedly few Criminal Court trials in the 2000 sample (N=38), the acquittal ratio was reversed:

Criminal Court Trials

Acquitted	73%
Convicted	$\frac{27\%}{100\%}$

* This proportion will be estimated from the "age" distribution of cases tried in the Supreme Court.

The outcome of these trials should not however be compared with statistics from other Criminal Court trials which largely consist of cases arrested as misdemeanors.

The 440 case sample provides an in depth analysis of 20 trial cases which will be discussed in the final report. These cases suggest that a cost-benefit analysis could be developed which explains why prosecutor and defense go to trial.

TOPIC 8

THE VICTIM AND COMPLAINING WITNESS

Table 1

The complaining witness is obviously an important part of the law enforcement process. He is often the initiator of the process and the victim of the crime. His cooperation is crucial to successful prosecution.

In 52% of the 440 cases, the victim's withdrawal from prosecution contributed to dismissal of the case and in 12% it contributed to a reduction in the original charge. (Data comes from the 440 case sample and reasons represent explanations offered by interviewee and could not be verified).

Reasons for Complainant's Non-Cooperation (400)
all cases=100%)

Reason unknown	38
Makes up with defendant	24
Afraid of own criminal involvement	10
Case was fabricated	8
State cannot locate witness	8
Intimidated by defendant	6
Damages repaired	6

Table 2

About 30 per cent of the victims knew the defendant prior to the event, some of them intimately:

Relationship of Victim to Defendant
(if personal victim) (440)

Spouse	3
Ex-Spouse	2
Co-Habiting	2
Other, but known	3
Acquaintance	6
Friend	8
Neighbor	4
Employer(ee)	1
Stranger	<u>71</u>
Total	100

The statistics are obviously incomplete in that they are based, to a great extent, on hearsay evidence. Only in a few cases was the complaining witness interviewed. Nevertheless, the statistics raise important questions.

Although the data was not available in this study, another metropolitan court system (Washington, D.C.) conducted a survey of victim's reasons for non-cooperation.

The survey found that many complaining witnesses disagreed with the prosecutor's and defense counsel's explanation for their non-cooperation. The legal parties attributed the complainant's withdrawal to a rapprochement with the defendant.

But the complainants blamed the courts for not facilitating their appearance. The results of the Washington, D.C. survey will be included in the final report. Possible reasons why the courts do not allocate more resources toward encouraging the complainant to prosecute will also be explored.

TOPIC 9

CONGESTION OF THE SYSTEM

A court system that disposes of fewer cases than it takes in becomes congested. One result is delay in the disposition of cases.

What does speeding up of disposition do to their quality? The ideal technique for measuring the impact of congestion on disposition quality would be a controlled experiment comparing a congested system with a non-congested system. While this particular technique is not possible, comparative data is available from within New York City which suggests that not all of the four major boroughs operate under the same kind of pressure, nor do they handle pressure in the same ways.

Table 1

Average (mean) Number of Days from Arrest to Disposition

	<u>Manhattan</u>	<u>Bronx</u>	<u>Brooklyn</u>	<u>Queens</u>
Criminal Court	81	96	144	115
Supreme Court	261	299	346	247

Delay in disposition is one measure of congestion and by this measure, Brooklyn appears to be more congested than the other boroughs.

Table 2

	<u>Manhattan</u>	<u>Bronx</u>	<u>Brooklyn</u>	<u>Queens</u>
Per cent convicted of all disposed cases	54%	62%	45%	51%

Table 3

Looking at the corresponding figures for all major crime categories, again Brooklyn has consistently the lowest conviction rate, with the exception of E felonies.

Per cent Convicted of all Dispositions(2000)

	<u>Manhattan</u>	<u>Bronx</u>	<u>Brooklyn</u>	<u>Queens</u>
B Felonies*	60	62	47	48
C Felonies	57	66	52	61
D Felonies	55	66	44	52
E Felonies	46	49	51	49

As Table 2 under Sentencing showed, Brooklyn also sends fewer people to prison. (It does, however, give stiffer--more than one year--sentences to slightly more defendants.)

There is one more clue which supports this hypothesis that greater congestion as manifested by longer delays results in greater leniency. Every so often, as the Guilty Plea tables indicated, court congestion was one of the reasons the prosecutor gave for making concessions to the defendant in order to obtain a plea.

None of these relationships, however, does more than suggest the possibility that greater pressure results in fewer convictions and more lenient sentences, but it is a hypothesis that shall be pursued.

Hopefully, data will be obtained from other court systems-- that will help us diagnose the effect of pressure on the system.

*For the purposes of this table, " crimes are too few to be divided meaningfully between boroughs.

ROLE OF COUNSEL

One of the troublesome questions in the criminal justice system is whether indigent defendants get the same quality of representation as defendants wealthy enough to afford private counsel. Put slightly differently, do private retained defense counsel do better for their clients than either the Legal Society or court appointed counsel?

Table 1

Table 1 shows the percentage of defendants arrested on felony charges represented by the three types of counsel.

	<u>Total</u>	<u>Manhattan</u>	<u>Bronx</u>	<u>Brooklyn</u>	<u>Queens</u>
Retained	24	23	18	25	43
Assigned	2	3	1	0	2
Legal Aid	$\frac{74}{100}$	$\frac{74}{100}$	$\frac{81}{100}$	$\frac{75}{100}$	$\frac{55}{100}$

Can one discern any differences in the performance of retained counsel and counsel of the Legal Aid Society, who together account for 98% of all defendants? The majority of felony arrests are entrusted to counsel from the Legal Aid Society, most of the remainder go to retained counsel, and only a small fraction to assigned counsel.

In Queens, retained counsel is more likely to be used than in other boroughs. As is shown in succeeding tables, the higher proportion of whites and type of crime in Queens probably account for the greater use of retained counsel. The opposite tendency probably accounts for the lower proportion of retained counsel in the Bronx.

The distribution of type of counsel varies by borough, by demographic characteristics of the clients and by type of crime.

Table 2

Retained counsel is likely to have a greater share of female defendants; about an equal share of the various crime charges; and a higher share of A felony arrests,

Type of Counsel by Sex

	<u>Male</u>	<u>Female</u>
Retained	23	34
Assigned	2	*
Legal Aid	$\frac{75}{100}$	$\frac{66}{100}$

*Less than .5%

Private counsel is retained most often in homicide cases although in Brooklyn and Queens only by two-thirds of defendants charged with homicide. Defendants arrested for gambling and possession of dangerous weapons retain private counsel in about half the cases. Burglary cases are least likely to be represented by retained counsel (13%).

While there are no clear inter-borough differences in type of counsel by type of crime, the difference between Queens and the other boroughs is most accentuated for burglary, assault, robbery, auto larceny and forgery.

Table 3

Per Cent Retained Counsel By
Borough & Type of Crime

	<u>Manhattan</u>	<u>Eronx</u>	<u>Brooklyn</u>	<u>Queens</u>	<u>Total</u>
Homicide	100	100	67	67	84
Robbery	19	23	14	35	23
Assault	24	22	29	56	33
Poss. Dang. Weap.	37	43	52	41	43
Rape	20	33	0	33	21
Burglary	12	04	06	31	13
Larceny	40	0	42	31	28
Auto Larceny	10	12	21	38	20
Narc. Poss.	22	20	23	54	30
Narc. Sale	19	25	29	50	31
Gambling	62	0	67	71	50
Forgery	<u>18</u>	<u>12</u>	<u>25</u>	<u>40</u>	<u>24</u>
All Crimes	23	17	25	43	27

Table 4

As one might predict, retained counsel was most common among defendants arrested for A felonies. But, suprisingly, except for the Bronx, a lower per cent of defendants was represented by private counsel for B felonies than for C, D or E felonies. Within each borough, the per cent of retained counsel for C, D, and E felonies was relatively constant.

Per Cent Retained Counsel
All Cases

	<u>Manhattan</u>	<u>Bronx</u>	<u>Brooklyn</u>	<u>Queens</u>	<u>Total</u>
A	43	57	30	60	48
B	17	26	16	16	19
C	25	18	26	47	29
D	21	15	27	49	28
E	33	12	25	44	29

(Read: of all A cases in Manhattan, 43% to to retained counsel, etc.)

Table 5

One measure of the performance of counsel is the type of disposition achieved. Table 5 shows that dismissal rates are similar for both types of counsel.

	<u>Retained Counsel</u>	<u>Legal Aid</u>
Dismissed or Acquitted	41	43
Convicted	55	53
Jumped Bail	4	4
	<u>100</u>	<u>100</u>

Table 8

This table shows that the time interval between arrest and disposition varies with type of counsel in the different boroughs.

In the Supreme Court there is no prevalent pattern. In Manhattan, a case with a retained lawyer takes somewhat longer than cases with Legal Aid, in the Bronx and in Queens it is the reverse, and in Brooklyn there is no difference.

In Criminal Court--except for Brooklyn--the situation is different: in each borough the retained counsel cases take considerably more time. In Brooklyn, there is, again, no difference.

Mean Number of Days from Arrest to Disposition

<u>Supreme Court</u>	<u>Retained</u>	<u>Legal Aid</u>	<u>Per Cent Retained Counsel Longer Than Legal Aid</u>
Manhattan "	288	214	+35%
Bronx "	227	274	-17%
Brooklyn "	348	346	+ 1%
Queens "	243	271	-10%
 <u>Criminal Court</u>			
Total			
Manhattan	128	57	+125%
Bronx "	116	87	33%
Brooklyn	143	145	- 1%
Queens	132	91	+ 45%

Table 9

Except for Queens, the cases of retained counsel are more likely to end in Supreme Court than in Criminal Court.

Per Cent of Cases Disposed of in the Supreme Court

<u>Type of Counsel</u>	<u>Manhattan</u>	<u>Bronx</u>	<u>Brooklyn</u>	<u>Queens</u>
Retained Counsel	28	44	37	36
Legal Aid	10	15	24	37

(Read: 28% of all Manhattan cases with retained counsel were disposed of in the Supreme Court.)

BAIL

The bail decision of the arraignment judge poses two questions:

- (1) What are the considerations that made the judge ROR or impose bail of varying size?
- (2) What are the effects on disposition between those who remain in custody because they cannot make bail and those who are released either because they made bail or bail was not required?

As to the first question the judge's bail decision has been related to the two factors that seem to weigh most heavily on his decision: the charge and the defendant's background; including his prior criminal record. A preliminary analysis suggests that the type of crime weighs more heavily than the defendant's background.

Table 1

Bail Custody Status by Specific Crime

The nature of the crime appears to be an important determinant in the judge's decision to impose bail or not. Bail was set in 95% of homicides and only 31% of forgeries. Bail was also set in about three-quarters of robbery, rape, burglary, and narcotic sales cases. Bail was set only in 50% of assault cases, perhaps because many were family members.

Bail is made in about half of all cases in which it is set: however, for robbery, rape, burglary and auto larcenies, about twice as many defendants do not make bail as do. The reverse obtains for possession of dangerous weapon, narcotics possession, gambling and forgery in which more defendants make bail than do not. These differences probably reflect both size of bail set

and characteristics of defendants committing specific crimes. Bail practices among the four boroughs were similar.

As to the second question earlier Vera studies showed that if the type of defendant and the type of crime are kept comparable, it appears that defendants in custody are more likely to obtain prison sentences than those on probation in case of conviction. But it also seemed that defendants in custody--other circumstances (e.g. type of crime, prior history) being equal--are also more likely to be convicted.

The defendant population can be divided into three groups on the basis of bail status: one-third released on their own recognizance (R)R); one-third making bail; and one-third (actually a little less) not making bail. Hence roughly 70 per cent of the arraigned defendants are released and 30 per cent remain in jail.

BAIL-CUSTODY STATUS BY SPECIFIC CRIME

	SELECTED CRIMES													
	TOTAL	HOMI- CID	RUB- BERY	AS- SULT	DAN- GEROUS WEAPON	RAPE	BUR- CLARY	LAR- CENV	AUTO LAR- CENV	POSS. NAR- COTICS	SALE NAR- COTICS	GAM- BLING	FUR- GERY	OTHER
TOTAL ADULT CASES	1589	15	219	160	98	18	208	72	121	234	115	35	124	170
(NO ANSWER)	237	4	19	17	16	3	29	11	23	48	11	3	27	26
TOTAL ANSWERING (UNWEIGHTED)	1352	11	200	143	82	15	179	61	98	186	104	32	97	144
(WEIGHTED)	69108	501	10916	7625	4313	737	9365	3142	4688	9304	5575	1717	4830	3504
	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
BAIL SET	62.9	95.4	83.0	49.7	58.9	74.1	73.3	64.4	54.2	58.3	81.1	42.5	30.5	53.5
BAIL MADE	30.7	46.1	27.0	26.9	38.2	27.7	23.8	36.4	19.7	35.8	47.3	38.2	21.1	34.1
BAIL NOT MADE	31.6	49.3	54.6	21.2	20.2	46.4	49.3	28.0	34.6	22.5	53.8	4.3	8.4	19.4
NO ANSWER	.5		1.5	1.6	.5		.2						1.0	
RELEASED ON RECOGNIZANCE	37.1	4.6	17.0	50.3	41.1	25.9	26.7	35.6	45.8	41.7	18.9	57.5	69.5	45.5

91.5

Table 2

One cannot compare the conviction rate of ROR's to those on whom bail was imposed and not made, because the judge's decision to release a defendant on his recognizance reflects the type of crime, the past criminal record etc.--characteristics which may also affect conviction rates.

For this reason those who remained in custody are compared with those who made bail, the latter being those who, but for their ability to make bail, would also be in custody.

This comparison shows that the probability of conviction is 49 per cent for those who made bail; as against 67 per cent for those who did not; part of this difference is the opportunity to jump bail. But the difference remains large enough even if those who jump bail are excluded: 55% vs. 67%.

DISPOSITION BY BAIL-CUSTODY STATUS

TOPIC 11
TABLE 2

	BAIL-CUSTODY STATUS							
	BAIL SET		BAIL NOT SET		NO AN-SHER		NO AN-SHER	
	TOTAL	MADE	TOTAL	MADE	RECDG	SET	RECDG	SET
TOTAL ADULT CASES	1619	863	443	412	8	516	138	102
(NO ANSWER)	39	13	6	7		3		23
TOTAL ANSWERING (UNWEIGHTED)	1580	850	437	405	8	513	138	79
(WEIGHTED)	81812	42487	21355	21757	375	25860	7889	4576
	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
ACQUITTED	1.2	1.2	1.8	.5	12.5	1.6	.6	
DISMISSED	37.9	32.1	36.0	28.3	36.5	45.0	49.3	33.3
CONVICTED	.8	1.2	1.4	.9		.2	1.2	.5
PLEADED GUILTY	48.4	56.7	47.5	65.7	50.9	38.6	47.7	26.6
MAIL JUMP	6.7	4.5	8.3	.9		8.6	.6	26.4
OTHER	5.0	4.3	5.0	3.6		6.1	.6	13.2

Tables 3 - 6

Tables 3 - 6 show bail status by final disposition for each borough. An examination of bail status for dismissed cases suggests that in every borough dismissal is least likely for cases when bail is not made. In Brooklyn custody status appears to have less impact on final disposition than in the other boroughs: 44% of those who made bail were convicted compared to 56% of those who did not. In the Bronx there was the greatest discrepancy: 55% of those who made bail were convicted compared to 77% who did not.

DISPOSITION BY BAIL-CUSTODY STATUS

11
3 TOTAL MANHATTAN

TOPIC
TABLE

	BAIL-CUSTODY STATUS							
	TOTAL	BAIL MADE	BAIL NOT MADE	NO ANSWER	LEASED ON	BAIL NOT SET	NO ANSWER	
ACQUITTED	424	84	132	2	125	66	15	4
DISMISSED	30952	16066	6190	9728	147	9212	4864	811
CONVICTED	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
PLEADED GUILTY	420	218	84	132	2	125	66	11
BAIL JUMP	4.8	3.2	7.1	.8	9.6			9.1
OTHER	4.5	4.1	5.9	3.0	6.4			18.1

DISPOSITION BY BAIL-CUSTODY STATUS

	TOTAL	BAIL-CUSTODY STATUS						
		BAIL MADE	BAIL NOT MADE	NO AN-SPEL	LEASED ON RECDG	BAIL NOT SET	NO AN-SPEL	
TOTAL BRONX	370	194	105	87	2	134	33	9
(NO ANSWER)	2					1		1
TOTAL ANSWERING (UNRECORDED)	368	194	105	87	2	133	33	8
(WEIGHED)	17343	9143	4943	4100	94	6268	1555	377
	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
ACQUITTED	2.2	1.5	.9	1.1	50.0	3.0	3.0	
DISMISSED	27.7	20.6	24.8	15.1		33.8	42.4	37.4
CONVICTED	2.2	3.1	3.8	2.3			6.0	
PLEADED GUILTY	53.5	61.9	51.4	74.7	50.0	43.6	48.5	37.4
BAIL JUMP	6.5	5.7	10.5			9.8		
OTHER	7.9	7.2	8.6	5.8		9.8		24.9

DISPOSITION BY BAIL-CUSTODY STATUS

	BAIL-CUSTODY STATUS											
	BAIL SET		BAIL NOT MADE		NO AN-SWER		LEASED ON RECDG		BAIL NOT SET		NO AN-SWER	
TOTAL	MADE	MADE	MADE	SMER	RECDG	SET	SMER	RECDG	SET	SMER	RECDG	SET
TOTAL BROOKLYN	406	213	116	76	1	113	14	66				
(NO ANSWER)	29	11	5	6		2		16				
TOTAL ANSWERING (NONRECEIVED)	377	202	111	90	1	111	14	50				
(WEIGHTED)	23775	12739	7000	5676	63	7000	883	3153				
	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0				
ACQUITTED	1.1	2.0	2.7	1.1								
DISMISSED	42.2	39.1	40.5	36.7	100.0	52.3	49.9	30.0				
CONVICTED	.5	1.0	.9	1.1								
PLEADED GUILTY	41.4	48.5	43.2	55.5		35.1	49.9	24.0				
BAIL JUMP	10.9	6.4	9.9	2.2		9.0		36.0				
OTHER	4.0	3.0	2.7	3.3		3.6		10.0				

DISPOSITION BY BAIL-CUSTODY STATUS

TOPIC TABLE (UNWEIGHTED)	TOTAL ANSWERING (UNWEIGHTED)	BAIL-CUSTODY STATUS							
		BAIL SET	BAIL NOT MADE	NO AN-SWER	LEASED ON RECOG	BAIL NOT SET	NO AN-SWER	RE-	RECOG
TOTAL QUEENS	419	238	136	97	3	144	25	12	
(NO ANSWER)	4	2	1	1				2	
TOTAL ANSWERING (UNWEIGHTED)	415	236	137	96	3	144	25	10	
(WEIGHTED)	9742	5240	3216	2254	70	3380	587	235	
	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	
ACQUITTED	1.4	1.3	2.2			2.1			
DISMISSED	43.6	36.4	43.8	27.1		53.5	48.0	60.0	
CONVICTED	1.7	1.7	1.5	2.1		1.4		9.8	
PLEADED GUILTY	46.7	55.5	46.0	67.7	100.0	36.8	35.9	9.8	
BAIL JUMP	2.6	2.1	3.6			2.8	8.0		
OTHER	3.9	3.0	2.9	3.1		3.5	8.0	20.9	

Table 7

The comparison of bail made and not made can be refined somewhat by comparing "bail made" separately for the 5 felony categories A thru E:

Per Cent Convicted for Various Crime Classes

	<u>Bail Made</u>	<u>Bail Not Made</u>	<u>Number of Cases</u>
A	66	31	(17)
B	56	62	(173)
C	52	68	(292)
D	50	69	(683)
E	46	65	(275)

In each crime category, except A in which the sample of cases is small, those who made bail are less likely to be convicted. This analysis will be further refined by comparing not only "all bail made" with "all bail not made". but by making these comparisons for the various levels of bail, assuming that size of bail generally reflects magnitude of offense.

It has been argued that not being in jail allows the defendant to prepare his defense better. Our case studies reveal a more direct cause, from the other side. A defendant in custody often accepts an offer of a guilty plea simple to get out of jail, thereby foregoing whatever chance he might have had of obtaining a dismissal of his case or an acquittal at trial.

Data particularly relevant to this issue come from the 440 case sample. In 12 per cent of all dismissed cases, the D.A. had, prior to the dismissal, offered a deal for a guilty plea. In these cases, it was not accepted. But, a defendant in custody might have accepted it -- and thereby foregone his chance of dismissal.

The case studies show in detail how a defendant in custody may accept a deal if it offers him immediate freedom.

Table 8

In all boroughs the median number of days between arrest and disposition is considerably less for cases in which bail is not made. In Queens where the median time to disposition is longer than in other boroughs, there is proportionally less decrease in the time defendants remain in custody.

Time Between Arrest & Disposition (Median Days)
by Borough and Bail Disposition

	Bail Not Made	Bail Made	ROR	% "Bail not Made" is below "Bail Made"	
MANHATTAN	40	17	40	-58%	days
BRONX	75	18	65	-76%	" "
BROOKLYN	88	31	126	-65%	" "
QUEENS	89	57	95	-36%	" "

Mean Difference --59%