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ACQUISITIONS

REPORT ON THE NEEDS, RESEARCH, AND DEVELOPMENT  
TO IMPROVE COURT PROCEDURES

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FOR: The United States House of Representatives  
Subcommittee on Domestic and International  
Scientific Planning and Analysis

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Criminal Justice Coordinating Council  
Office of the Mayor of the City of New York

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## I. INTRODUCTION

The criminal justice system is a cornerstone of our society and many of the difficulties encountered within that system are symptomatic of larger societal problems.

The primary difficulty facing the criminal justice system is how to deal effectively and efficiently with the number of criminal matters it handles annually through utilization of limited resources. Backlogs and congestion have impaired the system's ability to handle cases already within the system. Many of the efforts to alleviate the short term difficulties have ignored any long term systematic changes.

It is evident that these overwhelming concerns cannot be remedied solely through a massive infusion of funds. Generally what is required is a realistic analysis of the criminal justice system with reference to the systems' ability to handle cases in the future as well as clearing up the congested courts as they now exist. To achieve these goals extensive cooperation between the various facets that comprise the court system is required. We must begin to think of the courts, prosecutors and defense counsel as parts of a greater entity where the sum is in fact greater than the total of its parts. Planning, research and systematic appraisals must simultaneously consider the ramifications to the whole when a part is altered. Information systems must cut across agency lines. Multiple

utilization of resources in a combined effort are mandated. Efficiencies instituted in one sector must not be allowed to impinge on the operational efficiency of another segment of the system.

Instead of piecemeal changes involving one part of the court system all facets must be considered and the changes planned across the system. Each segment, as the situation currently exists, plans for its own immediate needs, and re-allocates resources as pressures are exerted upon them. This creates rippling effects throughout the system where the ultimate backlog becomes concentrated to such a degree that only emergency allocation of resources can rectify the crisis.

Just as significant for the system is research and study of the most efficient mode of accomplishing its work and a more knowledgeable allocation of existing resources. A concerted effort must and is being made to ascertain new methods of accomplishing existing tasks not only without infusion of new resources but with even fewer demands on existing resources. This effort must be a fortiori concentrate on the question of whether current court and case processing procedures are the most viable given the task and objectives of the system. We must openly and honestly evaluate the efficacy of extant court processing systems with a view to replacing them, guided by the

required constitutional guarantees.

The second section of this report deals with the need for modernization of case processing within the court system. Under the guidance of professional management personnel, the courts must undertake to streamline its operational procedures and capabilities for change. Several substantive recommendations relating to the conduct of criminal trial procedures are set forth.

Under the Prosecution heading, devices for screening out cases which should not either enter or remain in the criminal justice system are discussed. By reducing the number of cases that are processed at each stage of the adjudicatory process, the resources required to process these cases are similarly reduced. This is, in effect, a reallocation of resources to deal with the serious criminal cases.

Once the system has excluded all those matters not properly within the system consistent with its priorities, the next immediate goal should be expediting case processing.

The theory here is that the longer a case remains in the system the more it costs to process. The concern then is with disposing of cases as soon as possible after their entrance into the system. To achieve this



objective, a front-loading prosecution effort can be very effective, if coupled with effective case management techniques.

Many criminal matters would never reach the criminal justice system if the legislature took steps to decriminalize crimes such as alcoholism, gambling, prostitution and minor possessions of marijuana.

Secondly, the dispute mediation concept can be employed as an effective device to divert cases involving interpersonal disputes from the system.

Efforts to train front line police officers to distinguish activities which are not criminal but rather social in nature will similarly reduce the number of cases entering the system.

These recommendations can be implemented without significant additional resources. By processing only those matters which rightly belong in the system in a more efficient manner, surplus allocations can be used to process priority cases.

### III. REQUIREMENT AND NEEDS

#### A. COURT ADMINISTRATION

##### 1. Unified Administration of Courts

The court system of the State of New York should be reorganized into a unified judicial system financed and regulated under the direction of a Statewide Administrator. The courts suffer from fragmentation in organization, management, and budgeting. The deficiencies of this system are evident throughout the system although limited efforts to remedy the situation have taken place.

Congestion of court calendars, denial of speedy trial and case backlog are the more obvious indicators of the magnitude of the problems. The deeper concerns are the system's apparent inability to properly diagnose the causes of these problems and the fact that massive infusion of resources does not seem to help. What is required are new, innovative approaches to the solution of these dilemmas through the application of procedural and technological expertise.

It has been a tradition in previous history of court management to allocate supervisory responsibilities to the judges of the courts. Not only does this practice divert the judge from performing his intended function - that of hearing and deciding cases - but it additionally thrusts upon him a duty for which he has generally has not trained.

In response to this poorly conceived practice, a gradual awareness has been developing that the diverse and

complex activities inherent in daily operation of the courts can be better served through utilization of modern management technology.

An essential component of such utilization is the expertise of the specially trained court administrator.

The overall focus of a court administrator is aimed at the delay and congestion that characteristically arises from the mismanagement and improper utilization of time and resources observed in many court operations.

Another aspect of the fragmentation problem relates to the fact that the Criminal Division of the court system is divided jurisdictionally.

In New York City the Criminal Courts have jurisdiction to dispose of misdemeanors and violations but may only conduct probable cause hearings on felony complaints. The Supreme Court of the State of New York is vested with the authority to dispose of felonies after indictment.

At this time no State has achieved a single court of general trial jurisdiction.

The combination of the lack of unified administration of courts, the bifurcation of jurisdiction and the absence of sufficient administrative management expertise has resulted in duplication, inflexibility in resource allocation and a failure to maintain uniform statistics and records including a serious lack of accurate and useful statistical information on the work load of the courts.

At the heart of the court administrator's universe is the data base that provides raw material from which management personnel can analyze and evaluate court methods and procedures in order to undertake the planning necessary for designing improvements in operations.

The lack of such data effectively inhibits evaluation of court procedures, retards meaningful research, and generally stymies the efforts of court personnel and others interested in bringing about necessary changes.

If the technology of data analysis is to be an effective aid to court management, there are certain essential requirements that must be satisfied within any given court system.

In the first instance it is imperative that standardization be implemented in designing procedures for data-gathering in order to provide a uniform data base.

Provision of a standardized and uniform data base is an essential prerequisite for participation of a given court in automated data technology. The opportunities that are currently being explored and expanded in this area of computer technology include development of automated information and statistics system at local, state and federal levels with the possibility of varying degrees of participation for agencies within the criminal justice system. For example, the F.B.I. maintains an information system known as the National Crime Information Center or NCIC. The data stored in the NCIC system represents

documented information regarding crime and criminals that is collected and exchanged with authorized agencies in the interest of a more effective and efficient criminal justice system.

The criteria of eligibility for participation in this computerized system mandates the compatibility of a given data system with the NCIC guidelines - illustrating the importance of implementation of a uniform and standardized data base in a given court operation.

Beyond the exchange of criminal statistics and information, modern computer technology provides the opportunity for numerous other uses that may be beneficial to the courts.

Presently, computers are being utilized in various locales for such diverse activities as the scheduling of cases, identifying the number and age of cases for which a specific attorney is responsible, pinpointing backlogs and bottlenecks in the judicial process and providing notifications to defense attorneys and bailed defendants for scheduled trial dates.

Court administrators are becoming increasingly aware of the interrelationship of any given component of the criminal justice system to the other members. An evaluation of the bottlenecks that can be identified through data analysis of case processing reveals the necessity for upgrading all components of the criminal justice system if

we are to effectively meet the due process requirements prescribed in the Constitution.

Without a comprehensive assessment and upgrading of the total system, we will succeed only in smoothing out the wrinkles in case processing at one juncture to discover that a case is still subject to the frustrating congestion and delay that has become all too endemic to the criminal justice system, particularly in our nation's metropolitan areas.

A striking example of this phenomenon is the inability of the Courts and the correctional agencies to respond to the influx of defendants generated as a result of improved law enforcement techniques in recent years.

This does not mean to imply that law enforcement should not enjoy the benefit of innovations to assist in performance of essential duties, but the obvious fact that remains is the criminal justice system cannot provide the equitable standard of justice which should be the birth-right of every citizen, both the criminal and the victim, unless each component of the system coordinates its allocated resources to perform the duties with which it has been charged.

Once a court system has achieved the fundamental unified administration required, ancillary benefits are realized in the budgeting realm. Unitary budgeting means effective, uniform financial procedure and improved court management in the following areas:

- . Judicial administrative planning
- . Equitable statewide distribution of judicial services
- . Uniform job classification for judicial employees
- . Administrative methods

Uniform job classification for judicial employees is another problem created in New York City by the lack of a single court of general trial jurisdiction. The judges and their supporting staffs are not readily interchangeable between the inferior and superior court systems. This lack of interchangeability is compounded by salary differences, civil service distinctions and union restrictions. In combination, these differences substantially reduce the obvious benefits of unified administration of the Courts of the City by severely restricting the flexibility of the court administrator to deal with shifting caseloads. In 1974 New York City registered 253,065 arrest cases in addition to 5,078,005 summonses to appear. The absolute necessity for flexibility in the area of resource allocation is axiomatic.

## 2. Analysis of Case Management and Calendaring Procedures

In reference to the needs of case management, the utilization of computers for avoiding scheduling conflicts and for coordinating the appearance of individuals essential to the court process offers significant potential for attacking court congestion and delay.

The consequences of delays and interruption in the court process potentially include the financial loss and the misallocation of scarce court attendants, police, probation and/or corrections personnel as well as defense and prosecutorial attorneys. Over a period of time, the frequent occurrence of delays can contribute to a difficulty in recruiting witnesses and the refusal of complainants to cooperate.

Thus, non-appearance of an individual critical to the court process can seriously hamper effective operations of both the courts and the other components of the criminal justice system. A serious effort should be directed to the improved coordination of court appearance of all necessary parties. Present computer technology in this area makes it possible to automatically identify the necessary parties required on a given date as well as prepare the printed notices of appearance to be mailed. Such a capability can effect considerable manpower savings in clerical personnel as well as eliminating needless appearances on the part of individuals unaware of schedule



changes.

For years it has been virtually impossible for anyone to describe the work of the courts in terms of its workload. Statistical data, when available, varied widely from court system to court system. The format in which the data which existed was presented was generally self-serving, highlighting positive factors and ignoring the negative. Rarely was it at all useful for any management oriented purposes. Manually processed, it was generally dated when it finally appeared. Appearing in summary form, and because it was manually produced, stored or retrievable, further analysis was all but impossible. Since data elements were not uniformly defined, comparative analysis among courts was also impossible. And, because the formats of summaries changed frequently over the years, it was difficult to develop accurate trend data or to describe the probable impact of known events such as added personnel or changes in the law on the work load of the courts.

Based on the monitoring and case flow statistics which evolve in effective court administration, professional management and analytical techniques must be utilized to design evaluative studies of the system. The approach taken must be two-fold. First, the continuous production of data permits on-going evaluation for mid-course

corrections and flexibility in adapting to sudden stresses within the system. By carefully monitoring the flow of cases and periodic reporting by the calendaring staff the administrative judge can make adjustments in assignments or take other required steps to eliminate build ups in congestion and backlog.

The second outlook in evaluation design must seek long term alternatives to permit the system to adapt to less obvious trends in the adjudicatory process.

Calendaring systems must be adopted to the nature of the caseload and the infra structure of the particular court system in which they are to function. In the large metropolitan court systems many disparate approaches to court calendaring have been attempted. The demands with respect to calendaring in the two-tiered system are quite different from the system with a single court of general criminal jurisdiction. Research is required as to whether the individual system, the master system, the team approach or a hybrid of the foregoing is applicable in a specific court system.

Apart from the issue of which calendaring system is most suited to a particular jurisdiction, the court administrator must recognize the inherent value of selective judge assignment consistent with their strengths and weaknesses.

The key to proper calendaring is accurate data. Judicial temperament and productivity can be defined for individual judges. Knowledge of individual courtroom performance, coupled with scheduling of cases by non-judicial personnel should permit an efficient distribution of cases. Efficient distribution of cases may result in a wide disparity in the caseloads of individual judges.

Juror Management

The court system has been subject to intensive criticism with respect to the utilization of juror time. Jurors themselves complain of endless hours spent waiting and sitting idly, unable to return to their jobs and most importantly, unable to function in the capacity for which they were called.

Traditionally, defendants have the right to a trial by a twelve man jury and can be convicted only upon a unanimous vote. These concepts must be examined more closely to determine whether the twelve man panel is essential in all prosecutions and whether the unanimous rule is well founded in logic and fairness. It is my opinion that irrespective of jury size, the unanimity rule must be preserved as a safeguard to the rights of an accused. Whether the six juror panel concept currently utilized in New York for trials of crimes punishable up to a maximum of one year is to be extended to the more grievous offenses must be considered. Essential fairplay indicates that a six juror panel should be instituted in all but the most grievous matters. In New York State the jury of six should be used in all criminal matters except those charges punishable by more than fifteen years. Depending on the nature of a given prosecution, it has been demonstrated that from two to three times the number of jurors who actually serve on panels must be available to fill these panels. Given the tremendous expense of maintaining

so many jurors it would be wise to evaluate the efficiency and fairness of six juror panel utilization in as many instances as possible.

Perhaps the most compelling need in this area is for professional management of the juror panels. Many court systems do not employ professional management personnel or techniques in order to expedite optimum juror utilization. The panel must be more closely tailored to the number of jurors actually needed while special arrangements can be made for exceptional demands on the jury pool. The use of analytical management tools can limit the call of jurors to serve initially; in addition, dismissals should be exercised frequently and expeditiously. By staggering trial starts, veniremen can be available for selection at a number of proceedings during the course of a day. Sustained operation of the juror pool with judicious calling of panels would augment more effective juror utilization.

Professional management in this area of court operations could reduce waste; funds expended and increase juror utilization. It is a prime example of where the system can do more while employing fewer of its resources.

Jury Selection/Voir Dire

A surprisingly large percentage of the time required to conduct a criminal trial is devoted to the voir dire. The purpose of the voir dire is to discover bases for challenging jurors for cause and to facilitate exercise of peremptory challenges. In this jurisdiction the extent to which each attorney is permitted to inquire into prospective jurors' eligibility rests in large measure on discretion of the trial judges. The judge sitting may permit each of the respective counselors to ask all questions or he might ask many of the questions himself. In contrast, the Federal District Court preliminary questioning is performed by the judge. In this fashion much of the duplication and time waste involved is eliminated. The respective counselors are permitted to make only limited inquiries as to the qualifications of the prospective jurors. But while this solution has worked quite fairly and equitably, the threshold question remains. Should the judge, whose time is limited, be involved in the jury selection in the first instance? There is a definite need to investigate the alternatives to this procedure.

For example, in civil cases, it is quite common to have the jury panel selected by the opposing attorneys out of the presence of the presiding magistrate altogether. This approach yields significant savings in court personnel man-hours. The most vital issue to be dealt with in criminal prosecutions,

however, is safeguarding the rights of the accused in the process. In devising a system of jury selections in criminal prosecutions, great attention would have to be directed to selecting and preserving an unbiased panel. This issue could be partially resolved by preparation of written, standardized jury selection forms which must be carefully evaluated in the context of the accused's constitutional rights. The magistrate, nevertheless, would be available to resolve disputed issues.

An interesting possibility involves the integration of jury selection hearing officer without resort to either the judiciary or personnel.

By removing much of the jury selection out of the courtroom, it would appear that many of the functions presently assigned to the judiciary might be delegated, consistent with principles of fairness, in order to allow judges to perform those strictly non-delegable duties. The savings and efficiencies that could be achieved are apparent and again, this substantive change could be implemented without significant infusion of additional resources.

Elimination of Grand Jury Indictment Procedures

The formal indictment procedure by Grand Jury has become a serious obstacle to efficient case processing in the Supreme Courts of the State of New York. In New York City a felony complaint is first filed in the Criminal Court where a preliminary hearing may be conducted. Once a case is held for the action of the Grand Jury, an Assistant District Attorney will present the matter to the Grand Jury. A case can also reach the Grand Jury by direct presentment. The particular function of the Grand Jury we are dealing with instantly should not be confused with the investigative function of the Grand Jury.

The actual presentation to the Grand Jury is not an adversarial proceeding. The Assistant District Attorney in attendance acts only as a legal advisor but is entitled to express his opinion with reference to the significance of the evidence presented. The prosecutor should refrain from presenting evidence that would be inadmissible if submitted before the petit jury.

Despite its status as an independent legal body, the Grand Jury proceedings reveal that an extremely high percentage of those cases presented to it are returned as indictments. The procedural guidelines and statutes governing the conduct of Grand Jury operations are quite specific and unduly complex. A large investment in time and effort must be made in order to



complete this stage of the criminal prosecution, including the calling of witnesses.

Although a person charged with a felony is entitled to appear and testify before this panel, few defendants avail themselves of the opportunity. In any event, defendant's counsel is not permitted into the actual proceedings, which stimulates reluctance to appear.

Given this context we must question the need for this ponderous entity. Can the rights of the accused be adequately safeguarded through a simpler, more expeditious indictment procedure? The answer may be in a device known as the prosecutor's information.

The New York State Legislature has recently enacted Article 195 of the Criminal Procedure Law. A defendant in a criminal prosecution may waive formal Grand Jury presentment and thereby gain valuable time. Upon the defendant's waiver, signed in open court, the prosecutor then must file an information indicting the defendant for the charges covered by the executed waiver. The section has not been used extensively since its enactment.

Although Article 195 moves in the right direction it does not fully address the problem of Grand Jury presentment.

What is needed is reform of the preliminary hearing structure as discussed in 3(f) supra. so that it will function as a screening and discovery device. Once there

has been a judicial determination that there is probable cause a crime has been committed by the defendant, the prosecutor would merely file an information in the Superior Court indicting the accused. It is somewhat redundant to process a criminal allegation through two separate, time consuming stages where one procedure would suffice. It appears, that were appropriate safeguards to the defendants rights drafted into the procedure, the elimination of the formal Grand Jury indictment function would be compatible with constitutional requirements.

The Grand Jury would continue to function with reference to its current investigatory duties. Viewing the Grand Jury in the context of an extremely overcrowded judicial system, apparent reform in this area is warranted and essential.

Revision of Discovery Procedures

Fundamental to any effort at reform of the criminal justice system is a good, hard look at the adversary system and the attitudes that currently persist. It is conceivable and in fact most probable that the traditional roles to be played by the adversaries are not fully understood or have been altered by long usage and the passage of time. By re-assessing, ab initio the nature of this traditional relationship we may determine that it has been transformed into an entity inconsistent with the ends of justice.

More specifically, it is I believe in the best interests of all parties to have plenary knowledge of the salient facts in a criminal matter prior to any activity with reference to that case. As fundamental as this may sound, the adversary system practiced today is not consistent with this principle. To make it perfectly clear, the accused under our system remains under no obligation to provide the prosecution with any information whatsoever. The prosecution on the other hand must, consistent with the accused's right to be apprised of the charges against him, provide all discoverable information to the defendant as early as possible.

The current practices in New York State provide for discovery of the particulars of a prosecution pursuant to Civil Practice Law and Rules, Section 3041 and Article 240 Criminal Procedure Law. These devices and provisions for

motion practice discovery are archaic and cumbersome. Defense is entitled to certain basic undisputed information. There is a crying need for early, voluntary disclosure initiated by the prosecution. All disputes with regard to information, above and beyond information provided by the prosecution would still be amenable to discovery through the traditional motion practice statutes. Legislation is required to formalize the procedure and eliminate any inconsistencies in prosecution policies that may be in effect.

Much of the delay occasioned in the trial courts is spent waiting for discovery material to be turned over and in the preparation of numerous demands, answers and orders. In addition to speeding up the median time to trial, it is highly probable that dispositions would also be expedited. With full discovery the cases could be analyzed soon after their introduction into the criminal justice system and disposed of appropriately in an informed, equitable manner.

Preliminary (Probable Cause) Hearing

In New York State, a defendant committed to custody in excess of 72 hours upon a felony complaint must be accorded a preliminary hearing or be released from custody. This is qualified in Section 180.80 of the New York State Criminal Procedure Law by three factors: 1) if any of the delay is at the defendant's request, 2) an indictment was issued or 3) there is present a compelling fact or circumstance precluding disposition of the complaint.

The basic purpose of this hearing is to determine if there is reasonable cause to believe that the defendant committed a felony. Criminal Procedure Law Section 170.75 permits a defendant to request a similar hearing on a misdemeanor complaint. The probable cause hearing section has been strictly interpreted by the judiciary. The prosecutor aims at revealing only enough of his case to meet the probable cause requirement that a felony was committed. The judge usually limits cross examination of prosecution witnesses with the caveat that the hearing is not a discovery proceeding. By interpreting this hearing statute so restrictively, an excellent opportunity to weed out non-sustainable matters and to facilitate exchange of information is lost. Matters which will be dismissed for fatal evidentiary defects at a later stage are passed on through the system. Conversely, the defense may not be sufficiently acquainted with discoverable

items of evidence to fully realize at this early juncture that the probability of conviction is great.

In addition to certain preliminary screening procedures discussed elsewhere, it is imperative to eliminate cases from the system as early and equitably as possible. The preliminary hearing can be broadened to do just this, with tremendous savings to the system. If the procedure is coordinated with plenary discovery and waiver of indictment procedures the number of cases entering the Superior Court will be reduced but the quality of those matters enhanced.

Just what is the appropriate vehicle through which to achieve these aims is subject to question. It is conceivable at least in the New York Jurisdiction that the existing statutes can be interpreted with a view to discovery and early exchange of information although for the sake of uniformity and conciseness, a legislative determination is in order.

The primary effects of these changes are obvious while secondary ramifications are often obscured. By early elimination of cases, congestion is relieved at the latter stages and only serious, prosecutable criminal matters will continue through the system and priorities are more properly addressed. How much time and money would be realized is almost impossible to ascertain, but it is logical to infer that this would be a significant consequence of the change. It is crucial to note that, standing alone, this broadening of functions of one stage of a criminal proceeding would be ineffective. Along

similar lines without bona fide commitments to these principles by all facets of the criminal justice system including the prosecution, success will be limited.

Sentencing-Pre-Sentence Memoranda

The imposition of sentence upon a defendant is possibly the most critical point of the adjudicatory process both for the defendant and the administration of criminal justice. In deciding the destiny of the offender, the effectiveness and fairness of the criminal justice process is held up to scrutiny.

It seems incongruous that the system which provides complex safeguard procedures for the rights of the accused during trial ceases to function effectively when the sentencing phase is reached. Sentencing judgements are far less regulated or restricted than any other aspect of the judicial process. Thought must be given to the proper extent of judicial discretion in sentencing. The sweeping power given to judges in meting out sentences are sometimes inimical to the concept of equal protection under the law.

Trial judges, answerable only to their consciences and limited appellate review may pronounce sentence on a defendant in a given case that varies from no incarceration up to twenty-five years or more in jail.

A defendant who comes up for sentencing may have no reliable way of predicting whether he will be freed on probation or incarcerated for a period perhaps encompassing the remainder of his life.

When the judge determines what is an appropriate sentence in a particular case, he is left with "discretion" to make a choice. "Discretion" may be defined as the power to choose



between two or more courses of action, each of which is thought of as permissible. When offenders are sentenced under ordinary criminal statutes, judges have discretion in this sense.

Legislators rely for guidance upon their own values and estimates of social order but there are effective checks on their actions. If the position of a legislator is not in accordance with the majority, presumably he will be overruled.

In the sentencing procedure, judges have occasion to act directly upon their personal views with few immediate restrictions. Judges are not even directly responsible to a particular constituency. Viewed most favorably one might assume that if a judge's values varied too greatly from generally accepted standards of fair play, he would attempt to modify his actions accordingly and if he failed to do so, the Appellate Courts would respond.

Legislative codification cannot provide clear answers to each of the infinite variety of factual situations and some uncertainty about the application of statutes is unavoidable. Often those who legislate are handicapped by a "relative ignorance of fact." Thus it is sometimes desirable that a choice between alternates be provided at the point of actual application. When a judge must determine what sentence to impose upon an offender he is exercising this discretion to make a choice.

If a trial judge determines that the defendant is not suited for probation, or a statute precludes probation, or the defendant has been placed on probation which was revoked, a prison commitment is most likely to be imposed. When this situation arises, a determination as to length of incarceration is necessary. Often judicial sentencing is not an accurate indicator of how long a convict will remain incarcerated. Subsequent sentence decisions may be made by executive clemency authorities, parole boards and parole officers.

Who should bear the responsibility for determining the period of incarceration? Should the legislature attempt to control the length of sentence or should this responsibility be delegated to either the sentencing judge or the correctional institution? There is considerable controversy as to the trial judge's role in determining length of sentence. The Model Penal Code proposes that he have no discretion to select the maximum sentence, that it should be fixed by statute on the basis of the offense for which convicted.

When the trial judge has sentencing discretion he may use it to increase his disposition rate. When this discretion is eliminated, pressure is directed toward the prosecutor instead. Thus, the maximum sentence set by the legislature tends to place responsibility for determining length of sentence in the hands of the prosecutor, rather than in the sentencing judge. This merely substitutes prosecutorial disparity for

judicial sentencing disparity. Whatever the merit of the legislatively fixed maximum, it is difficult to implement regardless of where sentencing discretion is placed. It is clear, however, that in the interests of rehabilitation, maximum sentences of incarceration, except in the most heinous crimes, should be reduced to no more than five to ten years in duration. The Standards for Criminal Justice of the American Bar Association points out that in many instances in this country the prison sentences authorized, and sometimes mandated, are far greater than needed to protect the interests of the public.

The National Advisory Commission on Criminal Justice Standards and Goals recommends that the trial judge should be required to impose a sentence that, within limits imposed by statute, determines the maximum time a defendant's liberty may be restricted. Within this maximum period other agencies may be given the power to determine the manner and extent of incarceration.

Utilization of a variety of sentencing alternatives, including unconditional release, conditional release, fines payable in installments (with a civil remedy for nonpayment), and various supervised release plans are also recommended while deletion of mandatory minimum sentences for all offenses other than murder is suggested.

Some of the apparent sentencing disparities can be eliminated by providing the trial judge with all the assistance

currently available in the criminal justice system. One of these tools is the Pre-Sentence Memorandum.

In New York State pursuant to Criminal Procedure Law, Section 390.40 all defendants have been accorded the right to submit a pre-sentence memorandum. This document contains any information the defendant and his counsel may deem pertinent to the question of sentence. In the interests of justice and effective client representation it is essential that representation of defendants not cease after conviction. These interests are most admirably served when a sentencing judge knows all that he can with reference to the defendant being sentenced. It is important for the integrity of the system that the sentence be fair and appropriate. To achieve a balance to the sentencing reports submitted by the probation agency charged with the function, the defense bar must, as a regular practice, present the sentencing alternatives it sees fit to the judge prior to the time of sentence. These reports may prove to be significant with reference to any rehabilitative effects wrought by the system. It is essential to bear in mind the incredibly high cost of incarceration to society in exploring all the sentencing possibilities.

### Continuance Policy

The policy determining under what circumstances the judiciary should grant a continuance or adjournment has a significant impact on both the right of an accused to a speedy trial and the flow of cases generally in a congested court system.

There is a need to ascertain the best method of effecting and implementing such a policy. Changes in state law have been accomplished in New York, but have had little or no effect on the delay problem. Most statutes designed to remedy lengthy adjournments have sections prescribing exceptions to the general rule which effectively emasculate the legislative intent.

A hybrid approach involving a broad statewide constitutional provision mandating a speedy trial and an enunciated general policy of denying adjournments unless absolutely necessary may provide a solution. The second part of this approach could conceivably be codified within local court regulations providing limited judicial discretion and enforced by administrative judicial personnel.

Every defendant should have a right to trial within sixty to ninety days unless that right is voluntarily waived or tolled by defendant's request for a continuance.

A general policy of granting continuances only when a legitimate need for delay exists or when the court is temporarily unable to reach a case should be strictly enforced.

From a procedural standpoint the judiciary must be kept up to date, even on a daily basis, with the "age" of the cases on their respective calendars. Supervision in the application of these policies by the administrative judge is essential and must rely on: 1) substantial judicial discretion vested in the administrative judge, 2) close liaison and cooperation with the presiding judges and a commitment to exercise conscientious compliance with the promulgated standards of procedure. In this manner the criminal justice system may achieve a method of preventing excessive, prejudicial delay.

Non-Production of Prisoners

One of the more serious problems affecting the operations of the courts in New York City is that of the non-production of a substantial number of prisoners for court appearances.

Records maintained by the New York City Department of Correction indicate that in 1973, 9.9% of the total number of inmates requested by the courts were not produced. In some counties, the problem was even more serious with 24.9% of the prisoners not being timely produced.

The consequences of this defect impact on court operations, prisoner morale, and other agencies in the criminal justice system. More specifically, the failure to produce a prisoner results in lost time and the decreased efficiency of judges, court personnel, defense and prosecutorial staff, police, witnesses and juries. Further, such failures result in an extension of a prisoner's period of detention contributing to overcrowding in the prisons, higher correctional costs and unrest among the inmate population.

An investigation of this problem in New York City was recently conducted by the New York State Commission of Investigation. The Commission concluded that the prime reason for the non-production of prisoners for court appearances was "a lack of inter-agency cooperation."

The key causes of prisoner non-production were identified as follows:

1. Correction records not showing name requested by court.
2. No indictment number or incorrect indictment number.
3. Prisoner had been discharged or bailed out.
4. Correction Department failure to identify defendant.

Behind the apparent problems in inter-agency communications were, according to the Commission, three major factors: a) traditional manual record keeping by the courts, district attorneys and Department of Correction; b) lack of uniform and well-designed procedures as well as untimely communications; c) lack of a common prisoner identification number.

Recent suggestions for improvement have included the standard identification of inmates by the State Criminal Justice Service computer number (NYSIS number) and a system-wide information network that provides immediate information on prisoner status and location.



### 1. Police Discretion

Those familiar with the problems faced by District Attorneys are aware that a frequent complaint voiced by these officials is that they have limited control over their caseload. The law enforcement agencies operating within their jurisdictions govern the number and type of the cases presented to the prosecutor. Notwithstanding, the District Attorneys have significant discretion and control over those cases to be prosecuted.

Since the police play a large role in determining the composition of a prosecutor's caseload, the following factors have a bearing on the prosecutorial workload:

- . The deployment of police resources;
- . Law enforcement policies;
- . Community pressures on the police;
- . Individual discretion of police officers.

The degree to which these various factors are present within a jurisdiction determine the manner in which the police exercise their arrest powers, concentrate their prevention activities and allocate their investigative resources.

In the current climate, at least two of the above factors are always operating. Substantial community pressures are being brought to bear upon the police to "solve" the crime problem. If, in large urban areas, "community" meant a single consensus as to which types of crime should

be given priority, then the work of the police, and ultimately the prosecutor, would be considerably easier.

Urban areas are composed of a large number of communities, each with their own concerns, their own priorities, and their own views as to how crime and criminals ought to be dealt with. Consequently, enforcement policies of the police may vary widely across a city which results in an equally varied caseload for the prosecutor.

The discretion inherent in police powers operates at two distinct levels. Police administrators decide whether the resource allocation to deal with the so-called "victimless" crimes such as prostitution or gambling is sufficient. Accordingly, these crimes may be dealt with only when community pressure builds or when other circumstances, e. g. robberies by prostitutes, warrant increased attention. Departmental policy is subject to the exercise of discretion and judgment by individual police officers.

The police, if they are to operate effectively, must have broad discretionary powers. Legislative prescriptions cannot eliminate the exercise of discretion and sound police judgment in a practical context. What is needed, however, is more careful consideration within law enforcement of the manner in which police discretion will be exercised, and certainly more internal monitoring of individual actions.

I believe that these goals can be accomplished, although not without some difficulties. The first step to be undertaken should be to provide police recruits with a better understanding of the nature of their discretion and the ramifications of its exercise within the framework of departmental policies.

Secondly, greater efforts must be undertaken in connection with educating supervisory police department personnel as to the limit and scope of departmental charging policies. This education process requires the active cooperation of the prosecutor to ensure that prosecution priorities coincide or interface with departmental policy. Successful prosecution of those arrested requires this cooperation if the criminal justice system is to have any impact on the continued commission of crime.

Third, it is my view that the prosecutors must begin to play a more active role in the review of those cases in which arrests are made. The first time the actions of an arresting officer are subject to limited review occurs when the officer commences the booking procedure. The first opportunity for prosecutorial review is at the complaint room stage after considerable expenditure of police effort and manpower. Most states have made provisions within their penal codes, or criminal procedure codes, for the release of an arrested person by the police, when a review of the facts indicates that an

arrest was not warranted. It is rare that these provisions are used by the police, however. The reasons underlying this phenomenon are not altogether clear. A solution to this problem might be found by establishing a prosecutor unit within the police department central booking facilities whose sole concern would be the review of cases at time of booking. This review would have at least two major objectives:

- . Do the facts support the arrest of the individual in custody?
- . If the arrest is proper, has the crime alleged been properly defined?

The goal of such a review would be to reduce the caseloads of both the prosecutor and police department by eliminating cases which would be dismissed in the complaint room by the prosecutor and by properly defining the crime or crimes committed.

Police administrators and supervisors must become more concerned with the ultimate disposition of an arrest and the close coordination with the prosecution that this requires. The solutions to the problems of prosecutors with respect to the exercise of police discretion are most likely to be found in earlier prosecutorial involvement in the case processing scheme and increased liaison, cooperation and training.

## 2. Dispute Resolution Centers

This topic is included under the prosecution section because the dispute resolution concept most closely affects the prosecutorial sphere of operations. Dispute resolution is a pre-arrest diversion alternative in dealing with cases involving interpersonal disputes. With the cooperation of the police and prosecutors, family and neighborhood disputes can be resolved outside of the criminal justice system by addressing the problems at the root of these conflicts.

Minor criminal conduct alleged between parties known to each other usually stems from misunderstandings and resentments existing for a period of time prior to police intervention. The complainant is often the first disputant to reach the police station.

There are several benefits to be gained by the criminal justice system as a result of this type of program. The approach attempts to assist the participants in solving their own problems. If mediation is successful, the criminal justice system is relieved of the onus of entertaining a succession of petty charges and countercharges. In addition, once a defendant has been booked and charged there is considerable difficulty in removing the arrest records of individual from law enforcement files. Although the law enforcement establishment generally considers these matters a nuisance, it also realizes that such situations have the

potential to become aggravated. Lastly, the criminal justice system is able to address those matters wherein clear issues of criminality are present. In releasing resources usually devoted to resolving the interpersonal dispute, the criminal justice system is free to address its own priorities.

The Citizen Dispute Settlement Project, an exemplary project in Columbus, Ohio, continues to operate successfully. The Columbus project employed law professors, and as the project progressed, law school students as hearing officers. A member of the Night Prosecutor's Office was available in a supervisory capacity. A few constitutional issues relating to the right against self-incrimination have not been resolved, although as a practical matter the problem has not arisen to any significant extent.

The need for wider application of this concept is important in order to reduce the workload of law enforcement and judicial officers in an administrative framework rather than the criminal process.

### 3. Case Management

#### Priority Case Scheduling

#### Comprehensive Case Screening

All of these areas deal with prosecutorial assignment of priorities in the processing of criminal matters. Case management provides the prosecutor with data and statistics to support charge determination and case handling. Each office should have a weighting system for incoming matters which reflects the prosecutor's policies and priorities. Workloads, median times between major steps in the adjudicatory process and ages of cases are vital for resource allocation and for determining those priorities.

Priority case scheduling occurs when the prosecution advises the court administration which cases should be given preferential treatment for trial. Some of the criteria for determining which matters might fall into this category are: the custody status of defendant, the threat to society posed by the defendant, the defendant's prior criminal history and the length of time that the case has been pending.

Comprehensive case screening does not currently exist as a functional entity. The idea envisions the screening or evaluation of cases at the earliest stages in the adjudicatory process for referral and case handling consistent with the prosecutor's goals and priorities.

Currently, the Major Felony Processing Projects in New York City have instituted weighting systems that select serious offenses which have a high probability of conviction. This approach has proven quite satisfactory where prosecution resources are severely limited and the caseload outstrips the prosecution capability. This solution, however, cannot effectively address the largest percentage of cases entering the system without a massive infusion of resources.

Homicide, narcotics and rackets bureaus screen cases out of the general caseload on the basis of the type of crime committed. Generally, these types of offenses have always received priority handling. The bureaus tend to concentrate assistant prosecutors with the particular expertise required into the respective bureaus.

The Career Criminals program screens out the recidivist who has committed a serious offense, while the Prosecutor's Management Information System selects cases based on the gravity of the crime and the seriousness of the accused's criminal history. The latter project, in addition, attempts to address the control of logistical and scheduling impediments, the monitoring and enforcement of the consistent exercise of prosecutorial discretion and the analysis and research of screening and prosecution methods.

All of these principles and methods of analysis and



implementation have yielded valuable guidance for the prosecution. The time has come to incorporate many of the compatible features of each of these screening and monitoring projects into a comprehensive screening, management and analysis program. In addition to the promised objectives of the Prosecutor's Management Information System, the screening mechanism must operate at the earliest possible phase in the adjudicatory process. The longer a case remains in the System, the more disproportionately the investment of time and effort by the entire criminal justice system grows. The screening mechanism should be employed, therefore, in the complaint room or central booking facility as discussed in the section on Police Discretion. Experienced personnel would evaluate incoming matters to determine case strength and all factors relating to how the case should be dealt with, consistent with the prosecutor's policies and priorities. The staffing patterns are vital to the successful operation of the screening procedure at this early stage. Without trial-experienced assistant prosecutors, accurate evaluations cannot be performed nor is it likely that the chief prosecutor would vest the authority to screen cases effectively if they were inexperienced.

Screening should be directed not only to early preparation and investigation of grievous matters but also to elimination of those cases that are fatally defective. It must be kept in mind

that the length of time required to secure superior approval of decisions to dismiss certain cases would negate many of the benefits of early screening.

Once a comprehensive system consistent with uniform prosecution priorities is instituted, tremendous progress will have been made in addressing the congestion problem in the larger municipalities. Again, it is significant that the setting of priorities from the prosecution standpoint must reflect the capacities of the rest of the system and coincide with other criminal justice agency priorities. Only through integration and a cooperative approach can the monolithic problems of the criminal justice system be resolved.

### 7. Uniform Policy

It is essential that each prosecutor's office develop uniform guidelines and policies in the exercise of its duties. The policies thus developed would serve as a guide to all assistant prosecutors and provide continuity and consistency in dealing with both the judiciary and the defense bar. It is apparent that policy considerations of the prosecutor can have marked consequences with reference to both the volume of cases handled by the criminal justice system and how long these cases remain in the system.

Most of the criminal justice agencies complain about the volume of work and the limitation of resources. Inasmuch as the discretion to prosecute a particular matter lies in the office of the prosecutor, he can through an expression of policy determine not only his priorities and caseload statistics but also the workload for many of the other criminal justice agencies. With full realization of the import of prosecution policies, the prosecutor must exercise informed discretion with reference to prosecution policies. The general policy must incorporate priorities as to types of cases which are to be more vigorously prosecuted. A determinant here is the availability of resources, the number of people affected by the particular type of crime and the

overall congestion of the criminal justice system. A decision of this magnitude necessarily involves a reallocation of prosecutorial resources consistent with those objectives the prosecutor feels he can achieve.

There is a fundamental need on the part of the prosecution to reassess policy vis-a-vis the distinction between felony and misdemeanor charging policies. Designation and indictment of a particular act as a felony matter should ipso facto mean that the allegations are serious and a priority for that particular office. The designation should be coupled with a concomitant resolve to allocate sufficient resources for adequate prosecution. The decision to proceed with a felony case must be viewed as a policy decision to prosecute consistent with the gravamen of the offense. The decision to prosecute as a felony must also be developed in the context of available resources of the prosecutor and the system. Careful policy analysis and delineation is required to maintain the integrity and credibility of the office.

It has become evident also that unrealistic charging practices may be prime congestants in the criminal justice system. Over-indictment for plea bargaining purposes serves to exacerbate the already deplorable situation. The tendency to overcharge and then reduce the charge as an incentive to plea bargain is understandable in the context

of a system fraught with delays. However, continuation of these practices only compounds the problem. What is required is enlightened prosecutorial decisions with long range perspective rather than short sightedness.

The ramifications of ill-conceived charging policies are clearly felt throughout the system. The impetus to delay is further enhanced as the number of cases builds up in the court system. Defense counsel is encouraged to wait until the case becomes sufficiently ripe for dismissal and thereby capitalize on the congestion. The judiciary is unable to cope with the number of cases ostensibly ready for trial and the median time to disposition becomes lengthened. The tragedy is compounded when the most serious offenses must be plea bargained away because the system cannot accommodate the number of matters before it.

In addition to charging policies, clearly defined policies of plea negotiation must be instituted. Certainly a revision of the charging policies is of primary importance but after that plea negotiation standards are crucial. Knowledge that consistent plea policy exists within a prosecutor's office will minimize judge shopping, inequitable dispositions and miscarriages of justice.

The defense bar when confronted with the prospects of a uniform policy will be less likely to attempt dilatory tactics. The passage of time will not affect the policy and

hence the movement of cases through the system will be expedited.

## 5. Education

Education within the prosecutor's office must cover newly appointed or elected assistant training, in house practical training and orientation, as well as continuing education on the latest developments in the field. In addition to the three areas above, it is important for collaboration between prosecutors of various jurisdictions to facilitate discussion and exchange of information and new prosecutorial techniques. This can be realized through attendance at the national prosecutor's organization meetings and seminars.

In the past the skills required of prosecutors and other criminal justice personnel were not taught in law schools. Only recently have intern programs been developed. The necessity for classroom and practical training for newly elected or appointed prosecutors is particularly vital inasmuch as the interests of the state are at stake. The responsibility in discharging the duties of a prosecutor is onerous and initiates should have all benefits that can be provided to accomplish their obligations.

For the prosecutors on staff who are usually quite active in the discharge of the daily duties it is doubly important that they be systematically provided with the latest decisional law and theory.

Another area of training which has been ignored too long involved preparation of staff within the courts,

prosecutors' offices, public defenders' offices, probation offices, etc., to deal with management science and technological developments affecting their operations.

There is a need for research to determine how to structure educational programs to fulfill all the needs within a prosecutor's office. A systematic program would be most effective to ensure the quality of assistant prosecutors and provide the prosecutor with evaluations of his staff and where they can be best deployed.



## 6. Case Processing Cost Effectiveness

The criminal justice system needs systematic analysis of what it costs to process a criminal case at each stage of the proceedings. Too little attention has been spent in addressing the issue of cost effectiveness. It is a legitimate departure from customary procedures designed to assess criminal justice system priorities to proceed in the first instance from a cost per matter position.

Very few of the priorities for the prosecutors have given sufficient consideration to cost effectiveness. The priorities must be reevaluated on this basis. In the face of overwhelming caseloads, increase in the rates of commission of crime and budgetary restraints, there is no choice. The emphasis must be on reallocation of resources and design of systems to accommodate existing workloads. The efficiencies that can be achieved will certainly reduce the requirements for additional resources if not release already appropriated resources which may then be reallocated.

The entire cost analysis program provides an unified approach under which the various criminal justice agencies must cooperate. Without the unified approach it is clear, that the separate efforts to achieve economies will be frustrated.

### 7. Continuity of Representation

This principle has been extensively explored in connection with almost all the specialized prosecution bureaus. The backbone of this system places full responsibility for case handling from arraignment to disposition upon one assistant prosecutor. The traditional method of prosecution, especially evident in those locales where the volume of cases is overwhelming, is to station different assistant prosecutors at each critical stage that a case must pass through.

The benefits of the one assistant, one matter method are manifest. The assistant who will ultimately take the case to trial is involved in its preparation at the early stages. There is little likelihood that an error will be made in disposing of the case. No duplication of effort in achieving trial readiness is involved. The complainant feels certain that justice will be done and the system simultaneously becomes more attentive to the needs of the victim.

Inasmuch as the principle of continuity has been demonstrated as a superior method of prosecution case handling, the need to adapt the system on a wider scale across the full range of prosecution activities must be realized. Careful planning is essential to meet this need because the system is not easily adapted on a large scale.

without the possibility of increasing resources. Continuity is primarily oriented toward improving the quality of case handling. The problem then, is how to systematically process large numbers of criminal matters without a drastic increase in cost. The efficiencies inherent in the procedure are difficult to measure because they bear directly on the quality of case handling and the results are usually realized at a later point in time.

1. Speedy Trial

The number one priority for the defense bar must be the right to a speedy trial. New York State has enacted Section 30.30 Criminal Procedure Law which guarantees the defendant the right to a speedy trial once proceedings have commenced. As previously discussed more generally in the section on Continuance Policy, the speedy trial rule has been any thing but an ironclad guarantee of prompt case adjudication. The reasons for this failure are two-fold. First, the statute excludes many periods in computing the time from commencement of the action to the time of trial. Secondly, New York decisional law has indicated that the unavailability of sufficient court facilities should not be included in computing the time from commencement of the action to trial as long as the matter is placed on the Ready Calendar and the prosecutor indicates he is ready to proceed. What is required is probably a revised statute with specified times by which certain events in the adjudicatory process must occur. These milestones would involve completion of motion and discovery practice, an outside limit as to when the prosecution would actually be ready to proceed, and finally, a specific date by which the defendant would get a trial, whether or not either side was prepared to proceed. In the event the facilities were

not available or the prosecution is unprepared, the case would be discharged with a bar to any future prosecution on the charged offense as well as on any other offenses required to be joined with the charged offense.

In the case of an incarcerated defendant, a shorter time limitation could be instituted to provide for the defendant's release from custody, within a reasonable amount of time, but the specific date for the trial would still be applicable. This feature is particularly important because when a defendant is released from pre-trial detention, he may pose a danger to society. The ability of the criminal justice system has been impaired and the defendant must remain under limited restraint for unconscionable periods of time pending determination of guilt or innocence.

Few of the solutions proposed with respect to speedy trial take case load congestion into consideration. The mammoth congestion problem present in many large municipal court systems must be effectively resolved before the issue of speedy disposition of incoming cases can be dealt with.

## 2. Continuity of Representation

The same general principles and benefits accrue to defense counsel and prosecutor when a case is handled from commencement to final disposition by one attorney. The concept may at first seem unusual from the defense standpoint, if one thinks exclusively of the private practitioner, but viewed as a case handling method for public defender organizations it begins to make sense. Under this system the responsibility for a criminal matter lies with one defense attorney who makes all the decisions with reference to the case. In New York City where a separation of inferior and superior Court systems exists, the attorney who decides to take a case trial is not usually charged with the task of actually trying the case. The continuity principle in a two-tiered system usually allows a more experienced attorney to handle the matter in the inferior court. The expertise that is brought to bear at this early stage can precipitate early disposition of a case or shorten the time to trial readiness.

It is essential that the criminal justice system and its administrators and planners not lose sight of the fact that defense preparedness is just as vital to efficient case processing as any other agency function. Without a competent, viable defense organization and close liaison between it and the rest of the criminal justice system, operations would

come to a stand-still.

Varied approaches need to be tested under this case processing methodology. The team concept may be invaluable either as a device to ease the transition from horizontal representation, i.e. different attorneys at different stages, or as the ultimate case handling procedure. The team concept employs a combination of experienced and relatively inexperienced personnel dealing with a limited group of clients, but ultimate responsibility for a case is still relegated to one of the team members. This structure preserves the benefits of one-to-one representation while easing scheduling and interfacing problems with the other criminal justice agencies.

### 3. Management Training

There exists a critical need in the public defender organizations for management training of all supervisory personnel. A similar need exists for the Court and prosecution personnel in analogous supervisory positions. This training is distinguished from the need for professional management people in the various administrative capacities discussed previously. It is apparent that possession of a law degree does not automatically qualify one to manage operations of agency personnel. This type of management expertise must produce increased efficiencies throughout the system.



#### 4. Education

Educational requirements for the defense bar are vital to the interests of one accused of a crime and hence to society as a whole. Educational efforts can most effectively be directed toward those agencies charged with the defense of indigent defendants. In New York City the Legal Aid Society represents a vast majority of the defendants processed through the criminal justice system. Article 18B of the New York State County Law provides for indigent representation where the defender organization is unable to represent the defendant because of a conflict of interest.

The need to educate newly-appointed defense attorneys is paramount. The defense attorneys' responsibility must not be undertaken lightly or without adequate preparation. The focus of any educational effort for those attorneys new to the criminal defense field must incorporate both classroom theory and either practical on-the-job training or simulations. Practicing attorneys already within the system must be kept up to date and well-informed on the latest decisional law. Where feasible, an entity to entertain legal inquiries of attorneys actively engaged in a particular stage of the adjudicatory process would be a singular improvement.

In New York State the so called "18B" attorneys must meet certain criteria before being allowed to participate on the indigent defense panel. The attorneys on this panel, being drawn from the corpus of private attorneys, are less amenable to systematic educational efforts because of the apparent scheduling difficulties. However, attempts must be made to insure that the criteria for admission to the panel be maintained consistent with the highest ideals of the profession and secondly, to provide these attorneys with the latest criminal law developments.

Only when the criminal justice system achieves a well coordinated balance between the traditional adversaries can our system begin to function effectively.

### 5. Pre-Trial Diversion

The National Advisory Commission on Criminal Justice Standards and Goals recommends the diversion of offenders into non-criminal programs prior to formal adjudication in cases where a substantial likelihood exists that a conviction would be obtained but the abandonment of criminal prosecution would not result in societal harm. The arguments in favor of pre-trial diversion are four-fold: Incarceration prior to conviction is tantamount to deprivation of liberty, subjecting persons prior to adjudication of guilt or innocence to severe hardships. The second issue is cost. Not only is the maintenance of individuals in detention facilities a large public expense, but the cost is increased with each stage of the criminal processing system through which a non-diverted case must pass. Third, consistent with protection of the public welfare is the realization that it is best served by a non-punitive system characterized by individual programming and reintegration. Lastly, cases remaining in the system that could best be handled elsewhere provide an unnecessary drain on an already overburdened criminal justice network.

The need exists for formally organized diversion programs at every stage in the criminal justice system

from the occurrence of an illegal act to the adjudication of the case. Priorities should be established for each stage in the process where diversion may occur, considering the discretion involved and alternatives available to the decision makers. Formal liaisons should be established with both public and private agencies to whom persons may be referred. Diversion programs must also have clearly-defined objectives and success criteria.

The granting of pre-trial release and the form it takes should be based upon considerations such as the nature and circumstances of the case, the weight of the evidence, the defendant's ties to the community, and his criminal and bail-jump records.

It is important that pre-trial diversion programs include mechanisms for dealing with both low-risk individuals who can be released on their own recognizance and those higher-risk individuals requiring supervision and additional services from community agencies. Programs should be designed to impact on both defendants and the public criminal justice agencies involved. Effective programs can and should be vehicles for enabling the entire pre-trial process to operate efficiently and fairly.

Although research to date has shown a positive correlation between diversion and non-recidivism, it should

be noted that selective screening mechanisms tend to single out for these programs those persons who already exhibit strong success potential, and often bias the data. Mechanisms for evaluating diversion programs on several dimensions, including both system and individual impact and cost-benefit analysis, must be built into them at the outset.

6. Case Management

The Prosecutor's Management Information System would, ironically, provide an effective defense case management tool once adapted to the defender organization's data requirements. In the implementation of the prosecution priority, if no efforts are directed toward the defense bar's ability to respond to the increased demands placed upon it, the system cannot succeed in realizing those goals.

### 1. Decriminalization

Evaluations must be instituted to determine how much of the criminal justice system's time and resources are currently being devoted to the processing of victimless crimes. If these crimes were to be legislatively decriminalized or diverted to an appropriate administrative agency, valuable reallocations of resources could occur. This would have the effect of enabling the criminal justice system to place more emphasis on priority criminal matters.

Is the criminal law, rather than other available means of social control, really the appropriate approach for dealing with such conduct as gambling, public intoxication, prostitution, disorderly conduct, and minor marijuana offenses? In too many instances legislative bodies have responded to difficult social problems such as these by criminalizing the act involved. Society has been quick to institute criminal sanctions whenever personal behavior has deviated from the norm.

Worthwhile values should be maintained and socially desirable institutions preserved. The criminal justice system must be capable of recognizing the difference between criminal conduct and socially undesirable activity. Criminal sanctions are not the only means of regulating

conduct. Formal regulation in many fields is accomplished by licensing, imposition of civil liability, administrative regulation, and subjection to non-criminal penalties.

The assumption that the way to control essentially non-criminal behavior is to criminalize it interferes not only with the operation of the criminal law but clouds our ability to deal with social problems. Conduct possibly harmful only to the actor should be deterred through means other than criminal sanction because enforcement is difficult and the results achieved are not significant in dealing with criminal activity.

A typical sentence for a minor offender, such as the public drunk and/or streetwalker, is a trivial fine, a short jail stay, or a conditional or unconditional discharge. There are few benefits for the law enforcement establishment and much to be lost through implementation of the victimless statutes. The rational solution is to remove these matters from the system while making more appropriate provision for dealing with them outside the criminal justice system.

"Victimless" crimes such as gambling and prostitution are consensual transactions or exchange which takes place between the parties. Enforcement of these statutes is usually ineffective creating a drain on the allocation of police and court resources. Since there are few complainants,



enforcement is extremely difficult. This in turn raises the question of whether this allocation of costly police resources is justified. Enforcement is often discretionary. This leads to cynicism, indifference to the law and the police, and in some instances to bribery and corruption.

Many segments of society feel threatened by calls for decriminalization of these "borderline" offenses, fearing the effects of general permissiveness, but the origins and aims of the proposed reforms are directed toward installing a new morality. There is merely a growing movement to purge the criminal justice system of those laws which do not serve a legitimate purpose or function as they were designed.

Public intoxication is universally treated as criminal behavior. The drunkard is a problem to himself, an inconvenience to some, but not a criminal threat to society. Criminal treatment and status of this offense has been a costly failure, burdening law enforcement agencies and representing nearly one third of all arrests. Social services for treatment of alcoholism would be more constructive and far less expensive.

Included under the heading of "gambling" can be found everything from social card games to numbers and bookmaking. As with other consensual crimes, criminal enforcement is difficult and not highly successful in controlling the vice. Public sentiments in favor of the decriminalization of

gambling has been registered and is reflected in the public's positive response to certain types of legalized gaming.

Disorderly conduct and loitering statutes are often too broad and imprecise. The police are accorded great discretion in classifying this type of conduct as criminal. Disorderly conduct was shown in a recent crime statistic to be second only to drunkenness in the number of arrests made.

Many criminal statutes regulate sexual relations between consenting adults. Proposed revision of these laws raises much passionate debate. Legal sanctions against activities such as rape, incest and sodomy are necessary and warranted, but regulations governing sexual activity between consenting adults is thought by some to be a governmental invasion of privacy. Attempts to outlaw and enforce prostitution statutes have been as unsuccessful as the efforts against gambling, often raising similar problems.

Innumerable public and private organizations have advocated reduction of marijuana penalties; some have urged that the drug be legalized. Scientific studies have indicated that the effects of its use and/or misuse are no more deleterious than use of alcohol. Several states have already legalized possession of the drug in the domicile.

The solutions proposed here are by no means new or innovative but represent a constructive approach which must be utilized in overhauling the criminal justice system.

The costs to the system in terms of the diversion of valuable criminal justice resources away from the real priorities, the possibility of wrongdoing by criminal justice functionaries, and the harm done to the "criminal" who really needs assistance, are immeasurable. How long must society wait and at what cost to its integrity until these changes are finally realized?

## 2. Criminal Procedure Revision Judicial Impact Statements

There has been previous discussion of specific statutory changes recommended concerning the adjudication of criminal cases. The purpose of this section, then, will be to touch briefly upon the general requirements for legislative revision of the criminal procedure statutes and the factors which must be taken into account in effecting those changes.

In the past, the range of topics taken into consideration in the drafting of criminal procedure legislation has been too limited. Legislation can have far reaching effects on the criminal justice system in terms of increased costs, demands on its limited resources and with regard to calendar congestion and backlogs. Furthermore, the legislature must be more amenable to change already enacted legislation. By being more responsive to criminal justice system feedback, effective legislative action can be a reality.

In addition to the technological, organizational and procedural types of improvements required by courts, the environment in which courts operate is a dynamic one. Criminal justice agencies are constantly revising their rules and procedures, legislatures and regulatory agencies are turning out new bills and rules, and appellate courts are trying to sort it all out in accordance with constitutional principles. Several years ago, at a meeting of the American

Bar Association, Chief Justice Burger suggested that every piece of new legislation should have a judicial impact statement prepared along with it, to indicate to the judiciary and the criminal justice agencies involved what the proposed measure might mean in terms of increased court workload and demands on resources (manpower, transcript preparation capability, and judge-sitting time). Going beyond this, impact analyses of this type should be carried out not only for new or proposed legislation, but for appellate court decisions, agency procedural and rule changes, and for proposed judicial rules.

This type of analysis will at least enable an administrative judge at the circuit or district level as well as the state-level administrative officer to plan ahead for contingencies.

### 3. Firearms Control

It is quite appropriate to deal with this topic as a separate entity because the commission of so many of the priority crimes for the criminal justice system involves the use of illegal handguns. By illegal we mean, simply, a weapon possession in violation of handgun registration statutes or a weapon stolen from either interstate shipments or the law enforcement establishment.

The large metropolitan areas of the country are plagued by an alarmingly large supply of inexpensive handguns. Many of the homicides and other violent crimes are committed with the use of a concealable weapon. Most criminal justice personnel are in agreement that Federal Gun Control legislation is the most effective approach in dealing with this problem. They also are aware of the numerous attempts to legislate meaningful arms control on the national level. To date all meaningful efforts to legislate control of illegal handgun possession have been thwarted by the powerful anti-gun control lobby.

The arguments for liberalized possession of handguns relates to the constitutional guarantees of the right to carry and bear arms. Many individuals in large urban centers feel the inadequacy of police protection is sufficient cause for possession of an unregistered weapon. In reading

a report produced by the New York State Select Committee on Crime entitled Gun Control in New York, it becomes apparent that many of the homicides by firearm are committed by people known to the victim. Many victims were themselves in possession of unregistered weapons and seriously injured in attempting to defend themselves when attacked by felons.

The continued existence of inexpensive unlicensed handguns must not be allowed to continue. There is a dire need for effective regulatory legislation. The problem in the New York metropolitan area revolves around the large number of illegal weapons, estimated by some sources to be in excess of two and one half million, and the virtually unrestricted flow of weapons entering the city annually. Addressing solely the first aspect of this problem would force the prices of illegal weapons to skyrocket, making commerce in the weapons much more attractive to gun traffickers.

If it were possible to restrict the flow of weapons, the city would still be faced with the availability of an incredible number of weapons. What may well be an effective solution to this problem temporarily, is statewide legislation especially in face of the national legislature's failure to implement legislation in this area.

In New York State, statewide arms control legislation might include some of the following provisions:

- . the sale of illegal handguns would be codified as a crime
- . possession of two or more illegal handguns shall be a presumption of intent to sell
- . conviction of possession of stolen weapons will constitute a more serious crime than possession of an unregistered weapon
- . penalties for repeat violations of the section will be increased
- . acts constituting violations of one or more provisions of the statute would be punishable in accordance with the harshest penalties
- . an increase in the penalty for sale of weapons in distinction to mere illegal possession
- . stiffer penalties for possession of an illegal handgun used in the commission of a crime

The passage of the legislation might include a period of amnesty in an attempt to dry up the weapons already in circulation. It is true that many otherwise law abiding citizens may run afoul of this legislation, but the interests of society at large are significantly greater in rectifying this problem. In this regard, the state of Massachusetts recently enacted the Bartley-Fox state gun control law which may prove to be a prime deterrent to carrying



guns. The law prohibits possession of a weapon away from a person's home or place of business without proper authorization. Anyone convicted is subjected to a mandatory one year jail term with no plea bargaining or alternative sentencing.

Although in other respects the Massachusetts law is not viable for the City of New York it does present an innovative approach to this serious problem. Unfortunately for the victims who will be killed through the use of illegal weapons, the criminal justice system, and society as a whole, the prospects of effective legislation appear to be a long way down the road.

III. RESEARCHA. Court System1. Unified City-wide Court Administration

The process of administrative unification which has taken place in the City of New York recently has operated to solve many of the problems mentioned previously. In 1974, the State Judiciary appointed an administrative judge with jurisdiction over all courts operating within the City except the Appellate and Surrogate Courts. This move was coupled with the appointment of a single administrative judge for the Criminal Court and the Criminal Terms of the Supreme Courts operating within the City. Similar appointments were made for the Civil Courts.

## 2. Utilization of Court Administrator

A short time ago, the State Administrator for the Courts appointed a Deputy State Administrator for the New York City Courts. This individual is not a judge. He is a career Administrator. The full extent of his powers are not yet clear and it obviously too early to gauge his impact on the operations of the courts, but I believe that this action is one of the more important decisions taken in the City.

### 3. Data Analysis

With the assistance of LEAA funds, uniform and automated reporting systems have been developed and are operating for the criminal courts of the City. While these reporting systems are not without their faults, they are a dramatic improvement over their predecessors and the data they are supplying, their uniformity, timeliness and accuracy are enabling analysts, for the first time, to regularly measure court workload. This analysis has led, and will continue to lead, to revisions in the nature of data captured, stored and analyzed, ultimately resulting in a better picture of the work of the courts.

Since we now have, for the first time, a relatively accurate picture of the work of the courts in the City we are finally in a position to pinpoint problem areas within the courts, design programs to deal with them and evaluate the results of those programs. Efforts towards that end, including solutions to the problems associated with excessive adjournments, are already under way.

The statistical information now available to court administrators should lead to the establishment of better calendaring and case management methods and procedures.

In addition to improved calendaring and case management, further gains toward effective crime control through a

speedy, just legal system can be achieved by implementation of adequate pretrial and presentence investigations, viable alternatives to incarceration, and institutional facilities that provide for the protection of society as well as for the resocialization of offenders.

The provision of comprehensive dispositional alternatives permits the evaluation of individual defendants so that a determination may be made that optimizes the disposition of each case.

An essential ingredient in the personalization of case processing as opposed to a "wholesale" approach is the implementation of a system of keeping in touch with the progress of each case from start to finish as it travels through the criminal justice system.

An ideal vehicle for accomplishing this task is demonstrated through another contribution of computer technology. Officially billed as an offender-based-transaction-statistics system or OBTS, this data processing system makes it possible to keep track of an offender from the moment of his arrest to his final disposition and departure from the criminal justice system.

This computer application can store and generate up-to-the-minute data on an individual offender's status and locale as well as various other information required by a given jurisdiction.

An offender based tracking system can include identification of the volume of activity within the component agencies of a particular criminal justice system and statistics regarding time elapsed between the various processing points.

Thus, in addition to assuring the maintenance of pertinent information on a given individual, the OBTS system offers statistics on processing flows, backlogs and bottlenecks that will be of valuable assistance in policy evaluation and planning operations.

OBTS systems are presently being developed by States as a component of State-level design and implementation of Comprehensive Data Systems for criminal justice agencies. These systems will provide for interfacing with local, state and federal sources of pertinent statistics and information.

#### 4. Control of Court Congestion and Delay

Another area receiving research attention is that of court record gathering, record keeping and communication. Official recording of court proceedings is generally accomplished by shorthand or stenotype techniques. These traditional court reporting services have been plagued by rising costs, manpower shortages and delays in court transcript production.

Circumstances such as the above have led the courts to seek alternate methods of court reporting and communication.

Those methods currently in experimental and testing stages include computer-aided transcription, dial-up visual communication and the Gimelli System of Multi-Track Voice Writing. Computer-aided transcription enables the court transcript to be produced through computer utilization instead of being dependent upon the original stenographer to manually produce a transcript from his or her notes.

The dial-up visual communication system has the advantage of enabling individuals in separate locations to observe and communicate with one another as well as to view and transmit documents from one locale to the other.

The Gimelli System of Multi-Track Voice Writing provides the court with two alternative types of official records an audio record or a transcript, and thus provides an independent verification of the court reporter's transcript.

Since alternate methods for recording of court proceedings are still being tested, we will be dependent upon our present shorthand and stenotype techniques for general use for the present time. In conjunction with the stenotype method, a system of microfilming has been developed that enables rapid access and retrieval of court reporter's notes in the event a transcript is requested. By microfilming the stenotype notes, a more durable method of preserving the notes is achieved than would be the case with the fragile

paper document that is produced on the stenotype machine.

The microfilm form also allows for a considerable reduction in storage needs. Duplicate microfilm copies can easily be produced facilitating a secure off-site storage capability.

The Mayor's Criminal Justice Coordinating Council is presently funding a Decentralized Management Analyst program in the New York City Department of Correction.

To date, this program has conducted a preliminary study of the Department's system for transporting inmates to and from court. The study includes data on vehicle scheduling, utilization, and maintenance. In addition, the transportation route, the central vehicle garage, preventive maintenance, and major repairs were studied in an effort to produce information which would alleviate problems developing from an increased strain on transportation requirements.

The analysts will be conducting follow-up analysis and recommendations, based on the findings of the preliminary study.



### 1. Management, Planning and Analysis

Several management projects have been implemented in the various prosecutors' offices within the City of New York through the application of LEAA funds. The primary objectives of these operations were to reorganize the internal operational structure of those offices through the introduction of professional management personnel and to construct a planning bureau which would produce a capability for modifying the allocation of resources within the office to meet the ever changing demands of the criminal justice system.

Some of the considerations that the respective planning bureaus have dealt with are:

- . Planning for possible reorganization of superior court parts, reallocations
- . Transferral of case calendaring from prosecution to courts administration
- . Adapting office procedures in conformance with projected statutory changes
- . Budgeting and planning allocations of funds consistent with office priorities
- . Compilation of staffing patterns, manpower allocation and work schedules
- . Designing, implementing prosecutor management and information systems
- . Coordination, planning, development of paperflow procedures and case screening criteria in both inferior and superior courts
- . Analysis of entire range of procedural operations.

These programs represent a major thrust forward in an effort to assess the organizational difficulties of the large metropolitan prosecutor's offices through the application of professional managerial capabilities.

## 2. Major Felony Processing

The New York City Criminal Justice Coordinating Council has funded the establishment of Major Offense Bureaus in the prosecutor's offices in four counties.

The Major Felony Processing concept permits intensified prosecution for major felonies exclusive of homicide and narcotics cases, with special emphasis placed on the gravity of the crime and strength of the case. The same assistant prosecutor assigned to present the case to the Grand Jury, usually within 24 hours of arraignment, also carries the case through final disposition. This vertical continuity procedure is primarily responsible for a decrease in median time from arraignment to disposition to an average of 70 days.

The program offers a systematic approach to cases for intensified prosecution. A screening sheet based on a grading point system is prepared in the complaint room during the initial stages of the prosecution. Points are computed on the basis of (a) the nature of the case - number of victims, type of crime, value of stolen property; (b) defendant evaluation - prior convictions, evidence of drug addiction; and (c) the strength of the case - identification, witnesses, and weapons recovered. A specified point total will prompt intensified consideration of the case.

A control group is chosen to facilitate evaluation of the project. Control cases are immediately diverted back into the regular case processing system.

The Major Felony Processing procedure has hit the recidivist the hardest. The screening process effectively isolates such offenders. Furthermore, the deterrent of speedy justice culminating in an almost certain prison sentence may slow the tide of recidivism.

Vertical continuity and prompt prosecution policies assure effective prosecution of serious crime. All delays are minimized by trial readiness to make certain that a defendant cannot use a deteriorating case against him to bargain for an unjustifiably low plea. All analysis indicates that the Major Felony Processing is having the desired impact on the criminal justice system.

3. Case Screening - Early Case Assessment  
and Decision Making Programs - I & II

The correlative problems of excessive post-indictment delay and high dismissal rate continue to plague both the superior and inferior court systems in the State of New York.

While the Major Felony Processing Programs have dealt with the most serious offenses, effectively and efficiently, the bulk of incoming matters are charged and processed by inexperienced assistant prosecutors. As a result many weaker but sustainable cases are dismissed after lengthy delays because case development was not commenced at the intake stage. This research effort attempts to demonstrate that the ability to prepare an effective prosecution decreases measurably with the length of time that elapses from arrest to trial. These factors have contributed to chronic delay and calendar congestion in the courts.

By employing experienced trial lawyers at the complaint room stage with authority to refuse cases and the experience to recognize weaker cases, delays and dismissals can be substantially diminished.

It is estimated that only 25-30% of all felony arrests ever reach the superior court system. This project is designed to deal with the majority of incoming cases as opposed to other projects which are considerably more selective.

Recently it has been proposed that this screening procedure be expanded. The expansion will be known as Phase II. In each county of the City of New York a felony conferencing part will be added to review all cases surviving the preliminary hearing stage. The purpose of this project is to insure that only the most serious cases enter the superior court.

The cases constituting the existing backlog would be reconferenced in the same manner as the incoming matters are handled, with experienced personnel on each side. Crucial to success of the project is a prosecution policy of open disclosure, willingness of the prosecution to achieve negotiated plea settlements and full cooperation of the judiciary.

Both of these projects point up a favorable trend in the cooperation between respective criminal justice agencies. It is anticipated that the projects will facilitate felony case processing while relieving some of the pressure created by the tremendous calendar congestion.

#### 4. Skills of Advocacy

The Skills of Advocacy Program, funded by the New York City Criminal Justice Coordinating Council and implemented by the Queens County District Attorney's Office, had its genesis in the speech delivered at Fordham University by Chief Justice Warren Burger in November of 1973. Justice Burger highlighted the problems inherent in a system that permits all attorneys to try cases without regard to their courtroom experience and ability. This program assures the maximum effectiveness of assistant prosecutors by mandating a comprehensive knowledge of the criminal statutes and skillful training in trial techniques. This goal requires a concentrated course in decisional and statutory law and practice sessions designed to allow attorneys to discover their own errors and learn to correct them.

The Skill of Advocacy Program offers a concentrated on-the-job training course whose curriculum includes, but is not limited to: case screening, motion, practice and trial tactics. Jury selection, witness examination, introduction of evidence, proper opening and closing statements are explored extensively.

Practice sessions, including mock trials, hearings, pre-trial motions and discussions concerning courtroom presence comprise a major portion of the course. A training manual will be prepared for use during the project and then will be made available to other prosecutors.

Prosecutors have an obligation to the People of the State of New York to prosecute all cases within their respective jurisdictions. In order to guarantee the ability of assistant prosecutors to faithfully execute their responsibility, they must be well-trained advocates as well as extensively educated in criminal law. The program outlined is a significant step towards achieving these goals.



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### 5. Video Recordings

This project is oriented heavily towards research and development of videotape technology within the Bronx County prosecutor's office.

This project is designed to test the utility of videotape recordings of defendant interrogations, witness statements and line-up identifications, for use in subsequent court proceedings.

The objective of the use of videotape is to provide the court with an accurate, unambiguous record of the circumstances in which statements were taken and the line-up was conducted while reducing the time involved in resolving legal issues arising out of these proceedings.

The use of videotape recordings in criminal proceedings is relatively new. A variety of legal questions exist with respect to their use, many raising substantial constitutional issues. A secondary objective of the project is to undertake the necessary legal research in order to establish the legality of their use on a regular basis.

This is a project which paves the way for the transfer of new technology to regular court proceedings, hoping to resolve the legal issues associated with the use of videotape recording, work out the technical bugs, and provide a data basis for cost-benefit analysis testing the feasibility of introducing the program in other counties of the City.

## 6. Consumer Frauds

Research into the prosecution of consumer fraud has recently come to be a priority for the criminal justice system. The impetus has been a sharp increase in the volume of consumer related complaints. It is not clear whether this increase is a function of an increasingly educated consumer or a definitive upsurge in this type of criminal behavior.

Nevertheless, prosecutorial response to this type of activity has been understandably subdued. Prosecutors faced with the tremendous increase in violent criminal activity and the accompanying public concern have allocated resources to those areas. The emphasis on the traditional type of criminal behavior has relegated the consumer fraud area to relative obscurity.

This situation has begun to be transformed with the appropriation of LEAA funding, through the Criminal Justice Coordinating Council in the City of New York. The emphasis has been to concentrate on those criminal schemes affecting large numbers of consumers, as registered by the number of complaints either directly received by the prosecutor's office or referred by other criminal justice agencies. This attempt to eradicate systematic criminal behavior has enhanced both investigatory and prosecutorial expertise in this area.

Prosecution efforts have been restricted by the applicable criminal legislative sanctions which center around the larceny statutes. All prosecutions in the State of New York must prove a theft, conforming the proof to this theory. Another problem has been the sophisticated nature of the activity sought to be curtailed. Expert technical testimony is usually required to prove a case.

Evidentiary techniques are being standardized and developed to facilitate prosecution of even the more erudite consumer fraud scheme.

It is reassuring that finally the prosecutors have coordinated their efforts and concentrated the available resources to seek redress in an area of criminal activity that has all members of society as its potential victims.

### 1. Law Advisory Bureau

In April 1975 the New York City Criminal Justice Coordinating Council funded the Legal Aid Society's Law Advisory Bureau to coordinate and assist the Criminal Defense Division training unit in its continuing education program for staff attorneys. The bureau staff consists of attorneys experienced in trial and appellate practice who devote their full time to research and analysis of case law.

This program assists the defense counsel by:

1. Providing staff attorneys with access to experienced attorneys who render assistance on complex issues of law and prepare memoranda of law prior to and during actual trial engagements.
2. Providing a full-time emergency service whereby attorneys on trial could obtain immediate and expert advice on unusual and unexpected legal issues by telephone.
3. Developing procedures to assist the training unit in conducting bi-weekly analyses of recent cases as they bear on trial practice and appellate review.
4. Developing and maintaining a current library of briefs, memoranda of law and "slip opinions" as an additional reference and advisory source to staff attorneys.

The defense of criminal cases has become more complex and difficult, due primarily to rapid changes in the criminal law over the past several years. Another factor is the courts' insistence on formal motion practice, which requires

submission of memoranda of law.

Defense attorneys do not have the time required to fully research issues and explore current trends in the law because of their large caseloads. It has become necessary to develop units such as the Law Advisory Bureau that can assist, advise, and continue the training required by trial attorneys.

## 2. Pre-Sentence Services Group

The Legal Aid Society's Pre-Sentence Services Group was formed in March 1974 under the auspices of the New York City Criminal Justice Coordinating Council to provide teams of trained field investigators and social workers to conduct the necessary background investigation and to prepare pre-sentence memoranda.

Prior to commencement of this project, attorneys in the Criminal Defense Division prepared these memoranda themselves. However, lacking time and the necessary social work skills to conduct a proper investigation of the defendant's background, the attorneys were not sufficiently prepared for the task. The use of social work and investigative professionals has released attorneys to concentrate on the legal aspects of their cases.

Cases are selectively referred to the Pre-Sentence Services Group by staff attorneys after a finding of guilt. Pre-Sentence Services Group services clients convicted of serious crimes who lack credible employment and educational backgrounds and those who may have prior criminal histories. For some clients, Pre-Sentence Services Group memoranda can avert incarceration by providing viable programmatic alternatives; for others, intervention may impact solely by minimizing the penal time to be served.

A first-year evaluation of the project conducted by the Institute of Judicial Administration determined that lighter sentences seem to be given when pre-sentence memoranda are submitted than when none has been submitted. In addition, the data collection methods utilized and the actual data obtained has proven to be accurate and reliable. The program provides members of the judiciary with concrete information presenting choices for alternatives to incarceration, alternatives that will benefit society and the needs of each individual.



### 3. Pre-Trial Services Agency

Perhaps the most important function in the pre-trial process is keeping non-dangerous defendants from punitive pre-trial incarceration, while at the same time assuring their appearance in court. New York City's Pre-Trial Services Agency was established in 1973 as an innovative attempt to impact on the pre-trial process. The agency's stated goals are the reduction of pre-trial detention time of defendants who could be safely released to the community pending trial, the reduction of the failure-to-appear rate of defendants released from detention and awaiting trial, and the development of a city-wide pre-trial services system which provides a variety of services both to defendants and to public criminal justice agencies, thus enabling the entire process to function efficiently, yet equitably.

Program services are broken down into components designed specifically for the type of clients in each. The Release on Recognizance component is predicated upon the assumption that the stronger a defendant's ties to the community, the less likely he is to jump bail. Clients are screened for information relative to their community roots, such as stable residence, close family ties, and steady employment. Clients evaluated as low risks for jumping bail are recommended for Release on Recognizance at arraignment. An independent evaluation has shown that

the Pre-Trial Services Agency recommended approximately 63% of all defendants for Release on Recognizance and that 42% of the defendants were, in fact, released on their own recognizance at arraignment. The judiciary has agreed with the agency recommendation for release in 51% of the cases, and agreed in 79% of the cases where Pre-Trial Services Agency has recommended against release on recognizance. Only 9% of all Pre-Trial Services Agency scheduled appearances were not met by defendants.

The Supervised Release component involves the release of certain high-risk defendants without bail under special conditions of supervision. Defendants selected for this program are provided with a package of services which includes counseling, job training, and supervision by a cooperating community group.

Organizational models and operational procedures are currently being tested to determine the best method of pre-trial release and provide a model for city-wide expansion of the program. Controlled experiments will enable the Pre-Trial Services Agency to determine whether it may appropriately assume additional functions in the pre-trial process.

#### 4. Training-Professional

The Legal Aid Society of the City of New York has implemented an extremely effective training effort which encompasses both training of newly appointed personnel and continuing education of staff attorneys.

Full-time staff personnel train incoming groups of prospective defense attorneys in the nuances of statutory, decisional and trial practice principles. The theoretical aspects of the training are integrated with both simulations and on-the-job training. The on-the-job training is accomplished by interspersing experienced personnel with the novice personnel.

Continuing education efforts have produced periodic seminars in topics of interest or specialization as well as lectures on newly enacted statutes. Periodically, pamphlets of decisional law and information germane to the defense of criminal matters is provided to defense counsel.

As previously mentioned, the public defender organization is particularly amenable to this type of information dissemination and training.

#### Training-Para-professional

The Para-professional Training-Unit within the Legal Aid Society was funded by the New York City Criminal Justice Coordinating Council as a training unit for the

para-professionals, aides and investigators within the Criminal Defense Division.

As a result of this grant, all new employees in the above mentioned title receive an orientation program to familiarize them with the Legal Aid Society, the criminal justice system in New York City, its administrative rules and regulations, and the terms of their employment.

The unit has developed an on-going core curriculum keyed to the indicated job titles, including prison legal assistants, legal service assistants, field investigators and case aides, investigative aides, statistical assistant social workers, and similar staff throughout the Criminal Defense Division. Techniques used in this training course include lectures, seminars, examples of interviewing and mock trials. Also included is a continuing education program for Investigative Aides to prepare them for transition to Investigator status. A program of this nature will develop in-house expertise in training methodology and application, promoting a greater understanding of the defense role by the non-lawyer staff.

IV. CONCLUSION

This report attempts to summarize some of the current thinking in the area of court operations. The suggestions made in the document do not require massive infusion of new funds, but they do necessitate a courageous restructuring of the entire criminal justice system.

The report attempts to view the criminal justice system as a whole. The solutions proposed in this document are intended to be integrated with each other to form a cohesive approach to the problem of case processing. Criminal justice experts believe that if one area of the system undergoes radical change, the shock waves created by those changes affect all the other components of the criminal justice system. Therefore, any proposed alteration in the method of handling criminal cases must be weighed against its impact on the other components of the system. Although the report concentrates on criminal case processing because of the immediate problems to be found in the court system, the result of implementing the proposed changes will be felt throughout the system.

The decriminalization of certain victimless crimes will increase the public's confidence in the law, decrease the use of police officers as guardians of public morals while allowing them to concentrate on the job of protecting the people they serve, allow for a radical redistribution of

manpower and talent in the court system, and relieve the overburdened correctional institutions. Clearly, the reform of certain of the present penal laws will allow for a rebirth in confidence in the criminal justice system.

In the same manner, the procedural reforms proposed in the document will streamline present court operations. In turn, the increased efficiency of the courts will encourage the public to change its present attitudes toward the system. The ricochet effect of this increased confidence in the court system will be felt in the closer cooperation the public will give the law enforcement establishment.

These beneficial results can be demonstrated for each of the proposals made in the document. It suffices to say, however, that one positive reform will be felt throughout the criminal justice system, and many of the suggestions made in the document, should they be enacted, will serve to rejuvenate the entire system.

It must be added that many of the recommendations compiled in this report have been made by others previously. It is sad that they need to be reiterated at this late date. But, the suggestions have yet to be implemented. The pressures for change have obviously not offset the resistance to modify the traditional methods of case processing, but the situation has now become critical. There is no time to

wait. Action must be taken before the system breaks down entirely.

What makes this report different from others which have been released in previous years is that it does not call for new funds but rather for increased productivity of the system's limited resources. In this respect, the report is an immensely optimistic document. Its theme is that the system can develop the capability of helping itself without the need of external assistance. The report demands that the truly capable people within the system devote their attention and energies to adopting new approaches and new ideas so that the system may overcome the seemingly insoluble problems confronting it today.

**END**