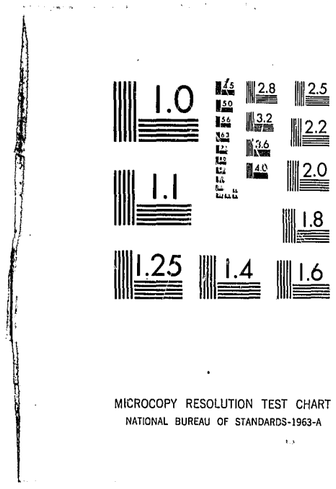

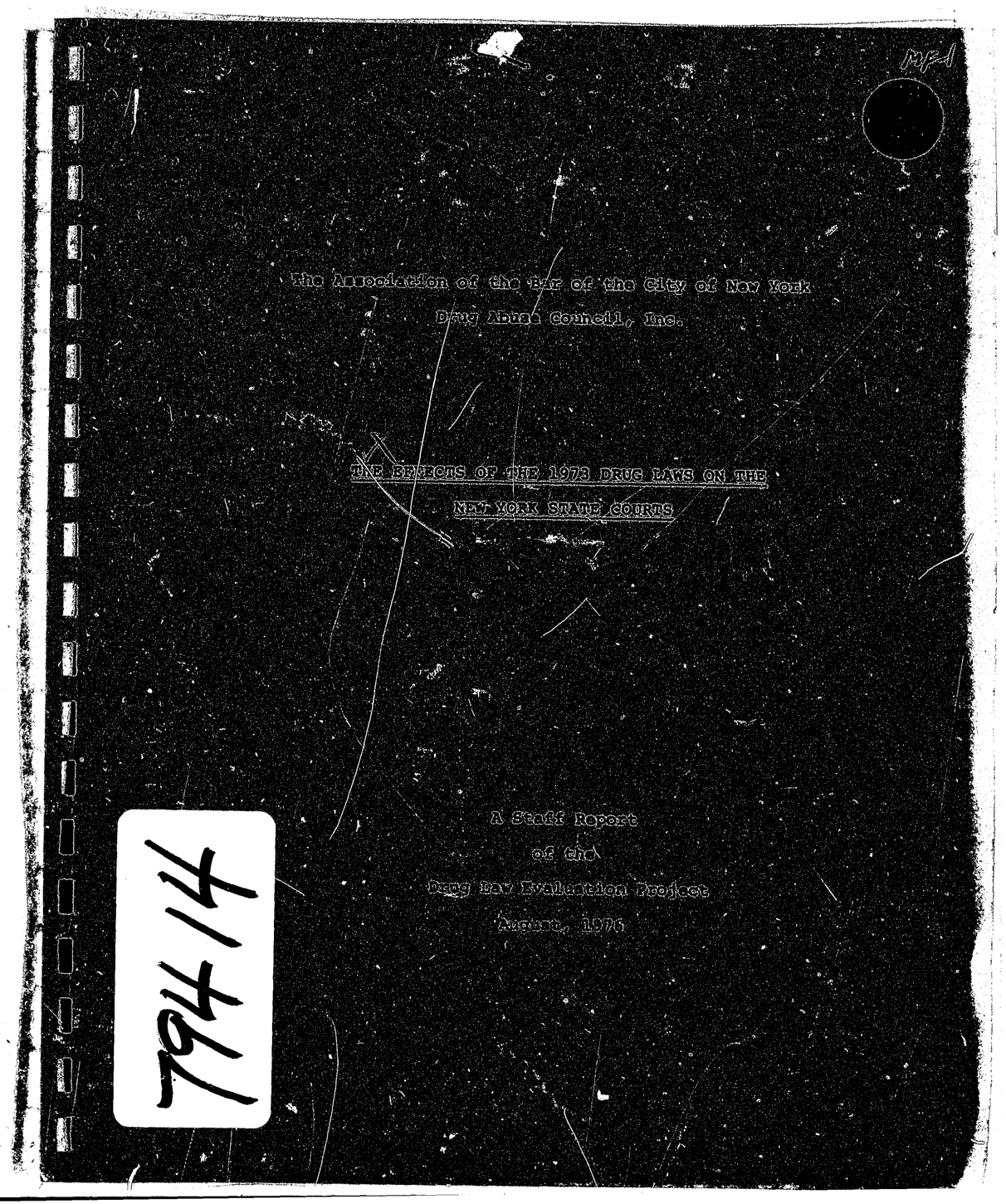

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ACKNOWLEDGEMENTS

In preparing this Report, practitioners in the criminal justice systems throughout the State of New York were consulted, and a large number of police officers, judges, prosecutors, court planners, and defense attorneys contributed to our understanding of their work. Our thanks and appreciation to all of them.

The two most wide-ranging sources of data used in this Report are the New York State Division of Criminal Justice Services and the Office of the New York City Administrative Judge. Without the continuing interest and assistance of Commissioner Frank Rogers of the Division, and Justice David Ross, the City's Administrative Judge, this work would not have been possible.

Comments on earlier drafts by Robert Kasanof, Joan Leiman, and Franklin Zimring were extremely constructive. Steven Brill made numerous helpful suggestions for improveing the presentation.

On the staff of the Drug Law Evaluation Project, Joseph Bauman contributed most importantly to the draft materials and was also responsible for organizing the data collection effort and subsequent analysis. Richard Jurges contributed drafts of some portions of the Report. Richard McGahey and Elizabeth Stanko assembled the information from a wide variety of sources and conducted much of the analysis. Laura Allen was assisted by Andrea Pedolsky in producing numerous drafts of the Report.

SECTION 1

The Effects of the 1973 Drug Laws on the New York State Courts

INTRODUCTION

Comprehensive revisions of New York State's drug laws became effective on September 1, 1973. The new statutes reclassified many drug crimes as high degree felonies, made prison sentences mandatory upon conviction for many drug crimes, restricted plea bargaining by defendants indicted for drug crimes, and reinstituted recidivist sentencing provisions in New York State. Under these latter provisions, prior felons newly indicted for a felony face new restrictions in plea bargaining, and prison terms must be imposed upon conviction.*

The Association of the Bar of the City of New York and the Drug Abuse Council, Inc. formed the Committee on New York Drug Law Evaluation late in 1973 to evaluate the effects of these revisions. The Committee's staff is addressing a variety of issues raised by the new provisions.

This is a Report of the staff and not of the Committee.

The degree to which the 1973 drug and sentencing laws can be judged successful will depend ultimately on their effects on street crime and drug abuse, effects which can

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*The recidivist sentencing provisions are referred to as "predicate felony" provisions in this Report.

occur in two ways. The laws might work to deter would-be drug abusers and other offenders by increasing the risks of committing crimes, an effect sometimes called "general deterrence." The laws could also be effective in reducing drug abuse and other crimes if they resulted in the imprisonment of offenders who would commit additional crimes if allowed to remain at large, a result known as the "incarceration" or "incapacitation" effect, or as "specific deterrence."

Neither deterrence nor incarceration can be expected to operate automatically after a law is enacted. The new laws may or may not prove to be an effective deterrent, but deterrence is not likely to be enhanced unless the likelihood of punishment can be increased. Similarly, incarceration effects cannot be significant until substantial numbers of offenders are actually sentenced to prison.

This report assesses the success achieved by the courts in creating a credible deterrent over the two year period for which data are available. It is concerned primarily with implementation of the statutes dealing with drug offenses -- possession or sale of dangerous drugs. Many of the same issues are relevant to the predicate felony sentencing sections of the 1973 laws. However, sufficient information is not yet available to permit a thorough examination of those provisions.

It is important to stress that whatever the courts are able to do in carrying out the objectives of the laws, they can only provide a limited role in the complicated process of deterrence and incarceration. They cannot, for example,

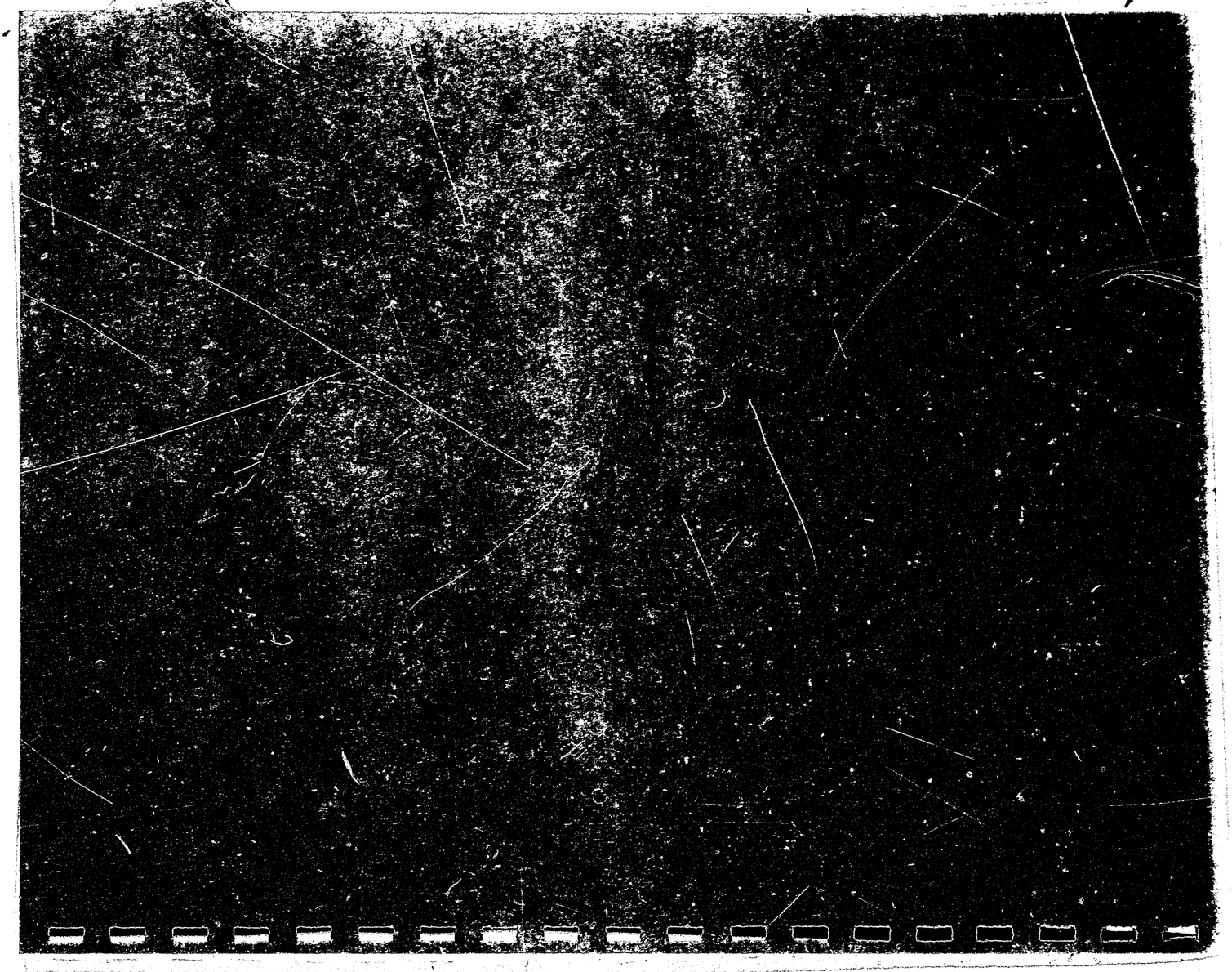
directly change the would-be drug abuser's perception of how likely he is to be arrested and go to prison, a factor which is crucial to establishing deterrence. To repeat, a final judgement on the effectiveness of these laws must await an evaluation of their effect on drug abuse and drug-related crime. Future reports of the Project will cover both these subjects.

The State's court system is dominated by the concentration of resources in New York City. The 117 criminal term judges operating within the City account for roughly 60% of the State's total superior court resources for criminal cases. The remaining judges are divided among 57 counties, with the heaviest concentrations in Nassau County, adjacent to New York City, and Erie County, which includes the city of Buffalo. The problems faced by judicial administrators in New York City are unique in the State, and a large part of this Report deals with the New York City situation.

Developments in six other counties are summarized to provide a range of experiences which together are probably representative of most court systems in the State.

The findings reported here are based on several sources of information. The Project staff conducted interviews with officials responsible for the administration of the criminal justice system in each county for which data were gathered. Discussions were held with the district attorney or the assistant district attorney responsible for the prosecution of drug cases, with administrative judges, with personnel in public defender offices, and with police officials.

SECTION 2



SUMMARY OF FINDINGS

Implementation of the 1973 drug and sentencing laws would be judged successful if: (a) the risk of punishment facing offenders increased to make the deterrent potential of law more powerful; (b) the number of offenders sentenced to prison increased to remove potentially dangerous criminals from society; and (c) the speed with which cases are processed improved so that swiftness of punishment accompanies certainty of punishment.

During the first two years the new drug and sentencing laws were in effect, none of these key indicators of successful implementation have been evident: (a) the risk of punishment facing offenders did not increase noticeably; (b) the number of drug offenders sentenced to prison declined; and (c) the speed with which cases were processed did not improve. Both in 1974 and 1975, there were fewer dispositions, convictions, and prison sentences for drug offenses in New York State superior courts than there were in 1973. However, 1975 was in several respects a more "normal" year than 1974 -- particularly with respect to processing drug cases in New York City -- so that some of the implementation problems may finally have been overcome.

In spite of the slow pace of implementation, over 1000 offenders have been sentenced to indeterminate "lifetime" prison terms for drug felonies in the two years the laws have been in effect, so that a significant number of individual offenders have been affected by the new laws (see Table 2-I).

A total of roughly $55 million had been spent on court-related resources to implement the laws by the end of 1975.

Credibility of the Deterrent (Section 3)

Increasing the risk of punishment facing offenders

TABLE 2-I

Drug Cases in New York State Superior Courts Before and After Implementation of the 1973 Drug Laws

	1972	1973	1974	1975***
Indictments	7,528	5,969	6,208	5,340
Dispositions	6,991	5,580*	4,368	4,587
Convictions	6,033	4,739*	3,251	3,095
Prison Sentences	2,039	1,561*	1,074**	1,433
(As a percentage of Convictions)	33.8%	32.9%	33.0%	46.3%
Mandatory "Lifetime" Sentences	N.A.	0	315	817

N.A. = Not applicable

*Estimates by the Drug Law Evaluation Project.

**Of these, an estimated 529 came in new law cases, and 545 in old law cases.

***Full year estimated on the basis of data for the first nine months.

Source: New York State Division of Criminal Justice Services

depends on actions of the courts, on the effectiveness of the police, and on the willingness of the public to report crimes. This Report focuses primarily on the role of the courts. A discussion of police policies is contained in Section 5.

Mandatory prison sentences as prescribed in the 1973 drug laws can be imposed only after a conviction in a superior (felony) court. But only about one of every five arrests for drug felonies results in a conviction for a felony in superior court. The role of the courts in sentencing is limited to that small proportion of arrests. And the arrests themselves represent a small share of the drug crimes which are actually committed.

The contribution of the courts in creating a credible deterrent improved sharply in 1975 after having declined during 1974, the first year the new laws were in effect. During 1974, the likelihood of a prison sentence following conviction for a drug crime did not increase above old law levels because it took very long to process the most serious new law drug cases. Last year, however, nearly half the convicted drug offenders were sentenced to prison compared to a third in previous years. There were an estimated 1,433 prison sentences in 1975 compared to less than 1,100 in 1974

But because it took so long to dispose of new law cases, there were still far fewer dispositions of drug cases in 1975 than in 1973, and the rise in the frequency of prison sentences in 1975 still left the total number of prison sentences below the number of sentences imposed

in 1973, when an estimated 1,560 defendants went to prison following conviction on old law drug charges. The backlog of drug cases increased during 1975 despite a reduction in the number of new indictments.

The rise in the frequency of prison sentences in 1975 was not enough to make a significant difference in the risk of prison facing offenders committing drug crimes. That risk is still less than one chance in a hundred of receiving a prison sentence from a superior court.

Because of the absolute decline in the number of prison sentences in drug cases during 1974 and 1975 compared to 1973, any beneficial effects the laws might have in terms of crime prevention (through the incarceration of dangerous offenders) have probably not been realized. Sentences imposed on drug offenders have increased in severity. While in 1973 and 1974 old law cases, minimum sentences of over one year were rare -- they applied to between five and ten percent of the cases Statewide -- a third of the new law offenders in 1974 received sentences with minimums of over one year. These sentences are for indeterminate periods, and no reliable information is currently available regarding the length of time those sentenced to prison will actually serve.

Indications are that court systems outside New York City adjusted to the new laws after about one year, and that the New York City courts achieved a balance between indictments and dispositions about two years after the laws became effective. It is estimated that when the difficulties of implementing the new laws are fully overcome, the laws will be responsible for between 500 and 1,000 new prison sentences a year throughout the State.

The Speed of Justice (Section 4)

Outside New York City, the courts have generally been able to manage new law drug cases without an increase in the average time it takes to process a case. By contrast, there appears to have been a significant increase in court delays in New York City.

A recurrent theme in this Report involves the effect of class A felony drug cases upon the ability of a court system to cope with the new drug laws. Class A cases are those which face the greatest restrictions in plea bargaining. Most offenders convicted of class A felonies must be sentenced to prison for indeterminate periods ranging from one year to life. In addition, lifetime parole follows release from prison in all class A cases. The plea bargaining and sentencing restrictions increase the time required to process these cases.

In New York City, class A cases predominate, with 75% of the drug indictments falling into this serious category. Elsewhere in the State, class A cases account for only 25% of drug indictments. It is this difference which explains the relative ease with which counties outside New York City have managed the drug law workload.

Enforcement Policies (Section 5)

The 1973 drug laws recategorized drug offenses by lowering the quantity of drugs required to classify a crime as a serious felony. At the same time, penalties which could be imposed for drug felonies were also increased drastically Police might well have reacted to these changes by concentrating enforcement efforts on relatively low level drug crimes, crimes which had been given increased importance by the Legislature.

We have found no evidence of the reordering of police priorities in the counties we examined.

In New York City, where the possibility for street-level enforcement is greatest because of the large volume of highly visible drug traffic, the Police Department decided to maintain its policy of concentrating resources against "middle and upper" levels of the drug distribution system. The adverse effects that the new laws have had on the New York City courts, even in the absence of increased arrest activity, suggest that large numbers of additional arrests would have led to a crisis in the courts.

Two other aspects of enforcement have been examined. It is the consensus among the State's police officials and prosecutors that the new laws have helped them to develop informants in drug cases. Fears to the contrary had been expressed by some police officials when the laws were first proposed. Despite tough restrictions, there is apparently enough flexibility left in pleading and sentencing to induce some offenders to cooperate with law enforcement agencies.

Finally, an examination of indictment activity by prosecutors indicates no noticeable changes in the frequency with which indictments have been sought in drug cases. This possible loophole for avoiding post-indictment plea restrictions has apparently not been used.

However, a recent movement toward a lenient indictment policy for some drug cases by the Special Narcotics Prosecutor in New York City may change this result markedly.

The Effects of the New Laws on the New York City Courts* (Section 6)

New York City, which faces the greatest narcotics problem in the State, has had the most difficult time managing the new law caseload. Backlogs of new law cases have built up more quickly in New York City than elsewhere in the State. It was not until the last quarter of 1975 that the backlog stopped growing, and the size of the backlog was then equivalent to ten months worth of drug indictments.

Backlogs have grown this large in spite of the addition of 31 new judges assigned to deal with new law cases, furnished at an annual cost of $23 million.

The failure of the New York City courts to deal effectively with the new law drug cases can be traced to several factors. The great predominance of class A cases has caused a sustained increase in the demand for trials unmatched elsewhere in the State. Compared to 218 drug trials and a trial rate of 6.5% in drug cases in 1973, 13.5% of drug cases resulted in trials during 1975 (370 trials). Among class A cases, 19.5% resulted in trials during 1975.

Trials are extremely expensive to conduct. In New York City, it takes an average of six days or more of court

*The superior criminal court in New York City is the Supreme court. Elsewhere in the State, it is usually the County Court, although in some instances it may also be the Supreme Court.

time to dispose of a case by trial. Dispositions by plea are possible in a fraction of that time. The average non-trial disposition takes between half a day and four-fifths of a day to accomplish. Because trials are so costly in terms of court resources, it is vital that the scarce trial resources that are available be allocated to the most serious cases.

Even after allowing for the rise in drug trials, however, the new courts did not match the productivity -- measured in terms of the number of cases disposed of per working day -- of the existing City courts. If they had, the additional courts would have been nearly sufficient to avoid a buildup of the backlog. But because cases appeared on court calendars many more times before they were disposed of in the new courts compared to the existing court, even cases which did not ultimately result in a trial took significantly more court time than cases processed in the existing courts.

In addition to the increased demand for trials and lagging productivity, there were several hundred cases assigned to the new courts during 1974 which aggravated the pressure on those courts. The assignment of "potential predicate felony" cases to these courts -- cases in which a defendant had a prior felony arrest but not necessarily a prior felony conviction -- increased the workload of the new courts and contributed to the growth of the drug case backlog.

The Effects of the New Laws on the Superior Courts in Six Upstate Counties (Section 7)

In contrast to the New York City situation, the courts elsewhere in the State have been generally successful in

managing new drug cases. The success is due in large measure to differences in the nature of the drug abuse problem, at least as it affects the criminal justice system.

Outside the City, nearly half the convictions for drug offenses involved marijuana in 1973. In 1974, partly because of a lag in processing class A cases upstate, marijuana accounted for nearly 60% of drug convictions in superior courts. (In the City, marijuana accounted for only 15% of convictions in both 1973 and 1974.) In 1973, only 35% of drug convictions upstate involved heroin or cocaine, compared to 75% of all City convictions.

Consequently, the prevalence of class A cases, most of which involve heroin (and to a smaller extent also cocaine), is much less upstate. While the class A cases in the City serve to increase the demand for trials substantially as described above, those pressures are not as great upstate.

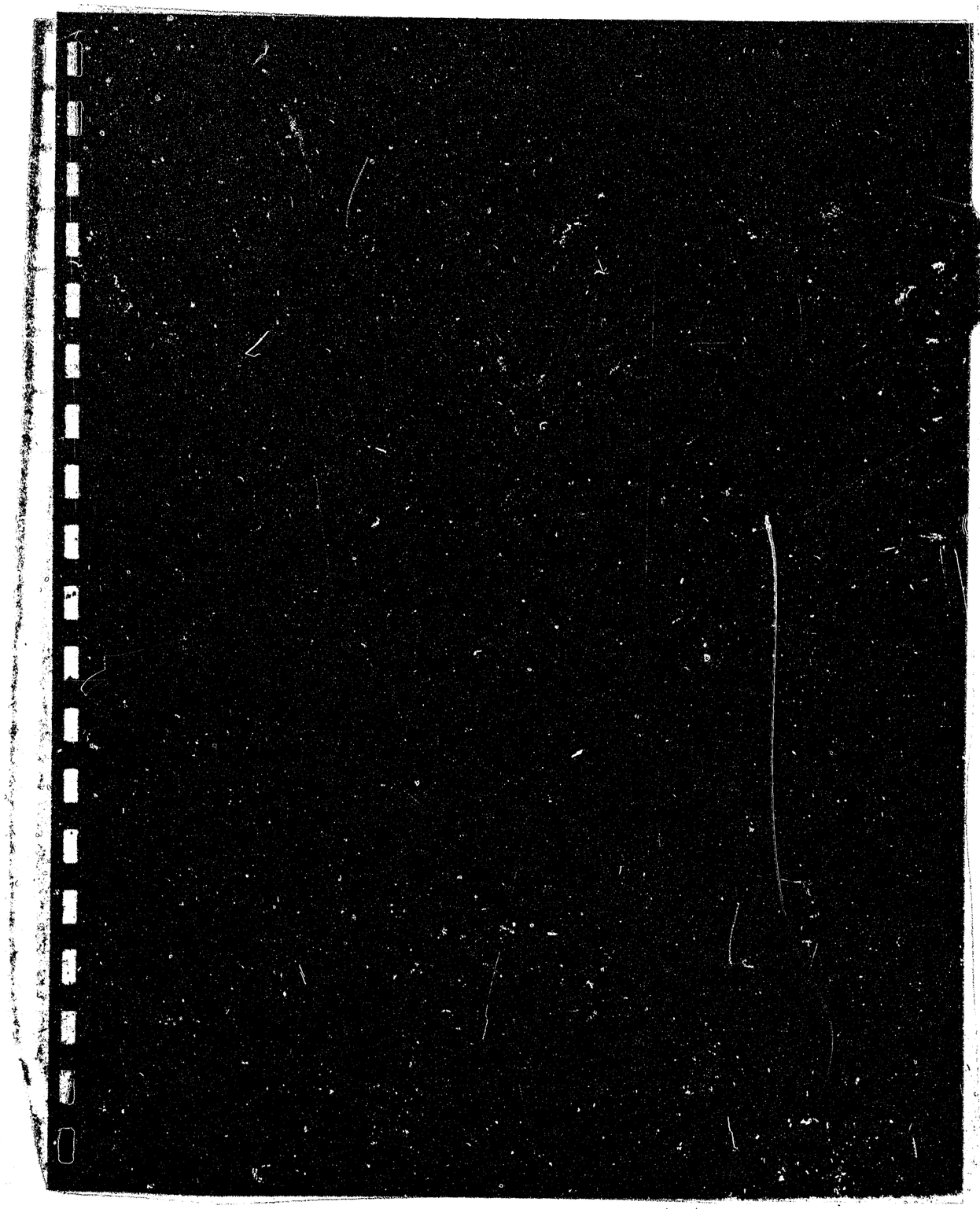
The relative scarcity of class A cases has, in general, permitted the upstate counties to manage the new law drug workload without significant increases either in their backlogs or in the time it takes to dispose of a drug case.

A Cross-County Comparison of Court Resources (Section 8)

The fact that the City has done so much worse than other counties in coping with the new laws suggests that a higher proportion of the new resources could have been productively employed in the City.

On the other hand, when the total workload -- drug and non-drug cases -- facing the City courts is compared to the total workload in other counties, there is no indication that the City has been short-changed. This conclusion is based on a comparison of the volume of indictments adjusted for the size of the court system in each county. The finding holds even after differences have been accounted for between counties in trial rates and in misdemeanor dispositions taken in superior courts.

The great difficulties which the New York City courts have faced over the years is due in part to the sheer size and complexity of the City system -- there are currently 117 Supreme Court judges sitting in 20,000 criminal cases per year. Solution of these basic problems will require that the development and application of modern management techniques, which have been started and are supported by the administrative judge, be supported by the appropriation of suitable funds over a period of years.



THE CREDIBILITY OF THE DETERRENT

For laws to become effective deterrents, they must have an effect on the behavior of would-be offenders.

The discussion in this section deals with the potential deterrent power of the laws rather than the result of the behavioral process. Changes in potential deterrence are measured here as changes in the objective probability of punishment, that is the arithmetical ratio of prison sentences to crimes actually committed. The first part of this section presents estimates of the likelihood of a prison sentence (in superior court) following a felony arrest. A subsequent part of the section discusses the likelihood of punishment in terms of actual crimes on the street.

This section does not establish the odds as perceived by the individual criminal but the odds as measured by the aggregate experience of offenders in the judicial system. The effect on behavior will depend on the extent to which aggregate experience influences individual perception. It should be kept in mind throughout the following discussion that the objective of risk of imprisonment is not the same as the perceived risk and may or may not have an independent effect on criminal behavior.* Future work of the Project will attempt to gauge the perception of drug abuse toward

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*On all this see the comprehensive work by Franklin Zimring and Gordon J. Hawkins, Deterrence, The Legal Threat in Crime Control. The University of Chicago Press, 1973.

risk of punishment.*

The Results**

Implementation of the 1973 drug laws had not resulted in a measurable increase in the likelihood of punishment for either drug or non-drug offenses by mid-1975. This result is not surprising because even if implementation had been more successful, the potential for increased deterrence may be small because the laws focus on the sentencing stage of the criminal justice process, and few crimes reach this very last stage in the adjudication process.

*Even the connection between perceptions of risk and behavior is not direct. For a single individual, changes in perception do not necessarily imply changes in behavior. For a large group of individuals, changes in behavior are more likely to follow changes in perceptions. It is possible that perceptions of risk might change without any change in the objective likelihood of punishment. A successful advertising campaign may bring about this result.

**Several additional qualifications apply to this formulation. First, these remarks refer only to the "general deterrent" effects that might be expected to affect the population and would-be offenders. The "specific deterrent" effects, resulting from the incarceration of individual offenders, must be examined separately to determine how many crimes may be avoided by incarcerating offenders. Second, this discussion of the likelihood of punishment does not refer to the results of the deterrent process on the prevalence of drug abuse and crime. Rather, changes in the objective probability of punishment measure changes in one input to the deterrent process. Trends in drug abuse and non-drug crimes are being evaluated separately. Third, limitations in the available data restrict the measurement of the true probability of punishment to less-than-perfect approximations (see Appendix II for a description of the information gaps). The most serious piece of missing data is the frequency with which felony arrests lead to a prison sentence in a lower court. Rates of imprisonment in the lower courts may be affected by the new laws if pleas are induced in these courts because the defense doesn't want to risk longer prison terms which would result after conviction in a superior court. The fact that indictment rates in drug cases have not fallen recently suggests that this effect has not been substantial (see Section 5).

The likelihood that a defendant arrested for a drug or non-drug felony would ultimately be convicted and sentenced to prison in a superior court declined during 1974 after having increased between 1970 and 1973. There are indications that the likelihood of a prison sentence had increased again during 1975.

The finding that the risk of punishment (following a felony arrest) was not increased holds both in New York City and, generally, in upstate jurisdictions. Failure to increase the frequency of prison sentences in drug cases during 1974 can be traced to the lack of success in processing class A felony cases, the cases which are subject to the most stringent restrictions on plea bargaining and mandatory sentencing. These difficulties can, in turn, be attributed in large part to a rising demand for trials, which is discussed in Sections 6 and 7. As the following table shows, class A cases were completed in greater number in 1975, and contributed to the increase in the frequency of prison sentences.

Statewide Disposition of Class A Indictments

	All Class A Indictments	All Class A Dispositions	Number of Prison Sentences
1974	3,007	620	325
1975*	2,934	1,694	859

*Full year estimated on the basis of data for first nine months.

Source: Felony Processing Report, New York State Division of Criminal Justice Services.

In New York City, where there are a great many class A cases, these cases contributed most to the buildup in the backlog of drug cases in the Supreme Court. Upstate, where there are relatively few class A cases, the few that do occur are not sufficient to significantly raise the overall rate at which offenders are sent to prison. But, even upstate, the disposition of class A cases lagged behind the disposition of other drug cases in the superior courts.

Estimates of the Likelihood of Punishment*

The likelihood that a defendant arrested for a drug felony would ultimately be sentenced to prison in the superior courts varies between jurisdictions, but most counties experienced increases over the 1970-1973 period (see Table 3-I).

Among the larger jurisdictions (New York City and Erie, Monroe, and Nassau counties), the likelihood of receiving a prison sentence varied widely, between two percent and 16%, but patterns within jurisdictions were fairly clear. Erie County has consistently had the lowest

*The probability of punishment cited here is calculated as the composite of three intermediate probabilities: (1) the likelihood of indictment following a felony arrest; (2) the likelihood of conviction following indictment (conviction to either a felony or a misdemeanor); and (3) the likelihood that a prison sentence will be imposed following conviction (for either a misdemeanor or a felony). These intermediate probabilities were examined to determine how frequently they contributed to changes in the probability of punishment. Each of the three intermediate probabilities contributed to changes in the probability of punishment in about the same number of cases so that in general no one of them was more important than any other.

TABLE 3-I

Ratio of Prison Sentences to Arrests:
The Likelihood of Receiving a Prison Sentence
in Superior Court After a Felony Drug Arrest

COUNTY	1970	1971	1972	1973	1974	Jan.-June 1975
ALBANY	0.7%	3.1%	4.7%	4.4%	8.0%	N.A.
BROOME	0	4.0	8.9	16.7	7.1	7.9%
DUTCHESS	1.1	5.9	16.9	8.2	5.3	18.1
ERIE	3.8	2.2	2.0	2.6	3.1	N.A.
MONROE	8.7	10.6	5.5	6.4	6.4	N.A.
NASSAU	8.3	16.0	14.4	10.1	6.1	12.0
NEW YORK CITY	8.6	7.6	12.4	12.9	9.6	12.5

TABLE 3-II

Ratio of Prison Sentences to Arrests:
The Likelihood of Receiving a Prison Sentence
in Superior Court After a Non-Drug Felony Arrest

COUNTY	1970	1971	1972	1973	1974	Jan.-June 1975
ALBANY	4.7%	5.6%	7.4%	11.1%	8.0%	N.A.
BROOME	7.6	10.4	11.5	16.1	14.3	20.9%
DUTCHESS	7.7	7.3	11.7	13.2	9.6	12.5
ERIE	7.1	5.7	6.4	9.4	8.3	N.A.
MONROE	12.8	11.3	11.6	10.3	11.2	N.A.
NASSAU	11.3	12.0	18.4	23.0	16.6	20.0
NEW YORK CITY	8.3	6.9	8.4	9.3	7.7	9.9

N.A. = Not available

Source: New York State Division of Criminal Justice Services

probability of punishment (between two and four percent); Monroe County is generally in the middle with prison probabilities of between six and eleven percent; Nassau County and New York City exhibit generally higher probabilities of punishment. The three counties in our study with the smallest populations (Albany, Broome, and Dutchess) had too few felony drug arrests to establish a pattern. Many of the extremes in the probability of punishment occurred in these three counties.

Several officials from non-New York City areas remarked to us that they felt the 1973 drug laws were aimed at curbing the lenient judicial policies thought to be prevalent in New York City. Our results show that for drug felony arrests, the likelihood of prison sentence is just as great in New York City as in the other jurisdictions. In 1974, New York City's likelihood of punishment was higher than in any of the other six jurisdictions. In no year for which we have data did New York City rank below third in the likelihood of prison sentence for drug offenses.

Four of the seven jurisdictions (including New York City) showed decreases in the probability of punishment for a drug felony during 1974; in a fifth (Monroe County) there was no change; and two counties (Albany and Erie) experienced increases (See Table 3-I). All four of the jurisdictions for which we have data covering the first half of 1975 showed increases above 1974 in the likelihood of a prison sentence after a felony drug arrest. It now appears that 1974 was a year of transition to the new

laws, with a major interruption in the flow of cases traceable to difficulties in processing class A cases. A return to more normal patterns of disposition and sentencing was evident in 1975.

Between 1970 and 1973 there was a definite trend toward an increase in the probability of punishment for non-drug felonies. Only Monroe County did not exhibit this upward trend, and there the risk of a prison sentence was virtually constant (see Table 3-II).

Since 1970, Nassau County has shown the highest probability of punishment for non-drug felonies.* Broome County had the steadiest increase in the probability of punishment with increases from 8% in 1970 to 21% in the first half of 1975.

New York City's ranking has not been as high for non-drug offenses as it has been for drug crimes, with the likelihood of punishment falling generally in the lower tier among the counties. In contrast to its high ranking during 1974 for drug crimes, the probability of a prison term following a non-drug arrest in New York City was the lowest of any of the seven jurisdictions (about eight percent), but only imperceptibly lower than in Albany and Erie counties. Albany and Erie counties showed

*But Nassau also had a high proportion of misdemeanor convictions in superior court. See "A Cross-County Comparison of Court Resources," below.

lower probabilities than New York City between 1970 and 1972, but caught up with the City's rate of punishment in both 1973 and 1974.

In New York City since 1970, drug offenders received prison sentences more frequently than non-drug offenders. Just the opposite is true in each of the six counties outside the City. We can speculate that the contrast is due to the relatively serious nature of drug offenses which come to the attention of the courts in the City, i.e. offenses involving heroin where the likelihood of non-drug criminal activity of the defendant is thought to be high.

Six of the seven jurisdictions experienced a break in the upward trend toward imprisonment in 1974, as the likelihood of punishment for non-drug felonies declined (Monroe County was again stable). However, all four jurisdictions for which data are available for the first half of 1975 (New York City and three other counties) experienced a resumption of the earlier trend, with the City and Broome County reaching new highs.

Each of the upturns in the first half of 1975 was accompanied by increases in the frequency with which convicted defendants were sentenced to prison.

The Potential in the New Laws for Raising the Risk to Offenders is Limited

Even if the new laws could have been implemented quickly without delays and higher backlogs (both of these trends are documented in following sections), the chance of increasing the deterrent power already present in existing law would be limited because of the very small risk presently facing those engaged in crime.

In contrast to the estimates of punishment probabilities cited above, which use felony arrests as a base, the discussion in this sub-section deals with the likelihood of punishment following an actual crime.

Typically, the number of offenders convicted (either by trial or plea) in superior courts account for only 15-20% of defendants arrests for felonies. The reduction occurs because most arrests do not result in indictments, and a significant proportion of those that do lead to indictments result in acquittals or dismissals (see Chart 3-A).

Compound this dilution in the courts with the facts that (1) only 20% of all complaints to the police lead to an arrest (a typical arrest rate both in New York City and elsewhere in the county), and that (2) citizens only report half the crimes (with victims) that really occur,* and it is striking what a small number of felonies eventually lead to a conviction in superior court.** The final tally

*U.S. Department of Justice, Law Enforcement Assistance Administration, Criminal Victimization Surveys in the Nation's Five Largest Cities. (Washington,D.C.: 1975),pp. 61,62.

**These figures are for non-drug felonies in New York City, where data exists for complaints and for criminal victimizations. The values might vary from place to place, but probably not enough to change the conclusion that the risk facing an offender is low.

Chart 3-A

The Gradual Reduction in the Risk of Imprisonment

Non-Drug Felonies

All non-drug felonies	100%									
	x									
Felonies reported to the police	50%	=	50%							
			x							
Arrests for known felonies			20%	=	10%					
					x					
Indictments following arrest					25%	=	2.5%			
							x			
Convictions in superior court							60%	=	1.5%	
							x			
Prison sentences after conviction							60%	=	0.9%	

Drug Felonies

All drug felonies	100%									
	x									
Felonies reported to the police	1%	=	1%							
			x							
Arrests for known drug felonies			40%	=	0.4%					
					x					
Indictments following arrest					35%	=	0.14%			
							x			
Convictions in superior court							60%	=	0.08%	
									x	
Prison sentences after conviction									60%	= 0.05%

Source: Estimates by the Drug Law Evaluation Project based on 1975 data for New York City.

comes to 1.5-2% of non-drug felonies actually committed. (Some felony arrests lead to a prison term in a lower court after the charge has been reduced to a misdemeanor, i.e. prior to indictment. We estimate that these prison sentences add roughly 0.5% to the 1.5-2% range cited here.) A comparable figure for drug felonies would be much lower because so few drug crimes are reported to the police. Use of official statistics on complaints to the police of drug offenses would severely understate the true prevalence of drug crimes.* Laws dealing with mandatory sentencing in the superior courts can only operate on this two percent of crimes.

Nothing in this study addresses the question of the deterrent effect of the old drug law, or, for that matter, of any other section of the Penal Law which did not change. A very low risk of punishment may be sufficient to deter most would-be offenders. The question at issue is whether the change in risk is effective in deterring additional would-be offenders.

Changes in the risk of engaging in crime depend on changes in what is now a two percent likelihood of being sent to prison as a result of committing a crime.

Approximately one-third of those convicted in the superior courts of the State in 1972, 1973 and 1974 were sentenced to prison under the old drug laws. These prison terms represent far less than one percent of drug crimes which are actually committed.

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* A subsequent report of the Project will examine changes in the prevalence of heroin abuse, which with some caution, can be used as a proxy for movements in the most serious drug crimes.

Eliminating all discretion from the sentencing process, and imposing prison terms after every conviction, would change the cost of conviction substantially (from less than a 50% chance of prison to 100%), but the risk involved in committing a crime would only be changed from the one percent it is today to two percent.

We project that when backlogs have stabilized, i.e. when class A dispositions occur with the same regularity as class A indictments, approximately 60% of all superior court drug convictions will result in prison terms. Under the old laws, roughly a third of convictions resulted in prison sentences. (The Project's survey of sentences showed that because class A cases lagged during 1974, the rate of prison sentences did not increase during the first year the new laws were in effect.)

Once stability has been achieved, we expect the new drug provisions to have resulted in an increase in the likelihood of punishment (the ratio of prison sentences to crimes actually committed) of one percent or less.

It is possible that even this small change in risk will have some effect on deterrence. For example, the change in risk might be perceived as large because it is concentrated at one point in the judicial process, i.e. after conviction. The odds of punishment facing the relatively few who get that far through the system have gone up substantially. On the other hand, conviction is the point in the process furthest removed from commission of the crime. From this point of view, a given increase in the risk of punishment might be most effective if concentrated at the arrest stage rather than the conviction stage.

Several police officials, both within and outside New York City, informed us that they noted a retrenchment of street level drug dealing just before and soon after the new laws became effective. The officials attributed this caution to uncertainty among dealers over the police response to the laws. These same officials believe that the retrenchment was only temporary. When dealers noticed no change in police behavior, they say, business picked up once again, although it is felt that, in general, more caution is exercised in street level dealing than before the new laws became effective. (The data presented in Chart 5-A, which shows a uniform downturn in arrests during 1973, are consistent with this view. See Section 5, page 11.)

We do not have enough information yet to project the comparable change in the probability of punishment for non-drug crimes. Some increase is expected to result from implementation of the predicate felony provisions, but it is not likely to be greater than the change we expect to see for drug offenses.

To repeat, these conclusions refer only to the potential in the laws for general deterrence, and not for crime prevention as a result of incarceration. If their potential as an enhanced deterrent is as limited as suggested here, the benefits they can have as crime control measures must depend on incarceration effects.*

*Late in 1975, staff of the Drug Law Evaluation Project conducted a survey of convictions and sentences in 1974 new law drug cases. Results regarding prior criminal history and age of defendants were compared to offenders convicted and sentenced under the old drug laws in 1972 and 1973. The results of the survey are fully described in Convictions and Sentences Under the 1973 New York State Drug and Sentencing Laws: Drug Offenses, A Staff Report of the Drug Law Evaluation Project, December, 1975.

Potential Number of New Prison Sentences

The defendants in cases which reach the sentencing stage account for a greater (though unknown) proportion of the crimes actually committed than the two percent figure discussed above suggests. Thus a policy of incarceration should have a somewhat greater effect on crime on the streets.

The two percent risk of imprisonment may be thought of as the potential cost facing a would-be offender in committing a single crime. For an offender who commits many crimes, the two percent figure is the risk he faces in committing his next crime. However, if he were to commit ten crimes he would face a two percent risk of imprisonment for each crime, and his risk of imprisonment is much higher than the objective odds facing one-time offenders.

The relatively high risk of imprisonment for multiple offenders is the basis for the contention that many recidivists eventually find themselves before the bench. A policy of imprisonment, then, has potentially significant effects on the incidence of crime on the streets simply because recidivists are isolated from society.

The extent of the effects of incarceration depends on the frequency of crimes commited by criminals and the length of the criminal "career" in addition to the likelihood of punishment.* These factors are being explored by Project staff.

*See, for example, Shlomo Shinnar and Reuel Shinnar "The Effects of the Criminal Justice System on the Control of Crime: A Quantitative Approach," in Law and Society, Summer, 1975.

It is clear, though, that in the absence of reliable predictions of future behavior by offenders, there will be no increase in the effectiveness of prison as a preventer of crime unless there is an increase in the number of offenders in prison (or a rise in the length of time offenders spend in prison).

We estimate that even with full implementation -- once there are proportionately as many dispositions of class A cases as there are indictments -- the number of newly imposed prison sentences will be surprisingly small. Based on the frequency of prison sentences in 1974 and 1975, and on the distribution of cases between class A felonies and other drug cases, it is likely that only 600 new drug felony offenders a year will face prison sentences as a result of the new laws, once full implementation has been achieved.

This estimate is based on the projection that 60 of every 100 drug convictions will eventually result in a prison term.* (In 1974, the comparable figure was 33% and in 1975 it was 46%.) In New York City, because of a much higher proportion of class A cases, the prison rate is likely to reach 75% of all drug convictions.

Table 3-III summarizes recent history and presents three alternate projections for the future.

*Statewide in 1974 and 1975, roughly 50% of drug indictments were for class A felonies. Fully 90% of convictions for class A felonies resulted in a prison sentence. Only 20% of non-class A convictions resulted in prison terms. Therefore (.5)(.9) + (.5)(.2) = .55. The table in the text conservatively rounds upward to .60.

Table 3-III

Number of Prison Sentences Likely to Result from Full Implementation of the 1973 Drug Laws

YEAR	Superior Court Drug Convictions N.Y.S.	Superior Court Drug Convictions N.Y.C.	Frequency of Prison Sentence After Conviction N.Y.S.	Frequency of Prison Sentence After Conviction N.Y.C.	Number of Prison Sentences N.Y.S	Number of Prison Sentences N.Y.C.
1973	4,739	2,703	32.9%	41.4%	1,561	1,118
1974	3,251	1,673	33.0%	45.6%	1,074	762
1975	3,095	1,652	46.3%	59.0%	1,433	974
Future I	3,000	1,500	60.0%	75.0%	1,800	1,125
Future II	3,500	1,750	60.0%	75.0%	2,100	1,312
Future III	4,000	2,000	60.0%	75.0%	2,400	1,500

Sources: New York State Division of Criminal Justice Services; and estimates by the Drug Law Evaluation Project.

Recently, statewide drug indictments have been running between 5,000 and 6,000 per year, and convictions between 3,000 and 5,000 per year. In New York City, drug indictments have been about 3,000 a year for the last three years, and they have led to between 1,500 and 2,000 convictions. The larger number of convictions in 1973 is the result of cases which originated under the City's mass arrest policy and which were still being disposed of.

If we assume that recent indictment and conviction rates will prevail in the near future, and that the frequency of prison sentences rises to expected levels (60% of convictions across the State and 75% of convictions in New York City), between 1,800 and 2,400 prison terms will result from drug convictions statewide. Taking the midpoint (Future II in Table 3-III) as the most likely estimate, the 2,100 prison sentences in statewide drug cases represents an increase of only 600 sentences above the 1,561 sentences under the old laws in 1973.

Direct costs of the new courts and associated personnel furnished to implement the 1973 laws are currently running at $40 million a year. Since mid-1975 those courts have handled both new law and other cases*, and their value must be put in terms broader than the number of prison sentences they produce.

*See Section 6, p. 23.

But as a crude gauge of their value, assume their existence results in another 400 prison sentences a year statewide, above the 600 new sentences they might produce in drug cases. The $40 million expenditure* would then result in 1,000 new prison sentences (which would not have occurred under the old laws), or an extraordinary cost of $40,000 for each new prison sentence. To the extent that offenders are likely to be responsible for numerous crimes, the cost per crime avoided or postponed by incarceration is reduced. The higher the recidivism rate, and the more crimes committed by offenders, the greater are the benefits of incarceration, for a given cost.

This reference to the cost of additional prison sentences is not meant to imply that prison sentences are the only product of the courts. If the new courts furnished to implement the 1973 laws also produced dispositions in non-new law cases which would not have been produced in their absence, they would be contributing to a reduction in the overall backlog of the courts, and generate another benefit to be weighed against the costs of implementation. The courts furnished to deal with the new laws do produce some dispositions in non-new law cases. However, the 1973 laws are not in themselves expected to have an impact on total dispositions while they were intended to result in additional prison terms.

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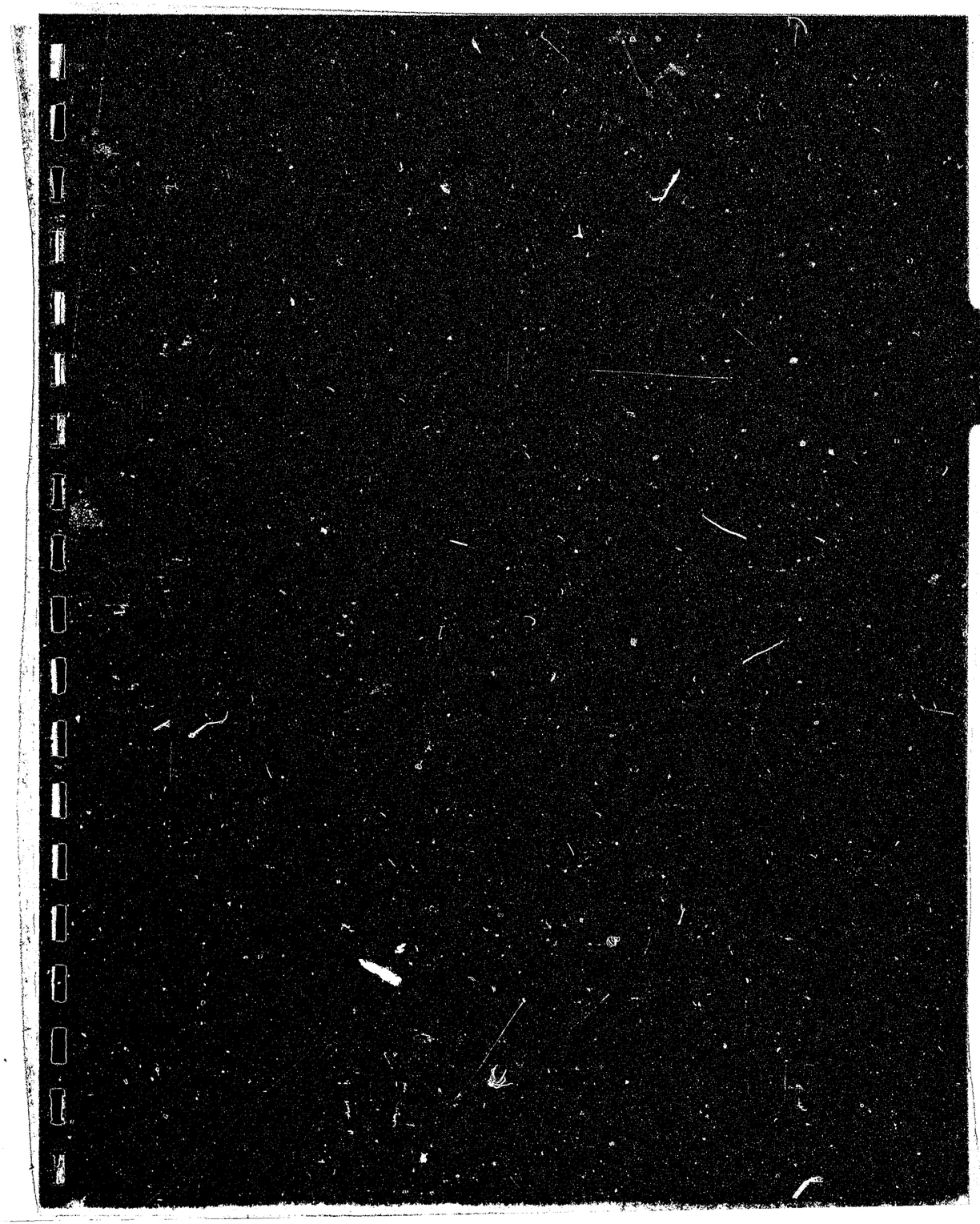
*The estimate is crude because the $40 million includes the cost of that portion of the newly furnished resources which are devoted to non-new law cases.



SPEED OF JUSTICE

The speed with which indictments are processed is an issue of central importance in evaluating the impact of the new drug laws on the administration of justice. Changes in the age of cases in the criminal justice system serve as one measurement of the ability of the courts to efficiently handle the change in workload caused by new law cases. In addition, while there is no empirical evidence we know of that correlates the speed of disposition with effective and credible deterrence, that relationship is intuitively attractive and is often mentioned in the literature.*

Although the present data are not conclusive, they do suggest that the length of time required to process a drug indictment in upstate counties has not been seriously affected by the new drug and sentencing laws. However, drug cases in New York City do seem to be facing considerably longer delays than was the rule prior to the implementation of the new laws. These judgments are based on an analysis of the change in backlog in the

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*See, for example, Herbert L. Packer, The Limits of the Criminal Sanction. Stanford University Press, 1973, p. 159; and The President's Commission on Law Enforcement and Administration of Justice, Task Force on the Administration of Justice, Task Force Report: The Courts. U.S. Government Printing Office, 1967, pp. 80-91.

superior courts of the State, and the length of time between indictment and disposition for cases which were actually disposed of.*

The New York City Supreme Courts experienced a steady increase in the backlog of new law drug indictments from the time the laws were passed through the fall of 1975. By the end of December, 1975, 2,500 new law drug cases were pending in the New York City Supreme Courts. This backlog amounted to the equivalent of ten months worth of drug indictments.

An increase in the backlog would not in itself be a cause for alarm if resources could be expanded enough to hold delays constant. For example, if the pending caseload rose by 1,000 cases, but new court personnel were available to process those cases in a reasonable amount of time, the delay between indictment and disposition might not change at all.

There is no indication, however, that the additional resources furnished in New York City were sufficient to avoid a rise in court delays. During the first two years under the new drug laws, the time it took to dispose of

*The length of time that disposed cases had been pending in the superior courts does not give a true indication of the actual court delay. For example, if only cases that are easy to process are disposed of, the time to disposition for those cases might be quite low. However, the age of the cases awaiting disposition might be going up at the same time. In order to judge the true direction of changes in the speed of justice, we would need to know the age of pending cases as well as of disposed cases. Unfortunately, only data on the latter are available.

new law drug cases increased steadily, from an average of roughly six months in the third quarter of 1974 to eight months in the third quarter of 1975.

The combination of increasing backlogs and increasing age of cases which did complete the process is evidence that the age of the pending caseload had increased as well in New York City. No accurate estimate can be made of the extent of the increase, but an increase of about 45 days in the median age of the pending caseload would not be inconsistent with the available data.*

In upstate counties, there was an unavoidable increase in the pending new law drug caseload during 1974. There is always some minimum time required to process a case, and as there were virtually no new law cases pending before 1974, some growth of the pending caseload was inevitable. However, in contrast to the New York City experience, the backlog of new law indictments upstate stabilized during 1975. In these counties, the median time to disposition is between 90 and 120 days compared to the City's 240 days, and has not changed since the last quarter of 1974. It appears, therefore, that upstate areas have been able to stabilize the disposition process for drug cases at half the time it takes to dispose of new law cases in

*The calculation assumes a first-in, first-out processing system and an even flow of indictments. In 1973, the median age of disposed cases was 150 days, from which we assume that the median age of pending cases was 75 days. Corresponding figures for the first three quarters of 1975 were 245 days for disposed cases, and 122 days for pending cases. The difference is 122 minus 75, or 47 days.

the City. The stability in both the size of the backlog and in the time it has taken to process cases in the past implies that there has also been stability in the age of the pending caseload.

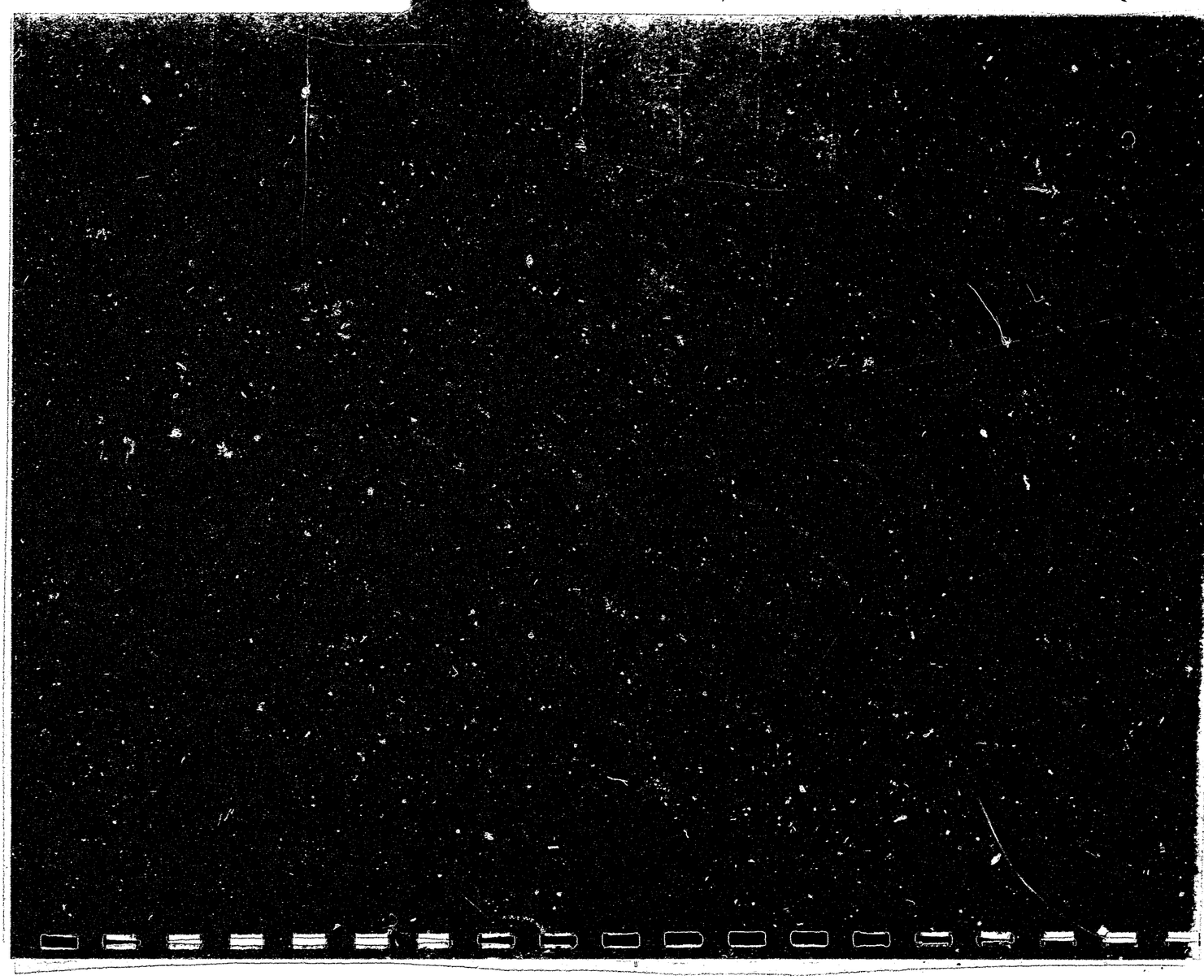
We think that a large part of the increase in court delays in the City can be attributed to the plea bargaining and sentencing restrictions imposed by the new drug laws. The causality is somewhat ambiguous because there is no pre-law non-drug information available to compare to non-drug data for 1974 and 1975. Without such information, we do not know for certain that the rise in drug case delays are not matched by greater delays in non-drug cases.

The best evidence for attributing the rising delays to new drug cases is that it is the prevalence of class A felony cases which seems to make the difference between success and failure in coping with the new laws. The high proportion of class A felony indictments pending in New York City is evidence that class A cases have been much more difficult to process than other drug cases. Class A cases comprise over 90% of the pending new law caseload in New York City, a higher percentage than their share of indictments (75%).

Latest available data show that half the class A felonies are over eight months old at time of disposition, but other new law drug cases are only about five months old. Since the backlog of drug cases in New York City

is dominated by A felonies and these cases have already been awaiting disposition longer than other cases, the processing time of the new drug cases is likely to increase for some time to come.

The relative speed with which new law cases are processed in upstate counties is partly attributable to a lower percentage of class A felonies than is evident in the City. As the data for the City indicated, disposition data for upstate show that class A felonies tend to have been in the courts about two months longer than less serious drug indictments. However, both class A felonies and other new drug cases appear to be processed more quickly in upstate counties, with times to disposition running between two and three months less than in the City. Unless there is an increase in the frequency of class A cases outside the City, processing times should remain in the three to four month range.



ENFORCEMENT POLICIES

The reclassification of most narcotic drug crimes to high degree felonies gave police departments across the State the opportunity to reassess their drug enforcement policies. From the point of view of imposing punishment on drug offenders, the new laws were potentially significant. In particular, successful prosecution of narcotic drug felonies promised a high likelihood of a prison sentence for the offender. The reclassification of low level narcotic offenses into a class which contains the State's most serious crimes (the class A felony) suggests that the Governor and Legislature regarded these offenses with special concern, and that they expected police officials to make control of these crimes a high priority.

However, our discussions with law enforcement officials throughout New York State have failed to identify policy changes that took place in response to the new drug laws. The only explicit decisions were to maintain the enforcement strategies in effect prior to the passage of the laws.

New York City

In 1968, the New York City Police Department implemented a policy very similar to the one implied by the new drug laws. Large numbers of low level drug arrests were encouraged, and the number of felony drug arrests increased more than three-fold, from 7,199 in 1967 to

26,799 in 1970. About three quarters of the arrests involved heroin.

After two years of very high numbers of arrests-- drug felonies accounted for 29% of the City's felony arrests in 1970 compared to 12% in 1968-- a re-evaluation of drug enforcement policy was undertaken by Police Commissioner Patrick Murphy. The re-evaluation concluded that only a small proportion of arrests resulted in a prison sentence, and that the harassment value of the arrests was not great enough to have a visible effect on the size of the drug market. In early 1971, explicit revisions to enforcement policy were made, changing the emphasis from large numbers of low level arrests to "quality" arrests, i.e. arrests which, it was hoped, would lead to the prosecution of largescale drug dealers. Significant, too, was the centralization of drug enforcement in a citywide Narcotics Division. In the three years following adoption of this new policy, drug arrests declined to a level equal to the one observed in 1968. Almost all of the decline can be accounted for by a decrease in heroin arrests.

The emphasis on drug distribution, rather than on street-level activity, was still in effect when the new drug laws were enacted. According to Donald Cawley, Police Commissioner at the time that the new laws became effective, a decision was made <u>not</u> to change the established enforcement strategies. The roughly equal division of enforcement

resources between low, middle and high levels of the market, which was a rule of thumb under the Murphy policy, was to be maintained.

This decision was based on two overriding concerns. First, the belief remained that the arrest of large numbers of low level violators could not have any real impact on drug trafficking, even if those now arrested faced long prison terms. Second, it was feared that increasing the number of drug arrests under the new laws would create intolerable delays in processing cases in the courts.

The reluctance of the New York City Police Department to return to a policy of sweeping the streets of low level narcotics violators is evident from arrest statistics. During 1974, there was virtually no change in the number of individuals arrested for felony drug crimes beyond the 1973 level. It is widely recognized by Departmental personnel that, in terms of raw numbers, the arrest activity could be increased substantially at any time.

Similarly, the proportion of drug felony arrests involving heroin remained constant at about half of all drug arrests, indicating that enforcement activity did not change from other drug activity to narcotic crimes. In addition, the proportion of class A felony arrests accounted for by low level sales of narcotics (class A-III felonies) has not increased since implementation of the laws. An increase in this proportion would have indicated a possible

movement toward lower level narcotic arrests.

In retrospect, it appears that the Department's judgement, at least as far as the courts are concerned, was correct. The analysis in Section 6 suggests that largescale arrests of street level drug abusers would undoubtedly have led to even more delays than have already been experienced. On the other hand, the value of street level enforcement on an intensive scale is still an open question. One argument against upper level narcotics enforcement is that if it is successful in reducing the supply of drugs, the price of drugs will increase. If there is a direct causal relationship between price and crime -- the addict who must have his fix no matter what the price -- then street crime will rise as a result, as the addict plunders to raise more cash. The other side of the same argument is equally valid but seldom heard: if a direct relationship between price of drugs and crime is observed, then one way to lower price is to reduce demand by removing many users from the market through street level enforcement. Of course, these arguments are simplifications. No credible argument can be made that the demand for drugs is totally inelastic, nor are the choices between "high" and "low" level enforcement very clear. Research currently underway by others into the elasticity of demand for heroin should

eventually provide some clues to the likely outcome of narcotic enforcement policies on non-drug crime.*

One powerful argument for street level enforcement should not be overlooked. Failure of the police to respond to obvious street level drug dealing -- and it is obvious and widespread in Harlem, for example -- may lead to high levels of cynicism about the police within the affected community, where police relations are already tenuous.**

But effective street-level enforcement of the drug laws is extremely expensive. In New York City, several police precincts operate narcotics squads, made up of a group of uniformed officers, to observe street-level drug activity and to make arrests which will stand up in court. That is, the evidence against the buyer and seller of drugs must be obtained in a legal manner and should stand up to the scrutiny of the court. Typically, a narcotics squad operates with four men at a time, including a sergeant or other officer.

Because of the care taken in obtaining evidence (for example by photographing the exchange of drugs for cash), it might take a four man squad as long as a full tour of duty to make one or two street level arrests. That amounts to nearly a full man-week of effort, and this despite the

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*Levine, Daniel; Silverman, Lester; Spruill, Nancy. Urban Crime and Heroin Availability. Public Research Institute Report PRI75-1. April 1975.

**James Q. Wilson presents another sensible argument in Thinking About Crime, Basic Book, Inc., N.Y., 1975, p. 148. Wilson points out that high level dealers are easily replaced in a distribution organization.

ease of finding an open, active drug market.

Additionally, officers spend a great deal of time in court. In the Central Harlem Precinct, which produces more drug arrests than any other precinct in the City, the officers assigned to the narcotics squad spent more man-days in court during a four month period in mid-1974 than they spent on patrol.

A judgement on whether or not such a commitment of resources to street-level enforcement is justified is well beyond the scope of this Project. An assessment of that kind would have to be based on an evaluation of the alternative uses of police resources, and would lead quickly into an examination of crime control strategies in general. But the extreme cost of drug law enforcement is often not realized, and only when the full costs are considered can reasonable decisions be made on the allocation of enforcement to narcotics crime.

A widespread concern within the Department with avoiding police corruption may also have been a factor inhibiting an aggresive return to low level narcotics enforcement. Drug law enforcement is known as one of the seedier police activities, and one which has often been associated with extensive corruption. According to one report, more than half of the 90 detectives assigned to the now disbanded Special Investigations Unit have been indicted by Federal or State grand juries.*

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*New York Times, September 18, 1975.

Outside the Narcotics Division, narcotics law enforcement appears to be an undesirable assignment for police officers. Even in precincts where drug crimes are a very serious problem, the narcotics squads described above are operated only when a superior officer is available to accompany the other members of the squad in a supervisory capacity. If a sergeant or other officer is not available on a given date, the squad members don't patrol that day. Narcotics arrests by uniformed officers not assigned specifically to narcotics squads are discouraged. Even members of the precinct anti-crime teams, plainclothes officers who work as decoys to catch perpetrators, are strongly discouraged from making narcotics arrests. The anti-crime squads are the most productive on the force as far as felony arrests and convictions are concerned. In 1975, precinct anti-crime squads comprised only five percent of the patrol force, but were responsible for 14% of the felony arrests in the City. Members of the anti-crime squads, however, are forbidden to make narcotics arrests in the absence of a superior officer for fear that they will be accused of corruption.

Thus there were three factors, largely ignored at the time the laws were enacted, which operated against changes in drug enforcement patterns by the New York City Police Department. They were: 1) the 1969-70 experience with

very large numbers of arrests, which the department found did not produce an adequate number of convictions and sentences; 2) the very high cost in terms of manpower of enforcing the drug laws at the street level; and 3) the undesirability of involvement by the police officers themselves in narcotics law enforcement.

Whatever the optimum mix of enforcement activities might be, the Department's emphasis on middle and upper level traffickers has led to many arrests of offenders involved at levels of the drug market above the street level. Buys made by undercover agents generally increased in value during 1974, with about ten percent of the heroin buys involving one ounce or more. Each of these operations resulted in an arrest for a class A-I felony. These investigations have also led to many indictments. More than half the class A felony drug arrests and indictments are for class A-I and A-II offenses. There have been as many indictments for A-I crimes as there have been for A-III crimes (the lowest class which carries mandatory "lifetime" sentences). Most of the defendants indicted for class A-I and A-II offenses, however, have been allowed to plead to lower charges within the class A category and have not, as a group, been more likely to receive long sentences than defendants indicted on class A-III charges.*

Narcotics prosecutors in the Bronx, Brooklyn, and Manhattan all stressed that when lower level pleas are allowed to class A-I and A-II indictments, they would

*See page 18, second paragraph.

insist upon sentences longer than the minimum. The data does not support this contention.

Judge Michael Dontzin, who recently assumed responsibility for the administration of the Manhattan drug courts, was not surprised at the high proportion of short minimum sentences in these cases. He feels it is attributable in large measure to the low quality of the A-I cases. That is, prosecutors who are reluctant to bring an A-I case to trial because of a high risk of acquittal will often accept a lower plea even with a low minimum sentence. A second factor accounting for the low minimum sentences in some cases is that the offender has provided useful information to the prosecutor in return for a recommendation of a light sentence.

Counties Outside New York City

Large-scale increases in enforcement effort at the street level outside New York City were unlikely to occur. There are no open drug markets in upstate counties similar to those thriving in several New York City communities. Police officials have pointed to the closed nature of the hard drug market, and the need to infiltrate these markets with undercover agents if enforcement is to be successful.

In addition, the nature of the drug problem is entirely different in areas where heroin markets are not widespread. In most counties, more than half the felony drug arrests involve marijuana, penalties for which were not changed by the 1973 laws. Arrests for abuse of other drugs are

rare, and normally result from complaints received by the police. Very few of these arrests are in the class A category.

It is not surprising, then, that there was no notable reallocation of police resources within drug enforcement activities. Neither have we discovered any increase in personnel assigned to drug enforcement, either in local police departments or by the State Police.

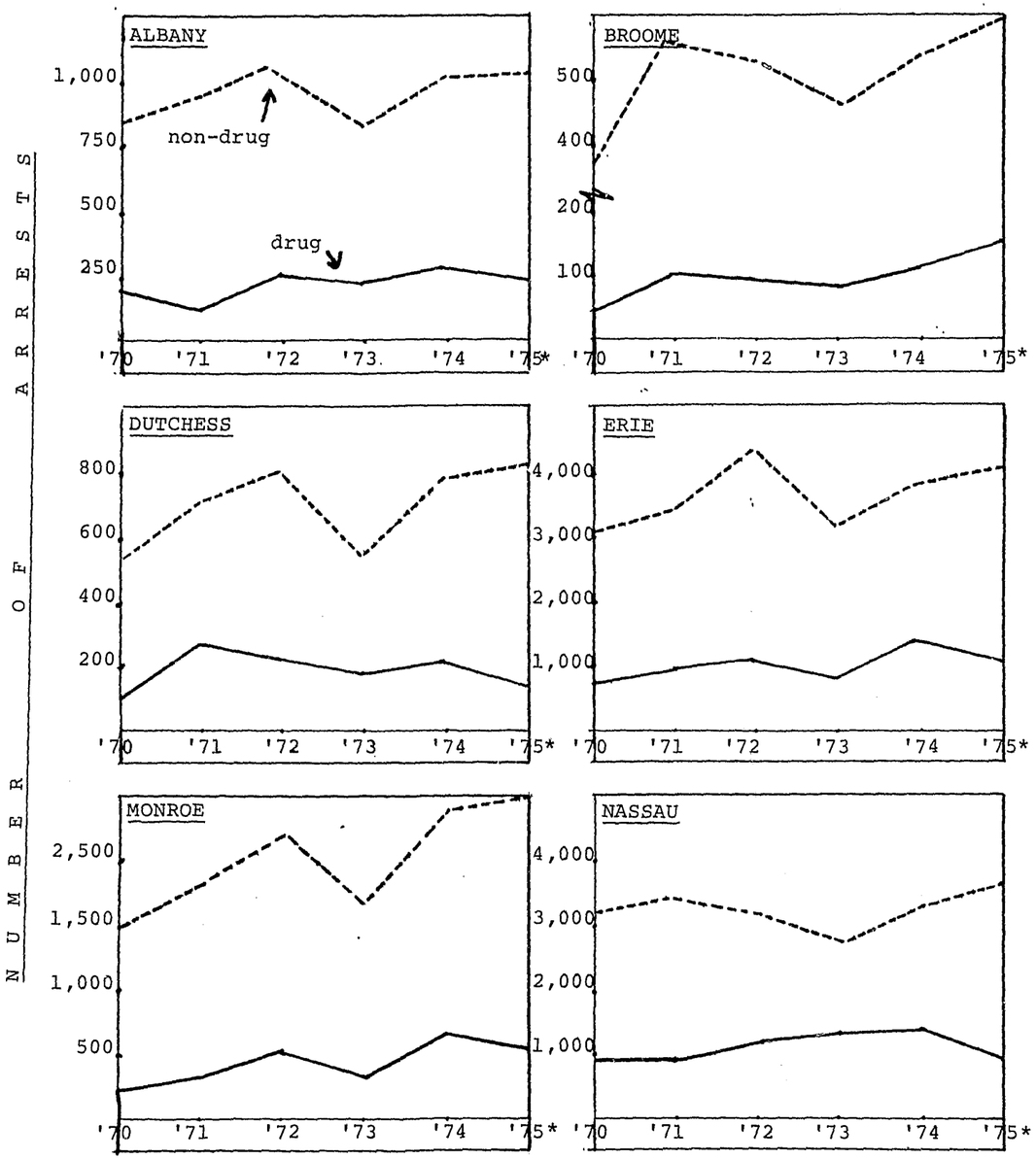
The absence of policy changes did not prevent 1974 from becoming a year of widespread increases in the number of felony drug arrests. Chart 5-A exhibits both drug and non-drug arrest data for the six upstate counties examined in this Report. Year-to-year changes are surprisingly similar between counties. Five of the six counties saw declines in drug arrests during 1973, and all six showed increased activities in drug arrests during 1974.

Note that patterns of non-drug arrests were much the same as the pattern for drug arrests. All six counties saw reductions in non-drug arrests during 1973, and increases during 1974. Last year, non-drug arrests continued to rise in all six counties, while drug arrests fell in five of the six.

Such similarity in changes from year to year suggest some common causality. If one exists, we do not yet know what it is. The possibility that patterns of drug arrests are good indicators of actual drug abuse will be examined

Chart 5-A

Drug and Non-Drug Adult Felony Arrests



*Full year estimated on the basis of partial data.

Source: New York State Division of Criminal Justice Services

as part of the Project's analysis of recent trends in drug abuse.

One effect that the high level of 1974 arrest activity did have was to increase the number of drug indictments in the superior courts. These changes are described in Section 7.

Informants

The consensus among law enforcement officials across the State is that the new drug laws have enhanced their ability to develop informants.

Drug enforcement relies heavily on informants for information about traffic movements, for identification of local sellers and users, and for the introduction of undercover agents into the drug market.

When the new laws were first under discussion the fear was expressed by police officials that restrictions on the ability of prosecutors to offer pleas and "acceptable" sentences would hinder their ability to entice offenders into cooperation. Our discussions with police and district attorney personnel suggest that the offenders' fear of long prison sentences has outweighed the restrictions placed on bargaining. The net result has been an increase in the activity of informants.

The 1973 drug laws contain one exception to otherwise mandatory prison sentences required after conviction for a class A drug crime. Offenders who have provided useful information to the prosecution may be sentenced to terms

of lifetime probation (no prison) if such a sentence is recommended by the prosecutor. (All such sentences must be reviewed by an administrative judge.) This provision together with the latitude which still exists in the minimum prison term set by the court in "lifetime" sentence, provides some measure of sentencing discretion.* In addition, defendants indicted for class A-I and A-II offenses are still allowed to plead down to A-III crimes.

Frank Rogers, who was the Special Narcotics Prosecutor in New York City when the 1973 laws were enacted, told us that several high level informants had come forward, who, Rogers felt, would not have cooperated had they not faced such long prison terms. Rogers believed these dealers reasoned that only cooperation with the prosecutor would get them less than the maximum prison sentence when even the lowest level street dealers were being sent to prison for "life".

Lower level offenders have also been anxious to inform, officials say, because they hope prosecutors will recommend short minimum sentences -- which is common practice among district attorneys -- and because they hope to take advantage of the lifetime probation sentences.

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*The minimum prison term in A-III cases is between 1 and $8\frac{1}{3}$ years; in A-II cases between 6 and $8\frac{1}{3}$ years; and in A-I cases between 15 to 25 years. Defendants must serve the minimum term set by the court. After serving the minimum, the Board of Parole determines when the offender is to be released from prison. But even after release, the offender will remain on parole for the rest of his life.

We examined length of the minimum prison term given in class A-III cases during 1974 (Table 5-I).* Of the 260 prison sentences, 170, or 65%, carried the lowest allowable minimum of one year. Another 15% carried minimums of over three years. In order to see if there was any advantage for a guilty defendant pleading instead of going to trial, we compared minimum terms in convictions which resulted from trial and convictions which came as a result of a plea.

We found that outside New York City defendants pleading guilty to an A-III felony (in 1974) generally received sentences with lower minimum terms than defendants convicted after trial. Almost 75% of these defendants pleading to an A-III felony and sentenced to prison received the lowest permissable minimum term (one year) and not one defendant in the Project's sample was sentenced to a minimum longer than three years. In contrast, only about 30% of the defendants convicted after trial received the one year minimum term, and over half were sentenced to minimums of longer than three years. However, in New York City there was no significant difference between the length of sentence faced by defendants pleading guilty and those convicted after trial. About 65% of the defendants in both groups received the minimum term of one year, and 15% received minimum terms of three year or more.

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*Drug Law Evaluation Project staff survey of drug convictions and sentences throughout the State.

TABLE 5-I

Prison Sentences Issued to Defendants Convicted of Class A-III Drug Felonies in 1974

Minimum Length of Prison Sentence	New York City		Rest of State		Statewide Total	
	Disposed of by Plea*	Disposed of by Trial*	Disposed of by Plea**	Disposed of by Trial**	Disposed of by Plea	Disposed of by Trial
One Year	69%	61%	73%	32%	71%	49%
More than one year, up to three years	19%	22%	27%	16%	21%	19%
More than three years	12%	17%	0%	52%	8%	33%
Total	100%	100%	100%	100%	100%	100%
Number of Defendants Sentenced to Prison	126	39	61	31	187	70

*Differences in length of sentence between plead and tried cases are not statistically significant

**Differences in length of sentence are statistically significant

Source: Drug Law Evaluation Project Survey

Offenders upstate therefore seem to have a greater incentive to plead guilty than offenders in New York City. Conversely, in the City it makes sense for a defendant to demand a trial because he has nothing to lose in terms of probable prison sentence.

Evidence is that the probation alternative has been used extensively in some counties. In suburban New York City counties, 25% of all class A-III offenders were sentenced to probation in the first nine months of 1975. This might well account for the flood of informants in Nassau County. According to officials in the District Attorney's office, who keep a count of informants, twice the number of drug offenders chose to cooperate in 1974 than in 1973. In the City, 15% of A-III offenders were sentenced to lifetime probation, but up to half of these were sentenced under the Youthful Offender provisions of New York State Law.* There is no requirement that a defendant provide information to the prosecution to be eligible for Youthful Offender treatment, as is required for lifetime probation. Upstate, only ten percent of A-III offenders escaped a prison sentence.

*Until August, 1975, the treatment of class A drug offenders as youthful offenders was only available in the First Judicial Department (Manhattan and Bronx counties). At that time, an amendment to State law made class A-III felons eligible for youthful offender treatment throughout the State.

There is some evidence that the lifetime probation sentences are favoring younger offenders. In 1974, 13 of the 25 probation sentences in class A-III cases went to offenders 21 years old and under. This was about twice the youths' share of all class A-III convictions.

At least one prosecutor does not agree that the probation alternative has been helpful. The Chief of the Narcotics Bureau for the Bronx District Attorney believes that a lifetime of probation is not a realistic option for many offenders because they don't have legitimate alternatives to further involvement in crime. Thus, these offenders would constantly be in violation of probation and subject to prison on that score. This official thinks that on balance, the new laws have restrained him from being able to make fruitful deals with informants.

Finally, defendants and district attorneys are taking advantage of the limited plea bargaining which is still allowable, and this undoubtedly helps in developing informants. Theoretically, someone indicted for a class A-I felony, which carries a minimum prison term of between 15 and 25 years, could plead to a class A-III crime, and receive the lowest minimum of one year. He might even be recommended for the probation sentence discussed above. Such latitude, though not as great as that which existed under the old laws, has apparently enabled prosecutors to offer "acceptable" pleas in exchange for information.

According to statewide data for 1974 and 1975, only 20% of the convictions resulting from class A-I and A-II indictments were to the highest charge covered by the indictment. All the other convictions came to lower charges, about half of which were class A-III felonies. These convictions came as the result of pleas.

We were surprised to find that in 1974 (no later data is yet available) defendants who plead guilty to a class A-III offense after having been indicted for a class A-I or A-II crime were just as likely to receive the minimum prison term of one year as defendants originally indicted for a class A-III crime. Two-thirds of all sentences in class A-III cases carried the minimum penalty.

Indictment Policies

We have not found a general tendency to reduce the frequency of indictments in felony drug cases, either in New York City or elsewhere(see Charts 5-B and 5-C).

All the procedural restrictions imposed by the 1973 laws are placed on the post-indictment adjudication process. There is nothing in the laws which prohibits bargaining with a defendant before his case is presented to a grand jury. If the post-indictment restrictions were viewed as particularly burdensome by prosecutors, one response might be to choose against seeking indictments in cases for which indictments were previously requested routinely. On the other hand, one expects a natural reluctance of prosecutors to use this "loophole", particularly

because the restrictions were imposed with great fanfare.

The data presented in Tables 5-B and 5-C suggest stronglythat indictment policies have not changed.* In New York City, the most serious cases (class A cases) are indicted at a higher rate than other new law cases.

A significant change in indictment policy has occurred in New York City during the past months, however. The Special Narcotics Prosecutor is suggesting that misdemeanor pleas be offered in certain class A-III cases provided prison sentences of six months or more are given. In addition, discretion is being advised in seeking indictments in some class C cases involving possession of heroin and cocaine. This change toward a lenient indictment policy indicates that a downturn in the indictment rates should be expected in the near future.

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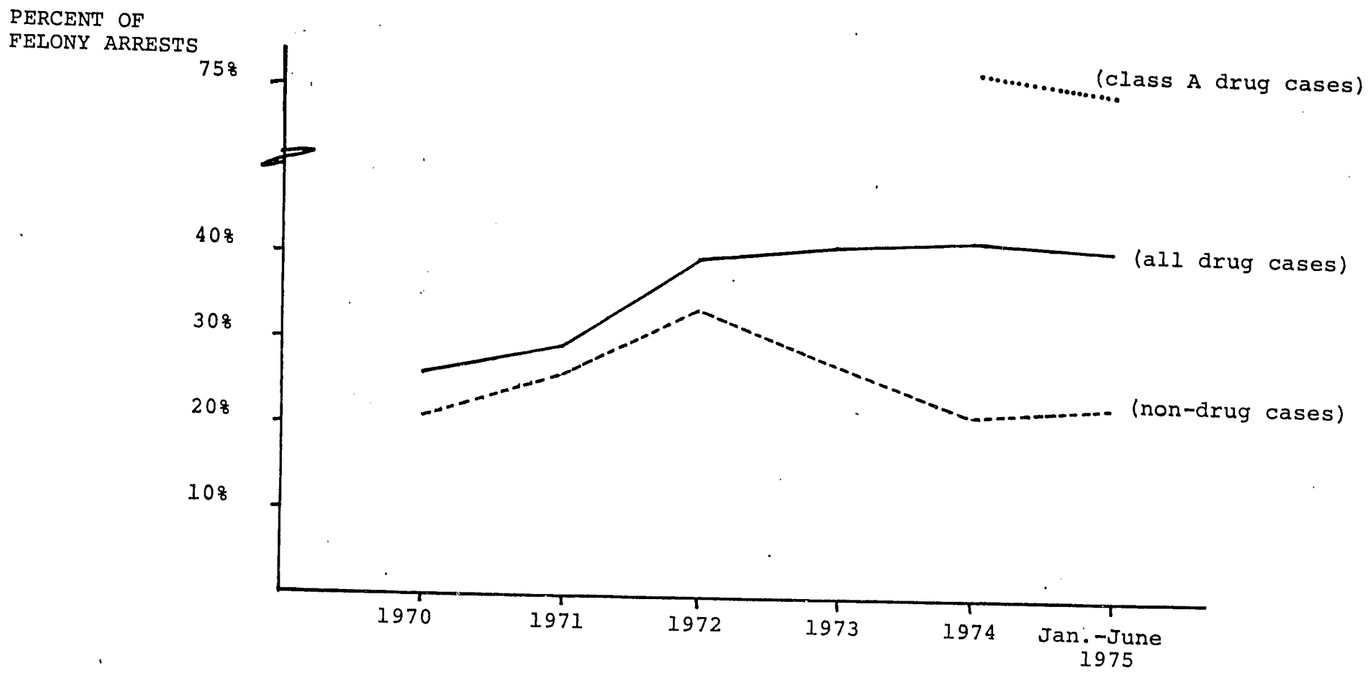
*The steady decline in the rate of indictment in Nassau County began before the new laws became effective. Even with a five year decline, Nassau still indicts a larger proportion of felony drug cases than any of the other counties. This fact may be related to the very high rate of misdemeanor convictions in the Nassau superior courts (See Section 8).

C H A R T 5-B

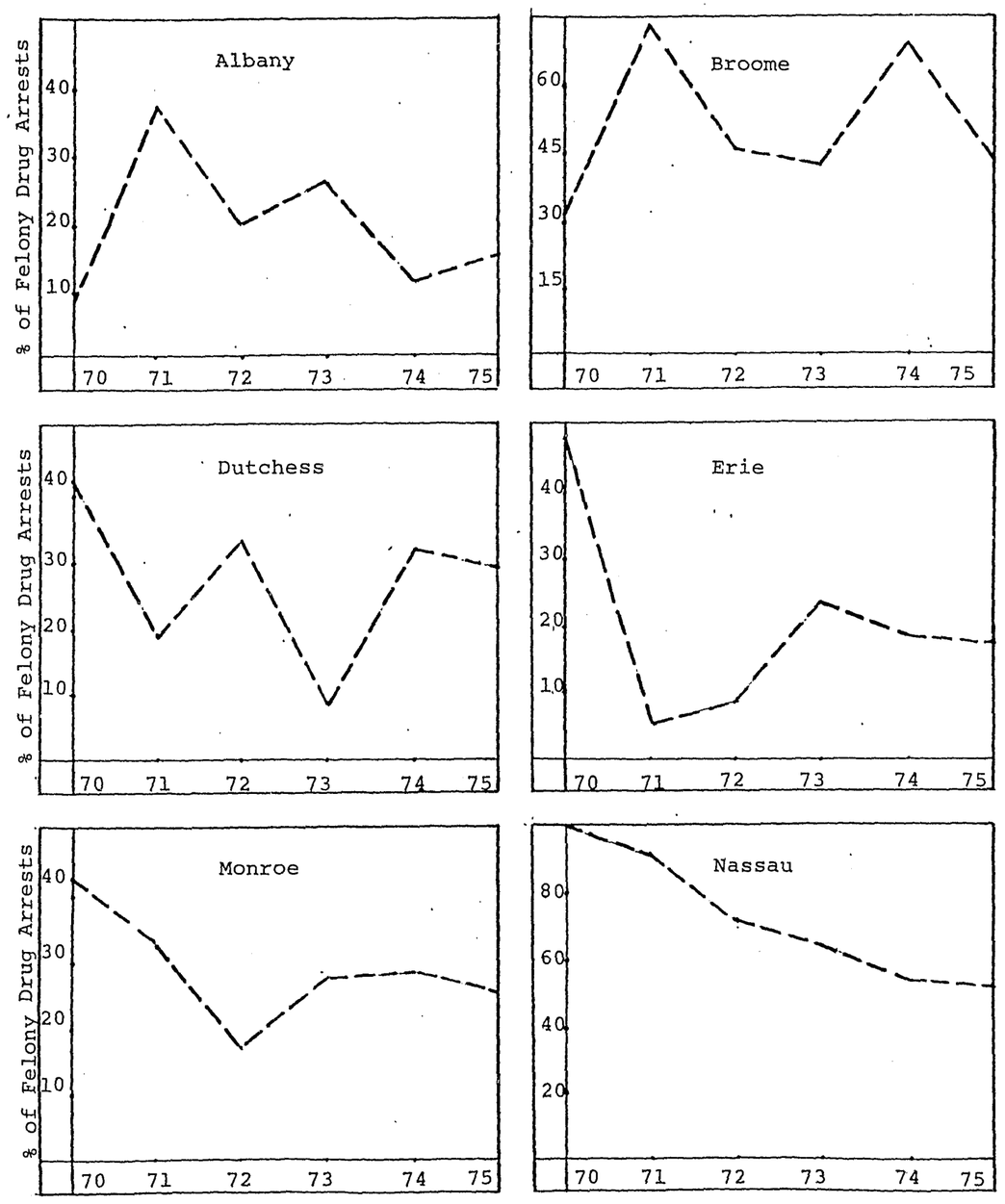
Frequency With Which Felony Arrests Result in Indictments ("Indictment Rate") in New York City



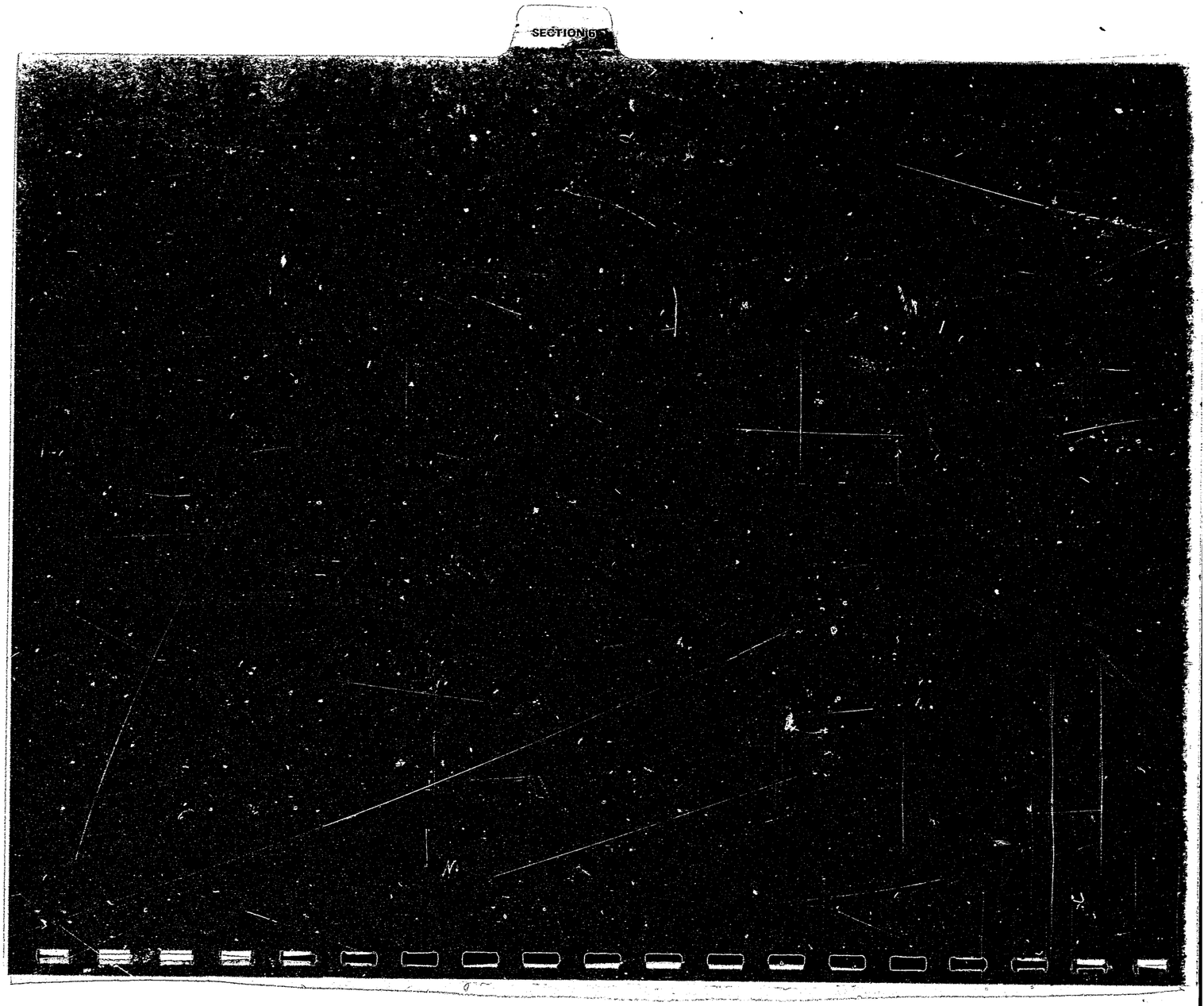
Sources: New York State Division of Criminal Justice Services; New York City Police Department Monthly Statistical Report.

Chart 5-C

Drug Indictments as a Percent of Felony Drug Arrests



Source: New York State Division of Criminal Justice Services


SECTION 6

THE EFFECTS OF THE NEW LAWS ON THE NEW YORK CITY SUPREME COURTS

Before describing the recent performance of the New York City superior courts, a few words about the organization and the remarkable growth of the City's court system are in order. Rapid expansion has added to the difficult job of managing this very large and complex institution.

The City's superior criminal court -- the Criminal Term of the Supreme Court -- is centrally administered, but is divided jurisdictionally into five separate counties. Prosecution in each of the county branches of the Supreme Court is the responsibility of the District Attorney, who is separately elected in each county.

The system itself has grown enormously since 1972. In the beginning of that year, there were 50 courtrooms (known as "parts") operating in the City as the regular operation of the Court. The first sizeable expansion occurred during 1972 with the inception of the federally funded Special Narcotics Court Program (SNCP). The SNCP added 12 new parts to the system during 1972, and all 12 are still in operation (7 in Manhattan, 2 in Brooklyn, 2 in the Bronx and 1 in Queens). Under the SNCP a special Assistant District Attorney for Narcotics Prosecution is appointed by agreement of the City's five district attorneys and is responsible for the prosecution of about half of the City's drug cases.

Also in 1972, the City and State combined to finance the addition of 13 new parts under the Emergency Felony Case

Processing Program (EFCP). These parts became a portion of the system's regular organization, and were intended for the general purpose of reducing backlogs, which had grown substantially between 1970 and 1972 (See Table 6-I). An additional two parts were furnished under EFCP in 1973.

Finally, in late 1973 and 1974, as a direct result of the 1973 drug and sentencing laws, 31 additional parts were added to the City's Supreme Court system. The formal name for these parts is the Emergency Dangerous Drug Control Program (EDDCP). Nine of the parts were established in Manhattan and were combined organizationally with the seven parts created earlier under the SNCP. Brooklyn received 11 of the new parts, the Bronx received eight, and three of the new parts were assigned to Queens.

Thus, by a series of steps, the already large criminal term of the New York City Supreme Courts more than doubled in size over the short period of three years. Currently, the system operates with a complement of 117 full-time criminal term parts.

For the purpose of processing cases, the Supreme Court is organized into a three tier system which distinguishes it from the "individual calendar" (or IC) system prevalent in many upstate counties. Under an IC system of court organization, one judge follows a case from beginning to end. In the New York City scheme, however, arraignments are handled in a specialized part or parts in each county, and cases are then assigned to pre-trial conference parts -- all-purpose parts -- where they remain until they are ready for trial.

TABLE 6-I

The Changing Backlog in the New York City Supreme Courts (Drug and Other Cases Combined)

YEAR	Indictments	Dispositions	Change in Backlog
1970	20,001	17,463	+2,538
1971	27,308	21,281	+6,027
1972	27,114*	21,873	+5,241
1973	22,458*	24,630	-2,172
1974	20,686	19,685	+1,001
1975	19,720	21,938	-2,218

*Data on indictments not available. Number of arraignments used here.

Source: Management Planning Unit, Office of Court Administration, New York State. Derived from JC-153 forms.

Trials generally take place in specialized trial parts. Each of the four large counties contains one or two arraignment parts* and varying numbers of conference and trial parts. Individual cases and justices are assigned to particular parts. In an IC system, cases are assigned to individual justices. Assignments of justices to specific parts may be changed monthly, but they often remain the same for months at a time.

There is some specialization among parts with respect to the kinds of cases which are assigned to them. The 12 parts created and federally funded under the Special Narcotics Court Program handle drug cases exclusively. The parts created through the Emergency Dangerous Drug Control Program handled drug and predicate felony cases almost exclusively until recently when they began to take on other cases.** Some counties have established parts to specialize in homicide cases or other major felony offenses.

The Court's expansion between 1972 and 1975 took place at a time when indictments had been declining from a peak reached in 1971, and has contributed to the success of the criminal term in achieving a balance between dispositions and indictments in non-drug cases, so that the tremendous growth of backlog experienced in the 1970-1972 period has stopped and has begun to be reversed (See Table 6-I). The reversal has been noteworthy because the trial rate had

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* Manhattan and Bronx counties have two arraignment parts each, while Kings and Queens Counties have one arraignment part each.

** See p. 23 of this Section for some additional detail.

almost doubled between 1973 and 1975. Trials absorb much more court time than other dispositions and thus are particularly expensive to the system. Our estimates indicate that every time the citywide trial rate increases by one percentage point (for drug and other cases combined), nine additional full-time court parts would be required annually to keep the number of dispositions constant. Although the backlog of non-drug cases in New York City stopped growing in 1973, the pending drug caseload grew for two full years following the effective date of the new drug laws despite the 31 additional court parts added under the Emergency Dangerous Drug Control Program.

The prime reason for the continuing growth of the drug case backlog has been the slowness with which class A felony cases generated by the 1973 drug law have moved through the system. As a substantial number of these cases finally reached disposition late in 1975, the backlog growth decelerated. By the fourth quarter of 1975, the drug case backlog had begun to decline slightly.

The Importance of Class A Cases in the Supreme Court Workload, Sept. 1, 1973 - Dec. 31, 1975

Case Type	Indictments	Dispositions	Rise in Backlog	Contribution to Backlog
Class A Drug Felonies	4,197	2,002	2,064	82%
Other New Law Drug Felonies	1,325	1,004	352	18%
Total New Law Drug Felonies	5,522	3,006	2,516	100%

Source: Estimate based on data from the Management Planning Unit, Office of Court Administration and New York State Division of Criminal Justice Services, Form D. See Table 6-II for computation method.

Growth of the Drug Case Backlog

Table 6-I gives an indication of the growth of the backlogs (both drug and other) which led to the expansion of the Supreme Court.* Indictments -- the input to the Supreme Courts -- jumped 35% (from 20,000 to 27,000) in one year between 1970 and 1971, an increase which could not possibly be matched by dispositions. Indictments remained stable during 1972, and declined sharply in 1973.

According to this set of estimates, backlogs rose by 20% of indictments in both 1971 and 1972 and had grown by nearly 14,000 cases between 1970 and 1972. It is useful to look at pending caseloads in terms of the number of months they represent for the workload of the courts. By this measure, the backlog grew by an equivalent of nearly eight months' worth of dispositions between 1970 and 1972.** This was an emergency by anyone's definition.

Drug cases made a heavy contribution to the backlog in 1970, which was the peak year for felony drug arrests under the Police Department's mass arrest policy. The 26,000

*There is a confusing array of figures available to measure the courts' workload, all produced by official sources. Appendix III presents a discussion of the various estimates. The ones used here produce conservative estimates of increases in the backlog for 1970, 1971, 1972 compared to the figures from other sources. Estimates of reductions in backlogs during 1973,1974 and 1975 are greater than those from other sources. In each year, then, these estimates provide the most favorable view of the courts' activities.

**14,000 $\frac{\text{(growth of backlog)}}{\text{22,000 dispositions in 1972 X 12 (months per year)}}$.

felony drug arrests resulted in over 7,000 indictments, of which over 1,500 remained pending at the end of the year. (See Table 6-II. The qualifications to the estimates in Table 6-I also apply to Table 6-II.)

Old law drug cases also contributed in a small way to the 1971 growth in the City's pending caseload (500 out of the 6,000 case increase were drug cases). By 1972, the backlog of drug cases seems to have stabilized, and 1972 and 1973 saw very small declines. Changes of this magnitude (200 to 300 cases per year) are negligible enough in terms of the total workload to be ignored. The measures themselves are not accurate enough to reflect changes of these small amounts.

In 1974, when the new law drug cases began to appear in large number, most of these cases remained pending at year's end. Only about 750 new law drug cases were disposed of in 1974 compared to about 2,650 total drug dispositions.

In the normal course of events, some buildup in backlog would be expected to occur. Cases cannot be disposed of instantaneously. If it takes a minimum of, say, three months to completely process a case, then a pending caseload of three months' worth of indictments would be normal. But by the end of 1974, the 2,000 pending new law cases already amounted to eight months' worth of indictments. There can be no doubt that a pending caseload of that size exceeds the magnitude explainable by what should be the minimum processing time.

More serious is the fact that the size of the pending caseload grew steadily, though more slowly, during the first nine months of 1975. Other counties in the State also saw

TABLE 6-II

Changes in the Backlog of Drug Cases in the New York City Supreme Courts

YEAR	Indictments	Dispositions	Change in Backlog
1970	7,381	5,761	+1,620
1971	6,638	6,131	+ 507
1972	4,086	4,300	- 214
1973	3,312	3,358	- 46
1974	3,278	2,366	+ 912
1975	2,855	2,739	+ 116
New Law Only			
1973	199	6	+ 193
1974	2,654	769	+1,885
1975	2,669	2,231	+ 438

Sources: Management Planning Unit, Office of Court Administration, New York State, JC-153 forms; and New York State Division of Criminal Justice Services, Form D.

Data from Form D, Division of Criminal Justice Services, are used to determine the proportion of indictments and dispositions accounted for by drug charges in each year. These proportions were applied to the total number of indictments and dispositions reported by the Office of Court Administration, which issues a more accurate count of total court actions, but does not isolate drug charges.

some buildup of their new law drug caseload during 1974, but by early 1975, those backlogs were already being reduced. (See discussion in Section 7.) It wasn't until the fourth quarter of 1975 that the New York City backlog was reduced. Even then the reduction was less than 100 cases from what had become a backlog of over 2,500 cases.

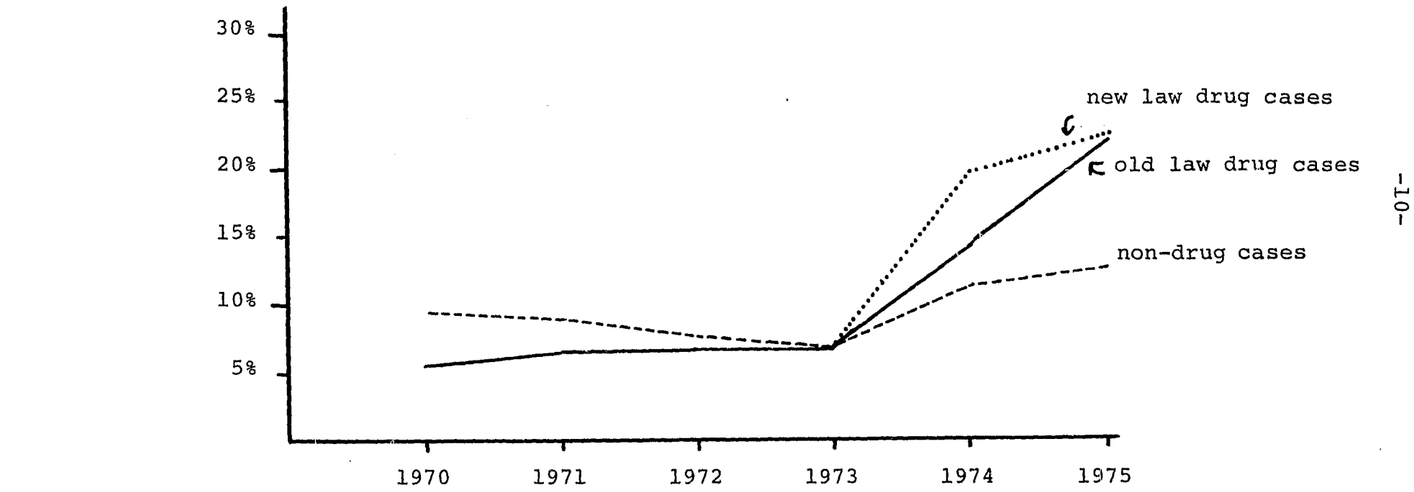
The 1974 and 1975 growth of the new law case backlog came at a time when the courts were reducing the pending caseloads of non-drug indictments. The backlog of indictments other than new law drug cases fell by 900 in 1974, and by an additional 2,700 in 1975.

The new law backlog would have grown even more had it not been for a sharp rise in the frequency of dismissals in drug cases (See Chart 6-A). We questioned several prosecutors about the reasons for the substantial increase in dismissals in 1974. They believe that the rise could be explained by the consolidation of indictments (and superceding indictments) facing individual defendants. Typically, if a defendant has more than one indictment pending, prosecutors might settle for a plea to one of the indictments in exchange for dismissing the others. This is itself a kind of plea-bargaining.

There is no evidence available on the number of dismissals which occurred as a result of consolidation under the old laws, but we doubt the prosecutor's explanation. There is no reason to believe that the frequency of consolidations should increase so strikingly between 1973 and 1974. The new laws do not permit the dismissal of class A drug cases in satisfaction of other indictments. Rather than explaining

C H A R T 6-A

New York City: Cases Disposed by Dismissal As A Percent of Total Dispositions in the Supreme Courts



Source: New York State Division of Criminal Justice Services

the rise in dismissals as a result of consolidations, the increase appears to be a natural response to the pressures of an ever-increasing backlog.

We do not yet know whether the increase in dismissals of non-drug cases during 1974 and 1975 support this suggestion (See Chart 6-A). If the increase in dismissals in non-drug cases was concentrated among predicate felony cases (which were processed in the same courts as the new drug cases), that would support the hypothesis that dismissals have increased in response to backlog growth. More evidence on this point will be forthcoming when the Project examines the disposition process for predicate felony cases later this year.

The Role of the Demand for Trials

The State-financed addition of court resources was furnished in response to predictions by judges and others that the plea bargaining restrictions and mandatory sentencing provisions in the new laws would leave very little incentive for defendants to plead guilty. Instead, defendants were expected to carry their cases to trial in large numbers.*

They have. There were 335 trials of new law cases during 1975, compared to 218 trials of old law drug cases during 1973, the last (nearly) full year of dispositions under the old laws. There were 20% fewer dispositions of drug cases in 1975 compared to 1973 (2,750 compared to 3,350). Thus the trials accounted for a much larger share

*The following subsection presents some estimates of the effect of increasing trials on the productivity of the courts.

of the courts' drug case workload in 1975 than it did in 1973. The trial rates are shown in Chart 6-B, which indicates that the rate climbed from 6.5% of dispositions in 1973 to 15.0% of new law dispositions in 1974 and 1975.

A tendency toward increasing trial activity predated the effective date of the new laws, so some of the increase during the past two years might have occurred even under the old laws. But there is an unmistakable acceleration evident in 1974, which seems clearly related to the effects of the 1973 laws.

This conclusion is strengthened by the fact that in class A cases -- those cases which face the most severe restrictions in plea bargaining and sentencing -- the trial rate was higher than in other new law cases (See Chart 6-B).

The frequency of trials in non-drug cases also increased faster in 1974 and 1975 than would have been expected on the basis of past experience. In these cases, trials grew from 6.6% of dispositions in 1973, to 8.7% in 1974, and further to 10.1% in 1975. While these increases are smaller than the increases seen in drug cases, they do suggest an accelerated inclination toward trials beginning in 1974.

Some part of this growth may be attributable to the plea bargaining restrictions and mandatory prison sentences which the 1973 laws placed on second felony offenders -- the so-called predicate felony provisions. Judge David Ross, the City's Administrative Judge, believes that these restrictions have had much the same effect on non-drug trials as the class A drug provisions have had on drug trials. Faced

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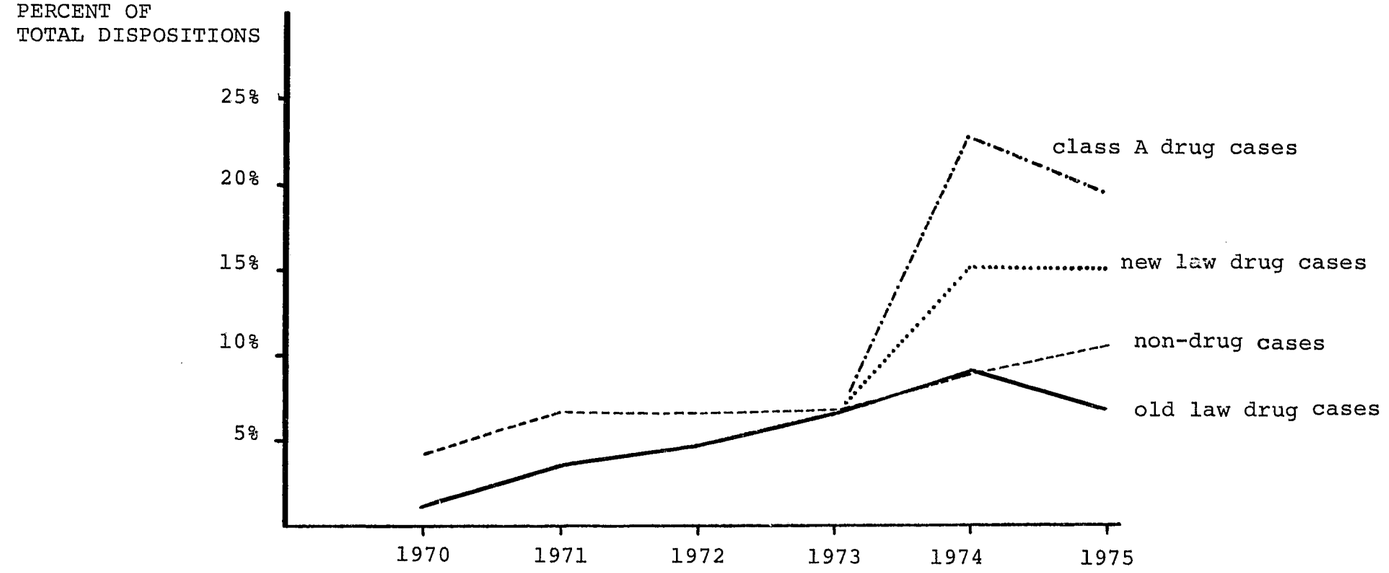
1 OF 2

C H A R T 6-B

New York City: Cases Disposed By Trial As Percent of Total Dispositions ("Trial Rate") in the Supreme Courts



Source: New York State Division of Criminal Justice Services

with certain imprisonment upon any plea to a felony, defendants, it can be argued, will choose to go to trial. This view has been supported by staff of the Legal Aid Society, which represents most indigent defendants in New York City.

The incentive to go to trial in these cases is not universal, however. A defendant facing a class C charge, for example, might be faced with the following options: (1) go to trial on the class C charge; if found guilty, receive a minimum sentence as a prior felon of three years (but the minimum sentence could be as high as 7½ years); or (2) plead guilty to a class E felony and receive a minimum sentence of 1½ years. Some defendants will take a chance on a trial, while others will take the sure thing by pleading, even though they must go to prison. Some officials outside the City believe that, on balance, most of their defendants prefer the sure thing.* A firm answer on the choices defendants make between trials and pleas will have to await the Project's analysis of the disposition process for predicate felony cases.

The following section presents some additional explanations for the failure of the City system to keep up with the demands the 1973 laws have placed upon it.

*Even the results of a plea are not always certain. It is only after the minimum term has been served that the Parole Board considers release of the defendant. The offender could serve as long as twice the minimum term set by the court.

Other Reasons for the Rising Backlog of New Law Cases

The rapid addition of new law cases to the backlogs of the New York City Supreme Court raises several questions about the productivity of the courts. Were the resources provided to deal with the new laws sufficient on the basis of past performance of the system? Have the new drug parts been significantly less productive than other parts within the Supreme Court? What lessons can be learned to guide future planning efforts?

In addition to the rise in the demand for trials discussed earlier, three other factors have contributed to rapid growth of the backlog of new cases in the City.

First, the productivity of the new courts, in terms of their ability to dispose of large numbers of cases, did not match the productivity of the established courts in the City.* Even after allowing for differences in the frequency of trials, the new courts lagged. Second, given the productivity the new courts did achieve, there were not enough new courtrooms furnished to deal with the demand for trials that resulted from the newly imposed restrictions on plea bargaining. Third, there was, for budgetary reasons, distortion in the workload assigned to the new courts.

Many parameters of court performance vary greatly from month to month, so analysis over short periods of time is

*Productivity is defined here as the average number of dispositions achieved in one day of a court part's operation (referred to as a part-day). Dispositions may come as a result of trials, pleas, dismissals, and other final court actions.

not very informative. Performance measures for two six month periods are analyzed here. Data for periods prior to 1974 are not available, nor is comparable information for other parts of the State.

Productivity

Manhattan (New York County) is the only county with enough courtrooms specializing in drug cases to provide a sound basis for comparison with non-drug courts. Currently, there are 18 parts devoted in whole or in part to drug cases in Manhattan. They are housed in one building, and they are under the administrative direction of one judge (Michael Dontzin recently replaced Norman Fitzer). The City's Special Narcotics Prosecutor, Sterling Johnson (this post was formerly held by Frank Rogers), is responsible for all drug prosecution in these court parts. (Non-drug cases are prosecuted by the Manhattan District Attorney.)

During the first half of 1974, when the backlog of new law cases was increasing at its fastest pace, an equivalent of 15 full-time court rooms (parts) were devoted in whole or in part to processing drug cases.* Some of the parts had been established under the Special Narcotics Courts program, the rest under the Emergency Dangerous Drug Program. During that same six month period, an equivalent of 17 full-time non-drug

*The number of parts actually operating from day to day may vary. To smooth over day-to-day fluctuations in part activity, the number parts will be described as "full time equivalent parts." This is determined by dividing the number of part-days of activity by the number of work days in the time period.

courtrooms were operating in Manhattan.

The 15 drug parts disposed of 1,249 indictments;* the 17 non-drug parts disposed of 2,423 indictments. On a per part basis, the non-drug parts disposed of 1.2 cases every day a part was open; the drug and predicate felony parts disposed of only 0.7 cases per part day (See Table 6-III). To examine how much of the difference in productivity was due to the higher rate of trial in the drug parts, we estimated what the output per day would have been in the non-drug parts if they had experienced the higher trial rate actually experienced in the drug parts. We estimate that productivity in the non-drug parts would have fallen from 1.2 cases a day to 1.0 case per day. Thus the higher trial rate explains about half the difference in productivity between drug and non-drug parts.**

Translating the productivity per part into estimates of resources required to dispose of the actual caseload results in the following estimates. The 15 drug parts disposed of 1,249 cases during the six month period. We estimate that if those same parts had operated with the productivity of the non-drug parts, (but had labored under the higher trial rates evident in drug and predicate felony cases), they would have disposed of over 1,700 cases in the first half of

*The New York City Supreme Courts count indictments and dispositions in terms of "defendant-indictments." Under this scheme, one defendant indicted on two separate indictments is counted as two defendant-indictments. Similarly, two defendants indicted under one indictment are counted as two defendant-indictments. In this Report, the terms indictments and dispositions reflect defendant-indictments.

**See Appendix IV for method of calculation.

Table 6-III

Productivity in the Manhattan Supreme Courts

January-June, 1974	Manhattan Drug and Predicate Felony Parts	Other Manhattan Parts
Trial rate	9.9%	7.2%
Time required for trial disposition	7.1 days	6.4 days
Time required for non-trial disposition	0.75 days	0.37 days
Dispositions per part-day	0.72 dispositions	1.24 dispositions
New cases (input) per part day	1.08 cases	0.78 case
Average number of appearances per disposition*	21	11
January-June 1975		
Trial rate	13.5%	10.3%
Time required for trial disposition	5.7 days	6.1 days
Time required for non-trial disposition	0.78 days	0.52 days
Dispositions per part-day	0.69 dispositions	0.92 dispositions
New cases (input) per part day	0.59 cases	0.91 case
Average number of appearances per disposition*	21	14

Source: Monthly statistical reports of the New York City Administrative Judge (unpublished).

*New York State Office of Court Administration, Court Information Service, "Statistical Summaries and Comparisons for New York City" (monthly).

1974, compared to the 1,249 cases actually disposed of. Production at the 1,700 case level would have been nearly sufficient to keep backlogs from growing since there were 1,859 arraignments in the drug courts during the period.

The time it took to dispose of a case by trial was about the same in the drug parts (7 days) and the non-drug parts (6.5 days). But, during the first half of 1974, it took twice as much court time to dispose of a non-trial case in the drug parts (3/4 of a part-day, compared to 3/8 of a day in non-drug parts). This difference is probably explained largely by the number of court appearances it took to dispose of a case. During the first half of 1974, the average case appeared on the calendar 11 times in a non-drug part before disposition. In drug parts, cases appeared an incredible 21 times before disposition.* One of the greatest needs in the court system is to determine the reasons for such frequent adjournments so that remedial action can be taken.

Differences in productivity between the drug and non-drug parts in Manhattan narrowed during the first half of 1975. The drug and predicate felony parts actually disposed of trials in slightly less time than the non-drug parts (about 6 days

*The raw number of appearances may be misleading because it could be reduced simply by increasing the time between appearances, e.g. until a case was clearly ready for disposition. In this respect forcing cases to appear on a calendar might be viewed as a pressure tactic against the prosecutor and defense counsel. Nevertheless, this is a lot like spinning wheels, and it does take a lot of effort to produce defendants and witnesses over and over again. Although we have not done a statistical analysis of the relationship between number of appearances and the time it takes to dispose of a case, that relationship is likely to be a positive one.

per trial disposition in each case). But overall productivity in both courts declined below 1974 levels as it took somewhat longer to dispose of non-trial cases. The average number of appearances per case increased from 11 to 14 between 1974 and 1975 in non-drug parts, while the average number of appearances remained at 21 per case in drug parts.

An equivalent of 17 full-time drug and predicate felony parts were in operation during the first six months of 1975, and they disposed of 1,450 cases during that period. We estimate that non-drug parts operating for the same number of days would have disposed of 1,650 cases, 14% more than the drug parts, if the non-drug parts had been subject to the higher trial rates actually witnessed in drug cases. Again, the high demand for trials in the drug parts can explain only about half the difference in productivity between drug and non-drug courts. The very large number of adjournments in drug case suggests that the rest of the difference is probably attributable to the failure of the drug parts to move cases on to disposition. The discussion in Section 7. gives some reasons for frequent adjournments in drug cases.

The finding that productivity in the new drug courts has been lower than the productivity of the existing courts is not surprising. When the court system is viewed as a large and intricate production process, the addition of a substantial number of judges (and associated personnel) is analagous to adding a new branch to a factory. If the technology used in the new branch was just the same as the technology common in the basic plant, then the new additions

would be expected to exhibit lower productivity than the basic plant. In the jargon of economists, the additional resources exhibit "diminishing marginal productivity."

The one way to avoid lower productivity is to improve the technology of the production process, i.e. to do things differently (and better). In industry, machines are often substituted for manpower in order to improve productivity. Alternatively, a change in the organization of the process, or even superior know-how on the part of the new employees, could be used to improve productivity.

The newly furnished courts, however, were organized along the lines of the existing Manhattan courts and the judges called upon to preside over the new courts were, in general, less experienced in the New York City court system.

Thus, it would have been normal to expect some lag in the productivity of the new courts. We know of no way, unfortunately, to gauge the extent to which the actual productivity achieved by the new courts was above or below "reasonable" levels.

Total Resources

We estimate that at the productivity actually achieved by the Manhattan drug parts, it would have taken eight additional full-time parts during the first half of 1974 to avoid the rapid buildup of backlogged cases. From the point of view of the demand for trials, the 17 parts which were in

operation could have absorbed a trial rate of only 2.8% and still kept current. The actual trial rate was 9.9%.

Extrapolation of these resource needs to the rest of the City is difficult because the organization of the new courts varies from borough to borough. In rough terms, though, if the Manhattan calculations are typical, an additional 15 parts could have been productively used citywide.

We have also estimated the resources which would be required over the next year to a) keep up with the current inflow of drug indictments and b) reduce the backlog to some predetermined level. The backlog of drug cases now represents about ten months work. If the court wanted to reduce the backlog over the next year to the point where it represented six months' work, the equivalent of approximately 35 full-time court parts working on nothing but drug cases would be necessary.*

It is possible that the resources devoted to drug cases will approximate this level. There are still 12 Special Narcotics Court parts operating citywide. Thus an equivalent of 23 parts out of the existing 31 Emergency Dangerous Drug Control parts -- or some combination of these parts and regular Supreme Court parts -- would have to be devoted to drug cases to reach the goal of reducing the backlog to six months' worth of dispositions. Such an allocation of court resources is not unreasonable to expect.

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*This estimate is based on current indictments and trial rates and court productivity between the extremes of productivity recently experienced.

The reduction in the citywide drug backlog during the last quarter of 1975, though quite small, is encouraging. A lower volume of indictments in the second half of 1975 compared to a year earlier, and recent stability in the trial rate after a huge initial increase (Chart 6-B), suggest that the outlook for processing drug cases in the City courts is far brighter than the past.

To achieve steady progress, however, the pressure to dispose of drug indictments must be maintained. Governor Carey last year relaxed a requirement which controlled the assignment of cases to the courts financed by the State under the Emergency Dangerous Drug Program. Under the old requirement, 80% of the cases assigned to the newly furnished parts were to be drug and predicate felony cases. Since the relaxation of that requirement, several counties outside the City have already assimilated the drug parts into their regular court operation. Judge Ross recently began to assign non-new law cases to the City's drug parts in greater number, and has informed us that the distinction between those parts and the other components of the Supreme Court will slowly be abandoned.

Distortion of the Workload

All through 1974, the new drug parts established under the Emergency Dangerous Drug Program were responsible for both drug cases and cases in which a defendant had a prior felony arrest. The latter cases are those which are potentially subject to the predicate felony provisions of the

new laws (which would have applied if the offender had a prior felony conviction). Early in 1975, after the pending caseload in the new parts had increased for a full year, assignment of these "potential predicate felony" cases reverted to the regular (non-drug) parts of the court.

In Manhattan, the 1,450 "potential predicate felony" cases assigned to the newly created parts accounted for 45% of the input to those parts during 1974. Out of these cases, it is likely that approximately 500 actually involved a defendant with a prior felony conviction.* These would be the true predicate felony cases. If the remaining 950 cases had been assigned instead to the regular parts of the court, it is likely that the new parts would have come much closer to balancing their workload. The improvement in the picture would not, however, have been as great as the raw numbers suggest because the cases which did not prove to be subject to the predicate felony provisions were probably the ones most easily disposed of. The rate at which these non-predicate felony cases went to trial was probably lower than the rate for true predicate felony cases.

There is also the possibility that the new courts would have remained idle a good deal of the time during their early months in the absence of some non-new law cases to work on. The issue would then have boiled down to a trade-off between

*A sample of felony arrests in New York City in January, 1975 indicated that the average number of felony arrests among defendants having at least one prior arrest was three. Roughly 1 out of every 8 felony arrests results in a felony conviction, resulting in an overall likelihood of conviction of about 35%.

1) using the new courts in part to alleviate the normal pressures on the Supreme Court or 2) prosecuting the new law cases exclusively. The second choice may have caused some slack time in the new courts, but it would probably have speeded up the processing of new law cases somewhat by keeping pressures on prosecutors and defense attorneys to prepare cases so that the courts could be kept busy.

From the point of view of court management -- and there was little if any dissent from this view at the time -- the more the new courts were integrated into the regular operation of the Supreme Courts, the more flexibility there would be in assigning cases to the various components of the court, and the more the priorities of court management could be pursued. From this perspective, the assignment of the "potential" predicate felony cases to the new courts was reasonable.

On the other hand, from the point of view of the Emergency Dangerous Drug Control Program, for which the Legislature was willing to spend up to $40 million a year, it appears that the potential "predicate" felony cases should not have been assigned to the newly created parts. There was a reduction in the backlog of cases in non-drug parts during the first half of 1974, just at the time the backlog was growing to large proportions in the drug parts. Better balance could have been maintained if cases had been screened prior to indictment so that only those cases in which the defendants with prior convictions would have been assigned to the new parts. Pre-indictment screening would have been relatively inexpensive.

The experience of researchers indicates that the commitment of several clerks to complete the criminal histories of defendants in the "potential" category would have made the job feasible. It is likely that the clerks would have been financed by the State as part of the drug program.

There was, however, one strategic reason for overloading the new parts relative to the regular portion of the Supreme Court. The regular parts of the Supreme Court in New York City are financed primarily from funds appropriated by the City -- so-called Tax Levy funds. The parts furnished under the Emergency Dangerous Drug Program are financed solely by the State of New York. Early in 1974, when State appropriations for the drug program had not been fully committed, and when the City was beginning to feel the fiscal pressures of the 1974-75 budget cycle, the likelihood of receiving additional funding from the City seemed slim compared to the prospects of additional State funds. If the need for more drug parts could have been established, the State would have financed these resources. However, the need for additional resources could not be established in time for the State's 1974-75 budget (the laws had been in operation for only a few months when the 1974-75 budget was being prepared). Additionally, the Governor's authority to appoint new judges to sit in new law cases expired on June 30, 1974.

Distortion of the workload might not have occurred if the incentives to seek funds from alternative sources had not existed. Future distortions of this type might be avoided

if a single funding source for the Supreme Courts were established. This is only one of several issues concerning the financial and management organization of the State courts. But it would support the argument that, because the administrative responsibility of the courts runs through a statewide Administrator and a statewide Administrative Board composed of senior judges, the State should be the single funding source. Immediate State assumption of the costs of the Superior Courts -- estimated to be about $100 million statewide for the current fiscal year -- may not be feasible. However, it may be possible to negotiate a gradual State assumption of costs over a five-year transition period. Such an arrangement would have to recognize joint budget-making authority during the transition so that neither the State nor the City could impose obligations unilaterally upon the other.

Other Problems of the Planning Process

At the time new resources were being allocated in mid-1973, it was impossible to accurately project the effects of the radically new provisions of law on the workload of the courts. During the legislative process, there were only guesses about actions that the police might take in enforcing the new laws. Uncertainty about police policy, particularly with respect to street level enforcement activities, was resolved to some extent in May, 1973. Former Police Commissioner Donald Cawley informed us that the New York City Police Department decided at that time to maintain its priority in favor of cases aimed at middle and upper level drug dealers, and rejected the option of returning to the policy of dragnet arrests it had followed between 1969 and 1971.

Two other important pieces of information remained lacking. Although there was universal agreement that the new laws contained incentives for defendants to choose to go to trial (rather than to plead guilty), there was no experience from which to draw estimates of the degree to which trials would be demanded. The best attempt at an analysis of these questions was carried out by the New York City Criminal Justice Coordinating Council (CJCC) in response to the Governor's original proposal which would have banned plea bargaining altogether for some crimes and would also have imposed mandatory definite lifetime sentences (with no parole possible). The CJCC analysis was based on the assumption that 85% of new indictments for class A felonies would result in a trial, and concluded that the minimum of 162 new court parts would be required in the City to successfully manage the workload brought by the new laws. The 85% trial rate was an unheard-of figure at the time, but there were no challenges to the assumption because no one planning for system expansion had any concrete reason to believe that figure or any other was the correct one. As it turned out, about 20% of new class A drug indictments have resulted in trials, but the plea bargaining restrictions in the final bill were less severe than those proposed in the original.*

The experience of the last two years with the increasing number of trials under the drug laws has provided experience which, though limited, is sufficient to allow estimates of the effects that future proposed changes in law may have on the demand for trials. For example, the Project staff was able to make fairly detailed predictions of the demand for trials that would result from implementation of changes made to the drug and sentencing laws during the 1975 legislative session (amendments which were eventually vetoed by the Governor).

*The State Administrator of the Courts projected a need for 133 new parts in New York City on the basis of the final bill.

Another problem of the early planning process was that only a crude estimate could be made of what a particular demand for trials would mean in terms of the need for new judges. CJCC's projection that a minimum of 162 new judges would be required in New York City alone made an attempt at precision somewhat academic. There were only 100 new judges available statewide, and several of these were to be judges for the family courts who would not be available to preside over new law cases. Although the estimate of 162 new judges was crude, it was consistent with the assumed 85% trial rate. In fact, it assumed doubling the average number of trials which could be conducted in a court part per year. Number of trials per year was the only specific measure of productivity used in the estimating procedure.

Somewhat more precision would be possible today, thanks to the development of comprehensive regular information regarding input and output of cases, both for the Statewide Court system, and for the City's Supreme Courts. The recent improvements in information for the City courts include details about the time courts are in session, and the proportion of time spent on trials and other matters. Information of this kind allows for the first time the estimation of the costs of conducting trials. For example, by comparing the time it takes to dispose of a case by trial with the time it takes to process a non-trial case, the cost of trials in terms of other dispositions can be estimated. For New York City, the ratio of trial time to non-trial time varies greatly depending on the group of court parts and the time period under study, but it is clear that trials are very expensive. The system gives

up between six and eighteen non-trial dispositions for every trial it conducts.*

A second kind of analysis made available by the new management information system is the determination of the marginal cost of a general increase in the demand for trials. As noted earlier, estimates based on the productivity of the first six months of 1974 indicate that for every one percentage point increase in the citywide trial rate, an additional nine full-time court parts would be required. The annual cost of each additional part (including support staff) under the Emergency Dangerous Drug Program is roughly $750,000. Thus the financial implications of a change in the trial rate can be enormous, with a meager one percent change costing over $6 million per year.

The 1973 laws themselves provided the seeds for improved statewide information by giving the New York State Division of Criminal Justice Services (DCJS) the responsibility for data collection and regular reporting of information relevant to felony case processing. The resulting reports and background materials made available by DCJS have made much of the Project's analysis possible. They also provide useful management information on a regular basis.

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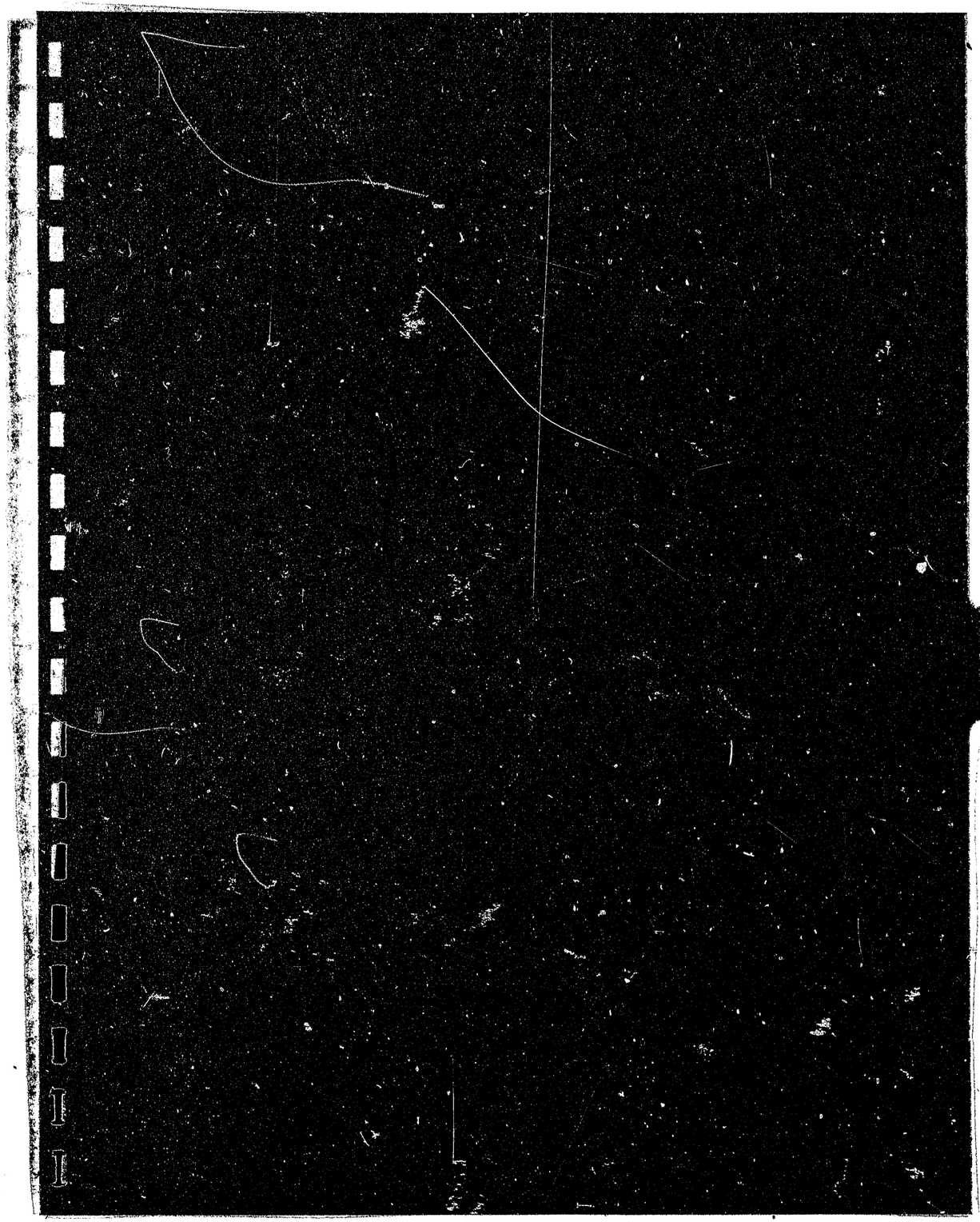
*This estimate is based on current indictment and trial rates and court productivity between the extremes of productivity recently experienced.



THE EFFECTS OF THE NEW LAWS ON THE SUPERIOR COURTS IN SIX UPSTATE COUNTIES

Developments in felony case processing in six counties outside New York City were examined in order to analyze the apparent ability of upstate jurisdictions to cope with the procedural restrictions embodied in the new laws. The following counties were included in the analysis: Albany, Broome, Dutchess, Erie, Monroe, and Nassau. Erie and Monroe counties contain the State's second and third largest cities, Buffalo and Rochester, respectively. With a population of 1,350,000, the Buffalo metropolitan area was the 24th largest in the country in 1970. The Rochester metropolitan area had a population of 960,000 in 1970. Nassau County is the largest suburban county in the New York City metropolitan area, with a population of 1,400,000. Albany County, which includes the city of Albany, the State's capital, has a population of 290,000. Broome and Dutchess counties each with a population of 220,000, are the counties with the smallest populations covered in this Report.

The relative scales of the superior court systems in these counties can be seen from Table 7-I. Nassau County, with a total of 12 criminal term judges, has the largest superior court complement of any county outside New York City. Even so, it supports barely ten percent of the number of judges in the City's Supreme Court (Criminal Term).

Table 7-I

The Size of the Superior Court Systems of Six Upstate Counties

	Albany	Broome	Dutchess	Erie	Monroe	Nassau	New York City
Number of "Regular" Criminal Term Judges	1	1	1	7	4	8	86**
Judges added Under the Emergency Dangerous Drug Control Program	1	0	0*	3	3	4	31
Total Number of Indictments, 1974	231	432	306	1,146	1,429	2,858	19,488
Number of Drug Indictments, 1974	32	78	67	271	281	709	3,081
(Percent of Total)	(13.9%)	(18.1%)	(21.9%)	(23.6%)	(19.7%)	(24.8%)	(15.8%)
Percent of Drug Law Convictions, 1972-74 (old law), Which Involved:***							
Heroin	53%	20%	92%	34%	23%	30%	68%
Marijuana	13%	60%	--	28%	59%	48%	12%

* One judge who normally sits in civil proceedings was transferred to handle criminal cases between September, 1974 and June, 1975.

** Includes "special" courts furnished under the Federal Special Narcotics Program and the Emergency Felony Case Program.

*** Source: Drug Law Evaluation Project Survey

Upstate courts have encountered some of the same pressures that the City courts have faced in trying to implement the 1973 drug laws, but they have, in general, fared better than the City courts in dealing with the problems. The favorable outcome is traceable to the relatively low frequency of class A indictments. This, in turn, has meant that the demand for trials in drug cases has not been as burdensome as it has become in the City.

Only Albany County managed to escape the buildup in the drug case backlog during 1974. Each of the other counties saw its pending caseload grow, and while the increases were very small compared to the rise in the New York City backlog, they were not negligible in terms of the number of drug indictments in these counties.

Change in the Pending Caseload of New Law Drug Indictments During 1974

COUNTY	Number of Cases	Percent of New Law Drug Indictments
ALBANY	-9	--
BROOME	+33	42.9%
DUTCHESS	+21	33.9%
ERIE	+150	66.7%
MONROE	+150	58.1%
NASSAU	+549	80.3%
New York City	1,885	64.0%

Source: New York State Division of Criminal Justice Services

In retrospect, it is not surprising to see some growth in the pending caseload during the first year the new laws were in operation. All jurisdictions began the year with virtually no backlog of new law cases -- the laws had been

in effect for only four months -- and it takes some minimum amount of time to process even simple cases through the court system. The caseload that can normally be handled in this minimum processing time represents the smallest "backlog" one would expect to find pending in the courts at any time.

Nonetheless, the growth of the pending caseload in these counties was not of enormously different proportions from the growth experienced in New York City, where the situation has always been viewed with considerable gloom. We wondered why officials in these other counties remained so calm.

Part of the explanation came from examining developments in each of the counties in turn. There are a few general points, however. First, when we began asking questions early in 1975, backlogs had already begun to decline. The only data for 1975 we have available is for Broome, Dutchess, and Nassau counties, and each showed a decline in its drug case backlog during the first half of the year. By contrast, the New York City backlog was still growing substantially in the first half of 1975. Second, 1975 also saw a decline in the number (and proportion) of drug indictments in most of the counties. Third, the counties which faced the largest increases in their pending caseloads, Erie, Monroe, and Nassau, each had received a relatively large injection of new judicial resources. Erie grew from seven to ten judges; Monroe from four to seven; and Nassau from eight to twelve. It is likely, although we do not have data on the point, that these counties were able to manage an increase in their backlogs without

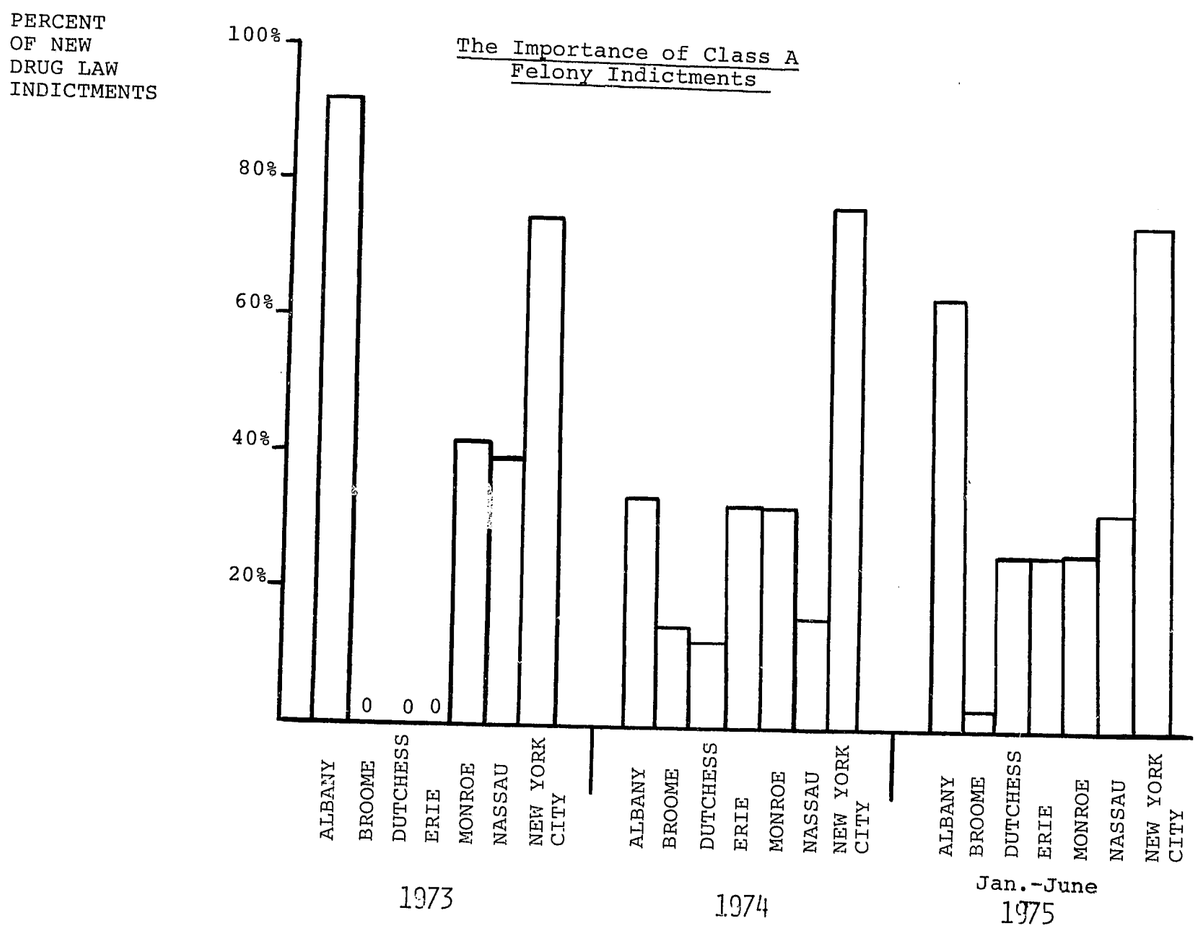
attendant increases in the time cases must spend in the system. In other words, the resources newly furnished in these counties were sufficient to handle the increased workload. Evidence for this conclusion is that for all 53 counties outside the New York City metropolitan area, the age of cases disposed of did not increase during 1974, and the five counties examined here (Nassau is within the metropolitan area) account for 40% of the workload of all those counties.

Another similarity between the counties examined here is that class A felony drug cases accounted for a large part of the initial growth in backlogs. In Erie and Monroe counties, there was actually a decline in the backlog of non-class A cases. (This was also true in New York City.) Class A cases amounted to two-thirds of the backlog growth in Nassau County and nearly half of the growth in Dutchess County. In all these counties, these proportions are far higher than the share of class A cases in indictments (See Chart 7-A).

The demand for trials in drug cases has increased in several of the counties, as well as in New York City (see Chart 7-B). The data are not extensive enough for reliable statistical analysis, but 1974 and 1975 variations in trial rates between counties seem to be related to the prevalence of class A cases. (By comparison, Chart 7-C indicates that there has not been a general increase in the frequency of trials in non-drug cases in these counties since 1973.)

Once again, it appears that when the effects of the new laws are being examined, "new laws" is nearly synonymous with "class A cases." This, in turn, reinforces the finding

Chart 7A

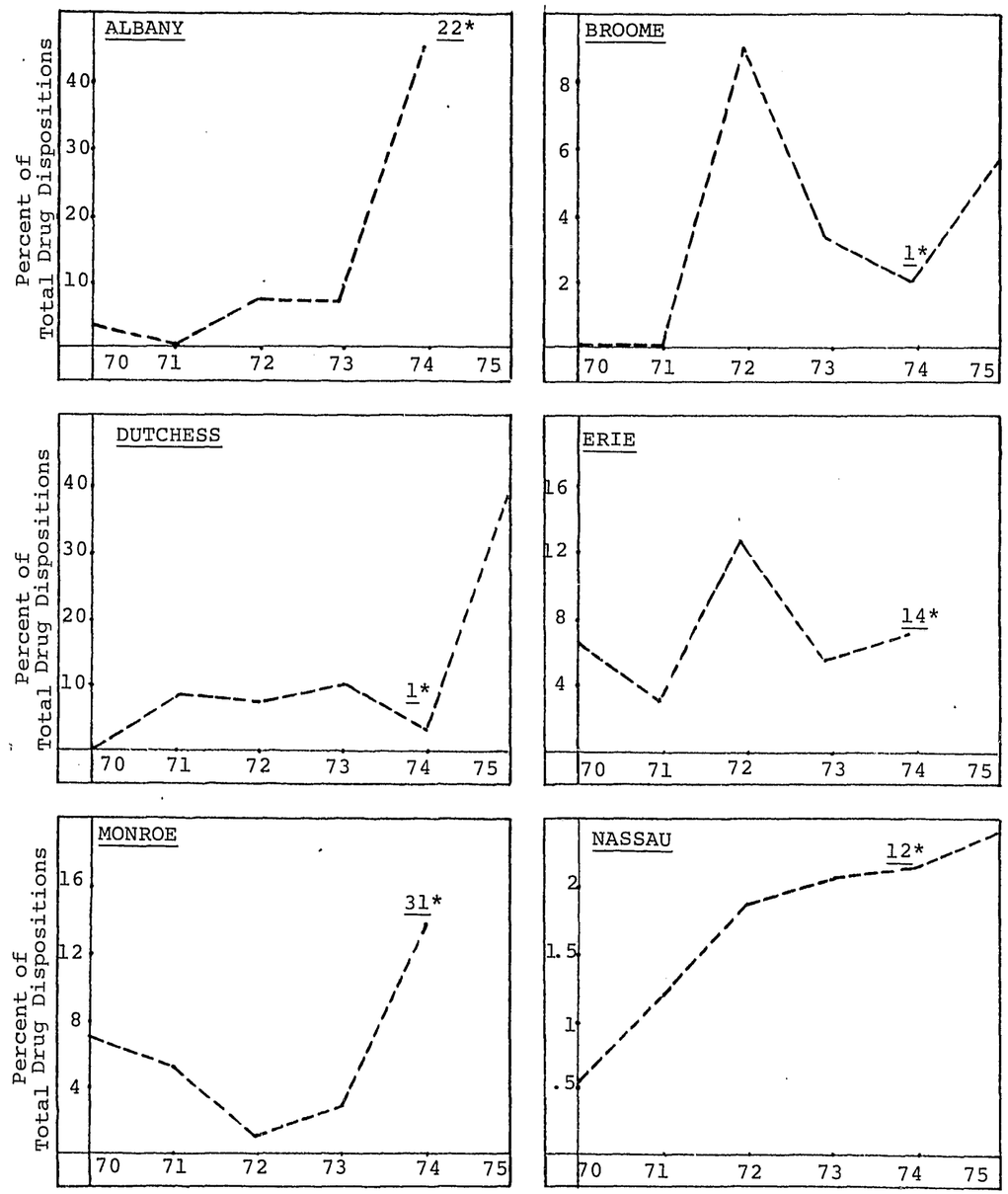


The Importance of Class A Felony Indictments

Source: New York State Division of Criminal Justice Services

C H A R T 7B

Trials in Drug Cases as a Percent of
All Dispositions in Drug Cases

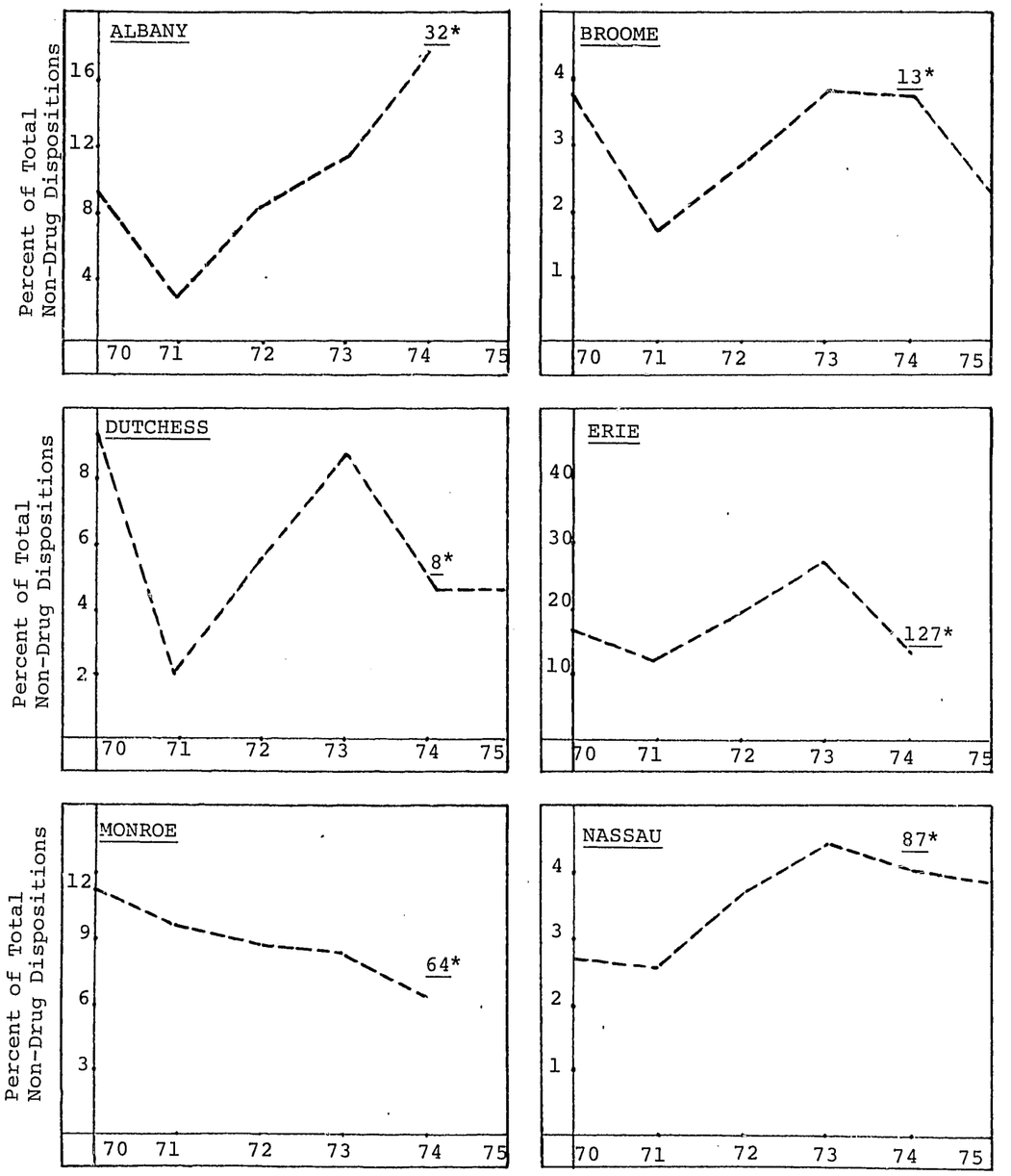


*Number of Trials

Source: New York State Division of Criminal Justice Services
Note; Large number of trials in Albany and Dutchess resulted from one-time State Police operations.

C H A R T 7C

Trials in Non-Drug Cases as a Percent of All Dispositions in these Cases



*Number of Trials

Source: New York State Division of Criminal Justice Services

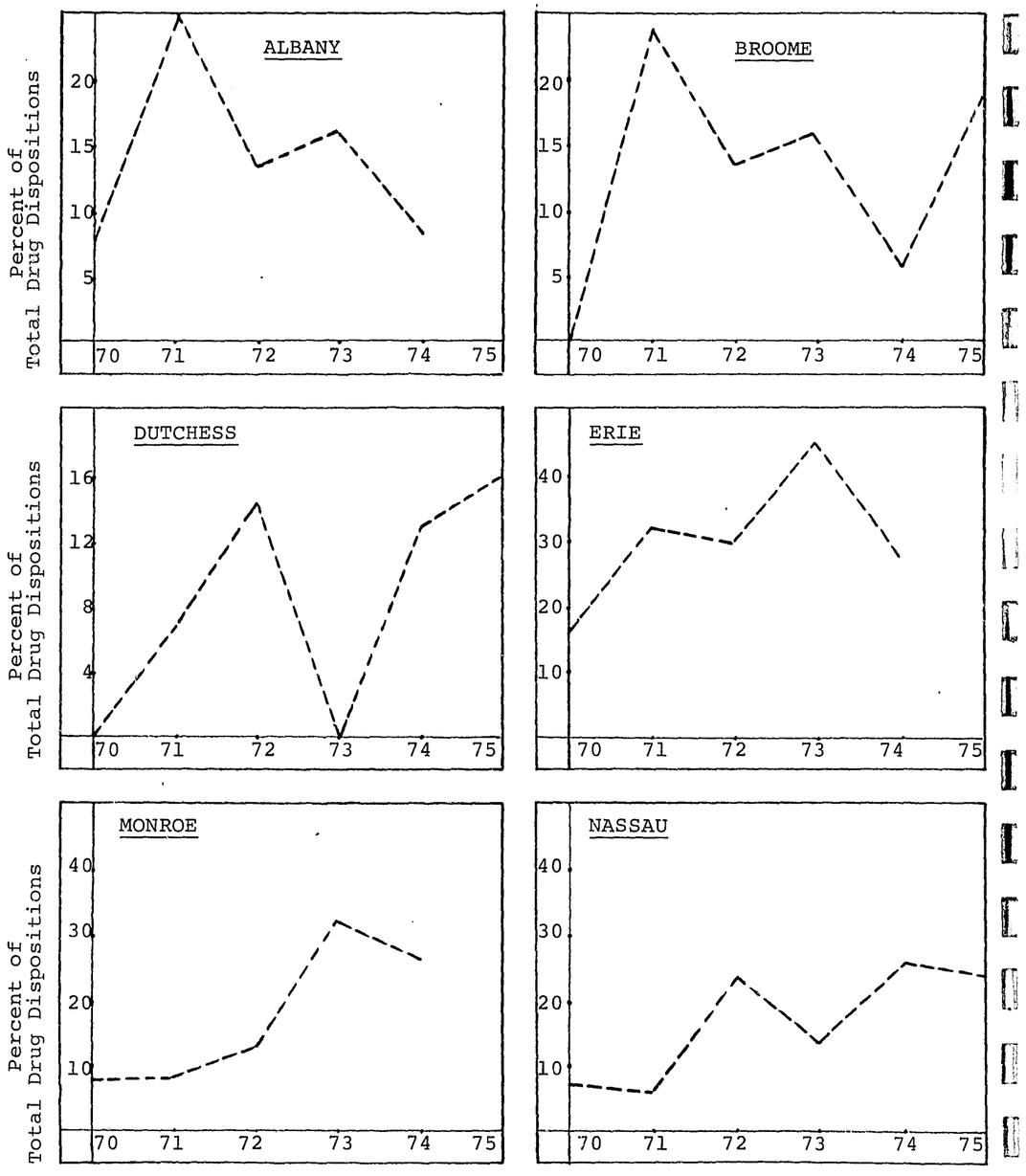
that the new laws are having an effect on the court system, because it is the class A cases which most clearly face the plea bargaining restrictions and mandatory sentencing provisions of the 1973 laws.

There are a variety of reasons for the slowness with which class A drug cases have been disposed. A high trial rate itself is, of course, of primary importance. But pleas in class A cases have also come slowly and, despite the high trial rate, most class A cases are resolved by a plea (within the new limitations on pleading). The reason may be the dynamics which apply to the class A plea process. Bargaining in these cases does not include the possibility of a non-jail sentence so that any plea will certainly involve incarceration for a minimum of one year and a lifetime maximum. If the defendant is free on bail, he will be reluctant to enter a plea until forced to a decision on whether to go to trial. This decision can be postponed by interposing motions, requesting adjournments, and finally insisting upon a trial and then entering a plea once the trial is ready to begin.

Some evidence to support this scenario is available. In Manhattan, for example, the number of appearances required on average to dispose of a drug case is 50% higher than average for non-drug cases. In New York City as a whole, the dismissal rate in drug cases has increased, which in turn suggests increased pre-trial hearing activity. (But dismissals have not increased markedly in the six upstate counties. See Chart 7-D). The assistant district attorney in Erie County in charge of drug prosecution has indicated that the decision to plead in A cases is usually not made by the defendant until a judge

C H A R T 7D

Dismissals in Drug Cases as a Percent of all Drug Dispositions



Source: New York State Division of Criminal Justice Services

is ready to begin his trial.

These possibilities add to the difficulties experienced by the courts in processing cases facing restrictions in plea bargaining and mandatory prison sentences. In most counties these restrictions do not affect a large enough number of cases (or portion of the courts' work) to be of major consequence. A brief review of the most relevant points for each county follows:

Albany County had the highest proportion of class A felony indictments among the non-New York City counties in our study. Although most of the indictments in 1973 grew out of a single State Police undercover operation which resulted in 23 arrests for A felonies late in the year, a steady flow of A felonies into the County court continues.

The 1973 arrests had a substantial impact on the courts during 1974. All but one of the defendants went to trial (about half were acquitted). This single operation raised the number of trials in drug cases from three in 1973 to 22 in 1974.

Despite the large increase in trials (the trial rate also increased in non-drug cases), there was no increase in Albany's pending drug caseload. The addition of a second County Court judge under the Drug Program was sufficient to cope with the volume of indictments, although because the new judge had just finished a term as District Attorney he did not sit in cases involving defendants he had indicted. Prior to the creation of the second judgeship, Albany's County Court Judge had been called upon to handle an extremely high workload (290 dispositions in 1973).

Broome County's only County Court Judge also had to deal with an exceptionally large number of indictments. The workload in Broome shows the steadiest increase among the counties we examined, with indictments growing from 208 in 1970 to an annual rate of over 500 during the first half of 1975. This workload is the highest per judge workload of the counties in our study.

Indictments for drug cases increased substantially in 1974, and the pending caseload increased as well. The trial rate in drug cases did not. Broome has historically had a very low trial rate, probably in large part because of a unique pre-trial conference procedure. The Probation Department prepares a pre-sentence report on defendants in time for an extensive

pre-trial conference. The conference takes place in the judge's chambers, and is attended by the defense and prosecution. Extensive information exchange occurs, so that the outcome of a trial is reportedly more certain than under normal pre-trial procedures. In other circumstances, little verified information about the defendant is available, and free exchange of information is seldom the rule.

In 1974, there was only one trial in a drug felony case out of 53 drug dispositions. Broome has also had the lowest proportion of class A indictments among the six counties.

The increased backlog of 25 cases in 1974 was not of an unusual magnitude compared to past fluctuations in the County's caseload. During 1973, the pending caseload (of both drug and non-drug cases) had declined by about 50 cases. During 1972, the pending caseload had increased by that same amount. A year earlier, the pending caseload had decreased.

In terms of the normal fluctuations of workload in a busy one judge county, then, the 1974 activity was considered normal. In any case, by early 1975, the pending drug caseload had itself begun to decline.

Dutchess County is also characterized by a very low number of class A drug cases. There were only 13 class A indictments between September, 1973 and June, 1975. The increase in the drug case backlog amounted to only a dozen cases in 1974. Even that small increase was reduced in half early in 1975.

During 1974, the backlog of non-drug cases increased substantially because of a very large rise in arrests and indictments. Between September, 1974 and June, 1975, a County Court Judge who had been presiding in civil matters was pressed into criminal term service to manage this high level of activity. Of the class A cases which did result in trial, most were disposed of during the period when the second judge was available.

Erie County, despite its large size, does not generate more class A indictments than is typical for non-New York City counties across the State (about 25% of all drug indictments). Consequently, the trial rate in drug cases is not particularly high.

During 1974, however, there was a substantial increase in the number of drug indictments, and the drug backlog grew despite an increase in the number of drug dispositions and the addition of two court parts. (There was no change in the pending non-drug caseload.) Consistent with the pattern found in other counties, the entire drug backlog growth consisted of class A cases. During 1974, less than 10% of the class A indictments filed were disposed of.

There was a substantial increase in the number of drug trials during 1975, as the pending class A caseload matured. The assistant district attorney in charge of drug prosecution believes that the class A backlog continued to grow in 1975

despite the increased number of trials, the addition of a third new court part, and a reduction in the number of drug indictments. Reductions in the pending caseload of non-class A cases, however, has offset the increase in class A cases.

Monroe County has experienced the most serious rise in backlog of the six counties we examined. In 1974, there was significant backlog growth in both drug and non-drug cases due to a large increase in the number of indictments. Class A indictments accounted for about 34% of all drug indictments filed during 1974, and accounted for the entire growth in drug case backlog. Only about 30% of the class A drug cases filed through 1974 had been disposed by the end of that year. Most were trial dispositions, as class A cases went to trial at two and one-half to three times the rate experienced in the other counties (except Albany).

The addition of three court parts under the Emergency Dangerous Drug Control Program (to supplement the county's four regular judges) enabled the county to dispose of twice as many cases and to hold twice as many trials in 1974 as in 1973, and to keep the backlog from overwhelming the system.

The number of drug trials in the county increased from 3 in 1973 to 31 in 1974 and the number increased again in 1975, although the district attorney's office had indicated that a higher percentage of class A cases were disposed by plea in 1975. The county continued to experience class A backlog growth during 1975 despite a decrease in drug indictments.

Nassau County also suffered an increase in its pending caseload of drug felonies during 1974. While less than 20% of drug indictments were for class A felonies, these cases accounted for 2/3 of the backlog increase. Again, this pattern is consistent with developments in other counties.

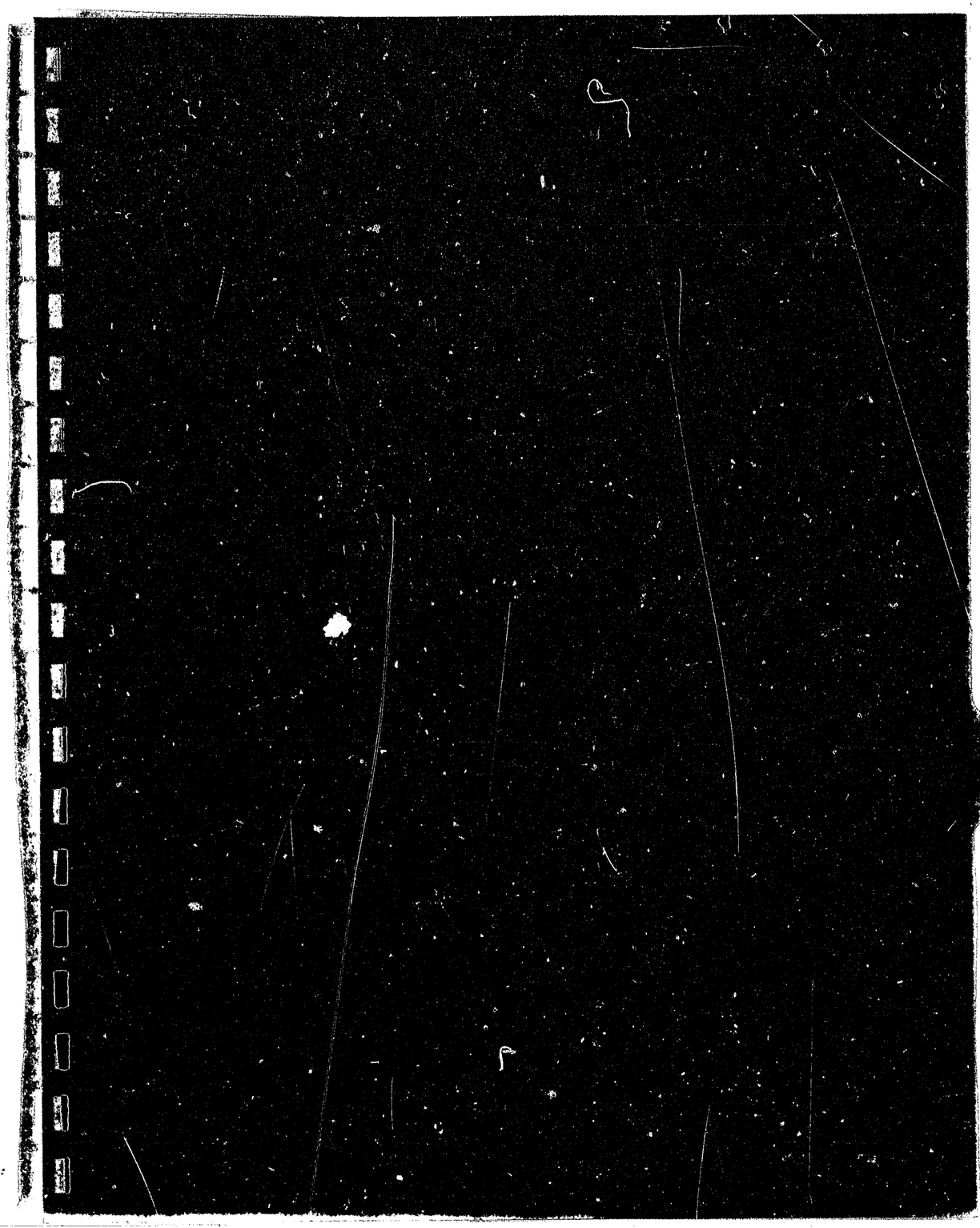
In the first six months of 1975, backlogs of class A cases have continued to grow while the pending caseload of less serious drug cases (and of non-drug cases) have declined.

The rise in Nassau's class A backlog seems to be due to two peculiarities of the county's caseload rather than to an increase in the demand for trials which has been characteristic of other counties. One is the frequency with which the probation alternative for informants has been used. Fully 25% of all sentences in class A-III cases have come under this provision. The evaluation of information provided by informants has added time to the processing of class A cases generally, even where it does not result in a probation sentence.

Second, many A-III cases involving young offenders were held open until the Legislature resolved a question of applicability of the State's Youthful Offender (YO) provisions to

class A felons. These statutes provide non-prison sentences for youths between the ages of 16 and 18. Before an amendment to the law in 1975, most judges believed the YO provisions did not apply in any class A case. Last year's amendment made the provisions applicable to class A-III offenders (but not to class A-I or A-II offenders). Nassau County officials have indicated that a substantial number of class A defendants are young, and that many of these cases were cleared in the second half of 1975 after the amendment became law.

Finally, Nassau has developed an extensive diversion program, Operation Midway, for defendants in both drug and non-drug felony cases. Under this program, a large number of cases are adjourned for periods of a year or more while defendants are under probationary supervision. Defendants in drug cases below the class A level are eligible for participation in Operation Midway. These cases show up in the data as pending, but they do not represent a burden for the court.



A CROSS-COUNTY COMPARISON OF COURT RESOURCES

To investigate whether or not the general congestion in New York City can be traced to an underallocation of court resources, we compared the workloads in the City courts with the workloads in the six other counties we examined. The comparison in this section deals with the entire workload of the courts -- both drug and other -- and with all resources available to the courts.

The general conclusion is that the City is not deprived of resources compared to other areas of the State.

With workload measured by the number of indictments for each judge there was a wide range of workloads in New York City and the upstate counties between 1972 and 1975 (see Table 8-I). Workloads varied by a factor of more than four to one, with a high of over 500 indictments per judge Broome County to a low of just over 100 indictments per judge in Albany County. Broome County's workload has been consistently among the highest. The workload of the New York City Courts has, by this crude measure, been somewhere in the middle since 1973. Judges made available under the Emergency Felony Case Program and the Special Narcotics Program in 1972 and 1973 served to significantly reduce the burden.

About half of the wide variation in workload can be explained statistically by differences in rates of trial between the counties. Broome County, a single judge county which has the highest workload, also has the lowest trial rate (consistently below four percent); Erie, with the lowest workload

TABLE 8-I

The Average Number of Indictments for Each Judge Varies Over a Wide Range

COUNTY	1972	1973	1974	Jan-June 1975
ALBANY	276	298	115	110
BROOME	352	371	432	532
DUTCHESS	260	153	230	169
ERIE	117	143	129	122
MONROE	186	174	204	263
NASSAU	378	345	238	274
NEW YORK CITY	370	245	179	192

TABLE 8-II

Dispositions by Trial As A Percent of Total Dispositions

COUNTY	1970	1971	1972	1973	1974	1975
ALBANY	7.1%	2.2%	7.7%	10.0%	23.3%	N.A.
BROOME	3.1	2.1	3.6	3.8	3.5	2.8%
DUTCHESS	8.0	3.7	5.6	8.6	3.8	10.1
ERIE	14.9	9.4	19.1	23.3	12.3	N.A.
MONROE	10.5	8.4	7.0	6.9	7.5	N.A.
NASSAU	2.1	2.2	3.2	3.9	4.6	3.7
NEW YORK CITY	3.0	5.6	6.0	6.6	9.0	11.1

TABLE 8-III

Misdemeanor Convictions As A Percent of All Superior Court Convictions

COUNTY	1970	1971	1972	1973	1974	Jan-June 1975
ALBANY	20.3%	13.9%	32.2%	25.1%	11.1%	N.A.
BROOME	14.1	8.7	22.1	16.0	17.2	15.0%
DUTCHESS	22.5	30.4	36.2	8.8	13.2	10.6
ERIE	20.1	26.3	24.1	22.7	32.2	N.A.
MONROE	19.2	22.0	38.7	30.5	35.3	N.A.
NASSAU	28.4	39.1	51.4	41.0	40.6	36.5
NEW YORK CITY	44.2	35.9	29.4	25.6	21.9	18.7

N.A. = Not available

Source for all Tables: New York State Division of Criminal Justice Services.

per part, has the highest trial rate (consistently above ten percent). It is reasonable that a county which continuously conducts a large number of trials should require relatively more resources than a county in which the demand for trials is low. New York City's trial rates tend to be higher than average but not greatly (See Table 8-II).

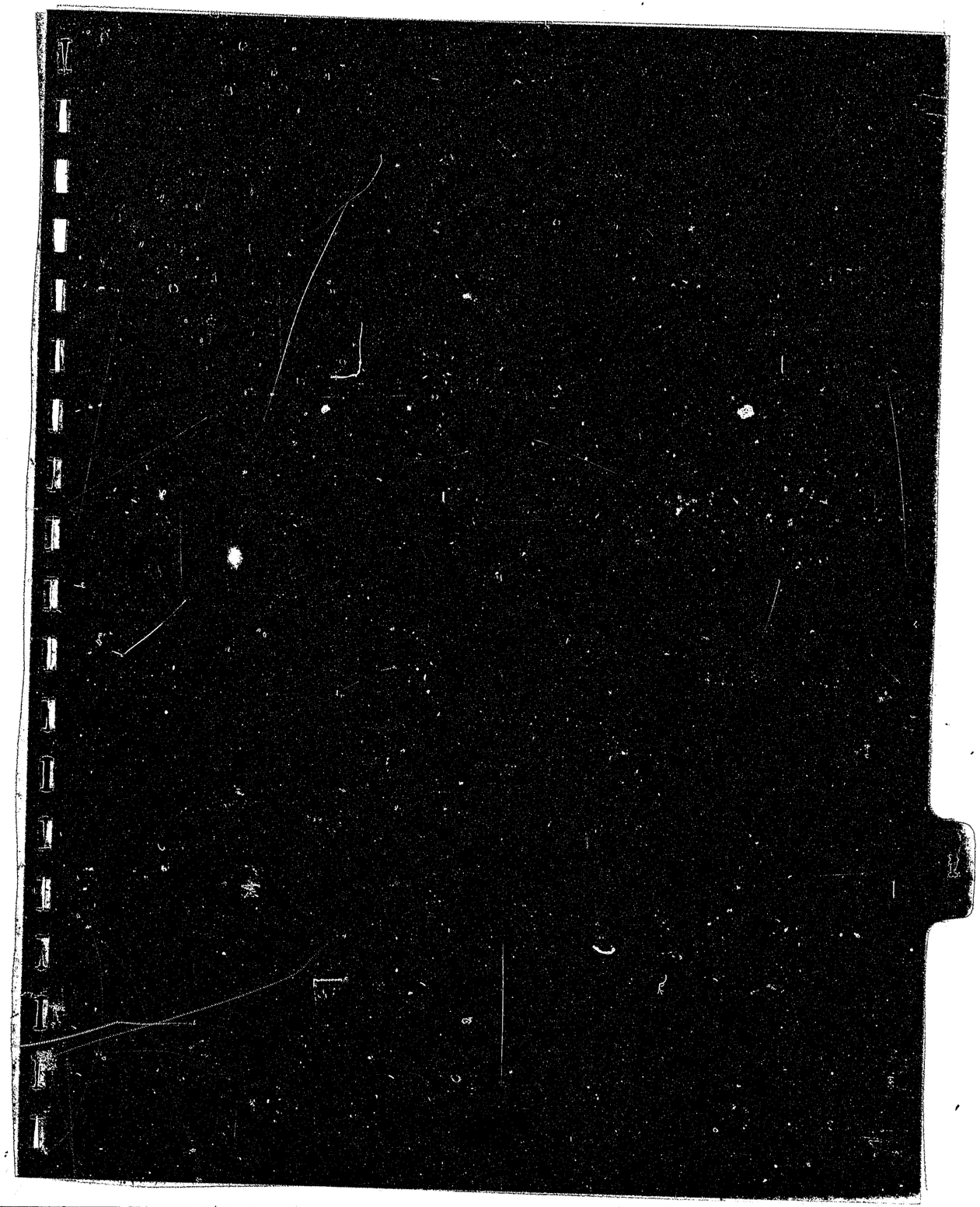
We also examined the possibility that the wide range among the counties in the number of indictments handled per judge is due to differences in the pattern of pre-indictment screening. In counties where screening is not well done, many of the convictions in superior court will be for misdemeanors rather than felonies. These counties could cope with a higher workload because the misdemeanor convictions are likely to be among the easier cases to dispose of.

We found no systematic relationship between misdemeanor convictions and per judge workload. Some interesting results were obtained, however, which might bear on other questions of performance. New York City has shown a steady and significant improvement in screening. In 1972, nearly 30% of Supreme Court convictions were for misdemeanors. Improvements in each year brought misdemeanors down below 20% of convictions in the first half of 1975 (See Table 8-III). Dutchess County has consistently done well since 1973, and Broome County has also done well in this respect. Nassau has done badly, but there is a definite trend toward improvement. Still, over a third of the county's convictions are for misdemeanors. The rates for Erie and Monroe counties fall between those for Nassau County and New York City.

The problems in the New York City courts are apparently not due to a shortage of resources in an absolute sense. Rather, the City's immense Supreme Court system presents management problems the dimensions of which are not approached in any other part of the State. The City's Supreme Courts (including the civil as well as the criminal branch -- both are under the same management) have an annual budget of $47 million and employ 1,800 people in ten different facilities in all five boroughs.

The development of a modern management apparatus, using tools applicable to the management of large and complex institutions, should be a high priority. Some of the problems faced by managers in the court system suggest a similarity to the problems of managing an airline: a high volume calendering system for a large number of courtrooms, analagous in some ways to an airlines reservation system; the management of extensive calendars in crowded courtrooms with the need to minimize waiting times, analagous to a traffic system at an airport; and the scheduling and physical movement of lawyers, witnesses, and documentation, analgous to assignment of flight crews and perhaps aircraft. A system of such complexity must be supported by techniques such as simulation and other operations research methods, which will require a significant investment.

The appointment of strong and knowledgeable administrative judges has put the City system in a position to be a responsive client for the initiatives of a bold management group.



Appendix I

Major Provisions of the 1973 New York State Drug and Sentencing Laws

In New York State, felonies are classified into five categories, class A through class E, with the A felony the most serious. The 1973 laws reclassified many drug offenses to higher degree felonies and further subdivided class A felonies into three classes, A-I, A-II, and A-III, with A-I the most serious class.*

The revisions to the New York State drug and sentencing laws enacted in 1973 also:

1. require that defendants convicted of class A, B, and C drug felonies (except those crimes involving marijuana) be sentenced to an indeterminate period of imprisonment of no less than one year and varying maximum terms (up to life for A felony convictions);

2. limit plea bargaining by defendants indicted for class A drug felonies to other drug crimes within the A felony category, thereby assuring that a person indicted for a class A felony cannot plead to a charge that would allow a non-prison sentence;

3. restrict plea bargaining to the felony level for newly indicted defendants who had previously been convicted of a felony in the last ten years, and make a prison sentence mandatory upon conviction; and

4. require that defendants convicted of any class B felony and certain class C and D felonies be sentenced to prison for an indeterminate period of time with a minimum of not less than one year.

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*There are also a few non-drug crimes classified as class A-I felonies. The class A-I felony of murder in the first degree (murder of a police officer under particular circumstances) carries a mandatory death sentence. The other non-drug class A-I felonies (attempted murder in the first degree, murder in the second degree, arson in the first degree, and kidnapping in the first degree) carry mandatory maximum lifetime sentences and minimum terms ranging from fifteen to twenty-five years. No non-drug crimes are classified as class A-II or A-III felonies.

Examples of the Reclassification of Drug Crimes to High Degree Felonies

	ALLOWABLE PENALTY					
	NEW LAW			OLD LAW		
CRIME	CLASS	MINIMUM SENTENCE	MAXIMUM SENTENCE	CLASS	MINIMUM SENTENCE	MAXIMUM SENTENCE
1. Sale 1 oz. heroin	A-I	15-life	25-life	C	Probation	5-15 yrs.
2. Sale 5 gm. stimulant	A-II	6-life	8 1/3-life	D	Probation	2 1/3-7 yrs.
3. Sale of less than 1/8 oz. of a narcotic drug	A-III	1-life	8 1/3-life	C	Probation	5-15 yrs.
4. Possession 1-5 mg. L.S.D. (similar for comparable amounts of depressants, stimulants, etc.)	C	1-3 yrs.	5-15 yrs.	A-Misd.	Uncond. Discharge	1 yr.
5. Sale 25 Marijuana cigarettes	C	Probation	5-15 yrs.	C	Probation	5-15 yrs.

NOTES:

1. The minimum sentence is the most lenient sentence that could be issued for the offense. The maximum sentence is the harshest sentence that can be imposed.

2. "Life" indicates mandatory lifetime parole after serving at least the minimum term in prison. After serving the minimum term in prison, the offender's future is in the hands of the State Board of Parole. Parole may be granted at any time after the minimum term has been served. There is no such thing as a definite lifetime prison sentence for any crime in New York State.

3. Offenses involving marijuana were not reclassified by the 1973 laws. Neither were penalties for marijuana offenses changed.

4. A second sale of small amounts of LSD or depressants is now a class A-III felony while first offenses are class C or D felonies.

New restrictions have been placed on non-prison sentence alternatives, for both non-addicts and addicts:

Examples of Newly Restricted Sentence Alternatives

DEFENDANT CATEGORY AND CRIME	ALLOWABLE ALTERNATIVES TO PRISON	
	NEW LAW	OLD LAW
1. Narcotics addict - selected B, C and D drug and other felonies	None	Treatment program for five years
2. Non-addict - selected B, C, and D drug and other felonies	None	Probation; unconditional discharge
3. Second felony offender - B, C, D, and E felony	None	Probation; unconditional discharge

Plea bargaining has been restricted in two important cases. There had been no restriction on pleading before the new laws:

Examples of Plea Bargaining Restrictions

CRIME	ALLOWABLE PLEA	
	NEW LAW	OLD LAW
1. A felony, any class	A-III (1-life)*	Any charge
2. B, C, D, E, second felony offense	E (1 1/2 to 3)*	Any charge

*Minimum prison term allowable

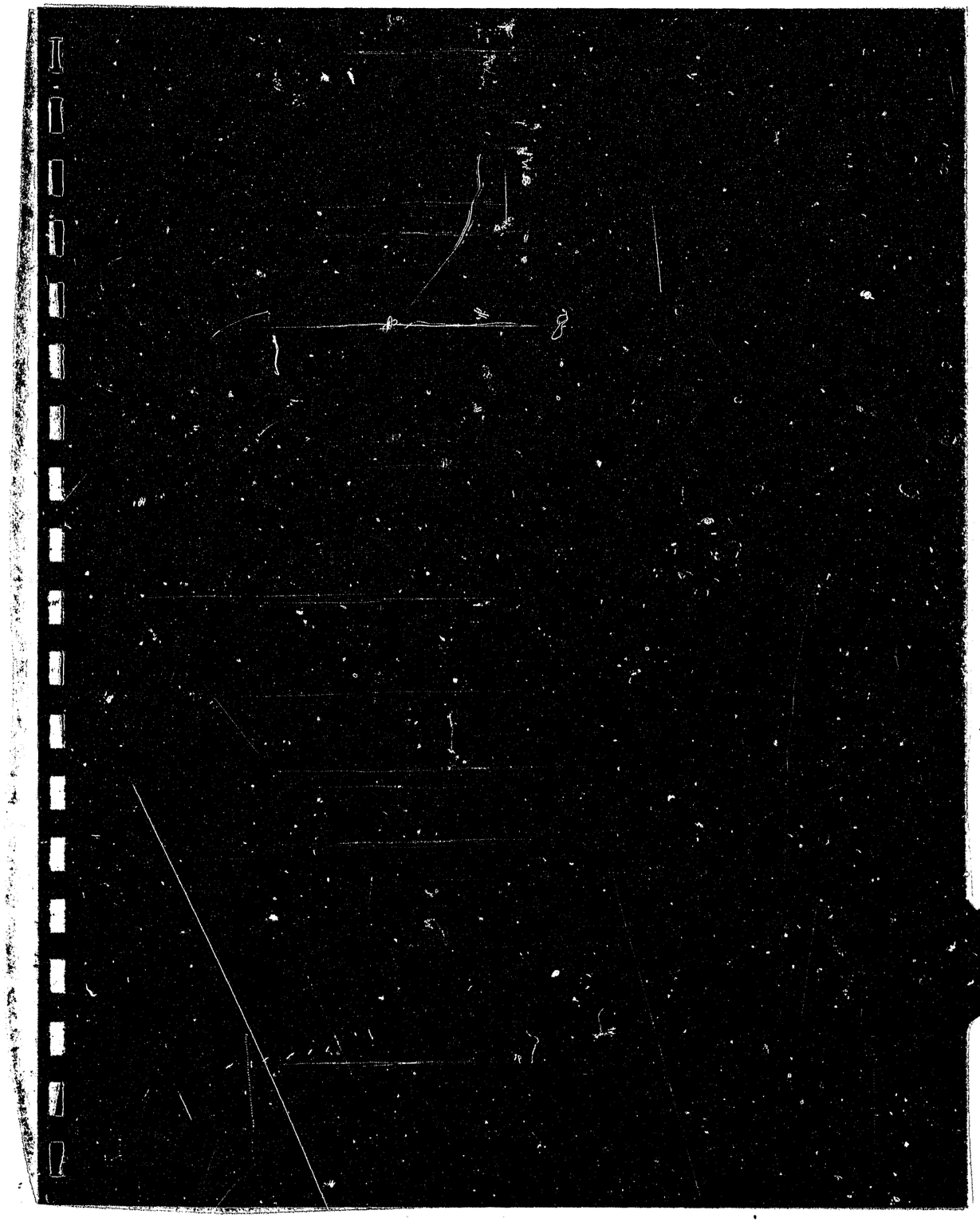
Plea bargaining restrictions and mandatory prison sentences were imposed on all second felony offenders, regardless of the exact crime. Either the first or the second crime can be either a drug or a non-drug felony. These provisions are known as the "Predicate Felony Provisions."

Predicate Felony Provisions
(for defendants with prior felony convictions within past ten years)

CURRENT CRIME	ALLOWABLE MINIMUM SENTENCES* NEW LAW**	OLD LAW
B Felony	4 1/2 to 9 years	Probation
C Felony	3 to 6 years	Probation or discharge
D Felony	2 to 4 years	Probation or discharge
E Felony	1 1/2 to 3 years	Probation or discharge

*Most lenient allowable sentence.

**All sentences are of indeterminate length. The offender is not eligible for parole until the minimum terms of the indeterminate sentence has been served.



Appendix II

Gaps in the Measurement of the Probability of Punishment

The probability of punishment (P) is the likelihood that a person committing a crime will be apprehended, convicted, and sentenced to prison for commission of the specific crime.

Let:

P_R = Probability of a crime being reported to the police

P_A = Probability that arrest will result from a reported crime

P_C = Probability that a person will be convicted in the courts after arrest

P_P = Probability that a person convicted of the crime will be sentenced to prison

The overall probability of punishment (P) is the product of these four probabilities:

$$P = (P_R)(P_A)(P_C)(P_P)$$

Similarly, interim probabilities can be obtained by multiplying together any sequential combination of these probabilities. For example, the probability of a defendant receiving a prison sentence after arrest ($P_{P/A}$) is:

$$P_{P/A} = (P_C)(P_P)$$

This Report focuses on the probability of prison sentence after arrest for drug and non-drug felonies separately, and isolates only those convictions and prison sentences that occurred in the superior court of the State, i.e. after an indictment has been returned. The limitation is necessary because of limitations in the availability of data.

First, data on processing felony arrests in the lower courts, i.e. prison to indictment, are presently unavailable for many areas of the State, including New York City. Although the likelihood of a defendant receiving a prison term after conviction in the lower courts is probably less than after conviction in the superior courts, the number of prison sentences issued in the lower courts may change the total number of prison sentences significantly, and thereby affect the probability of punishment.

The information that is required for calculating P_R is also generally unavailable. The Law Enforcement Assistance Administration began conducting surveys in 1973 which permit estimation of the rate at which all serious crimes that are reported to the police, but these data are now only available for New York City and Buffalo and only for one year. From the cross-jurisdictional data that is available, it appears that only about half of the serious crimes are reported to the police.

The data used in the calculation of $P_{P/A}$ were made available by the New York State Division of Criminal Justice Services (DCJS). The Project was given access to unpublished material collected by the Statistical Control Unit of DCJS for the years 1970 through 1974, and for 1975 where available.* The Statistical Control Unit receives monthly activity reports from each criminal justice agency in the State (police, district attorneys, lower courts, and superior courts). These reports consist of a cross-tabulation of the number of cases acted upon at a specific stage of the criminal justice process and the most serious charge facing the defendants at that time. Although yearly summaries of these data have been presented in various state and court publications, the data have not been used for analysis of activities in specific counties or of particular crimes.

A brief description of the data included in the calculation of the probability of punishment follows. In each case, the data were obtained for New York City and for six counties outside of New York City that were analyzed in this Report.

-- Arrests. The number of adults arrested in each of the counties for drug and non-drug felonies. Included are arrests made both by local and State police.

-- Indictments. The number of individuals indicted for drug and non-drug offenses, as reported by the district attorney in each of the counties. Each of the five New York City district attorneys reports separately to DCJS. The number of indictments serves as an indicator of the proportion of felony arrests that reach the superior courts, and conversely the proportion of felony arrests that are disposed of in the lower criminal courts.

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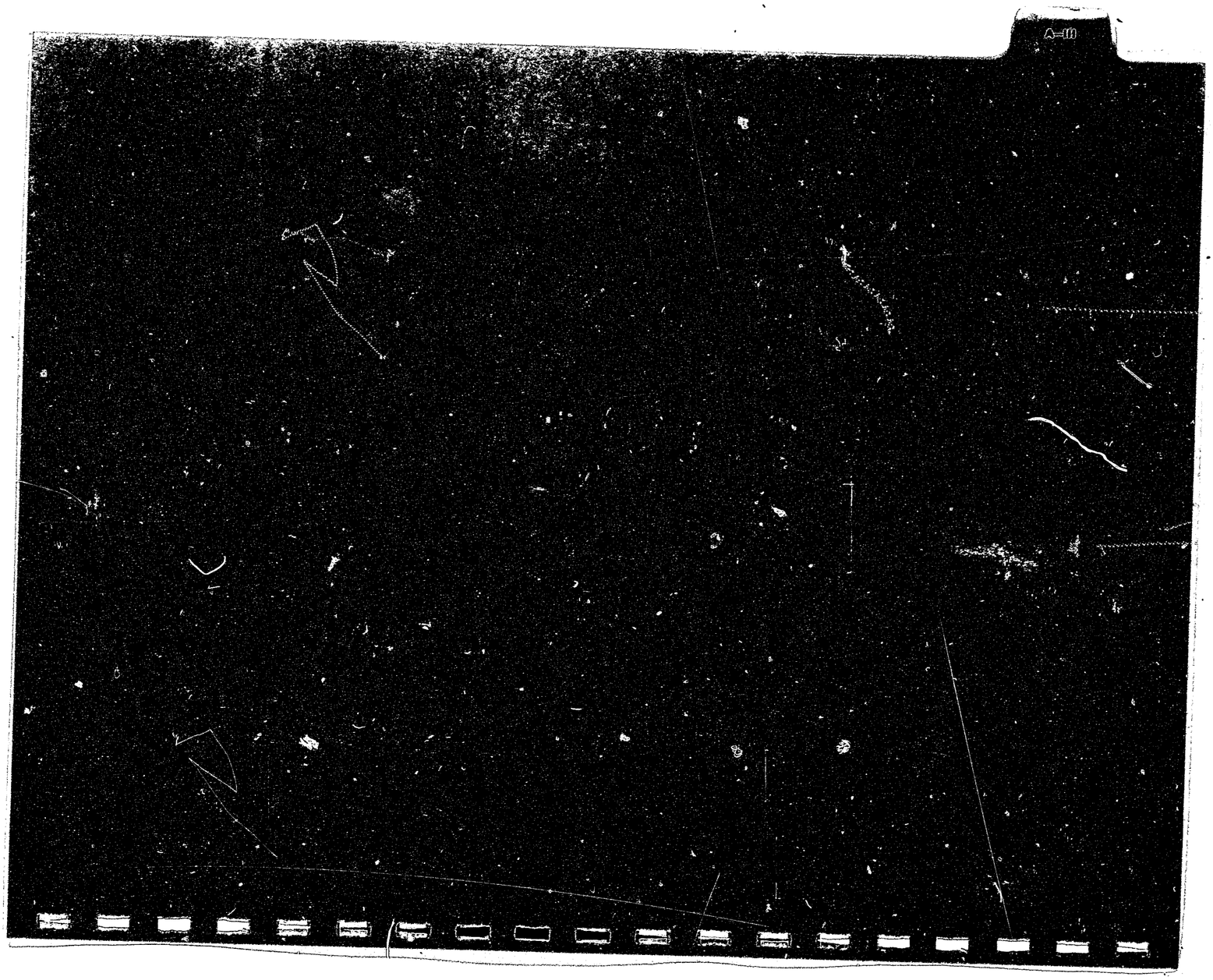
*The Statistical Control Unit was made part of DCJS on January 1, 1975. Before that date the unit was a division of the New York State Department of Correctional Services.

-- Superior Court Convictions. The number of individuals convicted of drug and non-drug offenses in each county was obtained from the report on dispositions submitted to DCJS by the chief superior court clerk of each county. Because these reports include the number of dispositions reached as a result of trials, pleas, and dismissals, they were also utilized in the sections of the report analyzing resources and workload of the superior court.

-- Prison Sentences. The number of prison sentences both to local and State prisons was obtained from the reports of sentences issued to defendants convicted in the superior courts. These reports are also submitted to DCJS by the chief superior court clerk of each county.

A perfectly accurate formulation of the probability of punishment would require the follow-up of individual crimes or arrests to see if an arrest was made for a specific known crime, and whether a conviction and prison sentence resulted. Given the present record-keeping systems in the counties, this is not a feasible approach. Instead, we have compared aggregate data from different stages of the process covering the same time periods. Most arrests occur a short time after a crime is committed, and a majority of the arrests are disposed well within a year of the time that the crime occurred. Only in circumstances in which the total number of arrests is small (as with the number of drug arrests in the smaller upstate counties) might the probability of punishment be seriously biased because the dispositions in one year might bear little relationship to crimes committed during that year.



Appendix III

Measuring Changes in the Pending Caseload of the New York City System Courts

Conflicting data from several public sources on indictments and dispositions in the City's courts make the measurement of workload and productivity difficult.

A brief description of the sources and types of data that are collected follows:

-- New York State Division of Criminal Justice Services Felony Indictment and Prosecution Report (Felony Processing).

Data covering indictments and dispositions are obtained from individual indictment and disposition forms submitted by each of the City's five district attorneys to DCJS. Half the form is submitted at the time of indictment, and half at completion of the case (sentence, acquittal, dismissal, etc.). DCJS issues the reports quarterly, beginning in December, 1973, and the only full year of data that is available is for 1974. Data on specific offenses are reported.

-- New York State Division of Criminal Justice Services: District Attorney Report on Grand Jury (Form C).

These reports consist of tabulations of actions taken by grand juries. The reporting form cross-references the type of offense with which the defendant is charged with the action taken by the grand jury (indictment, dismissal, returned to lower courts). Each district attorney submits the form each month to DCJS.

-- New York State Division of Criminal Justice Services: Outcome of Procedures in Supreme Court (Form D).

This report is identical in format to the "Form C" but substitutes the method of disposition (e.g. dispositions obtained as a result of trials, pleas, and dismissals) for the action of the grand jury. As in the Felony Processing Reports, dispositions are counted at the time of sentencing or other final action. The types of sentencing issued to convicted defendants (e.g. state and local prison terms, probation, and discharge) appear on an accompanying form (Form E). These forms are submitted each month to DCJS by the chief supreme court clerk in each borough. The disposition method is cross-referenced by the type of crime charged on the disposed indictment.

-- New York State Office of Court Administration, Court Information Service: Supreme Court (Criminal Branch) Statistical Summaries for New York City.

These monthly reports cover indictments and dispositions occurring in each borough of New York City. Data are obtained from forms filed weekly by the clerk of each Supreme Court part with the New York State Office of Court Administration. No information on specific charges are available from these reports.

As indicated on Table III, there are significant differences between the activity represented in the three reports. The number of reported indictments and dispositions and the resulting change in backlog differ by as much as 5,000 cases for the same year. Thus, resolution of these differences was required before analysis could progress.

We found it impossible to reconcile the exact count of indictments and dispositions between sources. However, we were able to explain the direction of the differences, and in consultation with the New York State Office of Court Administration settle on a procedure that yields what we believe to be the best estimates of the number of drug indictments and dispositions.

We found that the Statistical Summaries issued by the New York State Office of Court Administration contained about 15% more dispositions than were reported on the Form D reports during the six-year period of 1970 through 1975, but only three percent more indictments than the district attorneys reported on Form C. As a result, the Statistical Summaries show considerably less of a backlog increase than the data on Form C and D (an increase of 10,417 cases over the six year period compared to 23,210 respectively). The change reported in the Statistical Summaries is considerably closer to the current backlog level than that derived from Forms C and D. The New York State Office of Court Administration reported that 12,038 cases were awaiting disposition in the Supreme Courts on January 4, 1976.

In large measure, the difference in reported dispositions can be accounted for by the varied reporting practices followed by the county clerks in the filing of the Form D report. The Statistical Summaries have maintained a consistent definition of the unit of count (the defendant-indictment), which maximizes the count of dispositions.* On the other hand, the definition of the unit of count varies from borough to borough, and may have changed over time. Some boroughs count only defendants (as is instructed on the form) while other boroughs count defendant-indictments.

Analysis of the data for 1975 revealed that about half the difference in reported dispositions during that year could be accounted for by the fact that one borough counted the number of defendants having their cases disposed of instead of the number of defendant-indictments.

The indictments and dispositions reported in the Statistical Summaries originate with the same source (the individual part clerks), while Form C is submitted by the county district attorney and Form D by the chief county court clerk. A major effort of the New York State Office of Court Administration and of the Office of the New York City Administrative Judge has been the establishment of clear reporting procedures for the production of the Statistical Summaries. Thus, we are confident in using data from the Statistical Summaries to represent the Supreme Court workload.

Unfortunately, neither the Statistical Summaries nor the raw data forms from which the summaries are created record the charge facing the defendant. To estimate the number of drug and non-drug indictments and dispositions, the proportion of actions accounted for by drug charges was calculated from the data on Forms C and D, and applied to the total number of indictments and dispositions reported in the Statistical Summaries. This procedure was adopted after discussions with analysts at the Office of Court Administration confirmed that while the absolute number of actions reported in Forms C and D may be far from accurate, there was no reason to expect that one type of case would be any more likely to be reported than another.

*Under the definition of a defendant-indictment, one defendant listed in two different indictments and two defendants listed on one indictment both count as two defendant-indictments. If defendants were counted, then the first example would result in a count of one defendant, but the second would count as two defendants.

Table III

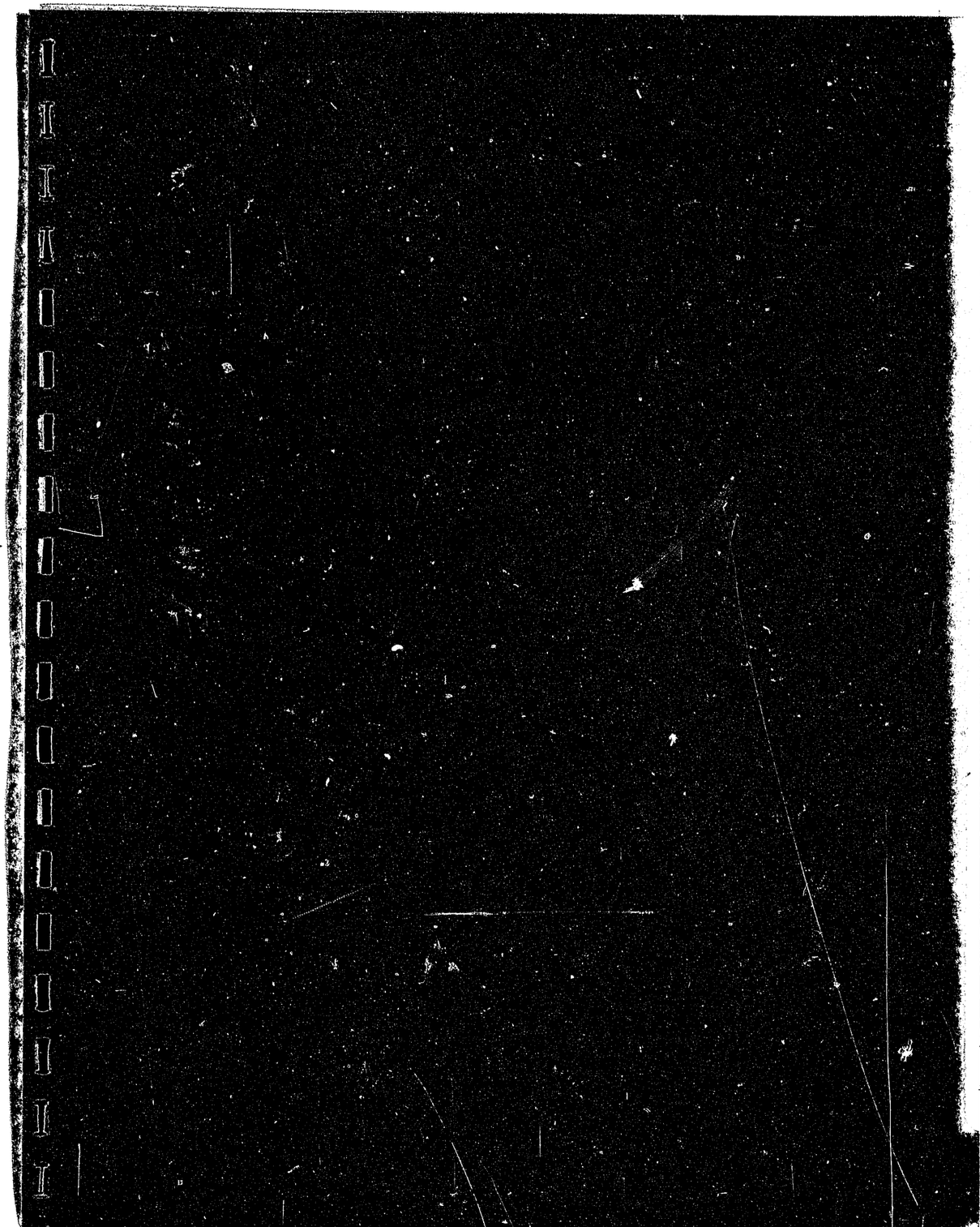
Comparison of Indictments and Dispositions

Reported in the New York City Supreme Courts

	Indictments	Dispositions	Change in Backlog
I. Forms C and D*			
	(Form C)	(Form D)	
1970	18,505	15,724	+ 2,781
1971	24,045	15,436	+ 8,609
1972	29,114	18,589	+10,525
1973	21,801	21,079	+ 722
1974	19,488	18,396	+ 1,092
1975	19,576	20,095	- 519
II. Statistical Summaries**			
1970	20,001	17,463	+2,538
1971	27,308	21,281	+6,027
1972	27,114	21,873	+5,241
1973	22,452	24,630	-2,172
1974	20,686	19,685	+1,001
1975	19,720	21,938	-2,218
III. Felony Processing			
1974	19,512	16,396	+3,116

*Although Form C originates with the District Attorney and Form D originates with the chief court clerk, both reports are governed by the same instructions and definitions. Because the number of indictments in 1975 are not available, arraignments reported on Form D are listed instead.

**Data for 1970 and 1971 were obtained from material published in the Judicial Conference annual reports. This is the same raw data that is now published in the Statistical Summaries.



Appendix IV

Methodology for New York City Supreme Court Productivity Calculations

Let T_1, T_2 = percent of dispositions accounted for by trials in t1 and t2, etc. Subscripts can stand for either time periods or for groups of courts (parts).

P_1, P_2 = percent of dispositions accounted for by non-trial dispositions in t1 and t2, or for court groups 1 and 2.

P_1 = $1.00-T_1$, etc.

S_{T1},S_{T2} = length of time in days it takes to dispose of a case by trial in t1, t2.

$$S_{TN} = \frac{\text{Total days on trial}}{\text{Total trial dispositions}}$$

S_{P1},S_{P2} = length of time in days it takes to dispose of a non-trial case in t1, t2.

$$S_{PN} = \frac{\text{Total court days not on trial}}{\text{Total non-trial dispositions}}$$

S_1, S_2 = length of time in days it takes to dispose of any case in t1, t2.

$S_1 = T_1S_{T1} + P_1S_{P1}$

$S_2 = T_2S_{T2} + P_2S_{P2}$

Y_1, Y_2 = proportion of the year covered by t1, t2.

e.g. $Y_1 = 0.5$ if t1 is 6 months

Then X_1 = output per court day = $1/S_1$

$X_2 = 1/S_2$

X can change because the mix of trials and other dispositions changes, or because the time it takes to dispose of a trial or other method changes, or both.

Assume no excess capacity in 1974

- 210 days/year/part

Several analyses can be performed with the data:

1. Calculate the change in the number of parts required to dispose of all indictments handed up during t2.

   Assume T_1, P_1, S_{T1}, S_{P1}, i.e. trial mix and productivity doesn't change.

   Let

   C_2 = number of courtrooms (parts) required in t2

   D_1 = number of dispositions in t1

   I_2 = number of indictments in t2

   C_{w2} = number of parts required to dispose of the indictments in time t2, given the trial rate and productivity of t1

   ΔC_w = change in parts required because of workload changes alone; i.e. parts required to leave backlog which exists at the beginning of t2 unchanged

   C_1 = actual number of parts in t1 = $D_1S_1/210/Y_1$

   a. $C_{w2} = (I_2S_1/210)/Y_2$

   b. $\Delta C_w = C_{w2}-C_1$

2. Calculate ΔC_T, the change in the number of parts required because of changes in the trial:non-trial mix alone.

   Assume S_{T1}, S_{P1}, D_1

   a. $S_{2.1} = T_2S_{T1} + P_2S_{P1}$ (the new trial:non-trial mix and the old times required to dispose of cases)

   $S_{2.1}$ = length of time in days it would take to dispose of a case given productivity of t1 but trial mix of t2

   b. $C_{T2} = D_1S_{2.1}/210/Y_2$

   c. $\Delta C_T = C_{T2}-C_1$

3. Calculate ΔC_x, the change in the number of parts required because of changes in the time it takes to dispose of cases alone.

   Assume T_1, P_1, D_1

   a. $S_{1.2} = T_1S_{T2} + P_1S_{p2}$ (the new times required to dispose of cases and the old trial:non-trial mix)

   $S_{1.2}$ = length of time in days it would take to dispose of a case given the trial mix of t1 but the productivity of t2.

   b. $C_{x2} = D_1S_{1.2}/210/Y_2$

   c. $\Delta C_x = C_{x2}-C_1$

4. Calculate C_2, the number of parts required in t2 as a result of all changes combined: workload, trial:non-trial mix, and time required to dispose of cases.

   $$C_2 = C_1 + C_w + C_T + C_x$$

   This calculation assumes independence between the time it takes to dispose of a case, case volume, and trial:non-trial mix.

Source of basic data: Office of New York City Administrative Judge

END