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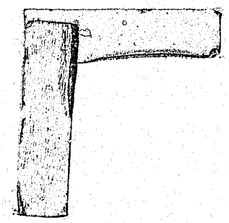

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December 16, 1981

PRELIMINARY REPORT TO GOVERNOR HUGH L. CAREY

From the Executive Advisory Commission
on the Administration of Justice
Arthur L. Liman, Chairman

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U.S. Department of Justice
National Institute of Justice

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I. Introduction

On March 19, 1981, Governor Hugh L. Carey created the Executive Advisory Commission on the Administration of Justice, chaired by Arthur L. Liman, and consisting of the members identified in the appendix to this Report. The purpose of the Commission is to review New York's criminal justice system, advise the Governor on its problems, and recommend improvements.

Referring to the recent increase in crime, the Governor's executive order recognized that "further success in our efforts to control crime will, to a large degree, depend upon our willingness to re-evaluate current problems, embrace new and innovative approaches, and establish comprehensive, long-range criminal justice strategies."

For the past several months, the Commission and its staff headed by Roderick C. Lankler have been engaged in a wide-ranging investigation of the problems which plague the criminal justice system in New York State. In a series of reports, we will examine these problems at length and provide a detailed agenda for reform. Our charge from the Governor is to take a hard and searching look at New York's criminal justice system and tell the unvarnished truth about what we see, and what must be done to make the system work better.

The place to begin is with a candid assessment of the mission of the criminal justice system. In truth, we expect more of the system than we have a right to, and, therefore, blame it for failures that are attributable to other forces. Drugs, child abuse, the weakening of the family structure, racism, the problems of the public education system, alcohol abuse, and lack of employment opportunities have more to do with crime rates than the efficiency of law enforcement agencies. The police, the courts and correctional institutions are not surrogates for the family, the schools, the employer, the churches and other institutions which have traditionally instilled values in the young. Confusing the criminal justice system with other core institutions of society can only lead to the failure to deal with the organic causes of crime.

The mission of the criminal justice system is a narrow one. It comes into play only after the damage already has been done by the commission of a crime. The measure of the justice system's effectiveness is not the crime rate, which it cannot control, but the efficiency -- and justice -- of the system, within the parameters of the demands placed upon it. The numbers show that the ability of the police, the courts, and

the correctional institutions to deal with offenders has never been more overtaxed. In this sense, the criminal justice system, in New York and elsewhere, faces a crisis which requires all the intelligence and energy which government officials and the people can muster. The criminal justice system cannot discharge its mission with practices that were developed when the numbers of offenses and cases were so much less.

Of course, concern about the criminal justice system, and calls for reform, are not new. Nor has the system stood still. The Chief Judge of New York, the Honorable Lawrence H. Cooke, has been bold in seeking new methods for dealing with calendar congestion and providing central management to the court system. Prosecutors, defense lawyers, police, correction officials and others have labored hard and often imaginatively to keep the system from collapsing under the weight of crushing caseloads. But the rising crime rate, generated by forces beyond the control of the justice system, has obscured the progress that has been made, and made it imperative that we chart new courses for coping with the demands on our criminal justice institutions.

The criminal justice system has survived so many

crises of exploding caseloads in the past that there is a tendency to take it for granted and assume it is indestructible. But the challenge today is different from those of the past: a system of dwindling resources.

The public must realize this fundamental constraint. When the citizenry exhorts the police or the courts to put a stop to crime, and to catch, try and imprison offenders, let them understand that our criminal justice system has been doing so more efficiently than many other states despite operating in an unprecedented condition of scarcity.

There will not be -- and never has been -- a police officer on every corner, an open trial part for every offender, a prison bed for every criminal who could under the laws be sentenced to prison.

Moreover, much of the progress made during the past ten years resulted from projects funded by the federal government, but New York State has now been told not to expect any more funding. Compounding the problem, the Justice Department has shifted its law enforcement priorities away from offenses most closely related to violent crime. Between 1976 and 1979, federal prosecutions for bank robbery declined by 48%, and for weapons offenses by 58%. Even drug prosecutions dropped by 37%. While the current administration has announced its intention to reverse its law enforcement priorities,

budgetary constraints may make that impossible. The budgets of federal prosecutors' offices have been cut, and state prosecutors have recently been told that federal undercover narcotics agents have run out of buy money. Thus, the burden of law enforcement for states will inevitably get worse during this decade as the effects of federal austerity are felt.

Given this context of scarcity, the problem for all criminal justice agencies becomes the allocation and stretching of resources.

That problem is most visible in our prisons and jails. On December 7, 1981, our state prisons were over 112% of capacity, with 25,518 prisoners; local jails were also filled to bursting. Parole officers were carrying impossible caseloads. And there was -- and is -- no end in sight.

In July, 1981, Thomas A. Coughlin III, Commissioner of the New York State Department of Correctional Services, pleaded in opposition to a lawsuit which would compel the state to accept 500 sentenced inmates from New York City's Rikers Island, "[w]e are just flat out of room, your Honor."

Ultimately, the federal judge directed the state to accept the sentenced prisoners. His decision was reached with some trepidation: he said he had "no desire to attempt to avoid a riot in one institution simply to produce one in another." His intervention had only a temporary effect, however. Rikers Island is once again full, and as of Decem-

ber 7, 1981, there were 2,000 more inmates in the state system than during the trial. In papers filed on December 9, 1981, Commissioner Coughlin told the federal court "[t]he Department is no longer engaged in rehabilitation and programming efforts but rather it is forced to warehouse people and concentrate only on finding the next cell."

Overcrowding and scarcity are most dramatic in the prisons, but they prevail in the rest of the criminal justice system as well. The police are overwhelmed by the rise in crime -- 2,381,906 crimes were reported in New York State during 1980, a 10% increase over the year before. At the same time, the New York City Police Department has still not recovered from a 1974 budget cut which reduced its number from 33,000 to 22,000. The department has dealt with reduced resources by establishing patrol priorities, achieving a *de facto* decriminalization of certain crimes by ignoring them. Burglaries of less than $5,000, for example, were not investigated last year, until the practice was publicized and a resulting public uproar caused the police once more to reallocate their manpower, creating a patrol force especially for residential burglaries.

New York City is not alone. While the police function is primarily a local responsibility, the New York State Police, which provides much needed law enforcement assistance to many upstate counties, has experienced budgetary and manpower cuts. Without additional funding, the State

Police will be more than 500 troopers below strength by the end of 1982.

In the courts, the problem of scarcity is also acute. Judges, prosecutors and defense lawyers are working harder and more effectively than ever before. Imaginative programs initiated during the Carey administration such as the career criminal project, have been inaugurated, and are maintained by funding from the state. More defendants are convicted of crimes than ever before, and more receive prison sentences, yet the courts still have difficulty in keeping pace. A growing backlog of cases requires more judges than we have to try them. Similarly, prosecutors and defense attorneys are faced with overwhelming caseloads. Many misdemeanor and violation arrests, reflecting the type of criminal case which strongly colors the quality of life in our communities, never even reach the courtroom, or, if they do, can receive only minimal attention. With priorities set on the more serious felony cases, our courts simply do not have the resources to provide jury trials for all misdemeanor cases; in 1980, only 1% were disposed of in that manner.

Similarly, probation departments, a local responsibility, handle more probationers than ever before with fewer probation officers. The New York City probation officer carries an average caseload of 190; his colleague upstate carries an average caseload of 69. The likelihood of adequate supervision is remote, thus often making imprisonment appear to be the only viable -- yet far more expensive -- alternative.

We have information management systems that fail to communicate adequately with each other. As the Executive Advisory Committee on Sentencing, appointed by the Governor, noted in 1979, "Incredibly, it is impossible to track a single felony arrest through the entire process of prosecution, conviction, and sentencing, which deprives us of the ability to assess what happens after arrest, or why. The aggregate statistics which are published are substantially meaningless for evaluating how well, or how poorly, the criminal justice system really works." The reason for this chaos is that each criminal justice agency keeps statistics primarily for its own internal purposes. Thus, different agencies use different definitions of crimes, different units of measurement, and different units of time. As a result, the data of one agency are frequently incompatible with that of another. Moreover, in many agencies too little attention has been paid to information systems at the highest levels of management. Realizing the problem, interagency committees have worked to overcome these practices, but, with only limited resources, they have had only modest success.

In sum, during the past ten years much attention, thought, money and energy have been devoted to the criminal justice system. There have been sweeping changes, innovative ideas and, overall, a general improvement in

the system. Had there not been, the system would be in a state of total paralysis today. But the demands on the system have increased dramatically. We are choking on numbers and the system, as things now stand, simply cannot meet the demands placed upon it.

The imperative is clear. The criminal justice system must operate at new levels of efficiency -- consistent with its obligation to do justice -- if it is to continue to function at all. No practice can escape reevaluation. Consider some examples, big and small:

-- Certain counties in our state have courts with extensive caseloads that require long hours of intensive work. In other counties, courts have caseloads that barely keep the assigned judge occupied. Even within particular counties lower courts may be overwhelmed with cases, while superior courts are not. A unified court system, which has been advocated by the Governor, the Chief Judge, various legislators, and leaders of the bar, would permit the free transfer of court personnel, including judges, from court to court and from county to county. This would enable our court administrators to attack more efficiently the imbalance in caseloads. The superior court judges are, for the most part, opposed to this. In an ideal world, it may be the better practice to have a judge preside over the local court to

which he was elected, but given the present demands on the system can we afford separate trial court systems, each with its own judges?

-- In New York City, voir dire -- the questioning of prospective jurors before they are accepted -- consumes, for the average case, eight-and-a-half hours spread over two-and-a-half days. The reason for such lengthy voir dire is that lawyers, rather than judges, do it, and for a variety of reasons are in no hurry to move the process along. In the federal system, however, where judges conduct voir dire, the time required to select a jury averages only two and a half hours. If New York State were to adopt some variant of the federal system, there would be a significant savings in time and money; more cases could be tried more quickly. But lawyers like to conduct voir dire, preferring its retention for tactical reasons. This may be so, but can the system afford it?

-- Collective bargaining agreements with the unions have long provided that correction officers can transfer to the prison and post of their choice on the basis of seniority. This "bidding" system may allow correctional officers to work closer to home, but it puts a dangerous strain on an unpopular facility like Green Haven. During a visit to that prison, the Commission learned that since the

beginning of 1981 the superintendent had been sent an average of 80 new correction officers every two weeks to replace those who had bid for and received transfers to other institutions. Of the institution's total complement, more than half the officers in this maximum security facility had less than one year's experience. An inexperienced staff can only further aggravate already dangerous conditions at overcrowded institutions. The bid system may be a cherished perquisite, but can the system afford it?

-- New York, unlike other states, requires the sequestration of jurors -- i.e., lodging them in hotels overnight. The Office of Court Administration (OCA) estimates that it costs nearly $1,500 for each night a jury is sequestered. OCA has therefore supported a bill which permits the jury to suspend deliberations with the judge's consent, and go home for the night. This is similar to the federal practice and the practice of other states. The principal opposition comes from court officers' unions who would lose overtime pay. Can the system afford to yield to such an interest group?

-- New York's system of indeterminate sentencing provides judges with little or no guidance regarding the length (and, in some instances, the type) of sentence to impose upon offenders. This gives rise to wide sentencing

disparities and undermines the certainty of punishment. Moreover, under our present sentencing laws, the parole board plays a pivotal role in the sentencing process, resentencing offenders on the basis of the same criteria commonly employed by sentencing judges. Despite the redundancy of our present sentencing scheme, and despite reasoned proposals to replace it with a determinate sentencing system based upon sentencing guidelines, efforts at reform have yet to be undertaken except for the creation of the Governor's Advisory Commission on Criminal Sanctions. Judges prefer to retain their discretion; the parole board opposes a determinate sentencing system, believing that it is best able to determine who should remain in prison; legislators are reluctant to delegate the authority to define the permissible range of sentences to an independent sentencing commission; and many prosecutors and defense lawyers have also voiced opposition. These institutional points of view are understandable but can we afford the status quo?

-- Stenographic methods more consistent with the 20th century would significantly reduce appellate delay, but there is strong opposition from court reporters. Job security is a legitimate concern of court reporters, but again, can the system afford it?

-- During the last session of the legislature money was appropriated for additional judges. But there is an

impasse as to whether the judges will be elected or appointed. Since there is no agreement as to the mode of selection and the number of judgeships, there are no new judges. The method of judicial selection is a legitimate subject of debate, but can we afford the impasse?

Given the scarcity of resources, changes that save time or money are crucial. Thus, we want to know -- and expose -- what unnecessarily slows the system, what forms of self-interest hinder it, and what work rules contribute to inertia. The answers to these crucial questions will enable us to make the system more efficient, more just, less costly; to make it a true system, as Webster defines it, "a complex unity formed by many often diverse parts subject to a common plan or serving a common purpose."

Finally, the Commission will turn its focus on the public itself, a public which can be just as selfish as any other actor in the system.

It is clear that if the present trends continue, even the additional cell space contemplated by the recently defeated prison bond issue soon would have been inadequate. The bond issue was supported by the Governor and the leadership of the legislature. But by a narrow margin the public was not willing to pay for additional cells. This same public demands that more people be placed in prison and for longer periods of time. Thus, we will ask the public: what do you <u>really</u> want, and what are you <u>really</u> willing to pay for?

With this brief preface, we now set forth the main subject areas which will occupy the coming months of our investigation.

II. Corrections

The prisons of New York State are in the midst of a population explosion. The inmate population has doubled in less than ten years, and, more significantly, the rate of increase has tripled in the past year. The prison population is now growing at a rate of 3,500 inmates per year. If present trends and policies continue we can expect to have in excess of 40,000 persons incarcerated by 1986. And this does not account for those detained awaiting trial or on probation or parole. A recent study, released by the Correctional Association of New York and the Citizens Inquiry on Parole and Criminal Justice, reveals that one out of every 56 males in New York over the age of 15 is incarcerated or under the supervision of probation or parole authorities.

The capacity of our state's correctional facilities has not grown apace with the inmate population. Despite the rapidly expanding number of prisoners, correctional authorities have less than 24,000 available beds to house more than 25,000 inmates. Over 1000 of these beds are temporary. The recent defeat of the prison bond issue insures that the crisis of

overcrowding will only worsen. In one medium security institution, Fishkill, 1,648 inmates are housed in space designed to hold 1,139. Soon, the prisons will be ready to burst.

Overcrowding portends another crisis in our prisons. As the Attica Commission clearly documented, overcrowding was a major contributing factor to the Attica uprising. Yet, only one decade after that tragedy, we are confronted with even more severe conditions.

Moreover, the overcrowding has undermined the ability of correctional authorities to discharge anything more than basic security functions. The swelling inmate population has simply overwhelmed the programming capabilities of the prisons.

We believe that incarceration must be something more than incapacitation. As Chief Justice Burger has observed,

> When a sheriff or a marshal takes a man from a courthouse in a prison van and transports him to confinement for two or three or ten years, this is our act. We have tolled the bell for him. And whether we like it or not we have made him our collective responsibility. We are free to do something about him; he is not.

Our system is better than most states, 27 of which are now in a form of receivership to the federal courts; 11 more are being challenged. But we have failed in our collective responsibility -- not only to prisoners -- but to ourselves as well. Common sense and our self-interest demand that we not

run our institutions in a way that brings out the worst in inmates, leaving them to emerge from prison even more anti-social and callous than when they went in. But severe overcrowding will inevitably produce this result.

The recent surge in the inmate population that has all but paralyzed our prisons can be attributed to a variety of factors. There has been a public outcry for legislators and criminal justice authorities to "get tough" with criminals. The legislature has responded by enacting several mandatory sentencing statutes which require even first offenders to serve substantial sentences for certain offenses. Redoubled efforts by prosecutors have resulted in a rapid escalation in the number of indictments. Plea bargaining has been restricted, and thirty-seven supreme court parts have been added in New York City alone to handle the increased caseload. Judges have been sentencing greater numbers of convicted felons to terms of imprisonment. The parole board has enacted guidelines which have resulted in prisoners serving more time before being released on parole. In short, more offenders are going to prison for longer periods of time, and fewer are coming out. Yet as new measures were taken, the prison capacity was not expanded sufficiently to handle the increased population, and the solution that was ultimately devised, the bond issue, was defeated by the public.

Funding from the bond issue was even more urgently required by the local jails, where defendants who cannot post bail are held pending trial. In New York City, the federal court has had to intervene to ensure that overcrowding will not create conditions that offend the due process and equal protection clauses of the Constitution.

How, then, can we cope with this desperate and dangerous crisis of overcrowding in our prisons and jails? The severity of the situation dictates investigation of several short-term, as well as long-term, solutions to the problems confronting the correctional authorities.

Among the more immediate alternatives the Commission will examine is the temporary conversion of existing facilities to prisons. For example, the dramatic decrease in the state's institutionalized mental health population has resulted in an excess capacity of thousands of beds in existing institutions. We will investigate the feasibility of converting these and other empty facilities to correctional uses.

Similarly, we will study the possibility of adding functional but temporary structures to existing facilities. Such additions may prove to be a low-cost alternative to the particularly acute problem of overcrowding in minimum and medium security institutions.

The Commission will also carefully scrutinize the

utility of an emergency release plan similar to the one recently implemented in Michigan. After the Michigan voters defeated a proposed income tax increase to finance prison construction, the legislature authorized the Governor to reduce all minimum sentences by three months when the prison population exceeded capacity. The early release to parole of approximately 900 inmates in the summer of 1981 restored balance to the system without any apparent effect on the crime rate.

Another short-term solution to overcrowded prisons has been adopted in Minnesota where sentencing guidelines have been calibrated to prison capacity. The implementation of this plan has resulted in a modest decline in the prison population. Similar results might be achievable in New York.

Alternatively, parole guidelines could be enacted which would consider overcrowding in our prisons. Currently, in New York, parole authorities may not consider prison capacity when determining eligibility for release. We will investigate the possibility of granting them that power.

Although these or other short-range solutions may temporarily ease the crisis of overcrowding, they merely provide a band-aid for a system in need of major surgery. Accordingly, the Commission will investigate permanent, long-term solutions to the severe space problems of the prisons.

An obvious solution to overcrowding is to build new prisons. But, as the defeat of the recent bond issue demonstrates, the public simply may not be prepared to allocate sufficient funds for prison construction. At one level, the voters' resistance to large capital outlays is understandable. However, it is incompatible with the public outcry for law enforcement authorities to "get tough" with criminals.

Even if funds can be found for financing new institutions, correctional authorities are confronted with public resistance to new facilities in their communities. Recently, proposals to convert or re-open existing institutions have met with staunch community opposition. The Commission will study the implications of this problem posed by a public that clamors for increased incarceration but is unwilling to bear the financial and other burdens required to achieve that goal.

Other long-term options for stabilizing the prison population revolve around reducing both the number of persons sentenced to prison and the length of their sentences. There is no proof that increasing the length of sentences has resulted in concomitant reductions in the crime rate. Other less expensive methods of punishment may be at least as effective in preventing recidivism. For example, the Commission will investigate the feasibility of so-called alternative sentences which provide for supervision and even punishment without imprison-

ment. We will examine the viability of increasing the size of halfway house programs in which prisoners serving the last months of their sentences are placed in such facilities to ease their reentry into the community. We will also examine the possibility of recommending a community corrections act which would provide subsidies to communities that establish a program of fines and supervised sentences for less serious offenders. Similarly, the increased use of intensive probation rather than incarceration for suitable offenders might significantly alleviate the burden on an already overcrowded system.

The Commission will also examine the scheme of mandatory minimum sentence laws that the legislature has adopted in piecemeal fashion since 1973. In particular, we will study the second-felony offender laws which now require a prison sentence for all non-violent repeat offenders. Should discretion be returned to the courts to fashion appropriate sentences for those convicted of non-violent felonies?

Another possible palliative for our overcrowded prisons may be increasing the discretion of correctional authorities to reduce sentences through the use of so-called good time credits. Currently, inmates in New York may have their maximum sentences reduced by one-third for good behavior; many states permit a reduction of one-half. In addition, many

states grant good time off minimum sentences -- New York does not.

The options outlined above are only some of the alternatives that the Commission will investigate in attempting to provide a solution for the acute crisis of overcrowding in the state's prisons and jails. But, despite the enormous difficulty of coming to grips with the problem of numbers, we will also attempt to examine some of the less dramatic, but nonetheless vexing, problems facing the prisons.

In particular, we will turn our attention to questions of prison management. Are the top prison officials effectively deploying their resources? To what extent are provisions in the collective bargaining contract an impediment to effective management? Management blames the existence of special seniority rights for high rates of inter-prison transfers and for causing sensitive positions to be filled with inexperienced officers. The contract's seniority provision permits officers to transfer to different institutions or to different posts within the same institution regardless of the needs of the institution to keep experienced officers in the same job. The problem is particularly severe at Green Haven which has become a temporary way station for many officers who prefer to work in home communities further upstate or in New York City, where the pay is higher in city facilities than

in the state institutions. A recent survey of that prison revealed that 340 officers, or more than two-thirds of the correctional staff, had less than one year's experience. But the bidding system cannot be considered in isolation. If some jobs and locations are less desirable because they are dangerous or unpleasant, are we unable to provide an incentive for those who are willing to remain in them? More generally, how can working conditions and job opportunities in corrections be improved so as to improve morale and slow turnover?

The exercise of seniority rights and the residential patterns of the state's racial minorities have also produced a situation where nearly all black and Hispanic officers choose to work in institutions proximate to New York City. At Ossining, Arthur Kill, and Bedford Hills, black and Hispanic guards constitute a majority of the correctional staff. In contrast, at Clinton, the state's largest facility, there are no blacks and only seven Hispanics among the 852 member guard force. Unless we ignore the lessons of Attica, an inmate population that is 52% black and 22% Hispanic should not be supervised by an essentially all-white staff.

Finally, the Commission will examine the problem of corruption within the prison system. A report by the State Commission of Investigation found extensive corruption -- what it termed a "let's make a deal" atmosphere -- at Green Haven, and surmised that similar corruption could be found throughout the system. We intend to suggest a mechanism for exposing and controlling corrupt prison practices, for corruption destroys the moral underpinnings of imprisonment.

The Commission's agenda for the prisons is a long and difficult one. But given our belief that corrections is the component of the criminal justice system that is in the most imminent danger of collapse, we will devote a significant portion of our resources to addressing each item on that agenda. We expect to recommend practical solutions to the problems of management and overcrowding that beset our prisons.

III. Information Systems

The history of criminal justice information systems in New York State bears an altogether too similar resemblance to the biblical story of the Tower of Babel. Despite a sizable infusion of federal funds in the last decade to computerize various criminal justice agencies, there is little if any coordination in the information systems. The question that now

challenges this Commission is whether in the next decade, when federal funds will be scarce, our system can learn a common language and work to benefit everyone or whether, as in the Tower of Babel, we will have "left off building the City."

In 1980, the State Assembly Codes Committee (chaired by Assemblyman Melvin Miller) issued an excellent report entitled "Too Little, Too Late," documenting the lack of communication between criminal justice agencies and the lack of information in the system as a whole. The report found that the Division of Criminal Justice Services (DCJS) and OCA, the two agencies responsible for the collection and the dissemination of information, were incapable of presenting an accurate statewide picture or even of producing statistical reports -- after spending 6.5 million dollars in federal funds and four-and-a-half years in development. Indeed, the report deplored that "a careful documentation of the morass existing in the area is difficult to achieve."

In 1979, the situation caused the Executive Advisory Committee on Sentencing to observe that "despite millions of dollars invested in data systems, statistics are kept in such a fashion that they are insufficient to answer even the most primitive questions about the criminal justice process." The problem is that the 3,000 public criminal justice agencies, supported by 1,600 governing units at the state, county and

municipal levels often lack a common language and a common purpose. Their data systems are primarily -- and understandably -- designed to meet their own management needs and not the needs of the larger system. The Executive Advisory Committee on Sentencing described the dilemma as one in which:

> Different agencies use different definitions of crimes; different units of measurement (e.g., prison officials count individual inmates, while DCJS counts indictments -- leading to the absurdity that 100 indictments may relate to one individual indicted 100 times for essentially the same transaction, or to 100 different individuals each indicted once); and different units of time. The result is that data compiled by one agency cannot be reconciled with data compiled by another.

In spite of the difficulties in communicating, computerized systems continue to proliferate without the benefit of a master plan. Now, as in the past, most criminal justice agencies make decisions about automation on a project-by-project basis, without considering state-wide needs.

For instance, there is no state requirement that new information systems consult with DCJS. There is similarly no guarantee that non-confidential data will be available to other parts of the system. With the growing availability of less expensive microcomputers, automation is within the reach of smaller criminal justice units. Each village and county will be able to record data that is useful to other

parts of the system. Without careful planning, however, these potential benefits will be lost.

A fundamental difficulty with some automated systems is that the data used by their computers are collected according to old methods and definitions. Computers alone do not assure the availability of useful information. Uniformity of data definition and inter-agency coordination deserves the attention of agency policy makers. Decisions should not be left to computer specialists who are unable to set agency policy or guarantee its implementation.

The Commission will focus on two areas. One is the feasibility of integrating present and future systems for the benefit of all, the other is the necessity for security of information for the protection of individuals.

Improvements in the field of information management have enormous potential to accomplish any changes which are agreed upon. We believe it is worth considerable effort to discover how new communication technologies can assist criminal justice in New York State.

One area for improvement relates to the criminal histories or "rap sheets" maintained by DCJS. These documents, setting forth the offenders' criminal histories, are the most commonly used records in the system, employed in setting bail, preparing presentence reports, assigning

inmates to prisons, in planning inmates' programs and considering release. For the past six years, DCJS has been under court order to include in these histories, not merely arrests, but their outcome, or disposition, as well. Nevertheless, as of October, 1981, DCJS reports that 60% of its criminal histories in counties outside of New York City still lacked dispositions. In New York City the figure is 18%.

There are many contributing factors to this basic breakdown in record-keeping, but one of the most salient is the flawed exchange of information between DCJS and OCA. DCJS receives arrest figures from the police and OCA receives dispositions from the courts. In many instances these records are not exchanged. Giving this problem immediate priority, the Commission has already begun a series of meetings with DCJS and OCA to study ways of solving this complex problem. Both agencies recognize the importance of the problem. Each is committed to solving it.

Given the unwieldiness of an information system that is so fragmented, a priority of the Commission will be to seek out principles of reorganization that can restore its overall functioning while at the same time employing safeguards to ensure that confidential information will not be improperly disseminated.

The questions the Commission will ask are complex

and often technical. We seek, therefore, the expert advice of computer consultants, private businessmen and criminal justice professionals. We are also examining fiscal considerations as they apply to each of the options under review.

Our preliminary investigation has reinforced our view that modern techniques of information management could be of invaluable assistance to the criminal justice system. Our efforts in the coming months will be designed to serve that end.

IV. Courts

Like other sectors of the criminal justice system, the courts are inundated by numbers of cases. In spite of a higher degree of cooperation from prosecutors and defense attorneys, in spite of a greater number of court dispositions and in spite of a transfer of judges to meet the growing backlogs, the courts, in general, continue to fall behind.

In late November 1981, the Chief Judge of the New York State Court of Appeals noted with dismay a backlog of 4,500 cases which have been pending beyond six months in the state supreme court in New York City. This backlog is almost 25% higher than it was a year ago, and constitutes 42% of all cases in the system. At the same time that the backlog grows, more cases enter the system. In 1981, indictments rose by 20% over 1980, and by 34% over 1979. The courts are

being overwhelmed by a caseload that is increasingly difficult for them to handle.

The effect of this backlog, of course, is overcrowding in New York City's jails, where in November 1981, more than 1,500 people had been detained for more than six months, waiting for their charges to be considered. Similar problems confront courts and jails statewide.

Our justice system has always prided itself on its constitutional guarantee of a speedy trial, a cherished right built into the Bill of Rights. The public interest, moreover, requires swift disposition of cases in order to acquit the innocent, punish the guilty, and deter the potential criminal. "Justice delayed," as William Gladstone wrote 100 years ago, "is Justice denied." The efforts of judges notwithstanding, the courts of New York are failing this standard. Delay has become an intolerable burden.

The Commission intends to address itself to three issues in the system: the need for more judges and a unified system of trial courts; the need to reduce the volume of petty cases in the lower courts; and the need to reform the work rules which delay the disposition of cases.

There is an urgent need for more judges to adjudicate an increasing caseload. For example, the New York City Criminal Court has been limited to 98 judges since 1968.

In an extraordinary patchwork of expediency, over 40 criminal court judges have been transferred as acting justices of the supreme court to handle felony cases, where some have been among the most effective jurists. Emergency allocations such as this have been necessary to allow the supreme court to dispose of its caseload. But this expedient has created a serious shortage and logjam in the criminal court.

Moreover, the New York Court of Claims will shortly present the system with another crisis. In 1973 and 1974, thirty-six judges were appointed by Governor Rockefeller as special court of claims judges for nine-year terms, to serve on the supreme court and to handle the increased caseloads expected from the strict new drug laws. However, there was no authority for new appointments to fill the vacancies as they arose and for the reappointment of these judges. Soon all the judicial terms of the special court of claims judges will expire, thus actually reducing the number of judges in the state.

Currently there are many bills before the legislature for the extension of the court of claims judges and the creation of new judgeships, but invariably they reach a stalemate because of arguments over who should hold the power of appointment and how many judgeships should be created. The Commission will look at the issue of appointive power, mindful

of the imminent crisis posed by the retirement of the court of claims judges, and the need to add to the complement of criminal court judges in New York City. This is a priority item on our agenda. The impasse on the appointment of judges must be resolved quickly.

Moreover, the addition of judges to the system without more is not enough. As new trial and calendar parts are opened, more prosecutors, defense lawyers, court staff and facilities have to be added. We intend to address this in our study of creating new judgeships.

We intend also to look at the question of court unification. Despite a move to centralize the administration of the court system in 1962, and the strong support of Governor Carey and Chief Judge Cooke to unify the state's courts, there are still eleven separate trial courts, each with separate functions and separate jurisdictions. Advocates of unification point out that it is central to the efficient use of judicial resources. If so, why delay any longer?

Even with the creation of new judgeships and unification, the caseload will be more than the courts can handle. We are particularly concerned about the volume of misdemeanor cases in the lower courts. These cases, which include assaults, aggravated harassment, petit larceny, gambling and criminal mischief, all crimes which are punishable by one year or less in jail, constitute the largest volume of cases in the system.

In 1980, in New York City, there were approximately 183,000 cases, most of them misdemeanors, filed in criminal court. Judges averaged fifty cases a day; some processed more than 140. Faced with such calendars, a premium is necessarily placed on quick dispositions.

The Commission will also address itself to reclassification of misdemeanors. Defendants charged with a misdemeanor punishable by more than six months in jail may demand a jury trial. Our courts have demonstrated an inability to provide jury trials for all who demand them. Indeed, only about 1% of all misdemeanor cases in New York are tried by a jury. Backlogs grow. Consequently, in order to avoid judicial gridlock, plea and sentence bargains are struck with a view toward volume control rather than justice. If the reality is that some defendants can plea bargain out of any meaningful punishment by invoking their rights to a jury trial which the courts cannot provide, would it make more sense to reclassify these crimes as less serious misdemeanors so that the threat of a jail term, albeit for less than six months, will actually be credible. Estimates predict a 25% reduction in jury trial volume if only four misdemeanors were reclassified. The Commission will determine if reducing the penalties below six months for selected misdemeanors will produce fair yet speedier justice.

In order to attack further the volume of cases in our lower courts, we are also examining decriminalization of certain misdemeanors, expansion of community dispute resolution programs and diversion programs, and increased use of administrative tribunals other than the courts.

The third subject we will address is the work rules which cause delay in our courts. We consider that frequent adjournments, for instance, cause inordinate delay to each case as it passes through the system. Presently, the average number of appearances between arraignment and disposition is, according to the Chief Judge, 15 in New York City.* Each time a case is adjourned, those who appear, including witnesses, defendants, police officers and attorneys, are inconvenienced seriously. The judge, court personnel, and the courtroom, all scarce resources, are tied up. Case time is prolonged and the backlog continues. Moreover, cynicism by the public and the participants in the proceedings is fueled by delay. We will ask whether new laws are necessary to attack the backlog, whether existing laws simply need to be enforced, or whether the problem is principally one of inadequate resources.

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* The figures are hard to obtain and sometimes contradictory because of the inadequacy of the information systems about which we have commented earlier. We are advised that the average number of appearances from arraignment to disposition in Supreme Court, New York County, is now 8.8.

We will also address the practice of voir dire, or the questioning of potential jurors. We are conducting a study, in conjunction with OCA, to determine the amount of time spent on voir dire in certain counties of our state. We will compare the relatively long time spent on attorney-conducted questioning with the average two-and-a-half hours that federal judges take, and we will make recommendations to expedite the process.

We are examining the necessity of a presentence report in every case, weighing its value as a criminal history to many of the criminal justice agencies against the time it takes to prepare it.

We also will investigate the causes of appellate delay and proper means to reduce it. Recently we met with an inmate at Green Haven Correctional Facility who had been waiting for nineteen months for his appellate attorney to receive the transcript of his trial. He had been convicted in March 1980. Because of the court's delay in ordering the records, his trial was not transcribed until October 1981. With average delays by the appellate attorneys and the court, it will be the autumn of 1982 before his appeal is decided -- over two-and-a-half years after his conviction. In federal court, because of strict time limits placed upon the attorneys the entire process would take less than six months.

Most of the Commission's concerns involving the courts have been caused by volume. There is another paramount concern which is unaffected by volume -- the conditions of jury service. Participation by all citizens is necessary to preserve the right to a jury trial that is the mark of our free society. Unfortunately, many of our citizens look upon jury service as onerous, boring and degrading. Some go to great lengths to avoid this important civic duty.

The Commission is concerned with all aspects of jury duty in New York State, and we think it is time that this examination be from the point of view of the juror. If we are to have a jury system that has the greatest number of citizens serving, in the most productive manner, for the shortest period of time necessary to arrive at the fairest possible decisions, we must examine the following issues:

-- The use of the most efficient, modern, and fairest methods to establish a list of all those eligible to serve.

-- The exemptions from jury service must be fair and necessary. Should our laws, which presently exempt embalmers, orthotists and attorneys from performing this important duty, be reviewed?

-- Our citizens summoned for jury duty must be given adequate notice. An average period of ten days that prevails

in our jurisdiction may not give prospective jurors time to alter their schedules -- yet they may want to serve. Court-established rules require at least six days' notice. Perhaps that time should be longer.

-- And once summonses are sent out, what is done about those which are not honored? A jurisdiction which does nothing about ignored summonses will soon be left with a "volunteer panel" and a judicial process without credibility.

-- It is wasteful of jurors' time and taxpayers' money to have jurors sit in a room for two weeks waiting to be selected for a jury. Many jurisdictions in our state have successfully utilized telephone call-in systems and one-hour alerts which permit the juror to remain at home, or at work, until needed. Is this feasible throughout the state? Should there be pilot projects to find out?

-- The "one-day one-trial" method of service has been a successful experiment in some states. Jurors are called for one or two days -- if they are not selected, they have completed their jury service and they go home. If selected, they serve for that one trial. This alternative requires an automated summonsing process, which may be expensive, but if we have more of our citizens taking part in this important civic duty for a shorter period of time, it may be worth it.

-- Adequate compensation for jury service is of interest to the Commission. Ten to twelve dollars a day, plus travel expenses, the average fee for jury service in most New York State jurisdictions, hardly compensates in the 1980's. Nor should jurors be required to wait ten weeks for their compensation to arrive; many of them have not received their normal salary while serving.

-- Just as we are concerned about court facilities in general, we are particularly aware of the physical conditions under which jurors serve. If citizens are asked to decide the fate of a fellow human being, they should be permitted to do so under clean, comfortable, secure conditions guaranteed to permit confidential and thorough deliberations.

-- One jury which could not reach a verdict was sequestered for the night in a Holiday Inn in Riverhead, Long Island. The only problem was that it was a jury from New York City -- miles from Riverhead -- and they finally arrived at the motel at 4:30 A.M. We intend to review the law requiring mandatory sequestration.

V. Police

The police function in New York is principally a local rather than a statewide responsibility. There are over

600 different police forces in New York State, 80% of them with less than 10 officers.

The common denominator is that all of these different police departments operate with diminished resources in difficult times. The plight of the New York City Police Department -- its personnel reduced by one-third in a 1974 budget cut -- has been well publicized, but is not unique. In Northern New York, a county has just decided to eliminate an entire road patrol rather than suffer higher property taxes to pay for it. State troopers are also below their quota by 230 officers and they expect an even greater deficiency in 1982 absent additional appropriations. And yet the demands on the police have not lessened. They are expected not only to deal with the rising crime rate but also to perform a host of ceremonial and non-law enforcement roles.

Because the Commission's mandate is the investigation of statewide aspects of the criminal justice system, we shall focus on areas in which the state can assist the local police department. These include assistance -- technological, educational and financial -- in the training of local police officers; the further development of statewide support services -- such as special forensic units, mobile laboratories, undercover forces and homicide investigative units to aid local communities which do not have these resources; and the

adoption of procedures, such as telephonic search and arrest warrants to enable the police to operate effectively and in conformity with the Constitution. We shall also inquire whether there are local police functions that could be more efficiently performed by the State Police.

No matter how efficient our police may become, there are some law enforcement functions that are beyond the means of either local or state agencies. They belong to the federal government. We refer particularly to narcotics. A major proportion of crime committed in New York can be traced to the presence of drugs imported from abroad. Narcotics constitute an international crime problem, and the federal government has the principal responsibility for combatting it -- just as only the federal government can deal meaningfully with the interstate traffic in guns. We applaud the Governor for the creation of a special commission, the Califano Commission, to make recommendations on dealing with the problems of drug and alcohol abuse in the State.

CONCLUSION

The Commission is aware that the imperfections of a system of criminal justice are not the major causes of crime, nor will the plague of crime be substantially relieved by a

more efficient court process, more effective information systems, improved police operations, or a better correctional system. The social, psychological, and economic maladies of an otherwise advanced culture such as ours constitute a highly complex, indeed often impenetrable, matrix of criminal behavior. We entertain no false illusions that we will develop the "solutions" which have defied the best efforts of generations of scholars and lawmakers who preceded us. Yet, we do believe that our people deserve a coordinated system for the most effective response to crime of which we are capable, and that a good process of criminal justice is, in itself, a precious asset of a free society.

From a preliminary vantage, the Commission views the criminal justice system of the State of New York as having a number of significant strengths. We believe, for example, that most of our public officials, who are daily grappling with the egregious problems that concern us all, are earnest, capable and responsible people. We are particularly grateful for such devoted service when we recall that not every age or jurisdiction has been so well-equipped. Institutionally, we also recognize that, especially in view of the dimension of New York's problems, we have many features of the system in which we can take just pride. Many of our police forces function with commendable vigor and restraint

in a variety of demanding roles. New York today has a major complement of well-qualified, able and diligent judges. And, our correctional system, which maintains a commitment to a policy of one man, one cell, may be favorably compared to those of many of our sister states. Other examples might be cited.

The strengths of our criminal justice system provide a firm base for our work, study and proposed reform. The cooperation of officials who share our objectives furnishes valuable aid to our project. And our appreciation of both the limitation and the importance of our task reinforces our, and the Governor's, determination that useful work can be done. Its strengths notwithstanding, our system is in need of repair in many respects.

We have identified a number of targets for careful attention. Our primary topics are: (1) the facilities and programs of incarceration and the mechanisms of release, together with the possible sentencing alternatives; (2) the judicial phase, with major emphasis on the swollen caseload, the needless consumption of court time and the extravagant squander of citizen energy and good will, particularly of victims and of jurors; (3) the inadequacy of our information management and dissemination systems necessary to the proper functioning of all other aspects of the system.

In these, and in other areas, we hope we shall be able to devise and recommend policies and procedures which, pursuant to our executive mandate, can guide legislative as well as executive and administrative programs to achieve a heightened level of energy in the criminal justice system and provide enhanced capacity for an effective state response to crime.

Appendix

Members of the Commission

Arthur L. Liman, Chairman of the Commission, partner in the law firm of Paul, Weiss, Rifkind, Wharton & Garrison, former General Counsel of the New York State Special Commission on Attica;

Arthur H. Barnes, President, New York Urban Coalition;

Richard L. Gelb, Chairman of the Board of Bristol-Myers Company and Chairman of the Crime Control Planning Board;

Betsy Gotbaum, Executive Director, New York City Police Foundation;

Simon Gourdine, Deputy Commissioner, National Basketball Association, former Assistant United States Attorney;

Ralph Graves, Editorial Director, Time, Inc.;

Thomas Hastings, Executive Director, Rochester Jobs, Inc., former Chief of Police, Rochester, New York;

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Robert M. Morgenthau, District Attorney, New York County;

Archibald R. Murray, Executive Director and Attorney-in-Chief, The Legal Aid Society;

Vincent O'Leary, President, State University of New York at Albany;

John F. O'Mara, Special State Prosecutor for Onondaga County, former Chemung County District Attorney and Judge of the New York Court of Claims;

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