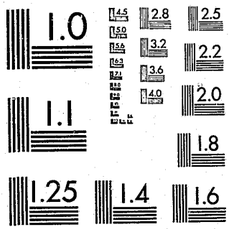

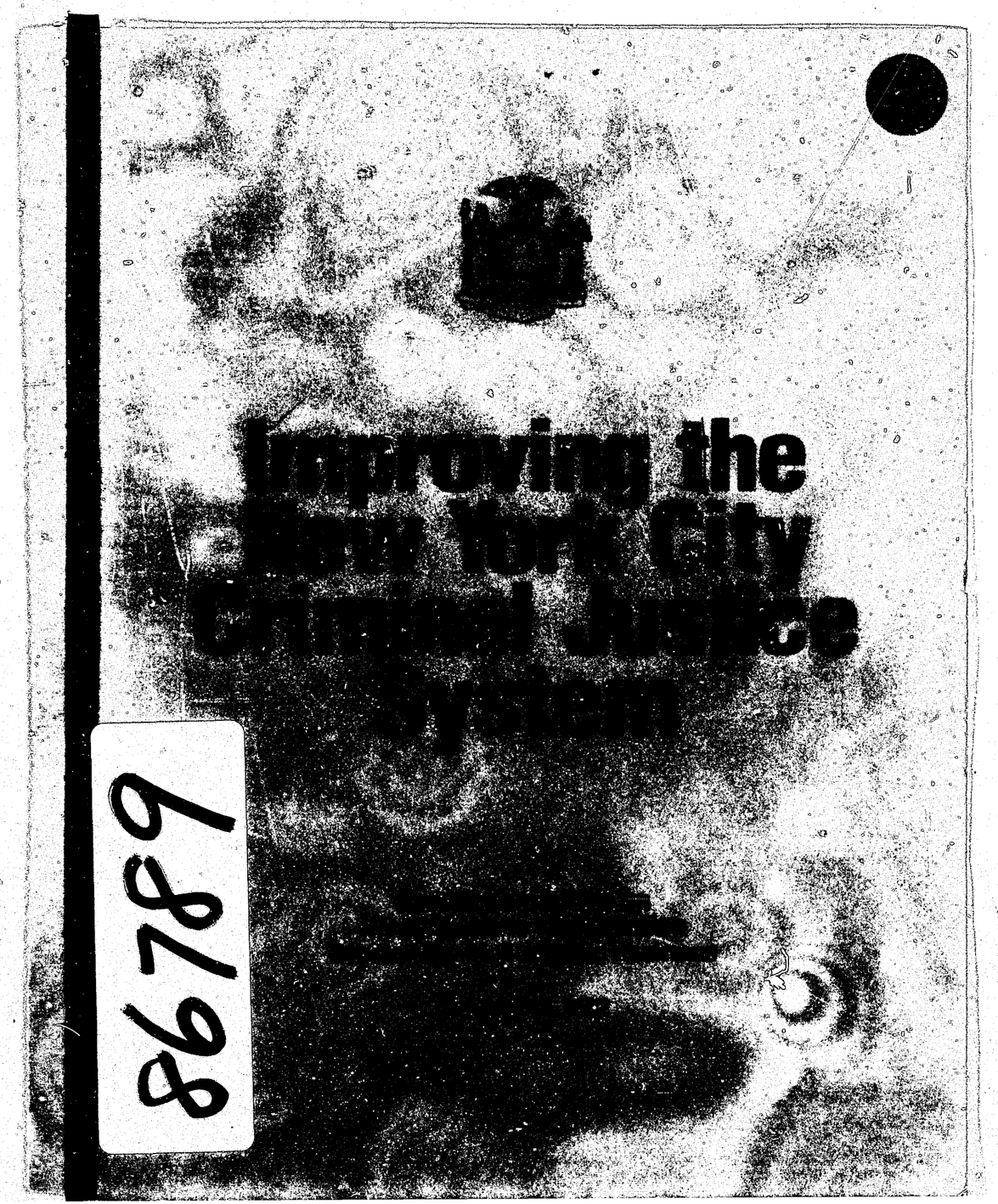

THE SENATE
STATE OF NEW YORK

SENATE COMMITTEE ON INVESTIGATIONS AND TAXATION

A REPORT ON THE NEW YORK CITY CRIMINAL JUSTICE SYSTEM

January 13, 1982

Committee Members

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Anthony V. Gazzara, Ranking Minority Member

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INTRODUCTION

In October, November and December of 1980, the New York State Senate Committee on Investigations and Taxation conducted six days of public hearings. The purpose of the public hearings was to take a searching look at the New York City criminal justice system and to try to learn from a group of expert witnesses what can be done to improve it.

Crime and safety remain the number one problem in the minds of most New Yorkers. Public fear of crime impacts heavily on the life style of every New Yorker. It causes anxiety among our citizenry, creates divisiveness and inter-group tension, and undermines public confidence in the entire process of free government.

Despite this reality and the preoccupation of all New Yorkers with criminal justice, it is painfully clear that the city's overall criminal justice system is plagued by lack of comprehensive planning, misplaced priorities, ineffective use of manpower and other resources, and an appalling lack of overall coordination among the various departments and agencies that make up the system.

The major components of the city's criminal justice system are the Police Department, the Department of Correction, the Office of Probation, the District Attorneys and the Courts, the Transit Authority police, the Housing Authority police, the Department of Investigation, the Youth Services Agency, the Corporation Counsel for Juvenile

Crime Matters, the Legal Aid Society and other defense counsel, the Addiction Services Agency and the Criminal Justice Coordinator - a most important figure in the Office of the Mayor.

The need to coordinate effectively these important branches of government is made clear by the extraordinary size of the city's criminal justice system. The City employs approximately 40,000 persons in criminal justice: more than 30,000 in the various police departments and agencies, 3,000 in correction agencies, and over 1500 in the Probation Department, and nearly 1,000 in the District Attorneys' offices.

Budget authorizations for criminal justice institutions total well in excess of a billion dollars a year.

During our extensive hearings, many recommendations for improving the criminal justice system were made by a diverse group of expert witnesses. From the large number of proposals submitted, this Committee has selected only those specific ideas which it believes to be feasible in view of the severe fiscal and practical constraints in today's society.

We have delayed promulgating our report until the filing of the initial report of the Governor's Executive Advisory Commission on the Administration of Justice, created on March 19, 1981. The Liman Commission issued its report on December 16, 1981, but did not go beyond defining the scope of its work. Therefore, we believe it is timely for us to issue our report, which we hope will stimulate legislative action in the 1982 Session and will

usefully add to the deliberations in this complex area.

A majority of the Committee has authorized the release of this report, although not every member of the Committee agrees with every recommendation.

Specific objections to a single district attorney for all five counties of New York City were registered by Senators Gazzara and Calandra. Senator Gazzara also opposed the state leasing of the New York City Prison on Rikers Island and Senator Calandra opposes the appointment, rather than the election, of judges. Senator Berman opposes patterning state jury selection after the federal system, the reduction of peremptory jury challenges, the appointment rather than the election of judges, the state takeover of the Rikers Island Prison, and a single district attorney for all five counties of New York City

Witnesses at Public Hearings
(in alphabetical order)

Michael F. Armstrong
Former Counsel to the Knapp Commission
Former District Attorney, Queens County

Dennis P. Brennan
President of the Detectives Endowment Association

Phillip Caruso
President of the N.Y.C. Patrolman's Benevolent Association

Honorable Thomas Coughlin
N.Y.S. Commissioner of Correction

Richard F. Coyne
Chairman of the Courts and Criminal Task Force of the Economic Development Council

Honorable Herbert B. Evans
Chief Administrative Judge of the State of New York

John P. Flannery, III
Former Assistant United States Attorney, Southern District of New York
Practicing Attorney

Honorable Edward R. Hammock
Chairman, New York State Board of Parole

James Hannon
President of the Supreme Court Officers Association

Edward Jordan
Founder of the Minorities Corrections Officers Association

Honorable Robert G. M. Keating
Coordinator of Criminal Justice for the City of New York

Honorable Edward I. Koch
Mayor, City of New York

Judy Levy
Assistant Corporation Counsel
Deputy Chief Family Court Division

Witnesses at Public Hearings (cont.)

Elliot H. Lumbard
Former Chief Counsel to the State Investigation Commission
Practicing Attorney

Honorable Mario Merola
District Attorney Bronx County

Honorable E. Leo Milonas
Chief Administrative Judge for New York City

Honorable Milton Mollen
Presiding Justice of the Appellate Division
Second Department

Honorable Robert Morgenthau
District Attorney, New York County
Former United States Attorney, Southern District of New York

Archibald Murray
Executive Director of the Legal Aid Society

Dan Pochoda
President of the Correctional Association of New York

Dr. Thomas A. Reppetto
President of the Citizens Crime Commission of New York City

Honorable Frank J. Rogers
Commissioner of New York State Division of Criminal Justice

Larry K. Schwartzstein
Assistant Corporation Counsel
Chief of the Family Court Division

Nicholas Scoppetta
Former Deputy Mayor for Criminal Justice

Phil Seelig
President of the Correction Officers Benevolent Association

Witnesses at Public Hearings (continued)

Whitney North Seymour, Jr.
Former United States Attorney for the Southern District of New York
Former President of New York State Bar Association

Honorable Henry J. Stern
New York City Council Member

Honorable Thomas R. Sullivan
District Attorney, Richmond County

Honorable Peter F. Tufo
Chairman, New York City Board of Correction

Patrick M. Wall
Practicing Attorney

Harvey Weitz
President, New York State Trial Lawyers Association

Honorable Joseph B. Williams
Administrative Judge, Family Court

PROPOSAL NUMBER ONE: PATTERN JURY SELECTION AFTER THE METHOD USED IN THE FEDERAL COURTS BY GRANTING TRIAL JUDGES DISCRETIONARY POWER TO CONDUCT THE ENTIRE QUESTIONING OF PROSPECTIVE JURORS

One of the most time-consuming aspects of a criminal trial is the selection of a jury. Sometimes it takes longer to select a jury than it does to conduct an actual trial. At present, both the counsel for the prosecution and for the defense as well as the trial judge have the right to question each prospective juror, a process known as voir dire. In Federal Court, on the other hand, jurors are usually questioned by the judge, who allows the prosecutor and the defense counsel to submit questions through him when he feels such questions are pertinent and relevant to judging the prospective juror's impartiality and qualifications.

In urging that New York State adopt the Federal system of jury selection, Mayor Edward I. Koch testified as follows:

> "We need less expensive, more efficiently run trials without sacrificing any of the defendant's rights .... Lawyers for both sides sometimes try to test a juror's attitudes toward every conceivable aspect of a case with questions and lengthy introductions that are both repetitive and irrelevant. The legitimate purpose of jury selection is simply to assure that no juror carries any personal prejudices into the trial which render him unable to deliberate on the evidence in a fair and impartial manner.

"In the Federal system, judges exercise far more control over the jury selection process than our own state courts currently enjoy ...."

Supporting the proposition that judges rather than counsel select jurors were Herbert B. Evans, Chief Administrative Judge of the State of New York; Whitney North Seymour, Jr., former U.S. Attorney for the Southern District of the York and former president of the State Bar Association; Justice Milton Mollen, Presiding Justice, Appellate Division, Second Department; Mario Merola, District Attorney, Bronx County; E. Leo Milonas, former Chief Administrative Judge, City of New York and now Justice of the Supreme Court, Appellate Division; Frank J. Rogers, Commissioner, N.Y.S. Division of Criminal Justice Services; and Michael F. Armstrong, a defense counsel, former District Attorney, Queens County, and former Counsel to the Knapp Commission and Governor Carey in his most recent State of the State Message.

In opposing the proposition that judges rather than counsel conduct the voir dire, Patrick M. Wall, a noted defense lawyer, told the Committee:

"I am absolutely and totally opposed to taking from prosecutor and the defense lawyer the ability, within reason, to pick and assist in picking the jury themselves. I like the jury system, and in my opinion the system, in theory, as it exists in the State is a far fairer system than that in the Federal court .... Simply because lawyers are abusing it, to take away what

I think is a valuable right on the part of both defense and prosecution is throwing the baby out with the bath water."

The Committee concludes that the elimination of trial delays is a top priority and that the present cumbersome New York State voir dire procedure is a major cause of calendar congestion. The Committee therefore strongly urges that the federal jury selection system be adopted in New York State. The federal system would also provide speedier trials for defendants who are imprisoned awaiting trial.

This change could be accomplished by amending section 270.15 of the Criminal Procedure Law.

PROPOSAL NUMBER TWO: REDUCE THE NUMBER OF PEREMPTORY CHALLENGES

The Committee also examined the issue of the number of peremptory challenges, i.e. challenges without cause, allowed to both the prosecution and the defense. Currently, under Section 270.25 of the New York State Criminal Procedure Law, each side is allowed twenty challenges for class A felonies, 15 challenges for B & C felonies, and 10 challenges for class D & E felonies. In the Federal system, there are generally a total of sixteen peremptory challenges allowed, ten for the defendant and six for the prosecutor, with the trial judge having discretion to increase the number if needed.

Justice Evans advocated reducing the number of such challenges in felony cases. He pointed out that:

> "New York now allows more peremptory challenges than almost any other state. A reasonable reduction would speed the jury selection process and reduce the expense of litigation to the public."

Mr. Wall, on the other hand, opposed a reduction in the number of peremptory challenges, fearing that in the attempt to achieve efficiency, the rights of defendants would be further eroded.

This Committee, aware of the need to protect the rights of the accused, recommends that the number of statutorily mandated challenges be reduced by amendment of the relevant sections of the Criminal Procedure Law, but with discretion given to the trial judge to increase the number as appropriate.

PROPOSAL NUMBER THREE: ELIMINATE MANDATORY SEQUESTRATION OF JURORS

Current New York Criminal Procedure Law mandates that juries in criminal cases be sequestered once deliberations have begun, regardless of need. In the federal system, sequestration is not mandatory, and indeed, is the exception rather than the rule. The consensus espoused at our hearings was that this is a needless expenditure of time and money for an already beleagured criminal justice system.

Mayor Koch testified that the expenses for food, lodging, transportation and security cost New York City over $640,000 in 1979, money which could have been better spent to hire more police.

Attorney Wall also expressed opposition to this practice, not only because it wastes money, but also because he feels it may unduly influence jurors:

> "My concern, however, is that a jury that is sequestered may very well not be - or some of its members may not be - deciding according to their conscience but according to the fact that they don't like being away from home or they have an ill mother or they just don't want to go to a hotel. I think this is wrong. This is coercive, I think, and it is an awful waste of money."

Both Justices Milonas and Evans favored elimination of this requirement, but suggested that judges be given discretion to determine if sequestration is warranted by prevailing

circumstances.

This Committee feels that amendment of the law requiring sequestration of juries would result in a more economical and productive court system, while not affecting the integrity of the jury system. Accordingly the Committee recommends amendment of the law to eliminate sequestration of juries in all criminal cases, but with discretion given to the trial judge to determine if sequestration is appropriate.

PROPOSAL NUMBER FOUR: EXPAND THE USE OF THE PROSECUTOR MANAGEMENT INFORMATION SYSTEM (PROMIS), A COMPUTERIZED METHOD OF PROVIDING PROSECUTORS WITH CASE HISTORY AND OTHER STATISTICAL DATA ON CRIMINAL CASES

PROMIS, the Prosecutor Management Information System, is a computerized information system that provides a prosecutor's office with a complete case history of each case from arrest through final disposition. It is capable of providing management reports including police precinct and individual police officer information, and providing an analysis of all dispositions including dismissals. Currently this system is employed only in the Manhattan District Attorney's Office, but nationwide, it is currently operational in forty other jurisdictions, and is in the process of being implemented in 150 others.

Nicholas Scoppetta, former Deputy Mayor for Criminal Justice of the City of New York, testified on behalf of implementation of the PROMIS system. Mr. Scoppetta explained that PROMIS was originally designed to help a prosecutor manage his case load and allocate his resources more efficiently. It is in fact capable of doing much more: "It immediately can find the weak spots, it can find the inefficiencies, the failures, so that administrators can make corrections." For example, PROMIS found that the most likely result for every serious arrest in every major jurisdiction that has been studied is dismissal of the case. PROMIS found that the two most important reasons for dismissals were witnesses' failure to appear and insufficient investigative work to develop evidence needed to sustain a successful prosecution. Once prosecutors are aware of these problems, they can develop appropriate solutions to deal with them.

Mr. Scoppetta also described how PROMIS has developed a strategy which can be used by prosecutors for dealing with repeat offenders, has led to the adoption of legislation on the bail system, analyzed case processing methods which were causing court delays, and probed the results of plea bargaining.

Mr. Scoppetta emphasized that:

> "it's only with this kind of sophisticated analysis of what's happening to the hundreds of thousands of cases in the system that we're going to be able to identify problems in the kind of terms that also give us some solutions. It's not enough to say cases are being dismissed. It is not enough to say crime is increasing. We've got to go beyond that and the PROMIS system isolates for us, identifies for us the kind of information we need ..."

In this regard, this Committee echoes the sentiments of Mr. Scoppetta that our time, attention, and energies be focused on realistic solutions to the problems of the criminal justice system. Thus, we urge that the PROMIS system, with its ability to analyze cases, and identify problems and potential solutions, be implemented city-wide.

PROPOSAL NUMBER FIVE: RETAIN THE 36 COURT OF CLAIMS JUDGESHIPS

In 1973, the enactment of strict narcotics laws resulted in creation of 36 new Court of Claims judgeships, many of which sit in the criminal term of the Supreme Court, but which the enacting legislation required be eliminated upon expiration of term, death, or retirement. Presently, only 17 of these 36 judgeships remain in existence.

The unanimous view expressed at the Committee's hearings was that the need for these positions has become even greater than when created. As Mayor Koch said, "their continued assistance is essential to provide the swift and certain justice that is the cornerstone of a firm, fair and effective justice system."

Justice Evans also pointed out that recently enacted laws requiring mandatory sentences and imposing restrictions upon plea negotiations have resulted in more trials, which have severely taxed the judicial system. Thus he strongly urged retention of these Court of Claims judgeships, along with additional judges for the New York City Criminal Court.

Governor Carey in his 1982 message to the legislature also advocated the retention of the 36 Court of Claims judgeships.

In order to deal with the number of cases coming into the New York City criminal justice system, which is increasing rapidly and which is higher than in any other city in the nation, it is essential that judicial resources likewise keep pace. Thus the Committee urges legislative action to retain these Court of Claims judgeships.

PROPOSAL NUMBER SIX: AMEND THE STATE CONSTITUTION TO ELIMINATE GRAND JURY PROCEEDINGS WHICH ARE DUPLICATIVE OF PRIOR FELONY HEARINGS

Article one, section six of the Bill of Rights of the New York Constitution mandates grand jury indictment before prosecution for a felony.

Often a defendant is arrested and charged with a felony prior to the grand jury presentment. Under present state law, section 180.80 of the Criminal Procedure Law, a defendant who has been committed to custody, is entitled to a felony hearing within 72 hours of his commitment.

At this hearing the People have the burden of demonstrating reasonable cause to believe that the defendant committed a felony.

Section 190.65 of the C.P.L. requires that a grand jury reach the same burden of proof before it votes an indictment, i.e.: " ... the evidence before it is legally sufficient to establish that such person committed such offense and ... competent and admissible evidence before it provides reasonable cause to believe that such person committed such offense."

In many cases there is both a felony hearing and a grand jury presentment. This results in a duplication of time, money and effort.

Proponents of the suggestion to eliminate grand jury proceedings which are duplicative of prior felony hearings including former prosecutors, judges and defense counsel argued that no grand jury presentment should be required if there has been a finding of reasonable cause at a felony hearing.

Whitney North Seymour, Jr. called for elimination of duplicative grand jury hearings, as has been done successfully in California. Mr. Seymour feels that such a system

> "has some remarkable advantages, one of them being that the prosecutor has to put his case in up front, so that he does exercise much better judgment as to what cases he's going to take in. They're much higher quality cases.
>
> The second is that the defendant himself sees the case against him and he's likely to get a disposition at a much earlier stage. So you get cases, you get prompter dispositions and you don't engage in a lot of horse trading on plea bargaining. You get a good solid disposition and a chance to impose a meaningful sentence."

It is the position of this Committee that the Criminal Procedure Law be amended to eliminate grand jury proceedings where they are duplicative of prior felony hearings which have found probable cause, with provision for use of the grand jury for conducting special investigations as needed. Such a step could save time, money, and effort - resources which our beleaguered system desperately needs to conserve.

PROPOSAL NUMBER SEVEN: CURTAIL DEFENDANTS' ABILITY TO APPEAL BASED ON DENIAL OF MOTION TO SUPPRESS EVIDENCE

Another practice which is statutorily authorized in New York, but not in the Federal system, allows a defendant to appeal a denial of a motion to suppress evidence which he says was illegally seized, even though he has pleaded guilty.

Presiding Justice Milton Mollen feels that this practice needlessly delays the criminal justice system, and feels that

> "There's no reason why that statute should not be amended so as to take away the right of a defendant from still having the opportunity to appeal his conviction on the grounds that his motion to suppress should have been granted. He is having it both ways. In the first instance, he bargains and he gets the advantage of a bargained plea and, in the second instance, he is able to appeal to try to set aside his conviction."

Justice Milonas takes a contradictory position, fearing that if a defendant cannot appeal the denial of a motion to suppress, he may be reluctant to plead guilty, which may lead to more trials, and add to the already heavy burden on the courts.

This Committee endorses the reasoning of Judge Evans, that there will not be any significant increase in trials if the right to appeal is waived upon a plea of guilty. Thus

it recommends that the Criminal Procedure Law now be amended so that a defendant who pleads guilty no longer has "two bites at the apple:" the advantage of a bargained plea and the right to appeal to set aside a conviction.

PROPOSAL NUMBER EIGHT: SCREEN AND APPOINT RATHER THAN ELECT JUDGES

Competent judges are essential for an effective, efficient criminal justice system. Currently, State Supreme Court judges are elected, with the result that partisan political interest and party loyalty, rather than ability, are often the criteria for election.

It is the feeling of this Committee that merit appointment will attract many qualified judicial candidates who are currently discouraged from seeking nomination by the nature and expense of campaigning, and will eliminate the potential for conflict of interest that can arise when individuals who may serve on the bench must solicit campaign funds.

A merit selection proposal backed by numerous bar and civic groups and introduced by Senator Roy M. Goodman, Chairman of this Committee, has been before the legislature for ten years. The latest proposal provides for the formation of eleven judicial nominating commissions, one for each of the judicial districts in the state. Each commission would consist of fourteen members: two appointed by the Governor, two by the Chief Judge of the Court of Appeals, two by the Presiding Justice of the Appellate Division for that district, and one each by the Speaker of the Assembly, the Majority Leader of the Senate, and the minority leaders of the Assembly and the Senate, with the four remaining members to be appointed by the Mayor in New York City, and

by the County Executive in other districts. The Commission would recommend three persons to fill each vacancy, from whom the Governor would select one, with the approval of the Senate. These judges selected would be appointed to terms between one and four years, but would have to be approved by the electorate in the general election two years after their appointment.

Merit selection of judges has the support of Justices Evans and Milonas and is being adopted by more and more states.

The civic groups which favor the Goodman Bill are:

New York State League of Women Voters
Citizens Union
City Club of New York
Common Cause
Women's City Club of New York
New York State Coalition for Criminal Justice
Community Service Society
American Jewish Congress
New York County Lawyers Association
Rochester Judicial Process Commission
Suffolk County Conference on Juvenile and Criminal Justice
Federation of Protestant Welfare Agencies
New York State Congress of PTAs
American Judicature Society
Association of the Bar of the City of New York
New York State Bar Association

It is the strong feeling of this Committee that merit selection of judges would result in a more capable and productive judiciary, and we urge prompt adoption of this measure.

PROPOSAL NUMBER NINE: HAVE THE STATE LEASE FROM THE CITY THE PRISON AT RIKERS ISLAND AND HAVE THE CITY USE THE $200 MILLION PROCEEDS TO CONSTRUCT EIGHT NEW FACILITIES

As of JAnuary 1982, New York State Prisons held 25,600 inmates, which is 12% over capacity. Local jail facilities, including those in New York City, are also beyond capacity.

The testimony of Peter Tufo, Chairman of the New York City Board of Correction, painted a grim picture of the current situation:

> "At a time when the number of people in our jails is rapidly increasing, with all major institutions in the city at over 100% capacity, with no additional bed space available, there must be a renewed commitment to making a sound investment in our system now rather than paying the price later for an inefficient, overcrowded and dangerous correction system."

Another consequence of overcrowding cited by Mr. Tufo is that judges, aware of the problem, tend to reduce sentences.

Bronx District Attorney Mario Merola said that while our laws against violent criminals are among the toughest in the country, these laws are worthless if there is no place to put those convicted. Further, the consequences he described of such a shortage of space are serious:

> "First, overcrowding creates hazardous and explosive conditions within existing facilities. Second, sentenced prisoners are being housed in detention facilities for lengthy periods of time despite the fact that such facilities are already overcrowded with those awaiting trial, and are wholly unequipped to provide the services or security required for long-term incarceration."

The sole voice opposing construction of additional prison space came from Thomas Coughlin, State Commissioner of Correction who testified that there is adequate room in the jails for criminals: "Our current plans indicate that we will have sufficient room within our system to deal with the expected population," even with tougher gun control laws and longer sentences for violent offenders. He felt prison overcrowding is an excuse used by the prosecution to justify plea bargaining.

More recently, however, Commissioner Coughlin reversed his position, declaring that New York is desperately short of space and unable to provide humane treatment to state inmates.

It is the feeling of this Committee that there is a dire need for more prison space. Police, prosecutors, and judges agree that lack of space brings serious consequences. It destroys police morale because of the perception that when

an arrest is made, it may well be in vain. It leads to unwarranted or excessive plea bargaining than would otherwise be the case. It is a factor taken into consideration by judges in meting out sentences. If the fight against crime is to be waged effectively, our prisons must have sufficient capacity to house those convicted for the length of time needed.

With the recent defeat of the prison bond issue, the Committee feels it would be worthwhile to resurrect the Rikers Island Plan, which provides for state leasing of the New York City Prison at Rikers Island. Negotiations between the city and the state to achieve this end broke down in 1980, but because of the many advantages inherent in the proposal, we concur with the suggestion of Mr. Tufo that the best answer to the pressing prison space problems is for "the city and state to reconsider the decision to abandon the Rikers Island transfer and to go forward with a coordinated state-wide solution on Rikers Island."

The proposal will benefit the city, the state, prisoners, and the public. In exchange for the lease of its Rikers Island facility to the state, New York City would receive more than $200 million to be used for construction of eight facilities throughout the city, which would place prisoners nearer to the courts in which they are to appear, and thus result in substantial savings in time and of money. In addition, the state would realize an increase in prison capacity of some 4000 beds.

While 1300 cells under construction will be ready in March, the state had recently been ordered to accept all state-ready prisoners from the New York City jails and has been barred from putting two inmates in one cell. An agreement between the city and state for the city to continue to temporarily house up to 150 of these prisoners is merely a stopgap measure. The soaring crime rate and the burgeoning prison population mandate that serious and intensive negotiations between the city and state begin immediately so that the Rikers Island plan can finally become a reality.

PROPOSAL NUMBER TEN: AMEND THE FAMILY COURT ACT TO ALLOW FAMILY COURT TO HAVE JURISDICTION OVER VIOLATIONS

Under present law, only crimes, i.e. misdemeanors and felonies, are referred to the Family Court, but juveniles between the ages of 7 and 16 who commit violations are not subject to Family Court jurisdiction, nor can they be brought into Criminal Court because of their age, while juveniles over 16 are referred to Criminal Court.

This anomaly was pointed out by Larry Schwartzstein, Assistant Corporation Counsel for Family Court. As a result of an inconsistency in the law, juveniles under the age of 16 accused of loitering, harassment, disorderly conduct, and other violations are not subject to any court's jurisdiction.

This Committee concurs with the suggestion of Mr. Schwartzstein that the Family Court Act be amended to enable the Family Court to deal with violations committed by all juveniles. Such a step would provide a forum with the requisite experience and expertise to deal with juvenile offenders, and would ease the burden on New York City Criminal Court which currently handles violations committed by juveniles over the age of 16.

PROPOSAL NUMBER ELEVEN: INCREASE SECURE FACILITIES FOR JUVENILE OFFENDERS AND LENGTHEN DETENTION WHERE NECESSARY FOR REHABILITATION

Assistant Corporation Counsel Judy Levy, Deputy Chief of the Family Court Division, advised the Committee that the New York State Division for Youth has inadequate and overcrowded facilities, with the result that many recidivist and violent juveniles are placed in non-structured, non-secure facilities, from which as many as half escape. Goshen, which is the only secure facility designed to house downstate juvenile offenders or those convicted of designated felonies, has beds for only 150 such juveniles. As a result, many who should be in secure facilities are not.

Part of the recently defeated prison bond issue was to be used for "construction, reconstruction, rehabilitation and improvement of state residential facilities for juvenile delinquents and juvenile offenders."

Because of the increasing juvenile crime problem and the resulting shortage of secure facilities, this Committee urges that sufficient funds be allocated to construct adequate and secure facilities for juvenile offenders.

Even if sufficient secure facilities are built, it is not enough that they merely warehouse these charges for a brief period of time. As Mr. Larry Schwartzstein testified:

> "I don't think we have the services ... to provide rehabilitation services. I am also a strong believer that you cannot rehabilitate somebody in a short period of time ... I would tend to think that we don't have the services to provide the juveniles with rehabilitation, nor do we have the time in dealing with the juvenile."

He pointed out that the most disruptive trouble-makers are released earliest because they are the most difficult to deal with.

Thus, both Mr. Schwartzstein and Mrs. Levy pleaded not only for the construction of additional secure facilities but also for detention for a sufficient period of time to provide rehabilitation.

This Committee joins in their recommendation so juvenile offenders can be housed for a sufficient period of time to permit intensive rehabilitative, educational and vocational training.

PROPOSAL NUMBER TWELVE: STATE TAKEOVER OF DEPARTMENT OF PROBATION IN NEW YORK CITY AND ALL OTHER LOCALITIES IN THE STATE

In theory, probation should play a pivotal role in assisting offenders to lead productive lives. Today, however, New York City and other localities are responsible for probation, and because of lack of financial resources, are unable to provide adequate probationary programs. The result is a glaring lack of uniformity throughout the state. Some locales are able to offer progressive programs designed to divert offenders from the prison system, while in others, defendants do not have access to such programs and must be incarcerated.

In this regard, Mayor Koch urged that the state take over the Department of Probation in New York City in order to provide a financially sound and uniform probation system, which could provide innovative programs. Assembly Speaker Stanley Fink also recently proposed a state takeover of local Probation Departments.

The Committee advocates the adoption of a consistent, state-wide probation program, with sufficient financial resources to supervise and assist probationers. Probation should ideally be an alternative to incarceration for those who have not committed violent crimes and have no prior criminal record. But unless adequate guidance is provided along with better education and vocational services, neither society nor offenders will benefit.

PROPOSAL NUMBER THIRTEEN: SINGLE DISTRICT ATTORNEY FOR ALL FIVE COUNTIES

The concept of a single district attorney for New York City evoked contradictory viewpoints at our hearings.

Mayor Koch testified in support of a city-wide district attorney, as did Whitney North Seymour, Jr., because of the need for greater coordination and consistency. Mr. Seymour stated that

> "the lack of uniformity, if you please, just in the quality of assistant district attorneys around the city and the lack of evenness in how many are working in different offices and the lack of support service and, indeed, the different enforcement policies don't make any sense at all."

Mr. Seymour said the result is that there is great disparity in the way offenders arrested in different boroughs for similar offenses are treated.

Justice Evans, however, is opposed to this concept, feeling that a separate district attorney for each county results in that county receiving more effective attention. He states that because each county has its own unique characteristics, priorities and problems "by decentralizing the operation that, probably, the counties are better served."

Justice Milonas also opposes a single city-wide district attorney, as he feels that if this proposal were adopted, there would still be five deputy district attorneys to run

each county separately. Further, he feels that the job is so massive that it cannot be effectively done by one person. The only advantages he sees are central supervision and budget control, which he feels can exist within the present system.

This Committee recognizes that this is a highly controversial and political issue, but nevertheless, advocates the adoption of a single city-wide district attorney. The present division of prosecutorial functions among five separate district attorneys ignores present-day realities which require a single unified system of crime control. It further results in a fragmentation of limited resources, different procedures and enforcement policies and duplication of effort. Our proposal has a two-fold benefit. It would improve the fight against crime in New York City and it would reduce the overhead cost of operating five separate district attorneys' offices.

Adoption of such a measure would require amendment of the State constitution by passage of two successive legislatures and the approval of the voters in a referendum. A bill to accomplish this was first introduced by Senator Goodman at the 1977 session of the Legislature.

PROPOSAL NUMBER FOURTEEN: INTENSIFIED D.A. COMPLAINT SCREENING TO ELIMINATE MATTERS FROM THE SYSTEM WHICH WILL NOT COME TO TRIAL OR RESULT IN CONVICTION

Several witnesses argued for effective early screening of cases in order to eliminate those where charges most likely will be reduced or dismissed. Every year, thousands of cases are dismissed after numerous appearances and needless expenditure of time and money. Experienced assistant attorneys can be utilized to prevent such waste of precious resources.

Bronx District Attorney Mario Merola testified that:

> "after a case is brought into the system, it must be screened and evaluated in a knowledgeable and expeditious fashion. Failure to do so frequently results in a waste of time and effort in the prosecution of a matter as a felony only to have it finally disposed of at the misdemeanor level or worse. More positively, early and effective screening can prevent a case from being lost in the system."

His office has been intensely screening cases in this manner for the past several years.

The Manhattan District Attorney's office under Robert Morgenthau has adopted a "decline prosecution" policy which has "diverted from the overburdened Criminal Court thousands of minor offenses involving defendants with little or no criminal record." His office declined prosecution of 6,000 cases in 1978, and of 4,000 in 1979. In addition, Mr. Morgenthau has adopted a procedure of careful screening

of arrests in the complaint room, which has resulted in the immediate reduction to misdemeanors of felonies which would have been reduced at a later stage. The result was that 95% of the cases presented to the grand jury resulted in indictment.

While pre-arraignment review of cases is already done to some extent throughout the city, this Committee urges that this procedure be intensified to further reduce the volume of cases clogging the criminal justice system. This method would not only be cost effective, but would also allow for greater concentration on more serious and violent crimes that are of far greater concern to New Yorkers.

END