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MANHATTAN CRIMINAL ARRAIGNMENT STUDY
Final Report

Angela O. Burton

April 1995

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Forward

In August 1994, New York City's Criminal Justice Coordinator asked the Vera Institute to monitor the impact of a joint effort by the Coordinator, the Legal Aid Society, and court administrators to increase the percentage of criminal cases in Manhattan to which Legal Aid was assigned as counsel for the defendant. Vera agreed to do so for a six-month period, but no sooner had the monitoring begun than Legal Aid's attorneys went on strike over other issues. Although that strike was short-lived, it was followed by the suspension of Legal Aid's contract with New York City, a substantial cut in Legal Aid's funding, and eventually, in February 1995, agreement to a modification of Legal Aid's contract.

It would be reasonable to think that the attempt to increase Legal Aid's share of cases could not have survived these events. Nevertheless, the data presented in this report show not only initial success, but that the increase was sustained, with temporary setbacks, through the strike, layoffs, and reorganization of Legal Aid.

This result is even more surprising in light of the fact that the change in procedure designed to boost Legal Aid's caseload was made only for a few weeks. Indeed, the story told here is a reminder that institutional change happens in many ways, and that influencing the expectations of people working within a complex institution like a court can be more effective than modifying formal procedures.

When the Coordinator and Legal Aid announced their plan in the summer of 1994, several judges and lawyers expressed concern that the time taken to arraign defendants would quickly lengthen and the quality of representation would suffer. We found no sign that either occurred. Concern was also expressed that Legal Aid might manage a growth in workload at arraignments by transferring more cases to other attorneys at later stages in the proceedings, but we do not yet have data to assess that possibility.

Today, in April 1995, the Legal Aid Society faces further strain from cuts in its state funding. We cannot predict how these cuts may affect Legal Aid's ability to maintain its newly enlarged share of cases, but whatever the impact, Angela Burton's report provides important lessons for all those who seek to manage busy arraignment courts and the provision of counsel to indigent defendants.

Angela Burton came to Vera for this project on leave from Debevoise & Plimpton, the law firm to which she now returns. In her months with us, Ms. Burton monitored arraignments in the Manhattan Criminal Court—day and night—in person as well as by computer. In the process, she became an expert in the arcane, tradition-bound court routines and in the many ways that judges, lawyers, and civil servants with diverse

interests compete there for control. This is the setting in which court reform succeeds or fails; her insights give us all a better chance to succeed.

The monitoring reported here could not have been accomplished without the cooperation and active assistance of many public servants. Judges Robert G. M. Keating, Joan B. Carey, Charles H. Solomon, and Micki A. Scherer generously lent their support; Steve Kuffs—Arraignment Expediter and the master of many roles in the court—made the in-court monitoring possible and practical; and Sergeant Antonio Astacio and Virginia Wheeler kept us supplied with fresh electronic files for coding and analysis. Finally, we owe special thanks to Marty Murphy of the Coordinator's office who has labored in these fields for many years and knows their secrets well.

Christopher Stone
Director, Vera Institute of Justice

Introduction:
Providing Indigent Defense in New York City

The city's obligation to provide free legal representation to indigent defendants is rooted in the 1963 United States Supreme Court decision in *Gideon v. Wrainwright.*[1] In that case, the Supreme Court recognized that for a person charged in the state courts with a felony, the right to counsel is essential to a fair trial. Furthermore, when the accused in such cases cannot afford to pay for their own defense, the state must provide free legal representation. In 1965, the New York State Court of Appeals extended that right to persons accused of misdemeanors and petty offenses.[2] In response to these court decisions, in 1965 the New York State legislature enacted Article 18-B of the County Law, placing on local governments the fiscal and programmatic responsibility for providing free legal representation to eligible defendants.[3]

Article 18-B outlines four possible methods for providing defense services.[4] In 1966, New York City adopted a combination plan: dividing the responsibility for indigent defense between the Legal Aid Society, a private organization under contract to the city, and an array of private attorneys, known as the 18-B Panel. Under the contract, the Legal Aid Society agreed to serve as the primary public defender for New York City and to handle all cases, with the exception of homicides and those presenting a conflict of interest.[5] To cover the remaining cases, the Association of the Bar of the City of New York and the five county bar associations drew up the Assigned Counsel Plan.[6] This plan established a panel of private attorneys, the 18-B Panel, to handle what was envisioned to

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[1] 372 U.S. 335 (1963).

[2] *People v. Witenski*, 15 N.Y.2d 392, 207 N.E.2d 358, 259 N.Y.S.2d 413 (1965).

[3] N.Y. County Law Sec. 722(a).

[4] These options include: (1) a public defender or public legal services agency that would hire defense attorneys as City employees; (2) a private legal aid society, under contract to the city; (3) a panel of private attorneys coordinated by an administrator pursuant to a bar association plan; or (4) a combination of any of the three.

[5] The contract remained in force from 1966-1994. Although the formal system has remained unchanged, a small number of indigent cases are assigned to law school clinics and the Neighborhood Defender Service of Harlem, and some appeals in Manhattan and the Bronx are assigned to the Office of the Appellate Defender.

[6] Plan of the Association of the Bar of the City of New York, Bronx County Bar Association, Brooklyn Bar Association, New York County Lawyers' Association, Queens County Bar Association and Richmond County Bar Association (approved by the Judicial Conference of the State of New York, April 28, 1966 and adopted pursuant to Article 18-B of the County Law.) (Hereinafter cited as the Assigned Counsel Plan.)

be a small proportion of the total indigent defense caseload. It was originally estimated that no more than 500 cases would be assigned to Panel attorneys each year citywide.[7]

The Legal Aid Society is paid a fixed sum, negotiated yearly. As an institutional defender, it is designed to handle a large volume of cases. Its staff attorneys are supervised closely by senior attorneys and are required to complete extensive and ongoing training in various aspects of criminal defense. Legal Aid also has a permanent staff of investigators, paralegals, social workers, and administrative staff to support their work.

By contrast, the 18-B Panel is a network of attorneys who work on their own without specific training or supervision and with only limited access to the support services available to Legal Aid attorneys.[8] Panel attorneys are paid a fixed hourly rate, established by the State legislature, for each case.[9] Although the Panel was not originally intended to handle a large volume of cases, judges immediately relied on 18-B attorneys to handle more cases than anticipated, and their reliance grew over the years. Gradually, the Panel became a major provider of indigent defense services in New York City, especially in Manhattan.

Controversy Over the Growth of the Assigned Counsel Plan

In 1986, two reports were issued focusing on the distribution of cases between the Legal Aid Society and the 18-B Panel, and the impact on quality and cost of providing legal representation to indigent criminal defendants. One report was released by Michael McConville and Chester L. Mirsky,[10] two law school professors, and the other by the Association of the Bar of the City of New York.[11] Both reports grew out of research commissioned by the Bar Association and conducted by Professors Mirsky and McConville in Manhattan criminal courts from September 1984 through April 1985. The researchers' stated goals were "to see whether the two entities' different funding and organization influence the type of attorneys they attracted, the quality of their representation, and the share of the indigent defendant population they each

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[7] Association of the Bar of the City of New York, Committee on Criminal Advocacy, *A System in Crisis: The Assigned Counsel Plan in New York: An Evaluation and Recommendations for Change* (October 1986), p. 14 (hereinafter cited as *A System in Crisis*).

[8] The 18-B attorneys have access to expert and support services, but they must get court approval for these expenditures. Also, there is no organized resource for these services; they must find them on their own.

[9] These rates are presently $40 per hour for in-court time and $25 per hour for out-of-court time spent on a case.

[10] Chester L. Mirsky and Michael McConville, "Defense of the Poor in New York City: An Evaluation," *N.Y.U. Review of Law & Social Change* 15, no. 4 (1986-87) (hereinafter cited as "Defense of the Poor").

[11] *A System in Crisis*.

represented."[12] A draft of the report was circulated in June 1985 and distributed to various groups and individuals between June and November 1985.

Because McConville and Mirsky were extremely critical of the system overall, arguing that from its inception the goals were "alien to the needs of indigent defendants,"[13] their report generated intense controversy. The authors claimed that the system aimed "to make the criminal law a more effective means for securing social control at minimal expense to the state and to the private bar,"[14] and therefore, Legal Aid and 18-B attorneys were forced to abandon constitutional standards of effective adversarial advocacy in favor of cost-efficient processing of defendants.[15] They also pointed to the paucity of funds allocated for indigent defense compared with funding for prosecutorial functions. While describing the crisis in representation as largely the result of systemic pressures, the report was highly critical of the quality of representation provided by both the Legal Aid Society and the 18-B Panel.

The Legal Aid Society released a 90-page rebuttal to the McConville and Mirsky report, charging that it was based on an incomplete or faulty understanding of available data.[16] Legal Aid offered their own analysis of the system's shortcomings and attempted to show how the operation of the criminal justice system as a whole contributed to the problems facing public defenders in the city.[17]

The Bar Association held extensive hearings at which the professors met with representatives from the Legal Aid Society, city government, the Supreme and Criminal Courts, and other interested groups to discuss the research and exchange ideas. The Bar Association then issued its own report focusing on problems with the 18-B Panel and possible remedies. The Association recommended that the 18-B Panel be replaced and suggested several alternatives; however, none were adopted.[18] The Association acknowledged that their recommendation was primarily aimed at addressing the fiscal

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[12] "Defense of the Poor," p. 700.

[13] Ibid., p. 876.

[14] Ibid., p. 877.

[15] Ibid., p. 892.

[16] The Legal Aid Society, *Reply Memorandum of The Legal Aid Society to McConville and Mirsky Draft Report* (October 1985), p. 6.

[17] Mirsky and McConville responded to Legal Aid's rebuttal in *Defense of the Poor in New York City: A Response to the Reply Memorandum of the Legal Aid Society* (November 1985).

[18] The Association proposed three alternatives: (1) establishing a "mid-range" institutional defender to handle homicides and the second defendant in multiple defendant cases while preserving a small panel of private attorneys to handle the remaining cases; (2) creating a "Conflicts Unit" within the Legal Aid Society that would have a "Chinese-wall-like relationship" to the rest of the Society; and (3) providing organized support services for the 18-B Panel.

problems caused by the unplanned growth in the 18-B Panel. "Therefore, if only for the purposes of fiscal accountability, the time for transforming the 18-B Panel has arrived. Yet, the overriding moral question which instigated our inquiry remains unanswered: will a serious effort be made to raise the level of representation of clients who are now being so badly served?"[19]

Despite disagreement, everyone acknowledged that the number of cases assigned to the 18-B Panel had grown far beyond what was originally intended, posing serious fiscal implications for the city and raising questions about quality of representation. From 1966 to 1967, the first year of operation of the Assigned Counsel Plan, 18-B attorneys were assigned 746 cases in Manhattan and the Bronx. From 1972 to 1973, this figure had grown to 6,077. By 1984, citywide, 18-B attorneys were handling over 36,000 cases a year.[20]

In 1988, the Office of Management and Budget produced a report on the 18-B Panel expressing strong concern about the city's heavy reliance on 18-B attorneys.[21] The report pointed out that the city had no oversight over the Panel, that its quality of defense and lack of formal supervision were consistently called into question, that there was inadequate use of investigative and expert services, and that its voucher and billing procedures were "questionable at best."[22] One of the central findings of the 1988 OMB report was that while the Legal Aid Society was still the principal provider of indigent defense services, the 18-B Panel had grown to become "an important front line defender in felony cases."[23] The 18-B Panel was by then handling almost 40% of all indigent felony cases in the city in Supreme Court. Table 1, reprinted from that report, shows the proportion of felony cases disposed of in Supreme Court by each defense provider for the years 1983 through the end of the first three-quarters of 1987.[24] As of January 1988, the assigned counsel system was representing the largest proportion of all felony cases in Supreme Court citywide, 38%.

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[19] *A System in Crisis*, p. 42.

[20] Ibid., p. 15.

[21] Office of Management and Budget, *The Role of the 18-B Assigned Panel Within New York City's Criminal Defense System*, (January 1988) (hereinafter cited as *The Role of 18-B*).

[22] Ibid., p. 20.

[23] Ibid., p. 17.

[24] Ibid., p. 15.

Table 1 Proportion of felony cases disposed of in Supreme Court

	1983	1984	1985	1986	1st three-quarters 1987
Legal Aid	41%	40%	42%	43%	37%
18-B	32%	31%	29%	29%	38%
Private	27%	26%	26%	25%	22%
Other[25]	*	3%	3%	3%	3%

Felony cases are of particular concern because they carry the possibility of longer jail terms, and are generally more difficult, time-consuming, and costly to adjudicate than cases involving lesser offenses. Because they lack support services and supervision, 18-B attorneys may not be equipped to provide adequate representation to felony defendants.

The Current Landscape

Almost 10 years have elapsed since the McConville & Mirsky report sparked fierce debate about the city's indigent defense system. Yet, recent events reveal the persistence of many of the problems mentioned in the 1986 and 1988 reports. In a series of articles published in 1994, commentators focused on the continuing disparity between the proportion of cases assigned to the 18-B Panel and the number originally intended, the quality of representation provided to indigent defendants by some 18-B attorneys, and the increasing and uncontrolled cost to the city of its over-reliance on the 18-B Panel.[26]

Based on intake at arraignment, 18-B attorneys currently serve about 40% of the indigent defendants citywide.[27] By borough, Legal Aid handles 75% of the cases at arraignment in Queens and the Bronx, 64% in Brooklyn, and only 58% in Manhattan—which has the highest volume of criminal cases.[28] These figures are not directly comparable to those in the 1988 OMB report because these count misdemeanor and felony cases at arraignment while the OMB counted only felony cases after indictment. Internal caseload reviews conducted by Legal Aid indicate that at 75%, their

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[25] Includes pro se dispositions (self-representation) and type of representation unindicated.

[26] See Jane Fritsch, "Defenders By Default," *New York Times*, 23 May 1994, sec. A, p. 1 and "Legal Aid Society Given Bigger Role in New York City Courts" (hereinafter cited as "Bigger Role"), *New York Times*, 14 June 1994, sec. A, p.1. See also Chester L. Mirsky, "The New Baxter Street Boys," *New York Newsday*, 7 November 1994, sec. A, p. 26.

[27] "Bigger Role."

[28] Daniel Wise, "Manhattan Legal Aid Lawyers Begin to Handle More Cases," *New York Law Journal*, 13 September 1994, p.1.

lawyers would be handling all cases except homicides and those raising conflicts of interest for the Legal Aid.[29]

A focus on representation at arraignment is important because arraignment is the moment at which counsel is assigned, and every criminal case begins with arraignment while only a minority of those cases reach indictment. Also, by 1994, the city was facing penalties for failing to arraign defendants within a 24-hour time limit.[30] As shown in the Table 2, the 24-hour rule was routinely violated in 1993 and 1994. In October 1994, the average arrest-to-arraignment time was 31.68 hours; in September 32.8 hours, and in August 32.9 hours. This change represents a 17% increase over the same period in 1993.[31]

Table 2 Arrest-to-arraignment times

1994	Arrest-to-arraignment time	1993	Arrest-to-arraignment time	Percentage increases '94 over '93
August	32.94	**August**	29.38	+ 12.1%
September	32.75	**September**	27.16	+ 20.6%
October	31.68	**October**	26.75	+ 18.4%

This was the context—renewed concern over the quality of representation provided to indigent defendants, growing costs and lack of oversight of the 18-B Panel, and backlogs and delays in arraigning defendants—in which city and state officials and the Legal Aid Society in the summer of 1994 decided to attempt to increase Legal Aid's intake at arraignment in Manhattan.

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[29] Ibid.

[30] In 1991, the New York State Court of Appeals ruled that, with certain exceptions, persons must be arraigned within 24 hours of their arrest. See *Roundtree v. Brown*, 77N.Y.2d 422. The penalty judges may impose on the prosecution is limited to the release of the defendant, but the City also faces civil liability as in the case of one woman, who in 1991, was arrested and held for 36 hours before being arraigned. She sued the City, and a federal jury in Manhattan recently awarded her $20,000 for her ordeal. (See "Today's News," *New York Law Journal*, 23 March 1995, p. 1, col 1.)

[31] See "212 Suspects Freed Since August," *New York Law Journal*, 25 November 1994, p.1, col. 2. The article also reported that on 16 separate days, from the beginning of August through November 20, 1994, the average arrest-to-arraignment time climbed to over 40 hours. The longest average time recorded was 46.6 hours on September 17.

1. Legal Aid's Assignment Experiment

Acknowledging that it was operating below capacity in Manhattan, the Legal Aid Society proposed a plan to enlarge its share of the arraignment intake in the Manhattan Criminal Court to at least 75% without increased funding from the city and without hiring additional lawyers. Legal Aid estimated that the increase would add approximately 13,620 cases per year to their caseload in Manhattan. The Legal Aid Society, the Mayor's Criminal Justice Coordinator, and the New York State Office of Court Administration agreed that for a trial period of six months Legal Aid would be given every case file in the Manhattan Criminal Court and would reject only those in which they had a conflict of interest. The plan was intended to increase Legal Aid's caseload in Manhattan to comply with its contractual obligations to provide legal representation for all nonexempt indigent criminal defendants. The Vera Institute was commissioned to monitor the experiment and report the results.[32]

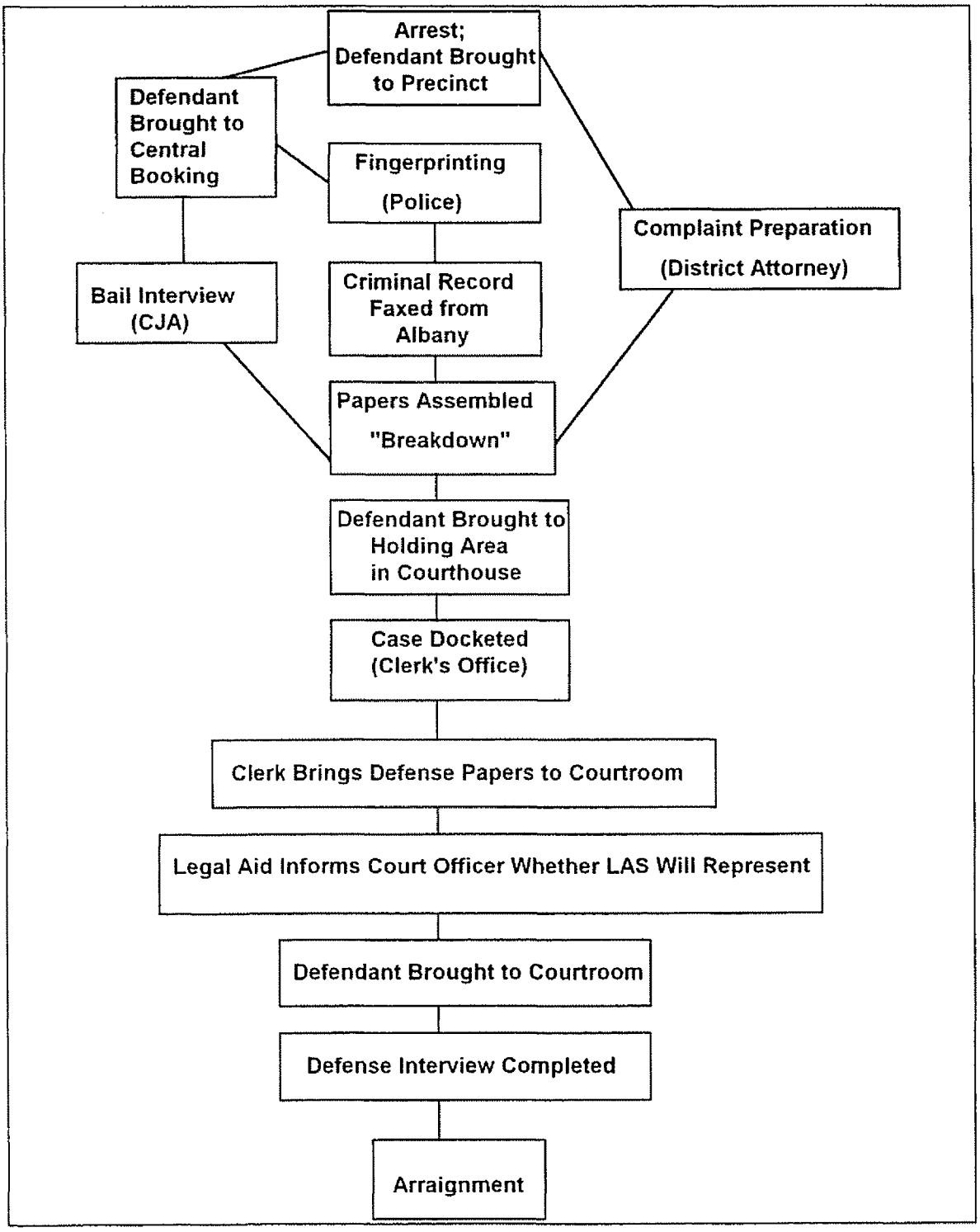
The Arrest-to-Arraignment Process

While a highly visible and vital part of the criminal justice system, arraignment represents a relatively small part of the overall arrest-to-arraignment process. Anywhere from ten hours to three days (or more) may pass before a defendant is brought to a courtroom for arraignment. The process of moving a prisoner and the corresponding paperwork to the courtroom at 100 Centre Street for arraignment is complex and involves, in addition to court personnel, four different agencies—the Police Department, the District Attorney's Office (DA.), the Criminal Justice Agency (CJA), and the Division of Criminal Justice Services (DCJS). From our observations, the inherently cumbersome sequence of events is further complicated by the fact that no single agency or person coordinates the process. Most of the delay contributing to violation of the 24-hour arrest-to-arraignment rule occurs before the defendant and the paperwork reach the courtroom.

The flowchart below outlines the events leading to arraignment. Although somewhat simplified, it illustrates the series of divergent tasks that must be coordinated in order to prepare a case for arraignment. The sequential nature of the process is problematic: a snag at any point can substantially postpone arraignment. Delays commonly occur during the initial police investigation, while transporting the prisoner from the scene of the arrest to the precinct or Central Booking, while waiting to receive rap sheets from DCJS, in

[32] A detailed description of the experiment and monitoring procedures is included in Appendix A.

Figure 1 Arrest-to-arraignment: courtroom events and paper flow



delivering papers to the courthouse, and during "breakdown," which is the assembly of all necessary papers. Breakdown alone can take five or more hours. In the past, the city has assigned over 50 additional staff to help clear backlogs in the production of paperwork and prisoners.[33]

When the papers reach the courthouse, the case is assigned a docket number, and a clerk brings the judge and defense copies of the completed case files. In practice, the clerk delivers the defense papers to a designated court officer, called the "bridge officer," who assigns the cases either to the Legal Aid Society or to the 18-B Panel by placing the defense copy in the appropriate intake basket.

During the experiment, the docketing clerk delivered all defense papers to the Legal Aid supervisor on duty. The supervisor then checked for conflicts of interest and determined which defendants Legal Aid would represent. Those cases were assigned to Legal Aid attorneys, and the rejected cases were given to the bridge officer for assignment to the 18-B Panel.

Although the new assignment practice was a minor change in courtroom procedure, it represented a significant shift in control over the flow of cases and the allocation of defense resources. For example, prior to the experiment, if the bridge officer felt that the Legal Aid Society was not moving cases fast enough, he or she could give more cases to 18-B attorneys to speed the arraignment process.

Changing Perceptions and Practices

From September 12 to September 31, 1994, the experiment initiated by the Legal Aid Society changed the way cases were assigned to Legal Aid and the 18-B Panel. Originally planned to run for six months, the experiment was prematurely aborted when Legal Aid staff attorneys went on strike on Saturday, October 1.[34] In response, Mayor Rudolph Giuliani canceled the city's contract with Legal Aid and threatened to replace the striking workers permanently.[35] Three days later, the lawyers agreed to return to work, but the experiment was not revived.

Vera began monitoring the arraignment process on August 1, 1994, six weeks prior to the shift in the assignment procedure. Although the experiment ended on October 1, and the bridge resumed the assignment function, Vera continued to review the arraignment process through March 12, 1995. From August 1, 1994 through March 12, 1995, the

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[33] "212 Suspects."

[34] The attorneys who work for the Legal Aid Society are not parties to the Society's contract with the City of New York. These attorneys are union members and work for the Society pursuant to a contract negotiated and agreed to between the Legal Aid Society and the Legal Aid Society Attorney's Union.

[35] Although the Mayor rescinded the cancellation, he served the Society with a 90-day notice of termination. On February 3, 1995, the Society and the City reached an agreement substantially modifying the contract for the first time in its almost 30-year existence.

Legal Aid Society handled 74% of the indigent cases in Manhattan. As Chart 1 shows, Legal Aid's share of the cases started to increase even before the experiment began on September 12. By the time Legal Aid assumed the assignment function, they were already handling 18% more of the cases, up from 58% at the beginning of August to 76% during the week ending September 11. Over the three weeks that Legal Aid controlled assignments, it accepted 81% of the cases. Interestingly, even after the experiment collapsed, the court officers continued to assign the target share of cases to Legal Aid. From October 3 through the end of our study, Legal Aid was assigned an average of 75% of the cases.

These findings indicate that the Legal Aid Society—with the number of attorneys and support staff working at that time—is capable of representing at least 75% of indigent defendants at arraignment in Manhattan. Furthermore, the fact that Legal Aid was assigned more cases prior to the experiment and that those gains were maintained after the experiment collapsed, suggests that the division of indigent cases between the two entities is sensitive to nonstructural as well as structural pressures aimed at changing the distribution of cases.

Changes in attitude and commitment on the part of city officials, the Legal Aid Society, judges, and other court personnel seem to have precipitated a shift in the "local legal culture." Local legal culture refers to the attitudes and beliefs of judges, prosecutors, defense attorneys, and other courtroom actors and how these subjective factors affect courtroom procedure, independently of caseloads, court rules, or other objective variables.[36] In this situation, changes in attitude may have been more important than any other factor. Perhaps the mounting media attention and frequent internal discussions in the weeks prior to the experiment created an expectation that the Legal Aid Society would assume more cases.

Some Legal Aid attorneys suggested that they had not been assigned a majority of the cases in the past because the court officers wanted to allocate a "fair share" of the cases to the 18-B attorneys. Since there are no caseload targets guiding the court officers in their assignment of cases, it is only reasonable that decisions are subject to criteria such as "fair share." (Other criteria—most notably, expediting the disposition of cases—also affect assignment decisions.) Once the definition of "fair share" was changed, the practice changed.

Our findings show that the Legal Aid Society was able to maintain an arraignment intake level of 75%, but we do not know whether Legal Aid continued to provide

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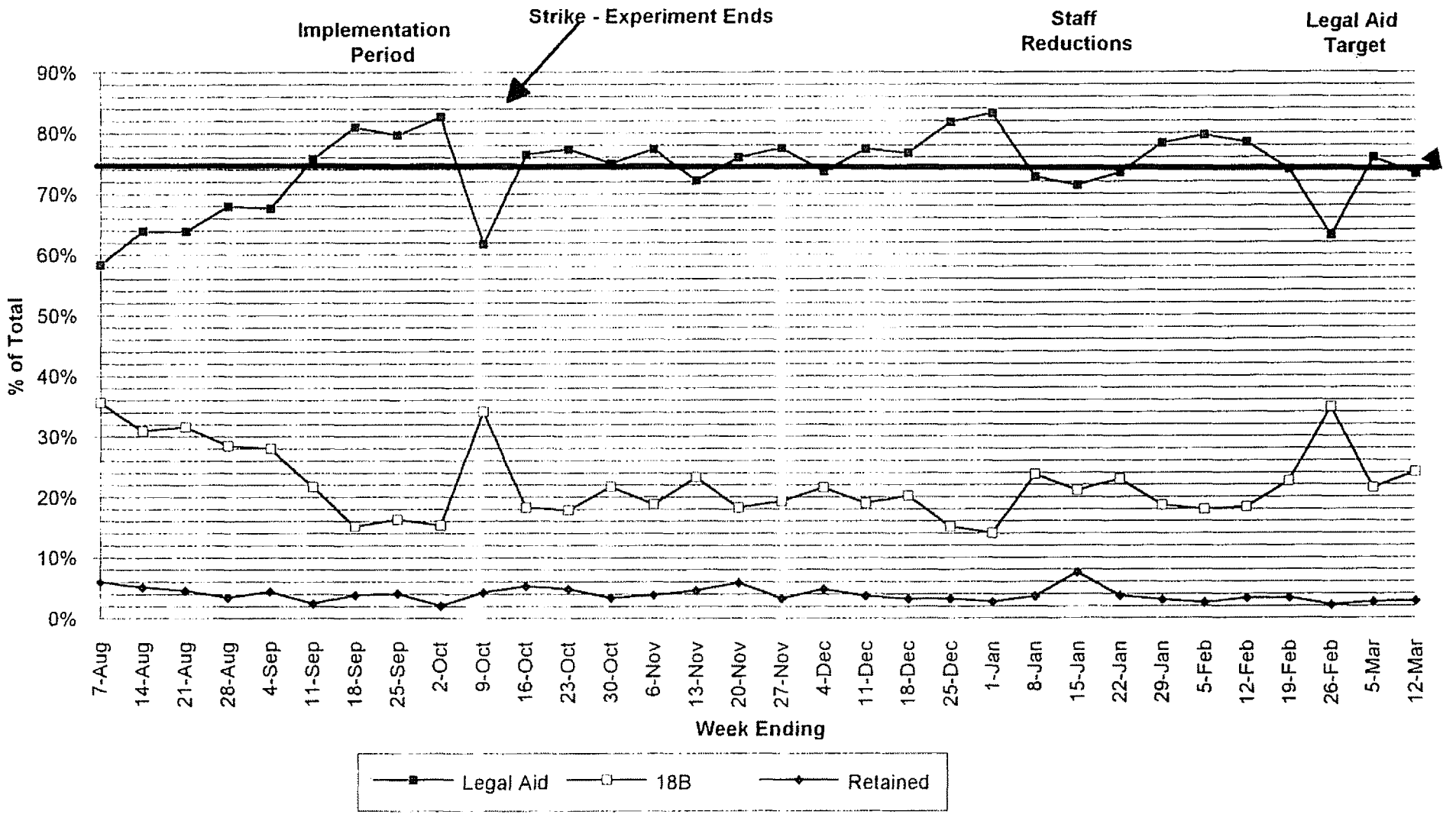
[36] The power of local legal culture to affect important court functions is well-documented. See , for example, Sally T. Hillsman, D. Johnston, S. Belenko, and L. Winterfield, *Summary of the Final Report of the New York City Speedy Disposition Project* (New York: Vera Institute of Justice, 1987).

CHART 1

Percentage of Total Cases Arraigned by Attorney Type
August 1, 1994 through March 12, 1995



representation in these cases after arraignment, or whether they were reassigned to the 18-B Panel at a later stage in the proceedings. In order to understand the full effect of increasing Legal Aid's caseload at arraignment, longitudinal study of a sufficiently large number of cases would be needed.

2. Secondary Effects of Increasing Legal Aid's Caseload

Although everyone involved was committed to increasing Legal Aid's caseload, the consequences of doing so were unclear. Some observers speculated that enlarging Legal Aid's overall caseload would indirectly reduce their felony intake because felony cases are more time consuming to prepare. Others feared that an increased caseload would slow the system or lead to diminished quality of representation. To see if these concerns would prove true, we collected information about the distribution of felony and misdemeanor cases, defense ready time, and the rate of guilty pleas entered at arraignment by defense entity.

Distribution of Felony vs. Misdemeanor Cases

During the study period, misdemeanors consistently represented a higher proportion of the Legal Aid Society's caseload than felonies. (Fifty-eight percent compared with 42%.) In contrast, the 18-B Panel handled more felony cases (55%) than misdemeanor cases (45%). On average, Legal Aid carries 80% of the misdemeanors and 67% of the felonies in the arraignment pool while the 18-B Panel handles 19% of the misdemeanors and 27% of the felonies. (Private attorneys account for the remaining 6% of felonies and 1% of misdemeanors.) As illustrated in Chart 2, increasing Legal Aid's overall caseload did not inversely affect their felony intake.

Table 3 Felony arraignments by defense entity

	Legal Aid	18-B Panel
No. of Felonies Arraigned	12,986	5,134
Percent of Felonies	67%	27%
Percent of Total Caseload	42%	55%

CHART 2

Percentage of Cases Arraigned by Legal Aid By Charge Class

August 1, 1994 through March 12, 1995

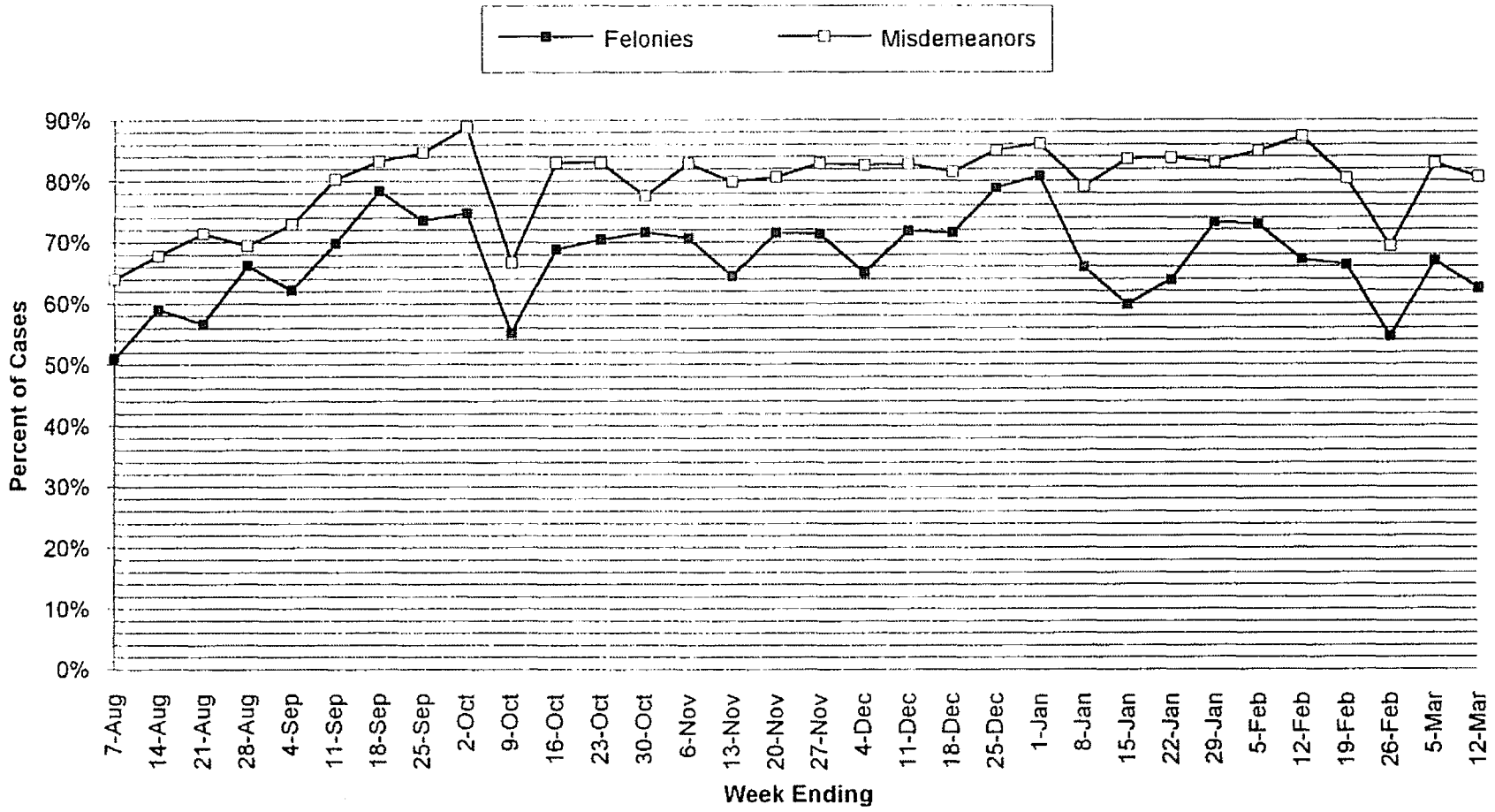


Table 4 Misdemeanor arraignments by defense entity

	Legal Aid	18-B Panel
No. of Misdemeanors Arraigned	17,872	4,158
Percent of All Misdemeanors	80%	19%
Percent of Total Caseload	58%	45%

However, judging from these figures, the 18-B Panel remains the important frontline defender of felony cases that OMB described in 1988. Because felonies are more costly and difficult to adjudicate, questions raised in 1986 and again in 1988 about the heavy reliance on 18-B attorneys in felony cases are still relevant.

Defense Ready Time

In the hectic atmosphere in which arraignment occurs, judges, defense attorneys, and court personnel experience pressure to process cases as fast as possible. Defendants who appear in court but are not arraigned during one shift are held over for the next shift. Delays in arraigning these defendants can lead to backlogs and overcrowding of the city's pretrial detention facilities. During the planning stages of the experiment, some judges and court personnel expressed concern that a drastic increase in Legal Aid's caseload might disrupt and slow the process.

The average defense ready time is measured from the moment a case file is placed in the intake basket to the point that an attorney submits a notice of appearance, indicating readiness for arraignment. Chart 3 shows the average defense ready time for felony charges; Chart 4 shows the same for misdemeanor charges; and Table 5 presents a summary of the findings.

Table 5 Defense ready time

	Legal Aid	18-B Panel
Felony	72 minutes	79 minutes
Misdemeanor	59 minutes	74 minutes
Blended	66 minutes	75 minutes

CHART 3

Average Defense Ready Time - Felony Charge

(In Minutes)

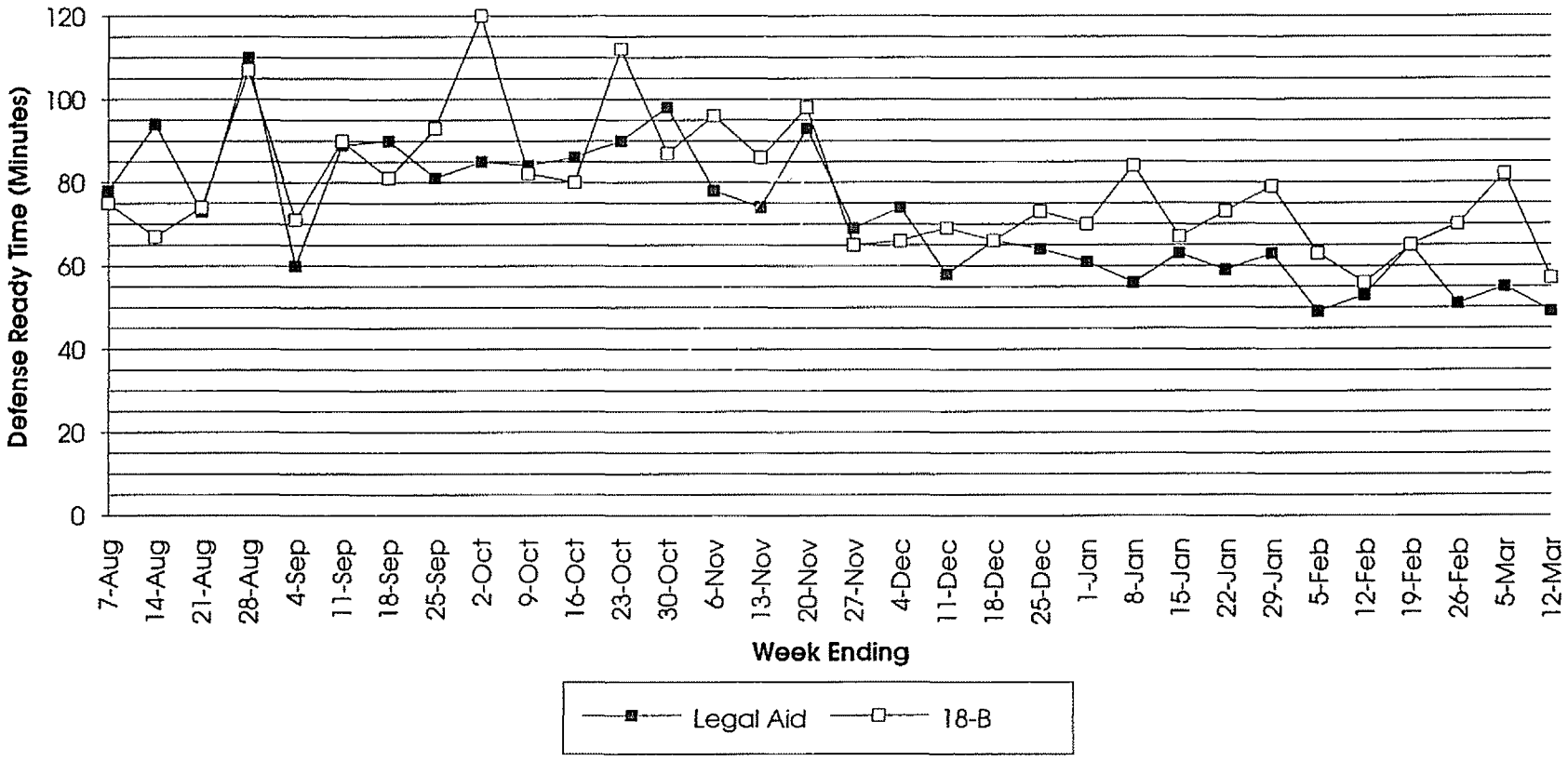
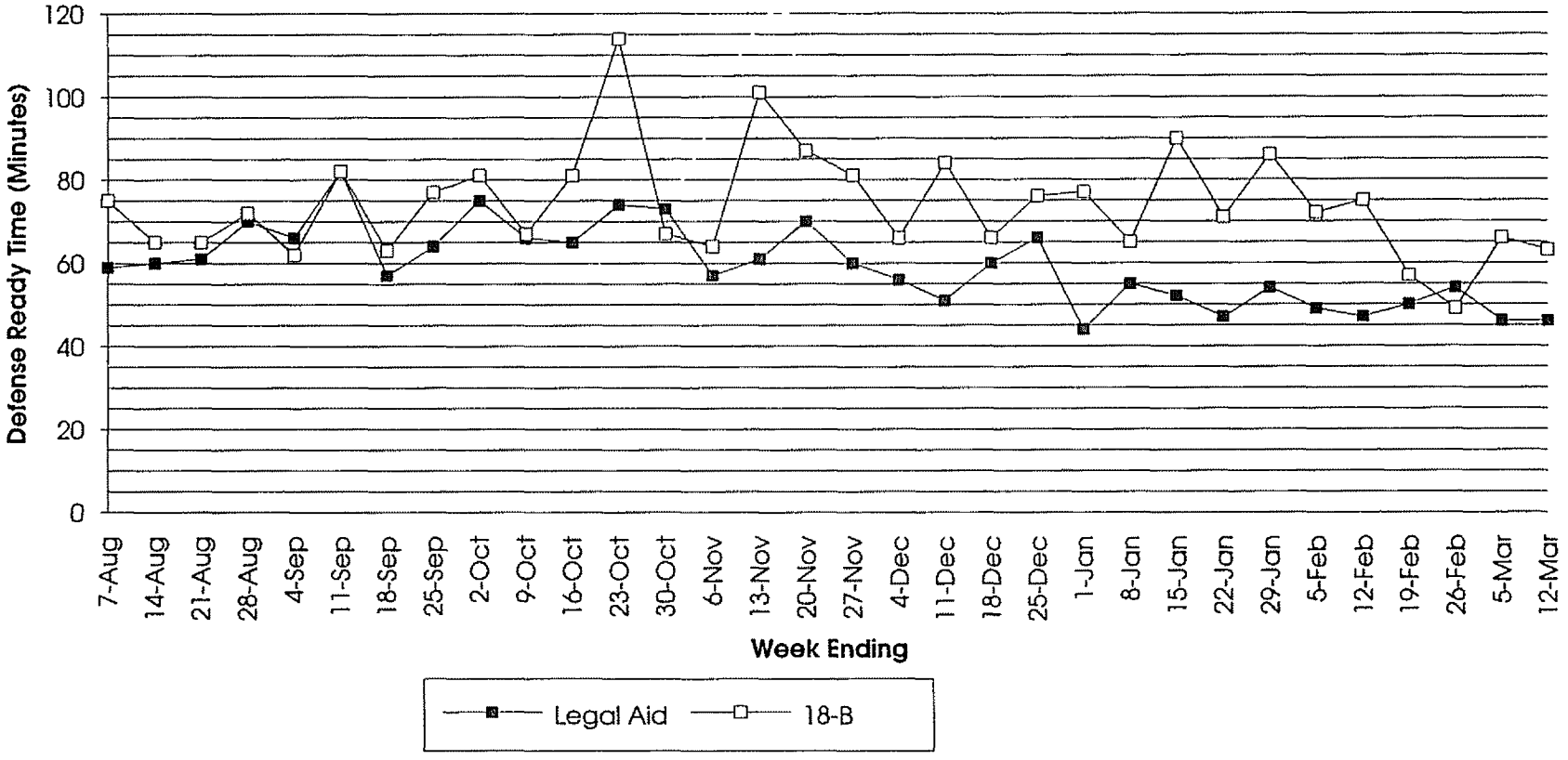


CHART 4

Average Defense Ready Time - Misdemeanor Charge

(In Minutes)



The average defense ready time was 66 minutes (29,923 cases) for Legal Aid and 75 minutes for the 18-B Panel (9,018 cases). These figures represent ready time for all cases. As shown in the Table 5, felony cases typically take longer than misdemeanor cases to prepare. Legal Aid's average ready time for felony cases was 72 minutes (12,673 cases) while the 18-B Panel took 79 minutes (4,987 cases). For misdemeanor cases, Legal Aid averaged 59 minutes (17,250 cases), and the 18-B panel averaged 74 minutes.

Unfortunately, much of the data used to calculate these times proved unreliable when tested by Vera.[37] Until more precise measures are available, all that can be said is that there is no evidence indicating Legal Aid attorneys spent more time preparing for arraignment than 18-B attorneys, or that delays resulted from increasing Legal Aid's share of the cases.

Whatever the precise times, Vera's in-court monitoring confirms that attorneys usually spend little more than an hour interviewing and consulting with their client in preparation for arraignment. Clearly, this is a very small portion of the total arrest-to-arraignment time, which is measured reliably and during our study averaged 33.25 hours. Attorneys are forced to quickly establish rapport with defendants, ascertain their side of the story, make contacts or telephone calls to confirm information, discuss plea possibilities, and advise them about possible outcomes of the arraignment—all necessary tasks to properly represent the defendant's interests.

Undue pressure to expedite case processing can hinder an attorney's ability to carefully and thoroughly interview each client. During our in-court observations, there were often times when the court officer called a case to be arraigned while the attorney was interviewing another defendant in the holding pen. The court officer would then go into the holding pen—interrupting the ongoing interview—and summon the attorney to arraign the ready case. The attorney either had to stop in the middle of the interview or rush to complete it. Unfortunately, it appears that efforts by attorneys to consult with their clients in preparation for arraignment are often viewed as slowing down the system.

Instant Pleas of Guilty

Whether to plead guilty or contest the charges is probably a criminal defendant 's most important decision. Because guilty pleas at arraignment rarely, if ever, can be based on an investigation of the facts or legal research by counsel, to some observers they raise the specter of coercive pressures on defendants to yield important constitutional rights. To others, early guilty pleas are an inevitable and desirable part of the criminal justice process—advantageous to both the defendant and the system. Whatever the view,

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[37] All times are based on data recorded using the On-Line Prisoner Arraignment System. Vera tested the veracity of these data and found the times recorded accurate within 15 minutes in less than half the test cases. (See Appendix.)

attorney workloads and systemic pressures to process cases quickly should not influence this decision.

Chart 5 shows the distribution of guilty pleas at arraignment by attorney type. We found no significant difference between defendants represented by the Legal Aid Society and the 18-B Panel. About one-third of the caseload of both entities were disposed of by guilty plea (32% for Legal Aid, 33% for the 18-B panel). Legal Aid's overall plea rate was relatively consistent throughout the study period. Charts 6 and 7 show the plea rates for felonies and misdemeanors. Legal Aid pled a slightly higher percentage of its felonies than the 18-B panel (37% vs. 34%) and a slightly lower percentage of its misdemeanors (29% vs. 31%).[38]

[38] A guilty plea to a felony charge cannot be entered at arraignment: the prosecutor must first reduce the charge to a misdemeanor.

CHART 5

Percentage of All Cases Pled at Arraignment by Attorney Type
August 1, 1994 through March 12, 1995

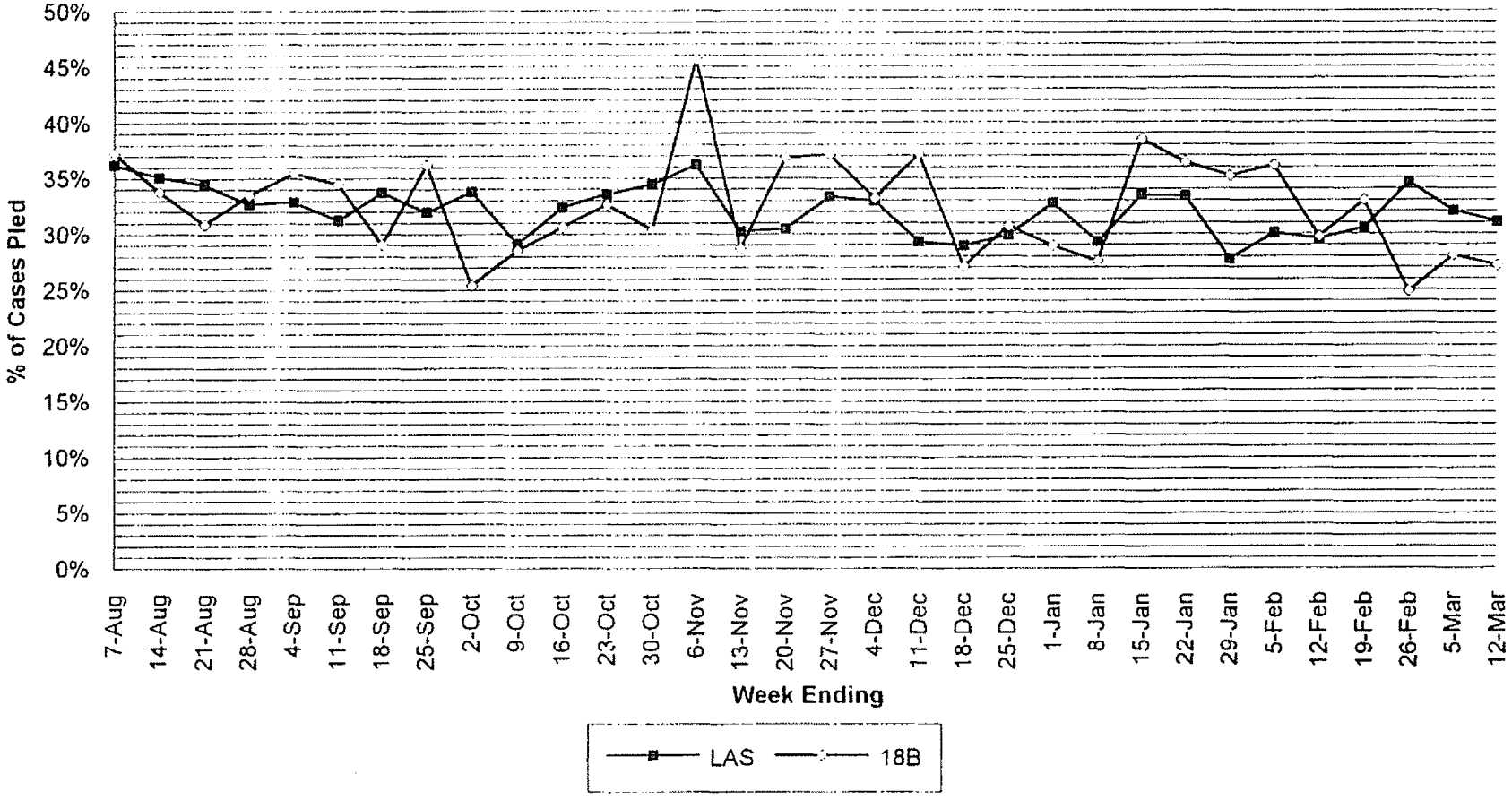


CHART 6

Percentage of Felony Cases Pled at Arraignment

August 1, 1994 through March 12, 1995

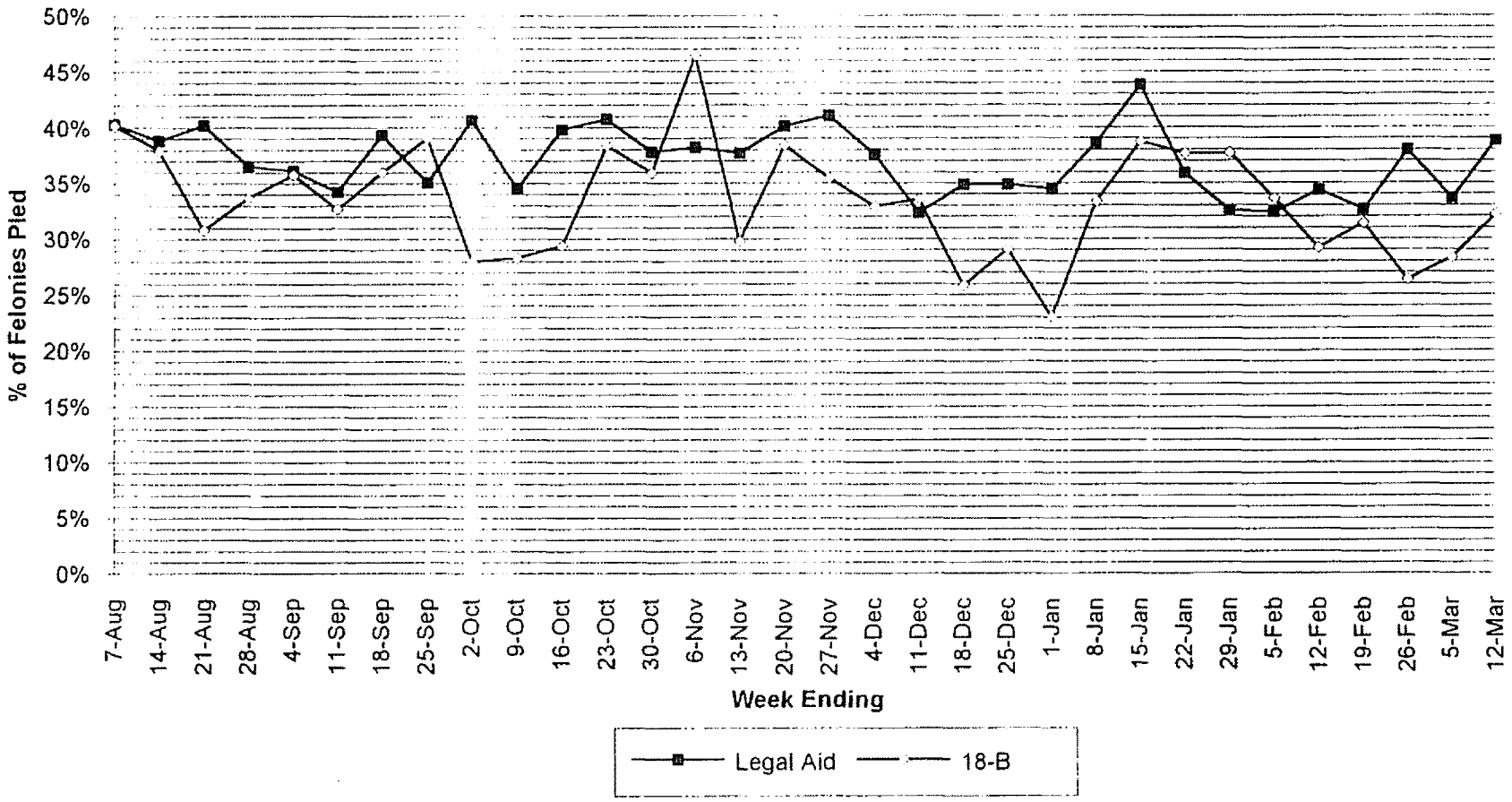
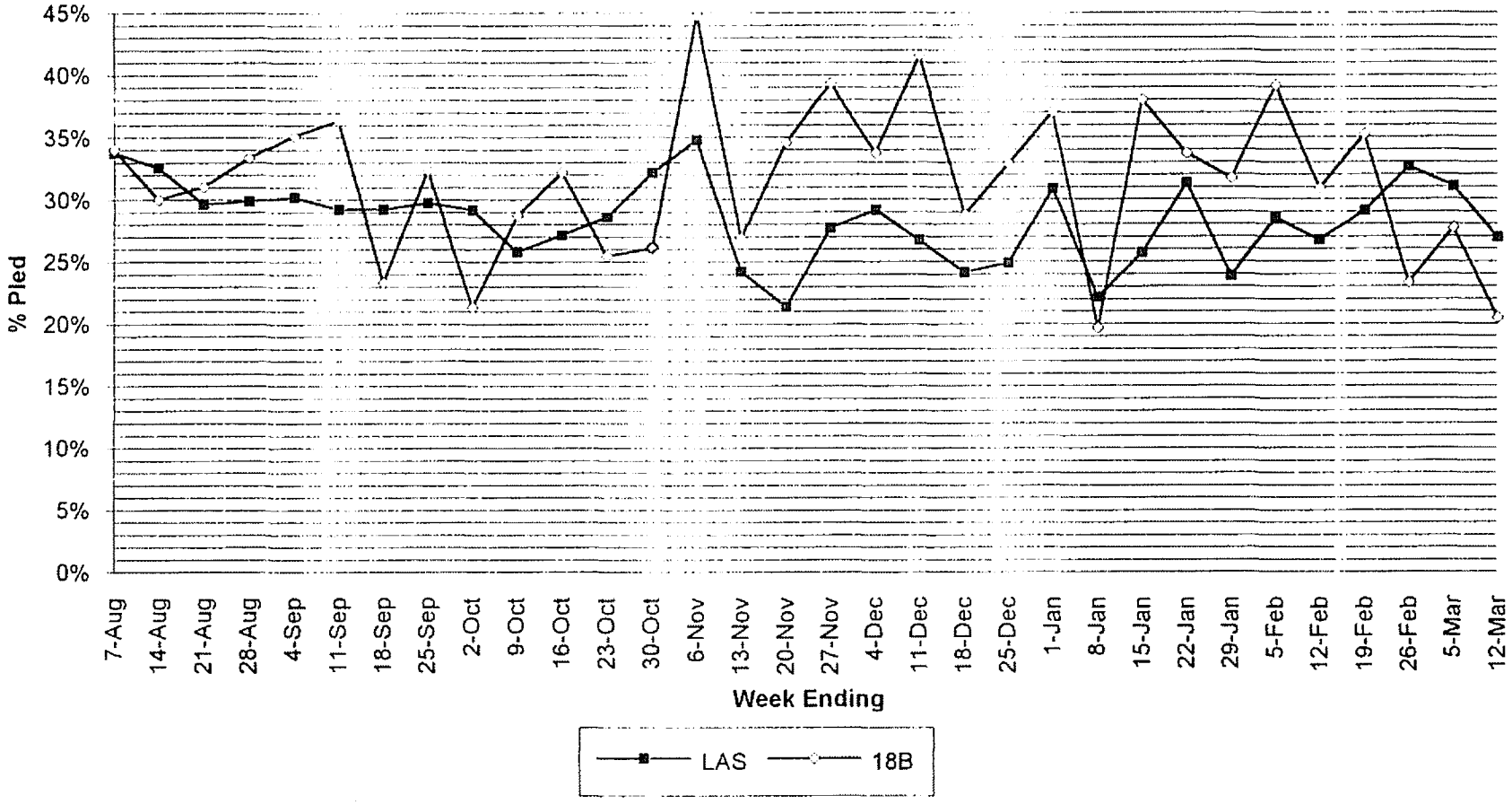


CHART 7

Percentage of Misdemeanor Cases Pled at Arraignment by Attorney Type
August 1, 1994 through March 12, 1995



Conclusion

The results of this brief study demonstrate the ability of the Legal Aid Society to effectively handle 75% of cases presented for arraignment in Manhattan courts. Furthermore, anecdotal and quantitative information presented here reveals the importance of individuals' attitudes in affecting this outcome. Physically shifting the assignment function from the bridge officer to the Legal Aid Society may have been less instrumental in enlarging Legal Aid's share of the cases than court officers' expectations that Legal Aid would indeed acquire more cases. Whether Legal Aid will continue to provide representation in all of these cases or shed a number to 18-B attorneys later in the process is not known.

The proportion of felony and misdemeanor cases handled by each defense entity remained stable during the monitoring. However, consistent with past patterns, 18-B attorneys represented more defendants facing felony charges than misdemeanors. Felony cases are more difficult and costly to adjudicate. The significant number of felony cases assigned to 18-B attorneys makes it difficult to evaluate the relative utility of Legal Aid and the 18-B Panel in providing indigent defense services.

Concerns that increasing Legal Aid's caseload would slow the system were not validated. In fact, there is no evidence that Legal Aid attorneys spent more time preparing for arraignment than 18-B attorneys. In any case, strategies employed to decrease the overall arrest-to-arraignment time should focus on streamlining and better coordinating the events that occur before the defendant reaches the courthouse.

The rate of guilty pleas entered at arraignment—a partial measure of quality of representation—did not differ by defense entity. Additionally, Legal Aid's rate did not increase or decrease significantly during the study.

In sum, concerted and cooperative effort by the Criminal Justice Coordinator, the Legal Aid Society, and court administrators to increase Legal Aid's share of cases produced encouraging results and no demonstrable problems.

Appendix: Methodology

Vera collected and analyzed arraignment-related data for arrest cases in the Manhattan Criminal Court from August 1, 1994 through March 12, 1995. With the exception of the in-court monitoring described below, no new field research was undertaken. We relied primarily on existing data collected by the New York City Police Department (in conjunction with the Office of the Criminal Justice Coordinator and the Office of Court Administration), compiled by their Management Information Systems Division in On-Line Prisoner Arraignment ("OLPA") reports. Our database consisted of 40,516 arrest cases docketed and arraigned in the borough of Manhattan.

The OLPA report tracks, among other things, the movement of the defendant and paperwork from one location to the next, from the time of arrest to the time of arraignment. The OLPA reports can be a powerful management tool in coordinating the work of the police, prosecutors, and court officers to move the defendant and the paperwork in tandem to arraignment. Therefore, we sought to provide confidence levels for certain types of information included in OLPA reports.

During our own in-court monitoring of arraignments, we used specially designed bar code labels affixed to each case file, a bar code scanning device, and a laptop computer to track case files. We recorded the following times: (1) when the defendant arrived in the courtroom holding area; (2) when the case file was placed in the defense entity's intake basket; (3) when the attorney reported to the clerk his or her readiness for arraignment; and (4) when the arraignment was completed. By comparing the time recorded during the in-court monitoring with that recorded on the OLPA reports for a limited number of randomly selected cases, we were able to make a rough estimate of the accuracy of OLPA reported times.

We collected data in three arraignment parts: during the day shift in AR1 from February 6 through February 10, during the night shift in AR3 on February 27 and February 28, and during the night shift in AR3A on March 1 and March 2.

Reliability of OLPA Reported Times

We then compared our times with the OLPA data, finding time of arraignment most accurate, defense ready time moderately accurate, and time of assignment least accurate.

The arraignment time recorded was highly accurate. Of the 365 cases compared, 95% (n=346) were within 15 minutes of the time we recorded, 1% fell into the 16-30 minute range, and 4% fell in the over 30 minutes range.

For defense ready time, we compared 208 cases. The time recorded on the OLPA reports for the moment when the attorney submits a notice of appearance indicating readiness to proceed with the arraignment was accurate to within 15 minutes in 48% of the cases (n=99). The reports were accurate to within 16-30 minutes in 22% of the cases (n=46). In 30% of the cases (n=63), the time recorded on the OLPA reports differed by more than 30 minutes from the time recorded during our in-court monitoring

We compared the time of assignment in 144 cases. The OLPA recorded time was accurate to within 15 minutes in 39% of the cases (n=56). In one-quarter of the cases (n=36), the time was accurate to within 16-30 minutes, and in 35% of the cases (n=52), the time recorded differed by more than 30 minutes from the time we recorded.