

ANNUAL REPORT OF THE MAJOR OFFENSE BUREAU
OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF QUEENS

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I N T R O D U C T I O N

1. Rationale for the Major Offense Bureau

The near total collapse of the criminal justice system in the last decade focused attention on the system from within and without. Previously, those on the inside had suspected that the system could not survive a marked increase in serious crimes. By the mid 1960's this proposition became evident to the public at large. The absence of resources to deal with the increase in criminal activity frustrated both the purpose and operation of the system.

A. Right to Speedy Trial.

The Constitutional right to a speedy trial became a phantom right in a nightmare of too few resources. As the number of defendants increased, the number of court rooms, judges, prosecutors and ancillary personnel did not keep pace. An arrested person who desired to resolve his case by trial could expect a delay of almost 18 months.

B. Recidivism.

In our system there is no justification for the forced detention of an individual while he waits 18 months for the opportunity to litigate the question of his guilt. Thus, serious offenders had to be released back into society while awaiting disposition of their cases. The deterrent of speedy justice denied them, and the underlying causes for their criminal activity left untreated, could result only in a high recidivist rate.

C. Delayed Prosecution Ineffective.

Memories of witnesses became clouded with time or the fear of the defendant returning to the community while awaiting trial. Other witnesses changed location without a trace. Material evidence was lost or misplaced. Prosecutor turnover caused witness irritation

as complainants told their story for the fourth time to as many Assistants.

D. Delay Becomes Art.

Defendants soon realized that the older a case got the less persuasive it got. Motion practice was prostituted to obtain delays of months. Psychiatric examinations were put to the same mis-use. If the People's case survived such a process, a defendant could fire his attorney and begin the destructive cycle again.

E. Plea-Bargaining.

The revolting fact is not that more than 90% of all felonies were resolved by this process, but that delay ultimately left a low plea as the only way to resolve these cases. Defendants could employ their arsenal of delaying tactics until an otherwise unjustifiably low plea offer was made to them.

It became clear that a new approach to prosecution was necessary. The Queens District Attorney set out to find the best approach for his county.

The Queens District Attorney undertook a study of criminal activity in Queens County. Criminal activity by repeaters was found to constitute a significant proportion of Queens crime. The focus of the study thus was directed at ways to (1) locate the recidivist, and (2) effectively prosecute him so as to make repetition of his crimes unlikely.

A search was undertaken to devise a screening process in the complaint room which would pinpoint a serious crime recidivist. Offices with similar programs were contacted to discuss methods proven successful and avoid duplicating methods proven unsuccessful. Available research was consumed. Experienced professionals were asked for their input.

It was determined that effective prosecution required minimal delays which could be obtained by prompt preparation for trial, continuous witness availability, the continuity of a single prosecutor on the case, and the assured integrity of a single reasonable plea offer.

A formal application was made to the Law Enforcement Assistance Agency for a grant to establish a Major Offense Bureau to assure the effective screening and prosecution of serious recidivist offenders. Major Offense Bureau personnel identify serious felonies by use of a point system, and thereafter a Major Offense Bureau Assistant determines what cases will be expedited by the Bureau. Screening by these experienced Assistants also ensures that vital evidence is not overlooked by the police. Indictments are sought the same day as arraignment when possible. The Assistant who handles the case at the Preliminary Hearing or Grand Jury continues to handle the case through disposition. One plea offer is made, and if refused, the matter is moved immediately for disposition by trial.

This report undertakes to review the effectiveness of the Major Offense Bureau during 1974.

ORGANIZATION AND POLICY

1. The Major Offense Bureau consists of a Bureau Chief, six (6) experienced Assistant District Attorneys and a support staff of non-legal personnel which consists of one (1) Legal Secretary, one (1) Supervising Clerk, two (2) Senior Clerks, two (2) Clerks, three (3) Senior Typists, one (1) Process Server and two (2) Trial Preparation Assistants.

2. Selection and Prosecution of Cases.

Target felonies (all felonies other than Homicide and Narcotic cases) are evaluated in the complaint room. A trained clerk measures each case against proven standards to achieve a preliminary ranking score. This process filters out possible recidivists of serious crime cases which achieve a sufficient preliminary score and are further screened by a Major Offense Bureau Assistant. An electronic signal beeper activated from the complaint room assures this prompt final screening and immediate processing of selected cases. Thus, valuable evidence and witnesses still at the crime scene can be located and made available for trial once the evaluating Assistant determines that a case qualifies for Major Offense Bureau treatment.

Control cases are chosen from those cases qualifying for Major Offense Bureau treatment. Thus, the integrity of the control group's relevance for comparative purposes is assured. Control cases are immediately diverted back into the system for regular (non Major Offense Bureau) treatment.

Major Offense Bureau processing begins at once. A Major Offense Bureau Assistant directs the drafting of the complaint and fully interviews the arresting officer. The same Assistant personally handles the Criminal Court arraignment. A decision is made whether to allow the case to go through a preliminary hearing. Cases so routed are presented by the same Assistant.

Major Offense Bureau arranges to present the case to the Grand Jury within twenty-four hours of the arraignment. Control cases take an average of 25 days to get to the Grand Jury. The same Assistant marshalls the evidence, directs the drafting of the indictment and presents the case.

Upon indictment, a short date is set for arraignment. As before, the same Assistant handles the arraignment and every appearance thereafter. A single plea offer is made and not reduced thereafter.

The plea offer reflects the policy of filtering out and discouraging recidivists of serious crimes. The plea to be offered is determined at a conference between the assigned Assistant and the Bureau Chief. As a general rule, the offer will be to the top count of the indictment or to no less than one count below.

The integrity of the plea offer is assured. The offer is made at the earlier opportunity, and once made, is not reduced. If the defendant does not accept the offer within a reasonable time, the offer is withdrawn. Thus, bad faith defense attempts to adjourn the case in contemplation of a plea are discouraged, depriving defendants of a vital delaying tactic. Further, holding out in contemplation of a reduced plea to delay must be weighted against the probable removal of the offer.

Once a plea offer is withdrawn, the case is fully prepared for trial. At this point, the defendant must either go to trial or plead to the top count of the indictment.

Informal discovery is encouraged to avoid the delays of extensive motion practice. The defense is encouraged to confer with the assigned Assistant candidly concerning the evidence in the case. Wherever possible, the Assistant waives formal motion papers.

3. Ready for Trial.

Evidence and witness availability are determined at the earliest possible stage of processing in the complaint room. Witnesses are interviewed early while their memories are fresh and motivation to cooperate strongest. Where necessary, the Assistant supervises past arrest police investigation to obtain and develop additional evidence left at the crime scene.

Witness availability is constantly monitored to assure trial readiness. Further, witnesses are advised of the progress of their cases to maintain their interest and cooperative demeanor.

STATISTICAL ANALYSIS

Two groups of cases are analyzed herein, (1) cases selected for Major Offense Bureau treatment, and (2) Control cases. The purpose of the Control group was to provide a basis of comparison against which the effectiveness of Major Offense Bureau treatment could be weighted. As previously noted, the integrity of the Control group's relevance for this comparative purpose has been assured by choosing Control cases from those cases qualifying for Major Offense Bureau treatment after preliminary screening.

A. SCREENING.

During the reported period, 33,000 cases were brought into the complaint room of the Criminal Justice Building in Queens County. After preliminary screening by Major Offense Bureau personnel, 2500 probable Supreme Court cases were identified, representing 7 1/2% of all cases screened. After secondary screening, 607 project felonies were routed to project personnel for initial preparation and investigation. From the cases initially prepared, 392 project felonies representing 544 defendants finally were selected for Major Offense Bureau treatment. This final screening also resulted in 215 project felonies representing 283 defendants being selected for Control treatment. The diversity of the selected felonies is represented by the full range of the Penal Law, with the exclusion of Murder and Drug resulted offenses.

392
215
607

Of the 392 project felonies selected for Major Offense Bureau treatment, 352 felonies were fully processed by Major Offense Bureau. 40 project felonies were removed from the Major Offense Bureau for the following reasons:

<u>Reason Removed</u>	<u>Number of Felonies</u>
All defendants transferred to Dept. of Mental Hygiene	19
Indictment not found	5
Indictment transferred to other bureaus	3
Bench Warrants issued on all defendants	8
Cases abated by death	1
Indictment dismissed	4
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Total felonies removed	40

Of the 544 defendants initially chosen for Major Offense Bureau processing, 50 were removed for the following reasons:

<u>Reason Removed</u>	<u>Number of defendants</u>
Transferred to Dept. of Mental Hygiene	21
Bench Warrant issued	9
Dismissed	6
Deaths	2
Sentence for non-Major Offense Bureau cases involving drugs	3
Transferred to other bureaus	3
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Total defendants removed	50

Of the 215 felonies chosen for Control treatment, 98 were removed for the following reasons:

<u>Reason Removed</u>	<u>Number of Felonies</u>
All defendants transferred to Dept. of Mental Hygiene	1
Indictments not found	39
All defendants transferred to Family Court	3

<u>Reason Removed</u>	<u>Number of Felonies</u>
Bench Warrants issued on all defendants	4
Dismissed against all defendants (Criminal Court)	48
Dismissed against all defendants (Supreme Court)	3
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Total cases removed	98

Of the ~~283~~²⁸³ defendants initially chosen for control processing, 128 were removed for the following reasons:

<u>Reason Removed</u>	<u>Number of Defendants</u>
Transferred to Dept. of Mental Hygiene	1
Bench Warrant issued	4
✓ Dismissed in Criminal Court	62
✓ Dismissed in Supreme Court	4
✓ Indictments <u>not</u> found	54
Transferred to Family Court	3
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Total defendants removed from Control	128

Thus, 352 project felonies involving 494 defendants were fully processed by the Major Offense Bureau. Similarly, 117 project felonies involving 155 defendants were fully processed as control cases.

B. DISPOSITION BY CLASSIFICATION.

The following chart summarizes the number of defendants convicted of each degree of a felony crime.

Where a defendant has been convicted of more than one crime, only the highest degree felony has been included.

<u>Felony</u>	<u>Major Offense</u>	<u>Control</u>
Class A	0	0
Class B	19	0
✓ Class C	138 ^{280/1}	11 ^{19/1}

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Where a defendant has been convicted of more than one crime, only the highest degree felony has been included.

<u>Felony</u>	<u>Major Offense</u>	<u>Control</u>
Class A	0	0
Class B	19	0
✓ Class C	138 ^{28%}	11 ^{19%}
Class D	58	34

<u>Felony</u>	<u>Major Offense</u>	<u>Control</u>
All Misdemeanors	*9	7

Total convictions	256	74
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*9 defendants were convicted of a Class "A" Misdemeanor.

Analysis of this table reveals that the average level of a Major Offense Bureau disposition is a "C" felony, while the average level of a control disposition is a "D" felony. Further analysis reveals that the Major Offense Bureau cases were disposed at the "C" level or above 61.33% of the time.

Control cases were never disposed of at the "B" level, and were disposed of at the "C" level only 14.86% of the time. These figures indicate that Major Offense Bureau treatment virtually assures the maximum conviction value of a case.

C. CONVICTION ANALYSIS.

<u>Indictment Count</u>	<u>Major Offense</u>	<u>Control</u>
Top Count	35	3
Top count less one degree	157	16
2nd Count	19	6
2nd Count less one degree	45	49
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Total convictions	256	74

Major Offense Bureau defendants were convicted of either the top count or one degree below the top count 192 times representing 75% of all Major Offense Bureau convictions. Control defendants were convicted of the top count or one degree below the top count 19 times representing only 25.68% of all control convictions. Further, Major Offense Bureau defendants were convicted either of the first 2 counts 82.42% of the time compared to 33.78% for control defendants. Thus, Major Offense Bureau treatment effectively eliminates the defendant's

ability to get an unreasonably plea on a serious case. Major Offense Bureau treatment assures the preservation of vital evidence, continued cooperation of witnesses, minimal formalized motion practice, and minimal susceptibility to delaying tactics used to erode a prosecution case.

The effectiveness of Major Offense Bureau procedures designed to assure trial readiness is attested to by the following figures:

<u>Maturity</u>	<u>Major Offense</u>	<u>Control</u>
Over 14 days	13	0
Over 28 days	18	2
Over 42 days	14	4
Over 56 days	0	2
Over 70 days	2	6
Over 84 days	49	43
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Total cases open	96	57

The medium time span from arrest to final disposition of a Major Offense Bureau case is approximately 70 days. 49 out of the open 57 control cases, or 85.96% of those cases are older than 70 days.

The percentage of matters disposed of is still another indicator of the speed and quality of dispositions obtained by the Major Offense Bureau. For the reported period, 494 defendants were fully processed by the Major Offense Bureau. Of these, 351 defendants have had their cases disposed of. Thus, 71.05% of the cases handled by Major Offense Bureau had reached disposition. For the same period, 155 defendants were processed as Control cases, 80 defendants having their cases disposed of. Thus, only 52.25% of the Control cases have reached disposition. These figures indicate that the consistently higher quality Major Offense dispositions were obtained by the prompt execution of uniform policies by experienced Assistants.

D. TRIALS.

During the period under consideration, the Major Offense Bureau conducted 24 trials involving 31 defendants. 23 defendants were convicted after trial, while 8 defendants were acquitted. Thus, the Major Offense Bureau trial conviction rate has been 74.2%. Expanding the conviction rate to include convictions obtained by pleas, the Major Offense Bureau conviction rate is 97.3% (256 defendants convicted out of 263). 15 of the 23 defendants convicted after trial were convicted of the top count of their indictment (65.22%).

During the same period, not a single Control case was resolved by trial.

The foregoing illustrates that Major Offense Bureau treatment preserves the trial ability of a case. Thus, a defendant cannot expect to hold out for an unreasonable low plea while the prosecution's case against him deteriorates. In contrast, Control cases, afforded the usual treatment, almost invariably result in elimination of trial value and a very low plea offer.

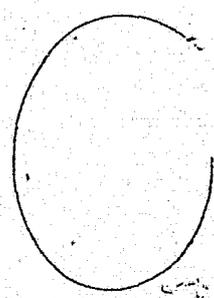
E. SENTENCES.

<u>Sentences</u>	<u>Major Offense</u>	<u>Control</u>
Prison	168	28
D.A.C.C.	5	1
Reformatory	9	4
Other, Y.O.	4	1
Probation	23	22
Conditional Discharge	2	3
Bench Warrant issued before sentence	3	1
Time served	0	1
Unsentenced to date	42	13
Total convictions	256	74

Prison sentences were doled out to 168 of the 256 Major Offense Bureau defendants who were sentenced. Thus, 79.62% of those sentenced were sent to prison. In comparison, 28 out of the 60 control defendants who were sentenced received prison sentences (46.66%). Thus, the re-enforcement value of speedy justice is effectively assured to a Major Offense Bureau defendant. In contrast, as in the Control cases, the deterrent value of speedy justice is minimized where the defendant receives no prison sentence whatsoever more than 50% of the time.

SENTENCE ANALYSIS MAJOR OFFENSE

<u>Minimum</u>	<u>Maximum</u>	<u>Defendants</u>
12 1/2 yrs.	25	2
10	20	2
6 2/3	20	1
8	16	2
7 1/2	15	28
5	15	2
4	15	2
-	15	1
6 1/2	13	2
6	12	6
4	12	3
5	10	3
3 1/3	10	1
-	10	8
4	8	3
-	8	5
3 1/2	7	7
2 1/3	7	1
-	7	27
3	6	6
-	6	4



<u>Minimum</u>	<u>Maximum</u>	<u>Defendants</u>
4	5	1
2 1/2	5	1
-	5	12
2	4	7
1 1/3	4	1
-	4	14
1	3	1
-	3	12
-	1	3

Total Defendants sentenced to Prison Terms - 168

SENTENCES ANALYSIS CONTROL

<u>Minimum</u>	<u>Maximum</u>	<u>Defendants</u>
0	10	1
0	8	1
3 1/2	7	1
0	7	2
3	6	1
2 1/2	5	1
0	5	3
2	4	2
0	4	8
1 1/2	3	2
0	3	4
0	1	2

Total defendants sentenced to prison - 28

Analysis of the above charts indicates that the sentences imposed on defendants within two groups are significantly different. The average maximum sentence imposed on a Major Offense Bureau defendant is 8.625 years. This must be compared with the average maximum sentence for a control defendant of 4.46 years. Furthermore,

the court imposed a minimum sentence on 48.8% of the Major Offense Bureau defendants compared with 21.4% of the Control defendants. In addition, the average minimum imposed on a Major Offense Bureau defendant was 5.54 years, compared to 2.66 years for a Control defendant. Thus, the court imposed a minimum sentence on Major Offense Bureau defendants more than twice as often as on Control defendants, and the average minimum Major Offense Bureau sentence imposed was over a year longer than the average maximum Control sentence imposed. These figures indicate that the Major Offense Bureau's purpose to weed out and isolate defendants who repeat serious crimes and to remove them from society for long periods of time, has succeeded.

F. PENDING CASES.

<u>Cases Awaiting</u>	<u>Major Offense</u>	<u>Control</u>
Preliminary Hearing	0	0
Grand Jury	22	8
Arraignments on Indictment	24	8
Arraigned but not disposed of	8	28
Sentences	42	13
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Total open	96	57

Examination of this data reveals the extent to which the prosecution has retained control over its cases. Certain delay factors may be minimized but not entirely eliminated. For example, no reasonable person would argue that an attorney be denied a reasonable time to prepare the defense of his client. However, the integrity of the system is undermined once the defendant is able to delay the case against him solely in the hope that it will deteriorate.

Delaying tactics are usually employed when a case is most ripe for disposition. Generally, this is the period after arraignment and before sentence. Prior to the arraignment on the indictment, a case is usually within the control of the prosecution which may present the case to the Grand Jury irrespective of the defendant's protestations. Further, once the case reaches the sentencing stage the case is similarly within the prosecution's control. Therefore, the stage most susceptible to the defendant's delaying tactics is that period after which he has been arraigned but the case not yet disposed of. 49.12% of the open Control cases fall within this critical period. Only 8.33% of the undisposed of Major Offense Bureau cases are similarly situated.

G. LEGAL REPRESENTATION OF DEFENDANTS.

The defendant's ability to change his counsel continues to be a major delaying tactic. The present status of representation for the defendants being prosecuted both by the Major Offense Bureau and as Control cases is reviewed below.

<u>Type of Counsel</u>	<u>Major Offense</u>	<u>Control</u>
Private	168	69
Legal Aid	111	84
18B	39	7

IV.

CONCLUSION

The foregoing analysis indicates that the Major Offense Bureau has had its desired impact on the Criminal Justice System.

The defendant's right to a speedy trial is assured by the Major Offense Bureau processing. An arrestee desiring to resolve his case by trial need no longer expect a delay of almost 18 months. The average Major Offense Bureau case is disposed of within 70 days.

The Major Offense has hit the recidivist defendant the hardest. The screening process effectively isolates such offenders. Further, such defendants need not be released back into society to avoid prolonged detention while awaiting disposition of their cases. Furthermore, the deterrent of speedy justice culminating in an almost certain prison sentence may yet stem the tide of recidivist behavior.

Major Offense Bureau's prompt prosecution policies assure effective prosecution. More complete witness cooperation is enlisted while all forms of evidence are marshalled in their most useful forms. All delays are minimized to make certain that a defendant cannot use a deteriorating case against him to bargain for an unjustifiably low plea.

All indications point to the fact that Major Offense Bureau works. The continued successes of the program requires that the program be continued.

END