

CHAPTER EIGHT

THE "SHEDDING" OF LEGAL AID SOCIETY CASES TO 18-B PANEL ATTORNEYS AT ARRAIGNMENT

This chapter examines the extent to which the Legal Aid Society shed cases that possessed no potential conflict of interest (non-conflict cases). The cases in focus were shed to 18-B Panel attorneys at arraignment. The following pages demonstrate that, despite the Legal Aid Society's contractual commitments, arraignment-case shedding occurred frequently. Shedding resulted from a combination of factors: the work habits and size of the Society's arraignment team, the readiness of Panel attorneys to substitute for Society staff attorneys at arraignment, and judges' desire to expedite the processing of cases. The end result of arraignment-shedding is to increase the likelihood that a defendant is represented by an attorney who, regardless of competence, does not have the organizational resources to provide a meaningful defense.

In order to explain how the 18-B Panel of private attorneys came to carry a caseload far in excess of that which the *1966 Plan* contemplated, we describe the circumstances under which indigent defendants were referred to Panel attorneys in the arraignment courts. We begin with an analysis of the extent to which the Legal Aid Society fulfilled its contractual obligations at arraignment. Next we consider the role of Criminal Court judges in the appointment of Panel attorneys to arraignment shifts. We also discuss the tensions and contradictions which underlied the substitution of Society attorneys by Panel attorneys in non-conflict cases. Finally, we devote considerable attention to the explanation that the Society put forward for the judicial appointment of Panel attorneys in non-conflict cases. The Society has contended that the ability of its attorneys to pick up equal numbers of cases at arraignment was constrained by differences in certification: some were limited to misdemeanors and others could not handle the most serious felonies. Our analysis reveals significant variation in the percentage of cases accepted, even among those attorneys for whom certification-status provided no constraint.

I.

REPRESENTATION PATTERNS OF THE LEGAL AID SOCIETY: EXPECTED VERSUS OBSERVED

The Legal Aid Society, in order to comply with its contract, must staff Criminal Court arraignment parts with a sufficient number of attorneys to handle the considerable caseload that the New York City courts process. In New York County, the principal arraignment court processes eighty to one hundred cases in each eight-hour court session. In addition, the administrative judge on occasion schedules a second, "overspill" court to work in tandem

with the principal intake part. In 1984, the Society committed almost 20 percent of its attorney resources to Criminal Court arraignment.¹⁰⁰⁰

Nevertheless, the Legal Aid Society did not represent all eligible defendants. Our observations of a sample of felony cases¹⁰⁰¹ reveals that indigent defendants were commonly assigned 18-B Panel attorneys in cases for which, under the 1966 Plan and the Society's subsequent policies, the Society should have taken responsibility.¹⁰⁰² The Plan and the Society's policies oblige the Society to provide representation in all non-conflict cases. These are usually single-defendant cases, and the Society may represent at least one defendant in multiple-defendant cases.¹⁰⁰³ Our felony sample contained 117 cases in which this expectation should have been fulfilled. Table 8-1 illustrates our findings.¹⁰⁰⁴

1000. Legal Aid Society, Reply Memorandum to McConville and Mirsky Draft Report 10 (Oct. 1, 1985) [hereinafter 1985 Reply Memorandum]. See also Letter from Arthur L. Liman, President of the Legal Aid Society, to the Committee on Criminal Advocacy of the Association of the Bar of the City of New York 3 (Oct. 3, 1985) [hereinafter Oct. 1985 Liman Letter].

1001. See *supra* pp. 709-10.

1002. The total sample includes all single-defendant and multiple-defendant felony cases in Criminal Court and Supreme Court, in which the 1966 Plan anticipates that the Legal Aid Society will provide continuous representation beginning with arraignment at Criminal Court. 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, Apr. 28, 1966) (adopted pursuant to Article 18-B of the County Law), reprinted *infra* app. 2(b), art. I at 925 [hereinafter 1966 Bar Association Plan]; Agreement Between the City of New York and the Legal Aid Society (Aug. 6, 1966), reprinted *infra* app. 2(c), para. Second, at 933 [hereinafter 1966 Agreement]. See *supra* notes 391-93, 509, 674-75; *supra* pp. 667-69.

1003. See *supra* note 1002.

1004. Table 8-1 excludes homicide defendants, since it was the policy of the Legal Aid Society during the period of the research not to provide continuous representation in these cases. See *supra* notes 509, 674 and accompanying text. This policy is the remnant of an accommodation that the Voluntary Defenders' Committee made to the private bar in 1917, see *supra* notes 276-77 and accompanying text.

TABLE 8-1: *Difference Between Expected and Observed Representation by the Legal Aid Society at Criminal Court Arraignment, New York County, 1984-1985*

	<u>Number of Cases</u>	<u>%</u>
Expected Legal Aid Society Representation (single- and multiple-defendant cases)	117	100.0
No Legal Aid Society Representation (11 single- and 2 multiple-defendant cases in which all defendants were represented by 18-B Panel attorneys at arraignment and thereafter)	13	11.1
Legal Aid Society Relieved (2 single- and 3 multiple-defendant cases in which all defendants were referred to 18-B Panel attorneys immediately following arraignment)	5	4.3
Observed Legal Aid Society Representation (single- and multiple-defendants referred for all matters)	99	84.6

As *Table 8-1* shows, there was no Legal Aid Society representation at arraignment or thereafter in thirteen cases, and in five more cases the Society was relieved immediately after arraignment. In each of these eighteen cases, 18-B Panel attorneys provided representation.

A possible conflict of interest appeared in only six of these eighteen cases.¹⁰⁰⁵ In total, the Legal Aid Society shed twelve cases in our sample, representing 11 percent of its expected conflict-free workload of 111 cases. All but one of these twelve defendants were subsequently indicted.¹⁰⁰⁶

1005. In two cases (Case 040 and Case S-83) a co-defendant represented by the Legal Aid Society was charged separately and arraigned at a different time. In one case (Case 007) the Society represented a co-defendant in an unrelated case. In two cases (Case 016 and Case 064) the Society represented the victim in an unrelated matter; and in one case (Case 033) the Society represented a separately-arrested cross-complainant.

1006. These 12 conflict-free cases in which 18-B Panel attorneys provided representation are summarized as follows:

Single-Defendant Cases

1. The defendant, a first offender, was charged with two sales of a controlled substance to an undercover agent. Despite the presence of the Legal Aid Society's attorneys the defendant was represented at arraignment by an 18-B Panel attorney, after which the case was reassigned to the Panel for all purposes. The defendant was subsequently indicted. (Case 006)
2. The defendant was charged with robbery. The complainant alleged that the defendant, aided by another unapprehended perpetrator, displayed a gun and stole the complainant's money. At the time of her arrest, there were no pending criminal charges against the defendant. At arraignment, the defendant was represented by a 18-B Panel attorney, after which the case was reassigned to the Panel for all purposes. The defendant was subsequently indicted. (Case 008)
3. The defendant, who was wanted in another state for violation of parole, was charged with criminal sale of a controlled substance to an undercover agent. Despite the presence of the

II.

CASE ASSIGNMENTS: THE ROLE OF CRIMINAL COURT JUDGES

In order to understand the shedding of non-conflict cases by Legal Aid

Legal Aid Society staff attorneys, the defendant was represented by an 18-B Panel attorney at arraignment and thereafter. (Case 027)

4. The defendant was charged with criminal sale of a controlled substance to an undercover agent. After the defendant was interviewed by a Legal Aid Society staff attorney, the case was reassigned to an 18-B Panel "for arraignment only" attorney. The Society staff attorney stated: "She (the defendant) wants a street lawyer." After the defendant was represented by a Panel regular, the case was reassigned to the Panel for all purposes. The defendant was subsequently indicted. (Case 044)

5. The defendant was charged with sale of a controlled substance to an undercover agent. Although the defendant was a predicate felon, there were no open cases against her. Nevertheless, despite the presence of Legal Aid Society staff attorneys at arraignment, the defendant was represented by an 18-B Panel attorney and subsequently reassigned to the Panel for all purposes. The defendant was indicted. (Case 046)

6. The defendant was charged with embezzlement. This was her first arrest. Despite the presence of the Legal Aid Society's attorneys at arraignment, she was represented by an 18-B Panel attorney. After arraignment, the Panel attorney was relieved and represented the defendant on a retained basis. The defendant was subsequently indicted. (Case 052)

7. The defendant was charged with operating a vehicle while intoxicated, a felony. Although the defendant had a prior criminal record, there were no pending cases at the time of arraignment. Despite the presence of the Legal Aid Society's attorneys, the defendant was represented by a Panel attorney for all purposes. The defendant was subsequently indicted. (Case S-13)

8. The defendant was charged with operating a vehicle while intoxicated, a felony. The defendant was a predicate felon and had an open bench warrant in another intoxicated driving case. The bench warrant had been outstanding for approximately one year and did not present a potential conflict of interest. Despite the presence of the Legal Aid Society's attorneys, the defendant was represented by an 18-B Panel attorney and subsequently reassigned to the Panel for all purposes. The defendant was later indicted. (Case S-59)

9. The defendant was charged with criminal sale of a controlled substance to an undercover agent. Although the defendant was a predicate felon, there were no pending cases against her. Despite the presence of the Legal Aid Society's attorneys at arraignment, the defendant was represented by an 18-B Panel attorney for all purposes. The defendant was subsequently indicted. (Case S-75)

Multiple-Defendant Cases

10. Defendants A and B were charged with acting in concert in a robbery. It was alleged that the defendants struck the victim in the course of the incident. This was defendant A's first arrest. Defendant B had been arrested previously, but there were no cases pending against her. Despite the presence of a Legal Aid Society attorney at arraignment, both defendants were represented by an 18-B Panel attorney for arraignment only, after which both defendants were reassigned to the Panel for all purposes. Both defendants were subsequently indicted. (Case S-02)

Legal Aid Society Relieved - Single Defendant Cases

11. The defendant, a predicate felon with no pending cases at the time of her arrest, was charged with grand larceny and criminal possession of stolen property. She was represented by the Legal Aid Society for arraignment only, after which, for no apparent reason, the case was reassigned to the 18-B Panel for all purposes. Thereafter, the defendant was indicted. (Case S-90)

Legal Aid Society Relieved - Multiple Defendant Cases

12. Defendants A, B and C were charged with criminal sale of a controlled substance to an undercover agent. This was the first arrest for all three defendants. The Legal Aid Society represented all the defendants for arraignment only. Although defendant A indicated that she wished to retain private counsel, defendants B and C required assigned counsel. The Society

Society attorneys to 18-B Panel attorneys at arraignment, it is necessary to explain the formal and informal mechanisms of control over case assignment.

A. Formal and Informal Control of Case Assignment

New York Criminal Procedure Law vests the court with control over case assignment.¹⁰⁰⁷ Rules bend to practice, however, and during our observation period it was the court's practice to place all case files in the Legal Aid Society's intake basket. By this action, the court vested effective control over case assignment in the Society, which was empowered to decide whether a conflict of interest or "other appropriate reason"¹⁰⁰⁸ justified it in relinquishing the case to the 18-B Panel attorney.¹⁰⁰⁹ If no Panel attorney was present, the arraignment judge would relieve the Society and asked the Panel administrator to assign a Panel attorney for all subsequent appearances. Thus, Society attorneys wielded significant control over assignments, including the *physical* control of court files.¹⁰¹⁰ The Society attorneys took charge at the outset of proceedings, before any questions about assignment could be formally raised.

Criminal Court judges retained formal control, of course, and occasionally exercised their discretion to assign non-conflict cases directly to 18-B Panel attorneys. These attorneys were rotationally appointed "for the day" by the Panel administrator.¹⁰¹¹ Judges authorized these attorneys to take cases awaiting assignment in the Society's basket.

Judges would also, as a matter of informal practice, appoint as 18-B Panel attorney "for the day"¹⁰¹² someone other than the person designated by the Panel administrator.¹⁰¹³ Upon a judge's request, court officers could almost always find a Panel attorney "on call" in the clerk's office or in the hallways. These attorneys were available and willing to undertake "per diem"¹⁰¹⁴ representation at a moment's notice; their livelihood depended upon soliciting fee-paying clients in the corridors and obtaining numerous 18-B Panel arraign-

was relieved of B and C and the cases were referred to the 18-B Panel for all matters. Thereafter the defendants were indicted. (Case S-79)

1007. N.Y. CRIM. PROC. LAW § 170.10, 210.15 (McKinney 1982).

1008. 1966 Agreement, *supra* note 1002, para. Second, at 933.

1009. For a description of the Legal Aid Society's control over case selection in conflict cases, see *infra* pp. 818-20.

1010. Case files were usually brought into the courtroom by a court clerk, transferred in batches to the Legal Aid Society's administrative support staff, and then placed in the Society's intake basket. The Society's clerks entered the cases in their records and then passed them to the Society's attorneys.

1011. See *supra* note 603-604 and accompanying text.

1012. *Id.* Frequently the 18-B Panel attorney so appointed serves for only part of an eight-hour shift. In such cases, the attorney is compensated for the actual number of hours worked at the hourly rate provided under Section 722(b) of the County Law, regardless of the number of arraignment cases handled.

1013. Whether appointed by the 18-B Panel administrator or the arraignment judge, attorneys could serve for arraignment only. In such cases, the administrator assigned another attorney for subsequent representation. See *supra* note 603-04; see also *supra* note 825.

1014. See *supra* note 603-04.

ment shifts.¹⁰¹⁵

B. The Frequency of Judicial Appointments

Neither the administrative judge nor the 18-B Panel administrator maintained data on the judicial appointment of Panel attorneys. Thus, we determined the frequency of judicial appointments by computing the difference between the total number of arraignment shifts awarded to Panel attorneys and the number of shifts rotationally assigned by the Panel administrator.¹⁰¹⁶ Table 8-2 provides the relevant data on the total number of arraignment shifts to which Panel attorneys were appointed in 1983 and 1984.¹⁰¹⁷

TABLE 8-2: Number of Arraignment Shifts to Which 18-B Panel Attorneys Were Appointed, First Department, 1983-1984

Number of Arraignment Shifts ¹⁰¹⁸	Number of Attorneys			
	Bronx County		New York County	
	1983	1984	1983	1984
0	137	121	341	355
1- 9	163	176	119	106
10-19	7	11	8	10
20-29	2	1	3	1
30-39	0	1	1	2
40-49	0	0	0	2
50-59	0	0	1	2
60-69	0	0	4	1
70-79	0	0	0	0
80-89	0	0	0	0
90 and over	1	0	2	0
	310	310	479	479

1015. The rise of a cadre of courthouse regulars, while violative of national standards, see AMERICAN BAR ASS'N, STANDING COMMITTEE ON ASS'N STANDARDS FOR CRIMINAL JUSTICE, STANDARDS RELATING TO THE PROVIDING OF DEFENSE SERVICES, Standard 5-2.1 at 5.23, 5-2.3 at 5.28 (1980) [hereinafter 1980 ABA STANDARDS FOR PROVIDING DEFENSE SERVICES]; see also NATIONAL LEGAL AID AND DEFENDER ASS'N, GUIDELINES FOR LEGAL DEFENSE SYSTEMS, FINAL REPORT, Guideline 2.16, at 509 (1976) [hereinafter 1976 NLADA GUIDELINES]; see also *supra* notes 470, 755, is also a principal factor in the distribution of indicted cases to career Panel defenders; see *infra* note 1118 and accompanying text.

1016. Our source for the number of arraignment shifts that 18-B Panel attorneys took was the First Department control cards for 1983 and 1984 which show the number of arraignment shifts for which Panel attorneys submitted compensation vouchers. See *supra* note 728; *infra* app. 1(d) at 918. For the number of appointments to arraignment shifts made rotationally by the Panel administrator, we referred to the administrator's list.

1017. The data for 1984 extend only to November 12, 1984, when we began our analysis of the control cards.

1018. The proportion of attorneys who did not take any assignment is slightly exaggerated, because it includes a small number admitted to the 18-B Panel after the start of 1984.

Over 90 percent of the attorneys who accepted rotational arraignment appointments¹⁰¹⁹ were awarded between one and nine shifts a year; approximately 10 percent received ten or more shifts a year. A small number received in excess of thirty shifts. In 1983, for example, one attorney was awarded 104 arraignment shifts and another 213.¹⁰²⁰ The administrator's records disclosed, however, that 18-B Panel attorneys were offered an equal opportunity for arraignment service and that those attorneys who were willing to serve were awarded, with only one exception,¹⁰²¹ between four and eight rotational appointments annually. It follows that those attorneys depicted in *Table 8-2* who were awarded more than ten shifts had been appointed by the arraignment judge.

To test the frequency of the practice of judicial appointment, we totalled the number of shifts actually awarded to the group of attorneys receiving over ten per year, and subtracted the number awarded by the 18-B Panel administrator. The following table depicts the frequency of judicial appointments among the upper 10 percent of the Panel attorneys shown in *Table 8-2*.¹⁰²²

1019. Approximately a third of all active attorneys in the First Department accepted rotational arraignment appointments. *See supra* TABLE 5-14, at 735.

1020. A perfectly equal rotation would have produced an annual per-attorney figure of between five and eight arraignment shifts.

1021. In that instance, the administrator appointed one attorney to fifteen shifts in 1984.

1022. For ease of presentation we identify only those attorneys who claimed compensation for more arraignment parts than the 18-B Panel administrator's rotational appointment system alone could have produced.

TABLE 8-3: *Number of Arraignment Shifts Judicially Appointed, Compared to Total Number of Arraignment Shifts to which the Upper 10% of 18-B Panel Attorneys Depicted in Table 8-2 Were Appointed, First Department, 1983-1984*¹⁰²³

New York County:			
Total Arraignment Shifts Appointed 1983	Arraignment Shifts Judicially Appointed 1983	Total Arraignment Shifts Appointed 1984	Arraignment Shifts Judicially Appointed 1984
213	212	61	60
97	92	57	50
67	60	50	47
67	58	45	38
63	59	41	38
62	59	32	25
53	48	30	24
30	29	24	21
25	19	19	4
22	21	18	12
22	16	16	13
17	10	15	7
15	12	14	9
14	8	14	8
12	11	13	8
12	5	12	5
11	6	12	5
10	4	10	7
10	3	—	—
Totals	822	732	483
			381

1023. The large number of arraignment shifts attributed to 18-B Panel attorneys in 1983 is in part due to the strike of Legal Aid Society attorneys in 1982 (which resulted in an increased presence of 18-B Panel attorneys in the courts), *see supra* text accompanying note 634, and to lags in the filing or processing of 1982 compensation vouchers.

Bronx County:

	Total Arraignment Shifts Appointed 1983	Arraignment Shifts Judicially Appointed 1983	Total Arraignment Shifts Appointed 1984	Arraignment Shifts Judicially Appointed 1984
	104	102	35	31
	28	20	22	18
	28	19	17	11
	15	10	16	11
	14	8	16	9
	12	10	15	10
	12	9	12	9
	11	6	12	6
	10	6	12	6
	10	6	11	5
	—	—	10	7
	—	—	10	6
	—	—	10	6
	—	—	—	—
Totals	244	196	198	135

Judicial appointment of 18-B Panel regulars was not limited to New York County; while it may have been more pronounced there, such appointments were a systemic feature of First Department Panel practice.

III.

THE TENSIONS AND CONTRADICTIONS WITHIN THE INDIGENT
DEFENSE SYSTEM ARISING FROM THE APPOINTMENT
OF 18-B PANEL ATTORNEYS

The significant number of 18-B Panel attorney appointments in non-conflict cases at Criminal Court arraignment raises serious substantive questions regarding the allocation of indigent defense resources. Since no standards govern the movement of cases from the Legal Aid Society to the Panel, the most serious felonies were liable to be assigned to those attorneys with the fewest resources. Moreover, no mechanism ensured the oversight of judicially-appointed Panel attorneys. As a result, such attorneys essentially selected themselves, by making themselves familiar and available to court personnel. They failed to provide continuous representation after arraignment or even to pass on to their successor-attorneys the information they obtained at arraignment.¹⁰²⁴ Defendants who were represented by such attorneys at arraignment may have remained unrepresented for one or more adjourned dates while their cases were pending before the grand jury. These defendants

1024. See *supra* TABLE 6-1, at 252; *supra* note 825, TABLE.

may have lost a valuable opportunity to testify before the grand jury.¹⁰²⁵

The appointment of 18-B Panel attorneys to non-conflict cases was a product of the tension between the Legal Aid Society's management, the Society's staff attorneys, the arraignment judges, and the Panel attorneys. We examine the interests of each of these groups in turn.

A. *The Legal Aid Society Management's Attitude*

Providing representation at arraignment has organizational advantages for the Legal Aid Society's management. In those arraignment parts served only by Society lawyers, the Society could handle all cases for arraignment, including homicides and cases involving potential conflicts of interest. In addition, it could provide continuous representation for all eligible indigent defendants.¹⁰²⁶ Even in the busiest intake parts, where 18-B Panel attorneys were present, the Society often represented all defendants for arraignment. The Society counted each case as an assignment and disposition, regardless of whether the Society represented the defendant thereafter.¹⁰²⁷ Consequently, arraignment provided the Society with a high volume of cases at low cost. In fact, over half the Society's final dispositions occurred at arraignment.¹⁰²⁸ Since the City's appropriation to the Society for the coming year was linked to the volume of cases the Society's attorneys handle, management had a considerable stake in preventing Panel attorneys from taking cases, particularly non-conflict cases, at arraignment.

In view of its fiscal concerns, the Legal Aid Society did make efforts to ensure that it took *most* arraignment cases. Society supervisors, for example, whom we rarely saw in Supreme Court during our observations, were highly visible at Criminal Court arraignment. One or two supervisors remained with their staff attorneys for all or most of the day, while others came into court periodically. If supervisors were present when 18-B Panel attorneys, with the permission of the judges, tried to acquire non-conflict cases, the supervisors would often lodge a protest with the judge. On two occasions we observed actual physical confrontations between Society supervisors and Panel regulars.

B. *The Legal Aid Society Staff Attorneys' Response*

Legal Aid Society staff attorneys were affected less by the arraignment "taking" habits of 18-B Panel regulars than by those of their own colleagues. The Society could not ensure that all staff attorneys took an equal share of the arraignment workload. Some staff attorneys whom we observed were highly motivated and carried an excessive burden of cases. Others, however, appeared uninterested and content not to acquire more than a few cases. These

1025. See N.Y. CRIM. PROC. LAW § 190.50 (6) (McKinney 1982). See *supra* note 841 and accompanying text.

1026. 1985 Reply Memorandum, *supra* note 1000, at 12.

1027. See *supra* text accompanying notes 929-33 and accompanying text.

1028. See *supra* notes 986, TABLE B. See *supra* TABLE 8-3, at 800.

latter attorneys permitted cases to remain in the Society basket for long periods of time; they often thumbed through cases looking for "something interesting" and, failing to find anything, sat down to chat or read. Had they acted more promptly, arrestees would have been arraigned earlier and, often times, released, instead of languishing in detention pens. As a result, judges eager to "move" the arraignment calendar invited Panel regulars to replace these Society staff attorneys in non-conflict cases. Consequently, the risk was increased that the defendant would be represented by someone who lacked the resources to provide meaningful adversarial representation. This phenomenon is discussed in more detail below.

C. The Arraignment Judges Needs

Arraignment judges perceived their primary interest to lie in "getting through the calendar". Whenever a backlog of cases awaited arraignment, the court's atmosphere became frenzied. If the judge was dissatisfied with the Legal Aid Society lawyers' speed, she might have invited the 18-B Panel attorney on arraignment duty to take non-conflict cases from the Society's basket. If the judge did not have confidence in the attorney whom the 18-B Panel administrator had appointed, or if no Panel attorney was present, she might have called in one of a core group of Panel regulars. Our daily observation of judges in New York County, confirmed by the statistical analysis of arraignment assignments in New York and Bronx Counties,¹⁰²⁹ suggests that the failure of Society attorneys to process cases in a timely manner frequently led to assignment of non-conflict cases to Panel regulars.

D. The 18-B Panel Attorneys' Interests

18-B Panel attorneys were often able to assist the court in expeditiously processing cases. Some, who were essentially retirees, used the arraignment rotation as a means of keeping a hand in practice without assuming continuing case responsibility. For the core group of career panelists, however, arraignment shifts constituted a livelihood. These attorneys disposed of large numbers of cases at arraignment or referred them to successor Panel attorneys. They had little contact with the defendant and declined continuing case responsibility. Still others, particularly young attorneys desirous of building a criminal docket, used arraignment shifts to increase the number of cases in which they provided continuous representation. Whatever the interests of Panel regulars, however, Society supervisors and staff attorneys resented them, treating them as poachers or parasites. During our observation period, the Society's lawyers did not communicate with the Panel regulars, let alone provide them with assistance. Judges, however, saw them as "doers," attorneys who would "clear the calendars." In the judges' eyes, these court functionaries played a vital role in the assembly-line processing of criminal cases.

1029. See *supra* TABLE 8-3, at 800.

IV.

THE LEGAL AID SOCIETY'S EXPLANATION FOR THE JUDICIAL
APPOINTMENT OF 18-B PANEL ATTORNEYS

The Legal Aid Society has attributed the varied "taking" practices of its staff attorneys not to the differing motivations and work patterns of individual attorneys but to differences in attorney certification. "Misdemeanor-certified" staff attorneys could not accept felony, cases and limited "felony-certified" attorneys could not accept the most serious felony cases; only fully "felony-certified" attorneys could handle the entire spectrum of cases, including serious felonies. The Society rejected the pre-existing caseloads of its attorneys¹⁰³⁰ or their motivation levels as explanations for the sorting and selection of cases at arraignment. Its position was as follows:

Assuming that the defendant has been delivered to the court detention area, cases are generally picked up by an attorney in order of delivery of the case papers to the Society's clerk. We assign attorneys with a mixture of experience to meet the workload of each of the 4088 arraignment sessions held each year. While attorneys, who have not yet been certified by the Society as ready to represent clients facing felony charges, can staff arraignment sessions and represent clients charged with non-felony offenses, there must also be attorneys present who have been fully felony certified by the Society and thus capable of representing clients facing any felony charge. There are also attorneys certified to handle some lower grade felonies. Each arraignment session is staffed by a team of attorneys reflecting this mix of levels of skill and experience so that representation can be appropriately provided in all the cases that emerge from arraignment. Bearing in mind the Society's commitment to continuity of representation, it is critical that attorneys at arraignment pick up cases that are within their levels of certification and so avoid the need for case reassignment. It is therefore necessary for attorneys to examine case papers and make a selection.¹⁰³¹

Over and above these selection principles, it was the Legal Aid Society's specific policy to equalize each attorney's share of the arraignment workload.¹⁰³² Thus, in the absence of felony cases, a fully-felony certified attorney

1030. However, the Association of Legal Aid Attorneys, the staff attorneys' union, contended that caseload pressure inhibited staff attorneys from arraigning as many new defendants as they otherwise might. Statement of Russell Neufeld, Spokesperson for the Association of Legal Aid Attorneys, to the Subcommittee of the Committee on Criminal Advocacy of the Association of the Bar of the City of New York (Nov. 4, 1985). See *supra* note 721. Mr. Neufeld indicated that while, in theory, the Society provided for the equitable distribution of caseload through internal reassignment, in practice reassignment was rarely successful.

1031. 1985 Reply Memorandum, *supra* note 1000, at 12-13.

1032. Statement of C. Cirigliano, Attorney-in-Charge of the Criminal Defense Division, to the authors (Nov. 4, 1985). See *supra* note 721.

was required to take a fair share of the remaining cases at the arraignment session.

The Legal Aid Society blamed the administrative judge of New York County for the judicial appointment of 18-B Panel attorneys to arraignment shifts and to single-defendant, non-conflict cases, rather than on the differential work rates of its staff attorneys: "During the research period, the previous Criminal Court Administrative judge vainly tried to overcome pre-arraignment inefficiencies by opening court parts which had little or no work. He regularly allowed a particular non-felony certified 18-B attorney and his colleagues to sweep up cases in arraignment part, and placed no pressure on inefficient components of the pre-assignment process which caused the bottlenecks."¹⁰³³ It is difficult to accord this explanation any weight, however, because judicial appointment of Panel attorneys occurred in both Bronx County and New York County.¹⁰³⁴

The Legal Aid Society's case-selection principles and its work-sharing policy, if adhered to in practice, would have required a fully felony-certified staff attorney to take roughly the same share of the Society's arraignment caseload as other staff attorneys.¹⁰³⁵ To determine whether staff attorneys in fact took equal shares, we analyzed a random sample of 134 arraignment sessions. The sample was obtained from data collected by the staff of the administrative judge of the Criminal Court in New York County.¹⁰³⁶ It spans several months in 1984-1985, and tracks the caseloads of fully felony-certified staff attorneys in 186 appearances during that period.¹⁰³⁷ Our objective was to de-

1033. 1985 Reply Memorandum, *supra* note 1000, at 11.

1034. See *supra* TABLE 8-3, at 800.

1035. Equal shares of the caseload means approximately equal numbers of cases, taking into account case complexity. For example, felony-certified attorneys might have been obliged to take fewer cases than other attorneys due to the level of case complexity.

Our court observations at arraignment, however, revealed that even if felony cases had been more complex, felony-certified attorneys devoted no more time to arraignment cases than did misdemeanor attorneys. All the arraignment cases that we observed were prepared within fifteen minutes, and sometimes as little as five minutes, of the staff attorney's receipt of the record papers. The arraignment itself was uniformly perfunctory.

The Legal Aid Society has stated that, on average, its attorneys prepare cases for arraignment "within one hour." 1985 Reply Memorandum, *supra* note 1000, at 14. This hour, however, measures the time between the case's having been deposited in the intake basket and its having been marked ready by an attorney. The hour included, among other things, the time elapsed *before* the case was examined by an attorney. Cases often sat in the basket for some time without any action by Society attorneys.

1036. We drew the sample from daily records maintained by the administrative judge. These records include, for each arraignment session, the total number of cases, the total handled by Legal Aid Society attorneys, and the identities and number of Society attorneys present. See *supra* p. 704.

1037. We eliminated from our analysis all arraignment shifts in which a Legal Aid Society attorney was present for less than seven of the eight hours that the shift lasted. (For those who arrived less than one hour late, there was no difference between the number of cases handled and the number handled by the other attorneys in the shift.) We also eliminated all-night arraignment sessions ("lobster shifts"), in which specially-designated Society attorneys with no ongoing case-handling duties were present but 18-B Panel counterparts were absent.

termine whether these attorneys took roughly equal shares of the Society's caseload and to what extent any differences in case-taking practices were attributable to the certification status of the attorneys.

We focused on fully felony-certified attorneys because they, unlike other staff attorneys with lower certification-status, were free to take any case, regardless of the severity of the charge. Whatever the mix of cases at the arraignment shift, these attorneys could always have taken at least an equal share of the Legal Aid Society's workload.

Our analysis first examines the number of cases that fully felony-certified attorneys took at arraignment and compares actual caseloads with expected shares of the Legal Aid Society's workload. We next present evidence on the work patterns of individual attorneys over time. The evidence tends to show that the unequal distribution of the workload was not random, but rather was due to the specific taking habits of particular attorneys. Finally, we consider the link between the unequal distribution of the workload and the shedding of non-conflict cases to the 18-B Panel.

A. The Range of Cases Handled by Legal Aid Society Fully Felony-Certified Staff Attorneys

In the 134 arraignment sessions we analyzed, the taking practices of fully felony-certified attorneys varied widely. *Table 8-4* illustrates our findings.

TABLE 8-4: *Number of Cases Handled by Legal Aid Society Fully Felony-Certified Staff Attorneys at Arraignment in Criminal Court, New York County, 1984-1985*

Number of Cases Handled	Number and Percentage of Attorneys In this Range	
	n	%
0-4	12	6.5
5-9	57	30.6
10-14	66	35.5
15-19	36	19.4
20-24	11	5.9
25-29	3	1.6
30-34	1	0.5

B. Actual Caseload Compared to Equal Share

To move from absolute numbers of cases taken to the question of whether attorneys were handling their expected *shares*, the total number of arraignment cases handled by the Legal Aid Society and the number of staff attorneys present at each shift was considered. We computed the expected "equitable" share for the Society attorneys at each arraignment session (the total Society caseload divided by the number of staff attorneys present at the session), and

compared that equitable figure with the actual caseload of the fully felony-certified attorneys present. *Table 8-5* groups attorneys according to the caseload ranges depicted in *Table 8-4*. It describes the degree to which attorneys within each caseload range took an equitable share.

Almost all the attorneys falling within the 0-4 and 5-9 caseload ranges took less than an equitable share, while almost all of those falling within the 15-19 range and above took more than an equitable share. Those fully felony-certified attorneys within the 10-14 range were almost equally divided, with 44 percent taking less than the equitable share and 56 percent taking a greater-than-equitable share.

TABLE 8-5: *Percentage Of Equitable Share Handled By Legal Aid Society Fully Felony-Certified Staff Attorneys, Grouped According to Caseload Ranges Depicted In Table 8-4*

Percent of Equitable Share Handled %	Number of Attorneys Within Each Caseload Range						
	0-4	5-9	10-14	15-19	20-24	25-29	30-34
	<u>n</u>	<u>n</u>	<u>n</u>	<u>n</u>	<u>n</u>	<u>n</u>	<u>n</u>
0-20	3	-	-	-	-	-	-
21-40	3	2	-	-	-	-	-
41-60	5	15	2	-	-	-	-
61-80	1	22	6	1	-	-	-
81-100	-	11	21	9	2	-	-
101-120	-	5	18	9	4	-	-
121-140	-	2	9	13	3	2	-
141-160	-	-	9	3	1	-	-
161-180	-	-	-	1	1	1	1
181-200	-	-	1	-	-	-	-
Total	12	57	66	36	11	3	1

The Legal Aid Society's equitable sharing hypothesis is clearly not tenable in the face of this relationship between low caseload and the failure to take an equitable share of the arraignment workload. In response to our data, the Society posed the explanation that it "schedules no more than four attorneys to be present at an arraignment session and may remove a lawyer from a shift if insufficient work is available."¹⁰³⁸ The Society thus contended that those attorneys who took less than an equitable share did so "because they were not present for a complete shift or were present but working on time-consuming cases."¹⁰³⁹

1038. 1986 Additional Reply Memorandum, *supra* note 1003, at 13.

1039. *Id.* at 12-13. For example, the Legal Aid Society has argued, the disparate taking practices could be explained by "whether the attorney was in the session for a brief period of time to help break a logjam of cases or was assigned for the day, or whether the attorney was responsible for a full arraignment shift, one-half of a shift or merely filling in for a brief period of time for a colleague who was called away on other matters." *Id.* at 13.

Neither our analysis nor the data support these contentions. First, our analysis included only those arraignment sessions where Legal Aid Society attorneys were present for virtually the entire arraignment shift.¹⁰⁴⁰ Second, under the Society's hypothesis, one would expect that those arraignment shifts at which no more than four Society attorneys were present would show a higher proportion of attorneys taking an equitable share. *Table 8-6* presents the caseloads of fully felony-certified attorneys falling within the 0-4, 5-9 and 20-24 ranges over the 134 arraignment sessions included within *Table 8-4* above.¹⁰⁴¹ An analysis of the data included in these tables shows that in the 0-4 range, no fully felony-certified attorney took her equitable share of the arraignment team's workload, regardless of the number of staff attorneys present. In the 5-9 range, only 12 percent (five in forty-one) of those fully felony-certified attorneys serving on arraignment teams of three or four took approximately equitable shares of the workload, while over 30 percent (five in sixteen) of those serving on teams of more than four attorneys did so. Finally, in the 20-24 range, 90 percent of the fully felony-certified attorneys who served on teams of three or four handled an equitable share; the one attorney serving on a team of five handled nearly twice her equitable share.¹⁰⁴²

1040. *See supra* note 1037.

1041. Portions of *Table 8-6* containing an analysis of attorneys handling between 10-14 cases, 15-19 cases, 25-29 cases, and 30-34 cases are reprinted *infra* app. 3, at 935.

1042. In the 10-14 range, 56 percent (twenty-nine of fifty-two) of those who served on teams of three or four handled their equitable shares, as compared with 79 percent (eleven of fourteen) of those who served on larger teams. In the 15-19 range, four of the attorneys on a team of five handled their equitable shares, as compared with only 72 percent (twenty-three of thirty-two) of those who served on smaller teams. *See infra* app. 3(c), at 938; app. 3(d), at 940.

TABLE 8-6: *Analysis Of Cases Handled By Legal Aid Society Fully Felony-Certified Staff Attorneys At Arraignment Sessions Involved In Table 8-4*

(a) Analysis Of Staff Attorneys Handling 0-4 Cases

Total Cases in Session	Total Legal Aid Society Cases	Total Legal Aid Society Staff Attorneys	Equitable Distribution	Actual Caseload of Fully Felony- Certified Staff Attorneys
58	53	4	13.25	4
45	36	4	9.0	1
43	43	4	10.75	4
36	33	4	8.25	4
41	31	4	7.75	4
35	28	4	7.0	4
33	24	4	6.0	4
63	35	5	7.0	4
39	35	5	7.0	1
67	49	5	9.8	4
56	43	6	7.2	2
56	43	6	7.2	1

(b) Analysis of Staff Attorneys Handling 5-9 Cases

Total Cases in Session	Total Legal Aid Society Cases	Total Legal Aid Society Staff Attorneys	Equitable Distribution	Actual Caseload of Fully Felony- Certified Staff Attorneys
61	61	3	20.3	8
41	39	3	13.0	6
52	46	3	15.3	9
44	40	3	13.3	7
54	39	3	13.0	7
40	38	3	12.7	7
57	38	3	12.7	7
29	29	3	9.7	5
34	29	3	9.7	5
53	26	3	8.7	9
49	39	3	13.0	9
36	36	3	12.0	5
36	31	3	10.3	8
27	22	3	7.3	9
38	22	3	7.3	8

38	37	4	9.25	9
28	25	4	6.25	6
52	44	4	11.0	6
60	52	4	13.0	8
85	55	4	13.75	9
64	53	4	13.25	7
59	39	4	9.75	5
52	42	4	10.5	6
66	48	4	12.0	8
56	52	4	13.0	9
39	35	4	8.75	5
46	42	4	10.5	7
46	42	4	10.5	7
45	34	4	8.5	5
79	49	4	12.25	9
46	37	4	9.25	6
59	44	4	11.0	8
36	36	4	9.0	7
36	36	4	9.0	7
31	28	4	7.0	5
52	42	4	10.5	9
35	25	4	6.25	5
34	25	4	6.25	5
64	36	4	9.0	8
45	40	4	10.0	9
59	39	4	9.75	9
43	33	5	6.6	6
33	32	5	6.4	7
58	38	5	7.6	5
70	52	5	10.4	8
67	49	5	9.8	8
58	38	5	7.6	6
33	32	5	6.4	8
70	52	5	10.4	9
80	67	5	13.4	5
62	55	5	11.0	7
54	46	5	9.2	9
41	39	5	7.8	8
63	35	5	7.0	5
63	35	5	7.0	6
56	43	6	7.2	8
57	42	6	7.0	5

(e) Analysis Of Staff Attorneys Handling 20-24 Cases

Total Cases in Session	Total Legal Aid Society Cases	Total Legal Aid Society Staff Attorneys	Equitable Distribution	Actual Caseload of Fully Felony- Certified Staff Attorneys
63	63	3	21.0	21
63	63	3	21.0	20
59	59	3	19.6	21
53	53	3	17.7	20
62	51	3	17.0	20
59	59	3	19.6	23
52	52	3	17.3	21
46	46	3	15.3	21
52	51	3	17.0	23
64	54	4	14.25	22
72	61	5	12.2	22

As *Table 8-6* demonstrates, attorneys serving on larger teams were nearly three times more likely to take an equitable share of the workload than those serving on "regulation-size" teams. Further, these data, consistent with our court observations, indicate that attorney caseloads at arraignment were an individual response to workload demands, and were not dependent upon attorney certification.

C. Legal Aid Society Staff Attorney Work Patterns

It is conceivable that a given Legal Aid Society staff attorney might have taken more than her equitable share of cases at one arraignment session and less at the next. This pattern might have resulted from differences in the "taking" practices of other members of the Society's arraignment team, or from the quantity and quality of cases at each arraignment session. To determine whether fully felony-certified staff attorneys consistently took a share above or below what was equitable, we tracked all those who appeared at three or more arraignment shifts in the 186 appearances covered by the sample. There were fourteen such attorneys. For each appearance of these attorneys at an arraignment session, we analyzed the percentage of equitable share the staff attorney handled. The findings are displayed in *Table 8-7*.

TABLE 8-7: *Profiles of 14 Legal Aid Society Fully Felony-Certified Staff Attorneys Falling Within the Sample of Attorneys Depicted in Table 8-4, With Their "Taking" Practices Related to Equitable Distribution*

Arraignment Session	Cases Handled	Percentage of Equitable Share Handled
ATTORNEY A		
1	7	53.8
2	4	30.8
3	7	52.6
4	8	77.5
5	12	128.8
6	5	57.2
		AVERAGE % = 66.8
ATTORNEY B		
1	1	11.2
2	7	56.8
3	6	64.8
4	9	69.2
5	4	37.2
		AVERAGE % = 47.8
ATTORNEY C		
1	7	77.6
2	7	52.8
3	5	51.7
4	9	69.4
5	16	132.0
		AVERAGE % = 76.7
ATTORNEY D		
1	7	52.6
2	12	81.9
3	15	95.8
4	10	88.8
5	6	54.4
6	6	46.2
		AVERAGE % = 69.9
ATTORNEY E		
1	18	110.2
2	6	57.2
3	1	14.5
4	4	69.6
5	10	114.4
6	9	86.5
		AVERAGE % = 75.4

ATTORNEY F

1	13	79.6
2	5	64.0
3	12	62.2
4	17	119.2

AVERAGE % = 81.3

ATTORNEY G

1	8	39.3
2	5	57.7
3	8	77.0

AVERAGE % = 58.0

ATTORNEY H

1	13	113.2
2	16	133.2
3	7	77.6
4	11	81.6
5	8	72.8

AVERAGE % = 95.7

ATTORNEY I

1	9	66.8
2	18	146.8
3	11	106.9
4	12	84.0

AVERAGE % = 101.1

ATTORNEY J

1	18	134.5
2	12	133.2
3	17	148.0
4	10	90.9

AVERAGE % = 126.7

ATTORNEY K

1	18	112.4
2	4	57.0
3	10	120.0
4	11	144.5
5	11	156.9
6	17	166.0

AVERAGE % = 126.1

ATTORNEY L

1	19	129.7
2	11	137.5
3	18	135.1
4	22	154.4

AVERAGE % = 139.2

ATTORNEY M

1	10	76.9
2	25	163.1
3	10	93.9
4	20	117.7
5	15	133.2
6	5	71.2
7	32	165.8
8	27	133.0
9	13	90.7
10	13	67.3

AVERAGE % = 111.3

ATTORNEY N

1	8	132.9
2	15	115.2
3	17	173.5
4	17	102.1

AVERAGE % = 130.9

The profiles demonstrate that there was little relationship between the caseloads of fully felony-certified staff attorneys and the taking practices of other members of the Legal Aid Society's arraignment team; there was also little relationship between caseloads of the felony-certified staff attorneys and the quantity or quality of cases at each arraignment session. Certain staff attorneys (attorneys B and D) consistently and others (attorneys A, C, E and G) regularly handled less than an equitable share of the workload. On the other hand, some attorneys (attorneys L and N) consistently and others (attorneys J and K) regularly handled more than an equitable share. Only four of the fourteen followed no discernible pattern; yet of these four, three (H, I and M) tended on average to take an equitable share. Work patterns were thus attorney-dependent, a function of a particular attorney's motivation and pre-existing caseload.

D. The Relationship Between Legal Aid Society Staff Attorneys' Handling Less Than an Equitable Share and the Loss of Society Cases to 18-B Panel Attorneys

The differential taking practices of Legal Aid Society attorneys at arraignment did not merely affect the internal distribution of the Society's caseload; they reduced the Society's capacity to handle the entire arraignment workload. When attorneys took less than an equitable share of the Society's workload, the effects were not necessarily offset by the efforts of other staff attorneys at the arraignment shift. It was precisely in such instances that we saw judges appoint 18-B Panel regulars to take up the slack, with the result that non-conflict cases were permanently assigned to the Panel.

In fact, we found that when fully felony-certified attorneys who accepted less than an equitable share of the Legal Aid Society's caseload were present, a

disparity existed between the number of cases in each arraignment session and the number the Society handled. In twelve arraignment sessions, one of the fully felony-certified attorneys who handled between 0-4 cases per session was present. There was a disparity in such sessions of at least 20 percent between the number of cases the Society handled and the total number of cases handled during the arraignment session.¹⁰⁴³ In four such sessions, this disparity exceeded 25 percent, and in one session it was over 44 percent.

In 57 arraignment sessions, a fully felony-certified attorney who handled 5-9 cases per session was present. During these sessions, as well, the Legal Aid Society was unable to handle at least 20 percent of the total arraignment workload.¹⁰⁴⁴ In ten sessions the disparity surpassed 30 percent. Four sessions resulted in a disparity of more than 40 percent, and one session in a disparity of over 50 percent. When an attorney in the 10-14 range was present, the Society on average was unable to handle 18 percent of the arraignment workload.¹⁰⁴⁵ Attorneys who handled 15-19 cases were present at 36 arraignment sessions. In these sessions, the Society failed to handle 14 percent of the arraignment workload.¹⁰⁴⁶

By contrast, each time that an attorney with full felony certification was present who handled between twenty and twenty-four cases (11 arraignment sessions), the Legal Aid Society was able to cover more than 95 percent of the arraignment workload. In seven of those sessions, the Society accepted all arraignment cases.¹⁰⁴⁷ Finally, when a fully felony-certified attorney was present who handled between 25-34 cases per session¹⁰⁴⁸ (4 arraignment sessions), the Society handled 98 percent, or virtually the entire arraignment workload.

In sum, when a Legal Aid Society attorney who took fewer than ten cases was present, the Society was consistently unable to handle between twenty and forty percent of the arraignment workload. Some disparity was to be expected when rotationally assigned 18-B Panel attorneys and retained counsel were present. Nevertheless, when staff attorneys were present who did not take an equitable share, the substantial gap between the Society's share and the total arraignment workload created an opportunity for judges, anxious to move their calendars, to refer single-defendant, non-conflict cases to the 18-B Panels.

V.

CHAPTER SUMMARY

The uneven work patterns of the Legal Aid Society's staff attorneys, the size of the Society's arraignment team, the availability of 18-B Panel regulars,

1043. See *supra* TABLE 8-6(a), at 808.

1044. See *supra* TABLE 8-6(b), at 809.

1045. See *infra* TABLE 8-6(c), at app. 3(c), at 938.

1046. See *infra* TABLE 8-6(d), at app. 3(d), at 940.

1047. See *supra* TABLE 8-6(e), at 811.

1048. See *infra* TABLE 8-6(f), at app. 3(f), at 941; TABLE 8-6(g), at app. 3(g), at 941.

and the willingness of judges to make attorney substitutions in the interests of case movement accounted for the shedding of non-conflict cases at arraignment. Arraignment shedding by the Society provides an explanation for the Panel's disproportionately high workload of non-conflict cases in Supreme Court. It also reveals that the support of judges, on which the Society has been able to historically rely,¹⁰⁴⁹ was contingent upon the Society's ability and willingness to assist in efficient case disposal. Once the Society failed to deliver this servicing function, judges called in those who could and would assist. Panel regulars, for whom arraignment assignments constituted a livelihood, appeared most able to clear backlogs and speed case flow.

The shedding of the Legal Aid Society's non-conflict caseload at arraignment has an important additional consequence. The presence of an 18-B Panel outsider was a cause for acrimony, jealousy, resentment and a lack of coordination in the relationship between the two defense entities. Each proceeded without regard for the needs of the other. Under New York State law, the availability of counsel may cause the right to counsel to attach at the time of arrest.¹⁰⁵⁰ Nevertheless, neither defense entity had attempted systematic representation prior to arraignment. Furthermore, because of a lack of coordination between the entities, indigent defendants who were reassigned to Panel attorneys after arraignment remained unrepresented for substantial periods of time.

Though the defense entities failed to coordinate their efforts, they were nonetheless interdependent. The Legal Aid Society's shedding of non-conflict cases at arraignment resulted in a steady supply of cases for 18-B Panel regulars. The Panel thus filled the gap between the Society's promise of full representation and the current reality.

Each entity, moreover, was complicitous in the other's failings. Had the Legal Aid Society's management obtained maximum attorney caseloads in its negotiations with New York City, it might have compelled the City to confront the shortage of indigent defense resources, whether by increasing the numbers of staff attorneys or by allocating fewer but more serious cases to the Society. Instead, in the name of cost-efficient case processing, the Society permitted the work patterns of individual staff attorneys to govern its caseload. For their part, 18-B Panel administrators, anxious to expedite case movement, authorized payment of arraignment vouchers for courthouse regulars who had not been legitimately assigned on a rotational basis. The administrators failed to scrutinize either the distribution of cases or the fate of defendants who received arraignment-only representation.

The net effect of these choices by arraignment judges, the institutional defender's management and staff, and the assigned counsel 18-B Panel was to obscure the reality of indigent defense in New York City and to disguise the failure of the City and the organized bar to adequately meet the demand for

1049. *See supra* notes 261, 378-80 and accompanying text.

1050. *See supra* note 354.

effective adversarial advocacy. No one closely monitored the movement of cases between the defense entities or decided whether the resources or the competence of the attorneys should govern case referrals. The reality was that a large portion of the Legal Aid Society's caseload was shed to the assigned counsel 18-B Panel, an entity without the resources to provide an effective defense.