

CHAPTER SEVEN

CASELOAD DIVISION BETWEEN THE 18-B PANEL AND THE LEGAL AID SOCIETY

Our preliminary court observations revealed that 18-B Panel attorneys handled a large number of cases at each stage of the criminal process.⁹¹⁷ Panel regulars were highly visible at Criminal Court arraignments, as well as in Supreme Court. They appeared to carry caseloads equal to or greater than those of Legal Aid Society staff attorneys. In both courts, it was common practice for judges to assign single defendant cases to Panel attorneys who were present in the courtroom.

To determine what share of cases the 18-B Panel attorneys handled, we first attempted to determine the proportionate number of First and Second Department assignments that went to each defense entity. Three findings were clear from the outset: (a) the clerks charged with the responsibility of assigning cases to Panel attorneys were unaware of the proportionate share of indigent defendants these attorneys handled vis-a-vis their Legal Aid Society counterparts; (b) the clerks had no knowledge of whether the cases they assigned were conflict or non-conflict cases; and (c) the clerks did not know why requests for assignment of Panel counsel were made.⁹¹⁸

We next sought to obtain a reliable caseload count for the 18-B Panel and the Legal Aid Society. None was available. In order to learn more about the proportionate share and source of the cases handled by both entities, we reviewed the annual reports that each entity filed with the Office of Court Administration. We then analyzed (1) OCA's independent inventory of citywide final dispositions (completed cases) in Supreme Court; (2) OCA's inventory of final dispositions in Criminal Court; (3) New York County District Attorney's Office data on multiple-defendant cases arising in that county and (4) the internal records of both defense entities related to final dispositions in Criminal Court and Supreme Court. It was necessary to analyze OCA's own data and the internal records of both entities because the reports filed with OCA were, as we will demonstrate below, misleading in different ways and therefore precluded a comparative caseload analysis.⁹¹⁹ The District Attorney's data per-

917. For a detailed discussion of the referral of non-conflict cases to 18-B Panel attorneys at arraignment in Criminal Court and Supreme Court, see *infra* pp. 792-99; TABLE 8-1, at 795; pp. 837-49; TABLE 10-1, at 838.

918. For a discussion of the clerk's operation of the rotational assignment system in the First Department, see *supra* 235-38. See also *supra* note 511 and accompanying text.

919. The reporting problems which we encountered resulted from the absence of an effective management information system. See American Bar Ass'n, Criminal Justice Section, Report to the House of Delegates Guideline III-22 (1985); Blumstein, *Management Science to Aid the Manager: An Example from the Criminal Justice System*, 15 SLOAN MGMT. REV. 35 (Fall 1973). The failure of indigent defense systems to undertake standardized reporting has been addressed in other jurisdictions. See, e.g., Spiegler, Ding & Mendelson, *Report to the Committee on Legal Representation of Indigents in the Criminal Process*, New York State Bar Ass'n (1980).

mitted us to analyze the difference between the expected and actual workload of both entities in New York County Supreme Court.

I.

THE ANNUAL REPORTS FILED BY BOTH DEFENSE ENTITIES WITH OCA

Each year OCA gathers data from the annual reports filed by each defense entity.⁹²⁰ Because of defects in both the reporting form used by OCA and the reporting practices of the two entities, the resulting data did not permit a calculation of the proportionate share of filed indictments handled by each defense entity. The reporting problems included OCA's failure to distinguish between felony complaints and indictments, the failure of both defense entities to standardize the reporting of assignments and dispositions, and the practice by the Legal Aid Society of double-counting felonies. Each of these problems will be discussed below.

A. *Failure to Distinguish Between Felony Complaints and Indictments*

The OCA reporting form did not distinguish between felony complaints which are reduced to misdemeanors in Criminal Court and those which ripen into indictments or originate in Supreme Court. Thus, a felony complaint which was reduced and disposed of as a misdemeanor in Criminal Court was included within the same category as a felony that was subsequently indicted and disposed of in Supreme Court.⁹²¹ This practice made it impossible to calculate each defense entity's share of *serious* felony cases from OCA's reporting forms. What resulted, therefore, was a distorted perception of the representation provided by each defense entity. OCA indicated that, on average, there were twelve appearances to disposition for each filed indictment in Supreme Court.⁹²² This is over three times the average number of appearances to dis-

[hereinafter 1980 Spiegler Report], where the New York State Bar Association cautioned against exclusive reliance on the UCS-195 given the divergent reporting practices used by different defense entities. Oaks and Lehman encountered similar problems in their study of the indigent defense system in Chicago. See D. OAKS AND W. LEHMAN, *A CRIMINAL JUSTICE SYSTEM AND THE INDIGENT* (1968). In that study the authors stated:

It is unfortunate but entirely possible that our attempt to analyze the available statistical data has produced a picture that bears little relation to reality . . . Such a review should be concerned with three problems: the choice of facts that are to be reported, the improvement of recordkeeping procedure, and the attainment of uniformity among agencies in respect to definitions, reporting periods, and subjects covered.

Id. at 86.

920. For a description of the annual reports filed by the defense entities, see p. 711; *supra* note 738.

921. See Office of Court Administration, State of New York, Instructions to Form UCS-195 (rev. Dec. 1983) [hereinafter OCA Instructions]. Instruction I requires each entity to report all felony cases "referred for all matters" but does not distinguish between a felony complaint in Criminal Court and an indictment in Supreme Court.

922. Office of Court Administration of the State of New York, Supreme Court Criminal Term Disposition Report (1984) [hereinafter 1984 OCA Criminal Term Disposition Report].

position ($n=3.6$) recorded by OCA in Criminal Court.⁹²³

To add to the confusion, each entity reported felonies differently. The 18-B Panel administrators, complying with OCA instructions, reported all felonies (complaints and indictments) in a single category, regardless of whether they were disposed of in Criminal Court or whether they survived to Supreme Court.⁹²⁴ The Legal Aid Society, by contrast, reported all Criminal Court felony complaints as misdemeanors, whether or not they were later presented to the grand jury.⁹²⁵ The Society reported as felonies only post-indictment Supreme Court cases.⁹²⁶ Our audit of the Society's monthly caseload activity reports, from January through December 1984, reveals that the Society had been assigned 67,794 felony complaints in Criminal Court which were listed as misdemeanors in the Society's annual report to OCA.⁹²⁷

B. Failure to Standardize The Reporting of Assignments and Dispositions

A second reporting problem was that a substantial portion of the caseload that the Legal Aid Society reported included cases which the 18-B Panel failed to report. In accordance with OCA's written instructions, Panel administrators recorded as "referred for all matters," only those assignments in which a Panel attorney agreed to provide continuous representation until final disposition.⁹²⁸ For 1984, in the First Department alone, the administrator omitted over 11,000 cases which were handled by Panel attorneys at arraignment and then immediately reassigned to a successor attorney.⁹²⁹

The Legal Aid Society, by contrast, included within its case count multiple defendants and homicide defendants whom it represented for bail purposes only.⁹³⁰ These defendants were subsequently reassigned to 18-B Panel attorneys.⁹³¹ There were 35,011 Criminal Court cases that the Society reported to

923. See Criminal Court of the City of New York, Caseload Activity Report — Arrest Cases (1984) [hereinafter 1984 Caseload Activity Report — Arrest Cases].

924. The administrator's recording practices were revealed in interviews with the principal assignment clerk for the First Department, who was charged with preparation of the annual report to the OCA. These interviews occurred in October-November of 1985.

925. See Legal Aid Society, Reply Memorandum to McConville and Mirsky Draft Report 49 (Oct. 1, 1985) [hereinafter 1985 Reply Memorandum].

926. *Id.*; See also *infra* text accompanying note 953.

927. *Id.* at 10. The Society acknowledged in its reply that of the 14,443 felonies which it reported to OCA for 1984, 9,049 originated in Criminal Court. The administrator's worksheets for the 18-b Panel did not provide similar data because the Panel did not identify what proportion of felony assignments originated in Criminal Court and survived to Supreme Court as filed indictments.

928. See *supra* note 921.

929. Report UCS-195 (1984) (18-B First Dep't).

930. See 1985 Reply Memorandum, *supra* note 925, at 22-23.

931. Five felony cases falling within our court observation sample illustrate the Legal Aid Society's practice of reporting "relieved" arraignment cases as assignments and dispositions. See *supra* note 930 and accompanying text. In each of these five cases, the Society asked to be relieved after arraignment for reasons of potential conflict or because of the Society's policy against accepting the case. In each instance the Society's attorney appeared for the defendant at arraignment despite the presence of an Panel attorney ready to do so. Upon the completion of

OCA as assignments, but of which it was ultimately relieved.⁹³² The Society made the following comment regarding its relieved cases: "A high proportion of LAR's [Legal Aid relieved's] involved multiple defendant cases to which the Society is assigned for bail/release purposes only. Also included within the LAR's are homicides where the Society may have provided representation at arraignment only."⁹³³ The Society's reporting misconstrued OCA's instructions. A reassignment by the Society to the 18-B Panel was neither an assignment nor a disposition.⁹³⁴ Nevertheless, the Society accorded these cases, to which it devoted a matter of minutes, the same weight in its reporting as for those for which it provided continuous representation, i.e., until final disposition.

The Legal Aid Society's justification for this practice was its need to open up a new file, regardless of whether the Society was relieved at arraignment. Since the initial file was maintained in "open" status until the 18-B Panel attorney appeared to replace the Society, the Society considered the case an open assignment. When a Panel attorney appeared, the Society counted the case as a disposition.⁹³⁵ The Society did not continue to represent the defend-

arraignment, the Society counted each case as an assignment to the Society and disposition by the Society, despite the fact that the defendant was immediately reassigned to the Panel. The cases are as follows:

1. A and B were charged with criminal sale of a controlled substance to a third individual who was already represented by the Legal Aid Society. At arraignment, the Society's attorney appeared for A and B. The Society was then relieved of both defendants, who were referred to two 18-B Panel attorneys for the next adjourned date. (Case 016)
2. A and B were charged with attempted rape. At arraignment, the Legal Aid Society represented both defendants, notwithstanding the presence of an 18-B Panel attorney. The Society's attorney justified her practice of representing both defendants at arraignment in disregard of an available 18-B Panel attorney on the ground that Panel attorneys represented defendants for arraignment only rather than providing continuous representation. After arraignment, the Society kept defendant A and was relieved of defendant B, who was assigned to a successor Panel attorney. (Case 050)
3. A and B were charged with robbery. At arraignment, the Legal Aid Society represented both defendants. After arraignment, the Society kept defendant A and was relieved of defendant B, who was assigned to a successor 18-B Panel attorney. (Case 051)
4. A and B were charged with robbery. The complainant had been represented by the Legal Aid Society at sometime during the preceding year. Despite the presence of an 18-B Panel attorney who was able to represent both defendants for arraignment only, the Society represented defendant A while the Panel attorney represented defendant B. After arraignment, the Society's attorney was relieved and defendant A was reassigned to a successor Panel attorney. B was also reassigned to a successor Panel attorney. (Case 064)
5. A and B were charged with murder. Each was alleged to have shot the deceased. Despite the Legal Aid Society's policy of refusing assignments in homicide cases, the Society represented defendant A, while the 18-B Panel represented defendant B. After arraignment, the Society was relieved and defendant A was reassigned to a successor Panel attorney. Defendant B was also reassigned to a successor attorney. (Case S-14)

932. See *infra* TABLE 7-1, at 779.

933. See 1985 Reply Memorandum, *supra* note 925, at 22-23.

934. In restricting the reporting of cases to defendants as "referred for all matters," OCA limited the universe of cases which may be included within the terms assignment and disposition. See OCA Instructions, *supra* note 921, at I, IIa.

935. The justification was offered by Harold S. Jacobson, the Legal Aid Society's Special Assistant Attorney for Planning and Management, in a statement in late 1985. Statement of

ant after arraignment, and Panel attorneys, for their part, failed to provide representation for one or more adjourned dates.⁹³⁶

C. Failure to Report Discontinued Cases

While the 18-B Panel recorded the number of cases in which representation had been discontinued prior to final disposition (5,946 in 1984),⁹³⁷ the Legal Aid Society did not report the number of discontinued cases, but instead responded "N/A" (not available).⁹³⁸ The number of discontinued cases is readily available, however, from the Society's monthly caseload activity reports.⁹³⁹ In 1984, the Society was relieved of 19 percent of its assignments in Criminal Court and 21 percent of its assignments in Supreme Court.⁹⁴⁰ We have computed the Society's discontinued cases; the results are presented in *Table 7-1*:

TABLE 7-1: *Legal Aid Society Discontinued Cases, Citywide, 1984*

Relieved Defendants - Supreme Court	2,969
Absconded Defendants - Supreme Court	1,533
Relieved Defendants - Criminal Court	35,011
Absconded Defendants - Criminal Court	<u>15,712</u>
Total	55,225

The Legal Aid Society's practice of omitting its discontinued cases dates back at least ten years.⁹⁴¹ During the same period, this information was provided

Harold S. Jacobson, Special Assistant-in-Charge of Planning and Management of the Legal Aid Society, to the Committee on Criminal Advocacy of the Association of the Bar of the City of New York (Oct. 22, 1985) [hereinafter Oct. 1985 Jacobson Statement]. See *supra* notes 721-22.

936. See *infra* note 1028 and accompanying text.

937. See Reports UCS-195 (1984) (18-B 1st Dep't); UCS-195 (1984) (18-B 2d Dep't).

938. See Report UCS-195 (1984) (Legal Aid Society).

939. We obtained the caseload activity reports from confidential sources. See *supra* pp. 704, 711. The monthly caseload activity reports are not appended to the forms submitted by the Society to the OCA nor are they appended to its annual budget request to the City. See Report UCS-195 (Calendar year 1984, 1985) (Legal Aid Society); FY 1985, 1986 Legal Aid Budget.

940. In 1984, the Legal Aid Society reported 184,788 assignments in Criminal Court and 14,443 assignments in Supreme Court. See Report UCS-195 (1984) (Legal Aid Society). A review of the Society's monthly caseload activity reports for the same calendar year revealed that the Society was relieved of 35,011 assignments (19%) in Criminal Court and 2,969 assignments (21%) in Supreme Court. See *infra* TABLE 7-1, at 779. Moreover, in a statement to the Committee on Criminal Advocacy of Oct. 22, 1985, the Society's Special Assistant Attorney for Planning and Management stated that between 1980 and 1984, approximately 19% to 24% of the Society's assignments in Supreme Court were cases in which the Society was relieved. See *supra* note 721. See also Full Report of the 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* at 20 n.12 (1986).

941. See Reports UCS-195 (1973-1983) (Legal Aid Society); but see OCA Instructions, *supra* note 921, at III which states: "... record the number of defendants who were not represented or for whom representation was discontinued before final disposition by the court." The Society's reporting practices did not conform to these Instructions.

by the 18-B Panel in each Annual Report submitted by the administrators of the First and Second Departments.⁹⁴²

Our audit of the Legal Aid Society's monthly caseload activity reports for 1984 reveals that it completed 126,829 cases, 65,747 fewer⁹⁴³ than the total dispositions (n=192,576) it reported to OCA.⁹⁴⁴ The omission of discontinued cases conceals the shedding of cases from the Society to the 18-B Panel in both Criminal Court and Supreme Court. Of those cases which were discontinued, 69 percent involved replacement of a Society staff attorney with a successor attorney, either a member of the Panel or, infrequently, privately retained counsel.⁹⁴⁵

A further consequence of the Legal Aid Society's failure to report its discontinued cases is that it precludes comparative analysis of cases with equivalent work load value for each defense entity. For instance, when the final dispositions for both entities in Supreme Court are recomputed, we find that the Society actually handled 9,419 cases to completion in 1984 (it reported 14,028 Supreme Court dispositions),⁹⁴⁶ compared to 8,601 cases for the 18-B Panel.⁹⁴⁷ Thus, the Panel's share of more serious cases was much greater than the statistics reported to OCA indicate.

D. Double-Counting Felonies

The Legal Aid Society's double-counting of felony cases further misrepresents the proportionate number of felony assignments handled by each entity. The Society reported each felony case arraigned in Criminal Court and held for the grand jury as a completed assignment and disposition.⁹⁴⁸ While these cases were "referred for all matters" to the Society on only one occasion, the Society counted them a second time when an indictment was filed in Supreme Court.⁹⁴⁹ A work load comparison with the 18-B Panel was further skewed because 18-B Panel administrators, complying with OCA's instructions,⁹⁵⁰ counted such cases only once.

Double-counting felony complaints in this manner was contrary to the

942. See Reports UCS-195 (1973-1983) (18-B 1st Dep't); UCS-195 (1973-1983) (2d Dep't).

943. See *infra* note 986, TABLE B.

944. See Report UCS-195 (1984) (Legal Aid Society).

945. See *supra* TABLE 7-1, at 779.

946. In 1984, the Legal Aid Society reported to OCA 179,284 dispositions in Criminal Court. See Report UCS-195 (1984) (Legal Aid Society). In actuality, the Society handled only 117,410 such cases to completion, see *infra* note 986. For an analysis of the Society's final dispositions in Supreme Court, see *id.* Following the filing of our Draft Report, the Society began to report its discontinued cases to OCA. See Report UCS-195 (1985) (Legal Aid Society). However, the Society still did not distinguish between Criminal Court and Supreme Court discontinued cases. Without access to the Society's monthly caseload activity reports, these reports were of limited value.

947. For an analysis of the 18-B Panel's final dispositions in Supreme Court, see *infra* note 986. See also *infra* TABLE 11-8, at 872.

948. See *infra* text accompanying note 953.

949. *Id.* See *supra* note 921.

950. See *supra* note 924 and accompanying text.

language of the reporting form and the accompanying instructions which provided only for dispositions by "trial level" courts. Criminal Court is not a "trial level" court in felony complaints; it is a court of *limited* jurisdiction.⁹⁵¹ Only felony complaints in which the grand jury returned a vote of "no bill" could have been properly recorded as dispositions.⁹⁵²

The Legal Aid Society addressed the issue of double-counting in the following manner:

The Society follows the practice of the Office of Court Administration in reporting assignments. Cases that are assigned to the Society in Criminal Court and assigned again in Supreme Court are counted twice. The gross trial level assignments to the Society in calendar 1984 was 199,231. The net trial level assignment figure of 190,182 is the total of Criminal Court assignments plus *new* Supreme Court assignments.⁹⁵³

The justification offered by the Society for double counting is contrary to the purpose of OCA's reporting system. The purpose of these reports was to enable OCA to engage in a resource assessment for two separate criminal courts (Criminal and Supreme), each requiring its own set of judges, clerks, correction officers, and support personnel.⁹⁵⁴ That reporting system was different and distinct from the one devised for the defense entities. The latter system contemplated the assignment of a single attorney to a defendant in both Criminal Court and Supreme Court, from appointment until final disposition.⁹⁵⁵ In operational terms, double counting, as practiced by the Society, inflated case count (assignments and dispositions) while staffing requirements remained unchanged.

II.

OCA'S INVENTORY OF FINAL DISPOSITIONS

Our ultimate source of data for computing each defense entity's proportionate share of filed indictments was the inventory of final dispositions com-

951. N.Y. CRIM. PROC. LAW § 10.30 (McKinney 1986).

952. See OCA Instructions, *supra* note 921, at II. Instruction IIa enumerates the dispositions each entity is to record. Transfer of a felony complaint from Criminal Court to Supreme Court is not a disposition for these purposes.

953. 1985 Reply Memorandum, *supra* note 925, at 489.

954. For an explanation of the operational and supervisory authority of the OCA, see N.Y. JUD. LAW ART. 7-A (McKinney 1972); see also *supra* p. 711; *supra* note 699.

955. For a discussion of the adoption of vertical continuity by the Legal Aid Society, see *supra* notes 562-63 and accompanying text. The assignment system utilized by the 18-B Panel administrators has always been one of vertical continuity. Once an attorney is assigned to a case, the assignment is to continue until final disposition. See 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. IV(B), at 928 [hereinafter 1966 Bar Association Plan].

piled by OCA on a county-by-county and citywide basis. The inventory was based on the daily record entries of disposed cases in Supreme Court, which indicated the type of counsel (18-B Panel, Legal Aid Society or retained counsel) who appeared for the defendant.⁹⁵⁶ OCA's inventory of final dispositions (i.e., cases which resulted in a dismissal, a guilty plea, or an acquittal or conviction after trial),⁹⁵⁷ permits calculation of each defense entity's share of cases in which "trial" level assignments had been completed. *Table 7-2* summarizes the data in the OCA inventory for the years 1982 through 1984.⁹⁵⁸

TABLE 7-2: *Office of Court Administration Inventory of Disposed Defendant Indictments For Each Defense Entity, Citywide, 1982-1984*⁹⁵⁹

Defense Entity	Number of Cases			Percentages		
	1982	1983	1984	1982	1983	1984
18-B Panel	5,959	9,854	8,161	30.1	35.7	31.1
Legal Aid Society	6,388	9,710	10,344	32.3	35.2	39.5
Retained	6,541	7,181	6,828	33.0	26.0	26.1
Unknown	906	846	868	4.6	3.1	3.3
Total	19,794	27,591	26,201	100.0	100.0	100.0

956. See 1984 OCA Criminal Term Disposition Report, *supra* note 922.

957. OCA's own statistics are not subject to the biases that are apparent in the reports that the Legal Aid Society files with reference to its own performance. See *supra* pages 776-81. These statistics are derived from OCA's Criminal Term Disposition Reports. See *supra* note 922. They do not take into account a minority of dispositions where the attorney type is unknown, the defendant's age is unknown, and where the disposition results from Supreme Court information. The number of cases is, to that extent, smaller than the actual number of dispositions. Regardless of this diminution, the proportionate breakdown of each defense entity should remain unchanged.

While we consider the total case count prepared by OCA reliable as to the Legal Aid Society, we believe that the percentage of 18-B Panel representation is, to some degree, understated. This is because the clerks who reported the data had little difficulty in identifying a staff attorney for the Society but did encounter difficulty in distinguishing between private attorneys who were assigned pursuant to Article 18-B and private attorneys who were retained. Each notice of appearance filed by the Society's staff attorneys contained the name of the Attorney-in-Charge of the Criminal Defense Division, in addition to the name of the Society's designated attorney. While notices of appearances filed by private attorneys enabled lawyers to designate whether they were assigned pursuant to Article 18-B or retained, attorneys often failed to mark this designation. Since the same private attorney typically filled both assigned and retained roles on different occasions, in the absence of a County Law designation, an attorney could have been counted as retained unless the clerk was informed that representation was pursuant to Article 18-B.

958. OCA included within its completed-case inventory only those indictments in which a dismissal or verdict had occurred, or in which a guilty plea had been entered. See *infra* note 965. Cases in which a sentence had been imposed or a bench warrant issued were not included within the OCA inventory. It should be noted that the figures were *net* dispositions, covering only pleas, verdicts, and dismissals.

959. See 1984 OCA Criminal Term Disposition Report, *supra* note 922. The term "defendant-indictments" is a measure of counting properly called "defendants by indictments." See D. Oaks & W. Lehman, *Lawyers for the Poor*, in *LAW AND ORDER: THE SCALES OF JUSTICE* 159-60 (A. Blumberg ed. 1973) [hereinafter *Lawyers for the Poor*]. A defendant may be

These data strongly suggest that the 18-B Panel's proportionate share of the caseload was much greater than that expected given the design of the 1966 Plan⁹⁶⁰ and the Legal Aid Society's subsequent policies.⁹⁶¹ The Panel's caseload may have included single-defendant cases and all co-defendants in multiple-defendant cases even when no actual conflict of interest had arisen.

III.

SUPREME COURT (NEW YORK COUNTY) INVENTORY: THE DIFFERENCE BETWEEN THE EXPECTED AND ACTUAL WORKLOAD OF THE TWO DEFENSE ENTITIES

The Legal Aid Society has made two claims about its share of cases in Supreme Court. First, it has contended that it handled 50% of the filed indictments as compared to 79% of the arrest cases in Criminal Court.⁹⁶² Second, the Society has attributed its reduced Supreme Court presence to (a) an increase in the number of cases handled by retained counsel and (b) a greater number of multiple defendants in felony cases.⁹⁶³ The Society has insisted that the only clients it routinely declines to represent are those charged with homicide and more than one co-defendant in multiple-defendant cases.⁹⁶⁴

the subject of more than one indictment while a single indictment may include more than one defendant.

960. See *supra* text accompanying notes 391-93, 397.

961. See *supra* pp. 665-69.

962. Legal Aid Society, Budget Submission to the City of New York for Fiscal Year 1986 at 14 (Jan. 28, 1985) [hereinafter FY 1986 Legal Aid Budget]; Letter from Archibald R. Murray, Executive Director of the Legal Aid Society, to the Committee on Criminal Advocacy of the Association of the Bar of the City of New York at 3-4 (Oct. 22, 1985) [hereinafter Oct. 1985 Murray Letter]; see also 1985 Reply Memorandum, *supra* note 927, at 21.

963. See Legal Aid Society, Additional Reply Memorandum to McConville and Mirsky Draft Report (Jan. 3, 1986) [hereinafter Additional Reply Memorandum]. There, when referring to the proportionate decrease in cases referred to the Society from Criminal Court to Supreme Court, the Society made the following statement:

Another misleading presentation involves the construction of an invalid model of expected representation in the Supreme Court. The researchers would have one conclude that because the Society represents a specific percentage of defendants in the Criminal Court it should represent the same percentage of defendants in the Supreme Court. This model might have some hypothetical validity if the universe of cases entering the Criminal Court all involved felony charges and could therefore end up in the Supreme Court. Of course, this is just not so. There are many more misdemeanor charges which enter the Criminal Court than felonies and the Society represents a much higher percentage of incoming defendants facing misdemeanor charges than felony charges. This is true because of the greater presence of private [retained] counsel in cases involving felony charges and the greater number of multiple defendants involved in felony cases.

Id. at 20.

964. The Legal Aid Society has repeatedly contended that it complied with its contractual commitments. For example, at arraignment in Criminal Court, the Society has maintained that it took all eligible defendants, except those cases which presented a conflict of interest:

Society attorneys assigned to arraignment sessions are required to accept assignments in every case which the court delivers to the Society's arraignment clerk during the session, except for cases which present a conflict of interest — generally multiple defendant cases. In these conflict cases the Society will, if 18-B Panel attorneys are avail-

The three year inventory of final dispositions compiled by OCA, depicted in *Table 7-2*, decisively refutes the Legal Aid Society's first contention. At best, that inventory reveals that the Society represented 40 percent of the disposed defendant-indictments during the years 1982 to 1984.⁹⁶⁵ The first part of the Society's second contention, relating to the growth in the number of

able, provide representation to only one defendant. If no Panel attorney is available the Society will, upon request of the court, represent multiple defendants for the limited purpose of assisting with bail and/or release on recognizance determinations. 1985 Reply Memorandum, *supra* note 925, at 12.

965. The Legal Aid Society's claim of representing 50% of the Supreme Court caseload is exaggerated because it is based upon a comparison between the inventory of cases it claimed as "pending" with the inventory of pending cases compiled by OCA. OCA counted as "pending" only those cases in which a dismissal, acquittal, or conviction had *not* been entered. The Society, on the other hand, counted as "pending" all cases in which the defendant awaited sentence and in which the defendant had absconded within thirty days. OCA's instructions specifically state that cases where the defendant awaits sentencing are *not* pending for reporting purposes and that cases in which the defendant has absconded were to be counted as discontinued, *not* as pending. See OCA Instructions, *supra* note 921, at IIA, IIB, IV. The result is that the number of pending cases that the Society reported was greater than the number of cases attributed to it by OCA. The following tables show the magnitude of this problem. The figures show the Society's claimed percentage of citywide cases pending in Supreme Court as compared with OCA's own inventory of Legal Aid Society cases for an analogous period of time:

TABLE A: *Legal Aid Society Claimed Percentage of Pending Cases in Supreme Court, Citywide*

Week Ending	Legal Aid Society Inventory of Pending Cases	Total Citywide Reported Pending Cases*	Legal Aid Society Claimed Percentage of Citywide Cases
May 31, 1985	5,531	11,370	48.6%
July 30, 1985	5,708	11,924	50.5%
August 31, 1985	6,066	12,197	49.7%

TABLE B: *OCA Inventory of Legal Aid Society Pending Cases in Supreme Court, Citywide*

Week Ending	OCA Inventory of Legal Aid Society Pending Cases*	Total Citywide Reported Pending Cases*	OCA Percentage of Legal Aid Society Citywide Cases
Aug. 16, 1985	4,717	12,486	37.8%
Sept. 6, 1985	4,730	12,606	37.5%
Sept. 27, 1985	4,806	12,757	37.7%
Oct. 4, 1985	4,738	12,714	37.3%

* The OCA data indicates that the Society represented no more than 37.8% (not 50%) of the genuinely (by OCA standards) pending defendants in Supreme Court during selected portions of 1985. The discrepancy is attributable to the universe of cases counted within the Society's pending caseload. All of the Society's cases are not included in the universe of cases reported by OCA for each defense entity.

The Society believed it was justified in counting cases awaiting sentence, given the importance of representation at the sentencing stage. See Additional Reply Memorandum, *supra* note 963, at 19. However, the issue was not whether the Society was justified in including these cases in its own internal accounting system. Rather, the problem is that by including these cases, and cases in which the defendant has absconded, in its annual report to OCA, the Society inflated its proportionate share of the OCA inventory of pending cases.

cases handled by retained counsel, is questionable, once a comparison is made of the citywide inventory of Criminal Court dispositions with Supreme Court dispositions.⁹⁶⁶ This comparison reveals a growth in the percentage of cases handled by retained counsel of somewhat less than 4 percent.⁹⁶⁷

To test the Legal Aid Society's remaining contention regarding the proportionate growth in referrals to the 18-B Panel, we compared the number of final dispositions recorded by OCA for New York County with the number of multiple-defendant indictments. The latter were differentiated according to the number of co-defendants and were separately compiled by the New York County prosecutor.⁹⁶⁸ We then computed the difference between the actual number of defendants represented by the two defense entities in New York County⁹⁶⁹ and the number which would be expected if the 18-B Panel were truly limited to the role defined by the Society's contract, the *Bar Association*

966. See *supra* note 963. Compare the proportionate share of cases handled by retained counsel in Criminal Court (TABLE 7-4, at 788), with the proportionate share handled in Supreme Court (TABLE 7-2, at 782). In 1982, retained counsel handled an additional 6.9% of the citywide inventory. See *supra* TABLE 7-2, at 782. This number, however, appears to be attributable to the 12-week strike by the Legal Aid Society's staff attorneys.

967. But see *infra* note 981, which reveals that the percentage attributed to retained counsel in Criminal Court may be inflated as a result of the accounting practices of the 18-B Panel administrators, which failed to report the cases disposed of by Panel attorneys at Criminal Court arraignment.

968. The total number of disposed multiple-defendant indictments reported by the New York County prosecutor in 1984 (n=944) constituted 8.5% of the total disposed defendant indictments reported by OCA in New York County (n=11,126). See 1984 OCA Criminal Term Disposition Report, *supra* note 922, at 3. The New York County prosecutor's data is derived from computerized segregation (supplemented by hand counting) of all indictments differentiating between multiple-defendants in banded categories. These data include all *dispositions* in multiple-defendant cases in New York County for 1984 for (a) multiple-defendant indictments disposed of by the New York County District Attorney and (b) multiple-defendant indictments disposed of by the Special Narcotics Prosecutor's Office (many of which originated outside New York County.)

The following Table sets forth the findings of this analysis:

TABLE: *Multiple Defendants, New York County, Supreme Court, 1984*

Category	Multiple-Defendant Indictments	Number of Defendants Involved
Two defendants	798	1,596
Three defendants	115	345
Four defendants	25	100
Five defendants	5	25
Six defendants	1	6
Total	944	2,072

969. The actual case-count for both defense entities has been reconstructed based on the total known dispositions and the defendant-indictments identifiable for each attorney type. See 1984 OCA Criminal Term Disposition Report, *supra* note 922, at 3. The OCA figures are based upon the *known* ages of defendants. The OCA identified the vast majority of dispositions for the Legal Aid Society, the 18-B Panel, and retained attorneys and provides proportionate breakdowns as between each group. For the minority of dispositions where the attorney type and the defendant's age was *not known* and where the disposition resulted from Supreme Court information, disposition figures can be allocated between the Panel and the Society on the basis of their proportionate shares of the known age group.

Plan, and the Society's policies regarding multi-defendant cases and homicides.⁹⁷⁰ This enabled us to determine whether the sheer number of multiple-defendants could account for the Panel's increased caseload in Supreme Court, or whether that increase is attributable to the Society's case selection practices and shedding of non-conflict cases.

We made several assumptions in the course of our analysis. First, we assumed that retained counsel would have handled their proportionate share (21 percent) of multiple-defendants.⁹⁷¹ Second, we assumed that the 18-B Panel would have accepted all but a single defendant in multiple-defendant cases.⁹⁷² Third, we assumed that all but retained counsel's share of completed and attempted homicides were referred to the Panel, despite the fact that the Legal Aid Society was responsible for representing defendants charged with attempted homicide, and on rare occasion accepted representation in a completed homicide.⁹⁷³ On this basis the expected workload of the Panel in Supreme Court is 13 percent of the cases (1,384 defendant-indictments).⁹⁷⁴ We further assumed that the Society was able to represent all single defendants as well as one co-defendant in every multiple-defendant case, excluding a proportionate share (21 percent) for retained counsel and excluding all homicide offenses. Based on this added assumption, the expected Society share is 65 percent of all cases (7,276 defendant indictments).⁹⁷⁵ The results of this

TABLE: *OCA Disposition Figures for Both Defense Entities, Including Estimated Share of "Unknown" Dispositions, New York County, Supreme Court, 1984*

<i>New York County</i>			
<u>18-B Panel</u>		<u>Legal Aid Society</u>	
<u>Known Age</u>	3294	<u>Known Age</u>	4257
Share (32.7%) of age		Share (42.2%) of age	
not known, etc.,		not known, etc.,	
(n=1421)	464	(n=1421)	599
	3758		4856

970. See 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]; 1966 Bar Association Plan, *supra* note 955, art. I, at 925; *supra* notes 391-93, 509, 674-75; *supra* pp. 667-69.

971. See 1984 OCA Criminal Term Disposition Report, *supra* note 922, at 3.

972. The *maximum* defendant-load for 18-B Panel cases should have been 1,128 (i.e., 2,072 less the 944 represented by the Society). When 21% is excluded for private counsel, the expected Panel workload is 891.

973. In 1984, the Legal Aid Society, in its response to the Committee on Criminal Advocacy, reported handling 28 homicide trials, of which 16 were attempted murder cases. See 1985 Reply Memorandum, *supra* note 925, at 40.

974. Homicide offenses accounted for 5.6% of all disposed indictments in New York City. See DIVISION OF CRIMINAL JUSTICE SERVICES OF THE STATE OF NEW YORK, FELONY PROCESSING PRELIMINARY ANNUAL REPORT, INDICTMENT THROUGH DISPOSITION at 8 (1984) [hereinafter 1984 FELONY REPORT]. Thus, the number of estimated disposed homicide indictments in New York County is 623 (5.6% of 11,126). If the 18-B Panel accepted all but 21% (n=492), the Panel's expected workload is 1,384 defendant-indictments.

975. The Table, *supra* note 968, indicate the Legal Aid Society's representation (one co-defendant in each multiple-defendant case) should have yielded 944 defendants. Therefore, the Society is expected to represent 944 co-defendants and all single defendants, for a total of 9,998 defendant-indictments (11,126 minus 1,128). See *supra* note 968, TABLE. By subtracting 2,099

analysis are shown in *Table 7-3*.

TABLE 7-3: *Difference Between Expected and Actual Defendant-Indictments Handled by 18-B Panel Attorneys and Legal Aid Society Staff Attorneys, New York County, Supreme Court 1984*

	<u>n</u>	<u>%</u>
Total Disposed Defendant-Indictments		
OCA Inventory	11,126	100
Expected Legal Aid Society Representation	7,276	65
Actual Legal Aid Society Representation	4,856	44
Expected 18-B Panel Representation	1,384	13
Actual 18-B Panel Representation	3,758	34

Table 7-3 shows that the 18-B Panel represented almost three times the expected cases given the tenets of the *1966 Plan*. The Legal Aid Society's caseload is 20 percent less than expected. It illustrates the gap between the promise of the original defense delivery model and the system's reality. Had the Panel been limited to multiple defendants and homicides, as the Society contended it was, the Panel would have represented, at most, 13 percent of the disposed inventory. Instead, the Panel represented 34 percent of all disposed defendant indictments, or 2,373 cases beyond its anticipated share. Furthermore, had the Society undertaken representation of all single-defendant indictments and one co-defendant in multiple-defendant indictments, it would be expected to represent two-thirds of the disposed inventory; instead, it actually handled less than half of all final dispositions.

Some 90 percent of all indictments were single-defendant cases, while 85 percent of all multiple-defendant indictments were double-defendant cases in which the Legal Aid Society and the 18-B Panel had equivalent opportunities for representation.⁹⁷⁶ At most, 5 percent of the Panel disposed indictments involved more than two defendants. This small proportion cannot account for the growth of the Panel's actual share, which is well beyond its expected share.⁹⁷⁷ The Panel grew because of its increasing share of single-defendant indictments combined with the Society's failure to represent even a single defendant in a multiple-defendant indictment.

defendant-indictments (21%) for retained counsel and 623 homicide indictments, the Society's expected workload is 7,276. *See supra* note 974. A small number of single and multiple-defendant cases, in which the defendant is either a potential witness or uncooperative, will involve an actual conflict and preclude assignment to the Society.

976. *See supra* TABLE, note 968.

977. *See supra* note 968 & TABLE. Based on the figures presented in the TABLE, *supra* note 968, the Legal Aid Society and the 18-B Panel had equal opportunities for representation in 944 cases. Thus, in 184 cases, the Society did not have an equivalent opportunity for representation and the Panel's proportionate share of the total inventory of cases is, to this extent, exaggerated. The impact of removing this from *actual* Panel dispositions in New York County for 1984, *see supra* note 969, TABLE, can be seen as follows:

IV.

OCA INVENTORY OF CRIMINAL COURT DISPOSITIONS

Although equivalent Criminal Court data were not available for comparison of expected and actual representation, we were able to compare the proportionate share of each defense entity's caseload. Because the OCA citywide inventory which provided total final dispositions for Criminal Court cases⁹⁷⁸ was not broken down by attorney type, it was necessary to utilize data derived from both entities' internal records. These records enabled us to compute the proportionate share of citywide arrest cases. *Table 7-4* summarizes our results:

TABLE 7-4: *Inventory of Final Dispositions—Arrest Cases—Criminal Court, Citywide, 1984*

210,432 Final Dispositions ⁹⁷⁹		
Attorney Type	Number of Cases	Percentage
18-B Panel	34,302	16.3%
Legal Aid Society	128,912	61.3%
Retained Counsel	47,120	22.4%

TABLE: *18-B Panel "Equal Opportunity" Representation, New York County, Supreme Court, 1984*

	n
Actual 18-B Panel Representation in New York County, 1984	3758
Excess Representation Gained in Cases Involving more than Two Defendants	184
Representation that Would Have Occurred Without Excess	3574

Furthermore, this 5% reduction is a *maximum* one because it assumes that all multiple-defendants not handled by the Society were handled by Panel attorneys.

978. 1984 Caseload Activity Report — Arrest Cases, *supra* note 923.

979. The OCA dispositions include felony complaints held for action by the grand jury and final disposition for all misdemeanors, violations, and other offenses. We reduced the OCA total (n=228,391) by a factor of 1.1, (a number estimated by court administration sources to approximate the number of defendant-dockets to available assignments). This yielded 207,628 assignments. "Defendant-docket" is a counting method, utilized by OCAs similar to defendant-indictments. *See supra* 959. This counting method takes into account the fact that a defendant may be named in more than one Criminal Court docket and that one docket may name two or more defendants. Both defense entities counted cases in terms of assignments (approximately the number of defendants); it was, therefore, necessary to reduce defendant-dockets to assignments in order to compare the cases counted by both entities.

Using the Legal Aid Society's monthly caseload activity reports, *see supra* pp. 223-30, we calculated all of its net dispositions in Criminal Court. In 1984, the Society's net dispositions (convictions, dismissals, and acquittals) totaled 117,410. *See infra* note 986, TABLE B. The Society was also assigned 11,502 felony complaints which were held for the grand jury. We added these so-called "carryovers" to the final dispositions to arrive at 128,912 total dispositions in Criminal Court for the Society.

The number of 18-B Panel Criminal Court dispositions includes 26,240 net final dispositions, with an additional estimated 8,062 felony complaints held for the Grand Jury. *See supra* note 986. The "carryovers" were computed on the basis of the Panel's proportionate share of dispositions in Supreme Court for 1984 (31.1%), *see supra* TABLE 7-2, at 782, and the total number of citywide complaints held for the Grand Jury (n=25,924). *See* 1984 Caseload Activity Report — Arrest Cases, *supra* note 923.

This analysis reveals that the Legal Aid Society's actual share of the Criminal Court inventory (61.3 percent) was one fourth less than the Society had contended (80 percent).⁹⁸⁰ Nonetheless, the Society's share of Criminal Court cases (61.3 percent) was 20 percent greater than its share of Supreme Court cases (39.5 percent).⁹⁸¹

V.

INTERNAL DEFENSE ENTITY RECORDS RELATED TO FINAL SUPREME COURT AND CRIMINAL COURT DISPOSITIONS

The internal reports of the two defense entities confirm that 18-B Panel attorneys handled a proportionately higher number of serious cases to final disposition than their Legal Aid Society counterparts.⁹⁸² When a comparison is made between the distribution of serious cases in each defense entity's caseload, a greater proportion of Panel cases was resolved in Supreme Court, where trials accounted for over 10% of final dispositions,⁹⁸³ than in Criminal Court, where trials accounted for half of 1% of final dispositions.⁹⁸⁴

Our analysis, for 1984, based entirely upon completed cases excluding

The balance of the dispositions was attributed to retained counsel.

980. *See supra* text accompanying note 962.

981. *See supra* TABLE 7-2, at 782. Thus, the Legal Aid Society's workload was predominantly Criminal Court practice, while the 18-B Panel constituted a numerically equivalent first line of defense in Supreme Court. The 18-B Panel's share of Criminal Court dispositions, however, was likely higher than this analysis reveals. The Panel administrators' records, unlike the Society's, did not include the number of cases which Panel attorneys disposed of at arraignment. Often, court-appointed Panel regulars disposed of a large number of cases in a few hours. *See infra* notes 1014-17; TABLE 8-3, at 800; pp. 801-02. This under-recording has the effect of depressing the Panel disposition figure while inflating the proportion of dispositions attributed to retained counsel.

982. We chose the year 1984 so that a fair comparison could be made in the most recent year that the Legal Aid Society was unaffected by any strike. This was also the most recent year in which the monthly caseload activity reports were available to us. *See supra* p. 230. These monthly reports provided a detailed breakdown of the caseload pending at the end of each 30 day period. An analysis of the Society's monthly reports for 1983 and the first quarter of 1985 shows essentially the same breakdown as 1984.

Comparable data for the 18-B Panel were obtained through an analysis of the administrator's worksheet prepared in the Second Department, the Criminal Term Disposition Reports independently prepared by OCA for the First Department, and the Annual Report submitted by the First Department administrator. *See* Report UCS-195 (1984) (18-B 1st Dep't).

983. *See* Office of Court Administration of the State of New York, Supreme Court — Caseload Activity Reports (1984) [hereinafter 1984 Supreme Court Caseload Activity Reports]. In 1984, the Supreme Court disposed of 30,279 indictments citywide: 76.1% (n=23,031) resulted from guilty pleas and 10.2% (n=3,082) occurred after a trial; *see also supra* note 14. During the same calendar year the New York State Division of Criminal Justice Services (DCJS) reported that 85% of all final dispositions in Supreme Court, citywide, are convictions and 47.8% result in sentences to state prison. *See* 1984 FELONY REPORT, *supra* note 974, at 9.

984. *See* 1984 Caseload Activity Report — Arrest Cases, *supra* note 922. *See also supra* text accompanying note 13. In 1984, the Criminal Court disposed of 244,380 cases citywide — 99.5% (n=243,187) resulted from non-trial dispositions and 0.5% (n=1,193) occurred after a trial. Furthermore, of 237,463 arraignment dockets, 39% (n=92,265) were summarily disposed of at the initial appearance.

appeals,⁹⁸⁵ reveals that 25 percent of the 18-B Panel's final dispositions (8,601 of 34,841) were achieved in Supreme Court, as compared with only 7.4 percent of the Legal Aid Society's final dispositions (9,419 of 126,829).⁹⁸⁶ In contrast, 92.6 percent of the Society's final dispositions (117,410 of 126,829) occurred in Criminal Court, as compared with 75 percent (26,240 of 34,841) for 18-B. Even more striking, 56.6 percent of the Society's final dispositions (71,836 of 126,829) came about at Criminal Court arraignment, representing

985. Our analysis of completed cases (final dispositions) includes all pleas, dismissals, adjournments in contemplation of dismissal, acquittals, and convictions. Excluded are bench warrants, mental commitments, relieved cases, and transfers.

986. In 1984, the 18-B Panels handled 34,841 cases to final disposition: 9,000 were estimated arraignment dispositions in Criminal Court, *infra* pp. 863-64, 17,240 were dispositions in Criminal Court, and 8,601 dispositions in Supreme Court. See *infra* TABLE 11-8, at 872.

Disposition figures for the 18-B Panel were computed from the Second Department administrator's internal worksheets, as amended by the Panel administrator. These data (not appended to the administrator's report to OCA) distinguish between final dispositions in Supreme Court ($n=3,889$) and Criminal Court ($n=4,602$). Criminal Court arraignment dispositions ($n=4,500$) are estimated on the basis of our own analysis. See *infra* pp. 863-64.

The Panel's final dispositions in the First Department were computed from the Form UCS-195 (1984) and the Office of Court Administration of the State of New York, Supreme Court Criminal Term Disposition Report (1984).

The OCA figures identify the vast majority of disposed defendant-indictments. For the minority of dispositions where the attorney type was *unknown*, where defendant's age was *not known*, and the disposition resulted from Supreme Court information, disposition figures can be allocated on the basis of the 18-B Panel's proportionate shares of the known age group.

TABLE A: OCA Disposition Figures for 18-B Panel, Including Estimated Share of "Unknown" Dispositions, First Department, 1984

<u>New York County</u>		
	Known Age	3,294
	Share (32.7%) of age not known, etc., ($n=1421$)	464
	TOTAL	3,758
<u>Bronx County</u>		
	Known Age	1,406
	Share (31.2%) of age not known, etc., ($n=1197$)	373
	TOTAL	1,779

The total number of disposed defendant-indictments for the 18-B Panel in the First Department is 5,537. To include an analysis with the completed cases (assignments) reported by the Panel administrators this figure must be reduced by a factor of 1.175 — the ratio of defendant-indictments to defendant-assignments. Thus, the total number of disposed assignments is 4,712. (The ratio of 1.175 defendant-indictments to assignments is obtained by dividing the total number of disposed 18-B defendant-indictments reported by OCA in the Second Department, ($n=4,558$), by the actual number of completed cases (assignments) ($n=3,889$), reported by the Second Department administrator.) The total final 18-B Panel First Department dispositions figures are 21,850. Of these, 4,712 were Supreme Court dispositions, 12,638 Criminal Court dispositions, see UCS-195 (1985) (18-B 1st Dep't), and 4,500 arraignment dispositions. See *infra* pp. 863-64; TABLE 11-8, at 872.

The Legal Aid Society's dispositions were obtained from an analysis of the Society's monthly caseload activity reports for calendar year 1984. The Society handled 126,829 final dispositions — 71,836 occurred at arraignment in Criminal Court, 45,574 in Criminal Court and 9,419 in Supreme Court.

17 percent of the Society's staff attorneys' efforts.⁹⁸⁷

VI. CHAPTER SUMMARY

The annual reports to the Office of Court Administration filed by each defense entity do not provide an adequate basis for measuring the respective caseloads of the 18-B Panel and the Legal Aid Society. The Society's contentions: (1) that it accepted 79 percent of all arrest cases in Criminal Court and 50 percent of filed indictments in Supreme Court;⁹⁸⁸ (2) that the growth in the Panel caseload did not result from a "shedding" of cases by Society staff attorneys or its case selection practices;⁹⁸⁹ and (3) that the disproportionately low number of assignments the Society took in Supreme Court resulted from the increased presence of retained counsel and the greater number of multiple-defendants,⁹⁹⁰ are all products of the Society's inaccurate reporting procedure.

Our analysis of OCA data reveals a substantially different caseload distribution. In Supreme Court, citywide, where the Legal Aid Society claimed in 1984 to represent 14,028 cases to final disposition, it actually handled only 9,419 to completion.⁹⁹¹ In comparison, 18-B Panel attorneys handled 8,601.⁹⁹² In New York County, the Society represented only 44 percent of Supreme Court defendants against an expected proportion of 65 percent.⁹⁹³ Conversely, Panel attorneys took 34 percent of the total caseload against an expected proportion of 13 percent.⁹⁹⁴ In Criminal Court, citywide, where the

TABLE B: *Legal Aid Society Dispositions, Citywide, 1984*

	Total Criminal Court Dispositions	Disposed of at Arraignment	Supreme Court Dispositions
January	9,164	5,532	712
February	8,846	5,372	735
March	9,152	5,050	813
April	9,190	5,655	790
May	10,176	6,564	805
June	9,346	5,679	829
July	10,408	6,599	839
August	9,278	6,184	576
September	10,230	6,262	755
October	12,078	7,100	979
November	10,607	6,287	869
December	8,935	5,552	717
	117,410	71,836	9,419

987. The Legal Aid Society has stated that it "committed the equivalent of 86 staff attorney years to [arraignment] assignments." See 1985 Reply Memorandum, *supra* note 925, at 10. During this period, the Society employed 502 full-time attorneys. Report UCS-195 (1984) (Legal Aid Society). Consequently, this commitment of 86 staff attorneys years equals 17.1%.

988. See *supra* note 962, and accompanying text.

989. See *supra* note 964 and accompanying text.

990. See *supra* note 963 and accompanying text.

991. See *supra* note 986, TABLE B.

992. See *supra* note 986 and accompanying text.

993. *Supra* TABLE 7-3 at 787.

994. *Id.*

Society reported representing 179,284 dispositions in 1984, it actually handled 117,410 such cases to completion.⁹⁹⁵ While its Criminal Court caseload share was greater (61 percent), it was much less than the Society's claimed share of 79 percent.⁹⁹⁶

Our research identified a clear redistribution to the 18-B Panel of a substantial portion of the Legal Aid Society's caseload in Supreme Court. Between 1982 and 1984 the Panel handled between 31 percent and 36 percent of all final dispositions in Supreme Court, while the Society handled between 32 percent and 40 percent of all completed cases.⁹⁹⁷ This growth in the Panel's caseload belies the Society's contention that it continued to function as the sole major provider of indigent defense services.⁹⁹⁸ In 1984, the Society was relieved of 19 percent of its assignments in Criminal Court and 21 percent of its assignments in Supreme Court.⁹⁹⁹ These figures suggest that an informal mechanism had been established whereby felony cases were referred to the Panel in substantial numbers.

Given the enormous, uncontrolled increase in referrals to the 18-B Panel, it is essential to understand the mechanisms which rendered the Panel an equivalent first line of defense. The ensuing chapters will review the sorting and selection of cases, and analyze the practices that explain this growth in referrals to 18-B Panel attorneys.

995. Compare Report UCS-195 (1984) (Legal Aid Society) with *supra* note 986 TABLE B.

996. See *supra* note 962 and accompanying text; see also *supra* TABLE 7-4, at 788.

997. See *supra* TABLE 7-2, at 782.

998. See *supra* note 964 and accompanying text.

999. See *supra* note 940 and accompanying text.