

PART TWO

THE STRUCTURE AND OPERATION OF THE 18-B PANEL AND THE LEGAL AID SOCIETY

The next seven chapters present the results of our empirical research in New York City. Chapters Four through Six explain our research design and provide data on the operation of the rotational assignment system, the composition of the 18-B Panel and of the Legal Aid Society staff attorneys, and the quality of Panel representation. Chapters Seven through Eleven examine the workload of the 18-B Panel and the Legal Aid Society, their proportionate share of citywide arrest cases and filed indictments, and the managerial policies and lawyering practices of both defense entities that transformed the 18-B Panel from a residual entity to a major provider of indigent defense services.

We begin, in Chapter Four, by describing our methods and goals and how we modified our objectives when the Legal Aid Society denied us access to certain records and aggregate statistics. We then describe the source of the data ultimately used to analyze the operation of the 18-B Panel and the Legal Aid Society, the quality of indigent representation, the interdependence of both defense entities, and the comparative costs of both methods of representation.

Chapter Five describes the 18-B rotational assignment system and provides demographic data on “active” and “inactive” 18-B Panel attorneys, with comparative data on Legal Aid Society staff attorneys. The chapter includes an analysis of the work and income patterns of Panel attorneys. We present data on the emergence of a core group of Panel regulars and compare their income patterns from court assignments with the salaries of Society staff attorneys.

Chapter Six compares the quality of representation provided by 18-B Panel attorneys in the First Department (New York and Bronx Counties) against national standards for the defense function. The chapter describes the in-court and out-of-court lawyering activities of Panel attorneys, as documented in over 14,000 case vouchers spanning a three year period. We measure the extent to which Panel attorneys provided continuous representation, conducted interviews, undertook an investigation, engaged in pre-trial motion practice, and prepared for trial.

Chapter Seven shows whether each entity’s proportionate caseload over a three year period was consistent with its expected caseload under the 1966 *Plan*. The chapter provides data on the number of defendants represented by each defense entity in Supreme Court and Criminal Court, and the extent to which the 18-B Panel handled a higher proportion of indicted defendants than did the Legal Aid Society. We explain how the Society and the Panel’s report-

ing practices misconstrued their actual caseload and distorted efforts at a comparative caseload analysis.

Chapter Eight analyzes the case taking practices of attorneys from both defense entities at arraignment. The chapter presents data on the frequency of judicial appointment of 18-B Panel attorneys and the extent to which the Legal Aid Society staff attorneys accepted an equitable share of the arraignment workload. We show how Panel attorneys' arraignment practices interacted with the Society's caseload policies, and how staff attorney caseloads, morale and motivation contributed to the Society's shedding of non-conflict cases to the Panel.

Chapter Nine examines the Legal Aid Society's case selection policies in multiple-defendant cases. It provides data based on our own observations of co-defendant cases over a six month period in New York County. These data separate co-defendants selected by the Society and referred to the 18-B Panel according to factual culpability, prior criminal record, and bail status. In this chapter, we analyze the effects of case selection on the Panel's share of indicted defendants and on the trial rate of both defense entities.

Chapter Ten examines the extent to which Legal Aid Society staff attorneys provided continuous (vertical) representation following arraignment, and the effect that discontinuous representation had on the 18-B Panel's proportionate share of indigent defendants. The chapter provides data on the appearance rate of Society staff attorneys and Panel attorneys in both single-defendant and multiple-defendant cases. We show how the Society's low appearance rate often resulted in the substitution of Society staff attorneys by Panel attorneys.

Chapter Eleven analyzes the per-case cost for both defense entities and its importance to the City of New York when formulating policy regarding the continued expansion of the 18-B Panel. The chapter provides data on the actual cost of misdemeanor, felony and homicide representation in over 13,000 Panel case compensation vouchers, and the comparative case costs of Panel and Legal Aid Society representation. To undertake this analysis, we standardized the caseloads and expenditures of each defense entity and weighted each entity's completed cases according to charge severity and method of disposition.