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A Report on Chicago's Felony Courts: Executive Summary (Chicago Appleseed Fund for Justice Criminal Justice Project, December 2007) (member of advisory board)

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A Report on Chicago's Felony Courts Executive Summary



Chicago Appleseed Fund for Justice Criminal Justice Project

December 2007

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Introduction

The sheer volume of cases in Chicago's felony courts overwhelms the judges, prosecutors, and public defenders. This report focuses on the main Criminal Courts Building at 26th Street and California Avenue, where most felony cases are tried. The courtrooms hear more than 28,000 cases per year; each judge has on average 275 cases pending at any one time. The adult probation department seeks to handle more than 23,000 offenders. The jail houses nearly 10,000 inmates awaiting trial. The courts struggle to adapt to the realities of operating beyond capacity, but patchwork adaptations are not good enough.

This report is a result of unprecedented cooperation among leaders with a commitment to reform. Presiding Judge Paul Biebel, State's Attorney Richard Devine, and Public Defender Edwin Burnette provided both advice and data. An advisory committee of local experts identified issues and reviewed findings.

Public policy decisions involve tough choices. We want safety and, at the same time, low taxes. But in criminal justice, as in so much else, we cannot have all we want. We may hope, however, to make informed choices, based on facts. It is our objective here to provide facts and constructive recommendations.

The Research

The report draws on 104 intensive interviews with lawyers, judges, and experts in criminal justice, 160 hours of observation of 550 proceedings in 25 different courtrooms, another 45 interviews with persons having extensive knowledge of the criminal justice system, responses from a survey of state's attorneys and public defenders, and information supplied by the offices of the Presiding Judge, State's Attorney, and Public Defender. We also interviewed defendants, victims, other court participants, and lawyers and experts from other jurisdictions.

Findings and Recommendations

FINDING 1: THE STATE LEGISLATURE HAS OVERBURDENED THE CRIMINAL COURTS BY PASSING CRIMINAL LAWS WITHOUT REGARD TO COST, IMPACT, OR RESOURCES.

The State legislature determines which offenses should be treated as felonies. Legislators need to recognize the consequences of loading more and more cases on an already overburdened system without providing resources.

Recommendation

- **Evaluate the impact of pending legislation.**

We call for a legislative review commission that will attach a "criminal justice system impact statement" to each pending piece of legislation, estimating the potential costs.

FINDING 2: THE COOK COUNTY BOARD HAS TOO OFTEN REGARDED CRIMINAL JUSTICE AS A SOURCE OF PATRONAGE JOBS AND HAS NOT GIVEN ADEQUATE CONSIDERATION TO ITS RESOURCE NEEDS.

This attitude conflicts with the goal of creating and maintaining a high quality, professional, adequately staffed criminal justice system in Cook County.

Recommendation

- **Appoint an independent oversight commission.**

An independent oversight commission is needed as a buffer between the County Board and the day-to-day operations of court personnel. This Commission would also provide a vehicle for budgeting discussions among the stakeholders, so that decisions are informed by those who manage the caseload and see the consequences.

FINDING 3: THE SYSTEM MUST GIVE GREATER ATTENTION TO THE PUBLIC IT IS INTENDED TO SERVE.

It is very important that the courts be authoritative, professional and unbiased. The courts are not social service agencies, but they should treat all members of the public with courtesy and respect, and even with understanding. Whether one is a defendant, a victim, a witness, or a family member, a trip to the felony courts is intimidating. To some extent, this is inevitable, but it does not need to be threatening and uncomfortable. Our observations and interviews demonstrate that, too often, court personnel at 26th and California fail to meet acceptable standards of conduct.

The 26th Street building is a stark contrast to the more modern, more hospitable courthouses found elsewhere. Victims and witnesses, families, defendants out on bail, and jury members encounter inadequate parking in a decrepit parking garage and then a security line so long that it snakes down the steps of the building. When they finally locate their assigned courtroom, they are too often met with impatient judges and advocates whose morale is at low ebb.

In about half of the courtrooms, the audience is separated from the proceedings by thick, soundproof glass. Only when microphones are properly used can the gallery, full of victims and family members, hear. In the larger courtrooms, acoustics are poor. Individual judges have rules that families and witnesses must follow. Some do not allow children in their courtrooms, and no childcare is provided.

Court observers and interviewed defendants were troubled by overly cozy relationships among the prosecutors, public defenders, and judges. We heard defendants and family members on both sides express concern that their cases were not taken seriously. Assistant State's Attorneys and defense counsel must confer about case scheduling and plea negotiations, but defendants and victims lose confidence in the system when they perceive the actors in the system to interact in ways that do not reflect their need for professional independence.

Under the administration of Presiding Judge Biebel, improvements have been made in the courthouse, and more are planned. The physical facilities have been improved, and mental health and drug courts have been created. But more steps must be taken. There is almost universal acknowledgment among the major players that the system needs significant improvement. It now survives day-to-day, but at great cost to society.

Recommendations:

- **Establish a code of conduct.**

A task force of judges, prosecutors, public defenders, deputies, and advocates for crime victims should collaborate to draft a code of conduct setting standards of behavior that emphasize the importance of civility, order, and safety. The code should require, among other things, that the public be treated with respect and courtesy, regardless of an individual's race, ethnicity, gender, or socioeconomic class.

- **Reinstate court watching.**

A pool of volunteers diverse in race, ethnicity and age should evaluate the level of professionalism in each courtroom with a focus on management, temperament, and the overall conduct of the court.

- **Revive the court information program.**

Victims, witnesses, and families need information about cases, but such assistance was discontinued due to budget cuts. The program should be reinstated and expanded.

- **Preparation rooms, annexed to the courtrooms, should be built.**

Because of a lack of rooms in which witnesses and police officers can wait before testifying, police are often seen going into the back rooms of the courtrooms. This leads laymen to conclude that police are fraternizing with judges and lawyers in the back rooms, and that improper conversations take place among these "insiders."

- **Judges should observe their peers.**

The presiding judge should initiate a program in which judges observe each other's courtrooms in order to minimize inconsistency in the way judges address defendants and the gallery. Judges should strive for uniformity of rules and procedures.

- **Improve public access to the proceedings.**

Courtrooms should be remodeled to eliminate separation between the galleries and proceedings. Microphones should be used in the larger courtrooms to compensate for poor acoustics. Funds should be sought to support childcare services for witnesses and families. The entry system should be reconfigured to permit people to wait inside, or be expedited to reduce time spent standing in rain or snow.

- **Judges must provide leadership so that the system appears fair and is fair.**

Judicial training courses should focus on public perceptions of propriety. Plea conferences should be in open court and on the record. Judges should take the time to explain the proceedings to participants and observers.

- **After a 26th Street state's attorney or public defender is elected or appointed to the bench, there should be a reasonable period of time before he or she is assigned to that location.**

Almost all of the judges at 26th Street formerly served as attorneys in the building. About three-fourths are former prosecutors, while the other fourth are former public defenders. A greater degree of professional distance between the role of lawyer and the role of judge would be desirable.

FINDING 4: NONVIOLENT DRUG CASES OVERWHELM THE SYSTEM.

The judges are overburdened by excessive caseloads—each receiving, on average, more than 800 new cases per year. This means that the average judge must dispose of nearly four felony cases per workday, and determine the appropriate sentences for those convicted. This does not leave much time for trials. A 1993 judicial caseload study done by American University concluded that, in order to handle 29,307 cases each year, 26th Street needed 65 judges. Today, it has only 36.

The National Center for State Courts recommends that continuances be granted only for good cause, not by agreement. Nevertheless, we observed judges freely granting continuances by agreement.

Non-violent, drug-related charges make up more than half of the cases. When asked to identify changes they would like to see in the criminal justice system, more than a third of the professionals focused on drug cases. There was nearly unanimous frustration: “Drug cases have crippled the system,” said one prosecutor. Another prosecutor said: “We’ve become a factory mill, just concerned with the disposition of the case. There’s not enough consideration of if the person needs prison time or needs an extra attempt at rehabilitation.” The volume of drug prosecutions is dealt with through assembly-line plea bargaining. There is a feeling of grim reality among courtroom professionals about the system’s inability to rehabilitate addicts, but there is no consensus about how to deal with drug abuse. Many judges believe that the existing alternative treatment programs are ineffective. Another prosecutor said that the system “has no choice” but to ship offenders to prison.

Because of the restricted sentencing options, prosecutors and judges try to avoid treating these drug cases as felonies, especially for first-time offenders. “People charged with small amounts of possession usually are dismissed because of the number of cases,” notes one prosecutor, “and those are the cases that should be getting treatment alternatives.” There is also a strong incentive for defendants to plead guilty to drug charges to avoid harsh minimum sentences.

Even though reduced charges in drug cases may allow for probation instead of jail time, many offenders fail probation because the system does not provide the supervision and rehabilitation needed to return them to productive society. One former probation officer told us, “adult probation that provides only one unsupervised check-in is useless as a way to give real services.” Judges vary as to whether they enforce the conditions of probation. Probation cannot work without a well-funded, consistently applied program.

Like other defendants aged 18 to 25, nonviolent drug offenders are excluded from the juvenile court system. Many of them could be rehabilitated. Their potential value as productive members of society argues for more flexibility in sentencing.

Recommendations:

- **Increase funding for and oversight of the probation system.**

As is true of the juvenile probation system, which currently has enough resources to provide a number of different services, an adequately funded and managed adult probation department should be a “mission control” of sorts. That is, the probation department should work to coordinate the availability of new drug and mental health

treatment services, education programs, and vocational training. Adult probation needs the resources that could permit it to identify and secure vocational, education, and treatment options.

- **Expand the use of private, community-based organizations for supervised, rehabilitative probation.**

Drug therapy, counseling, and job and life skills should be pursued with the assistance of community-based social service agencies and faith-based organizations. An outside monitoring group including practitioners, criminal justice experts, and others with specialized knowledge of probation should annually report on the progress made by the adult probation system.

- **Redefine young, non-violent offenders as a “post juvenile” category of defendants.**

Current programs targeting 17 to 18 year old juveniles could be extended to teach accountability and life skills to 18 to 25 year olds. Only by rehabilitating young defendants can we hope to decrease the number of repeat drug offenders.

- **Expunge criminal record after successful completion of probation.**

After probation and three years of good behavior, there should be a presumption in favor of expungement of the criminal records of those convicted of nonviolent drug offenses. Felony convictions severely limit employment.

- **Create up to four new drug courts with a focus on diversion/treatment programs.**

Diversion and treatment programs, combined with supervised probation, offer the best hope for rehabilitation. More judges will be needed to ensure the success of these programs.

- **New Facilities are needed with courtrooms dedicated exclusively to narcotics cases in which the defendants are eligible for diversion and cases involving mental health issues.**

Adding more drug courts and providing a separate facility to handle narcotics cases in which the defendants are eligible for diversion and cases involving mental health issues would reduce overall caseloads per courtroom and provide more opportunity for systematic intervention.

- **Create, through legislation, a station adjustment model for dealing with possession of small amounts of controlled substances.**

The criminal justice system would benefit from programs that divert persons from the system and assist them in identifying effective treatment alternatives. Station adjustments are limited interventions, used primarily in the juvenile court system, that allow police to handle a matter without involving the court system. An informal station adjustment is often a warning. A formal station adjustment involves referral to a treatment program. The adult criminal justice system is overwhelmed with non-violent offenders who are charged with possession of small quantities of controlled substances. We recommend that station adjustments be added to the tools used to deal with non-violent persons with a drug problem. These individuals need services, and the ability to use station adjustments will allow at least some of them to receive treatment without having to enter the court system.

- **The drug school concept, operated on a deferred prosecution basis by the State’s Attorney’s Office, should be expanded. The Juvenile Drug School Program, eliminated due to budget constraints, should be re-established.**

Criminal justice needs more deferred prosecution alternatives – programs that, if completed, allow a person to proceed with his or her life without a felony conviction on record. The State’s Attorney’s Office has a school-like program for those facing felony charges related to drug use. If an offender completes the program, the felony is not charged. Pending legislation would permit this program to handle more defendants. We also recommend revival of the Juvenile Drug School Program, which was eliminated due to budget constraints. This program was similar to the one in the adult Criminal Division. Funding such a program in the short-term will reduce longer-term costs.

- **Increase training for defense counsel, prosecutors, and judges about the availability of diversion and treatment programs.**

Some diversion and treatment programs operate at 26th Street. While more are needed, it is important that the existing services be utilized more extensively. We recommend that the Court and the State’s Attorney’s Office sponsor training sessions to discuss the value to defendants of taking advantage of existing programs.

- **The Rehabilitation Alternative Probation Program (RAP program) should be expanded into the Second, Third, and Fifth Municipal District.**

The RAP program in the Criminal Division targets nonviolent probationers who are subsequently charged with possession of a gram or less of a controlled substance (i.e. a class 4 felony drug charge). If the probationer elects to participate in RAP, the new charge is dismissed and the probationer is sentenced to RAP for the violation of probation. This program was widely praised during our interviews with both prosecutors and defense counsel. It should be expanded to include courtrooms in the municipal districts. This would require additional Assistant State’s Attorneys to be in these courtrooms.

- **In creating legislation, attention should be paid to replacing mandatory minimum jail sentences with treatment and rehabilitation alternatives.**

FINDING 5: THE CRIMINAL JUSTICE SYSTEM HAS BECOME THE DE FACTO COMMUNITY MENTAL HEALTH SYSTEM.

Jails have become the largest providers of mental health care in our large cities, and this is stretching the resources of the criminal justice system. It is estimated that at least 20% and perhaps as many as half of the inmates of Cook County Jail suffer from untreated mental illness. This de facto mental health care system is woefully inadequate. A majority of the judges said that mental health needs are not being handled effectively.

Mental health courts are designed to keep persons with mental illness out of prison by placing them into treatment, preventing the cycle between jail and street. The Trotter Report, conducted by American University in 2005, noted that the most immediate impacts of mental health courts are the savings in correctional costs (jail and prison) and recidivism reduction. Participants spent an average of 115 days in jail in the year

prior to entering the program. In contrast, in their first year in the program, they spent an average of 15 days in jail.

Recommendations

- **Provide improved resources for mental health services and a system to identify the most serious or difficult cases and give them priority.**

Defendants should receive mental health services as soon as possible after arrest. Programs that keep mentally ill persons out of the criminal justice system would save money. Community programs make assistance and treatment available before, during, and after the court process. If mentally-ill defendants can be identified before spending much time in jail, not only will prison populations be reduced, but the defendants will receive treatment. If the defendant can be stabilized before his court date, it is more likely that he or she will receive a mental health probation sentence to facilitate rehabilitation.

- **Mental health courts should be expanded and adequately funded.**

Mental health courts provide needed services to only a limited number of defendants. While some of the personnel interviewed during the course of this study would rather devote the money to jail or community-based programs, these courts are a valuable resource. A deferred prosecution option would allow an eligible defendant to receive mental health treatment without having a felony conviction on record.

- **Delays in reports on fitness for trial must be reduced.**

More clinicians and more training for the existing clinicians at the Forensic Clinical Services Department are necessary in order to keep cases moving and to determine whether alternative treatment is appropriate for mentally ill defendants.

- **The Chicago Police Department's CIT program must be maintained with adequate funding and resources.**

The courts work with programs like Crisis Intervention Team Training (CIT) to create a network of assistance and treatment before, during, and after the court process. Even before defendants arrive at the court system, police officers have discretion to take potentially mentally ill persons straight to jail or to a hospital to be stabilized. In 2004, CIT was introduced in an attempt to raise awareness of signs of mental illness. Trained police officers try to ensure that patients get services as an effective alternative to incarceration. The program has received enthusiastic support from mental health officials within the court system. A private/public partnership, in which private individuals and foundations partner with government agencies, could provide resources.

FINDING 6: THE OFFICES OF THE PUBLIC DEFENDER AND THE STATES ATTORNEY SHOULD CONTINUE TO STRIVE FOR IMPROVEMENTS IN EFFICIENCY AND EFFECTIVENESS.

The Public Defender's Office

The Assistant Public Defenders

Eighty-four attorneys serve in the felony trial division. Each is assigned to a single courtroom at 26th Street, and these lawyers handle the majority of felony cases. Each defender had 67 pending cases at the end of 2005, on average, and had resolved about

229 cases that year. This heavy caseload is a source of great frustration, and there is no system permitting public defenders to decline to accept a case when they are overextended.

The office has equal numbers of men and women, and 25% of the public defenders are African-American, 3% are Asian, and 6% are Hispanic. The average length of service among current felony division attorneys is seven years, and is longer in the office's more specialized groups.

The office is unionized. Most public defenders view the union as both a positive and a negative. While the union has arguably made it more difficult for management to implement reforms, it has increased salaries and made the advancement process less political, according to people in the office. One public defender, observing that being an Assistant Public Defender (APD) is now viewed as a "career," said that because of the union "the Public Defender's office is not the revolving door that it used to be."

Conflict with clients contributes to the emotional exhaustion of some APDs, which leads them to burn out on the job. "On a good day, there's no better job. It's wonderful to feel you are helping people. On a bad day, you never want to come back," said one APD. Although a third of public defenders were critical of their salaries in our anonymous surveys, none mentioned it in one-on-one interviews. Forty percent of interviewed APDs said that they expected to still be in the office ten years from now.

Hiring

In 2005, 367 applications were received for 15 new attorney positions. Because offers are not made until after applicants pass the bar exam, hiring decisions are made well after many of the most capable applicants have found other jobs.

Training

The office lacks a strong culture of training and mentoring. Budget constraints have resulted in less training within the last two years. Several new hires said that the initial training process is inadequate. They describe a "sink-or-swim" environment in which lawyers must figure out for themselves how to do things.

Public defenders represent with some clients who have special problems, such as immigration and mental health issues. Several ADPs noted that they did not feel confident advising clients on the immigration consequences of pleas. Juveniles being tried in the adult system also present issues requiring specialized knowledge.

Office Structure and Accountability

The APDs are supported by forty administrative staff and thirty investigators. This includes seven administrative assistants, two interpreters, eighteen stenographers, and thirteen clerks. There are no paralegals, although they might present an economical way to increase productivity without hiring additional attorneys. Unpaid law students volunteer as law clerks. Although the majority of public defenders said that they were satisfied with the support staff in general, 80% said that the investigators were less than adequate and that investigations were often delayed and incomplete. APDs note that caseloads would be more manageable if there were more investigators.

APDs are supervised by more experienced attorneys. The quality of supervision and mentorship seems to vary greatly, according to interviews and surveys. At least part of the reason for this is the substantial number of supervisor vacancies and the failure of the Cook County Board to allow the office to fill these vacancies without political interference.

Public defenders handle most cases horizontally – that is, each APD is assigned a courtroom and handles the case only at a certain stage of the proceedings. Assignment to one courtroom can have advantages. As one judge notes, working with the same staff every day makes for “efficient” work. It also means, however, that the case changes hands among APDs, reducing familiarity with the case.

The office is perceived to hold its lawyers accountable for their work, with positive incentives for high performance and consequences for poor performance.

Office Space

The office is located on two floors of the building at 26th Street. Most attorneys share offices with one or two other public defenders in the cramped space. Several APDs complained about broken desks and water fountains, and bug infestation. “It makes it so you don’t want to be here; it’s not a good environment to work in,” said one public defender.

Recommendations:

- **Hiring procedures must be modified so that the office can make job offers when competing employers are making offers:**

This would permit the office to be more competitive in hiring the best qualified applicants.

- **Resources should be concentrated on attracting and retaining supervisors who provide hands-on assistance to APDs:**

The office should be allowed by the Cook County government to fill supervisory slots available in the 2006 and 2007 budgets without political interference. The office should also provide regular management training, and assure that supervisors have a stable career track, free from threats of political hiring, promotion, or firing. Currently, the Public Defender’s office usually functions as a group of solo practitioners.

- **Realistic ceilings on monthly caseloads should be established, and the resources necessary to meet these goals should be provided:**

Currently, APD caseloads exceed national guidelines and there is no mechanism by which APDs can refuse additional cases. When faced with an excessive caseload, public defenders should pursue all reasonable means for alleviating the problem. According to a recent opinion issued by the American Bar Association, “if a lawyer believes that her workload is such that she is unable to meet the basic ethical obligations required of her in the representation of a client, she must not continue the representation of that client or, if representation has not yet begun, she must decline the representation” (ABA Standing Committee on Ethics and Professional Responsibility. May 13, 2006).

- **Additional training is needed in specific areas of law, including immigration law and mental health issues, with mandatory sessions required.**
- **Social workers should assist APDs in dealing with defendants with mental health problems:**

Schools of social work could provide needed expertise, including advice on access to mental health services. An externship program should link the office to graduate programs in social work in the Chicago area.

- **The office should contest issues that affect groups of clients and involve recurring violations of defendant rights, such as jail conditions, caseloads, and discovery compliance.**

The office should consider using private sector pro bono legal assistance in pursuing these cases.

- **The office should issue an annual report noting the accomplishments and the needs of the felony trial division.**
- **Better statistical reporting would permit evaluation of performance, allowing the office to identify areas where training or other resources are needed.**

The State's Attorney's Office

The Assistant State's Attorneys

About half of the Assistant State's Attorneys (ASAs) serving at 26th Street are female, 85% are Caucasian, 7% are African-American, 4% Hispanic, and 4% Asian-American.

The more than 28,000 felony cases are prosecuted annually by 199 ASAs. A third of those interviewed said that caseloads were unmanageable, and there was evidence that courtroom performance is adversely affected by the high volume of cases. During this year's budget cuts, the office lost 50 attorneys—placing further strain on the remaining prosecutors.

Before arriving at the felony courts, ASAs have several years of trial experience. Like public defenders, most prosecutors in the felony trial division are assigned to a specific courtroom. Specialized units, however, may work on cases vertically, from start to finish.

The overwhelming majority of prosecutors were satisfied with their jobs -- 70% were "very satisfied." Many mentioned poor pay, however. Because the office is not unionized, they have been unable to bargain for better pay raises, as have the APDs. Perhaps as a result, only 25% of prosecutors said they would still be in the office ten years from now.

Hiring

The State's Attorney hires about 92 attorneys per year from about 1400 applications.

Training

The office conducts a three-day orientation for newly hired ASAs each November. Two months later, new hires attend a trial advocacy training program. When ASAs reach the felony trial division for the first time, they receive another orientation and extended trial advocacy training. 75% of prosecutors felt that this initial training was “generally adequate.”

Further training, once or twice annually, is required for all attorneys. The office also conducts semimonthly hour-long sessions on specific issues. These are mandatory for new attorneys, and experienced attorneys often attend. More than 85% of prosecutors surveyed believed that this ongoing training was usually, almost always, or always adequate.

Office Structure and Accountability

ASAs are supported by 300 administrative assistants and at least 35 law clerks. Almost three-quarters of the prosecutors surveyed said that their support staff was usually or always adequate. The ASA’s also have 139 investigators, and 89% of ASAs said the investigators were usually or always adequate.

Prosecutors took it as a “given” that drug lab services would be slow, but 88% indicated that these services were usually or always adequate. DNA lab services, however, took far too long and had quality control problems.

Each team of prosecutors assigned to a courtroom has three lawyers. The “first chair” is the most experienced attorney, acting as a de facto supervisor for the team. This structure reinforces mentoring within the office. Prosecutors rank their supervisors very highly, with 96% evaluating them as usually or always adequate.

Like public defenders, ASAs believe that trial experience is critical in achieving promotion. A vast majority of respondents said that laziness or poor work would cost the lawyer the respect of colleagues.

Office Space

The office occupies four floors at 26th Street. Supervisors have their own offices, but all other interviewed ASA’s share offices with one or two other prosecutors. ASAs are highly critical of the space, with only 19% indicating that it is usually or always adequate, and a full 41% saying that it is always inadequate. Since our interviews, however, there have been improvements in the office space used by ASAs.

Recommendations:

- **There should be pay parity between the ASAs and the APDs, for both trial lawyers and supervisory lawyers. An independent group should collect the appropriate data and issue a public report.**
- **Caseloads should be reduced to levels dictated by national standards. Budgets and diversion programs should be tied to the need to meet national standards.**
- **Prosecutors need specialized training in dealing with mentally ill and drug-addicted defendants.**

- **The office needs to find ways to maintain training programs.**

While the initial training of prosecutors has been good, there is a need for more continuing education.

- **DNA lab services should be expedited. They take too long, causing costly delay for prosecutors.**
- **Office space is inadequate and should be upgraded to include additional conference rooms for witness preparation and for meetings with families and police officers.**
- **Funding should be provided to hire an ASA to oversee diversity training, and to spearhead recruitment in an effort to increase the number of prosecutors of color.**
- **The office should increase ethics training.**

The office should reinforce, especially with younger Assistants, the policy that winning at all costs is not the goal.

- **Community offices, eliminated because of recent budget cuts, should receive the funding necessary to re-open.**

FINDING 7: VIGOROUS ENFORCEMENT IS NECESSARY AND PROPER, BUT THE LEGAL RIGHTS OF DEFENDANTS MUST BE RESPECTED.

The felony courts are highly dependent upon the police, both logistically and as witnesses. Unfortunately, 85% of prosecutors said that they had experienced problems with the police department in the last six months—with police not appearing in court as witnesses or not providing a case’s paperwork in a timely fashion. Moreover, there was a perception among 44% of ASAs that police perjury sometimes occurs in the courtroom, especially in the form of “shading”—perhaps not outright lying, but testimony biased in favor of conviction. Nearly all public defenders and judges reported that they believed police perjury sometimes occurs. Prosecutors pointed out that they are trained to report to their supervisors when they have problems with police witnesses.

Prosecutors acknowledged the difficulty of striking the proper balance between vigilant enforcement and due process. ASAs are often confronted with the details of horrific crimes, and they sympathize with the victims and the families; they are faced with high caseloads and resulting time pressures; and they often perceive that defense counsel are given greater latitude, which some defense attorneys exploit. Most prosecutors take their commitment to justice very seriously, but some may be too eager to demonstrate trial skills or secure convictions—despite admonishment from supervisors that winning at all costs is not the policy of the office.

- **Improve communication with police about cases and evidence.**

Although there is a sergeant from the Police Department at 26th Street, there should be additional coordination of police witness appearances in accordance with national prosecution standards.

- **Prosecutors should increase training of police officers regarding admissibility of evidence.**

Some training of this kind takes place, but more is needed.

- **ASA's should be able to file a complaint against a police officer confidentially and at a place away from 26th Street**

The unit within the office that investigates complaints against police officers should be housed away from 26th Street, in order to enhance both the appearance and the reality of independence. The unit should employ investigators who are not former police officers. An ASA should be able to file complaints confidentially regarding police conduct. ASAs may understandably be cautious about being seen entering this office.

FINDING 8: THE SYSTEM LACKS ESSENTIAL RESOURCES, WHICH INCREASES LONGER-TERM COSTS.

When a part of the system is understaffed, such as public defense and pretrial services, cases are rushed through without individualized attention. Drug addicts and the mentally ill are then routinely sent to prison because the primary goal is to dispose of cases. This fills the jail with nonviolent offenders in need of treatment.

Recommendations

- **Diversion programs need to be expanded through private-public partnerships.**

Where budget restraints currently cripple the system, private foundations, corporations and organizations should be asked to supply resources and staff to diversion programs.

- **Judges should improve caseload management by adopting a system that increases accountability by requiring specific reasons for granting continuances.**

- **More court reporters and interpreters are needed at 26th Street.**

Many of the attorneys and judges interviewed said that there were too few interpreters, and that this added to misunderstanding and case delay.

FINDING 9: THE WAY BOND HEARINGS ARE CONDUCTED AT 26TH STREET SHOULD BE CHANGED.

Recommendations

- **Eliminate the use of closed circuit television in conducting bond hearings.**

Closed circuit television is now used to conduct bond hearings. This results in an unnecessary violation of bond applicants' right to a full and fair determination of the appropriate level of bond. Hearings should be held in the presence of counsel.

- **Establish a pretrial services department that is separate from, but coordinated with, the adult probation department and under the supervision of the Chief Judge.**

Judges who make bond decisions do not receive sufficient facts regarding defendants. Bond hearings average 27 seconds. An effective pretrial services agency would provide

information that might allow defendants to be released on bond. This agency should consider the use of trained and supervised students to gather this information. Without the information, far too few defendants are released and, instead, are quickly remanded. The jail population thus increases unnecessarily.

Conclusion

Criminal justice has become our de facto drug treatment and mental health system. It is expected to punish and to rehabilitate, and to do both without adequate funding. Dangerous and repeat offenders should be sent to prison, but our moral revulsion at other sorts of offenses, including many drug offenses, need not always result in imprisonment. If prison is the legislative mandate for most drug offenses, while we are unwilling to increase taxes significantly, law enforcement will be deprived of the resources needed to deal with violent crime. At the same time, some non-violent drug offenders will be incarcerated, resulting in a lack of rehabilitation and the stigma of a felony conviction, and other drug cases will be dismissed for want of rehabilitative options.