

THE ADMINISTRATION OF JUSTICE  
UNDER EMERGENCY CONDITIONS  
Lessons Following the Attack  
on the World Trade Center

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## Executive Summary

The attack on the World Trade Center plunged the administration of justice in New York City into turmoil. Courthouses throughout lower Manhattan became inaccessible; prosecutors and defense lawyers lost access to phones, files, and computers; and police officers became unavailable to testify at hearings and trials. Hundreds of adults, many accused only of petty crimes, were stranded in jail longer than the law would normally allow. Dozens of children, locked in detention and accused of delinquent acts, were similarly deprived of their day in court. How was the justice system to cope?

The Vera Institute redeployed two attorneys and two writers on September 14 to document how the administration of justice continued under emergency conditions. They interviewed more than 50 officials, including the Mayor's Criminal Justice Coordinator, the state's Chief Administrative Judge, other judges, prosecutors, and defense attorneys. They observed several hundred court hearings and read court files in others. They reviewed a 1969 report, *The Administration of Justice Under Emergency Conditions*, that Vera produced for the Lindsay administration following the collapse of local justice systems in the wake of civil disturbances across the United States.

The examination revealed four issues crucial to the administration of justice in such times. First is the question of leadership in a system that often resists management. By stating immediately following the attack that the courts would be reopened and conducting business at the earliest possible date, New York State's top judge established the priorities that guided the system throughout the crisis. Second is the actual work of returning to business as usual. In the days following September 11, prosecutors in Manhattan sought a mass postponement of all cases of jailed defendants for at least two weeks, but the judges insisted on maintaining individual consideration of each case. Once the judges ruled, prosecutors, defense attorneys, city officials, and judges worked cooperatively to bring the cases to court, and the vast majority were resolved before the date to which they would have been postponed. As part of getting back to business, the courts had to establish channels of communication, negotiate the availability of police officers to testify in court proceedings, and develop efficient methods to handle postponements so that cases could proceed with minimal delay. The remaining two issues—involvement of community representatives to bridge potential credibility gaps with the public, and the institution of temporary legal oversight—were less relevant in the days after September 11 but will be crucial in many emergencies. Vera staff concluded that the judicial leadership's confidence in the ability of their courts to rise to the crisis allowed the courts to restore the administration of justice surprisingly quickly. While officials in the executive branch would have found it more convenient to suspend more procedural protections, leadership from the judiciary persuaded all the players to work together to make the courts function well in this emergency.

These findings suggest that officials in New York City, as well as in local governments around the country, should continue to plan across agencies for emergency conditions, emphasizing these four issues. The individual adjudication of cases is more practical than some officials inevitably will suggest, and it represents a commitment to individual rather than mass justice worth restoring quickly in any emergency.

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Notwithstanding the invaluable assistance by those listed above and in the Appendix, the contents of this report do not necessarily represent the views of any of those who were interviewed or of their organizations. Any mistakes of fact or nuance are solely my responsibility.

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## Introduction

At 8:48 on the morning of September 11, 2001, American Airlines Flight 11, commandeered by a team of hijackers, slammed into the north tower of the 110-story World Trade Center. Fifteen minutes later, United Airlines Flight 175 crashed into the center's south tower. In little more than an hour, the twin colossi that once dominated lower Manhattan's skyline collapsed in flames, leaving thousands dead and wounded and the surrounding business district cloaked in chaos, smoke, and debris. The attack, part of a larger assault in which two other hijacked planes crashed into the Pentagon and a field in Pennsylvania, shocked the world. On a more practical level, in much of New York City, essential services were disrupted, including the administration of justice. For the New York courts, the events of September 11 were a physical and practical reality that had to be contended with immediately.

Because Manhattan's principal courthouses were in sprinting distance from the disaster site, the courts found themselves on the front line of the disaster. Three court officers who ran to assist in the rescue effort perished when the buildings collapsed. The Court of Claims Courthouse, located at Five World Trade Center, was destroyed. Immediately following the collapses and during the course of the day, most of the public fled the area. The courthouses were deep within the so-called "frozen zone," an area that city officials ordered evacuated to facilitate the efforts of emergency personnel. Most of the area, including the courts, the New York County District Attorney's and Special Narcotics Prosecutor's<sup>1</sup> offices, and police headquarters, lost telephone service.

Less than one hour after the worst terrorist attack in American history, New York's Chief Judge, Judith S. Kaye, opened a long-planned national conference in Albany on Access to Justice. Most of the state and city administrative judges were in attendance. Judge Kaye's words on September 11 would guide the court system in the succeeding weeks. The justice system will go forward, she said. The attack had been an assault on America's values, including that of justice. The court system had a responsibility to show that it would not succumb to terrorism. Additionally, as she explained in a speech on October 5, her decision to reopen the Manhattan courts as soon as possible had also been driven by her conviction that courts "provide an essential public service."

This report examines how the justice system responded to the crisis. Vera staff monitored the courts and interviewed officials throughout the justice system. Oren Root and Heidi Segal, attorneys on Vera's staff, and Robin Campbell and Jill Pope of the Communications Department observed several hundred Supreme and Criminal Court hearings in four of New York's five boroughs and gathered observations of Family Court from the staff of Vera's Project Confirm. Staff interviewed and obtained information from more than 50 judges, court personnel, prosecutors, defense lawyers, and city and justice system officials, including the city's Criminal Justice Coordinator, and the

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<sup>1</sup> The Special Narcotics Prosecutor's office has jurisdiction over drug cases from the five counties of New York City. It prosecutes its cases in Manhattan and, with offices next door to the District Attorney's office, has a close association with the Manhattan prosecutor.

administrative judges for the city and state courts, for the Criminal and Family Courts citywide, and for the Supreme and Criminal Courts in Manhattan.<sup>2</sup> In gathering information, we wanted, on the one hand, to identify smart and innovative practices so that they might be preserved as good policy; and, on the other hand, to identify areas that needed more preparation and planning for emergencies in the future.

Much of what went right following the attack on the World Trade Center was the result of the preparations made in anticipation of other emergency conditions. The Y2K computer problems had provoked the court system, the police, and other city justice agencies to plan and practice how they would cope without computers, telephones, and electricity. Even where these specific plans were not directly applicable, the practice drills had prepared officials from different agencies to work together in completely unexpected circumstances.

Keeping the justice system operating under emergency conditions is not simply a matter of disaster recovery. The multiplicity of agencies, separately elected officials, and levels of government make coordination a particularly vexing problem. In writing this report, therefore, we were hoping not only to lay the groundwork for better planning in the courts and in each agency, but to provide a picture of how the independent efforts of separate agencies fit together in an emergency.

This is not the first time that Vera has examined these questions. In the summer of 1967, racial unrest in cities across America erupted into widespread rioting that left Newark and Detroit, in particular, devastated. In response to those riots, President Lyndon B. Johnson appointed the National Advisory Commission on Civil Disorders (generally known as the Kerner Commission) and charged it with studying the disturbances and proposing steps for avoiding their recurrence. The Commission's report, presented the following year, included a section detailing the breakdown of the criminal justice process in several cities. It recommended that local jurisdictions draw up specific plans to avoid similar failures in the future.

In New York City, Mayor John V. Lindsay—the Kerner Commission's Vice Chairman—appointed an ad hoc committee to draft the broad outlines of a plan to prepare the criminal justice system to function in times of civil disorder. The city then asked Vera to work with agencies of the justice system to formulate detailed emergency plans. Those plans and the work that remained to be done were described in Vera's October 1969 report, "The Administration of Justice Under Emergency Conditions," that provided a blueprint for how the city's justice system could function justly and effectively during civic emergencies. Similar reports were prepared for some other cities, including Washington, D.C.

The September 11 emergency was different from some other crises in that there were no mass arrests, and different from many other crises in that it profoundly united all segments of the community. Vera's 1969 report was drafted in anticipation of civil disorders that would result in mass arrests. That report therefore focused significantly on arrest and other pre-court processes. While we identify two themes presented in the 1969

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<sup>2</sup> A list of those interviewed appears as the Appendix.

report as important to include when planning for future emergencies, those issues were not directly applicable to the 2001 emergency. Our account of the recent crisis focuses on the adjudicative process, the part of the justice system that presented the most useful lessons for the future.

Reported crime (other than the terrorism), arrests, and prosecutions all dropped dramatically after the World Trade Center catastrophe. In the seven days from September 10-16, reported crime across New York City fell 34 percent as compared with the same week in 2000. In the following seven-day period, reported crime was 18 percent lower than for the same week in the preceding year. Homicides, which in recent times have averaged more than ten a week, fell to four for the September 17-23 period. The drop in crime, along with the redeployment of thousands of police to the disaster area, contributed to a huge decline in arrests and subsequent decline in arraignments. Citywide, there were 54.4 percent fewer arrests from September 11 through October 10 as compared to the previous year; arraignments declined 56.8 percent in the same period. (Statistics by borough are shown in the table below.) This decline in court intake contributed significantly to the courts' ability to deal with and recover from the emergency.

**Comparative Arrests and Arraignments by Borough for 2000 and 2001  
September 11 through October 10**

	<b>Manhattan</b>		<b>Brooklyn</b>		<b>Bronx</b>		<b>Queens</b>		<b>Staten Island</b>	
	Arrests	Arraignments	Arrests	Arraignments	Arrests	Arraignments	Arrests	Arraignments	Arrests	Arraignments
<b>2000</b>	8,615	7,914	8,183	7,038	6,296	5,434	4,639	4,158	917	775
<b>2001</b>	3,066	2,700	3,937	3,221	2,968	2,435	2,552	2,182	545	406
<b>% Change</b>	-64.4%	-65.9%	-51.9%	-54.2%	-52.9%	-55.2%	-45.0%	-47.5%	-40.6%	-47.6%

Source: New York City Criminal Justice Agency, Inc.

The attack on the World Trade Center united disparate New Yorkers in ways that are unlikely to be repeated in future emergencies faced by a local justice system. Many people felt an overwhelming psychological need to contribute to the common good in the days following September 11. Some volunteered to help directly with the rescue effort, but most could help only in less direct ways. Jurors, standing normal behavior on its head, requested not to be excused from jury service because of the terrorist attack, and a court officer in Manhattan whose fireman son was missing did not take time off from work in the days immediately after September 11. In a similar, but institutional, vein, the Special Narcotics Prosecutor offered the services of her assistants to federal authorities investigating the terrorist acts.

History teaches us that the justice system—in New York and elsewhere—will face emergencies on a recurring basis. With this report, we hope to document and stimulate a process of preparedness so that the administration of justice can proceed in a fair manner no matter what emergencies occur in the future. And we seek to encourage processes in

the courts that live up to the standards set by the Kerner Commission when it noted (p. 337):

The quality of justice which the courts dispense in time of civil crisis is one of the indices of the capacity of a democratic society to survive. To see that this quality does not become strained is therefore a task of critical importance.

## The Issues

A multiplicity of factors come into play when the justice system faces a crisis. Judges, prosecutors, defense lawyers, and police officers must confront such potential problems as limited access to courts, lack of communication, a substantial backlog of cases, and a suspicious public, among others. They must simultaneously strive to uphold the fundamental principle of justice that individual cases be decided individually. The obstacles to doing business as usual have the potential to limit the system's ability to dispense individual justice. How the various players face and resolve these difficulties will determine how well a justice system functions in a crisis situation. We will discuss four specific issues likely to be generated by an emergency. The first two were directly applicable in the aftermath of the attack on the World Trade Center. The latter two, which deal with civil disturbances, were central to the 1969 report, and will likely be relevant in some future emergencies.

### **Leadership**

In any crisis there must be leaders who make decisions, resolve disputes, and generally set the tone for handling the emergency. The type of leadership structure in place at the time of a crisis can influence the performance of an organization during a period when its regular mode of operation is disrupted.

The administration of the courts in New York State was not unified in a single statewide hierarchical structure until April 1977. The fledgling system was just beginning to function when New York City experienced the blackout of July 13, 1977. With no professional court management structure yet in place, the resulting 6,000 looting arrests overwhelmed the city's criminal court system, and some defendants waited nearly a week for arraignment.

While the terrorist attack of 2001 was a very different kind of emergency, the current hierarchical structure of the justice system allowed for priorities enunciated from the top—in the words of Judge Kaye—to guide the courts through the crisis. Her decision to reopen the courts and resume business as soon as possible was carried out by administrative judges on the state, city, and county level. The judges applied the priorities according to the needs and circumstances that prevailed in their individual jurisdictions. In the process of implementation, the local judges were able to benefit from their colleagues' experience and to share their thinking and solutions back up the hierarchical chain.

## Business as usual

A 1973 effort to plan for emergencies in Washington concluded: "...[T]he criminal justice process should have as nearly the same impact on arrested persons and the community during an emergency as under normal circumstances."<sup>3</sup> But when to open the courts and when to resume business as usual can be difficult decisions, depending on the circumstances of the particular emergency. Lack of physical access, which was a factor after September 11, 2001, in most circumstances will preclude opening the courts. Some situations may be resolved by creating special or alternative access or by moving the court to another building. Concerns about safety also may delay the opening of the court.

Reasonable people can disagree as to the best time to reopen. After September 11, some judges outside the administrative hierarchy argued for a period of mourning. The difficulties faced by prosecutors, particularly in obtaining police witnesses, gave them compelling reasons to ask the courts to delay reopening. But the unambiguous imperative to open as soon as practicable—enunciated by Judge Kaye within minutes of the attack—meant that the administrative judges did not have to weigh arguments about whether to open the courts and could instead focus on how to accomplish that goal.

The mandate to open the courts as soon as possible is not, of course, an absolute. On September 12 the Mayor's office sought to limit traffic throughout the city as much as possible, including public transportation. The court system was persuaded to close most courts throughout the city that day, and the Manhattan courthouses did not generally reopen until September 17 when public access was restored.

Once operational, the courts found that performing business as usual during an emergency is a challenge. From the first meetings between the court administrators and the Manhattan District Attorney's office on September 12, the administrative judges made clear that cases would be determined individually, not en masse. As both the Kerner Commission and the 1969 Vera report noted, individuals are deprived of rights when "judicial procedures bec[o]me oriented toward mass rather than individual justice."<sup>4</sup> Nevertheless, the judges empathized with the real problems faced by the prosecutor's office, like the unavailability of police witnesses and the absence of much of its normal communication systems. Given the circumstances, the District Attorney's office doubted it could be prepared within the short deadlines required on most new arrests, which, in its view, created a significant risk that dangerous criminals would be released and the safety of the public would be jeopardized.

We examined three specific challenges the court system faced in returning to business as usual following the attack: communication, police availability, and postponements.

*Communication.* Communications issues permeate every aspect of restoring the administration of justice in emergency conditions. Those issues, technological and personal, must be addressed quickly and simultaneously so that everyone essential to the

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<sup>3</sup> The Committee on the Administration of Justice Under Emergency Conditions, *The Administration of Justice Under Emergency Conditions in the District of Columbia*, p.5.

<sup>4</sup> New York City Criminal Justice Coordinating Council and Vera Institute of Justice, *The Administration of Justice Under Emergency Conditions*, 1969, p.1.

functioning of the courts receives the information they need. First of all, there is the availability of technology. Without the technological means—whether land-line telephones, wireless telephones, internet telephones, faxes, pagers, personal digital assistants, email—communication is limited to talking face-to-face, a significant limitation in most circumstances. Not only are the means required; so is the knowledge of how to contact someone using each of these different technologies. That requires access to numbers and addresses. Then there is the substance of communication—people talking to each other about what needs to be considered. Finally, communication must take place both within and between the varied organizations that play roles in the justice system. In September, 2001, the Office of Court Administration, for example, had a desk at the Mayor’s Command Center, allowing officials there to focus on the substance of issues of concern to the court while others were working on technological fixes.

The administrative judges are responsible for ensuring that communication takes place among the appropriate participants in court proceedings, including litigants and other agencies. While the administrative judges will have to decide how the courts will handle any emergency situation, they need open communication with everyone involved in order to understand the competing concerns. It is unlikely that all the concerns will be accommodated, but a willingness to listen will win respect for decisions the judges eventually will make.

Administrative judges in Supreme and Criminal Courts, for example, were on the telephone from their homes and by cell phone and conducting meetings on a regular basis as they worked to get their courts ready to reopen and to deal with the backlog of cases.

*Police availability.* In any emergency the primary responsibilities of the police will involve maintaining public order, protecting people and property, and, in some instances, dealing directly with the cause of the emergency. The need for officers to testify in court proceedings is never going to be paramount, but the police will usually be able to accommodate this need to some extent. How many officers are available to testify, and how quickly, may be influenced by the ability of the courts to function in as normal a fashion as possible.

Immediately after September 11, the official word from the Police Department was that no officers would be available to testify in any court or grand jury proceedings for one month. Within days, however, that absolute prohibition was lifted, and over the next two months the categories of cases for which officers could be ordered to appear gradually but steadily widened. Nonetheless, according to an administrative judge, the unavailability of police officers had a dramatic effect on the number of trials citywide. Between September 11 and early October, according to some estimates, only 10 to 15 percent of the normally more than 100 trials proceeding at any given time had occurred, principally because police officers were unavailable.

*Postponements.* Emergencies create situations, such as the inaccessibility of the courthouse, in which pending cases must be postponed. When courts order such postponements (referred to in New York as “administrative adjournments”), it is extremely important that they communicate the new court dates to all parties and attorneys or some are likely to be absent, requiring further postponements.

There are a number of ways to handle administrative adjournments. Some courts follow uniform patterns of adjournment, assigning all cases of a particular category to the same date, for example. Some choose not to follow a uniform pattern and individually notify all the parties and lawyers of the new date. And some courts, lacking adequate resources to notify all affected parties and lawyers, still choose to postpone cases on an individualized basis, making it incumbent on the participants themselves to ascertain the rescheduled date.

### **The government's credibility**

Emergencies can strain the government's credibility, when officials with limited information report one thing, while rumors circulate based loosely on different information. This can easily happen during emergencies that involve mass arrests, when people already distrustful of the police quickly believe rumors that detainees are being mistreated or will be kept in custody longer than is actually the case.

The 2001 emergency certainly did not create a credibility gap between the city authorities and members of the public, but the issue remains important in planning for future emergencies. Vera's 1969 report recounts two ways in which New York City responded to this issue. Most significantly, the city recruited hundreds of community representatives who would be available in emergencies to observe the treatment of arrested people in police staging areas (where initial police processing would take place) and court holding cells. Among their duties was to report back to their communities on their observations. The representatives' presence at places where people recently arrested were being detained was calculated to lessen the chances of mistreatment. The representatives were then expected to spread word in their home communities that detainees were being treated appropriately.

The city in 1968 also created an Emergency Information Center to serve as a central clearinghouse for information on arrested, hospitalized, and missing persons. Providing accurate information in a timely fashion would lessen public anger and anxiety about loved ones and would mitigate suspicion of government.

### **Legal oversight**

Emergencies frequently involve temporary police activities that restrict the public. While efforts are being made to restore the normal functioning of law enforcement, temporary forms of legal oversight can also be put in place.

This was not a prominent theme in our examination of the emergency conditions following September 11, but it could have arisen in connection with the pedestrian and vehicle checkpoints that were established throughout the city and at all bridges and tunnels leading into Manhattan.

This was, however, a concern in earlier emergencies, especially with regard to mass arrests. The city's emergency plans in 1969 called for the use of lawyers from the Office of the Corporation Counsel as monitors of the processing and detention of arrestees.

Their presence was to help assure the fair and effective administration of justice and to reduce tensions. In their monitoring role, the lawyers were to be available to receive complaints from community representatives and to bring legitimate complaints to the attention of the commanding officer on the scene. They also would serve as liaisons between the Police Department, Department of Correction, District Attorney's office, and community observers. After such assignment, the monitors were to file telephone and written reports detailing their experiences, including any problems they observed.

## The Courts Citywide

- Leadership. *The administrative judges immediately took charge of the courts.*
- Business as usual. *A few courts were open on September 12 and all courts outside lower Manhattan were open on September 13. Operations outside Manhattan started to return to normal the following week.*
- Communication. *Makeshift systems were created to compensate for the loss of most data and some telephone communication. Agencies obtained cell phones for their staffs and distributed new phone lists to staff and other agencies.*
- Police availability. *Initially almost no officers were available, but that began to change at the beginning of the second week. The unavailability of officers affected probable cause determinations in the Criminal and Family Courts.*
- Postponements. *Because the courts outside Manhattan were closed for less than two days (part of September 11 and on September 12) and because their telephones generally were working, this was not a citywide problem.*

In the immediate wake of the attack, courts throughout the city were closed and evacuated, and 24-hour security was put in place inside and around the courthouses. Manhattan courts closed quickly, and courts in other boroughs followed soon after. Judy Harris Kluger, Administrative Judge of the Criminal Court citywide, and Micki A. Scherer, Administrative Judge of the Criminal Term of the Supreme Court in New York County, gave directions from Albany that members of the public who felt safer inside 100 and 111 Centre Street than out on the streets should be allowed to stay. In fact, the court officers emptied the entire court side of 100 Centre Street and tried unsuccessfully to persuade the District Attorney's office, which wished to remain open, to evacuate its wing of building. Court officers said they subsequently would have allowed members of the public to seek refuge in the courthouse, but by then those who had been in the courthouse had left the area.

Most courts around the City were closed on September 12. Exceptions included the Family Court (though the Manhattan courthouse was inaccessible to the public), the Criminal Court arraignment courtrooms in all boroughs, the Criminal Court in Staten Island, the Midtown Community Court, and the Appellate Division, First Department, where the public could file emergency applications usually made in lower Manhattan courts. The administrative judges' strong desire had been to reopen all courts on September 12, except those in lower Manhattan that were not accessible to the public. The city administration, however, had wanted to limit vehicle and pedestrian traffic everywhere in the city. After weighing the city's concerns, the Office of Court Administration yielded, deciding that the courts would generally remain closed. The fact

that the Family Court was open was not widely known, and relatively little substantive business was transacted in any of its locations.

On September 13, all courts outside of lower Manhattan were open, though the amount of substantive business transacted varied from court to court and from judge to judge. Chief Administrative Judge Jonathan Lippman estimated that more than one half of the Family Court's business was adjourned because of missing parties and lawyers. Proceedings in Criminal, Supreme, and Family Courts that required police testimony could not go forward. In the first days after September 11, very few police officers were made available to testify in court and before grand juries. Their absence and the resulting concern that grand jurors would have little to do led Judge Lippman to determine that grand juries should not resume until the following Monday, September 17.

When the courts opened in most of the city on September 13, they still had to cope with the problems that individual lawyers were experiencing. Approximately 14,000 lawyers work in lower Manhattan. Most had to contend with lost access to offices and files and little if any telephone service. Because many of these lawyers practiced across the region, the loss of their offices reverberated in courts throughout the city and suburbs. The court system helped lawyers determine when their cases were on the court calendars, provided copies of filed documents free of charge, and encouraged adversaries to help lawyers reconstruct their files. In general, the response to adversaries whose practices had been directly affected by the attack was extremely cooperative. A joint letter from Judges Kaye and Lippman urged judges throughout the state to grant the extensions and accommodations needed by the affected lawyers.

In this early chaotic time, the determination and flexibility that would characterize most of the system's response was already evident. For example, some rap sheets for defendants awaiting arraignment were transmitted electronically to the wrong boroughs. The Police Department arranged to shuttle the rap sheets from the courts where they were received to the courts where they were needed so that the arraignments could proceed without undue delay. In another instance, the Special Narcotics Prosecutor, whose network connections to city and state criminal justice databases remained operational, reconfigured a network connection for the Manhattan District Attorney's office, which had lost its service. The DA's office thus regained limited access to these databases.

From September 13 forward, the administrative judges who oversee the Supreme and Criminal Courts were on the phone and conducting meetings, making clear to all the officials in the system that the courts would resume business as usual at the earliest possible time. Priority was given to the cases of jailed defendants and to cases that were actually on trial. Defendants were to be arraigned, either after their initial arrests or on the indictments against them, as soon as possible. The processing of cases of jailed defendants also was to take place as soon as possible, in accordance with the requirements of Sections 180.80 and 170.70 of the Criminal Procedure Law. The law in New York generally requires that defendants held in custody be released after six days if the prosecution has not more firmly established "probable cause" through steps that often require police officer involvement and grand jury action. The provision that applies to felony cases is Section 180.80; the similar provision applicable to misdemeanors is Section 170.70. Each section allows the court to keep the defendant in custody, even if

the case has not moved forward, if the prosecution can make a showing of “good cause” that precluded the required progress. The Family Court Act contains similar provisions concerning the prosecution of cases against alleged juvenile delinquents in detention. On September 13 and 14, judges were routinely granting “good cause” adjournments, keeping defendants in jail despite the lack of progress in their cases. Very occasionally felony cases proceeded to preliminary hearings, a procedure rarely used in New York City (other than in Staten Island) that, in the absence of grand jury action, allows the prosecutor to comply with the statute and avoid the defendant’s release.

The unavailability of police officers was a frequent reason for adjournments. At first, officers were permitted to appear for ongoing trials and a limited number of officers (typically 20 or 25 per borough per day) were summoned for grand jury appearances. By October 1, new trials of jailed felony defendants were added to the permissible list, followed by hearings for jailed felony defendants, trials for jailed misdemeanor defendants, and trials for released felony defendants. By November 19 the last restrictions on appearances for misdemeanor hearings and trials involving released defendants were lifted.

The categories of proceedings for which police would be made available were determined by the Mayor’s Criminal Justice Coordinator, Steven Fishner, in consultation with police managers, all based at the Mayor’s Emergency Command Center. The number of police officers to whom the five county District Attorneys, the citywide Special Narcotics Prosecutor, and Family Court prosecutor could issue notices to appear was determined by the Coordinator’s office. The Coordinator set these allocations after consultation with the seven prosecutorial agencies and with Judge Lippman, who regularly consulted with Mr. Fishner but was not part of the decision-making process. The size of the individual allocations, and the degree to which they were used, reflected in part the vigor with which particular courts were pushing to return to business as usual. For example, the Criminal Court’s decision to enforce the statutory provisions requiring swift probable cause determinations, albeit leniently, led the District Attorneys’ offices to request more officers for grand jury proceedings and the Coordinator’s office to increase the allocations for this purpose beyond what it would otherwise have granted. On the other hand, when it became clear to the Family Court prosecutor that judges in that court were generally granting almost all the postponements his office sought, he chose to summon considerably fewer officers for court appearances than had been allotted.

The Mayor’s Emergency Command Center proved useful to the courts for more than coordinating with the police. Because so many justice-related agencies had representatives located at the center, and the city departments of correction, juvenile justice, probation, and police were represented by their commissioners, decisions that would usually have taken days or weeks could be made in minutes. And at an operational level, an agency could ask its representative to buttonhole another agency’s representative and ask that person to relay a message to the appropriate person at the second agency. With so many people not available at their usual telephone and fax numbers or their usual e-mail addresses, this form of direct person-to-person communication between agencies became a useful communications vehicle. For example, the command center proved useful in coordinating the movement of detainees to courts

throughout the city as well as to the dissemination of information to the public about the status of the courts.

The courts had not long been among the government agencies with a desk at the command center. Just two years earlier, during drills for the widely anticipated Y2K computer problems, the Criminal Justice Coordinator had noticed that the Office of Court Administration was not represented, and had extended an invitation. As a result, when agencies assembled on September 11, the courts could take advantage of this centralized point for decision-making and dissemination of information.

On September 14, three days after the attack on the World Trade Center, all the administrative judges from the city met with Judge Lippman as they were to continue to do on a weekly basis until the crisis eased. With the courts now all open for a second day outside of lower Manhattan, the judges faced two large, continuing problems: the lack of phone service and public access to lower Manhattan. By consensus they determined that the lack of phone service would not be sufficient reason for the Manhattan courts to remain closed. What would, and did, keep the courts from opening, however, was their location inside zones which continued to be off-limits to the public.

Meanwhile, the courts were pursuing technological solutions to replace more than 2,200 inoperable telephone lines. The court system in lower Manhattan had no telephones, no faxes, no internet, no email, and no access to statewide electronic databases used to create court calendars and track cases. Immediately after the attack, the court system's technology team managed to reroute data from the courts' computer network to much slower telephone lines that were still working. Because this short-term solution, while useful under emergency conditions, would be inadequate for fully functioning courts, they turned to high speed wireless service. The weekend after the attack three Office of Court Administration engineers underwent intensive training in new wireless technology that uses lasers to communicate between buildings. They installed the equipment the following week at the courthouses at 60 Centre Street and 31 Chambers Street, which had a backup connection to the main terminals in Albany, thereby restoring data communication at most court facilities.

Even before the attack, OCA engineers had been considering a six-month limited pilot test of a new, internet-based telephone system. Now suddenly desperate to re-establish voice communications, they accelerated their interest and installed 600 of the telephones, which run over internet data lines. The effort, which required the construction of a mini-telephone switching center and the manufacture of custom equipment, would normally have taken six months. It was completed in a week.

## The Criminal Court in Manhattan

- *Leadership. The supervising judge and some prosecutors remained in the court building overnight on September 11, making the continued operation of the courts possible the next morning.*
- *Business as usual. Arraignments of new arrestees resumed on September 12, and the rest of the Criminal Court reopened on September 17. Two days later the court*

*denied the District Attorney's request for a blanket two-week adjournment of all jail cases, insisting on individualized consideration of each case.*

- *Communication. Administrative judges, senior prosecutors, city officials, and leaders of defender agencies were in frequent communication from September 12 forward, despite the virtually complete collapse of phone service to all of them.*
- *Police availability. The Coordinator's office and the Police Department released more officers for grand jury appearances than they originally thought possible, and a surprising number of cases were able to proceed without more than a few days of delay.*
- *Postponements. Administrative adjournments were ordered uniformly, with jailed defendants given the shortest postponements possible, and released defendants a consistent three weeks.*

On September 12, even though the rest of the Criminal Court in Manhattan was closed, arraignments were scheduled to proceed.<sup>5</sup> Court administrators had spoken about moving the arraignments either to the Bronx or to the Midtown Community Court on 54<sup>th</sup> Street partly because they did not think the necessary personnel could reach 100 Centre Street, located deep in the frozen zone that then stretched a mile and a half north to 14<sup>th</sup> Street. All necessary personnel were able to gain access, however, and the administrative judges decided that, even without telephones, it was better to conduct the arraignments on September 12 at 100 Centre Street because all the paperwork and the defendants were in the courthouse. They sought and gained the Criminal Justice Coordinator's permission to do so.

Because some staff had spent the night of September 11 in their office and other staff voluntarily came in to assist, the District Attorney's office was able to resume the processing of arrests on September 12, slowed down principally by the difficulty in locating police officers to provide the necessary information.

On September 13, the administrative judges, in conjunction with the District Attorney's office, the Police Department, and the Department of Correction, decided to move Manhattan arraignments to the Midtown Community Court, where they remained, two shifts a day, for almost two weeks, long after 100 Centre Street had otherwise reopened. Arraignments remained in midtown at the request of the Police Department because of the problems caused by the lack of telephones downtown. Although the police had discussed holding the prisoners awaiting arraignment at the Midtown court in precincts around Manhattan, it was ultimately decided to hold them at 100 Centre Street until shortly before they were to be arraigned. They then were bussed 15 or 20 at a time to 54<sup>th</sup> Street. The transition worked very smoothly, helped by the low volume of cases. Some arrests from September 10 and 11 were delayed principally by the unavailability on September 12 of officers who could provide prosecutors with the information necessary

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<sup>5</sup> Almost all criminal cases in New York begin in the Criminal Court with a brief arraignment hearing. Defendants have a right to an arraignment within 24 hours of their arrest unless there is good cause for delay. In order to meet this deadline, Criminal Court arraignment courtrooms operate every day of the year with as many as three eight-hour shifts. After arraignment, misdemeanor cases remain in the Criminal Court through their dispositions, while felony cases are eventually transferred to the Supreme Court, generally after a grand jury returns an indictment.

to draw up charges. By the evening of September 14 most defendants were being arraigned within the required 24 hours.

Not only was the volume low, only a small percentage of the cases were related to the emergency. Of the approximately 40 arraignments we observed on September 14 and 15, only five had a direct connection to the September 11 events. A young man was arrested for allegedly punching an officer as he rode his bicycle through a checkpoint near the World Trade Center on the night of September 11, causing the officer to spray him with mace. A man was arrested for taking a pair of sunglasses from the floor of a building across the street from the Trade Center complex. Another man, pretending to be a Red Cross worker, was charged with looting a store near the Trade Center. An ironworker who came from Chicago to help in the rescue efforts was arrested for possession of a gun in a gun case in his car. His Illinois gun license was not valid in New York. Finally, a young woman from New Jersey, the mother of two small children, was accused of falsely reporting that her husband was trapped in the rubble with several Port Authority police officers and was calling her on his cell phone.

After arraignment of new cases, the Criminal Court's next priority was defendants who remained in jail after their arraignment and whose cases were subject to the provisions of Criminal Procedure Law Sections 180.80 and 170.70. Supervising Judge Martin P. Murphy slept in the courthouse on the night of September 11 for fear that he would not be allowed to re-enter the frozen zone. The following day, Judge Murphy and Borough Chief Clerk John Hayes began isolating the jail cases and creating a special "jail" calendar to be used when the court reopened. Staff identified all the jail cases from the various parts of the court by looking at court papers of cases not heard from September 11 forward and then drew up a calendar by hand as some of them had done before the days of computers.

In addition to creating a "jail calendar," the court administratively adjourned all non-jail cases scheduled for September 11 through 14 for three weeks from their originally scheduled dates. The use of uniform dates allowed a high-volume court to relatively easily inform the many hundreds of affected defendants and lawyers of their next court dates by posting them in the courthouse, in the *New York Law Journal*, and on the court system's website.

The court and the prosecutors also worked out a procedure for dealing with the large number of temporary orders of protection that were expiring.<sup>6</sup> These orders, consistent with normal procedure, expired on the originally scheduled dates of the cases, when they might have been renewed. The DA's office, assisted by court clerks, identified the cases involved, and the court extended the orders of protection to the new adjourned dates. Defendants were notified of the extensions by mail.

On September 12 and 13, those who did not live in the area or persuade the police that they were engaged on official business were not allowed south of 14<sup>th</sup> Street. On Friday, September 14, the northern edge of the frozen zone was moved south to Canal

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<sup>6</sup> Temporary orders of protection require defendants to stay away from and refrain from any contact with victims or witnesses in pending cases.

Street, three blocks north of the courthouse. The court was ready to open, if the public could reach the building. Judge Murphy explored the possibility of creating a corridor—lined by court officers—from Canal Street to the courthouse. Although the Criminal Justice Coordinator considered the idea seriously, the Police Department objected because the corridor might interfere with emergency traffic in the area near the World Trade Center, and the idea was dropped.

Consideration was given to shifting hearings on some jail cases, particularly misdemeanors, to another county (Bronx or Queens) or to jails on Rikers Island. The Legal Aid Society<sup>7</sup> supported this suggestion, and it probably would have been adopted had the frozen zone not contracted again over the weekend, rendering the courts accessible to the public on Monday, September 17.

When the court opened Monday morning, the judges' top priority was to deal substantively with jail cases originally scheduled for that day and the four lost days of the preceding week. After nearly a week of delay, the need to promptly address the 180.80 and 170.70 cases was increasing. Still, the judges did not believe that all the participants would be ready to proceed on that Monday. Instead, they scheduled the backlogged misdemeanors for the next day and felonies for Wednesday, September 19. Although court officials had asked the Department of Correction not to produce the jailed defendants on Monday, the department transported most defendants to the courthouse.

Between September 11 and 18, approximately 75 cases subject to the provisions of Section 170.70 had backed up in the system, and the court hoped to dispose of as many of these misdemeanor cases as possible on September 18. But, after having produced these jailed defendants the preceding day, the Correction Department mistakenly failed to produce them on the 18th, necessitating a delay of those cases until later in the week.

The greatest test of the Criminal Court's ability to return to business as usual centered on the treatment of 180.80 and 170.70 cases. From the beginning of the emergency, the Manhattan District Attorney's office had planned to seek a blanket adjournment of all such cases except for a very few in which it consented to the release of the defendant. This would have meant that detained defendants would remain in jail beyond the usual time limit, despite the inability of the prosecution to demonstrate probable cause in the ways required by the statutes. With a much smaller volume of cases, the Special Narcotics Prosecutor did not object to dealing with the cases individually.

Officials from the DA's office had expressed their intention to seek this blanket extension to Judges Kluger and Murphy in several meetings and conversations. From September 12 on, however, the judges had indicated their intention to provide individualized, case-by-case determinations on every matter before the court. The judges empathized with the real problems faced by the prosecutor's office, particularly in getting police witnesses. The judges recognized that, if a prosecutor tried in good faith to proceed on an individual case and was precluded from doing so by extraordinary circumstances arising out of the events of September 11, those circumstances would generally constitute "good cause" under Sections 180.80 and 170.70, and the defendant would continue to be

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<sup>7</sup> The Legal Aid Society serves under contract as New York City's principal public defender.

detained. What was unacceptable to the judges, however, was the blanket adjournment of all cases of jailed defendants without an individualized determination of the inability of the district attorney to move *that* case forward.

Faced with severe and genuine obstacles not of their own making—the unavailability of many police witnesses and the inoperability of much of its normal communication systems—prosecutors could not see how they could prepare most of their 180.80 and 170.70 cases. Additionally, from the prosecutors’ perspective, making release decisions on an individualized basis created a significant risk that dangerous criminals would be released and the safety of the public would be jeopardized. Failing to persuade the judges, they asked state officials if the Governor would suspend the operation of Sections 180.80 and 170.70. While the Governor declined to order a suspension, his office and city officials contacted senior members of the judiciary to advocate for a blanket extension of the deadlines required by those statutory provisions.

The issue came to a head on September 19 in a courtroom where Judge Murphy was presiding over a calendar of more than 300 cases, 245 of which were jail cases. The courtroom was packed with spectators, and approximately 50 lawyers were crowded around the rail. Assistant District Attorney Nancy Ryan, chief of the trial division, made her case for a blanket extension of the 180.80 provision “for a minimum of two weeks.”<sup>8</sup> She noted her office’s loss of telephone, fax, and external computer communications. She cited the unavailability of police officers because of their World Trade Center assignments and volunteer work, increased security concerns throughout the city, attendance at funerals, and the limitations on the number of officers that would be allowed to make grand jury appearances. She argued that Criminal Procedure Law Section 180.80 was not constitutionally required, that New York law was stricter than in many other states, that in the past 180.80 had not always been as strictly followed, and that “we need a realistic adjournment so we don’t just churn cases through the system.”<sup>9</sup> Assistant District Attorney Ryan also offered to report to the court daily on the progress the DA’s office was making, and to ask the court to release any defendants that her office had decided not to indict, including two such cases that had already been identified. Judge Murphy denied the request for the two-week “good cause” extension, stating:

Everybody is here, the audience is full and the pens are full, and I think we owe it to everybody to do each case, as laborious as it may be. We will deal with each one with whatever information we have and adjourn them in a general way, and you will probably get good cause on almost every case today. I can’t see anything else happening. However, I think that at some point we have to realize that people have to move forward. Both the President of the United States and the mayor of the city want everybody to get back to normal. This is a very important institution in the City of New York and we have to make every effort to move forward and we will make every effort.<sup>10</sup>

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<sup>8</sup> In the Matter of a Blanket Application for Extending 180.80, Criminal Court of the City of New York, New York County, Part F, Sept. 19, 2001, p.2.

<sup>9</sup> *ibid*, p.7.

<sup>10</sup> *ibid*, pp.14-15.

Judge Murphy sat until 9:30 that evening, hearing every case. Contrary to many people's expectations, quite a lot was accomplished. Twenty cases were indicted, 16 defendants pled guilty to misdemeanors, and prosecutors reduced 13 cases to misdemeanors which were then adjourned to other courtrooms for trial or disposition. Of the 153 release applications made that day under Section 180.80, none was granted over the DA's objection. Fifteen releases were granted without prosecutorial opposition, and 138 were denied upon a finding of "good cause." Of these, 29 were adjourned for one to two days, 64 for the following week, and 45 to the week of October 1. On September 20, Judge Ellen M. Coin, who presided in that courtroom for the balance of the week, began granting 180.80 release applications in cases where the DA failed to meet the burden of showing "good cause."

Once the court had ruled against a blanket adjournment, the prosecutors worked hard to move each case forward and to resolve it as they thought appropriate. Even on September 19, prosecutors committed themselves to the administration of individual justice, consenting to 15 releases pursuant to Section 180.80. On four separate occasions they asked the court to recall cases in which Judge Murphy had initially agreed to continue the defendant's detention, informing the court of changed circumstances that now led them to consent to the release of the defendant.

The result of treating cases in an individualized manner can be shown several ways. First, by October 3, the date to which the District Attorney's office had requested that all the 180.80 cases heard on September 19 be adjourned, more than 90 percent of those cases had been indicted, disposed of, or reduced to misdemeanors, or the defendants were released or had consented to their non-release in an effort to obtain a disposition of the case. In other words, in the overwhelming majority of cases, the cases had moved forward in ways satisfactory to the prosecutors without sacrificing the defendants' right under Section 180.80. Had the two-week extension been granted, all of the 180.80 cases that would normally have been heard from September 20 through October 3 would have been backed up behind the approximately 200 other 180.80 cases scheduled to be dealt with on October 3. At the least, it would have taken until the latter part of October to clear the backlog.

Looking back several weeks later, a senior prosecutor and the Criminal Justice Coordinator told us that "no major injustices" had been done and that the defendants who should not have been released from jail were in fact not released from jail. And the court's stand, coupled with the readiness of prosecutors to consent to the release of defendants whom it was not ready to indict, prevented many defendants from being unnecessarily detained for extended periods, often on quite minor charges. For example, Rashid,<sup>11</sup> a young man of 22 with no criminal record, was able to testify as to his innocence before the grand jury, have his robbery case dismissed, and be released from custody at least eight days earlier than he would have been had the blanket extension

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<sup>11</sup> All names of defendants have been changed. We obtained the information on these six defendants' cases by observing proceedings in Part F in Criminal Court in Manhattan on September 19 and 20, by examining the completed Part F calendars and the court papers for each case, and by inquiries to the defendants' lawyers.

been granted. The following five defendants provide further examples. All were released pursuant to Section 180.80 on September 19, 20 or 21, thereby avoiding an additional two weeks in jail:

- Banduk, a 26-year-old man with no prior arrests who was charged with possession of a stolen credit card, was released with the prosecutor's consent.
- Caesar, a 29-year-old with no criminal record who had already spent 13 days in jail on felony marijuana possession and two misdemeanor charges, was released on consent of the prosecutor, even in the absence of a defense lawyer to request his release.
- Jeremiah, a high school student, and Anwar, both 17 with no criminal record, who were charged with the felonies of drug possession (less than one gram of cocaine) and attempted assault as well as several misdemeanor charges, were released over the prosecutor's objection.
- Jose, a 52-year-old man charged with obtaining a driver license with false information, who had already spent 15 days in jail, was released with the prosecutor's consent.

The DA's office also applied on September 19 for a blanket extension of the 170.70 time periods on misdemeanor cases. That application was also denied, and the cases were considered on an individualized basis. As there were several judges hearing misdemeanor cases that day, the "good cause" threshold varied from courtroom to courtroom, but automatic "good cause" extensions were not given. Judge Patricia M. Nunez denied an across-the-board extension on one case where the District Attorney needed only a corroborating affidavit from the civilian complaining witness. Faced with the possible release of the defendant pursuant to Section 170.70, the District Attorney contacted the complainant and obtained and filed the corroborating affidavit that afternoon.

Paradoxically, because the Police Department would only let officers appear for the more serious cases (as determined by a senior supervisor in the DA's office), the prosecutor was more likely to seek continued detention through "good cause" adjournments on the less serious cases. Prosecutors explained that they had to pursue serious cases more vigorously and could not take the chance that a serious offender would be released, particularly because the court might be persuaded that they had inappropriately chosen to use the limited pool of officers to pursue a less serious case.

## The Supreme Court in Manhattan

- *Leadership. The administrative judge and chief clerk worked long days and over the weekend to have matters ready to proceed when the court reopened.*
- *Business as usual. The Supreme Court reopened on September 17 and scheduled all jail cases in the first ten days. Some trials that were in progress on September 11 resumed.*
- *Communication. The court reached prosecutors, institutional defenders, and jurors, but found that court-appointed and private lawyers were particularly hard to locate.*

- *Police availability. The police were made available for ongoing trials but otherwise were generally not available until October 1.*
- *Postponements. Every attorney and every released defendant whose case was administratively adjourned was sent a letter over the weekend just before the court reopened advising them of their new court dates.*

Judge Scherer, the Administrative Judge of the Criminal Term of the Supreme Court,<sup>12</sup> set two priorities for the court: arraignments of jailed defendants on new indictments, and completion of as many of the 15 ongoing trials as possible. She, who, like most of the city's administrative judges, had been in Albany on the morning of September 11, and Chief Clerk Alan Murphy immediately started to communicate with the affected participants. That night Judge Scherer, from home, and Mr. Murphy telephoned all the judges to tell them of the priorities and that court would be closed the following day; the Chief Clerk got the word out to key non-judicial personnel, many of whom voluntarily reported for work the next day without being asked to do so.

The biggest question they faced the following morning was how long the court was going to be closed. Following the clear direction from Judges Kaye and Lippman, Judge Scherer wanted to reopen the court as soon as possible. The lack of computers (which came back within a day) and phones was not going to delay the reopening. But the court's location within the frozen zone would. And there was no way of knowing when public access to the building would be restored. The administrative judges briefly considered hearing cases in another county, but there was little support for the idea because of the disruption involved and the belief that public access to the courthouse would soon be granted.

One of the first orders of business was to establish lines of communication with all the necessary parties. Contact with the DA's and Special Narcotics offices was easy since they were in the same building or next door. Even though the institutional defense lawyers were out of their offices and had no telephone service, the Legal Aid Society and New York County Defender Services were reachable by cell phones. It was considerably more problematic to contact private attorneys and lawyers appointed by the court (pursuant to Article 18B of the County Law) because so many of them have lower Manhattan offices which were inaccessible. As the first week progressed, it became clear that lower Manhattan would remain closed to the public. Hoping that the area around the courts would be accessible at the beginning of the following week, Judge Scherer arranged to have all jailed defendants whose cases had been scheduled for arraignment from September 11 through 14 produced in court on Monday, September 17, together with the jailed defendants originally scheduled for that day. To create court calendars and to let the Department of Correction know whom to produce, Manhattan court personnel communicated case information by cell phone to staff at the court system's statewide database in Albany. The calendars were then created in Albany and sent to Brooklyn, where they were printed out and retrieved by Manhattan court personnel. Once the calendars had been created, the Correction Department agreed to produce prisoners for September 17 based on a list of names with limited data rather than requiring the usual paper- and labor-intensive system of superseding commitment forms.

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<sup>12</sup> The Criminal Term of the Supreme Court is the felony trial court in New York City.

To ensure the resumption of trials, court officials provided the DA—whose own case management system was down—with information on the 15 cases and asked for an assessment of the prosecutors' ability to proceed. The DA's office got back to Judge Scherer in a day or two on the status of the 15 cases. The court then contacted the defense lawyers, informed them of the DA's readiness to proceed, and told them the cases would be called on September 17, at which time the trial judges would rule on each case on an individualized basis. Lawyers whose clients were released were told to notify their clients to be in court on September 17, and the court arranged for the production of the jailed defendants. All except one (who eventually arrived late in the afternoon) were produced on time. Sworn trial jurors were individually telephoned on Friday and told to await specific instructions, not to come to the courthouse unless told to do so, and to ignore general public announcements about jurors. When reached by telephone, one juror revealed that he probably would have been dead had he not been on jury duty on September 11; he worked on a high floor of the World Trade Center from which no one had escaped.

Full juries had been selected for 10 of the 15 trials that were pending at the time of the attack, and one case was being tried before a judge without a jury. All defense counsel informed Judge Scherer that they were ready to proceed. Five of the trials continued and were completed. In six other cases judges granted a mistrial, most typically because the prosecution was unable to obtain police testimony. As one measure of the challenges to be met, Judge James A. Yates had to track down a displaced juror, who had lived in Battery Park City, through a former employer who contacted the juror who then communicated with the judge by email. That case, in which deliberations had already begun, was then able to proceed. Mistrials were declared in the four cases in which lawyers were in the process of picking a jury at the time of the attack, allowing those cases to be restarted at a later time.

Judge Scherer had decided that no trial would resume before Thursday, September 20, following Rosh Hashanah. The judge, the chief clerk, and a staff of assistants worked both days of the weekend of September 15-16. Because the court did not set uniform adjournment dates, all lawyers and all released defendants were notified by mail of the new dates for the adjourned cases from the prior week. On September 17 and for several days thereafter, fliers with information about the status of all cases scheduled for that week and the prior week were handed out to lawyers entering the courthouse. Information about the adjourned dates for specific cases was available in specially designated courtrooms, one in 100 Centre Street and one in 111 Centre.

On Sunday, Judge Scherer telephoned all the judges and asked them to meet early Monday morning. At the meeting, Judge Scherer communicated her determination that all jailed defendants appear in court within 10 days in order to be brought up to date on the status of their cases. The judges agreed at that meeting that they would grant any non-appearing released defendant at least a second opportunity to appear in court without having a warrant issued.

As October drew near, the court was encouraging the DA to move more cases to trial, but that goal was hampered by the unavailability of police officers and other difficulties.

The prosecutors were dealing with the Criminal Justice Coordinator on the availability of officers for trials, rather than the court getting the information directly from the Police Department—a situation that both the Supreme Court judges and the prosecutors found frustrating. Judge Lippman, who also was in contact with the Coordinator, worked on the problem generally, but did not at that time address the availability of particular officers for particular trials in Manhattan Supreme Court.

As of October 1, however, police officers were generally made available for trials of all Supreme Court cases with jailed defendants, and the categories of other proceedings for which officers were available increased week by week. Shortly thereafter, Judge Lippman began providing the Coordinator with lists of specific cases that the Supreme Court hoped to try in the immediate future.

In addition to restoring arraignments and trial cases, the Supreme Court was also responsible for reconstituting grand juries. This task was greatly complicated by the fact that the court did not have all the grand jurors' phone numbers. Because many of the grand jurors whom the court was able to contact were atypically flexible about rearranging their schedules, on September 18 and 19 the court was able to reconstitute four grand juries, shared (for greater efficiency) by the Manhattan DA and the Special Narcotics Prosecutor. Other grand jurors were told they might be needed later in the month, and some were called when a Special Narcotics grand jury was subsequently sworn to deal with various investigative cases.

## Family Court

- *Leadership. The administrative judge opened the court when most other courts were closed.*
- *Business as usual. The Family Court reopened on September 12, but the number of adjournments remained high for several weeks because of the absence of parties, lawyers or indispensable witnesses.*
- *Communication. The court relied on its normal schedule for inter-agency meetings.*
- *Police availability. The Police Department allocated more police to be available for Family Court cases than were actually called to appear.*
- *Postponements. Manhattan Family Court's notification of parties and attorneys about new court dates varied from courtroom to courtroom.*

On Wednesday, September 12, the Family Court throughout the city was open for business. Unlike most courts, Family Court was open not only for emergency applications but also to hear any pending cases. The reality, however, was that most people did not know the court was open—public announcements were saying that all courts were closed—and relatively little business was transacted. Fortuitously, there were no juvenile delinquency cases involving detained children awaiting arraignment in any of the five counties.

The Family Court in Manhattan, inside the frozen zone, was inaccessible to the public, so Family Court Administrative Judge Joseph M. Lauria arranged for emergency

applications to be heard at other courthouses and over speakerphones. He instructed court personnel in all the boroughs and communicated with the police that any litigant whose case normally would have been heard in Manhattan could be heard in any other borough. On September 12 a few Manhattan residents who were seeking new or extended orders of protection did in fact appear in court in the Bronx and Brooklyn.

Judge Lauria, who like most of his colleagues had been in Albany on the morning of September 11, accompanied some of those colleagues back to New York on a 5 a.m. train on September 12. After arriving in the city, Judge Lauria walked from Pennsylvania Station to the Family Court in lower Manhattan. There he found a courthouse without power or telephones. Even cell phones were not working, so he walked across the Brooklyn Bridge to work from the Brooklyn Family Court. Later that day he returned to the Manhattan courthouse to spend the first of two consecutive nights sleeping on the couch in his chambers.

On September 13 and 14, more business was conducted in the boroughs outside Manhattan than had been conducted on the 12<sup>th</sup>, but a majority of cases still were adjourned without substantive action. Judge Lippman estimated that on September 13 half to two-thirds had to be adjourned because of the absence of parties, lawyers, and/or witnesses.

Peter Reinharz, the chief Family Court prosecutor, had heard indirectly that the Family Court wanted a skeleton staff of prosecutors at the Manhattan courthouse. On September 13, after negotiating his way into the frozen zone with the help of a cell phone call to the Coordinator's desk in the Command Center, he arrived at 60 Lafayette Street. The elevators and telephones were not working, so he spoke to Judge Lauria by cell phone from the lobby. The judge informed him that all emergency Manhattan cases would be heard in Brooklyn and that he should proceed there. In fact, the prosecutor's office handled no emergency Manhattan cases on September 13 or 14.

In the best of times, significant percentages of cases in Family Court are adjourned because of the unavailability of one or more of the necessary parties or lawyers. In addition, the low rate of compensation for assigned counsel has led to a chronic shortage of lawyers for those indigent parties who are not represented by the Legal Aid Society or other agencies. At various times during 2001, children have sat in jail without a lawyer to represent them, and parents whose children have been removed from the home have experienced multiple adjournments without representation. The events of September 11 simply exacerbated what one judge called the permanent crisis in Family Court.

The Manhattan Family Court was completely closed from September 11 through 14, and all the cases scheduled for those days had to be rescheduled. A uniform system was developed for the accused juvenile delinquents who were in detention: those cases were rescheduled for exactly one week after their original date. For the other cases, the efficiency of the response depended a great deal on the initiative of the judge or referee presiding. Some judges made sure that new dates were promptly assigned and took advantage of a special team from the clerk's office that was created to send out notices in an expeditious fashion. Others were less proactive. The consequence of the less meticulous procedures was that one or more necessary party was absent on the new date,

causing the case and its resolution to be further delayed. Such postponements increased the frustration of the parties who had made the effort to come to court.

On September 13 and 14, the Department of Juvenile Justice did not produce many children detained on delinquency charges whose cases were scheduled in courts outside of Manhattan. Still, whether the accused delinquents were produced or not, most of their cases could not proceed without police witnesses. Because police witnesses were almost entirely unavailable during the week of the September 11, most cases were adjourned for “good cause” without the child being released.

By the week of September 17, the Department of Juvenile Justice was generally producing detained children at court when required, and the Criminal Justice Coordinator gave the Family Court chief prosecutor the ability to call up to 25 officers to testify in proceedings. Nevertheless, almost all cases were postponed for “good cause” without the children being released. Assistant Corporation Counsel Reinharz indicated that his office did not come close to summoning his full allocation of officers, in significant part because the court granted most of the delays it had requested.

The Family Court had less communication and fewer meetings among the interested officials than occurred in the criminal courts following September 11. In the first week of the emergency Judge Lauria held meetings in the four Family Court courthouses outside of Manhattan, but not all of the agencies that would normally attend were notified. The regular monthly stakeholder meeting in Manhattan was cancelled for September, and no general meeting to address issues arising out of the emergency was held in Manhattan until October. There was, therefore, less ability to work together to minimize the disruption. On the other hand, the effects of the disruption were mitigated by the fact that the number of arrests, child protective proceedings, and other new filings fell off drastically in all the boroughs, particularly Manhattan.

## The Institutional Defenders

Reports from defense lawyers suggest that detained defendants were quite understanding of the delays in the processing of their cases. They may not have been pleased, especially if they otherwise would have had a high possibility of release, but they understood the gravity of the problems the whole city was facing.

The Legal Aid Society undertook to communicate with its clients who were in jail and who had not been produced in court for scheduled appearances. The Criminal Defense Division of Legal Aid has paraprofessionals who work in the jails on a regular basis. Lawyers were able to request that the paraprofessionals speak specifically to their clients who had missed court dates. The Legal Aid Society’s headquarters and Manhattan trial office were located near the World Trade Center. Its staff was unable to use the case management system or recover the files through which specific clients could be identified. Unable to identify many individual clients, the Legal Aid Society offered to have lawyers meet with the inmate councils in each of the New York City jails. This was a way to provide information to defendants in the jails, whether they were Legal Aid clients or not, particularly since the lawyers and paraprofessionals who met with the

inmate councils came equipped with fliers that could later be circulated. A number of wardens accepted the offer, although more declined.

The Juvenile Rights Division of the Legal Aid Society made an organized effort to have a staff member talk to each of its detained clients. This was easier to accomplish than in adult jails because lawyers and their representatives can telephone children in the custody of the Department of Juvenile Justice. DJJ itself organized rap sessions for residents to discuss the events that they had seen on television and to prepare them for the roadblocks, National Guardsmen, and other unusual sights they would see when they were next transported to court. DJJ had earlier arranged multiple telephone calls for two children who feared that family members might have been in the Trade Center when it was attacked. The phone calls established that both family members were safe.

Numerous reasons have been advanced as to why legal representation for indigent parties who are entitled to lawyers (as most indigent parties in the criminal and Family Courts are) is more effectively and more economically delivered by lawyers in agencies or firms organized for that purpose than by individual practitioners. The September 11 emergency provides at least three more arguments concerning the desirability of agency lawyers for indigent legal services.

First, communicating with agencies during an emergency is far simpler, and, once contacted, agencies can agree with the court on prospective actions that will affect significant portions of the court's caseload. Second, providers like the Legal Aid Society employ paraprofessionals, social workers, and investigators who can perform many services in an emergency—for example, contacting detained clients. Third, agencies have multiple lawyers, ensuring that their clients will be represented even if individual attorneys are unavailable.

## Recommendations

Emergencies test the dexterity of the justice system. Civil unrest, we know from recent history, can overwhelm the courts with masses of arrests; terrorist attacks, we know since September 11, can force courts to operate without phones, computers, police witnesses, and even buildings. Whatever the emergency, the challenge is to restore the ordinary administration of justice—with individual consideration of each case—as soon as possible. Thoughtful, thorough planning, and simulations conducted among the people who will have to make decisions in a crisis, will increase the speed and efficiency with which justice is restored.

Our examination of the response of the courts to the events of September 11 and our review of early guides to the administration of justice during emergencies lead us to suggest that future planning exercises and drills focus on the four issues we have identified as crucial.

## Leadership

The need for local leaders to make sound decisions without direction from a central office is common to all complex organizations in the first hours of a major emergency. They may be guided by earlier instruction or by messages broadcast in a moment of crisis, but they must be able to act decisively on their own. Soon, however, when regular communications are restored or emergency communications established, hierarchical leadership resumes its place and interagency coordination becomes essential.

Both of these phases were evident after the destruction of the World Trade Center. Chief Judge Kaye was able quickly to communicate a broad directive to open the courts as soon as possible, but more detailed instructions issued on September 11 from administrative judges far away were only partially effective. Instead, local leadership emerged among both the local administrative judges and senior prosecutors, allowing the Manhattan Criminal Court to be ready for arraignments on the morning of the September 12. By the next day, however, the second phase had begun with Judge Lippman directing and coordinating decisions centrally and remaining in regular communication with both the administrative judges and the Mayor's Criminal Justice Coordinator.

Both of these phases can be anticipated in planning. For example, police departments actually train their local commanders in the exercise of leadership during the first phase of emergencies. Using written scenarios based on actual emergencies from the past, police conduct "table top" simulations several times each year, putting local commanders under the kind of stress they will face in the early hours of a real emergency, thereby improving their performance. Court administrators, district attorneys, and public defenders might consider engaging in such "table top" exercises as well.

Leadership during the second phase of an emergency, when central coordination is established, requires that the judicial and executive leaders be in close communication. Fortunately, the courts had a seat at the city's emergency command center on September 11 because an earlier exercise—undertaken in anticipation of potential Y2K problems—had revealed that need. Such preparation should be considered in other jurisdictions as well.

Business as usual

To be able to return to normal business operations as soon as possible following an emergency, the justice system needs to have policies and plans in place that relate to safety and evacuation (including guidelines as to when it is safer to remain in place). For instance, agencies should determine in advance if they want evacuated personnel to gather at a central point and be accounted for, or if people are free to go where they wish once they have left a building. In courthouses, where several agencies typically occupy separate sections of the same building, planning could usefully be done together, at least allowing each agency to know how the others will handle future evacuations of their shared buildings.

A particularly difficult problem that would benefit from advance planning is how courts will continue their operations if a courthouse is inaccessible or otherwise unusable.

Determining in advance what the options are and how each might be implemented will alleviate some of the inevitable confusion and difficulties. If the courthouse is physically fit to function, but is located in a zone from which the public is excluded, planners might anticipate how they could establish a guarded corridor, as was considered in lower Manhattan, or arrange transportation on buses from publicized locations.

In planning how to staff the courts during emergencies, court administrators should recognize that, until other agencies return to normal, less serious cases may need as much attention and independent judgment from judges as more serious cases. While it will almost always make sense to prioritize the cases of jailed defendants over those of released defendants, it may not make sense to assume that issues presented in felony cases will be more difficult than those arising in misdemeanors, juvenile delinquency cases, or probation violations. For instance, if police or prosecutors decide that these less serious cases will not be promptly moved forward because of limited resources, judges will have to weigh whether such a decision should presumptively result in the release of these defendants.

*Communication.* One lesson learned from September 11 is that whole geographic areas may lose electricity and telephone connections, or become largely inaccessible. Different emergencies will cause different types of communication system dysfunction, but communications planning can limit the time needed to recover from the adverse impact of the emergency. Just as simulations can enhance leadership, advance preparations can increase the likelihood that an agency will be left with some computer and some telephonic capacity, and that individuals and agencies will be able to reach each other, no matter what the emergency. Planners must deal with the means, methods, and substance of communications and then ensure that all affected participants are part of the plan.

- Re-establishing the means of communication should be a high priority, but in some circumstances the resumption of computer, telephone, fax, etc., services will be beyond the control of justice agencies. A communications plan should include, for example, an off-site backup for computer systems at a location sufficiently removed from the home office that it is unlikely to be subjected to the same incapacitation. Advance exploration of, and planning for, new communications technology can be useful when telephone lines are inoperable, as was the case in the lower Manhattan courts after September 11.
- Whatever means are used to communicate within the justice system, officials must know *how* to reach all the players. That means maintaining and consistently updating contact lists—home, office, pager, and cell phone numbers; fax numbers, and email addresses, etc.—and ensuring they will be available to all who need them during an emergency. Managers should be encouraged to keep such lists in hard copy form and electronically at more than one location. On the night of the attack, for example, the administrative judge of the Supreme Court was able to contact many of the court’s judges from her home to inform them of operational decisions. Planners should consider how harder-to-reach players, such as individual lawyers dislocated by the emergency, might be contacted in future emergencies.

- While the nature of the information to be conveyed will vary from one emergency to the next, justice agencies can have in place a plan to get basic information to those who need it. First is notification of when the courts will be open and how cases will be considered. The need for police witnesses must be conveyed to those who can make the officers available. Corrections officials can benefit from planning how to advise detainees about the emergency's effect on their cases. One method might be to build relationships with a defender organization that has the expertise and is willing to make oral presentations and prepare general written materials for pretrial detainees affected by a crisis.
- Decisions that can be made in consultation across agencies (e.g., with judges, prosecutors, defense lawyers, police, and other executive branch officials all participating) will be better decisions and easier to execute. Decision makers, therefore, should plan multiple ways—both high-tech and low-tech—that they might consult rapidly on such issues as adjournments and police availability.

*Police Availability.* The attack on the World Trade Center produced a sustained need for thousands of police to be deployed on emergency duties. As a result, police officers needed in court were unavailable not just for a day or two, but for weeks. Future emergencies could cause the same problem again in New York or in other cities. New York's justice system coped with this situation surprisingly well, especially in light of the fact that no contingency plans had been made for such police unavailability. The experience, however, suggests several areas in which advance planning might have helped.

First, it would be useful to agree in advance to the relative priority of different kinds of proceedings requiring police testimony (e.g., grand jury vs. trial, juvenile vs. adult, jail vs. released cases) and the numbers of police officers who might be necessary to each. Second, it would also be useful to share information about the availability of officers to each part of the system, so that cases are not postponed in the mistaken belief—as occurred in Family Court after September 11—that officers are not available. Finally, lines of communication to deal with a court's specific need for individual officers should be clear.

*Postponements.* When cases need to be postponed, it is important for courts to try to ensure that all who need to know the new date receive that information sufficiently promptly to facilitate their appearance on the new date. Otherwise, the business of the courts and the rights of the litigants are jeopardized. In instances where the courts are forced to close or otherwise postpone all cases, courts can usefully consider in advance whether decisions that foster simplicity and uniformity—such as postponing all cases in a given category to the same date—will help get the cases in question back on track sooner.

### **The government's credibility gap**

Although the aftermath of the attack on the World Trade Center did not open a credibility gap between local government and the public in New York City, planning for this issue may be important for future emergencies. Even in this emergency, events could easily have developed in ways that Arab-Americans or others would have needed reassurance

from their own community leaders about the propriety of government actions. Efforts can be made in advance to designate members of many different constituencies who can be mobilized to share accurate information in an emergency. Community leaders are far more likely to agree to help the authorities disseminate information if they themselves know that it is correct. Procedures that allow representatives from affected communities to observe police and court procedures and meaningfully object if they seem unfair will increase the willingness of people to play this role. For instance, as part of New York City's 1969 plans for emergencies involving mass arrests, such representatives were to observe police staging areas and court holding cells.

### **Legal oversight**

Perhaps the most profound measure adopted as part of New York City's 1969 plan for the administration of justice during emergencies was the deployment of city lawyers—members of the Corporation Counsel's office—to oversee the fairness of practices at mass detention areas. Recognizing that judicial oversight was impractical, city planners nonetheless realized that resolving claims of unfairness quickly, on the spot, could prevent bad situations from getting worse.

While mass arrests did not occur, the September 11 experience pointed to places where legal oversight might be crucial in future emergencies. For example, the police checkpoints established along the perimeter of the frozen zone were the scenes of disagreements between individual citizens and police officers about who could enter the zones and under what conditions. The planning that might be done to improve the operation of similar checkpoints in the future is beyond the scope of this report, but we do see value in legal oversight at such checkpoints, perhaps by city lawyers, as contemplated in the 1969 plan. Not only would such oversight, along with greater clarity about the rules at the checkpoints, have avoided some unpleasant confrontations and arrests, it would have signaled that fairness in the administration of justice remains a high priority even under emergency conditions.

## Appendix

The following individuals were interviewed or provided information for this report.

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Hon. Eileen Koretz  
*Criminal Court of the City of New York*

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Hon. Martin P. Murphy  
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