Plea Bargains Settling 8 of 10 Homicide Cases

Reduced Charges Found to Bring Probation or 10 Years at Most

NYT 1/[illegible]

By SELWYN RAAB

Almost eight of every ten defendants who are accused of homicide in New York and who plead guilty to a reduced charge are freed on probation or receive a prison term of less than 10 years. And of those receiving a maximum 10-year term, most will be eligible for parole in three years.

This was the principal finding of a study by The New York Times of all homicide indictments in 1973 that have been resolved, so far, in the city's courts.

A typical homicide case, as it winds its way through New York's criminal-court system, the study found, is disposed of in this manner:

First, a grand jury indicts the suspect for murder—the most serious homicide count. But court backlogs and delays prevent a speedy trial, leading to out-of-court negotiations between a prosecutor and a defense lawyer.

These negotiations culminate in a bargain in which the defendant agrees to change his plea of innocent to the original homicide indictment to a plea of guilty to a less-serious charge.

By accepting the guilty plea, the district attorney's office avoids the necessity of a trial and the defendant virtually is guaranteed a lesser sentence than he would have received if he had been convicted by a jury.

Faced with a plea bargain already worked out by the prosecutor and the defense counsel, a judge completes the judicial process by granting the defendant—who had originally been accused of murder—immediate freedom on probation or a prison sentence of less than 10 years.

The disposition of all 885 murder and manslaughter indictments handed up in New York in 1973 was reviewed by The Times for this study. Another 641 homicide arrests that year are still unresolved in the courts.

Compared with available court records in the suburbs and upstate, the study found that homicide sentences in the city apparently were less severe than those imposed elsewhere in the state for the same crime.

The comparatively low sentence structure here for homicide convictions has generated a behind-the-scenes dispute among district attorneys, judges and defense lawyers.

District Attorneys and their assistants contend that they are at a disadvantage because of the huge backlog of murder cases and their inability to try more indictments. This compels them, they say, to accept pleas to lesser charges.

"We're caught in a buzz saw," says Bronx District Attorney Mario Merola. "We haven't got the facilities to try all murder cases and the defense lawyers are well aware of it. There's no doubt that defendants are getting some benefit out of it in terms of softer sentences."

Many judges maintain that they have little discretion in

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sentencing because of plea arrangements made by the prosecutors and defense lawyers.

"There's a limit to what a judge can do after a plea is taken," declares Justice David Ross, the city's Administrative Judge. "The D.A. has tremendous input in sentencing by agreeing to a plea."

Defense lawyers, however, argue that far from being too lenient, prison terms are often much too severe because many murders are simply the consequences of domestic quarrels and that murderers seldom repeat their crime. One experienced homicide lawyer, Stanley S. Arkin, asserts,"We have to be more enlightened. The system can't be inflexibly harsh even for "murder sentences."

The police reported 1,680 murders in the city during 1973 —more than triple the number reported in 1963. During that same decade, the "solved" rate of slayings dropped from 89.3 per cent in 1963 to 64.8 per cent in 1973.

A homicide is described by the police as solved or "cleared" if an arrest is made, even if the charge is dropped later or if the suspect is acquitted.

Homicide statistics for last year are still being compiled by the police, but the number of murders is believed to have declined by eight per cent compared to 1973. Among the country's 10 largest cities, New York had the eighth lowest murder rate for each 100,000 residents in 1973.

Key Findings Cited

The Times's homicide analysis included all 1,326 adult indictments for murder and manslaughter in the five boroughs during 1973.

Another 94 homicide arrests that year involved youths under the age of 16 whose cases were referred to the Family Court, where records are confidential. The recent increase in the number of murders committed by juveniles has sparked demands for longer detention terms—and improved psychiatric care—for these youngsters.

Juveniles who are believed to be murderers are rarely confined for more than three years in a state training school or at the Elmira Correctional Institution. During such confinement, most authorities agree, there is little opportunity to provide them with intensive psychiatric treatment.

In its review of adult indictments, the study found that cases involving only 685 suspects—about half of the 1973 total—had been adjudicated by last December in the city's courts. Other major findings were:

¶Only 4 per cent of the defendants, those who were convicted by juries or who pleaded guilty to the most serious charge of murder, got the maximum potential term of life imprisonment.

¶Of those sentenced on lesser charges of manslaughter or attempted manslaughter, 20 per cent were released on conditional discharges or probation. A probationary sentence usually means no further imprisonment unless the defendant is arrested again.

¶Another 28 per cent of the sentences were for a period of less than five years and 30 per cent were for less than 10 years. Thus, almost eight of every ten defendants—78 per cent—either won their freedom or received a maximum sentence below 10 years.

¶About 21 per cent of the defendants were sentenced to more than 10 years.

¶Some 80 per cent of the completed 1973 homicide indictments were determined by pleas, almost always to a reduced count. Eleven per cent of the accusations were resolved by trials and jury verdicts; 6 per cent were dismissed after indictments, usually because of insufficient evidence, and 3 per cent of the defendants were institutionalized as mentally incompetent to stand trial.

¶Of the 74 defendants who went on trial for homicide, 48 were found guilty and 26 were acquitted. Judges seemingly imposed harsher sentences on defendants convicted by juries in contrast to those who pleaded guilty without a trial.

Comparisons Are Noted

In attempting to compare the severity of homicide sentences here with those in the rest of the state, The Times obtained the preliminary results of a survey made by the State Office of Court Administration of homicide sentencing in 56 of 57 suburban and upstate counties.

The state survey indicated that outside of the city, nine of every 10 defendants who plead ed guilty or who were convicted by a jury of murder or manslaughter charges received a maximum sentence of more than 10 years.

Only two of every 10 homicide defendants in city courts received similar penalties for the same charges, according to the analysis of the 1973 indictments.

An official of the Office of Court Administration said the data covering sentencing in the suburban and upstate communities from July, 1973, through August, 1974, was supplied by the district attorneys in those counties. He cautioned that the information was still being analyzed by his office.

While there is no precise data to compare homicide sentences here with the rest of the country, Dr. Martin E. Wolfgang, a nationally recognized criminologist, said, based on his own studies, that he believed that sentences in the city tended to be lighter.

'Sheer Volume' a Factor

Dr. Wolfgang, who is the director of the Center for the Studies in Criminology and Criminal Law at the University of Pennsylvania, said the "sheer volume" of murder cases in New York may be contributing to lower sentences by judges who are frequently assigned to murder trials or sentencing after pleas.

"When you're dealing primarily with murders there could be a tendency to alter one's perception of the range of tolerance for that crime," Dr. Wolfgang said in an interview. "In New York the proportion of lower sentences is higher than one would normally expect. The sheer volume could be expected to have an effect on the judges."

Justice Ross, who is administrative head of the city's criminal and supreme courts, denies that a policy of softer sentences exists in return for homicide pleas. He attributes the high number of reduced indictments and lower prison terms mainly to jury attitudes of the relationships beween the defendants and victims.

According to police statistics, about 70 per cent of the suspects arrested for murder in 1973 were either related to a victim or knew the slain person at least casually.

"Although the indictment on a count of murder may be proper in a legalistic sense, juries as a rule will not bring in a conviction for murder where a prior relationship existed," Justice Ross said in an interview. "Juries look beyond technical evidence and they look for a relationship, family or otherwise. They may not acquit, but they'll come back with a conviction on a lesser count."

This factor prompts district attorneys to accept pleas to reduced charges of manslaughter, Justice Ross emphasized.

"The D.A.'s are not stupid and when they get an offer of a plea that's similar to what they would probably get if they go to trial, then they'll take the plea," he said. "I deem it totally appropriate when a D.A. offers a defendant a sentence to a reduced charge in circumstances like these."

Indirect Pressure Felt

M. Merola, the Bronx District Attorney, counters that the lack of courtrooms and staff to try more murder cases have contributed to lighter sentences.

Mr. Merola also believes there is indirect pressure on his office to resolve murder indictments by pleas because the appeals courts have dismissed charges when lengthy delays have occurred between arrest and trial. He said in an interview:

"Any time there's a plea negotiation and the defendant's lawyer knows we don't have the capacity to try the case, then the defendant gets a better deal. Society does not."

District Attorney Nicholas Ferraro of Queens also expresses concern that recent rulings by appellate courts may be influencing the sentencing decisions of judges.

"I think it's about time to look at what the appeals division is doing," Mr. Ferraro said sharply. "Sentences are often reversed as being too excessive. The appeals courts seem to be leaning toward leniency."

Caseload a 'Problem'

In Manhattan, which has the largest docket of untried homicile cases, District Attorney Robert M. Morgenthau said: "The bigger the backlog, the lighter the sentences."

Mr. Morgenthau, who took over his elected post on Jan 1, noted that more than 360 defendants were awaiting disposition of homicide charges in his county. He described this caseload as one of his major problems.

"If we had more trial parts [courtrooms], the balance would then tip in favor of the district attorneys," he said. "The opportunity of trial would lead to more serious charges and stiffer sentences and, at the same time, give an innocent defendant his rightful day in court."

Richard H. Kuh, Mr. Morgenthau's predecessor as district attorney, generally is critical of the quality of state supreme court justices who preside over murder proceedings. These judges, he asserted, often have "shortsighted views" in sentencing and were "giving away the courthouse."

"In the last decade judges have become overly concerned with volume," Mr. Kuh said. "The simplest thing to do is to wave bait and give light sentences. It isn't even done consciously. The pattern has developed because of the large caseload."

Disputing Mr. Kuh's charges, Justice Ross insisted that judges in the state supreme court, where all homicide cases are heard, are under no directions

to soften sentences so that the homicide case backlog could be trimmed.

"We want cases disposed of, but there's no such thing as a speedup," he said recently during a shirt-sleeved interview in his office at 80 Centre Street, a block from the Manhattan Criminal Court Building.

Backlog Is Assailed

Those lawyers whose job it is to defend the hundreds of murder suspects in New York's crowded courts understandably are in disagreement with district attorneys who believe murder sentences are too light.

"What's most unconscionable to me is the backlog of untried cases," said William J. Gallagher, the lawyer in charge of the criminal defense division of the Legal Aid Society. Noting than about half of the 1973 homicide indictments were still unresolved in 1975, Mr. Gallagher declared:

"Many of these people charged with murder or manslaughter are spending long periods of time in prison prior to acquittal or a disposition. That backlog is alarming."

Mr. Gallagher accused assistant district attorneys of manipulating grand juries into unjustifiably indicting defendants for murder or manslaughter when the charge against them should have been reduced or thrown out instead.

"The D.A. has absolute control over the grand jury," he said. "He's the only lawyer sitting in that room and jurors are not sophisticated enough to vote out what isn't asked of them. It's only later that a distinction on a homicide charge is made and the charges filter down to what they really should have been.

"That's why these indictments for murder so often become attempted manslaughters or dismissals — because they were never strong cases to begin with."

'Enlightenment' Is Seen

Mr. Arkin, a lawyer who frequently defends murder suspects, believes sentences here are lower than in other parts of the country because "New York City is more enlightened, sociologically and legally."

"Sentences for murder in this country are far too high," said Mr. Arkin, a former chairman of the committee on criminal courts, law and procedure of the Association of the Bar of the City of New York. "Putting a man away for 25 years is inhumane and rarely serves any deterrent purpose."

In his 13 years of practice in the courts, Mr. Arkin said, he had encountered few instances of "calculated murder."

"While the average end result of a killing is terrible, the mitigating circumstances that often lead up to the death are still susceptible of human understanding," he said. And that crime is rarely committed again by the same person."

Mr. Arkin conceded, however, that the backlog of murder cases simplified a defense counsel's task of bargaining for reduced charges and lighter sentences.

'Not an Evil'

"There's no doubt that the D.A.'s in the city are more inclined to make a deal than those upstate," he continued. "But I think a lot of the yelling and screaming about permissiveness in the courts is ill-thoughtout.

"Plea-bargaining is not so evil. The people who castigate it just don't understand it. It wouldn't seem so evil if it were taken out of the closet and put in front of the courtroom."

While many defense lawyers prefer the present system because it relies so heavily on plea-bargaining, Justice Ross acknowledged that there has been increased public pressure for more trials.

Citing statistics which, he said, show that the proportion of trials to murder indictments was three times higher in the city than the national average, Justice Ross, his voice rising angrily, asserted:

"I would like to do away with plea negotiations entirely. But is the public ready to give the money for the courtrooms and backup facilities that we need? Is the Mayor? We're bursting at the seams and it would take millions to try all of these cases."

3 Major Homicide Charges

Under New York State law there are three major categories of homicide.

Murder is defined as intentionally causing the death of a person or committing a homicide during the commission of a crime, such as robbery.

Manslaughter in the first degree occurs when there is an intent to cause severe physical injury or when a defendant commits a homicide while "influenced by extreme emotional disturbances."

Manslaughter in the second degree occurs when a defendant recklessly—but not intentionally—causes a death.

The maximum penalty for murder, a class "A" felony, is life imprisonment. A judge can set a minimum prison term of 15, 20 or 25 years before an inmate is eligible for parole.

Last year the State Legislature restored the death penalty for murderers of policemen or prison employes and for life-term inmates who commit murder. The constitutionality of the penalty, however, has yet to be tested.

The maximum penalty for manslaughter in the first degree, a class "B" felony, is 25 years and for manslaughter in the second degree, a "C" felony, 15 years.

Federal Courts to Initiate Code For Rules of Evidence on July 1

By WARREN WEAVER Jr.

Special to The New York Times

WASHINGTON, Jan. 26—For the first time in the nation's history, lawyers trying cases in Federal Court will be operating under uniform rules of evidence in every jurisdiction in the country, beginning July 1.

The process of substituting a simplified national code for a confused patchwork of state law and varying court-made rules took more than 14 years. A major confrontation between Congress and the Supreme Court resulted.

A compromise draft of the code was pushed through Congress in the closing days of the 1974 session, after nearly two years of deliberation. President Ford signed the legislation without comment early this month.

While enactment of the rules failed to attract much public attention, it was a source of considerable satisfaction to Representative William L. Hungate, chairman of the House Criminal Justice subcommittee, chief sponsor of the legislation.

Mr. Hungate predicted that the code would "certainly improve the administration of justice" and "help to insure the highest standards of fairness in our courts."

Generally, despite the large umber of lawyer-members and heir reluctance to revise long-tanding practices, Congress managed to reach agreement on the rules by dropping some of the most controversial material in the version promulgated by the Supreme Court late in 1972.

More Secrecy

That draft, which would have become law automatically if Congress had not stepped in, would have given government officials the privilege of refusing to testify in court if a "secret of state" or "official information," a lesser category, were involved.

That language was stricken from the rules after protests that it would encourage still more secrecy in government.

The Supreme Court's version would also have made privileged, or unavailable as court evidence, confidential conversations between lawyer and client and clergyman and parishioner, but not between doctor and patient.

Congress resolved the debate that resulted by avoiding the issue entirely. The new rules provide that whatever case-law or state statutes control such privileges in Federal Court now will continue to apply in the future.

The legislation goes so far as to prohibit the Supreme Court from issuing any more rules on evidentiary privileges, a power the Justices currently enjoy. Representative Hungate said this had seemed desirable "because of the sensitivity and impact" of the subject.

State Laws Apply

This stance enabled Congress to avoid the controversial question of a possible Federal shield law authorizing newsmen to refuse to reveal their sources in courtroom testimony. This leaves state shield laws, where they exist, in effect in Federal Court cases.

A particularly significant section of the new rules attempts to codify the law on admission of hearsay, or second-hand, evidence. It states 23 exceptions to the basic rule that such testimony is unacceptable, plus an all-purpose provision likely to require considerable judicial interpretation.

Another major revision limits the extent to which the credibility of a witness can be undermined by introducing evidence of his past criminal record, particularly where the offenses were relatively minor or took place long before.

Congress Stepped In

The process that produced the new rules began in 1961 when the Judicial Conference of the United States, which administers the Federal Court system, established a committee to study the advisability of such a project. An advisory committee set up by the conference in 1963 produced a preliminary draft in 1969.

The rules were revised and submitted to the Supreme Court in 1970. The Justices, however, called for further study, and a third draft was finally submitted to the Court in 1971. A year later, with Associate Justice William O. Douglas dissenting, the court promulgated that code.

Under Federal law, these rules would have gone into effect automatically on July 1, 1973, if Congress did not act within 90 days. Alarmed that the courts were legislating in substantive areas and not merely recasting procedure, Congress postponed the effective date and launched the two-year redrafting project that produced the new law.