



REPORT ON THE MERGER OF THE
BRONX SUPREME
AND CRIMINAL COURTS

Committee on Criminal Courts
Committee on Criminal Justice Operations

JUNE 2009

THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK
42 WEST 44TH STREET, NEW YORK, NY 10036

REPORT ON THE MERGER OF THE BRONX SUPREME AND CRIMINAL COURTS

Committee on Criminal Courts
Committee on Criminal Justice Operations of
The Association of the Bar of the City of New York

In early 2004, Chief Judge Judith S. Kaye announced that the Supreme and Criminal Courts in Bronx County would be merged to create a new Criminal Division to handle all misdemeanor and felony cases.¹ This judicial experiment was implemented in November, 2004. Prior to this, in New York City's criminal justice system all post-indictment felony cases were prosecuted exclusively in the Supreme Court, and all misdemeanor cases were prosecuted exclusively in the Criminal Court of the City of New York. The stated purpose of Merger was: "to promote the administration of justice in the criminal courts in Bronx County by authorizing deployment of the judges of those courts in a manner that assures that all present and future caseload demands in such county will be met as expeditiously as possible."²

It was generally acknowledged prior to Merger that because of the overwhelming crush of misdemeanor cases filed annually, the Criminal Court of the City of New York was staggering under an insurmountable misdemeanor trial calendar. For example, in 2003, the last full year before Merger, out of more than 40,000 misdemeanor complaints filed in Bronx County Criminal Court, only 191 misdemeanor cases were tried. While the problem was not unique to Bronx County, the Bronx was chosen to serve as the

¹ Left unaffected by this decision were the civil courts located in Bronx County.

² The Merger was authorized by 22 NYCRR 42.1, which reads as follows:

§ § 42.1 Criminal Division of the Supreme Court in Bronx County

(a) The purpose of this rule is to promote the administration of justice in the criminal courts in Bronx County by authorizing deployment of the judges of those courts in a manner that assures that all present and future caseload demands in such county will be met as expeditiously and effectively as possible.

(b) The Chief Administrator of the Courts, following consultation with and agreement of the Presiding Justice of the First Judicial Department, may by administrative order establish a Criminal Division of the Supreme Court in Bronx County. As provided by rules of the Chief Administrator promulgated pursuant to subdivision (c) of this section, such Criminal Division, when established, shall be devoted to the hearing and determination of criminal cases commenced in or transferred to the courts sitting in Bronx County.

(c) The Chief Administrator shall promulgate rules to regulate operation of the Criminal Division of Supreme Court in Bronx County. Such rules may authorize the transfer to Supreme Court in such county, for disposition in the Criminal Division thereof, of some or all classes of cases pending in the Criminal Court of the City of New York in Bronx County in which at least one felony or misdemeanor is charged therein.

judicial Petri dish for the purpose of determining whether Merger, if successful, should be extended to the other counties of New York City as well.

Merger has now been in effect for almost five years and it appears that while the program has reduced the backlog in misdemeanor trials it has had the unintended consequence of creating a far greater backlog in felony trials. This report will evaluate the stated goals of the Merger against an analysis of its actual results. It will address a statistical analysis of caseloads prior to and after Merger, the practical effects of implementing Merger, its future prospects, and a conclusion as to its effectiveness and potential expansion to other jurisdictions. This report is based upon statistics from the Office of Court Administration, and extensive interviews of members of the judiciary, prosecutors and criminal defense attorneys.

Purpose of Merger

Merger was proposed to alleviate two problems³. The first was that the number of misdemeanor cases pending trial had reached extraordinary levels. The numbers of cases pending will be discussed below; however, almost everyone who had occasion to appear before the Bronx Criminal Court in the days before Merger has their own horror story about the way cases in that court seemed to permanently languish. The second, and closely related, problem was the occasional circumstance in which a Supreme Court trial part would be idle, with no felony case then before it. This waste of resources -- from the trial judge otherwise able to hear a case, to the idle courtroom, court officers, clerks, and court reporter -- was difficult to justify while so many misdemeanor cases sat by, waiting for a trial part.

Statistical Comparison of Cases Prior to and After Merger⁴

Misdemeanors: Trials, Filings, Standards and Goals

A review of the pertinent statistics shows that since coming into effect in November, 2004, the Merger has had an impact. Misdemeanor trials that reached a verdict increased from 191 in 2003 (the last full year before Merger – this figure includes both jury and non-jury trials) to 265 in 2007 (34 jury trial verdicts, 229 non-jury trial verdicts). Further, for the time from December 31, 2007 through June 15, 2008, 159 misdemeanors had reached verdict. This represents an increase from the pre-Merger

³ *New York Law Journal* February 10, 2004:

“Part of the rationale is the fact that in the Bronx misdemeanor arrests have increased 71 percent over the last decade while felony filings dropped 46 percent. Chief Judge Kaye said the shift in workload from the felony courts to the misdemeanor courts is exacerbated by the “needless artificial barriers” of the current court structure. The Criminal Court and criminal division of Supreme Court are separate entities that have different judges following different procedures in the way they handle different dockets — all the while presiding over criminal cases in the same jurisdiction.”

⁴ The statistics referenced, unless otherwise noted, were provided by the Office of Court Administration and are attached as an appendix hereto.

Criminal Court system. It should be noted, however, that the increase in misdemeanor cases being tried to verdict is numerically small compared to the many thousands of misdemeanors reaching disposition, and the increase is almost entirely attributable to non-jury verdicts.

In any event, the Criminal Division has clearly been able to handle an increase in the number of misdemeanor cases filed. In 2004, 46,080 misdemeanors were filed. In 2007, this number increased to 56,169. Even with this increase, the number of cases over standards and goals⁵ has only marginally increased; on January 2, 2005, 3,757 cases were over standards and goals, and on December 30, 2007, 4,092 cases were over standards and goals. Thus, while there has been an increase in misdemeanors filed between 2004 and 2007 of 21%, there has been an increase in misdemeanors over standards and goals of only 8%.

Felonies: Trials, Filings, Standards and Goals

The positive effect of Merger on misdemeanor trials has not been duplicated with felony trials. Quite the contrary. In 2003, 317 felony trials reached a verdict (252 jury trial verdicts and 65 non-jury verdicts); 2007, 140 felony trials reached a verdict (128 jury trial verdicts and 12 non-jury verdicts). This represents a decline of 55% from the pre-Merger number.

This statistic would not be so alarming if it reflected a corresponding decrease in the number of felony prosecutions. That is not the case. In 2004, 14,236 felony complaints were filed while in 2007, 16,037 were filed; this translated into 2,697 pending indictments / SCI's as of January 2, 2005, and 3,952 as of December 30, 2007. Thus the number of felony prosecutions initiated has actually significantly increased. The rising number of indictments/SCI's running up against the decrease in felony trial capacity is reflected in the felony standards and goals statistics: On January 2, 2005, 1,417 felonies were over standards and goals (measured as being over 180 days old). On December 30, 2007, 2,300 were over standards and goals. This represents an increase of cases over standards and goals of 62%. As of June 15, 2008, the number had grown to 2,443 cases over standards and goals. Even without reference to statistics from other counties, this increase in felony cases over standards and goals in Bronx felonies is sobering.

⁵ The Chief Administrator has established standards and goals to provide performance measures for the courts reflecting the time elapsed from case filing to disposition. Standards and Goals have been established for felony cases in the Supreme and County Courts, civil cases in the Supreme Courts, and for proceedings in the Family Courts.

Total Trials in Comparison⁶

Using the numbers above, one can see that in 2003, 508 trials, misdemeanor and felonies together, went to verdict. In 2007, this number had decreased by 20%, to 403. Thus, while misdemeanors have increased and felonies decreased, overall, fewer total cases are being resolved by trial verdict, even as the number of prosecutions initiated has increased.

Practical Difficulties of Implementing Merger

From the time it was announced in 2004, the Courts had about seven to eight months to put the Merger plan into effect. During this time, clerks from the Criminal Court and Supreme Court had to be merged, the status of the members of the bench – elected Supreme, Court of Claims, Criminal Court (both acting Supreme and Criminal Court) – and their duties and new obligations had to be resolved, over 10 unions had to be

⁶ Below are statistics for trials in the Bronx, 2003-2008.

Trials (felony and misdemeanor):

Year / Trials Begun / Days on Trial / Judges on Trial / Avg. Days on Trial per Judge*

2003	356	2,785	29	96
2004	390	2,709	34	79
2005	584	2,941	38	77
2006	516	2,620	29	90
2007	471	2,393	30	79
2008	484	2,316	37	62

Hearings (felony and misdemeanor):

Year / Hrgs. Begun / Days on Hrg. / Judges on Hrg. / Avg Days on Hrg. Per Judge*

2003	753	1,191	34	35
2004	788	1,146	39	29
2005	953	1,270	39	32
2006	787	1,122	36	31
2007	568	999	35	28
2008	622	965	38	35

* It should be noted that some judges were on trial or hearings for only a handful of days (e.g. newly appointed, put in a trial part only a few days before the end of the calendar year, volunteered to conduct a trial outside of normal calendar part, etc.). For example, in 2003, five judges were responsible for 91 of the 2,785 total days on trial. It should be kept in mind that while the average above is a mean average, most of those judges engaged in trial parts averaged between 100-150 trial days a year; for hearings the number fluctuates between 40 and 70 days a year.

coordinated, duties of Supreme Court and Criminal Court court reporters had to be arranged, and a host of other issues had to be resolved.

While such difficulties were anticipated, other difficulties, not foreseen – and often unforeseeable – emerged. A description of some of the more prominent difficulties follows.

More Misdemeanor Arrests

As described above, more misdemeanors have been filed in recent years.⁷ Although the ability to get these cases to trial has improved, as has the ability to promptly resolve these cases (as evidenced by the much lower growth in standards and goals as compared to filings), this increase has necessarily placed a burden on the system. With this increase, and without a corresponding increase in judicial resources to handle this increased caseload, increases in the numbers of cases over standards and goals do not necessarily reflect a shortcoming of the Merger concept. Further, as the same judicial resources must handle felonies and misdemeanors, this increase in misdemeanors necessarily means that felonies are affected by the increase also.

Judicial Attrition

When put into effect, there were a total of 48 judges assigned to the newly merged Criminal Division.⁸ As of June, 2008, this number had been reduced to 40. The number of judges has been supplemented with visiting judges from Westchester County, and further by judges assigned exclusively to handle arraignments.

However, not only has the absolute number of judges decreased, another Merger-created factor has reduced the number of available judges. Many of those who were Acting Supreme Court Justices prior to Merger were on schedules with reduced requirements for covering night and weekend sessions; with the Merger, all Criminal Court judges were raised to Acting Supreme Court status, and all Acting Supreme Court Justices equally share weekend and night duties.⁹ As a result, many of these judges are taken out of circulation for felony trial assignments the week before a week of night duty so as to avoid having a week's hiatus in the trial. With the number of Criminal Court judges available, these judges have to work roughly two weeks of night duty per year, making them unavailable to hear felony cases for four weeks every year. This does not include time for vacations.

⁷ In statistics prepared by the New York City Police Department, misdemeanor arrests since 1990 have increased every year, and in 2007 the number of misdemeanor arrests had increased by 89.5% from 1990 levels; conversely, violent crime arrests, by 2007, had decreased by 72.7% from 1990 levels.

⁸ Most of the information in the section was provided by the office of the Bronx Criminal Division Administrative Judge.

⁹ Although the Acting Supreme Court Justices would work night and weekend duty prior to Merger, they were on a schedule that involved far fewer assignments to this duty than those judges who remained on the Criminal Court bench.

Given the obligations of covering nights and weekends, and allotting time for vacations, a total number of 40 judges has the practical effect of reducing the effective number of judges available to staff the court parts of the Criminal Division to between twenty and twenty-five. The diminution in the number of available judges is curious given the stated importance to OCA of the Merger project. (It is unfortunate that greater use of Judicial Hearing Officers has not been made to help compensate for this loss. Going forward, attention should be given to using this resource to alleviate the reduction in judges in the Bronx.)

Physical Plant

A refrain from many judges was that a major difficulty in implementing the Merger was the very simple fact that the courthouses at the time of its implementation, the Criminal Court building, located at 215 East 161 Street, and the Supreme Court building, located at 851 Grand Concourse, did not have adequate facilities to hear trials. Several courtrooms at the 215 building had to have jury boxes specifically built for them, while others were too small to have a venire at all. Other courtrooms could accommodate trials, but were too small to have more than two counsel tables, one for the prosecution and one defendant, thereby preventing multi-defendant trials from being heard in that courtroom.

Many of these plant problems have been remedied by the opening of the new Hall of Justice. Even so, the Hall of Justice was designed prior to Merger, and thus was built to house only Supreme Court parts. This has caused problems with such simple matters as controlling the inflow of visitors to the courthouse as they are being screened through security. Another problem has been the relative lack of prisoner elevators to get defendants to the courtrooms, whether for a trial or regular docket part.

Prestige of Supreme Court

Although next to impossible to quantify in any meaningful way, many members of the bench and bar who were interviewed, and who practiced in the Bronx before Merger, stated that the prestige of appearing before the Supreme Court parts has, regrettably, been lost. In the bifurcated, Criminal Court / Supreme Court system, many said that practitioners treated Supreme Court proceedings with greater solemnity, and better preparation.

The Bronx Merger's Future Prospects

Trial Selection

As detailed above, Merger has allowed for a greater number of misdemeanors to be resolved through trial, but has resulted in fewer felony cases going to trial, along with a decline in the total number of cases, felony or misdemeanor, reaching a trial verdict. The staff of the Administrative Judge reported that it has been undertaking modifications

in the arrangements by which trials are selected to be sent to the trial parts. Rather than simply sending out the first case that is ready to go to trial, a greater system of triage is reportedly being used to make sure older felonies are being secured trial parts, and also steps are being taken to ensure that cases are being sent to the appropriate parts (*e.g.* more complicated cases will be sent to more experienced trial judges, etc.).

Judicial Resources

The number of judges in the Bronx is a matter of essential concern to the future prospects for the Merger project. In remarks before a combined meeting of the Committees on Criminal Courts and Criminal Justice Operations of the Association of the Bar of the City of New York, Bronx District Attorney Robert T. Johnson stated that while the program has been very effective in reducing the backlog of misdemeanor cases, an increase in the number of judges assigned to the Bronx would be essential for the Merger to reach its potential. This was a comment echoed in many interviews with members of the Bronx Criminal Division bench. With adequate staffing, the problems of coverage during nights, weekends and vacations should not pose any problem for the efficient management of the court system. Without proper staffing, Merger could never succeed. It should also be noted that the return to more frequent night and weekend duty among members of the bench has created turmoil. Some effort to obviate this effect would not only return more seasoned judges to being available to hear trials, but it would also restore some of the prestige earned after years of serving as an Acting Supreme Court Justice.

CONCLUSIONS & RECOMMENDATIONS

According to the Constitution of the State of New York, there is a unified court system in effect in this state.¹⁰ New York's court system nevertheless has ten different trial courts. These include the Civil Court of the City of New York, the Criminal Court of the City of New York, District Courts (located in Nassau County and five western towns of Suffolk County), City Courts, Town and Village Courts, the Supreme Court, County Courts, Family Courts, Surrogate's Courts, and the Court of Claims.¹¹

¹⁰ New York Constitution, Art. 6, Section 1.

¹¹ The method of election or appointment to these respective courts is as follows:

- 1) Civil Court of the City of New York – elected to 10 year terms
- 2) Criminal Court of the City of New York – appointed by the Mayor of New York City to 10 year terms
- 3) District Court – elected to 6 year terms
- 4) City Court – either elected or appointed, depending on locality; full time judges serve 10 year terms, part time 6
- 5) Town and Village Courts – elected to 4 year terms (majority non-attorneys)
- 6) Supreme Court – elected to 14 year terms
- 7) County Court – elected to 10 year terms
- 8) Family Court – outside New York City, elected to 10 year terms, inside appointed by the Mayor of New York City to 10 year terms

Calls for a merger of the trial courts are far from new.¹² Calls for judicial reform have been loud and constant, but difficult to gain traction. In 2006, *The New York Times* ran a detailed exposé of the town and village court system, which prompted a commission to review the operations of these courts and the challenges presented by the fact that many of the judges in those courts are not lawyers. A great part of the difficulty in addressing the current structure of the New York Court system is the fact that many of its parts have been in existence since, to use that immemorial phrase, “the memory of man runneth not to the contrary.”¹³

9) Surrogate’s Court – elected to 10 year terms in each county outside New York City, and to 14 year terms in all New York City counties

10) Court of Claims – appointed by the Governor, with the advice and consent of the Senate, to 9 year terms

¹² *New York Times*, November 29, 1983:

City Judges Urge Merger of Courts

The associations representing New York City's Civil and Criminal Court judges called yesterday for creation of a single-tier state trial court system to eliminate fragmentation and duplication of court resources.

A merger of all state trial courts would save money and eliminate the need to name more judges, said a report released by the associations.

It said there was "a constant transfer of litigation from one court to another and no single forum in which the entire dispute can be resolved."

In a statement, the associations noted that the present system "has created six separate trial courts within the City of New York and many more elsewhere in the state."

The report was prepared by a joint committee of the Board of Judges of the Civil Court of the City of New York and the Association of Judges of the Criminal Court of the City of New York.

¹³ In a lecture presented on December 5, 1985 at a seminar on the Unified Court System entitled, *A Short History of the New York State Court System*, Marc Bloustein, Deputy Counsel, New York State Office of Court Administration, detailed the following:

Since 1962, section 1 of Article VI of the New York State Constitution has proclaimed to all that "[t]here shall be a [U]nified [C]ourt System for the [S]tate." In spite of this confident and unequivocal command, legislators, lawyers, judges and others involved in the administration of justice are still wrestling with one another in an effort to give it meaning. The court merger debate, the pros and cons of which you will hear later this morning, is but the latest round in this wrestling match.

Rather than attempt to give you my own personal concept of a Unified Court System, I think it might be instructive were I to chronicle for you significant historical events that have combined to produce our court system -- whether it be unified or otherwise.

The Merger of the Criminal Courts in Bronx County was a worthy effort designed to meet the clear problem of underutilized trial parts and wasted judicial resources. Unfortunately, it was undertaken without the judicial resources essential to its success. Due to a reduction in the number of judges available to adjudicate increasing misdemeanor and felony caseloads, Merger has resulted in a serious backlog in felony cases. While the misdemeanor backlog has been reduced, the unintended consequence of Merger has been a precipitous decline in felony trial capacity, with an attendant increase in languishing felony cases, many of which are older than the requisite standards and goals. In 2003, the last year before Merger, 317 felony trials proceeded to verdict, while in 2007 only 140 felony trials proceeded to verdict. From a fundamental criminal justice standpoint, it must be kept in mind that most criminal defendants awaiting trial on misdemeanor charges are at liberty; while most criminal defendants awaiting the more serious felony trials are not. The practical effect is that the average defendant awaiting a felony trial in Bronx County is now incarcerated for two years or longer before he or she can receive a jury trial.

In effect, Merger has substituted the misdemeanor backlog for a felony backlog, posing serious problems not only for the criminal justice system as a whole, but for the criminal defendants whose very liberty depends on that system. Unless this serious problem is immediately and effectively addressed, any improvement with regard to the misdemeanor backlog has come at far too high a price.

Nevertheless, the goals of Merger are important and may indeed be achievable if sufficient judicial resources are devoted. Although when Merger was implemented there were 48 judges assigned to the merged Bronx County judiciary, by June, 2008 that number had been reduced to 40 judges. Furthermore, because of vacation time and the need to cover night and weekend assignments, for all practical purposes there are only 20-25 Bronx County judges currently available at any given time to staff the court parts of the merged Bronx County Criminal Division. With so few judges, the substantial reduction of felony cases tried annually under Merger comes as no surprise. Accordingly, it is our recommendation that strong and immediate steps be undertaken to remedy this decline in felony trial capacity by providing an adequate number of judges to adjudicate these crushing combined felony/misdemeanor caseloads. If these steps cannot be taken, or are ultimately unsuccessful, the continuation of this experiment must be re-evaluated. Unless and until it can be demonstrated that Merger can be achieved without deleterious effects on the adjudication of felony cases, it must be deemed a failure which should not be extended to other counties.

This historical odyssey should begin in 1846 -- with the Constitutional Convention held in that year. It was then that the antecedents of today's court system began to take form.

A primary item on the agenda of that convention was the restructuring of the courts. For the first 70 years of its life, from the time of the State's first Constitution in 1777, the New York Judiciary was a comparatively primitive institution, little changed - in form and operation - from the colonial court system erected in the 17th Century.