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EXPEDITING ARREST PROCESSING

Pat Raburn-Remfry†

INTRODUCTION

Over 200,000 people were arraigned in New York City in 1990.¹ The average arrest processing time for these detainees was forty hours.² Throughout the processing period, the City held detainees in pre-arraignment cells. The Association of the Bar of the City of New York (ABCNY) examined the conditions of these cells. Their investigation revealed that the cells were dark, crowded, and fetid.³ Excrement clogged the plumbing.⁴ Detainees undergoing drug or alcohol withdrawal had no access to medical treatment.⁵

During 1990, the New York City Police Department’s policy was to arrest all felons, as well as any misdemeanor who could not provide proper identification.⁶ One detainee was Sei Boo, an itinerant peddler whose only crime was selling umbrellas without a license. Police incarcerated Sei Boo in squalor for fifty hours prior to his arraignment.⁷ Prosecutions against

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² Id.
³ COMMITTEE ON CORRECTIONS, ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK, Inadequacies of the New York City Court Pre-arraignment Pens, 45 RECORD NYCBA 390, 391 (1990) [hereinafter ABCNY CORRECTIONS REPORT].
⁴ Id. at 394.
⁵ Id. at 395.
⁶ New York criminal procedure, N.Y. CRIM. PROC. LAW § 150.30 (McKinney 1981 & Supp. 1991), permits the arresting officer to issue a Desk Appearance Ticket (DAT) (a citation for a future court date), for certain classes of E felons and misdemeanants. The New York City Police Department incarcerates all those who cannot produce identification or who are visibly, physically or mentally impaired by drugs or alcohol.
offenders such as Sei Boo were routinely resolved at arraignment by pleas to disorderly conduct and time served.\(^8\)

Such situations are not unique to New York City. Riverside, California, a few years earlier, imprisoned detainees for periods of up to one hundred and twenty-five hours in equally deplorable conditions.\(^9\) Detainees often slept on the floors of the overcrowded detention cells without bedding.\(^10\) Furthermore, detainees alleged that the County failed to provide adequate supervision in the holding cells.\(^11\)

Conditions in affluent suburban communities were frequently no better than in New York City or Riverside. Fairfax County, Virginia, held 7,056 people for arraignment in 1989.\(^12\) Approximately eighty-five percent of those detained were addicted to drugs. Regardless of the detainees' physical or psychological conditions, the County treated all individuals jailed on minor charges in the same manner as those jailed for murder.\(^13\) The County transported detainees from the Fairfax County Adult Detention Center to the nearby Fairfax County Courthouse. Officers searched detainees for drugs, weapons, and other contraband prior to production at the Arraignment Court.\(^14\) Afterwards, armed guards handcuffed detainees and escorted them to the basement holding cells of the courthouse where as many as

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\(^8\) Interview with Michelle Maxian, Legal Aid Society, in New York, N.Y. (Jan. 23, 1991).

\(^9\) The Cal. Penal Code §§ 825, 991 (West 1988) permitted local authorities up to forty-eight hours to produce detainees for arraignment. Since this statute excluded weekends and holidays from the compilation, arrestees could be detained up to five days before receiving a probable cause hearing. Over the Thanksgiving Holiday, a seven day delay was possible. County of Riverside v. McLaughlin, 111 S. Ct. 1661, 1665 (1991).

\(^10\) In the initial complaint before Federal District Court Judge Gadbois, petitioners alleged that the Riverside County Jail was severely overcrowded and that detainees were often forced to sleep on the floor of triple-bunked cells. Detainees also charged that they were subjected to excessive force by the guards. Joint Appendix, Volume I at 5, Riverside (No. 89-1817).

\(^11\) Id.

\(^12\) In 1989, approximately 26,000 were arrested in Fairfax County. Most of those arrested were released on bond or personal recognizance. Most of those held over for criminal court arraignment were physically or emotionally impaired. Comments by Sgt. Edward Schifko of the Fairfax County Virginia’s Sheriff’s Office in Camera Ready Inmates, Fairfax County Will Use Video To Arraign Inmates, WASH. TIMES, July 16, 1990, at C1.

\(^13\) Id.

\(^14\) Id.
twenty-five inmates were chained together and brought by elevator to the holding cells adjacent to the Arraignment Court.\textsuperscript{15}

The length and terms of pre-arraignment confinement procedures have recently become the subject of federal and state court scrutiny. In \textit{County of Riverside v. McLaughlin},\textsuperscript{16} the Supreme Court ruled that under the promptness requirement of \textit{Gerstein v. Pugh},\textsuperscript{17} persons detained pursuant to a warrantless arrest must ordinarily receive a probable cause hearing within forty-eight hours of the arrest.\textsuperscript{18} Local authorities who meet this requirement are immune from systemic attacks on the reasonableness of their arrest processing policies and procedures.\textsuperscript{19} If local authorities fail to provide a probable cause hearing within forty-eight hours, they must demonstrate that exigent circumstances or a bona fide emergency barred earlier production of the detainee.\textsuperscript{20}

Probable cause hearings can be ex parte and non-adversarial.\textsuperscript{21} The hearing may consist of nothing more than an impartial reading of the complaint by a magistrate to substantiate that the complaint states a prima facie case of probable cause.\textsuperscript{22} Legislatures throughout the United States, however,

\begin{itemize}
\item \textsuperscript{15} \textit{Id.}
\item \textsuperscript{16} In \textit{Riverside}, a class action was brought to challenge the timeliness with which the County of Riverside provided probable cause hearings. At issue was the County's policy of combining probable cause hearings with arraignment proceedings. \textit{111 S. Ct. at 1661.}
\item \textsuperscript{17} In \textit{Gerstein v. Pugh}, 420 U.S. 103 (1975), the Supreme Court held that those arrested without a warrant were entitled to the same impartial judicial assessment of probable cause as those arrested with a warrant.
\item \textsuperscript{18} \textit{Riverside}, 111 S. Ct. at 1670.
\item \textsuperscript{19} \textit{Id.}
\item \textsuperscript{20} \textit{Id.}
\item \textsuperscript{21} The \textit{Gerstein} Court held that cross-examination and assistance of counsel are not required because the probable cause hearing is not considered a critical stage of the pretrial proceedings. \textit{Gerstein}, 420 U.S. at 123.
\item \textsuperscript{22} The \textit{Gerstein} Court approved the use of an informal proceeding: not only [because of] the lesser consequences of the probable cause hearing but also [because of] the nature of the determination itself. It does not require the fine resolution of conflicting evidence that a reasonable doubt or a preponderance standard demands and credibility determinations are seldom crucial in deciding whether the evidence supports a reasonable belief in guilt.
\end{itemize}

\textit{Id.}
have chosen to promulgate procedures that incorporate the probable cause hearing into an in personam arraignment and bail application. These rules, in combination with *Riverside*, now require these jurisdictions to process and produce an arrestee for the arraignment and bail hearing within forty-eight hours of arrest.

The processing required for these arraignment and bail hearings is much more complex than that required for production and review of a criminal court complaint. At the bail hearing, local authorities must provide the arrestee's prior criminal history, finances, ties to the community and likelihood of returning to court if released. Local authorities must also ensure that the accusatory instrument properly charges the crimes allegedly committed by the detainee.

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23 States can sever the probable cause hearing from the bail application. This was done in Orange County, California to comply with a thirty-six hour time limitation for probable cause hearings imposed by Judge Gadbois in *Scott v. Gates*, C.V. 84-8647 (C.D. Cal. Oct. 3, 1988). To cope with the accelerated production period, Orange County appointed a judicial hearing officer who conducted probable cause hearings at the local jail. In 1988, 14,557 hearings were held. Joint Appendix, Volume 2 at 168-9, *County of Riverside v. McLaughlin*, 111 S. Ct. 1661 (No. 89-1817).

No jurisdiction, however, has voluntarily chosen to sever the probable cause hearing from the arraignment since this additional step merely adds additional procedures to a criminal justice system, which, in the words of the *Gerstein* Court, is "already overburdened by the volume of cases and complexities of the system." *Gerstein*, 420 U.S. at 122.

24 *Riverside*, 111 S. Ct. at 1670.

25 The Federal Bail Reform Act of 1966 set forth the following criteria:
1) nature and circumstances of the offense
2) weight of the evidence
3) family ties
4) employment
5) financial resources
6) character
7) mental condition
8) length of residence in the community
9) record of convictions
10) record of appearances in court proceedings
11) flight to avoid prosecution
12) failure to appear at court proceedings

26 Accusatory instruments are subject to dismissal where the instrument fails to state specific facts which apprise the defendant of what he must be prepared to meet and enable the courts to decide whether the facts alleged are sufficient to support a conviction. *Russell v. United States*, 369 U.S. 749
Although *Riverside* does not address acceptable conditions of pre-arraignment confinement, the legal community highly scrutinizes such conditions.\(^7\) In *Youngblood v. Gates*,\(^2\) a California state appellate court ruled that the government has a duty to provide acceptable conditions of confinement and treatment for mental and physical diseases.\(^2\) Since many detainees suffer from alcoholism, drug addiction, AIDS, tuberculosis, and other opportunistic diseases,\(^3\) this mandate could "empty the coffers" of local governments if strictly enforced.

Furthermore, a federal district court in the Second Circuit ruled in *Hodge v. Ruperto*\(^3\) that the Constitution\(^4\) guaranteed detainees adequate food, clothing, shelter, sanitation, medical care, and safety.\(^5\) The Report of the Criminal Justice Committee of the ABCNY revealed that New York City did not adequately provide these necessities in 1990.\(^6\)

The *Riverside* decision places judges sitting in arraignment courts in a quandary. The *Riverside* majority warns judges that judicial intervention in arrest processing violates the separation of the legislative and judicial branches or functions of government.\(^7\) Yet the arraignment judge must obtain timely production of detainees from agencies charged with custody if he is to promptly arraign those assigned to his court.

The *Riverside* decision also presents a dilemma to criminal justice administrators responsible for arrest processing. Administrators must expedite arrest processing to meet federal due process mandates despite spiraling arrests and diminishing local resources\(^8\) that play havoc with the symbiotic relations

\(^{1962}\).

\(^7\) See ABCNY CORRECTIONS REPORT, supra note 3, at 390.


\(^9\) Id. at 788, 790.


\(^3\) Id. at 876.

\(^3\) Id.

\(^3\) ABCNY CORRECTIONS REPORT, supra note 3.


\(^3\) In many urban areas the number of criminal cases has risen substantially, in a large part as a result of the widespread use of crack. For example in New York City drug related crimes have risen 249% in the last five years.
of the numerous agencies that interact to process detainees. State statutes and court decisions that mandate even shorter periods from arrest to arraignment than the constitutional minimum under *Riverside* also cause concern. *People ex rel. Maxian v. Brown*, decided a few weeks before *Riverside*, requires administrators in New York State to produce detainees for arraignment within *twenty-four hours* of arrest or provide an acceptable explanation for the delay. The New York State Court of Appeals specifically rejected cries of lack of funding for expedited arrest processing as an insufficient reason for delays in arraignment.

Wachtler, *supra* note 1, at 40.


In California, where the state has traditionally made up for shortfalls in the funding of trial courts costs for processing arrests, state funding for courts fell from 44% of the local court budget in 1989-90 to 38% in 1990-91 despite a 10% increase in court administrative expenses. Blum, *supra* at 25.

37 The Second Circuit in *Williams v. Ward*, 845 F.2d 374 (2d Cir. 1988), *cert. denied*, 48 U.S. 1020 (1989) reversed a lower court order mandating that certain city officials (including the Mayor, Chief of Police and Chief of Corrections) ensure that arrestee be arraigned within twenty-four hours of arrest. The Second Circuit based its reversal in part on the fact that with seven independent agencies coordinating the production of each defendant, petitioners failed to provide proof that the named defendants could legally provide the relief demanded by the plaintiff class.


39 *Id.*

40 The decision of the Appellate Division, 1st Department, was especially scornful of the argument that inadequate resources were an acceptable cause for delay:

>Delay is not necessarily within the meaning of the statute unless it is delay which could not have been reasonably foreseen and either reduced or eliminated. Clearly, there is nothing necessary about delays resulting from the long standing failure of the government to take reasonable remedial measures, including of course the alloca-
This article charts the development of the twenty-four hour outer time limit for processing detainees adopted by New York and then considers changes New York City made to comply. Part I introduces us to Michael Cardwell. The story of his arrest and the bureaucratic delays before his arraignment present, in human terms, the need for prompt processing. The Supreme Court first addressed processing concerns in *Gerstein*. However, the ambiguities in the *Gerstein* holding lead to a series of cases to resolve questions left unanswered. The courts then attempted to catalogue the steps incident to arrests and to identify the consequences of delayed probable cause hearings. Next, courts articulated specific conditions of pre-arraignment detentions which would be acceptable.

The most difficult question left unanswered by the *Gerstein* Court was the definition of the outer time limit of a prompt arraignment. The Federal District Court in *Williams* suggested a twenty-four hour time limit, but this decision was overturned by the Second Circuit. Among other concerns, the Second Circuit argued that the twenty-four hour time limit might not guarantee the full range of a detainee’s rights at arraignment. The Ninth Circuit addressed this same issue in *Riverside*. That court noted that other courts had required a twenty-four hour production rule and ordered Riverside County to provide probable cause hearings within thirty-six hours of arrest. The Supreme Court granted certiorari and concluded that forty-eight hours was the mandatory outer time limit for prompt arraignments.

In *Maxian*, the New York Court of Appeals agreed with the lower courts that arraignments must take place within twenty-four hours of arrest. In order to implement this decision, New York City has adopted administrative, procedural, and even technological changes in their processing system, which will be considered in Part II. Other jurisdictions can evaluate and adopt those elements of the New York system which might facilitate their own processing of pre-arraignment detainees.
I. FEDERAL AND STATE STANDARDS FOR THE PROMPT PROCESSING OF DETAINEES HELD PURSUANT TO A WARRANTLESS ARREST

A. ONE EXAMPLE OF THE PROBLEMS CONFRONTING CRIMINAL JUSTICE ADMINISTRATORS IN THE TIMELY PRODUCTION OF DETAINEES: THE PRE-ARRAIGNMENT DETENTION OF MICHAEL CARDWELL

At 10:40 p.m., January 16, 1990, New York City Police Officer Margaret Kerwin pulled over the automobile Michael Cardwell was driving. Officer Kerwin ran the license plate and vehicle identification number of the car. Both plate and auto came back as stolen. Officer Kerwin then placed Michael Cardwell under arrest and took him to the local precinct. There he was searched, fingerprinted and photographed. Officer Kerwin filled out the On Line Booking System (OLBS) Report and notified TXT Rent-a-Car that their automobile had been recovered.

Just before midnight, Officer Kerwin took Cardwell to the Manhattan Central Booking Unit, where she deposited Mr. Cardwell, his prints, and the OLBS Report. Ordinarily, Officer Kerwin would report to the complaint room to speak with an Assistant District Attorney (ADA) about the arrest. However, the officer went off duty because the complaint room had closed.

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41 When automobiles and license plates are reported as stolen, the officer taking the information places the information in a computer system. Any officer on patrol can call up this information through a radio in his vehicle. Where license plates are affixed to an automobile that does not match the make, model and year of the assigned plate, the police have reasonable suspicion that either the car or plates were stolen. Automobile manufacturers affix individual vehicle identification numbers to the vehicles, which are also placed in the police information system.

42 OLBS is the information system used by NYPD for logging in arrests. Information can be accessed from this system by various fields, such as arrest number, defendant's name and arresting officer's name and shield number.

43 In New York City, when a detainee lacks proper registration, the police regularly verify with the owner of the vehicle to ensure that the detainee did not have permission to take or possess the vehicle. This procedure of confirming illegal possession through the owner of the car often leads to lengthy delays in the processing of the detainees charged with theft of vehicles. Frequently, the arresting officer may not be able to contact the owner of the vehicle for several hours. This is especially true on weekends when the owners may be miles away from the city.
for the night. In the early hours of January 17, 1990, Cardwell's fingerprint card was faxed by Central Booking personnel to the central depository for fingerprint classifications in New York State, the Department of Criminal Justice Services (DCJS) located in Albany, New York. A member of the CJA verified his community ties.

At 5:30 a.m., DCJS returned the computerized classification of Cardwell's fingerprints to Central Booking. At 8:00 a.m., Officer Kerwin came back on duty. She immediately reported to the District Attorney's complaint room where she was interviewed by an ADA. Based on his questioning of the officer, the ADA drew up a complaint and Officer Kerwin swore to the veracity of the facts therein.

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44 DCJS oversees the central depository for fingerprint identification records in Albany, New York. New York State was one of the first states to develop a software program for the retrieval of a defendant's prior criminal history by matching his fingerprints with a batch of prints culled from those in the DCJS mainframe computer. This culling is initially based on sorting through identification information such as name, address, or social security number.

45 CJA is an independent, non-profit organization whose services are contracted for by the City of New York. A CJA staff member interviews the defendant confidentially and then verifies the defendant's name, address, place of employment and ties to the community.

46 The police officer must swear to the affidavit's truth because the affidavit serves as the factual basis for the court's ruling on probable cause to arrest at arraignment. Many years ago, the officer would be present at the arraignment to orally testify as to the facts that resulted in his arresting the detainees. This practice was stopped in the 1970s because the legislature found exorbitant the administrative cost of producing officers at arraignment. See Act of May 1, 1970, ch. 434, § 150-b, 1970 N.Y. LAWS 933 (complaint verification); § 150-b, Memorandum of Nassau County, Police verification of Felony complaints, reprinted in 1970 NEW YORK STATE LEGISLATIVE ANNUAL 48.

Ordinarily, the arresting officer accompanies the defendant to the Central Booking Unit where the identification of the arrestee is confirmed through the faxing of fingerprints to and from DCJS. Afterwards, under NYPD procedure, the arresting officer confers with an Assistant District Attorney to determine the charges to be brought.

Based on the facts given by the arresting officer, the defendant may be charged up as a felony or down as a misdemeanor. Factors to be considered in charging up or down include prior relationship between complainant and victim, injury to the victim, and provocation by the victim.

Thereafter, the defendant is to be taken directly to the arraignment part. In Manhattan County, the arraignment parts run twenty-four hours. Evidently on January 16, 1990, the pens at Central Booking were so overcrowded that Cardwell had to be transported to another precinct with holding space until
At 8:15 a.m., Cardwell was "paper ready" for arraignment. However, because the pens at the court were full, Cardwell was transferred to the holding cells of the sixth precinct. Fifteen more hours elapsed before Cardwell was taken to the court pens at 100 Centre Street and transferred into the custody of the New York City Department of Corrections (DOC). Forty-two hours later, on the morning of January 19, 1990, Michael Cardwell was provided with a public defender and produced for arraignment.

As illustrated above, pre-arraignment processing requires a synchronization of several autonomous government agencies: NYPD, DOC, the District Attorney, the Legal Aid Society (LAS), and the 18B panel, CJA, and DCJS. When the actions of one agency processing arraignments is out of sync, papers and detainees become backlogged. Too frequently, a backlog in one agency's tasks precipitates a bottleneck in another agency's procedures. This is especially true when police crackdowns on drug sales, prostitution or even farebeating on subways increase the number of arrests.

his paperwork was complete.

47 The paperwork that accompanies the defendant to the arraignment part includes: 1) the CJA sheet confirming community ties, 2) the DCJS prior criminal history sheet, and 3) the sworn complaint of the arresting officer. When cell space is available in the arraignment part, the defendant and his paperwork are simultaneously transported to the Criminal Court for arraignment.


49 The City of New York has contracted with the Legal Aid Society to act as the public defender. Where criminal acts are committed by two or more people, conflicts of interest may arise; therefore attorneys from the 18B panel are assigned to each additionally co-defendant. The term 18B refers to N.Y. COUNTY LAW § 722 (McKinney 1991) which delegates authority to local governments to assign a private attorney to represent co-defendants.

50 As previously stated, the bottlenecks are exacerbated by inadequate pre-arraignment holding pens. Once the pens at Central Booking and the arraignment parts fill up, the defendants are shuttled throughout the NYPD system in search of NYPD holding pens. These multiple transfers frequently result in the defendant's paperwork being misplaced, greatly contributing to prolonged delays in individual arraignments. COMMITTEE ON CRIMINAL JUSTICE OPERATIONS, ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK, The Arrest to Arraignment Process, 45 RECORD NYCBA 172, 175-77 (1990) [hereinafter ABCNY CRIMINAL JUSTICE REPORT].
B. FEDERAL STANDARDS FOR PROMPT PROCESSING OF ARRESTEES

1. Prompt Probable Cause Hearing: Gerstein v. Pugh

The United States Supreme Court first addressed the issue of prompt arrest processing in *Gerstein v. Pugh*.\(^\text{51}\) In this decision, the Supreme Court nullified a Florida statute that permitted police to jail a warrantless detainee or subject them to other restraints pending trial without an opportunity for a probable cause hearing.\(^\text{52}\) Justice Powell wrote, "[T]he Fourth Amendment requires a judicial determination of probable cause as a prerequisite to extended restraint of liberty following arrest."\(^\text{53}\)

The *Gerstein* Court would have preferred police procedures in which warrants were obtained prior to an arrest, but nevertheless accepted the necessity of warrantless arrests for crime control.\(^\text{54}\) The Court warned police, however, that such detentions are permissible only for the brief time it takes to complete the administrative steps necessary for arrest processing and to transport the arrestee to a magistrate.\(^\text{55}\) Unfortunately, antiquated equipment, facilities, and transportation often obstruct arrest processing so that this "brief time" may be hours, even days, of incarceration.

The *Gerstein* Court also developed vague and sometimes contradictory guidelines balancing the state's duty to control crime with the individual's right to be free from unreasonable searches and seizures.\(^\text{56}\) The Court did not want to dictate


\(^{52}\) The *Gerstein* Court noted that the Fourth Amendment's "protection consists in requiring those inferences [of probable cause] be drawn by a neutral and detached magistrate instead of being judged by the officer engaged in the often competitive enterprise of ferreting out crime." *Id.* at 112-13 (quoting Johnson v. United States, 333 U.S. 10, 13-14 (1948)).

\(^{53}\) *Id.* at 114.

\(^{54}\) The *Gerstein* Court pondered requiring a magistrate to review factual justification prior to any arrest. The Court rejected this requirement as an intolerable handicap for legitimate law enforcement. *Id.* at 113.

\(^{55}\) *Id.* at 113-14. Police may continue to detain only those individuals for whom a magistrate validates the arresting officer's assessment of probable cause. *Id.* at 114.

\(^{56}\) *Id.* at 112.
specific procedures for arrest processing, nor did the Court choose to describe a bright line separating those police activities incidental to arrest processing from those activities beyond necessary arrest processing.

The Court did, however, cite the procedures set forth in the American Law Institute's Model Code of Pre-Arraignment Procedures, as an example of appropriate experimentation. These procedures incorporate the probable cause hearing into the arraignment and bail hearing, delaying the probable cause hearing until the detainee is "paper ready," and produced before the arraignment court. Unfortunately, probable cause hearings have been delayed hours, even days, after completion of the procedures incident to arrest so that the police could gather information necessary for the arraignment and bail application.

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57 The Gerstein court concluded:
There is no single preferred pretrial procedure, and the nature of the probable cause determination usually will be shaped to accord with a State's pretrial procedure viewed as a whole. While we limit our holding to the precise requirement of the Fourth Amendment, we recognize the desirability of flexibility and experimentation by the States. . . . In some States, existing procedures may satisfy the requirement of the Fourth Amendment. Others may require only minor adjustment, such as acceleration of existing preliminary hearings. Current proposals for criminal procedure reform suggest other ways of testing probable cause for detention. 

Id. at 123-25.

58 Id.

59 MODEL CODE OF PRE-ARRAIGNMENT PROCEDURE, § 310, (Tentative Draft No. 5A, 1973), quoted in Gerstein, 420 U.S. at 124-25 n.25 This draft allowed a forty-eight hour adjournment for a probable cause hearing to be held within seventy-two hours of arrest. Subsequent drafts of the ALI Model Code deleted this provision. See MODEL CODE OF PRE-ARRAIGNMENT PROCEDURE, § 310 (1975).

60 MODEL CODE OF PRE-ARRAIGNMENT PROCEDURE § 310. A detainee is "paper ready" when police complete the pre-arraignment paperwork, including independent confirmation of community ties, the prior criminal history sheet, and the sworn affidavit of the arresting officer.

2. Litigation Resulting from Ambiguities in Gerstein v. Pugh

a. Defining Steps Incident to an Arrest

As illustrated in the arrest of Michael Cardwell, after taking a suspect into custody the police photograph and fingerprint the detainee, then send the prints to a central record keeping facility for classification. Those detainees not immediately released may wait hours pending the return of the fingerprint classification.\(^{62}\) Aware of these delays, the court in *Lively v. Cullinan*,\(^ {63}\) held that officials must provide a probable cause hearing prior to photographing and fingerprinting detainees.\(^ {64}\) Further, the court ruled that when it would unduly prolong detention, police officers need not complete all their paperwork prior to the probable cause hearing.\(^ {65}\) The court in *Gramenos v. Jewel Cos., Inc.*,\(^ {66}\) held that denying those accused of non-violent misdemeanors the opportunity of posting bond prior to confirmation of identification was unreasonable.

Members of the defense bar have brought lawsuits in several jurisdictions arguing that the police must either expedite arraignments or separate the probable cause hearing from the arraignment so that a magistrate can promptly adjudicate probable cause. *See e.g., Williams, 845 F.2d at 374; Bernard v. Palo Alto, 699 F.2d 1023 (9th Cir. 1983); Sanders v. City of Houston, 543 F. Supp. 694 (S.D. Tex. 1982), aff'd without opinion, 741 F.2d 1379 (5th Cir. 1984); Lively, 451 F. Supp. 1000; Dommer v. Hatcher, 427 F. Supp. 1040 (N.D. Ind. 1975), rev'd in part sub nom. Dommer v. Crawford, 653 F.2d 289 (7th Cir. 1981).*

\(^{62}\) The public defenders' society in New York City, the Legal Aid Society, brought a lawsuit in 1990 to compel the NYPD to change their policy and issue DATs to all those charged with petty crimes. The trial court dismissed this law suit ruling that there was no law which prohibited the police from exercising their discretion and incarcerating suspects rather than issuing these suspects' DATs. Mullins v. Ward, 203 N.Y.L.J. 37, at 26 (Sup. Ct., Feb. 26, 1990).


\(^{64}\) *Id.* at 1003.

\(^{65}\) *Id.* at 1004.

\(^{66}\) 797 F.2d 432 (7th Cir. 1986), *cert. denied,* 481 U.S. 1028 (1986).
b. Defining the Consequences of a Delayed
Probable Cause Hearing

In holding that states cannot detain arrestees absent a probable cause hearing, the Gerstein Court did not state that a Gerstein violation triggered the right to immediate release.67 Some jurisdictions mandate the release the detainee on his own recognizance.68 Other jurisdictions impose criminal sanctions on government workers who fail to process detainees' paperwork or to produce detainees at probable cause hearings.69 Where local policies and procedures cause undue delay, Gerstein did authorize federal suits against local authorities for civil damages.70 Detainees may also hold liable in common law tort those public officials acting outside the scope of their employment.71 Detainees who can prove that a corporation's employees acted "in unison" with the police may join the corporation as a party.72 Nevertheless, the mere fact that an arrest was found to be lacking probable cause does not automatically result in a judgment for false arrest against either the arresting officer or the local government.73 The detainee must prove that the officer's actions were neither reasonable under the totality of the circumstances nor predicated on a good faith belief that probable cause existed at the time of the arrest.74

The Gerstein Court did not discuss the consequences of a determination of undue delay for the admissibility of confessions or contraband obtained during that incarceration.75 Some

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68 ARIZ. R. CRIM. P. 4.1.
69 ALASKA STAT. § 12.25.150 (1990); HAW. REV. STAT. § 803-10 (1988); MO. REV. STAT. § 544.170 (1986); UTAH CODE ANN. § 77-7-23 (Supp. 1992).
70 420 U.S. at 103, 107 n.5 (1974).
73 Id. at 441-442.
74 See id. at 438-39.
75 In Search and Seizure, Wayne LeFave has the following comments on the impact of a Gerstein violation on dismissal of the charges or suppression of evidence:
jurisdictions have held that lengthy detentions necessarily taint such evidence. Most jurisdictions, however, have not imposed an automatic bar on admissibility; rather, they hold that the trial court must look to the circumstances of the detention to determine, for example, whether the detainee offered a confession voluntarily.\textsuperscript{76}

c. Specifying Acceptable Conditions for Pre-Arraignment Detention

The Gerstein Court recognized detentions prior to a determination of probable cause are permissible only for the brief time necessary to complete arrest processing and to transport the arrestee to a magistrate.\textsuperscript{77} Beyond permitting the inference that such detentions must be neither investigatory nor punitive, the Court did not prescribe minimum conditions under which pre-arraignment detainees could be incarcerated.

Federal courts, however, have become active in overseeing prison management,\textsuperscript{78} ensuring that corrections officials meet

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The Supreme Court did not speculate (on the consequences that flow from the failure to comply with Gerstein) except to note that it was not retreating from the established rule that illegal arrest or detention does not void a subsequent conviction. [See In re Walters, 543 P.2d 607 (Cal. 1975)].

In terms of exclusion of evidence, the impact of Gerstein will be limited. In a case where there is less than probable cause, the failure to determine the fact promptly and release the defendant is not particularly significant from an exclusionary rule standpoint, as evidence obtained incident to arrest is subject to suppression in any event. And when . . . there was probable cause at the moment of arrest but it dissipates shortly thereafter, Gerstein is again not significant, for even prior to Gerstein, it has been held that evidence obtained from the defendant after the point when probable cause no longer exists must be suppressed. [See United States v. Coughlin, 338 F. Supp. 1328 (E.D. Mich. 1972).]


\textsuperscript{76} Romualdo P. Eclavea, Annotation, Admissibility of Confession or Other Statements Made by Defendant as Affected by Delay on Arraignment, 28 A.L.R. 4th 1121, 1138-78 (1984).

\textsuperscript{77} Gerstein v. Pugh, 420 U.S. 103, 114 (1974).

their obligation to provide humane conditions. These courts have held that conditions of incarceration should be the minimum necessary to detain arrestees, and mandated that states provide post-arraignment detainees and convicted criminals with adequate medical care, recreation, and training programs.

In *Bell v. Wolfish*, the Supreme Court reversed a Second Circuit holding that practices such as double bunking, routine strip searches, and a ban on packages from family and friends violated the due process rights of pre-arraignment detainees. Justice Rehnquist wrote, "[T]hat conditions are unpleasant does not mean they constitute punishment. Punishment occurs only where corrections officials maintain inadequate conditions for the express purpose of punishment, or where they cannot link the inadequacy to a legitimate governmental or operational concern." The Supreme Court further ruled that courts must give considerable discretion to corrections officials on whether inadequacies, including systematic neglect, constitute punishment or operational necessities.

Despite *Bell* and other more recent Supreme Court decisions discouraging judicial oversight of prison operations, district courts continue to regulate the conditions under which pre-trial detainees and post-conviction prisoners can be held.

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79 Id. at 2-24, 2-25.


81 Adequate medical treatment must be provided to prisoners under the Eighth Amendment. Estelle v. Gamble, 429 U.S. 97 (1976).

82 Exercise programs must be made available. Spain v. Procunier, 600 F.2d 189, 199 (9th Cir. 1979).


84 441 U.S. 520 (1979).

85 Id. at 520-22.

86 Id. at 520.

87 Id. at 548, 562.


89 In 1985, over 130 jails were under court order to limit their population
In stark contrast, few courts have prescribed a difference in conditions under which the court can hold *pre-arraignment* detainees and *pre-trial* detainees,\(^{90}\) notwithstanding the substantial differences in their legal status. Several courts have treated the pre-arraignment detainees as if they were pre-trial detainees when in fact their legal status is quite different.\(^{91}\)

One explanation for the lack of regulation of the conditions of pre-arraignment confinement is the traditional belief that the detainee becomes a ward of the court only after arraignment. Another is the reluctance of courts to spend judicial resources overseeing conditions of confinement for persons whom they believe spend only short periods of time incarcerated. The same courts which demand humane conditions for other classes of prisoners have failed to acknowledge the deplorable conditions and long hours many detainees must endure while awaiting arraignment.

As previously stated, a movement exists to improve the conditions of pre-arraignment confinement in lower federal and state courts. In *People ex rel. Maxian v. Brown*,\(^{92}\) the court rebuked local authorities for confining detainees in appalling conditions where detainees were subject to extraordinary psychological and physical stress.\(^{93}\) In *Hodge v. Ruperto*,\(^{94}\) a pre-
arraignment detainee alleged that corrections officers deprived him of food and water for two and a half days and confined him to an overcrowded unsanitary cell. The court denied the defendant's motion to dismiss for failure to state a claim, holding that the detainee's claim alleged "sufficiently egregious conduct" to infer that the conduct was attributable to municipal policy, and that the detainee's claim of inadequate supervision in the cells allowed a reasonable inference that the supervisors were deliberately indifferent to the constitutional rights of the detainee.

In *Youngblood v. Gates*, the California Court of Appeals upheld a lower court order mandating that Los Angeles provide sanitary conditions for pre-arraignment detainees, which include the opportunity for daily showers and shaves and access to sanitary materials and toothbrushes. City officials must also insure diagnosis and treatment of physical and mental illnesses. Finally, they must provide detainees with newspapers, board games, and opportunities for brief daily visits with family.

d. Defining the Outer Limit of a Prompt Arraignment

i. Second Circuit's Ruling in *Williams v. Ward*

Public defenders and public interest groups seeking a federal forum for reforming local procedures for arrest processing brought class actions in federal courts charging that their clients were deprived of the right to a prompt review of the

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95 *Id.* at 877-78.
96 *Id.* at 878.
97 In the late 1970's the American Civil Liberties Union brought a class action against various criminal justice officials in Los Angeles, California, challenging under state law, arraignment delays and confinement conditions. After several amendments to the complaint and consolidation with a second class action, the matter went to a hearing before Justice Harry Hupp on October 25, 1982. On March 9, 1983, Justice Hupp issued his opinion in favor of the petitioners. On May 4, 1988, the Court of Appeals of the 2d District, 4th Division, affirmed the lower court order. *Youngblood v. Gates*, 246 Cal. Rptr. 775 (1988).
98 *Id.* at 790.
99 *Id.* at 791.
100 *Id.* at 789-90.
probable cause for arrest. In most jurisdictions, although the cases are couched in terms of unreasonable seizures and the necessity of a timely probable cause hearing, the real issue is the length of time an arrestee can be incarcerated prior to being produced for arraignment.

In New York City in early 1985, four pre-arraignment detainees brought a class action individually and on behalf of all other persons similarly situated against Benjamin Ward (then Police Commissioner of New York City), Richard Koehler (then Commissioner of Corrections), and Edward Koch (the former Mayor of New York). These detainees sought judicial review of local arrest processing procedures for compliance with Gerstein. Federal District Court Judge, Constance Motley, agreed to hear the complaints of the class. On October 17, 1986, while the parties attempted to mediate their differences, Judge Motley advanced the matter and consolidated it with a motion for a preliminary injunction against Benjamin Ward and all other custodians of pre-arraignment detainees in New York County held in excess of twenty-four hours. Thereafter, the parties agreed to submit stipulated facts. These facts suggested some changes in procedures which could reduce arrest processing time. For example, obsolete equipment could be replaced and record keeping simplified, standardized, and more frequently updated. Upon review of...

101 See supra note 61 and accompanying text.

102 Although petitioners demanded their due process right to a prompt trial hearing, none insisted that the arraignment procedures of their diverse jurisdictions be radically modified; rather, the petitioners demanded that arrest to arraignment processing time be reduced so that the arraignment and bail determination occurred within the time envisioned by the Gerstein Court for a prompt probable cause hearing. Detainees did not seek to bifurcate the arraignment and the probable cause hearing because the probable cause hearing, as delineated by the Gerstein Court, did not provide the remedy sought by a majority of the detainees, release on bail.


104 While the local practices reviewed included the procedures of all the separate agencies involved in the production of the detainees, the public defender was especially concerned with the amount of time it took for fingerprint identification information to be transmitted from local precincts in New York City to DCJS in Albany. Id. at 226-27, 230-31.

105 Id. at 228.

106 Id. at 231.
this stipulation and the testimony of both sides, Judge Motley concluded that twenty-four hours allowed sufficient time to process an arrest in New York City.\(^\text{107}\)

Despite specific incidents set forth in the lower court decision, the Second Circuit found that the stipulated facts provided "little illumination as to the bottlenecks that delayed arraignments."\(^\text{108}\) Absent these findings, the Circuit Court rejected the lower court's holding as merely conclusory.\(^\text{109}\) The Second Circuit was especially disdainful of the lower court's recommendation that the police take fewer people into custody and that the City provide more personnel for the task of processing detainees.\(^\text{110}\)

The appellate court also rejected the district court's conclusion that despite the scarcity of resources presently available, arraignment must ordinarily occur within twenty-four hours of arrest.\(^\text{111}\) The appellate court argued that the lower court failed to account the full panoply of rights afforded to a detainee at arraignment in New York City: counsel, confrontation, cross-examination, and compulsory process.\(^\text{112}\) Other benefits noted by the Second Circuit included: verification of identity\(^\text{113}\) and prior criminal history,\(^\text{114}\) review of the arrest charges by supervisors in the Police Department and Prosecutor's Office,\(^\text{115}\) and an authorized plea offer at arraignment.\(^\text{116}\) The Second Circuit found that these procedures provide checks on police error, more reasonable and equitable bail determinations, and more dispositions when the detainees are produced at arraignment.\(^\text{117}\)

The appellate court then looked to the *Gerstein* decision for guidance on the outer limit of promptness. The Second Circuit examined the sections of the American Law Institute's *Pre-
Arraignment Code cited in Gerstein. Section 310.2(2) of the Code requires scheduling a probable cause hearing within twenty-four hours of arrest.\textsuperscript{118} If the detainee contests probable cause, section 310.4 requires the court schedule a further adjournment of forty-eight hours so that the detainee can be provided with counsel and an in personam appearance.\textsuperscript{119} The Second Circuit also explored another Supreme Court decision, Schall v. Martin,\textsuperscript{120} which upheld a seventy-two hour delay between the initial appearance of a juvenile before a magistrate and a hearing on the merits of the detention.\textsuperscript{121} From these cases, the Second Circuit extrapolated that in New York County, seventy-two hours was a permissible arrest to arraignment time frame.\textsuperscript{122}

\textbf{ii. Ninth Circuit’s Ruling in County of Riverside v. McLaughlin}

Criminal justice administrators in the urban area surrounding Los Angeles, California, faced the same problems producing detainees as those confronting the police in New York City. There were a record number of arrests, diminishing resources for processing criminals,\textsuperscript{123} and a deteriorating urban infra-

\textsuperscript{118} \textit{Id.}

\textsuperscript{119} \textit{Id.} at 387-88.

\textsuperscript{120} In Schall v. Martin, 467 U.S. 253, 275 (1984), the Supreme Court upheld the New York Family Court Act § 320.5(3)(b) (codified at JUD. § 320.5(3)(b) (McKinney 1983)), which authorized detentions as long as six days prior to production of the juvenile before a Family Court officer for a probable cause hearing.

\textsuperscript{121} The Supreme Court noted that at the first appearance, the presentment agency must file with the Family Court a certificate of delinquency. \textit{Schall} at 258 n.6; see N.Y. FAM. CT. ACT § 310.1 (West 1983). "The petition must contain a precise statement of each crime charged and ... factual allegations which clearly apprise the juvenile of the conduct which is the subject of the accusation. \textit{Schall} at 258 n.6.

\textsuperscript{122} The Second Circuit observed in Williams v. Ward, 845 F.2d 374, 389 (2d. Cir. 1988), \textit{cert. denied}, 488 U.S. 1020 (1989): "We do not suggest that pre-arraignment delays of seventy-two hours are desirable. Our task is only to define the range of constitutionally acceptable arraignment times in light of Gerstein's recognition of 'the desirability of flexibility and experimentation by the States.'"

\textsuperscript{123} To accommodate rising caseloads, criminal justice administrators have streamlined the arraignment procedures. In California, for example, in 1973, the Los Angeles Police Department (LAPD) was authorized to obtain from a
structure in which the detainees must be transported and produced. In August of 1987, Donald McLaughlin filed a class action in the United States District Court for the Central District of California against the County of Riverside and Cois Byrd, individually and in his official capacity as the Sheriff of Riverside. As in the Williams complaint, McLaughlin argued the violation of his civil rights and the civil rights of others detained in the County jail resulting from delays in arraignment. The County moved to dismiss the complaint for lack of standing. District Court Judge Gadbois allowed McLaughlin to add other persons who were presently detained as plaintiffs to resolve the standing issue and scheduled the matter for a hearing.

Like New York, California pretrial procedures incorporate the probable cause hearing into the arraignment and bail proceedings. Unlike New York, California statutes set for-


124 In Youngblood v. Gates, 246 Cal. Rptr. 75 (1988), detainees contested LAPD's practice of holding overnight those detainees against whom an accusatory instrument had not been handed down by noon. This practice resulted from a decision to send jail buses to the courts only in the morning. LAPD justified this practice on the grounds that it would be prohibitively expensive to keep an endless stream of buses in perpetual motion to deal with the individualized treatment of thousands of prisoners.

The trial court refused to accept the county's reasoning and ordered afternoon bus runs to the courts. This order was affirmed by the Court of Appeals for the Second District which informed LAPD that inadequate resources are not an excuse for holding thousands of unarraigned arrestees for an extra day. Id.

125 Brief for the Respondents in Opposition to Petition for Writ of Certiorari at 1, County of Riverside v. McLaughlin, 111 S. Ct. 1661 (No. 89-1817).

126 See supra text accompanying note 101.

127 McLaughlin's claim under 42 U.S.C. § 1983 for violations of his civil rights was predicated on the County's failure to provide both a prompt probable cause hearing and arraignment on the criminal court complaint. Id.

128 The County of Riverside argued that under Los Angeles v. Lyons, 461 U.S. 95 (1982), petitioners had no standing under Article III of the United States Constitution for seeking injunctive relief since the petitioner had not alleged that he would be subject to the same improper use of force by the police in the future. Brief for the Petitioners, Petition for Writ of Certiorari at 3-4, Riverside (No. 89-1817).

129 Riverside, 111 S. Ct. at 1666.

130 CAL. PENAL CODE §§ 872, 991 (West 1985).
ty-eight hours, excluding Saturday, Sunday, and Holidays, as the outer parameter for production at arraignment. The further delay in *Riverside* resulted from the county policy of delaying arraignment until the last day permissible under the statute. Thus, a person arrested on a Wednesday evening might not be arraigned until the following Monday — over one hundred hours later. If an arrest fell on a holiday weekend, the detention period, even prior to arraignment, could exceed one hundred and twenty-four hours.

At the hearing before Judge Gadbois, petitioners presented data from 1987 on the length of prearraignment detentions and requested a preliminary injunction ordering detainees produced within thirty-six hours of arrest. The defendants' motion in opposition to the petition argued that the plaintiffs lacked standing due to lack of evidence that the petitioners would again be subject to the practices and procedures of which they complained. The defendants also asserted that according to more recent data, the Riverside facility complied with *Gerstein* and the California Penal Statutes. Further, the defendants argued that the proposed order would result in a costly duplicative layer of proceedings that would effectively prevent the state from adopting uniform arraignment production proceedings.

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131 *Riverside*, 111 S. Ct. at 1665. There is presently conflicting case law interpreting the term "forty eight hours" under CAL. PENAL CODE § 825 (West 1985). In *Youngblood*, 246 Cal. Rptr. 775 (1988), the court interpreted forty-eight hours to mean that defendants arrested at any time on one day must be produced for arraignment on the second court date thereafter. Earlier case law holds that when a defendant is arrested on a Thursday and Saturday and Sunday are municipal holidays, the forty-eight hour limit expires just before Monday midnight; therefore, defendant is properly arraigned on Tuesday afternoon. People v Chambers, 80 Cal. Rptr. 672 (1969). While the *Chambers* decision is at odds with the strictures of *Riverside*, since weekends can no longer toll the forty-eight hour limitation on arrest processing time, the *Youngblood* decision appears too strict an interpretation of the California Code in light of the Supreme Court's definition of prompt processing in *Riverside*.

132 Joint Appendix, Volume 1 at 82, *Riverside* (No. 89-1817).

133 Brief for Respondents in Opposition to Petition for Writ of Certiorari at 1, *Riverside*, 111 S. Ct. at 1661 (No. 89-1817).

134 Joint Appendix, Volume 1 at 16, *Riverside* (No. 89-1817).

135 Brief for the Petitioners, Petition for Writ of Certiorari at 1, *Riverside* (No. 89-1817).

136 *Id.*

137 *Id.*
Upon review of the record, Judge Gadbois found Riverside's average processing time for arraignment within the outer limits of the California statute. Nonetheless, Gadbois concluded that factual evidence demonstrated that thirty-six hours provided the County with ample time to complete all administrative steps necessary for arraignment. Despite compliance with state production statutes, the court ordered the County of Riverside to provide arrestees with probable cause hearings within thirty-six hours of arrest.

Riverside appealed this preliminary injunction to the Ninth Circuit. Riverside's appeal was joined with an appeal from San Bernardino County contesting a similar injunction. Both counties contested the requirement that the probable cause hearing must take place within thirty-six hours of arrest. San Bernardino County also contested a district court ruling mandating the physical production of detainees.

The Ninth Circuit held that Gerstein did not require an in personam appearance by detainees; therefore, the court struck down that part of the San Bernardino preliminary injunction dictating physical production. The Circuit Court did, however, agree with the lower court that Gerstein mandated a probable cause hearing within thirty-six hours of arrest. Further, the Ninth Circuit, taking notice of several other court decisions requiring a twenty-four hour production rule, suggested that twenty-four hours rather than thirty-six hours was the outer limit of promptness under Gerstein. The counties of

138 Riverside, 111 S. Ct. at 1661.
139 Id.
140 Id.
141 McGregor v. County of San Bernardino, 888 F.2d 1276 (9th Cir. 1988) (arising from a similar injunction issued by Judge Gadbois upon San Bernardino County, California).
142 In McGregor, Judge Gadbois demanded not only more prompt probable cause hearings, but also that San Bernardino County provide for the arrestees' attendance at the probable cause hearing. Id.
143 McLaughlin v. County of Riverside, 888 F.2d at 1276, 1279 (9th Cir. 1990), rev'd, 111 S. Ct. 1661 (1991).
144 The Ninth Circuit cited Bernard v. City of Palo Alto, 699 F.2d 1023, 1025 (9th Cir. 1983), in which the court upheld an injunction ordering that probable cause hearings be held within twenty-four hours of arrest because the facts produced at the hearing before the trial court indicated that no more than twenty-four hours was required to complete the administrative procedures incident to arrest. The Ninth Circuit also noted that other circuits
Riverside and San Bernardino filed a writ of certiorari. The Supreme Court, because of the split of authority in the Circuits, accepted the writ.\textsuperscript{145}

iii. The United States Supreme Court's Definition of Promptness: County of Riverside v. McLaughlin

In a split opinion, the Supreme Court rejected the Ninth Circuit's interpretation of Gerstein in \textit{County of Riverside v. McLaughlin}.\textsuperscript{146} The majority, in an opinion written by Justice O'Connor, held that Gerstein permitted flexibility in state production statutes.\textsuperscript{147} The Ninth Circuit's interpretation, on the other hand, wrongfully compelled states to relinquish this right to experiment with procedures for expediting arrest processing and conserving judicial resources.\textsuperscript{148} Further, the Ninth Circuit opinion was found to result in judicial overreaching by forcing criminal justice administrators to burden citizens with additional taxes to provide defendants expedited probable cause hearings.\textsuperscript{149} Such judicial mandates violate the doctrine of federalism implicit in the United States Constitution.\textsuperscript{150}

\begin{footnotesize}
\begin{enumerate}
  \item Riverside, 111 S. Ct. 1661 (1991).
  \item Id. at 1668.
  \item In Riverside, the majority noted that in contrast to the Fourth, Seventh and Ninth Circuits' interpretation that Gerstein, 420 U.S. 103, required a probable cause determination immediately following completion of the administrative procedures incident to arrest, the Second Circuit understood Gerstein to stress the need for flexibility and to permit states to combine probable cause determinations with other pretrial proceedings. Riverside, 111 S. Ct. at 1666.
  \item Id. at 1668.
  \item The majority criticized the minority's view that additional tax dollars must be allocated to guarantee a detainee's right to prompt arrest processing: In advocating a 24-hour rule, the dissent would compel Riverside County — and countless other [counties] across the Nation — to speed up its criminal justice mechanism substantially, presumably by allotting local tax dollars to hire additional police officers and magistrates. There may be times when the Constitution compels such direct interference in local control, but this is not one.
  \item Id. at 1670.
  \item Id. at 1668.
\end{enumerate}
\end{footnotesize}
Despite its deference to state legislatures, the *Riverside* majority admitted that flexibility has its limits\(^\text{151}\) and that the *Gerstein* "flexible time" criteria resulted in too much litigation.\(^\text{152}\) Therefore, the Court ruled that forty-eight hours was the outer limit for the production of detainees.\(^\text{153}\)

Where state arrest processing laws result in production of arrestees within forty-eight hours of arrest, local officials are immune from systemic attack on the constitutionality of those statutes.\(^\text{154}\) However, the forty-eight hour time limitation will not be strictly construed. In cases where local authorities can substantiate that "extraordinary circumstances" or a "bona fide" emergency required additional time for arrest processing, continued detention of an arrestee may be deemed to have been proper.\(^\text{155}\) Also, in cases where forty-eight hours has not yet lapsed, an arrestee may successfully challenge local authorities by proving that he has been held for improper reasons.\(^\text{156}\) For example, the Court struck down the part of the California statute that tolled arraignments on weekends when the court

\(^{151}\) As the majority aptly stated, "Gerstein is not a blank check. A state has no legitimate interest in detaining for extended periods individuals who have been arrested without probable cause." *Id.* at 1669.

\(^{152}\) The majority raised the concern that:

Unfortunately, as the lower courts in applying *Gerstein* have demonstrated, it is not enough to say that probable cause determinations must be "prompt." This vague standard simply has not provided sufficient guidance. Instead it has lead to a flurry of systemic challenges to city and county practices, putting federal judges in the role of making legislative judgments and overseeing jail house operations. *Id.* at 1669.

\(^{153}\) *Id.* at 1670.

\(^{154}\) *Id.*

\(^{155}\) Although the majority used the terms "extraordinary delays" and "bona fide emergency," the majority also emphasized that:

[C]ourts must allow a substantial degree of flexibility [in evaluating whether the delay is unreasonable in a particular case]. Courts cannot ignore the often unavoidable delays in transporting arrested persons from one facility to another, handling late-night bookings where no magistrate is readily available, obtaining the presence of an arresting officer who may be busy processing other suspects or securing the premises of an arrest and other practical realities. *Id.*

\(^{156}\) The majority noted the following improper reasons for detention: 1) "delays for the purpose of gathering additional evidence;" 2) "delay motivated by ill will against the arrested individual;" 3) "delay for delay's sake." *Id.*
was not in session, noting that intervening weekends do not qualify as an extraordinary circumstance.\textsuperscript{157} In Justice Scalia's strong dissent, the minority argued that a probable cause hearing is sufficiently prompt under \textit{Gerstein} only when there is a hearing immediately upon completion of the "administrative steps incident to arrest."\textsuperscript{158} The dissent argued that the majority's opinion struck at the heart of the Fourth Amendment's prohibition against unreasonable seizures.\textsuperscript{159} Common law dictates that any person arrested without a warrant must be brought before a magistrate as soon as possible.\textsuperscript{160} The only element bearing on the reasonableness of the delay is the arresting officer's ability to reach a magistrate who could issue the needed warrant for additional detention.\textsuperscript{161}

While the \textit{Riverside} opinion laid to rest the arguments on the outer limit of promptness and the configuration of a pre-arraignment hearing, the Court did not delineate the consequences of a \textit{Gerstein} violation, nor did the Court define the minimal conditions of pre-arraignment detention. Thus, resolution of these issues is left to others in the \textit{Gerstein} decision.

\textbf{iv. New York State Court of Appeals' Definition of Unreasonable Delay under \textit{People ex rel. Maxian v. Brown}}

The \textit{Riverside} opinion mirrors the reasoning of the Second Circuit in \textit{Williams} by stating that, under \textit{Gerstein}, the Fourth Amendment permits flexibility which takes into account the limited resources of the county criminal justice systems.\textsuperscript{162} As previously noted, the Second Circuit had reversed Federal District Court Judge Motley's ruling that detainees must be produced for arraignment within twenty-four hours of arrest.\textsuperscript{163} The Second Circuit told Judge Motley that while detainees were entitled to a prompt hearing, they were not

\textsuperscript{157} \textit{Riverside}, 111 S. Ct. at 1670.
\textsuperscript{158} \textit{Id.} (Scalia, J. dissenting).
\textsuperscript{159} \textit{Id.} at 1672.
\textsuperscript{160} \textit{Id.}
\textsuperscript{161} \textit{Id.}
\textsuperscript{163} \textit{Williams}, 845 F.2d at 375-76.
necessarily entitled to an ideal one. The Second Circuit also informed Judge Motley that the complexity of the tasks facing New York City's criminal justice system made Motley's demand for production within twenty-four hours unrealistic. Oddly enough, just a few weeks prior to the Supreme Court's *Riverside* decision, the New York Court of Appeals in *People ex rel. Maxian v. Brown* vindicated the reasoning of Judge Motley by affirming a trial court's order that all detainees must be arraigned within twenty-four hours unless the county provides an acceptable reason for the delay.

Justice Brenda Soloff reviewed numerous writs, brought in arraignment parts from January 3, 1990 until April 20, 1990 by the Legal Aid Society, for each detainee held in excess of twenty-four hours. The basis for the demands was a statutory requirement that an arrestee must be arraigned without unnecessary delay. On April 20, 1990, Justice Soloff consolidated these writs into a class action and granted the Legal Aid Society's petition for relief.

Any delay in excess of twenty-four hours is presumptively unnecessary. After twenty-four hours, the county has the burden of proving that continued detention of the arrestee is not unlawful.

On appeal, the Appellate Division, First Department, held that the lower court's ruling enabled an arrestee to vindicate his right to be arraigned without unnecessary delay. The appellate court also found that corrections officials have a burden

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164 The Second Circuit criticized the District Court:
The district court's twenty-four hour limit on arraignment times might perhaps be realistic if there were less crime and traffic in New York City, or if, as the district court actually suggested, the City's police did not "arrest so many and make the system so overworked," or if the City had more police, courthouse detention space, judges, prosecutors and Legal Aid lawyers. Whether New York can establish an ideal arraignment system is not the issue before us, however, for the Constitution does not compel it to do so. *Id.* at 389.

165 *Id.*


169 *Id.* at 27.

of providing reasonable explanations for pre-arraignment delay.\textsuperscript{171} Further, delays which are both reasonably foreseeable and avoidable are not necessarily within the meaning of the statute, while unanticipated and unavoidable circumstances would warrant a judicial extension of the statute.\textsuperscript{172} A strong presumption of regularity attaches to production for arraignment within twenty-four hours.\textsuperscript{173} The New York Court of Appeals agreed with the lower courts that all arraignments must take place within twenty-four hours of arrest.\textsuperscript{174}

\section*{II. ADMINISTRATIVE AND PROCEDURAL CHANGES IMPLEMENTED IN NEW YORK CITY TO EXPEDITE ARRAIGMENTS}

As noted earlier, all prisoners have the right to be treated humanely.\textsuperscript{175} Unfortunately, the sheer volume of arrests in New York City has frequently resulted in inhumane treatment in overcrowded cells.\textsuperscript{176} Some public officials believe that only large infusions of money into the criminal justice system can cure lengthy detentions under abominable conditions. They attribute pre-arraignment delays to fiscal restraints imposed on both New York City and New York State that have left criminal justice administrators without the necessary resources to afford defendants speedy arraignments by traditional means.\textsuperscript{177}

\begin{footnotesize}
\begin{enumerate}
\item Maxian, 561 N.Y.S.2d at 424.
\item Id.
\item Maxian, 570 N.E.2d 223 (N.Y. 1991).
\item Underlying the Eighth Amendment prohibition against cruel and inhuman treatment is the prohibition against actions that offend the dignity of the individual. This prohibition draws its meaning from evolving concepts of decency that mark a maturing society. Tropez v. Dulles, 356 U.S. 86, 100-01 (1958).
\item The Appellate Division described the unconscionable circumstances of pre-arraignment delay in New York City:
Abruptly severed from all that is familiar and sustaining in the world they are used to travel, detainees are consigned, often in chains, to chronically overcrowded and squalid holding facilities where they will likely be subject to extraordinary physical and emotional strain.
\item In Wachtler's report to the New York Legislature in 1990, he stated,
\end{enumerate}
\end{footnotesize}
Meanwhile, many of the courthouses presently utilized for criminal arraignments throughout New York City are woefully inadequate for the production of large numbers of pre-arraignment detainees.\textsuperscript{178} The Queens County Supreme Court building in New York City, for example, was initially constructed for use as a civil courthouse; consequently, many of the courtrooms lack adequate holding pens for securing prisoners. Correction officers, therefore, detain the arrestees in areas of the courthouse far from the courtrooms in which they must be produced. Handcuffed prisoners are brought through public corridors to the courtroom in which their case is to be heard. This manner of production deprives the defendant of dignity and exposes the public to potential harm should a prisoner escape his custodians.

When Justice Soloff issued her ruling, it was feared that this decision would have a shattering impact on the criminal justice system — a system that is already on the brink of collapse after the dramatic rise in drug-related arrests.\textsuperscript{179} However, between the issuance of Justice Soloff's order in April 1990 and a report issued in 1991, not only has the prosecution routinely provided reasonable explanations for any arraignment delay in excess of twenty-four hours, but the time for processing arraignments in Manhattan has dropped from an average of thirty-nine hours to an average of twenty-six hours.\textsuperscript{180}

In large part, the Deputy Mayor for Public Safety's implementation of the recommendations of the ABCNY Committee on Criminal Justice Operations and Budget (ABCNY Criminal Justice Committee)\textsuperscript{181} and of the Enforth Corporation for expe-

\textsuperscript{178} The ABCNY Criminal Justice Report noted that there are inadequate facilities at Central Booking (Manhattan) to hold all defendants at peak arrest periods. Thus, while the paper package is being assembled, defendants are routinely transported to any precinct until the package is complete. ABCNY CRIMINAL JUSTICE REPORT, supra note 50, at 176.

\textsuperscript{179} Wise, supra note 177, at 1.

\textsuperscript{180} Justice and Efficiency After Arrest, N.Y. TIMES, March 11, 1991, at A16.

\textsuperscript{181} Recommendations set forth in ABCNY CRIMINAL JUSTICE REPORT, supra note 50.
diting arraignment processing has resulted in this decrease in arraignment time.\textsuperscript{182} The balance of this article discusses the administrative, policy, and technical recommendations of these two groups and suggests additional means for expediting pre-arraignment processing.

A. ADMINISTRATIVE CHANGES

1. \textit{Creation of the Position of Arrest to Arraignment Director}

As previously noted, the arraignment process in New York requires the synchronization of several independent government agencies. Prior to 1990, the Coordinator of Criminal Justice Services was primarily responsible for overseeing the work flow between the various agencies. However, because the Coordinator did not directly control the staffing of the agencies nor the priorities with which these agencies expended their funding, his influence on these agencies was more persuasive than controlling. The oversight of the Coordinator of the Criminal Justice Services is now backed by the authority of the newly created position of Deputy Mayor of Public Safety. The Deputy Mayor directly advises the Mayor on criminal justice issues and participates in the planning and implementation of the criminal justice programs undertaken by criminal justice agencies of the City of New York.\textsuperscript{183} To assist the Deputy Mayor in his goals, he has hired a city-wide Arrest to Arraignment (ATA) Director who reports directly to him.\textsuperscript{184}

The ATA Director is responsible for overseeing long term strategic planning for the entire arrest to arraignment process in each of the boroughs. The ATA Director evaluates and recommends changes in city-wide policies. He has a staff of Assistant Directors placed in the boroughs of Brooklyn, Bronx,

\textsuperscript{182} Enforth was selected in a competitive bid process in New York City and worked under the joint supervision of the Office of the New York City Criminal Justice Coordinator and the New York City Office of Management and Budget. The results of this study appear in Enforth Corporation, \textit{A Systematic Analysis of the Arrest to Arraignment Process: Final Recommendations} (on file with the Cornell Journal of Law and Public Policy) [hereinafter \textit{Enforth Report}].

\textsuperscript{183} Mollen Affidavit at 1, Brief for Corporation Counsel, People \textit{ex rel.} Maxian v. Brown, 570 N.E.2d 223 (N.Y. 1991).

\textsuperscript{184} \textit{Id.} at 7.
Manhattan, and Queens who insure that these policies are implemented.  

The Deputy Mayor and the ATA Director have the power of the purse over the agencies processing pre-arraignment detainees. For example, when Enforth recommended that additional complaint room staff were needed to speed the arrest to arraignment process, the Deputy Mayor had at his disposal funding for the staffing of the four District Attorney's complaint rooms.

2. Centralized Confinement of Paper-ready Detainees

Prior to August 1990, even when the police had record numbers of detainees in processing, filling the court cells was difficult because the prisoners had to be segregated by sex and age. Enforth recommended that NYPD group detainees by crime classification and readiness to be arraigned before bringing them to court pens. Following this recommendation, NYPD now uses holding pens at various locations near the courthouse to pre-sort classes of detainees prior to their production in the courthouse holding cells.

B. Policy Changes: Issuing of More Desk Appearance Tickets

Both the ABCNY Criminal Justice Committee and Enforth recommended that arresting officers, rather than taking certain classes of criminals into custody, issue more Desk Appearance Tickets (DATs), a significant policy change. DAT arrestees are scheduled to return for arraignment several weeks after

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185 Id.
186 Id.
187 N.Y. CORRECT. LAW § 500-b (McKinney 1987 & Supp. 1992). Police are mandated to segregate adult men, women, adolescent boys and girls, remand- ed prisoners and known homosexuals. This statute has been extended until September 1993.
188 Enforth Report, supra note 182, at 2-22.
190 N.Y. Crim. Proc. Law § 150.20 (McKinney 1992) states that when a person is arrested for an offense other than a class A, B, C, or D felony or certain other offenses, the arresting officer may issue an appearance ticket instead of holding for arraignment.
arrest. Therefore, the production of prior criminal history sheets and complaints can be assigned a low priority. When there is little backlog, the arresting officer can report to the complaint room. DAT fingerprint cards can then be classified at a time of relatively low on-line arrest workload. Further, the defendant is not occupying limited cell space, thereby eliminating competition for scarce cells.\textsuperscript{191}

Prior to May 1990, statistics from the OLBS indicated that only 25% of all misdemeanor and virtually none of class E felon arrestees were issued DATs.\textsuperscript{192} Policies of the NYPD precluded issuing DATs to those with outstanding warrants, those without verifiable community ties, those excluded due to provisions in the police department Patrol Guide, and those violating "special precinct conditions."\textsuperscript{193}

The Deputy Mayor recommended to the Police Commissioner more restrictive threshold standards for taking persons into custody. After this recommendation, OLBS records indicate an 100% increase in the number of misdemeanants given DATs rather than incarcerated prior to arraignment.\textsuperscript{194} This policy is presently under review because of the large percentage of warrants among those receiving DATs.\textsuperscript{195}

Two other Enforth policy recommendations appear promising: the setting of bail at the precincts\textsuperscript{196} and expediting the arraignments of certain classes of misdemeanants.\textsuperscript{197} Both

\begin{footnotes}
\item[	extsuperscript{191}] Enforth Report, supra note 182, at 3-2.
\item[	extsuperscript{192}] Id.
\item[	extsuperscript{193}] Enforth Report, supra note 182, at 3-3.
\item[	extsuperscript{194}] Mollen Aff. at 7, 8, Brief for Corporation Counsel, People ex rel. Maxian v. Brown, 570 N.E.2d 223 (N.Y. 1991).
\item[	extsuperscript{195}] Interview with Michelle Maxian, Legal Aid Society, New York, N.Y. (March 15, 1992).
\item[	extsuperscript{196}] Enforth Report, supra note 182, at 3-4 to 3-6. The ABCNY Criminal Justice Committee also recommended jail house bail, dismissing the advice of administrators that the presence of funds at the precinct might corrupt the staff. ABCNY CRIMINAL JUSTICE REPORT, supra note 50, at 189-90.
\item[	extsuperscript{197}] Enforth recommended the expedited arraignment of misdemeanants through a single arraignment part, operating either sixteen or twenty-four hours a day, with its own associated holding space located adjacent to Central Booking. After arrest and paperwork processing at the arrest precinct, those defendants charged with misdemeanors who show no active warrants on a local warrant check, yet denied DATs, would be taken to the expedited arraignment facility. Upon arrival, they would be placed in a holding cell while the arresting officer submits his paperwork to the booking staff. Upon
\end{footnotes}
policies are still under consideration by the Deputy Mayor's Office.

C. TECHNICAL EQUIPMENT MODERNIZED

1. Increased Automation in Identification Techniques

In 1978, New York State became one of the first states to access fingerprints through computerization. This information system is statewide and accesses the National Computer Information Center, which tracks out-of-state warrants. While innovative at the time it was developed, this system relies on technology and procedures that in some instances are now technically obsolete.198

Inkprinting is the technique currently used by NYPD to generate fingerprints. A police officer obtains prints from a defendant by placing the defendant's fingers on an ink pad and then rolling the fingers on a white index card. The officer then manually types onto this card additional identifiers, such as the defendant's name, address, and social security number. This card is faxed to DCJS where a staff member of the DCJS again manually inputs the identification information into the DCJS mainframe computer. From a database of more than four million fingerprints, the mainframe produces a number of possible matches which the DCJS technician visually compares with those on the fax. Where a match is produced, the computer generates the defendant's prior New York State criminal history, which is faxed to the Central Booking Unit.199

DCJS estimates that faxing to Albany and analyzing the print takes about forty-five minutes and another two to three

completion of arrest-related paperwork, the complaint would be drawn upon site by an ADA, a paralegal, or the arresting officer. Once the complaint had been drawn up, the arrestee would be interviewed by defense counsel and arraigned.

Advantages of this system are: (1) logistics are simplified since this defendant is moved directly from the precinct of arrest to the arraignment facility; (2) the complaint generation process is simplified by eliminating the bottleneck at the Complaint Room; and (3) the identification procedure is simplified, since a prior criminal history sheet will not be required. Enforth Report, supra note 182, at 3-12 to 3-13.

198 ABCNY CRIMINAL JUSTICE REPORT, supra note 50, at 186-189.

199 Id. at 187-88.
hours to prepare a correct history for transmission.\textsuperscript{200} NYPD estimates the entire process takes about nine hours from the first faxing of the prints to DCJS until the receipt of the information at NYPD.\textsuperscript{201} One statistic is certain, however: in May of 1990, one of the most significant delays in the arrest to arraignment process resulted from DCJS rejection of fingerprints. In 1990, as many as twenty-five percent of the fingerprint cards faxed for classification and identification to DCJS were unreadable.\textsuperscript{202} In some cases, reissuing the original card resolved the problem.\textsuperscript{203} In many cases, however, the detainee had to be reprinted by a member of the NYPD Bureau of Criminal Identification (BCI) before the DCJS computer could properly classify the fingerprints.\textsuperscript{204}

Enforth recommended that all NYPD officers receive better initial training and periodic retraining in fingerprinting techniques.\textsuperscript{205} Enforth also suggested that a member of the BCI team be assigned to each borough's Central Booking Unit. This BCI officer would inspect each fingerprint card for readability prior to faxing the card to DCJS.\textsuperscript{206} Enforth also suggested that using better transmitting equipment in the Central Booking Units. The purchase of more advanced fax equipment resulted in a fifty percent decrease in the rejection rate of prints sent by NYPD to DCJS.\textsuperscript{207}

DCJS is in the process of implementing an Automated Fingerprint Information System (AFIS) to further eliminate readability problems.\textsuperscript{208} Existing fax machines will be replaced by infrared processors which can read the prints, convert them to digitized data, and transmit this data via phone lines directly to the DCJS mainframe computer.\textsuperscript{209} The DCJS main

\begin{thebibliography}{9}
\bibitem{1} Id. at 188.
\bibitem{2} Id.
\bibitem{3} Enforth Report, supra note 182, at 2-10.
\bibitem{4} ABCNY CRIMINAL JUSTICE REPORT, supra note 50, at 188.
\bibitem{5} Enforth Report, supra note 182, at 2-11. ABCNY CRIMINAL JUSTICE REPORT, supra note 50, at 189.
\bibitem{6} Enforth Report, supra note 182, at 2-11.
\bibitem{7} Id.
\bibitem{8} Mollen Affidavit at 8, Brief for Corporation Counsel, People ex rel. Maxian v. Brown, 570 N.E.2d 223 (N.Y. 1991).
\bibitem{9} ABCNY CRIMINAL JUSTICE REPORT, supra note 50, at 188.
\bibitem{10} Id.
\end{thebibliography}
frame computer will subsequently generate a list of ten to fifteen potential identifications, identify a unique characteristic in the NYPD print, and match the NYPD print with a print in the DCJS database. A DCJS technician will still manually verify the match of the computer generated print with the NYPD print.

Switching to the newer technology has several advantages. Less technical skill is required to photograph a finger than to print a finger; therefore, this task could be delegated to any properly trained person. The digitized image is sent directly from the infrared processor to the computer at DCJS, thus eliminating the procedure of photocopying and faxing the fingerprint. Readability problems are reduced because the processing of the digitized print is done by the computer rather than by a technician.

2. Micro-computer Work Stations

The use of desk top micro-computer work stations at DCJS, and possibly at Central Booking, offers another solution to the bottle neck of inkprint faxes between NYPD and DCJS. Although the desk top system could not access all four million fingerprints on file with DCJS, these micro-computers could access the prints of defendants with a predilection for certain types of violent crimes, such as child molestation or rape, as opposed to shoplifting or disorderly conduct. Also, such micro-computers can be programmed to locate habitual offenders of certain crimes, such as drunk driving. In addition, micro-computer identification systems could target bench war-

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210 Id.
211 Id. at 188-89.
212 Micro-computers lack the storage capacity required for all the information contained in the central DCJS computer. However, local bench warrants and prior criminal history sheets on designated crimes or criminals could be contained in a micro-computer.
213 Local verification of warrants would be appropriate only for misdeemeanants. Additional verification of warrants must, of course, be done afterwards through the state central warrant system.
214 This author, a former Assistant District Attorney in Kings County, recalls that microcomputers have been used in the White Collar Crime Unit of that office for targeting arson through the systematic recording of arson locations, names of property owners, and insurance policies.
rants for crimes committed in specific areas — for example, the street turf of a gang or drug pushers.

When the fax lines between NYPD and DCJS are jammed, these desk top work stations would provide an alternative to processing prints through DCJS. Many defendants should be granted a DAT under new NYPD guidelines, but they cannot because their identity is in doubt. Backup micro-computers would provide assurances that defendants of doubtful identity are not presently wanted for a heinous crime prior to their release.

3. Casetracking of Pre-arraignment Detainees

The New York City Police Department has also recently implemented a casetracking system for pre-arraignment detainees. This system keeps the police apprised of where a particular defendant is within the arrest to arraignment system. Such casetracking was not possible prior to the centralization of administrative authority for the arrest to arraignment process in the Deputy Mayor. The system also contains a mechanism to detect potential backlogs triggered by a significant increase in the number of arrests. When the mechanism is triggered, the Deputy Mayor of Public Safety, the Office of Court Administration (OCA), the District Attorneys and the Legal Aid Society are notified in order to prepare additional arraignment parts to handle the backlog.\(^\text{216}\)

4. Creating One Warrant Information Bank

Enforth also recommended, but the system has yet to implement, that the courts no longer mandate that warrants be issued by the Central Warrants Unit.\(^\text{216}\) Presently, warrants are issued by NYPD and OCA. A county clerk makes a handwritten notation of the warrant in a log under the warrant's issue date. When a warrant search is required, the clerk searches the warrant log and locates the indictment number and bench warrant notation. The clerk manually prepares a warrant and takes it to the Chief Clerk to be notarized. The clerk then faxes the notarized warrant to the court holding the


\(^{216}\) Enforth Report, supra note 182, at 2-8.
detainee. Occasional breakdowns of fax equipment have caused massive tie-ups in arraignment processing.217

Enforth recommended that courts simplify the system by authorizing the receipt of warrants generated from one on-line warrant system. The warrant would be verified by an affidavit of authenticity from the Chief Clerk of the issuing county.218 This on-line system would include the warrants issued by the courts, the police and the state, thereby eliminating duplicative paperwork and expediting the arraignment of detainees with outstanding warrants.

5. Producing Pre-Arraignment Detainees Electronically

The ABCNY Criminal Justice Committee recommends another technical innovation: the use of closed circuit televisions and microwave systems to produce defendants electronically.219 Several jurisdictions, including Riverside, California, routinely arraign detainees electronically.220 The New York State legislature has statutorily authorized video arraignments in Suffolk County221 and has recently passed a temporary statute authorizing video production in the Bronx, Kings and

217 Id. at 2-7.
218 Id. at 2-8.
219 ABCNY CRIMINAL JUSTICE REPORT, supra note 50, at 181-183.
220 Among the numerous jurisdictions that have been authorized to video arraignments are the counties of:
1) Fairbanks, Alaska, pursuant to ALASKA CRIM. R. 38.2;
2) Maricopa and Pima, Arizona, ARIZ. R. CRIM. P. 14.2;
3) Numerous counties in California, including Riverside, San Bernardino, and Glendale, pursuant to CAL. PENAL CODE §§ 977, 977.2 (West 1985 & Supp. 1992);
4) Dade County, Florida, pursuant to FLORIDA CT. R. 3.160;
5) Ada County, Idaho, pursuant to IDAHO CRIM. R. 43.1;
6) Baton Rouge, Louisiana, pursuant to LA. CODE CRIM. PROC. ANN. art. 831, 833 (West 1984 & Supp. 1990);
221 New York Criminal Procedure Law §§ 185.10-185.40 (McKinney 1985) were added by the Laws of 1978. The Office of Court Administration failed to implement video arraignments prior to the expiration of the act in 1983.

The Court's concern with due process safeguards (including the sending and receiving of images within the territory or county in which the arraignment judge is authorized to hear cases and the blocking of unauthorized receptions or interference) has resulted in inordinate costs and delays from the inefficiency of physical production at arraignments.
New York Counties for a period of eighteen months. However, Chief Administrator Wachtler has not taken the necessary steps to make video arraignments operational in New York City, based, in part, on his opposition to the restrictions set forth in the legislation. That these counties have thus far been deprived of the great success video arraignments have enjoyed in other jurisdictions is unfortunate.

It is hoped that the Chief Administrator will either reverse his decision or that the legislature will pass legislation that the Administrator wants implemented in his courthouses. City administrators should, nonetheless, investigate the diverse electronic production procedures of other jurisdictions for a prototype that adequately protects the due process rights of the accused.

CONCLUSION

As noted in Part I of this article, the Riverside decision has set a national outer limit of forty-eight hours for detention absent a probable cause hearing. Many states already have more narrow time frames for production of detainees at arraignment. Fundamental decency and financial constraints mandate short production times. A record number of arrests dictate that those dollars spent on criminal justice be spent wisely. Criminal justice administrators should withdraw a case as quickly as possible from the bloated court calendars if it cannot survive even a cursory reading for probable cause.

Part II of this article gave an overview of the policies and procedures followed in the pre-arraignment system in New York City. Criminal justice administrators throughout the nation should take heart. If arraignment time can be reduced by forty percent in New York City, all manner of miracles are possible in other jurisdictions.

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222 New York Criminal Procedure Law §§ 182.10-182.40 (McKinney Supp. 1992), authorize electronic appearances as an alternate method of court appearances in Westchester and all counties in New York City, except Staten Island. This statute became effective January 1, 1991 and is effective until July 1, 1993. Despite the legislature’s desire to utilize video procedures, the Chief Administrator of the Courts has not drawn up court rules for the administration of this video production statute. See Peter Preiser, Practice Commentaries, N.Y. CRIM. PROC. LAW §§ 182.10, 182.40 (McKinney Supp. 1992).

223 Wachtler, supra note 1, at 42.
Perplexed judges and criminal justice administrators should examine those procedures recently implemented in the courts of New York City. In 1991, spurred by federal and state challenges to existing arrest processing procedures, both minor technical and radical policy changes recommended by Enforth and the ABCNY Criminal Justice Committee were implemented. These changes have not only saved taxes badly needed by a collapsing court system, but they have also secured the rights of detainees. The New York Times reported on March 11, 1991, that New York City administrators had reduced the average arrest processing time from thirty-nine hours to twenty-six hours.\textsuperscript{224}

New York City is one of the more complex and busier criminal justice systems. It is not fully representational of other municipalities. However, the sheer size of the area and the volume of business involved strongly suggests that the lessons learned here may be successfully implemented elsewhere.

\textsuperscript{224} Justice and Efficiency After Arrest, \textit{supra} note 180.