

Justice Denied

Inside the Bronx's Dysfunctional Court System

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NOTE: Due to the size of the article, most photos and all graphs are not included here. Those can be found at <http://www.nytimes.com/2013/04/14/nyregion/justice-denied-bronx-court-system-mired-in-delays.html>.

PART 1

Faltering Courts, Mired in Delays



Michael Appleton for The New York Times

The delays in the Bronx court system are apparent even before entering the criminal courts building. Victims, defendants, witnesses and relatives often face long lines to go through security.

Outside the courtroom, the children of the murdered man waited with their mother. It had taken five years for the Bronx courts to get around to them and to the man with teardrop tattoos charged with killing their father.

The death of Robert Gaston on a bloody bodega floor was one of those murders New York barely notices. The family's grief had given way to an agonizing wait for what they called their day in court. Two years. Four. Five, as bloodstains and memories faded.

"It should never take five years," 15-year-old Kaitlynn Gaston said. "All the good parts of New York, the high-class parts of New York, they easily get justice."

The Bronx courts are failing.

With criminal cases languishing for years, a plague of delays in the Bronx criminal courts is undermining one of the central ideals of the justice system, the promise of a speedy trial.

At a time of slashed judicial budgets across the country, the Bronx offers a stark picture of what happens when an overwhelmed justice system can no longer keep pace: Old cases pile up, prosecutions fail at alarming rates, lives stall while waiting for court hearings and trust in the system and its ability to protect the public evaporates.

In the Bronx in recent years, there were more people in jail waiting years for their trials than in the rest of the city combined, court data show. The borough was responsible for more than half of the cases in New York City's criminal courts that were over two years old, and for two-thirds of the defendants waiting for their trials in jail for more than five years.

In January, 73 percent of all Bronx felony cases exceeded the courts' own time targets, far more than any other borough.

And over the last two decades, the Bronx prosecutors' jury conviction rate has plummeted. Less than half of jury trials now end in guilty verdicts, far fewer than elsewhere in the city, raising questions about whether rapists, robbers and killers are going free because the borough's justice system is broken.

Just up the street from Yankee Stadium, that rare Bronx institution that gets the rest of the city's attention, the gleaming glass courthouse has quietly become a place where dysfunction is expected. Failures by nearly every component of the criminal justice system have contributed to what is known inside the building as a "culture of delay."

That includes a district attorney whose policies have contributed to a decline that extends over his long tenure, defense lawyers who exploit delays at every turn to help their clients beat charges, judges who are unable or unwilling to take command of their courtrooms and court administrators who overlooked the growing crisis while refusing requests for more resources. All of this happens in the poorest borough in the city, a place lacking the political clout to stir outrage and force reform.

Months of court visits in the Bronx beginning last June — which included observations of trials, examinations of case files and transcripts in scores of cases, analyses of law enforcement statistics and reports, and dozens of interviews with crime victims, witnesses, defendants, lawyers, court officials, judges and jurors — showed the broad range of problems afflicting the borough's justice system.

For years trials have been postponed every week because there were not enough judges. But less compelling reasons are also sufficient, including prosecutors' vacation plans and defense lawyers' birthdays. Even excuses like a backache and a picnic were deemed sound enough to keep the courts waiting.

Prosecutors from the office of the Bronx district attorney, Robert T. Johnson, routinely tell defense lawyers handling two- and three-year-old cases that they are too new to be dealt with. Two years ago, a judge threw out all charges against a man accused of trying to murder a police officer simply because prosecutors had allowed too much time to pass.

At the same time, the court day is shrinking. It is at best a modest 9:30 a.m. to 4:30 p.m., with an hour for lunch. In practice it has been whittled further because even the most basic functions, like bringing prisoners to courtrooms, are undermined by cascading delays.

The chronology of a second-degree murder trial on March 13 shows how a full day of work can shrink down to 2 hours 49 minutes.

9:00 a.m.

In the midst of The New York Times's reporting, the top official in the state court system publicly acknowledged the "glaring problems" in the Bronx criminal courts, which he said went back "as long as I can remember." In a January speech, the official, Jonathan Lippman, the state's chief judge, called the court delays "intolerable," "entirely unacceptable" and "singularly intractable."

Concerns about an overburdened, underfinanced court system have nagged with increasing urgency across New York City. The number of felony cases citywide that exceed the courts' own guidelines for excessive delay — 180 days in most felony cases — has more than doubled since 2000, even as the total number of felony cases has dropped by nearly a quarter.

"The Bronx is a window into the problems in the criminal justice system across the city," said Steven Banks, the citywide attorney in chief of the Legal Aid Society.

But even by comparison with other troubled courts across the city, the criminal courts of the Bronx stand out as crippled. A new analysis by The Times shows that the Bronx criminal courts slipped during the last decade into the bottom ranks of the most backlogged of the big-city courts in the country.

These problems worsened after two reorganizations left the Bronx criminal courts with fewer judges, a smaller budget and a bigger backlog of cases. The most recent attempt at resolving the felony backlog was announced by Judge Lippman in his January speech. The emergency measures included replacing the borough's top criminal judge and bringing in a temporary "swat team" of judges to handle some of the oldest cases.

Though court officials have called that effort a success, many Bronx judges and lawyers have been openly skeptical. They questioned whether the plan would deal with the causes of the problems because past efforts had only contributed to the backlog. State budget cuts two years ago trimmed 12 percent of the annual spending in the Bronx and in courts across the state.

The problems are visible even before entering the courthouse on 161st Street, where the line to get inside often stretches down the block and around the corner.

Those waiting — whether victims, defendants, witnesses or supportive relatives — often turned to the same phrase: “Justice delayed is justice denied.” For them it was no platitude.

Sam Braverman, a veteran Bronx defense lawyer, recently had a 34-year-old client charged with murder freed after someone else confessed to that killing. His client had been in jail awaiting his trial for nearly three years.

Those long waits are hardest to explain to the mothers of young men, particularly around the holidays, Mr. Braverman said in his cramped office near the courthouse.

“I tell them: ‘I don’t want you thinking he’s going to be home for Christmas. Or the next Christmas, or the next Christmas after that.’ It tastes like vomit in my mouth when I have to say it.”

Robert Gaston’s widow and children knew the big glass courthouse on 161st Street. They knew about the shootings and the knifings that happened so often right there, as if in defiance of the place itself.

They knew about the long line out front where crime victims and witnesses jostled with drug dealers and street thugs, eyeing one another month after month. They knew about the special line that whisked lawyers and court clerks inside, while the people of the Bronx waited and waited in heat and cold.

But it was different to be in the line yourself. Fights break out. A court officer shouts through a megaphone: Do-rags must be removed.

“You are treated as just another criminal in the Bronx,” 19-year-old Robert Gaston Jr. said.

Routine Lateness

Inside the Bronx County Hall of Justice, everyone seems to be waiting. The translator is late. The prisoner is not yet up from the pens. The prosecutor is busy. There are not enough court officers. The jurors have not assembled. The judge is still in his chambers.

Even the mail is late at the courthouse. One judge remembered finding four boxes of unopened mail addressed to the court. Some of it was months old.

People missing work or school for cameo appearances as victim, defendant or witness crowd around the doors in the wide hallways, which often remain locked long past the official starting time of 9:30 a.m. Their disbelief at the disregard for their time sometimes provokes outbursts of fury.

Some judges wander into their crowded courtrooms at 10:15 or later without excuse or apology.

Correction officials say they have a “97 percent on-time delivery rate” bringing prisoners to court. But their definition of on-time includes prisoner arrivals by 11 a.m.

Courtroom doors are locked again for a long lunch hour. The official closing time is 4:30. Sometimes a judge will be able to squeeze in only a few hours of business.

During an attempted-murder trial that slogged through nine weeks last summer, Judge Denis J. Boyle would take the bench in his mostly empty courtroom at 9:30, only to stare into space, expressionless, sometimes for two hours, waiting for the lawyers or the jurors. The lead prosecutor in that case took a vacation in the middle of the trial, which some lawyers called unheard-of.

And on the bench in June, Judge William I. Mogulescu noted with resigned frustration that instead of following his order to begin a trial, the assistant district attorney went to a picnic.

Dennis W. Quirk, the president of a court officers’ union, said judges and court officials had allowed delays in the Bronx to spiral out of control. “They don’t hold the private bar and the D.A.’s office to task to bring a case to trial,” he said. “It’s the culture and it’s been the culture for the last 30 years in the Bronx.”

Judge Efrain Alvarado, a former prosecutor, said one afternoon in a courthouse that had already emptied for the day, “Things tend to wind down earlier than they should.”

He said the court had long needed more judges, court officers, stenographers and court clerks. “I don’t believe we have enough resources to do the job that’s expected of us,” he said.

At the time, Judge Alvarado was the top criminal judge in the Bronx, the administrative judge of the criminal division of State Supreme Court. Not long after that interview this winter, court officials removed him from his administrative position.

He was replaced by someone with no experience in criminal court. That judge, Douglas E. McKeon, who was [censured in 1998](#) for violating judicial ethics by speaking publicly about court

cases and seeking a favor from the city for a former employee, is already the top administrative judge in the nearby civil courthouse. He does not have his chambers in the criminal courts building he now runs. Instead, he is working on the crisis from down the street.

“I have a proven record of court management,” Judge McKeon said in an interview.

Even the very design of the building, which opened just five years ago, contributes to the delays. Every day, scores of lawyers for jailed defendants spend hours in a basement holding area waiting for their turn to talk to their clients in just nine interview rooms. Often there are not enough chairs, so the lawyers sit on the floor. “It’s like waiting in an emergency room,” one lawyer said to a judge.

There sat Carlos Vega, finally, as his trial began last fall. The teardrop tattoos on his cheek hinted at grief on the streets, as they did when he was picked up near the bodega that night five years earlier.

Robert Gaston’s widow, red-eyed, was there in the second row with her children, who had grown up in the years since their father was killed.

But the first police officer to testify — called only to say he had seen the bloody corpse — quickly showed the hazards for prosecutors who wait too long.

“I don’t remember,” the officer said under questioning by the defense lawyer.

Nine times in three minutes, when asked about one detail or another, the officer testified he could not remember.

Delay as a Strategy

Defense lawyers everywhere use delay to foster doubt. They capitalize on memories that grow murky and the holes that are blown in cases when prosecution witnesses go missing.

In the Bronx, they have a lot to work with.

They point out how different an accused man looks from long-ago descriptions. They demand lost paperwork. They wait for witnesses to vanish, to be shot to death, to change their minds.

Or to forget. “It was two years ago; it’s a long time ago,” a police officer said in one Bronx assault trial. Verdict: Not guilty.

In another case, the star witness in a murder trial said that after nearly four years, too much time had passed to be sure who pulled the trigger. “People change,” he said. Verdict: Not guilty.

In the hands of the right defense lawyer, a choirboy witness one year can be portrayed as a liar or worse if that witness happened to be arrested in the meantime.

This is a favored Bronx strategy for the hard cases: “We wait for their witnesses to get locked up,” said Edward R. Dudley Jr., who has been a Bronx defense lawyer for nearly 40 years. As the delays worsened, the office of Mr. Johnson, the Bronx district attorney, began to lose at a breathtaking rate.

Bronx jurors are famously skeptical of the police, so prosecutors there often attribute their failures to that bias. But they rarely acknowledged the link between their own delays and their courtroom defeats. People who they had said were so dangerous that they needed to be locked up for decades instead walked out the courthouse’s glass doors.

In 2011, according to court data, Bronx prosecutors won only 46 percent of their jury trials, down from 67 percent when a newly elected Mr. Johnson took office in 1989. No other prosecutors in the city won less than 71 percent of the time in 2011, which is closer to the national rate.

Though it can be hard to prove that a delay brought about any specific acquittal, new city data show how much delays damage prosecution cases. Bronx prosecutors got guilty pleas or other convictions in 80 percent of their three-year-old felony cases, but that figure slipped to 67 percent for four-year-old cases and then 56 percent for five-year-old cases.

Sometimes it was the near miss that made the point.

In a mostly empty courtroom last summer there was Mr. Dudley for the defense, looking euphoric. His client was on trial for shooting a man to death. He told his client’s family that the prosecutors could not find their eyewitness, a crack cocaine user, from the shooting four years earlier. There were smiles all around.

A few feet away, the prosecutor knew his case was collapsing. He paced back and forth in the courtroom. The cuffs of his suit pants were shredded where they met the floor.

But the next morning, everything was different. It was the prosecutor who was looking pleased. The missing eyewitness had turned up and taken the stand. “He’s right there,” the witness testified, pointing at the defendant.

Verdict: Guilty.

Some time later, in his cluttered second-floor office on the Grand Concourse, Mr. Dudley remembered that case, and many that had turned out differently. “There are a million reasons that delays mess up their cases,” he said.

In the bodega that night in 2007, a man in a T-shirt and jeans happened to be buying NyQuil when Robert Gaston was shot three times in the chest. Back then, he was the perfect witness: an off-duty cop. He said he had seen the gunman's tattoos.

But in five years, a lot of things can happen to a case in the Bronx. In 2010, Officer Marco Sang, the perfect witness of 2007, had been one of dozens of officers caught fixing tickets. The Police Department had disciplined him after he gave evasive answers.

The lawyer for the man with the teardrop tattoos knew a gift when he saw one. "This whole case is Marco Sang," he told the jury. "Marco Sang is a liar."

Trouble on the Bench

"In the end, it is judges" who are responsible for clearing court delays, Chief Judge Lippman said in his announcement of the judges' "swat team" to deal with the Bronx delays. Court officials say they have already cut the number of cases two years or older by 21 percent, the vast majority by arranging plea deals and dismissing cases.

Some Bronx lawyers and judges said they were perplexed that the state's top judges suddenly seemed to have discovered the emergency in the Bronx. The growing backlog had been no secret; it had been the subject of newspaper articles, reports and studies for years.

"If you had these numbers in Manhattan or any other borough, it would never be tolerated," said one of the Bronx judges.

[The Daily News](#) last year called the courthouse the "Bronx Gulag." A [2009 bar association report](#) noted there were 48 criminal judges in the borough before the 2004 court reorganization, and only 40 afterward. It called the decline "curious." And a [report by the court system](#) itself said the Bronx criminal courts "lacked sufficient resources — in particular, sufficient judicial resources to try cases."

John P. Collins, a former Bronx criminal courts administrative judge, said Bronx judges felt there had been a crisis for many years.

"I would ask for more resources and I would be told they weren't needed," he said. After years of complaints, he said, state court administrators told him to step down in 2009.

With a single judgeship carrying an annual price tag of nearly \$1 million because of staff and security costs, state court officials have not asked the Legislature for new criminal judges for years. Instead, they shift judges around and make do.

Back in 2004, the first reorganization of Bronx criminal courts was presented as a bold experiment to tackle the borough's legacy of court problems. It was a merger of the Criminal Court, which handles less-serious charges, and the criminal section of State Supreme Court, where felonies are tried.

The merger was universally regarded as a failure. The backlog grew markedly and the state court administrators separated the two courts again last October in their second reorganization effort. "We had a problem there to begin with, and it got worse," said Lawrence K. Marks, the state's first deputy chief administrative judge.

Several Bronx judges said that in a meeting last summer at which they were informed the merged courts would now be separated, Judge Mogulescu, one of the most experienced judges, voiced the views of many of his colleagues by likening the court management's approach to "rearranging deck chairs on the Titanic."

Some Bronx judges privately say the dysfunction in the courts is more easily ignored in the borough because its poverty means it lacks the political clout to register objections.

"If you had these numbers in Manhattan or any other borough, it would never be tolerated," said one judge, who, like others, spoke on the condition of anonymity, fearing retribution from court officials.

They were learning how things work in the Bronx courts. Before the trial began, the case had been postponed 55 times. "I would be calling constantly," Robert Gaston's widow, Erika Garcia, said.

Now that it was finally under way, the family wanted to show the jury that those bullets in the night had left so much pain behind. But it was hard to have all that emotion churn up again after so long. Out in the hallway, they talked about how much Robert Gaston had missed in five years. In a flash, tears filled all their eyes.

But even now, their patience was being tested. During the trial, Tuesdays and Fridays were always days off.

The Low-Profile Prosecutor

With cases piling up and guilty verdicts plummeting, the Bronx district attorney, Robert T. Johnson, has shown little sense of urgency or outrage.

With cases piling up and guilty verdicts plummeting, many prosecutors would sense a crisis. But Mr. Johnson, a Democrat who after 24 years in office is now the longest-serving district attorney in the city, has shown little sense of urgency or outrage.

“Without additional judicial resources,” his office said in written responses to questions, “continuing difficulties can be expected.” He repeatedly declined to be interviewed.

His aides say the office’s abysmal rate of trial victories shows that his prosecutors do not back down when faced with hard cases. But critics note that Mr. Johnson actually turns away cases about three times as often as other district attorneys in the city. In 2011, he declined to follow through with prosecutions in 23 percent of all arrests.

Over Mr. Johnson’s tenure, the record shows judges found that his office generated gridlock with plea bargaining policies and inflexible responses to judges’ requests to move cases faster.

Not long ago, one judge wrote a decision criticizing Bronx prosecutors’ “abject dilatoriness,” while another wrote of a “cavalier attitude” about speedy trial rights. An appeals panel noted that one defendant spent twice as long in jail waiting for trial as the sentence he received after his conviction.

Homicide cases pile up, judges say, because Mr. Johnson has so few prosecutors assigned to the cases. A review of court records showed that several of his senior prosecutors had multiple cases that were so delayed they were among the oldest in the Bronx.

One of them, Joshua Gradinger, the prosecutor with the shredded cuffs, had five four-year-old cases awaiting trial. Another, Christine Scaccia, had six cases four years or older. Two years ago, a judge dismissed one of her cases in which a man was charged with trying to kill a police officer, saying Ms. Scaccia had allowed too much time to pass.

Judge Alvarado, the ousted administrative judge, said before he was demoted that in the years he was running the Bronx court, he talked to Mr. Johnson “a number of times” about reassigning cases to try to attack the backlog, but with “a limited amount of success.”

Mr. Johnson, a former judge who has maintained an insistently low public profile, is widely viewed by government officials as the least effective of the city’s prosecutors in fighting for money for his justice system. The Bronx receives 19 percent of the financing allocated to the city’s district attorneys, although it has 24 percent of the arrests and almost 29 percent of the homicides in the city, according to his office.

When asked months ago why the Bronx’s record for delays was so much worse than elsewhere in the city, Mr. Johnson issued a statement: “We are managing our caseload as best we can and are not aware of what goes on in other counties.”

Some of the pleas for changes date back decades. In 1993, Judge William C. Donnino asked the district attorney to reassign a long delayed murder case to a different prosecutor and was refused.

“Delay only risks the loss of witnesses,” Judge Donnino wrote, “the dimming of a witness’s memory of the events and the perception of a justice system that does not act timely to punish and remove serious offenders from the community.”

The police said the suspect with the teardrop tattoos was planning his defense as soon as he was arrested. “I’ll get out of this. I got myself a lawyer,” an officer said Carlos Vega had muttered.

But for the trial, his case was assigned to someone else. Anthony J. Ventura was one of the Bronx defense lawyers who has so many trials scheduled back to back that delays were almost guaranteed. The city paid him \$226,258 in 2011 to represent defendants who could not afford to pay their own lawyers — more than any other homicide lawyer in the Bronx.

This trial was never going to be speedy. But no one explained that to the murdered man’s family. “I would ask my mom about it all the time,” Robert Gaston Jr. said. “It was always: ‘No progress. No progress.’”

Waiting Behind Bars

If delay is painful for victims and witnesses, it is searing for defendants.

Some of them are innocent. But many of them are unsympathetic figures — sometimes brutally violent, sometimes pathological. Still, they say they are entitled to more than the Bronx courts provide.

Last winter, a Rikers Island prisoner named Jeffrey Wilson wrote a letter to a Bronx judge. It was stuffed in a court file. By then, his case was one of the 10 oldest in the borough.

It had been four years since he was arrested, accused of assaulting a man with a club. The file documented numerous delays that seemed to overlook his right to a speedy trial, including one day when the lawyer appointed to represent him missed court, saying he had a backache.

“Please don’t think I’m saying I’m innocent and everyone is against me because that is the furthest thing from the truth,” Mr. Wilson wrote. “But there are rules, and this court doesn’t seem to play by them.”

Another veteran of the long Bronx wait for justice, Miguel Cintron, who was charged with murder, remembered in an interview feeling almost invisible inside the courtroom. He was brought in chains again and again through nearly four years only to hear the judge, clerks and lawyers bantering as they agreed on some new postponement.

“They’ll start laughing and giggling,” he said. “I was like: ‘What’s happening? I’m fighting for my life here.’ For them, it’s everyday business.”

Last winter, he was acquitted of all charges after spending 3 years and 10 months in jail.

Another Bronx jury took two hours to acquit a 22-year-old named Michael Ikoli of murder. He had waited in jail for five years. His freedom was brief: He was fatally shot on the Bronx streets two years later.

Even the simplest things eat up time. In 2010, a 20-year-old warehouse worker named Corinthian Hills was arrested on charges of robbing a woman at gunpoint. There was a video of the crime, but it took 11 months for prosecutors to turn it over to the defense.

When they did, it was obvious to his Legal Aid lawyer, A. Casey Burke, that the man who seemed to have a gun on the tape was not her client. Case dismissed, a year and a half after the arrest.

“They looked at my face,” Mr. Hills said later, “and they think: ‘He probably could have done this. Let’s put this file at the bottom.’ Because I’m black and I live in the Bronx.”

The jury was finally deliberating in the bodega murder. But even now, delays taunted the victim’s family. Friday, the jury had the day off. Again, Monday, there were no deliberations because the defense lawyer took a day off for his birthday.

They would not let themselves imagine that Carlos Vega might walk free.

For them, the trial had rubbed raw those feelings from five years ago. “Taking all this time and reliving everything, it’s overwhelming,” Erika Garcia, Robert Gaston’s widow, said.

A Changing Standard

In the Bronx courthouse, time seems to move at a different pace than it once did. What was once an outrageous delay is now just the way the system works.

The state’s “speedy trial” law sets a target of 180 days — 6 months — after an arraignment, for most felony trials to begin. There is no target for homicides. But in practice, there are many ways to stretch that limit: court scheduling delays do not count toward that time limit and prosecutors

can pause the clock by asking for a few days postponement when the court cannot reschedule a case for months.

In the Bronx, the median length of cases was 517 days from arrest to disposition, more than twice the time it took in Manhattan, recent data showed.

There was a time, not too long ago, when the speedy-trial principle carried more meaning. Back in 1975, the state's highest court reviewed a Bronx murder case and declared, unequivocally, that 18 months was far too long to wait for a trial. "Society too," the Court of Appeals said, "has an interest in seeing that those accused of crimes are swiftly brought to justice."

Four years later, the Court of Appeals overturned another Bronx homicide conviction after a judge called 18 1/2 months in jail before trial "shocking by any standard."

Now, almost four decades after the courts drew that line in the sand, it has been all but washed away.

Three and a half years, one judge wrote in September, was "not necessarily unusual" in the Bronx.

In another case that was nearly four years old, a Bronx judge went through the familiar reasons for delay and reached a resigned conclusion.

"Unfortunately," the judge wrote, "this is the reality of felony indictments in the current court system."

In November the jury deliberations came to an end in the case of the 2007 bodega killing.

It was a hung jury. The jurors had been unable to agree about what had happened on a long ago night when Robert Gaston was shot to death in the Bronx. The retrial of Carlos Vega, the man with the teardrop tattoos, is expected in the glass courthouse sometime this year. In September, it will be six years since Robert Gaston was killed.

Robert Gaston Jr. said the family had been shocked that the case, somehow, still was not over. He did not know if he could put himself through it all again.

Alice Brennan, Jo Craven McGinty and Nate Schweber contributed reporting.