



November 2023 Collaborative Report

# OPEN CRIMINAL COURTS

## New York Criminal Court Decisions Should be Public

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## Executive Summary

Transparency is a cornerstone of a robust democratic governance system. It helps build public trust, fosters accountability, and promotes informed citizen participation. When it comes to the transparency of the state judiciary and court administration, there are notable shortcomings due to gaps in current law and practice. Since judicial data is a public good, there is a compelling public interest in making more judicial data publicly available. This report delves specifically into the limited publication of written decisions by criminal court judges.

### Key Findings:

1. Only an estimated 6% of the total written criminal court decisions are published every year.
2. In New York, criminal court judges effectively decide whether or not to publish their decisions in criminal cases. Of the judges who published at least one decision a year, the average number of published decisions was two to three decisions a year.
3. The number of judges presiding over criminal cases each year is not made available by the court system, meaning that it is not possible to determine how many judges publish zero decisions each year.
4. Of the 600 New York criminal court judges who published at least one decision between 2010 and 2022, 20 judges (3%) were responsible for 28% of all published decisions, while 356 judges (59%) published three or fewer decisions.

### Public Access to Criminal Court Decisions Boosts Transparency and Judicial Accountability:

- **Judicial Assessment:** Access to decisions is vital for evaluating a judge's performance and qualifications during reappointment, reelection, or promotion.
- **Legislative Oversight:** Publicly available decisions provide a window for the Legislature to monitor the implementation of criminal law reforms.
- **Legal Insight:** Decisions offer valuable insights for appellate courts and attorneys into legal interpretations and trends, but only if they are available for review.

### Recommendations:

1. New York should pass a law to increase transparency by requiring written decisions by criminal court judges to be publicly available online.
2. Judges would be able to submit transcripts of oral rulings in lieu of written decisions.
3. The new law would mandate publication of decisions when they resolve a legal issue raised in a written motion or decide a pre-trial hearing.
4. The new law would also require the Office of Court Administration to make all written criminal court decisions authored in the past 15 years publicly available.
5. The Office of Court Administration should immediately begin implementing these policies administratively.

# 1. Introduction

Transparency is fundamental to a robust, democratic governance system, fostering trust, ensuring accountability, and promoting informed citizen participation. Yet New York's state judiciary and court administration often fail to uphold this principle, as exemplified, most recently, by the Office of Court Administration's withholding of internal memos.<sup>1</sup> Increasingly, New Yorkers and their elected officials are demanding greater judicial transparency, including monitoring for bias, financial interest disclosure, and access to court data.<sup>2</sup>

Yet in the very heart of New York's criminal justice system, a fundamental opacity persists: the public remains in the dark about the judicial decisions in criminal cases. The high-profile criminal cases of Harvey Weinstein and former President Trump underscore this systemic opacity, where even decisions in the most scrutinized judicial proceedings remain out of public reach.

This report delves into a fundamental issue of judicial transparency: The limited electronic publication of written decisions by criminal court judges.<sup>3</sup> While judges usually provide written decisions on significant matters to the parties involved in criminal cases, the choice to make these decisions publicly available online is left to the judge's discretion. Our findings reveal that New York's judges published<sup>4</sup> an average of 318 criminal court decisions annually, with 94% to 99.5% of all criminal court decisions remaining inaccessible to the public through a free, online platform. Furthermore, among the 600 judges who published at least one decision between 2010 and 2022, there is a notable disparity: 20 judges (3%) were responsible for 28% of all published decisions, while 356 judges (59%) published three or fewer decisions.

This restricted access severely hampers New Yorkers' ability to monitor their judiciary. Without practical access to these decisions, the public cannot properly assess judicial candidates

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<sup>1</sup> In June 2021, a confidential memo from New York's state court system sought to limit the impact of a landmark ruling that aimed to protect defendants' rights to argue against orders of protection. The memo was eventually leaked, leading the New York Civil Liberties Union to sue the Office of Court Administration for greater transparency into similar guidance materials. Despite a state judge ruling in favor of public access to such memos, the Office of Court Administration continues to fight disclosure on appeal. See Editorial Board, [The New York State court system should make guidance memos and policy board meetings public](#), New York Daily News (2023); Sam Mellins, [New York Judges Lock the Accused Out of Their Homes, Skirting Review Required by Landmark Ruling, Critics Charge](#), NY Focus (2021); Sam Mellins, [The Secret Memos New York Courts Refuse to Give Up](#), NY Focus (2023).

<sup>2</sup> See [Senate Acts to Strengthen Judicial Accountability and Transparency](#), New York State Senate (2023); Joshua Solomon, ['Lobbying loophole' bill after LaSalle fight advances through Senate](#), Times Union (2023); Oded Oren, Chad M. Topaz, and Courtney Machi Oliva, [Cost of Discretion: Judicial Decision-Making, Pretrial Detention, and Public Safety in New York City](#), Scrutinize (2023) (recommending release of historical court data).

<sup>3</sup> For simplicity, we use the terms 'criminal court decision' or 'criminal court judge' to encompass any criminal proceeding decision or judge regularly involved in overseeing criminal cases, even though such proceedings may occur in courts other than those specifically called 'criminal courts,' such as Supreme Courts – Criminal Term, District Courts, County Courts, New York City Criminal Courts, City Courts, as well as Town and Village Courts.

<sup>4</sup> In the context of this report, 'published' refers to decisions that are made publicly available online, for free, in an easily searchable format, through the State Reporter website. These published decisions stand in contrast to those that remain 'unpublished,' which are not accessible to the public online. This usage should not be conflated with the oft-used legal definition of 'published,' which refers to (mostly appellate) decisions that are both citable and binding.

or remain informed of how judges interpret the Constitution. Similarly problematic, without public access to decisions, legislators lack insight into the judges' application of recent reforms, like the 2020 discovery reform. This limitation also affects appellate courts and attorneys, hindering their understanding of trial-level legal dynamics and undermining court efficiency.

To improve transparency, we urge the Legislature to enact legislation requiring judges to publish all written criminal court decisions. The new law would mandate publication of decisions when they resolve a legal issue raised in a written motion or decide a pre-trial hearing. Given the longevity of judges' tenures, the Office of Court Administration should also publish all written criminal court decisions from the past fifteen years, as well as make available other data for analysis.

In the words of Senate Deputy Leader Michael Gianaris, “[i]t is important for the judiciary to be at least as transparent and accountable as the rest of state government.”<sup>5</sup> Our recommendations would bring greater parity of access to government decision making and instill greater public confidence in New York’s judicial branch.

## 2. Written Criminal Court Decisions in New York

Written decisions by judges play a crucial role in providing a comprehensive account of their reasoning, analysis, and legal interpretation. New York statute mandates the publication of Court of Appeals and Appellate Division decisions.<sup>6</sup> Made available online for free, these decisions are easily accessible and searchable through the State Reporter website, as well as through other legal research outlets, such as Justia, Casetext, and Westlaw.<sup>7</sup> Such easy accessibility has facilitated quality reporting about important court decisions,<sup>8</sup> served to inform New Yorkers about their judicial candidates,<sup>9</sup> and has fostered advocacy efforts.<sup>10</sup>

To clarify, in the context of this report, ‘published’ refers to decisions that are made publicly available online, for free, in an easily searchable format, through the State Reporter website. These published decisions stand in contrast to those that remain ‘unpublished,’ which are not accessible to the public online.<sup>11</sup> This usage should not be conflated with the oft-used legal definition of ‘published,’ which refers to (mostly appellate) decisions that are both citable and binding.<sup>12</sup>

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<sup>5</sup> [Senate Majority to Pass Legislation to Strengthen Judicial Accountability and Transparency](#), New York State Senate Democratic Majority (2023).

<sup>6</sup> Judiciary Law §§ 431, 432.

<sup>7</sup> [Search New York Slip Decisions](#), New York State Reporter (2023); Justia; Casetext; Westlaw.

<sup>8</sup> See, e.g., Jon Campbell, [NY’s top court rejects congressional district maps, primaries likely delayed](#), Gothamist (2022); Sam Mellins, [Judge Frees Man From Rikers in Exceptional Decision Citing Bail and Jail Conditions](#), New York Focus (2022).

<sup>9</sup> See, e.g., Sam Mellins, [Judge Who Censored The New York Times on Behalf of Project Veritas Seeks New Term as a Democrat](#), New York Focus (2023) (linking to State Reporter decision).

<sup>10</sup> [Factsheet on the Candidates for NY Chief Judge](#), The Court New York Deserves (2023).

<sup>11</sup> Generally, to access an unpublished decision, one must go to the clerk of the court where the case was heard and request to look at the physical file, from which a hard copy of the decision can be obtained.

<sup>12</sup> See, e.g., George M. Weaver, [The Precedential Value of Unpublished Judicial Opinions](#), 39 Mercer L. Rev. 477,



## 2.1. Publication of criminal court decisions

New York law does not mandate online publication of lower court decisions, including decisions issued in criminal cases.<sup>13</sup> Under Judiciary Law § 432, criminal court judges, including criminal court judges, are required to send their decisions to the State Reporter: “the judges or justices of every court of record . . . shall promptly cause to be delivered to the state reporter . . . a copy of every written opinion rendered in causes determined therein.”<sup>14</sup>

However, in practice, judges do not follow this law, which was enacted in 1938, only providing the state reporter with a small percentage of the decisions they write. This lack of compliance is longstanding, a point underscored by a New York City judge in 2005:

Under Judiciary Law § 432, every judge or justice of a court of record must promptly deliver to the State Reporter a copy of every written opinion rendered, *although no one complies with that rule*. Judges submit to the LRB [Law Reporting Bureau, the body managed by the State Reporter] only those opinions they hope to publish. (emphasis added).<sup>15</sup>

Judiciary Law § 432 does not require the state reporter to make decisions available online, instead reflecting an archaic standard of public access. Thus, the public availability of these decisions depends on whether criminal court judges *choose* to submit their decisions for publication with New York’s State Reporter.<sup>16</sup>

The State Reporter will publish online practically every written decision submitted by a lower court judge for publication, either in the Official Reports or on the Slip Opinion Service.<sup>17</sup> The Official Reports collects decisions that the Reporter determined to be consequential or of practical importance, among other criteria, and these decisions receive a thorough proofreading before publication.<sup>18</sup> The Slip Opinion Service publishes online, free of charge, all decisions submitted that did not make the cut for the Official Reports. In either case, the written decision will receive a unique citation and be published in an easily-searchable format.<sup>19</sup> Many, if not all, of these decisions then become available in paid legal research databases, such as Westlaw and Lexis. However, decisions that are *not* published by the State Reporter are *not*

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490-93 (1988) (discussing distinction between “published” and “unpublished” decisions in the context of the legal system).

<sup>13</sup> Judiciary Law §§ 431, 432.

<sup>14</sup> Judiciary Law § 432.

<sup>15</sup> Gerald Lebovits, [The Third Series: A Review](#). Y. St. B.J. (2005). This observation is further corroborated by the State Reporter’s Annual Reports, which enumerate the number of lower court decisions submitted and published each year. See [New York Official Reports Annual Reports](#), Law Reporting Bureau (2023).

<sup>16</sup> Third parties can also submit a written decision for publication by emailing it to the State Reporter. See [New York Official Reports Electronic Format Guides for Submitting Trial Court Opinions](#), Law Reporting Bureau (2023). According to the Annual Reports from the State Reporter, only a small fraction of decisions appears to be submitted by third parties. [New York Official Reports Annual Reports](#), Law Reporting Bureau (2023).

<sup>17</sup> This is confirmed by the State Reporter’s Annual Reports, which enumerate the number of lower court decisions submitted and published each year. See [New York Official Reports Annual Reports](#), Law Reporting Bureau (2023).

<sup>18</sup> [New York Official Reports - Selection of Opinions for Publication](#), Law Reporting Bureau (2023).

<sup>19</sup> [New York Official Reports - Decisions](#), Law Reporting Bureau (2023).

available on these paid databases.<sup>20</sup> Lawyers typically receive a printed or emailed copy of the decision from the judge or their staff.

Although New York law does not require criminal court judges to issue their decisions in writing, it is common practice for judges to do so, with some caveats. For matters like bail, sentencing, and trial objections, judges often issue their decisions orally. Occasionally, they do so for other issues, such as findings regarding the constitutionality of police conduct. All oral decisions are made ‘on the record,’ that is, before a court reporter, who produces an authenticated transcript of the ruling.

## 2.2. Key areas of criminal court decisions

Written criminal court decisions cover varied substantive legal issues, such as:

- **Suppression:** Evaluating the constitutionality of police conduct to determine the admissibility of evidence.<sup>21</sup>
- **Dismissal:** Determining if the evidence presented to the grand jury supports felony charges.<sup>22</sup>
- **Prosecutorial Misconduct:** Ruling whether a prosecutor withheld exculpatory evidence.<sup>23</sup>
- **Discovery/Speedy Trial:** Determining whether evidence was provided to the defense in a timely manner.<sup>24</sup>
- **Warrants:** Assessing if evidence collection violated the accused person’s privacy due to an overly-broad warrant.<sup>25</sup>
- **Protective Orders:** Deciding on the prosecutor’s right to withhold evidence from the defense.<sup>26</sup>

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<sup>20</sup> Some judges apparently submit their decisions for publication to the New York Law Journal, a legal periodical covering the legal profession in New York. However, decisions published in the Journal are not available to the public in the same way as decisions in the Slip Opinion Service and the Official Reports due to paywall restrictions.

<sup>21</sup> See, e.g., *People v. Mohabir*, 77 Misc.3d 1219(A) (Crim. Ct., Queens County 2023). For a general survey of the concept of suppression, see [suppression of evidence](#), Legal Information Institute - Cornell Law School (2023).

<sup>22</sup> See, e.g., *People v. Gibson*, 77 Misc.3d 1237(A) (Sup. Ct., Queens County 2023).

<sup>23</sup> See, e.g., *People v. Waters*, 35 Misc.3d 855 (Sup. Ct., Bronx County 2012).

<sup>24</sup> See, e.g., *People v. Davis*, 70 Misc.3d 467 (Crim. Ct., Bronx County 2020).

<sup>25</sup> See, e.g., *People v. Jackson*, 79 Misc.3d 1216(A) (Sup. Ct., Kings County 2023).

<sup>26</sup> See, e.g., *People v. Harvey*, 66 Misc.3d 867 (Sup. Ct., Bronx County 2020).

### 2.3. The evolving significance of omnibus decisions

The majority of unpublished written decisions in criminal proceedings are known as ‘omnibus decisions.’ Historically, these were brief, formulaic, written decisions issued by judges at the early stages of a case, following either the arraignment on an indictment in felony cases or the prosecutor’s declaration of readiness in misdemeanor cases. Because defense attorneys had access to limited evidence (discovery) when they were required to file omnibus motions, the resulting submissions were often generic and generated equally generic responses from judges.

Despite their brevity, these decisions played a crucial role in safeguarding constitutional rights. For instance, if a judge denied a request for a suppression hearing in an omnibus decision, they effectively ended constitutional scrutiny of police conduct in that case.<sup>27</sup> Omnibus motions often include other requests, such as dismissal of charges. Therefore, while these decisions may not have offered much insight into a judge’s legal reasoning, they were instrumental in understanding a judge’s influence on case outcomes and their broader approach to constitutional scrutiny.

However, the landscape of omnibus decisions has shifted significantly since the introduction of New York’s discovery reform law in January 2020.<sup>28</sup> This law mandates quicker evidence disclosure from prosecutors, enabling defense attorneys to file more substantive omnibus motions. As a result, omnibus decisions have evolved to become more detailed and reflective of a judge’s analytical approach and legal reasoning skills.<sup>29</sup>

### 2.4. Public access to written criminal court decisions in other jurisdictions

In the federal court system, virtually all written decisions by criminal court judges (called ‘district court judges’) are available through the PACER system,<sup>30</sup> albeit at a steep cost to the non-party seeking to access them.<sup>31</sup> In contrast, state courts systems, even in progressive jurisdic-

<sup>27</sup> See Oded Oren, [New Yorkers Should Push for Police Accountability](#), *New York Law Journal* (2019) (“When judges deny [suppression] hearing [requests made in omnibus motions]... the officers do not take the stand; they do not testify under oath; they are not subjected to scrutiny by the judge and the litigation process itself. If any misconduct took place, it does not see the light of day”).

<sup>28</sup> For general information about New York’s discovery law reform, see Krystal Rodriguez, [Discovery Reform in New York](#), Data Collaborative for Justice (2022).

<sup>29</sup> See, e.g., [People v. Sherman](#), 2023 NY Slip Op 23240 (Dist. Ct., Suffolk County 2023) (substantive omnibus decision); [People v. Vaillant](#), 2023 NY Slip Op 23191 (Crim. Ct., New York County 2023) (same).

<sup>30</sup> Aziz Z. Huq and Zachary D. Clopton, [The Necessary and Proper Stewardship of Judicial Data](#), *Stan. L. Rev.* 76 (2023).

<sup>31</sup> [PACER: Public Access to Court Electronic Records](#).



tions like New Jersey,<sup>32</sup> California,<sup>33</sup> and Massachusetts,<sup>34</sup> offer far less transparency, making only a limited number of criminal court decisions publicly accessible.

Thus, requiring New York’s court system to make decisions publicly available for free, as proposed by this report, would position the state as a national leader in judicial transparency.

### 3. The Importance of Public Access to Written Judicial Decisions

Ensuring public access to written decisions is crucial for promoting judicial transparency and monitoring the implementation of new legislation. These objectives are especially vital in the criminal legal system, where individuals face severe consequences, such as the loss of liberty and potential deportation. Therefore, it is essential for the public to understand how legal issues related to these matters are reasoned and decided.

Moreover, criminal court decisions often require interpretation and application of federal and state constitutions. Decisions may expand or contract the right to privacy or the right to remain silent, among other constitutionally-implicated rights. While not binding, these decisions nevertheless shape the trajectory of constitutional law and therefore affect the entire public—not only the defendant whose rights are directly implicated by the decision.

#### 3.1. Public access to written decisions is crucial for the democratic process

Public access to written decisions is crucial for assessing a judge’s candidacy as they seek reappointment, reelection, or promotion.<sup>35</sup> Decision-makers, including the public at large, voters, the Governor, the New York City Mayor, and various selection committees and bar organizations, need to be able to understand how a candidate interprets the law, applies the law to the facts, and otherwise exercises their discretion and the powers of their office. Written decisions provide such insights, since they outline the judge’s understanding of the law and their step-by-step reasoning, from facts to ultimate ruling.

<sup>32</sup> New Jersey Rules of Court 1:36. Note that this Rule is concerned with whether the decision is published or unpublished, which is a different, but related, question to whether it is made publicly available. It appears that New Jersey does not mandate that written criminal court decisions be publicly available. See *Court Opinions*, New Jersey Courts (2023).

<sup>33</sup> California Rules of Court 8.1105. Note that this Rule is concerned with whether the decision is published or unpublished, which is a different, but related, question to whether it is made publicly available. It appears that California does not mandate that written criminal court decisions be publicly available. See *Opinions*, California Courts (2023).

<sup>34</sup> Massachusetts Appeals Court Rule 23.0: Summary disposition (formerly known as Appeals Court Rule 1:28); *Appeals Court Decisions*, Mass.gov (2023). Note that this Rule is concerned with whether the decision is published or unpublished, which is a different, but related, question to whether it is made publicly available. It appears that Massachusetts does not mandate that written criminal court decisions be publicly available. See *Published Trial Court Opinions*, Mass.gov (2023) (“Most Trial Court opinions are not published at all, or are only available through paid databases. Here we provide access to those opinions that are currently available online to the public”); *Appellate Opinion Portal*, Mass.gov (2023); *Unofficial collections of published opinions*, Mass.gov (2023).

<sup>35</sup> For a general introduction to the various judicial positions and judicial selection processes in New York, see Special Committee to Encourage Judicial Service, *How to Become a Judge*, The Association of the Bar of the City of New York (2018).

Moreover, written decisions provide less distorted, more objective understanding of a candidate's jurisprudence than interviews, questionnaires, and public hearings. A candidate's professed values and positions may be of limited value in assessing their judicial candidacy: They are often reluctant to take any position on legal issues. Even when they do take such a position, their statements cannot always be trusted—as several Justices of the United States Supreme Court have recently demonstrated.<sup>36</sup>

In New York, assessment of criminal court judicial candidates based on their prior decisions is complicated because these judges control which of their decisions are published. Since criminal court judges choose whether to submit their written decisions to the State Reporter for publication, their published decisions do not represent their entire body of work. For example, judges may choose to publish only their best-reasoned decisions. As a result, assessment of a judge's record and quality of work may be biased, as their published body of work may not reflect their true jurisprudence and legal acumen.

Furthermore, even if criminal court judges provide written but unpublished decisions for review by decision-makers,<sup>37</sup> assessment of their record and quality of work remains flawed. In such cases, judges still control which written, unpublished decisions they provide for review, potentially biasing the assessment due to an unrepresentative sample being made available.

Without access to a judge's full legal track record, decision-makers and the public cannot thoroughly scrutinize and assess judges' work.

### **3.2. Oversight over criminal law reforms depends on public access to written decisions**

Public access to written criminal court decisions is also crucial for oversight of criminal reform laws. In written decisions, judges interpret and apply new laws, further determining their scope and meaning. This provides a direct window for legislators and the public to understand how judges put these laws into practice and whether they uphold the legislative intent and the spirit of the law in their decisions—long before these same issues first surface on appeal.

Public access to written criminal court decisions is especially crucial where members of the judiciary oppose reform legislation. In New York, after the discovery and bail reform laws were enacted, some criminal court judges expressed opposition and outright resistance to the reform laws, including by issuing administrative rules, oral decisions, and both published and unpublished written decisions.<sup>38</sup>

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<sup>36</sup> See, e.g., Scott Detrow, [Collins Says Supreme Court Nominee Kavanaugh Called Roe v. Wade 'Settled Law'](#), NPR (August 21, 2018); Martin Pengelly, [Samuel Alito assured Ted Kennedy in 2005 of respect for Roe, diary reveals](#), The Guardian (October 25, 2022); Becky Sullivan, [What conservative justices said — and didn't say — about Roe at their confirmations](#), NPR (June 24, 2022).

<sup>37</sup> For example, judicial candidates for reappointment by the New York City's Mayor's Committee on the Judiciary are asked to provide their ten most recent written decisions, published or otherwise. See [Uniform Judicial Questionnaire](#), The City of New York Mayor's Advisory Committee on the Judiciary (2023).

<sup>38</sup> See, e.g., Angelo Petrigh, [Judicial Resistance to New York's 2020 Criminal Legal Reforms](#), Journal of Criminal Law and Criminology 113:1 (2023); George Joseph, [Brooklyn Judge Curbs Defendants' Rights To Challenge DAs On Evidence Sharing](#), Gothamist (2021); Sam Mellins, [New York Judges Lock the Accused Out of Their Homes, Skirting Review Required by Landmark Ruling, Critics Charge](#), NY Focus (2021).

Through public access to all written criminal court decisions, legislators and the public can evaluate whether reforms are being implemented in good faith or not.

The public availability of criminal court decisions is also crucial for monitoring the impact of the court system on New York's most vulnerable populations. For instance, NYPD's controversial 'stop and frisk' policy was so problematic that it was declared unconstitutional by a federal court in 2013.<sup>39</sup> Despite this ruling, the practice has seen a resurgence under the mayoralty of Eric Adams, with 95% of the stops targeting people of color.<sup>40</sup> Criminal courts serve as a vital check on police actions, including 'stop and frisk,' by issuing decisions that determine the constitutionality of police actions in individual cases. These decisions offer invaluable insights into how the New York judiciary, both at the individual and collective levels, holds law enforcement accountable for unconstitutional actions. Moreover, these decisions can play a role in addressing the persistent racial disparities affecting minorities across the state. Public access to these decisions enables legislators, federal courts, and the public to monitor the state judiciary's oversight over police actions.

### **3.3. Criminal court decisions are important even though they are not binding**

While lacking binding authority, written criminal court decisions hold significance because they provide guidance for similar cases. Judges and attorneys often refer to these written decisions as persuasive authority when presenting arguments or devising legal strategies.<sup>41</sup> Without access to these decisions, parties have less information on which to base their legal arguments and assessments of the outcomes of litigation, undermining the efficiency of court proceedings. This is particularly relevant for defense attorneys, who may be hindered in preparing an adequate defense without access to a judge's prior decisions. Moreover, lack of access to these decisions may lead to an inconsistent application of the same laws to different defendants.

In addition, criminal court decisions influence appellate courts, even if those decisions are never appealed. Given their staggering caseloads, even intermediate appeals courts must be selective about the cases they devote significant resources to. Written and accessible criminal court decisions help appellate courts determine which legal questions need particular attention. They also help the higher courts understand how their doctrines are working in practice. Without publication of criminal court decisions, appellate courts may be unaware of a considerable number of analyses, distorting their understanding of how issues are litigated and resolved.

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<sup>39</sup> Joel Rose, [NYPD's 'Stop-And-Frisk' Deemed Unconstitutional](#), NPR (2013).

<sup>40</sup> Bahar Ostadan, [The NYPD has stopped tens of thousands of people under Mayor Adams. Just 5% were white](#), Gothamist (2023); Tana Ganeva, [Eric Adams Is Bringing Back the NYPD's Anti-Crime Unit. Do They Commit More Crimes Than They Solve?](#), NY Focus (2022).

<sup>41</sup> See, e.g., [People v. Lustig](#), 68 Misc.3d 234 (Sup. Ct., Queens County 2020) (interpreting the newly-enacted CPL 245, cited by at least 58 published lower court decisions); [People v. Erby](#), 68 Misc.3d 625 (Sup. Ct., Bronx County 2020) (interpreting the newly-enacted CPL 245, cited by 41 published lower court decisions). For a discussion of the role of non-binding decisions as persuasive authority, see George M. Weaver, [The Precedential Value of Unpublished Judicial Opinions](#), 39 Mercer L. Rev. 477, 490-93 (1988).

Just like the appellate courts, the Office of Court Administration (OCA) would benefit from greater transparency into, and passive oversight over, judicial decisions. As the administrative arm of the court system, OCA should have an interest in tracking the quantity and subject areas of decisions authored by judges. More broadly, OCA, along with appellate courts and judges, should be deeply committed to promoting the legitimacy of the court system—a goal that would undoubtedly be enhanced by greater transparency.

## 4. Analysis

We next estimate the number and rate of unpublished, written criminal court decisions using data from the New York Office of Court Administration’s pre-trial records, as well as published criminal court decisions from the State Reporter’s website. We discuss this data in greater detail in the Data Methodology section. This quantitative data is further supported by other evidence. Specifically, both anecdotal accounts and appellate decisions highlight a significant disparity between the total number of written criminal court decisions and those that are readily accessible to the public.

Our main finding—that between 94% and 99.5% of decisions are not published—reveals a transparency problem of staggering proportions.

### 4.1. Preliminary evidence suggests many written criminal court decisions in New York are not published

Before examining the empirical data, we provide anecdotal evidence that demonstrates the unavailability of New York criminal court decisions to the public.

Consider, first, the sexual assault case against Harvey Weinstein, a matter that garnered national attention. In this case, the criminal court judge issued a written decision denying a motion to dismiss the charges filed by Mr. Weinstein’s legal team.<sup>42</sup> Despite the case’s high-profile nature and reporting on the denial of the motion, this judicial decision has not been made publicly available.<sup>43</sup> Moreover, the judge in Mr. Weinstein’s case issued at least one additional written decision, granting a hearing on evidence admissibility and a preliminary hearing on courtroom closure.<sup>44</sup> This decision was released as an attachment to a press advisory by New York’s court system—an unusual action in itself—but it was not subsequently made publicly available through the State Reporter website.<sup>45</sup>

Another illustrative example involves Diana Florence, the former head of the Manhattan District Attorney Office’s Construction Fraud Task Force. Ms. Florence, who ran as a Democratic candidate for Manhattan District Attorney in 2021, resigned from her position as an Assistant

<sup>42</sup> Jan Ransom, [Judge Rejects Harvey Weinstein’s Request to Dismiss Sexual Assault Case](#), New York Times (2018).

<sup>43</sup> As required by law, an intermediate appellate decision in the case is publicly available. See [People v. Weinstein](#), 207 A.D.3d 33 (1st Dep’t 2022).

<sup>44</sup> [New Advisory: People of the State of New York v Harvey Weinstein](#), New York State Unified Court System (2019).

<sup>45</sup> Many, if not all, of Mr. Weinstein’s appellate documents were filed electronically, with both the intermediate appellate court and New York’s high court. The documents, which may include additional decisions issued by the criminal court, are not publicly available. See [New York State Courts Electronic Filing](#) entry for New York Criminal Index Number 2335/2018, 2673/2019; [Court-PASS](#) entry for People v. Harvey Weinstein.

District Attorney in 2020 following the issuance of a 17-page judicial decision that found she had withheld evidence in a significant bribery case.<sup>46</sup> Although portions of this decision were cited in media reports, the full text of the decision—which bears significant import given that it pertains to the professional conduct of someone who later pursued public office—was never made publicly available through the State Reporter.<sup>47</sup>

Similarly, consider former President Trump’s ongoing hush money criminal case in Manhattan, the first criminal case brought against a former president of the United States.<sup>48</sup> In June 2023, Trump’s legal team sought the recusal of the presiding judge, who denied the motion in a written decision two months later.<sup>49</sup> This decision was quickly made public by AP News in PDF form—presumably, one of the parties gave AP News a copy because of the public interest in this case—but, as of late October 2023, the decision was unavailable on the State Reporter’s website.<sup>50</sup> In stark contrast, the unprecedented *civil* decision finding that former President Trump committed fraud was published by the State Reporter on September 28, 2023, just two days after it was issued.<sup>51</sup>

Other anecdotal evidence similarly supports the fact that numerous criminal court decisions remain publicly unavailable. In conversations, many criminal defense attorneys in New York City state that the vast majority of the decisions they receive remain unpublished. Author Oded Oren’s experience serves as a case in point: During his seven-year career as a criminal defense attorney, only five of the hundreds, if not thousands, of written decisions Mr. Oren received in his cases have been published.<sup>52</sup>

Similarly, appellate decisions routinely reference criminal court decisions that are not published. While in some appellate decisions the criminal court decision is discussed in some

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<sup>46</sup> Jonah E. Bromwich, [Here Are the Democrats Running for Manhattan D.A.](#), *New York Times* (2021); Greg B. Smith, [A Top Prosecutor in Manhattan DA Vance’s Office Accused of Hiding Evidence](#), *The City* (2020); Greg B. Smith, [Case Tossed Amid ‘Staggering’ Hidden Evidence Allegations Against Vance Deputy](#), *The City* (2020); Larry Celona, Elizabeth Rosner, and Jorge Fitz-Gibbon, [Judge tosses corruption case botched by Manhattan prosecutor](#), *New York Post* (2020).

<sup>47</sup> A PDF of the decision was made [publicly available](#) on a blog called Simple Justice and was discovered only after extensive searching. We do not know how the blog obtained this decision. The case was ultimately dismissed because of Ms. Florence’s failure to disclose evidence. Although dismissed cases in New York are frequently sealed and thus not publicly accessible, there seems to be no legal impediment to making the judicial decisions from such cases available to the public. *See, e.g., People v. Canady*, 80 Misc.3d 1208(A) (Sup. Ct., Kings County 2023) (dismissing indictment); *People v. McCarter*, 77 Misc.3d 825 (Sup. Ct., New York County 2022) (same).

<sup>48</sup> Jake Offenhartz, [Donald Trump indicted by Manhattan grand jury](#), *Gothamist* (2023).

<sup>49</sup> Jeremy Herb and Lauren del Valle, [Trump seeks recusal of judge overseeing New York hush money criminal case](#), *CNN* (2023); Michael R. Sisak, [Judge in Donald Trump’s hush-money case denies bias claim, won’t step aside](#), *AP News* (2023).

<sup>50</sup> AP Staff, [Ruling on recusal motion in Trump hush-money case](#), *DocumentCloud.org* (2023).

<sup>51</sup> [New York Official Reports - Most Recent Decisions - Other Court Decisions \(September 2023\)](#), *Law Reporting Bureau* (2023); *People v. Trump*, 2023 NY Slip Op 33314(U) (Sup. Ct., New York County 2023). While we have not analyzed the data on the public availability of civil decisions, an initial survey suggests that civil court judges release, on average, a significantly larger number of decisions to the public compared to their criminal court counterparts.

<sup>52</sup> *People v. Mendez*, 73 Misc 3d 715 (Sup. Ct., Bronx County 2021); *People v. Castellanos*, 72 Misc 3d 371 (Sup. Ct., Bronx County 2021); *People v. Cartagena (I)*, 76 Misc 3d 1214(A) (Crim. Ct., Bronx County 2022); *People v. Cartagena (II)*, 6 Misc 3d 1214(A) (Crim. Ct., Bronx County 2022); *People v. S.E.*, 63 Misc 3d 198 (Crim. Ct., Bronx County 2018);



detail, in many cases the appellate discussion does not reveal the reasoning and analysis used in the criminal court decision.<sup>53</sup> Consider a couple of examples:

1. In the case *People v. Hancock*,<sup>54</sup> the appellate court reversed the criminal court’s suppression decision—a ruling about the constitutionality of police conduct. The appellate decision provides limited insight into the criminal court’s legal reasoning, merely noting that the criminal court based its suppression ruling on a specific legal doctrine, even though that doctrine was not applicable to the case. However, the appellate decision did not outline which argument the criminal court judge had considered, and how they had applied these to the specific facts of the case. The underlying criminal court decision has not been published.
2. In the case *People v. Garner*,<sup>55</sup> the appellate court affirmed the criminal court’s suppression decision, stating that, “the hearing record establishes that the police had reasonable suspicion justifying pursuit.” The appellate decision did not outline the legal reasoning and facts considered by the criminal court. The underlying lower court decision has not been published.

These two cases, along with many others, corroborate the anecdotal evidence presented here: Criminal court decisions, including those interpreting the New York and U.S. Constitutions, are rarely published.

#### **4.2. Public court data indicates that almost all of New York’s written criminal court decisions are not published**

In light of the evidence of a gap between the number of written criminal court decisions and those published, we estimate its magnitude. We use pre-trial court data since more directly pertinent data is not maintained by New York’s Office of Court Administration. Specifically, in response to a Freedom of Information request, the Office of Court Administration stated that it neither keeps a record of the number of written criminal court decisions nor tracks proxy data, such as the total number of criminal cases slated for motion practice, or the aggregate number of written motions submitted either electronically or in paper.<sup>56</sup>

Instead, as a proxy for the volume of written decisions issued, we use official pre-trial data on serious or lengthy criminal cases arraigned in New York courts. These cases are highly likely to lead to litigation involving at least one written decision—an omnibus decision.

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<sup>53</sup> Appellate decisions do not clarify whether the criminal courts decisions were put in writing or delivered orally, although as noted above, criminal court decisions are typically documented in writing.

<sup>54</sup> *People v. Hancock*, 71 A.D.3d 566 (1st Dep’t 2010).

<sup>55</sup> *People v. Garner*, 196 A.D.3d 406 (1st Dep’t 2021).

<sup>56</sup> [FOIL Request: Motions and decisions in criminal court](#), Muckrock.com (2023). Furthermore, OCA does not retain other metrics that might assist estimation of the annual number of written decisions.

An average of 318 criminal court decisions are published each year by the State Reporter's Official Reports or Slip Service.<sup>57</sup> The average number of decisions published annually out of New York City criminal courts is 179, compared with an average of 139 decisions from criminal courts outside of New York City.

**Figure 1: The average number of criminal court decisions published annually: 318**

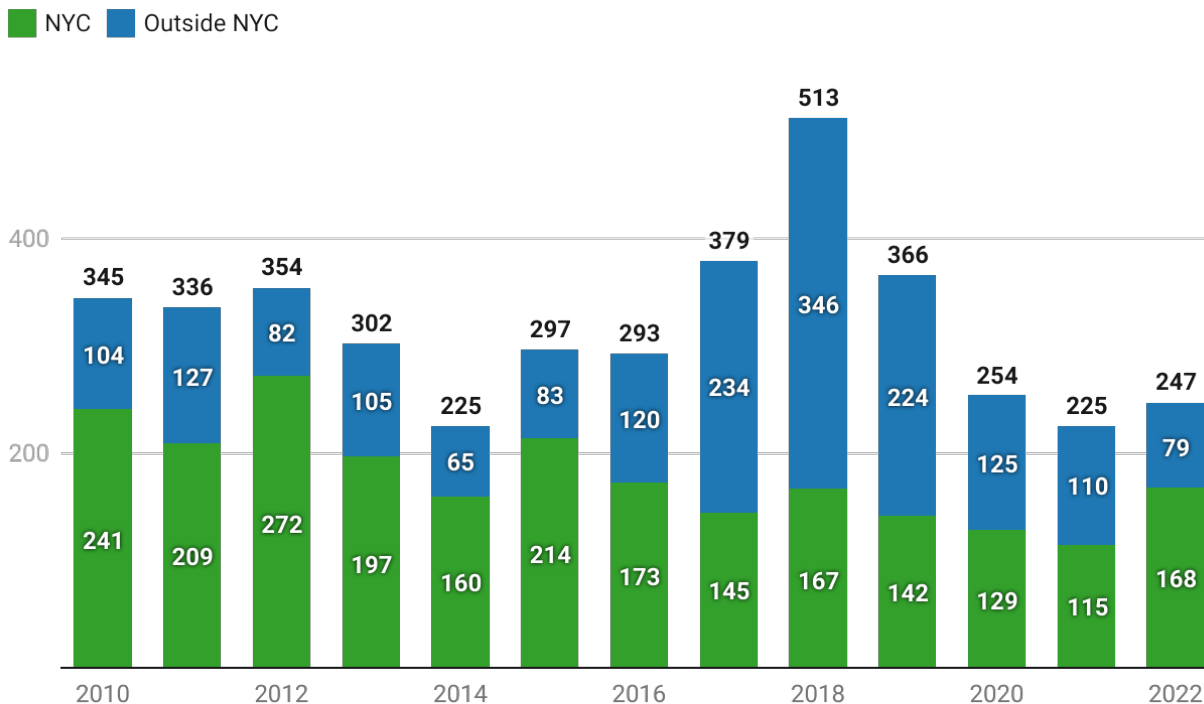


Figure 1: The average number of criminal court decisions published annually: 318

Source: Open Criminal Court report by Scrutinize & Reinvent Albany · Created with Datawrapper

We next turn to compare the annual number of published criminal court decisions and the number of cases arraigned, where a notable disparity exists. Between 2019 and 2022, an average of 181,000 new criminal cases were arraigned annually, whereas only an average of 318 criminal court decisions were published each year.<sup>58</sup>

<sup>57</sup> In 2018, a significant rise in published decisions was largely attributed to one judge who published 93 decisions, the most in any surveyed year.

<sup>58</sup> We use data only from 2019 to 2022 because the Office of Court Administration has not published pre-trial data from before 2019.

**Figure 2: Comparing volumes: annual criminal arraignments and published decisions, 2019-2022**

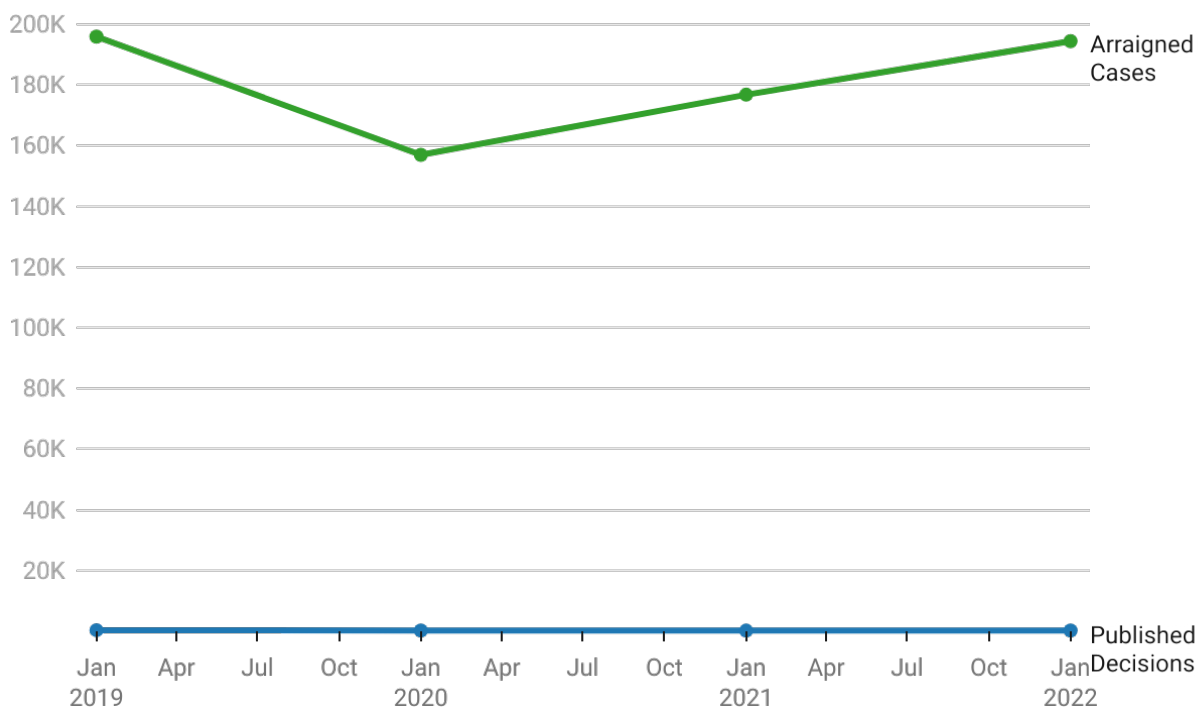


Figure 2: Comparing Volumes: Annual Criminal Arraignments and Published Decisions, 2019-2022

Source: Open Criminal Court report by Scrutinize & Reinvent Albany • Created with Datawrapper

However, the number of arraigned cases is not a reliable proxy for estimating the number of written decisions in criminal cases. This is because not all arraigned cases give rise to a written decision, as some may be quickly dismissed or resolved through early plea agreements. In such cases, litigation of legal issues is postponed or not reached, and the judge will typically not be called upon to issue a written decision.

Therefore, to obtain a more accurate estimate of the number of written criminal court decisions through the use of pre-trial data, we focus on specific subsets of arraigned cases, each one larger than the other, that are more likely to have generated at least one written decision.

- **Subset 1: A and B violent felony cases.** This subset encompasses the cases with the most severe top charges in New York’s criminal justice system, including offenses like murder, attempted murder, and serious assaults with weapons.
- **Subset 2: all violent felony cases.** This subset encompasses all of the cases in Subset 1, as well as all other cases with a top charge that is a violent felony, including the majority of robbery, burglary, and gun possession cases.

- **Subset 3: all violent felony cases, as well as misdemeanors lasting 180 days or more from arraignment to disposition.**<sup>59</sup> This subset includes all cases from Subset 2, as well as extended misdemeanor cases.

The three subsets consist of cases that are highly likely to involve at least one written decision, the omnibus decision. Violent felonies, given their severity and the potential for long prison sentences, are less likely to be dismissed or resolved with a plea without substantial litigation. Such litigation usually involves, at the very least, an omnibus motion, which in turn results in the issuance of a written omnibus decision. This holds especially true for A and B violent felonies in subset 1, where the minimum prison sentence is five years. Thus, although the vast majority of criminal cases in New York result in pleas,<sup>60</sup> serious cases are much more likely to be litigated before a plea is reached, leading to a written decision. Misdemeanors lasting 180 days or more, as in subset 3, are also highly likely to produce written decisions given their prolonged duration: New York law mandates misdemeanor dismissal after 90 days unless the prosecution is trial-ready.<sup>61</sup> If the case stretches beyond this period, it typically involves litigation and a resultant decision. Subset 3's 180-day threshold further ensures only the most litigation-prone misdemeanors are included.

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<sup>59</sup> We chose not to use the duration of felony cases in the dataset as a measure in our analysis of pre-trial data. This is because felony cases receive new entries upon indictment, which include additional fields specifying the case's length. This added complexity makes it difficult to parse the data accurately. Furthermore, indictment data, *i.e.* new entries, are not consistently available for all felony cases. As a result, relying on the "length of litigation" metric for felony cases would not provide accurate estimates.

<sup>60</sup> [The New York State Trial Penalty: The Constitutional Right to Trial Under Attack](#), NACDL and NYSACDL (2021) ("As of 2019, 96% of felony convictions and 99% of misdemeanor convictions in New York State were the result of guilty pleas").

<sup>61</sup> C.P.L. § 30.30(1)(b).

**Figure 3: The three subsets of cases encompass only a fraction of the number of arraigned cases**

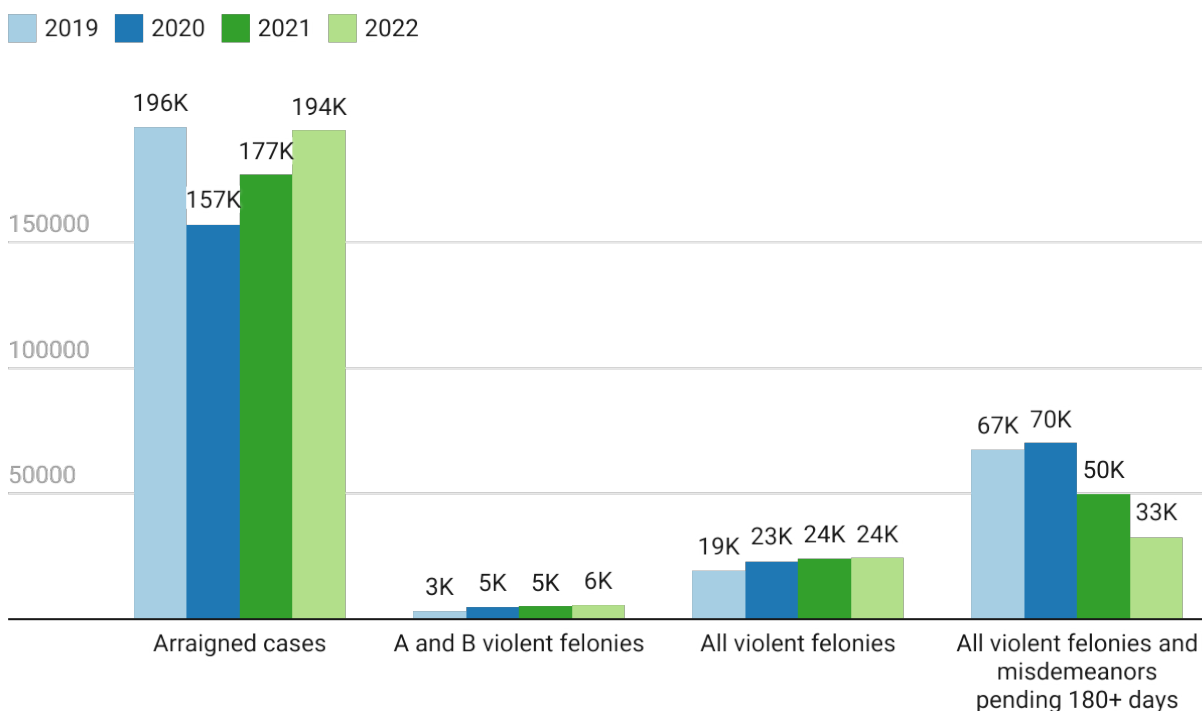


Figure 3: The three subsets of cases encompass only a fraction of the number of arraigned cases

Source: Open Criminal Court report by Scrutinize & Reinvent Albany • Created with Datawrapper

The three subsets operate as a proxy for the number of decisions written during the same time period. By focusing on these subsets, we approximate the volume of written decisions generated within New York’s criminal legal system.

However, the three subsets likely *underestimate* the total number of written criminal court decisions because they do not account for the written decisions issued in the following cases and scenarios:

1. **Non-violent felonies:** These cases, less severe than violent felonies, more often conclude with a plea or dismissal without reaching the litigation stage and, consequently, without a written decision. However, not all of these cases resolve with a dismissal or a plea, and those that do not typically lead to the issuance of a written decision. These are not captured in our subsets.
2. **Misdemeanors under 180 days:** Some misdemeanors, even if resolved in less than 180 days, can result in written decisions. These are not captured in our subsets.
3. **Multiple written decisions:** In a non-negligible number of cases, the parties litigate multiple legal issues, resulting in more than one written decision. Any written decision beyond the first is not tallied by our subsets.



Using these subsets, we proceed to estimate the publication rate of written criminal court decisions. We divide the number of published decisions in 2019-2022 (1,092) by the number of cases in each subset, to obtain the publication rate for the period. We estimate the number of unpublished decisions by subtracting the number of published decisions from the number of cases in each subset and rounding down.

**Table 1: An estimated 94% to 99.5% of decisions are not published<sup>62</sup>**

Subset	Cases in Subset	Publication Rate	Number of Unpublished Decisions
A and B violent felonies	19,000	5.8%	17,000
All violent felonies	90,000	1.2%	88,000
All violent felonies and misdemeanors pending 180+ days	220,000	0.5%	218,000

*Table 1: An estimated 94% to 99.5% of decisions are not published*

Source: Open Criminal Court report by Scrutinize & Reinvent Albany • Created with Datawrapper

Our analysis suggests that only 0.5% to 6% of written criminal court decisions are published, depending on which subset is used as a reference point. Regardless of which subset is used, a considerable number of decisions, totaling 17,000 to 218,000 over a four-year period—or 4,250 to 54,500 a year—remain unpublished.

### **4.3. A majority of New York’s criminal court judges publish an average of 2-3 decisions a year.**

Next, we examine the distribution of published written criminal court decisions by individual judges in 2010 to 2022. Ideally, we would calculate the average and median numbers of decisions published by judges who presided over criminal cases in a given year. However, the New York court system does not publish either the names or an aggregate number of such judges. For instance, the Law Reporting Bureau publishes a quarterly list of all presiding judges in New York. Yet, for most judges, these lists do not indicate whether they oversee criminal, civil, or both types of cases.<sup>63</sup> Additionally, when we attempt to find information about individual

<sup>62</sup>We have not individually categorized each of the 1,092 criminal court decisions in our 2019-2022 dataset according to the specific subset they belong to—whether it is A and B violent felonies (vfoAB), all violent felonies (vfo), or misdemeanors and violent felonies (misdvfo). Instead, the Publication Rate is calculated by dividing the total number of these decisions by the aggregate number of cases in each subset. It should be noted that assigning decisions to a particular subset based on the top charge of the case is not always practical, even when examining the text of the decision itself.

<sup>63</sup>[New York Official Reports - Judges and Justices of Courts of Record of the State of New York](#), Law Reporting Bureau (2023). For instance, judges listed under the “Judges of the Civil Court of the City of New York” category

judges' court assignments by searching the specific court websites or the Judicial Directory, we often encounter inaccurate, outdated, or missing information.<sup>64</sup> Thus, it is not possible to determine how many criminal court judges published zero decisions each year. This lack of information represents another significant gap in the court system's transparency.

Thus, our analysis below only uses the number of judges who published a criminal court decision in a given year.

**Table 2: For judges who published decisions in a given year, the average number was 2-3.**<sup>65</sup>

Year	# of Judges with Published Decisions	Average Decisions Published	Median Decisions Published	Highest Number of Decisions Published by a Single Judge
2010	148	2	1	15
2011	138	2	2	13
2012	139	3	1	22
2013	137	2	1	19
2014	115	2	1	24
2015	107	3	1	31
2016	128	2	1	17
2017	111	3	1	39
2018	134	4	2	93
2019	121	3	1	38
2020	115	2	1	19
2021	115	2	1	12
2022	112	2	1	26

Table 2: Judges publish an average of 2-3 decisions every year. This table overestimates judicial publication rates because it does not count the number of criminal court judges who did not publish any written decision in a given year.

Source: Open Criminal Court report by Scrutinize & Reinvent Albany • Created with Datawrapper

for a given quarter may be assigned to preside over either criminal or civil cases. Likewise, those listed under the “Justices of the Supreme Court” category could be assigned to either the Civil or Criminal Terms.

<sup>64</sup> See, e.g., [Criminal Term - Court Information, 12th JD - Criminal Supreme, Bronx](#), New York Courts (2023) (accessed in late October 2023, yet listing judge assignment from January 2023, including Judge Naita Semaj, who was reassigned to Civil Term in mid-2023); [Judicial Directory - Judges of the Trial Courts - Naita A. Semaj](#), New York Courts (2023) (accessed in late October 2023, does not specify which Supreme Court Term Judge Semaj is presiding over).

<sup>65</sup> This analysis assumes that any judge who published a criminal court decision in a given year regularly presided over criminal cases.

As evident from the discussion above, Table 2 *overestimates* judicial publication rates because it does not count the number of criminal court judges who did not publish any written decision in a given year.

We observe substantial variation in the number of decisions each judge publishes, a trend that holds consistent year after year. Figure 4 represents this variation visually and, as before, does not reflect the number of judges who published no written decisions in a given year.

**Figure 4: Judges vary considerably in the number of decisions they publish**

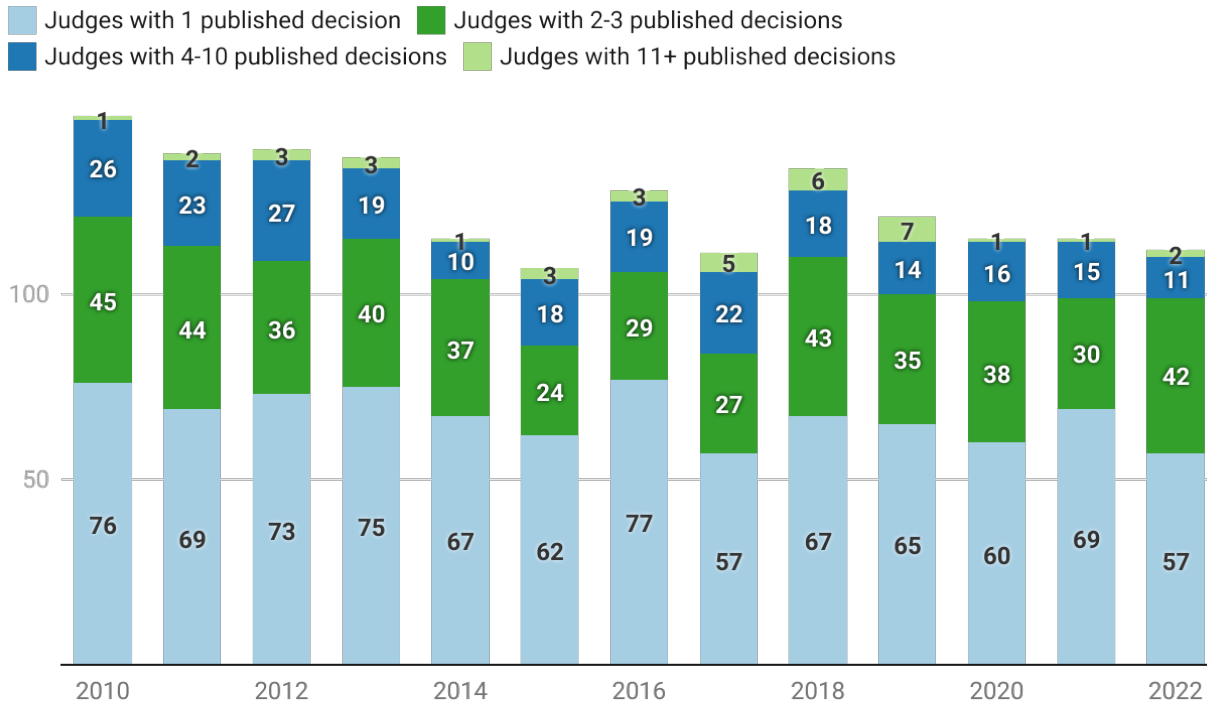


Figure 4: Judges vary considerably in the number of decisions they publish  
 Source: Open Criminal Court report by Scrutinize & Reinvent Albany • Created with Datawrapper

Figure 4 reveals that a minority of judges contribute a significantly higher proportion of published decisions compared to the average judge.<sup>66</sup> Specifically, the 20 judges who published the most decisions published a total of 1,192 decisions, comprising 28% of all published decisions during this period. Out of 600 judges who published decisions during this period, 356 (59%) published 3 or fewer decisions.

We next examine whether the observed variation in judges’ publication numbers is consistent within different counties and within a given year. We look at four counties with the most published decisions— Kings (770), New York County (621), Bronx (632), and Westchester (621), in 2019.

<sup>66</sup> It is not possible to estimate the publication rate for each judge accurately because of the lack of public data of judges’ court assignments in a given year and the number of cases each one handled, among other potential sources of relevant data.

**Figure 5: Variation in judicial publication numbers is reproduced at the county level**

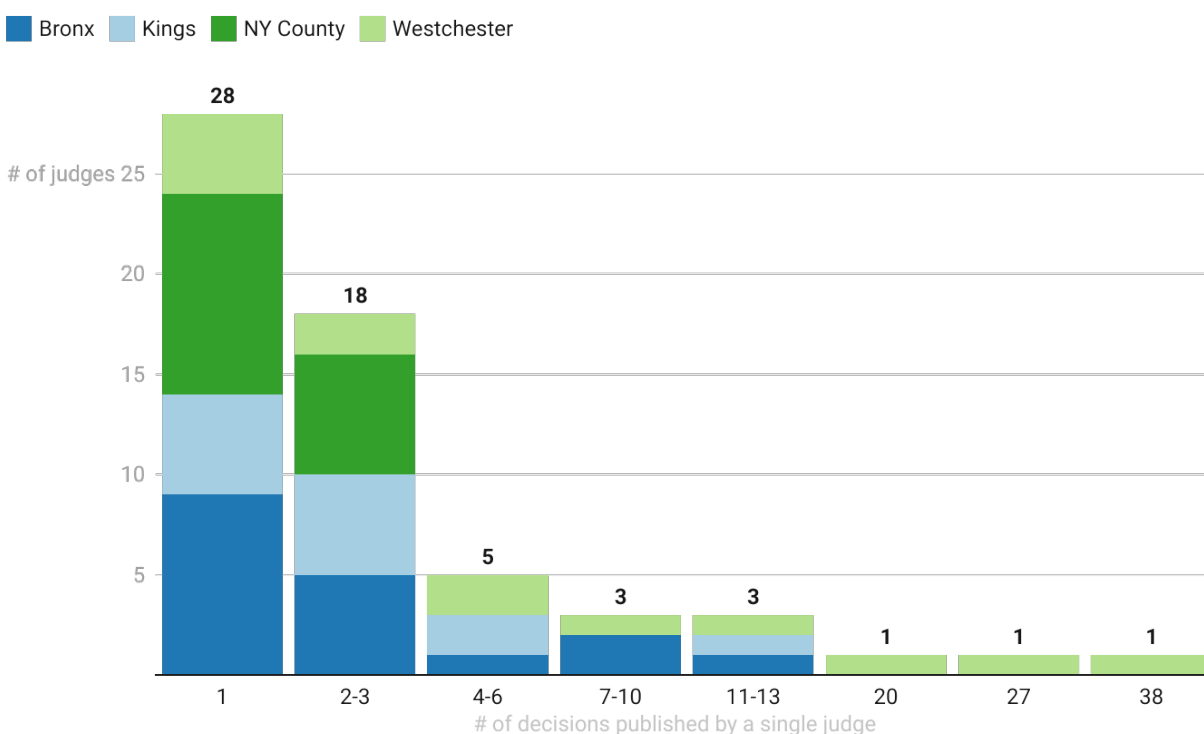


Figure 5: Variation between individual judges' publication numbers holds across counties in 2019

Source: Open Criminal Court report by Scrutinize & Reinvent Albany • Created with Datawrapper

Figure 5 suggests that the significant variation in judicial publication numbers is reproduced at the county level. This suggests that the variation we observe does not originate in differences across counties; that is, variation is not due to county-level institutional policies or cultural norms. Instead, the data indicates that individual judges choose whether to publish their decisions—and that some of them choose to do so more often than others.

#### 4.4. Why aren't judges publishing their decisions?

We do not know why Judiciary Law § 432 is not enforced by the Office of Court Administration or self-enforced by the judges themselves. As discussed above, the law requires judges to send their decisions to the State Reporter, but it does not require that the State Reporter publish all submitted criminal court decisions—although that is what happens in practice. It is possible that enforcement of § 432 became practically impossible when the volume of litigation increased in the previous century. This explanation, however, begs the question of why the court system did not seek additional resources to enable it to comply with the law.

From the perspective of individual judges, there are several possible reasons to explain the variation in publication numbers we observe:

1. **Case Type and Workload.** Judges may write fewer decisions based on the type of cases they preside over or their court assignment. For instance, a judge who regularly oversees pre-indictment felony cases may encounter fewer opportunities to write decisions, as their work tends to be more administrative in nature. Similarly, judges presiding in mixed family and criminal courtrooms—or who preside over civil and criminal courtrooms—may issue non-criminal decisions, which are not counted in our data. Finally, due to the high volume of cases they oversee, some courts prioritize oral rulings, which cannot be submitted for publication with the State Reporter.
2. **Personal Publication Standards.** Judges may believe that a decision they wrote merits publication only if it is in some way important (either dealing with a first-impression issue or treating a common legal dispute extensively) and well-written, by that judge's own standards. Even though any decision submitted to the State Reporter will be published, there is a natural human tendency to only show your peers that work you are especially proud of or that you believe is deserving of a wider audience. Therefore, judges might refrain from submitting decisions for publication either because they do not think the work reflects their best efforts or because they are unwilling (or unable) to invest the time to meet their own standards for publication-worthy materials.
3. **Avoiding Scrutiny.** Judges may want to avoid scrutiny from decision-makers, the media, and the public, for decisions that, if published, would lead to backlash and subsequent professional and personal repercussions. First, a judge may believe that a legally sound but unpopular decision is best made quietly, without publication, to avoid media attention. Second, a judge burdened with a heavy caseload might worry that a minor error or poorly chosen phrase in their decision could attract undue criticism or misrepresent their legal views, especially if they lack the time to thoroughly research the issue.

There is nothing necessarily untoward about the possible explanations outlined above; they simply reflect the truth that judges are people too. But for the reasons discussed above, the public interest in transparency rightly outweighs these considerations.



## 5. Recommendations

There is a significant disparity in the public availability of written criminal court decisions in New York. The majority of these decisions—4,250 to 54,500 decisions a year, depending on which subset is used—are not published. Furthermore, of the judges that choose to publish their decisions, most publish only one decision per year, limiting decision-makers' and the public's ability to access and evaluate their legal reasoning and determinations. This lack of disclosure poses a challenge to ensuring transparency and scrutiny of the judicial system, as the analysis and interpretation of facts and laws are a core function of judicial work.

Fortunately, there are readily available solutions that can effectively narrow the gap between written decisions and their public availability in a timely and cost-effective manner.

1. New York should pass a law to increase transparency by requiring written decisions by criminal court judges to be publicly available online, thus aligning with the current practice for Court of Appeals and Appellate Division decisions.
  - a. The Legislature should amend the Judiciary Law to mandate that the State Reporter publish all submitted decisions, and that the law be updated to require they be published online. Moreover, Section 432 of the Judiciary Law—which already requires judges to submit all their written decisions to the State Reporter—should be rigorously enforced.
  - b. In cases where a written decision raises privacy concerns, it should be published in accordance with the privacy guidelines already established by the State Reporter.<sup>67</sup>
2. Under this new law, judges would be able to submit transcripts of oral rulings in lieu of written decisions.
  - a. This approach addresses workload concerns by providing judges with a streamlined and time-saving alternative to written decisions.
3. The new law would mandate publication of decisions when they resolve a legal issue raised in a written motion or decide a pre-trial hearing.
  - a. This approach would ensure that the decisions in suppression or *Crawford* hearings, for example, would be published. Decisions at sentencing, bail, or objections during trial would not need to be published, unless a written motion was filed.
4. The new law would also require the Office of Court Administration to make all written criminal court decisions authored in the past 15 years publicly available.
  - a. The collection body—whether the Office of Court Administration, or possibly another entity—should have the authority to collect decisions from judges, court attorneys, and physical case files to ensure comprehensive coverage. The decisions will be published through the State Reporter.
  - b. The Office of Court Administration (or the State Reporter) would additionally collect and publish data that permits quantitative analysis of New York State published deci-

<sup>67</sup> [New York Official Reports Privacy Guidelines](#), Law Reporting Bureau (2023).

sions. The dataset will enable researchers to study the trends and impacts of judges by codifying aspects of the decisions' substance into data variables, such as the name of the judge, the type of decision, and the outcome of the decision. The dataset will also include other statistics, such as the number of judges assigned to oversee criminal cases in different courts in a given year.

5. The Office of Court Administration should immediately begin implementing these policies administratively.
  - a. Implementation should begin by fully complying with Judiciary Law § 432.

Additional resources should be provided to ensure that judges and the State Reporter are able to fulfill their important new mandate. Specifically, the New York Unified Court System should request these resources in their December 1, 2023, budget submission to the Governor, which is required to be included in the executive budget without revision.<sup>68</sup>

Concerns that the implementation of these recommendations would overwhelm judges through increased workload are misplaced. Judges are already writing these decisions in electronic format and disseminating them to the litigating parties in paper or emailed copies. The additional step of submitting these decisions to the State Reporter is a minimal task—and judges would always have the option of issuing a decision orally and submitting the transcript. Moreover, our proposal calls for provisions for increased funding for judges and the State Reporter to enable making publicly available the higher volume of decisions.

Another concern is that making decisions publicly available could compel judges to invest more time in writing and researching them—since they will become publicly available, and the judges would want to put their best foot forward—thereby increasing their workload and slowing down other court processes. As an initial matter, if the quality of decisions is so deficient that judges are reluctant to make them public, then creating an incentive to enhance the quality of these decisions is a beneficial outcome of our proposal. In addition, our data indicates that some judges are already publishing a greater number of decisions than their peers, despite facing similar time and resource constraints. To the extent that our proposal would lead to an increase in the time spent on writing decisions, we propose that the court system hire additional law clerks and court attorneys, who regularly assist with the research and writing of decisions.

Finally, there is no risk that a substantial increase in publicly available decisions could overwhelm legal practitioners and judges as they engage in legal research. The availability of substantially more decisions will yield more relevant cases—more search results—when one engages in legal research. However, legal practitioners use complex search systems, such as Westlaw and Lexis, which permit advanced approaches to locating relevant materials. Moreover, since criminal court decisions are not binding, their impact on the corpus of law and legal practice is limited. Practitioners will generally continue to rely on binding appellate law, while those who do use lower court decisions in their litigation will be able to sift easily through the electronic materials using existing platforms' capabilities.

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<sup>68</sup> N.Y. Const. art. VII, § 1.

## Data Methodology

We obtain criminal court decisions data from the New York State Reporter's Archive website,<sup>69</sup> which we consider to be a comprehensive repository of publicly available criminal court decisions. Our analysis covers decisions published between January 1, 2010, and December 31, 2022. While the archive is extensive, we acknowledge that it may not be entirely exhaustive. In specific cases, we found a small number of decisions that apparently were not listed in the archive but were discoverable through the State Reporter's search function. Therefore, we are confident that any omissions in our data set are minimal and do not significantly impact our findings. This confidence is further bolstered by our analysis, which suggests that the number of written but unpublished decisions is likely underestimated, reinforcing the robustness of our study.

- **Type of Decisions:** Given that our report is focused on criminal courts, we exclude decisions in civil cases. To distinguish between criminal and civil decisions, we use the title of each decision as an indicator. Specifically, we include decisions with titles that begin with phrases such as 'People of the State of New York,' 'People of the State of N.Y.,' and similar configurations. Titles that started with 'People ex. rel.' were also retained, among other configurations. We exclude any decision that has been withdrawn from publication, as indicated within the text of the decision itself. We also exclude Qui Tam cases and civil cases litigated by the Attorney General, whose case titles are often formulated similarly to those of criminal cases. Finally, we excluded appellate decisions from County Courts.<sup>70</sup>
- **Publication Date:** Published decisions are often associated with multiple dates, including the date listed on the Reporter website and the date listed in the decision itself. To standardize this and stick to the date of *publication*, we rely on the year specified in each decision's web address as the official year of its publication.
- **Authoring Judge:** The name of the judge who authored each decision is included in the text of the decision.
- **Originating County:** We identify the county of origin for each decision using the 'Court' column provided by the State Reporter.

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<sup>69</sup> [New York Official Reports - Most Recent Decisions - Other Court Decisions](#), Law Reporting Bureau (2023); [New York Official Reports - Most Recent Decisions - Supreme Court, Commercial Division](#), Law Reporting Bureau (2023).

<sup>70</sup> County Courts oversee civil and criminal appeals from City, Town and Village, courts. [Appeals Resources](#), New York Courts (2023).

We obtain pre-trial case data from the New York court system's website.<sup>71</sup> This data includes a list of cases arraigned from 2019 through 2022. We kept only entries for new cases ('Docket' or 'Felony Youth Complaint') and cases that did not end in a dismissal or plea at arraignments. While the dataset is extensive, for the purposes of this report, we focus on the following key fields:

- Date of arraignment
- Severity of the top charge, categorized as either a misdemeanor or a felony
- Classification level of the felony top charge, ranging from A to E
- Nature of the felony top charge, identified as either violent or nonviolent
- Time span, in days, between the date of arraignment and case disposition.

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<sup>71</sup> [Pretrial Release Data](#), New York Courts (2023).

## About

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Scrutinize uses innovative, scalable, and data-informed tools to shed light on the judges who drive the criminal legal system's most extreme negative impacts and advocates to hold them accountable.



Reinvent Albany advocates for transparent and accountable New York government. We work to strengthen the Freedom of Information Law and put government information online. We advocate for government open data and the laws, practices, and funding to make it happen.

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