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REPORT TO THE PHILADELPHIA
CITIZEN'S COMMITTEE ON
THE OPERATIONS OF THE MUNICIPAL
AND COMMON PLEAS COURTS

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THE INSTITUTE FOR COURT MANAGEMENT

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INTRODUCTION

While the Citizens Committee and the Philadelphia Justice Consortium were organized early in 1971, the federal funds necessary to support Consortium activities had not been approved until on September 1, 1971. The Consortium consists of national organizations: The Institute of Judicial Administration, the National Council on Crime and Delinquency, the National College of State Trial Judges, the American Judicature Society, and the Institute for Court Management.

Because of the funding delay and the need to present something to the Citizens Committee prior to late fall, the Institute for Court Management agreed to do some preliminary work and produce an early report provided that such work be consistent with the goals of its LEAA Grant to study court operations in major cities.

In this report we draw conclusions and make recommendations on concerns and activities of the Citizens Group. We have no specific recommendations on court operations at this time. In the report we have included examples of problems and solutions as illustrations of Committee concerns. If we seem to be advocating particular solutions, it is unintentional.

FORWARD

Basic to the concept of fair treatment is the requirement that parties to a court proceeding receive a prompt trial. Judged by this standard, it is clear that in several major areas the Philadelphia justice system now simply does not pass this test.

In regard, Philadelphia does not stand alone--backlog and the spectre of ever-increasing delay before trial are common to all major urban centers.

Yet, by comparative standards the Philadelphia justice system moves cases to trial faster than its counterparts in many of the country's other major cities.

Utilizing this admittedly deceptive relative standard, we are able to say that the Philadelphia justice system is probably the finest of any major urban center in America.

With fewer judges per unit of population than any of the nation's three largest cities--New York, Los Angeles and Chicago--Philadelphia is still able to boast a smaller backlog of cases, according to 1970 statistics.

Such comparison, though, furnishes little consolation.

One conclusion, unfortunately, is quite clear: No matter what the verdict or how fairly the parties are treated during trial, delay in bringing these major criminal and civil cases to trial has created a crisis of public confidence which strikes hard at the increasingly more vulnerable foundation of our constitutional form of government.

Armed with this realization we can only conclude that we must act decisively and immediately. We cannot afford the luxuries which the indolent inadvertently reserve to themselves.*

*From a speech by D. Donald Jamieson, President Judge

OVERVIEW OF CRIMINAL TRIALS

There are criminal trial programs in the Municipal Court, the Family Court and Trial Division of the Court of Common Pleas. The Family Court hears juvenile matters.

Until July 9, 1971, the Municipal Court had jurisdiction over adult cases carrying a maximum sentence of two years, but any case may be appealed for a trial in the Trial Division of Common Pleas. The Trial Division had jurisdiction over adult cases carrying a maximum sentence of two or more years.

On July 9, 1971, legislation was signed that expands Municipal Court jurisdiction to cases carrying maximum sentence of five years. This will transfer much of the caseload presently in the General Trial program (see later) of Common Pleas to the Municipal Court. This is not just a simple shift of workload: there are fewer steps to trying cases in Municipal Court than in Common Pleas as Municipal Court cases go directly from arraignment to trial listing; unless, as has happened occasionally elsewhere, the Municipal Court decides, in view of its increased jurisdiction to complicate its own procedures and become more like a felony court.

If jurisdiction is increased, more judges, assistant District Attorneys, defenders, etc., will be needed in the Municipal Court as both case volume and complexity will increase. Beginning September 15, 1971, six courtrooms, instead of two will be regularly assigned each day for Municipal Court criminal proceedings.

Everyone seems to be for increased jurisdiction, but no one has a good basis to estimate accurately what the effect will be.

Cases are adult cases if the defendant is over 18; juvenile if under 18. The adult court has concurrent jurisdiction for ages 14-18 and cases involving defendants in that age range may be removed, by order of the juvenile court, to the adult court. If a defendant falsifies his age in order to appear in adult court, he must be removed to the juvenile court if his age is 14-16 and he may be removed, upon order of the adult court if his age is 16-18. Reasons a juvenile may falsify his age include:

- right to bail in adult court
- long juvenile record
- to be a "big shot"
- better, more lenient treatment (strictly a matter of which judge he gets, judges range from tough to lenient in both courts)

Case Processing

Adult cases carrying maximum sentences of less than five years will be arraigned in Municipal Court and scheduled for trial there during the arraignment. Listing for trial does not necessarily mean that trial occurs on that date. Many postponements occur and a case may be re-listed several times.

All juvenile cases (except murder) are heard in Juvenile trials in the Family Court. Juvenile processing is similar to the

Municipal Court processing described above.

The processing of adult cases carrying maximum sentences of five or more years is more complicated. An excellent description of the process, Anatomy of a Case, was extracted from the 1969 report of the District Attorney and is Appendix A. A summary of the process follows:

Preliminary Arraignment in Municipal Court--

to notify the defendant of the charges against him,
to set bail and to set a date for the Preliminary
Hearing 3-10 days later.

Preliminary Hearing in Municipal Court--

to determine if probable cause exists to bind over
the case to Grand Jury and to set date for Bail
Arraignment in Common Pleas six or seven weeks later.

Grand Jury Indictment--

presently all cases must be indicted by the Grand Jury.
This occurs about five weeks after Preliminary Hearings
and is usually a rubber stamp operation. Nearly
everyone agrees that the requirement of grand jury
indictment should be abolished--this requires a
change in the Pennsylvania constitution.

Bail Arraignment in Common Pleas--

to give a copy of the indictment to the defendant,
advise him of his rights to counsel, to see if he
has a lawyer, and to review the bail set by the
Municipal Court. Reasons for continuance usually

are due to no lawyer present for defendant. Upon successful arraignment, the case is scheduled for listing--weeks later.

Pre-trial Motions--

if any, they are usually motions for discovery and to suppress evidence. These are heard by a Special Motions Court for the Homicide and Major Programs. All other motions in General Trial Programs are heard at trial. A source of delay in that lawyers often are "busy" elsewhere.

Trial--

at which the case is heard. There are different procedures for each program (see below). A significant source of delay is due to the need for several people to be ready and present at trial time.

Post-trial motions--

usually a standard list of motions that have to be heard prior to the sentencing. A significant source of delay as many continuances occur on these motions because transcripts aren't ready or lawyers are busy elsewhere. A legislative proposal calls for summary disposition of such motions.

Sentencing--

when sentence is imposed on the defendant.

Many feel that the last four steps should be normally combined into one with the four steps occurring as the exception rather than the rule. Many defendants remain on the street while their

sentences are deferred for post-trial motions. This is a prosecutor's view.

Most defense counsel don't want the trial judge, particularly if it is to be a court trial, to hear motions to suppress evidence nor do they want to lose the opportunities to maneuver that a process fragmented into four steps offers them. For the most part, delay works to the advantage of the defendant. Each step offers opportunity for postponement and hence delay in case processing. Thus, it is not a matter of consolidating steps of the process, it is also a matter of reducing opportunities to delay the case.

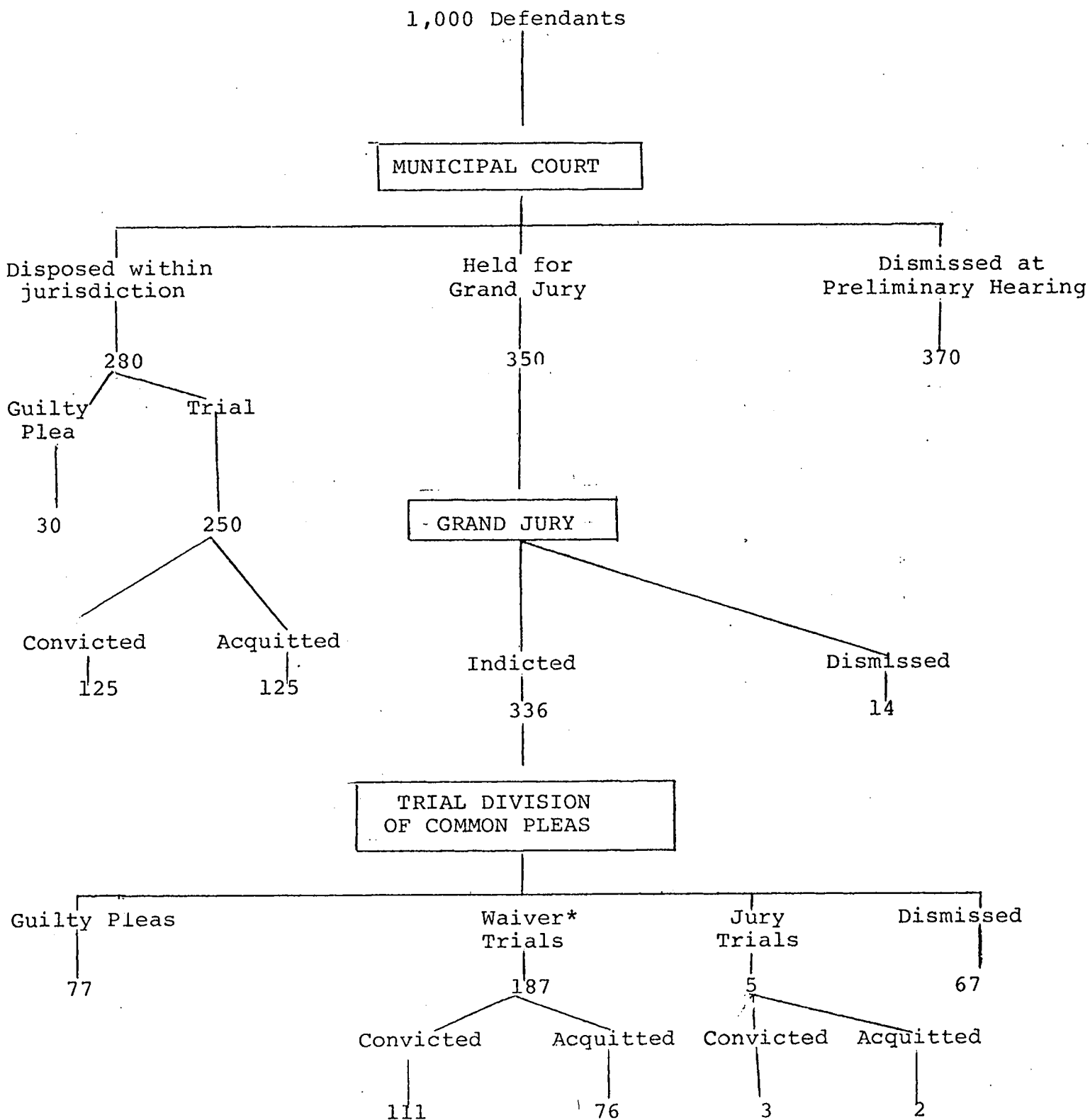
Figure I shows the expected screening and disposition for each 1,000 defendants arraigned in the Municipal Court. Of the 1,000 defendants, it can be expected that 654 will be dismissed or acquitted somewhere in the process as follows:

Acquitted by Municipal Court	125
Dismissed at Preliminary Hearing	370
Dismissed by Grand Jury	14
Dismissed by Trial Division	67
Acquitted by Waiver Trial	76
Acquitted by Jury Trial	<u>2</u>
TOTAL	654

This indicates that a lot of bad cases are entering the system and benefit would accrue from screening complaints before they enter the Municipal Court. The District Attorney presently has a pilot project to perform this earlier screening. Early screening deserves high priority both in allocation of resources and quality of personnel assigned.

FIGURE I

Expected Screening for each 1,000 Defendants Arraigned in Municipal Court in 1970.



*A waiver trial is where the defendant has waived his right to jury trial.

Municipal Court

On January 1, 1969, the present Municipal Court replaced the old magistrates' courts. The procedures in this court are much simpler than in the Trial Division. A case within the jurisdiction of the court goes directly from arraignment to trial listing; such cases are usually tried at the first or second listing. The average time between arrest and trial of these cases was 44 days in 1969 and 44 days in 1970. Municipal Court trials disposed of 8,133 cases in 1969 and 10,248 cases in 1970.

Cases beyond its jurisdiction are given a preliminary hearing by the Municipal Court. If a case is dismissed at this hearing, it is disposed for all courts. If it is held for grand jury, it is disposed only from the view of the Municipal Court since cases indicted by the grand jury are disposed only by Trial Division of Common Pleas.

Of the 36,441 defendants processed by the Municipal Court in 1970, 23,562 (65%) were disposed by the court--13,256 (37%) by dismissals at Preliminary Hearings and 10,306 (28%) by disposition of cases within its jurisdiction.

It is clear that the Municipal Court performs substantial case screening for the Trial Division. Of the 26,135 that could have been indicted, Preliminary Hearings dismissed 13,256 (51%) and held 12,879 (49%) for the grand jury. See Appendix B for more statistics on the Municipal Court.

The Municipal Court runs two or three criminal trial courtrooms

a day and two or three civil courtrooms. Two of the three, civil courtrooms run in the evening in rooms used for criminal trials during the day.

As an example of trial workload in this court, 47 criminal and 125 civil trials were listed on Monday, May 10, 1971. The criminal listings were 19 to Room 195, 19 to Room 196 and 9 to Room 195; civil listings were to Room 196 (10 a.m.), 99 to Room 195 (at 3:45 p.m.) and 24 to Room 196 (at 3:45 p.m.).

There are 22 municipal court judges of which seven are law trained. The law trained judges do all the trial work and are generally considered to be good movers of cases and good judges (this quality is strictly due to "luck of the draw" and did not result from a superior judge selection mechanism in the Municipal Court). The non-law judges will be replaced by law-trained judges as they retire from the bench.

The District Attorney and Defender assign one man each to a criminal courtroom. Neither feels that there is adequate time to prepare cases. Judges are subject to reassignment to courtrooms every week. As a result, there is a tendency to postpone cases to a later week when some other assistant District Attorney, defender or judge will handle them--at this time such cases may again be postponed.

Each assistant District Attorney and defender keeps his own score card and neither likes to lose cases. Continual postponement works only to disadvantage of the public. It is not only

costly, it is damaging to the prosecution of offenders as witnesses die, disappear, tire of appearing or their memories become dim.

Many suggest that a judge be assigned for a longer term to a given courtroom and that postponement be permitted only to the same room. The assistant District Attorneys and defenders would likewise be assigned to courtrooms for corresponding terms. Advantages include:

- .clearer responsibility--postponements would be to themselves rather than to others.
- .case continuity--better relations with witnesses and defendants who would see the same lawyers at each appearance.
- .coordination--as each team of judges, assistant District Attorneys and defenders work together, better work-relations will develop.

Grand Jury

In 1969, out of 2,995 presentments to the Grant Jury, 21,109 (96%) were indicted and 866 (4%) were dismissed. In 1970, out of 23,083 presentments, 22,219 were indicted and 827 (4%) were dismissed. Thus the Grand Jury performs an insignificant screening function (4%) at a cost far exceeding the benefits and the requirement that all cases be indicted by Grand Jury should be abolished as proposed by the Court's Legislative Committee. This does not mean the Grand Jury should be abolished. It performs an important role where secrecy or investigation independent of the establishment is required.

Trial Division of Common Pleas

Adult criminal cases that exceed the jurisdiction of the Municipal Court are presently tried in one of three trial programs: Homicide, Major and General Trial. With the expansion of Municipal Court Jurisdiction it is expected that the General Trial Program will be significantly revised or eliminated.

All homicide including murder*by juveniles is automatically classed Homicide. The basic test for Major cases is whether pre-trial motions or trial involves substantial legal problems or complexity of preparation. Due to search and seizure technicalities, most drug cases above threshold quantities are automatically designated Major cases. Other cases (e.g., some burglary or some robbery) that are not obviously Major are sent to General Trial. The remainder are referred to the Chief assistant District Attorney for Major Trials who decides case by case.

The earlier court criteria for Major versus General Trial are no longer true. The present basis for Major seems to be legal sophistication. A crime may be a major offense by a dangerous offender and still go to General Trial. Perhaps there should be a fourth classification of cases.

*Murder in the juvenile court is a matter of interpretation by judge: some consider only murder I and murder II to be murder; others consider all homicides to be murder; others fall in between.

The workload of the Trial Division has increased from 10,227 cases disposed in 1965 to 14,845 in 1970 and jury trials increased from 77 in 1965 to 218 in 1970:

<u>Year</u>	<u>Cases Disposed</u>	<u>Jury Trials</u>
1965	10,277	77
1966	12,308	123
1967	11,558	124
1968	13,351	189
1969	19,060	210
1970	15,845	218

Thus, in 1970, cases disposed were 56% more than those disposed in 1965 but 17% less than those disposed in 1969. This drop in cases disposed is due to a concerted effort in 1969 to clean up the back-logged General Trial List. Jury Trials in 1970 were 182% more than jury trials in 1965 and 4% more than in 1969.

Of the 15,845 defendants processed by the division, 6,828 (43%) were acquitted and 9,017 (57%) were convicted. Of the 43% acquitted, 20% were dismissed without trial, 23% were acquitted by waiver (court) trials and only 0.5% by jury trial. Similarly, of the 57% convicted, 23% were by guilty plea, 33% were convicted by waiver trial and only 0.8% were by jury trial. See Appendix B for additional statistics on the Trial Division.

By method of disposition the cases were disposed as follows:

	<u>Number</u>	<u>Percent</u>
Dismissed	3,104	20%
Guilty Plea	3,722	23%
Waiver Trial	8,801	56%
Jury Trial	<u>218</u>	<u>1% (actually 1.3%)</u>
TOTAL	15,845	100%

Waiver trials overwhelmingly predominate over jury trials. This is by design: tough sentencing judges sit in the jury rooms, more lenient sentencers in the waiver rooms. If the number of jury trials were to merely double or triple, case processing in the Trial Division could become hopelessly clogged. Few defendants will waive jury trial before a tough sentencing judge, so the waiver rooms with the more lenient sentencers are crucial to case flow unless significant additional resources are added to the Trial Division. Much the same is true of guilty pleas, most of these are due to lenient sentences or are in exchange for the dismissal of other, sometimes more severe, charges against the defendant.

Philadelphia disposes a much higher percentage (57%) of its cases by trial than most other places and the average length of waiver trials is much less. This should be investigated. It may be due to the reluctance of the District Attorney to plea bargain on charges.

In General Trial, cases are first listed in one of three "First Listing" Rooms. For the week beginning 10 May, there were 15 listings in Room 602; 14 in Room 653; 14 in Room 696. Approximately 60 per cent of the cases are tried in these rooms.

Cases which were not tried at first listing, are listed in a calendar or pool room. For the week beginning 10 May, there were 32 cases listed in this Calendar Room. If ready, they are assigned to one of four waiver rooms or a jury room. A waiver room is where the trial is heard by the judge; i.e., where the defendant has waived his right to jury trial. If not reached, they are returned to pool. The jury room approximates individual assignment, as the judge is assigned for quite a while and so can only postpone to himself. The new date for waiver cases is set by the Calendar Room as the case is returned. The jury room sets its own next date.

Homicide and Major are generally as above starting, however, with a calendar room (Room 625 for Major, Room 613 for Homicide). Backup rooms for major trials usually are two waiver, two jury; for Homicide, four Jury, one waiver.

For the week beginning 10 May, four back-up rooms were listed for Major trials and seven were listed for Homicide. The Major Calendar Room had (on Monday, 10 May): 26 cases listed for 10 May, 19 cases for 11 May and 17 cases for 12 May. The Homicide room had six cases for 10 May, three for 11 May and four for 12 May.

After listing in Calendar room, applications for continuance are made directly to the calendar judge. Counsel are instructed to appear at 2:30 P.M. on the day prior to the list date for pre-trial conference which is conducted in the calendar rooms.

Homicide, in addition to above, maintains a Homicide Ready Pool. The first 10 cases on this list are to be ready to commence trial on 24 hour notice. Movement out of the Ready Pool is granted only

by the Homicide Calendar judge.

The Trial Division has continuance problems akin to those in the Municipal Court.

The use of calendar rooms has markedly improved case management in the Trial Division. For example, General Trials used to be conducted in six or seven list rooms, case management was fragmented, and sometimes a case was listed over 15 times before disposition occurred. Since the Calendar room was added, it is rare that a case is listed more than three times. Since the probability of successful prosecution drops sharply after the third listing, the addition of the Calendar has enhanced successful prosecution of offenders as well as lowered the costs of case processing.

The table below shows the average time delays between events:

AVERAGE TIME IN DAYS BETWEEN EVENTS FOR
CASES DISPOSED IN MARCH, 1971

	Homicide Cases	Major Cases	General Trial Cases
Arrest to Indictment	53 (7-8 wks)	54 (7-8 wks)	51 (7-8 wks)
to Arraignment	70 (10 wks)	43 (6-7 wks)	35 (5 wks)
to Trial	71 (10-11 wks)	71 (10-11 wks)	76 (10-11 wks)
to Sentence	14 (2 wks)	14 (2 wks)	6 (1 wk)
SUM	208 (29-30 wks)	184 (26-27 wks)	169 (24-25 wks)
Number of Cases	30	230	895

Family Court

The Family Court has 20 judges which the administrative judge assigns. Usually five judges are assigned to Juvenile, seven to other Family Court areas and eight to the Trial Division. These eight are requisitioned by the President Judge but selected by the Administrative Judge of the Family Court.

The seven judges assigned to Family Court areas other than Juvenile are sitting roughly as follows: one of Criminal Fornication and Buggery cases (Jury trials); two or three on Support cases; one on Dependency cases; one on Attachment cases; two or three on Divorce cases. The District Attorney staffs only Juvenile and Criminal Fornication and Buggery cases.

The Chief of the District Attorney Family Division thinks Support matters should be "civil" and that the City Solicitor should handle them.

The District Attorney gives priority to Juvenile, feels this is the critical time in offenders life. The Juvenile load is 12,000 cases per year. Assistant District Attorneys are individually assigned to major cases (about 10 per cent); other cases are handled as they appear in courtrooms by assistant District Attorneys assigned to each courtroom. Individual assignment to major cases sometimes requires artful juggling when a man's cases are listed in different courtrooms on the same day, but they manage surprisingly well.

Preliminary hearings for adult offenders against juvenile victims

are held at juvenile court.

Juvenile cases present the heaviest load to judges. Some of the judges are slow to change from old way of handling juveniles and do not follow due process and formalities. They aren't accustomed to the presence of assistant District Attorneys and defenders or the presentation of evidence. Some new judges pick up these habits. No calendar room is used for Juvenile cases.

GENERAL PROBLEMS

Trial Delay*

Delaying a trial benefits only the guilty defendant. Delay harms (1) the community, which is subjected to the risk of repeat offenses by defendants on bail; (2) the defendant who is later found innocent; (3) the police and civilian witnesses who must come to court time and again at the expense of lost time and money; (4) the police witnesses whose repeated appearances in court drain manpower from other police duties; (5) the prosecutor, who sees strong cases grow weak as memories fade and witnesses become unavailable or simply lose their interest; and (6) the people of Philadelphia, who suffer the burden of increased costs necessary as a result of repeated listings.

Delay in the criminal courts also weakens the deterrent effect of punishment, for deterrence is based not only on the severity of punishment and communication to potential criminals of that punishment but also on the swiftness and which the punishment is imposed. Would-be rapists and robbers are certainly more likely to hesitate if they know that their arrest will result in quick trial and sentence than if they know that, even after arrest, trial may be years away and imposition of sentence even more years in the future.

Similarly, delay in the criminal courts causes victims of crimes, as well as other witnesses, to lose respect for law and for the orderly administration of justice. A man who is robbed at gunpoint and who then must appear in court five times before the case is tried--and that over many months after the robbery--will gain no respect for our courts or our laws. He can only be bitter about both.

It is for these reasons that the District Attorney's Office has bent every effort to reduce the length of time between arrest and trial. The causes of the delay and congestion in the criminal courts are legion. Many of these causes operate in every case, some in only a few cases. Obviously, a combination of factors operates in almost every case.

*Extracted from District Attorney's Annual Report for 1969.

The major actors operative in causing trial delay are (1) insufficient judicial manpower available to hear criminal matters; (2) appellate decisions broadening the rights of defendants and thereby enormously increasing the amount of pre-trial litigation; (3) repeated unwarranted continuances of cases on the motion of defense attorneys; and (4) a concentration of too many cases in the hands of a small number of defense attorneys.

Efficiency

Many speak of making courts more efficient and it is true that every element in the courthouse can be greatly improved through better work and information flow, job descriptions, procedures and matching of people to jobs. Each of these elements should be analyzed and redesigned to achieve significantly higher efficiency in operations.

But the purpose of the courts is justice, not efficiency, and the American people chose the inherently inefficient adversary system, right to jury trial, and the separation of executive and judicial powers as the best way to achieve justice.

Due to severely limited resources and high case loads, most courts can ill-afford the adversary system. Everyone familiar with criminal justice in Philadelphia and elsewhere knows that jury trials for all but a small fraction of defendants are impossible if court production is to keep pace with court input. They also know that the court's need for production is so high that the frenetic environment permits some cases to be delayed until dismissed or greatly reduced pleas or sentences are accepted.

Defense counsel know this and they properly take advantage of the

court's production need on behalf of their clients. Those defendants whose thorough prosecution is most important to public safety know this and take the initiative if their attorneys are remiss.

In sum, only half of the adversary system is in full gear; this works principally to the benefit of the defendant and to the detriment of the public interest.

It is strange economics that trades off a few days of court resources for years of criminal activity. A habitual criminal on the street awaiting trial and the same man back on the street years early because of plea and sentence bargaining has many years of criminal activity added to his lifetime.

What is the cost to the public? A burglar, thief or shoplifter has to steal \$100 worth of goods to get ten dollars in cash. Even worse for a drug addict who has to steal \$100 worth of goods to get ten dollars to buy a few cents worth of drugs. There is no way to assess the dollar cost of violent crimes such as murder, armed robbery, mugging, yoking and rape.

The above has not been presented as an argument to do away with the adversary system. We believe in the adversary system. The above was presented to show the need to bring additional resources to prosecution, court, probation and corrections so that the public can regain parity with the defendants. Clearly a large effort in the public education is needed.

Statistics

It may be that a rose is a rose is a rose, but a case is not a case is not a case. A case is disposed whether it is dismissed for lack of prosecution, it takes a few minutes of court time to accept a guilty plea, or it takes several weeks of jury trial. In the case of a negotiated guilty plea both the District Attorney and the defense counsel can claim a "win"--the defendant was convicted but to a lesser charge or punishment than called for in the indictment.

Statistics in the criminal justice area are more misleading to the public than they are helpful. Each element--police, District Attorney, Voluntary Defender, court, probation, corrections--generates statistics complimentary to its own priorities. Simple counts of arrests, convictions, acquittals, dispositions, etc. are not measures of the effectiveness of criminal justice as a whole.

Being composed of people, each element concentrates on the easiest things which build their scores. Simple counts bias the system toward giving priority to its easy chores. This being a statistical era, we see no alternative to designing more sophisticated measures of effectiveness.

GENERAL RECOMMENDATIONS

Priorities

Resources will always be limited so the need exists to set priorities that are followed by each element of criminal justice. Critical to setting priorities is the ability to differentiate among crimes and offenders. For example:

Just as we must reconsider the criteria for entry into the criminal justice system and redefine criminal acts, we must also differentiate among classes of offenders. I do not mean individual offenders, but categories such as organized crime, individual crime for profit, and accidental offenses.⁷ Opinions will differ about nomenclature and about the dividing lines between categories, but the important thing is for the system to recognize that these classes do exist and to acknowledge that it may process the different classes in different ways.

Johnny Jones has a few beers, breaks into the Monza Shop, takes a \$350 motorcycle, and goes for a joy ride. Jimmy Jones breaks into the Grand Prix Shop and steals a \$350 cycle; he is a member of a ring which steals motorcycles, strips and repaints them, and resells them through a distribution system in another state.

If the two are apprehended, the system treats them identically. True, actual sentences may differ, because persons within the system may realize the difference in circumstances. The point is, should sentences depend upon individual views, attitudes, and training? Should not the system itself differentiate among the major groups of offenders?

In one sense we are doing this when we create special police units to deal with organized crime and when we acknowledge that wire tapping is permissible in matters of organized crime and national security. These isolated examples are responses to specific situations. The entire

⁷An "accidental offender" is a person who commits an offense through force of circumstances. The largest proportion of members of this category is made up of juveniles who follow the ringleaders of their group in perpetrating a crime but are not the actual instigators. Another "accidental offender" is a person who is made desperate by a series of personal misfortunes and turns to crime as the only immediate solution to his problems.

system should be surveyed to determine which procedures designed for the protection of the average citizen are not really appropriate for a member of a crime organization. We may discover that different rules should be established for arrest and interrogation, for bail and release, for pretrial procedures, for conduct of hearings, and for sentencing and correction. Although my opinion borders on heresy, I do not accept without question the current assumption that identical procedures must be used in every case. Change always entails some risks, which must be analyzed and provided with safeguards, but their presence should not foreclose inquiry.

W. T. Davis: A Balanced System, Crime and Delinquency, April 1969.

Clearly if resources for investigation, prosecution and adjudication are limited, priority should be given to Jimmy Jones. The expansion of the Municipal Court Jurisdiction should permit the Court of Common Pleas to concentrate on more serious offenses. In Brooklyn, police call the District Attorney if a serious crime is committed. The District Attorney sends an investigator and stenographer to the scene of the crime to interview witnesses and to the police station to interview the defendant. All statements are taken down and type up. About 10 calls a day are responded to by five assistant District Attorneys in the investigation department.

Assignment Procedures

Large gains have been made in Philadelphia through its present calendaring methods. Further modifications should be approached with care. There are, however, some distinct advantages to assigning judges to cases earlier.

Presently, one judge becomes responsible for a case when it reaches trial and his responsibility carries forth through sentencing. In Brooklyn, judge assignment is made after arraignment is made when the case is filed.

The advantages of earlier judge assignment accrue in case responsibility, case continuity and reduction of "judge-shopping" by defense counsel. Once a judge has been unequivocally assigned to a case, assistant District Attorneys and Defenders assigned to that judge can become unequivocally assigned to the case. Case responsibility and continuity are thus gained with no loss of the "efficiency" gained by staffing courtrooms instead of cases. Further "judge-shopping" maneuvers by defense counsel become pointless when a judge has been unequivocally assigned.

If earlier assignment on a completely random basis were introduced in Philadelphia, some judge's calendars would become immediately clogged with jury trials. For the most part these are the judges who presently sit in the jury rooms. The usual criticism is not that they don't conduct fair trials but that they don't move cases: since they are tough sentencers, defendants won't enter pleas or waive jury trial before them.

These judges would become a distinct asset if they all sat in a "Major Offender" division and defendants were assigned for trial in that division on some priority, but limited basis. These defendants would then receive more appropriate sentences if found guilty and the public interest would be better served.

Staging Procedures

For each event--arraignment, preliminary hearing, motion hearing, trial, sentencing--to occur in a courtroom, certain people have to be present. In a jury trial, these include the judge, defendant, attorneys, witnesses, jurors, court reporters, etc. If an event is postponed because a key actor does not appear, or a continuance is granted, the time of those who do appear is wasted.

Postponement is probably the largest factor in the poor image many of the public have of the courts. The second largest factor is the sense of confusion and lack of decorum (e.g., court officers sleeping) conveyed in some courtrooms. Postponement also raises the cost of trying defendants and lowers the chance of successful prosecution.

Much better coordination is needed. The day before an event, the ability to appear of the defendant, his attorney and witnesses should be verified. An event may also be postponed because something else hasn't occurred--e.g., chemical report, mental exam, notes of testimony. That afternoon a coordination conference should take place and, if the event is to be postponed, witnesses should be notified that they do not have to appear.

A system of controls and incentives are necessary for effective staging. A few examples from other jurisdictions are:

In Chicago, bondsmen were eliminated and defendants pay 10% of their bond as premium to the court. Bonds require defendants to appear from time to time as ordered. At each event, a defendant is given his next date and place of appearance. If the defendant appears as ordered,

he gets 90% of his premium back. Failure to appear is grounds for bench warrant and bail forfeiture. Willful failure to appear is a separate criminal offense.*

By statute, court reporters in Oakland (Calif.) are required to deliver notes of preliminary hearings within 10 days or get half-price for the work.*

In Los Angeles, 90% of all witnesses (including police) are on 1/2-1 hour telephone call notice which lowers confusion as fewer people are in a courtroom at a given time. Witness control is handled by a special section in the District Attorney office.*

In Pittsburgh, all defendants on bail are sent a letter informing them of their indictment and that they must secure an attorney or be subject to revocation of bond. This takes the place of the Bail Arraignment and apparently is successful as it is a rare defendant who appears without counsel. If he does, the judge puts him in jail.*

*from Foulke Report

RECOMMENDATIONS FOR THE CITIZEN'S COMMITTEE

While the fore-going discussion is far from comprehensive, it is sufficient for recommending the organization of certain sub-committees. These sub-committees do not represent a complete set of sub-committees; they are those sub-committees to which the Institute for Court Management could supply partial staff support.

While these sub-committees overlap in function, it is important that the committee divide its labor. Some examples of things being done under each sub-committee's area are cited.

Recommended: A Sub-Committee on Criminal Justice Priorities,
Measures of Effectiveness and Public Education

This sub-committee would determine ways of differentiating among crimes and among offenders and establishing priorities for the apprehension, investigation, case preparation, prosecution and trial according to the type of offense and the offender (see discussion on priorities under General Recommendations).

The sub-committee would design measures of the effectiveness with which elements of the criminal justice system are allocating resources to established priorities. It would issue an annual report to the public on the conformance of elements of the system of the priorities.

It can be assumed that acceptance of these priorities will meet with considerable reluctance on the part of some elements of the system. To counteract this and to gain public support for criminal

justice needs, the sub-committee must conduct an extensive public education including newspaper releases, TV coverage, public hearings, political endorsement and legislative lobbying.

Longer-term concerns would be reorganization of the Criminal Justice Community and removal of some low priority crimes (e.g., "victimless" crimes such as simple possession of narcotics) from the criminal code. Both of these will involve substantial legislative action. A good source for the sub-committee to begin with is The Honest Politician's Guide to Crime Control.

The criminal justice system and the courthouse are a community of political institutions. They are political as the heads of many agencies are elected and rewards have to be found for their supporters. They are institutional in that procedures and prerogatives date back over several years; in a few cases, for centuries. The sub-committee should consider ways to reorganize and consolidate in this area.

The Court's Legislative Committee has prepared proposals that warrant the review of this and other sub-committees.

"Besides the input of additional space, manpower and techniques, it may be that basic structural changes are necessary if the justice system is to show significant improvement. The Board of Judges in Philadelphia has organized a Legislative Committee to propose and introduce a package of reform programs to the State Legislature."*

There are 14 such proposals extant. Copies are available from the Court Administrator. The topics covered are:

*By Mr. Blake, Court Administrator

- Thirty Additional Judges
- Elimination of the Indicting Grand Jury
- Compulsory Arbitration to \$10,000
- Increase in Municipal Court's Criminal Jurisdiction
- Reduction in Number of Peremptory Challenges
- Summary Disposition of Post Trial Motions
- Alternative Sentencing
- Collective Swearing of Veniremen
- Note-taking by Jurors
- Prohibition of Judicial Comment on a Verdict
- Amended Fee Bills

Recommended: A Sub-Committee on Court Operations

This sub-committee would oversee design of new procedures, work and information flow for the court and new categories of trial programs to satisfy the new priorities. It would oversee the evaluation of designs prior to their full incorporation into court operations. Finally, it would oversee the development of an information system to monitor court operations and to provide measures of the effectiveness with which the court and other elements of criminal justice are conforming to the established priorities to the extent such conformance can be measured at the courthouse.

Longer-term concerns would be the effect of future legislation or Supreme Court decisions on court operations. Definition of Speedy Trial is an imminent example both from expected Supreme

Court decisions and legislative patterns in other states. A good beginning point for this sub-committee would be the ABA project to establish minimum standards for the administration of criminal justice.

Areas presently under development by the Court which warrant the attention of the sub-committee include:

"The Clerk of Quarter Sessions, assigned the duties of keeping records and holding dockets of criminal cases, is an elected city official. His function is closely tied to that of court administration, and in Philadelphia a working cooperation has been formed between the Clerk's Office and that of the Court Administrator. An in-house systems study has been conducted and procedures developed and implemented to increase the probability of locating and producing every criminal case file in our system. Among other benefits and advances, we have removed 20,000 old records from the central filing facility, and we are in the pilot stages of microfilming every completed court file. A similar systems study should be conducted of the Municipal Court recordkeeping system."*

"As the Consortium undoubtedly knows, the Philadelphia courts have computerized their criminal and civil dockets, recording updated information from the Quarter Sessions file as it is returned from the courtroom at the end of the day. From the experience we have gained by making all information recorded in the file available instantaneously to any number of people, we can substantiate the fact that information is being recorded inconsistently, haphazardly, and with little follow-through. The problems multiply geometrically as the number of people handling pieces of the information increases."*

"In order to meet demands of elected officials, the press, and the public, the courts have employed the bulk of their judicial manpower to the speedy disposition of criminal cases. As a result, the court has had to devise alternatives to judge and jury trials for civil cases in order to keep up the ever-increasing load. As of the end of December 1970, the court recorded 15,700 undisposed civil cases; this represented a four to five-year delay for civil injury trials."*

*By Mr. Blake, Court Administrator

"In lieu of the addition of more judges, the President Judge, on 29 January 1971, announced a new program of voluntary arbitration before a panel of randomly-selected defense attorneys for civil cases carrying a stipulation amount between \$3,000 and \$10,000. It should be noted that Philadelphia already has a highly successful compulsory arbitration program for cases stipulated at less than \$3,000, and that Philadelphia has introduced legislation making arbitration compulsory up to \$10,000. We need to know if the quality of justice is impaired or enhanced by these 'temporary' programs."*

Recommended: A Sub-Committee on Court Resources

This sub-committee would review the court operations as defined above and assess the need for people, facilities and equipment to meet present and future workloads of the court. The sub-committee would recommend an operating budget to meet present needs and provide for the planning of future needs.

The court has often expressed its need of more resources. For example:

"For several years now the Courts of Philadelphia have articulated their concern over the growing number of cases entering the justice system and the court's concomitant lack of facilities and manpower to handle the increased load. The three needs basic to the administration of justice in the courts are the addition of a minimum of thirty Common Pleas Court Judges, a new criminal courthouse with adjacent detention facilities, and an operating budget sufficient for applying qualified personnel and advanced techniques to the problems of a large urban court system. We are aware that all of these requirements involve large expenditures of tax dollars."*

Longer-term concerns would assess new court resources needed to respond to future legislation or Supreme Court decisions. An example here would be the right of indigents to counsel in civil

*By Mr. Blake, Court Administrator

as well as criminal matters. The sub-committee would oversee the development of a ten-year plan for locating and building new facilities and a three-year plan for adding modern equipment and new staff to court operations. A ten-year capital budget would be projected for the facilities plan and a three-year capital and operating budget would be projected for modernizing operations and for operating the court.

The Court Administrator is presently designing a badly needed Judicial Merit System covering secretarial, clerks and court administrative officers. Under it, job levels, salaries and requirements are defined. It will be possible for an employee to progress on merit from Clerical Assistant I to Court Administrative Officer V. The entrance level for Court Administrative Officer is as Trainee and requires a college diploma or two years satisfactory experience as Clerk Supervisor II.

While this will not remove political appointments from the Courthouse, it will tend to keep such appointments at their entrance levels unless they merit promotion. Added to the merit system should be methods of removing personnel at all levels. The Court also has a project for Job Definition and Training:

"Traditionally, procedures for court clerks, court reporters, and other court employees have been unwritten, unclear, and incongruous. We are moving slowly forward in this area, although we need to devise a continuous system of training and communications. Communication with Judges is mainly through the issuance of Administrative Memoranda. There are no sanctions nor followup for the procedures we have written."*

*By Mr. Blake, Court Administrator

Staff Support

The Citizen's Committee consists of busy people. If the sub-committees are to be responsible for the work recommended above, they will need extensive staff support; the role of Committee members principally being review of staff findings, coordination with other Committee members and the lending of their prestige in support of actions and recommendations adopted by the Committee as a whole.

There should be a permanent staff, headed by a director, that is responsible for: the design of projects; the clear presentation of project findings and recommendations to each sub-committee; the revision of recommendations as decided by the sub-committee; and assisting, as needed, the sub-committee's presentation of recommendations to the full committee; and release of committee-endorsed reports and recommendations.

The project would be conducted using permanent staff, people working in areas under review by the project, and consultants. The Technical Advisory Group, in addition to advising on the conduct and need for each project, should review reports prior to their submission to sub-committee and be present during sub-committee and full committee consideration of reports and recommendations.

APPENDIX A

TAKEN FROM THE DISTRICT ATTORNEY'S
ANNUAL REPORT FOR 1969

ANATOMY OF A CASE

Many words have been spoken and written in the communications media concerning the rights which are afforded to defendants in our criminal courts. The Congress of the United States passed legislation during 1968 which attempts to limit the boundaries of these rights. Its legislation also purports to restrict the role of the United States Supreme court in reviewing certain legal issues that arise when the exercise of these rights is improperly denied.

Because of this widespread public attention which has been given to what are relatively complex legal problems, this Office feels that it might be of interest to outline the various stages of a typical criminal felony case as it proceeds through our court system. The administration of criminal justice has become increasingly more difficult because of the continuing development of new constitutional and procedural requirements which the police, the prosecutor, and the courts must meet. The failure of any one of these offices to comply with those standards may result in the discharge of an otherwise sound case.

The outline below is not intended in any way to be an attack on our system of criminal justice. Nor is it intended to be an answer to those who do attack the system. Its purpose is to better inform the public concerning what was involved in the

trial and conviction of a criminal in Philadelphia's court system in 1969. The comparison to 1959 is an indication of what changes have developed during the last ten years.

1969

Shortly after three o'clock one afternoon, police detectives received a telephone call from a man who had given them accurate information several times in the past concerning sales of stolen jewelry. The informant told the police that a certain man named John Smith had tried to sell him various pieces of valuable jewelry which appeared to be stolen merchandise.

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THE SEARCH WARRANT

In response to this call, the detectives filled out a search warrant. In the warrant, they outlined the information which they had received as their probable cause to believe that Smith was in possession of stolen jewelry. They took the warrant to the Police Administration Building at Eighth and Race Streets, the location in the City where a Judge and an Assistant District Attorney are on duty on a 24-hour basis.

Search warrants were rarely used by police because any evidence secured from a defendant, no matter how it was seized, was admissible at the criminal court trial in City Hall. After having received the information from even an unknown informant, the police detectives would have proceeded directly to John Smith's home.

There was no magistrate on duty 24 hours a day, even though that has been required by a Pennsylvania statute since 1937. Magistrates have sat around the clock only after pressed to do so by our Investigation of the Magisterial System.

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The warrant was examined by the particular Assistant on duty that evening. After the Assistant District Attorney had advised the detectives that the warrant was constitutionally sufficient under the principles of recent case law governing searches, one of the detectives swore to the facts stated in the warrant as being true. The Judge then approved the warrant and the police were authorized to make a search of John Smith's home.

Two police officers proceeded to Smith's home. They knocked on his door, identified themselves as police officers, and informed persons inside that they had a search warrant for the premises. They were then admitted. On searching the home, the officers found four necklaces, 25 rings, and eighteen pairs of jeweled cufflinks. These were all readily identifiable as stolen property from the tags on the jewelry.

Smith was arrested at approximately 8:00 PM and taken to the Eleventh and Winter Streets stationhouse in the police district in which a jewelry store recently had been burglarized. His arrest was entered on the books at that time, and he was then taken to the Central Detective Division at Twentieth Street and Pennsylvania Avenue for questioning. There Detective William Jones read to Smith, as set out below, the five oral warnings and seven questions printed on the Standard Police Interrogation Card. This card was prepared for the Philadelphia Police Department by the District Attorney's Office in June 1966, in response to the decision of the United States Supreme Court in *Miranda v. Arizona*:

19691959WARNINGS:

We have a duty to explain to you and to warn you that you have the following legal rights:

- A. You have a right to remain silent and do not have to say anything at all.
- B. Anything you say can and will be used against you in Court.
- C. You have a right to talk to a lawyer of your own choice before we ask you any questions, and also to have a lawyer here with you while we ask questions.
- D. If you cannot afford to hire a lawyer, and you want one, we will see that you have a lawyer provided to you free of charge, before we ask you any questions.
- E. If you are willing to give us a statement, you have a right to stop any time you wish.

The defendant was not given any warnings or asked any questions concerning his right to remain silent or his right to counsel. He could be interrogated by the police for a reasonable period of time, as long as he was not coerced to speak. Any statement that the defendant made to the police could be used against him in court unless it was a coerced confession or admission.

QUESTIONS:

- 1) Do you understand that you have a right to keep quiet and do not have to say anything at all?
(Smith answered, "Yes.")
- 2) Do you understand that anything you say can and will be used against you?
(Answer: "Yes.")

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- 3) Do you want to remain silent?
(Answer: "Yes.")
- 4) Do you understand that you have a right to talk with a lawyer before we ask you any questions?
(Answer: "Yes.")
- 5) Do you understand that if you cannot afford to hire a lawyer, and you want one, we will not ask you any questions until a lawyer is appointed for you free of charge?
(Answer: "Yes.")
- 6) Do you want either to talk with a lawyer at this time, or to have a lawyer with you while we ask you questions?
(Answer: "No.")
- 7) Are you willing to answer questions of your own free will, without force or fear, and without any threats or promises having been made to you?
(Answer: "No.")

Having received these warnings and questions prior to any interrogation, Smith declined to make a statement. He was then taken to the Police Administration Building, commonly called the "Roundhouse" because of its circular structure. This building is the headquarters for the Philadelphia Police Department. He was fingerprinted, and his police photograph was taken there. A search of the police records revealed that Smith had two prior convictions for burglary. This processing took about four hours.

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THE PRELIMINARY ARRAIGNMENT

Smith then was taken to the courtroom for his preliminary arraignment. The arraigning judge informed Smith of the charges placed against him; burglary and receiving stolen goods. Smith was given a copy of the complaint. The Judge set a date for a preliminary hearing within three to ten days back at the Eleventh and Winter Streets divisional police court. No evidence was heard at the arraignment.

Bail was not set at Smith's arraignment because burglary is considered a serious felony and a Judge cannot set bail for this offense except upon the recommendation of the Assistant District Attorney. No such recommendation was made at this time, principally because of Smith's prior record of convictions for the same offense. The defendant was taken in a police wagon to the City's Detention Center at 8201 State Road.

The defendant was not given a preliminary arraignment. He stayed in the cellroom of the district police station until his preliminary hearing the following morning.

A LINEUP

While at the Detention Center awaiting his preliminary hearing, Smith was placed in a lineup with seven other men. There was an eyewitness who had reported the burglary of a jewelry store to the police ten days prior to Smith's arrest. This witness had chased the burglar down the street, but was unable to overtake him. He was brought to the Detention Center to see whether he could identify

A lineup could take place at any place any time. There was no attorney present to protect the persons in the lineup and no record was kept of the proceeding for future review.

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Smith as the man he had confronted at the scene of the crime.

Smith was represented at the lineup by an attorney on the staff of the Voluntary Defender Association of Philadelphia. The Defender was there to make certain that the lineup was conducted in a constitutionally fair and orderly fashion. He performed this function by ascertaining that all of the men present were of approximately similar age, build, and color. The witness then positively identified Smith as the man whom he saw leave the burglarized jewelry store.

THE PRELIMINARY HEARING

Five days later, Smith was taken from the Detention Center to the divisional police court for a preliminary hearing before another Judge. The police officers who had searched Smith's home and arrested him appeared and testified as to the circumstances surrounding the arrest. The owner of the jewelry store also appeared and identified the stolen property as the jewelry which was missing from his store and which Smith had not bought or otherwise been given permission to possess. The witness reiterated his identification.

Because Smith did not have his own attorney due to lack of funds, he was represented at his hearing free of charge by a Voluntary Defender. The Commonwealth was represented by an Assistant

As noted above, this hearing took place the morning following the arrest.

The preliminary hearing was held whether or not the defendant had an attorney. Since the defendant was in police custody all night, he probably did not have sufficient time to contact

1969

District Attorney. The Judge decided that the Commonwealth had made out a prima facie case of burglary and held Smith for action by the Grand Jury. The Judge informed him that his case would be presented in not less than ten days to the Grand Jury then empanelled or to the Grand Jury to be empanelled at the next session.

Following this disposition, the Voluntary Defender asked the Assistant District Attorney and the Judge to consider setting bail for his client. Since Smith supported his wife and four children by means of a steady, though low-paying job, and since there was no evidence of any violence or threat of violence during the commission of the alleged offense, bail was agreed upon at \$2,000. Mrs. Smith obtained a bail bond from a bondsman and her husband was released to await his trial.

1959

an attorney. He, therefore, was not represented by counsel at this proceeding.

PRESENTMENT TO THE GRAND JURY

Several weeks later, Smith's case was presented to the Grand Jury, which heard the evidence against Smith and then approved a bill of indictment charging burglary, larceny, and receiving stolen goods. The defendant had a right to challenge the array of the Grand Jury by filing a petition alleging that the Grand Jury was improperly empanelled or was biased. If the defendant successfully moved to quash the subsequent indictment, the Commonwealth would then have had to give the defendant notice and present the case again to another Grand Jury.

There was no procedure to challenge the make-up of the Grand Jury, and the defendant was not told when his case was to be presented to the Grand Jury. He had no right to move to quash the indictment on these grounds.

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This creates an additional administrative burden for the District Attorney's Office.

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THE TRIAL ARRAIGNMENT

Approximately three months later, the defendant was subpoenaed to appear at a court arraignment in City Hall. A Deputy Trial Commissioner presided over this proceeding. He told Smith that the Commonwealth must provide counsel at trial for any defendant who cannot afford to retain his own attorney.

If the defendant was unable to obtain bail and consequently remained in prison awaiting his trial, he received legal assistance at trial from an attorney on the staff of the Voluntary Defender Association. However, if the defendant could afford to purchase his release on bail, then no attorney would be appointed to represent him free of charge. If the defendant had not retained an attorney by the time his case was scheduled for trial, he was tried without representation by counsel (except in a murder case).

Smith stated that he could not pay for his own lawyer, and he requested the appointment of a Voluntary Defender. The Trial Commissioner appointed the Voluntary Defender and then set a date and courtroom for trial. A representative from the Defender Association of Philadelphia was at the arraignment and referred Smith to his office for an interview.

A PRE-TRIAL HEARING

After reviewing the pertinent facts and the applicable law, the Voluntary Defender decided to file a petition in the Criminal Motions Court to challenge the constitutionality of

All evidence seized by the police was admissible at trial, including evidence obtained as the result of an illegal search and seizure. Therefore, suppression hearings were unknown. If the defendant

1969

the police search and seizure of the jewelry in Smith's house. A petition challenging the voluntariness of a confession was not filed, of course, because no confession was made by the defendant after he had been warned of his rights.

A court proceeding took place prior to the trial. Both officers who engaged in the search testified again before a Judge as to all circumstances surrounding the swearing-out and execution of the warrant. After this full evidentiary hearing, the Judge denied the defendant's petition and refused to suppress the introduction at trial of the evidence which was seized.

THE TRIAL

The trial before a Judge sitting in the Court of Common Pleas took place three weeks after the arraignment (one week after the pre-trial hearing). At the commencement of the trial, Smith entered a plea of not guilty and demanded a jury trial.

Smith's attorney then petitioned the court to suppress the lineup identification because of allegedly unconstitutional procedures. Before going any further into the case, the Judge heard evidence concerning the totality of the circumstances surrounding the lineup. He then ruled in favor of the Commonwealth that the defendant's constitutional rights had been protected.

1959

had given a confession to the police and thereafter his attorney alleged on his behalf that that confession was involuntarily made as a result of coercion, there would not have been a separate hearing on that issue. The jury alone would have decided the question of voluntariness.

Such a petition was not filed because the court would not have given it a hearing.

1969

The entire first two days of trial were consumed in the selection of a jury. The attorneys on both sides questioned each prospective juror individually, in a procedure known as "voir dire," to determine that the juror did not know any of the parties in the case and did not have any biases in favor of the defendant or the Commonwealth.

On the third day of trial, the Assistant District Attorney presented the Commonwealth's case against Smith. He introduced into evidence the jewelry that had been seized in the defendant's house. The owner told the jury about the burglary, and the detectives related the circumstances surrounding the arrest. The Commonwealth also produced the witness who placed the defendant at the scene of the burglary.

After the Commonwealth's case was concluded, Smith testified on his own behalf. Following the presentation of the defendant's evidence, both attorneys made final statements to the jury and the Judge delivered his charge. After two hours of deliberation, the twelve jurors returned with a unanimous verdict of guilty.

Prior to the imposition of sentence, the Judge informed the defendant of his right to file certain post-trial motions with the assistance of counsel. The defendant indicated his desire to petition for post-trial relief, and the Judge deferred sentencing pending the disposition of his motions.

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Selection of the jury was limited to general questions addressed to the panel of jurors collectively. This procedure seldom took more than a few minutes. There was no right to question prospective jurors individually (except in murder cases).

The rules of evidence were essentially the same in 1959 as in 1969.

The defendant was not told by the Judge of his right to file motions for post-trial relief. Nor was he entitled to the aid of counsel in the preparation and argument of these motions.

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A POST-TRIAL HEARING

Within seven days of the trial, the Voluntary Defender filed related motions for a New Trial and in Arrest of Judgement. When such motions are filed, the defendant has an absolute right to bail. Smith's bail was raised to \$4,000, but he was released pending disposition of his motions by the trial court Judge.

Approximately four months later the Judge heard formal arguments in court from the Voluntary Defender and from an Assistant District Attorney. The questions discussed were whether any reversible errors were committed at trial or whether the evidence was legally insufficient to sustain a verdict of guilty. The Judge denied these motions, and the defendant stood ready for sentencing. If the Judge had granted these motions, the Commonwealth would have had to go back to the stage of the arraignment for trial and set another time and date for the re-trial.

The defendant did not file any post-trial petition because he did not know that he could pursue such a course. Even if he did discover that this procedure were available, he would have had to write and argue his petition himself.

THE PROCESS OF SENTENCING

Because burglary is a serious felony carrying a maximum penalty of imprisonment for twenty years and because the defendant was convicted twice previously for the same type of offense, the Judge requested a presentence background and neuro-psychiatric report from the Probation Department. At this time, he com-

Sentence was imposed immediately after the trial.

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mitted the defendant to the County Prison to facilitate the presentence examination.

The presentence report took about ten weeks to prepare. Smith was interviewed and examined by a psychiatrist, a psychologist and a social worker in the prison during this period. He was then scheduled for another court appearance.

At that time, he was called before the trial Judge, and the Judge imposed a sentence of not less than three nor more than fifteen years in a State Correctional Institution. A Voluntary Defender and an Assistant District Attorney were present in court again. The Assistant District Attorney made a recommendation in line with the Judge's eventual disposition. This followed closely the recommendation contained in the presentence report. The Defender requested a brief sentence to be followed by a long period of probation, but this plea was to no avail.

There was no special hearing on the appropriateness of the sentence, and very few presentence reports were secured.

RIGHTS OF APPEAL IN STATE COURTS

The defendant was then informed of his right to appeal to the Superior Court of Pennsylvania and of his right to the assistance of counsel in the preparation and argument of that appeal. Smith decided to take an appeal and was provided again with an attorney from the Voluntary Defender Association.

Only defendants with extensive financial resources could afford to proceed on direct appeal to the Superior Court.

1969

Six months later, briefs were submitted and oral arguments were heard by the seven Judges of the Superior Court. An Assistant District Attorney and a Voluntary Defender again presented their sides of the case. Approximately three months after the date of argument, the Superior Court handed down its written opinion, which affirmed the trial court's disposition.

The defendant then requested the Voluntary Defender Association to file what is called a petition for allocatur in the Supreme Court of Pennsylvania.

That court, however, has discretion which it may exercise to refuse to hear certain cases which have already been argued in front of the Superior Court. The court exercised this option and denied Smith's petition.

Smith is currently serving his term in a State Correctional Institution. At the prison, he was advised of his right to file a petition for post-conviction relief under the Post Conviction Hearing Act. The prisoner has a right to be represented by counsel again in this proceeding, even though the issue raised in his petition may be frivolous and repetitious. If he alleges any fact which, if true, would entitle him to relief, he must be given an evidentiary hearing before a Judge in court.

The court proceeding takes place about six months after the petition is filed. An Assistant District Attorney again represents the Commonwealth in court. If the petition is denied, the defendant

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Post-conviction relief was available to a defendant in 1959, but not under the uniform system created by the Post Conviction Hearing Act. The defendant could proceed by habeas corpus, coram nobis, and other writs of relief which existed under the old English common law. However, he was not informed that he had a right to bring these writs, nor was he provided with counsel to present them. Therefore, such petitions were not frequently brought, and, when they were, they were written chiefly by the defendant himself in jail. There was no right to a hearing on the petition, and often it was dismissed by a Judge without any argument or presentation of evidence.

1969

has an automatic right to appeal this determination to an appellate court in the same fashion as his previous direct appeal. In some cases, he may be released on bail pending disposition of his petition, even though this Office may object vigorously to the setting of bail at this stage.

1959

However, if Smith was imprisoned in 1959 and remained in jail until now, he could raise in a petition in 1969 certain new issues which he could not have raised in 1959. For example, he could challenge now the makeup of the lineup then, and the court could grant him a new trial if it found that the lineup was fundamentally unfair.

RIGHTS OF APPEAL IN FEDERAL COURTS

If the defendant alleges any violations of Federal constitutional law, he is entitled to file a similar petition in Federal District Court after he exhausts his state court remedies. This Office represents the Commonwealth and its officials in all Federal matters also. An Assistant District Attorney must prepare and file a written answer to each such petition.

The District Court often holds an evidentiary hearing where both sides are again represented by counsel. If that court decides to grant his petition, it has the power to order a new trial. If it denies his petition, he may appeal further to the Circuit Court of Appeals. If relief is still denied, he may seek relief in the Supreme Court of the United States. That Court, however, is very selective in what petitions it will review.

Only a small number of criminal defendants from around the country have their cases presented to the Supreme Court each year.

The procedural right to file a petition in the Federal court structure was very similar to that right as it exists under the present system. However, the defendant had very few substantive constitutional issues which he could raise. The now complex and extensive law of search and seizure, confessions, etc., was just beginning to develop ten years ago. Very little court time was consumed on such matters, and very little work remained to be done by the District Attorney's Office after trial and sentencing. The situation is far different now.

1969

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The extensive procedural safeguards that have been outlined above are sufficient to ensure that each defendant is given every possible constitutional protection. As we have seen, he is given not one, but many days in court.

APPENDIX B
ADDITIONAL STATISTICS

Tables I-A and I-B show defendant processing by the Municipal Court for January and February 1971. Table I-A shows the number of defendants disposed by each method for each of nine categories of crime, totals for the other 33 categories and totals for all 42 categories. Table I-B shows the percentages disposed by each method for each category and for the aggregate categories.

"Removed to Juvenile" are those defendants whose juvenile status was determined by the Municipal Court and removed by it to the Juvenile Court.

Tables II-A and II-B show defendant dispositions by the Trial Division for 1970. Table II-A shows the number of defendants disposed by each method for each of nine categories of crime, totals for the other 33 categories and totals for all 42 categories. Table II-B shows the percentages disposed by each method for each category and for the aggregate categories.

TABLE - 1-A

DEFENDANT PROCESSING IN MUNICIPAL COURT FOR JANUARY AND FEBRUARY, 1971

CATEGORY	TOTAL DEF. PROCESSED	PRELIMINARY HRGS.			DISPOSED DEFENDANTS			REM. to Juvenile
		Total	Dism at Hrg.	Held Grand Jury	Acquitted Dism. Trial	Convicted Glty. Trial	Plea	
MURDER	71	74	7	64				
ROBBERY	323	319	54	265			1	3
ACCR. ASSAULT	267	264	108	156			3	
MINOR ASSAULT	556	389	210	179	1	44	111	1
BURGLARY	685	678	185	493			3	4
LARCENY AUTO EXCEPT	342	333	164	169		1	8	
NARCOTIC - DRUG	1257	1198	539	659		38	17	1
WEAPON OFFENSES	319	242	84	158	1	30	43	1
RAPE	81	80	11	69				1
OTHER (33 CATS.)	2250	1432	956	476	0	389	313	6
TOTAL ALL CATS.	6151	5006	2318	2638	2	502	499	17

Total cases disposed: 1128
under Municipal Court Jurisdiction + 2318 dismissed at Prel. Hrg. = 3446

TABLE II - A

1970 DEFENDANT DISPOSITIONS FOR THE TRIAL DIVISION OF COMMON PLEAS

CATEGORY	Defendant Disposed	Acquitted				Convicted				Trials		Sentence		
		Total	Dism. w/Ofrl.	Waiver Trial	Jury Trial	Total	Guilty Plea	Waiv Trl	Jury Trl	Waiv	Jury	Over 2 Yrs.	Under 2 Yrs.	Probab or Other
Murder	452	139	37	77	25	313	135	151	27	228	52	185*	47	81
Robbery	1330	480	244	218	18	850	338	485	27	703	45	356	234	260
Aggr. Assault	1177	495	224	258	13	682	216	454	12	712	25	79	158	445
Minor Assault	1359	552	236	314	2	807	253	546	8	860	10	21	138	648
Burglary	2613	872	360	511	1	1741	824	911	6	1422	7	115	557	1069
Larceny Except Auto	1827	709	303	405	1	1118	563	552	3	957	4	43	243	832
Narcotic-Drug	2848	1419	679	739	1	1429	576	852	1	1591	2	70	179	1180
Weapons Offense	1045	525	198	325	2	510	180	338	2	663	4	10	89	421
Rape	552	238	106	114	18	314	120	167	27	281	45	91	74	149
Other (33 Categories)	2642	1399	717	675	7	1243	517	709	17	1384	24	59	165	1019
TOTAL-All Cats.	15, 845	6828	3104	3636	88	9017	3722	5165	130	8801	218	1029*	1884	6107

*include 1 death sentence

TABLE I-B

DISPOSITION PERCENTAGES

DEFENDANT PROCESSING IN MUNICIPAL COURT FOR JANUARY AND FEBRUARY 1971

Category	Total Defendants Processed	--Preliminary Hearings-- Total Hearing Dism at		Gr Jury	--Acquitted-- Dismissed Trial		--Convicted-- Glty Plea Trial		REM to Juvenile
Murder	71	100	10	90					
Robbery	323	99	17	82				+	1
Aggr Assault	267	99	40	59				1	
Minor Assault	556	70	38	32	+	8	2	20	+
Burglary	685	99	22	72				+	1
(Except Larceny Auto)	342	98	48	50		+		2	
Narcotic-Drug	1257	95	43	52		3	+	1	+
Weapon Offenses	319	76	26	50	+	10	1	13	+
Rape	81	99	13	86					+
Other (33 Cats)	2250	64	42	22		17	5	14	+
TOTALS. . .	6151	81	38	43	+	8	2	8	+

+ = Less Than 0.5%

18%
+38% = 56% disposed by Municipal Court

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DISPOSITION PERCENTAGES

+ less than 0.5%