

DELAY AND THE QUALITY OF JUSTICE:

A Management Study of the Erie
County Criminal Court System



by

Northwest Regional Planning Unit
Governor's Justice Commission
Commonwealth of Pennsylvania

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INTRODUCTION

In the winter of 1972 Mr. Gordon Kennedy, the Erie County District Attorney-elect and Dr. Robert Rhodes, discussed the desirability for a management study of the District Attorney's office and of the Erie Criminal Courts.

A number of traditional problems in a District Attorney's office --- court calendar, court backlog, lack of coordination between the criminal justice agencies and departments -- were reviewed. In addition, Mr. Kennedy requested an examination of administrative procedures and actual tasks performed by personnel in the District Attorney's office, and requested recommendations for reorganizing his office to provide better interfacing with other agencies, avoid duplication of effort and generally improve the quality of justice.

As a result of discussion with the District Attorney and subsequent discussions with the Honorable Edward Carney, President Judge of the Erie County Courts, the Northwest Regional Planning Unit of the Governor's Justice Commission agreed to do a management study of the Erie County Courts with particular reference to the office of the District Attorney.

It should be obvious that such an undertaking could not be done without the explicit cooperation and assistance of the members of the bench in Erie County and of the District Attorney's office. The planning unit would also like to extend its appreciation to all of those individuals in private and public life who gave generously of their time for interviews and lengthy informal discussion. A word of thanks must especially be

extended to Joseph Riggione of the Bureau of Criminal Justice Statistics, Pennsylvania Governor's Justice Commission for his superlative efforts on our behalf. The Commission provided free computer time and data from their criminal justice data bank in Harrisburg. Edinboro State College also provided free computer time and Professor Marie Palmer of Edinboro State College provided valuable technical advice. Without this assistance the court study could not have been completed.

THE SETTING FOR THE PROJECT

The Erie County Court system has neither the high volume of case pressures of Philadelphia, nor the bucolic, even pace of suburban or rural county courts. The Court serves a SMSA of approximately 264,000. Its 18 police departments and state police installations in the county reported 4,778 serious crimes in 1971¹ and in the same year approximately 1,326 criminal cases² reached the Erie District Attorney's office.³

Key personnel in the Erie County criminal courts include 17 magistrates and five Judges sitting on the Court of Common Pleas. The District Attorney's office professional staff number 7 part-time attorneys who, nevertheless, work full time during criminal court and much of the remaining time as well, a full time County Detective and his assistant and the District Attorney, who is part-time.

¹Uniform Crime Report 1972, Federal Bureau of Investigation, page 82.

²1972 Report, Pennsylvania State Court Administrator's Office, Philadelphia, page 82.

³This court data does not include cases dismissed at preliminary hearings and crimes not cleared by the police. It must also be pointed out that several crimes may be prosecuted in a single case. Discrepancy between crimes and the number of cases entering the court system is not atypical.

GENERAL OBJECTIVES OF THE STUDY

As a frame of reference, two questions were initially raised by the study project. The first posed how the operations of the court component of the criminal justice system could be made more efficient. The second question asked to what extent were current administrative practices affecting the quality of justice.

Current emphasis on increasing the efficiency of the criminal justice system, while assuring a high quality of justice raises a question that goes to the heart of a dilemma in criminal justice planning. If the "efficient" functioning of the prosecutor's office means obtaining a conviction with a minimum commitment of resources in as brief a span of time as possible, that function contradicts another function of the courts, to protect the innocent by requiring adherence to due process. The dilemma is that criminal due process, to paraphrase the late Justice Black of the U.S. Supreme Court, to some extent makes the criminal justice system inefficient with respect to determining guilt in order to protect the innocent. President Nixon indicated the importance of recognizing the juxtaposition of efficiency values and cautious deliberation when he said to the American Judicature Society:

The ultimate goal of changing the process of Justice is not to put more people in jail or merely to provide a faster flow of litigation-- it is to resolve conflict speedily but fairly, to reverse the trend toward crime and violence, to re-instill a respect for law in all of our people.¹

¹President Nixon, "The President's Message," Judicature, Vol. 54 (May, 1970) pp. 404-409.

In addition, the importance of maintaining a vigilant attitude with regard to the quality of justice equal to that of the certainty of justice toward offenders is a state policy of both Governor Milton Shapp and the Executive Director of the Governor's Justice Commission, Dr. E. Drexel Godfrey.

Consistent with the policy of the Governor's Justice Commission and with the concern of the Erie County District Attorney's office for fairness to defendants, this study project has attempted to assess degrees of efficiency for two juxtaposed objectives: a.) assessing management and communication in the Erie County courts relative to speedy disposition, and b.) assessing the quality of defense afforded those accused of crime.

Speedy disposition of street crime offenders has a direct relationship to deterring crime. A number of studies have demonstrated that recidivism increased among bailed defendants as the period between initial arrest and trial or plea lengthens.¹ Moreover, there is reason to believe that speedy justice has a general deterrent effect on other potential offenders as well. Consequently, delay in criminal proceedings is a crucial dependent variable when examining court calendaring and management within the Erie County Court System.

¹See: J.W. Lock, R. Penn, J. Rick, E. Bunten, and G. Hare, Compilation and Use of Criminal Court Data in Relation to Pre-Trial Release of Defendants: Pilot Study. National Bureau of Standards Department of Commerce, U.S. Government Printing Office, p. 164-165. The study demonstrated that the peak period for recidivism of bailed defendants was between 120 and 240 days after the first arrest. Subsequently studies have generally confirmed the relationship between extended delay of adjudication and recidivism.

Any study of this nature requires a great deal of experimentation, experiences inevitable false starts and demands an awareness of the need for constant modification as tentative conclusions are reached regarding the bewildering complexity of the criminal justice system. Although the study does not shy away from recommendations, its conclusions must be considered preliminary to continuous inquiry, considering the embryonic nature of court management technology in middle level counties. Court data is not designed for research, and is rarely in a form which permits statistically significant generalization of behavior. This is the case even in the most sophisticated of automated court information systems, and is especially true regarding the serviceability of data on court calendaring and delay.¹ All statistical analyses in this report are based on the most reliable court data available; yet, the quality of that data does not permit tests above the descriptive, lower levels of statistical analysis. Consequently, any generalizations which are ventured must be considered in light of data limitations.

The size of the County immediately presented a problem to the researcher. The current literature of court management is replete with "system" models with a variety of purposes and intriguing variables to be measured in a criminal justice system. But with few exceptions, the literature does not provide very much

¹For a review of research difficulties in measuring the relative impact of comparative court calendars see: Eldridge Adams, The Feasibility of Measuring and Comparing Calendaring Effectiveness, National Technical Information Service, U.S. Department of Commerce, pp. 13-32.

assistance for urban county areas of moderate size. This is unfortunate considering the fact that 22% of the urban counties in Pennsylvania, comprising 64% of the urban county population of the State, lie between 623,000 and 125,000 in population. (The above assumes a county in excess of 125,000 may be considered "urban".) Erie County lies in the middle range of such moderate size urban counties with a population of 263,654. The volume of its court of Common Pleas case flow makes its problems comparable to those of the majority of the urban counties in the State of Pennsylvania.

Not only is research limited with respect to middle level urban court systems operations, but technical assistance for court management is also limited at this level. A brief review of what technology is available to assist the office of the prosecutor in managing his case load will put this problem and the recommendations that follow from this project into perspective.

One of the most sophisticated system models for prosecutor management, Prosecutor Management Information System (PROMIS) is now operational in the District of Columbia. PROMIS is a computer based system to assist the prosecutor of the District to improve the allocation of his resources. The system has the capability of providing data services in three categories which are helpful for prosecution and management decisions in the District Attorney's office. The first category of data relates to Priority Case Listings, and is designed to identify priority cases to prosecute. Priorities identifications are

* 1971 Pennsylvania Statistical Abstract, Bureau of Statistics, Harrisburg, Pennsylvania, p. 13.

based on three factors: a.) the Sellin-Wolfgang seriousness scale for criminal offenses; b.) the probabilities of obtaining a conviction; c.) the previous offenses of the defendant. The second category, automated notification, communicates information regarding trials, hearings and indictments to witnesses, police officers, expert witnesses, defense counsel, and defendants.

The third category provides management information on calendar breakdown, conviction rates, dismissals, delays in the system and defendants with multiple cases pending. The volume of crime types and their dispositions are then sorted and displayed by charge, bail status, prosecutor and defense counsel.¹

Other computerized models have been developed to assist planning efforts throughout the criminal justice system. In Pennsylvania, both the planning agencies of Philadelphia and Allegheny have operational models which "simulate" the flow patterns and related costs of offenders which enter the criminal justice system and are variously disposed of at each functional decision point in the system. Additionally, many courts in Pennsylvania (Allegheny, Philadelphia, Bucks, Delaware, Montgomery, Beaver) have data processing systems designed to

¹ System Overview and Report Formats for PROMIS A Computer Based System for the U.S. Attorney's Office for the District of Columbia. Prepared for the District of Columbia Government Office of Crime Analysis, May, 1971. For a brief review of the system see: Frederick G. Watts and Charles R. Work, "Developing an Automated Information System for the Prosecutor." American Criminal Law Quarterly, Vol. 19, No. 1, Fall, 1970 pp. 164-169.

improve procedures by reducing manual operations of personnel, keeping court records or improving overall court management.¹

Many of the above management information and general data processing plans have made major contributions to upgrading criminal justice planning, management and research. However, existing models may not be related to the problems of the Erie Courts for a number of reasons.

The major liability is that data processing systems and management information systems may be too expensive in the small urban county of less than 600,000 population. Although existing systems have been installed in several moderate size counties, it is questionable if their advantages outweigh the expense of installing hardware and employing technical personnel. The exception occurs when moderate size urban counties utilize data processing for multiple purposes. If a county, city or both jurisdictions have developed a computer center for tax assessments, payroll automation and the like, expanding computer capability for criminal justice data processing and information will not necessarily be prohibitively expensive.²

While there has been an explosion of government sponsored research and planning for the criminal justice system in recent years, it is unfortunate that very little attention has been

¹ For a general account of computer based information systems application to the Courts see: Gerald S. Blaine, "Computer-Based Information Systems Can Help Urban Court Problems", Judicature, Vol. 54, November, 1970, pp. 149-153.

² For a survey of existing computer applications to court management in the United States, see: Systems Technology and the Michigan Courts, a preliminary survey by the special industry advisory group for the Michigan Supreme Court, Chrysler Corporation, Ford Motor Company, General Motors Corporation, September 29, 1971.

directed toward problems of the smaller urban counties with populations between 125,000 and 600,000 which are also in need of less sophisticated management information assistance. There are 23 county court systems that fall into this category in Pennsylvania, comprising 64% of all urban population in Pennsylvania.¹ It is generally acknowledged that sophisticated data processing is not justified on a cost-benefit basis for court systems serving populations under 600,000.² Indeed, the previously discussed PROMIS system was designed for a city handling over 30,000 serious cases in the prosecutor's office annually.³ Clearly, the Erie County court system does not have the volume of cases that merit the hardware and personnel expenses of a large metropolitan court. Yet, its conceptual problems of tracking cases and examining delay are not unlike a large urban center.

Consequently, this study analyzed the Erie County District Attorney and Court management problems without the assistance of previously developed operational models. In the process of collecting necessary data, the study also sought to provide a preliminary assessment of the possibility of developing an information system for the District Attorney's office and the Erie Court based on already existing information systems at the state

¹U.S. Bureau of the Census, 1972, Table 7, p.10

²President's Commission on Law Enforcement and the Administration of Justice, Task Force Report on Science and Technology, p. 77. The exception to this generalization occurs when computer time and personnel are shared with other public institutions.

³Watts and Work, pp. 165.

level while modifying these designs to meet the unique needs of Erie County.

FOCUS OF THE STUDY ON THE DISTRICT ATTORNEY'S OFFICE

It may appear novel to concentrate on the prosecutor as a point of departure for a study of management and calendaring in the Erie County Courts. The reason for this approach is that the prosecutor is the major decision maker in the criminal court prior to trial. It is he who decides on the indictment charges, on whether or not to drop charges, nolle a case or to reduce charges in return for a plea. The prosecutor performs a major function in "gate keeping", regulating the flow of cases proceeding to the trial courts. More than any other officer in the criminal justice system, excepting perhaps the arresting officer, the prosecutor has broad discretionary power. Such discretionary judgments generate policy considerations in the dispositions of cases which enter the District Attorney's office, and this makes him the focus of the system.

Considering the policy making function which the prosecutor must exercise, the prosecutor also needs current information to assist him in making informed judgments and in allocating scarce resources for priority cases. This is not to suggest that the judiciary does not have supervisory responsibility over prosecutorial decision making. Legally, a dismissal, nolle prosequere or guilty plea requires judicial review and approval. Yet, in any judicial system where there is a heavy flow of cases, the judiciary must rely heavily upon the prosecutor for policy judgment regarding pre-trial dispositions. The major responsibilities of the judiciary are focused at the hearing and trial level.

Judicial decision-making is adjudicatory, not administrative and strategic. The courts need for systematic information is at the supervisory level, not at the day by day decision-making level of the District Attorney, who must make the crucial decisions as to how various types of cases are to be handled.

METHODOLOGY

Methodologically, the study required an eclectic approach. This was especially necessary since the initial stages of our inquiry could not be specifically focused until more was known about the routine workings of the system. Three methods were utilized to examine court delay. A flow chart of all legal documents from preliminary arraignment up to trial was developed to permit examination of time lapses between various stages in the document flow. This proved to be useful primarily for assessing delay at the magistrates level and in orienting the research staff to structural problems affecting delay in the entire court system. Extensive interviews were conducted to quantify routine times to process the documents indicated on the flow chart. The operationalization of a "critical level" of work at the magistrates level is provided on page 21 and concerns itself with objective 5.

Structured and open ended interviews were also conducted with members of the bench, the District Attorney's staff, former District Attorneys and staff. These interviews proved useful not only for quantifying internal document flow time periods, but for opening up problems for further inquiry.

In a second phase of the study, a series of measurements were developed to indicate crucial operations in the District Attorney's office and in the Court of Common Pleas. The impact of the Court Calendar on delay, the case disposition, court backlog and work loads was assessed. In addition, comparative

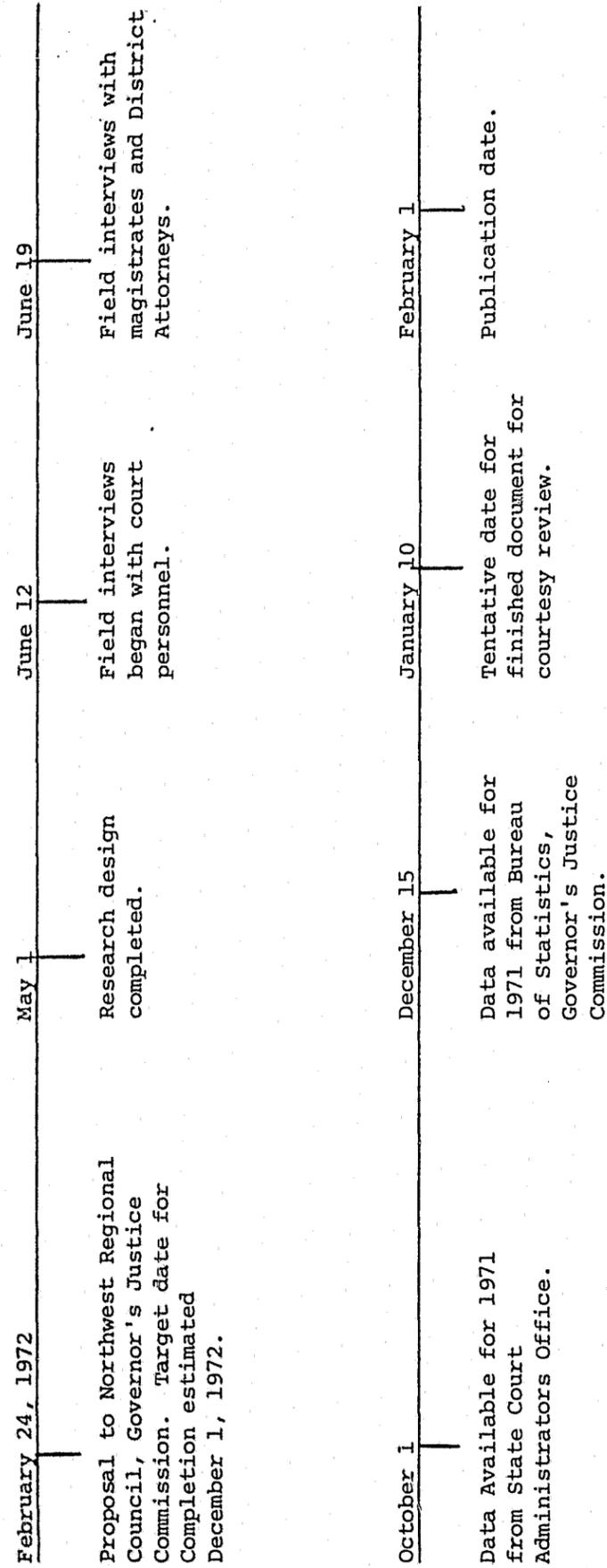
analysis was performed for private counsel and public counsel with respect to delay and disposition. An assessment was also made of delay-time for defendants awaiting trial without bail, especially as delay-time is related to the court calendar. The specific measurements employed in assessing the Court of Common Pleas are discussed in sequence throughout the study. Data for most calculations of court operations was collected from reports by the Clerk of Courts office to the Bureau of Criminal Justice Statistics, Governor's Justice Commission and the State Court Administrator's Office. Some monthly filed court data originated from the Erie County Court Administrator's Office, and still other data was available at the Erie Police Department, State Police, Erie Municipal Police Department, County Jail, and the Uniform Crime Report of the Federal Bureau of Investigation. Members of the Northwest Planning Unit of the Governor's Justice Commission were responsible for the collection of all necessary data.

RESEARCH OBJECTIVES

1. Description of existing office positions and responsibilities in the criminal justice system as they relate to the District Attorney's office.
2. Description of existing work-tasks in all offices in the criminal justice system which affect directly the operations of the District Attorney's Office. "Affect Directly" refers to formal or informal documents and informal communications that are received by the D.A.'s office from another office or are initiated in the District Attorney's office.
3. Description of legal decision points (preliminary arraignment, preliminary hearing, Grand Jury, trial, etc.) as variables in the operation of the District Attorney's office.
4. Description of work functions in the flow of documents and formal decisions preparatory to dispensing justice. The objective is to isolate tasks which are dependent on concurrent fulfillment of work functions of others.
5. Analysis of work functions, communication and time expended by key personnel in the criminal justice structure as it relates to the District Attorney's office. The object of such analysis is to determine overlapping work functions, stress points, potential areas where reorganization can improve efficiency, procedures which can be streamlined by technology.

6. Comparative analysis of court inventory or backlog in Erie County and other comparable County Courts in Pennsylvania (1970-1972).
7. Analysis of time lapse between docketing and the disposition of a case and its relationship to the criminal court calendar, the type of offense, and patterns of arrest in Erie County.
8. Analysis of final dispositions and their relationship to the court calendar.
9. Analysis of time lapse between docketing and disposition; the type of disposition compared to the type of counsel (privately retained, court appointed or public defender).
10. Analysis of cell-days of incarcerated defendants and the period of arrest and the court calendar.
11. Recommendations of the study. The recommendations will also comment on the feasibility of a Management Information Retrieval System for the criminal courts of Erie County. The MIRS should provide for a reasonable cost both the District Attorney's office and the President Judge's office a procedure to obtain practical statistics indicating delay and dispositions at given stages in the system, and indicate plausible systemic factors influencing delay and dispositions. The system should be interfaced with the Bureau of Criminal Justice Statistics, Department of Justice and the Pennsylvania Court Administrator's Office in Philadelphia.

TIME SCHEDULE FOR ERIE
COUNTY COURT STUDY



FINDINGS OF THE STUDY (OBJECTIVES 1-5)

A principal purpose of the study was to examine "critical flow paths" in the processing of defendants from the time of arraignment up to appeal. "Critical path" is a term associated with a standard management technique for analysing a "process" whose efficiency depends upon interdependent tasks being performed in proper sequence.

Let us take an illustration from industry. A contractor is to build a bridge over a river. A certain time must be allotted to surveying the width of the bridge, the depth of the river and the quality of construction materials needed to withstand the stress. At the same time, he must order the cable, cement, steel supporting, and other materials, hire the employees to lay the cement supports, hire other specialists to perform highly skilled tasks. All cannot be done at once; yet all tasks must be coordinated and performed sequentially to avoid delays in the project. For example, if the skilled workers in charge of laying the cable are hired before the unskilled workers have prepared the cement substructure; they necessarily must wait around with nothing to do. If they are hired sometime after the substructure is completed the late hiring will hold up the project.

The same problem of coordination and sequential scheduling occurs in an urban court system such as Erie County. An indictment cannot be returned unless the defendant has an attorney, indictment papers have been prepared, and district attorneys, witnesses and judicial personnel are available.

The absence of any of these elements results in the entire procedure being delayed. Through examining clusters of interrelated work functions, "critical paths" in the entire criminal justice process were identified and analyzed with an eye to improving coordination of effort. It was anticipated that at the magistrates level analysis of related work tasks in the processing of documents would suggest improved procedures leading to better coordination of activities.

The first step in assessing the adequate scheduling, overlapping work functions, managerial delays and general administrative procedures was to identify "critical paths" in the processing of defendants. Initially, the District Attorney's office was the subject of this inquiry, but it quickly became apparent that any useful examination of administrative procedures and scheduling had to include magistrates, sheriffs, courts and corrections. For identifying a critical path (or paths) the flow of documents (See flow chart) which either originated or passed through the District Attorney's office was plotted. Structured interviews were then conducted with 60 individuals who either handled these documents once on a routine bases, or had considerable experience and expertise in the past with the courts and could provide additional insight in the operations of the courts.

The principal objectives of the interviews was to quantify procedural time consumed for each individual office dealing with criminal justice systems documents essential to an orderly processing of defendants. Of specific interest were prerequisites to beginning a task, completing the task, frequency of task, special

time periods, average work times (times expended on a given task) and total elapsed time (time expended on a given task, including interruptions). A second intent of the interviews was to provide a first-hand check on the accuracy of our efforts to model formal and informal communication flows through the courts, and to familiarize the researcher with the actual operations of the system.

Below is the model developed to calculate the critical flow level of the magistrates office.

CRITICAL FLOW PATH AT MAGISTRATES LEVEL FOR THE CITY OF ERIE

e = elapsed time (includes interruptions)

f = frequency of task

t = total time available

S = system overload

so that: $\frac{e f}{t} = S$

When all magistrates workloads in the system were calculated, a system overload along the critical path did not appear. That is "S" did not exceed the value of 1.00. This means that, taken collectively, the weight of criminal work did not exceed the amount of time the magistrates had to complete it. Consequently, a critical path was calculated for the magistrates in the City of Erie alone during peak crime periods. Arrest patterns per month in the City of Erie were examined to indicate at what times overload in the magistrate courts were likely to occur.

Arrest patterns are heaviest, as the following chart illustrates, in the months of June, July and especially August. (See Graph A)

Data on maximum-minimum times for processing offenders at various stages had already been collected from interviews. Maximum process time (time expended to complete tasks including interruptions) had been calculated at various stages in the criminal justice systems of Erie County.¹ Process times were then multiplied against offenses per week to assess the extent of system overload at critical junctures. The following values were substituted in the formula for Erie Magistrates based on the data collected by the researchers.

e = 1.6 hours

f = 397 (Month of August)

t = 1020 hours (8 hour day, 4 weeks in a month)

$$\frac{635.2}{1020} = S$$

$$62\% = S^*$$

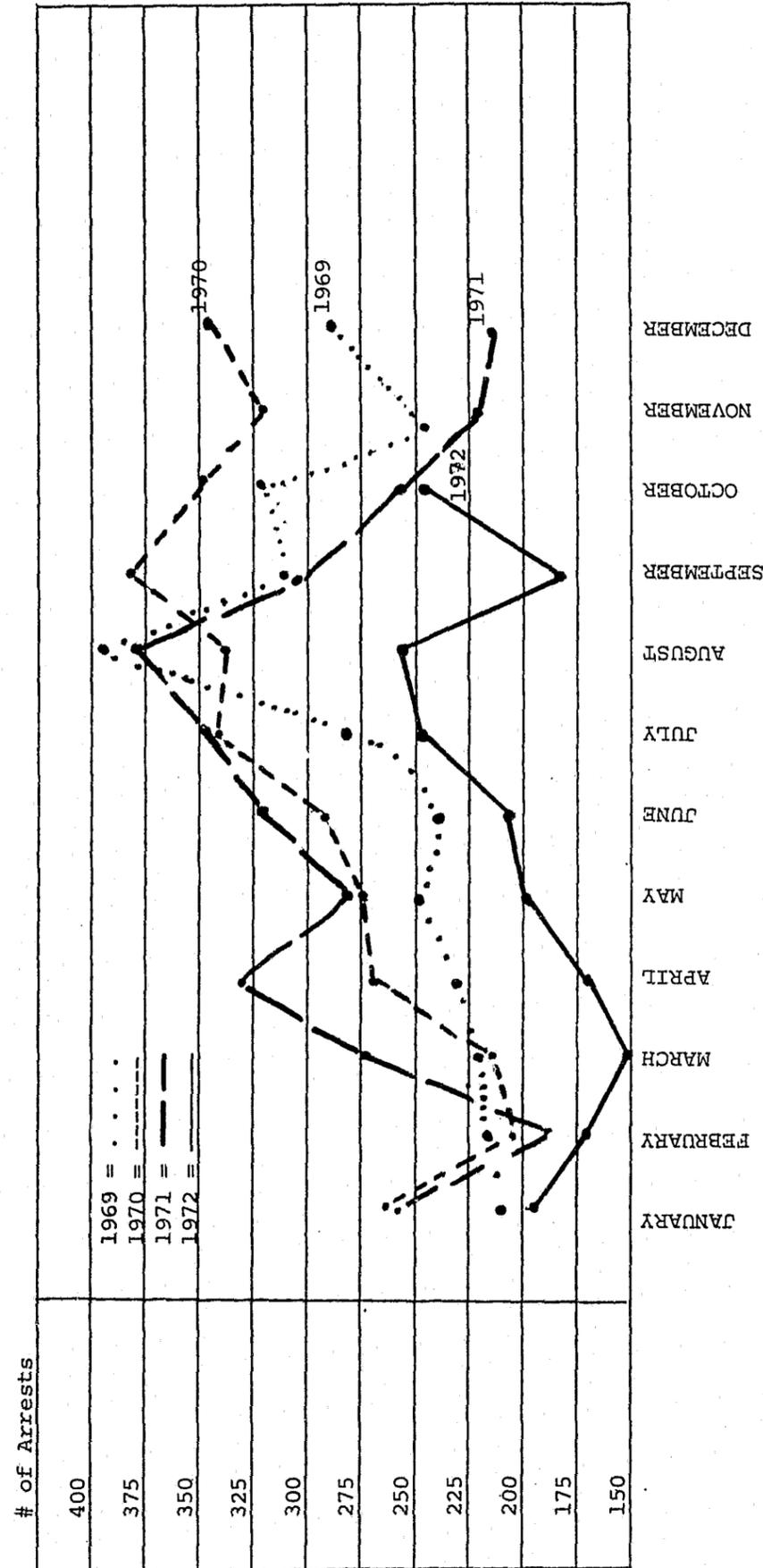
¹ See foldout, Flow of Documents in Erie Court.

* Preliminary hearing work-time data was collected, but no reliable records are available at the present time on the total number of preliminary hearings per month in Erie County. District Magistrates did consistently call to the researcher's attention two problems. The first refers to the absence of a D.A. at many preliminary hearings. The Magistrates pointed out that police officers are unable to compete in an adversary climate with defense attorneys in "show cause" hearings. The absence of County Attorneys, in their judgment, creates excessive pressure on the arresting officers. Unfortunately, insufficient data on preliminary hearings does not permit generalizations to be made regarding the impact of preliminary hearings on delay or the quality of justice. However, the District Attorney's office has commented that the absence of full-time District Attorneys does strain the office's ability to attend many preliminary hearings.

GRAPH A

ARRESTS BY MONTH IN CITY OF ERIE

January 1969 - October 1972

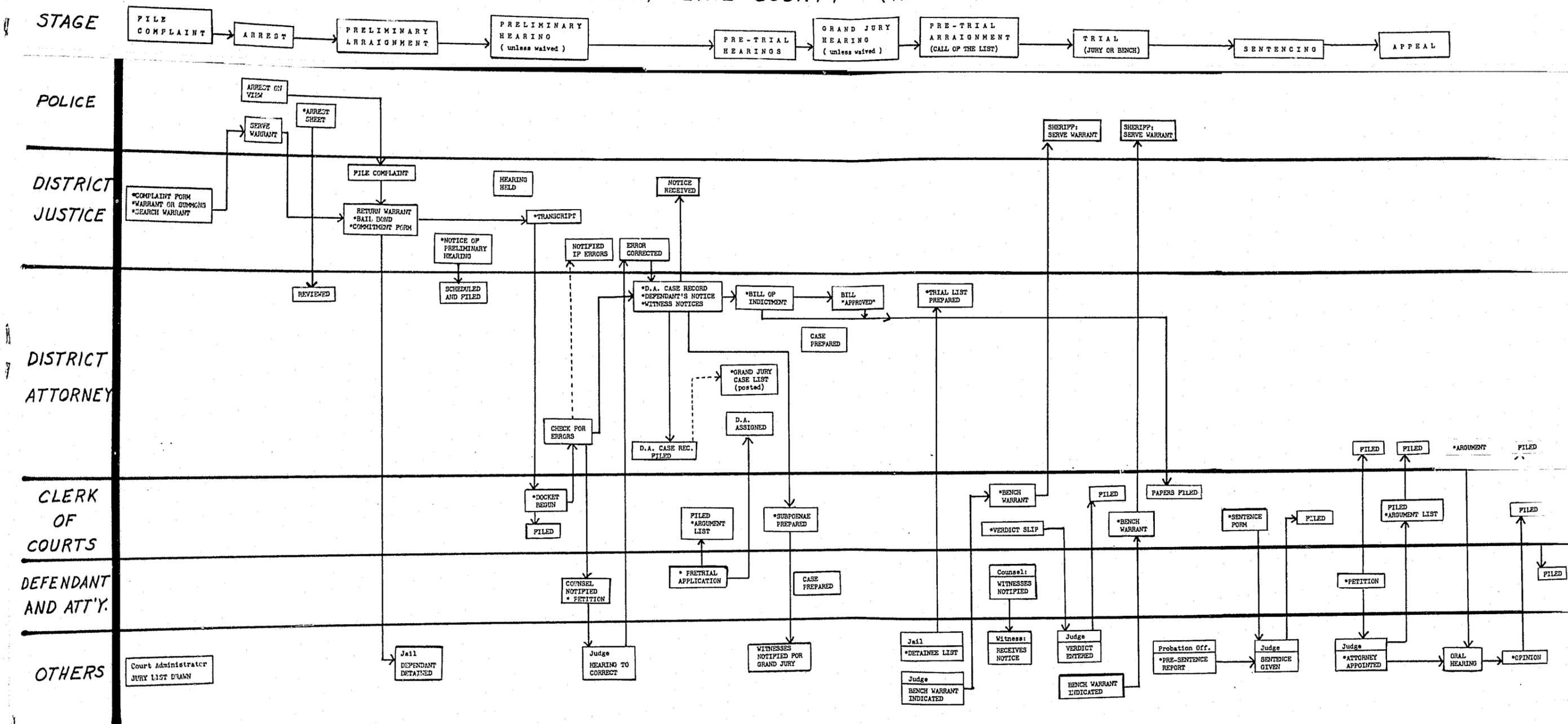


Note: Crossroads Pick-up became official Policy October, 1971. This reduced considerably the arrest rate between October, 1971 and October, 1972.

62% refers to the fact that criminal justice responsibilities take up approximately 62% of a magistrates time in Erie in August. Obviously, if the critical level is not approached in August when the flow of offenders is greatest, it is safe to conclude that there is not system over-load at the magisterial level deducible from our data. Such a conclusion does not mean that individual workloads are not, on occasion, severe. The formula for assessing a critical period in the magistrates office assumes that criminal responsibilities of the magistrates take precedence over civil case loads at the magistrate level. But the data does mean that regularized overload cannot be detected for criminal cases in the magisterial sub-system.

An identical approach was used to assess possible overload in the District Attorney's office. Primarily this approach was useful to examine clerical procedures to facilitate staff efficiency. Minor changes will be recommended to the District Attorney based on these examinations. However, "critical paths" in the District Attorney's Office and in the Erie Court System as a whole with regard to the court calendar require different techniques of analysis than workloads secured by interview. It is to this analysis that we now turn.

SIMPLIFIED CASE DOCUMENT FLOW, ERIE COUNTY (ADULTS)



DELAY, CALENDARING AND THE QUALITY OF JUSTICE

Each prosecutor in the District Attorney's office in Erie County has an average docket of cases compared to other counties in the Northwest service Region of the Commonwealth. (See Table 1) This statement must be qualified by the fact that serious crimes tend to be more prevalent in Erie County than elsewhere, with some exceptions. For example, in 1971 and 1972, Erie County handled 47% of all interpersonal crime and 40% of all property crime in the Northwest Region, whereas the prosecution staff represented 28% of total prosecutor resources for the Northwest.¹ Robbery is perhaps one of the more accurate indices of reported crimes, and of all robbery offenses reported for 1970 alone, Erie County accounted for over 58% within the 14-county area.²

¹Northwest Regional Planning Unit, Report to Northwest Regional Planning Council, September 7, 1972, Table at p. 39 (Page 27, this report).

²Ibid., table at page 30.

TABLE 1

1970 & 1971 PROSECUTOR AND CRIMINAL CASE FLOW DATA

District (in order of population)	Part- Time DAs	1970 Cases Received	1971 Cases Received	% Change	1970 Cases Disposed	1971 Cases Disposed	2-year Change in Backlog (1970-71)	Inventory of Cases 12/31/71 (Backlog)	Inventory as % of cases disposed	1971 cases per D.A.
Erie	7	1,511	1,326	-12%	1,143	1,233	+461	376	30%	189
Mercer	4*	541	584	+ 8%	631	492	+ 2	264	54%	146
Lawrence	2	437	323	-26%	190	401	+169	42%	162	
Crawford	2	427	452	+ 6%	311	443	+125	189	43%	226
Clearfield	1	346	446	+29%	246	433	+113	113	26%	446
Venango	1	237	286	+20%	133	187	+203	365	195%	286
Forest- Warren	1-2	287	310	+ 8%	203	300	+ 94	96	32%	103
McKean	1	217	224	+ 3%	248	218	- 25	26	12%	224
Cameron- Elk	1-1	114	168	+47%	124	155	+ 3	21	14%	84
Jefferson	1	273	361	+32%	188	342	+104	131	38%	361
Clarion	1	227	302	+33%	178	277	+ 74	82	30%	302
Potter	1	97	76	-21%	120	78	- 25	29	37%	76
TOTAL	26*	4,714	4,858	+ 3%	3,715	4,559	+1,298	1,861	41%	187

*Mercer County has one full-time and two part-time DA's which is equivalent of 4 part-time D.A.'s.

COURT BACKLOG IN ERIE COUNTY COURTS (OBJECTIVES 6-8)

Erie County in 1971 had the lowest annual court backlog of the 12 most populated counties in the Commonwealth. Consequently, the annual volume of civil and criminal cases flowing into the Erie County Court system would not appear to be serious considering the size of the metropolitan area.

TABLE 2¹

The twelve most populated judicial districts comprise 62.2% of the State's total population and account for inventory of open cases.

Judicial District	Percent of State Inventory	Percent of State Population
Philadelphia	28.8%	16.5%
Allegheny	23.8%	13.6%
Montgomery	6.9%	5.3%
Delaware	3.2%	5.1%
Bucks	4.3%	3.5%
Westmoreland	1.4%	3.2%
Luzerne	2.3%	2.9%
Lancaster	2.6%	2.7%
Berks	1.0%	2.5%
Chester	2.3%	2.4%
York	1.7%	2.3%
Erie	.8%	2.2%
Total of Above Judicial Districts	79.1%	62.2%

¹ 1971 Report of Court Administrator's office, p.4.

However, the vagaries of court scheduling are an additional consideration regardless of the annual cases which a criminal court handles. The Erie criminal trial court does not operate on a continuous basis. It normally meets for grand jury and trial once during each of four criminal court terms. Normally, these sessions are held in February, May, September and November. Ideally, the scheduling of the criminal calendar should be consistent with the number of defendants who enter the court system at a given time. If criminal court schedules do not permit trials to be held when both the defense and prosecution are prepared, evidence gets cold, defendants must languish in jail, and justice is delayed with inconvenience to defendant, victim and police officer alike. In addition, the relative weight of cases in a particular court session may also affect the decision to prosecute. There is ample literature demonstrating the relationship between the weight of cases in a given court jurisdiction and the tendency to dismiss or nolle a case.

Analysis of the flow and number of offenders into the system over a given time period can indicate to what extent the Erie County Court schedule contributes to delay. It was hypothesized that: a.) the differential rates of new cases flowing into the separate court sessions will contribute to the relative delays experienced in litigating criminal cases, and b.) the differential rates will influence the decision to prosecute.

Arrest patterns vary with seasons of the year, as well as with a number of other factors. As has been previously pointed out in the County of Erie, the month of August represents a higher

TABLE 3

MEAN ACTIVE CASE INVENTORY
PER COURT SESSION 1970-1972

	Mean Inventory	% of deviation from mean
February	1137	-7
May	1207	-2
September	1327	+8
*November	1235	+1
All Sessions	1227	

Source: Erie County Court
Administrator's Office.

*Note on tabulating cases by court term. All data is taken from reports which the Erie County Court Administrator's Office provides for the State Court Administrator's Office. Although these reports are designed to provide annual statistics, they are filed monthly and are therefore useful for assessing seasonal fluctuations in the court docket and output. The researchers for this study utilized the reports in the following manner. Monthly total of transcripts of cases received by the Erie County Court Administrators office were pro-rated to the date on which the grand jury ended its business for criminal court session. However, guilty pleas, nolle prosequis and dismissals (other dispositions) during a month in which criminal court was in session were apportioned 100% to the term of court for that month. Figures for pending cases begin with Jan., 1970, including holdover cases from the last court session in 1969. New cases are added up to the last day on which the Grand Jury was in session.

The monthly reports represent the only convenient and reliable figures on monthly input and output available for the Erie County Court of Common Pleas. But the data must be treated with caution. The reports are inconsistent since sudden, inexplicable drops occur in the number of pending cases. It should be understood that the monthly report of a criminal court for concluded cases reflects the month of sentencing and not the actual time of the trial for cases resulting in conviction.

proportion of arrests than any other month of the year, and this is a consistent pattern. (See Graph A) However, the trial calendar is not based on arrest patterns, but on the traditions of the law. Consequently, the September court reflects a case load much more severe than that of other criminal sessions since it reflects summer arrests and a 4-month lapse between the May and September courts. Theoretically, the difference in work load for police, prosecutors and judges may produce different decision patterns in prosecution strategy and produce varying delay periods in the adjudication of crime.

Total case inventories and new cases entering the criminal courts during the four criminal sessions are indicated in tables 3 and 4.

However, many cases are "held over" several terms, thus confusing the pattern of "heaviest dockets" as it is affected by the seasonal variations of crime. The following table includes only new cases entering the court per term and more accurately reflects the relatively heavy weight of cases in the September court.

TABLE 4
AVERAGE OF CASES NEWLY INITIATED
PER CRIMINAL COURT SESSION (1970-1972)

Term	Number	% of Annual Cases
February	325	24
May	339	25
September	400	30
November	282	21
Annual Average	1,346	100%

Source: Erie County Court Administrator's Office.

A possible consequence of the differential volume of cases which the court must handle may be in prosecutorial decision making. To explore this possibility, the various decision possibilities were examined. The following graph illustrates the apparent effect of the court calendar and each session's volume of cases on disposition of cases. (See graph B, next page).

When this data is submitted to multivariate analysis, ϕ values are as follows: February, $\phi = -.033$; May, $\phi = -.051$; September, $\phi = +.043$; November, $\phi = +.03$. The above values are based on the following formula:

$$\phi = \sqrt{\frac{ad-bc}{(a+b)(c+d)(a+c)(b+d)}}$$

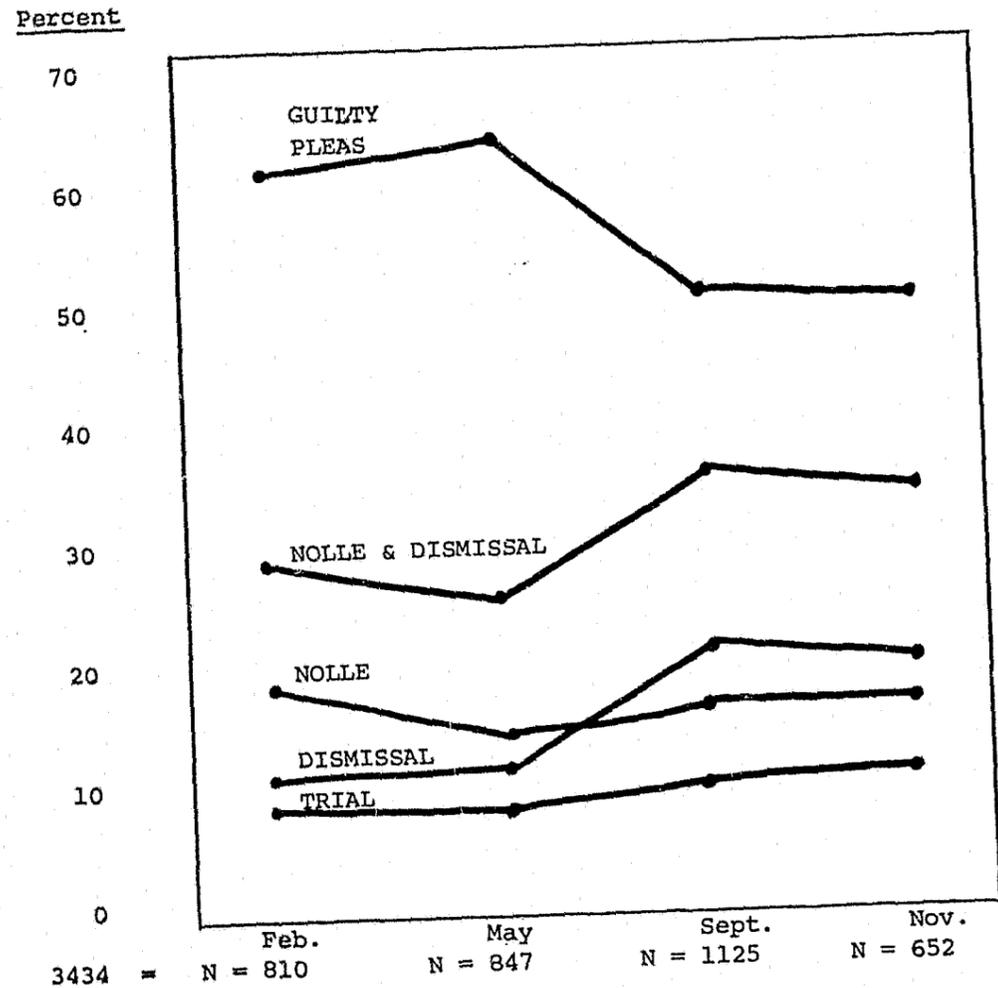
Disposition	Court Session	Annual Ratio
Dismissal - Nolle Other	a	b
	c	d

The analysis indicates that the September court is weakly associated with a relatively higher dismissal-nolle rate over the period 1970 - 1972.¹ Since the weight of new cases entering the court in September is consistently higher, it is likely that the higher dismissal-nolle rate is a function of the increased number of cases flowing into the September court as a result of high arrest rates in the Summer and other factors. Moreover, the November court appears to be affected by a large portion of bound-over cases from the September court, although the number of newly initiated cases in the November court remains quite small.

¹
 $\chi^2 = 36.98$ at 3 degrees of freedom. Significance above the .001 level.

GRAPH B

BRANCHING DISPOSITIONS OF EACH CRIMINAL COURT SESSION, 1970-1972



Source: Regional Planning Unit, Northwest Raw data supplied by Erie County Court Administrator's Office.

* Figures are not based on a calendar year, but on a court calendar year. See note on tabulating cases by court term.

¹CALENDAR

Disposition		February Court	Control
Dismissal -	Nolle	235	1131
	Other	575	2303

$\phi = -.03300$

CALENDAR

Disposition		May Court	Control
Dismissal -	Nolle	228	1131
	Other	619	2303

$\phi = -.05149$

CALENDAR

Disposition		September Court	Control
Dismissal -	Nolle	424	1131
	Other	701	2303

$\phi = +.04323$

CALENDAR

Disposition		November Court	Control
Dismissal -	Nolle	225	1131
	Other	408	2303

$\phi = +.02007$

¹ (p > .001) for the entire table.

The data suggests that the court calendar does tend to have an impact on the disposition of cases, although the strength of the relationship between the court calendar and dispositions is very weak. In general, this means that court personnel "work harder" in the fall term of courts due to the pressure of an increased volume of cases, and this has a slight effect on prosecution decision-making. However, sweeping generalizations are very dangerous to make in describing this relationship. For example, the type of offense being prosecuted may alter the disposition. A large number of cases which normally end in a plea in September may be the reason for the 64% plea rate in May rather than the court calendar. This fact (and others) may alter the disposition of offenders and affect the outcome of any measurement of the court schedule's impact on disposition. At the present time sufficient offense based data on delay per court session is not available. It will be available in April, 1973. At that time, delay and dispositions will be re-examined, holding the type of offense constant.

It should be added that significant results could be obtained by using data on prosecutorial decision-making in Pennsylvania court jurisdictions with comparable volumes of cases and type of court calendar. Such a study would require an additional commitment of resources by the Governor's Justice Commission, but would permit more reliable, sophisticated analysis of the impact of the court calendar on prosecution. In the present study, the researcher is permitted to use only lower level statistical analyses due to the limited number of observations.

The advantage of more powerful statistical analysis will be in exploring the significance of the weak association between nolle dismissal rates and an increased volume of cases.

TYPE OF COUNSEL, DELAY AND DISPOSITION (OBJECTIVE 9)

The Governor's Justice Commission, Northwest and the Erie Court also wanted to examine the impact of the type of counsel on delay and disposition. The quality of counsel is an obvious factor in assessing the quality of justice since disposition and also time lapse between initial charge and disposition may be a function of the type of counsel in Erie County. For example, a comparative study by Stuart Nagel of assault and larceny cases in all 50 states concluded that the proportion of cases with over two months delay from onset to trial was greater for indigents, normally defended by public defenders, than for non indigents.¹

In general non-conviction cases in Erie County experience delays which are longer than cases terminating in a conviction. This is to be expected since delay may be a function of a case too weak to prosecute in an expeditious manner. Average delay times are listed on the next page for burglary, assault, larceny, robbery, and driving under the influence.² (See table 5)

¹Stuart S. Nagel, "Disparities in Criminal Procedure," UCIA Law Review p. 1273, 1967.

²All cases terminated in 1971 which involved the following offenses were used in the sample [All] Burglary; robbery; [All] Assaults; operating under the influence; [All] larceny; and total offenses. It was felt that analysis had to include more than total offenses since the type of offense may be related to the type of defense counsel retained.

TABLE 5

NON - CONVICTION CASES AND AVERAGE DELAY TIME - 1971¹

	BURGLARY	ASSAULT	D.I.	LARCENY	ROBBERY
Number of Cases	31	41	65	27	10
Months	12.6 mo.	13.9 mo.	9.6 mo.	9.9 mo.	17.1 mo.

Source: Planning Unit Analysis of B.O.S. raw data

The data was insufficient to permit generalizations regarding the type of counsel's impact on delay for non-convicted cases. However, qualified generalizations can be offered in assessing impact of counsel on delay for convicted cases in our sample for 1971, most notably for the offense of operating under the influence. As the table indicates, a comparison of delay rates between offenders represented by private attorneys and public defenders does not reveal any serious systemic problem. There is a difference between burglary and larceny of considerable proportions, but the limited number of observations do not permit generalizations to be made. Where a sufficient number of observations do exist, as with driving under the influence, the difference in delay is not significant. Moreover, total delay for all offenders does not reflect a serious discrepancy between public defender and privately retained counsel.

¹ Delay time is calculated from the time at which the clerk of court records the receipt of a transcript from the D.A.'s office to the termination of the cases at a hearing or a trial. Any time between disposition and sentencing is not included.

TABLE 6

DELAY TIME IN MONTHS AS A FUNCTION OF COUNSEL
FOR CASES TERMINATING IN CONVICTION - 1971

	(All)	(All)				All
	BURGLARY	ASSAULT	ROBBERY	D.I.	LARCENY	OFFENSES*
Public Defender						
# of cases	41	22	9	29	23	266
average delay	3.2	3.0	2.5	3.9	5.5	4.0
Self-represented						
# of cases	1	5	1	190	2	260
average delay	1.9	4.6	9.0	2.5	2.0	1.9
Privately retained						
# of cases	3	8	3	42	7	133
average delay	15.2	5.9	.7	3.7	2.6	4.4
Total Cases						
# of cases	45	35	13	261	32	659
average delay	4.0	3.9	2.6	2.9	4.7	3.2

Source of raw data: Bureau of Criminal Justice Statistics

The project is also assessing the influence, if any, of the Erie County Court Calendar on delay between receipt of the transcript in the Clerk of Court's Office and final disposition. It has already been demonstrated that Erie County does not have the delay problems associated with large metropolitan court systems such as Philadelphia. Its 3.8 months per case average delay time compares favorably with delay times of comparable sized criminal court systems throughout Pennsylvania.

*Includes offenses not shown here.

TABLE 7

DELAY TIME IN MONTHS (1971)

COUNTY	POPULATION	GUILTY PLEAS	JURY COURT	TOTAL	
Berks	269,382	5.8	13.1	3.7	6.3
Chester	278,311	6.8	15.3	10.8	7.6
York	272,603	3.4	4.7	7.4	3.7
Erie	263,654	3.5	6.3	9.6	3.8
Lehigh	255,304	3.6	15.2	12.1	4.5

Source: Pennsylvania Bureau of Criminal Justice Statistics.

Preliminary analysis of delay in Erie County for 1971 indicates that the court calendar does not represent an important factor in delay times. The salient variable affecting delay appears to be the type of offense. For example, very serious offenses, such as robbery are prosecuted almost immediately, whereas assault and battery and larceny cases take somewhat longer to prosecute. Data to fully explore the relationship between the two variables, type of offense and court term, on the one hand and delay time on the other, will not be available until Spring. At that time, a supplemental report will be prepared to indicate any significant relationship.

INCARCERATED DEFENDANTS AWAITING TRIAL (OBJECTIVE 10)

One of the indicators identified as a measure of the quality of justice was the number of cell-days spent by incarcerated defendants relative to the time they were detained and their offense. Since defendants languishing in detention may ultimately be found innocent, the Pennsylvania Rules of criminal procedure require trial within 60 days unless the defense requests a delay. The time of detainment was examined to determine if any relationship existed between the criminal court calendar and excessive lengths of detainment for those awaiting trial.

Ordinarily, criminal court in Erie County meets four times a year in February, May, September and November. It does not meet during the months of June, July or August, though Summer represents the most active period of criminal activity (See chart C). Additionally, the September criminal court represents a very heavy flow of cases. (See Table 4). Consequently, on the basis of these factors it was hypothesized that the periods of detention for defendants detained in May through November would be longer than for those detained during lower arrest periods and court terms with relatively lighter dockets.

Clearly, the fact that more defendants were awaiting trial during the Summer of 1971 did not increase "dead time", time between arraignment and disposition. From interviews it became clear that the Magistrates and the D.A.'s office are conscious of the possibility of a lengthy stay in jail during the summer months and are especially careful to provide nominal bail for those defendants who qualify and to prosecute in timely fashion.

Graph C presents the results of the study which gives the percentages of non-sentenced persons serving various numbers of cell days in the Erie County Jail in 1971. According to this study 87% of the over 1200 non-sentenced persons incarcerated in the jail in 1971 served under 31 days. Only 5% served over 50 days.

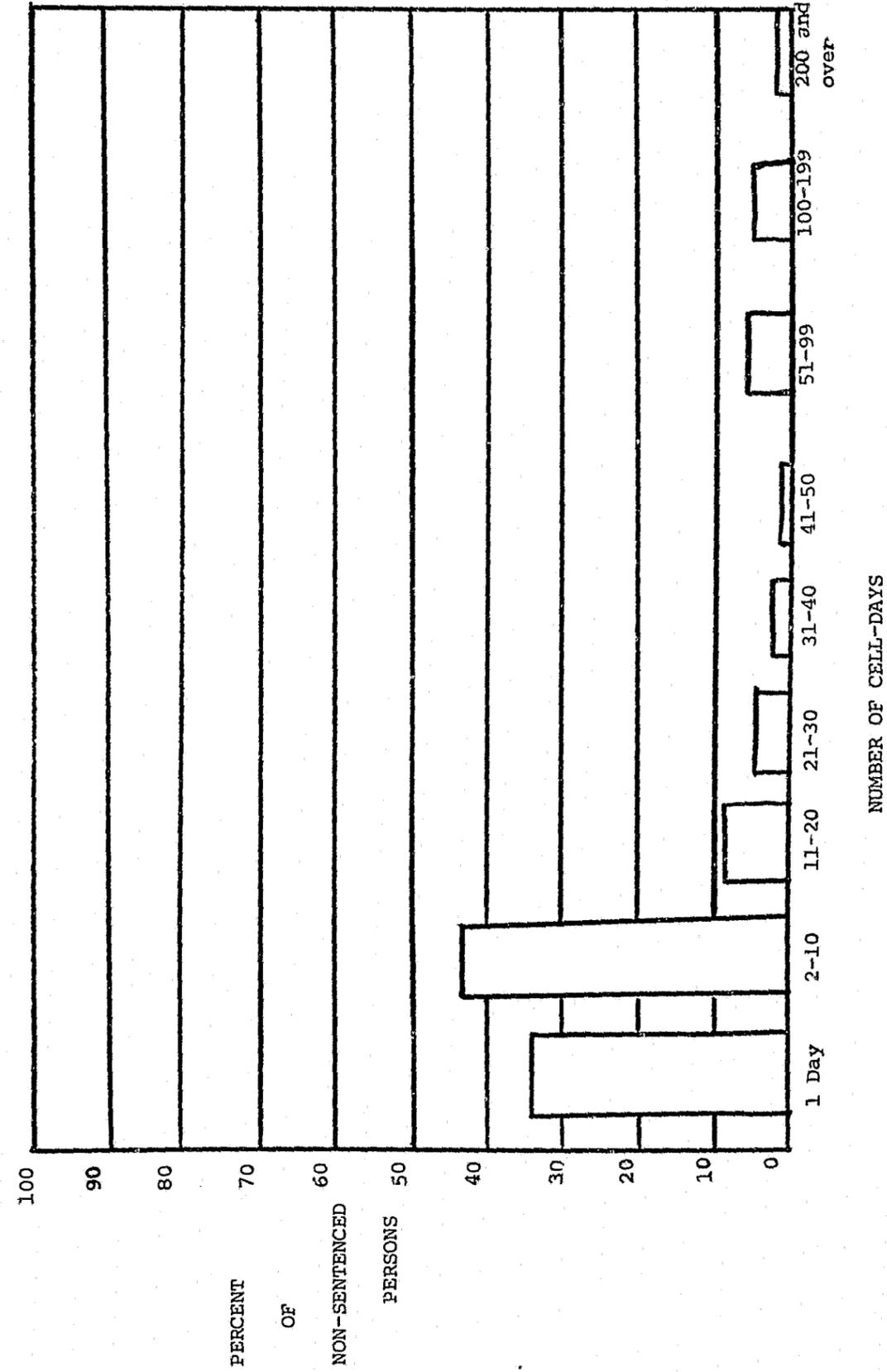
Graph D presents the results of subsequent study indicating the month in which a person detained over 30 days was received. An average of 12.3 persons per month serving over 30 days was received in the months of June, July and August between the May and September terms of Court as compared to an average of 15 persons in December - January and 9.5 persons in March - April.

A review of the percentages of persons serving given numbers of days as depicted in Graph C leads to the conclusion that a long period (over 30 days) of pre-sentencing incarceration is the exception rather than the rule for criminal defendants in Erie County. Only 13% of criminal defendants served over 30 days, and just 5% served over 50 days. Erie County currently does not appear to have a serious problem with regard to incarcerating a large percent of criminal defendants for long periods of time prior to disposition.

Assuming that this issue of pre-disposition imprisonment of criminal defendants does not appear to be a serious problem, the question of whether or not persons incarcerated in the span between the May and September terms of court serve longer periods than persons incarcerated between the other periods of court must be viewed as a question of limited importance.

In view of the irregular nature of the graph relating month received to number of persons received in that month serving over 30 days., it cannot be concluded with any assurance that the month in which a person is received at the County Jail has any strong relation to the probability of his serving over 30 days prior to his sentencing.

GRAPH C
 PERCENT OF NON-SENTENCED PERSONS (excluding juveniles and parole violators)
 SERVING GIVEN NUMBER OF CELL-DAYS IN ERIE COUNTY PRISON, 1971

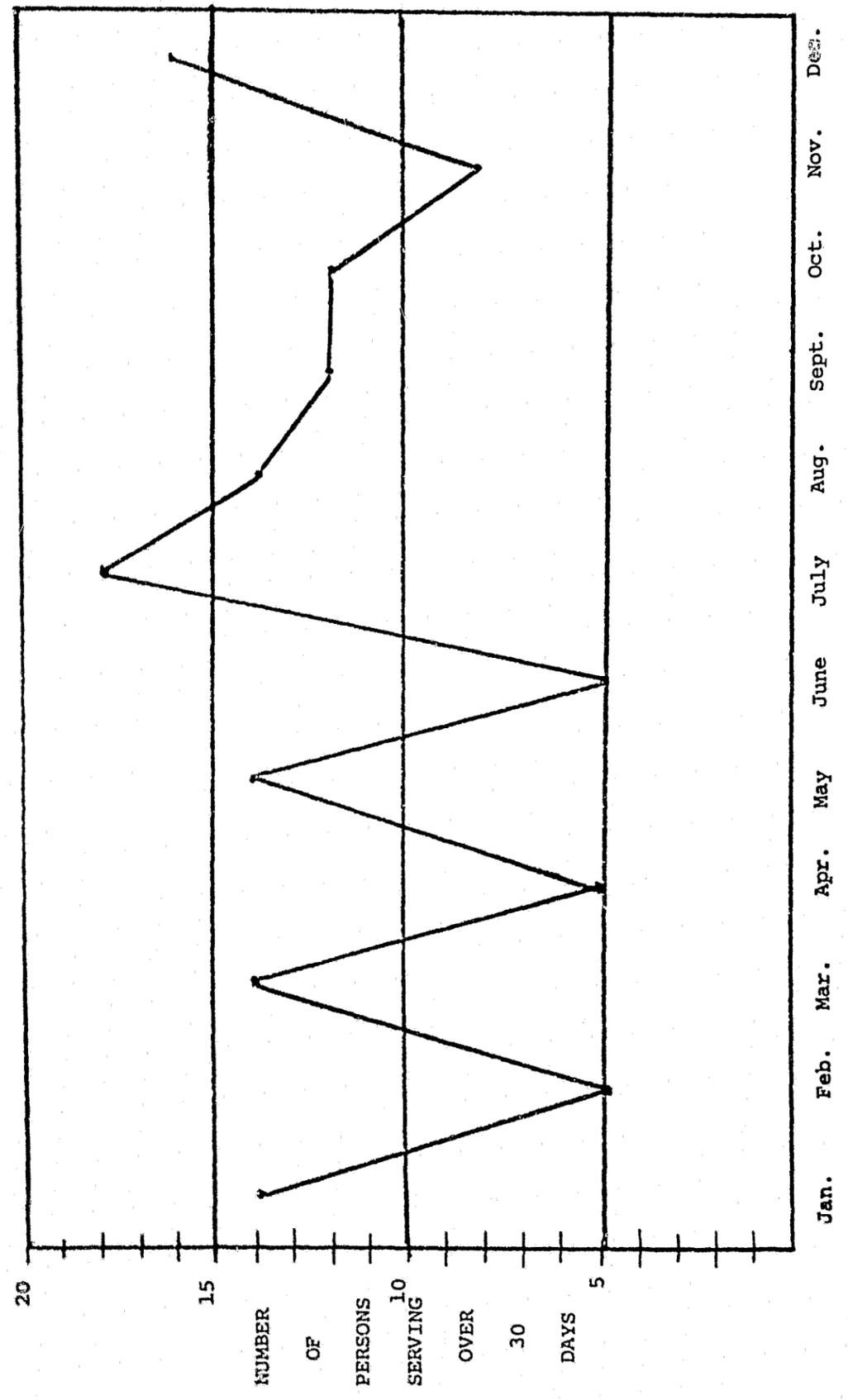


SUMMARY OF CONCLUSIONS

Perhaps the most salient conclusion of the study is that the Erie County Court System has no serious, systemic problem revealed by the data for the areas of concern delineated by the research design. The flow of documents is constant at the magistrate level, the Erie Courts of Common Pleas are not hampered by a backlog problem of serious proportions. Nor is there serious delay of criminal cases for either bailed or non-bailed defendants. Finally, there was little systematic difference, as far as our data permitted analysis, between indigent and non-indigent in the Erie County Courts. In general, the indicators of the study suggest that the Erie County Courts and the District Attorney's office enjoys an enviable position when compared to comparable court systems in the Commonwealth.

The single area of improvement the study did indicate was in the criminal court calendar. The data suggests, and direct observation of each criminal court session would certainly support the view that the District Attorney's office is severely pressed by the weight of cases during each criminal court term, particularly in the fall. The traditional calendar of four court sessions in February, May, September and November is based on a legal tradition from English history that is an anachronism today for a metropolitan court. Although a solution to the calendar problem is not urgent, for the data certainly does not suggest a difficulty of crisis proportions, it appears that the Erie Courts would best serve the interests of justice if in

GRAPH D
 NUMBER OF NON-SENTENCED PERSONS SERVING
 OVER 30 DAYS BY MONTH RECEIVED



MONTH RECEIVED

the future criminal court could meet on a relatively continuous basis, particularly in the summer months.

In addition to procedural changes, it should be recognized that the Erie County Court represents almost half of serious crime in Northwest Pennsylvania. A modern criminal court which operates under the restraints of major procedural changes in due process in the areas of disclosure, search and seizure, interrogation and representation and many other areas requires a full-time staff. The present District Attorney has recognized the importance of a full-time staff and has applied to the Governor's Justice Commission for federal funding to initially support full-time personnel. The conclusions of the study certainly do not contradict that initiative. Moreover, the same logic which supports establishment of a full-time District Attorney would seem to apply to the public defender's office as well.

In a court system the size of Erie's someone on the District Attorney's staff has to function as a "Court Administrator", keeping track of cases, deciding which cases will go to trial, what human resources will be required and what time constraints exist. The job of "administrating" the prosecution docket is immeasurably more difficult without full-time personnel. In the event this point is not self-sufficient, there is in addition, the obvious point that a full time prosecutor who does not have to balance his private practice responsibilities with his public responsibilities will make a more efficient public prosecutor.

During the course of the study, two areas that were examined were record-keeping within the D.A.'s office and the clerical procedures used to prepare these records and notices to others. The most pertinent data (including status) for each case is maintained on a "D.A. Case Record" card. These cards are filed by name for a permanent record. Additional copies of this card, if generated, could be used for both managerial and statistical purposes. One copy could be filed according to the D.A. assigned to the case. This could facilitate equitable distribution of the workload among the D.A.'s and could also be used as a reference for each D.A. of his active cases and for trial lists (See below). A second copy could be used for statistical purposes and filed by term of court. This would provide a ready reference for determining seasonal and annual fluctuations in case-flow, number of guilty pleas, trials, etc. Some of this data is currently being kept, but once the case cards are filed alphabetically with all cases for the past 20 years or more, it is very difficult to go back to retrieve information that is not now being tabulated. Such information can be employed for various management purposes within the D.A.'s office. Extra copies of the "D.A. Case Record Card" could be produced readily with prepared form packets that have carbon inserts.

Another clerical procedure which can be improved is the manner in which Grand Jury Trial lists are prepared. Each case for a term of court is listed with a docket number, term number, year, name of defendant, charge, D.A., and defense attorney.

In addition to initial preparation, each list is updated prior to grand jury and trial. This list could be prepared using a copy of the D.A. Case Record Card if the format of that card is revised slightly. On the longest side of the card could be typed all of the information now on a Grand Jury or Trial listing. The first carbon of these cards (the ones suggested for use as reference by the D.A.'s) could be put in the desired order and "fanned out" as one does with a hand of playing cards so that the one line on the edge is visible. This array can then be placed in a holder and duplicated on a copy machine - providing as many copies as needed. Updated lists for both Grand Jury and Trial can be created easily as often as desired. In addition, it would be easy to create lists organized alphabetically by defendant's name, by the D.A. assigned to the case, by trial date, or by department and name of police officer for posting at police departments. Standard heading cards can be created and used to identify lists and columns at the top of each page.

A third clerical procedure noted was the preparation of cards for each case to notify the person pressing charges and all witnesses for the Commonwealth of the dates for Grand Jury and for Trial. A copy of each is prepared for reference by the D.A.'s office. In addition, notice is sent to the Defendants with date and time of trial. Each of these cards is hand-written and contains a great deal of the same information. If form packets were developed using paper instead of heavy cards (to permit carbon copies), information for a case could be type once (or at most a few times) thus producing a neater, more business-like document with a savings of clerical time that could be put to better use.

Finally, it is the conclusion of the researchers that the Erie County Court would benefit from an automated records and information system, given the volume of current cases, if the system was shared with other users such as the Erie Police Department. Since the Erie Police Department is presently exploring an automated records system which generates data of equal interest to the courts, this may be a propitious time for a joint computerized records and information system. Data of interest to the District Attorney's office would include: the status of a case; prior arrests, hearings, indictments, convictions of a given offender; time of court transactions; delay times; prosecutor and defense attorneys associated with a given case and court transactions; and, relative case loads of district attorneys. Case files could be updated weekly by police reports and court transactions punched on computer cards. Aggregate data for required annual reports for the State Court Administrator's Office and the Uniform Crime Reports, as well as supervisory requests for statistical material, would be readily available under an automated system.

RECOMMENDATIONS

1. It is recommended that the Erie County Criminal Court explore the feasibility of a relatively continuous criminal court.
2. It is recommended that at least a portion of the prosecutorial staff of the District Attorney's office be full-time.
3. The "D.A. Case Record Card" should be revised, and at least two additional copies should be provided for preparation of case listings by copy machine and for tabulation of statistical data for management purposes.
4. Form packets with carbons should be developed for sending notice of grand jury or trial to witnesses and defendants in order to save clerical time and present a more business-like document to the individual.
5. It is recommended that a portion of the public defender's office be full-time.
6. It is recommended that the Erie Courts explore the feasibility of automated records system to provide aggregate data for management decisions in the courts and instant retrieval access to selected data for prosecutorial decision-making.

END