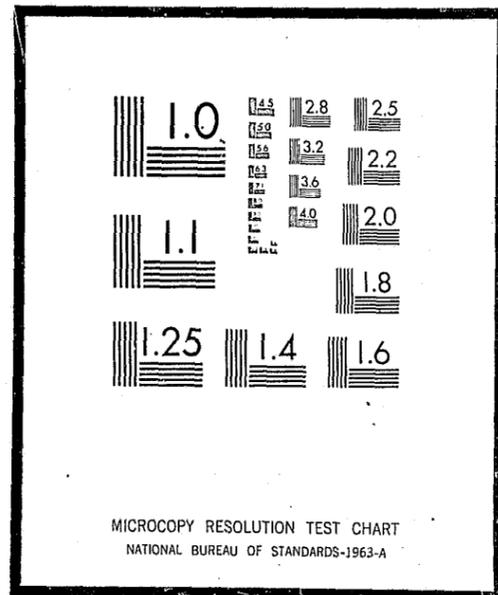


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SUMMIT COUNTY (OH) - OFFICE OF THE
PROSECUTING ATTORNEY - ANNUAL REPORT 1974

1974

ANNUAL REPORT

OFFICE OF THE
PROSECUTING ATTORNEY OF SUMMIT COUNTY, OHIO

STEPHAN M. GABALAC
PROSECUTING ATTORNEY

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INTRODUCTION

The purpose of this report for the year of 1974 is two-fold. First, it was compiled at the request of Prosecutor Gabalac in order to provide him with meaningful data concerning every area of this office. In turn, this information will then be used by the Prosecutor in order to increase the level of efficiency of this County office. Innovations of any sort cannot be successfully implemented without basic data regarding the complex nature of the operation as a whole. Since the overriding concern of this office has and always will be a striving for the most responsible, efficient, and economical discharge of the statutory duties placed upon the Summit County Prosecutor, the information enclosed herein has been compiled as carefully and correctly as is possible with the present system of record keeping.

Secondly, because the office of the County Prosecutor is a creation of the laws of the State of Ohio, or more importantly a reflection of the legislative intent of the people of this State, it is the duty of the County Prosecutor to continually inform the people of Summit County of the nature, extent and success of the work done by the employees of this office. In order to accomplish this purpose as effectively as possible, this report contains several narrative sections which were designed as aids in interpreting the statistical information provided herein.

It is our belief that tables and graphs cannot, in and of themselves, tell the complete story.

Finally, we hope that this report will serve as a meaningful expression of our desire to report fully and honestly to the people of Summit County.

SUMMIT COUNTY PROSECUTORS OFFICE

STEPHAN M. GABALAC
PROSECUTING ATTORNEY

Secretary

S.S.O.

Civil Division

Criminal Division

Appeals Division

Juvenile Division

Administrative &
Fraud Division

1 Chief

3 Attorneys

1 Secretary

1 Chief

8 Attorneys

5 Secretaries

2 Grand Jury
Secretaries

1 Attorney

1 Secretary

1 Attorney

1 Investigator
(Non-Support)

1 Chief

4 Investigators

1 Secretary

1 Receptionist

1 Attorney*

*This attorney handles Grand Jury and is advisor for the Fraud Squad.

REPORT FROM THE CRIMINAL DIVISION

The powers and duties of the Prosecuting Attorney are enumerated in Section 309.08 of the Ohio Revised Code which states:

The prosecuting attorney may inquire into the commission of crimes within the county and shall prosecute, on behalf of the state, all complaints, suits, and controversies in which the state is a party ...

The mandates contained in this section are in part carried out by the Criminal Division of the Summit County Prosecutor's Office. This division is one of five and consists of one chief assistant, eight assistants, and seven secretaries, two of which work primarily in the Grand Jury. The specific duties of the Criminal Division include the following:

1. Legal advisor to the Sheriff's office - criminal prosecutors give advice on matters of law to the Sheriff and his deputies, when requested, even in the investigatory stages of criminal cases.
2. Indictments and Bills of Information - Article I, Section 10 of the Ohio Constitution requires that no person shall be required to stand trial on felony charges unless required to do so by an indictment returned by a grand jury. Therefore, criminal prosecutors must prepare each case that has been bound over from the municipal court where the complaint was filed to the Grand Jury which, in turn, will return either an Open Indictment or a No Bill. In addition,

the Grand Jury has the power to interdict bind-over proceedings and return a Secret Indictment. Finally, felony prosecution can also be based upon a Bill of Information which eliminates the procedural step of the grand jury indictment. However, three requisites attach to felony prosecution by information:

- a. The defendant must waive in writing and in open court, prosecution by indictment.
 - b. The offense prosecuted, by information must carry a punishment less than death or life imprisonment.
 - c. The prosecuting attorney of a county must agree to sign the information before prosecution by information is possible.
3. Disposition of cases - once an indictment has been returned, the criminal prosecutor then must dispose of each case according to the Rules of Criminal Procedure either by acceptance a plea(s) of guilty or by trying the case before a jury of twelve registered voters or a panel of three judges. Preparation of a criminal case for trial may and generally does include a significant number of man-hours by the prosecutor spent in completing the investigation. This preparation consists of the location and interviewing of witnesses, location and preservation of evidence, supervision of scientific examinations

of evidence, preparation of expert testimony and many other miscellaneous matters peculiar to each criminal case. In addition, once a case has been prepared for trial, the prosecutor must then spend anywhere from a few days to a couple weeks in the actual trial. It is significant to note here that felony convictions were returned in approximately 90% of all cases tried in 1974 by the Summit County Prosecutor's Office.

4. Additional duties - criminal prosecutors also handle probation hearings, pre-trial and post-trial motions, and extradition proceedings for criminals who have fled to foreign jurisdictions.

Finally, the reader must bear in mind that the preceding enumeration of the duties and responsibilities of the Criminal Division has been, for the sake of brevity, simplified. The majority of attorneys in this division and in the other four generally work overtime during the work week and often on the weekend without additional compensation. A numerical breakdown of cases, defendants and counts assigned to this division can be found in the following exhibits.

EXHIBIT III-A
GRAND JURY REPORT

JANUARY TERM

Open Indictments	205
No Bills	92
Secret Indictments	32

APRIL TERM

Open Indictments	355
No Bills	147
Secret Indictments	52

SEPTEMBER TERM

Open Indictments	252
No Bills	79
Secret Indictments	18

TOTAL

Open Indictments	812
No Bills	318
Secret Indictments	102

EXHIBIT III-B

CASES ASSIGNED IN 1974 ACCORDING TO CASE NUMBER

Carry over from 1973	197
Open Indictments	812
Secret Indictments	102
No Bills	318
Bills of Information	<u>212</u>
TOTAL	<u>1641</u>

CASES DISPOSED OF ACCORDING TO CASE NUMBER

Carry over to 1975	189
Dismissed w/o Prejudice(Including Nolles)	136
Dismissed w/ Prejudice(Including Nolles)	11
Guilty Pleas - as charged and to lesser included felony offenses	1195
Convictions by Court Trial	14
Convictions by Jury Trial	47
Acquittals by Court Trial	2
Acquittals by Jury Trial	5
Hung Jury	1
Unavailability of Accused for Trial	<u>41</u>
TOTAL	<u>1641</u>

EXHIBIT III-C

DEFENDANTS ASSIGNED

Carry over from 1973	212
Open Indictments	915
Secret Indictments	107
No Bills	330
Bills of Information	<u>222</u>
TOTAL	1786

DEFENDANTS DISPOSED

Carry over to 1975	201
Dismissed w/o Prejudice(Including Nolles)	170
Dismissed w/ Prejudice(Including Nolles)	13
Guilty Pleas - as charged and to lesser included felony offenses	1292
Convictions by Court Trial	14
Convictions by Jury Trial	47
Acquittals by Court Trial	2
Acquittals by Jury Trial	5
Hung Jury	1
Unavailability of Accused for Trial	<u>41</u>
TOTAL	<u>1786</u>

EXHIBIT III-D

COUNTS ASSIGNED

Carry over from 1973	295
Open Indictments	1221
Secret Indictments	138
No Bills	431
Bills of Information	<u>398</u>
TOTAL	<u>2483</u>

COUNTS DISPOSED

Carry over to 1975	267
Dismissed w/o Prejudice(Including Nolles)	191
Dismissed w/ Prejudice(Including Nolles)	18
Guilty Pleas - as charged and to lesser included felony offenses	1770
Convictions by Court Trial	21
Convictions by Jury Trial	138
Acquittals by Court Trial	5
Acquittals by Jury Trial	9
Hung Jury	1
Unavailability of Accused for Trial	<u>63</u>
TOTAL	<u>2483</u>

REPORT FROM THE APPELLATE DIVISION

The Appellate Review Division of the Summit County Prosecutor's Office was created in July, 1973 and consists of one assistant prosecutor and one secretary. This division is responsible for the preparation of briefs and for presentation of arguments of all criminal appeals before the Ninth District Court of Appeals, the Ohio State Supreme Court, and the United States Supreme Court from decisions of the Summit County Common Pleas Court. The reason for the creation of this division is two-fold. One, it relieves criminal prosecutors of their individual appellate responsibilities and permits them to begin preparation on the next case and secondly, the consolidation of appeals under one assistant prosecutor has increased the uniformity that is necessary to meet the strict procedural and form requirements at the various appellate levels. Thus, the Common Pleas Court of Summit County is now represented by a more professional appellate product.

Innovations created by the Appellate Review Division include:

1. An appeal's docket to determine the immediate status of each appeal from Summit County. This docket also ensures timely filings.
2. Coordinated communication between the Summit County Prosecutor's Office and the Ninth District Court of

Appeals and the Ohio Supreme Court.

3. Indexing of pertinent case law to avoid duplication of research.
4. Indexing and filing of Appeal's briefs by issue to facilitate prompt answers and to provide quality legal analysis.
5. Preparation of standard dismissal motions to terminate procedurally incorrect appeals, and to also prevent review of cases where no right of appeal exists.
6. This Division has created machinery to provide each Common Pleas Judge with the briefs submitted concerning the review of decisions of the particular court involved. This process has hopefully opened a communications channel to enable the Trial Judges to provide suggestions to the Prosecutor's Office concerning particular appeals.

Furthermore, because of the lack of precedent due to the adoption of the new criminal code on January 1, 1974, the appellate work load has significantly increased. The Appellate Review Division maintains that quality legal analysis, on behalf of the State, during appeals, will be crucial to the correct interpretation of this new code. The appellate work of this office, along with the work of the other Ohio Prosecutors, will be essential to support the decisions of the Ohio Trial Courts as they interpret this new codification.

The following table reflects the volume of appeals

processed by this division.

It should be noted however, that the Appellate Prosecutor is not able to devote his full time to the Appellate Division. Because of the heavy trial load in this office regarding serious felonies, it is necessary that the Appellate Prosecutor also be involved in trial litigation.

EXHIBIT IV

	<u>1973*</u>	<u>1974</u>
NINTH DISTRICT COURT OF APPEALS		
By Defendant	39	64
By State	-	4
OHIO SUPREME COURT		
By Defendant	14	23
By State		2
UNITED STATES SUPREME COURT		
By Defendant	2	2
By State	-	-
TOTAL	<u>55</u>	<u>95</u>

*Figures for 1973 are approximate because the division was created in July 1973.

REPORT FROM THE CIVIL DIVISION

Under Ohio Revised Code Section 309.09 the Prosecuting Attorney is the legal advisor for all township officials, County Commissioners, Board of Elections, Auditor, Treasurer, Recorder and also for the Judges of the courts and all other county officials and boards, including tax supported public libraries. These duties are discharged by the Civil Division which consists of one chief assistant, three assistants and one secretary. All of the above may require written opinions or instructions in matters connected with their official duties and the Civil Division furnishes approximately two hundred such opinions a year. This division is also charged with prosecuting and defending all law-suits pertaining to said boards, including suits brought in the Federal District Court

More specifically, the duties and responsibilities of this division include the following:

1. Answering all correspondence relating to reports or requests involving the county offices.
2. Collecting delinquent inheritance taxes for the Probate Court.
3. Legal work for the Sanitary Engineer and the Highway Engineer which involves the acquisition of easements, supervision of the preparation of legal contracts and agreements relating to sewer installations and appropriations for

county-use, and the disposition of claims involving the County Engineer and the County Sanitary Engineer.

4. Defending all suits brought against county officers, several of which are now pending in the United States District Court.
5. Handling of cases referred to this office by the Summit County Welfare Department. Such cases may involve personnel employed by the county and also matters relating to civil rights litigation brought against county officers.
6. Representation of the Sheriff, the Clerk of Courts, the Auditor, and other county officers relating to their official duties. This division is also required to bring suit upon findings made by the State Auditor against persons or office holders in Summit County.
7. The review of a compliance with the law of all condominium applications.
8. Representation of the Summit County Board of Education, Board of Mental Retardation, Board of Mental Health and Mental Retardation, Summit County General Health District which involves answering inquires and enforcement of Health Regulations, and Edwin Shaw Hospital.
9. Representation of township zoning boards,

the handling of all injunction matters in court which involve county officials, and appearances at bankruptcy hearings.

REPORT FROM THE JUVENILE DIVISION

DELINQUENCY CASES - All cases where a juvenile enters a not guilty plea to a charge of delinquency, by reason of activity which would be a crime if committed by an adult, are referred to the Assistant Prosecutor assigned to the Juvenile Court.

In cases of serious crimes such as homicides, aggravated robberies, aggravated burglaries, rapes, etc., the Assistant Prosecutor may be involved from the commencement of police investigation on through the filing of the complaint, detention hearing, preliminary hearing, possible motion to bind over as an adult, probable cause hearing for purposes of bind over, pre-trial if retained as a juvenile, trial at Juvenile Court, and disposition hearing after probation study.

The Assistant Prosecutor at the Juvenile Court serves as a legal advisor and counselor to police departments, court workers, and private citizens who have questions about what can be done in specific fact situations and what would be the most effective course of action to remedy the situation.

DEPENDENT-NEGLECT CASES - The Assistant Prosecutor at the Juvenile Court represents the Summit County Children Services Board in cases where the Agency is requesting emergency, temporary or permanent custody of children who are dependent or neglected.

Typically, the Children Services Board presents facts to the Court to convince the Court that it should issue an order for emergency temporary custody for the protection of the child. Next, a hearing is held on the Children Services Board's request for temporary custody. At such hearings, the Assistant Prosecutor appears with representatives of the Agency while the parents are represented by private counsel. The first hearing is usually an informal preliminary type hearing to establish the positions of the parties, reach a compromise in the best interest of the child, or establish a date for a formal hearing to establish the allegations of dependency or neglect by clear and convincing evidence. At the formal hearing the Assistant Prosecutor will call in case workers from Children Services Board, health nurses, doctors or neighbors to establish that the best interests of the child require that it be removed either temporarily or permanently from the parents.

TRAFFIC OFFENDERS - Serious traffic matters, such as vehicular homicides, are referred to the Prosecutor to arrange pre-trial conference with Judge Kannel, the police officers and the attorneys representing the defendant and the victims family. If the defendant does not enter a guilty or no contest plea at the pre-trial, then the matter is continued for a probation evaluation. After

the evaluation, all parties re-appear before the Court for disposition of the case.

CONTRIBUTING TO DELINQUENCY - Complaints that an adult is acting in a way tending to cause the delinquency or unruliness of a minor come to the Assistant Prosecutor.

Typically, a parent of a minor will come in to talk to the Prosecutor about filing charges against an adult for contributing. Often, the matter can be resolved by calling in the adult or sending him a written statement of the law and that his actions may result in prosecution. In cases, where the adult refuses to come in, or discontinue the complained of activity, or where the circumstances are aggravated, a complaint is authorized. The adult is ordered into Court for arraignment and trial, if necessary. The Prosecutor serves as representative of The State of Ohio and advisor to the complainant in these situations.

SCHEDULING OF HEARINGS - If the Court is to handle its caseload effectively and efficiently, the Assistant Prosecutor at the Juvenile Court must take the responsibility of seeing that cases are promptly set for the appropriate hearing and the parties properly notified. In an effort to insure that cases are promptly and effectively handled, the Assistant Prosecutor and Judge Kannel developed a pre-trial procedure to be followed where a juvenile enters a not guilty plea at preliminary hearing before the Referee.

This procedure is that when a juvenile enters a plea of not guilty the matter is set generally between 21 to 28 days later on Judge Kannel's calendar. The case is referred to the Prosecutor in the form of a face sheet with a copy of the complaint, police report, and previous court history attached. The Prosecutor sends out the necessary notices to the parties for the pre-trial.

The pre-trial is rather informal involving a conference in chambers where the police officers lay out what they have in the presence of the Prosecutor, defense counsel and the Judge. After the defense counsel hears the facts and the thoughts of the Court, police officers and the Prosecutor, he discusses the matter with his client. In a great majority of the cases the defendant will enter a guilty plea at this point.

If the defendant's attorney does not feel a guilty plea is in order, then the matter is set for trial. In some cases a polygraph test with the results stipulated may be the next course of action.

The advantages of the pre-trial procedure include the fact that all parties are actively involved in the pre-trial and that it serves as a vehicle for insuring that the case progresses automatically all the way to trial if necessary. However, out of approximately 200 delinquency pre-trials held since April 1, 1974, only 11 have gone to trial with less than 10 out of 200 being

dismissed for lack of evidence.

Perhaps the greatest advantage of the pre-trial procedure is that it allows the informality historically characteristic of the juvenile court system while it maintains the safeguards needed to protect the constitutional rights to the juvenile and his parents.

SCHOOL ATTENDANCE CASES - Occassionally an adult is charged with failure to send his or her children to school. Such cases are referred to the Assistant Prosecutor at the Juvenile Court for purposes of prosecution.

EXHIBIT VI

SUMMARY OF PROSECUTOR'S ACTIVITY IN JUVENILE COURT, 1974
(April 1st to December 6th)

Delinquency Pre-Trials - Approximately 200
Delinquency Trials - 12
Dependency-Neglect Pre-Trials - Approximately 150
Dependency-Neglect Trials - 10
Bind-over Hearings - 14 (usually 2 hearings per defendant)
Contested Traffic Hearings - 5
Contributing Hearings - 8
Polygraph Scheduled and attended at BCI - 20
Phone Calls from Police Departments - Approximately 150
(requesting information or advice)
Phone Calls from Private Citizens - Approximately 105
(requesting information or advice)
Office Conferences with Private Citizens - 20

REPORT FROM THE CONSUMER FRAUD DIVISION

This division represents a consolidation of resources county-wide designed to reduce fraudulent trade practices in Summit County by more efficiently enforcing Section 2907.21 (Larceny by Trick - 1973 Ohio Revised Code) and Section 2913.02 (Theft by Deception - 1974 Ohio Revised Code). Included in this division are one Project Director, one assistant prosecutor, three investigators and one secretary.

It is the duty and responsibility of this division to investigate and prosecute all cases in the consumer field. This field of investigation is time consuming and complex due to the nature of the offense, i.e. often times it is difficult to establish the criminal intent necessary for prosecution on the basis of one complaint. Generally speaking, this unit must bring together several complaints against a business before an actionable pattern of criminal behavior can be proven in a court of law. Many man-hours are spent by each member of this unit in interviewing prosecuting witnesses and attempting to locate and contact potential defendants by phone and in person. Further, the investigation is not complete until all physical evidence has been located and preserved and when necessary expert witnesses have been contacted and made available for trial.

Throughout the course of each investigation the investigators work closely with the assistant prosecutor, in order to insure that every case meets the requirements set within the Rules of Criminal Procedure. In addition, a close rapport is maintained between this unit and local police departments who welcome assistance and expertise in this field because of the overwhelming amount of work that law enforcement agencies must produce in relation to all other areas of crime.

This unit utilizes the Grand Jury indictment to bring cases to court and since its inception, 100% convictions have been obtained.

One of the unique points of this unit is that it works closely with the University of Akron Criminal Justice College. Investigators are constantly being sent to training sessions and seminars in order to keep abreast of new techniques and developments in this field. Furthermore, this division is taking part in the National District Attorneys' Association Economic Crime Project whereby information and expertise is shared on a national level.

The benefit of this division to the people of Summit County is two-fold. First it has helped to reduce existing fraudulent trade practices in this county and has acted as a deterrent to such future practices.

Secondly, in 1974, restitution to the public was fourteen times our annual budget of \$40,000.00.

We are consistently reevaluating and updating the program in order to give the people a maximum return on their tax dollar. We feel this unit is unique because it has brought a new dimension in law enforcement, i.e. the cooperation and consolidation of community resources for a common goal.

END