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THIS BOOKLET IS PREPARED AS AN  
INFORMATION BROCHURE  
ON THE

DOCKET OBSERVER PROGRAM

AND AS A

NCJRS

JUL 6 1979

TRAINING

MANUAL

ACQUISITIONS

TO BE USED BY COURT WATCH VOLUNTEERS.

THIS PROJECT IS SUPPORTED BY GRANT NO. 78-CA-AX-0014 AWARDED BY THE LAW ENFORCEMENT ASSISTANCE ADMINISTRATION, UNITED STATES DEPARTMENT OF JUSTICE. POINTS OF VIEW OR OPINIONS STATED IN THIS PUBLICATION ARE THOSE OF U.N.I.C.O.R.N. AND DO NOT NECESSARILY REPRESENT THE OFFICIAL POSITION OF THE UNITED STATES DEPARTMENT OF JUSTICE.

Court Watchers have been around at least since 1962 and have proliferated since 1970. The first type of court watching groups were started to protect the right of criminal defendants and to look for discrimination in the courtrooms. Church Women United in Rochester, New York organized the Task Force on Court in 1970 out of concern for defendants who were too poor to afford bail or counsel and held in custody for long periods of time awaiting trial. This group was also concerned about judges who had too heavy a work load to give proper attention to each defendant and troubled by public defenders who did not provide adequate representation. The Task Force believed that its presence in the courtroom would make officials, defendants, and complainants aware that a sympathetic ear was present and that a critical voice would be raised.

Since that time a number of court monitor programs have been instituted all over the country to serve not only defendant protector projects but law and order goals as well. Still other programs have been appointed to service management in time cost analysis and other specific data projects.

The purpose of the Docket Observer Program is to gauge the traumatic experience involving the victim. Evolved by members of the Louisville Inter-Neighborhood Coalition with the help of federal funding from the Law Enforcement Administration (LEAA), this program emphasizes the use of volunteers as "presence monitors," to act as "eyes and ears of the community" to expose the flaws which exist throughout the normal productive activity of the courts.

The goals of the Volunteer Docket Observer Program are:

--To discover if due process is available to

all the public.

- To educate the citizen in all facets of criminal justice system.
- How the general environment of the courts affects its proceedings.
- To discover if courts are properly equipped with directional and informational aids to serve the participants in Judicial procedures.

Objectives for scrutiny involve:

1. Do visitors, witnesses, and others in attendance upon the court, understand the nature of the proceedings, their rights, obligations, and especially the ultimate disposition of the case.
2. Are recommendations for continuances of cases unreasonably granted.
3. In the process of court judgement do disparities exist in sentencing certain offenders.
4. How is despecialization in the two-month period rotation of judges related to the quality of justice in our court system.

It is anticipated that assessment of the above goals and objectives will subsequently enable Docket Observer to identify problems of personnel and facilities, court organization and procedures and inequitous administration of justice.

The Volunteer Docket Observer Program will function under the auspices of the advisory committee. Established as members of the advisory board are:

1. Bixler Howland
2. Bill Bartley
3. Ernie Allen
4. Norma Fletcher
5. Larry Petersen
6. Dave Armstrong

#### RECRUITMENT AND TRAINING

This Program will utilize citizen volunteers as monitors in the Jefferson County Circuit and District Courts. Under the best possible circumstances, court watching projects are staffed by relatively heterogeneous groups of people who

have received two and a half hours (2½) training in court procedures and observational techniques in addition to one full session of court for individual training with each volunteer from the Program Director or other members of staff. Training is important, since the language and procedures used in public courtroom can often be confusing to uninitiated observers; such confusion may thus prevent them from collecting accurate data or drawing informed conclusions.

Volunteers may be found from a number of sources. Among them, municipal colleges, senior citizen groups, church groups, various women's clubs, neighborhood organizations and young adult clubs.

Many of these groups have already been contacted on behalf of the program as they have committed full pledges to participation in the project. These groups are as follows:

Political Science Department, University of Louisville, Dr. James Weber; Downtown Optimist Club, Mr. John Erb; Church Women United; Junior League of Louisville; Soroptomist International; League of Women Voters; A.A.R.P., Pleasure Ridge Women's Club; and Council of Jewish Women, Jane Emke; Kathy Rosebud, University of Louisville

A number of groups have yet to be contacted.

Among them are:

Hikes Point Women's Club, Jeffersontown Women's Club, LaGrange Women's Club, Lyndon Women's Club, Meadow Heights Women's Club, Okolona Women's Club and Shively Women's Club; Colonelettes, Inc.;

Compass Club; Queen's Daughters, Sweet Adelines; American Association of University Women; Kentucky Jaycees, Louisville and Middletown Jaycees; Kiwanis Clubs (Dixie Louisville and Louisville), Lions Club, and Downtown Louisville Optimist Club of Suburban Louisville.

Please refer to Exhibit I for contact information. (DELETED)

Recruitment is usually done through organizational heads by phone with the use of a follow-up letter and information brochures. From that a final contact is made to set up a speaking engagement by which the Program Director will speak to various members of the group on behalf of Docket Observer. An accurate count of literature distributed and number of people contacted is noted on both daily and weekly report forms.

Though subject to change, the training program is conducted usually in the Hall of Justice where Judge Ken G. Corey is contracted as instructor under the consultant's account of U.N.I.C.O.R.N. Consultants are contracted and paid \$50.00 an hour. Contracts may be obtained from the Administrator.

#### MANAGEMENT AND ADMINISTRATION

Monitoring within the Jefferson District Courts is from previously attempted observations considered to be the most difficult type of courtwatch. Unlike the Circuit Courts these courts are bogged down daily with a number of cases. Dockets move at a quick pace making it difficult for monitors to grasp the necessary information. To complicate matters further is the informality of the court procedures constricting the courts from proceeding through the dockets in an orderly

fashion. Often continuances of cases are called first, followed by arraignments and then trials. It is difficult to hear. Other impediments include the failure of the County Attorneys to discuss the nature of the charge making it extremely difficult to conclude resourceful and valuable information.

These cited problems may choose a number of remediations. Among these alternatives are the use of two volunteers in each district courtroom, one to record the name and docket number of the defendant while the other notes and records improprieties of the case. Difficulties in implementing Alternative one involves the exhaustion of monitor manpower in using two volunteers in one courtroom; for docket observer has only 15 active volunteers, making it difficult to achieve widespread observations among the courts.

Since the collection of name and docket number are extremely important in formulating conclusive evidence (they provide for the program the needed information for historical research of the case), one must choose another alternative which could be the use of the "judges docket." Here, the name, docket number and the nature of the charge are stated on a computer print-out sheet and stated in alphabetical order enabling the volunteer to keep up with the judge as he records the outcome of each case. This alternative is considered to be the best possible solution for clarity and convenience of court watch, however, certain difficulties exist in obtaining this docket. First of all, if it is possible to obtain the data, the Court Administrator must reprogram the computer to print an extra docket for each court which may not be obtained at a nominal fee for Project U.N.I.C.O.R.N. Even if this is cost effective this data may not be obtained until after January 1, 1979. Glenda

McCubbin, Director of District Court, will service the program in helping to obtain this information.

The importance of monitoring in the District Court should not be overlooked for many disparities exist with the systematic approaches of the court clerks office, police officer as prosecuting witness, preliminary hearings, bench warrants, continuances and decorum.

Much less difficult is the monitoring of the Circuit Court. Cases flow at a much slower pace and provide for the monitor the most orderly fashion for viewing a case.

Circuit Court Administrator, Roger McCubbins has agreed to schedule monitors in the desired criminal case courtrooms. It should be noted here that circuit jury cases are often hard to calendar for judges never know until the day of the trial if a case will be settled without the use of a jury. Another scheduling problem is cases often start at different times of the day, making it extremely difficult to meet the time schedule of the monitor (most volunteers are only prepared to be in court x  $\frac{1}{2}$  day), and view a case from start to finish.

#### DATA FORMS

1. Disposition Forms - With the Circuit courts the disposition forms can be used without any difficulties. On Side 1 are spaces for both objective and subjective recordings of data. When completing the identification box, please where possible, record the middle initial or name of the defendant. Often two defendants may have the same name. Indicate whether an attorney is present, if the defendant is presently in jail, presence of a police officer and witness, and note the purpose of appearance. Court monitors are instructed to ask the clerk in helping them record any information they could not hear. Tapes of the case may also be made available by the Court Administrator's office.

On Side 1 are five lines by which the monitor will record aspects of impropriety. The Docket Observer Program will emphasize subjective collection of information relative to the victim, since the pro-

secuting witness and the victim are of its main concern. They are instructed to note anything unusual about the case paying close attention to the following:

- 1) favoritism on the part of the judge for certain witnesses such as that of a police officer.
- 2) insensitivity of the judge to the victim in carelessly allowing for further continuances of cases.
- 3) fines or other dispositions are discriminatory.
- 4) favoritism on the part of the judge toward the defendant relative to the victim.
- 5) possible jeopardies of the safety of the victim, the prosecuting witness, and the public in releasing certain offenders.
- 6) understanding on the part of the victim and prosecuting witness to the nature of the court proceedings.
- 7) unjust intimidation of the victim or prosecuting witness by certain defense attorneys.
- 8) failure of the Commonwealth Attorney to bring out inherent portions of the case which as a result could effect the overall outcome of the case.

For clear identification of court procedures and terminology, monitors are instructed to carefully read the training manual found in Exhibit II.

The Trial Court Section will record the offense and the offense convicted of if the judge chooses to amend the case to a higher or lesser charge and check off the appropriate information for each offense. Be sure to note below jail, prison or probation terms, the total dollar amount of the fine, type of trial, restitution and when restitution is to be settled.

On Side 2 is a box for Preliminary Hearings or Probable Cause Hearings. This space is used only when the monitors are eyeing the District Court, for mostly all these type hearings are conducted at this level, with the exception of those private direct submission indictments.

The Case History section is for researcher's use only. Here demographics, continuance reasons and bond release action is recorded. The CCN number is important for it is the file number given to the case for District Court only. Circuit Court will file

cases by the Indictment number. One of the two numbers should be entered in the space.

2. Evaluation Forms - There are two types evaluation forms used in court watch. One is arranged in an objective format while the other allows for narrative explanations of which subjective information is recorded. Completion of these forms should not be difficult, for both forms are self-explanatory.

When all forms are completed after each court session, the monitor will drop the information in the District Court Administrator's Office in Judge Ken G. Corey's mailbox. The researcher will then pick up the forms and proceed to complete the History portion of the form. Once the disposition forms are completed with both researcher and monitor information, they are then filed along with the evaluation forms under the monitor's name. The monitor is given time credit served for his or her participation in the courtroom that day. This will allow merit at the end of the project.

#### COMMUNICATIONS WITH JUDICIARY

In the early days of court watching, it was the general practice not to communicate with a judge before the monitoring began, lest the project compromise its objectives. In many cases this resulted in confusion and misunderstanding. This is the reason why the Program forcefully practices policies of good rapport with members of the Judiciary.

District Court judges have provided much enthusiasm in reaching our public on pertinent issues of court procedure. They are most cooperative and have agreed to meet with volunteers, in discussing ideas and suggestions in ways of improving the lower courts. Refer to Exhibit I-A for roster of both District and Circuit Court judges.

Though little response has been submitted to Docket Observer on behalf of Circuit Court judge support, a few have offered special services in assisting the organization of circuit criminal case monitoring. Among them, Judges Joseph Eckert, Richard Oldham, Charles Liebsen and George B. Ryan. Although District Court judges agree to meet with all volunteers, judges

of the Circuit Court may be more strenuous in giving the Program adequate counseling.

Once the project has completed its in-court observations, the draft report should be carefully prepared by the staff and discussed with the local advisory committee. When this process is completed, the draft should be sent to each of the judges observed along with a cover letter inviting their comments and suggesting a meeting to discuss the report. At that meeting the staff should evaluate suggestions or changes submitted by the judge.

Two final points should be emphasized again. First, the purpose of all this communication with the judiciary is to emphasize accuracy and cooperation. Second, every report must state the facts as found by the court monitoring project. Comments and suggestions made by judges should be reviewed carefully, but in the final analysis, the project must prepare a final report without fear of or intimidation by the local judge.

One of the primary goals of most court monitoring projects is, to raise the community's interest and awareness about the problems in the courts. Furthermore, any pressure for change in the judicial system is likely to be more successful if it has the support of a wide segment of the community. Thus, the successful use of the press and other media has an important effect on the impact of each stage of a court monitoring effort.

WAVE-TV, a local television station has assisted to the project in announcing the establishment of a court monitoring effort in Louisville and Jefferson County and thus aided Docket Observer in the recruitment of volunteers. Local radio stations such as WVEZ, and WLOU have also been helpful in pro-

ject radiation. Though not yet contacted, Phylliss Riedley has agreed to give column space for active recruitment in Louisville Time's "Tipsheet." Mary Sullivan of Metro United Way has also agreed to aid volunteer recruitment.

Perhaps the most powerful service the media can provide is to publicize a project's findings and recommendations once the actual court monitoring efforts have been concluded. Newspaper coverage of a final report not only insures that the project's findings will reach a large portion of the community, but in addition, the widespread publicity makes ignoring the report that much more difficult for a resistant or uncooperative judiciary.

However, the tremendous power of the media brings with it certain responsibilities. Before releasing the report, it is important to inform the monitored judges of the project findings and solicit their comments on the report. While this courtesy will in no way diminish the quality or content of the report, any misinformation or misrepresentations may be pointed out before causing public embarrassment for both the judge and the project. More importantly, distributing rough drafts of the report helps to preserve an atmosphere of cooperation which can be essential if any constructive changes are to come of the monitoring effort. To this end, some court watching projects have omitted specific names of judicial personnel from their public report, while including the names in the drafts submitted to the judges. The Illinois Court Watching Project, for example, would not release the names of court personnel mentioned in their report, but referred inquiries to the Illinois Law

Enforcement Commission. The ILEC had been given copies of the unedited reports and could release the confidential material as it saw fit.

The withholding of specific names in the public report also limits the potential misuse of the report in the future. One incumbent judge, mentioned in the League of Women Voters' Illinois Court Watching Project, stated in an election campaign brochure that he had been given a high rating by the project, implying that the LWV was in support of his re-election. Such tactics can threaten the integrity of a court watching project that has maintained a nonpartisan perspective throughout the court monitoring. The project has since asked judges not to cite the report in their campaign literature and copies of the report sent to judges are now marked confidential.

It should be noted that not all projects are opposed to their findings being used to advance political candidacies. The Rainier Community Action Center of Seattle, Washington, rated incumbent judges "unacceptable," "recommended," and "acceptable" based on the sentencing practices of the monitored judges. Those judges found to be "too soft on the criminal" were unacceptable, and leaflets distributed at the voting polls by the Action Center opposed their re-election. At the same time, those judges who received favorable ratings were supported in their re-election bid and their campaign literature reflected that support.

When the court monitoring report is finally released to the public, a timely use of the media can contribute to the recognition and implementation of the report's recommendations. A well-planned news conference, during which the recommendations are outlined and the report is released to the press, can attrac

both newspapers and television coverage and result in a major media event. Once the project's findings have gained some attention, follow-up stories, editorials and even interview programs can serve to perpetuate public interest in court reform in general and the project's recommendations in particular. Once a sufficient degree of public support has been reached, the press and other media are likely to reflect the public concern and exert pressure for judicial reform.

Because a successful media campaign can have a significant influence on the impact of the project's final report, there is a strong argument for designating one member of the project as the media coordinator. The coordinator's responsibilities might include preparing news releases, making contacts with reporters and editors, and keeping the media informed of the progress of the monitoring efforts. The media coordinator might also serve as the spokesperson for the court monitoring project, appearing on interviews and presenting the project's position on the relevant issues. Appointing a spokesperson for the group also minimizes the problem of self-appointed spokespeople speaking on behalf of the project and thus misrepresenting or confusing the issues. Although well-intentioned, these "spokespeople" often make statements which are damaging to the integrity of the monitoring effort and give the impression that the project is poorly organized. Some projects, including the Illinois Court Watching Project, have instructed their monitors not to discuss the project or its findings with the press but to refer the press to a representative of the steering committee.

In summary, court watching projects are perhaps best viewed both as a vehicle for practical improvements in court procedure and as a method for raising the public consciousness on significant criminal justice issues. With respect to the former, most projects have served to make the courts more accessible to participants in the criminal justice process as well as the public.

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## I. THE PROJECT

The Volunteer Docket Observer Program is a project instituted to document procedural inadequacies of the court. Funded as a part of U.N.I.C.O.R.N. by the Law Enforcement Assistance Administration (LEAA), this program is a first attempt to utilize volunteers as monitors to unbiasedly report on the trial process within selected courts of Jefferson County.

Our goals are:

- 1) To discover if due process is available to all the public.
- 2) To educate the citizens in all the facets of the criminal justice system.
- 3) How the general environment of the court affects its proceedings.
- 4) To discover if courts are properly equipped with directional and informational aids to serve first time offenders and victims.

The anticipated results are:

Specific recommendations for upgrading the courts. They may include suggestions for 1) improvement of physical facilities 2) addition of personnel 3) changes in the law or procedures.

Better public understanding of problems in administering justice and support for improving the system.

Establishment of a continuing dialogue between citizens and their judiciary.

The district courts were chosen for the first phase of the project because they are the "people's courts", the place where most offenders meet the law for the first time. As such, they should be models which exemplify justice under law.

MONITOR'S HANDBOOK

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Appendix A - Data Forms

U.N.I.C.O.R.N.

The United Neighborhoods Incorporated for Criminal Opportunity Reduction Now was incorporated February 6, 1978 as a result of cooperative efforts involving city and county neighborhood associations who then felt that Louisville had a need to reduce and prevent crime.

Through its individual members, professional staff and Board of Directors, U.N.I.C.O.R.N. administrates seven other programs, among them the Neighborhood Safety Network, Urban Youth Conservation Corp., Community Engagement, Girls' Club, Youth Volunteers For Positive Action, Senior Citizens Victimization Program, and Crime Prevention Resource Centers.

Major functions of these programs are as follows:

Girls Club

Facillitating constructive programs in increasing awareness of individual potential, girls clubs foster the development of personal growth and maturation of community's future young women.

A-Plus

Denoting positive action of youth volunteers, this program activates the education of youths in crime prevention, first aid, in addition to servicing the community in perpetuating future oriented community leaders.

Community Engagement

Providing senior citizens and the handicap with transportation through its "escort services," this program affiliates itself with the organization and implementation of neighborhood clubs with prime focus on arts and crafts, alleviation of neighborhood eyesores, block clubs and social service referral.

Neighborhood Safety Network

Designed basically to service the Park-Hill area in reduction of crime, this program organizes block watch clubs and service the neighborhood with Operation I.D. engravings and tips on how to prevent crime.

UYCC

Functioning primarily as a supportive program to other U.N.I.C.O.R.N. projects, the Urban Youth Conservation Corps in addition thrives for educational and vocational counseling for the youth as well as interpersonal and public communication training.

A-Cop

Offering aid of assistance in techniques of crime prevention, this program aims for awareness, among Shephard Square and Phoenix Hill senior citizens.

Crime Prevention Resource Center

Organized to reach county area citizens, this center provides crime prevention tips in forceful establishment of block clubs, Operation I.D., and other solutions for crime related problems.

## II. CRIMES

In the State of Kentucky, common law offenses are abolished and no act or omission shall constitute a criminal offense unless designated a crime or violation under the Kentucky Revised Statute.

This provision shall not affect the power of a court to punish for contempt or to employ any sanction authorized by law for the enforcement of an order or civil judgment.

On the following pages are listed the offenses and the crimes found in the Penal Code. By using this list, you will be able to translate the numbers of the charge you hear in court to the actual crime being charged.

In order to better understand the information on our list, please note the following keys.

<u>Abbreviation</u>	<u>Category</u>	<u>Class</u>	<u>Possible Sentence</u>
Fel.	Felony	A	20 or more years
		B	At least 10 - not more than 20 years
		C	At least 5 - not more than 5 years
		D	At least one - not more than 5 years
Misd.	Misdemeanor	A	90 days to 12 months
		B	Less than 90 days
Viol.	Violation		A sentence to a fine but no term of imprisonment
Spe.	Special		Depending on the severity of the crimes as to degree and type of felony or misdemeanor charge

### KENTUCKY PENAL CODE BY CHAPTER-READING

#### CRIME DESCRIPTION

<u>INCOMPLETE OFFENSES</u>	<u>KRS NUMBER</u>	<u>CLASS &amp; CATEGORY</u>
Criminal Attempt	506.010	(Special)
Criminal Solicitation	506.030	(Special)
Criminal Conspiracy	506.040	(Special)
Criminal Facilitation	506.080	(Special)

#### CRIMINAL HOMICIDE

Murder	507.020	(A Fel. Spe.)
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Manslaughter - 1st degree	507.020	(B Fel.)
Manslaughter - 2nd degree	507.040	(C Fel.)
Reckless Homicide	507.050	(D Fel.)

<u>ASSAULT AND RELATED OFFENSES</u>	<u>NUMBER</u>	<u>CATEGORY</u>
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Assault - 1st degree	508.010	(B Fel.)
Assault - 2nd degree	508.020	(C Fel.)
Assault - 3rd degree	508.030	(D Fel.)
Assault under extreme emotional conditions	508.040	(Special)
Menacing	508.050	(B Misd.)
Wanton Endangerment - 1st deg.	508.060	(D Fel.)
Wanton Endangerment - 2nd deg.	508.070	(A Misd.)
Terroristic Threatening	508.080	(A Misd.)

<u>KIDNAPPING AND RELATED OFFENSES</u>		
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Unlawful Imprisonment-1st deg.	509.020	(D Fel.)
Unlawful Imprisonment-2nd deg.	509.030	(A Misd.)
Kidnapping	509.040	(Special)
Custodial Interference	509.070	(B Misd.)
Criminal Coercion (No penalty shown)		

<u>SEXUAL OFFENSES</u>		
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Rape - 1st degree	510.040	(Special)
Rape - 2nd degree	510.050	(C Fel.)
Rape - 3rd degree	510.060	(D Fel.)
Sodomy - 1st degree	510.070	(Special)
Sodomy - 2nd degree	510.080	(C Fel.)
Sodomy - 3rd degree	510.090	(D Fel.)
Sodomy - 4th degree	510.100	(A Misd.)
Sexual Abuse - 1st degree	510.110	(D Fel.)
Sexual Abuse - 2nd degree	510.120	(A Misd.)
Sexual Abuse - 3rd degree	510.130	(B Misd.)
Sexual Misconduct	510.140	(A Misd.)
Indecent Exposure	510.150	(B Misd.)

<u>BURGLARY AND RELATED OFFENSES</u>		
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Burglary - 1st degree	511.020	(B Fel.)
Burglary - 2nd degree	511.030	(C Fel.)
Burglary - 3rd degree	511.040	(D Fel.)
Possession of Burglary Tools	511.050	(A Misd.)
Criminal Trespass - 1st deg.	511.060	(A Misd.)
Criminal Trespass - 2nd deg.	511.070	(B Misd.)
Criminal Trespass - 3rd deg.	511.080	(Viol.)

<u>CRIMINAL DAMAGE TO PROPERTY</u>	<u>NUMBER</u>	<u>CATEGORY</u>
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Criminal Mischief-1st deg.	512.020	(D Fel.)
Criminal Mischief-2nd deg.	512.030	(A Misd.)
Criminal Mischief-3rd deg.	512.040	(B Misd.)
Criminal use of noxious substance	512.050	(B Misd.)
Criminal possession of noxious substance	512.060	(B Misd.)
Criminal Littering	512.070	(B Misd.)
Unlawful Posting Advertising	512.080	(Viol.)

<u>ARSON AND RELATED OFFENSES</u>	<u>NUMBER</u>	<u>CATEGORY</u>
Arson - 1st degree	513.020	(B Fel.)
Arson - 2nd degree	513.030	(C Fel.)
Arson - 3rd degree	513.040	(D Fel.)
<u>THEFT AND RELATED OFFENSES</u>		
Theft by unlawful taking or disposition	514.030	(Special)
Theft by deception	514.040	(Special)
Theft of property	514.050	(Special)
Theft of Services	514.060	(Special)
Theft by failure to make required disposition	514.070	(Special)
Theft by Extortion	514.080	(Special)
Theft of Labor	514.090	(Special)
Unauthorized use of Vehicle	514.100	(A Misd.)
Receiving Stolen Property	514.101	(Special)
Obscuring the Identity of a Machine	514.120	(A Misd.)
<u>ROBBERY</u>		
Robbery - 1st degree	515.020	(B Fel.)
Robbery - 2nd degree	515.030	(C Fel.)
<u>FORGERY AND RELATED OFFENSES</u>		
Forgery - 1st degree	516.020	(C Fel.)
Forgery - 2nd degree	516.030	(D Fel.)
Forgery - 3rd degree	516.040	(A Misd.)
Forgery/Criminal Possession - 1st degree	516.050	(C Fel.)
Forgery/Criminal Possession - 2nd degree	516.060	(D Fel.)
Forgery/Criminal Possession - 3rd degree	516.070	(A Misd.)
Possession of Forgery Device	516.090	(D Fel.)
Criminal Simulation	516.110	(A Misd.)
Using Slugs - 1st degree	516.120	(D Fel.)
Using Slugs - 2nd degree	516.130	(B Misd.)
<u>BUSINESS AND COMMERCIAL FRAUDS</u>		
Deceptive Business Practices	517.020	(A Misd.)
False Advertising	517.030	(A Misd.)
Bait Advertising	517.040	(A Misd.)
Falsifying Business Records	517.050	(A Misd.)
Defrauding Secured Creditors	517.060	(A Misd.)
Fraud in Insolvency	517.070	(A Misd.)
Issuing False Financial Statement	517.080	(A Misd.)
Receiving Deposits in Failing Institutions	517.100	(D Fel.)
Misapplication of Entrusted Property	517.110	(A Misd.)
<u>MISCELLANEOUS CRIMES AFFECTING BUSINESSES, OCCUPATIONS, PROFESSIONS</u>		

Commercial Bribery	518.020	(A Misd.)
Receiving Commercial Bribe	518.030	(A Misd.)
Sports Bribery	518.040	(D Fel.)
Receiving Sports Bribe	518.050	(D Fel.)
Tampering with or Rigging Sports Contest	518.060	(A Misd.)
Ticket Scalping	518.070	(Viol.)

#### OBSTRUCTION OF PUBLIC ADMINISTRATION

Obstructing Governmental Operations	519.020	(A Misd.)
Compounding a Crime	519.030	(A Misd.)
Falsely Reporting an Incident	519.040	(A Misd.)
Impersonating a Public- Servant	519.050	(A Misd.)
Tampering with Public Records	519.060	(A Misd.)

#### ESCAPE AND OTHER OFFENSES RELATED TO CUSTODY

Escape - 1st degree	520.020	(C Fel.)
Escape - 2nd degree	520.030	(D Fel.)
Escape - 3rd degree	520.040	(B Misd.)
Promoting Contraband - 1st deg.	520.050	(D Fel.)
Promoting Contraband - 2nd deg.	520.060	(A Misd.)
Bail Jumping - 1st degree	520.070	(D Fel.)
Bail Jumping - 2nd degree	520.080	(A Misd.)
Resisting Arrest	520.090	(A Misd.)
Resisting Order to Stop Motor Vehicle	520.100	(A Misd.)
Hindering Prosecution or Appre- hension 1st degree	520.120	(D Fel.)
Hindering Prosecution or Appre- hension 2nd degree	520.130	(A Misd.)

#### BRIBERY AND CORRUPT INFLUENCES

Bribery of Public Servant	521.020	(D Fel.)
Soliciting Unlawful Compen- sation	521.030	(B Misd.)
Receiving Unlawful Compen- sation	521.040	(A Misd.)

#### ABUSE OF PUBLIC OFFICE

Official Misconduct - 1st deg.	522.020	(A Misd.)
Official Misconduct - 2nd deg.	522.030	(B Misd.)
Misuse of Confidential- Information	522.040	(D Fel.)

#### PERJURY AND RELATED OFFENSES

Perjury - 1st degree	523.020	(D Fel.)
Perjury - 2nd degree	523.030	(A Misd.)
False Swearing	523.040	(B Misd.)
Unsworn Falsification to- Authorities	523.100	(B Misd.)

INTERFERENCE WITH JUDICIAL ADMINISTRATION

Bribing a Witness	524.020	(D Fel.)
Bribe Received by Witness	524.030	(D Fel.)
Intimidating a Witness	524.040	(D Fel.)
Tampering with a Witness	524.050	(A Misd.)
Bribing a Juror	524.060	(D Fel.)
Bribe Received by a Juror	524.070	(D Fel.)
Intimidating a Juror	524.080	(D Fel.)
Jury Tampering	524.090	(A Misd.)
Tampering with Physical Evidence	524.100	(D Fel.)
Simulating Legal Process	524.110	(B Misd.)

RIOT, DISORDERLY CONDUCT AND RELATED OFFENSES

Riot - 1st degree	525.020	(D Fel.)
Riot - 2nd degree	525.030	(A Misd.)
Inciting to Riot	525.040	(A Misd.)
Unlawful Assembly	525.050	(B Misd.)
Disorderly Conduct	525.060	(B Misd.)
Harassment	525.070	(Viol.)
Harassing Communications	525.080	(B Misd.)
Loitering	525.090	(Viol.)
Public Intoxication	525.100	(B Misd.)
Desecration of Venerated Object	525.110	(A Misd.)
Abuse of Corpse	525.120	(A Misd.)
Cruelty to Animals	525.130	(A Misd.)
Obstructing a Highway or Other Public Passage	525.140	(B Misd.)
Disrupting Meetings	525.150	(B Misd.)

EAVESDROPPING AND RELATED OFFENSES

Eavesdropping	526.020	(D Fel.)
Installing Eavesdropping Device	526.030	(D Fel.)
Possession of Eavesdropping Device	526.040	(A Misd.)
Tampering with Private Communications	526.050	(A Misd.)
Divulging Illegally Obtained Information	526.060	(A Misd.)

OFFENSES RELATED TO FIREARMS AND WEAPONS

Carrying Concealed Weapon	527.020	(Special)
Defacing a Firearm	527.030	(A Misd.)
Possession of Handgun by Convicted Felon	527.040	(D Fel.)
Possession of Defaced Firearm	527.050	(A Misd.)

GAMBLING

Promoting Gambling - 1st degree	528.020	(D Fel.)
Promoting Gambling - 2nd degree	528.030	(A Misd.)
Conspiracy to Promote Gambling	528.040	(D Fel.)
Possession of Gambling Records - 1st degree	528.050	(D Fel.)
Possession of Gambling Records - 2nd degree	528.060	(A Misd.)
Permitting Gambling	528.070	(B Misd.)
Possession of Gambling Device	528.080	(A Misd.)

PROSTITUTION	529.020	(B Misd.)
Promoting Prostitution - 1st degree	529.030	(C Fel.)
Promoting Prostitution - 2nd degree	529.040	(D Fel.)
Promoting Prostitution - 3rd degree	529.050	(A Misd.)
Permitting Prostitution	529.070	(B Misd.)

FAMILY OFFENSES

Bigamy	530.010	(D Fel.)
Incest	530.020	(C Fel.)
Concealing Birth of Infant	530.030	(A Misd.)
Abandonment of Minor	530.040	(D Fel.)
Nonsupport	530.050	(A Misd.)
Endangering Welfare of Minor	530.060	(A Misd.)
Unlawful Transaction with Minor	530.070	(A Misd.)
Endangering Welfare of Incompetent Person	530.080	(A Misd.)

PORNOGRAPHY

Distribution of Obscene Matter	531.020	(Special)
Distribution of Obscene Matter of Minors	531.030	(Special)
Using Minors to Distribute Obscene Material	531.040	(Special)
Advertising Obscene Material	531.050	(B Misd.)
Promoting Sale of Obscenity	531.060	(Special)

## III - THE KENTUCKY COURT SYSTEM

Structured functionally on four tiers, the Kentucky court of justice imposes the use of the District and Circuit Court, Court of Appeals, and the Supreme Court.

A court of limited jurisdiction, District Court has criminal jurisdiction on all misdemeanors, preliminary hearings of most felony offenses (deleting direct submission indictments), and all ordinance cases. District judges handle all wills not contested through probate court. Its civil jurisdiction encompass all civil cases in which the amount in controversy is \$1,500 or less. This court informally handles the jurisdiction on small claims of less than \$500. Under the system a person may file a claim by completing a supplied form of which a minimal fee of \$10 is charged. The services of a lawyer are not necessary.

The Circuit Court is granted jurisdiction of all capital offenses and felonies. It will handle equity matters (divorce), land title problems, contested probate of will cases and all civil matters involving more than \$1,500.

The Circuit Court hears appeals from the District Court and from administrative agencies. In hearing appeals from District Court the Circuit Court reviews the record of the case, the arguments of the attorneys and makes it's decision. It does not hold a new trial.

The Court of Appeals has appellate jurisdiction only. All cases come to it from either Circuit or District Court. It is divided into panels of three who do not sit permanently in one site, but rotate periodically to assure new judges in each region of the state on a regular basis.

Occasionally the lower courts may by-pass the Court of Appeals of which decisions will be made by the Supreme Court. It is the final arbiter of state law and has appellate jurisdiction.

The final arbiter of state law is the Supreme Court. It has appellate jurisdiction only and occasionally hears cases of the circuit court where sentencing of death, life imprisonment, or imprisonment for more than 20 years occur.

In addition to its appellate duties the Supreme Court sets the rules of practice and procedure for the Court of Justice, for the conduct of attorneys, for the conduct of judges, and for administrative procedures to be followed by clerks and judges.

## IV - THE CRIMINAL JUSTICE PROCESS

### Criminal Case Processing Chart

Arrest

Booking

Complaint

Arraignment

Plea Bargaining

Preliminary Hearing

Grand Jury

Circuit Court

Trial

Juvenile Delinquent

Jury Selection

Sentencing

ARREST

Most people are familiar with the commonest form of arrest, the "on view" arrest. As the term implies, this occurs when a police officer sees someone committing a felony, misdemeanor, or offense and immediately apprehends the offender. Kentucky law allows a police officer to make an arrest for a crime not committed in his or her sight and without a warrant for a felony whenever there are "reasonable grounds" to believe that the crime has been committed and that the defendant is the perpetrator. An arrest may be made at any time when there is a valid arrest warrant.

Another type of arrest is a "citizen's arrest." In that case, the arresting person must state the defendant's right to remain silent and report directly to the police for processing.

BOOKING

Once an arrest has been made, the accused is brought to the Hall of Justice where he is booked. This is a clerical procedure which involves entering the charges into the police register and fingerprinting the accused. A date is then set for appearance at court for arraignment, usually within 24 hours, if the defendant is held, or the defendant may be given a summons to appear.

COMPLAINT

Once an arrest has been made, a formal complaint is filed against the accused with the prosecutor in the local criminal court by the arresting officer and/or complaining witness, on behalf of the people of Kentucky State. This verified written accusation must be obtained, along with the defendant's criminal history before the defendant can be arraigned.

While the formal complaint is being sworn to, the defendant is often interviewed by the Probation Department, a report is made, and a docket number is assigned.

ARRAIGNMENT

The arrestee's first appearance in court is arraignment. Here, the person arrested is informed of his rights and advised of the formal charges against him. The judges may also recommend an attorney, who should counsel the person arrested on the nature of the charge. Though the person may have the right to waive use of an attorney, most judges routinely practice this behavior in order to reduce the amount of time and backlog spent on many cases appealed on behalf of disadequate counseling.

In setting bail, great care must be given in consideration to reliability of the defendant to appear in court and the public safety. The defendant may be asked certain "bond facts" by either the judge or Pre-Trial Services, i.e., how long the defendant has lived in the community, employment record, educational background, etc. If prior arrest records are not produced, the defendant may be released on his own recognizance ("ROR"), provided he will "comply with the

conditions of his release."

At this stage the judge may dismiss the case for lack of sufficient evidence to proceed. He or she may reduce a felony charge to a misdemeanor. If the charge is for a misdemeanor or less, the defendant may enter a plea at this time, or may obtain an adjournment until a future date.

If the arraignment is for a felony charge, the defendant never enters a plea in criminal court. He or she may request a hearing (called a preliminary hearing) to determine whether there is sufficient evidence to warrant holding the case for action by the Grand Jury, or the defendant may waive the right to a preliminary hearing.

#### WHEN THE PLEA IS GUILTY - PLEA BARGAINING

If a defendant pleads guilty, before accepting this plea the court must inform him or her of (and determine that he or she understands):

- 1-The nature of the charge
- 2-The maximum and minimum penalties for the offense
- 3-The right to plead guilty or not guilty
- 4-The consequence of a guilty plea - forfeiture of a trial of any kind and waiver of the right to be confronted by witness against him or her.

The court must also determine whether there is a factual basis for the plea and whether the plea is voluntary. To accomplish this, the judge must directly question the defendant. The defendant may plead any time throughout the whole court process; in arraignment, preliminary hearing, various court appearances, or during the trial.

Often the plea is entered after a process of plea bargaining, an agreement between defense and prosecution to lessen the charge and/or recommended penalty in return for a plea of guilty. After a plea agreement is stated in court, the judge must confirm the terms by personally questioning the defendant to determine whether force, threats or promises outside of the agreement were used to obtain the plea.

A judge may not initiate plea negotiations, but he or she is not explicitly prohibited from participating in them once they have begun. The parties involved can either request the judge's concurrence in court prior to entering the plea or his or her previous agreement can be stated when the pleas is entered. The judge then will either sentence the defendant or adjourn to a later date to wait for a pre-sentence investigation report by the Probation Department.

#### PRELIMINARY HEARING

In Kentucky, a defendant charged with a misdemeanor is entitled to a preliminary hearing where the judge will determine if there is sufficient evidence to believe that the crime charged was committed and that the defendant was the one who committed it.

Preliminary hearings for felonies serve a different purpose than for misdemeanors. A hearing may be requested by a person charged with a felony at the time of arraignment in a local district court. The purpose is to determine if there is sufficient evidence to warrant submitting the case to the Grand Jury for consideration. A felony hearing can be waived by the defendant, or by-passed by the issuance of a Grand Jury Indictment.

### MOTIONS AND APPLICATIONS

These are often procedural moves made by either the defense or prosecuting attorney that help to define and set the ground rules for the proceedings, such as a motion to postpone a hearing or trial date or to delay sentencing. These motions can be made in stage: arraignment, examination, pleading, trial or sentence. Other motions, such as a motion to suppress evidence because it was seized by illegal methods, or to suppress a confession, are always made before trial.

### GRAND JURY

From the preliminary hearing, a felony case may be sent to the Grand Jury. This panel, consisting of twelve jurors chosen on a countywide basis, is charged with the determination of whether there is sufficient evidence to prosecute. Enough evidence must indicate that both a felony was committed, and that it was committed by the accused.

If all twelve jurors decide the case is strong enough to justify a trial, a "true bill" is returned. If it is found that the case should be dismissed, the Grand Jury returns a "no bill". If the Grand Jury determines that the evidence of a felony charge is inadequate, but enough to believe a misdemeanor has been committed, the charges can be reduced and sent back to the local criminal courts on information as a misdemeanor.

A Grand Jury has inquisitorial powers which allow it to make full investigations into cases. They may investigate on their own knowledge or upon information of any kind from any source deemed reliable. Evidence and testimony is presented by the prosecuting attorney against the accused. At the discretion of the Grand Jury, witnesses may also testify. The secrecy of proceedings before a Grand Jury is zealously guarded in order to encourage witnesses to give full disclosure of their knowledge about possible criminal action.

### CIRCUIT COURT

The first procedural step following felony indictment by the Grand Jury is arraignment in the circuit court. In that court, the defendant may now plead guilty to the felony charges in the indictment; or at the discretion of the prosecutor, to a lesser charge.

Should the defendant plead not guilty at the arraignment, he or she might next appear at a pre-trial conference. There the judge, prosecutor and defense counsel will attempt to settle the case by dis-

(1)

missal or plea of guilty. Failing such settlement, the case will be assigned to trial, where motions will be decided and trial will be held.

### TRIAL

Upon pleading not guilty, on arraignment, the defendant is often asked by the presiding judge in open court, whether he or she wants a trial by jury or trial by a judge (a bench trial). If the accused waives his or her right to a jury trial, the court has the burden to insure that the choice was made knowingly and voluntarily.

The purpose of the trial, be it bench or jury, is to examine the evidence, hear the testimony and determine the innocence or guilt of the accused.

All violations and misdemeanors with less than a possible six month maximum sentence are tried by the judge only. Persons eligible for Juvenile Delinquent Treatment are given bench trials. Most trials in misdemeanor cases are such trials. These trials may sometimes be rather perfunctory, with the judge reaching a verdict after brief questioning of the defendant, complainant and witness (if any). However there are, of course, many bench trials in which defense and prosecuting attorney find through examination of witnesses necessary.

### JUVENILE DELINQUENT

In Kentucky, a person under 17 who commits a crime is a juvenile delinquent. Juveniles are never charged with crimes until proven guilty. All violations, misdemeanors and felonies are handled through District Court and are subjected to bench trials. There are no jury trials for juvenile offenders.

In cases of serious felony offense, when the child is from prior record considered to be immuable to treatment and of public danger, the county may request a waiver hearing where the juvenile will be tried as an adult in Circuit Court.

During arraignment of juveniles, a motion to detain may be heard by the judge. If the motion is sustained, the judge may request the child be held in Detention Center, which will serve only as a holding cell until trial procedures are completed. If the motion is not accepted, a detention hearing will take place within 72 hours after arraignment. Here, probable cause to believe the defendant committed the crime is established. Also, consideration is given to the juvenile's endangerment to himself and the public. If there is probable cause, the witnesses, commonwealth attorney and defense attorney may all attend a conference prior to trial where ramifications of the case are discussed and recommendations for amendments are decided. Once the commonwealth attorney recommends his findings to the judge, he may choose to accept the motions or pass for trial.

Often, at least for the first time offender, the parties involved in pre-trial conference may decide there is no reason to try the case. When this happens, the judge may assign an "assessment worker

who will in turn counsel the child until he is released. If the judge decides to pass the case for trial or agree to the plea entered, sentencing will occur of which a number of dispositions may be given. Among them, probation, intensive probation, group homes, commitment to state, or Ormsby Village. In cases where the juvenile has been tried as an adult in Circuit Court, penalties may include the separate incarceration of the local jail or penitentiary.

### JURY SELECTION

Prospective jurors are selected randomly from the county's registered voters list and property owner rosters. Jurors names are then pooled and drawn from the jury box. If there is any irregularity in the drawing, names will be drawn until an adequate proportion is represented.

Once the panel of jurors have been selected, the judge and the attorneys may question the potential juror to ascertain their qualifications and assure that they will be free of biases or prejudices in reaching a verdict. This questioning process is known as the voir dire examination.

### SENTENCING

Upon conviction of a misdemeanor, after trial, or upon a plea of guilty, the defendant will be sentenced immediately unless a pre-sentence report for application for a stay of execution is requested. In this event, the case is adjourned to a later date for the sentencing. All felony convictions require a pre-sentence investigation. The defendant's final appearance in the trial court will be for the purpose of sentencing.

No person convicted for any misdemeanor, except minor driving infractions, can be sentenced until the judge has received and considered information as to the defendant's previous criminal record.

Pre-sentence reports are prepared by the probation department servicing the court. They are mandated in all cases where possible sentence can exceed a period of 90 days incarceration, and up to the discretion of the judge for lesser charges, except when the defendant is sentenced to Probation or to a Reformatory (youth).

The reports provide the judge with information on the defendant's background, possible mitigating circumstances involved in the crime, chances for successful probation, and suggested programs of rehabilitation. The judge is under no legal obligation to follow the probation department's recommendation, however.

In New York State, as in many other states and in the federal system a judge usually has a broad range of discretion in determining what type of sentence to impose on a person convicted of a crime.

Some alternatives to a sentence of incarceration are:

a-Unconditional discharge: open court - the offender may be released subject to no conditions.

b-Conditional discharge: the defendant is released on the promise to comply with court-imposed rules governing his conduct.

c-Fine: A monetary sentence may be given alone or with a reformatory or prison term.

d-Probation: The defendant is placed under the supervision of a probation officer to whom he must report periodically.

Some judges prefer probation and conditional discharge sentences because they feel they offer great hope for rehabilitation and are much less expensive than imprisonment. A defendant assigned probation or conditional discharge is released under conditions set by the judge: such as attending Alcoholics Anonymous or a drug program, or participating in a work program.

## V -- DEFENDANT'S RIGHTS

THE ARRAIGNMENT

In Kentucky, arraignment must occur without unnecessary delay; but before bringing the arrestee to court the police must fingerprint, photograph and do other preliminary police duties.

Where the arrest is not for a felony, without an arrest warrant, and the police are unable to bring the person before a court with reasonable promptness, they may serve an appearance summons.

In setting bail, great weight must be given to the evidence of reliability and the financial resources of the defendant. The defendant will be asked certain "bail facts" by the attorney or the judge: e.g. how long the defendant has lived in the community, their employment record, educational background, family ties and family responsibilities, reliability in the past, etc. These questions, together with the seriousness of the alleged crime and the defendant's prior criminal record, are the only factors that the court may consider in setting bail.

It is illegal for the court to set bail in such an extremely high amount that the court knows the defendant cannot post it, just to keep the defendant in jail.

RIGHT TO COUNSEL

The accused has the right to have a lawyer with him or her at any stage of the criminal process from arrest through appeal, except inside a grand jury room. For those who cannot afford a lawyer, the court refers the public defender.

Juveniles are also entitled to free counsel where there is a possibility that their freedom will be curtailed, even though the proceedings may be labeled as civil rather than criminal.

The right to counsel is not limited to the trial itself, it extends to every "critical stage" of the proceedings. When someone is being held for questioning by the police, they have the right to counsel, free if they cannot afford their own and they must be informed of that right. The right attaches whether or not they are actually in custody, as long as they have somehow been deprived of their freedom in any way.

RIGHT TO EXCLUDE EVIDENCE

When evidence is illegally obtained, it is not admissible at trial. Procedurally, the lawyer must make a motion to exclude the evidence, and usually a Preliminary Hearing is held on the motion.

Four common motions to exclude evidence are:

1. The illegal seizure of physical evidence confiscated by a police officer without a search warrant.
2. To taint a search warrant, on the grounds that the affidavit presented to obtain the warrant did not

contain sufficient factual information to show probable cause to believe that a crime was or is being committed on certain properties.

3. Suppress confessions by or statements against, the defendant on the grounds that they were illegally obtained. The grounds for illegality might be that the defendant acted involuntarily (due to pressure, tricks, threats, etc.) or the defendant was not properly warned, prior to being questioned, that he or she had the right to remain silent, that anything they said might be used against them and that they had a right to a lawyer (including a free one if they are indigent). The defendant must knowingly waive these rights to make his or her statement admissible.
4. To suppress evidence of an identification, where a lineup or showup was held in illegal or suggestive manner.

#### RIGHT TO A SPEEDY TRIAL

A defendant's right to a speedy trial is guaranteed by the 6th Amendment of the United States Constitution. According to Kentucky Revised Statute, a person in custody must be brought to a court within 48 hours of time of arrest, however, in recent years, courts have become somewhat bogged down in their handling of docket cases.

Under Kentucky's "ready rule," the prosecution must be ready to prosecute:

- 1-a felony within 6 months after arraignment
- 2-a misdemeanor within 90 days
- 3-a violation within 30 days

However, if the defendant is in custody, he or she must be released from jail if the prosecutor is not ready to proceed within:

- 1-90 days for a felony
- 2-30 days for a misdemeanor
- 3-15 days for a violation

A defendant may move to dismiss the charges for unreasonable delay if these standards have been violated.

#### PRIVILEGE AGAINST SELF INCRIMINATION

It is illegal for the state to force a defendant to make his choice as to whether to take the stand before he has heard the testimony of defense witnesses.

#### RIGHT TO COMPULSORY PROCESS

A state cannot prohibit the testimony of a co-participant on behalf of the other participant.

RIGHT TO CONFRONTATION

No secret witness may be used in evidencing the jury in their decisions of verdict.

## VI - THE ROLE OF THE PROSECUTOR AND DEFENSE ATTORNEY

The services of the commonwealth and county attorney comprise the Kentucky prosecution function. Designated and established to support the state, the commonwealth attorney lends itself to three major functions:

- 1) prosecution of all violations of the criminal and penal laws which are to be tried in circuit court.
- 2) present evidence to the grand jury on behalf of indictments.
- 3) handles county mental inquest warrants in representation of the state.

The county attorney involves himself with the duties of prosecution of all district level criminal cases of misdemeanors, in addition to preliminary hearings and arraignments of felony criminal offenses. They are also involved with the civil representation of county elected officials.

The defense attorney's major role is to represent the accused in criminal matters.

The Public Defender is a defense attorney who represents, without fees, indigent persons at every stage of a criminal proceeding. The Legal Aid Society in the state of Kentucky, fulfills the role of representation for civil cases.

Lawyers have special responsibilities in the administration of justice and their admission to practice and subsequent conduct is carefully supervised.

A defender must represent his or her client zealously and within the bounds of the law he or she is forbidden to make a defense unwarranted by law, to advise the client to do something illegal or to employ coercion. A defender is supposed to tell the client about trial risks and range of sentences and relay to them any prosecution offers.

Attorneys guilty of serious misconduct may be disbarred or temporarily suspended from practice by the Appellate Division. The defense attorney is guilty of misconduct when he or she participates in any activity with the intent to deceive the court or any party, or intentionally delays the clients suit with a view toward their own gain.

## VII - ADDITIONAL PERSONNEL

WITHIN THE COURTROOM

Court clerk - Assists the judge in record-keeping and other clerical duties.

Stenographer or Court Reporter - Takes verbatim record of court proceedings.

Interpreter - (When necessary)

Sheriff - They are distinguished by their gold badge and shoulder patches, and are responsible for security in the court room. They are usually armed. They often assist the clerk of the court with clerical duties.

STATEWIDE AGENCIES

Probation Department - This agency, found in eleven supervisory districts of Kentucky, is the social arm of the court. It is responsible for supervision and assistance of offenders in preparation for re-integration of the community. Through its counseling, this agency provides for expanded and coordinated services in referral of offenders to public social service organizations.

State Bureau of Corrections - This agency is in charge of all persons in detention. This department also transports prisoners to and from court.

## VIII - VOLUNTEER DOCKET OBSERVER PROGRAM

LEGAL TERMINOLOGY AND DEFINITIONS

**ABATED:** A possible disposition of a case. The case is dismissed, usually because of the death of a party to the case.

**ACCESSORY:** A person who contributes to or aids in the commission of a crime. One who aids without being present at a crime.

**ACQUITTAL:** A verdict or finding of not guilty by a jury, or a judge in the case of a bench trial.

**ADJOURN:** To postpone the case to a later time.

**ADJOURNMENT IN CONTEMPLATION OF DISMISSAL (ACD):** An option not to prosecute in exchange for the fulfillment of certain conditions in cases involving a misdemeanor or less for a set period of time. If at the end of the time, the charges haven't been reinstated, and the conditions were met by the defendant, the case is automatically dismissed and the charges is erased from the record.

**ADJUDICATE:** To hear (or try) and determine a matter before the court.

**ADMISSIBLE EVIDENCE:** Evidence or testimony which is allowed by the judge to be introduced during the trial.

**AFFIDAVIT:** A written declaration or statement sworn to and affirmed.

**APPEAL:** To ask for review by a higher court of the bail, the sentence, decision, a motion or the verdict handed down by a lower court.

**APPEARANCE TICKET OR SUMMONS:** A summons to appear in court on a particular date. Issued by a police officer after or in lieu of arrest.

**APPLICATIONS OR MOTIONS:** Procedural moves made by either attorney and submitted to the court. They help to define and set the ground rules for the proceedings of a particular case.

**ARRAIGNMENT:** The appearance before the court of a person charged with a crime; at this time he or she is advised of the charge(s) against them.

**BURNING:** The willful or malicious burning of, or setting fire to, a dwelling or other structure or personal property,

**ASSAULT:** An unjustified attack upon a person with an intent to injure or kill him or her.

**BAIL:** Security given a court in exchange for the release of a person in custody to assure their appearance later.

**BAIL BOND:** An obligation to pay the amount of bail in the person fails to appear in court when requested.

**BENCH:** Refers to attorneys, counsellors and advocates of the court collectively.

**BENCH WARRANT:** A direction by the court for the apprehension and arrest of a defendant or one in civil contempt or sought in a civil case.

**BRIDGE:** The table behind which the defendant stands when he or she comes before the judge. The bridgeman is the person who handles the routing of the documents between the judge, the clerk, and the attorneys.

**BURGLARY:** The entering of another's property without permission and with intent to commit a crime.

**CALENDAR:** The list of cases which are to be heard in a particular court.

**CASE LAW:** Non-statutory law, based on past decisions, opinions, interpretations, traditions.

**CHALLENGE:** The right of one party to object to a juror during the selection of the jury before the trial.

**CHANGE OF VENUE:** Transfer of a case for trial to another county or district, often because of claimed prejudicial publicity in the original district.

**CHARGE:** In criminal law, the accusation made against a person. In civil and criminal law, it also refers to the instructions on law that the court gives the jury at the end of the trial.

**COMMITMENT:** The order of a court to keep a person in custody in a penal or mental institution or hospital.

**COMMON LAW:** The vast collection of previous court decisions, customs, and usage.

**COMMUTATION:** A reduction of punishment or sentence after conviction.

**COMPLAINANT:** The victim of a crime who brings the facts to the attention of the authorities.

**COMPLAINT:** The document prepared by the plaintiff to set forth his or her claims.

**CONCURRENT & CONSECUTIVE SENTENCE:** A concurrent sentence is one in which the sentences for different offenses are served at the same time. A consecutive sentence is one in which one sentence is served after another one has been completed.

**CONDITIONAL DISCHARGE:** A sentence wherein the defendant is released on certain conditions set by the court.

**CONTINUANCE:** The postponement of a legal proceeding to another set date.

**COURT REPORTER:** A stenographer who records verbatim the proceedings in open court.

**CROSS EXAMINATION:** The questioning by a party or the attorney of the opponent's witnesses.

**DECREE:** A formal determination of the court.

**DETENTION:** The act of holding a person in custody; by police for questioning, by police while awaiting arraignment, or in jail while awaiting hearing or trial.

**DEFAULT:** Failure to appear and defend a lawsuit.

**DEFENSE ATTORNEY:** Attorney representing the accused.

**DEMURRER:** A defendant's answer to a charge against him or her. It admits the facts while denying legal responsibility.

**DEPOSITION:** A written statement made under oath.

**DISPOSITION:** The outcome of a case.

**DISTRICT ATTORNEY (D.A.) AND ASSISTANT DISTRICT ATTORNEY (ADA):** The prosecutor on behalf of the people against the accused.

**DOCKET:** The formal record maintained by the clerk or the court, listing all cases to be heard in a particular part each day. It often contains the defendant's name, docket number, charge, date of arrest, and the outcome of the case.

**DUE PROCESS:** Regular and orderly administration of justice by a court in accordance with established rules.

**EXCEPTION:** An objection made to a court's ruling or its charge to the jury.

**EXHIBITS:** Documents or other tangible evidence.

**EXTORTION:** The taking of money or property by threat or force or under pretense of authority.

**EXTRADITION:** The process for return of a fugitive from one state to another which wants him or her for a criminal offense.

**FELONY:** A crime that may be punishable by imprisonment for more than one year or up to five year of probation supervision.

**GRAND JURY:** A group of citizens that examines evidence against a person suspected of a crime. If it decides they should be held for trial, the foreman writes a "true bill" on the indictment and signs it.

**HABEAS CORPUS:** A writ that requires a person having another in custody to produce that person before the court to show that they have a right to custody.

**HEARSAY EVIDENCE:** Testimony that is brought out by the witness which is based not on his or her personal knowledge but rather on information he or she received from someone else. Generally it is not acceptable because the information is not available for cross examination.

**INCARCERATION:** Imprisonment.

**INCOMPETENT:** Refers to a defendant who is unfit to stand trial because he or she is unable to understand the nature of the case, due to a mental or physical condition.

**IN CAMERA:** In private chambers, in secrecy, off the record.

**INDICTMENT:** The document prepared by the District Attorney and approved

by the Grand Jury which charges a certain person with a certain crime.

**INFORMATION:** The written charge against a defendant filed by the District Attorney without grand jury action.

**INJUNCTION:** A court order prohibiting a certain named person from performing certain acts.

**JURISDICTION:** The geographical area and the type of case over which a court has authority.

**JUVENILE:** An accused person between the ages of 7 and 17. These cases are conducted in Family Court.

**LARCENY:** Taking property from another with intent to defraud and deprive that person of it. Petit larceny is the charge for amounts up to \$250.00 grand larceny is the charge for amounts over that.

**MAGISTRATE:** An officer having the power to issue a warrant for arrest of a person charged with a crime. All judges are magistrates but not all magistrates are judges.

**MANSLAUGHTER:** The killing of one person by another although without intent to kill, or under the influence of extreme emotional disturbance.

**MISTRIAL:** A trial which is invalid because of some error in procedure, law, or fact.

**MOTIONS:** (see applications)

**NEGLIGENCE:** The failure to use the degree of care required to protect the rights and property of others.

**NOLO CONTENDERE:** " I do not wish to contest." A plea made by defendant; while not an admission of guilt, it means the defendant will not challenge the charges but will submit to the court imposed punishment.

**NONSUIT:** Dismissal of a lawsuit when the plaintiff abandons it or fails to prove his or her cause.

**KYSIIS:** Kentucky State (Investigating Division) - Identification and Intelligence System. A state report of a person's previous record, obtained by a person's fingerprints.

**OBJECTION:** A protest made to record one party's disapproval of a question asked by their opponent.

**OFFENSE:** A violation of a local municipal regulation. The violation of any criminal ordinance or statute is commonly designated an offense.

**ORDINANCE:** A regulation established by a local government.

**PARDON:** An order releasing a person convicted of a crime from the punishment imposed by the court. Only the Governor has that power in the state.

**PAROLE:** A conditional release from custody.

**PERJURY:** The legal offense of testifying falsely and deliberately under oath.

**PLEA:** The reply of the defendant to the charges.

**PRELIMINARY HEARING:** To determine if there is sufficient evidence to warrant submitting a felony case to the grand jury; and in N.Y.C. to determine if there is sufficient evidence that a crime was committed and the defendant is the offender.

**PRE-SENTENCE INVESTIGATION:** A report on the defendant done by the Probation Department and submitted to the judge for consideration before sentencing.

**PRETRIAL CONFERENCE:** A meeting, after indictment, in which the judge, defense attorney, prosecutor & defendant try to conclude a case without a trial.

**PRIMA FACIE:** "On the face of it". Where sufficient evidence has been produced to obtain a conviction unless overcome by additional evidence.

**PRISONER'S PEN:** The detention center where the prisoners wait to be brought before the judge.

**PRIVILEGED COMMUNICATION:** A statement made to a person of trust (Minister, doctor, lawyer, wife, husband). It cannot be revealed without the originator's consent.

**PROBATION:** A sentence that allows a person found guilty of a crime not to be incarcerated, but to be under the supervision of a probation office for a period of time.

**PUBLIC DEFENDER:** The attorney representing a defendant who can not afford private counsel.

**QUASH:** To make void, or do away with. Example: an indictment may be quashed if there is not enough evidence to hold a suspect for trial.

**RELEASE ON OWN RECOGNIZANCE:** (ROR) The defendant is released without bail, pending a trial or other court action.

**SEARCH WARRANT:** A written order issued by a judge directing a police officer to search a person or place for particular articles specified in the warrant.

**STATUTE:** Any law passed by a local, state or federal legislative body.

**STAY OF EXECUTION:** A temporary delay of the enforcement of sentence after the defendant has been found guilty.

**STIPULATION:** An agreement between the parties or their attorneys.

**SUBPOENA:** A court order requiring a witness to attend; it may also order him or her to bring books or records with them.

**SUMMONS:** The process by which a defendant is advised that there is a claim against him or her; it may also be a notification to a witness or a juror to appear in court.

**TESTIMONY:** Words heard from the witnesses in court ( as distinguished from evidence derived from writings).

**TRANSCRIPT:** An official record of proceedings in court recorded by the court stenographer.

**TRIAL:** A proceeding in court where the charge and facts in question are reviewed and the guilt or innocence of the defendant is determined.

**TRUE BILL:** The endorsement of an indictment when the Grand Jury finds it to be sustained by the evidence; also the bill so endorsed.

**UNCONDITIONAL DISCHARGE:** A possible disposition of a case; the defendant is released without any court-imposed conditions.

**VENUE:** The county in which a prosecution or an action is brought to trial.

**WAIVE:** Voluntary surrender of a right, claim, or privilege.

**WITHDRAWAL OF PLEA:** The court at its discretion, may permit a plea believed to be made unknowingly and involuntarily, to be withdrawn and a plea of not guilty submitted.

## APPENDIX A

DATA FORMS

1. Disposition Forms - With the Circuit courts the disposition forms can be used without any difficulties. On Side 1 are spaces for both objective and subjective recordings of data. When completing the identification box, please where possible, record the middle initial or name of the defendant. Often two defendants may have the same name. Indicate whether an attorney is present, if the defendant is presently in jail, presence of a police officer and witness, and note the purpose of appearance. Court monitors are instructed to ask the clerk in helping them record any information they could not hear. Tapes of the case may also be made available by the Court Administrator's office.

On Side 1 are five lines by which the monitor will record aspects of impropriety. The Docket Observer Program will emphasize subjective collection of information relative to the victim, since the prosecuting witness and the victim are of its main concern. They are instructed to note anything unusual about the case paying close attention to the following:

- 1) favoritism on the part of the judge for certain witnesses such as that of a police officer.
- 2) insensitivity of the judge to the victim in carelessly allowing for further continuances of cases.
- 3) fines or other dispositions are discriminatory.
- 4) favoritism on the part of the judge toward the defendant relative to the victim.
- 5) possible jeopardies of the safety of the victim, the prosecuting witness, and the public in releasing certain offenders.
- 6) understanding on the part of the victim and prosecuting witness to the nature of the court proceedings.
- 7) unjust intimidation of the victim or prosecuting witness by certain defense attorneys.
- 8) failure of the Commonwealth Attorney to bring out inherent portions of the case which as a result could effect the overall outcome of the case.

For clear identification of court procedures and terminology, monitors are instructed to carefully read the training manual found in Exhibit II.

The Trial Court Section will record the offense and the offense convicted of if the judge chooses to amend the case to a higher or lesser charge and check off the appropriate information for each offense. Be sure to note below jail, prison or probation terms, the total dollar amount of the fine, type of trial, restitution and when restitution is to be settled.

On Side 2 is a box for Preliminary Hearings or Probable Cause Hearings. This space is used only when the monitors are eyeing the District Court, for mostly all these type hearings are conducted at this level, with the exception of those private direct submission indictments.

The Case History section is for researcher's use only. Here demographics, continuance reasons and bond release action is recorded. The CCN number is important for it is the file number given to the case for District Court only. Circuit Court will file cases by the Indictment number. One of the two numbers should be entered in the space.

2. Evaluation Forms - There are two types evaluation forms used in court watch. One is arranged in an objective format while the other allows for narrative explanations of which subjective information is recorded. Completion of these forms should not be difficult, for both forms are self-explanatory.

When all forms are completed after each court session, the monitor will drop the information in the District Court Administrator's Office in Judge Ken G. Corey's mailbox.

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