

## FINAL REPORT

Award Number NI-055  
Bernalillo County Magistrate Program  
Albuquerque, New Mexico

### HISTORY AND DESCRIPTION OF MAGISTRATE COURT

The Magistrate Court of the Bernalillo District, New Mexico commenced operation on January 1, 1969. The court serves a population of approximately 400,000 people living in Bernalillo and Sandoval counties. The court has jurisdiction in civil cases in which the debt or sum claimed does not exceed \$2,000 exclusive of interest and costs. Magistrates have criminal jurisdiction in all cases of misdemeanors where the punishment prescribed by law is a fine of \$100 or less, or imprisonment for six months or less, or where fine or imprisonment or both are prescribed but neither exceeds these maximums. In any criminal action in the Magistrate Court which is beyond its jurisdiction, the magistrate may commit to jail, discharge or recognize the defendant to appear before the state District Court. The Magistrate Court criminal jurisdiction is also limited to adult offenders.

There are five magistrates serving the Bernalillo District for elective, two-year terms. The Magistrate Court is not a court of record and only one magistrate sits on a case at a time. The magistrates in the Bernalillo District are required to be attorneys and members of the New Mexico Bar.

Much of the work of the Magistrate Court involves handling traffic cases in which citations have been issued by the State Police or the Bernalillo County Sheriff's Office. Citations issued by the Albuquerque City Police are handled by the Municipal Court of Albuquerque.

### PROCEDURE IN MAGISTRATE COURT

The Supreme Court of New Mexico has promulgated rules of pleading, practice, and procedure in both criminal and civil actions in the Magistrate Court. This report is primarily concerned with the operation of the court in criminal cases. A calendar of cases is prepared in advance of each court session and call by the court personnel and made available to defendant. All cases are heard separately, about fifteen criminal cases per day. All defendants are entitled to jury trials on request.

If a defendant fails to appear a clerk prepares a warrant and it is served by a police agency. Bail for the warrants issued during the court's first session remained outstanding.

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At the beginning of each court session a magistrate makes opening remarks including comments on court procedure and defendant's rights. There is, however, no printed matter instructing defendants as to their Constitutional rights, court procedure or the effect of a plea of guilty. The oath is administered to witnesses collectively. There is no attorney-prosecutor available to participate in each case. Generally the prosecution is directed by a police officer connected with the case or by the private complainant. Although precise figures are not available, many defendants are not represented by an attorney at their trial. Appeals are taken by trial de novo to the State District Court. Approximately 97% of all cases appealed are affirmed.

### COURT ADMINISTRATION

Complaints are filed by the New Mexico State Police, the Bernalillo County Sheriff's Office, the District Attorney's office, or private citizens. The issuance of books of traffic tickets to police officers is under the control of each police department and traffic tickets are audited by a state agency. Officers do not write tickets for a predetermined court appearance date and session. The complaint form used by the Magistrate Court consists of four copies containing the criminal complaint, the criminal summons, the criminal arrest warrant, and the final disposition on the criminal complaint. In addition to the five magistrates, the court has one chief clerk, who acts as administrator, and four deputy clerks. All of these personnel are appointed and are under the exclusive control of the magistrates at all times.

The Magistrate Court does not have a separate budget. All expenses are submitted to the Office of the Court Administrator for payment. Figures on the full cost of operating the court during its first year are not available. Salaries of the magistrates and the court personnel, however, amount to over \$85,000 each year. The cost of office machines and office supplies was also substantial during the court's initial year. In relation to income produced, it appears from the records that the Magistrate Court of the Bernalillo District produced revenues of \$24,846.50 from civil cases and \$70,741.33 from criminal cases for a total of \$95,787.83 from January 1, 1969 to December 31, 1969. Thus the cost of operating the court is not totally offset by the revenues the court produces.

### ENVIRONMENT OF THE MAGISTRATE COURT

The Magistrate Court is located in the Bernalillo County Courthouse. The building is shared by two other courts, the New Mexico District Court and the county Small Claims Court. The Magistrate Court has two small courtrooms available. Many traffic cases are heard in the magistrate's chambers. Physically, the existing facilities are inadequate to meet the needs of the court. By the end of August, 1970, however, the Magistrate Court will have moved into adequate space on another floor of the courthouse.

## LEAA MISDEMEANOR PROBATION PROGRAM

During its first year of operation approximately 7200 criminal cases were filed in the Magistrate Court of the Bernalillo District. Of these cases, an estimated 5000 involved traffic violations, about 4000 moving and 1000 non-moving. Approximately 75% of the cases involved first offenders. As a result of a survey of criminal prosecutions from January 1, 1969 to June 30, 1969, it appears that 1430 man-days were spent in jail as a consequence of convictions for drunkenness, disorderly conduct, and assault and battery. This represents a direct expenditure of \$5,005.00 in jail expenses and untold indirect costs in lost wages and increased welfare payments.

As a matter of routine procedure the Magistrate does not receive a defendant's statewide record of convictions before imposing sentence. The court does not have personnel available to conduct any type of pre-sentence report. If a defendant is found guilty his case can be taken under advisement, he can be placed on probation, he can be fined, or he can be sentenced to jail. Only because of Grant Award NI-055 of the Law Enforcement Assistance Administration has probation become available as a rehabilitative tool. With the help of this grant, a volunteer probation program has been established with law student administrators supervising volunteer citizen probation counselors.

The program was begun on the hypothesis that counselors could effectively work with probationers and thereby decrease costs connected with jail sentences and solve problems of the probationer which could cause him to relapse into criminal conduct. This hypothesis has not yet been tested, since the counselling program went into substantial effect only on July 1, 1970, but there is a body of statistics (see, e.g., Table 1, infra) against which its results can be checked as they unfold.

The program began its first orientation-training class for volunteer probation counselors on Tuesday, June 2, 1970. The group met for three hours one night each week for three weeks. The class consisted initially of 13 citizen volunteers, most of whom became interested in the program after reading newspaper articles or seeing news telecasts publicizing the program. All volunteer counselors, ten men and three women, are from middle class backgrounds. All are of Anglo-Saxon descent with the exception of one who is of Spanish-American descent.

The training class was conducted by Dan Perez, the chief intake officer of the District Court Juvenile Probation Department, and assistants from his office. The purpose of the first class was to acquaint the volunteers with the program generally, give them insight into what counselling involves, and illustrate counselling techniques. The counselling techniques were demonstrated by Edward Sullivan of the Juvenile Detention Home, who is an expert group therapist. The volunteers reacted enthusiastically to the discussion and a lengthy question and answer session followed.

Offense

State Police

Sheriff's Office

Frequency

City Police

Motor Vehicle Violations

Speeding	226	29	0
No Operator's License	214	26	0
DWI	54	12	0
Reckless Driving	83	20	0
Failure to Use Due Care	56	13	0
Stop Sign or Signal Vio.	55	15	0
Following too Closely	9	4	0
Careless Driving	19	4	0
Failure to Yield	13	2	0
Driving on Wrong Side	27	2	0
Improper Turn, Backing or Overtaking	33	2	0

- Includes conviction, pleas of nolo contendere and cases taken under advisement
- Repeat offenses extend to six months from date of latest conviction within
- The General category includes Alcoholic Beverage Control Board, Motor Trans.
- Nineteen individuals repeated.
- An additional five month sentence was suspended.
- One sentence was for six months.
- Traffic citations issued by city officers are handled by the Albuquerque Mu
- Includes DWI and reckless driving.

Table 1.

Summary of Convictions<sup>a</sup> on Criminal Complaints Filed By the New Mexico  
Office, the Albuquerque City Police and Private Complainants From

<u>Offense</u>	<u>Frequency</u>		
	State Police	Sheriff's Office	City Police
Drunk	49	205	2
Disorderly Conduct	1	17	0
Resisting Arrest	9	13	0
Abusing, assaulting an officer; foul language toward; threatening with deadly weapon.	3	10	0
Vagrancy	0	6	0
Assault and Battery	2	4	2
Larceny	0	4	0
Illegal Possession of Deadly Weapon	2	2	1
Criminal Trespass	0	3	0
Attempted Escape	0	1	0
Illegal Possession of Liquor	0	0	0
Falsely Obtaining Services	0	0	1
Criminal Damage to Property	0	0	0

At the second weekly meeting, a local attorney, Lawrence Buchmiller, informed the volunteers about the role an attorney plays in misdemeanor cases and how a counselor can interact with the attorney to the benefit of the probationer. A talk was then given by Captain Vance of the Albuquerque Police Community Relations Department describing how counselors can set up a meeting with the probationer's arresting officer if the probationer feels that he is being harassed by the police.

During the last weekly meeting, members of the Juvenile Probation Department staged an interview and demonstrated counselling techniques. One of the officers played himself and another officer played the probationer in a simulated interview situation. Several pairs of volunteers then engaged in similar role-playing and were constructively criticized by the group.

Of the initial group of volunteers, only one person dropped out of the program during the training class. The reason he gave for his departure was that he feared retaliation by a probationer if the probationer violated his probation and the counselor so informed the Magistrate. It was explained to the individual that this was the remotest of possibilities but he left the program anyway. All other volunteers completed the program and have begun work with their first counselees.

The fact alone that our program concerns itself with misdemeanants does not make it unique. Royal Oak, Michigan, and Denver, Colorado, have misdemeanor probation programs in more advanced stages than ours. The unique feature of our program is that, as nearly as we can determine, it is the only misdemeanor program operating (or testing whether it is possible to operate) with volunteer lay counselors and with law student supervisors.

#### NEW LEAA INTRA-COURT RECORD MAINTENANCE SYSTEM

Another improvement that has been made in the Magistrate Court with the help of Grant Award NI-055 is a new intra-court record maintenance system. The court after its first year was faced with a storage problem concerning its records. The records had been kept by means of retaining the entire original case file in its manilla folder. This presented a problem because of inadequate storage space and the inefficient use of time expended by having to locate the file and search through the many papers contained therein in order to find needed information. The court has revised record-keeping by filling out an index card classifying the case as to complainant (e.g. State Police) at the time the complaint is filed. This card, containing the name of the defendant, the criminal docket number of the case, the complainant, and the date set for hearing is then placed in the Active Card File. The criminal file itself is then placed in a permanent calendar file behind the date on which the case is to be heard. After the case is heard the file is closed by recording on the index card the final disposition of the case, the date of the final disposition, and the magistrate who heard the case. This card is then placed in the Inactive

Card File and becomes a permanent, easily accessible record of the pertinent facts of a case. The criminal file itself is then placed in a group of files in numerical order and stored until a sequence of 250 cases are so filed. These files are then destroyed after separating the one official record copy of the criminal complaint. These single sheets are then permanently stored.

#### PROJECTION

The most critical problem facing the Magistrate Court is its lack of adequate funds. After July 1, 1970, there are no funds in sight for the newly instituted misdemeanor probation program. The law school and the court are currently seeking volunteer administrators, students or lay members of the community, in the event we are unable to pay law student administrators as planned.

Also, notwithstanding the recent improvements in the system of internal recording, that system will not be adequate for long in the face of the rapidly increasing caseload. The magistrates look forward to a computer record system, but this is not now within the realm of fiscal possibility.