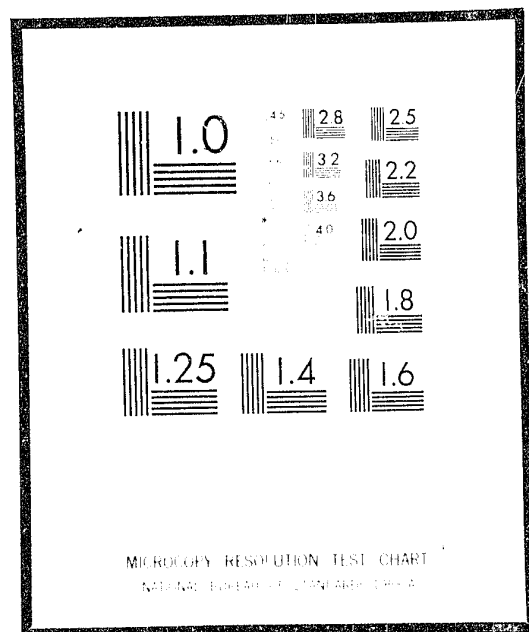


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ANNUAL REPORT OF THE DISTRICT ATTORNEY
 Second Judicial District
 STATE of NEW MEXICO
 1974

Second Judicial District Attorney



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ADMINISTRATION

Crime in our society is a matter of concern to all citizens. The office of the District Attorney, as an element of the Criminal Justice System, is responsible to the citizens and feels that its performance should be a matter of public record.

This report presents a survey of facts and statistics compiled by the staff of the District Attorney's Office during calendar year 1974. It is intended to advise the citizens of the performance and plans of the office so that a knowledgeable public evaluation can be made.

The Criminal Justice System can be only as strong as the citizens require that it be, and its effectiveness is dependent upon the interest, support, and cooperation of the public. It is our hope that this report will contribute to that public interest, support and cooperation.

Yours very truly,

James L. Brandenburg
James L. Brandenburg
District Attorney

JLB:sak

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SECOND JUDICIAL DISTRICT ATTORNEY
Bernalillo County, New Mexico
1974 Annual Report

The district attorney's office in Albuquerque during 1974 established two new divisions to broaden the scope and efficiency of services provided.

The new divisions were an investigative unit and an appeals division.

APPEALS DIVISION

It is hoped the appeals division ultimately will represent the State before the Appellate Courts on all criminal cases from the Bernalillo County District Court.

More than fifty percent of the cases before the Court of Appeals are from the Second Judicial District which is Bernalillo County.

But until the division, staffed by one assistant district attorney, gains needed experience in appeals procedure and is expanded with additional personnel, it will handle only select cases before the Appellate Courts.

It is felt that criminal cases, especially those which presented unique legal or evidentiary problems or were unusually complex at trial, can be better dealt with before the Appellate Courts by the office that tried the case.

The power to argue appeals for the State is, by law, that of the attorney general; his permission is obtained for each case the district

attorney handles. The office completed its responsibilities in one appeal and began work on a second. Both cases involved murder convictions.

The practice of the district attorney's office handling its own appeals will lighten the workload of the attorney general's office and this should benefit the twelve other judicial districts as the attorney general's staff will have increased time and personnel to devote to appeals from those districts.

The Chief Judge of the Court of Appeals met with the legal staff and executive secretaries of the district attorney's office to review procedure and stress the importance of closely monitoring the status of cases on appeal to avoid infractions of the appellate rules.

As the division matures, a file of briefs and arguments on specific issues of law and evidence will be compiled; these will be available for presentation to the trial court when such issues arise as well as for use before the Appellate Courts.

All briefs and arguments will be catalogued and available to district attorneys throughout the state.

INVESTIGATIONS DIVISION

Headed by a professional investigator with more than 20 years experience in New Mexico law enforcement, the Investigations Division has as its primary responsibility the strengthening of cases scheduled for trial by obtaining additional evidence or evidence supplemental to that uncovered by police agencies.

The division also investigates matters which may not be within the jurisdiction of police agencies but which come to the attention of the district attorney's office and are determined to be serious

enough to warrant inquiry.

From its establishment April 1 to the beginning of September, the division assisted trial attorneys with 65 cases. Beginning September 1, one of the three investigators was assigned to assist as needed with each new case filed.

The amount of work involved with these cases has ranged from a simple study to determine the validity of the case to the sending of an investigator to California to obtain information unavailable locally on accused murderers.

One investigator located two previously unknown witnesses during the course of the trial of the case in which they were witnesses. Their testimony contributed substantially to the strength of the case and is considered to be a major factor in the jury's verdict of guilty of first-degree murder.

Many cases submitted by police agencies are sufficient to satisfy the officers involved and sufficient to result in a grand jury indictment. But such evidence is not always sufficient to convince each member of a jury of the defendant's guilt, or sufficient enough to convince the defendant that he should plead guilty.

It is the task of the Investigation Division to search for such additional evidence. Conversely, one investigation cleared a man who had been suspected of murder.

In addition to supplementing cases from the police agencies, the division carried out 41 'confidential' investigations. These included three into possible murders, two into alleged illegal medical practices, one each into possible price fixing and indications of organized criminal activities in gambling and prostitution.

Anytime an investigation uncovers evidence of wrongdoing, either criminally or professionally, the case is prosecuted or the evidence is turned over to the proper authorities.

An investigation was conducted into the retail price of beef. It was aimed at determining whether evidence of price fixing or other illegal consumer-oriented activities existed. No such evidence was found; it was discovered, however, that retail outlets enjoyed a disproportionately large profit percentage as compared to the other elements of the meat industry. The results of the investigation were made public and also turned over to the United States Attorney.

WARRANTS & COMPLAINTS DIVISION

The Warrants & Complaints Division, staffed by three attorneys and detectives from the three major local law enforcement agencies, is responsible for screening the reports submitted by the agencies.

One of the division attorneys is funded by Bernalillo County; another is paid through a Law Enforcement Assistance Administration grant.

The division reviewed prospective cases totally involving 3,089 suspects during 1974.

Each report was studied as to each suspect to determine if probable cause existed to charge the suspect with a misdemeanor in Magistrate Court; to submit the case to the grand jury for possible felony indictment; to return it to the reporting agency for further investigation; or to reject the case entirely for lack of indication that a crime was committed or the suspect committed one.

If the detectives, called liaison officers, accept a case for presentation to the grand jury, they have two possible procedural

alternatives:

If the suspect is in custody and not considered to be dangerous or likely to leave the area, the officers may order him released pending presentation of the case to the grand jury. Meanwhile, the suspect has been booked, photographed, and finger-printed. If the grand jury returns an indictment, an arrest warrant will be issued.

If the suspect is considered dangerous or a poor risk to remain in the area, the officers will charge him with the offense on a criminal complaint in Magistrate Court. The suspect then must appear for arraignment before a Magistrate Judge who will advise him of his rights and set a bond or release him on his own recognizance.

The State Supreme Court's rules of criminal procedure direct that a suspect charged with a felony on a criminal complaint must receive a preliminary hearing or be indicted within ten days of his arraignment or he is to be released from custody.

This often causes problems because police agencies may be unable to develop the case with necessary evidence such as ballistics tests, autopsy reports, chemical analyses, or polygraph tests within the ten days.

If the suspect is not in custody and not considered dangerous, the case is submitted to the grand jury when it is completed by police; an arrest warrant then is issued for the defendant if he is indicted.

The grand jury, composed of 12 citizens, ordinarily hears only the evidence against the suspect--no defense evidence is presented and no cross-examination of witnesses occurs.

If eight of the jurors agree that probable cause exists to believe that a crime was committed and the suspect committed it, a

True Bill indictment is returned; if eight do not agree, a No Bill, or no indictment, is returned.

Of 681 cases submitted to the two grand juries sitting during 1974, 675 resulted in True Bills and six in No Bills.

A suspect and his attorney may waive the Constitutional right to a grand jury indictment or preliminary hearing. In such cases, the Warrants & Complaints Division files a direct information charging the suspect in District Court. Twenty-two informations were filed during the year.

The grand jury indictments and the informations totally charged 852 defendants with 1,115 offenses.

Table 1 lists the offenses charged and the number of defendants accused of them. The total number of defendants listed exceeds the 852 individuals named on indictments and informations because many were charged with multiple crimes. For instance, one defendant may be accused of burglary, larceny, and arson on the same indictment and he would be counted three times on this compilation.

Table 1

| <u>OFFENSE</u> | <u>NUMBER OF OFFENSES</u> | <u>NUMBER OF DEFENDANTS</u> |
|-------------------------------------|---------------------------|-----------------------------|
| Aggravated Assault | 13 | 13 |
| Aggravated Assault on Peace Officer | 3 | 6 |
| Aggravated Battery | 32 | 37 |
| Aggravated Battery on Peace Officer | 1 | 1 |
| Aggravated Burglary | 13 | 18 |
| Aggravated Sodomy | 4 | 5 |
| Altering, Changing Engine Numbers | 1 | 1 |
| Armed Robbery | 87 | 89 |
| Arson | 5 | 7 |
| Assault with intent to Rape | 3 | 3 |
| Attempted Armed Robbery | 6 | 8 |
| Attempted Burglary, auto | 1 | 1 |

| <u>OFFENSE</u> | <u>NUMBER OF OFFENSES</u> | <u>NUMBER OF DEFENDANTS</u> |
|---|---------------------------|-----------------------------|
| Attempted Burglary, residential | 5 | 6 |
| Attempted Forgery | 17 | 17 |
| Attempt to Furnish Drugs to Prisoner | 1 | 1 |
| Attempted Fraudulent Use Credit Card | 1 | 1 |
| Attempted Kidnaping | 1 | 1 |
| Attempted Murder | 1 | 2 |
| Attempted Rape | 3 | 3 |
| Attempted Rape of Child | 1 | 1 |
| Attempted Robbery | 2 | 3 |
| Attempted Sodomy | 2 | 3 |
| Battery on Peace Officer | 4 | 4 |
| Bribery of a Witness | 1 | 1 |
| Burglary, auto | 13 | 17 |
| Burglary, commercial | 63 | 76 |
| Burglary, residential | 85 | 100 |
| Child Abuse (2nd degree) | 2 | 2 |
| Conspiracy | 23 | 49 |
| Contributing to Delinquency of Minor | 7 | 3 |
| Criminal Damage to Property | 3 | 5 |
| Criminal Trespass | 1 | 1 |
| Dealing in Credit Cards of Another | 5 | 5 |
| Embezzlement | 13 | 12 |
| Escape from Jail | 2 | 2 |
| Escape from Peace Officer | 4 | 5 |
| Extortion | 2 | 2 |
| False Imprisonment | 4 | 9 |
| Forgery | 44 | 29 |
| Fraud | 11 | 8 |
| Fraudulent Refusal to Return Leased Vehicle | 1 | 1 |
| Fraudulent Signing Credit Card Sales Slip | 8 | 8 |
| Fraudulent Use of Credit Card | 33 | 17 |
| Homicide by Vehicle | 7 | 6 |
| Incest | 2 | 1 |
| Involuntary Manslaughter | 3 | 3 |
| Issuing Worthless Checks | 15 | 4 |
| Kidnaping | 22 | 21 |

| <u>OFFENSE</u> | <u>NUMBER OF OFFENSES</u> | <u>NUMBER OF DEFENDANTS</u> |
|--|---------------------------|-----------------------------|
| Larceny | 132 | 160 |
| Larceny of Livestock | 1 | 1 |
| Making False Affidavit Perjury | 1 | 1 |
| Murder | 19 | 24 |
| Perjury | 2 | 1 |
| Possession of Burglary Tools | 2 | 2 |
| Rape | 21 | 29 |
| Rape of Child | 1 | 1 |
| Receiving Stolen Property | 25 | 26 |
| Receiving Stolen Vehicle | 12 | 13 |
| Robbery | 34 | 47 |
| Sexual Assault | 25 | 13 |
| Shoplifting | 10 | 11 |
| Sodomy | 19 | 21 |
| Statutory Rape | 7 | 4 |
| Unlawful Taking of Vehicle | 26 | 28 |
| Attempted Distribution Narcotics | 1 | 1 |
| Distribution of Marijuana | 25 | 41 |
| Distribution of Marijuana to Minor | 1 | 2 |
| Distribution of Narcotic | 35 | 43 |
| Distribution of Other Controlled Substance | 17 | 17 |
| Attempted Possession Marijuana | 1 | 2 |
| Attempted Possession Narcotic | 1 | 1 |
| Possession of Marijuana | 22 | 30 |
| Possession of Narcotic | 81 | 95 |
| Possession of Other Controlled Substance | 13 | 13 |
| Totals: | 1,115 | 1,245 |

Of the 1,115 offenses charged, 533 or 47.8% of the total involved crimes against property. These include all burglaries except aggravated burglary, arson, forgeries, frauds, embezzlements, larcenies, and receipts of stolen property.

Crimes of violence or threats of violence, including all assaults, batteries, aggravated burglary, all robberies, all sex offenses, all

homicides, extortion, kidnaping, and false imprisonment totaled 344 offenses or 30.85% of the total.

Narcotics crimes, consisting of all offenses involving controlled substances, totaled 198 or 17.75% of the total.

Other crimes, including conspiracy, contributing to the delinquency of minors, all escapes, briberies, and perjuries, totaled 40 offenses or 3.58% of the total.

Considering this rectangle as representing the total of charges brought, the divisions within it indicate the portions made up by the various crime categories.

| | | | |
|-------------------|-------------------|---------------------|----------------|
| PROPERTY 47.8% | VIOLENT 30.85% | NARCOTICS 17.75% | OTHER 3.58% |
|-------------------|-------------------|---------------------|----------------|

As compared with the 1973 crime category percentages, property crimes in 1974 were up 4.48% from 43.32%; violent crimes were up 6.42% from 24.43%; narcotics crimes dropped a sharp 10.04% from 27.79% of the total, and other crimes dipped .87% from 4.45%.

A Narcotics Division, specializing in the prosecution of drug offenses, was established in 1973. Some of the decline in the number of drug charges undoubtedly can be attributed to the activities of the division; but some must be attributed to the fact that far fewer undercover agents, whose activities result in many arrests, were in use by police agencies in 1974 than in 1973. The reason for this is that most of the agents were extremely active in 1973 and lost their undercover anonymity in the narcotics community.

TRIAL DIVISION

All defendants become the responsibility of the Trial Division

for disposition.

The division generally is staffed by about eleven attorneys including the District Attorney, a division chief, an attorney responsible for Children's Court matters, an attorney dealing exclusively in narcotics cases, and an attorney responsible for misdemeanor cases in the Magistrate Court.

The District Attorney and the Trial Division chief have heavy administrative responsibilities in addition to their trial duties.

The division seldom maintains a stable legal complement as attorneys are prone to resign their positions to take higher-paying posts in private practice after they have gained a reasonable degree of trial experience in the district attorney's office.

Seven of the eleven assistant district attorneys in the division at the first of the year resigned before year's end.

The Children's Court attorney, the Magistrate Court attorney, and attorneys in the Warrants & Complaints Division and the Administration Division try cases in District Court in addition to their primary responsibilities.

One hundred and sixty-two (162) trials were conducted in District Court during 1974 for 182 defendants.

One hundred and two (102) defendants were convicted of 123 offenses during 95 trials;

Twelve (12) defendants pleaded guilty during 10 trials to 11 offenses;

Twenty-one (21) defendants were found not guilty of 25 offenses during 20 trials;

Five defendants received a prosecutor's dismissal of five offenses

during four trials.

Three defendants received a Court dismissal of four offenses during three trials;

Seven defendants received a directed verdict of acquittal on ten offenses during seven trials, and

Thirty-two (32) defendants were mistried on 35 offenses during 26 trials.

The data immediately above accounts for 165 trials, a surplus of three. That is because different verdicts were returned for different defendants accused of the same offenses in several trials and so each trial was counted twice.

Table 2 lists the offenses of which the 102 defendants were convicted. Multiple-offense convictions against the same defendant are listed together which makes it necessary to examine each listing if an attempt is made to discover the number of defendants convicted of a particular offense.

Convictions

Table 2

Aggravated Assault - 1
Aggravated Assault; False Imprisonment; False Imprisonment - 1
Aggravated Assault on Peace Officer; Possession Heroin - 1

Aggravated Battery - 1
Aggravated Battery on Peace Officer - 2
Aggravated Burglary; Armed Robbery; Unlawful Taking Vehicle - 1

Armed Robbery - 12
Armed Robbery (two counts) - 1
Attempted Armed Robbery - 2

Attempted Burglary, auto - 1
Attempted Robbery - 3
Bribery of a Witness - 1

Burglary, commercial - 5
Burglary, commercial; Larceny - 2
Burglary, residential - 2

Convictions (Continued)

Burglary, residential; Attempted Burglary, residential - 1
Burglary, residential; Larceny - 5
Conspiracy - 1

Embezzlement - 1
Forgery; Attempted Forgery - 1
Forgery; Forgery; Forgery; Attempted Forgery - 1

Fraud - 1
Fraudulent Signing Credit Card Sales Slip - 1
Habitual Offender - 1

Homicide by Vehicle - 2
Homicide by Vehicle; Homicide by Vehicle - 1
Kidnaping; Aggravated Sodomy - 1

Larceny - 1
Murder (1st degree); Armed Robbery - 2
Murder (1st degree); Rape; Sodomy - 4

Rape - 2
Receiving Stolen Property - 5
Receiving Stolen Property (two counts) - 1

Shoplifting - 1
Statutory Rape - 1
Unlawful Taking of Vehicle - 2

Voluntary Manslaughter - 1
Voluntary Manslaughter; Aggravated Battery - 1

Distribution of Narcotics - 3
Distribution of Narcotics (three counts) - 1
Distribution of Other Controlled Substance - 1

Possession of Marijuana - 1
Possession of Narcotics - 21
Possession of Narcotics; Conspiracy - 1

Convictions of Lesser-Included Offenses

Seven of the convictions listed above were for lesser-included offenses in the charge on which the defendants were tried; they were:

Aggravated Battery on Peace Officer included in Assault with Intent to Commit a Violent Felony on Peace Officer - 1

Attempted Robbery included in Attempted Armed Robbery - 3

Voluntary Manslaughter included in Murder (open charge) - 1

Voluntary Manslaughter; Aggravated Battery included in Murder (open charge); Aggravated Battery - 1

Possession of Heroin included in Distribution of Heroin - 1

Just as a jury may decide that the defendant is guilty of a lesser charge than that on which he went to trial, the prosecutor, after hearing defense testimony, seeing unexpected weaknesses develop with his own witnesses, or encountering unexpected legal problems, may feel he will be unlikely to win a conviction on the charge.

He may then offer the defendant an opportunity to plead guilty to a lesser charge or fewer charges than he is being tried for.

This is felt to better serve the citizens than risking a complete acquittal of the defendant.

If the defense attorney also is unsure about the strength of his case, he may urge his client to accept the negotiated plea rather than risking a conviction on the original charge.

Ten of the 12 defendants who pleaded guilty during their trials admitted such negotiated charges. They were:

In-Trial Guilty Pleas

negotiated charges:

Armed Robbery from Armed Robbery; Attempted Murder - 1
Attempted Aggravated Battery from Aggravated Battery - 1
Attempted Fraud from Fraud - 2

Burglary, residential from Burglary, residential; Attempted Burglary, residential; Larceny - 1
Murder (2nd degree) from Murder (1st degree) - 1
Petty Larceny from Larceny over \$100 - 1

Receiving Stolen Property from Armed Robbery; Attempted Murder - 1

Possession of Barbiturates from Possession of Narcotics - 1
Possession of Marijuana from Distribution of Marijuana - 1

Two defendants, for reasons known only to themselves and perhaps their attorneys, pleaded guilty during trial to the offenses for which they were tried. They were:

original charges:

Aggravated Assault - 1
Larceny of Livestock - 1

Acquittals

Table 3

Offenses for which the 21 defendants who were acquitted were tried were:

Aggravated Battery - 1
Aggravated Burglary - 2
Armed Robbery - 3

Burglary, commercial - 1 (by reason of insanity)
Burglary, residential - 1
Burglary, residential; Larceny - 3

Larceny - 1
Larceny (two counts) - 1
Murder - 3

Murder; Aggravated Assault - 1
Receiving Stolen Property - 1
Robbery - 1
Unlawful Taking of Vehicle - 1

Distribution of Narcotics - 1

The prosecutor may sometimes during trial encounter unexpected evidentiary or legal problems of such magnitude that he knows the case cannot result in a conviction. In such an instance, he will dismiss the charge rather than waste the valuable time of the Court and jury.

Offenses against the five defendants which were dismissed by the prosecutor, and the reasons for dismissal were:

Prosecutor Dismissals

Burglary, residential; Criminal Trespass - 1 (insufficient evidence).

Larceny - 2 (Court disallowed State's witness to testify to value and denied a continuance to obtain a witness acceptable to the Court).

Possession of Narcotic - 1 (police agency lost evidence).

Possession of Narcotic - 1 (evidence tampered with in police agency's evidence room).

An evidentiary or legal problem for the prosecution may arise during a trial and the defense attorney will ask the Court to declare the defendant not guilty because of the problem. In this report, such an action is termed a Court dismissal.

Offenses against three defendants which were dismissed by the Court, and the reasons for dismissal were:

Court Dismissals

Distribution of Marijuana; Conspiracy - 1; State's refusal to disclose identity of confidential informant.

Distribution of Narcotics - 1; Chain of police custody of evidence broken.

Possession of Narcotics - 1; Chain of police custody of evidence broken.

Following is a list of acquittals ordered by the Court based on its conception of the weight of evidence against the defendant.

Directed Verdicts of Acquittal

Burglary, commercial - 1
Burglary, residential; Attempted Burglary, residential - 1
Forgery - 1

Homicide by Vehicle - 1
Murder; Rape; Sodomy - 1

Distribution of Narcotic - 1
Possession of Marijuana - 1

A trial may be declared a mistrial and stopped without having the jury reach a verdict for a variety of reasons. The most frequent reason is that the jury, after deliberating for a lengthy period, reports that it is unable to agree unanimously on a verdict; this is termed a hung jury.

Other reasons generally involve prejudice to the defendant--an occurrence during trial which the Court feels may influence the jury

in such a way that the defendant will lose his right to a fair trial.

A mistrial generally does not prohibit the case from being taken to trial at a later date.

Because a mistrial accomplishes nothing productive and wastes the time of the Court, the jury, and witnesses in addition to the State and defense, the reason for each mistrial is noted so that trial attorneys can make an effort to prevent another mistrial for the same reason.

This is a tabulation of the reasons for the 26 mistrials declared during 1974, the offenses involved, the number of defendants involved and a statistical analysis of the number of mistrials declared for a particular reason.

Mistrials

Hung jury - Aggravated Sodomy; Sexual Assault - 2
Burglary, commercial - 2
Burglary, residential - 1

Burglary, residential; Larceny - 2
Kidnaping; Rape - 1
Larceny - 1

Rape - 1
Receiving Stolen Vehicle - 2
Statutory Rape - 1

Distribution of Narcotics - 1
Possession of Marijuana with Intent to Distribute - 1
Possession of Narcotics - 1

Mistrials declared because of a hung jury occurred in 13 trials involving 16 defendants; this was 8.02% of all trials conducted, 8.79% of all defendants tried, and 50.00% of all mistrials involving 50.00% of all mistried defendants.

Mistrials resulting from hung juries totally used 25 of the available trial days; this was 59.52% of the total days lost through mistrial; 6.31% of the total days available, and 8.06% of the total days used.

Prejudicial Question by State

Burglary, residential; Attempted Burglary, res. - 2
Rape - 1

Mistrials declared because of a prejudicial comment of the prosecutor occurred in two trials involving three defendants; this was 1.23% of all trials conducted, 1.64% of all defendants tried, and 7.69% of all mistrials involving 9.37% of all mistried defendants.

Prejudicial Comment by State's Witness

Habitual Criminal Information - 1
Receiving Stolen Property (2 counts) - 1

Mistrials declared because of a prejudicial comment of a state's witness occurred in two trials involving two defendants; this was 1.23% of all trials conducted, 1.09% of all defendants tried, and 7.69% of all mistrials involving 6.25% of all mistried defendants.

Juror Knew Defendant

Distribution of Narcotic - 1
Possession of Narcotic - 1

Mistrials declared because a juror realized after testimony had begun that he knew the defendant occurred in two trials involving two defendants; this was 1.23% of all trials conducted, 1.09% of all defendants tried, and 7.69% of all mistrials involving 6.25% of all mistried defendants.

Juror Related to Defense Witness

Possession of Narcotic - 2

Mistrials declared because a juror was related to a defense witness occurred in one trial involving two defendants; this was 0.61% of all trials conducted, 1.09% of all defendants tried, and 3.84% of all mistrials involving 6.25% of all mistried defendants.

Testimony of Illegal Search

Armed Robbery - 2

Mistrials declared after testimony indicated an illegal search had taken place occurred in one trial involving two defendants; this was 0.61% of all trials conducted, 1.09% of all defendants tried, and 3.84% of all mistrials involving 6.25% of all mistried defendants.

Prejudicial Comments of State and Defense Counsel

Burglary, residential; Larceny - 1

Mistrials declared after prejudicial comments by both state and defense counsel occurred in one trial involving one defendant; this was 0.61% of all trials conducted, 0.54% of all defendants tried, and 3.84% of all mistrials involving 3.12% of all mistried defendants.

Defense Attorney Asked to Testify

Burglary, residential; Larceny - 1

Mistrials declared after the defense attorney asked to testify on behalf of his client occurred in one trial involving one defendant; this was 0.61% of all trials conducted, 0.54% of all defendants tried, and 3.84% of all mistrials involving 3.12% of all mistried defendants.

Defendant Asked to Testify

Burglary, residential - 1

Mistrials declared after the defendant asked to testify and his attorney indicated this would cause the attorney a problem with his ethics occurred in one trial involving one defendant; this was 0.61% of all trials conducted, 0.54% of all defendants tried, and 3.84% of all mistrials involving 3.12% of all mistried defendants.

Missing Defense Witness Located

Forgery; Attempted Forgery - 1

Mistrials declared after the location of a missing defense witness was obtained occurred in one trial involving one defendant; this was 0.61% of all trials conducted, 0.54% of all defendants tried, and 3.84% of all mistrials involving 3.12% of all mistried defendants.

Jurors Talk to State's Witness

Burglary, residential - 1

Mistrials declared after jurors talked to a state's witness occurred in one trial involving one defendant; this was 0.61% of all trials conducted, 0.54% of all defendants tried, and 3.84% of all mistrials involving 3.12% of all mistried defendants.

Trials resulting in mistrial totally used 42 of the available trial days; this was 10.60% of the total days available and 13.54% of the total days used.

Many defendants were tried for more than one offense. In some cases, the jury returned different verdicts on the different offenses or the Court directed a verdict on one offense but the case was disposed through action on another offense.

This is a list of such second-count dispositions showing the manner in which the second count was disposed, the offense involved, the offense on which the case was disposed, if it was disposed, and the number of defendants involved.

Second-Count Dispositions

- Acquitted - Armed Robbery but Convicted Attempted Armed Robbery - 1
Distribution of Marijuana but Convicted Conspiracy - 1
Fraud but Convicted second count Fraud - 1
Receiving Stolen Property but Convicted second count Receiving Stolen Property - 1
Unlawful Taking of Vehicle but Convicted Aggravated Assault;
False Imprisonment (two counts) - 1
Possession of Marijuana; Conspiracy but Convicted Distribution of Amphetamines
- Directed Verdict - Larceny but Convicted Burglary, commercial - 1
Larceny and Acquitted Burglary, commercial - 1
Armed Robbery and Acquitted Aggravated Battery - 1
False Imprisonment and Hung Jury Aggravated Sodomy; Sexual Assault - 2
Aggravated Burglary but Convicted Armed Robbery - 1
Conspiracy but Convicted Fraud - 1
Larceny but Convicted Receiving Stolen Property - 1
Larceny but Convicted Burglary, commercial - 1
- Hung Jury - Burglary, residential, but Convicted Larceny - 1
Trafficking Heroin but Convicted second count Trafficking Heroin
- Prosecutor Dismiss - Receiving Stolen Property and Acquitted second and third counts Receiving Stolen Property

Not including days used exclusively for jury deliberations, 82 trials lasted one day; 49 trials lasted two days; 18 trials lasted three days; four trials lasted four days; four trials lasted five days and one trial each lasted six, seven, eight, nine, and ten days.

Totally, the trials took 310 days for an average trial length of 1.91 days. Eight trials were conducted by two prosecutors making a total of 358 man-days that attorneys spent in trial.

A day is considered an available trial day any time a District Court judge is available to hear a case and the District Court's Criminal Division has scheduled a case for trial. If two judges are available on a specific day and the Court has scheduled cases for trial that day, it is considered two available trial days.

The District's twelve judges made 396 days available for trial;

but because a scheduled case may have been continued at the last moment, or the defendant pleaded guilty before his trial was to begin, or the defendant failed to appear for trial, or necessary witnesses were unavailable, or an attorney handling a scheduled case was in trial in another court, or for other similar reasons, an available trial day may be lost.

The district attorney's office was able to utilize 78.28% of the available days during 1974.

Fortunately, not all defendants go to trial. As the list of total offenses and defendants charged on page 8 shows, the district attorney's office and the Court would have to provide resources for the trials of 1,245 defendants for 1,115 offenses charged in just a year.

If convinced that the evidence against them is so strong that a trial conviction is a foregone conclusion, some defendants will plead guilty.

Two hundred and two (202) defendants pleaded guilty to one or more offenses charged to them by the grand jury or by information. Table 4 lists the offenses admitted and the number of defendants pleading guilty to them.

Guilty Pleas to Charge

Table 4

- Aggravated Assault - 1
Aggravated Assault on Peace Officer - 1
Aggravated Battery - 5
- Aggravated Burglary - 1
Armed Robbery - 21
Armed Robbery; Attempted Armed Robbery - 2
- Arson - 2
Attempted Armed Robbery - 1
Attempted Forgery - 1

Guilty Pleas to Charge (Continued)

Attempt to Furnish Drugs to Prisoner - 1
Attempted Rape of Child - 1
Attempted Robbery - 2

Attempted Sodomy - 1
Burglary, auto - 5
Burglary, commercial - 18

Burglary, commercial; Larceny - 1
Burglary, residential - 14
Burglary, residential; Larceny - 5

Conspiracy - 2
Criminal Damage to Property - 2
Embezzlement - 1

Escape from Jail - 1
Falsely Obtaining Accomodations - 1
Forgery - 8

Fraud - 2
Fraudulent Use of Credit Card - 4
Fraudulent Signing of Credit Card Sales Slip - 2

Homicide by Vehicle - 1
Kidnaping - 2
Larceny - 19

Larceny; Receiving Stolen Property - 1
Murder (2nd degree) - 3
Rape - 2

Receiving Stolen Property - 7
Receiving Stolen Vehicle - 1
Robbery - 1

Robbery; Aggravated Battery - 1
Sexual Assault - 2
Sexual Assault; Contributing to Delinquency of Minor - 1

Shoplifting - 5
Sodomy - 2
Sodomy; Aggravated Battery - 1

Unlawful Taking of Vehicle - 4
Voluntary Manslaughter - 7*

Distribution of Marijuana - 4
Distribution of Marijuana; Conspiracy - 1
Distribution of Narcotic - 2
Distribution of Other Controlled Substance; Conspiracy - 2

Guilty Pleas to Charge (Continued)

Possession of Marijuana - 9
Possession of Narcotic - 11
Possession of Other Controlled Substance - 7

*The seven defendants pleading guilty to voluntary manslaughter were named on indictments charging open counts of murder, which include voluntary manslaughter.

In its screening of cases for presentation to the grand jury, the Warrants & Complaints Division attempts to weed out those in which a trial conviction or guilty plea appears doubtful.

But even the best of cases may degenerate after indictment: witnesses may leave the area; it may be determined under the trial attorney's closer scrutiny that the evidence provides grounds for additional defense theories of the crime, or the evidence is insufficient to support the degree of the offense charged; new evidence which is contradictory or incompatible with earlier evidence may be turned up; the matter of the defendant's 'intent' to commit the crime--which must be shown by circumstantial evidence or other means to gain a conviction--may be questionable.

As noted earlier, the grand jury deals with 'probable cause' usually after hearing only prosecution testimony; a trial jury deals with 'reasonable doubt' after hearing both prosecution and defense testimony. Eight of the twelve grand jurors must agree that probable cause exists to believe the suspect committed the crime for an indictment to follow; all twelve trial jurors must agree that beyond a reasonable doubt the defendant committed the crime for a conviction to follow.

For an assistant district attorney to take a case to trial when he believes a jury conviction is doubtful or that the Court might direct a verdict of acquittal would be risking the waste of his time

as well as that of the Court, the jury, and the witnesses.

It also would use valuable trial time which could be better used in the trial of more important or stronger cases.

So the trial attorney may enter into a plea negotiation with the defense attorney. Plea negotiating is the procedure in which the defense attorney and the trial attorney meet to agree on a lesser charge or the number of fewer charges to which the defendant will plead guilty.

The trial attorney considers such a plea will better serve the citizens than would a possible acquittal; the defense attorney considers such a plea will better serve his client than would a possible conviction.

A guilty plea also gives the State the advantage of completely disposing of the case with no grounds for appeal to take the time of the Appellate Courts.

The negotiation of a plea is a heavy responsibility for the trial attorney. The victim of the crime is consulted and in the case of violent crimes, the victim's approval of the negotiation is obtained. Every negotiation must also be approved by either the District Attorney or the Chief Trial Attorney before it is finalized.

In addition to the matter of likelihood of conviction, factors considered in a plea negotiation include: Was the crime violent? Was the victim injured? What impact upon the community did the crime have? What impact upon the community will the plea negotiation have? What is the defendant's record? What are his chances of rehabilitation? What impact will the plea negotiation have on his future behavior?

One hundred and forty-eight (148) defendants pleaded guilty to

negotiated charges. Table 5 lists the charges admitted and the number of defendants pleading guilty to them.

Guilty Pleas to Negotiated Charge

Table 5

- Aggravated Assault - 1
- Assault - 4
- Assault on Peace Officer - 1

- Attempted Aggravated Assault - 6
- Attempted Aggravated Assault; Sexual Assault - 1
- Attempted Aggravated Battery - 2

- Attempted Armed Robbery; Aggravated Battery (original charge) - 1
- Attempted Burglary, commercial - 7
- Attempted Burglary, residential - 3

- Attempted Burglary, residential; Larceny - 1
- Attempted Forgery - 2
- Attempted Fraud - 1

- Attempted Incest - 1
- Attempted Issuing Worthless Checks - 2
- Attempted Kidnaping; Attempted Rape - 1

- Attempted Larceny - 7
- Attempted Receiving Stolen Property - 2
- Attempted Receiving Stolen Vehicle - 1

- Attempted Robbery - 5
- Attempted Shoplifting - 2
- Attempted Sodomy - 1

- Attempted Tampering with Motor Vehicle - 1
- Attempted Unlawful Taking of Vehicle - 1
- Battery - 2

- Burglary, commercial - 5
- Burglary, commercial; Larceny - 1
- Burglary, residential - 3

- Criminal Trespass - 2
- Criminal Trespass; Assault - 1
- Improper Use of Registration - 1

- Larceny - 12
- Negligent Use of Weapon - 1
- Receiving Stolen Property - 1

- Resisting Arrest - 1
- Robbery - 7
- Sexual Assault - 1

Shoplifting - 1
 Tampering with Motor Vehicle - 3
 Violation of Construction Industries Act - 1

 Attempted Distribution of Narcotic - 8
 Attempted Distribution of Narcotic; Possession of Narcotic - 1
 Attempted Distribution of Other Controlled Substance - 2

 Attempted Possession of Marijuana - 1
 Attempted Possession of Narcotic - 14
 Attempted Possession of Other Controlled Substance - 1

 Possession of Marijuana - 10
 Possession of Narcotic - 9
 Possession of Other Controlled Substance - 5

Table 6 presents a percentage comparison of defendants charged, defendants tried, defendants pleading guilty to the charge, and defendants pleading guilty to negotiated charges by crime category.

The table deals with percentages of defendants rather than percentages of offenses as cited earlier.

The figures should be read from left to right as follows: 44.74% of all defendants charged were accused of property crimes, 36.81% of all defendants tried were accused of property crimes, 50.99% of all defendants pleading guilty to the charge were accused of property crimes, etc.

| Crime Category | Defendant Percentage Comparisons | | | Table 6 |
|----------------|----------------------------------|------------------|------------------------|-------------------------|
| | Percent of Charged | Percent of Tried | Guilty Pleas to Charge | Negotiated Guilty Pleas |
| Property | 44.74% | 36.81% | 50.99% | 25.00% |
| Violent | 30.52% | 36.26% | 29.21% | 40.54% |
| Narcotic | 19.75% | 24.72% | 18.31% | 34.45% |
| Other | 4.97% | 2.19%* | 1.48% | 00.00% |

*Defendants tried for Other Crimes included two named on habitual criminal informations which is not really a crime, but a method of increasing sentence on the most recent conviction.

The figures indicate that police agencies are the most effective

in handling crimes against property; for while only 45% of the persons charged were accused of property crimes, 51% of the total defendants pleading guilty to the charge were accused of such offenses.

And the difficulties police agencies face in making strong cases in the violent and narcotics crimes categories is illustrated by the fact that while defendants charged in the two categories made up only about 50% of the total charged, 75% of all defendants pleading guilty to negotiated charges and 61% of all defendants going to trial were from the two categories.

These observations are supported by a study of the number of cases dismissed by the district attorney's office because of insufficient evidence; 35% of the defendants whose cases were dropped for that broad reason or a more specific reason which could fit into that category were accused of either violent or narcotics crimes.

Many cases are dropped for reasons other than a lack of evidence. The two primary other reasons are that the defendant was sentenced in another, separate case, and that the victim filed an affidavit of non-prosecution.

Dismissals occurring after a defendant is sentenced on a separate charge often stem from a plea negotiation: it will be agreed between the trial attorney and defense counsel that if the defendant pleads guilty to one indictment, another will be dropped. In such instances, the defendant generally pleads guilty to the stronger of the two cases and the weaker then is dismissed.

Trial attorneys attempt to discourage victims from filing affidavits of non-prosecution unless the case appears so weak that a conviction or guilty plea is unlikely.

Especially in cases involving violence or threats of violence, it

is felt that all citizens would be better served if the case were prosecuted.

This attitude is tempered, however, with respect for the feelings of the victim. A rape victim, for instance, may indicate that for her to testify to the event before a courtroom of strangers would be so traumatic that her emotional health could be damaged. Despite its desire to fully prosecute defendants accused of such offenses, the district attorney's office does not want to compound the victim's problems, and so the affidavit of non-prosecution may be accepted.

All affidavits are executed in the presence of a trial attorney and only after the attorney has discussed the merits of the case with the victim.

Those three reasons: insufficient evidence, affidavit of non-prosecution, and that the defendant was sentenced for a separate offense were responsible for about 60% of the dismissals.

Cases against 228 defendants were dismissed during 1974 for those and other reasons. Table 7 presents the reasons for dismissal, the offenses involved, the number of defendants involved, and the percentage of total dismissals occurring for that reason.

| | <u>Dismissals</u> | Table 7 |
|--|--|---------|
| <u>Insufficient Evidence:</u> (75 defendants; 32.89% of total dismissals) | Aggravated Assault on Peace Officer - 1 Aggravated Burglary; Aggravated Assault - 1 Aggravated Burglary; Armed Robbery - 1 Armed Robbery - 3 Attempted Rape - 1 Burglary, commercial - 3 Burglary, commercial; Larceny - 2 Burglary, residential - 5 Burglary, residential; Larceny - 5 Burglary, residential; Larceny; Receiving Stolen Property - 1 Burglary, Criminal Damage to Property - 1 Conspiracy - 1 Conspiracy; Fraud - 1 Conspiracy; Receiving Stolen Property - 1 | |

- Embezzlement - 1
- Escape from Peace Officer - 1
- Forgery - 2
- Fraudulent Use of Credit Card - 1
- Homicide by Vehicle - 1
- Larceny - 1
- Murder - 1
- Receiving Stolen Property - 3
- Receiving Stolen Vehicle - 1
- Robbery - 7
- Sexual Assault - 1
- Unlawful Taking Vehicle - 3

- Distribution of Marijuana - 2
- Distribution of Narcotic - 1
- Distribution of Narcotic; Possession of
Narcotic; Conspiracy - 2
- Distribution of Other Controlled Substance;
Possession of Marijuana; Conspiracy - 1
- Attempted Possession of Marijuana; Conspiracy-3
- Possession of Marijuana - 2
- Possession of Narcotic - 13
- Possession of Other Controlled Substance - 1

- Sentenced Other Charge:
- Aggravated Battery - 1
 - Armed Robbery - 2
 - Armed Robbery; Forgery - 1
 - Attempted Forgery - 1
 - Attempted Rape - 1
 - Attempted Rape; Armed Robbery - 1
 - Burglary, auto - 1
 - Burglary, auto; Larceny - 1
 - Burglary, commercial - 2
 - Burglary, commercial; Larceny - 2
 - Burglary, residential - 4
 - Burglary, residential; Larceny - 1
 - Escape from Jail - 1
 - Escape from Peace Officer - 1
 - Larceny - 1
 - Larceny; Forgery - 1
 - Murder - 1
 - Robbery - 3
 - Shoplifting - 1

 - Distribution of Narcotic - 2
 - Distribution of Other Controlled Substance - 1
 - Possession of Marijuana - 2
 - Possession of Narcotic - 5

- Affidavit of Non-Prosecution:
- Aggravated Battery - 3
 - Burglary, commercial; Larceny - 2
 - Burglary, residential - 2
 - Burglary, residential; Larceny - 4

Forgery - 1
Fraud - 1
Larceny - 1
Kidnaping; Rape - 2
Robbery - 3
Unlawful Taking Vehicle - 2

Necessary Witness
Unavailable:

(16 defendants;
7.01% of total
dismissals)

Aggravated Battery - 1
Aggravated Burglary; Kidnaping; Rape; Sodomy - 1
Burglary, auto - 1
Burglary, commercial - 1
Burglary, commercial; Larceny - 1
Burglary, residential - 1
Burglary, residential; Larceny - 2
Embezzlement - 1
Kidnaping; Rape - 1
Sexual Assault - 1
Tampering with Motor Vehicle - 1
Unlawful Taking Vehicle - 1

Distribution of Narcotic - 2
Possession of Narcotic - 1

Evidence Suppressed:

(13 defendants;
5.70% of total
dismissals)

Armed Robbery - 1
Battery on Peace Officer; Possession of Nar-
cotic - 1
Receiving Stolen Property - 2
Robbery - 1
Unlawful Taking Vehicle; Burglary, auto - 1

Distribution of Marijuana - 2
Possession of Marijuana; Possession of Other
Controlled Substance - 1
Possession of Narcotic - 4

Indictment Quashed:

(9 defendants;
3.94% of total
dismissals)

Burglary, commercial - 1
Contributing to Delinquency of Minor - 1

Distribution of Marijuana; Possession of
Marijuana - 1
Distribution of Narcotic - 1
Possession of Marijuana - 5

Extension of Six-
Month Limit Denied:

(7 defendants;
3.07% of total
dismissals)

Aggravated Assault Peace Officer; Unlawful
Taking of Vehicle - 1
Armed Robbery; Attempted Murder - 1

Distribution of Narcotic - 1
Distribution of Narcotic; Possession of
Narcotic - 2
Distribution of Other Controlled Substance - 1
Possession of Narcotic; Possession of
Marijuana - 1

Defendant in Prison:

(6 defendants;
2.63% of total
dismissals)

Burglary, residential; Larceny - 1
Perjury - 1

Distribution of Narcotic - 2
Possession of Narcotic - 2

Pre-Prosecution
Probation Program:

(6 defendants;
2.63% of total
dismissals)

Burglary, auto - 1
Forgery; Attempted Forgery - 1
Larceny - 1
Receiving Stolen Property - 1

Distribution of Marijuana - 1
Distribution of Marijuana; Conspiracy - 1

'Passed' Polygraph:

(5 defendants;
2.19% of total
dismissals)

Aggravated Battery - 1
Aggravated Burglary; Armed Robbery - 1
Burglary, residential; Larceny - 1
Shoplifting - 1

Distribution of Narcotic - 1

Defendant in Treat-
ment Program:

(5 defendants;
2.19% of total
dismissals)

Burglary, commercial - 1
Forgery - 2
Robbery - 1

Possession of Narcotic - 1

Indictment Incorrect:

(5 defendants;
2.19% of total
dismissals)

Larceny - 2
Unlawful Taking Vehicle - 2
Unlawful Taking Vehicle Parts - 1

These cases normally are re-indicted with the error corrected.

Restitution Accepted:

(4 defendants;
1.75% of total
dismissals)

Criminal Damage to Property - 1
Embezzlement - 1
Larceny - 1
Unlawful Taking Vehicle - 1

Defendant Deceased:

(3 defendants;
1.31% of total
dismissals)

Burglary, commercial; Larceny - 1

Distribution of Narcotic - 1
Distribution of Narcotic; Possession of
Narcotic - 1

Committed State
Hospital:

(2 defendants
.87% of total
dismissals)

Robbery - 1
Unlawful Taking of Vehicle - 1

Illegal Search & Seizure:

(2 defendants;
.87% of total
dismissals) Distribution of Narcotic - 2

Pre-Indictment Delay: Armed Robbery - 1

(2 defendants
.87% of total
dismissals) Distribution of Narcotic - 1

Disclosure of Informant
Required:

(2 defendants;
.87% of total
dismissals) Distribution of Narcotic - 1
Distribution of Other Controlled Substance - 1

Defendant Extradicted: Burglary, commercial; Larceny - 1

(1 defendant;
.43% of total
dismissals)

Witness Change Story: Murder - 1

(1 defendant;
.43% of total
dismissals)

State Unprepared for Trial:

(1 defendant;
.43% of total
dismissals) Conspiracy; Fraud - 1

No Criminal Intent: Murder - 1

(1 defendant;
.43% of total
dismissals)

Self Defense: Murder - 1

(1 defendant;
.43% of total
dismissals)

Double Jeopardy: Aggravated Assault on Peace Officer - 1

(1 defendant;
.43% of total
dismissals)

Defendant Cooperated
Further with Police:

(1 defendant;
.43% of total
dismissals)

No Evidence Necessary
Force:

(1 defendant;
.43% of total
dismissals)

Distribution of Marijuana; Conspiracy - 1

Rape - 1

MAGISTRATE COURT DIVISION

One trial attorney has his primary responsibility the prosecution of criminal defendants in the Magistrate Court. Because of the high resignation rate of attorneys from the Trial Division and the necessary reshuffling of personnel which follows, three different attorneys were at times during 1974 designated as the Magistrate Court attorney.

Under the most recent organization of the division, two assistant district attorneys--one from the Trial Division and one from the Administration Division--were assigned to assist the Magistrate Court attorney as needed.

Also assisting were, on the average, six third-year students from the University of New Mexico School of Law.

The division is responsible for the disposition of all criminal petty misdemeanor cases (punishable by up to six months in County Jail) and all major misdemeanor cases (punishable by up to a year in County Jail).

Because persons accused of either a petty or major misdemeanor who demand a jury trial generally have retained counsel or have qualified for appointed counsel, an assistant district attorney or a law student always is assigned to represent the State in jury trials.

An assistant district attorney normally would not prosecute a non-jury petty misdemeanor unless the Magistrate judge requested one. Law students tried the bulk of those cases.

The Magistrate Court attorney and the District Court judge overseeing the District Court's criminal trial activities also arranged for a more expeditious and efficient handling of Magistrate Court appeals in the District Court.

In years past, the District Court sometimes scheduled up to 50 appeals to be heard on a specific day during the month. Notice to the Magistrate Court attorney of which cases were to be heard often was too short to allow the subpoenaing of witnesses and preparation of the case. Dismissals and needless plea negotiations resulted.

The newest arrangement called for four Magistrate Court appeals to be heard on a specific day weekly and for the Magistrate Court attorney to receive notice of those cases two weeks in advance.

Major misdemeanors handled by the division include attempted fourth-degree felonies, assault of a peace officer, possession of amphetamines, second-offense driving while intoxicated, and many others.

Petty misdemeanors include most driving charges, possession of less than an ounce of marijuana, criminal trespass, assault and battery, and many others.

Because of the turnover of Magistrate Court attorneys and the unfamiliarity of law students with the procedures and requirements for reporting trial activity and guilty pleas, the records of such information probably is incomplete.

Table 8 lists the documented Magistrate Court Division activity.

Magistrate Court Activity

Table 8

One hundred and twenty-one (121) Magistrate Court trials for 142 persons accused of petty or major misdemeanors.

114 convicted;

23 acquitted;

4 dismissed by court;

1 mistried

Ninety-three (93) defendants pleaded guilty at times other than trial to one or more of the misdemeanors with which they were charged.

CHILDREN'S COURT DIVISION

One trial attorney also is responsible for representing the State in the Children's Court. This position saw a change in personnel during June because of a resignation.

The Children's Court attorney is responsible for disposition of all cases in which the Juvenile Probation Office has filed a petition (formal charge) against a child.

The Juvenile Probation Office has a workload much greater than is reflected by the work of the Children's Court Division of the district attorney's office. The probation office offers counseling and referrals to children and this does not result in Court action.

New procedures to give the Children's Court attorney greater control over the processing of a case to trial were established. Previously, the Juvenile Probation Office subpoenaed State's witnesses and performed other duties which were more appropriately those of the Children's Court Division of the district attorney's office.

The division has instituted a systematic weekly meeting with probation office personnel to assure that the office is fully aware of the case proceedings.

The attorney and a District Court judge prepared a number of suggestions and comments which were submitted to the State Supreme Court for consideration by the Court in preparation of its procedural rules to be effective in July 1975 for all Children's Courts in the State.

The Warrants & Complaints Division, at the request of the Juvenile Probation Office, reviews each case in which the probation office anticipates filing a petition to determine that sufficient evidence exists and that no violation of the child's Constitutional guarantees were committed. This results in close to a 30% increase in the Warrants & Complaints Division workload.

During 1974, the division reviewed cases involving 880 children and approved the cases against 531 as being appropriate for the possible filing of a petition by the probation office.

A child who denies the accusations of a petition has all the rights of an adult who pleads innocent and may demand a jury trial on the matter.

In addition to conducting those trials, with or without a jury, the Children's Court attorney may file a motion to have an accused child be bound over to the District Court for trial as an adult.

The motion hearing then becomes a small-scale trial in which the Children's Court attorney must convince the Court that reasonable grounds exist to believe the child committed the offense; that he is not amendable to treatment as a child; that he is not mentally retarded nor committable to a mental institution, and that it is in the interests of the community that the child be placed under legal restraints.

One hundred (100) trials were conducted in Children's Court for

102 children, resulting in 73 children being convicted, six children bound over to District Court as adults, and 23 children acquitted.

Table 9 presents the offenses and number of children involved for each of the dispositions.

Children's Court Trial Dispositions

Table 9

Convictions

- Aggravated Assault - 2
- Assault - 4
- Assault with Intent to Murder - 1

- Attempted Arson - 1
- Battery - 2
- Burglary - 21

- Criminal Damage to Property - 3
- Criminal Trespass - 2
- Disorderly Conduct - 6

- Driving While Intoxicated - 10
- Fraud - 2
- Larceny - 5

- Rape - 2
- Receiving Stolen Property - 1
- Receiving Stolen Vehicle - 1

- Resisting Arrest - 1
- Robbery - 2
- Sexual Assault - 2

- Shoplifting - 1

- Possession of Marijuana - 2
- Possession of Other Controlled Substance - 2

Bound Over to District Court

- Aggravated Battery - 2
- Armed Robbery - 1
- Murder; Armed Robbery - 1
- Rape - 2

Acquittals

- Attempted Burglary - 1
- Battery - 3
- Burglary - 6

Criminal Damage to Property - 3
Driving While Intoxicated - 2
Larceny - 3

Public Nuisance - 1
Resisting Arrest - 1
Statutory Rape - 1

Tampering with a Motor Vehicle - 1
Unlawful Taking of a Vehicle - 1

ADMINISTRATION DIVISION

The Administration Division, staffed by four attorneys--including the Appeals Division attorney--and a para-legal, is responsible for all non-trial activities of the office, representation of public agencies, office planning, inter-agency relations, and assistance to the public by providing requested information on legal procedures; legal advice is not given.

Non-trial duties include the presence of an attorney at all District Court arraignments and sentencings, the monitoring of all cases on appeal, the monitoring of cases in which an arrest warrant for the defendant is outstanding, the handling for the State of all motions from convicted defendants seeking post-conviction relief, all probation revocation matters, extradition matters, bond forfeitures, and the monitoring of cases in which the defendant hasn't been arrested so that a petition may be submitted to the Supreme Court seeking extension of the six-month rule which directs that a defendant must be tried within six months of the time he is indicted.

Two private attorneys had been retained part-time and were associated with the Administration Division to handle Reciprocal Enforcement of Support Act petitions and petitions seeking the involuntary commitment of persons to the State Hospital. Those duties were assigned to

two Trial Division attorneys near the end of the year.

The Reciprocal Enforcement of Support Act makes the district attorney's office responsible for seeing that an ex-spouse in one state provides support for dependents in another state. District Court records show 657 reciprocal petitions were filed in 1974 and 648 petitions were disposed.

The office also is the representative of persons who wish to have a relative declared mentally ill and dangerous to himself or others so that the person may be committed to an institution.

Court records show 338 such actions were filed and 365--some from 1973--were disposed.

The division represents wage claimants referred by the State Labor Commission. A civil suit is filed against an employer who refused to abide by a Labor Commission ruling regarding payment of wages.

Two hundred and sixty-five (265) claims were filed in either the District or Small Claims Court by the division and 124 claims were disposed.

During the year, District Court judges ordered the bonds forfeited of 41 persons who failed to appear as scheduled in court; 12 orders later were canceled by the Court. The Administration Division obtained forfeiture judgments in 25 cases and executions of the judgments in 16 cases.

Extradition--the involuntary return to Bernalillo County of fugitives apprehended in other states--was accomplished in 38 instances. The division also filed 155 fugitive complaints against out-of-state fugitives apprehended in Bernalillo County as a part of their extradition to the state in which they were wanted.

All such activities require strict adherence to legal requirements

and extensive communication between the agencies involved.

Motions to revoke the probation of defendants convicted but not incarcerated are filed by the division at the request of the adult Department of Probation and Parole when a probationer violates some condition set upon him by the Court.

Violations may range from failure to make reports as directed to the commission of a crime.

The division filed 76 motions to revoke the probation of 75 persons (one defendant given probation in two separate cases had a motion filed in each case).

An arrest warrant is issued for the probationer at the same time the motion to revoke his probation is filed; if he ever is apprehended, he is brought before the Court and an Administration Division attorney details the violation to the judge.

The probationer is represented by counsel who assists him in denying the violation or explaining the mitigating circumstances which lead to it.

The division disposed of 71 motions to revoke probation (including two on the same individual), resulting in the imprisonment of 22 probationers and the continuance of probation for 18. Thirty of the disposed motions were dismissed without a Court hearing. Such action occurs only at the request of the Department of Probation and Parole or the Court.

The division filed 60 motions to the Supreme Court asking extension of the six-month rule, which directs that a defendant is to be taken to trial within six months of his indictment, for unapprehended defendants; 55 of the motions were granted and five remained pending.

CONSUMER PROTECTION DIVISION

The Consumer Protection Division, staffed by a director and two assistants, successfully handled 2,033 cases during 1974, resulting in the return of \$142,840.63 to unsatisfied consumers and the cancellation of \$34,000 in fraudulent or misleading contracts.

The division also worked closely with residents of an Albuquerque suburban community in obtaining a water system which would supply an adequate volume of water.

Attorneys from the Administration and Trial Divisions regularly lend assistance to the staff of the Consumer Protection Division, all of whom are lay persons.

The division attempts to solve consumer problems through mediation of the matter with the business involved. If the division is unable to resolve a complaint in this manner, or if it is not within the jurisdiction of the office, or is determined to be the result of a statewide activity, the consumer will be referred to the appropriate governmental agency to obtain relief.

Of the 2,033 cases closed by the division, 115 were through referral to a separate agency.

The division has met the full cooperation of the legitimate business community in its efforts.

Complaints resolved by the division included 216 characterized as overcharging; 585 concerning guarantees; 259 misrepresentations; 139 concerned with advertising; 172 involving trade practices; 178 rental problems; and 12 concerning checks.

The division also cleared up 357 problems in 'other areas' which may not have been consumer-oriented but originated with a citizen's complaint against another governmental agency, a utility, or individual.

PRE-PROSECUTION PROBATION PROGRAM

The Pre-Prosecution Probation Program is funded entirely through the Bernalillo County Commission with federal revenue sharing funds.

Staffed by a director, an assistant, and a secretary, the program provides certain first-offenders the opportunity to avoid prosecution and the resulting lifelong criminal record by completing a probationary program designed especially for the individual.

Prospective 'clients' must not be accused of a violent crime, must not have any involvement with hard drugs and no commercial activity with drugs of any kind.

Generally, persons accused of multiple counts of an offense or who give indications of being involved in prior criminal activities are not considered. Persons accused of residential burglary also receive an especially close scrutiny and those persons generally are not considered for the program.

Comments from police agencies concerning the proposed client's chances at rehabilitation are solicited.

The program is not for criminals; it is intended to help those persons who deviated from their usual behavior pattern and committed a criminal act.

An applicant who is considered acceptable must waive all his rights to grand jury indictment and a speedy trial and give a written confession to the crime charged.

Prosecution of the case is held in abeyance pending the client's completion of his probation; if he violates the probation, the charge will be filed against him and his confession used to obtain a conviction.

Probationers are encouraged--sometimes required--to complete their high school educations if they have not previously done so, or to obtain vocational training.

Probationers also are required to make restitution for any losses suffered by the victims of their crimes. The Program Director estimated that during 1974, about \$22,370 in restitution was made through the joint efforts of the program and local police agencies.

During the year, 231 persons applied for the program but only 68 were accepted. The program had 74 successful completions, several of whom were accepted in 1973, and two failures.

The low rate of recidivism is attributable to the intensive screening of applicants and the individualized probationary programs designed to emphasize meaningful goal-oriented counseling by the program staff.

The probationer is not the only one to benefit from the program. By diverting his case from the criminal justice system, the workload of the district attorney's office and the District Court is lessened.

This results in a better utilization of the taxpayer's monies by allowing the prosecutor's office and the Court to concentrate their activities on the more serious cases.

Impossible to document is the number of first-offenders whose life styles are changed through participation in the program and who go on to become productive, useful citizens of the State.

SCHOOLS and SEMINARS

Continual education and training for the attorneys and other personnel of the office is necessary so they may keep abreast of new developments in law and procedure and become aware of innovations or

programs used in other districts which would prove beneficial to the citizens of Bernalillo County.

The Law Enforcement Assistance Administration (LEAA) considers many such educational programs to be of such a great value to the effective and efficient administration of justice that it provides funds for persons in the Criminal Justice System to attend out-of-state seminars.

The District Attorney, the Chief Trial Attorney, and the District Attorney's special investigator completed the National College of District Attorneys five-day Advanced Organized Crime seminar at Houston; expenses were met with LEAA funds.

The District Attorney also served as 'consultant prosecutor' for the National Center for Prosecution Management's para-legal project at Colorado Springs; expenses were paid by the Center.

The Chief Trial Attorney served as faculty adviser for the National College of District Attorneys' Career Prosecutor Course; expenses were met by the College.

Two trial attorneys attended the short course for prosecuting attorneys at Northwestern University, Chicago, sponsored by the National District Attorneys Association; again, LEAA met expenses.

An Administration Division attorney attended a LEAA-sponsored conference on Citizen's Dispute Centers held at Dallas. Such centers are designed to reduce the number of minor infractions handled by police and the courts, thereby reducing the workload of those agencies. LEAA provided the necessary funds.

One attorney completed an Organized Crime seminar at Denver which was sponsored by the National Attorney Generals Association and the National District Attorneys Association; LEAA paid expenses.

An administrative attorney and one from the Warrants & Complaints Division co-chaired the First Governor's Conference on Sex Crimes and the Citizen; the conference was attended by a second Administration Division attorney.

The director of the Pre-Prosecution Probation Program taught a full-credit course in probation and parole at the University of Albuquerque.

One trial attorney served as a member of the panel in a panel discussion under the auspices of the State Medical Examiner concerning the medicolegal investigation of death; the discussion was attended by three trial attorneys and an investigator.

Two trial attorneys attended a seminar on cross examination sponsored by the State Public Defender.

The District Attorney, four division chiefs, the Office Manager, four executive secretaries, and two administrative attorneys attended an office management seminar sponsored by the New Mexico District Attorneys Association; two division chiefs, the Office Manager, and an administrative attorney lectured while at the conference.

The District Attorney, the Chief Trial Attorney, and nine attorneys from various divisions attended a seminar on use of the polygraph and the defense of insanity sponsored by the New Mexico District Attorneys Association.

One division chief, three executive secretaries, and nine secretaries attended a second office management seminar sponsored by the New Mexico District Attorneys Association.

The District Attorney and four trial attorneys attended a New Mexico District Attorneys Association seminar on obscenity.

In conjunction with the New Mexico State Police Laboratory, the

district attorney's office sponsored a questioned documents--hand-writing seminar for all attorneys.

And in conjunction with the Albuquerque Police Department, the office sponsored a seminar for all attorneys on fingerprints.

PUBLIC APPEARANCES

Because the functioning of the criminal justice system relies on the cooperation and support of the citizens, and because needed changes can properly come about only with approval of the citizens, the public must be knowledgeable of its intricacies, have confidence in its strengths, and be aware of its shortcomings.

To this end, the District Attorney has continually made himself and his staff available to the public.

Representatives of the office in 1974 delivered 31 talks to civic groups, 15 at high schools, six to college-level groups, three to business organizations, and three to other governmental agencies.

Representatives also discussed aspects of the system on three radio 'talk-shows' and made similar appearances on three television programs.

The director of the Pre-Prosecution Probation Program hosted a 13-week 'criminal justice' series on educational television produced with the cooperation of the Metropolitan Criminal Justice Coordinating Council.

Law enforcement officers often must make split-second decisions on matters of law; appeals courts throughout the country and even the United States Supreme Court may take months to determine if those decisions were the legal ones. To aid the officers in making those decisions, members of the district attorney's staff spoke to local and

state law enforcement agencies on 11 occasions to explain details of the law, latest interpretations, and apparent trends.

PROPOSED ECONOMIC CRIMES UNIT

The district attorney's office applied for a \$93,000 Law Enforcement Assistance Administration grant to establish an economics crimes division.

The division would add two attorneys and two investigators to the staff. They would concentrate on the 'invisible crimes' occurring in business and government--kickbacks, bribery, embezzlement, corrupt practices, consumer frauds, fencing, pilferage, and others.

These crimes are difficult to detect and when they are discovered, police agencies seldom have the expert investigators, or the funds available to hire or train specialists, required to investigate the more complex cases.

The Chamber of Commerce of the United States estimates that economic and white collar crimes annually cost the taxpayer, businessman, and consumer more than \$40 billion. In addition to the monetary loss, the Chamber says, unchecked economic crimes can "contribute to the existence, severity, and profitability of other forms of criminal activity." And, the Chamber continues, governmental "insensitivity to ethical practices has, in some instances, retarded economic growth."

It is anticipated that at least one of the lawyers and one investigator in the division would have experience in the detection, investigation, and prosecution of such crimes.

The division hopefully would be free of additional duties so that it would have ample time to investigate information of corrupt practices and develop prosecutable cases resulting in convictions.

The division also would be responsible for looking into indications that organized activity was developing in any area of criminal conduct.

It is felt that the mere presence of such a unit will serve as a deterrent to those who might attempt to engage in such practices.

PROPOSED REPEAT-OFFENDER PROSECUTIONS UNIT

A high percentage of crimes are committed by persons with prior criminal records. In many instances, several previous attempts at rehabilitation through the Department of Corrections have proven fruitless.

A procedure is being developed which will provide for the rapid identification of repeat offenders so that their cases will be given top priority. It is expected that such a case will be identified and designated a priority case in the Warrants & Complaints Division and one of several designated experienced Trial Division attorneys will immediately be assigned to it. The attorney will be responsible for carrying the case to its disposition.

If, after a study of the evidence available, the attorney feels the case against the suspect is valid, he personally will direct all further investigations by police agencies and the Investigations Division to increase the likelihood of a trial conviction or entrance of a guilty plea. The Investigations Division will give such cases the maximum use of its resources.

The imposition of sentence under the Habitual Criminal Act--which increases the statutory length of sentence on the most recent conviction--demands strict adherence to both procedural and evidentiary requirements. Problems most often arise in obtaining admissible evidence pertaining to the defendant's prior convictions, and it is expected that attempts to obtain the evidence will begin even before the repeat offender pleads guilty or is taken to trial to minimize the time between a guilty plea or a conviction and the imposition of the maximum lawful sentence.

The cooperation of the District Court will be needed, and it is anticipated, so that priority cases can be scheduled for trial as early as possible to expedite their disposition.

END